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Beyond National Origins: The Development of Modern Immigration Policymaking,
1948-1968

By

Philip Eric Wolgin

A dissertation submitted in partial satisfaction of the
requirements for the degree of

Doctor of Philosophy

in

History

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor David Hollinger, Chair
Professor Kathleen Frydl
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Professor Hasia Diner

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Abstract

Beyond National Origins: The Development of Modern Immigration Policymaking,
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This dissertation examines the development of the modern system of immigration policy. In doing so I shift the lens of analysis from singular strands of legislation to the most enduring facet of postwar reform: the three major categories of permanent immigrant admissions – family reunion, labor-market, and refugee – enshrined in the Hart-Celler Act of 1965. Hart-Celler ended the race-based national origins quota system which had governed immigrant admissions since the 1920s, and implemented a new preference system that allotted just under three quarters of all visas to family reunification, with the remainder for labor migrants and refugees. I ask why policymakers created a system so heavily weighted toward family reunification and how they decided who qualified for each admissions preference. The idea of using these specific categories, and of allotting the lion’s share of visas to family, marked a revolutionary break from the past. Far from being primordial or pre-ordained, the shape of the preferences emerged from two decades of political struggle.

Examining the development of these categories of admission within one overarching admissions structure allows me to detail the long history of policy development. Using a range of archival sources, including the under-utilized State Department records, I follow political and legal processes as they emerged and intertwined from multiple venues, including the executive branch, federal bureaucracies, congress, and civil society groups. My research shows that more than any other factor – more than the will of powerful individuals; of the sausage-making legislative process; or the shape of political coalitions and public opinion – what mattered most for the development of the preference categories, and thus for immigration policymaking itself, was a series of successful short-sighted defenses of older policies and unsuccessful reform efforts. These early attempts at defense and reform in the late-1940s to early-1960s did not answer the key question of immigration policy in the postwar era: how to regulate admissions without the use of the race-based quotas. But, over the course of two decades, they set in motion a positive feedback cycle that, once full-scale legislative reform was possible with the Hart-Celler Act, pushed policymakers to implement a heavily family-reunification based system. Critically, this feedback loop functioned largely below the radar, constraining

policymaking in a manner overlooked even by those officials most intimately connected with immigration reform.

While other pieces of legislation, such as the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990, have made cosmetic changes to the admissions regime, for example raising the numbers of people admissible each year, the foundations of the system – the three categories and emphasis on family reunification – remain the same. These three preferences, above any other facet of policymaking, have shaped the modern immigration regime, with all of its trials and tribulations, including long backlogs in the family preference categories, large numbers of undocumented immigrants, and a disconnect between labor-market needs and available visas. Though many of the constrictions on policymaking from the postwar era emerged from the peculiar history of the national origins quotas, I conclude that the lessons about policy defense and failed reform are applicable to contemporary immigration policymaking.

To My Parents, Evelyn and Larry

Table of Contents:

List of Tables		iii
Acknowledgments		iv
Chapter 1	Introduction – Hart-Celler: “Not a Revolutionary Bill”?	1
Chapter 2	“If You Want the Rainbow, You Must Take the Rain”: Postwar Immigration Policymaking through 1968	22
Chapter 3	“A Great Part of Our Moral and Spiritual Fiber”: The Development of Family Reunification in U.S. Immigration Policy, 1948-1968.	56
Chapter 4	“Carefully Selected Immigrants”: The Development of U.S. Labor-Based Immigration Policy, 1948-1968	94
Chapter 5	By “the Least Troublesome Method”: The Development of U.S. Refugee Policy, 1948-1968.	131
Chapter 6	Conclusion	175
Bibliography		204

List of Tables

2.1	Immigration Quotas, 1921-1952	27
2.2	Worldwide Quota Admissions under the McCarran-Walter Act, 1953-1965	41
2.3	Total Quota Admissions, Great Britain, Germany, and Ireland, 1953-1965	41
2.4	Backlogs of Selected Quotas by Preference, March, 1962	42
3.1	Postwar Legislation Related to Family Reunification	57
3.2	The McCarran-Walter Act Preference System	63
3.3	Italian Immigrants Waiting for 4 th Preference Visas	65
3.4	The Hart-Celler Act Preference System	81
3.5	Estimated Hart-Celler Preferences and Demand, 1968	85
3.6	Total Quota and Italian Admissions, FY 1954-1970	85
3.7	Family Preference Categories in the Immigration Act of 1990	89
4.1	Quota Preferences Under the 1952 and 1965 Immigration Acts	95
4.2	Total Quota Issuance by Class, 1954-1970	107
4.3	Irish and Italian Quota Entry by Preference Class, FY 1957-1965	107
4.4	Total Quota Usage Worldwide, 1954-1970	119
4.5	Irish and Italian Average Yearly Immigration 1954-1965, and Total Immigration, 1966-1969	120
4.6	Total Irish Preference Nonpreference Admissions by Year, Compared with Total Nonpreference Admissions per year (all countries), FY 1960-1969	124
5.1	U.S. Legislative Refugee Policy After WWII	135
6.1	Family, Labor, and Refugee Preferences	176
6.2	Aspects of Admissions Reform	177

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Chapter 1: Introduction – Hart-Celler: “Not a Revolutionary Bill”?

“This bill that we will sign today is not a revolutionary bill. It does not affect the lives of millions. It will not reshape the structure of our daily lives, or really add importantly to either our wealth or our power.”
- President Lyndon B. Johnson, 1965¹

Standing at the base of the Statue of Liberty, President Lyndon Johnson spoke these words to introduce the Immigration and Nationality Act of 1965, otherwise known as the Hart-Celler Act. After a half-century of restrictive immigration policy, with Hart-Celler the United States revised its immigration statutes, removing race and nationality as the principle criterion for admission. Even though Johnson believed that the bill would not be “revolutionary,” he nonetheless singled it out as “one of the most important acts of this Congress and of this administration.”²

It is hard to understate just how wrong Johnson was, and just how monumental the Hart-Celler reforms were: the nation’s immigration regime had, since the early 1920s, privileged citizens of northern and western Europe, while discriminating against those from southern and eastern Europe, and largely excluding Asians and Africans. Under the national origins quota system just three countries – Great Britain, Germany, and Ireland, supplied close to three-quarters of all immigrants in the four decades of its operation.³ The 1965 Act removed all references to race and nationality in immigration law, dismantled the quotas, and implemented a seven-point preference system that emphasized family reunification first and foremost, and to a lesser extent, skill level and refugee status, in determining admissions. The removal of the national origins system, and its foundations of race-based restriction, repaired, according to Johnson, “a very deep and painful flaw in the fabric of American justice.”⁴

¹ “President Lyndon B. Johnson’s Remarks at the Signing of the Immigration Bill, Liberty Island, New York, October 3, 1965.” Lyndon B. Johnson Library and Museum, <http://www.lbjlib.utexas.edu/Johnson/archives.hom/speeches.hom/651003.asp>. accessed 6/15/10.

² *Ibid.*

³ The national origins system emerged from a tide of nativist and isolationist sentiment that had been growing in the U.S. since the late-19th century, and crested in the 1920s. The quotas limited immigration proportionately to two percent of the population of each nationality living in the United States in 1920. Through this system restrictionists privileged northern and western European nations, whose citizens had arrived earlier than those of southern and eastern Europe, the latter considered to be racially inferior. The system exempted the western hemisphere from numerical limitation and excluded Asians and Africans outright. See: Aristide R. Zolberg, *A Nation By Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2006), 216-233 and 245-264; E.P. Hutchinson, *Legislative History of American Immigration Policy, 1798-1965* (Philadelphia: University of Philadelphia Press, 1981), 479-489; Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002), 138-146; and Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 18-50. On nativism in the late-19th and early-20th century, see also: John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (Westport: Greenwood Press, Publishers, 1981 [1955]) and David H. Bennett, *The Party of Fear: From Nativist Movements to the New Right in American History* (Chapel Hill: The University of North Carolina Press, 1988).

⁴ “President Lyndon B. Johnson’s Remarks.”

Johnson's belief in the mundane nature of the new bill was not simply an understatement, but rather a drastic misreading of the future: Hart-Celler signaled an end to Europe's dominance as a sending region, and ushered in a greater number and diversity of immigrants than ever before. The 1965 reforms opened the doors to large-scale immigration from Asia, Latin America, and the Caribbean, as well as southern and eastern Europe, whose citizens had seen the gates partially or fully shut prior to this point. The sheer number of immigrants arriving after Hart-Celler rose significantly, from around 250,000 annually in the 1950s, to over 400,000 in the 1970s, and 700,000 in the 1980s.⁵

Much of this shift can be attributed to the new preference system put in place with Hart-Celler, with many of the new immigrants entering through the family categories. Patterns of chain migration in particular, where individuals arrived in the United States and later sent for their family members, led to expansive growth, especially from areas like Asia. Even though the post-1965 migration contained the highest rates of skilled and educated immigrants ever, it also carried with it a significant number of low- and un-skilled workers. By 1980, over forty percent of all legal permanent immigrants arriving in the U.S. came from Asia, with the bulk of the rest entering from Latin America. European migration in the same period, by contrast, had fallen to only 10 percent of the total.⁶

The Hart-Celler reforms clearly reshaped the landscape of American immigration, but most scholars examining the history of reform argue that these dramatic shifts in immigrant flows surprised policymakers, as illustrated best by Johnson's signing speech. The Hart-Celler Act then stands as evidence of the unintended consequences endemic to immigration policymaking.⁷ These same scholars view the 1965 Act as generally conservative and focused on maintaining a future flow of largely European immigrants, even as it removed overt references to race within the statutes. Other scholars point out that legislators pushed for a system based primarily on family relations, since they

⁵ Many more Asian, Central American, and Caribbean migrants arrived in the 1970s through refugee movements, such as those from Vietnam, Cuba, and Haiti. See: Reed Ueda, *Postwar Immigrant America: A Social History* (Boston: Bedford/St. Martin's, 1994), 58-74 and David M. Reimers, *Still the Golden Door: The Third World Comes to America* (New York: Columbia University Press, 1992 [1985]), Chapter 4-5.

⁶ David Reimers has shown that under the 1965 preferences, one immigrant could, theoretically, bring over eighteen others in the span of only ten years. Jasso and Rosenzweig find the actual immigrant multiplier to be far lower, around 1.2 other people. More recently, Bin Yu, using a different methodology combining unification and reproduction, estimates the immigrant multiplier at around 4.3 per individual, through the second generation. Not counting reproduction, each individual migrant brings approximately 2.1 family members through reunification. Reimers, *Still the Golden Door*, 94-96; Guillermina Jasso and Mark R. Rosenzweig, "Family Reunification and the Immigration Multiplier: U.S. Immigration Law, Origin-Country Conditions, and the Reproduction of Immigrants," *Demography* 23(3) (August 1986); and Bin Yu, "Immigration Multiplier: A New Method of Measuring the Immigration Process," Population Association of America, 2006 Annual Meeting. <http://paa2006.princeton.edu/download.aspx?submissionId=61643>, accessed 10/9/09.

⁷ Aristide Zolberg, for example, points out that while legislators worked to remove the most overtly discriminatory aspects of the law, they did not intend for immigration to expand as much as it did. Zolberg, *Nation By Design*, 335-338. See also: Tichenor, *Dividing Lines*, 216-218.

erroneously believed that future arrivals would be overwhelmingly white and European, mirroring the overrepresentation of the group within the nation.⁸

Even Representative Emanuel Celler (D-NY), one of the leading Congressional liberals and backers of reform, would state from the floor of Congress in 1965 that “there is no danger whatsoever of an influx from the countries of Asia and Africa” under his proposed reform bill. Speaking directly to the shortsightedness of the new preference system, Roger Daniels argues that policymakers ignored demographic evidence that a reunification-based system would alter the flow of immigration, and “expect[ed] the future to resemble the past.” Indeed the Act itself, even while removing national origins discrimination, allotted only slightly more permanent visas to residents of the eastern hemisphere – 170,000, up from 154,000 previously – while for the first time limiting immigration from the western hemisphere to only 120,000 per year.⁹

And yet even within Johnson’s signing speech, the evidence of a new paradigm for immigrant admissions is clear. Delving deeper into his speech uncovers a larger shift in immigration policy than simply increasing numbers or diversity. What emerges is a movement away from an immigration system based on race and national origins, and toward one centered on three primary categories: family reunification, labor-market need, and refugee status. “This bill says simply,” Johnson continued,

that from this day forth those wishing to immigrate to America shall be admitted on the basis of their skills and their close relationship to those already here... The fairness of this standard is so self-evident that we may well wonder that it has not always been applied.

⁸ See, for example: Ngai, *Impossible Subjects*; Reimers, *Still the Golden Door*; Zolberg, *Nation By Design*; Tichenor, *Dividing Lines*; Hutchinson, *Legislative History*, 376-379. Gabriel Chin has argued that legislators knew that the 1965 changes would open the doors to renewed immigration, but set aside the knowledge in the fight to pass the bill. I agree that legislators had the pertinent information, but considering that legislators attempted to stem the tide of immigration from the western hemisphere by exempting it from the preference system and subjecting immigrants from the area to harsh labor certification procedures, (thereby limiting family unification possibilities for these immigrants, and checking their potential for explosive growth,) while not doing the same for other non-European groups, I do not believe that they expected such drastic changes from Asia or Africa. Gabriel J. Chin, “The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965,” *75 North Carolina Law Review* 273 (1996).

⁹ Emanuel Celler quote in: *Congressional Record*, 89th Congress, 1st Session, 1965: 21758. Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants since 1882* (New York: Hill and Wang, 2004), 137. Since the start of numerical limitations in the 1920s, immigrants from the western hemisphere had been exempt, subject only to exclusionary provisions such as the literacy test and public charge provisions. The Hart-Celler Act of 1965 placed a cap of 120,000 immigrants on the western hemisphere, which Mae Ngai argues represented a 40 percent reduction from previous immigration levels. She also argues that the retention of numerical limitations reinforced unequal treatment. By subjecting all nations to the same yearly cap on immigration, of no more than 20,000 people per year, legislators perpetrated the fallacy that nations as different as Luxembourg and Mexico were equal in size, proximity, and circumstance. Ngai, *Impossible Subjects*, 261. Note that the Hart-Celler Act only placed a per-country cap on immigration from the eastern hemisphere. Immigration from countries like Mexico, Canada, etc. entered on a first-come, first-served basis, only subject to the hemispheric limit of 120,000 people. The Eilberg Act of 1976 brought the western hemisphere under the same 20,000-person per year cap. James G. Gimpel and James R. Edwards, Jr., *The Congressional Politics of Immigration Reform* (Boston: Allyn and Bacon, 1999), 121.

Johnson did not propose returning to an earlier system of open immigration, arguing instead that “the days of unlimited immigration are past.” In the absence of race-based restriction, he proposed new criteria for selecting immigrants, based on skill level and family ties. While Johnson did not explicitly single out refugees as one of the major admissions categories, he dedicated the entire second half of his speech to precisely that topic, speaking about “asylum for Cuban Refugees.” Johnson stated emphatically that “I declare this afternoon to the people of Cuba that those who seek refuge here in America will find it. The dedication of America to our traditions as an asylum for the oppressed is going to be upheld.”¹⁰

More than simply ending national origins then, the Hart-Celler Act created a new preference system for admissions, allotting an unprecedented 74 percent of all visas to family reunification, with only 20 percent to labor-market needs, and 6 percent to refugees. The idea of using these three preference categories – which had in one form or another been part of immigration law, but never the primary influence – and of allotting the lion’s share of visas to family, marked a revolutionary break from the past. Johnson’s signing statement not only chronicled the demise of the old system, but also the basis for a new and unique one, shaped by family, and to a lesser extent labor, and refugee restrictions.¹¹

With these changes in mind, in this dissertation I contend that the narrative of unintended consequences surrounding the Hart-Celler Act requires a second level of analysis. Legislators in 1965 did not simply remove race from immigration law, but rather implemented a very specific and revolutionary mixture of family, labor, and refugee preferences to regulate admission. Far from being primordial or pre-ordained, the shape of these three categories; who qualified for admission in each; and what proportion of the total number of visas each would receive, emerged from two decades of struggle for policy development. By 1965, while legislators might not have *intended* the post-Hart-Celler changes, the shape of the system, as well as its ramifications, were already discernable, and had been set in place by a long history of iterative policymaking.

In contrast to immigration studies which have focused on generative moments, major personalities, or the strange bedfellows of policymaking, I argue that in the postwar era, a series of under-the-radar, and often times contradictory attempts at policy reform and retrenchment fused together to radically alter the framework of immigrant admissions.¹² This iterative process created a positive feedback loop which, by 1965, came to constrain and define lawmakers’ notion of their ideal immigrant. The path dependencies that shaped the preference system began shortly after World War II and continued up to and even beyond Johnson’s signing of Hart-Celler. Thus while scholars have detailed the demise of the national origins system, I argue that they have overlooked the creation of

¹⁰ “President Lyndon B. Johnson’s Remarks.”

¹¹ The Hart-Celler Act also allowed the parents of U.S. citizens to enter the country outside of numerical limitations. (Previously they had only received preference within the visa system.) This change further increased the number and percentage of permanent immigrants arriving through family reunification.

¹² For an episodic history of U.S. immigration policy, see, for example: Keith Fitzgerald, *The Face of the Nation: Immigration, the State, and the National Identity* (Stanford: Stanford University Press, 1996). On strange bedfellows, see, for example: Zolberg, *Nation By Design*.

the admissions regime that replaced it – a preference system heavily weighted toward family reunion, with lesser emphases on labor-market needs or refugee status – missing the most important and enduring policy development of the era.¹³

The three categories of admissions remain prominent in contemporary policymaking. While other pieces of legislation, such as the Refugee Act of 1980, the Immigration Reform and Control Act (IRCA) of 1986, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRA-IRA) of 1996, have altered the façade of admissions, for example by raising the numbers of people admissible each year, or changing the processes by which immigrants secure visas, the three preference categories themselves, and their relative weight within the total number of legal permanent resident (LPR) visas, remain the same today.¹⁴

Furthermore, the development of the preference system predated and outlasted the major legislators, legislation, bureaucrats, and interest groups from the postwar era. These three preferences, more than any other facet of policymaking, have shaped the modern immigration regime, with all of its attendant triumphs and tribulations, successes and failures. The family preference categories remain heavily oversubscribed and, with a dearth of low- and un-skilled work visas, the number of undocumented immigrants has only risen since the 1960s. Other issues that emerged during the postwar era but were overlooked in the policy debates, such as the system of temporary work visas and U.S. asylum policy, continue to haunt immigration reformers. Thus an understanding of how the current system came about is critical to understanding contemporary immigration reform efforts.¹⁵

¹³ Note that in contrast to many studies of policy feedback loops, which focus on the mechanisms of policy evolution such as the building of core constituencies, or the entrenchment of interest groups, here I argue that a confluence of small policy decisions, defenses, and reform attempts created a self-reinforcing loop, narrowing the options for future reform. At times, interest groups such as those representing Italian immigrants, proved crucial to advancing policy. But more importantly, the iterative form of policymaking in the postwar period provided the mechanism that changed policymakers' notion of their ideal immigrant – for example elevating family reunification above labor migration. This shift in turn shaped the Hart-Celler preference system. On path dependencies and positive feedback loops, see: Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press, 2004). For studies focused on the role of constituencies, see, for example: Andrea Louise Campbell, *How Policies Make Citizens: Senior Citizen Activism and the American Welfare State* (Princeton University Press, 2003).

¹⁴ The Immigration Act of 1990, which set the modern admissions levels, raised the total number of visas from 290,000 to 675,000 per year, but retained the same preference allotments: 70 percent of all visas were allotted to family reunification, with only 20 percent for skilled labor. The Act did reduce the percentage allotted to the brothers and sisters of U.S. citizens, from 24 to 10 percent, but as James Gimpel and James Edwards point out, even while the percentage dropped, the absolute number of visas rose. Gimpel and Edwards, *Congressional Politics of Immigration Reform, 197-98*.

¹⁵ I do not mean to suggest that issues such as undocumented entry and asylum policy emerged solely from the postwar immigration reforms, but rather that the shape of the preference system deeply exacerbated the tensions already in place, while creating a new institutional dynamic for these same issues to expand. As of February 2011, visas are available for those brothers and sisters of citizens who registered for a visa prior to: January 1988 for the Philippines; January 1996, for Mexico; and January 2000, for the rest of the world. With waiting times between eleven and twenty three years, it is not surprising that many chose to enter outside of legal status. Data on waiting times for visas from: Department of State, "Visa Bulletin for February 2011," Number 29, Vol. 9, http://www.travel.state.gov/visa/bulletin/bulletin_5228.html, accessed 2/1/11.

This dissertation tells the story of the policy developments that led to the 1965 admissions regime. My research shows that more than any other factor – more than the will of powerful individuals; the sausage-making legislative process; or the shape of political coalitions and public opinion – **what mattered most for the development the preference categories**, and thus for immigration policymaking itself, **was a series of successful short-sighted defenses of older policies and unsuccessful reform efforts.**

These early attempts at defense and reform in the late-1940s to early 1960s did not answer the key questions of immigration policymaking in the postwar era – how to regulate admissions without the use of the race-based quotas. But, over the course of two decades, they set in motion a positive feedback cycle that, once full-scale legislative reform was possible with the Hart-Celler Act of 1965, pushed policymakers to implement a heavily family-reunification based admissions system, with far lesser emphases on labor or refugee admissions. Critically, this feedback loop operated largely below the radar, constraining policymaking in a manner that was overlooked even by those officials most intimately connected to immigration reform. Though many of the constrictions on policymaking from the postwar era emerged from the peculiar history of the race-based national origins quota system, I conclude that the lessons about policy defense and failed reform are applicable to contemporary immigration policymaking.

Questions and Timeline

In examining the development of Hart-Celler’s three preference categories, this dissertation asks two interlocking questions:

(1) *How and why did legislators so overwhelmingly choose family reunification to replace the race-based quotas?*

After 1965 family reunion received close to three-quarters of all permanent visas, with far less for labor and refugees. The choice of a heavily family-based system represents an anomaly when placed within a global context. Canada, for example, emerged from World War II with an admissions system similarly weighted toward white Europeans, facing many of the same circumstances and challenges with regard to immigration policy. In 1967, just two years after the Hart-Celler Act, Canada passed its own immigration reforms. The points-based admissions system it implemented gave far more weight to skill level and education, than family ties.¹⁶

In the Great Britain, policymakers attempted to crack down on nonwhite Commonwealth immigration during the same period. From 1962 to 1971, three laws limited immigration to Britain using a combination of labor restrictions (based on total numbers as well as

¹⁶ On the Canadian reforms, see: Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy* (Toronto: University of Toronto Press, 1998) and Triadafilos Triadafilopoulos, “Global norms, domestic institutions and the transformation of immigration policy in Canada and the US,” *Review of International Studies* 36 (2010).

skill level and relative demand,) and strict ancestry rights. Australia implemented its own version of the points system in the late 1970s. Out of these major liberal democracies, only in the United States did reform take the shape of an admissions regime based first and foremost on the right of family reunion.¹⁷

(2) *Within the categories of admission, how did legislators decide who qualified as a family, labor, or refugee migrant?*

Why did legislators allot a larger percentage of visas to the brothers and sisters of citizens (24 percent) than any other category, more than the entire allotment to labor migration? Why did they focus so strongly on the admission of the highly skilled and professional (all but excluding the unskilled from permanent visas,) when demand for immigrant labor moved in the opposite direction? Finally, why did they feel the need to include refugees at all within the permanent admissions preference system, when refugees had been up to this point relegated to separate and temporary legislation? This final question about the place of refugee admissions is even more peculiar, considering that policymakers deemed the refugee provisions of the 1965 Act inadequate even as they were implemented, and would shortly split them once again from immigrant admissions in 1980.¹⁸

TIMELINE OF REFORM

My story begins just after World War II, since the war itself, and U.S. intervention, shifted the terms of the immigration debate, and set the stage for reform. The war broke the United States from its previously isolationist stance, which had helped produce the national origins quota system in the first place. The fight against Nazism and Nazi racial science; gains made by African Americans fighting at home and abroad; and the internment of Japanese Americans during the war increasingly made racial discrimination unacceptable in all facets of federal policymaking. Additionally, continued racial

¹⁷ In Great Britain, the government passed the Commonwealth Immigration Act of 1962 to limit the numbers of non-white immigrants. The Act ended the previously open policy of immigration from Commonwealth nations. It also created an admissions system based on skilled and needed labor, while an Immigration White Paper in 1965 reduced the number of work vouchers available, especially for the low-skilled. Finally, the Immigration Act of 1971 restricted the right of settlement in Britain to those British and Commonwealth citizens whose parents or grandparents had been born in the U.K. Jeffrey G. Reitz, "The Institutional Structure of Immigration as a Determinant of Inter-Racial Competition: A Comparison of Britain and Canada," *International Migration Review* 22, No. 1 (Spring, 1998), 135. Randell Hansen points out that the British reforms were deeply intertwined with questions of citizenship within the British Empire and newly independent Commonwealth nations. Randell Hansen, *Citizenship and Immigration in Post-war Britain* (Oxford: Oxford University Press, 2000). On Australia, see: James Walsh, "Navigating Globalization: Immigration Policy in Canada and Australia, 1945-2007," *Sociological Forum* 23 No. 4 (December, 2008).

¹⁸ Deborah Anker and Michael Posner argue that the 10,200 visas allotted to the 7th preference for refugees "was inadequate even as it was written," forcing legislators to circumvent the 1965 law from the start. The inability of the small number of refugee visas to handle the ever-present and emergency nature of worldwide refugee crises was one of the impetuses for the passage of the Refugee Act of 1980. See: Deborah E. Anker and Michael H. Posner, "The Forty Year Crisis: A Legislative History of the Refugee Act of 1980," *San Diego Law Review* 19(9) 1981-1982, 19.

inequalities within the nation conflicted with the U.S.'s goals in the deepening Cold War, and with its role as a leader of the free world.¹⁹

The demise of the long-standing policy of Asian exclusion provides a particularly strong example of the changing norms during the war. Asian exclusion had been on the books since the late-19th century, but in 1943 Congress granted Chinese nationals naturalization rights and an immigration quota of 105 people per year. Legislators devising this end to exclusion made it clear that they were granting these rights to a wartime ally as a symbolic gesture, rather than as a policy revision. Once the doors had been opened though, legislators found them difficult to shut, granting immigration and naturalization rights to India and the Philippines in 1946, and to all of Asia in 1952.²⁰

Still, the shape of policymaking after the war was by no means set in stone. As Mary Dudziak has shown for civil rights, even as the Cold War opened a space for challenging racial discrimination, it also limited the terms of the debate, as legislators pursued only those policies that would look good to the international world, rather than promoting full equality. Thus for example, while the McCarran-Walter Act of 1952 ended Asian exclusion by granting full citizenship and immigration rights to all, it also reaffirmed unequal treatment on the basis of national origins, by creating the Asia-Pacific Triangle. Under the provisions of the Triangle no more than roughly 2,000 Asians could immigrate each year. Unlike any other quota area, the Triangle was demarcated by ancestry as well as geography. Thus a person of Chinese descent living in England would have to enter under the far smaller quote for China, rather than that of Great Britain. World War II then opened a space for new ideas in immigration policy, but it would take over two decades for policy reforms, along with the preference categories themselves, to develop.²¹

I begin my narrative of policy development just after World War II, with the passage of the Displaced Persons (DP) Act of 1948, and end in 1968, with the implementation of the Hart-Celler Act. I commence with the DP Act since it was the first piece of postwar legislation to reverse the course of restrictionism, here as an emergency and temporary

¹⁹ See, for example: Desmond S. King, *The Liberty of Strangers: Making the American Nation* (New York: Oxford University Press, 2005), 78 and 108-109, and Gary Gerstle, *American Crucible: Race and Nation in the Twentieth Century* (Princeton: Princeton University Press, 2001).

²⁰ On Asian exclusion, see: Zolberg, *Nation By Design*, 176-184; Tichenor, *Dividing Lines*, Chapter 4; Erika Lee, *At America's Gates: Chinese Immigration During the Exclusion Era, 1882-1943* (Chapel Hill: The University of North Carolina Press, 2003), 37-45. See also: Lucy E. Salyer, *Laws as Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill: University of North Carolina Press, 1995), and Alexander Saxton, *The Indispensable Enemy: Labor and the Anti-Chinese Movement* (Berkeley: University of California Press, 1971). The classic study of the repeal of Chinese exclusion is Fred W. Riggs, *Pressures on Congress: A Study of the Repeal of Chinese Exclusion*, (New York: King's Crown Press, 1950). Reed Ueda also points out that economic concerns impacted repeal, with policymakers looking to China as an important trading partner. Reed Ueda, "The Changing Path to Citizenship: Ethnicity and Naturalization during World War II," in *The War in American Culture: Society and Consciousness During World War II*, Lewis A. Erenberg and Susan E. Hirsh, eds. (Chicago: University of Chicago Press, 1996). On the repeal, see also: Zolberg, *Nation by Design*, 290 and Reimers, *Still the Golden Door*, 11-17.

²¹ Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton: Princeton University Press, 2000). On the Asia-Pacific Triangle, see: Reimers, *Still the Golden Door*, 17-18.

bill to help the European victims of World War II. The bill also created one of the first bureaucracies for admitting refugees, the Displaced Persons Commission, and set in place the first conscious labor preferences and job requirements for entry. These latter requirements would become a mainstay of postwar immigration policymaking.²² On the other end of the temporal spectrum, while President Johnson signed the Hart-Celler Act into law in 1965, its full provisions did not enter into effect until July 1, 1968. In the three years between passage and implementation, policymakers haggled over the bill's provisions; developed the bureaucracies charged with fulfilling them; and attempted further legislative reforms. These post-passage debates laid the foundations for reform efforts in the following decade and beyond.

The preference system implemented in 1965 continues to influence contemporary policymaking efforts. While the number of immigrants admitted each year has expanded greatly (from a legal limit of 290,000 permanent resident visas worldwide in 1965, to 675,000 after the Immigration Act of 1990,) the percentage of visas given to the major categories of admission remains largely the same, with 70 percent given to family reunion, and only 20 percent given to labor.²³ Within the preferences, the choices made for each category continue to influence the current debates as well: the family preferences remain oversubscribed, with waiting periods in the 4th preference for the brothers and sisters of U.S. citizens (the most heavily backlogged,) no less than eleven years, and as long as twenty-three years.²⁴ Likewise the lack of permanent visas given each year to un- and low-skilled workers has pushed many laborers into temporary admissions categories,²⁵ or undocumented entry.²⁶

Only in refugee policy have both the definition of who qualifies as a refugee, as well as the numbers admitted, changed since 1965. The Hart-Celler Act codified a definition of a refugee that largely turned on Cold War notions of anti-Communism. In 1980 legislators removed refugee admissions from the immigration preference system and adopted the United Nation's more expansive and non-ideological definition. But in this sphere as well, the postwar development of the concept of a refugee and bureaucracy charged with handling refugee admissions persists in affecting how policymakers deal with new

²² DP Act of 1948, P.L. 774, 62 Stat. 647.

²³ The Immigration Act of 1990 (P.L. 649, 104 Stat. 4978) expanded the overall number of immigrant visas, and split admissions between family migrants, with 480,000 total slots, and labor migrants, with 140,000 slots. See: Gimpel and Edwards, *Congressional Politics of Immigration Reform*, 198.

²⁴ See fn. 15.

²⁵ H-1 visas for the highly skilled, H-2 visas for the low-skilled, etc.

²⁶ Under the current immigration system, only 5,000 low-skilled permanent visas are available each year. According to Gordon Hanson and the Migration Policy Institute, there are roughly 8.3 million undocumented immigrants working in the country, not to mention the family members of these immigrants, bringing the total number to roughly 11.2 million as of March 2010. With only 5,000 slots per year, it is practically impossible to clear the backlog of unskilled workers through current policy. Gordon H. Hanson, "The Economics and Policy of Illegal Immigration in the United States," Migration Policy Institute, December 2009 <http://www.migrationpolicy.org/pubs/Hanson-Dec09.pdf>, accessed 7/28/10. On estimates of the undocumented population, see: Jeffrey S. Passel and D'Vera Cohn, "Unauthorized Immigrant Population: National and State Trends, 2010," Pew Hispanic Center, February 1, 2011 <http://pewhispanic.org/files/reports/133.pdf>, accessed 3/8/11.

refugee crises.²⁷ Thus an understanding the development of the admissions preference under the Hart-Celler Act of 1965 helps not only to illuminate the history of policymaking, but also the conundrums and pitfalls that continue to plague the immigration regime.

Framing of the Dissertation

The Hart-Celler Act set in stone a very distinct type of family, labor, and refugee immigrant, and this dissertation seeks to explain the peculiar and relatively silent way that each of these categories came into being. Focusing on the admissions categories – rather than legislation or specific events – as my primary unit of analysis allows me to examine policymaking holistically, as a series of decisions that developed in multiple spheres, and through multiple actors. Instead of studying change in one branch of government, such as the congressional politics of immigration, or executive branch influence into the shape of policymaking, my work moves back and forth between the bureaucracy, executive branch, and Congress.

The importance of understanding the evolution of policymaking through different governmental spheres is perhaps best exemplified by the passage of the 1958 Azorean Refugee Act. Scholars point to this bill, which allotted special visas outside of numerical limitations to the Portuguese victims of an earthquake in the Azores, and Dutch refugees from the former colony of Indonesia, as the first piece of legislation to incorporate humanitarian intervention (rather than simply Cold War foreign policy,) into refugee law. Senator John F. Kennedy (D-MA) shepherded the bill through Congress, but only *after* Immigration and Naturalization Service (INS) Commissioner Joseph Swing declined to use parole authority²⁸ to help these groups. The State Department as well appeared dubious of extending refugee legislation to the Azorean refugees, arguing that they had “no reason to believe that [the Azoreans were] permanently displaced or in “urgent need of assistance for the essentials of life,”” the basic criteria for receiving refugee status. Nevertheless a combination of factors, including the inaction of the executive branch; a small and backlogged Portuguese quota, which made the admission of these victims through normal channels impossible; and constituent lobbying of Senator Kennedy, all combined to push for legislation. Thus an expansion of the definition of a refugee – to

²⁷ Scholars point out that even after the passage of the Refugee Act, the U.S. continued to make ideological determinations for refugee status, declining to accept as refugees people from countries allied with the United States (such as El Salvador and Haiti in the 1980s and beyond.) See: Anker and Posner, “The Forty Year Crisis”; Carl J. Bon Tempo, *Americans At the Gate: The United States and Refugees During the Cold War* (Princeton: Princeton University Press, 2008); Gil Loescher and John A. Scanlan, *Calculated Kindness: Refugees and America’s Half-Open Door, 1945-Present* (New York: The Free Press, 1986); and Norman L. Zucker and Naomi Flink Zucker, *The Guarded Gate: The Reality of American Refugee Policy* (San Diego: Harcourt Brace Jovanovich, 1987).

²⁸ Section 212(d)(5) of the McCarran-Walter Act gave the Attorney General the authority to temporarily parole refugees into the country in times of extreme need.

encompass humanitarian need – emerged from a complicated series of forces, whose origins spanned multiple branches of government.²⁹

Furthermore, while many scholars study immigration and refugee policy separately, for example, making a distinction between refugee policy, with its roots in international United Nations conventions, and immigration policy, with its roots in domestic law, I am concerned here with the development of a unified entrance system, containing both.³⁰ In their public rhetoric, legislators at the time mirrored this separation, projecting the goals of refugee admissions outward, as part and parcel of the nation’s foreign policy (such as inflicting a psychological wound on the Soviet Union through defections,) while focusing family and labor admissions inward as a part of domestic policy and the needs of the nation. Rhetoric aside, archival sources illustrate that refugee and immigrant admissions were deeply and intimately linked in the minds of policymakers. I argue that change in one sphere, such as admitting greater numbers of refugees through temporary legislation, evolved in tandem with and because of occurrences in the other sphere.

In particular, the inability of legislators to admit adequate numbers of southern and eastern Europeans and Asians through the restrictive quotas shaped the development of refugee policy. In 1954, for example, members of the Eisenhower Administration discussed widening the statutory definition of a refugee to include, according to Administrator of the Bureau of Security and Consular Affairs (SCA) Scott McLeod, “the earthquake victims in Greece, the flood victims in Holland, the Po River Valley flood victims in Italy and the flood victims in Japan.” Not surprisingly, the countries that McLeod highlighted were the most restricted by the immigration quotas. Here refugee policy worked to solve domestic issues as well.³¹

And, just as refugee policy could be focused inwards, the political calculus surrounding immigrant admissions could be projected outwards. Creating programs that reduced the

²⁹ Constituent lobbying of JFK certainly played the most important role in securing passage of the law, but my point here is that this legislation would have been unnecessary had it not been for previous bureaucratic decisions and the heavily restrictive Portuguese quota under the national origins system. On the Azorean refugee crisis, see: Hutchinson, *Legislative History*, 528-529. Joseph Swing to John F. Kennedy, June 25, 1958, JFK Pre-Presidential Papers, Senate Files, Box 695, Immigration 6/5/58-7/31/58, Kennedy Presidential Library and Herbert Thompson to Robert Cavanaugh, “S.3942, 85th Congress, 2d Session, for the Relief of Certain Residents of the Azores Islands,” RG 59 E. 5296, European Affairs, Records Relating to Portugal, Box 2, PL 85-892, NARA II.

³⁰ Stand-alone works such as Gil Loescher and John Scanlan’s *Calculated Kindness*, Norman and Naomi Zucker’s *The Guarded Gate*, and Carl Bon Tempo’s *Americans At the Gate*, study refugee policy as a discrete subject. Bon Tempo does integrate domestic policy discussions, but still focuses primarily on the politics of refugees. Other scholars such as Keith Fitzgerald and Aristide Zolberg split their discussions of immigration policymaking into three spheres: front-gate immigration, for permanent immigrants; side-gate, for refugees; and back-door, for unauthorized migrant labor. Loescher and Scanlan, *Calculated Kindness*; Zucker and Zucker, *The Guarded Gate*, Chapter I; Fitzgerald, *The Face of the Nation*; Zolberg, *Nation By Design*, 20-23. For legal scholars and the split between immigration and refugee policy, see: Bill Ong Hing, *Making and Remaking Asian America through Immigration Policy, 1850-1990* (Stanford: Stanford University Press, 1993), 122, and Guy S. Goodwin-Gill, *The Refugee in International Law* (Oxford: Oxford University Press, 1996), Chapter 1.

³¹ Maxwell Rabb, Memo, February 17, 1954, and Maxwell Rabb to Scott McLeod, February 24, 1954. Maxwell Rabb Papers, Box 33, McLeod, Scott (3), Eisenhower Presidential Library.

quota backlogs of family preference migrants, for example, allowed presidents from Truman to Johnson to respond to the needs and requests of allied nations. In a series of memos around 1950, the State Department discussed the issue of overcrowding in countries like Italy and Greece. In particular, the Department realized that rampant overpopulation and unemployment could open the door to unrest and communist revolution. According to Irwin Tobin of State's European Division, the best solution to the population crisis would be a revision of the quota system to allow in greater numbers of southern and eastern Europeans. But barring more substantive reform, Tobin suggested instead an ad hoc and temporary piece of refugee legislation, such as what had been used for European displaced persons, to relieve the population pressures. The Italian government as well lobbied the Eisenhower Administration throughout the 1950s to accept greater numbers of their immigrants. With the failure of domestic legislation to solve international issues then, policymakers turned to refugee programs.³²

With the issues of immigration and refugee admissions so intertwined in the minds of policymakers, I argue that it is crucial to study the history of immigration and refugee policy side-by-side, rather than separately. Thus my dissertation considers refugees alongside the other two categories of admission – family and labor – to examine all of the factors, both domestic and foreign, which shaped the creation of the modern admissions system.

It is important to note that the story I tell here is largely one of elite policymaking. While interest groups and public opinion as a whole did play a role at times in the development of the preference categories, by mobilizing coalitions and lobbying for distinct changes (such as organized labor's ultimately successful push for greater governmental oversight into regulating the admission of laborers,) they formed only a peripheral part of the narrative. As John Skrentny points out, while grassroots actors do sometimes form a key part of political development, policymakers *always* play such a role, and are as such the key actors for discerning political development. In this dissertation I draw on civil society organizations and interest groups as they affected the development of immigrant admissions, but the overall emphasis is on policymaking within the federal government.³³

POSITIVE FEEDBACK LOOPS AND PATH DEPENDENCES

³² "Italian Over-Population and Migration", "The Greek Population Problem and Emigration," "Netherlands Emigration Problems," June 6, 1950, and "Possible Revision of United States Quota System," June 22, 1950. RG 353, Records of the European Migration Working Group, Box 136, MWG Documents. NARA II. Bon Tempo in particular points out that the 1953 elections in Italy provided significant concern for the State Department. Bon Tempo, *Americans At the Gate*, 35-37. On Italian government lobbying, see, for example: see: Memorandum of Conversation, "Italian Emigration to the United States," December 15, 1955 and Scott McLeod to Loy W. Henderson, "Changes of Immigration and Nationality Act Proposed by the Italian Government," January 4, 1956. RG 59, A1 E 1509, SCA Decimal File, Box 49, Immigration and Nationality Act Amendments, NARA II.

³³ John D. Skrentny, "Policy Making is Decision Making: A Response to Hattam," *Studies in American Political Development* 18 (Spring, 2004). See also: John D. Skrentny, *The Minority Rights Revolution* (Cambridge: Belknap Press of Harvard University Press, 2002).

In examining the development of the categories of admissions, I draw on the work of scholars examining positive feedback loops and path dependencies, in particular Paul Pierson, to illustrate how and why ideas of who should qualify in each of the major admissions categories developed and became entrenched in policymaking efforts. As Pierson explains, positive feedback loops allow for small changes, made relatively early in the process of reform, to greatly influence the course of policymaking. Once implemented, these policies become self-reinforcing, making them difficult to shift away from later on. Occurring when they do, Pierson argues that feedback loops narrow the options for further reform, raising the transactional costs for further change, while lowering the cost for inertia. Instead of focusing on individual actors and their relative power within the political process, or specific pieces of legislation and various coalitions that emerged to pass them, I focus on the long history of admissions preferences – how a series of successful attempts to defend, and unsuccessful attempts to reform the immigration system all pushed policymakers toward a distinct notion of their ideal immigrant.³⁴

The issue of military spouses provides a discrete example of how these feedback processes operated in the postwar era. Congress first passed legislation to facilitate the entry of the spouses of World War II veterans in 1945, and made it clear that they intended the new law only to benefit those spouses already racially eligible for entry – i.e. white Europeans. But with occupation in Japan, and a greater number of GIs attempting to bring over their Asian spouses, Congress expanded the provisions without regard for race in 1947. This expansion came at a time when only China, India, and the Philippines, out of all of Asia had received immigration rights, and Asian exclusion as a whole still remained on the books. Though legislators framed these first two bills as temporary legislation, emerging from exigent wartime circumstances and a sense of obligation toward American GIs, an ever-growing number of military spouses, especially from Asia, pushed legislators to continually seek exemptions for the group, passing new legislation in 1950 and 1951.³⁵

By the 1950s, the earlier pieces of war brides legislation had paved the way so that Congressional leaders devising the latter reforms spoke of them as “interim” rather than “temporary” legislation, on the road to the McCarran-Walter Act of 1952. The 1952 bill accorded non-quota entry (outside of numerical limitations) to all spouses, regardless of race or military status. Following Pierson’s logic, in this story timing was crucial: the war provided a generative moment in which admissions could be widened beyond those racially eligible under the law. Still, what ultimately mattered most for military spouses was not the actions of individual legislators pushing for reform, or even any one pressure group prodding congressional action. Rather, the movement toward spousal reunification rights for all in 1952 came from a long history of small bills which, taken together,

³⁴ Pierson, *Politics in Time*, 10-14 and 21.

³⁵ On military spouse legislation and family reunification, see: Philip E. Wolgin and Irene Bloemraad, “Our Gratitude to Our Soldiers”: Military Spouses, Family Re-unification, and Postwar Immigration Reform,” *Journal of Interdisciplinary History*, 41:1, Summer 2010.

revamped the institutional context in which family reunification and immigration reform operated.³⁶

I do not mean to suggest that the development of the admissions preferences was by any means uncontested or a foregone conclusion at the end of World War II. Rather the forces and coalitions in favor of and opposing reform shifted throughout the period. Organized labor, for example, defended the national origins quota system in 1952, while coming out forcefully against it in 1965. Critically as well, throughout the period the goals of policymakers shifted, from attempting to modify the quota system in the 1950s, to removing it wholesale in the 1960s. And yet, while a number of important factors combined in 1965 to open up a space for the comprehensive legislative reform that removed the national origins system, including the shift in organized labor; rising Democratic majorities in Congress in the 1960s; and the declining fortunes of nativist organizations, the factors that went into the development of the preferences began much earlier, right after the end of the war.³⁷

Consider, for example, the Hart-Celler Act's preference for the brothers and sisters of U.S. citizens. This category received 24 percent of all visas in 1965, more than any other category, and more than the entire allotment for labor migration. Previously, the immigration system under the McCarran-Walter Act in 1952 had given 0 percent of visas to the siblings of citizens, allotting only a percentage of those visas left over from the other preferences.³⁸ Within a short time, the numbers of people waiting for sibling visas had reached into the hundreds of thousands. Equally critical, the vast majority of those waiting hailed from Italy, one of the main countries the national origins system discriminated against. The long backlogs pushed liberal policymakers, bureaucrats, and ethnic groups to mobilize and push Congress to admit greater numbers of these immigrants outside of numerical limitations. At the same time, attempts to widen the sibling's preference ran into intense opposition from restrictionists, who stymied legislative efforts. Ultimately the long history of attempting to pass small bills to admit a

³⁶ *Ibid.*, and Pierson, *Politics in Time*, 44-45.

³⁷ There are almost as many opinions as to the contributing factors for change in 1965 as there are students of the process. At the risk of oversimplifying, most cite some or all of the following: the fight against Nazism and the discrediting of race science; international decolonization; the creation of the United Nations and the increasing voice of third world nations in the international sphere; and the Cold War and fight against Communism. The Civil Rights Movement facilitated changing ideas about immigrants and minorities, and as scholars such as John Skrentny have pointed out, it is not surprising that Hart-Celler arrived concurrently with the landmark Civil Rights Act of 1964 and Voting Rights Act of 1965. Scholars such as Daniel Tichenor have also singled out the work of strong presidents such as Kennedy and Johnson, an overwhelmingly Democratic Congress after 1964, and the death of a staunch restrictionist, Congressman Francis Walter, as factors driving change. See: Desmond King, *Making Americans: Immigration, Race, and the Origins of the Diverse Democracy* (Cambridge: Harvard University Press, 2000); Loescher and Scanlan, *Calculated Kindness*; Tichenor, *Dividing Lines*; Zolberg, *Nation By Design*; Skrentny, *Minority Rights Revolution*.

³⁸ The 1952 Act created a 4th preference for the brothers and sisters of U.S. citizens with no quota allotment, just 25 percent of all leftover visas from the first three preferences. This allotment was raised to 50 percent in 1959.

greater number of siblings drove legislators in 1965 to privilege this group above all others.³⁹

Just as in Pierson's telling, each decision to help or hinder the admission of siblings moved the feedback loop further down the path toward completion, by bringing the plight of one group to the forefront of the reform debates. Each time conservatives had to defend and update the restrictions of the national origins system for the new postwar circumstances – in this case keeping out Italian siblings – they opened a space for liberals to drive a wedge into policy process. Each failed attempt as well allowed liberals to refine the scope of what was possible for immigration reform. Again, the course of postwar policymaking was never set in stone – the original Kennedy and Johnson proposals from the Hart-Celler Act in 1963 and 1964 contained a far greater emphasis on labor migration, and far less on siblings.⁴⁰ Yet, as Pierson argues, early events in path dependencies can have far greater weight than those that occur toward the end of a reform process.⁴¹

Thus in my analysis I am more interested in outcomes and the confluence of a string of policymaking efforts, rather than the rationales that policymakers gave to explain individual changes. Even if legislators never explicitly set out to give such a large share of permanent visas to brothers and sisters, nor ever acknowledged a goal of privileging this category above the others, the combined force of a number of successful and blocked attempts at change pushed them to do so nevertheless in 1965, even in the face of executive branch efforts to push policymaking in a different direction.

A NOTE ON THE NATIONAL ORIGINS QUOTA SYSTEM

Ultimately, the long and peculiar history of the quota system's demise shaped the development of Hart-Celler's preference admissions system. By severely limiting immigration from southern and eastern Europe, as well as Asia, the quota system consistently frustrated the efforts of policymakers attempting to control Cold War foreign policy. Integrating newly emerged East Asian democracies, for example, was particularly difficult with such small numbers of quota slots hindering entry of their citizens. Likewise, efforts to tackle the problems of overcrowding, unemployment, and unrest in southern Europe, which executive branch officials saw as critical to stopping the march

³⁹ On the number of immigrants waiting for the 4th preference, see: James W. Morgan to Drury Blain, March 17, 1954, RG 59, Records of the Bureau of the SCA, Decimal Files, Box 9, Implementation of Refugee Relief Act, NARA II; Joseph Swing to Gerald Morgan, November 26, 1958, 1. Gerald D. Morgan Records, Box 14, Immigration and Naturalization (1), Eisenhower Presidential Library; Department of State, Visa Office Bulletin, Number 91, March 2, 1962 "Quota Immigrants Registered Under Oversubscribed Quotas. As reported on February 1, 1962." RG 233, 87th Congress, Box 261, HR 11911 (2), NARA I.

⁴⁰ The original Kennedy reform plan of 1963 proposed allotting 50 percent of all visas to labor categories, and 50 percent to family.

⁴¹ In Pierson's telling, no reform is final, and rather "change continues, but it is bounded change – until something erodes or swamps the mechanisms of reproduction that generate continuity." Pierson, *Politics in Time*, 21 and 44-53. Quote on 52.

of Communism, ran up against the cold logic of quota numbers.⁴² So while I am primarily interested in the categories with which legislators replaced national origins, in many ways this story is delineated and defined by the quota system. Many of the reforms in question emerged from what historian Stephen Thomas Wagner has termed the “lingering death” of the national origins system, the two decade struggle to remove the quotas.⁴³

Most scholars examining immigration policy in the period focus, like Wagner, on the particulars of the quota system’s demise. These scholars detail, for example, the political coalitions that kept the system in place through the 1950s, and then emerged to destroy it in the 1960s. While the issues of coalition building and constraint inform my work, I am less interested in national origins as a distinct policy area to be studied, and more interested in using the system as a prism through which to view the reforms of the era. Thus, I shift the attention away from the ending of the old system to the birth of the new one. I examine the ways in which the continued presence of race-based restriction, as well as attempts by liberals and conservatives to modify and remove the quotas, shaped the ultimate form of the three admissions preference categories after 1965.⁴⁴

Here I argue that the quota system played a critical role in the development of the immigration categories in three intertwined ways, which will be detailed in the dissertation.⁴⁵

⁴² Chang Kai-Shek, for example, argued during World War II that Japan was using his country’s second-class status in American immigration law as propaganda against them. Likewise, the Soviet Union would capitalize on any and all instances of racial difference and discrimination in their propaganda. See: Riggs, *Pressures on Congress*; Zolberg, *Nation by Design*, 290; Hing, *Making and Remaking Asian America*, 110; King, *Making Americans*, 232. On the Soviet Union and American race relations, see: Dudziak, *Cold War Civil Rights*. On European overpopulation, see, for example: “Italian Over-Population and Migration”, “The Greek Population Problem and Emigration,” and “Netherlands Emigration Problems.”

⁴³ Stephen Thomas Wagner, “The Lingering Death of the National Origins Quota System: A Political History of United States Immigration Policy, 1952-1965” Ph.D. Dissertation, Harvard University, 1986.

⁴⁴ See, for example Zolberg, *Nation By Design*; Tichenor, *Dividing Lines*; and Daniels, *Guarding the Golden Door*.

⁴⁵ Political scientist Triadafilos Triadafilopoulos provides a useful framework for contextualizing the quota system, and for understanding how immigration reform occurred in liberal-democratic nation-states after World War II. In countries such as the United States and Canada, Triadafilopoulos argues that changing ideas about racial discrimination and human rights opened a space for reformers to press for change. Policymakers responded first by *stretching* existing policies to fit the new global realities, in the American case by retaining the national origins quota system in the 1952 omnibus reform. These initial attempts at stretching only led to greater criticism of the older system, as the disconnect between new racial norms and discriminatory practices were thrown into even greater relief. Here the older policies began to *unravel*, and ultimately policymakers *shifted* toward a more substantive liberalization in the 1960s.

Many of the initial experiments that would end up in the 1965 admissions categories, from the emergency preference system of the Displaced Persons Act of 1948, which included skilled laborers, and required citizens to sign employment assurances, to the family reunification provisions of war brides legislation, fit with Triadafilopoulos’s narrative. I draw on his framework in this dissertation, and argue that the national origins quota system, more than anything else, was at the center of these stretching, unraveling, and shifting attempts.

In Triadafilopoulos’s understanding, while the factors that led to policy change and ‘stretching’ in the U.S. and Canada emerged from similar questions of race, ethnicity, and human rights, the ultimate shape of reform (‘shifting’) were filtered through differing political contexts in the United States and

(a) *Backlogs*: the small number of quota visas available for anyone living outside of northern Europe led to long waiting periods for most of the world. The creation of an overarching preference system within the country-specific visas in 1952 further limited visa allotments, and only exacerbated these backlogs.

While few of the 1st preference visas for skilled and urgently needed workers would be utilized anywhere in the world after 1952, for the small quota countries of the Asia-Pacific Triangle, especially China, the waiting times quickly led those waiting to despair of the possibility of gaining entrance. By the early 1960s there were close to 1,400 skilled Chinese workers waiting to enter the country. With a maximum quota of 105 slots per year, only half of which could be allotted to the first preference, Chinese workers faced an approximately twenty-six year wait for visas. This backlog pushed an unlikely duo of legislators – conservative Representative Francis Walter (D-PA) and liberal Senator John O. Pastore (D-RI), to pass Public Law 87-885 in 1962 to admit approximately 6,900 Chinese workers outside of numerical limitations, at a time when the nation as a whole only admitted just over 2,000 people a year from all of Asia.⁴⁶

The backlogs in the family preferences quickly grew as well, and in much higher proportions. The 4th preference for the brothers and sisters of citizens became the most heavily oversubscribed, with over 135,000 Italians waiting for these visas by 1962 alone. The unbearable waits served as a catalyst for groups such as the American Committee on Italian Migration and the Italian Government itself to lobby the Administration for change. The possibility of gaining entrance coupled with interminable waits, led many Italian immigrants to conceptualize visa admissions as a “right” promised to them by the United States, but denied to them in practice. Just as in the case of China, the backlogs ultimately pushed policymakers to pass a series of small fixes to admit greater numbers

Canada. He argues that the autonomous nature of the Canadian immigration apparatus and executive branch allowed them to “experiment with new ideas,” and ultimately establish a system that focused first and foremost on the needs of the Canadian nation. The U.S. by contrast, followed a more “patchwork policy” with a greater number of competing interests involved. Triadafilopoulos’s framework for reform in the United States places the ‘unraveling’ process as occurring from 1952 to 1958, in the shape of growing criticism of the McCarran-Walter’s attempt to stretch national origins policy for the new era. I agree that the 1950s were the critical time for change, but I do not believe that substantive reform would have been possible before the early 1960s.

Here I combine Triadafilopoulos’s focus on the mechanisms behind *policy demise* with those scholars examining feedback loops and path dependencies – the mechanisms surrounding *policy creation* – to argue for a version of *policy incrementalism* that combines a focus on both destruction and creation. These two forces, I argue, occurred in tandem and in tension with each other. Triadafilopoulos, “Global norms, domestic institutions,” 36, 169-171. On the DP Act of 1948, see: Hutchinson, *Legislative History*, 512-513.

⁴⁶ Using the annual reports of the Immigration and Naturalization Service, I have estimated that only 5.55 percent (out of a possible 50 percent allowable under the law) of all preference immigrants under the 1952 Act’s admissions regime entered under the skilled preference. *Annual Report of the Immigration and Naturalization Service* (Washington DC: U.S. Government Printing Office, 1954-1970), Table 4. On the Chinese backlogs and P.L. 87-885, see: Department of State, “Quota Immigrants Registered Under Oversubscribed Quotas,” and Department of Justice to James Eastland, August 13, 1962, RG 46, Sen 87A-E12, Committee on the Judiciary, Box 40, S.3361, NARA I.

of siblings, and to privilege the siblings of citizens over any other group with the Hart-Celler Act.⁴⁷

(b) *Refugee Policy*: The inability of legislators to admit an adequate number of refugees from countries like Italy, Greece, and Hong Kong, (a product of the small number of quota slots and long backlogs,) pushed them to seek alternative solutions. Throughout the period, policymakers viewed refugee admissions as a way to admit a greater number of these immigrants. Refugee policy did develop as a tool in the Cold War fight against the Soviet Union, but I argue that the robust bureaucracy, funding allotments, and admissions programs that developed during the period emerged as much from an inability to admit refugees through normal channels as from foreign policy prerogatives. The special refugee program passed by Senator John F. Kennedy (D-MA) for the Portuguese victims of an earthquake in the Azores again stands as a prime example. INS Commissioner Joseph Swing would tell Kennedy that “although the distress of these persons was caused by a sudden natural catastrophe, there are throughout the world today thousands of persons suffering in varying degrees.” “It would not,” Swing concluded, “be in the national interest to single out this group for parole.” Still, the heavily restrictive Portuguese quota, offering only 438 slots per year, pushed Kennedy to pass P.L. 85-892 to allow for 1,500 visas to be allotted outside of numerical limitations.⁴⁸

(c) *Erasing the System*: In the 1950s policymakers aimed their reform efforts at modifying the quota system rather than erasing it, turning to eradicating national origins as a whole in the 1960s. By 1965 the quest to remove the quotas had overshadowed the remainder of the immigration system. According to Abba Schwartz, one of the key bureaucrats in charge of drafting immigration legislation, this singular emphasis on national origins pushed the Johnson Administration and its congressional allies to focus solely on eradicating the old immigration regime, and allowed them to overlook the creation of the new. Still, the drive to end the race-based quotas did not alone shape the development of the post-1965 admissions system. Instead, the long history of backlogs in the family preferences, especially in the fourth preference for the siblings of citizens, as

⁴⁷ In February of 1962, the State Department estimated that Italy had 136,858 people waiting for fourth preference visas. Department of State, “Quota Immigrants Registered Under Oversubscribed Quotas.” On Italian lobby groups, see, for example: LBJ to Joseph DeSerto, December 13, 1963, White House Central Files, Immigration-Naturalization, IM Box 1, IM 11/23/63-7/31/65, LBJ Presidential Library. Joseph Cogo, ACIM to Ramsey Clark, May 22, 1968, White House Aides Files, James Gaiter, Box 14, Immigration and Naturalization Laws, LBJ Presidential Library. P.L. 363, 73 Stat. 644, in 1959 allowed anyone waiting for any of the family preferences, and who had registered prior to December 31, 1953, to enter immediately outside of quota limitations. P.L. 885, 76 Stat. 1247, in 1962, advanced the December 1953 cutoff date to March of 1954, to allow in particular more siblings in the fourth preference to enter the country outside of numerical limitations.

⁴⁸ Joseph Swing to John F. Kennedy, June 25, 1958. During the debates over the Refugee Relief Act (RRA) of 1953, Eisenhower Administration officials as well explicitly focused on using refugee legislation to help overcrowding in southern and eastern Europe. See: John Foster Dulles to Eisenhower, “Emergency Immigration Legislation,” March 26, 1953. DDE Papers, Ann Whitman File, Dulles-Herter Series, Box 1, March 1953, Eisenhower Presidential Library. On the RRA in general, see: Loescher and A. Scanlan, *Calculated Kindness*, 44-48; Bon Tempo, *Americans At the Gate*, Chapter 3; and Zucker and Zucker, *The Guarded Gate*, 31-32.

well as legislative fixes and lobbying to increase the number of family admissions, made it seem only natural for lawmakers to ultimately privilege these groups above all others.⁴⁹

Sources and Roadmap for the Dissertation

The sources for this dissertation are primarily archival. I have done extensive work in the State Department records at the National Archives at College Park, MD, and the congressional archives at the National Archives in Washington DC. Many of the State Department records have only recently been declassified, and in general have been underutilized in the literature on immigration. These sources provide a wealth of information as to the development of policymaking, the bureaucratic process behind admissions, and the interactions between different branches of the government and with civil society groups.

I have examined the immigration and refugee policy holdings at the Dwight D. Eisenhower, John F. Kennedy, and Lyndon B. Johnson Presidential Libraries, as well as the papers of Emanuel Celler at the Library of Congress, the papers of Francis Walter at Lehigh University, and the AFL-CIO records at the National Labor College. In addition, I have consulted the *Congressional Record* for the period, as well as numerous Congressional reports, hearings, and pieces of legislation. I have also compiled statistics on immigrant admissions using the *Annual Reports of the Immigration and Naturalization Service*. Though the archival records of the Immigration and Naturalization Service (INS) and Department of Justice for most of the period are unavailable to researchers, I have sought out copies of them in other venues (especially within the collections of the presidential archives,) wherever possible.

Chapter 2 moves chronologically from World War II through 1968, providing the policymaking framework for the dissertation. I focus on the major pieces of legislation, policy discussions, and political maneuverings of the period. In particular I examine the debates surrounding the ending of Asian exclusion, the passage of the McCarran-Walter Act of 1952, and the passage of the Hart-Celler Act of 1965. The chapter also provides the historical context for the period, and details the relevant bureaucratic institutions, key policymakers, and civil society groups that played a role in policymaking. In particular I focus on the role of legislation and political coalitions; institutions – both government bureaucracies and interest and ethnic groups; and the evolution of the national origins quota system, in influencing the ultimate shape of policymaking.

By providing the timeline of reform efforts as well as delineating the major factors that went into bureaucratic and legislative change, chapter 2 serves as the anchor for the rest of the dissertation. Since I am primarily concerned with the long history of the categories of admission, the next three chapters are arranged thematically, retelling the story of postwar reform through the lens of family, labor, and refugee migration. By holding one

⁴⁹ Schwartz concludes that Johnson compromised on labor preferences in the heavily family-centric admissions system in the rush to dismantle the national origins system. Abba P. Schwartz, *The Open Society* (New York: William Morrow & Company, Inc., 1968).

category constant in each, these chapters allow me to illustrate the unseen and relatively silent development of policymaker conceptions of their ideal normative immigrant. It also allows me to detail the long term ramifications of a slew of individual policy decisions, and to explain how reform efforts affected individual migrant groups – particularly those from Italy, Ireland, and Hong Kong – at the time, and even after the 1960s. A thematic approach allows me to isolate the forces that affected change in each of the categories, and to discuss why reform operated as it did for the preferences as a whole, and for each specific category.

Chapter 3 discusses the development of the family reunification category. I argue that legislators throughout the period drew on the rhetoric of the family to illustrate the hardships of the quota system. The ever-present focus on family reunion pushed policymakers to privilege this group above all others. In addition, after the implementation of a totalizing preference system within each country's quota with the passage of the McCarran-Walter Act of 1952, long backlogs developed in the family preferences, especially the 4th preference for the brothers and sisters of citizens. Italy in particular bore the brunt of the 1952 changes, and its advocates – in Congress, the executive branch, and civil society – pressed for reform. These waiting lists created a positive feedback loop and path dependency that galvanized interest and ethnic group lobbying in favor of the fourth preference; forced policymakers to continually seek ways to admit a greater number of these siblings; and ultimately pushed legislators to grant more visas to this category than to any other.

Chapter 4 examines the development of the labor-preference category. I argue that the development of labor-market preferences began initially as a way to further restrict immigration from the southern and eastern European countries already disadvantaged by the quota system. Once in place, they created a positive feedback loop that expanded to encompass all of labor-based migration. The large number of visas given to skilled labor after 1952 went mostly unused each year, and that fact, coupled with the concurrent oversubscription of the family preference categories, led legislators to limit the overall percentage of visas given to labor in 1965. Throughout the period as well, legislators worked to reduce the number of unskilled admissions. Developments in the postwar era, including the launching of the Soviet *Sputnik* and shifts in organized labor, all pushed policymakers to see their ideal immigrant as the highly skilled and professional, especially in science and technology, even though the greatest demand for and supply of immigrant labor still came from the low- and un-skilled categories. Whereas Italy bore the brunt of the changes in the family preference category, Ireland felt the sting of these labor reforms. After 1965, Irish advocates drew on the rhetoric from the Hart-Celler debates to push for new legislation that would allow more of their own (unskilled) brethren into the country.

Chapter 5 discusses the development of the refugee preference category. I argue that legislators initially developed refugee policy as a way to admit a greater number of immigrants from the countries most disadvantaged by the quota system. Though scholars largely study refugees as distinct entities from immigrants, legislators at the time saw the groups as deeply intertwined. Thus each of the main expansions of refugee admissions

from the 1940s through the 1960s emerged from the logic of quota restrictions, even as refugee policy as a whole remained outwardly focused on foreign policy and Cold War prerogatives. Additionally, as the shape of national origins restrictions pushed policymakers to find more creative ways to admit southern and eastern Europeans, as well as Asians (specifically anti-Communist Chinese living in Hong Kong,) bureaucrats and legislators increasingly turned to refugee policy as a salve. Even as refugee legislation itself remained emergency and ad hoc through the early 1960s, policymakers slowly built up a permanent bureaucratic apparatus and funding structure for domestic and overseas refugee programs. I argue that this apparatus ultimately paved the way for permanent refugee admissions to take their place beside the family and labor categories in 1965.

The conclusion, chapter 6, sums up the dissertation, discusses the differences and similarities between the developments of each category of admission, and explains how the Hart-Celler reforms continue to influence contemporary policymaking. I conjecture as to why reform occurred differently in the three preferences within the same time-span, and discuss the ramifications that these differences have on our understanding of immigration policymaking. Finally I discuss the contributions of the dissertation to the field, and to contemporary policymaking and reform efforts. I argue that while many of the processes at work in the postwar era emerged from the vagaries of the early Cold War as well as the peculiar history of the national origins quota system, the lessons from the period are nevertheless applicable to current policy dilemmas.

Chapter 2: “If You Want the Rainbow, You Must Take the Rain”: Postwar Immigration Policymaking through 1968

Sen. John O. Pastore (D-RI): “The Senior Senator from Rhode Island will never be satisfied until there is a real liberalization of the immigration laws...I do not agree with every feature of the bill.”

Sen. James Eastland (D-MS): “Has the Senator ever agreed with every feature of every bill?”

Pastore: “There have been times. I have agreed with the Ten Commandments. But I know the Senator is jesting.”

Eastland: “But the Ten Commandments have never been before the Senate in Bill Form.”

- *Debate from the Senate Floor, 1961*¹

This chapter traces the long history of immigration policymaking in the postwar period, focusing on the major political battles of the period. Like the Pastore-Eastland debate in 1961, much of the controversy in the lead-up to the Hart-Celler Act of 1965 revolved around the question of how to pass durable and substantive immigration reform in the face of multiple and conflicting viewpoints and interests. Policymakers grappled with the question of how to create a new and effective system of immigrant and refugee admissions without compromising national need or national security, and how to balance domestic and foreign policy prerogatives.

In this chapter I detail the legislative and bureaucratic developments in immigration policy from the end of World War II through 1968, as well as the historical context in which reform took place. In particular I focus on three distinct, but intertwined facets of policymaking during the era: (a) the role of legislation and political coalitions; (b) the role of institutions, primarily government bureaucracies, but also interest and ethnic groups; and (b) the evolution of the national origins quota system and attempts to modify and remove it.

In the first sections I focus on early efforts to reform the admissions system in the 1940s and 1950s. I highlight the elements that would ultimately shape the Hart-Celler Act, including the implementation of labor-based restrictions; continued unease about southern and eastern Europeans; and concerns over the viability of large-scale immigration from Asia and Latin America.² I first examine the development of

¹ *Congressional Record*, 87th Congress, 1st Session: 1960-1961.

² Scholars of immigration have given only cursory attention to the legislative battles of the late 1940s and early 1950s, believing that although much occurred during this time, little was accomplished. Those that have examined the postwar era fall into three main camps with regard to immigration and refugee policy. The first, led by scholars such as Roger Daniels, Haim Genizi, Gary Gerstle, and David Reimers, see the era generally as one of restriction and conservative dominance. The gains made by Asians (the ability to naturalize and immigrate) and refugees (to be allowed in over and above the quota system) however, mitigated this dominance and signaled a shift toward liberalization. On the other side of the debate, scholars such as Robert Divine, Bill Ong Hing, and Desmond King see only renewed discrimination during this period. Far from signaling liberalization, emergency refugee policies did not challenge the larger structure of immigration law, and the comprehensive ‘reform’ as part of the McCarran-Walter Act created

immigration law up to World War II, and then detail the factors that came together to pass the first piece of omnibus immigration legislation in the postwar era, the McCarran-Walter Act in 1952. These forces included continued domestic restrictionist sentiment, foreign policy and national security concerns, and debates over Asian exclusion. I then turn to the interim period between the McCarran-Walter and Hart-Celler Acts, to highlight the structural changes that opened a space for substantive reform in 1965.

In this interim period, as the U.S. came to terms with its new role as the leader of the free world and beacon of democracy after World War II, continued racial discrimination inside the country compromised its foreign relations. But even as the Cold War opened a space for challenging racial norms, it also limited the range of possibilities. Immigration reform largely followed that of civil rights, where, according to historian Mary Dudziak, legislators pursued only those changes that would allay international concern rather than promote full equality. Policies of racial liberalism now dealt mainly with those aspects of change that posited a stronger picture of American race relations inside the nation.³

Foreign policy needs, especially the drive to integrate developing-world democracies into an American-led world order, created a need for immigration and refugee reform, and ushered in a new era where Asians would receive naturalization and immigration rights for the first time in over sixty years. But while international politics opened an avenue for change, the rise of the Soviet Union and the need for a strong American national security state also limited the scope of reform. The critical dilemma of the late-1940s and 1950s became how to protect the nation from security threats and regulate its borders, while still removing the racial hierarchies underlying the quota system?⁴

only further structures of racism and discrimination. While not fully aligning with either group, Aristide Zolberg and Daniel Tichenor view this period as the last in which the nativists would control immigration policy. See: Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants since 1882* (New York: Hill and Wang, 2004); Haim Genizi, *America's Fair Share: The Admission and Resettlement of Displaced Persons, 1945-1952* (Detroit: Wayne State University Press, 1993); Gary Gerstle, *American Crucible: Race and Nation in the Twentieth Century* (Princeton: Princeton University Press, 2001); and David M. Reimers, *Still the Golden Door: The Third World Comes to America* (New York: Columbia University Press, 1992 [1985]); Robert A. Divine, *American Immigration Policy, 1924-1952* (New Haven: Yale University Press, 1957); Bill Ong Hing, *Making and Remaking Asian America through Immigration Policy, 1850-1990* (Stanford: Stanford University Press, 1993); Desmond King, *Making Americans: Immigration, Race, and the Origins of the Diverse Democracy* (Cambridge: Harvard University Press, 2000); Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2006); and Daniel Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002).

³ Azza Salama Layton, *International Politics and Civil Rights Policies in the United States, 1941-1960* (Cambridge: Cambridge University Press, 2000), 7; Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton: Princeton University Press, 2000), 13 and 250.

⁴ See: Dudziak, *Cold War Civil Rights*; John Fousek, *To Lead the Free World: American Nationalism and the Cultural Roots of the Cold War* (Chapel Hill: University of North Carolina Press, 2000), Layton, *International Politics and Civil Rights*; Penny M. Von Eschen, *Race Against Empire: Black Americans and Anticolonialism, 1937-1957* (Ithaca: Cornell University Press, 1997).

Throughout the period legislators remained hesitant about reform, preferring to retain the structure of earlier laws, while modifying them to appear egalitarian.⁵ Asians, for example, received full naturalization rights under the McCarran-Walter Act of 1952, but only limited immigration quotas, far stricter than any other race or nationality. The duality of full naturalization and limited immigration rights allowed policymakers to tout the nation's nondiscriminatory policies on the international stage, while quietly preserving the use of racial hierarchies to arrange its borders.⁶

The retention of the national origins system in 1952, as well as the imposition of preference categories within the country quotas, created a policy feedback loop that pushed legislators on both sides of the aisle to find new and creative ways to defend and challenge the admissions system. During the period as well major institutions within the government – such as the State Department – and outside of it – such as organized labor – shifted their views on immigration and national origins restrictions, all of which encouraged reform efforts.⁷

In the final section I turn to the 1960s, to analyze how the disparities between egalitarian impulses and fears of overwhelming numbers of migrants from the earlier period influenced the passage of the Hart-Celler Act. Though the national origins quotas had weathered the challenges of the earlier period, by the 1960s, the American public no longer supported the system. A confluence of factors, including a postwar moment of international human rights; decolonization and the growth of new voices on the international scene; expanding refugee populations; declining racial ideology; the Civil Rights Movement; and the rise of ethnic and interest group lobbying, all forced policymakers to rethink their ideas about immigration and acceptance into the national

⁵ In this paper I will refer to conservatives and liberals as the two major groups debating immigration and refugee reform. (I use conservative and restrictionist interchangeably.) Conservative politicians generally, but not exclusively, came from the Southern Democrat-Northern Republican alliance, and represented areas with few immigrants. Senator Pat McCarran (D-NV), the most prominent restrictionist of the period, represented a state with few eastern European settlers, but many agribusiness interests. Congressman Francis Walter (D-PA), an equally famous conservative, came from a conservative district with a number of eastern Europeans. Because of these constituents, Walter supported limited admissions policies such as emergency refugee relief, even while opposing major changes to immigration law. On the other side of the debate, liberals generally represented areas with larger immigrant populations, such as Senator Herbert Lehman (D-NY), and Representatives Emmanuel Celler (D-NY) and Joseph Farrington (R-HI). See, for example, on McCarran: Michael J. Ybarra, *Washington Gone Crazy: Senator Pat McCarran and the Great American Communist Hunt* (Hanover: Steerforth Press, 2004); on Walter: Michael Gill Davis, "The Cold War, Refugees, and U.S. Immigration Policy, 1952-1965" (Ph.D. diss., Vanderbilt University, 1996); and on Celler: Bernard Lemelin, "Emanuel Celler of Brooklyn: Leading Advocate of Liberal Immigration Policy, 1945-52," *Canadian Review of American Studies* 24, no. 1 (1994).

⁶ Asian immigrants had been subject to limitations on admission since as early as 1875 with the Page Laws, and had been excluded from immigration and naturalization with the Immigration Act of 1924. Triadafilos Triadafilopoulos has portrayed the policy process with regard to postwar immigration in liberal-democratic nation-states as following a three step process: first policymakers 'stretched' existing procedures to fit new normative contexts. These initial attempts at retaining the underlying structure of policy gave way to their 'unraveling', and finally a 'shifting' toward new policy. See: Triadafilos Triadafilopoulos, *Becoming Multicultural: Immigration and the Transformation of Citizenship in Canada and Germany* (Forthcoming).

⁷ On policy feedback loops, see: Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press, 2004).

polity. The Hart-Celler Act significantly reshaped the character and flow of immigration to the country, and the system of immigrant preferences it mandated remains the foundation of immigrant admissions through the present day.⁸

Immigration Policymaking on the Eve of McCarran-Walter

The beginnings of concerted federal intervention into immigration policy began in 1875, with the passage of the Page Laws. Prior to that point, a patchwork of local and state laws, federal limitations on shipping and passenger service to the United States, and conscious choices about who to admit, (political refugees, for example,) amounted to a de facto patchwork immigration policy. The first major legislative limitation on immigration began in 1875, when Congress banned the importation of foreign women engaged as prostitutes, targeting Chinese women, as well as Asian “coolie,” or forced labor.⁹ Anti-Asian sentiment, especially in the Pacific, pushed Congress to act again in 1882, with the passage of the Chinese Exclusion Act, which excluded Chinese laborers from entry, and barred Chinese from naturalization. These restrictions on immigration and naturalization were expanded to cover most of Asia by the early twentieth century.¹⁰ Congress also acted to ban the importation of contract labor in 1885, a provision that would remain in place until 1952.¹¹

Proposals to limit overall immigration gained strength toward the end of the 19th century, as the numbers of people entering the United States rose to new heights. Immigration as a whole grew significantly around the turn of the century, peaking at close to 1.3 million

⁸ There are almost as many opinions as to the contributing factors for change in 1965 as there are students of the process. At the risk of oversimplifying, most cite some or all of the following: the fight against Nazism and the discrediting of race science; international decolonization; the creation of the United Nations and the increasing voice of third world nations in the international sphere; and the Cold War and fight against Communism. The Civil Rights Movement facilitated changing ideas about immigrants and minorities, and as scholars such as John Skrentny have pointed out, it is not surprising that Hart-Celler arrived concurrently with the landmark Civil Rights Act of 1964 and Voting Rights Act of 1965. Scholars such as Daniel Tichenor have also singled out the work of strong presidents such as Kennedy and Johnson, an overwhelmingly Democratic Congress after 1964, and the death of a staunch restrictionist, Congressman Francis Walter, as factors driving change. See: King, *Making Americans*; Gil Loescher and John A. Scanlan, *Calculated Kindness: Refugees and America's Half-Open Door, 1945 to the Present* (New York: Free Press, 1986); Tichenor, *Dividing Lines*; Zolberg, *Nation By Design*. John D. Skrentny, *The Minority Rights Revolution* (Cambridge: The Belknap Press of Harvard University Press, 2002). See also: Otis L. Graham, Jr., *Unguarded Gates: A History of America's Immigration Crisis* (Lanham: Rowman & Littlefield Publishers, Inc., 2004); Hing, *Defining America Through Immigration Policy*; Davis, “The Cold War, Refugees”; and Elizabeth Borgwardt, *A New Deal for the World: America's Vision for Human Rights* (Cambridge: Belknap Press, 2005).

⁹ See: Zolberg, *Nation By Design*.

¹⁰ On Asian exclusion, see: Zolberg, *Nation By Design*, 176-184; Tichenor, *Dividing Lines*, Chapter 4; Erika Lee, *At America's Gates: Chinese Immigration During the Exclusion Era, 1882-1943* (Chapel Hill: The University of North Carolina Press, 2003), 37-45. See also: Lucy E. Salyer, *Laws as Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill: University of North Carolina Press, 1995), and Alexander Saxton, *The Indispensable Enemy: Labor and the Anti-Chinese Movement* (Berkeley: University of California Press, 1971).

¹¹ On labor-based restrictions, see: Kitty Calavita, *U.S. Immigration Law and the Control of Labor: 1820-1924* (London: Academic Press, Inc. 1984).

people in 1907.¹² The Dillingham Commission report of 1911, a comprehensive study of immigration, provided ammunition for those who believed in reduced immigration, by highlighting the differences between “old” immigrants from northern and western Europe, and “new” immigrants from southern and eastern Europe. The report drew a false dichotomy between the groups, conflating the occupational, educational, and social milestones of immigrants that had been in the United States for many years with those who had just arrived. Still, it provided nativists with a justification for the exclusion of those people considered less desirable.¹³

Proposals to curb immigration also drew on the evolving race sciences such as eugenics, which promoted a hierarchy of groups. While not all in the social sciences – most notably the anthropologist Franz Boas – agreed with the notion that fitness for citizenship and assimilation followed racial and ethnic lines, widely influential works such as Madison Grant’s 1916 work, *The Passing of the Great Race* enshrined notions of difference within the dominant immigration discourses of the era.¹⁴

In response to the Dillingham Commission report, Congress passed a literacy test for admission with the Immigration Act of 1917. Presidents Cleveland, Taft, and Wilson had all vetoed similar proposals in the past, but with a confluence of restrictionist sentiment in Congress, attacks on hyphenated-Americanism during World War I, and the power of groups like the Immigration Restriction League (IRL), the literacy test finally became law over Wilson’s veto.¹⁵ The 1917 Act also created the Asiatic Barred Zone, which excluded all but professionals from wide swaths of Asia and the Middle East. These impositions coincided with an era of increasing U.S. isolationism from world affairs, and limitations on immigration flowed from much of the same logic.¹⁶

¹² As Aristide Zolberg points out, while overall restrictions on immigration may have been inevitable because of the demographic and industrial revolutions of the era, the shape of exclusion was by no means a foregone conclusion. Zolberg, *Nation By Design*, 200 and 205. The classic study of nativism in the late-19th and early 20th centuries is John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (Westport: Greenwood Press, Publishers, 1981 [1955]). See also: David H. Bennett, *The Party of Fear: From Nativist Movements to the New Right in American History* (Chapel Hill: The University of North Carolina Press, 1988), and Tichenor, *Dividing Lines*, Chapter 5.

¹³ On the Dillingham Commission, see: Robert F. Zeidel, *Immigrants, Progressives, and Exclusion Politics: The Dillingham Commission, 1900-1927* (Dekalb: Northern Illinois University Press, 2004); Zolberg, *Nation By Design*, 232-238; and Tichenor, *Dividing Lines*, 128-132.

¹⁴ On the intellectual underpinnings behind immigration restrictionism, see: Zolberg, *Nation By Design*, 205-216.

¹⁵ Zolberg points out that Higham’s account sought to explain the lack of progress on the literacy test through a push-and-pull between concerns about mass-immigration and the ways in which these same anxieties were transferred to other spheres, such as the Spanish-American War. Instead Zolberg posits that party politics; interest group access to the Commissioner of Immigration and Department of Commerce (which supervised the Commissioner of Immigration); as well as concern for immigrant votes, mitigated legislative triumphs. Additionally, Daniel Tichenor argues that elite and intellectual restrictionist sentiment did not easily translate into clear legislative decision-making. Zolberg, *Nation By Design*, 201 and 216; E.P. Hutchinson, *Legislative History of American Immigration Policy, 1798-1965* (Philadelphia: University of Philadelphia Press, 1981), 481-483; Tichenor, *Dividing Lines*, 138-142; and Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 19.

¹⁶ See: Zolberg, *Nation By Design*, 216-223, 245-248, and 252; Hutchinson, *Legislative History*, 479.

Though immigration as a whole fell during World War I, after the war, it became clear that the literacy test had not stemmed the tide of admissions, and by 1919 and 1920, immigration from Europe had rebounded. Adding to growing fears of immigrants and rising nativist sentiment during the first Red Scare, the American economy entered a recession at the beginning of the 1920s, which set the stage for the passage of restrictionist legislation. Now Congress moved toward the imposition of a numerical limitation.¹⁷

In 1921 legislators passed the Emergency Quota Act, to reduce immigration and to privilege the admission of northern and western Europeans, whose citizens were viewed as more racially desirable and more easily assimilable. Proposals to place a numerical limitation on immigration had been in the works since 1913, when Senator William P. Dillingham (R-VT) had proposed a cap on immigration of 10 percent of the foreign-born population from each sending country in the United States, with a minimum of 5,000 people allowable per country.¹⁸ The 1921 Act limited immigration to 3 percent of the total foreign-born population of the United States, using the census of 1910. (Table 2.1).

Table 2.1: Immigration Quotas, 1921-1952

	Quota Act of 1921 (3 percent of 1910 census)	Johnson-Reed Act of 1924 (2 percent of 1890 census)	National Origins system, 1929 (1/6 of 1 percent of the white population of 1920 census)	McCarran-Walter Act of 1952 (1/6 of 1 percent of the white population of 1920 census)
Total	357,803	164,667	153,714 ^a	154,657 ^a
Asia	492 ^b	1,424 ^b	1,423 ^b	2,990
Africa and Oceania	359 ^b	1,821 ^b	1,800 ^b	2,000 ^b
Western Europe	197,630	140,999	127,266	126,131
Eastern Europe	155,585	20,423	23,235	23,536

a - Minor changes, including new countries and colonial territories, added just under 1,000 quota slots to the system between 1929 and 1952.

b - Only for those otherwise racially eligible for entry.

Adapted from: President's Commission on Immigration and Naturalization, *Whom We Shall Welcome* (DC: U.S. Gov't Printing Office, 1953,) 76.

¹⁷ Mae Ngai points out as well that by the 1920s, the economy no longer required the same numbers of immigrants as before. Ngai, *Impossible Subjects*, 18-20. As Daniel Tichenor points out, most Asian groups were already excluded under immigration law, and the bill mainly added "Hindus" – i.e. Indians. Tichenor, *Dividing Lines*, 141.

¹⁸ Zolberg, *Nation By Design*, 237.

When the roughly 350,000 visas allotted under the system, and still-high proportion of visas given to southern and eastern Europe, proved too much for restrictionists, Congress passed a permanent reduction. The Johnson-Reed Act of 1924 and the national origins quota system (implemented in 1929,) further restricted quota immigration, and shifted the overwhelming balance of visas to northern and western Europeans. Instead of using the foreign-born population as a metric for deciding future flows, the 1924 and 1929 systems took a survey of the entire white population, and apportioned visas by the proportion of each immigrant group in the wider American populous. (Table 2.1) Under the 1924 Act, immigration was held at 2 percent of the white population, using the census of 1890, for a total of 165,000 slots. The 1924 law also excluded anyone deemed racially ineligible to citizenship. While most Asians had been barred from entry either through the exclusion laws of the late-19th and early 20th century, Japanese exclusion had been accomplished through informal Gentleman's agreements. Here the 1924 Act completed the process of Asian exclusion.¹⁹

By heavily weighting admissions toward just three countries – Great Britain, Germany, and Ireland – the 1924 Act acted in favor of nativists who sought to limit southern and eastern European migration. But by singling out specific countries for restriction, and by using an outdated census (1890), it also invited criticism of discrimination. Thus the framers of the national origins system sought to create a policy that would differentiate between peoples, without appearing overtly discriminatory. The national origins quotas did just that, by basing immigration figures based on percentages of all citizens in the nation. Framers argued that the visas simply mirrored the racial and ethnic make-up of the United States, by allotting visas based on the percentages of each group already living in the nation. The quota system based its visas on one-sixth of 1 percent of the white population using the census of 1920, for a total of just over 154,000 slots (150,000, plus a base-line of 100 visas per country.) The national origins system severely limited the number of southern and eastern Europeans to only 15 percent of the total, roughly the same as that of the 1924 system, though here couched as limitations based on national origin, rather than race. Importantly, the Western Hemisphere was exempted from numerical limitations, subject only to exclusionary provisions such as the literacy act or public charge provisions.²⁰ The imposition of the quotas mostly accomplished nativist goals, and immigration fell significantly after 1924.²¹

¹⁹ Ngai, *Impossible Subjects*, 37-50.

²⁰ Ngai, *Impossible Subjects*, 21-37; Zolberg, *Nation By Design*, 261-264; Hutchinson, *Legislative History*, 483-489; Tichenor, *Dividing Lines*, 143-146; Reed Ueda, *Postwar Immigrant America: A Social History* (Boston: Bedford/St. Martin's, 1994), 20-22. The national origins quota system was scheduled to go into effect in 1927, with the formula of 2 percent of the census of 1890 being used in the interim. Policymakers could not agree on what methods should be used to define the national origins. In particular, the notion of accurately determining the nationalities of immigrants for use in the quota system provided difficulties. The final national origins system, using the census of 1929 and a total of just over 150,000 quota slots, went into effect on July 1, 1929.

²¹ It is important to note that the restrictionist policies of the 1920s had other ramifications as well. While the quota system worked to limit the number of immigrants from southern and eastern Europe, as Mae Ngai points out, it drew a line around all of Europe, marking its citizens as racially eligible for entry, and everyone else as not. Thus the quota system, in her words, “remapped the ethno-racial contours of the nation,” while at the same time generating significant undocumented migration. Even as the national origins quotas mandated a hierarchy of European groups within immigrant admissions, they solidified a

WORLD WAR II AND BEYOND

World War II shook the foundations of American isolationism that had characterized its foreign policy since the 1920s. The fight against Nazism discredited the use of racial hierarchies within the nation, and during the ensuing Cold War, the Soviet Union capitalized on American racial tension in their propaganda, damaging the United States' image abroad. The Cold War also ushered in the rise of the national security state, charged with protecting the country against the specter of Global Communism.²² The United States could no longer return to its prewar isolationism, and now positioned itself as a leader of the free world, ensuring a continued peace. Still, continued fears over numbers of immigrants ran up against these new international and foreign policy prerogatives, limiting the terms of immigration reform.

Even if the U.S.'s outward position on isolationism had changed after the war, public opinion on admissions remained dim. When asked in a January 1946 Gallup Poll whether the nation should admit a greater or lesser numbers of European immigrants, only 5 percent responded more, while 51 percent responded fewer or "none at all." The remaining 32 percent chose "about the same." Polls taken in 1946 indicated that the public opposed admitting a larger share of European refugees. These anti-immigrant attitudes only continued into the 1950s. In an April 1955 poll, only 13 percent of respondents believed that the United States was not admitting enough immigrants, while 37 percent argued that the U.S. was taking "about the right number," and a full 39 percent believed that the U.S. took too many. Other factors in the immediate postwar period, especially foreign policy and domestic security, would shape the context in which immigration reform occurred, but the generally restrictionist public sentiment did not help.²³

The debates over Asian exclusion formed one of the first challenges to the prewar immigration order. During World War II Chang Kai-shek implored the United States to remove exclusion, testifying that Japan was using his country's second-class status as propaganda against them. In 1943 Congress granted China a quota of 105 people per year and offered the right of naturalization to permanent residents, as a concession to a wartime ally. Congressional members devising the bill made it clear that these actions would affect only token change, a political exigency rather than a policy revision. Once the boundaries began to fall though, liberals seized on the opportunity to dismantle exclusion. In 1946 Congress extended naturalization and immigration rights to the

unified white American identity of European descent. This commonality helped to assimilate southern and eastern Europeans, while further excluding groups like Asians and Africans from the polity. Ngai, *Impossible Subjects*, 17 and 23-27.

²² See, for example: Desmond S. King, *The Liberty of Strangers: Making the American Nation* (New York: Oxford University Press, 2005), 78 and 108-9; Gerstle, *American Crucible*; and Dudziak, *Cold War Civil Rights*.

²³ Rita J. Simon, *Public Opinion and the Immigrant: Print Media Coverage, 1880-1980* (D.C.: Lexington Books, 1985), 34-38.

Philippines and India, with small quotas attached. By the end of the decade, only Japanese and Koreans remained excluded.²⁴

Representative Walter Judd (R-MN), a former medical missionary in China, led the legislative fight to end exclusion. Though motivated by a spirit of racial egalitarianism, Judd would not argue for complete liberalization, fearing a negative impact on American society from large numbers of arrivals.²⁵ To limit Asian immigrants, in 1949 Judd proposed the creation of the Asia-Pacific Triangle. Heralded by conservatives and hated by liberals, the Triangle demarcated all of Asia into one region from which no more than 2,000 people could immigrate per year. Each country inside of the Triangle received a quota of 100 (save for countries like China that had previously been given slightly larger quotas,) with an additional 100 spots reserved for the Triangle as a whole. These final slots were allocated to persons with parents from two different Asian countries, or to those born in a colony within the Triangle.²⁶

While Europeans immigrated under the country of their birth, Asians alone possessed blood-based ancestry under the law. A person of Chinese heritage born in Germany, for instance, had to enter under the small quota of China, instead of the much larger one of Germany. Reporting on the Judd Bill, Representative Ed Gossett (D-TX) defended the descent-based provisions, “so there can be no flood of immigration from these small-quota countries,” or more frightening for legislators, from the nonquota countries of the Western hemisphere.²⁷ In this hyper-restrictive manner, Asian quotas became racial *and*

²⁴ The classic study of the repeal of Chinese exclusion is Fred W. Riggs, *Pressures on Congress: A Study of the Repeal of Chinese Exclusion*, (New York: King’s Crown Press, 1950). See also: Zolberg, *Nation by Design*, 290; Hing, *Making and Remaking*, 110; King, *Making Americans*, 232; John Hayakawa Torok, “‘Interest Convergence’ and the Liberalization of Discriminatory Immigration and Naturalization Laws Affecting Asians, 1943-65” *Chinese America: History and Perspectives* 28 no. 1 (1995), 6; Reimers, *Still the Golden Door*, 11-17.

²⁵ See: Michael G. Davis, “Impetus for Immigration Reform: Asian Refugees and the Cold War” *Journal of American-East Asian Relations* 7 no. 3-4 (1998), 130.

²⁶ Judd first proposed the Triangle in 1949, H.R. 199, as a revision of the Asiatic Barred Zone. Each country inside the Triangle received a quota of 100 (save for countries like China that had previously been given slightly larger quotas,) with an additional 100 spots reserved for the Triangle as a whole. These final slots were allocated to persons with parents from two different Asian countries, or to those born in a colony within the Triangle.

²⁷ On the provisions of the Asia-Pacific Triangle, see: Reimers, *Still the Golden Door*, 17-18. In a position paper attacking the discriminatory features of the McCarran-Walter Act, social worker Charles Chan quoted McCarran as saying that if there were no restrictions on Asian immigration, “an estimated 600,000 Orientals who are natives of non-quota countries in the Western Hemisphere would become eligible overnight for immigration.” Charles Chan, *Racial Discrimination Features of the Immigration and Nationality Act of 1952, with Specific Emphasis on the Asia-Pacific Triangle Provisions for Quota Chargeability* (Los Angeles: International Institute of Los Angeles, 1956), 7.

national in character.²⁸ Though ultimately passing the House, the Judd Bill was tabled until 1952, when its provisions were included in the omnibus McCarran-Walter Act.²⁹

The impetus for expanding Asian rights centered on winning the propaganda battle with the Communist world, by positing a better image of America to the world. Legislators made a distinction between Asian *immigrants*, who might disturb the racial and ethnic status quo, and those already here. For the latter group, according to Congressional testimony, “it would be better to have them fully incorporated as citizens than as alien residents.”³⁰ The arguments in favor of full naturalization rights referenced Asian assimilation, loyalty, and wartime sacrifices as positive factors, in addition to their low crime rates and general contributions to the nation. One Congressman, testifying on the Judd Bill, stated that the right to naturalization “was fought for by young, courageous men, and we are now rewarding them, in part, for their deeds on behalf of Americanism.”³¹ Most of those who would gain citizenship under the Judd Bill had resided in the country since before 1924, and implicit in these arguments about exemplary Asian residents was an assumption about the success of Americanization. In reality, legislators made a distinction between the place of race inside the nation, where Asian residents had to be incorporated as citizens, and outside, where legislators feared that large numbers would be detrimental to American society.

Inside the nation, and without threats to national and economic security, racial egalitarianism could be achieved, or at least attempted, with all permanent residents receiving an equal ability to naturalize. Externally though, race and racial hierarchies continued to operate, as legislators singled Asians out for descent rather than birth-based quotas, and allowed only paltry numbers to enter. Trapped between the legacy of World War II and the unfolding Cold War, the tension between domestic and international pressures drove a redefinition of policy, but limited the scope of possible reform. On paper, legislators had excised all references to race-based discrimination in admissions: anyone could enter the country, in stark contrast to prewar policy. But policymakers balked at truly erasing race, preferring to subtly enshrine difference.

²⁸ Daniels, *Guarding the Golden Door*, 116. This distinction was not lost on contemporary commentators, as former Commissioner of Immigration Edward Corsi pointed out in 1956, “the immigration law of 1952 eliminates race, as such, as a reason for exclusion. It then proceeds to single out Orientals for special prejudicial treatment on the basis of racial ancestry...No other group is similarly treated.” Edward Corsi, *Paths to the New World: American Immigration--Yesterday, Today, and Tomorrow* (New York: Anti-defamation League of B’nai B’rith, 1956), 35.

²⁹ Interestingly, the Judd Bill of 1949 limited Asians to quota immigration only, and would not have given citizens of Asian descent the same family unification rights – to bring in wives and children on a nonquota basis – allotted to Europeans under the law. For reasons that are unclear, this provision did not make it into the McCarran-Walter Act in 1952, and Asians, like all other citizens, were allowed to bring in nonquota family members.

³⁰ U.S. Congress, House Judiciary Committee, “Providing for Equality under Naturalization and Immigration Laws: Hearings before Subcommittee on Immigration and Naturalization of the committee on the Judiciary, House of Representatives, 80th Congress, 2nd Session, on H.R. 5003 (Washington D.C.: United States Government Printing Office, 1948), 6.

³¹ “Complete Text on the Debate on H.R. 199 in the House of Representatives.” *Congressional Record*, 1 March 1949, 1712.

The tentative nature of change in the 1940s is perhaps best exemplified by the position of the State Department on Asian exclusion. In May of 1947, the State's interdepartmental Policy on Immigration and Naturalization (PIN) Committee took up the issue of removing the racial bar from immigration and naturalization law, in the face of multiple legislative proposals to make the change. During the discussion, the main sticking point against reform was that, according to the committee, "there are large numbers of Orientals in the American Republics...who have immigrated into these countries since 1850." Because of the non-quota status for the Western Hemisphere, State Department officials worried of the numbers that would be able to immigrate if the barriers to exclusion were dropped. Many of the committee members expressed a strong desire to end the barriers to *naturalization*, but were more reticent when it came to immigration.³² Still, in February of 1948 the Committee also did come out on the side of limited immigration rights, and in December, endorsed a bill to make the change.³³ The restrictionist viewpoint of many in State, especially of those in the Visa Office, run by Robert C. Alexander, points to the lingering influences of isolationism in the postwar era.³⁴

By the end of the 1940s, not only had the policies with regard to admission and exclusion begun to change, but the context in which they operated had also begun to change as well. Over the three decades from 1920 to 1950, the American population had expanded from just over 100 million people to over 150 million, while the percentage of the foreign born dropped from 13.1 percent to only 6.9 percent. As the sources of and need for immigrants changed from industrial workers to a mix of agricultural and skilled labor, views about race and racial discrimination shifted as well. Especially in the wake of the fight against Nazism and the burgeoning civil rights movement at home, U.S. policymakers started to reevaluate the basis for restriction. Similarly, as was evident in the debates over the Judd bill, the heroic wartime service of Japanese Americans, as well as guilt over internment, had changed attitudes toward Asian immigration.³⁵ And while bureaucratic institutions such as the State Department remained concerned with large numbers of immigrants entering the country, they also realized the foreign policy values in removing racial discrimination. Lingering questions of inclusion and exclusion would emerge at the center of the debate over omnibus reform in 1952.

³² PIN Committee Minutes, May 15, 1947, "Removal of the Racial Bar from the Immigration and Naturalization Laws of the U.S.," 2 and 4. RG 353, UD-26, PIN Committee, Box 1, Minutes 1947-1952 (1), NARA II.

³³ PIN Committee Minutes, February 11, 1948, 3. The main reservation that the State Department had with the proposal, H.R. 6809, was that it would have removed nonquota status for the wives of Filipino and Chinese immigrants, a right granted to them under previous legislation. As the PIN Committee report from December of 1948 stated, they "would prefer to have it enacted in such form as will not deprive any class of aliens of the privileges they now enjoy." PIN Committee Minutes, December 15, 1948, "A Bill to Remove Racial Bars from Immigration and Naturalization Laws," 2. Both documents in: RG 353, UD-26, PIN Committee, Box 1, Minutes 1947-1952, 1 of 3, NARA II.

³⁴ On restrictionism within the State Department, see: Alan M. Kraut, Richard Breitman, and Thomas W. Imhoof, "The State Department, the Labor Department, and German Jewish Immigration, 1930-1940" *Journal of American Ethnic History* 3 No.2, Spring 1984.

³⁵ Zolberg, *Nation By Design*, 295-297.

Passing the McCarran-Walter Act

The early postwar immigration battles came to a boiling point with the enactment of the McCarran-Walter Act (Immigration and Nationality Act of 1952,) the product of five years of hearings, reports, and political maneuvering.³⁶ In its final form, the McCarran-Walter Act retained the quota system and discounted liberal attempts at modification. The law contained an array of contradictory impulses, ending Asian exclusion by granting immigration and citizenship rights regardless of race, while simultaneously creating the Asia-Pacific Triangle, limiting total Asian immigrants to just over 2,000 per year.³⁷

The two figures in charge of immigration policy in Congress, Representative Francis Walter and Senator Pat McCarran (both Democrats,) led the charge to retain the national origins system. Walter, Chairman of the House Judiciary subcommittee on immigration, had served the area of Easton-Bethlehem in eastern Pennsylvania since 1932. While Walter had a number of eastern Europeans in his district, he was generally a conservative legislator, and sensitive to criticism of his political positions. In addition, he had close ties to many of the patriotic organizations that were the staunchest supporters of the national origins system. But, though he was generally opposed to liberalizing the immigration system, he did support refugee legislation. Pat McCarran, chairman of the Senate Judiciary Committee, by contrast, opposed most admissions – of immigrants or refugees. McCarran was an ardent anti-Communist and supporter of Senator Joseph McCarthy (R-WI). Historian Stephen Wagner points out that McCarran’s chairmanship of the Senate Internal Security subcommittee, and Walter’s membership on the House Un-American Activities Committee influenced “their tendencies to regard exclusion and deportation of subversives and other undesirables as a major function of immigration and nationality law.” The power of these two individuals was so great that from the end of World War II until the early 1960s, they, more than anyone else, shaped policymaking.³⁸

Leading up to the passage of the 1952 bill, a Senate subcommittee led by McCarran produced in 1950 the first compressive review of immigration since the Dillingham Commission of 1911. The Dillingham Commission report had first posited the dangers of

³⁶ Scholars are divided on the final analysis of the McCarran-Walter Act. Historians such as Roger Daniels, Gary Gerstle, and Michael Davis believe that the Act contained both liberal and conservative features. These scholars view the legislation optimistically, regarding it as a first step toward liberalization. A second group, led by Desmond King, Aristide Zolberg, Robert Divine, and Bill Ong Hing, portray the Act as intrinsically conservative and discriminatory, mainly because of its racial components. See: Daniels, *Guarding the Golden Door*; Davis, “Impetus for Reform”; Divine, *American Immigration Policy*; Gerstle, *American Crucible*; King, *Making Americans*, Hing, *Making and Remaking*; Zolberg, *Nation By Design*.

³⁷ The McCarran-Walter Act also included a provision that limited immigration from any colony or dependent area to only one hundred people per year from the colonial quota which, according to Stephen Wagner, worked to reduce immigration of blacks from the Caribbean. Wagner points out that the amendment had first been proposed by the State Department. See: Stephen Thomas Wagner, “The Lingering Death of the National Origins Quota System: A Political History of United States Immigration Policy, 1952-1965” Ph.D. Dissertation, Harvard University, 1986, 63-66.

³⁸ Wagner also points out that immigration advocates viewed McCarran’s Staff Director on the Judiciary Committee, Richard Arens, as racist and anti-Semitic, though he feels that this sentiment was probably overblown. Wagner, “Lingering Death,” 35-44. Quote on 44; Zolberg, *Nation By Design*, 303.

the ‘new immigrants’, and formed the basis for the restrictive national origins quota system and Johnson-Reed Act of 1924. Not surprisingly, the new report augured well for the continuation of national origins. While it shunned overt expressions of racial difference, it did give detailed data on the employment, crime, disease, birth, death, and education rate of each immigrant group. Congressman and Judge Marion T. Bennett concludes in his contemporaneous study of immigration policy that from the data each reader could decide “which nationality and racial group [held] the beset potential for adding to the strength and welfare of the national community.” The staff of the Committee Report also ignored the views of opponents of the national origins system.³⁹

The McCarran report touched on the issue of creating a system of visa preferences within each country’s quotas. The idea of a preference system had been first proposed in 1947 by Congressman Christian Herter (R-MA), and Pat McCarran’s original proposal for the omnibus bill contained a system whereby first preference, with 30 percent of each country’s quota, would go to skilled and urgently needed labor, followed by two preferences for family reunification: 50 percent for the parents of citizens, and 20 percent to the spouses and unmarried minor children of legal permanent residents. The system allowed for only 10 percent of the total unused visas to be used by nonpreference immigrants (immigrants without skills or family ties,) with half of that number reserved for the brothers and sisters of citizens. Francis Walter’s omnibus proposal in the House had slightly more lenient provisions, allowing visas unused by higher preferences to be recaptured for use by lower ones. Many civil society groups and witnesses before the immigration committees came out in favor of Walter’s preference system, and in the end his version made it the final bill. From this beginning, visas preferences for family and employment needs would become the standard in immigration policy.⁴⁰

The 1952 Act itself repealed all prior immigration and naturalization laws, substituting them with the omnibus bill. Like much of the postwar immigration reforms, the fight over national origins during McCarran-Walter took place within the logic of Cold War exigencies. The quota system, and its foundation of racial hierarchy, damaged the United States’ reputation as an international leader of democracy. For liberals *and* conservatives the question became how could the United States retain a system so obviously based on the type of racial thinking they were trying to eradicate? Changes to the quota system would not arrive without a struggle.⁴¹

The arguments in favor of abandoning national origins were both obvious and unavoidable. Countries with small quotas had waiting lists many years long, while larger ones such as Britain or Germany never exhausted their allocations. The law did not allow the carrying over of unused slots, and forbade quota pooling, whereby unused visas from

³⁹ Marion T. Bennett, *American Immigration Policies, A History* (Washington: Public Affairs Press, 1963), 114; Wagner, “Lingering Death,” 46-48.

⁴⁰ Wagner, “Lingering Death,” 51-53.

⁴¹ Desmond King put the problem succinctly: “In 1952, Congress enacted legislation over President Truman’s veto, affirming national origins. But as an expression of membership, the national origins system looked embarrassing after a war in which participants sought to end the use of such distinctions in politics. It took twenty years to abandon.” King, *Liberty of Strangers*, 127.

large-quota countries could be reallocated to oversubscribed ones.⁴² In his veto of the McCarran-Walter Act, President Truman held nothing back, stating the “greatest vice of the present quota system...is that it discriminates, deliberately and intentionally, against many of the peoples of the world.”⁴³

If liberals felt the national origins system had failed to regulate the ethnic and racial composition of the nation, conservatives agreed, but felt that it had not gone far enough. One committee report downplayed the differences in quota allotments, reminding Congress that “the national origins formula has...provided a fixed and easily determinable method for controlling immigration.” The report in effect deemphasized the system’s hierarchies, portraying it as the best general method for restriction. Even while avoiding quota differences, nativists spoke of national origins as “a rational and logical method of numerically restricting immigration...to best preserve the *sociological* and *cultural* balance in the population.”⁴⁴

During this era conservatives traded the language of race in favor of a discourse about the assimilatory power of immigration. National origins was not simply the best method for regulating entrance, but also for assuring that those securing admission would be integrated into the nation.⁴⁵ McCarran summed up the conservative position by stating that

The simple theory underlying the national origins quota system is that if we permit new immigrants to enter in uniform proportions to those of each foreign national origin already here, they are more likely to assimilate readily than if they arrived in numbers disproportionate to the origins of our people. This is not any super-racial theory.⁴⁶

By setting aside the racial foundation of national origins, proponents sought to update an antiquated system to the contemporary need for racially neutral legislation.⁴⁷

The debates from the earlier Judd Bill in 1949 provide a window into restrictionist thinking around 1952. In 1949, even ardent conservatives like Congressman Francis Walter (D-PA) spoke of ending Asian exclusion as “an act of justice of immediate value to American moral leadership in the Far East,” given “to long resident Asian immigrants who have made a positive contribution to America.” “The maximum number of possible immigrants...under this bill,” stated one Congressional report, “would be entirely in keeping with the principle embodied in the national origins provisions...which seeks to preserve the ethnic and racial composition of the United States.”⁴⁸ Most importantly, by

⁴² Hutchinson, *Legislative History*, 295-296.

⁴³ Quoted in: President's Commission on Immigration and Naturalization, *Whom We Shall Welcome* (Washington: U. S. Govt. Print. Off., 1953), 277.

⁴⁴ Quoted in: Bennett, *American Immigration Policies*, 123 and 124. Emphasis added.

⁴⁵ King, *Making Americans*, 237.

⁴⁶ Quoted in: Bennett, *American Immigration Policies*, 183.

⁴⁷ Zolberg, *Nation By Design*, 316.

⁴⁸ U.S. Congress, House Judiciary Committee, “Providing for Equality under Naturalization and Immigration Laws: Hearings before Subcommittee on Immigration and Naturalization of the committee on the Judiciary, House of Representatives, 80th Congress, 2nd Session, on H.R. 5003 (Washington D.C.: United States Government Printing Office, 1948), 3; “Report: Providing the Privilege of Becoming a

including liberalizing features such as the Judd Bill's repeal of exclusion in the omnibus 1952 revision of immigration, it allowed conservatives to gain support for an otherwise restrictive Act. Senator Pat McCarran (D-NV), for example, recruited the Japanese American Citizen's League (JACL) to lobby for the McCarran-Walter Act's passage on the basis that it ended exclusion, disregarding the strict limitations on Asian admissions. McCarran even went as far as branding the bill's critics racist for opposing Asian immigration rights. The JACL supported the Act even with the Asia-Pacific Triangle, reasoning that token benefits would ultimately lead to full inclusion.⁴⁹

Liberals too could not break with the quota system, even as they worked to dismantle national origins. Attempting to reclaim the initiative on the omnibus revision, Senators Herbert Lehman (D-NY) and Hubert Humphrey (D-MN) submitted their own bill for consideration in 1952. The bill was a compromise, but critically it retained the national origins system. Instead of scrapping the quotas, the bill provided for the pooling of unused visas (which would allow for their recapture and use by small-quota countries,) and for the base year for calculating the quotas to be changed from 1920 to 1950, adding roughly 60,000 extra visas.

Ultimately, the Lehman-Humphrey bill failed to emerge from the McCarran-dominated Senate Judiciary committee. Emanuel Celler separately tried to add a quota-pooling amendment to the McCarran-Walter bill, which would have allowed any nation with less than 7,000 quota visas to receive a portion of those visas left unused from the previous year, but this attempt failed as well. By accepting the inevitability of the quota system, and instead attempting to modify it, liberals as well as conservatives tacitly accepted the continuing utility in differentiating between national origin groups. I do not mean to downplay what was and was not politically possible at the time, but to outline the limitations, for liberals and conservatives, of the impulses toward racial egalitarianism during this era.⁵⁰

Logistically, McCarran and Walter won the ability to hold hearings for the bill under a joint House and Senate subcommittee on immigration, in an attempt to cut liberal Emanuel Celler, chairman of the House Judiciary Committee, out of the process. Celler had been a staunch opponent of the national origins system since its inception, and had given one of his first speeches in Congress against the implementation of the quotas in the early 1920s.⁵¹ McCarran and Walter packed their hearings with witnesses that supported the quota system, including patriotic groups like the American Legion and Daughters of the American Revolution, and other opponents of change, such as the American Federation of Labor (AFL). A coalition of Republicans and southern Democrats largely controlled the policymaking process, while liberal groups remained

Naturalized Citizen of the United States to All Immigrants Having a Legal Right to Permanent Residence, to Make Immigration Quotas Available to Asian and Pacific Peoples," 81st Congress, House of Representatives, 1st session, Mr. Gossett to accompany H.R. 199, 5.

⁴⁹ Reimers, *Still the Golden Door*, 16-18; Davis, "Impetus for Reform," 130-131.

⁵⁰ Wagner, "Lingering Death," 55-58. Note that the Lehman-Humphrey bill did call for an end to the Asia-Pacific Triangle, and removed the descent-based provisions for Asians, while still retaining small quota allotments. See: Divine, *American Immigration Policy*, 176; Daniels, *Guarding the Golden Door*, 118.

⁵¹ See: Lemelin, "Emanuel Celler."

divided over the major points of reform. Jewish groups, for example, felt that removing national origins and combating anti-Semitism were the most important changes that could be made, while Catholic groups felt that winning greater numbers of admissions for Catholic-dominated countries such as Italy had to take precedence.⁵² Once the McCarran-Walter Act passed Congress, President Truman vetoed it, pointing to its differential treatment of different countries, especially of NATO allies such as Italy and Greece. The House and Senate quickly overrode his veto by wide margins, and the Act became law.⁵³

Ultimately, why did the bill pass? First and foremost, many in Congress were content with the quota system. And, while the final bill failed to remove the quota system, some of the provisions, like those that ended Asian exclusion, did liberalize immigration policy. Notably, supporters of the bill like Walter and McCarran appealed to the plight of family members kept apart to secure the votes needed to override Truman's veto. "If the President's veto is sustained," stated Francis Walter in a list of detrimental factors, "the GI in Japan or in Korea will not be permitted to bring his Oriental wife into this country." Pat McCarran contended that failure to pass the legislation would maintain the status quo in immigrant admissions without any of the "desirable revisions," such as Asian immigration and naturalization rights.⁵⁴ Proponents of the bill also used its harsh internal security provisions to push for the bill, drawing on the McCarthyist sentiment that peaked in 1952.⁵⁵

In terms of the provisions of the bill itself, arriving at the apex of McCarthyism, the threat of Communism played a large role in the development of the omnibus law. The Act adopted many of the provisions of the 1950 Internal Security Act, allowing for the exclusion and deportation of an expanded list of potential subversives. It also included a new set of admissions preferences. First preference, with 50 percent of each nation's quota slots, went to skilled or urgently needed labor, with the remaining 50 percent split between two family reunification preferences: 30 percent for the parents of citizens, and 20 percent for the spouses and minor children of legal permanent residents. The system also included a fourth preference for the brothers and sisters of U.S. citizens, which received no quota allotment, but instead a portion of all unused visas – initially 25 percent, but later raised to 50 percent in 1959.⁵⁶ Upon certification of the Secretary of Labor, the Act provided for the exclusion of labor migrants if admission would diminish wages or job prospects for citizens. Most crucially, it repealed the Contract Labor and Alien Assistance Laws. Combined with the emphasis on labor certification, this latter

⁵² Tichenor points out that while the McCarran-Walter Act maintained strict limitations on immigration from Europe, Asia, and Africa, it also discounted attempts (by organized labor in particular,) to regulate migratory labor. Tichenor, *Dividing Lines*, 191-193; See also: Zolberg, *Nation By Design*, 314.

⁵³ Tichenor, *Dividing Lines*, 194-195. The margins to overturn the veto were 278-113 in the House and 57-26 in the Senate.

⁵⁴ *Congressional Record*, 82nd Congress, 2nd session: 8215 and 8254.

⁵⁵ Stephen Wagner also argues that the Truman Administration did not make a concerted enough effort to oppose the bill, and opponents of the quota system were not nearly as unified as proponents. Wagner, "Lingering Death," 58-60.

⁵⁶ Second preference, with thirty percent of the visas went to parents of adult citizens; third preference, with twenty percent of the visas to spouses and children of resident aliens; a portion of the remaining visas were allotted to fourth preference, for siblings and adult children of citizens.

change further moved the U.S. toward a system of overt control over admissible employment preference categories, and of limiting unskilled labor.⁵⁷

Senator Pat McCarran defended the new preference structure in his introduction to the official version of the Act, stating that it “provides a more thorough screening in order to insure that the admission of aliens...will serve the national interest.” Basing his reasoning on national need, he argued that fifty percent of all quotas would be allotted to “aliens whose services are urgently needed.”⁵⁸ But underlying these arguments about domestic interest, (a line of reasoning that would reappear in future immigration debates,) economic preferences too became entangled in discrimination. Preference categories on the basis of skill allowed conservatives to further restrict immigration from undesirable areas such as southern and eastern Europe, where the majority of immigrants were unskilled workers. Into the 1950s these preference categories, and the long waiting lists that quickly developed for small-quota countries, would set the context in which reform efforts through the passage of the Hart-Celler Act of 1965 would occur.⁵⁹

The 1950s: Fallout from McCarran-Walter and Attempts at Reform

For liberal legislators like Emanuel Celler, who emerged from World War II hoping to dismantle national origins, the McCarran-Walter Act came as a disappointment. Ardent restrictionists held a tight grip over immigration policy in Congress. Francis Walter’s subsequent defenses of the 1952 Act, as well as poor relations between conservatives like Walter and liberals like Celler, continued to hinder reform efforts.⁶⁰ These stumbling blocks notwithstanding, legislators in every year from 1953 through 1965 introduced bills to modify or negate the quota system. Though most failed, no fewer than seven passed in the decade after 1952, enlarging the preference categories and chipping away at the quota constraints.⁶¹

⁵⁷ Legislators brought these restrictions one step forward in the 1965 Act when they reversed the system of labor preferences, establishing a system whereby labor migrants could enter the U.S. only with positive certification from the Secretary of Labor. See: Hutchinson, *Legislative History*, 430. The 1952 Act also set the stage for the modern system of temporary labor visas, defining a class of nonimmigrants in Section 101(a)(15)(H) as “an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform temporary services of an exceptional nature requiring such merit and ability; or (ii) who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country; or (iii) who is coming temporarily to the United States as an industrial trainee.” Public Law 414, 82nd Congress.

⁵⁸ Sidney Kansas, *Immigration and Nationality Act Annotated* (New York: Immigration Publications, 1953), iii and 25.

⁵⁹ Aristide Zolberg also points out that since unused visas from the top preference categories could not be transferred to the others, labor preferences served to further limit the number of possible immigrants. Zolberg, *Nation by Design*, 312.

⁶⁰ Wagner states that Walter’s power over immigration matters was almost unchallenged up to his death in 1963. Wagner, “Lingering Death,” 157 and 237.

⁶¹ See: Hutchinson, *Legislative History*, 314-357.

In 1953, upon failing to block passage of the McCarran-Walter Act, liberals launched their main salvo, with a report from the President's Commission on Immigration and Naturalization, entitled *Whom We Shall Welcome*. Truman had created the Commission as part of his veto of the 1952 Act, nominating a bevy of prominent liberal commissioners under executive director Harry Rosenfield, a former commissioner of the Displaced Persons Commission. The report admonished the actions of McCarran and his allies by differentiating between racial and ethnic groups, stating that "American national unity has been achieved without national uniformity."⁶² In addition, it consciously refuted the McCarran immigration report of 1950, which had focused on the differences *between* immigrant groups, by instead focusing on the positive contributions immigrants had made to American society. The commission's work reflected a sea-change in how intellectuals and academics viewed immigration. Witnesses rejected the race-science basis of the earlier commissions such as the Dillingham Commission, and in contrast to the McCarran report, consciously invited pro-immigrant witnesses to its hearings.⁶³

In particular, *Whom We Shall Welcome* called for a new revision of immigration law, an end to national origins, and increased flexibility in immigration law. Exposing the racial basis of the 1952 Act, "the Commission was told that the new law is a mixture of discriminations based on nationality, and on race irrespective of nationality." In its introduction, the report set out its guiding principles, that "America was founded upon the principle that all men are created equal, that differences of race...or national origin should not be used to deny equal treatment or equal opportunity." Tying the need for immigration reform to foreign policy imperatives, the introduction also discussed the fact that "the immigration law is an image in which other nations see us," and emphatically stated that "immigration policy is an important and revealing aspect of our foreign policy." Here the logic of national origins discrimination was wrong not simply because it violated the principles of equality, but because of the message it sent to America's allies abroad. Critically though, the report drew on the Commission's understandings of public opinion to argue that the American people would not accept a discriminatory immigration law, but rather "desire[d] a law geared to the forward-looking objectives of a great world power." Finally, having touched on equality, domestic and foreign problems, the report linked immigration with civil rights, by arguing that "We cannot defend civil rights in principle, and deny them in our immigration laws and practice."⁶⁴

The focus on a "forward-looking" immigration policy underscored many of the Commission's proposals on immigration reform. Notably, the commissioners did not call for a return to open borders or a scrapping of numerical limitation, stating that "no one has seriously urged this position upon the Commission."⁶⁵ The days of unlimited immigration, in the Commission's mind had passed, and even without the race-based quotas, they still pushed for a system of conscious regulation geared toward the needs of the nation. In place of national origins, the report called for a unified system that would

⁶² President's Commission, *Whom We Shall Welcome*, xiii.

⁶³ Tichenor, *Dividing Lines*, 198-199. On the Commission in general, see: Wagner, "Lingering Death," 142-152.

⁶⁴ President's Commission, *Whom We Shall Welcome*, xii-xv. Quotes on xii, xiii, xiv, xv.

⁶⁵ *Ibid.*, 111.

“allocate visas without regard to national origin, race, creed, or color.” Within an annual ceiling on immigration, visas would be allotted based on five categories: the right of asylum, family reunification, the needs of the United States, special needs in the free world (including foreign policy goals,) and general immigration (immigration of people without specific skills or family ties.)⁶⁶

The Commission proposed using the census of 1950 to set an annual limit of one-sixth of one percent of the population, for a total of 251,162 annual visas, roughly 100,000 more than under the previous system. Like the Lehman-Humphrey substitute for the 1952 omnibus bill, the Commission’s proposals retained the same numerical ceiling of the quota system, limiting immigration to one-sixth of one percent of the population, albeit now counting the entire population, not just whites. This retention is particularly noteworthy in light of the fact that the report stated explicitly that the United States could absorb a larger number of immigrants than it had been under the quota system. Here a desire to increase immigration was mitigated by an acknowledgement of the upper limits for immigrant admissions. A restrictionist dominated Congress largely ignored the Commission’s findings. Still, many of its recommendations, particularly the ceiling of 250,000 immigrants per year, would form the foundations of liberal reform proposals throughout the 1950s.⁶⁷

MCCARRAN-WALTER IN PRACTICE

The McCarran-Walter Act itself deeply exacerbated the tensions brought about by the national origins quota system, further frustrating reformers. Under the quota system, tens of thousands of visas went unused every year, as the large-quota countries of Great Britain, Germany, and Ireland failed to utilize their full visa allotment. (Tables 2.2 and 2.3) These three countries received just over 70 percent of all quota visas, but only Germany consistently filled its share. Great Britain (including Northern Ireland,) and Ireland only used 39 and 36 percent of their allotments, respectively. Even in 1963, the peak year of immigration under the national origins system, more than 50,000 visas went unused. In that year, out of the total quota of 65,361 quota visas given to Great Britain, only 28,291 people entered; out of 17,765 visas given to Ireland, only 6,054 people entered. As Secretary of State John Foster Dulles would testify before congress in 1956,

It is particularly awkward and difficult to explain when, year after year, large numbers of authorized quota numbers go unused, and yet no relaxation is allowed...[for] those countries which most need our assistance in this regard, and which we desire to assist.

⁶⁶ *Ibid.*, 75-79.

⁶⁷ *Ibid.*, 263-264. The Commission also called for all immigration and naturalization affairs in the Departments of State and Justice to be consolidated into a new Commission on Immigration and Naturalization. The idea of creating a new bureaucracy did not gain much traction in reform proposals, but a version of the Commission did make it into the Kennedy Administration’s original proposal for the Hart-Celler reforms, in the guise of a board which, in consultation with the President, could set aside up to 20 percent of all visa slots for refugees.

While restrictionists may have applauded the fact that the quotas restricted absolute admissions even beyond their original intent, liberals instead argued that the quotas failed to even function as intended, by not admitting the numbers specified by law.⁶⁸

Table 2.2: Worldwide Quota Admissions under the McCarran-Walter Act, 1953-1965

1953	84,175
1954	94,098
1955	82,232
1956	89,310
1957	97,178
1958	102,153
1959	97,657
1960	101,373
1961	96,104
1962	90,319
1963	103,036
1964	102,844
1965	99,381

Source: *Annual Report of the Immigration and Naturalization Service, 1953-1965*, Table 6A: Immigrant Aliens admitted by Classes under the Immigration Law and Country or Region of Last Permanent Residence.

Table 2.3: Total Quota Admissions, Great Britain, Germany, and Ireland, 1953-1965

<u>Country</u>	<u>Yearly Quota</u>	<u>Average Yearly Admissions*</u>	<u>Average Percentage of Yearly Quota Used*</u>
Great Britain	65,361	25,299	39%
Germany	25,814	24,148	94%
Ireland	17,765	6,479	36%

* - averages calculated based on quota admissions from 1953 to 1965.

Source: *Annual Report of the Immigration and Naturalization Service, 1953-1965*, Table 7: Annual Quota and Quota Immigrants Admitted.

Secondly, but equally important, the imposition of a preference system for labor and family migrants within each country's quotas created long backlogs of people waiting for visas. While Great Britain, Germany, and Ireland wasted over 50,000 visas each year, the rest of the world experienced a severe shortage of visas. These waiting lists, of people registered and cleared for entrance, but unable to receive a visa, led to increased interest and ethnic group lobbying, and pushed Congress to pass a series of stop-gap measures, in 1957, 1959, 1961, and 1962, to convert waiting lists into non-quota, immediate-entry status.⁶⁹

⁶⁸ Department of State Press Release, Statement of John Foster Dulles before the Subcommittee on Immigration, in Support of the President's Recommendations for Revision of the INA, April 25, 1956. RG 46, Sen.86A-F12.1, Judiciary Immigration Subcommittee, Box 5, Press Releases (2 of 2), NARA I.

⁶⁹ The Refugee-Escapee Act of 1959 (P.L. 316, 71 Stat. 639,) allowed anyone waiting for a 1st, 2nd, or 3rd preference visa to convert to nonquota status and received immediate entry. In 1959, P.L. 363, 73 Stat. 644

The preference backlogs accelerated criticism of the quota system itself, and focused it onto the oversubscribed categories, particularly the fourth preference for brothers and sisters. By 1954 alone, only two years into the tenure of the McCarran-Walter Act, small-quota countries had tens of thousands of people waiting, and by the early 1960s, had hundreds of thousands of people waiting worldwide.⁷⁰ (Table 2.4) To take the case of Italy, by 1962, the country had close to 137,000 people waiting for fourth preference visas alone. With a yearly quota of only 5,666, and the fact that no more than half of all visas could be allotted to the fourth preference, it would take close to fifty years to clear the backlog, and then only if no other Italians in the first, second, or third preference entered. As constituent Nello Ori would argue in a 1957 letter to Senator John F. Kennedy (D-MA), “Citizens of Italian descent, will be the strongest supporters of the McCarran-Walter Act as soon as the Visa Petitions they have filed for close relatives, *a right given to them by the McCarran-Walter Act*, are brought to their logical conclusion.” Opposition to the immigration regime would solidify around this “right” to family reunification pointed to by Ori.⁷¹

Table 2.4: Backlogs of Selected Quotas by Preference, March, 1962

<u>Country</u>	<u>Annual Quota</u>	<u>1st Backlog</u>	<u>2nd Backlog</u>	<u>3rd Backlog</u>	<u>4th Backlog</u>
China	105	1,387	231	304	1,124
Greece	308	174	185	107	6,304
Italy	5,666	1,371	489	647	136,858
Philippines	100	578	122	138	1,171
Poland	6,488	95	33	39	9,621
Portugal	438	19	56	62	4,471
Yugoslavia	942	51	62	75	2,072
Total (worldwide)	154,857	6,213	1,561	1,781	171,020

Source: Department of State, Visa Office Bulletin, Number 91, March 2, 1962 “Quota Immigrants Registered Under Oversubscribed Quotas. As reported on February 1, 1962.” RG 233, 87th Congress, Box 261, HR 11911 (2), NARA I.

doubled the number of visas available under the 4th preference, from 25 percent of unused visas to 50 percent, and allowed anyone waiting for the family preferences, 2nd through 4th preference, and registered prior to December 31, 1953, to enter immediately under nonquota status. In 1961, P.L. 301, 75 Stat. 650, allowed anyone still waiting for a 2nd or 3rd preference petition, to enter immediately under nonquota status. Finally in 1962, P.L. 885, 76 Stat. 1247, advanced the cut-off date from the 1959 Act to allow anyone waiting for a family preference prior to March 31, 1954 to enter immediately under nonquota status.

⁷⁰ James W. Morgan to Drury Blain, March 17, 1954, RG 59, Records of the Bureau of the SCA, Decimal Files, Box 9, Implementation of Refugee Relief Act, NARA II. Morgan reported that as of March of 1954, there were 2,815 Greeks; 38,264 Italians; and 385 Dutch applicants for the 2nd, 3rd, and 4th preference, waiting for slots. The vast majority were waiting for the fourth preference.

⁷¹ Department of State, Visa Office Bulletin, Number 91, March 2, 1962 “Quota Immigrants Registered Under Oversubscribed Quotas as reported on February 1, 1962.” National Archives, RG233, 87th Congress, Judiciary Committee, Box 261, HR 11911 (2 of 3). Nello Ori to John F. Kennedy, October 25, 1957. JFK Presidential Library, JFK Pre-Presidential Papers, Senate Files, Box 695, Immigration 9/26/57 – 11/19/57. Emphasis added.

REFORM ATTEMPTS IN THE MID-1950S

Liberals presented a slew of reform bills starting just after passage of the McCarran-Walter Act to remedy the deficiencies of the immigration regime. Senator Herbert Lehman (D-NY), for example, proposed the first widespread change in 1954, based on the President's Commission principles. Lehman's bill called for immigration to be increased to just over 250,000 people per year, and for a unified quota system, with visas allotted based on the Commission's five categories. Republicans sat on the bill, waiting for Eisenhower to announce his own immigration proposals.⁷²

Most reform attempts during this period, especially those of the Eisenhower Administration, called for a *revision* of the quota system, to make it more equitable, rather than an excising of national origins. With so many visas going unused every year, Eisenhower officials hoped that a quota-pool, which would allow unused visas to be captured and used by oversubscribed countries, would pass muster with conservatives like Francis Walter. In this way legislators hoped to rectify the large number of visas being wasted each year, and the hardships placed on southern and eastern Europe, without challenging the overall foundations of policymaking.⁷³

President Eisenhower laid out his basis for reform of the immigration system in 1956, proposing that the base-line for computing the quotas be changed from 1920 to 1950, an increase of roughly 65,000 visas. In addition, his proposals called for unused visas to be put into one of four regional pools – Europe, Africa, Asia, and the Pacific – to be used the following year by small-quota, oversubscribed countries. Eisenhower strategy memos illustrate that the Administration consciously tailored its proposals with an eye toward gaining Walter's approval, by attempting to limit beneficiaries of the quota pool mainly to Europe, where the bulk of all unused visas lay. Walter saw through this ploy, and refused to consider any pooling proposals. Senator James Eastland (D-MS), chairman of the Senate Judiciary Committee, also made it clear that he would allow no changes whatsoever to the national origins system.⁷⁴

Eisenhower's reforms failed to materialize in 1956, but Congress took up the issue again in 1957. By this point, as Stephen Wagner points out, Francis Walter realized that he

⁷² Wagner, "Lingering Death," 227-229; Hutchinson, *Legislative History*, 316.

⁷³ It is important to note that these quota pooling proposals would have brought radical change, in that they would have allowed greater numbers of southern and eastern Europeans to enter, exactly the outcome against which the national origins system guarded.

⁷⁴ On the Eisenhower Administration's strategy with the quota pool, see: Memorandum of Conversation, "Italian Emigration to the United States," December 15, 1955 and Scott McLeod to Loy W. Henderson, "Changes of Immigration and Nationality Act Proposed by the Italian Government," January 4, 1956. RG 59, A1 E 1509, SCA Decimal File, Box 49, Immigration and Nationality Act Amendments, NARA II. On Eastland's views, see, for example: McCollum to Watkins, undated, handwritten memo in: Maxwell Rabb Papers, Box 46, Immigration Legislation, 1957 (4) and Joseph Swing, handwritten memo, July 19, 1957, Immigration Legislation, 1957 (2), in *ibid.* Eisenhower Presidential Library; Wagner, "Lingering Death," 285-287.

needed to do something to help southern and eastern Europeans, especially since he had a large number of immigrants and their descendants in his district. Still, while he did allow a reform bill to move through Congress, he stopped well short of changing the national origins system.⁷⁵ Instead, under the leadership of Senator John F. Kennedy (D-MA), Congress passed a more modest piece of legislation. The final bill, dubbed the Refugee-Escapee Act, made none of the major changes that Eisenhower had called for, dropping the change in census year and quota pool. The Act allowed those visas left unused from the Refugee Relief Act of 1953, which had expired at the end of 1956, to be used; repealed the quota mortgaging provisions of the Displaced Persons Acts, which had curtailed immigration from southern and eastern Europe; and allowed anyone waiting for a first, second, or third preference visa to convert to nonquota status, and gain immediate entry. While not overtly modifying the national origins system, these small changes did make the first steps toward mitigating its harshest effects, by clearing a portion of the backlogs that had developed.⁷⁶

Throughout the remainder of Eisenhower's tenure, wholesale reform of the quota system remained elusive, as powerful restrictionists like Walter and Eastland blocked any attempt at reform. Modest proposals, such as quota pooling, failed during the period. But, even though according to Eastland, the Refugee-Escapee Act was "a compromise...designed to relieve certain hardship conditions which have arisen in the administration of that act," this first clearing of the backlogs in 1957 – allowing anyone waiting for a first through third preference visa to enter immediately under nonquota status – led to further clearings in 1959, 1961, and 1962.⁷⁷ These changes only exacerbated the situation, as the clearings failed to stem the tide of backlogged migrants attempting to enter, and only emboldened ethnic lobby groups such as the American Committee on Italian Migration to petition the Eisenhower Administration to allow in greater numbers. Thus initial attempts at retaining the national origins system ultimately led to policy unraveling, and finally, in the 1960s, shifting to a completely new system.⁷⁸

CHANGING CONTEXTS IN THE 1950s

Attempts to create a new structure for admission, without the national origins system, moved closer to reality in the 1950s with the help of a number of important contextual shifts. Pat McCarran died in 1954, removing one of the most ardent restrictionists from the Senate.⁷⁹ As McCarthyism itself waned after the 1954 censure of Senator McCarthy,

⁷⁵ Wagner, "Lingering Death," 324.

⁷⁶ Wagner, "Lingering Death," 325-339. On the provisions of the Refugee-Escapee Act, see: Hutchinson, *Legislative History*, 328-334; Zolberg, *Nation By Design*, 325.

⁷⁷ *Congressional Record*, 85th Congress, 1st Session: 15487. On the stop-gap measures, see fn. 68.

⁷⁸ Traidafilopoulos, *Becoming Multicultural*. On ACIM lobbying, see, for example: LBJ to Joseph DeSerto, December 13, 1963, White House Central Files, Immigration-Naturalization, IM Box 1, IM 11/23/63-7/31/65, LBJ Presidential Library. Joseph Cogo, ACIM to Ramsey Clark, May 22, 1968, White House Aides Files, James Gaiter, Box 14, Immigration and Naturalization Laws, LBJ Presidential Library.

⁷⁹ As Stephen Wagner points out, McCarran, when dealing with the 1953 Refugee Relief Act for example, did everything in his power to delay hearings on the legislation, and to curry favor with Republican members of the Judiciary Committee. Wagner, "Lingering Death," 197.

so do did the anti-Communist, pro-national origins sentiment of the State Department. Though the department would still continue to focus on security concerns, some of the more conservative and restrictionist minded senior bureaucrats at State retired or left by 1957. In particular, the Visa and Passport offices of the State Department had strongly supported the McCarran-Walter Act, and Robert C. Alexander, Assistant Director of the Visa Division, had authored many of its most restrictive provisions. Even though he had retired from State by 1954, he continued to defend the national origins quota system as a “mirror” of the American people, through 1956.⁸⁰

Other changes at the State Department also encouraged reform. Scott McLeod, who had been installed by Eisenhower to run both the Consular Affairs of the State Department as well as the anti-Communist and anti-homosexual purges under the Bureau of Security and Consular Affairs (SCA), left to become Ambassador to Ireland in 1957.⁸¹ By 1962, the job of leading the SCA, which by this point no longer ran security investigations, would fall to Abba Schwartz. Schwartz was a noted liberal, had been an advisor on immigration to John F. Kennedy in the Senate, and counsel to the Intergovernmental Committee on European Migration (ICEM). While Robert Alexander drafted much of the McCarran-Walter Act, Schwartz drafted much of the Hart-Celler bill. The tenor of the bills reflected not only the political winds of the time, but the ideological leanings of the individuals drafting the legislation.⁸² The State Department as a whole would shift from supporting the national origins system in the early 1950s, to becoming one of its main opponents in the lead-up to the Hart-Celler Act.⁸³

In addition to shifts within the executive branch, changes to civil society as well augured in favor of immigration reform. The merging of the American Federation of Labor (AFL) and Congress of Industrialized Organizations (CIO) in 1955 pushed organized labor from anti- to pro-immigration reform. This shift, as Daniel Tichenor points out, emerged from changes to the AFL and CIO’s membership, which included a significant number of southern and eastern Europeans, as well as what he terms a “hostility toward conservative

⁸⁰ Wagner also points out that since McCarran was in charge of the subcommittee dealing with the State Department’s appropriations, he held extra control over their decisions. Wagner, “Lingering Death,” 6 and 105-106. On Robert C. Alexander and the State Department’s Visa Division prior to World War II, see: Kraut, Breitman, and Imhoof, “The State Department,” 25.

⁸¹ The character and leadership of Scott McLeod as Administrator of the SCA will be discussed in detail in chapter 5.

⁸² Wagner points out that Schwartz was also on good terms with Francis Walter, which only helped his standing in mediating policy debates. Wagner, “Lingering Death,” 317-318 and 373-375.

⁸³ Compare for example, the testimony of State Department officials in hearings on McCarran-Walter and Hart-Celler. In 1951 Robert C. Alexander of the State Department argued that “we may say that the bill has many desirable features, as contrasted with existing law,” and took no issue with the national origins system as a whole. As Michael Gill Davis points out, the removal of Asian exclusion (even while creating the Asia-Pacific Triangle,) sealed State Department support. In 1965, as David Reimers points out, Secretary of State Dean Rusk came out forcefully against the national origins system, arguing that it was discriminatory and antithetical to American interests. “Revision of Immigration, Naturalization, and Nationality Laws,” Joint Hearings before the Subcommittees of the Committees of the Judiciary, 82nd Congress, 1st Session, on S.716, H.R. 2379, and H.R. 2816”, March-April, 1951, 245; Davis, “Impetus for Immigration Reform,” 131; and Reimers, *Still the Golden Door*, 69.

congressmen who defended national origins quotas while promoting Mexican guestworker programs.”⁸⁴

While in 1951, Walter Mason of the AFL’s legislative committee had argued against any type of quota pooling, “because it would be in direct contravention to the spirit of the quota act of 1924 and would have a tendency to disturb the ethnic equilibrium of this country,” by 1955 Mason’s testimony had shifted significantly. In hearings before the Senate Subcommittee on Immigration and Naturalization, Mason testified that the McCarran-Walter Act had not been working properly, and “particularly at this time when we are seeking the support of people all over the world...it should be our national policy to admit the maximum number of immigrants who want to build a new life in America.” This statement, while drawing on the need for greater numbers and foreign policy goals, did not mean that the AFL supported unlimited immigration. They did however now support changing the census baseline from 1920 to 1950, which would increase the total number of immigrants, especially from southern and eastern Europe. While the AFL focused on reforming the quota system, the CIO had been in favor of abolishing national origins since at least 1952. Within two years of their merger, the AFL-CIO advocated for a complete removal of the national origins system. As the 1950s progressed, more and more interest groups shifted from supporting targeted reforms to a full revision of national origins.⁸⁵

REFORM AND THE SOUTHERN BORDER

Though conservatives throughout the 1940s and 1950s succeeded in rebuffing attempts to liberalize the national origins system, many remained committed to unrestricted Mexican immigration. Central Americans, particularly from Mexico, had been coming to the United States as migrant laborers since the late-19th century, subject to lax border controls and admissions standards. World War II created an increased need for migrant labor, and so the United States signed a series of agreements with Mexico for temporary workers beginning in 1942, known as the *bracero* program. Throughout the 1940s and 1950s policymakers in Mexico and the United States, as well as employers, fought a protracted battle over numbers, wages, and worker-rights. The negotiation of continued *bracero* agreements throughout the period hinged on an ever-fluctuating demand for workers, and on relations between the two countries.⁸⁶

⁸⁴ Tichenor, *Dividing Lines*, 180.

⁸⁵ Statement of Walter J. Mason, National Legislative Committee, American Federation of Labor, Before Joint Hearings of the Senate and House Judiciary Subcommittees on Proposed Amendments to the Immigration and Naturalization Laws, April 9, 1951, 4; Statement of Walter J. Mason, National Legislative Committee, American Federation of Labor, Before the Subcommittee on Immigration and Naturalization of the Senate Judiciary Committee on Immigration Legislation, November 21, 1955; Thomas E. Harris to Stanley Ruttenberg, “Immigration,” January 30, 1956; Andrew J. Biemiller and Boris Shishkin to George Meany, “Memorandum to President Meany on Refugee-Immigration Situation,” January 24, 1957. All documents in: AFL-CIO Records, RG21-001, Box 27, Folders 14, 16, 17, and 19, respectively, National Labor College.

⁸⁶ Reimers, *Still the Golden Door*, Chapter 2. On the *bracero* program, see: Kitty Calavita, *Inside the State: The Bracero Program, Immigration, and the I.N.S.* (New York: Routledge, 1992).

But, while many people, including labor unions and interest groups on both sides of the political spectrum opposed the programs (either because of fears of increased immigration or labor and wage abuses,) change proved difficult. Conservative legislators such as Pat McCarran represented agribusiness regions dependent on cheap labor, and blocked efforts to curb undocumented migration or to end guest worker arrangements like the *bracero* program. Additionally even after World War II, the INS and State Department continued to negotiate guest worker agreements outside of congressional mandates.⁸⁷ Toward the beginning of the 1950s, as Truman's Presidential Commission on Migratory Labor argued that the *bracero* program only increased undocumented entry, it looked as though employer sanctions or permanent legislation on migrant labor might be possible. But the start of the Korean War created a new need for labor and legislators passed a new *bracero* agreement. Congress did legislate against providing aid for or harboring illegal immigrants with the 1952 Act, but a compromise that became known as the "Texas Proviso," exempted employers from prosecution, and gutted these early sanctions from functioning.⁸⁸

During the period, Mexican migration garnered greater attention, as the plight of exploited migrants mixed with fears over the security of American jobs and wages. In June of 1954, the new commissioner of the INS, General Joseph Swing, launched Operation Wetback in the Southwest, reporting over one million arrests and deportations. Though Swing would argue that with Operation Wetback, the problem of illegal migration had been solved, the numbers of migrant laborers entering each year only rose. President Johnson terminated the *bracero* program in 1964 in the face of opposition from the Mexican community, organized labor, and interest groups. Lingering unease over Latin American migration though would boil over in the deliberations over the Hart-Celler Act, when legislators debated proposals to limit immigration from the Western Hemisphere.⁸⁹

Hart-Celler and the 1960s

By the 1960s, the American public had come to view the national origins quota system as deliberately discriminatory. The question was now no longer whether to remove the national origins quota system, but when and how to do so.⁹⁰ Walter himself even offered a reform bill in 1961, and though it did not call for a complete end to national origins, it did allow for the pooling of unused quota slots, something he had vehemently opposed to this point.⁹¹

⁸⁷ Calavita, *Inside the State*, 25.

⁸⁸ Tichenor, *Dividing Lines*, 193-94 and 200-204; Zolberg, *Nation By Design*, 308-311. See also: Reimers, *Still the Golden Door*, 50-52.

⁸⁹ Tichenor, *Dividing Lines*, 193-94 and 200-204; Zolberg, *Nation By Design*, 296-97 and 321-327; Reimers, *Still the Golden Door*, Chapter 2.

⁹⁰ Reimers, *Still the Golden Door*, 82-83; Zolberg, *Nation By Design*, 327.

⁹¹ Wagner, "Lingering Death," 366-368.

As a sign of the new era, prior to the submission of the Administration's reform bill, H.R. 7700, Senator Everett Dirksen (R-IL) also put forth a proposal for quota pooling, with four regional pools. Though quota pooling had been the center of many reform efforts in the past, including that of the Eisenhower administration in 1956, Norbert Schlei of Justice Department's Office of Legal Counsel now argued that supporting such a proposal "would perpetuate and enlarge upon the discrimination against non-whites which is effected by the existing system of quotas." More importantly, supporting pooling would diminish chances to fully eliminate discrimination in immigration policy. President Johnson echoed this sentiment in his January 1965 message to Congress, when he argued that the quota system "impl[ies] that men and women from some countries are, just because of where they come from, more desirable citizens than others." Reformers would now tolerate only a full removal of national origins.⁹²

A number of factors had changed since 1952 to shape the reformist coalition, and to encourage passage of the bill. In the first place, organized labor favored the Administration's approach, focusing most of its lobbying efforts instead on strengthening the provisions for labor certification, and on blocking migratory labor admissions. Additionally, executive branch departments now came out fully in favor of ending the national origins system. The State Department in particular, which had supported the quota system through the mid-1950s, now pressed for reform, as did the Department of Justice. Finally, the weight of civil society groups in pushing for policy change had shifted as well. Whereas in 1952 patriotic and nativist groups had dominated the hearings, in 1965 ethnic organizations like the American Committee on Italian Migration and the Japanese American Citizens League took control. The overall power of patriotic organizations had waned, with the American Legion even shifting to supporting the bill.⁹³ Finally, American public opinion shifted as well. While only 8 percent of respondents stated in a 1965 Gallup Poll that they favored increasing immigration, more than half – 51 percent – favored changing from the national origins system. Only 32 percent of the public opposed removing the quotas.⁹⁴

Structural realignments at the turn of the decade also encouraged reform, including the election of John F. Kennedy in 1960 and a sweeping Democratic Congressional majority in 1964. Kennedy entered office having run on a platform that stressed support for immigrants, and as Aristide Zolberg has pointed out, immigrants and their descendants proved crucial to his election.⁹⁵ Liberal Democrats won an enlargement of the House

⁹² Norbert Schlei to Myer Feldman, May 27, 1963 "Re: Proposals to Utilize Unused Immigration Quotas by Establishing a "Continental Quota" System," White House Central Files, Subject File, Box 482, LE/IM Executive, JFK Presidential Library; Press Release, January 13, 1965. Abba Schwartz Papers, Box 6, Proposed Immigration Legislation Press Releases 1/65-2/65, JFK Presidential Library.

⁹³ This change from the American Legion, according to David Reimers, had less to do with a watershed in their policy positions, than an acceptance of the reality of the changing times. Reimers, *Still the Golden Door*, 66-69; Zolberg, *Nation By Design*, 331-332.

⁹⁴ Simon, *Public Opinion and the Immigrant*, 39-40. Note that the second question asked respondents whether they would favor changing from the quota system to an admissions system based on skill level.

⁹⁵ Reimers, *Still the Golden Door*, 82-83. Zolberg, *Nation By Design*, 327. According to Roger Daniels, Eisenhower viewed immigration mainly as a tool for foreign policy while Kennedy had identified himself with immigrants and their interests. Daniels, *Guarding the Golden Door*, 128.

Rules Committee, breaking the stranglehold of restrictionists like Representative Michael Feighan (D-OH) who had stymied reform efforts. Other factors, including shifts in organized labor, connections with civil rights reform, a buoyant economy, and the legislative prowess of Lyndon Johnson, all contributed. The real turning point came in 1963 with Walter's death, and Kennedy's submission of an immigration bill shortly thereafter.⁹⁶

In his message to Congress in July of 1963, Kennedy laid out his most fundamental motivation for reform: dismantling the national origins system.⁹⁷ As originally proposed, the immigration bill called for the quotas to be phased out over five years, though the Asia-Pacific Triangle would be abolished immediately. The transition period was necessary, according to Kennedy, specifically because of the failures of the quota system. "The national origins system has produced large backlogs," stated Kennedy in his letter to Congress in July of 1963, "and too rapid a change might...so drastically curtail immigration in some countries the only effect might be to shift the unfairness from one group of nations to another." Here the need for equality among the nations won out even over the "problems of fairness and foreign policy [that] are involved in replacing a system so long entrenched."⁹⁸

The Kennedy proposal allotted first preference and 50 percent of immigrant visas to skilled and urgently needed labor, with the remainder for family unification. The bill reaffirmed nonquota status for western hemisphere immigrants and immediate relatives, and proposed an advisory board that, along with the President, could allocate up to 20 percent of all visas for refugee admissions. The total number of visas for those outside of the western hemisphere was raised only slightly, from 154,000 under the quota system to 165,000, and the bill placed a cap of 10 percent of the overall visas on any sending country. The Administration believed that only an additional 50,000 to 60,000 people would enter under the new system.⁹⁹

Congress took no action on Kennedy's proposal through his assassination in 1963, and reform proceeded cautiously afterward. Lyndon Johnson's views on immigration were unknown at the time he became President – he had voted to override Truman's veto of the McCarran-Walter Act in 1952 and many liberals were uncertain as to whether he

⁹⁶ Stephen Wagner argues that the administration either knew, or suspected that Walter was dying, and delayed introduction of immigration legislation until after his death. Still, he argues that there is evidence that even on his deathbed, Walter understood that reform was coming. Wagner, "Lingering Death," 377-378.

⁹⁷ Kennedy's speech is reproduced in: Abba P. Schwartz, *The Open Society* (New York: William Morrow & Company, Inc., 1968), 210.

⁹⁸ Kennedy's speech in: "Immigration," Hearings before Subcommittee No. 1, of the Committee on the Judiciary, House of Representatives, Eighty-Eighth Congress, Second Session on H.R. 7700 and 55 identical bills to Amend the Immigration and Nationality Act and for other purposes, 1964, 285.

⁹⁹ These additional immigrants would arrive through a combination of increased nonpreference admissions, (with the parents of citizens now receiving immediate nonquota status,) and the fact that under the quota system restrictions, thousands of visas went unused each year (see Tables 2.2 and 2.3). Zolberg, *Nation By Design*, 328; Reimers, *Still the Golden Door*, 64. The bill also allowed the President to set aside up to half of the total number of visas for immigrants from countries affected by the reduction of the old quotas. Hutchinson, *Legislative History*, 360-361.

would support reform. Still, Johnson recognized the links between his civil rights agenda and immigration, and ultimately threw his weight behind reform. The Administration also persuaded Senator James Eastland, who had previously blocked all hearings on immigration reform in the Senate, to cede some authority to Senator Edward Kennedy (D-MA,) who would ultimately become the floor manager for the final bill.¹⁰⁰ Throughout 1964, progress on the bill stagnated, tied up in a never-ending series of hearings led by Congressman Michael Feighan (D-OH), chairman of the House subcommittee on immigration.¹⁰¹

In 1965 the Administration renewed its fight for reform, reintroducing a bill co-sponsored by Senator Philip Hart (D-MI) and Representative Emanuel Celler.¹⁰² Hearings on the Administration's bill appeared to be moving forward, but in June Feighan introduced his own reform bill, H.R. 8662, with radically different priorities. When the bill emerged from committee, the preference structure had been enlarged and revamped, reflecting the priorities of Congressman Feighan. Instead of Kennedy's equal emphasis on skilled labor and family unification, the revised bill contained seven categories, reserving 74 percent of slots for family unification (including the first, second, fourth, and fifth preferences) and only 20 percent for labor categories. The remaining 6 percent went to refugees. In place of the five year transition period, Feighan's bill mandated only three years.¹⁰³

Unlike the 1952 Act, which excluded labor-class immigrants upon certification of the Secretary of Labor, the 1965 Act took a more proactive stance, requiring each arrival to have *positive* certification attesting to the need for their presence. The revised bill excised the immigration board, (reaffirming Congressional control over admissions,) and in its final form imposed, for the first time, a limit on immigrants on the western hemisphere.

¹⁰⁰ Tichenor, *Dividing Lines*, 213-214.

¹⁰¹ Throughout 1964, Feighan and Emanuel Celler fought over funding for the Joint Committee on Immigration Policy, a non-legislative committee that Feighan theoretically chaired, but which had never received the necessary fiscal appropriation to operate. The Johnson Administration feared that if Feighan received the funding he requested, he would have the power to hold an unlimited series of hearings in the Committee, and never allow a bill to be brought to the floor. Celler ultimately won out in terms of funding, but the fight stymied progress on the immigration bill. Reimers, *Still the Golden Door*, 65. On the Administration's views on the Joint Committee, see: Abba Schwartz to Theodore Sorensen, November 6, 1963, White House Staff Files of Lee C. White, Box 6, Immigration Bill, February 13-December 18, 1963, JFK Presidential Library, and Wm. A. Geoghegan to Lawrence F. O'Brien, February 18, 1964. Office Files of Henry H. Wilson, Box 3, Immigration, LBJ Presidential Library.

¹⁰² Reimers, *Still the Golden Door*, 65-66; Hutchinson, *Legislative History*, 368-369.

¹⁰³ It is important to note that Feighan's revised preference structure also discarded the Administration's proposal that refugee admissions should be determined by the President, through a set-aside of up to 20 percent of all visas. Thus his bill also reasserted Congressional control over refugee admissions. Reimers chalks up the loss of an immigration board to the conservative nature of the final bill, and a rejection by Congress of further liberalizing procedures for Hart-Celler. Reimers, *Still the Golden Door*, 84. Abba Schwartz of the State Department recognized that the three year transition period would not be enough to clear the backlogs that had developed, and argued that an immediate end to national origins would hinder foreign policy objectives in Europe. Schwartz also lamented the fact that the Feighan bill excised the recommendation to allow up to 50 percent of the visas to be set aside for those countries (mainly in northern and western Europe) disadvantaged by the end of national origins. See: Abba Schwartz, "Memorandum on H.R. 8662," June 2, 1965, 1-2. Emanuel Celler Papers, Box 482, H.R. 8662, 89th Cong., Library of Congress.

This ceiling allotted 120,000 visas to western hemisphere migrants, to complement the 170,000 visas given to the rest of the world.¹⁰⁴ Though the Act legislated the ceiling, it also created a Select Commission to investigate the proposal in advance of its July 1, 1968 adoption date. Finally, the bill set a 20,000 person-per-year cap on any sending country, to make sure that no one nation monopolized more than its fair share of visas.¹⁰⁵ The revised preference categories garnered little attention in the Congressional debates, and indeed much of the discussion around the Act focused on national origins and the western hemisphere with little or no debate on the preference categories, the percentages allotted to each preference, or the new qualifications for entry.¹⁰⁶

THE HART-CELLER DEBATES

First and foremost in the debates over Hart-Celler, reformers had to prove that the previous legislation had not functioned as intended, and that the national origins system could not withstand domestic or international scrutiny. Because of the system, Senator Edward Kennedy argued “we have discriminated in favor of some people over others... we have separated families needlessly. We have been forced to forgo the talents of many professionals.” “As a device to control immigration by predetermined percentages of national and racial stock,” Congressman Arch Moore (R-WV) concluded, “the national origins system has been a failure and it today is but a fiction.”¹⁰⁷ Worse than a discriminatory system, the quotas had not even regulated admissions, with almost two-thirds of all immigrants arriving outside of quota limitations.¹⁰⁸

Regardless of the talk of liberalization, policymakers focused less on eradicating discrimination than on destroying national origins. The race-based quotas, especially the Asia-Pacific Triangle, had become a domestic and international pockmark on American society, and had to go. “During my tour of the Far East and southeast Asia,” Senator Hiram Fong (R-HI) stated, “I was asked many questions about our immigration policies... These people feel greatly the sting of discriminatory treatment.” Congressman Arch Moore put the issue into perspective, stating “we have concluded unanimously that the national origins strictures can be removed from the immigration law *without doing violence to our Nation’s immigration policy*.” National origins became the target of reformist rhetoric, but changes to the structure of regulations and numbers admitted would not occur easily.¹⁰⁹

¹⁰⁴ The Western Hemisphere also did not fall under the per-country cap on immigrants, and thus Zolberg concludes that Canadian immigrants were the most negatively affected by the new changes, being squeezed out by other groups such as Mexicans. Zolberg, *Nation By Design*, 335.

¹⁰⁵ This imposed equality, according to Mae Ngai, in reality perpetuated inequalities by perpetuating the fallacy that all countries were equal in size or circumstance. Ngai, *Impossible Subjects*, 258-261.

¹⁰⁶ Zolberg, *Nation By Design*, 329-333; Reimers, *Still the Golden Door*, Chapter 3; Tichenor, *Dividing Lines*, Chapter 7; Daniels, *Guarding the Golden Door*, Chapter 7.

¹⁰⁷ *Congressional Record*, 89th Congress, 1st Session, 1965: 24225 and 21590 respectively.

¹⁰⁸ Primarily as quota-exempt family admissions. See: Reimers, *Still the Golden Door*, 38.

¹⁰⁹ *Congressional Record*, 89th Congress, 1st Session, 1965: 24467 and 21589, emphasis added.

Abba Schwartz of the State Department, the bureaucrat in charge of Kennedy's immigration proposals, has argued as well that while Kennedy had a comprehensive immigration plan, Johnson concerned himself mainly with dismantling the quota system. Schwartz implies that by focusing on national origins above all else, the administration compromised on many of Kennedy's original proposals, including the emphasis on economic preferences.¹¹⁰ While many legislators spoke of the need for admitting skilled immigrants, none challenged Feighan's revised preference structure. While emphasizing the discriminatory nature of national origins helped those advocating reform accomplish their goals, discussion of the system overshadowed the process, and limited the range of reform. All agreed that the quotas had to go, but no consensus formed on how to replace them, allowing conservatives like Feighan to limit labor migration, a clear victory for organized labor, according to David Reimers.¹¹¹

In chapters three and four I will discuss the various factors that led to a heavily-family based system, as well as the claim of a 'clear victory' in limiting labor-based admissions. But nonetheless, placing family unification at the center of the new preference structure became a convenient way of creating a system that did not discriminate by country of origin, but that would not substantially alter the numbers of admissions. Legislators believed that southern and eastern Europeans would be able to bring their family members in, while nonwhite groups would not substantially rise in numbers.¹¹² The imposition of a 20,000-person per year cap on each sending country also impeded the possibility of explosive growth and served to assuage critics. There is evidence that legislators knew at the time that economic circumstances in Europe had improved, further limiting even Europe as a source of increased immigration.¹¹³

¹¹⁰ See: Schwartz, *Open Society*.

¹¹¹ Reimers, *Still the Golden Door*, 70. I do not mean here to downplay the ways in which the Hart-Celler Act also *facilitated* skilled migration. For some countries, particularly those that fell within the Asia-Pacific Triangle, the 1965 reforms can be seen as labor-centric, even while the system as a whole stressed family over skills. Post-1965, countries such as India and China, which had been previously allotted miniscule quotas, could now send a far greater number of highly skilled migrants per year than their total annual migration had been previously. I am indebted to Vibha Bhalla for this line of thinking.

¹¹² Reimers, *Still the Golden Door*, 73-80; Davis, "The Cold War," 302. Gabriel Chin has argued that legislators knew that these changes would open the doors to renewed immigration, but set aside the knowledge in the fight to pass the bill. I agree that legislators had the pertinent information, but considering that they attempted to curb immigration from Latin America while not doing the same for Asia, I doubt they expected such drastic changes. Gabriel J. Chin, "The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965," *75 North Carolina Law Review* 273 (1996). The fact that legislators exempted the Western Hemisphere from the preference system (thereby limiting family unification possibilities for these immigrants, and checking their potential for explosive growth,) and subjected them to harsh labor certification, while not doing the same for other non-European groups, further attests to the lack of Congressional concern over Asian immigration.

¹¹³ See, for example: Statement of Dr. Dudley Kirk, Demographic Directory, Population Council, New York, United States, Committee on the Judiciary, Subcommittee No. 1, House of Representatives, *Study of Population and Immigration Problems* "The Population of Western Europe," (Washington D.C.: U.S. Gov't Printing Off., 1963) (In future footnotes, this series will be abbreviated as *Population and Immigration Problems*). Kirk stated explicitly "with or without immigration restrictions there is little prospect of mass migration to the United States from Western Europe in any way comparable to the great migrations before the First World War." Quote on 27.

When it came to the question of numbers, legislators, according to Roger Daniels, ignored evidence that family unification would alter the flow of immigration, “expecting the future to resemble the past.”¹¹⁴ Congress had received testimony only a few years earlier that Europe could no longer supply large numbers of immigrants, while Asia and Latin America were expanding in population.¹¹⁵ During the seventeen part study of “Population and Immigration Problems” conducted by the House Subcommittee on Immigration from 1962 to 1963, representatives learned, first from officials of the Immigration and Naturalization Service (INS), and then from academics such as Nathan L. Whetten of the University of Connecticut and T. Lynn Smith of the University of Florida, of population expansion and economic decline in Central and South America and the Caribbean.¹¹⁶ Similarly, with regard to the “Asian Populations,” Dr. Irene B. Taeuber of Princeton University stated that “international migrations can be neither solutions nor major palliatives to the problems of population growth and economic development in Asian countries.” “There are no conceivable circumstances,” Taeuber continued, “in which we could absorb an appreciable fraction of the increase of the large Asian countries and maintain our present economy and levels of living.” “That is the point to which I wanted to come ultimately,” replied Congressman Richard Poff (R-VA), who would later use demographic evidence from the hearings to support the western hemisphere ceiling.¹¹⁷

THE WESTERN HEMISPHERE CONUNDRUM

Ultimately the question of limiting western hemisphere immigration dominated much of the debate on Hart-Celler. Proponents of a ceiling on admissions, like Congressman Clark MacGregor (R-MN), argued that while the bill would “sweep away any discrimination on account of race,” it would “continue and even increase unequal treatment based upon national and geographic location,” by giving preference to the western hemisphere over the rest of the world. Emanuel Celler disagreed, arguing that existing security and labor limitations would suffice. The imposition of a ceiling, he argued, would imperil foreign policy in the region, especially in an era of already tricky relations. “If a 40-percent ration is bad treatment,” Congressman Frank Chelf (D-KY) testified, speaking of the 120,000 slots allotted to the western hemisphere, “I want you to give me that kind for the rest of

¹¹⁴ Daniels, *Guarding the Golden Door*, 137.

¹¹⁵ Demographic growth, according to Reimers, did spur legislators into some action, prompting them to curb Western Hemisphere admissions. Reimers, *Still the Golden Door*, 37.

¹¹⁶ The study had been commissioned by Francis Walter, but failed to produce a final report. Still, many of the Congressmen involved would play pivotal roles in the fight for and against Hart-Celler. See: Statement of Mrs. Helen F. Eckerson, *Population and Immigration Problems*, “Administrative Presentations (I),” 1963; Statement of Nathan L. Whetten, *Ibid.*, “Western Hemisphere (I)” 1963; Statement of T. Lynn Smith, *Ibid.*, “Western Hemisphere (II)” 1963.

¹¹⁷ *Population and Immigration Problems*, “Asian Populations: The Critical Decades,” 1962, 14 and 19. See: *Congressional Record*, 89th Congress, 1st Session, 1965: 21573. As stated above, legislators like Poff pressed for a Western Hemisphere ceiling but remained unconcerned about expansive Asian immigration. Emanuel Celler echoed this point, stating “there is no danger whatsoever of an influx from the countries of Asia and Africa. If there were, the AFL-CIO would breathe their hot breath down our necks...but they have no objections to the terms under which Asians and Africans can come in.” *Ibid.*, 21758.

my life.”¹¹⁸ While the House defeated MacGregor’s hemisphere amendment, leaders in the Senate compromised to win the support of Everett Dirksen (R-IL) and Sam Ervin (D-NC), passing the ceiling but creating a Select Commission to further study the proposal. In the end, the conference committee reconciling the House and Senate versions of the bill retained the western hemisphere limitation. As Emanuel Celler would explain in his notes on the conference committee report, “we did not emerge from the Conference with all we desire nor did the Senate... If you want the rainbow, you must take the rain. If you want the rose, you must put up with the thorns.”¹¹⁹

Under the Hart-Celler Act, immigrants from the western hemisphere did not fall under the preference system, and thus all except immediate relatives required labor certification attesting to the need for their presence prior to entry. Viewed in light of the evidence of demographic expansion in Latin America, the imposition of a ceiling underscores the fact that during the 1960s legislators attempted to use immigration policy as a way of reasserting control over growing immigrant arrivals. That those supporting the ceiling did so under the rubric of equitable treatment – that the western hemisphere needed to be treated as the eastern – points to the unique reformist moment in which they operated, and the difficulty, in a bill attempting first and foremost to end national origins, to refute these arguments.¹²⁰

President Johnson signed the Hart-Celler Act into law on October 3, 1965, at the base of the Statue of Liberty. Its full provisions were scheduled to take effect on July 1, 1968, though in the interim all unused quota slots were put into a pool, to reduce the backlogs in the preference categories, and to put all countries on an equal footing when the quotas were finally abolished. This clearing of the waiting lists ultimately failed (for reasons that will be discussed in detail in the following chapters.) Even as the new system went into effect in 1968, backlogs in the family preferences continued, skewing the reformed admissions process from day one. In addition, the Select Commission on Western Hemisphere Immigration failed to produce a report on time, pleading with Congress for

¹¹⁸ *Congressional Record*, 89th Congress, 1st Session, 1965: 21573 and 25661, respectively.

¹¹⁹ Reimers, *Still the Golden Door*, 77-79. Typed notes, attached to a copy of the conference report, Emanuel Celler Papers, Box 481, H.R. 2580 – Conference Rep. Sept. 30, 1965, Library of Congress.

¹²⁰ Zolberg chalks up the relatively limited criticism of the western hemisphere quota as an indication of reformers’ “long-standing ambivalence regarding the back door.” Zolberg, *Nation By Design*, 324. A number of scholars have also pointed to the western hemisphere quota as an attempt by Republicans to put their imprint on the new legislation, as well as an indication of the ambivalence of liberals on the issue. See, for example: Zolberg, *Nation By Design*, 331-333. In a July 1965 Johnson Administration memo, Perry Barber wrote to Jack Valenti that Johnson would be willing to accept a numerical ceiling on the Western Hemisphere, but only if Secretary of State Dean Rusk would go along with it. Since Rusk was absolutely opposed, Barber stated that opposition to the ceiling was now the Administration’s position. Interestingly, the Administration also worried that Congressman like Peter Rodino (D-NJ) would argue that the U.S. should not treat the parents of Italian-American citizens differently than those from the Western Hemisphere, thus giving Republicans an opening to suggest a limitation on immigration from *both* hemispheres. Perry Barber to Jack Valenti, “Immigration,” July 8, 1965. White House Central Files, Immigration-Naturalization, IM Box 1, IM 11/23/63-7/31/65, LBJ Presidential Library.

an extra year to finalize its recommendations. Without a report, the western hemisphere ceiling passed into law without controversy.¹²¹

Conclusion

In just over two decades from the end of World War II, the U.S. moved from an isolationist immigration system that largely excluded non-Europeans and allotted visas by country-of-origin, to a system heavily based on family reunification, with a lesser emphasis on labor and refugees. Many of these changes emerged from the changing circumstances, such as shifts in organized labor, growing foreign policy concerns in the cold war, and increased disillusionment with race-based admissions. Equally so, the particular shape of political coalitions, bureaucratic shifts, and legislative compromises during the period combined to shape the admissions system created by Hart-Celler. The 1965 reforms radically altered the shape and form of immigration to the United States. In their attempts to re-form entrance requirements, legislators left unanswered a set of questions about undocumented entry, numbers admitted, chain migration, and refugee status that would continue to haunt future debates.

In the first place, immigration as a whole rose significantly after 1965. Though the Administration had only expected 50,000 to 60,000 additional immigrants per year after 1965, immigration grew by 40 percent in the 1970s, and doubled the 1965 level by the early 1980s. Additionally, immigration from Latin America, Africa, Asia, and the Caribbean increased significantly, to become the major sources of immigrants. Though Europeans did manage to bring in many of their backlogged relatives, they became a far smaller portion of the total by the mid-1970s. Additionally, nonpreference admissions – immediate relatives not subject to numerical limitations – grew, as did the numbers seeking refuge in the U.S. Finally, the numbers of unauthorized entries rose as well, as many in the western hemisphere found it difficult to comply with the strict labor and employment certifications required for admission.¹²²

Many of the reasons behind these demographic changes – whether for entrants inside or outside of legal provisions; through family, labor, or refugee admissions – emerged not simply from the ending of national origins, but from the particular development of the preference system through 1965. Within the larger debates over immigration reform and the quota system, smaller, but equally important battles raged. A confluence of factors pushed policymakers toward a very specific notion of their ideal family, labor, and refugee immigrant. The next three chapters will examine each of these categories in turn, to discuss how and why they became the dominant narrative of immigration preferences after 1965, why they took the ultimate shape that they did, and how they continued to affect admissions and immigrant flows well after the 1960s had ended.

¹²¹ On the continuation of the backlogs, see: Abba P. Schwartz, “The Role of the State Department in the Administration and Enforcement of the New Immigration Laws,” *Annals of the American Academy of Political and Social Science* Vol. 367 (Sep. 1966); Zolberg, *Nation By Design*, 335; Reimers, *Still the Golden Door*, 85-86.

¹²² Zolberg, *Nation By Design*, 336-339; Reimers, *Still the Golden Door*, 90-91.

Chapter 3: “A Great Part of Our Moral and Spiritual Fiber”: The Development of Family Reunification in U.S. Immigration Policy, 1948-1968.

Introduction

In January of 1962, Representative Francis Walter (D-PA), chairman of the House Judiciary Committee, explained his definition of the right to family reunification in a letter to the United-Italian American Labor Council. Walter, an ardent champion of restrictionist sentiment and the national origins quota system,¹ responded to a request to clear a large backlog of Italian fourth preference applicants – the brothers and sisters of U.S. citizens – waiting to immigrate under the provisions of the McCarran-Walter Act of 1952.² According to Walter, the parents and children of citizens entering the country “obviously remain an integral part of that family,” but their brothers and sisters constitute “new family units, seeking employment opportunities and their own homes in this country.” “Fourth preference categories,” Walter concluded, “most definitely [do] not belong in the notion of “family reunion.” Walter stated emphatically that “under the prevailing unemployment conditions, I could not recommend in good conscience” expanding the number of siblings receiving family reunification visas.³

Walter’s exchange with the United-Italian American Labor Council provides a puzzle for the development of immigration law in the United States: only three years later legislators forcefully rejected his reasoning, with the passage of the Hart-Celler Act of 1965.⁴ Hart-Celler allotted 74 percent of all yearly permanent immigrant visas to family reunification, including an unprecedented 24 percent to brothers and sisters. Legislators gave more visas to siblings than any other category, more than the entire allotment (20 percent) for labor-based migration. Previous immigration law had included family reunification as a component of admissions, but only secondary to labor-market needs; brothers and sisters received no visa allotment.

Why then did policymakers replace the race-based quotas with a system so heavily weighted toward family reunification? Once they decided to weight the system toward reunion, how did they decide who qualified as ‘family,’ and why did they give such a large allotment of visas to the siblings of citizens?

¹ The national origins quota system, which came into effect in 1929, apportioned visas by percentage of each nationality, using the census of 1920, for a total of 153,714 permanent visas (1/6 of 1 percent of the white population living in the United States in 1920.) The system privileged immigration from northern and western Europe, while limiting southern and eastern European entry, and barring immigration from Asia. E.P. Hutchinson, *Legislative History of American Immigration Policy, 1798-1965* (Philadelphia: University of Philadelphia Press, 1981), Chapter 16. See also: Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004).

² The Immigration and Nationality Act, otherwise known as the McCarran-Walter Act of 1952, P.L. 414, 66 Stat. 163.

³ Francis Walter to Luigi Antonini, January 22, 1962. Ralph Dungan White House Staff Files, Box 1, Immigration. JFK Library.

⁴ The Immigration and Nationality Act, otherwise known as the Hart-Celler Act of 1965, P.L. 236, 79 Stat. 911.

Scholars examining the history of immigration policy have largely focused on the dismantling of the national origins quota system, and the concurrent retention of numerical limitations after 1965.⁵ Most, like David Reimers, Daniel Tichenor, and Aristide Zolberg, view the new preference system after 1965 as evidence of, in the words of Reimers, the “conservative nature of the final bill.” These scholars argue that the family-centric admissions policy was an attempt by legislators to limit immigration to the relatives of those immigrants – mainly white and European – already in the country. No one has systematically explained how and why family reunification came to dominate admissions above other categories such as labor-market needs.⁶

Additionally, most scholars view reform as episodic, focusing on the forces and factors that came together to pass the major pieces of legislation, and discounting the long history of minor fixes and unsuccessful attempts at comprehensive reform that occurred in two decades prior to Hart-Celler (table 3.1).⁷ Examining the debates around the Hart-Celler Act may illustrate the ‘conservative’ nature of the bill, but it cannot explain why legislators allotted more visas to brothers and sisters than any other category. To fully understand the shape of the immigration preferences after 1965, I focus on the cumulative effects of a series of reform attempts, successes, and failures, all of which pushed family-reunification, and siblings, to the forefront of policymaking.

Table 3.1: Postwar Legislation Related to Family Reunification

<u>Year(s)</u>	<u>Bill(s)</u>	<u>Description</u>
1945, 1946, 1947, 1950	“War Brides Act” P.L. 271, 59 Stat. 659; “Alien Fiancées and Fiancés Act,” ; P.L. 213, 64 Stat. 402; P.L. 717, 64 Stat. 464.	Acts to admit the spouses and fiancés of military personnel. Originally only for those racially eligible under the quota system, but expanded to include all spouses.
1948,	DP Acts, P.L. 774, 62 Stat. 647	Included preferences for the relatives

⁵ This is the approach taken by Mae Ngai, for example, in her work *Impossible Subjects*, who points out that the imposition of a ceiling of only 20,000 people per year on each sending country continued inequalities, as Mexico and Luxembourg received equal treatment under the law. See: Ngai, *Impossible Subjects*, 258-263.

⁶ David M. Reimers, *Still the Golden Door: The Third World Comes to America* (New York, Columbia University Press, 1992 [1985]), 83-84; Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton University Press, 2002); Aristide R. Zolberg, *A Nation By Design: Immigration Policy in the Fashioning of America* (Harvard: Harvard University Press, 2006). One notable exception is E.P. Hutchinson, who devotes a chapter of his *Legislative History of American Immigration Policy* to the development of family reunion. Still, Hutchinson is more concerned with *how* family preferences developed, than *why* they expanded. Similarly, while Stephen Thomas Wagner discusses Feighan’s 1965 rationales for wanting to substitute family for labor, he only interrogates the immediate circumstances favoring family reunion in 1965, rather than the two decades of policy development. Stephen Thomas Wagner, “The Lingering Death of the National Origins Quota System: A Political History of United States Immigration Policy, 1952-1965” Ph.D. Dissertation, Harvard University, 1986, 394-398.

⁷ Keith Fitzgerald, for example, focuses on the distinct factors that come together to create policy realignments such as the Hart-Celler Act of 1965, but discounts the smaller, interim components that I argue formed the foundations basis for policymaking. Keith Fitzgerald, *The Face of the Nation: Immigration, the State, and the National Identity* (Stanford: Stanford University Press, 1996).

1950	and P.L. 555, 64 Stat. 219.	of American citizens within legislation to admit displaced persons from World War II.
1952	McCarran-Walter Act, P.L. 414, 66 Stat. 163.	Gave all citizens the right to bring immediate relatives on a nonquota basis regardless of race; Created a preference system within the national origins quotas which gave 2 nd through 4 th preference to family reunification categories.
1953	Refugee Relief Act, P.L. 203, 67 Stat. 336.	Included preference for parents, children, brothers and sisters within legislation to admit refugees.
1957	Refugee-Escapee Act, P.L. 316, 71 Stat. 639.	Included provisions to allow anyone waiting for a 1 st , 2 nd , or 3 rd preference visa to convert to nonquota status.
1959	P.L. 363, 73 Stat. 644.	Doubled the number of visas under the 4 th preference to 50% of all unused quota slots per year, and allowed anyone on a waiting list for a family preference visa (2 nd through 4 th preference) prior to December 31, 1953 to enter as a nonquota immigrant.
1961	P.L. 301, 75 Stat. 650.	Allowed anyone still waiting for a 2 nd or 3 rd preference petition, filed prior to July 1, 1961, to convert to nonquota status.
1962	P.L. 885, 76 Stat. 1247.	Advanced the cut-off date for nonquota status conversion from the 1959 Act to March 31, 1954.
1965	Hart-Celler Act, P.L. 236, 79 Stat. 911.	Removed the national origins quota system; implemented a 7-point preference system that allotted 74 percent of all visas to family reunification; added parents of citizens to nonquota entry.

I begin the chapter with an introduction to family reunification in American immigration law prior to World War II, and then move chronologically from 1945 to 1968. I argue that the enshrinement of family preference categories with the McCarran-Walter Act of 1952 placed further limits on the disbursal of national origins visas, and became a focal point for opposition to the admissions system as a whole. Throughout the 1950s and 1960s, backlogs in the preference system combined with cultural shifts favoring familial relations, (such as sympathy for the spouses of American GIs,) to create a positive feedback loop that focused reform efforts on family reunification first and foremost.

Importantly, both liberals and conservatives harnessed the rhetoric of the family to press for their positions. While the two groups had different end goals in mind – on the one hand retaining national origins, and on the other dismantling it – the constant appeals to the plight of separated family members by policymakers on all sides of the question helped to ensure that reunification would become the centerpiece of any reform efforts.⁸

Among the categories created with the 1952 preference system, conservative legislators designed an unfunded 4th preference for the brothers and sisters of U.S. citizens (assigning only a remainder of leftover visas from the other preferences.) This new category created the possibility of admission, with a seemingly endless wait for entry. Fourth preference backlogs, particularly in small-quota countries such as Italy, surpassed 100,000 people in less than ten years. I argue that these waiting lists became a lightning rod for criticism against the entire immigration regime, galvanized liberal attempts at reform, and mobilized interest and ethnic group lobbying. In the late-1950s and 1960s legislators turned to the most immediate and pressing question in immigration policy – how to alleviate the long waiting periods for family members kept apart by the quota system? By the time legislators finally removed the national origins system in 1965, a series of minor bills and unsuccessful attempts at comprehensive reform had shifted perceptions so that implementing a family-based system seemed only natural. It was anything but.

Early Policies Relating to Family Reunification

Family reunion provisions have a long history in federal immigration policy, with exemptions based on familial ties written into the first proposals to limit immigration. The Contract Labor Act of 1885, for example, made clear that its provisions did not apply to anyone bringing family members to the United States. Similarly the Immigration Act of 1917 exempted parents, grandparents, wives, and daughters from the literacy test required for entry. The concept of admitting relatives outside of numerical limitations (nonquota status), or of granting them preferential status within numerical limitations, began concurrent with the start of these same restrictions in the 1920s, with the Quota Acts and the national origins quota system.⁹

With regard to nonquota status, the Quota Act of 1921 accorded entry outside of numerical limitations to children aged 18 or under of U.S. citizens. The Quota Act of

⁸ On policy feedback loops, see: Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press, 2004). I am also drawing on the insights of Triadafilos Triadafilopoulos who argues that postwar immigration policymaking in liberal-democratic nation states followed a three step process: first policymakers ‘stretched’ existing procedures to fit new normative contexts. These initial attempts at retaining the underlying structure of policy gave way to their ‘unraveling’, and finally a ‘shifting’ toward new policy. Here the creation of the preference system in 1952 can be seen as stretching, while the ensuing backlogs and growth of ethnic group lobbying constituted unraveling. Finally the Hart-Celler Act signaled a shift to a new policy. See: Triadafilos Triadafilopoulos, *Becoming Multicultural: Immigration and the Transformation of Citizenship in Canada and Germany* (Forthcoming).

⁹ Hutchinson, *Legislative History*, 506-513.

1924 (Johnson-Reed Act) added wives of resident citizens to the 1921 regulations, and specified that eligible children had to be unmarried. Chinese wives of U.S. citizens, ineligible to entry under the national origins system prior to 1943, were accorded the same nonquota status as European wives with the Act of August 9, 1946, but only if marriage occurred prior to May 26, 1924.¹⁰

Within the quota system, the Act of 1921 gave preference to wives, parents, brothers, sisters, children under 19 years of age, fiancés of U.S. citizens and resident aliens who had applied for citizenship, as well as those eligible for citizenship who had served during WWI and had been honorably discharged. The 1924 Act contained two equal preferences, not to exceed 50 percent of any nation's quota allotment: (a) agricultural workers and their immediate dependants, and (b) unmarried children under 21, and the father, mother, husband, or wife of a U.S. citizen over 21. By World War II then, wives and minor children could enter the country outside of numerical limitations, while parents, husbands, and adult children gained preferential access to visas.¹¹

MILITARY SPOUSES AND FAMILY REUNIFICATION

Entry into World War II created a new need for legislation related to family reunion, as members of the armed forces met and married foreigners, and attempted to bring them back to the United States. In 1945 Congress passed P.L. 271, the "War Brides Act," to, in the words of Representative John Lesinski, Jr. (D-MI), "cut the red tape surrounding the law...[and to] expedite the admission to the United States of thousands of alien brides who were married to our soldiers" during the war. One year later Congress expanded these admissions by passing P.L. 471, the "Alien Fiancées and Fiancés Act," to provide for the admission of those people engaged to GIs. Both Acts waved the medical examination required for entry, and worked to expedite the necessary paperwork.¹²

The introduction of legislation to facilitate the entry of military spouses speaks to the privileged place that family reunification held in postwar immigration policy. As Representative Noah Mason (R-IL) argued in regard to the War Brides Act, "one of the reasons for the introduction of this measure is due to the fact that it is believed such strong equities run in favor of these servicemen and women in the right of having their families with them." Though most bills to increase immigration in the era ran into staunch Congressional opposition, the War Brides and Alien Fiancées Acts passed

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² On military spouse legislation and family reunification, see: Philip E. Wolgin and Irene Bloemraad "Our Gratitude to Our Soldiers": Military Spouses, Family Re-unification, and Postwar Immigration Reform," *Journal of Interdisciplinary History*, 41:1 (Summer 2010). See also: Ji-Yeon Yuh, *Beyond the Shadow of Camptown* (New York: New York University Press, 2002); Daniel Boo Duk Lee, "Korean Women Married to Servicemen," in Young In Song and Ailee Moon (eds.), *Korean American Women Living in Two Cultures* (Academia Koreana, 1997); Reimers, *Still the Golden Door*, 21-26. Interestingly, while legislators referred to the 1945 bill as the "War Brides" Act, the language of the bill itself was gender neutral, and a small number of husbands took advantage of the provisions, alongside over 100,000 wives. Lesinski quote in: *Congressional Record*, 79th Congress, 1st Session: 11738.

quickly, with little controversy or debate either in committee or on the floor of Congress.¹³

While racially eligible spouses under the quota system faced only bureaucratic delays to entry prior to war brides legislation, Asian spouses experienced far greater challenges. With Asian exclusion still on the books, only China, out of all of Asia, had been granted the right to enter the country by the end of the war. The original military spouse legislation covered only those spouses who were racially admissible – i.e. Europeans. But after the war, once soldiers stationed in the Pacific began to petition to bring their wives back, Congress widened the original authorization to cover these spouses as well. P.L. 213, passed in 1947, extended the provisions of the War Brides Act regardless of race. Like the original authorization, P.L. 213 sailed through Congress. With continued occupation in Japan, and the start of the Korean War in June of 1950, Congress revisited the issue, passing P.L. 717 to once again admit spouses outside of legislation. Congressional reports make clear that they intended P.L. 717 to benefit the Japanese wives and children of servicemen first and foremost.¹⁴

Legislation for military spouses helped to enshrine the concept of family reunification as the driving force in immigration law. While legislators framed the original authorization and expansion of war brides legislation in 1945 and 1947 as temporary ad hoc measures, by the time P.L. 717 passed in 1950, legislators now viewed war bride admissions as “interim legislation” on the road to comprehensive immigration reform. The omnibus reform measure passed by Congress two years later, the McCarran-Walter Act of 1952, obviated the need for further military spouse legislation by granting the right to family reunification regardless of race, and by ending, at least on paper, Asian exclusion. Here then one of the first post-war expansions of immigration rights occurred under the guise of family reunification.¹⁵

On the eve of the McCarran-Walter Act in 1952, only the wives and minor children of citizens could enter the U.S. outside of quota limitations, while parents, spouses, and children received priority under the preference system. Family reunification, while a part of regular immigration policy, did not drive it at this point in time. Still, the idea of family as a driving force behind immigrant admissions, as seen with legislation for military spouses, had begun to take shape. The Displaced Persons Act of 1948 for example, like the earlier quota Acts, contained a positive admissions preference for relatives of citizens up to the third degree.¹⁶ In the postwar era, legislators would continue

¹³ Wolgin and Bloemraad, “Our Gratitude.” Mason quote in: 79th Congress, 1st session, House Report No. 1320, “Expediting the Admission to the United States of Alien Spouses and Alien Minor Children of Citizen Members of the United States Armed Forces,” November 30, 1945, 2.

¹⁴ The numbers entering under P.L. 213, 758 from Japan and 5,132 from China, and P.L. 717, 760 total, were small, compared to the over 100,000 military spouses who immigrated from Europe. Still, compared to the yearly quota of 105 total immigrants for all of China, and lack of any quota slots for Japan, these numbers represented a significant increase for these nations. See: Wolgin and Bloemraad, “Our Gratitude.”

¹⁵ *Ibid.*

¹⁶ Like the 1920s Quota Acts, the DP Act contained only a weak preference for family reunification. After the first and second preferences for agricultural workers and skilled labor, the bill provided a third preference (without a visa allotment,) to the relatives of citizens and legal permanent residents. When the

to draw upon the “strong equities” in favor of family reunification to which Representative Mason had referred, as a uncontroversial way of expanding immigrant admissions.

The McCarran-Walter Act and the Creation of the Preference System

After World War II, and especially in the wake of the fight against Nazism and Nazi racial science and the ensuing Cold War, efforts began to reform the immigration system and the race-based national origins quotas. These attempts first came to a head in June of 1952, as Congress passed the McCarran-Walter Act (Immigration and Nationality Act, P.L. 82-414). The Act repealed all prior immigration legislation and substituted the omnibus bill.

Liberals like Representative Emanuel Celler (D-NY) tried to remove the national origins system, but pressure from nativist groups, as well as the relative power of restrictionists such as Senator Pat McCarran (D-NV) and Representative Francis Walter, who controlled the Senate and House Judiciary Committees, resisted attempts to change the system.¹⁷ The new law contained an array of contradictory impulses, ending Asian exclusion by granting immigration and citizenship rights regardless of race, while simultaneously creating the Asia-Pacific Triangle, limiting total Asian immigrants to just over 2,000 per year.¹⁸

With regard to family reunification, the Act made two important changes. First, in response to pressure from GIs attempting to bring back their spouses, Congress broadened nonquota status to include all spouses of citizens and minor children of U.S. citizens through age 21.¹⁹ The Act also created a new preference system within the

DP Act was amended in 1950, this third preference became the second preference. Hutchinson, *Legislative History*, 512.

¹⁷ Scholars are divided on the final analysis of the McCarran-Walter Act. Historians such as Roger Daniels, Gary Gerstle, and Michael Davis believe that the Act contained both liberal and conservative features. These scholars view the legislation optimistically, regarding it as a first step toward liberalization. A second group, led by Desmond King, Aristide Zolberg, and Robert Divine portray the Act as intrinsically conservative and discriminatory, mainly because of its racial components. See: Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants since 1882* (New York: Hill and Wang, 2004); Michael G. Davis, “Impetus for Immigration Reform: Asian Refugees and the Cold War” *Journal of American-East Asian Relations* 7, no. 3-4 (1998), 130; Robert A. Divine, *American Immigration Policy, 1924-1952* (New Haven: Yale University Press, 1957); Gary Gerstle, *American Crucible: Race and Nation in the Twentieth Century* (Princeton: Princeton University Press, 2001); Desmond King, *Making Americans: Immigration, Race, and the Origins of the Diverse Democracy* (Cambridge: Harvard University Press, 2000); Zolberg, *Nation by Design*.

¹⁸ The Triangle provided for 2,000 base slots, plus 100 for the Triangle as a whole (for those with parents from two different Triangle countries or a colony), 105 for China, and 185 for Japan, for a maximum of 2,390 Asians per year. While immigrants from elsewhere entered under the quota of their birth country, Asians alone possessed blood-based ancestry under the law, and had to enter under the much smaller quotas for Asia. See: Reimers, *Still the Golden Door*, 17-18.

¹⁹ See fn 13. Frank Auerbach of the State Department’s Visa Office argued in a speech in 1955 that “while this concept of not separating families, or of reuniting them when separated, had already found expression in various provisions of the immigration laws of 1921 and 1924 and their amendments, it has gained

national origins quotas (table 3.2). While the quota system under the 1924 Act had give only a portion of all visas to preference immigrants – split equally between agricultural workers and the children, parents, and children of citizens – the 1952 system widened these preferences to include family reunification for legal permanent residents, and for the brothers and sisters of citizens. Now each country’s quota was split between four preferences, a 1st preference for skilled labor, and a 2nd, 3rd, and 4th preference for family reunification.

Table 3.2: The McCarran-Walter Act Preference System

1 st Preference	50% of each country’s total visas for skilled and urgently needed labor.
2 nd Preference	30% of each country’s total visas for parents of citizens aged 21 or older.
3 rd Preference	20% (plus unused from the above) of each country’s total visas to spouses and children of resident aliens.
4 th Preference	No allotment, but 25% of unused visas from the previous three categories, for brothers, sisters, and adult children of citizens. ^a

a – The Act of September 22, 1959 (73 Stat. 644) expanded the 4th preference allotment to 50% of all unused visas.

During the debates over the omnibus bill, retention of the national origins system, Asian exclusion, and the enhanced security and deportation provisions dominated the discussion. The new preference structure received little time either in hearings or on the floor.²⁰ The House report on the McCarran-Walter Act, for example, stated that the “bill introduces a greater degree of selectivity into the method of allocating the quota numbers...while at the same time adequate provision is made for the preferential treatment of close relatives.” This latter provision, according to the report, was “consistent with the well established policy of maintaining the family unit wherever possible.” Legislators in 1952 then did not question the need for family reunification policies.²¹

considerable momentum under the Immigration and Nationality Act of 1952 in that the Asian husband, wife and child of an American citizens is not accorded nonquota status on the same basis as the non-Asian husband, wife and child of an American citizen.” Department of State, Press Release, address by Frank L. Auerbach, May 27, 1955. “Immigration Today.” National Archives, RG46, Sen.86A-F12.1, Committee on the Judiciary, Immigration Subcommittee, Box 5, Press Releases (2 of 2), 1-3.

²⁰ This was the strategy taken by William Nitzberg, for example, representing the American Apostolic Branch of Churches, when he argued before joint hearings of the Subcommittees of the Committee of the Judiciary that “Our immigration problems have long been neglected. It is an important problem, when we look at it from the eyes of our citizens, who have close family ties with relatives abroad, and whom they have been endeavoring to bring to these United States for many years,” because of quota backlogs. The inability of citizens to bring in their family members because of the restrictive quota system spoke to the failures of the entire immigration regime. “Revision of Immigration, Naturalization, and Nationality Laws,” Joint Hearings before the Subcommittees of the Committees of the Judiciary, 82nd Congress, 1st Session, on S.716, H.R. 2379, and H.R. 2816”, March-April, 1951, 500. (hereinafter: Joint Hearings, 1951.)

²¹ 82nd Congress, 2nd Session, House Report No. 1365, “Revising the Laws Relating to Immigration, Naturalization, and Nationality,” February 14, 1952, 38-39.

When the preferences did come up for debate, legislators discussed not the individual categories themselves, or the relative weight of labor-to-family visas, but rather argued the merits of implementing the preference system as a whole.²² Leading restrictionist Senator Pat McCarran would argue that the revised categories provided “a more thorough screening in order to insure that the admission of aliens... will serve the national interest.”²³ On the other side of the issue, the Minority Views filed by liberal Senator Estes Kefauver (D-TN) to accompany the Senate report on the Act protested the implementation of a preference system in general, arguing that “instead of more rigid class preferences we need more flexibility in the operation of our quota distribution. As the 1952 Act expanded the categories of family members considered under preference status, most legislators felt, like the House Report, that the new law followed the “well established policy” of reunification.²⁴

Family reunion would however play an important role in helping to pass of the overall bill. Both co-sponsors of the bill – Pat McCarran and Francis Walter – would appeal to the needs of family members kept apart to push Congress to overturn President Truman’s veto of the Act. “If the President’s veto is sustained,” stated Walter in a list of detrimental factors, “the GI in Japan or in Korea will not be permitted to bring his Oriental wife into this country.” McCarran contended that failure to pass the legislation would maintain the status quo in immigrant admissions without any of the “desirable revisions,” such as Asian immigration and naturalization rights. These pleas were ultimately successful, and Congress voted overwhelmingly in favor of passage.²⁵

THE GROWING BACKLOG

Even though the new preference system proved uncontroversial at the time of its passage, it deeply exacerbated the tensions brought about by the restrictive quotas. The combination of preferences and country-quotas further restricted visa usage for small quota nations like Italy, Greece, and Portugal, already disadvantaged by the national origins system. Within a short period, the preferences themselves, and specifically the heavily oversubscribed family categories, were at the center of the immigration reform debates. Legislators in every session from 1953 through 1964 would, unsuccessfully,

²² Legislators did take issue with the large number of visas allocated to highly skilled labor, especially since according to State Department estimates, only roughly 3,200 people a year would qualify, far less than the 77,000 (50 percent of the total) visas proposed. “Who is kidding who?” argued leading liberal legislator Emanuel Celler. The preference system also allowed restrictionists like McCarran to further limit immigration from southern and eastern Europe, the very countries already discriminated against with the national origins system. “To my mind,” stated Celler during the McCarran-Walter debates, the preference system “is an ingenious method of hermetically sealing our shores against immigration.” Joint Hearings 1951, 358-359.

²³ McCarran quotes in: Sidney Kansas, *Immigration and Nationality Act Annotated* (New York: Immigration Publications, 1953), iii and 25.

²⁴ 82nd Congress, 2nd Session, Senate Report 1137 Part 2, “Revision of Immigration and Nationality Laws, Minority Views,” March 13, 1952, 56.

²⁵ *Congressional Record*, 82nd Congress, 2nd session: 8215 and 8254. The margins to overturn the veto were 278-113 in the House and 57-26 in the Senate. Tichenor, *Dividing Lines*, 194-195.

introduce legislation to remove the national origins system from immigration law. An equal number of bills attempted to revise the preference structure of the new Act.

The 4th preference in particular, for the brothers and sisters of U.S. citizens, proved to be the death-knell of the entire immigration regime. The McCarran-Walter Act legislators created the possibility of entrance by giving this category legitimacy within the preference system. But for reasons which are unclear, Congress gave no actual percentage of visas to the category, only a percentage of those visas left unused by the first three preferences (table 3.2). With no fixed allotment of visas, the waiting lists for entry under the category quickly grew exponentially.²⁶

Consider the case of Italy: as one of the countries discriminated against under the national origins system, Italy received only 5,666 visas per year. Even under the expanded 4th preference allotment after 1959 (50 percent of leftover visas,) no more than 2,833 brothers or sisters could immigrate per year, and only if no one entered in the 1st, 2nd, or 3rd preference. In practice, many more siblings registered with American consulates. In 1955, the State Department estimated the backlog of 4th preference cases in Italy at 37,136, while large quota countries such as Britain and Ireland never used their full quota allotments.²⁷ By 1962 Italy had a backlog of approximately 137,000 people approved for 4th preference visas, but unable to obtain a quota slot. (Table 3.3)

Table 3.3: Italian Immigrants Waiting for 4th Preference Visas

Date	Number in Backlog
March, 1954	32,335
November, 1958	90,000*

²⁶ I have not been able to find an explanation as to why legislators included the brothers and sisters of citizens in the 1952 legislation in the first place. I conjecture that the large number of people attempting to bring in these relatives after 1952 provides an ex-post facto rationale that policymakers recognized at the time. And, while the Immigration Act of 1924 and national origins system had no special preference for brothers and sisters, the Quota Act of 1921 did include brothers and sisters in its preferences. Likewise the DP Act of 1948 gave second preference to “blood relatives of citizens or lawfully admitted alien residents...within the third degree of consanguinity.” On the DP Act, See: Hutchinson, *Legislative History*, 512-513. Some, like Horatio Tocco, representing the Italian Welfare Council of Chicago, Illinois, would argue during the 1951 hearings on McCarran-Walter for the inclusion of a space for brothers and sisters of American citizens of Italian descent within admissions, but by this point the category had already been included in the legislative proposals. Joint Hearings, 1951, 526. Others, like Herbert Lehman, would draw on the category of brothers and sisters to demonstrate the shortcomings of the quota system. Lehman would state on the floor of Congress that “we are discriminating against people whose countries confront serious problems, peoples who would make good citizens, peoples whose forebears and whose brothers and sisters have come to this country from Italy and Greece.” 82nd Congress, 2nd Session, *Congressional Record*: 5167.

²⁷ “Pending Demands as reported August 1, 1955,” January 16, 1955 FY 1955 admissions figures for the United Kingdom listed 45,287 unused quota slots; Unsigned, “Re-distribution of Unused quota Numbers, Fiscal 1955” January 17, 1956. Both documents in: RG353, UD Entry 26, State Department Policy on Immigration and Nationality (PIN) Committee, Box 3, D-46 through D-49/2. A memo from Senator JFK in 1955 argued that in order to sustain its political stability and freedom from Communism, Italy required at least 200,000 people to emigrate in the next ten years, pointing to the foreign policy implications of admissions policy. June 13, 1955. JFK Pre-Presidential Papers, Senate Files, Box 647, Immigration 6/3/55-8/2/55, JFK Presidential Library.

February, 1962	136,858
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* Estimated

Source: James W. Morgan to Drury Blain, March 17, 1954, RG 59, Records of the Bureau of the SCA, Decimal Files, Box 9, Implementation of Refugee Relief Act, NARA II; Joseph Swing to Gerald Morgan, November 26, 1958, 1. Gerald D. Morgan Records, Box 14, Immigration and Naturalization (1), Eisenhower Presidential Library; Department of State, Visa Office Bulletin, Number 91, March 2, 1962 “Quota Immigrants Registered Under Oversubscribed Quotas. As reported on February 1, 1962.” RG 233, 87th Congress, Box 261, HR 11911 (2), NARA I.

The ever-growing backlog of Italians (as well as immigrants from other small-quota European nations such as Greece, Portugal, and the Netherlands),²⁸ pushed the Eisenhower, Kennedy, and Johnson Administrations, as well as their congressional allies, to continually seek ways to admit greater numbers of these migrants. The backlog also emboldened ethnic lobby groups, such as the American Committee on Italian Migration and the Sons of Italy, to step up their opposition to the McCarran-Walter Act and quota regime. As constituent Nello Ori would argue in a 1957 letter to Senator John F. Kennedy (D-MA), “Citizens of Italian descent, will be the strongest supporters of the McCarran-Walter Act as soon as the Visa Petitions they have filed for close relatives, *a right given to them by the McCarran-Walter Act*, are brought to their logical conclusion.” Opposition to the immigration regime would solidify around this “right” to family reunification, pointed to by Ori.²⁹

The disconnect between the ability to register and be approved for a 4th preference visa and actually *receive* a visa, galvanized opposition to the immigration system as a whole. But to reiterate, after the passage of the McCarran-Walter Act in 1952 the U.S. had a quota system that on paper recognized economic need first and foremost (through the 1st preference for skilled and urgently needed labor.) The system held family reunion as a well-trodden principle of immigration law, but only after employment needs. Critique of the immigration system, while focused on the national origins system, centered on the dual strands of small quotas and unfunded preference categories.

²⁸ Note that the preference system did not actually preclude anyone from receiving a visa per se, but the long backlogs made the possibility of obtaining a visa remote. With 136,858 people waiting for fourth preference visas in Italy by 1962, it would take almost fifty years to clear the backlog. Other southern and eastern European countries, as well as Asian ones, had long backlogs by the early 1960s, but even the 9,621 people waiting for Polish 4th preference visas came nowhere near the number for Italian 4th preference visas.

Number of People Registered for 4th Preference Visas in Select Oversubscribed Countries, February 1962

Country	Yearly Quota	4 th Preference Backlog
China	105	1,124
Greece	308	6,304
Philippines	100	1,171
Poland	6,488	9,621
Portugal	438	4,471

Source: Department of State, Visa Office Bulletin, Number 91, March 2, 1962 “Quota Immigrants Registered Under Oversubscribed Quotas. As reported on February 1, 1962.” RG 233, 87th Congress, Box 261, HR 11911 (2), NARA I

²⁹ *Ibid.*; Nello Ori to John F. Kennedy, October 25, 1957. JFK Presidential Library, JFK Pre-Presidential Papers, Senate Files, Box 695, Immigration 9/26/57 – 11/19/57. Emphasis added.

Early Attempts to Sidestep National Origins and Growing Backlogs: 1953-1958

After failing to block passage of the McCarran-Walter Act, liberals in Congress and the Executive branch began a long campaign to discard, modify, or mitigate the 1952 reforms. In the mid-1950s, Congressional attempts to reform national origins focused on changing the system, rather than excising it completely. In addition to these modification endeavors, as backlogs in family preference categories continued to grow, legislators passed a series of bills to admit people outside of the quotas, or to convert those waiting for preference visas to nonquota status. Liberal policymakers as well harnessed sympathy for those family members kept apart by long backlogs in their attempts to dismantle the quotas. This discourse of hardship would increasingly place family reunification at the forefront of admissions reform.

After vetoing the 1952 Act, President Truman appointed a Presidential Commission on Immigration and Naturalization. The Commission's 1953 report, entitled *Whom We Shall Welcome*, called for an end to the national origins system, and a 100,000-person increase in overall immigration. The Commission suggested a preference structure based on five categories: asylum; family reunion; the needs of the United States, primarily for skilled and advantageous immigrants; the needs of the free world, such as foreign policy and international security; and general immigration allotted without regard for race or national origin. Under the category of "reunion of families," the report acknowledged that "a great part of our moral and spiritual fiber grows out of the sacred place of the family in American life," and recommended that family play a prominent role in admissions policy.³⁰

Unlike the McCarran-Walter Act, which ranked labor preferences first, and family preferences second, the Commission did not place any of its six categories above the others. It did, however, recommend expanding family reunion, by granting nonquota status to close relatives of citizens, adding parents and grandparents to the already privileged spouses and children. This addition represented an expansion in the conception of the immediate family by liberals, and would carry through to the Hart-Celler Act in 1965. A restrictionist dominated Congress largely ignored the Commission's findings, but it did form the basic principles that would drive immigration reform through 1965. In one form or another this proposal would appear in a slew of bills through the early 1960s; none emerged from committee.³¹

³⁰ President's Commission on Immigration and Naturalization, *Whom We Shall Welcome* (Washington, D.C.: U.S. Gov't Printing Office, 1953), 111-122. Quote on 119. See Hutchinson, *Legislative History*, 314-320.

³¹ President's Commission, *Whom We Shall Welcome*, 111-122. Hutchinson, *Legislative History*, 314-320. The Refugee Relief Act of 1953, for example, contained preferences within its visa allotment that largely mirrored those of the McCarran-Walter Act, with a first preference for urgently needed skills, and a second preference for the parents of citizens, spouses and unmarried minor children of citizens and legal permanent residents, and brothers, sisters, and adult children of citizens. Section 12(1)-(2), Refugee Relief Act of 1953, P.L. 203, 67 Stat. 336.

The most popular attempts at reform during the 1950s proposed to recapture unused quota slots for use by oversubscribed countries, in the form of a quota pool. These plans received a boost in 1956 when President Eisenhower sent a special message to Congress urging reform of the immigration system. His attempt called for changing the base year for computing the quotas from 1920 to 1950, as well as the pooling of unused visas within four geographic areas – Europe, Africa, Asia, and the Pacific. The latter emphasis on geography, the Administration hoped, would soften the impact of reform, and keep immigrant admissions focused on Europe, which contained the bulk of all unused quota slots.³²

Much of the foundation for Eisenhower's 1956 proposal came from the work of Scott McLeod, the State Department's Administrator of Security and Consular Affairs (SCA), and Frank Auerbach, of the State Department's Visa office. Both individuals formed their policy prescriptions with an eye specifically on the growing backlogs. "As long as the basic policy remains unchanged," McLeod wrote in July of 1955, referring to the waiting periods, "it will be a source of grievance to those who oppose it and a matter of considerable indifference to others." Auerbach in particular recognized the political limitations of the era, and believed that the regional pooling system "should appeal to Mr. Walter since it is not an indiscriminate redistribution of unused quotas to which he so strongly objects," but rather a more targeted one focused on Europe.³³

More importantly, with regard to family reunion, McLeod planned to reform the 4th preference category, by granting it a fixed allotment of 10 percent of all visas, ostensibly in an attempt to begin to clear the backlogs.³⁴ After a conversation between Henderson and the Italian Ambassador in December of 1955, in which the Ambassador expressed a desire to see Italian immigration to the U.S. increased, McLeod stated that "the quota system which I presented to the secretary... would go far to meet the objectives outlined by the Italian representatives," to clear the waiting lists. McLeod argued that with the change in preference structure and quota pool, the backlogs would be eliminated within two to three years. McLeod's proposals illustrate that he not only understood the need for reform to help countries such as Italy, but also actively worked to shape reform toward mitigating the waiting times.³⁵

³² See: Hutchinson, *Legislative History*, 320-328. On the Administration's regional pooling proposal, see: Scott McLeod to Maxwell Rabb, "Proposed Modification of Quota System," September 29, 1955, in which McLeod argued that regional pooling would "alleviate pressures on countries with small quotas," while at the same time giving "due consideration to the fact that the United States population is basically of European stock." Maxwell Rabb Papers, Box 59, Walter McCarran Act (5), Pgs 2-3, Eisenhower Presidential Library.

³³ Scott McLeod to Loy W. Henderson, "Departmental Position on Revision of McCarran-Walter Act," July 8, 1955, 3. RG 59, A1 E 1509, SCA Decimal File, Box 49, Immigration and Nationality Act Amendments, NARA II.

³⁴ Scott McLeod to the Secretary, "Proposals to Amend the Quota Laws," January 17, 1956, 2. RG 353, PIN Committee, Box 3, D-46 through D-49/2, NARA II. The 10 percent would be taken from the second preference, whose allotment would be dropped from 30 percent to 20.

³⁵ See: Memorandum of Conversation, "Italian Emigration to the United States," December 15, 1955 and Scott McLeod to Loy W. Henderson, "Changes of Immigration and Nationality Act Proposed by the Italian Government," January 4, 1956. RG 59, A1 E 1509, SCA Decimal File, Box 49, Immigration and Nationality Act Amendments, NARA II. Maxwell Rabb would also state in a March 1956 memo that "the

President Eisenhower as well elevated the issues of family reunion to the forefront of reform. In a 1957 press conference on his proposed comprehensive immigration reform legislation, he argued that “more and more Americans are becoming aware of...defects in our immigration laws.” “There is increasing apprehension among our citizens,” Eisenhower stated

about the moral principle involved when we keep children and spouses apart from fathers and husbands for many years by immigration barriers. There are thousands of these cases in were aliens legally residing in this country cannot look forward to reunion with their families now in foreign lands, for possibly five or six years...Eventually, they will be joined. But it is immoral to keep them separated for so long a period of time.

Eisenhower framed his arguments against the current regime both in terms of internal issues, the “apprehension among out citizens,” as well as external ones, arguing that these issues “affect adversely the prestige of the United States abroad.” Critically he spoke of family reunion as a moral principle, which necessitated that parents and children be kept together, as well as the immorality of quota backlogs that delayed reunion from occurring. Here Eisenhower utilized family reunion as a wedge issue against the quota system as a whole.³⁶

Congress took up Eisenhower’s call for change in 1957, but ultimately passed a more limited reform bill, sponsored by Senator John F. Kennedy (D-MA).³⁷ The fact that the Act, which emerged from a drive for comprehensive *immigration* reform, earned the title “Refugee-Escapee Act,” speaks to its narrow scope. The bill retained the national origins system, and discounted attempts to permanently modify the quota system and preference categories. Administration strategy memos made it clear that Francis Walter would not accept any quota pooling plans, and that Senator James O. Eastland (D-MS), chairman of the Senate Judiciary Committee, would allow no modifications of the national origins system.³⁸

response [to the immigration legislation] has been extraordinarily good among the foreign language groups in the United States.” Maxwell Rabb to Governor Adams, March 1, 1956, Gerald D. Morgan Records, Box 14, Immigration and Naturalization (1), Eisenhower Presidential Library.

³⁶ Notably though, and speaking to a growing emphasis on admitting the parents of citizens, while even in 1957 brothers and sisters comprised the heaviest backlog, Eisenhower spoke of reunification in terms of parents and spouses. Undated, Draft of a press conference speech of the President, 1. Maxwell Rabb Papers, Box 46, Immigration Legislation, 1957. Eisenhower Presidential Library. Though I have not found explicit evidence, I believe that Eisenhower and other liberals drew on the relatively nonthreatening rhetoric of parents kept apart from their children, rather than instead discussing the more controversial aspect of siblings kept apart.

³⁷ Act of September 11, 1957, Public Law 85-316. Stephen Wagner argues that the Refugee-Escapee Act emerged from JFK’s attempts to take the lead on immigration affairs in the Senate. He also argues that Walter realized that he would have to go along with some legislation in favor of southern and eastern Europeans, especially since there were so many of them in his district. Thus he supported Kennedy’s limited reform bill. Wagner, “Lingering Death,” Chapter 5.

³⁸ See, for example: McCollum to Watkins, undated, handwritten memo in: Maxwell Rabb Papers, Box 46, Immigration Legislation, 1957 (4) and Joseph Swing, handwritten memo, July 19, 1957, Immigration Legislation, 1957 (2), in *ibid.* Eisenhower Presidential Library.

Still, the new law did make the first overtures toward clearing the backlog of oversubscribed quotas, marking a sharp divergence from earlier attempts at reform. The Act granted nonquota status to anyone in the 1st, 2nd, or 3rd preference category with an approved petition prior to July 1, 1957. Notably, it did nothing for 4th preference applicants.³⁹ “This bill is a compromise,” stated Eastland from the floor of the Senate, “it does not touch the basic provisions of the McCarran-Walter Act.” The bill, according to Eastland, was “designed to relieve certain hardship conditions which have arisen in the administration of that act,” specifically the preference backlogs.

Liberals like John O. Pastore (D-RI), pointed out that while around 60,000 people would be admissible under the terms of the bill, it did “not measure up to all my hopes” for more substantive change. Pastore did however point to what he felt was the most pressing change, arguing that the 1957 Act “is praiseworthy in its fundamental purpose – to reunite families.” This central goal – of reunification – was a far cry from its refugee-escapee title. Even Senator Kennedy, sponsor of the bill, lamented the fact that the bill did not “go to the heart of what many of us believe are critical weaknesses in our immigration policy,” namely the national origins quota system. Still, this first clearing of the family preference backlogs marked a significant departure from defenses of the quota system, and this clearing would only open to the door to future clearings as the waiting times only continued to grow.⁴⁰

THE FAMILY DEBATE OUTSIDE OF CONGRESS

The discussion over immigration reform and family admissions in the mid-1950s also took place within the public sphere. In March of 1955, Francis Walter appeared on Edward R. Murrow’s program *See It Now*. Murrow opened the show by quoting Eisenhower’s stump speech on immigration, which labeled the quota system as discriminatory, and called for reform. Walter defended the 1952 law, stating that “it has accomplished much that we hoped would be accomplished,” and downplayed its racial underpinnings.⁴¹ In seeking to defend his law against criticism from those like Archbishop Richard J. Cushing of Boston, who stated that the law was “outmoded and out of harmony with the humanitarian, democratic aim of our current domestic and foreign policies,” Walter drew on the plight of the family. He responded that “it has been

³⁹ Stephen Wagner argues that Walter realized that if nothing was done to clear the backlogs in countries like Italy, then he would only invite more criticism of the 1952 Act and quota system. He also points out that Walter allowed for only the most pressing changes to be made to the system, “as a safety-valve” for the type of pressures that might have built up and destroyed the quota system as a whole. Wagner, “Lingering Death,” 329. Anecdotal evidence suggests that with the backlog of 1st through 3rd visas cleared, some 4th preference applicants did manage to gain entry. See: John F. Kennedy to Angela Marino, April 3, 1958, JFK Pre-Presidential Papers, Senate Files, Box 695, Immigration 2/10/58-5/14/58, JFK Presidential Library.

⁴⁰ *Congressional Record*, 85th Congress, 1st Session: 15487, (both Pastore quotes on) 15497, and 15498.

⁴¹ In fact, Walter stated that the system “doesn’t prefer one group over another. It merely states that according to the percentages, the Anglo-Saxons were given a larger percentage because there was a larger percentage of the type of people who came here during that time, and that’s only accidental.” *See It Now*, March 8, 1955, Vol. 4 #27, Show Transcript, 6. RG 46, Sen.86A-F12.1, Box 3, I&N Act – Provisions (Gen) 1 of 2, NARA I.

the policy of the committee of the Judiciary, ever since I have been a member of it, to endeavor to reunite families, and I am sure that the record will show that.” Here Walter pointed to the presence of reunification policies as a way to sidestep the inequalities of the quota system.⁴²

Members of the bureaucracy would also portray family reunification as one of the main pillars of immigration policy. In a 1955 speech to the American Immigration Conference of the National Conference of Social Work, Frank Auerbach of the State Department’s Visa Office, one of the key drafters of immigration legislation in the Eisenhower Administration, ranked reunion as on par with the two other main policies that he saw as underpinning the entire immigration regime: the national origins quota system, and the policy of granting nonquota status to the Western Hemisphere.⁴³

By 1958 then a few significant factors with regard to family reunification and national origins had become clear: most reform proposals called for a modification of the quota system, rather than wholesale revision; powerful restrictionists like Walter and Eastland blocked any attempt to broaden entry requirements, even as they drew on the language of family to support the quota system; and nothing had been done to alleviate the burdens of 4th preference applicants. But, as Roderic O’Connor, who took over as Administrator of the State Department’s SCA, argued in a 1958 speech, “Congress has been traditionally motivated by the humane purpose of reuniting families,” pointing to the large number of quota and nonquota slots available for family. “This family relationship,” O’Connor continued, “has also been an important factor which motivated the special legislation last year,” i.e. the Refugee-Escapee Act. It is important to note that the individual in charge of all things immigration and refugee related at the State Department recognized family as the most prominent aspect of immigration policy.⁴⁴

Addressing rising concerns over the 4th preference, John F. Kennedy issued a press release on the Refugee-Escapee Act in 1958 entitled “Nine Months of Experience with the ‘Reunion of Families’ Legislation.” The document began with the fictional story of an Italian immigrant who receives a visa, but is unable to obtain one for his father, mother or brothers. Kennedy argued that the 1957 Act “is not and was not intended as a complete solution to the many problems of the McCarran Act or the overpopulation in foreign countries,” and reminded readers that while the new law might have helped this fictional immigrant bring in his mother and father, his brothers had no recourse to entry. Kennedy closed his story by stating definitively that “all Americans react instinctively against the disruption of families,” and pushed for new legislation to solve the sibling problem.⁴⁵

In Kennedy’s press release, as in the Refugee-Escapee Act’s clearing of 1st through 3rd preference categories, the first stirrings of change are visible. Presciently, Frank

⁴² *Ibid.*, 3, 11, and 17.

⁴³ Department of State Press Release, “Immigration Today.”

⁴⁴ Department of State, Press Release, “Address by Roderic L. O’Connor, Administrator, Bureau of Security and Consular Affairs, Before the National Council on Naturalization and Citizenship, “Our Immigration Policies and the International Scene,”” 2. RG 21-001, Box 27 Folder 23, AFL-CIO Records.

⁴⁵ “Nine Months of Experience with the “reunion of Families” Legislation”, undated, JFK Pre-Presidential Papers, Senate Files, Box 767, Immigration, 9/17/56-7/11/58, JFK Presidential Library. Quotes on pg. 5.

Auerbach of the State Department's Visa Office opined that "one shot" attempts to clear backlogs, as in 1957, "would no doubt lead to subsequent pressures by interested groups to have such aliens with later dates of approval also declared nonquota immigrants." Like earlier challenges to the quota regime, the latter ones, as Auerbach correctly intuited, would focus on the family preference categories.⁴⁶

Widening Gaps in the Family Preferences, 1959-1962

From 1959 to 1962 the pace of reform quickened, with legislative efforts building upon the Refugee-Escapee Act by continuing to clear the visa backlog created with the McCarran-Walter Act. Three Acts, in 1959, 1961, and 1962,⁴⁷ allowed for those on the waiting lists to convert to nonquota status. Taken together, these bills did not amount to a permanent revision of the preference system or national origins quotas, but they did galvanize liberal opposition to the quota system, and provided a stress point in the restrictionist position. While full reform of national origins could not be achieved until 1965, by 1962 the stage had been set for change – no longer *revision* of the preferences, as had been attempted under the Eisenhower Administration, but rather a wholesale scrapping of the older immigration regime. Notably, while quota pooling again failed to pass during this period, Walter himself would offer a pooling proposal in 1961, a stark indication of the changing times. By 1963 when Walter died, the stage had been set for wider reform of immigration policy.⁴⁸

COMPREHENSIVE REFORM AND FAMILY REUNIFICATION

As in the earlier era, the 1959 to 1962 period saw a slew of attempts at comprehensive reform, including a last-ditch effort by the Eisenhower administration in 1959 (S.2718) to enlarge the number of admissions per year, by changing the base year for the quotas from 1920 to 1950, and by increasing the total number of visas. Other attempts at reform in 1959 included bills by Senator John F. Kennedy (S.1996), Senator Hubert Humphrey (D-MN) (S.952), and Senator Jacob Javits (R-NY) (S.1919). Most contained variations on the Administration's proposal, and attempted to introduce quota pooling; none emerged from committee.⁴⁹

⁴⁶ The 1957 reform also ushered in a major fixture of postwar immigration reform: greater interest and ethnic group lobbying. Eisenhower deputy Maxwell Rabb in particular, in the midst of trying to pass the Administration's reforms in 1957, suggested the enlistment of these exact forces to neutralize Francis Walter. Frank Auerbach to Robert McCollum, "Proposed modification of Quota Pool Provisions of Administration Bill"; Maxwell Rabb to Governor Adams, March 19, 1957, Gerald D. Morgan Records, Box 14, Immigration and Naturalization (1), Eisenhower Presidential Library.

⁴⁷ Act of September 22, 1959 (73 Stat. 644), Act of September 26, 1961 (75 Stat. 650), and Act of October 24, 1962 (76 Stat. 1247).

⁴⁸ Michael Gill Davis also points to this pooling proposal as an attempt to beat reformers at their own game. Michael Gill Davis, "The Cold War, Refugees, and United States Immigration Policy, 1952-1965," Ph.D. Diss., Vanderbilt U. 1996, 234

⁴⁹ Hutchinson, *Legislative History*, 338-344.

Kennedy's bill in particular, S.1996, provides a window into the immigration politics that would become dominant in the 1960s. His legislation proposed a new preference structure that would raise the ceiling on immigration from 150,000 to 250,000, and allot 60 percent of all visas to family reunification, defined as anyone through the third degree of relation (including siblings, grandparents and great-grandparents, grandchildren and great-grandchildren, aunts, uncles, nieces and nephews) to both citizens and permanent residents. S.1996 contained one of the most expansive definitions of family reunion in the postwar era, and one of the first to allot more visas to family than employment categories.⁵⁰ This shift to an expansive family reunion paradigm would, ostensibly, work to fix the backlog of 4th preference migrants. The bill also proposed giving nonpreference entry, outside of numerical limitations, to husbands, wives, children, and parents of citizens *and* legal permanent residents. Parents of citizens had been included under the 1952 preferences, but not allotted nonquota entry. This change to the parents' category would ultimately end up in the Hart-Celler Act.⁵¹

Kennedy, like those on both the left and right throughout the 1950s, framed his support for the new bill by drawing on the history of family in immigration law, stating that "it will make our immigration laws consistent with American traditions and principles," by "reunite[ing] families long separated by arbitrary eligibility standards." The AFL-CIO threw its support behind the bill, though other institutions such as the Department of Justice instead pushed for the Eisenhower proposal. S.1996 ultimately failed, but it illustrates just how far the future president would go to put family reunification at the center of a new immigration regime.⁵²

The 87th Congress (1961-1962,) saw a new set of reform proposals that failed to pass, most notably a 1961 proposal from Francis Walter (H.R. 6300) to introduce quota pooling, something he had previously vehemently opposed.⁵³ Senator Philip Hart, a future co-sponsor the 1965 legislation, also put forth a reform proposal in 1962, which, like Kennedy's earlier bill, called for 60 percent of all visas to go to reunion, and for an increase in the total number of slots to 250,000. Kennedy would write to Judge Juvenal Marchisio of the American Committee on Italian Migration in 1961 that "the most important immediate objective of immigration policy is the reuniting of families." "We have a social obligation to bring these families together," Kennedy continued, and proposed allotting unused quota slots for reunion. By 1962 then, as family preference backlogs built up, the major liberal reform bills, as well as the President's own thinking,

⁵⁰ Press Release, "Senator Kennedy Introduces Three Point Immigration Program," May 18, 1959. JFK Pre-Presidential Papers, Senate Files, Box 630, 86th 1st Immigration: General Revision S. 1996, JFK Presidential Library.

⁵¹ Even today, spouses and children of legal permanent residents do not receive nonpreference entry.

⁵² "Senator Kennedy Introduces Three Point Immigration Program." On the AFL-CIO support, see AFL-CIO News Service, "Liberalize and Humanize Immigration Policies, AFL-CIO Urges," July 1, 1959. RG21-001, Box 27, Folder 26, AFL-CIO Records. On the Department of Justice's views, see: Lawrence Walsh to James Eastland, December 18, 1959. RG46, Sen.87A-E12, Box 28, S.1996, NARA I.

⁵³ One Eisenhower Administration memo in particular, written by Maxwell Rabb, stated explicitly that Walter would accept some reforms, "as long as nothing [was] done about unused quota numbers." Handwritten memo, undated. Maxwell Rabb Papers, Box 46, Immigration Legislation, 1957 (4), JFK Presidential Library.

trended toward allotting a greater percentage of visas to family reunification than any other category.⁵⁴

BACKLOGS AND CRACKS IN THE NATIONAL ORIGINS CEILING

Even while comprehensive reform efforts continued to fail, the issue of expanding backlogs remained on the Congressional radar. As Frank Auerbach correctly intuited in 1957, the initial clearing of the waiting lists that began in 1957 with the Refugee-Escapee Act only led to further clearings. Two years after the passage of the Refugee-Escapee Act, in September of 1959, Congress passed a new law designed to liberalize the quotas. The Act⁵⁵ made two major changes: it doubled the number of admissible 4th preference immigrants (siblings of U.S. citizens) to 50 percent of all unused quota visas per year. Second, and more importantly, it allowed anyone who had registered for a family preference visa (2nd through 4th) prior to December 31, 1953, to enter immediately outside of numerical restrictions.

While the 1957 Refugee-Escapee Act had allowed only those people waiting for 1st through 3rd preference visas to enter, conservative legislators had blocked proposals to grant nonquota status to 4th preference migrants. Emanuel Celler, speaking on this historical disregard, argued that with the 1959 legislation, “we, once again, emphasize the moral importance of reuniting families...we have most unfortunately ignored the fourth preference category where the waiting has been hardest and longest.”⁵⁶

Francis Walter agreed with Celler’s underlying rationale, arguing in a 1959 letter, that the main purpose of new law was “to expedite the reuniting of certain separated family units.” Unlike Celler though, he argued that “this legislation could in no way be regarded as contrary to the letter and the spirit of the Walter-McCarran Act,” and that “no person who would not come to the United States in the course of time anyway,” would be admitted. But while Walter viewed the change as hewing to the spirit of the 1952 Act, the fact that a second reform (following the 1957 law) had to be made to admit backlogged family members, spoke to a growing problem in immigration affairs. Congressman Peter Rodino (D-NJ) also spoke to this disconnect, stating that “by passing this bill we show once again that America, even though she operates through the cold quotas and figures of the Immigration and Nationality Act, is willing to change those figures where human suffering is at stake.” By 1961, 28,093 people had been admitted under the new law, with 16,742 from Italy alone.⁵⁷

⁵⁴ Hutchinson, *Legislative History*, 351-357. John F. Kennedy to Juvenal Marchisio, April 25, 1961. White House Staff Files of Ralph A. Dungan, Box 1, Immigration, JFK Presidential Library.

⁵⁵ Public Law 86-363, Approved September 22, 1959.

⁵⁶ “Statement of Representative Emanuel Celler on H.R. 5896,” July 6, 1959. Emanuel Celler Papers, Box 492, Immigration – General, 1952-1958 (2), Library of Congress.

⁵⁷ Department of State numbers for admission under the Act of September 22, 1959 quoted in: Walter Besterman to Ruth Miskell, May 22, 1961. RG 233, 87th Congress, Box 261, HR 11911 (2 of 3), National Archives; Francis Walter to G.A. Smith, October 28, 1959. Francis Walter Papers, Carton 21, H.R. 5896, Lehigh University Archives; *Congressional Record*, 86th Congress, 1st Session: 18996.

Still, while the 1959 Act marked a step toward resolving the backlogs, it admitted only those waiting six years or longer for entry. In September 1961, at the end of a technical bill⁵⁸ defining eligible orphans and nonquota status petitions, Congress allowed for all remaining 2nd and 3rd preference petitions filed prior to July 1, 1961 to be converted to nonquota status. According to Senator James Eastland, just over 18,000 people would benefit, mainly from China, Greece, Italy, and the Philippines.⁵⁹

In 1961, as in 1959, Francis Walter framed the bill not as a substantive revision, but rather as part of “the Judiciary Committee’s continuous observation and studies of the administration of the basic immigration code.” Once again Walter stressed that only those who would have ultimately been admitted (albeit with long delays,) would enter. These technical changes came about, according to Walter, not because of the *failures* of the quota system, but rather from the routine endemic necessary for any admissions system.⁶⁰

Here again, while congress recognized the necessity of doing something to clear the backlog of family members waiting to immigrate, they stopped short of admitting further 4th preference applicants. Notably, liberal Senators from both sides of the aisle, including John Pastore, Philip Hart and Jacob Javits (R-NY) expressed their disappointment at the continued lack of comprehensive reform. Javits in particular called out Eastland and Walter, arguing that “the fact remains that by means of these procedures we are foreclosed from doing other than the limited things the chairmen...believe should be done in connection with immigration matters.” All three Senators would note that both Eisenhower and Kennedy had unsuccessfully called on Congress to change the admissions system, and pointed to the series of piecemeal reforms that they continuously had to pass to resolve the backlogs.⁶¹

With over 170,000 people worldwide waiting for 4th preference visas by 1962, an unlikely duo – conservative Francis Walter and liberal John Pastore now introduced a bill directly targeting the group.⁶² Though they entitled the 1962 bill “to facilitate the entry of alien skilled specialists and certain relatives of US citizens, and for other purposes,”⁶³ the Act first and foremost dealt with the 4th preference. “Each year in the Congress,” began Pastore, introducing the bill,

⁵⁸ Public Law 87-301, Approved September 26, 1961.

⁵⁹ Eastland estimated that 6,979 people would enter under the 2nd preference, and 11,040 under the 3rd, including: 1,575 from China, 408 from Jamaica, 1,761 from Greece, 855 from Hungary, 8,156 from Italy, 415 from Japan, 1,085 from the Philippines, 521 from Portugal, and 522 from Yugoslavia. *Congressional Record*, 87th Congress, 1st Session: 19650.

⁶⁰ *Congressional Record*, 87th Congress, 1st Session: 18283 and 18285.

⁶¹ Javits in particular voiced his frustration and an unwillingness to compromise on anything short of wholesale reform, stating that “we are not “chipping away”...at anything fundamental.” Pastore responded by saying “eighteen thousand does not satisfy the Senator from Rhode Island. I would like to see it 180,000; but just because I would like to see it 180,000 does not mean I would not take 18,000 now or take nothing.” *Congressional Record*, 87th Congress, 1st Session: 19653-19655.

⁶² S. 3361 and HR 11911. Public Law 87-885, Approved October 24, 1962. Statistics from: Department of State, “Quota Immigrants Registered Under Oversubscribed Quotas.”

⁶³ The bill contained a provision to clear 1st preference backlogs, allowing an estimated 6,900 skilled and professional Chinese workers already approved for visas into the country.

we have been able to achieve some liberalization of our immigration laws. Each year we have a feeling that we have not done quite enough – but we do make gains which we feel improves the image of America in places where we desire friends.

Crucially, while even Francis Walter now felt it necessary to do something about the backlog, once in committee, restrictionists worked to limit the number admissible. As introduced by Pastore and Walter in May of 1965, the bill granted nonquota status to anyone registered on a waiting list prior to December 31, 1954, advancing by one year the cutoff date of the 1959 Act. Congressional memos estimated that approximately 65,000 people would benefit, 52,000 of them from Italy, (though from the floor of Congress, Pastore mentioned a far smaller number, of only around 15,000 Italians.) During the committee hearings, restrictionists first proposed a cut-off date of June 30, and ultimately succeeded in pushing the date back even further, winning a March 31 cap. This change, from December to March, reduced the estimated number of immigrants to fewer than 17,000. The need to remedy the preference backlog here is clear; equally clear is Congressional intent not to admit too many siblings. And, as in the previous year, Senators and Congressman expressed their exasperation at the lack of full-scale change. More substantial admissions would await comprehensive reform in 1965.⁶⁴

FRANCIS WALTER AND THE DEFINITION OF FAMILY REUNION

While most legislators during the period left their appeals to the need for family reunion vague, purposefully declining to pin down an exact definition of who qualified as an eligible family member, Francis Walter provided an explicit definition in a 1962 letter to the president of the United-Italian American Labor Council. Walter strongly rejected calls to admit greater numbers of 4th preference applicants under quota legislation. He differentiated between the parents and children of an individual who belong to a single family unit, and 4th preference applicants, “who deserve some preferential treatment although less favorable than those who belong to separated family units.” By amending the law to allow all 4th preference immigrants into the United States as nonquota immigrants, Walter estimated that as many as 158,000 people would enter the country as *new family units*, outside of the support and employment structure of established family structures. “Fourth preference categories,” concluded Walter, “most definitely [do] not belong in the notion of “family reunion.”⁶⁵ As far as I can tell, Walter’s letter is the only explicit definition of the rationales behind family reunion from the postwar period. Here Walter provided a concrete distinction, based on an arguably sound distinction between single and new family units.

The heavily labor- and welfare-centric rhetoric of Walter’s 1962 letter contrasts sharply with the language used by conservative politicians supporting the 1952 Act, illustrating

⁶⁴ *Congressional Record*, 87th Congress, 2nd Session: 9448-9449. On estimates of the numbers to be admitted, see the series of undated, unsigned memos in the Senate file on S.3361, RG 49, 87th Congress, Judiciary Committee, Box 40, National Archives. See also: HR 11911 (2 of 3), RG 233, 87th Congress, Judiciary Committee, Box 261, National Archives.

⁶⁵ Walter to Antonini, January 22, 1962.

how far reform had travelled in a decade. One committee report on the McCarran-Walter Act in 1952 spoke of national origins as “a rational and logical method of numerically restricting immigration...to best preserve the sociological and cultural balance in the population.”⁶⁶ This shift away from a language of maintaining population “balance” and toward less overtly discriminatory categories such as labor and family signaled the turning point away from race and national origins.⁶⁷

It is important to note that Walter’s motivations for restricting 4th preference admissions may not have been entirely pure, especially given his longstanding bias against admitting Italian immigrants.⁶⁸ Nevertheless, his memo stands as an important vantage point to discern the shift toward reform. In hindsight it is clear that Walter’s rationale for blocking 4th preference applicants lost out: the 1965 Act granted more visas to brothers and sisters (24 percent) than any other category. Certainly the over 100,000-person backlog of Italian 4th preference applicants played a role in this shift. Additionally, the fact that Walter felt the need in 1962 to so strongly define his position on family reunification to an Italian lobby group attests to the growing power of these forces in immigration politics.

Taking the ten-year view of the McCarran-Walter preferences points to the inherent weaknesses of the 1952 system. The creation of a 4th preference category with no actual allotment established the *possibility* of receiving an immigrant visa, without the corresponding ability to have that visa fulfilled. By 1954 alone, State Department memos make clear that the total number of preference backlogs (for all categories) had reached 70,000 people, while a 1958 memo from Joseph Swing, the commissioner of the INS stated that since 1952, 116,320 4th preference visas had been approved, but only 15,173 people had been admitted. Of those still waiting for visas, he estimated that Italians constituted roughly 90,000. Even in 1958, Swing recognized the danger of an unfunded 4th preference category. Addressing the various one-off proposals to clear the backlogs, (such as the Refugee-Escapee Act,) he instead suggested comprehensive reform, proposing that the 4th preference receive a fixed allotment of 10 percent. Simply clearing the backlogs would not only fail to solve the problem but could also potentially create an even larger backlog, as those admitted laid the foundations for future chain migration.⁶⁹

⁶⁶ Quoted in: Marion T. Bennett, *American Immigration Policies, a History* (Washington: Public Affairs Press, 1963), 124

⁶⁷ This is not to say that labor and family preferences were wholly egalitarian. Labor preferences in 1952, for example, allowed conservatives to further restrict immigration from southern and eastern Europe, where the majority of immigrants were unskilled laborers. See: Bennett, *American Immigration Policies*, 120-121.

⁶⁸ Maxwell Rabb stated in confidential administration memos in 1953 that Walter had a particular dislike for Italians, blaming them for his electoral difficulties. “Chronological Record of Immigration Hearings,” undated, Maxwell Rabb Papers, Box 46, Immigration Hearings, Chronological Record, Dwight Eisenhower Library, 4.

⁶⁹ Scott McLeod to General Persons, “Legislative Support for Refugee Relief Program”; Joseph Swing to Gerald Morgan, November 26, 1958. Gerald D. Morgan Papers, Box 14, Immigration and Naturalization (1), Dwight Eisenhower Library. In the State Department’s analysis of the 1962 bill to partially clear the backlog (S.3361, Public Law 87-885 Act of October 24, 1962,) Assistant Secretary Frederick Dutton echoed Swing’s sentiment, calling for permanent legislation to solve the backlog problem, rather than piecemeal efforts. Dutton suggested a quota-pooling scheme to allow unused visas to be given to

On the eve of Francis Walter's death in 1963, when reform efforts would kick into high gear, legislators had two models of caution when dealing with the long backlogs that had developed. On the one hand, as Swing argued, failing to create a fixed mandate for a preference category would only exacerbate tensions among pressure groups, and could ultimately create even larger backlogs. On the other hand, as Walter's memo makes clear, fourth preference applicants had a different connection to reunification than did immediate relatives such as parents, children, and spouses. But even with these warning signs, by the mid-1960s the course of reform had pushed legislators to focus on the siblings' category above all else, and this preference would emerge as the centerpiece of the Hart-Celler Act in 1965.

Passing Hart-Celler, 1963-1968

By 1963 the stage had been set for reform, though it would take two more years for a new law to be passed. A number of changes opened the door for reform. On May 31, 1963, Francis Walter died, and less than two months later, the Kennedy administration submitted its reform bill to Congress (H.R. 7700). Kennedy had been elected on a platform calling for immigration reform, and immigrants and their descendants proved crucial to his election. In addition, the sweeping Democratic Congressional majority in 1964 aided reform efforts, as did the strong efforts of President Johnson. A buoyant economy; the decline of nativist group opposition, and the rise of ethnic group lobbying; and the shifting of organized labor from anti- to pro-immigration, also contributed.⁷⁰

As a sign of the new era, prior to the submission of H.R. 7700, Senator Everett Dirksen (R-IL) put forth a proposal for quota pooling, with four regional pools. Though quota pooling had been the center of many reform efforts in the past, including that of the Eisenhower administration in 1956, Norbert Schlei of Department of Justice's Office of Legal Counsel now argued that supporting such a proposal "would perpetuate and enlarge upon the discrimination against non-whites which is effected by the existing system of quotas." More importantly, supporting pooling would hurt chances to fully eliminate discrimination in immigration policy. President Johnson echoed this sentiment in his January 1965 message to Congress, when he argued that the quota system "impl[ies] that men and women from some countries are, just because of where they come from, more desirable citizens than others." Reformers would now tolerate only a full removal of national origins.⁷¹

oversubscribed quotas. Department of State to James O. Eastland, August 3, 1962. RG 49, 87th Congress, Judiciary Committee, Box 40, S. 3361.

⁷⁰ On the impetuses for reform, see: Zolberg, *Nation by Design*, 329-333; Reimers, *Still the Golden Door*, Chapter 3; Tichenor, *Dividing Lines*, Chapter 7; and Daniels, *Guarding the Golden Door*, Chapter 7.

⁷¹ Norbert Schlei to Myer Feldman, May 27, 1963 "Re: Proposals to Utilize Unused Immigration Quotas by Establishing a "Continental Quota" System," White House Central Files, Subject File, Box 482, LE/IM Executive, JFK Presidential Library; Press Release, January 13, 1965. Abba Schwartz Papers, Box 6, Proposed Immigration Legislation Press Releases 1/65-2/65, JFK Presidential Library.

Legislators working to pass Hart-Celler focused their attention generally on eradicating the national origins system, and more specifically on helping those European countries that had borne the brunt of national origins discrimination. State Department memos from 1965 indicated that over 260,000 people languished on oversubscribed lists in Italy, Greece, Portugal, and Poland alone. These same memos made it clear that the Administration consciously tailored its reform proposals to help these countries first and foremost. As Lyndon Johnson would write to the umbrella lobby group the American Committee on Italian Migration in 1963, “there is no consistency in an American policy that...capriciously bars immigration from countries of Southern Europe.” To remedy the situation he proposed that “special consideration should be given to the re-uniting of families.” Here the history of preference categories, waiting times, and small individual fixes to the quota system all tilted reform toward the family preference categories.⁷²

While earlier bills from Senators Kennedy and Hart had proposed giving 60 percent of all visas to family reunification categories, the Administration’s original proposal followed the McCarran-Walter Act’s provisions by giving equal weight to labor and family classes.⁷³ The legislation proposed abolishing the quota system after five years, and in the interim transition period gradually reducing the quotas by 20 percent each year. These extra slots, as well as any unused visas, would be put into a pool to be used by oversubscribed countries.⁷⁴ First preference under the new system, with 50 percent of all visas, would go to skilled and urgently need labor, with the second and third preference for relatives of citizens and legal permanent residents. The bill also included parents of citizens in nonpreference status (i.e. eligible for admissions outside of numerical limitations,) and placed a 10 percent cap on any one country’s visa usage per year. With Kennedy’s assassination in 1963 Congressional debate carried over into the second session of the 88th Congress in 1964.⁷⁵

⁷² Department of State, Bureau of Security and Consular Affairs, “Effect of Proposed Legislation on Selected Quotas”, February 1, 1965. Abba P. Schwartz Papers, Box 6, Proposed Immigration Legislation Press Releases, 1/65-2/65. JFK Presidential Library. The “selected” quotas comprised only Italy, Greece, Poland, Portugal, Spain, and Yugoslavia; LBJ telegram to Honorable Paul Douglas c/o Joseph DeSerto, December 12, 1963. WHCF, Immigration-Naturalization, IM Box 1, IM 11/23/63-7/31/65, LBJ Presidential Library.

⁷³ An earlier proposal by Abba Schwartz, the State Department’s Administrator of Security and Consular Affairs, had suggested giving the President the power to split the entire yearly quota between the four categories of family reunion, labor, refugees, and new seed immigrants, with no country utilizing more than 15 percent of the total. Abba Schwartz to Myer Feldman, June 14, 1963. RG 233, 88th Congress, Judiciary Committee, Box 58, HR 7700 (1 of 12), NARA I.

⁷⁴ As JFK would write in a letter to Congress in July of 1963, introducing his legislation, “The national origins system has produced large backlogs of applications in some countries, and too rapid a change might, in a system of limited immigration, so drastically curtail immigration in some countries the only effect might be to shift the unfairness from one group of nations to another.” Thus he proposed a transition period to regulate the flow. “Immigration” Hearings before Subcommittee No. 1, of the Committee on the Judiciary, House of Representatives Eighty-Eight Congress, Second Session on H.R. 7700 and 55 identical bills to Amend the Immigration and Nationality Act, and for other purposes,” 285.

⁷⁵ See: Hutchinson, *Legislative History*, 357-366 and Department of State, Bureau of Security and Consular Affairs, “Summary of the Major Provisions of the President’s Immigration Bill Submitted to Congress January 13, 1965,” January 13, 1965. Abba P. Schwartz Papers, Box 6, Proposed Immigration Legislation Press Releases, 1/65-2/65, JFK Presidential Library.

The Johnson Administration continued to push for an immigration reform bill throughout 1964, to no avail. In an effort to sway interest groups to the cause of immigration reform, President Johnson met with representatives of a number of voluntary organizations in January of 1964. Speaking on the proposed new criteria for admission, Johnson laid out four questions “What is the training and qualification of the immigrant?” “What kind of a citizen would he make?” “What is his relationship to persons in the United States? And “what is the time of his application?,” rules that Johnson stated “are full of common sense, common decency, which operate for the common good.” Instead of using place of birth to determine entry, Johnson proposed a first-come, first-served system based on skill level and family ties. The Johnson Administration, as well as Congressional leaders such as Emanuel Celler, attempted to shepherd the bill through Congress, but Senator Eastland and Congressman Michael Feighan (D-OH), chairman of the House Judiciary Subcommittee on Immigration, slowed the process to a halt through a series of never-ending hearings.⁷⁶

At the beginning of January 1965, Emanuel Celler and Philip Hart introduced a new reform bill (H.R. 2580, S.500), a slightly modified version of H.R. 7700. President Johnson once again outlined his vision for reform in a message to Congress in January of 1965. “Thousands of our citizens are needlessly separated from their parents or other close relatives,” stated Johnson. To remedy this situation, he proposed a system that relied upon the skill-level of the immigrant, as well as “the existence of a close family relationship between the immigrant” and those living in the U.S.⁷⁷ Though the President would rank labor needs as the most important immigration preference, followed closely by family, others in the administration, such as Abba Schwartz of the State Department argued in 1965 that in terms of immigration reform, “first of all there is urgency in terms of simple humanity. Under present law, we are forcing families to be separated, and in some cases, mothers must choose between America and their children.” Schwartz was one of the key Johnson advisors drafting immigration legislation, and so even if the President’s proposals themselves focused on skills first and foremost, the rhetoric surrounding the Act – even from within the administration – increasingly privileged family reunion.⁷⁸

While committee hearings appeared to be moving forward, in June of 1965 Michael Feighan proposed his own substitute bill, which allotted the majority of visas to family categories, and substantially limited labor admissions. Abba Schwartz, one of the chief architects of President Kennedy and Johnsons’ immigration policy, has argued that while Kennedy had a comprehensive immigration plan, Johnson concerned himself more with dismantling national origins, ostensibly allowing him to compromise on the new

⁷⁶ “Remarks of the President to Representatives of Organizations Interested in Immigration and Refugee Matters,” January 13, 1965. Statements of LBJ, Box 93, 1/13/65 Remarks of the President, LBJ Presidential Library.

⁷⁷ Press Release, January 13, 1965. Abba P. Schwartz Papers, Box 6, Proposed Immigration Legislation Press Releases, 1/65-2/65, JFK Presidential Library.

⁷⁸ “Address by Abba P. Schwartz, Administrator, Bureau of Security and Consular Affairs,” April 1965, 1. Abba P. Schwartz Papers, Box 9, Speech 4, 1965 (1), JFK Presidential Library.

preference structure.⁷⁹ Not all in Congress were happy with the change, and Celler in particular lamented the loss of economic focus. But as in 1952, while Congress argued the merits of ending national origins, and on whether or not to remove the historical exemption of the western hemisphere from quota restrictions, they devoted no time to the revised preference structure.⁸⁰

The new bill set a ceiling of 170,000 total visas, and a new preference structure with seven categories (table 3.4).⁸¹ Notably, Feighan’s plan reduced labor categories to only 20 percent of the total number of visas, and allotted just under three-quarters (74 percent) to all family reunification categories. The brothers and sisters of U.S. citizens, which had received no visas under McCarran-Walter Act, now received the largest share, with 24 percent. Furthermore, the system added the parents of citizens, hitherto receiving only preference status, to nonpreference, immediate entry. Finally, the new system placed a cap of no more than 20,000 visas per year from any one sending country.⁸²

Table 3.4: The Hart-Celler Preference System

Nonpreference Status	Spouses, parents, and children of citizens (without limitation.)
1 st Preference	20% of all visas to unmarried sons or daughters of citizens over the age of 21.
2 nd Preference	20% of all visas to spouses and unmarried children of permanent residents.
3 rd Preference	10% of all visas to highly skilled and professional workers.
4 th Preference	10% of all visas to married sons or daughters of citizens over the age of 21.
5 th Preference	24% of all visas to the brothers and sisters of citizens.
6 th Preference	10% of all visas to skilled and unskilled labor in urgently needed fields.
7 th Preference	6% of all visas to refugees.

The substitution of family for labor is not surprising, given the long history of legislative proposals in the 1950s and early 1960s in favor of greater numbers of family admissions. Even Representative Harold Ryan (D-MI), a co-sponsor of the Administration’s bill, wondered aloud on the floor of the House in 1964, “sometimes I think perhaps [skills] should be the second basis, and the first one should be given to close relations of the U.S. citizens and resident aliens.” Many of the witnesses before Michael Feighan’s immigration hearings ranked family reunification as the most important admissions

⁷⁹ *Ibid.*, 366-379; Reimers, *Still the Golden Door*, 73-80; Abba P. Schwartz, *The Open Society* (New York: William Morrow & Company, Inc., 1968).

⁸⁰ Undated, Summary of H.R. 8662 with Celler’s handwritten notes, Emanuel Celler Papers, Box 482, H.R. 8662, 89th Congress, Library of Congress, Pg 2.

⁸¹ The Act created a separate quota of 120,000 for the western hemisphere, not subject to the preference system.

⁸² Note that as originally proposed, Feighan’s H.R. 8662 allotted only 20 percent of visas to brothers and sisters, and 10 percent to refugees. The Congressional committee decided to scale back the number of visas given to refugees to 6 percent, and gave the remaining 4 percent to brothers and sisters. See: H.R. 8662, RG 233, 89th Congress, Judiciary, Box 112, HR 8662, NARA I.

preference, while even ardent opponents of national origins such as Peter Rodino worried that giving first preference to skilled labor would exacerbate the brain drain, and jeopardize foreign policy. “All too often,” stated Senator Leverett Saltonstall (R-MA), “we must report to our constituents the discouraging news that delays, often of many years’ duration, must be anticipated before families can be brought together.” As they had since the passage of the McCarran-Walter Act, legislators drew on the rhetoric of family to expose the hardships and discriminations of the quota system.⁸³

Furthermore, substituting labor for family became a convenient way of removing racial discrimination from immigration law while (it was mistakenly believed,) not changing the flow or composition of immigration. Legislators believed that southern and eastern Europeans would be able to bring in their family members, while other groups, such as Asians, who had far fewer numbers in the country at the time, would make only minimal gains. Since the peoples of Africa and Asia have very few relatives here,” testified Celler, “comparatively few could immigrate from those countries.” Restrictionist Senator Sam Ervin (D-NC) agreed, stating that “the bill does not open the doors for the admission of all the people all over the face of the earth.”⁸⁴

The imposition of a 20,000-person per year cap on any sending country also impeded the possibility of explosive growth and served to assuage critics. These beliefs led President Johnson to proclaim at the signing of Hart-Celler, in one of the understatement of the century, “this bill that we will sign today is not a revolutionary bill...It will not reshape the structure of our daily lives.”⁸⁵ Interestingly, while legislators viewed family reunification as their primary concern, in a Gallup poll commissioned by the Johnson Administration in July of 1965, 71 percent of respondents stated that occupational skills should be the most important criteria for admitting new immigrants to the United States, while only 55 percent ranked “relatives in the U.S.”⁸⁶

⁸³ “Statement of Hon. Harold M. Ryan,” “Immigration,” 88th Congress, 2nd Session, 1964, 209; *Congressional Record*, 89th Congress, 1st Session, 1965: 24442; Wagner, “Lingering Death,” 397-399; Hutchinson, *Legislative History*, 366-379; Reimers, *Still the Golden Door*, 73-80.

⁸⁴ *Congressional Record*, 89th Congress, 1st Session, 1965: 21758 and 24780. The Japanese American Citizens League lamented this fact as well, in a letter entered into the *Congressional Record*: since the new laws would privilege family unification, and only a small number of Asians resided at the time in the United States, “it would seem that, although the immigration bill eliminates race as a matter of principle, in actual operation immigration will still be controlled by the now discredited national origins system.” *Ibid.* 24503.

⁸⁵ Gabriel Chin has argued that legislators knew that these changes would open the doors to renewed immigration, but set aside the knowledge in the fight to pass the bill. I agree that legislators had the pertinent information, but considering that they attempted to curb immigration from Latin America while not doing the same for Asia, I doubt they expected such drastic changes. Gabriel J. Chin, “The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965,” 75 *North Carolina Law Review* 273 (1996). More plausibly, Roger Daniels argues that Congress ignored ample demographic evidence about population growth in Latin America and Asia, “expecting the future to resemble the past.” Daniels, *Guarding the Golden Door*, 137. “President Lyndon B. Johnson’s Remarks at the Signing of the Immigration Bill, Liberty Island, New York, October 3, 1965.” Lyndon B. Johnson Library and Museum, <http://www.lbjlib.utexas.edu/Johnson/archives.hom/speeches.hom/651003.asp> (accessed 10/08/09).

⁸⁶ The margin of error and sample size is not stated. Hayes Redmon to Mike Manatos, July 21, 1965. White House Aide Files, Office Files of Mike Manatos, Box 8, Immigration, LBJ Presidential Library.

But while Congressional intent to retain the largely white and European character of immigration, and the relative weight of testimony before Congress, may help to explain why family won out over labor, it does not alone explain why legislators provided nonquota status to the parents of immigrants, and why they gave more visas to brothers and sisters than any other category. Here again, the long history of immigration reform efforts in the postwar era favored these two categories. “How can we, as Americans,” argued Congressman Peter Rodino in the 1965 debates, “explain to another American that his mother or father must wait years before coming to the United States, when there are countries with large quotas that go unused?”⁸⁷ Rodino’s statement harnessed the sympathetic power of family reunion to argue against the quota system, and mirrored President Eisenhower’s 1957 message on immigration reform, where Eisenhower spoke of the “moral principle” of keeping parents and children together.

And, just as the image of elderly parents kept away from their children helped liberal policymakers portray the negatives of the national origins system, the long backlog of brothers and sisters, as well as the numerous pieces of emergency legislation to provide nonquota status to those waiting for quota slots, pushed legislators to privilege brothers and sisters over all other groups. “This system inflicts cruel and unnecessary hardship on the families of many American citizens and resident aliens,” stated Representative William F. Ryan (D-NY), in 1964, “again and again they are deprived of the chance to bring brothers and sisters or other close relatives to this country.”⁸⁸

As Senator Edward Kennedy (D-MA) stated from the floor of the Senate in 1965, under the new bill, “high preference would be given to unmarried brothers and sisters of U.S. citizens.” In a separate speech, Kennedy argued that the “entire concept has been changed in the pending legislation to one emphasizing the reunification of families.” He then referenced the long backlogs in the second preference (the parents of U.S. citizens,) to argue that “it was because of these examples that such serious consideration was given...to the importance of the reunification of families.”⁸⁹ Here the confluence of speeches, lobbying, and legislation all pushed legislators to give nonquota status to parents, and to give large numbers of visas to brothers and sisters. Legislators drew on the hardship involved in keeping siblings apart, but never questioned, as Walter did in his 1962 letter to the United-Italian American Labor Council, the degree of the relationship. And, even though no one in the postwar era explicitly made the argument that siblings deserved a greater number of visas than any other group, the feedback loop in play elevated the category above all others.

IMPLEMENTING HART-CELLER, 1965-1968

While the Hart-Celler Act and three-year transition period after passage was supposed to clear the waiting lists, so that on July 1, 1968, when the Hart-Celler system went into full

⁸⁷ *Congressional Record*, 89th Congress, 1st Session, 1965: 21594.

⁸⁸ *Congressional Record*, 88th Congress, 2nd Session: 20190.

⁸⁹ *Congressional Record*, 89th Congress, 1st Session: 24775 and 24747.

effect, citizens from each country would stand on an equal basis to receive visas on a first-come, first-served basis, the backlogs in the preference categories continued. Two main factors inhibited the clearing of the backlogs: (a) the 20,000 person per year cap on each sending country went into effect immediately, stopping countries like Italy (which had well over 100,000 people waiting,) from clearing their rolls.

Additionally (b), demand for preference visas after 1965 only increased, skewing the original projections.⁹⁰ Mario T. Noto, Special Assistant to President Johnson, wrote in a letter to the Reverend Joseph Cogo of the American Committee on Italian Migration, that even in 1967, preference petitions for the siblings of citizens were backlogged to March of 1955. Furthermore, he stated that “natives of Italy are the only aliens for whom immigrant visas are now unavailable despite the fact that approved petitions were filed prior to July 1966.” And, while Noto did discuss the possibility of passing new emergency legislation to help Italy, he pointed out “legislation which would benefit natives of any single country by permitting such an influx of immigrants from that one country would be novel.” In the post-national origins immigration regime, the Johnson Administration shied away from plans that would appear to favor one nation over others.⁹¹

Abba Schwartz, one of the key architects of the Hart-Celler legislation, recognized the operational difficulties of the new preference system. “Many individuals, including myself,” stated Schwartz in his 1968 tell-all book about his time working with Presidents Kennedy and Johnson on immigration policy,⁹² “were highly skeptical of the preference system whose outline, in the main, was traceable to the Representative Feighan and the general willingness of the Administration to acquiesce to his views.” Specifically Schwartz took issue with the disconnect between demand for preference visas, and their allotment.⁹³

Table 3.5 lists the visa allotments, estimated annual demand, and estimated backlogs on the eve of Hart-Celler’s full implementation on July 1, 1968. The two most oversubscribed preferences were the 3rd preference, for professionals, (with demand close to three times the legal allotment,) and the 5th preference, for brother and sisters. Even

⁹⁰ Abba Schwartz, in a 1966 article reviewing the Hart-Celler changes, also argued that the exclusion of nonpreference applicants from using the quota pool would pose a problem, as after 1968, these applicants would have access to visa slots over new applicants from other countries. Schwartz concluded that the new strict labor certification provisions would drastically cut down on the number of nonpreference entries. Abba Schwartz, “The Role of the State Department in the Administration and Enforcement of the New Immigration Law,” *Annals of the American Academy of Political and Social Science*, 367 (Sep. 1966), 99-100.

⁹¹ Mario Noto to Joseph Cogo, September 8, 1967. White House Central Files, Immigration-Naturalization, Box 1, EX IM 9/1/67-8/31/68, LBJ Presidential Library. The Italian Embassy would also push the Administration to pass special legislation for the beneficiaries of 5th preference slots. See: Memo from the Italian Embassy, July 3, 1969. Emanuel Celler Papers, Box 482, HR 9112, To Amend the INA, Library of Congress.

⁹² Stephen Wagner states that there is evidence that the Johnson Administration sacrificed Schwartz to Congressional conservatives to pass the Hart-Celler Act. Thus the book, written in 1968, also represented an airing-of-grievances for Schwartz. Wagner, “Lingering Death,” 452-453.

⁹³ Schwartz, *The Open Society*, 1968, 129-132.

with over 44,000 slots left unused from the 1st through 4th categories, Schwartz estimated that there would still be over 100,000 people waiting, many of them from Italy. By contrast, out of 34,000 visas allotted to the first preference for adult unmarried children of citizens, only 2,000 were estimated to arrive each year. “The complete lapse of the national origins system on July 1, 1968,” concluded Schwartz, which would open all immigration to a first-come, first-served system, “will undoubtedly intensify the problem.”⁹⁴

Table 3.5 Estimated Hart-Celler Preferences and Demand, 1968

<u>Preference</u>	<u>Allotment</u>	<u>Demand</u> *	<u>Backlog</u> *
1 st Preference	34,000	2,000	--
2 nd Preference	34,000	23,000	--
3 rd Preference	17,000	44,000	50,000
4 th Preference	17,000	16,000	--
5 th Preference	40,800	84,800 ¹	100,000
6 th Preference	17,000	36,000	--
7 th Preference	10,200	7,000	--
Nonpreference	0	3,000 ²	--

* - Demand estimated as those able to receive visas. Backlogs of those waiting above demand, estimated and anticipated by June 30, 1968

1 – Figure includes approximately 44,000 visas left over from 1st – 4th preference, and usable for 5th preference.

2 – Estimated visas leftover from 7th preference, usable for nonpreference.

Source: Abba P. Schwartz, *The Open Society* (New York: William Morrow & Company, Inc., 1968), 130-131.

It is important to note that although Italy was unable to clear its backlog of family preference migrants, the numbers of Italians entering the country in the years immediately following Hart-Celler increased significantly. As is evident from Table 3.6, total global immigration rose from a high of just over 103,000 quota immigrants prior to 1965, to over 150,000 by the end of the decade, and the numbers of Italians entering under preference categories rose as well. Italy’s quota under the McCarran-Walter system had been only 5,666 immigrants per year, but after 1965, it began to send up to and just beyond the 20,000 per-country cap.

Table 3.6: Total Quota and Italian Admissions, FY 1954-1970

Year	Total Quota/Preference Entries	Italian Quota/Preference Entries	Total Italian Entry ¹	Total Italian Family Preference Immigrants ²
1954	94098	4,901	13,145	-- ³
1955	82232	4,128	30,272	-- ³
1956	89310	5,425	40,430	-- ³
1957	97178	5,388	19,624	3,908

⁹⁴ *Ibid.*

1958	102153	4,533	23,115	2,317
1959	97657	5,792	16,804	3,439
1960	101373	5,642	13,369	2,792
1961	96104	5,635	18,956	2,779
1962	90319	5,430	20,119	2,232
1963	103036	5,607	12,769	3,767
1964	102844	5,761	12,769	3,855
1965	99381	5,442	10,874	3,229
1966	126310	20,083	26,447	16,680
1967	153079	20,585	28,487	16,462
1968	156212	18,915	25,882	15,103
1969	157306	21,291	27,033	17,990

1 – Total entry includes quota, nonquota, and refugee admissions, as well as those admitted under special legislation.

2 – 2nd through 4th preference, 1954-1965; 1st, 2nd, 4th, 5th, and 6th preference, 1966-1969.

3 – The INS did not keep statistics on per-country quota breakdowns prior to 1957.

Source: *INS Annual Report*, Table 6A: Immigrant Aliens admitted by Classes under the Immigration Law and Country or Region of Last Permanent Residence and Table 7A: Quota Immigrants Admitted by Quota Area and Quota Preference.

Additionally, the total number of Italians entering the country each year grew as well – while in every year from the McCarran-Walter Act through Hart-Celler Italians were admitted above quota limits, through temporary pieces of legislation such as the Refugee Relief Act of 1953, or the adjustments of status that began with the Refugee-Escapee Act of 1953 – total numbers jumped, from around 12,000 in the few years immediately preceding Hart-Celler, to over 25,000 after. Much of this increase came through the family preferences, which expanded from a high of 3,908 in 1957 under the national origins system, to 17,990 by 1969.⁹⁵

Even though the Hart-Celler transition period failed to clear the backlogs or stem the tide of those attempting to immigrate to the U.S., reforming the preference system after 1965 proved difficult. As Schwartz argued in 1968, “while there is widespread agreement that the preference system, as it currently operates, is impractical, there appears to be little agreement as to how it should be changed.” Liberal legislators like Peter Rodino and Emanuel Celler would introduce bills in the late-1960s to try to amend the preference system. Rodino offered two bills in 1968, H.R. 16863 and H.R. 16716. The former would have allowed up to 25 percent of unused preference visas in 1968 and 1969 to be used by any of the oversubscribed countries, while the latter would introduce a new and simplified admissions system. First preference, with 25 percent of all visas, would go to married children of citizens and spouses and unmarried children of LPRs; second preference, with 25 percent of all visas, would go to the highly skilled and professional workers; third preference, with 25 percent of all visas would go to skilled laborers; fourth preference, with 15 percent of all visas, would go to “aliens in religious duties, aliens not seeking employment, investors, and fiancés”; and finally any unused visas could go to

⁹⁵ As will be discussed in the next chapter, while Italian immigration rose after 1965, immigration from northern European countries such as Ireland declined, as the demise of the national origins system cut off avenues for unskilled entry.

nonpreference immigrants. Notably the plan did not include any space for the brothers and sisters of citizens.⁹⁶

Two years later Rodino introduced another plan, H.R. 17370, based off of a similar 1969 proposal by Emanuel Celler, H.R. 9112. Like his 1968 plan, Rodino's H.R. 17370 gave first preference to family reunification, though he now included the unmarried brother or sister of a citizen in the first preference. Second and third preference was given to professional and skilled labor, respectively. His proposal also included a provision to admit all 5th preference petitions for brothers and sisters filed prior to July 1, 1970 outside of numerical limitations. "I must point out...that the transition from the national origins concept to the first-come, first-served concept," concluded Rodino, "was predicated upon a reasonable phase-out period which was intended to alleviate backlogs...Unfortunately, this just did not happen." In 1970 Ted Kennedy also introduced a plan that would have helped to clear the 5th preference backlog.⁹⁷

It is important to note here that these plans dealt equally with revising the labor preferences as the family ones, and the latter two proposals, by Rodino and Kennedy, also attempted to merge the hemispheric quotas, and create one unified ceiling, under the preference system. So even after 1965, many of the reform proposals spent more time on other facets of immigration than family reunification. With James Eastland chairing the Senate Judiciary committee through 1976, no major immigration reform legislation came to the floor of the Senate. Thus into the 1970s and 1980s, none of the intended reforms to the preference system saw the light of day, and the backlogs only continued to grow.

Epilogue

The battles over family reunification and who qualified as an eligible family migrant from the 1950s and 1960s arose again in the last few decades of the twentieth century, culminating in the passage of the Immigration Act of 1990. The 1990 Act revised the preference system and enlarged the total number of admissible immigrants. But while legislators attempted to tamp down on the number of immigrants arriving each year, especially in the family categories, by this point the brothers and sisters category had become entrenched in the law. Now a new policy feedback loop began, and for similar reasons as with Hart-Celler, legislators ultimately retained the same percentage of visas given to family categories as in 1965.

Much of the debate over immigration in the 1970s and 1980s focused on the issue of undocumented and labor migration, as well as refugee admissions. In 1976 Congress brought the Western Hemisphere into the preference system, and in 1978, merged the hemispheric quotas into one overall ceiling of 290,000. Two years later Congress passed

⁹⁶ Schwartz, *The Open Society*, 131; Peter W. Rodino, Jr., "New Immigration Law in Retrospect," *International Migration Review* 2, 3 (Summer 1968).

⁹⁷ Edward M. Kennedy, "Immigration Law: Some Refinements and New Reforms," *International Migration Review* 4, 3 (Summer 1970); Peter W. Rodino, Jr. "Today's Need for Immigration Revision," *International Migration Review* 4, 3 (Summer 1970), Quote on 15.

the Refugee Act of 1980, which took refugee admissions out of the immigration preference system. Legislators abolished the 7th preference for refugees and allotted its 6 percent visa allotment to the 2nd preference, for spouses and unmarried children of legal permanent residents. Now the fifth preference for brothers and sisters no longer received the largest allotment, with 24 percent, as compared with the 2nd preference's 26 percent.⁹⁸

After the Refugee Act, legislators turned to the issue of illegal immigration. Though, as Aristide Zolberg points out, the Select Commission on Immigration and Refugee Policy (SCIRP) argued in its 1981 report argued that immigration as a whole was good for the country, it also believed that now was “not the time for a large-scale expansion in legal immigration.” The Commission insisted that Congress tackle the issue of illegal entry before reforming the legal preference system. Thus the Immigration Reform and Control Act (IRCA) of 1986 focused primarily on this issue. It provided for employer sanctions, amnesty for approximately three million undocumented immigrants, and an expansion of the temporary H-2 unskilled work visas.⁹⁹

While SCIRP suggested tackling the issue of illegal entry first, it also made suggestions for reforming the legal preferences. The commission recommended that “the reunification of families continue to play a major and important role in U.S. immigration policy,” and proposed expanding visa allocations for the spouses and children of legal permanent residents (LPR); including parents of LPRs in numerical limitations, as had been the case prior to 1965, and expanding numerical exceptions for immediate relatives of citizens, to include adult unmarried children and grandparents.¹⁰⁰

Importantly, the Commission recommended retaining the preferences for brothers and sisters of citizens, arguing that “continuing this tradition... recognizes the closeness of the sibling relationship and the broader concept of family held by many nationalities.” Still, the commission did report a largely-held minority view that the provisions be limited to only unmarried siblings, due to the large numbers seeking reunification, and “the fact that the immigration chain created by the spouses of married siblings... results in exponential growth in visa demand.” This question of how to reform the 5th preference would emerge in the fight over the Immigration Act of 1990.¹⁰¹

After passing IRCA, Congress turned to the issue of legal immigration and the preference system, hoping to raise the proportion of labor visas, lower the proportion of family visas,

⁹⁸ On the 1976, 1978, and 1980 Acts, see: James G. Gimpel and James R. Edwards, Jr. *The Congressional Politics of Immigration Reform* (Boston: Allyn and Bacon, 1999), 121-130.

⁹⁹ On the provisions of IRCA, see: Zolberg, *Nation By Design*, 354-370 and Gimpel and Edwards, *Congressional Politics of Immigration Reform*, 135-180. Gimpel and Edwards argue that IRCA brought immigrant admissions to new heights, while creating even larger backlogs of preference immigrants: employer sanctions largely failed to work, and those who benefited from the amnesty provisions were able to register for family reunification preferences.

¹⁰⁰ Select Commission on Immigration and Refugee Policy, *U.S. Immigration Policy and the National Interest: The Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy with Supplemental Views by Commissioners*, March 1, 1981, 14-15 and 119-120.

http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/2f/b7/7e.pdf, accessed 5/11/10.

¹⁰¹ *Ibid.*

and limit overall immigration. The Immigration Act of 1990 made a number of important changes to the preference system, including *raising* the overall ceiling on total immigration to 675,000 visas per year. Family reunification received the same percentage of visas as under the Hart-Celler Act – 70 percent, or 480,000 visas – and parents and unmarried children retained nonpreference status. Under the new system, the numbers of immediate relatives entering each year were to be deducted from the following year’s family preference numbers, though the law also established a floor of no less than 226,000 family preference admissions per year. The law also lowered the percentage of visas going to brothers and sisters of citizens, from 24 percent to 10 percent, and allotted 17 percent of all visas to the second preference – the spouses and unmarried children of legal permanent residents. (Table 3.7) Still, political scientists James Gimpel and James Edwards conclude that since the proportions themselves changed very little, what mattered most was the increase in total allotted visas, including an increase in the total number of visas granted to the siblings of citizens. Finally, the Act raised the per-year ceiling on immigration from 20,000 to 25,620 or 7 percent of the total.¹⁰²

Table 3.7 – Family Preference Categories in the Immigration Act of 1990

Preference	Number of Visas	Percentage*
Immediate Family Members of citizens	254,000	38%
1 st Preference: Unmarried adult children of U.S. citizens	23,400	3.5%
2 nd Preference: Spouses and unmarried children of permanent residents	114,200	17%
3 rd Preference: Married adult children of U.S. citizens	23,400	3.5%
4 th Preference: Brothers and Sisters of adult U.S. citizens	65,000	10%
Total:	480,000	71%

* - Percentages rounded

Adapted from: Gimpel and Edwards, The Congressional Politics of Immigration Reform, 198

So how did a drive to reorient immigration toward labor market needs end up raising the ceiling on both labor and family? In the end, Congress bowed to the pressure of interest groups – church and ethnic organizations, as well as employer groups, for example – all of whom wanted more immigration rather than less. Asian and Hispanic leaders in particular felt that legislators wanted to reform the fifth preference to cut down on their numbers, since they most utilized the category. While many Congressional leaders felt that economic immigration should be privileged, they faced strong pressure not to cut

¹⁰² Zolberg, *Nation By Design*, 380; Gimpel and Edwards, *Congressional Politics of Immigration Reform*, 197-98. The Act also implemented a diversity visa for countries whose immigrants had been disadvantaged by the Hart-Celler reforms. For the first three years of the Act, the lottery allotted 40,000 slots per year, and then 55,000 slots after that point. See: Reimers, *Still the Golden Door*, 259. See also: Tichenor, *Dividing Lines*, 267-285.

family immigration. And, even though most Americans felt that immigration should not be increased, the general public was less organized than the interest groups.¹⁰³

Most critically for the issue of family reunification, the course of the 1990 debates points to the continued influence of the policy feedback loop privileging family and siblings, which had begun prior to Hart-Celler. The original Edward Kennedy and Alan Simpson (R-WY) plan for the 1990 Act would have capped total immigration (including immediate relatives) at 590,000, and would have restricted the fifth preference for brothers and sisters to only unmarried siblings. In response to pressure from Asian and Latino groups about the size and length of the backlogs, Congressman Howard Berman (D-CA) introduced a provision to treat immediate relatives of citizens and LPRs equally. Each of these attempts to reform family reunification failed.¹⁰⁴

This same feedback loop only continued to influence the debates at the turn of the twentieth century. The 1990 Act created the Jordan Commission to further study immigration, and in its 1995 report on legal immigration policy, the Commission called again for a reorientation of immigration policy toward economic need, and for the restriction of family reunification to only immediate relatives.¹⁰⁵ Ethnic groups, along with labor unions and the libertarian CATO institute came together to oppose the restrictions on family preference categories to immediate relatives. Asian and Latino groups argued that restricting family reunion by eliminating provisions for brothers and sisters represented a Euro-centric notion of the family, which they rejected. Tinkering with the legal preference system was thus off the table when Congress again took up immigration reform with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.¹⁰⁶

Into the twentieth century, a number of recent proposals – for example the Duke-Brookings Roundtable of 2009 – have called for family reunification to be limited to immediate relatives, and for a greater number of visas to be allotted to labor-market needs. These reports repeated earlier findings by calling into question the efficacy of a system that allots such a high number of visas to the brothers and sisters of immigrants, among other things. But as the 2007 bi-partisan comprehensive immigration reform proposal, which attempted to implement a Canadian-style points system to determine admissions, and would have given more weight to skills and education, illustrates, family reunification remains highly popular. The *New York Times* argued, for example, that

¹⁰³ Zolberg chalks up the 1990 changes to the strange bedfellows of immigration reform. Zolberg, *Nation By Design*, 375-376 and 381; Reimers, *Still the Golden Door*, 256-257.

¹⁰⁴ Gimpel and Edwards, *Congressional Politics of Immigration Reform*, 187.

¹⁰⁵ The Jordan Commission report on legal immigration called for the immigration preference system to be revised to include only spouses and minor children of citizens and legal permanent residents, and parents of citizens, excluding brothers and sisters. As a rationale, the Commission argued that “unless there is a compelling national interest to do otherwise, immigrants should be chosen on the basis of the skills they contribute to the U.S. economy.” Notably, they included nuclear family members as having just such a “compelling national interest.” United States Commission on Immigration Reform, “Legal Immigration: Setting Priorities,” 1995 <http://www.utexas.edu/lbj/uscir/exesum95.pdf>, accessed 4/25/2010, xvii-xix.

¹⁰⁶ See: Zolberg, *Nation By Design*, 412-418 and Gimpel and Edwards, *Congressional Politics of Immigration Reform*, 244.

“closing the door to families would be unjust and unworkable, and... would only encourage illegality by forcing people to choose between their loved ones and the law.”¹⁰⁷

The course of reform in the 1965 and 1990 Act then, above all else, show the positive and negative sides of the entrenchment of family reunification in immigration policy. On the one hand, the heavy weighting of visa policy toward the family provides the possibility for explosive growth. Under the 1965 preferences, as David Reimers has shown, one immigrant has the theoretical potential to bring over eighteen others in the span of ten years. While the actual ‘immigrant multiplier’ is estimated to be far less, the perception of unchecked chain migration led the bill to earn the nickname the “Brothers and Sisters Act.”¹⁰⁸ Though a seemingly minor and uncontroversial change in 1965, in 2008, for example, the parents of immigrants comprised roughly 18.5 percent of all new arrivals, while brothers and sisters comprised 13.5 percent. In total, family reunification comprised approximately 87.5 percent of all new legal permanent residents, including 51 percent for immediate, nonpreference relatives.¹⁰⁹ In the ten-year period from FY 1999-2008, family reunion categories comprised 82 percent of new arrivals, and 65 percent of the total receiving legal permanent residence status. The category for brothers and sisters remains the most oversubscribed of all permanent immigration preferences, with waiting

¹⁰⁷ The Brookings-Duke Immigration Policy Roundtable report from 2009 came to a similar conclusion, calling for the concept of family to “be narrowed as much as feasible to mean nuclear family members.” The Migration Policy Institute, in its 2006 “Report of the Independent Task Force on Immigration and America’s Future,” argued that “the immigration selection system rarely realizes its core goals of meeting family reunification and labor market demands,” but could not come to a conclusion on how to change the family preference system. Nonetheless they stated that “it would be prudent to re-examine the continued viability of the current category of siblings of US citizens,” and instead argued that many family reunification immigrants might instead benefit from an expanded provisional and permanent employment visa system. See: Brookings-Duke Immigration Policy Roundtable, “Breaking the Immigration Stalemate: From Deep Disagreements to Constructive Proposals,” 2009 <http://www.duke.edu/web/kenanethics/immigration/BreakingtheImmigrationStalemate.pdf>, accessed 4/25/2010, quote on 4; Migration Policy Institute, “Immigration and America’s Future: A New Chapter, Report of the Independent Task Force on Immigration and America’s Future, September 2006, <http://www.migrationpolicy.org/ITFIAF/finalreport.pdf>, accessed 4/25/2010, quotes on 22 and 64. “Family Values Betrayed,” *New York Times*, May 4, 2007, A22.

¹⁰⁸ Reimers, *Still the Golden Door*, 94-96. Reimers’s estimates are theoretical. Jasso and Rosenzweig find the actual modifier to be far lower, around 1.2 other migrants from a cohort of 1971 arrivals. Guillermina Jasso and Mark R. Rosenzweig, “Family Reunification and the Immigration Multiplier: U.S. Immigration Law, Origin-Country Conditions, and the Reproduction of Immigrants,” *Demography* 23(3) (Aug., 1986). Bin Yu, using a different methodology combining unification and reproduction, estimates the immigrant multiplier at around 4.3 per individual, through the second generation. Not counting reproduction, each individual migrant brought approximately 2.1 family members through reunification. Bin Yu, “Immigration Multiplier: A New Method of Measuring the Immigration Process,” Population Association of America, 2006 Annual Meeting. <http://paa2006.princeton.edu/download.aspx?submissionId=61643>, accessed 10/9/09.

¹⁰⁹ All numbers from the 2008 figures on Table 6 “Persons Obtaining Legal Permanent Resident Status,” Department of Homeland Security. Figures for the 1999-2007 period are roughly the same as for 2008. Note that these figures include only new arrivals. The total percentages, including new arrivals and adjustment of status: 66.5 percent of the total for family categories, including 44 percent for immediate nonquota relatives, 11 percent for the parents of immigrants, and 6 percent for brothers and sisters.

periods for a visa of no less than eleven years, and as long as twenty-three years.¹¹⁰ On the other hand, the change to a family-centric admissions policy has been among the chief factors transforming the United States into a multi-ethnic and multi-cultural nation in the last half-century. Backlogs notwithstanding, this change has been one of the most important shifts in American society, and cannot be easily discounted.

Conclusion

The history of legislation designed to facilitate family reunification between World War II and 1968 points to the successes and pitfalls of wedge issues in immigration politics. Over the course of the period family preferences expanded to include new groups as nonquota immigrants (parents, for example,) and shifted from a system that gave an equal number of quota visas to labor *and* family, to one that heavily favored family. Brothers and sisters, allotted only a percentage of remainder visas in 1952, now received 24 percent of all permanent visas under the 1965 system. Much of this change came from a history of small attempts to modify the quota system that revolved around the preference backlogs, especially for the fourth preference siblings of U.S. citizens. Equally so, appeals by legislators on the left and right to the logic of family, as a way to defend and critique the national origins system, opened a space for reform, while channeling these efforts along a limited line of thinking and legislating.

Returning to Walter's 1962 letter to the United-Italian American Labor Council, his attempt to articulate a rationale for separating the admission of brothers and sisters from immediate family members arrived too late in the process of reform to gain traction. By the early 1960s countries like Italy already had over 100,000 people waiting for their 'right' to reunite, as Nello Ori had written to John F. Kennedy in 1957.¹¹¹ The preference system and long backlogs had already created a logic for policymaking, and brothers and sisters were on track to receive the largest share of policy reform. Consider soon-to-be-President Kennedy's 1961 letter to Juvenal Marchisio of the American Committee on Italian Migration, "I believe that the most important immediate objective of immigration policy is the reuniting of families." Not surprisingly as legislators focused on eradicating the discriminatory national origins system, they implemented a heavily family-based system.¹¹²

¹¹⁰ Statistics averaged from the total numbers for 1999-2008. Table 6 "Persons Obtaining Legal Permanent Resident Status by Type and Major Class of Admission: Fiscal Years 1999 to 2008," Office of Immigration Statistics, Department of Homeland Security, *Yearbook of Immigration Statistics: 2008*, pg 18.

http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2008/ois_yb_2008.pdf, accessed 4/25/10. Total numbers include new arrivals as well as adjustment of status. I have included nonpreference immediate relatives and family preference categories in the percentages. On the post-1965 demographic changes, see: Reed Ueda, *Postwar Immigrant America: A Social History* (Boston: Bedford/St. Martin's, 1994). As of February 2011, visas are available for those brothers and sisters of citizens who registered for a visa prior to: January 1988 for the Philippines; January 1996, for Mexico; and January 2000, for the rest of the world. Data on waiting times for visas from: Department of State, "Visa Bulletin for February 2011," Number 29, Vol. 9, http://www.travel.state.gov/visa/bulletin/bulletin_5228.html, accessed 2/1/11.

¹¹¹ Ori to Kennedy, October 25, 1957.

¹¹² Walter to Antonini, January 22, 1962; Kennedy to Marchisio, April 25, 1961.

The lessons for contemporary policymaking are twofold: piecemeal reform efforts (here in the case of a series of bills designed to convert backlogs into nonquota entry,) do open some doors, providing a wedge in which policies like the national origins system can be slowly broken down over time. But critically this same opening closes off other paths for reform, in this case focusing legislators on family and siblings instead of other categories such as labor-market needs. Likewise, continued opposition to policy change by restrictionists, in the face of growing backlogs and waiting lists, only hastened more dramatic reform. In the case of 1965 both lessons led to unexpected changes, new waves of immigration, and new backlogs, the legacies of which, for better and for worse, are still with us today.

Chapter 4: “Carefully Selected Immigrants”: The Development of U.S. Labor-Based Immigration Policy, 1948-1968

Introduction

Speaking in 1958 on the issue of labor-based immigration policy in the postwar era, the State Department’s Administrator of Security and Consular Affairs, Roderic O’Connor, argued that

In earlier decades our rapidly expanding country desperately needed mass labor from whatever sources. Today, this is no longer true. The Soviet Sputnik has dramatically emphasized a different need. Today we need scientists and technicians. We need professional people, doctors and teachers. In short, we need highly skilled and specialized immigrants.

As the official in charge of all things immigration and visa related at the State Department, O’Connor’s judgment of the changing landscape of labor admissions serves as an important indicator of just how much immigrant admissions had changed since before World War II.¹

O’Connor’s speech provides an entry point into one of the key puzzles of immigration policy in the postwar era: how did the United States, in the span of two decades, move from an immigration system that barred contract labor and privileged agricultural workers, to one that sought only the highly skilled and professional; excluded the unskilled; and required all labor migrants to have employment prior to entry?

Immigration policy prior to World War II had included labor-market needs as a portion of admissions policies, but not as a dominant thrust of admissions. In 1885 the U.S. had restricted the importation of contract labor, barring those with jobs-in-hand from entering. Since 1924, the immigration system as a whole contained a positive preference for agricultural workers, while the race-based national origins quota system dominated admissions. Twenty years after the war, in 1965, legislators passed the Hart-Celler Act, which contained a positive preference for the highly skilled and professional; largely excluded the unskilled from permanent immigration policy; and required strict job and labor certifications prior to entry.

In this chapter I argue that in the postwar era, policymakers initially created labor preferences to further restrict immigration from southern and eastern Europe. Once implemented, these preferences created a positive feedback loop that grew to define and constrain the overall shape of admissions policy. Discussions of labor market needs in immigration drew on many of the dominant discourses of the era – for example, the need

¹ “Our Immigration Policies and the International Scene,” Department of State, Press Release, Address by Roderic L. O’Connor, Administrator, Bureau of Security and Consular Affairs, Before the National Council on Naturalization and Citizenship, Friday, March 14, 1958. AFL-CIO Records, RG 21-001, Box 27, Folder 23, 2-4.

for greater numbers of scientists and engineers to staff the Cold War national security state – into a system of greater selectivity over and exclusion of unskilled migrants.²

I begin by discussing the shape and scope of labor-based immigration policy prior to and immediately following World War II, and then focus on the passage of the McCarran-Walter Act of 1952. The 1952 Act marked the entrenchment of labor categories as the dominant thrust of immigration policy. It revised the admissions system within each country’s quota, (table 4.1) allotting for the first time 100 percent of all visas to preference categories. In addition, the law repealed the bars on contract labor; implemented a system of weak labor certification; and established procedures for granting temporary guestworker visas.³ After examining the debates surrounding the 1952 Act, I discuss the contextual factors in the mid- to late-1950s that pushed policymakers to increasingly privilege the admission of only the most highly skilled and professional workers. The forces behind this feedback loop included shifts in organized labor and the launching of the Soviet *Sputnik*.

Table 4.1: Quota Preferences Under the 1952 and 1965 Immigration Acts

	McCarran-Walter Act, 1952 ^a	Hart-Celler Act, 1965
1 st Preference	50% for skilled and urgently needed labor	20% for unmarried sons or daughters of citizens over the age of 21
2 nd Preference	30% for parents of citizens aged 21 or older	20% for spouses and unmarried children of legal permanent residents
3 rd Preference	20% for spouses and children of resident aliens	10% for professional and highly skilled workers
4 th Preference	No allotment, but 25% of unused visas from the above, (expanded to 50% in 1959) for the brothers and sisters of citizens	10% for married sons or daughters of citizens over the age of 21
5 th Preference	-	24% for brothers and sisters of citizens
6 th Preference	-	10% for skilled or unskilled labor in urgently needed occupations
7 th Preference	-	6% for refugees
Nonpreference	No allotment, but all remaining visas from the first 4 preferences	No allotment, but all remaining visas from the first 7 preferences

a – Percentages within each country’s quota allotment under the national origins system.

Finally, I turn to the passage of the Hart-Celler Act of 1965 and its immediate aftermath. Hart-Celler removed the national origins system, and set the basis for the contemporary immigration priorities. It reduced the number of labor visas to only 20 percent of the

² On policy feedback loops, see: Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press, 2004).

³ Section 101(a)(15)(H) of the Immigration and Nationality Act of 1952, P.L. 414, 66 Stat. 163.

total, and significantly strengthened the labor certification provisions of the 1952 Act.⁴ By the end of the 1960s, all non-reunification or refugee migrants required labor certification, and, contrary to the historical illegality of entering with a job-in-hand, most required employment prior to entry. These changes made it increasingly difficult for all but the most highly skilled to enter the country, as the positive job requirements proved difficult for those unable to apply or interview in person.⁵ The implementation of this revised preference system occurred even as the 1965 Act itself ushered in greater numbers and diversity of immigrants than ever before. The strict limitations on unskilled workers cut neither demand for their labor, nor supply of it. Ironically, in the rush to protect the American worker and limit labor migration, Congress ensured that the bulk of permanent migrants would enter under unregulated family categories, under temporary visas, or as undocumented workers.

Just as Italy stood at the heart of the story of the development of family preferences, here, for labor, Ireland takes center stage. As one of the large-quota countries most advantaged by the national origins system, Ireland consistently sent large numbers of unskilled immigrants to the United States. Once the 1965 Act severely curtailed the availability of these visas, the numbers of Irish immigrants fell significantly. In the wake of the 1965 Act, a new feedback loop began, drawing on the foundations of the older one. Now Irish advocates and their Congressional allies pushed for the return of unskilled visas as a way to bring in more of their countrymen.⁶ Debates over the admission of greater numbers of Irish immigrants, which grew directly out of the 1965 reforms, continued through the remainder of the century, and contributed directly to the creation of the Diversity Lottery in 1988.⁷

Framing

⁴ The Immigration Act of 1990 (P.L. 649, 104 Stat. 4978) revised the preference structure of the 1965 Act, but kept the same basic characteristics and categories of the 1965 Act: family reunification still received the bulk of all legal permanent residence (LPR) visas, while labor received far less. Thus by priorities I mean that the 1965 Act set the groundwork for the current immigration system – heavily focused on family, with lesser emphasis on labor and refugees. On the 1990 Act see: Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002), 267-285.

⁵ The Hart-Celler Act of 1965 (P.L. 236, 79 Stat. 911) created two classes of labor migrants: 3rd preference for professional and highly skilled labor, and 6th preference for skilled and urgently needed labor. Under the 1965 provisions, both categories required labor certification, but only 6th preference migrants required a job-in-hand prior to entry. Congress amended this provision with the Eilberg Act of 1976, making the job requirement uniform across all classes of labor migrants. See: Gilbert Yochum and Vinod Agarwal, “Permanent Labor Certifications for Alien Professionals, 1975-1982,” *International Migration Review* Vol. 22, No. 2 (Summer, 1988), 265-281.

⁶ See, for example: “Statement of John P. Collins, National Chairman, the American Irish National Immigration Committee,” in “Immigration. Hearings before Subcommittee No. 1, House Judiciary Committee, 90th Congress, 2nd Session: The Effect of the Act of October 3, 1965, on Immigration From Ireland and Northern Europe, July 3 and September 18, 1968,” 5-6.

⁷ The diversity lottery, as Anna O. Law has pointed out, emerged in part from pressures brought by European ethnic groups disadvantaged by the labor provisions (both preference and certification) of the 1965 Act. Anna O. Law, “The Diversity Visa Lottery – A Cycle of Unintended Consequences in United States Immigration Policy.” *Journal of American Ethnic History*, Vol. 21, No. 4 (Summer 2002), 3-29.

Sociologist E.P. Hutchinson, in the introduction to “Labor Market Policy,” in his *Legislative History of Immigration Policy*, points to one of the inherent problems with studying labor market needs in immigration policy. While rhetorical tropes of protecting the American worker and economy can be found in many of the postwar immigration debates, Hutchinson argues that “what was genuine and what was specious cannot be determined with any assurance.” Both those in favor of and against expansive immigration harnessed employment-based arguments as proxies for more delicate issues (chief among them race and nativism.) Others supported or opposed admissions policies with an eye toward the voting power of organized labor.⁸

Still, while parsing rhetoric from reality in policy debates may be, as Hutchinson suggests, impossible, three important factors are discernable in the development of labor preferences in the postwar period: First, even taking the most pessimistic approach to the allotment of half of all visas to labor in 1952 (that, as will be discussed later, restrictionists implemented the preference specifically to limit southern and eastern Europeans,) the very existence of such a provision marked the shift to an admissions program that focused on the highly skilled and professional, and excluded the unskilled from permanent immigration visas. Though *bracero* and other government-negotiated work agreements had already relegated labor migration from Mexico, Central America, and the Caribbean to temporary work status, the shift to a labor preference system ensured that the rest of the world’s unskilled workers would as well be shunted to temporary visa categories, or excluded completely. Cold War foreign policy and the privileging of scientific and technological knowledge to meet the Soviet threat played a significant role in this change.⁹

Second, the enshrinement of the highly skilled and professional as policymakers’ ideal worker marked a rejection of new seed immigration. Policymakers never precisely defined the category of new seed, but it generally referred to unskilled immigrants without family ties in the U.S. Legislators explicitly referred to the group using the Horatio Alger-esque rhetoric of individual immigrants arriving destitute at the country’s shores, and working their way into the middle class. These immigrants, according to Representative Emanuel Celler (D-NY) were of the type that had opened the frontier, built the railroads, and laid the foundations for industry. On one side of the debate, liberals like Celler strove to keep open what they viewed as the traditional pathway to immigration taken by their relatives.¹⁰ Opposing this liberal-ideological view, a disparate group that included organized labor, restrictionists in Congress, and the immigration bureaucracy came together by 1965 to shut off new seed immigration. This latter group, though never a unified contingent, drew on arguments of economic pragmatism and Cold

⁸ E.P. Hutchinson, *Legislative History of American Immigration Policy, 1798-1965* (Philadelphia: University of Philadelphia Press, 1981), 492.

⁹ On the *bracero* program, see: Kitty Calavita, *Inside the State: The Bracero Program, Immigration, and the I.N.S.* (New York: Routledge, 1992), and David M. Reimers, *Still the Golden Door: The Third World Comes to America* (New York: Columbia University Press, 1992 [1985]).

¹⁰ As will be discussed later, most legislators speaking about the new seed referred to European immigrants, though Emanuel Celler would also extend the rationale to Latino groups as well.

War national security to privilege the admission of the highly skilled and professional – especially in science and technology – while shunning the unskilled.¹¹

Finally, while legislators throughout the period largely ignored the temporary labor provisions created with the McCarran-Walter Act, the shape of postwar policymaking – especially the limiting of labor visas to only 20 percent of the total migration after 1965 – set the stage for temporary work visas to dominate the American foreign-born workforce by the end the 1980s. What historian David Reimers and others call a “clear victory for organized labor” became one of the thorns in its side.¹²

In examining the policies that led to the passage of a strong labor-selection regime with the Hart-Celler Act of 1965, I focus on policy outcomes, rather than inputs or legislative goals. As will be discussed later, the visa preference system put in place with the McCarran-Walter Act consciously shifted the basis of admissions policy toward labor-based immigrants. In reality though, very few actual skilled laborers entered under the system, with the bulk of migrants after 1952 continuing to enter as nonpreference immigrants (i.e. without declaring skill levels or family ties,) just as they had since the creation of the national origins system in 1924. Following political scientist Paul Pierson and his work on positive feedback loops, where actions taken early in the process of reform narrow and constrain the range of options later down the road, I argue that although the preferences failed in their goal to regulate admissions, once entrenched in the immigration system, they expanded to become one of the foundations for basing *all* admissions. By 1965 labor-market needs took their place beside the other two major categories – family and refugee – as the primary avenue for permanent resident immigrants. The story of labor based immigration visas is a story of unintended

¹¹ During House debates over omnibus reform in 1951, Celler defined new seed as “the type of immigrant that built up our country, the common man, the hewers of stone, the bearers of water, those who built our railroads, ships, and planes, tunneled our mountains and our subways, erected our bridges and roads, and still construct our cars.” “Revision of Immigration, Naturalization, and Nationality Laws,” Joint Hearings before the Subcommittees of the Committee on the Judiciary, 82nd Congress, 1st Session, on S. 716, H.R. 2379, and H.R. 2816. “Bills to Revise the Laws Relating to Immigration, Naturalization, and Nationality.” March 6 – April 9, 1951, 359.

¹² H1-B visas, as Lindsay Lowell points out, have become de facto provisional visas, since they are one of the only temporary categories that can be converted into LPR status. They offer employers more control over their workforce, as visas are tied to individual jobs. B. Lindsay Lowell, “The Foreign Temporary (H-1B) Workforce and Shortages in Information Technology,” in: *The International Migration of the Highly Skilled: Demand, Supply, and Development Consequences in Sending and Receiving Countries*, Wayne Cornelius ed., (San Diego: University of California, 2001), 131-162. Scholars point to the lack of portability and labor standards as opening temporary visa categories to abuse. These authors also highlight to the lack of a clear process of conversion from temporary to permanent, and the lack of adequate safeguards for ensuring fair labor standards and practices. See: Demetrious G. Papademetriou, Doris Meissner, Marc R. Rosenblum, and Madeleine Sumption, “Aligning Temporary Immigration Visas with US Labor Market Needs: The Case for a New System of Provisional Visas.” Migration Policy Institute, July 2009. http://www.migrationpolicy.org/pubs/Provisional_visas.pdf, accessed 11/23/09; Cindy Hahamovitch, “The Politics of Labor Scarcity: Expediency and the Birth of the Agricultural “Guestworkers” Program.” Center for Immigration Studies, December 2009, <http://www.cis.org/articles/1999/back1299.htm>, accessed 11/23/09; and AFL-CIO Executive Council, “Reform the H-1B and L-1 Guest Worker Visa Programs” August 06, 2003, <http://www.aflcio.org/aboutus/thisistheaficio/ecouncil/ec08062003e.cfm>, accessed 11/23/09.

consequences, where policy decisions built upon one another in ways unanticipated by their framers.¹³

Labor Preference Categories Up to the McCarran-Walter Act

PRE-WWII

Preferences for employment-based migration, both positive, in favor of certain classes of immigrants, and negative, for the exclusion of others, have existed in U.S. admissions policy since as early as the Civil War. In 1864 Congress passed the Act to Encourage Immigration to allow employers to recruit foreign workers and pay their transportation expenses. Organized labor and nativists heavily criticized the Act, as well as the penalty-laden contracts for laborers, which amounted to debt peonage. Congress repealed the Act in 1868, but did not prohibit the outright recruitment of foreign labor until 1885, with the passage of the Contract Labor Laws. As historian Kitty Calavita points out though, this early attempt at banning the importation of foreign labor in 1885 was more symbolic than substantive. Congress established no way of enforcing the Act, while subsequent Supreme Court decisions exempted skilled laborers from the ban.¹⁴

Other attempts to limit specific types of laborers, such as the Page Laws of 1875 (for Chinese prostitutes,) or the Chinese Exclusion Acts of 1882 (for Chinese Laborers,) contained similar exemptions for groups like teachers, students, or merchants.¹⁵ In 1907, Congress attempted to close the loopholes from the 1885 law and ban all labor recruitment, but ultimately these provisions as well contained exemptions for skilled laborers, professionals, actors, ministers, professors, and domestic servants. The Immigration Act of 1917 Act similarly reaffirmed the ban on contract labor, adding nurses to the list of exempt professions.¹⁶ The 1917 law also laid the groundwork for a system of temporary labor recruitment, giving the Secretary of Labor the power to waive exclusionary provisions (such as the literacy test,) for Western Hemisphere immigrants applying for temporary admission as laborers. During World War I, the guestworker program admitted around 77,000 people, mainly from Mexico, to staff agricultural pursuits in the Southwest.¹⁷

¹³ Pierson, *Politics in Time*.

¹⁴ Kitty Calavita, *U.S. Immigration Law and the Control of Labor: 1820-1924* (London: Academic Press, Inc. 1984), Chapters 2-3.

¹⁵ On Chinese exclusion, see: Tichenor, *Dividing Lines*, Chapter 4; Erika Lee, *At America's Gates: Chinese Immigration During the Exclusion Era, 1882-1943* (Chapel Hill: The University of North Carolina Press, 2003), 37-45. See also: Lucy E. Salyer, *Laws as Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill: University of North Carolina Press, 1995).

¹⁶ Section 6(a)(1) and (2) of the Immigration Act of 1924 (43 Stat. 153) stated that 50 percent of each country's quotas would be set aside for two equal preferences – for unmarried children, parents, and husbands of a citizen, and agricultural workers. Hutchinson, *Legislative History*, 428-429.

¹⁷ The program began in April of 1917 and terminated in March of 1921, though some workers were held over until 1922. Vernon Briggs is critical of guest worker programs in general, and writes that less than half of those participating in the WWI program returned to Mexico. He argues that this temporary program only increased American reliance on Mexican labor, especially undocumented labor. Vernon M. Briggs, Jr.,

The Immigration Act of 1924 limited skilled labor exemptions, allowing only ministers and professors to enter outside of contract labor prohibitions. But while the Act continued the ban on the importation of foreign labor, it also created a positive preference for agricultural laborers within the newly created national origins system. Legislators set aside 50 percent of each country's quota for these workers, alongside a concurrent preference for immediate family members. Under the 1924 law, Western Hemisphere immigrants were exempt from all quota provisions, subject only to exclusionary law.¹⁸

By the eve of World War II, the system of labor-based immigration preferences in the United States banned the entrance of workers with jobs-in-hand, while leaving room for the skilled and professional to enter. And, while unskilled migrants bore the brunt of anti-contract labor legislation, immigration law held a preference for agriculture, over all other employments.

WWII AND AFTER

Addressing wartime employment shortages, in 1942 the government negotiated the Mexican Labor Program, more commonly known as the *bracero* program, to admit workers for the agricultural regions of the Southwest. Though both the U.S. and Mexican governments agreed on a number of safeguards for worker safety and base wages, the system saw abuses on all fronts, and garnered critique from organized labor, religious groups, and even Edward R. Murrow in his 1960 documentary *Harvest of Shame*. The original authorization, Public Law 45, ran until 1948. Congressional restrictionists such as Senators Pat McCarran (D-NV) and James O. Eastland (D-MS) succeeded in rebuffing pressure from President Truman and organized labor to end the program, and revived it after the outbreak of the Korean War in 1951, with Public Law 78.¹⁹ Congress extended the program three more times, until President Johnson finally ended it in 1964. As Aristide Zolberg points out, while most of the *braceros* returned home every year, a substantial number settled in the United States. Though the *bracero* program had definite consequences for Mexican immigration, it was never a formal part of immigration law, operating outside of the 1917 and 1952 Immigration Acts' temporary labor programs. The government also devised a similar agreement to bring British West Indian laborers to

"The "Albatross" of Immigration Reform: Temporary Worker Policy in the United States," *International Migration Review*, Vol. 20, No. 4 (Winter 1986).

¹⁸ Hutchinson, *Legislative History*, Chapter 15.

¹⁹ Tichenor points out that the Truman administration, in the wake of a failed attempt to end the *bracero* program, tried to impose employer sanctions on those smuggling and employing illegal aliens. Senators Pat McCarran and James Eastland defeated the attempt, and the McCarran-Walter Act of 1952 contained only provisions against transporting and harboring illegal immigrants, specifically exempting employment. Tichenor sees this "Texas Proviso" as an illustration of the paradoxes inherent in restrictionists like McCarran who fought to keep the national origins strictures in place, while also pushing for open immigration from Mexico. Tichenor, *Dividing Lines*, 194.

the East Coast during WWII, but the numbers, around 24,000 people at peak, were far smaller than those of the *bracero* program.²⁰

More germane to the system of permanent labor-based migration, the Displaced Persons (DP) Act of 1948 marked a definitive step away from the contract labor laws, and toward a system of employment migration that would require jobs-in-hand, and privilege skilled and professional labor. As E.P. Hutchinson has argued, during the Great Depression, the contract labor laws had lost much of their relevance, since any immigrant arriving *without* assistance could be denied entry under the public charge exclusionary provisions. The DP Act required that an American citizen or relief organization sign employment, housing, and welfare assurances prior to entry, and contained two positive preferences for admitting refugees: first preference, with 30 percent of all visas, went to agricultural workers, while second preference (no percentage, but priority under the law,) went to skilled and urgently needed laborers. This second preference included “household, construction, clothing, and garment workers,” as well as those “possessing special educational, scientific, technological or professional qualifications,” and anyone filling a labor shortage.²¹

President Truman expressed his reluctance to sign the DP Act, pointing to the preference system as an attempt by Congressional restrictionists to limit Jewish and Catholic entry, and to the assurances as an overly cautious example of securitization in the emerging Cold War. Even so, once implemented, here as part of temporary refugee law, labor preferences and assurances became an integral part of immigration law.²² The preference system from the DP Act would emerge as a centerpiece of the 1952 McCarran-Walter Act. And, while the DP Act (like the Immigration Act of 1924,) contained a positive preference for agricultural workers, it would be the last to encourage low- or unskilled labor. From the 1952 Act on, skilled and professional laborers received priority under immigration law.

The McCarran-Walter Act and the Implementation of a Comprehensive Preference System

In June of 1952 Congress passed the McCarran-Walter Act (Immigration and Nationality Act) (P.L. 82-414). The Act repealed all prior immigration legislation and substituted the

²⁰ Vernon Briggs argues that the *bracero* program ‘institutionalized’ return migration of those who had already worked in the United States. Ending the program, in his view, only encouraged further entry, mainly outside of immigration law. Kitty Calavita points out that since Congress and the bureaucracy were either unwilling or unable to stem the tide of undocumented entry or implement a workable employer sanctions regime, the *bracero* program solved none of the major issues with undocumented entry that were present far before the program even began. Briggs, “Albatross”, 998-999; Calavita, *Inside the State*; Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2006), 308-311 and 322; Tichenor, *Dividing Lines*, 173-175 and 194.

²¹ Section 6(a) and (b), DP Act of 1948, P.L. 774, 62 Stat. 647. Congress combined these preferences into one first preference in the revised DP Act of 1950. Hutchinson, *Legislative History*, 430 and 493-497.

²² Truman quoted in Haim Genizi, *America's Fair Share: The Admission and Resettlement of Displaced Persons, 1945-1952* (Detroit: Wayne State University Press, 1993), 81. See also: Leonard Dinnerstein, *America and the Survivors of the Holocaust* (New York: Columbia University Press, 1982).

omnibus bill. Though liberals like Emanuel Celler attempted to remove the national origins system, pressure from nativist groups such as the American Legion, as well as restrictionists such as Senator Pat McCarran (D-NV) and Representative Francis Walter (D-PA), who controlled the Senate and House Judiciary immigration committees, resisted reform attempts.²³

With regard to labor market preferences, the Act made four major changes: (a) it amended the preference system from the 1924 Act to grant first preference, and 50 percent of all visas within each nation's quota to skilled and urgently needed labor (table 4.1). The remaining 50 percent of visas went to three family preferences, while any visas left unused could be utilized by nonpreference applicants (those not claiming skills or family ties.) (b) It removed the contract labor laws barring those with jobs-in-hand or receiving assistance from entering the country. (c) It created provisions for temporary workers under section 101(a)(15)(H), for (i) highly skilled workers coming to perform temporary jobs; (ii) those coming to perform temporary positions, if such workers could not be found in the U.S.; and (iii) industrial trainees. These "H" visas required that immigrants state intent to return to their home country at the end of the employment period to be eligible.²⁴ (d) It created a system of negative labor certification (Section 212(a)(14)). An alien laborer was deemed admissible to the United States unless the Secretary of Labor certified that their entry would harm U.S. workers the U.S. economy, or that they were entering to work in an occupation with a sufficient number of American workers. Additionally, the Act retained nonquota status for all Western Hemisphere immigrants, (much to the chagrin of organized labor,) but applied the labor certification provisions to these entrants.²⁵

While the DP Act had spelled out the various professions – such as household and garment workers, scientists, and technicians – that qualified under the second preference for skilled labor, the McCarran-Walter Act left the determination of who qualified as urgently needed in the hands of the Attorney General. Section 203(a)(1) did however

²³ Scholars are divided on the final analysis of the McCarran-Walter Act. Historians such as Roger Daniels, Gary Gerstle, and Michael Davis believe that the Act contained both liberal and conservative features. These scholars view the legislation optimistically, regarding it as a first step toward liberalization. A second group, led by Desmond King, Aristide Zolberg, and Robert Divine portray the Act as intrinsically conservative and discriminatory, mainly because of its racial components. See: Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants since 1882* (New York: Hill and Wang, 2004); Michael G. Davis, "Impetus for Immigration Reform: Asian Refugees and the Cold War" *Journal of American-East Asian Relations* 7, (1998) No. 3-4, 130; Robert A. Divine, *American Immigration Policy, 1924-1952* (New Haven: Yale University Press, 1957); Gary Gerstle, *American Crucible: Race and Nation in the Twentieth Century* (Princeton: Princeton University Press, 2001); Desmond King, *Making Americans: Immigration, Race, and the Origins of the Diverse Democracy* (Cambridge: Harvard University Press, 2000); Zolberg, *Nation by Design*.

²⁴ Congress removed the "double temporary," provision, which barred temporary workers from filling permanent positions, in 1970. The Immigration Act of 1990 allowed H-1B workers to have dual intent for either temporary or permanent stays in the United States. See: Lowell, "The Foreign Temporary Workforce."

²⁵ On the views of organized labor, see, for example: "Statement of Walter J. Mason, Member, National Legislative Committee, American Federation of Labor, Before Joint Hearings of the Senate and House Judiciary Subcommittees on Proposed Amendments to the Immigration and Naturalization Laws, April 9, 1951." AFL-CIO Archives, RG 21-001, Box 27, Folder 14.

limit these immigrants to people who “because of the high education, technical training, specialized experience, or exceptional ability” were “substantially beneficial prospectively to the national economy, cultural interests, or welfare of the United States,” along with their spouses and minor children. Here again, the shift from the predominantly agricultural preferences of the Immigration Act of 1924 and DP Act of 1948, is telling. The 1952 Act also excised the construction and clothing workers from the 1948 Act, granting preference specifically to educated and skilled immigrants.²⁶

During the debates over the omnibus bill, retention of the national origins system and Asian exclusion dominated the discussion. The new preference structure received little debate, though Senator Pat McCarran would argue that the revised categories provided “a more thorough screening in order to insure that the admission of aliens...will serve the national interest.”²⁷ Considering that few employment-based immigrants would actually take advantage of the provisions,²⁸ these preferences became a further method of restricting immigration from southern and eastern Europe, where the majority of immigrants were unskilled workers.²⁹ “Who is kidding who?” asked Representative Emanuel Celler (D-NY) in 1951, since by State Department estimates, no more than 3,200 people a year would enter under skills-based provisions. And yet, the McCarran-Walter bill proposed allotting 50 percent, or roughly 77,000 visas to employment categories.³⁰

These limitations on unskilled workers sparked a debate over the place of the new seed immigrants in postwar admissions policy. These immigrants – young, lacking skills or family ties – according to Emanuel Celler were “the type of immigrant that built up our country...those who built our railroads, ships, and planes, tunneled our mountains and our subways, erected our bridges and roads.” Or, in the words of Senator Estes Kefauver (D-TN), they constituted “the hardy freedom-loving pioneer, the type of our ancestors, who represent the new seed of our national existence.” In Senator Kefauver’s remarks the idea of the new seed encompassed more than simply a lack of skills, and instead touched

²⁶ Note that the House Report on the McCarran-Walter Act did state that *skilled* agriculturists could be eligible for the 1st preference, and thus no separate category for agricultural workers was necessary. Still, I find the emphasis on professional and technical workers, rather than agricultural workers as in 1924, to be telling. 82nd Congress, 2nd Session, H.Rept. No. 1365, “Revising the Laws Relating to Immigration, Naturalization, and Nationality, February 14, 1952, 39.

²⁷ McCarran quotes in: Sidney Kansas, *Immigration and Nationality Act Annotated* (New York: Immigration Publications, 1953), iii and 25.

²⁸ See table 2.

²⁹ Marion T. Bennett, *American Immigration Policies, A History* (Washington: Public Affairs Press, 1963), 120-121. As will be discussed later, taking into account the percentage of immigrants who entered under the preference system, southern and eastern Europeans bore the brunt of the new changes.

³⁰ “Revision of Immigration, Naturalization, and Nationality Laws,” 1951, 359. McCarran’s original provisions for the omnibus bill, as introduced in 1951, contained only 30 percent for the first preference for labor, 50 percent for second preference parents of citizens, and 20 percent for spouses and unmarried children of permanent residents. This version did not allow for unused slots to trickle down to other categories, and stated that only 10 percent of each country’s quota could be used for nonpreference admissions. Walter’s version of the omnibus bill had similar preferences, but allowed for trickle down. See: Stephen Thomas Wagner, “The Lingering Death of the National Origins Quota System: A Political History of United States Immigration Policy, 1952-1965” Ph.D. Dissertation, Harvard University, 1986, 44-57.

on something deeper: a connection with the nation's immigrant ancestors.³¹ Much like Matthew Jacobson's concept of 'Ellis Island Whiteness,' which he defines as an idealized depiction of earlier generations of white European immigrants, who came from nothing and pulled themselves up by their bootstraps, Celler and Kefauver linked the new seed to the immigrant experiences of their own ancestral pioneers. For Jacobson, post-civil rights era white ethnics harnessed this conception of whiteness as a trope to distance themselves from race and racism. Here though the new seed presented liberals with an ideology that allowed them to push for the retention, or even widening, of immigrant admissions. This ideology revolved around securing the traditional pathway to immigration taken, for the children of immigrants like Celler, by their own forbearers, who arrived in the United States without skills or family connections.³² "Immigration was as responsible for making our Nation great as were our natural resources," argued Charles Slayman of the liberal American Veterans Committee, "we need new seed immigration, not merely a hand-picked, highly skilled few."³³

Scholars examining immigration policy have overlooked new seed immigration, but I argue that the category lay at the heart of the postwar struggles to define labor-based migration policy. After waxing poetically about the "freedom-loving pioneer," Kefauver went to the heart of the matter, stating that "instead of more rigid class preferences we need more flexibility in the operation of our quota distribution." The fact that the McCarran-Walter Act preferences allotted 100 percent of all quota visas to preference categories, with nothing set aside for the unskilled, meant that new seed immigrants would have to compete for nonpreference slots, with little chance of gaining entry. "To my mind," argued Emanuel Celler, the preference system "is an ingenious method of hermetically sealing our shores against immigration." Indeed, liberals worried that none

³¹ "Revision of Immigration, Naturalization, and Nationality Laws," 1951, 359; "Minority Views to Accompany S.2550" Mr. Kefauver, March 13, 1952, 4, 82nd Congress, 2nd Session, S.Rept. No. 1137, January 29, 1952.

³² Matthew Frye Jacobson, *Roots Too: White Ethnic Revival in Post-Civil Rights America* (Cambridge: Harvard University Press, 2006), 9. This is not to say that race did not enter the conversation. In one of the only references to new seed migration between 1953 and 1963, Francis Walter questioned Robert C. Alexander of the State Department during hearings on amendments to the Refugee Relief Act of 1953. While Alexander attempted to inform Walter of the Italian government's position on U.S. refugee policy, and of the importance of taking into account foreign policy considerations, Walter dismissed him, stating "of course, I can see what their position would be; in order to get more people...they would get new seed in the United States." "H.R. 7475 Proposing an Amendment to the Refugee Relief Act of 1953, Subcommittee No. 1 of the House Judiciary Committee, 25 February, 1954," 12-13. Additionally, those utilizing arguments about the new seed argued that their ancestors had arrived with nothing, and had pulled themselves up by their bootstraps, ignoring, as whiteness scholars have pointed out, the material and psychological gains that whiteness provided them in their journey. See: David R. Roediger, *The Wages of Whiteness* (London: Verso, 1999 [Revised Ed.]); Cheryl I. Harris, "Whiteness as Property," 106 *Harvard Law Review* 8, June 1993; and Thomas A. Guglielmo, *White On Arrival: Italians, Race, and Color in Chicago, 1890-1945* (Oxford: Oxford University Press, 2003).

³³ "Statement of Charles H. Slayman, Jr. Executive Director, American Veterans Committee," in "Hearings before the President's Commission on Immigration and Naturalization, 82nd Congress, 2nd Session, September 30 – October 29, 1952", 1658.

other than the most highly skilled and those with family ties would be able to enter, thus closing off an important avenue for entry.³⁴

Appeals to new seed immigration though were fraught with difficulty, as the testimony of Max Swiren, representing the umbrella group the Principal Jewish Organizations of Chicago, illustrates. In his remarks Swiren argued that future immigration policy should be dictated by four categories: family reunification; asylum; special skills and training; and finally the new seed. But while Swiren presented a strong rationale for the importance of admitting those “seeking to join their families,” and argued that “college professors and scientists are at least as necessary” as agricultural workers, for his final category he could only state that “we ought to reserve a category for . . . immigration of the character that originally built this country.” This lackluster defense highlights the main dilemma facing congressional liberals: how to square a pragmatic and future-oriented category such as skilled labor, with an ideological and backward-looking one (both in a longing for ancestral immigration and a return to prewar labor needs,) such as the new seed?³⁵ In the end, the McCarran-Walter Act contained no provisions for these immigrants.

While the category of new seed garnered at least some congressional attention, the repeal of the contract labor laws went overlooked in 1952. Only subsequent to passage would the American Federation of Labor (AFL) argue that restoring the prohibition was necessary “in order to assure minimum protection and to guarantee basic rights to immigrant workers,” as well as to protect the American workforce. With exemptions for skilled labor written into the original 1885 restriction, as Kitty Calavita argues, its provisions had always been symbolic at best. Still, the conscious repeal of a symbolic law with the McCarran-Walter Act represented an important watershed on the road from excluding those with a job-in-hand, to ultimately requiring all labor migrants to secure employment prior to admission.³⁶

More than this symbolic shift, the implementation of labor certification, and its imposition on the western hemisphere, marked an important move toward establishing a consciously selective employment-admissions regime. Section 212(a)(14) of the 1952 Act made any alien excludable upon certification of the Secretary of Labor that their admission would harm U.S. workers or wages. Though the American Federation of Labor (AFL) pushed for a system whereby the Secretary would first survey the labor market and then certify the need for foreign labor prior to each admission, the 1952 process stopped short of this proposal. Instead, certification occurred only in negative cases: aliens were otherwise admissible unless the Secretary acted to certify them as otherwise. The AFL and Congress of Industrial Organizations (CIO), even after shifting to favor an increase in

³⁴ “Minority Views to Accompany S.2550”, 4; “Revision of Immigration, Naturalization, and Nationality Laws,” 1951, 358.

³⁵ “Hearings before the President’s Commission on Immigration and Naturalization,” 1952, 767.

³⁶ “Statement by Walter J. Mason, Member, National Legislative Committee, American Federation of Labor, Before the Subcommittee on Immigration and Naturalization of the Senate Judiciary Committee on Immigration Legislation” November 21, 1955, 6. AFL-CIO Records, RG21-001, Box 27, Folder 16, National Labor College; Hutchinson, *Legislative History*, 430; Calavita, *U.S. Immigration Law*.

overall immigration after their 1955 merger, continued to push for an expanded role for the Secretary of Labor in choosing which immigrants entered the country.³⁷

Finally, as with the repeal of the contract labor laws, the creation of temporary labor provisions in 1952 garnered no Congressional debate. Pat McCarran, in his report for the Judiciary Committee on S.2550 in 1952, felt the need to explain why his bill stripped professors and foreign students of their previously nonquota status, but simply restated the provision for temporary workers, without exegesis. The Minority Report to accompany S.2550, which blasted the bill for containing “302 pages...of highly controversial provisions,” similarly did not discuss temporary worker visas, nor did organized labor in its testimony.³⁸ In 1965 the AFL-CIO would argue for the barring of all temporary workers, but in 1952 they focused primarily on illegal entry. As demographer B. Lindsay Lowell has illustrated, usage of the H-1 category did not rise above 20,000 visas per year until the 1980s, and only surged above 60,000 in the late-1980s. It is possible then that while other temporary labor agreements such as the *bracero* program garnered intense criticism from labor groups, the evidence at hand suggested to policymakers that the H visas would play only a minor role in future immigration law.³⁹

With the McCarran-Walter Act of 1952 then, legislators moved U.S. immigration policy tentatively toward a system of greater selectivity for labor immigrants (through the creation of positive preferences,) and of restricting all but the highly skilled and professional (through labor certification.) In practice many of these strictures would be theoretical at best, as the bulk of all immigrants entered under nonpreference categories. But, once implemented in 1952, they laid the groundwork for the system of labor-based migration that would solidify under the Hart-Celler Act of 1965.

Race, Science, and Labor in the Interim Period, 1953-1962

Though preference category backlogs would not play as important a role in labor-reforms as in family reunification, the structure of the preference system implemented in 1952 nonetheless created a similar path dependency that shaped and constricted policymaking. Under the McCarran-Walter system, with first preference and half of all quota visas going to skilled labor, employment admissions, at least on paper, drove U.S. immigration policy between 1952 and 1965. In reality, according to INS records (table 4.2), only 5.55 percent of all quota immigrants arrived under labor preferences, while less than 20 percent entered under *any* of the quota preferences. This lack of preference usage would ultimately create a path dependency that constrained future policymaking and made it easier to constrict total labor admissions in 1965.

³⁷ On the AFL-CIO's position on immigration after the merger, see: Tichenor, *Dividing Lines*, 203-204.

³⁸ The Judiciary committee believed that professors would have ample space to enter under the first preference for labor, and switched students from permanent nonquota admissions, to temporary nonimmigrant status. 82nd Congress, 2nd Session, S.Rept. 1137, “Minority Views to Accompany S.2550.”

³⁹ Lowell, “The Foreign Temporary Workforce.” On organized labor's objection to temporary workers in the 1965 debates, see: “Proposed AFL-CIO Executive Council Statement on Immigration Reform” undated, (c. 1965), AFL-CIO Records, RG21-001, Box 27, Folder 31; On organized labor's views during the 1952 debate, see: “Statement of Walter J. Mason,” April 9, 1951.

Table 4.2: Total Quota Issuance by Class, 1954-1970

<u>Years</u>	<u>Total Preference</u> ^c	<u>Total Labor</u> ^d	Total Nonpreference
1954-1965 ^a	19.12%	5.55%	79.97%
1966-1970 ^b	49.75%	16.61%	27.17%

a – Percentages (total preference and total nonpreference) do not add up to 100%, as a small percentage entered under temporary legislation (charged as quota immigrants.)

b – Percentages (total preference and total nonpreference) do not add up to 100% as a small percentage entered as preference immigrants under temporary legislation, and under the 7th preference for refugees.

c – 1st through 4th preference.

d – 1st preference figures only, a portion of the total preference numbers.

Source: *Annual Report of the Immigration and Naturalization Service, FY 1954-1970*, Table 4

The vast majority of quota immigrants, almost 80 percent, immigrated through the nonpreference category, and arrived primarily from the large-quota countries of Great Britain, Germany, and Ireland. Nonpreference entry was both faster and cheaper – registering for a preference visa meant having to pay a fee and having to prove your skill level or family tie, whereas citizens from countries like Ireland, which never used its entire quota allotment and thus had no backlog of preference slots, could simply arrive at a consular post and declare themselves immigrants. Out of a total of 63,056 quota immigrants from Ireland from 1957 through 1965,⁴⁰ only 289 entered under the preference classes, and only 27 as 1st preference labor migrants (table 4.3). Italy sent slightly fewer total numbers of migrants, 49,785. But in contrast to Ireland, as one of the countries most disadvantaged by the quota system, and most heavily backlogged, only a small number of Italians entered through the nonpreference category, with the vast majority entering under the family and labor preferences.⁴¹

Table 4.3: Irish and Italian Quota Entry by Preference Class, FY 1957-1965

Country	Total Quota	Labor Preference ^a	Family Preferences ^b	Nonpreference
Ireland	63,056	27	262	62,767
Italy	49,875	19,674	28,318	1,882

a – 1st Preference under the INA of 1952

b – 2nd through 4th Preference under the INA of 1952

Source: Table 7A, *Annual Report of the Immigration and Naturalization Service, FY 1957-1965*.

Much of the discrepancy in preference usage can be attributed to the differences in quota allotment for each country. Under the national origins system, Ireland received 17,756 visas per year, and rarely filled them. Italy on the other hand, received only 5,666 visas per year, with far higher demand. Many in Ireland chose to avoid the preference system altogether, opting for the more immediate route of nonpreference migration. Within ten

⁴⁰ The INS did not keep detailed breakdowns of quota preference usage prior to 1957.

⁴¹ On nonpreference entry and large quota countries like Ireland, see: Abba P. Schwartz, “The Role of the State Department in the Administration and Enforcement of the New Immigration Law,” *Annals of the American Academy of Political and Social Science*, Vol. 367 (Sep. 1966), 93-104.

years of the passage of McCarran-Walter, Italy had approximately 137,000 people waiting for 4th preference slots alone, making usage of nonpreference visas, those left over after the first three visa preferences (100 percent of all quotas,) and the fourth (50 percent of unused slots from the first three preferences,) unlikely.⁴² With such discrepancies in distribution, the system of labor preferences after 1952 mattered most for southern and eastern Europeans, the very immigrants the quota system was designed to limit in the first place.⁴³

Debates over the category of the new seed, which had been vanquished in the McCarran-Walter Act, lay dormant in the interim period between reforms. While many of those testifying before the President's Committee on Immigration and Naturalization, (formed by President Truman in his veto of the 1952 law to provide a basis for immigration reform,) argued in favor of new seed migration, the category was absent from most of the reform proposals in the 1950s.⁴⁴ Even the Commission report, *Whom We Shall Welcome*, avoided the term altogether, including as one of its five primary principles for immigration reform "the kind of immigrants the United States traditionally has received," those without family ties, skills, or refugee status, but labeling it simply "General Immigration."⁴⁵ This idea of "traditional" immigration drew on the same nostalgia for immigrant ancestors as had the debates during the McCarran-Walter Act, without calling it by name. And, though liberals had feared that the imposition of the preference system would spell the end of new seed immigration, as evidenced by table 4.2, the vast majority of immigrants entering the country came under the nonpreference category, professing no skills or family ties.⁴⁶

Within this context of small preference usage, reform of the McCarran-Walter Act proceeded at a glacial pace. Still, the parameters of the debate shifted significantly during the 1950s. In the intermediary period between legislative reform, two major changes altered the course of employment-based migration policy. First, organized labor, which had been opposed to larger numbers of admissions, took up the liberal position on

⁴² Department of State, Visa Office Bulletin, Number 91, March 2, 1962 "Quota Immigrants Registered Under Oversubscribed Quotas as reported on February 1, 1962." RG233, 87th Congress, Judiciary Committee, Box 261, HR 11911 (2 of 3), NARA I.

⁴³ Western hemisphere migrants, by contrast, were not subject to numerical limitations or the preference system. Still, as Kitty Calavita points out, during the post-war period, the INS worked to keep groups like Mexicans from attaining permanent resident status, to ensure that growers in the southwest would be able to draw on a steady and easily returnable workforce. Calavita, *Inside the State*, 81-82. On congressional intent in the creation of the national origins system, see: Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), Chapter 1; and King, *Making Americans*, Chapter 7.

⁴⁴ E.P. Hutchinson writes that although the restrictionist Congress largely ignored the report, it became the basis for liberal attempts at immigration reform through 1965. Hutchinson, *Legislative History*, 314-320.

⁴⁵ President's Commission on Immigration and Naturalization, *Whom We Shall Welcome* (Washington D.C.: U.S. Government Printing Office, 1953), 121.

⁴⁶ It is impossible to accurately estimate how many of the almost 80 percent of all quota immigrants could actually be defined as new seed. Still, as became apparent after the passage of the 1965 Act, countries like Ireland (table 4.6) found their immigration severely curtailed by the lack of nonpreference slots and concurrent need to register as a preference immigrant. See: Raymond F. Farrell, "The Role of the Immigration and Naturalization Service in the Administration of Current Immigration Law," *International Migration Review*, Vol. 4, No. 3 (Summer 1970), 16-30.

immigration after 1955, arguing for an end to the national origins system and an increase in overall immigration. Crucially, labor's ideal immigrant was not the unskilled, who might compete with their members for jobs, but rather the highly skilled and professional. Similarly, in the deepening Cold War, especially after the launching of the Soviet *Sputnik*, policymakers recognized the need for scientific and technological expertise for the national security state. This need would ultimately reorient all labor admissions priorities. Though liberals revived the new seed category in the debates over Hart-Celler, by the early 1960s, ideological arguments based on traditional migration patterns had lost significant ground to more immediate concerns about economic and industrial needs.

After the 1955 merging of the American Federation of Labor (AFL) and Congress of Industrial Organizations (CIO), as political scientist Daniel Tichenor points out, organized labor moved from the anti- to pro-reform camp. The AFL, founded as a trade union for skilled craftsman, had supported the national origins system, and looked warily upon the admission of larger numbers of immigrants. The CIO by contrast, as a union dedicated to organizing workers regardless of skill level, had a significant proportion of southern and eastern European members. It had long opposed the quota system, which kept so many of its relatives and co-nationals out of the U.S. Even before the merger though, Tichenor argues that the AFL had begun to shift toward a more liberal position, and with George Meany as president of the newly merged union, and liberal Democrat Andrew Biemiller as director of the Legislative Office, the AFL-CIO landed firmly in the liberal camp.⁴⁷

As the AFL-CIO adopted a position of expansionism, it began to assimilate many of the leading liberal positions of the day. By 1956, the organization supported changing the base year for computation of the quotas to 1950, and increasing total immigration to 251,000. It also supported ending Asian exclusion, and repealing the quota mortgaging provisions of the DP Acts.⁴⁸ Even as individual unionists wrote to express their displeasure with the AFL-CIO's expansionist positions, leaders like Hyman Bookbinder of the Legislative Office would argue that in the face of unemployment, the United States could still absorb at least another 100,000 immigrants per year. "You are making a serious error," wrote Bookbinder to a constituent, "in believing that we can solve all our unemployment problems by cutting immigration." As Bookbinder would argue in a 1957 article, the admissions of 250,000 immigrants per year represented only one-seventh of one percent of America's population, meaning that "each year we would welcome to our shores one carefully selected immigrant for every 700 Americans."⁴⁹

This latter statement by Bookbinder, about "carefully selected immigrants," is key to understanding the AFL-CIO's position. While the union moved to the expansionist camp after 1955, they supported a very specific type of reform. In the 1957 statement on

⁴⁷ Tichenor, *Dividing Lines*, 203-04

⁴⁸ See, for example: "Statement of the AFL-CIO Executive Council," June 7, 1956. AFL-CIO Records, RG 21-001, Box 27, Folder 18; President's Commission, *Whom We Shall Welcome*.

⁴⁹ Hyman H. Bookbinder to Ervin J. McAbee, June 20, 1958. AFL-CIO Records, RG 21-001, Box 27, Folder 23; Hyman H. Bookbinder, "The Whole Country Benefits," Reprinted from *The American Federationist*, November 1957, 3, *Ibid.*, Folder 23.

immigration by the AFL-CIO's Executive Council, the union argued that "America is in a strong enough economic position to absorb a reasonable number of immigrants without undermining employment opportunities of American workers." Visas, the council argued, should no longer be allocated on the basis of race, but instead on "relevant factors," namely family reunification, the "technical and professional needs of America," refugee relief, and foreign policy needs. These categories were similar to the 1953 recommendations of the President's Commission on Immigration and Naturalization's categories (asylum, family reunion, the needs of the United States, the needs of the free world, and "general immigration,")⁵⁰ with two key differences. For one, while the "needs of the free world" and foreign policy lined up, the AFL-CIO statement says nothing about general immigration of the unskilled. And, instead of the vague "needs of the United States," the AFL-CIO statement is more specific, calling for a recognition of the "technical and professional needs of America." So though the AFL-CIO fought for increased immigration, they favored a more limited increase of only the highly skilled, who would not directly compete with their members.⁵¹

In letters to constituents, the AFL-CIO's Legislative Office argued that expanded immigration would be a net gain for the nation, as only a fraction (estimated at one-quarter to one-fifth) of entrants would enter the workforce, while all would become consumers, jumpstarting the economy.⁵² The Constitutional Convention of 1959 likewise pointed out that immigrants should not be viewed solely as competitors, but rather "customers for the goods and services of our productive economy...[and] the skilled workers and technicians who help create job opportunities for others." Here again, even as the AFL-CIO rejected the national origins quotas as "inconsistent with our American concepts of equality," the laborers they had in mind were decidedly the skilled and professional, not the new seed. And, far from competing with their numbers, they believed that skilled and technical workers would actually help to create jobs.⁵³

Alongside organized labor, a second shift in the 1950s emerged from external factors. On October 4, 1957, the Soviet Union launched *Sputnik 1*, sending American policymakers into a frenzied debate about the place of scientific knowledge and scientists within the nation, and about the superiority of American technological expertise. The importance of scientific knowledge for national defense had been evident since the exploding of the atomic bombs in World War II, and had accelerated with the rise of the Cold War. The Korean War in particular exposed, for those in the Eisenhower Administration, the shortage of science and engineering personnel in the country. The perceived gap between

⁵⁰ The report defined the needs of the United States as "entry into the United States of persons whose skills, aptitudes, knowledge or experience are necessary or desirable for our economy, culture, defense or security." The needs of the free world relate primarily to promoting the "stability of the other free nations of the world," by compensating for overpopulation. President's Commission, *Whom We Shall Welcome*, 118-121.

⁵¹ "Statement by the Executive Council, AFL-CIO, February 4, 1957," 2. AFL-CIO Records, RG 21-001, Box 27, Folder 19.

⁵² See, for example: Hyman H. Bookbinder to Homer J. Larkin, August 20, 1957. AFL-CIO Records, RG 21-001, Box 27, Folder 21.

⁵³ "A Democratic Immigration Policy," Resolution No. 170, Adopted at the Third Constitutional Convention of the AFL-CIO, September 1959, 1-2. AFL-CIO Records, RG 21-001, Box 27, Folder 27.

U.S. and Soviet space technologies, and the ensuing fears over Cold War supremacy, pushed policymakers in the 1950s to reorient educational and national security priorities toward highly educated and highly skilled workers. Just as the AFL-CIO moved toward a position of liberalization on immigration that privileged the highly skilled and professional, so too Cold War and *Sputnik* fears catalyzed legislators into increasingly privileging the admission of scientists and engineers. By the 1960s these new priorities would reorient the focus of all permanent labor admissions.⁵⁴

In a speech given before the National Council on Naturalization and Citizenship in March of 1958, the State Department's Administrator of Security and Consular Affairs, Roderic O'Connor, spoke directly to the changing labor needs in the post-*Sputnik* era. As in the 1952 debates over new seed immigration, O'Connor argued that the U.S. no longer required vast quantities of laborers for the now-closed frontier. Three principals drove immigration policy, according to O'Connor: family reunification, refugees, and skilled workers. "In earlier decades," argued O'Connor, "our rapidly expanding country desperately needed mass labor from whatever source." But presently, "this is no longer true. The Soviet *Sputnik* has dramatically emphasized a different need. Today we need scientists and technicians... professional people, doctors, and teachers." Instead of the unskilled, he concluded, "we need highly skilled and specialized immigrants." Moving even further from the labor preferences set out by the McCarran-Walter Act, O'Connor's speech pushed to the forefront of immigration policy the scientific, medical, and technological needs of the nation.⁵⁵

Equally so, O'Connor noted that the actual numbers of the highly skilled and professional immigrants entering under the provisions of the 1952 Act, less than 5,000 out of a total of over 75,000 possible, meant that "our immigration today is not bringing to our country the technological manpower we need for our defense and our economy." Here national defense and Cold War needs intimately informed economic decisions and labor-market policies. Tellingly, while O'Connor acknowledged that "we cannot, as a nation, take only the strong and the brave," he viewed America's obligations in this regard as extending only to the "the ill, the disabled, and the helpless." Nowhere in his statement is the type of young, unskilled immigrant that comprised the new seed.⁵⁶

This shift to a highly skilled and professional normative immigrant in the post-*Sputnik* era is most evident in the special legislation passed in 1958, P.L. 85-892, to admit Portuguese refugees from natural disaster in the Azores, and Dutch refugees from the former colony of Indonesia. Though the Act marked a departure from previously

⁵⁴ On the role of the cold war and Sputnik in privileging the role of science in national defense, see: John L. Rudolph, *Scientists in the Classroom: The Cold War Reconstruction of American Science Education* (New York: Palgrave, 2002); Robert A. Divine, *The Sputnik Challenge* (New York: Oxford University Press, 1993); Barbara Barksdale Clowse, *Brainpower for the Cold War: The Sputnik Crisis and National Defense Education Act of 1958* (Westport: Greenwood Press, 1981); Walter A. McDougall, *The Heavens and the Earth: A Political History of the Space Age* (New York: Basic Books, Inc., 1985); Robert Boyle, "A Red Moon over the Mall: The *Sputnik* Panic and Domestic America," *Journal of American Culture*, Vol. 31, No. 4, 2008.

⁵⁵ "Our Immigration Policies and the International Scene," 2-4.

⁵⁶ *Ibid.*

communist-centric definitions of a refugee to include humanitarianism, the priorities for admission are telling.⁵⁷ Whereas the DP Act of 1948 prioritized agricultural workers first, and skilled and urgently needed laborers second, priority under the 1958 law, according to a memo from John F. Depenbrock of the State Department, would be given first to those “who indicate exceptional ability in a professional, scientific or other intellectual field,” and only second to those “who possess a trade skill which can be utilized in the United States.” Seven years later, the Hart-Celler Act of 1965 would make a similar differentiation in labor categories, between the third preference, for the highly skilled and professionals, and the sixth preference, for skilled and urgently needed labor. The legislation itself though, unlike the DP Act, contained no written priorities. Considering the Cold War context, it is not surprising that the State Department interpreted it in this manner.⁵⁸ And, while the majority of Portuguese migrants were unskilled immigrants, the priorities at play here illustrate the diffusion of conceptions of the ideal immigrant – as professional workers, especially in the sciences – into refugee legislation.

The tipping point in the movement toward the highly skilled and professional came in 1962, with the passage of Public Law 87-885, from bills introduced by Francis Walter (H.R. 11911) and Senator John O. Pastore (D-RI) (S.3361). Alongside provisions to reclassify certain relatives as nonquota entrants, the bill worked to clear the backlogs in labor admissions.⁵⁹ Anyone with a first preference petition approved prior to April 1, 1962 could enter immediately as a nonquota immigrant. The vast majority of these first preference visas went unused each year (table 4.2), but Asian countries, whose numbers were severely curtailed by the Asia-Pacific Triangle, had amassed large backlogs. Asian immigrants faced a double limitation: small per-country quotas, and a yearly limit of just over 2,000 people from Asia as a whole. Thus the availability of a country-specific quota slot did not guarantee an immigrant entrance into the country.⁶⁰

⁵⁷ Scholars have largely overlooked the 1958 Act. Most, like David Reimers, simply point to the legislation and explain who entered under its provisions. Reimers does argue that the definition of a refugee in 1965 incorporated victims of natural catastrophe, which stemmed from the 1958 Act. Reimers, *Still the Golden Door*, 30 and 162. On the RRA, see Carl J. Bon Tempo, *Americans At the Gate: The United States and Refugees during the Cold War* (Princeton: Princeton University Press, 2008), Chapter 2.

⁵⁸ John F. Depenbrock (Special Assistant to the Coordinator, Special Immigration Program,) to Drury Blair, Senate Subcommittee on Immigration and Naturalization. “Department of State instruction CA-4252, November 7, 1958, on the implementation of PL 85-892, “An Act for the Relief of Certain Aliens.” The bill authorized 1,500 visas for those returning from the Azores, and just over 3,000 for those returning from Indonesia. Family reunification provisions were allotted only after the first two preferences for labor. RG 46, Sen.86A.F12.1, Box 6, State Department (1 of 5), NARA I. Richard Smith of the American Immigration and Citizenship Conference and United States Committee for Refugees, in his 1966 summary article of recent developments in refugee policy, writes that the Dutch-Indonesians were the first predominantly Asian refugee group of any substance to enter the country, though most spoke English and were of the middle class. Richard Ferree Smith, “Refugees,” *Annals of the American Academy of Political and Social Science*. Vol. 367 (Sep. 1966,) 43-52.

⁵⁹ The Act advanced the December 31, 1954 cut-off date for eligible fourth-preference applicants created under the Act of September 1959 (P.L. 86-363), highlighting the ever-growing backlog of immigrants, especially from countries like Italy and Greece.

⁶⁰ The Triangle provided for 2,000 base slots, plus 100 for the Triangle as a whole (for those with parents from two different Triangle countries or a colony,) 105 for China, and 185 for Japan, for a maximum of 2,390 Asians per year. While immigrants from elsewhere entered under the quota country of their birth,

Under the Asia-Pacific Triangle and national origins system, China had a maximum quota of 105 slots per year, and by 1962, a backlog of 1,387 in the first preference.⁶¹ The Department of Justice, in its comments on S. 3361 to the Senate Judiciary Committee, went as far to say that the bill would “have a direct effect upon the Chinese...for whom the prospects of obtaining a visa are apparently hopeless under the current law.” Walter’s bill allowed for approximately 6,900 Chinese skilled workers and their family members to obtain permanent residency. Critically, Walter stated in introducing his bill, that “many of these people have been certified by the Defense Department and defense contractors that they are needed,” and around half were already working in the United States, waiting for a quota slot.⁶² As with Roderic O’Connor’s 1958 speech, in the wake of *Sputnik*, the needs of the national security state and the Cold War pushed legislators in 1962 to admit a greater number of skilled immigrants. Tellingly, Francis Walter himself, the ardent defender of the 1952 Immigration Act, created this liberalization, bending even the exclusionary procedures of the Asia-Pacific Triangle to admit Chinese defense workers. Here labor needs trumped even the racial foundations of immigration law.⁶³

After Walter’s death in 1963, attempts to reform the McCarran-Walter Act kicked into high gear. By this time, as historian David Reimers has pointed out, the American public had come to view the national origins quota system as on par with deliberate segregation. With the shift of organized labor from anti- to pro-reform, as well as the loss of ground by traditional patriotic organizations, immigration reform seemed all the more imminent. Still, the final form of labor-admissions policy was never a foregone conclusion.

The Hart-Celler Act of 1965: Reform Redux

By 1963 the stage had been set for immigration reform, though it would take until 1965 for a new law to be passed.⁶⁴ In his July 23, 1963 letter to Congress urging legislative change, President John F. Kennedy revived the issue of the new seed, arguing that any plausible reform had to be flexible enough so that “immigrants from nations closely allied to the United States will [not] be unduly restricted in their freedom to furnish the new seed population.” This population, according to Kennedy, “has so long been a source

Asians alone possessed blood-based ancestry under the law, and had to enter under the much smaller quotas for Asia. See: Reimers, *Still the Golden Door*, 17-18.

⁶¹ Department of State, “Quota Immigrants Registered Under Oversubscribed Quotas.” With only 50 percent of the total Chinese quota of 105 available to first preference immigrants, even with no new applicants, it would take over twenty-six years to clear the backlog of 1,387 people.

⁶² Department of Justice to James Eastland, August 13, 1962, RG 46, Sen 87A-E12, Committee on the Judiciary, Box 40, S.3361, NARA I. Quote on 2; Speech of Francis Walter, *Congressional Record*, 82nd, 2nd, 1962: 22606.

⁶³ Stephen Wagner points out that while Walter was very sensitive to criticism of the 1952 Act, he realized by the 1960s that reform was imminent, even introducing his own plan for quota pooling. This plan, as Wagner points out, looked a lot like the one proposed by the Eisenhower Administration in 1956, which Walter had blocked. I find it especially telling that here Walter was willing to circumvent the restrictions of the quota system for defense contractors first and foremost. Wagner, “Lingering Death”, 364-377.

⁶⁴ On the impetuses for reform, see: Zolberg, *Nation by Design*, 329-333; Reimers, *Still the Golden Door*, Chapter 3; Tichenor, *Dividing Lines*, Chapter 7; Daniels, *Guarding the Golden Door*, Chapter 7.

of strength to our nation.”⁶⁵ Kennedy’s focus on new seed here is not surprising, considering that in earlier attempts at comprehensive reform, such as his failed attempt to pass S.1996 in 1959, he had explicitly suggested that permanent immigrant visas be split into three groups: 60 percent of all visas for family reunification; 20 percent for those with special skills and qualifications (including “scientists and men of letters”); and 20 percent for new seed immigrants. Additionally, in singling out “nations closely allied to the United States,” Kennedy subtly hinted to the quota-privileged nations of northern and western Europe that their immigration needs would not be overlooked once the national origins system was removed. These assurances were especially important to countries like Ireland, which sent a surplus of unskilled workers to the United States each year as nonpreference immigrants.⁶⁶

Emanuel Celler would also champion new seed immigration in the 1960s, as he had in 1952. In the transcript of a meeting between Celler and Senator Philip Hart (D-MI), the two individuals that would put their names on immigration reform, Celler laid out his three priorities for reform: first preference for “skilled persons especially advantageous to [the] U.S.,” second preference for families; and finally third preference for the new seed, those, in Celler’s words, “willing to do rough work.” Interestingly, while in 1959 Kennedy spoke of new seed immigrants as those arriving from “nations closely allied to the United States,” presumably white Europeans, Celler singled out Puerto Ricans in his home city of New York, working in hotels, hospitals, and laundries, as indicative of the new seed. Similarly, though most of the tenor of the new seed debate until Hart-Celler revolved around Europeans, in the 1960s groups like the Japanese American Citizen’s League (JACL) would harness a similar rhetoric to argue that without new seed provisions their ancestors would never have been able to enter the country. It is unclear whether legislators aside from Celler took such an expansive view of who could qualify for the new seed, but the fact that groups like the JACL found the arguments persuasive suggests a willingness on the part of Congress to consider a non-racial narrative of ancestral immigration as worthy of entrance visas.⁶⁷

As in 1952 though, liberals had difficulty defending the importance of the new seed in the greater scheme of an immigration system increasingly based on the needs of the national economy. Introducing his bill, Celler again reiterated that the three main categories of immigration would be skills, family relation, and refugees. Only following these three came “immigration of people who in their own mind have formulated the desire to abandon their old country and seek new opportunities.” With categories focused on the

⁶⁵ John F. Kennedy to President of the Senate and Speaker of the House, July 23, 1963, in: “Immigration” Hearings before Subcommittee No. 1, of the Committee on the Judiciary House of Representatives Eighty-Eighth Congress, Second Session on H.R. 7700 and 55 identical bills To Amend the Immigration and Nationality Act, and for other Purposes,” 88th Congress, 2nd Session 1964, 285.

⁶⁶ “Senator Kennedy Introduces Three Point Immigration Program,” Press Release, May 18, 1959, 2-3. The proposal divided a total of 250,000 slots as follows: 150,000 for family reunification; 50,000 for special skills; and 50,000 for new seed. JFK Pre-Presidential Papers, Senate Files, Box 630, 86th 1st Immigration: General Revision, S. 1996, JFK Presidential Library.

⁶⁷ Handwritten Meeting Notes, Emanuel Celler and Philip Hart, 8/1/63, 2. Emanuel Celler Papers, Box 480, HR 7700 88th Congress (3), Library of Congress; “Statement of Mike M. Masaoka, for the Japanese American Citizens League,” in “Immigration,” 88th Congress, 2nd Session 1964, 883-897.

technical needs of the United States (skills), the needs of its citizens (family reunion), and its foreign policy needs (refugees), providing for immigrants “who in their own mind” had decided to immigrate seemed out of place.⁶⁸ Mike Masaoka of the Japanese American Citizens League noted the incongruity, but stated that “even in this nuclear and space age, so-called new seed immigration should not be ignored.” Turning the Cold War arguments on their heads, which otherwise demanded greater skilled admission, Masaoka reminded Congress that “some of the greatest contributions...to the defense of the United States in wartime have been made by the unskilled and the nameless.” While it is possible that the JACL used the rhetoric of the new seed solely because of the urgency of winning immigration reform, the strategy is nonetheless useful for discerning how liberal groups approached widening immigrant admissions. Regardless, new seed immigration stood out as a backward oriented category in a preference system based on present and future needs.⁶⁹

Alongside liberals, some of the more ardent restrictionists worried about the new seed in the hearings on immigration reform. Questioning Secretary of Labor W. Willard Wirtz, Representative Michael Feighan (D-OH) asked him directly about the place of unskilled workers without family ties, “the so-called new seed immigration that certain people advocate.” To this not-so veiled reference to liberal reform desires, Wirtz responded emphatically that the new system would have no place for these immigrants. Likewise Frank Chelf (D-KY), an ardent and continued supporter of the national origins system, would tell Jon B. Trever, Jr. of the American Coalition of Patriotic Societies, that he “found himself in agreement” with their rejection of the new seed concept.⁷⁰ Feighan would prove concerned with limiting labor-based immigration in general, not just the new seed, introducing H.R. 12305 in August of 1964. The bill stated that if the Attorney General found that more than 20 percent of those admitted under skilled labor provisions for any vocation failed to remain in that field for at least one year, then for the following year no aliens would be certified to enter under that category. Though the bill failed, it is indicative of his restrictive mindset.⁷¹

As introduced, the Kennedy Administration’s bill, H.R. 7700, allotted first preference, and 50 percent of all visas to skilled and professional categories, with the remainder for family reunification. Up to half of unused visas could be used to fill labor shortages, with the remainder for the new seed. The law also contained provisions to make labor certification easier for those entering under skilled categories, and proposed a five-year transition period, during which time unused quota numbers would be placed in a pool to

⁶⁸ “Immigration Proposals Outlined to Intergovernmental Committee for European Migration – Extension of Remarks of Hon. Emanuel Celler of New York,” May 18, 1964, in: *Ibid.*, 684.

⁶⁹ Statement of Mike M. Masaoka for the Japanese American Citizens League, in: *Ibid.*, 883 and 897.

⁷⁰ “Statement of Hon. W. Willard Wirtz, Secretary of Labor,” in: *Ibid.*, 454; “Statement of John B. Trever, Jr., Chairman, Immigration Committee, American Coalition of Patriotic Societies,” in: “Immigration: Hearings before Subcommittee No. 1 of the Committee on the Judiciary, House of Representatives, 89th Congress, 1st Session, on HR 2580, March 3-June 1, 1965, 255. On Chelf’s views on national origins, see: Wagner, “Lingering Death,” 398.

⁷¹ H.R. 12305, “To create a selective immigration board and to provide for the allocation of authorized but unused quota numbers in accordance with the criteria established by the Congress, and for other purposes.” August 10, 1964. RG 233, 90th Congress, Committee of the Judiciary, Box 98, HR 2510.

be used by oversubscribed countries.⁷² The administration hoped that this interim period would help to clear the preference backlogs that had accumulated, especially in southern and eastern Europe, so that once immigration became a first-come, first-served system, no country or set of countries would monopolize admissions.⁷³

Though the Administration's reform proposals did not detail the type of skilled laborers desirable, leaving that determination to be made by the Attorney General and Secretary of Labor, the issue arose during a January 1965 background briefing on immigration policy by Assistant Attorney General Norbert Schlei. When pressed as to what type of skills would be approved for immigrant admissions, Schlei responded "well, sure. A scientist of some kind with advanced skills would qualify." Though he gave no further elaboration, the emphasis on science illustrates again the primacy of scientists and technicians in the post-*Sputnik* reform era. Schlei's remarks also belied a concern over numbers of unskilled immigrants, reassuring the assembled group that under the existing preference system, most arriving immigrants were "primarily educated, skilled people." "Even if they are not qualified for first preference [for skilled labor]," he continued, "we just don't get illiterate people." Though his basis for explaining why the illiterate would not seek admission – because "they can't afford to come to the United States, and they can't make the arrangements to come here on any basis" – seems ill-conceived, his conclusion, that "the immigrants that come here don't compete with our unemployed for unskilled jobs," speaks to a similar concern over competition as that of organized labor.⁷⁴

As hearings on the Administration Bill continued in 1965 (reintroduced in the 89th Congress as H.R. 2580, but containing most of the same provisions as H.R. 7700,) Michael Feighan offered his own substitute bill, H.R. 8662. Historian Stephen Wagner writes that Feighan had been blocking reform since 1963 with a series of never-ending hearings, and his relations with liberals like Celler were poor at best.⁷⁵ In place of the Administration's equal focus on skills and family reunification, Feighan allotted the lion's share of all visas to family reunification, with only a much smaller percentage (20 percent) to labor. The new bill also split labor-based migration into two categories (table 4.1): a 3rd preference for highly skilled and professional workers, and a 6th preference for skilled and urgently needed labor. Finally, the revised bill gave the Secretary of Labor an enhanced role in admissions, amending the weak labor certification of the 1952 system to require certification for every individual prior to entry.

Feighan's substitution of family for labor is not surprising, as even liberals like Representative Harold Ryan (D-MI), a co-sponsor of H.R. 7700, wondered aloud on the floor of the House that "sometimes I think perhaps [skills] should be the second basis,

⁷² Zolberg, *Nation by Design*, 328-329.

⁷³ Statement of Hon. Emanuel Celler, "Immigration," 88th Congress, 2nd Session 1964, 7.

⁷⁴ Schlei would state that the new proposals represented a change in that the highly skilled could be admissible even if they were not urgently needed. This switch was important because under the older statutes, according to Schlei, professors would not be automatically admissible, even if they were the top expert in their field, since their admission was not deemed urgent enough. "Background Briefing on a bill to amend the Immigration and Nationality Act," January 12, 1965. White House Press Office Files, Box 80, Background Briefings, January 7, 1965-January 18, 1965, 12 and 28.

⁷⁵ Wagner, "Lingering Death," 381.

and the first one should be given to close relations of the U.S. citizens and resident aliens.”⁷⁶ Many of the witnesses before Feighan’s immigration hearings ranked family reunification as the most important admissions preference, and even ardent opponents of national origins such as Representative Peter Rodino (D-NJ) worried that allotting first preference to skilled labor would exacerbate the brain drain, and jeopardize foreign policy.⁷⁷

The AFL-CIO as well began most of their statements on immigration by emphasizing family reunification as their first priority, and only then discussing labor admissions. During the 1965 debates, the AFL-CIO came out in favor of the Celler and Hart bills, but as Aristide Zolberg argues, worried more about the ‘back door’ from Latin America, than the front. They focused primarily on winning an enhanced role for the Secretary of Labor in determining labor admissions, and on limiting temporary labor programs. On the differences between the Hart-Celler proposals and the Feighan bill, Kevin Butler of the Legislative Office proposed that they stay out of the debate, and instead let Congress decide.⁷⁸

As indicated by the silence of the AFL-CIO, the substitute preference system garnered little public controversy in Congress, and no floor debate. In private, not all agreed with the shifted emphasis. “This is a Family Reunion Bill,” wrote Celler on his copy of H.R. 8662, which “disregard[s the] economic interests [of the] U.S.” Abba Schwartz of the State Department, one of the people most involved in shaping the Administration’s immigration policy, argued that the Feighan bill gave so little thought to those without family ties, “as to raise substantial doubts as to whether any “new seed” immigration would be admissible under the provisions.”⁷⁹ Still, while the preference system would become a major point of contention *after* 1965, at the time most in Congress focused on two other issues, the national origins quota system, and immigration from the Western Hemisphere.

Since 1924, the Western Hemisphere had been exempt from quota limitations, subject only to exclusionary provisions such as the literacy test or public charge provisions. Though historian David Reimers draws a causal link between evidence that immigration from Latin America was increasing and the imposition of a 120,000 person-per-year cap on the Western Hemisphere, Stephen Wagner argues that republicans imposed the limitation primarily to place their imprint on the new law. According to Mae Ngai, the quota of 120,000 represented a 40 percent reduction from previous levels.⁸⁰

⁷⁶ “Statement of Hon. Harold M. Ryan,” “Immigration,” 88th Congress, 2nd Session, 1964, 209.

⁷⁷ As will be discussed later, historians David Reimers and E.P. Hutchinson view this substitution as a clear win for organized labor, though I believe the net gains after 1965 constituted far less of a victory. Hutchinson, *Legislative History*, 366-379; Reimers, *Still the Golden Door*, 73-80.

⁷⁸ See, for example: “A Democratic Immigration Policy,” Resolution No. 170; Zolberg, *Nation by Design*, 331; Kevin Butler to Andrew Biemiller and Kenneth Meiklejohn, “Feighan Immigration Bill,” June 15, 1965, 3. AFL-CIO Records, RG 21-001, Box 27, Folder 31.

⁷⁹ Undated – Summary of HR 8662, 2; Abba Schwartz, Administrator, Bureau of Security and Consular Affairs, Department of State, “Memorandum on H.R. 8662,” June 2, 1965. Both documents in: Emanuel Celler Records, Box 482, H.R. 8662 89th Cong., Library of Congress.

⁸⁰ Reimers, *Still the Golden Door*, 37; Wagner, “Lingering Death,” 446; Ngai, *Impossible Subjects*, 261.

Liberals and the Department of State argued that the new limitations would hinder foreign policy, especially with neighboring countries such as Mexico and Canada. Proponents of the change, such as its House sponsor Clark MacGregor (R-MN), appealed instead to the rhetoric of equality, to argue that the bill would otherwise wipe away racial discrimination, only to “continue and even increase unequal treatment based upon national and geographic location.”⁸¹ In addition to the absolute cap on numbers, the final provisions extended the enhanced labor certification to the western hemisphere, even while declining to implement the preference system there as well. Demographer Charles Keely argues that legislators in the House of Representatives believed that labor certification alone would be an adequate method of keeping down overall immigration from the hemisphere, without having to resort to a total cap. Since the Senate version contained the cap, the conference committee retained both restrictions. Legislators created a Select Commission on Western Hemisphere Migration to investigate the cap in advance of the July 1, 1968 introduction date, as a compromise to pass the bill. The Commission failed to produce a report on time, and so the cap went into effect as scheduled.⁸²

In its final form, the Hart-Celler Act created a preference system that allotted 74 percent of all permanent visas to family reunification categories, and only 20 percent to employment (table 4.1). Even though organized labor had pushed for a ban on temporary workers, the bill did not change the nonimmigrant (“H” visa) provisions from the 1952 Act. It did however follow AFL-CIO recommendations by establishing a much stronger system of certification, forcing all those entering under labor provisions (3rd, 6th, and nonpreference applicants,) to obtain affirmative certification from the Secretary of Labor prior to entry, that their admission would not harm the American workforce or economy. The imposition of strong labor certification provisions in the 1965 Act represented the culmination of a process of requiring jobs-in-hand prior to immigration that had begun with the assurances of the DP Act in 1948.⁸³

The legislation also created two hemispheric quotas, 170,000 visas per year for the eastern hemisphere, subject to the preference system; and 120,000 visas for the western hemisphere, not subject to the preference system, and allotted on a first-come, first-served basis. In addition, the bill capped per-country yearly immigration from the eastern hemisphere at 20,000. As historian Mae Ngai notes, the 20,000-person cap perpetrated the fallacy that all countries are equal in size and circumstance. Without the preference system, all nonimmediate relatives from the western hemisphere had to go through the strict labor certification provisions, which Aristide Zolberg argues served only to lengthen backlogs and increase incentives for illegal entry. The bill provided for a three-

⁸¹ *Congressional Record*, 89th Cong., 1st Session, 1965: 21573.

⁸² Charles B. Keely, “Effects of the Immigration Act of 1965 on Selected Population Characteristics of Immigrants to the United States,” *Demography*, Vol. 8, No. 2 (May, 1971), 157-169; Zolberg, *Nation by Design*, 333.

⁸³ On the AFL-CIO’s concern with stronger labor certification, see, for example: “Proposed AFL-CIO Executive Council Statement on Immigration Reform.” On the labor certification provisions of the new law, see: Frank H. Cassell “Immigration and the Department of Labor,” *Annals of the American Academy of Political and Social Science*, Vol. 367 (Sep. 1966), 105-114.

year transition period before its full provisions went into effect on July 1, 1968. Certain changes, such as the enhanced labor certification, went into effect immediately, while unused quota numbers in each of the transition years went into a pool, to be used by oversubscribed countries.⁸⁴

Hart-Celler in Action: 1965-1968

DEMOGRAPHIC EFFECTS

Among the immediate changes wrought by Hart-Celler, total quota immigration rose significantly from pre-1965 levels (table 4.4). While under the McCarran-Walter Act of 1952 admissions had peaked at just over 103,000 out of just over 154,000 visa slots, by 1967 they had risen to over 150,000 per year. More importantly, the allocations of visas within the quotas had begun to even out as well. As table 4.2 illustrates, almost 80 percent of all visas went to the nonpreference category during the 1954 to 1965 period, while from 1966 to 1970 only 27 percent did. This shift occurred because of three changes: (a) all nonpreference applicants now required affirmative labor certification to enter the country; (b) anyone qualifying for a preference visa had to register as such, ending the practice of large-quota countries bypassing the system through nonpreference entry; and (c) nonpreference applicants were excluded from utilizing visas in the transition pool.⁸⁵ Though the new admissions system restricted labor-migration from 50 to 20 percent of the total number of visas, in the 1966-1970 period, more than double the number of labor visas were filled, with the percentage of skills-based admissions rising from 5.55 percent to 16.61 percent.

Table 4.4: Total Quota Usage Worldwide, 1954-1970

<u>Year</u>	<u>Quota</u>
1954	94,098
1955	82,232
1956	89,310
1957	97,178
1958	102,153
1959	97,657
1960	101,373
1961	96,104
1962	90,319
1963	103,036
1964	102,844
1965	99,381
1966	126,310

⁸⁴ Ngai, *Impossible Subjects*, 258-261; Zolberg, *Nation by Design*, 335.

⁸⁵ Schwartz, "Role of the State Department."

1967	153,079
1968	156,212
1969	157,306
1970	172,546

Source: *Annual Report of the Immigration and Naturalization Service, FY 1954-1970*, Table 4.

The 1965 changes also had an immediate effect on distinct nationality groups. The small quota countries most disadvantaged by the national origins system, such as Italy, Greece, and Portugal, brought in large numbers of family members, while the total volume of big quota countries such as Ireland, fell.⁸⁶ In fact, as Italy's overall quota migration from 1955-1969 quadrupled, Ireland's fell by two-thirds (table 4.5). Asian immigration as well rose, as the abolition of the restrictive Asia-Pacific Triangle put each country in the world on equal footing, only subject to the 20,000-person per year cap. In the decade following the passage of Hart-Celler, as sociologist John Liu points out, the percentage of Asian immigration relative to the whole more than tripled to over 26 percent. Much of this immigration came through the 3rd preference for professional, technical, and kindred workers (PTK), with around 21,500 Asian PTK immigrants entering annually from 1966 to 1988. Overall, Charles Keely argues that the emphasis on family reunification led to an immediate increase in southern European immigration, while strengthened labor certification led to a decrease from northern Europe.⁸⁷

Table 4.5: *Irish and Italian Average Yearly Immigration 1954-1965, and Total Immigration, 1966-1969*

Year(s)	Ireland - Total ^b	Ireland - Quota	Italy - Total ^b	Italy - Quota
1954-1965 ^a	5,246	5,196	19,638	5,307
1966-1969 ^a	2,107	1,869	26,962	20,219
1966	2,603	2,486	26,447	20,083
1967	1,991	1,743	28,487	20,585
1968	2,268	2,008	25,882	18,915
1969	1,567	1,237	27,033	21,292

a – Average yearly total

b – Total numbers admitted include total quota and nonquota immigrants, as well as all entries under special legislation, such as refugee laws.

⁸⁶ Wagner argues that the increase from southern and eastern Europe was only temporary, and the 1965 bill mainly shifted the sources of immigration from Europe to Asia, the Caribbean, and Latin America. Wagner, "Lingering Death," 464 and 470.

⁸⁷ While it is clear that policymakers did not anticipate such large numbers of Asian immigrants after 1965, they did know that some of the largest backlogs after 1952 for Asian countries came through the first preference for the highly skilled. In 1962, for example, legislators passed P.L. 87-885 to clear a backlog of 6,900 Chinese skilled workers. John M. Liu, "The Contours of Asian Professional, Technical and Kindred Work Immigration, 1965-1988," *Sociological Perspectives*, Vol. 35, No. 4 (Winter, 1992), 673-704; Keely, "Effects of the Immigration Act of 1965." In March of 1962, when the State Department compiled statistics on the preference backlogs, four out of the top seven countries with the longest backlogs in the first preference fell inside the Asia-Pacific Triangle, including: China (1,387); the Philippines (578); India (348); and Japan (223). (The other three countries were: Italy (1,371); Turkey (361); and Jamaica (301). Department of State, "Quota Immigrants Registered Under Oversubscribed Quotas."

Source: *Annual Report of the Immigration and Naturalization Service, FY 1954-1969*, Table 6A: Aliens Admitted by Class under the Immigration Law and Country or Region of Last Permanent Residence.

Scholars point to the Hart-Celler Act as responsible for significantly altering the racial and ethnic makeup of the United States, opening the doors to large numbers of Asians and Latinos, and giving rise to an increase in the total number of immigrants per year.⁸⁸ During the 1965 debates though, legislators focused primarily on Europe, expecting changes only in the distribution of quotas, rather than a significant shift in sources. President Johnson, in an oft-quoted speech, famously declared at the time of signing that the new law was “not revolutionary.”⁸⁹ Policymakers largely understood that southern and eastern Europeans would make limited gains, finally being able to bring in their backlogged family members. Less expected was what would happen to groups like the Irish after passage of Hart-Celler. Within a year, the transitional quota pool, preference system, and enhanced labor certification began to generate controversy.⁹⁰

In one of the first forums to discuss Hart-Celler’s effects on immigration policy, the *Annals of the American Academy of Political and Social Science* devoted their September 1966 issue to “The New Immigration,” with articles from prominent members of the Immigration and Naturalization Service (INS), State Department, Department of Labor, and National Science Foundation.⁹¹ Abba Schwartz, in his article on the State Department, focused on the Bureau of Security and Consular Affairs, which he had run since 1962. First and foremost he argued that the transition quota pool had not functioned as expected. The pool had been proposed to clear the backlogs from oversubscribed countries such as Italy, Greece, and Portugal, so that by 1968 all countries would compete on an equal footing. Within a year, demand for slots had outpaced supply, and so Schwartz predicted that after July 1, 1968, only those already on waiting for a visa (i.e. on a backlogged list,) would gain entry, temporarily shutting off immigration from the previously large-quota countries of Great Britain, Germany, and Ireland.⁹²

⁸⁸ See, for example: Zolberg, *Nation by Design*, 337-340; Reed Ueda, *Postwar Immigrant America: A Social History* (Boston: Bedford/St. Martin’s, 1994); Ngai, *Impossible Subjects*, 261-268; Tichenor, *Dividing Lines*, 218.

⁸⁹ On both sides of the issue legislators weighed in to assuage fears that the new law would open the floodgates for increased migration, especially from nonwhite areas. Emanuel Celler argued that “there is no danger whatsoever of an influx from the countries of Asia and Africa. If there were, the AFL-CIO would breathe their hot breath down our necks...but they have no objections to the terms under which Asians and Africans can come in.” Restrictionist Senator Sam Ervin (D-NC) agreed, stating “the bill does not open the doors for the admission of all the people all over the face of the earth.” The Japanese American Citizens League lamented this fact as well, in a letter entered into the Congressional Record. Since the new laws would privilege family unification, and only a small number of Asians resided at the time in the United States, “it would seem that, although the immigration bill eliminates race as a matter of principle, in actual operation immigration will still be controlled by the now discredited national origins system.”

Congressional Record, 89th Cong., 1st Session, 1965: 21758, 24780, and 24503, respectively. “President Lyndon B. Johnson’s Remarks at the Signing of the Immigration Bill, Liberty Island, New York, October 3, 1965.” Lyndon B. Johnson Library and Museum, <http://www.lbjlib.utexas.edu/Johnson/archives.hom/speeches.hom/651003.asp>, accessed 1/4/10.

⁹⁰ Wagner, “Lingering Death,” 464-65.

⁹¹ Vol. 367, September 1966.

⁹² Schwartz, “Role of the State Department,” 93-104.

Beyond the transition period, Schwartz believed that the labor certification provisions would prove difficult in estimating future immigration. In previous years nonpreference immigration had comprised the bulk of entries under the admissions system, but he argued that “if the trend of visa issuances continues as reflected in the first six months of operations under the new law, I would forecast a significant change in the usual pattern of immigration.” The shift in question was the exclusion of new seed immigrants, which now had the most difficulty obtaining labor certification. The bulk of immigrants under the new system, as Schwartz presciently opined, would arrive under the family reunification categories, while “visas available for nonpreference applicants will go unused because of the labor-certification requirement.” Schwartz predicted that the western hemisphere and nonpreference immigrants would bear the brunt of the new changes, since these groups contained the bulk of unskilled workers.⁹³

More than simply labor certification, the need for a job-in-hand prior to immigrating lay at the heart of the difficulties with the new system. As Schwartz pointed out, “few employers are willing to hire an alien worker on a permanent basis without first interviewing him.”⁹⁴ And, if the alien was a prospective immigrant, he or she could not qualify for a nonimmigrant visa to search for a job. This catch-22 – the need to have a job prior to immigration, but the inability, especially for unskilled workers, to secure employment prior to entry – would significantly cut down on the number of nonpreference applications each year (table 4.2). Under the 1965 Act, all but 3rd preference highly skilled immigrants had to secure a job offer prior to entry.

In Schwartz’s reading of the new labor certification provisions, the culmination of a process at work since the DP Acts is evident, an incremental shift from barring contract labor to requiring assurances of employment prior to entry. Likewise we see a shift away from the admission of unskilled, or even of skilled immigrants, and toward a privileging of the highly skilled and professional. As part of the new certification provisions, in December of 1965 the Department of Labor published a Schedule A of jobs in urgent demand that could receive automatic certification, and a Schedule B of oversubscribed jobs, which could never receive certification. Job categories on the original Schedule A included physicians, engineers, mathematicians, chemists, physicists, and anyone with at least a Master’s degree and two years of related work experience. The Schedule B, by contrast, included jobs such as hotel clerks, farm laborers, janitors, and kitchen workers. While the Schedule A only delineated which groups could receive automatic certification, not the entire list of admissible laborers, all of the professions listed (save for those with a masters degree,) were in the scientific and technological fields.⁹⁵

⁹³ *Ibid.*, 100. Previous Administration briefings had estimated that after a five-year transition period, as originally proposed by Kennedy and Johnson, only Italy would remain backlogged. The final bill contained only a three-year transition, and during that time, far more immigrants than anticipated took advantage of the quota pool or registered for new visa slots. On the original estimates for the transition period, see, for example: Department of State, SCA, “Effect of Proposed Legislation on Selected Quotas,” February 1, 1965, Abba P. Schwartz Papers, Box 6, Proposed Immigration Legislation Press Releases, 1/65 – 2/65, JFK Presidential Library.

⁹⁴ Schwartz, “Role of the State Department,” 101.

⁹⁵ On the Schedule A and B under the 1965 Act, see: Cassell, “Immigration and the Department of Labor,” 110-111. Schedule A and B for labor certification continued until 2005, when the Department of Labor

Contrary to Schwartz's negative assessment of labor certification, Frank Cassell of the Department of Labor argued in the *Annals* that the 1965 changes "forged a strong link between immigration policy and national manpower policy by virtue of broader Department of Labor participation." He also noted that in seven months under the new system, the Department had certified 23,000 people, with a total approval rate of 80 percent. It is important to note though that only those who applied (i.e. who already had a job lined up,) could receive certification. While Cassell's defense of the certification provisions emanated at least in part from the fact that the new regulations gave the Secretary of Labor more power and a more active role in regulating immigrant admissions, it also points to the ways in which these new job preferences, even if they ultimately limited who could enter, helped the immigration bureaucracy accomplish its job in deciding who to admit. This question, of delineating an adequate and workable admissions system without the use of the national origins quotas, would arise as well in a renewed debate over the new seed after 1965.⁹⁶

IRISH IMMIGRATION: THE NEW SEED REVIVED

Though legislators rejected the new seed concept during the Hart-Celler debates, the category remerged in policy debates after 1965, once the effects of the new law became clear. The new seed had previously represented a liberal ideology and historical pathway to immigration, but with the sharp decline in Irish immigration, ethnic lobby groups and liberal legislators drew on the category to admit more of their own. Organizations such as the umbrella American Irish National Immigration Committee, expressed their concern that under the 1965 provisions, Irish immigrants had been almost completely excluded. Emanuel Celler concurred, arguing in a 1966 press release that the labor certification procedures has resulted in "the cutting off of our traditional immigration" from European countries. In particular, the provisions affecting unskilled immigrants severely curtailed Irish admissions. As table 4.6 shows, Irish immigration dropped by more than half from 1965 to 1967, and continued to drop in the following years. Celler would propose, almost immediately, to return to the older version of negative labor certification as a way to help the unskilled. In May of 1966, Celler introduced H.R. 15349, and one year later introduced H.R. 2510, to make the change; neither passed the House.⁹⁷

abolished the Schedule B and implemented the Program Electronic Management Review (PERM) Labor Certification program, intended to cut the approval time for certification. See: <http://www.foreignlaborcert.doleta.gov/perm.cfm> (accessed 1/5/10).

⁹⁶ Cassell, "Immigration and the Department of Labor."

⁹⁷ See, for example: "Statement of John P. Collins, National Chairman, the American Irish National Immigration Committee," "Immigration," Hearings before Subcommittee No. 1, House Judiciary, 90th Congress, 2nd Session "The Effect of the Act on October 3, 1965, on Immigration From Ireland and Northern Europe." July 3 and September 18, 1968; "Celler Seeks Elimination of Labor Certification in New Immigration Law; Calls Acceptance of Such Provisions Bad Mistake," Press Release, May 31, 1966. Emanuel Celler Papers, Box 431, HR 2510, Library of Congress. On the transition period, see: Schwartz, "The Role of the State Department."

Table 4.6: Total Irish Preference Nonpreference Admissions by Year, Compared with Total Nonpreference Admissions per year (all countries), FY 1960-1969

<u>Year</u>	<u>Total Irish Admissions</u> ^a	<u>Total Irish Nonpreference</u>	<u>Total Nonpreference</u>
1960	7,479	7,451	80,987
1961	6,273	6,252	73,923
1962	5,364	5,353	71,542
1963	6,054	6,047	83,517
1964	6,134	6,124	83,185
1965	5,256	5,241	80,433
1966^b	3,068	2,925	53,705
1967	2,216	1,657	40,639
1968	2,587	1,950	53,994
1969^c	1,495	772	23,170

a – Total admissions, excluding those not subject to quota limitations (such as immediate relatives.)

b – First full year under the Hart-Celler Act of 1965; Note: the revised preference system did not take effect until July 1, 1968, though other provisions, such as a requirement that all those eligible for a preference slot apply for one, limited the number of nonpreference immigrants.

c – First full year under the preference system of the 1965 Act.

Source: *Annual Report of the Immigration and Naturalization Service*, FY 1960-1969 Tables 4 and 7A.

With the inability of formerly large-quota countries like Ireland to receive visas for their migrants, controversy over the new law only grew. In June 1968 hearings on the operation of Hart-Celler, even Michael Feighan expressed his concern that “under our preference system...there is practically little or no opportunity for so-called new seed” immigration. His respondent, James L. Hennessy, Executive Assistant to the Commissioner of the INS, responded by laying out the paradox at the heart of the issue: “when you abolish the national origins quota, you have a worldwide potential of persons desiring to come here, the large bulk of whom I would assume are unskilled.” No matter what the percentage allotted to new seed then, demand would always outpace supply. “I venture to suggest,” concluded Hennessy, “that the first day such a procedure was put in, the applications filed in consulates throughout the world would be overwhelming.” Here Hennessy expressed one of the major concerns of the era: how to still regulate admissions and check explosive growth, without the use of the quota system.⁹⁸

In 1968, the year that Hart-Celler’s full provisions went into effect, Irish groups stepped up their efforts to amend and liberalize the Act. “The obvious truth,” testified John P. Collins of the American Irish National Committee before Congress, “is that employers do not want to hire workers sight unseen.” Pointing to the decrease in Irish nonpreference admissions, Collins suggested that “our country was built with new seed,” and so, “if an applicant desires to come here and work in a job category which has been certified as having no oversupply of workers,” then he or she should be allowed to do so.

⁹⁸ “Statement of Hon. Raymond F. Farrell, Commissioner, Immigration and Naturalization Service, Department of Justice, Accompanied by James L. Hennessy, Executive Assistant, and Mario T. Noto, Associate Commissioner,” in: “Immigration” Hearings before Subcommittee No. 1 of the Committee on the Judiciary, House of Representatives, 90th Congress, 2nd Session. “Review of the Operation of the Immigration and Nationality Act as Amended by the Act of October 3, 1965.” April 8 – June 13, 1968, 69.

Representative Joseph G. Minish echoed these sentiments, pointing out that historically, many of the immigrants from Ireland and Germany “who have contributed so very much to our national life,” have been new seed, the very people disadvantaged most by the new labor certification process.⁹⁹ The resurrection of the new seed by these lobby groups is not surprising. As political scientist Anna Law argues, Celler and other politicians invented the category as a proxy for Irish and Italian immigrants, realizing that in the post-national origins U.S., they could no longer make appeals for the preferential admissions of individual nationality groups.¹⁰⁰

Congressman Peter Rodino (D-NJ), Emanuel Celler, and Senator Edward Kennedy (D-MA) would continue, unsuccessfully, to introduce reforms of the preference system into the 1970s, including, for example H.R. 9112, introduced by Celler in 1969, which would have increased the total number of labor based visas to 50 percent of the total, removed job-in-hand provisions for skilled workers, and allowed some immigrants under the age of twenty-five (new seed) to enter without labor certification.¹⁰¹ Rodino’s 1970 bill, H.R. 17370, would likewise have granted non-certification visas for new seed immigration, but allotted the majority of immigration visas to labor categories.¹⁰² From 1965 through 1976 James Eastland refused to hold hearings on any immigration bill, and so all legislation sent to his Senate Judiciary Committee died there.¹⁰³

Critically, while Congressional liberals like Celler and Rodino fought to revise immigration law in favor of greater numbers of employment-based and new seed immigrants, others were less disposed to change. Organized labor for instance, which had fought for an enhanced role for the Secretary of Labor in immigration policy and for stricter labor certification, opposed any new reforms. AFL-CIO Legislative Director Andrew Biemiller, in a letter to George Meany outlining the union’s position on immigration policy for a speech to the American Committee on Italian Migration, argued that while he was sympathetic to the need to clear the Italian backlogs, he recognized that “it poses a danger of opening up the possibility that in the process the labor protection provisions...may be watered down or seriously limited.” The Department of State as well expressed reservations with changing the labor preference system, arguing in a March, 1968 letter to Celler that “present indications are that section 212(a)(14) is being administered effectively.” Recent administrative changes, noted William B. Macomber,

⁹⁹ “Statement of John P. Collins,” 5; “Statement of Hon. Joseph G. Minish”, 77 in: “Immigration” July 3-September 18, 1968.

¹⁰⁰ Anna O. Law, “The Diversity Visa Lottery – A Cycle of Unintended Consequences in United States Immigration Policy.” *Journal of American Ethnic History*, Vol. 21, No. 4 (Summer 2002), 12.

¹⁰¹ “Celler Introduces Bill for Greater Flexibility in Immigration,” Press Release, March 18, 1969. Emanuel Celler Papers, Box 482, H.R. 9112, Library of Congress.

¹⁰² Both bills sought to wipe away the Italian preference backlogs. Congress, as Peter Rodino argued in a 1970 article, had assumed this clearing would be done prior to the implementation of the Hart-Celler provisions in 1968, with the quota pool. Peter Rodino, Jr. “New Immigration Law in Retrospect,” *International Migration Review*, Vol. 2. No 3 (Summer, 1968) 56-61.

¹⁰³ Law “Diversity Visa Lottery,” 14; Stephen Wagner argues that Michael Feighan also blocked the legislation, believing it a return to national origins discrimination. Wagner, “Lingering Death,” 468.

Jr., have made the certification system work even more efficiently, and thus “it would appear, therefore, that revision of section 212(a)(14) is not necessary.”¹⁰⁴

By the end of the 1960s, with the new immigration system firmly in place, Congress completed the system of labor reforms that began with the DP Act of 1948. Though liberals like Emanuel Celler and Abba Schwartz would argue that in 1965 Congress had not recognized the danger to shutting off new seed immigration that came with the enhanced labor certification provisions and the new preference system, the trajectory of policymaking from 1948 through 1968 points to increased attempts to limit the unskilled, and a movement toward requiring a firm job offer prior to entry. The shift to a highly skilled and professional normative migrant is evident in the postwar debates, as the U.S. raced to catch up technologically with the Soviet Union. And, even though changes such as the imposition of labor certification certainly served to cut down on migration from Europe and the Western Hemisphere, as Labor Secretary Frank Cassell’s 1966 article argues, the calculations involved were far more complicated, as these same provisions more closely aligned immigration and labor market needs.

Epilogue

Though attempts to reform the visa preference and labor certification systems failed in the late-1960s and early 1970s, a number of important changes did occur during the 1970s. First, while Hart-Celler did not alter the process of temporary labor admissions, in 1970 Congress removed the double temporary provision of “H” nonimmigrant visas, allowing admission for either temporary or permanent jobs, as long as the immigrant still intended to return home.¹⁰⁵ In 1976 legislators passed the Eilberg Act (P.L. 94-571). While Congress had passed the Hart-Celler Act during a period of economic prosperity, by the mid-1970s the economy had deteriorated, and so in 1976 Congress strengthened the labor provisions of the law. Now all labor-class immigrants, including the 3rd preference for the highly skilled and professional, required employment prior to immigration. The Act shifted more of the burden of certification to the employer, rather than the Department of Labor, with the former having to provide ample proof that they had attempted to hire American workers, and that they would pay immigrants a prevailing market wage. These changes increasingly made it more expensive for employers to sponsor immigrants. The Act also imposed the preference system on the Western Hemisphere, along with the 20,000 person-per-year cap on each sending country.¹⁰⁶

These latter changes, according to Austin T. Fragomen, reviewing the Eilberg Law for the *International Migration Review*, would eliminate delays for most Western

¹⁰⁴ “Notes for Speech at Annual Dinner Benefit of the American Committee on Italian Migration,” Andrew Biemiller to George Meany, April 16, 1968. AFL-CIO Records, RG 21-001, Box 28, Folder 62, 2; William B. Macomber, Jr. to Emanuel Celler, March 5, 1968, Emanuel Celler Records, Box 431, H.R. 2510, Library of Congress.

¹⁰⁵ Lowell, “Foreign Temporary Workforce.”

¹⁰⁶ Yochum and Agarwal, “Permanent Labor Certifications,” 265-281.

Hemisphere migrants, but would severely curtail immigration from Mexico, the one country that consistently sent more than 20,000 immigrants per year. Liberal legislators like Ted Kennedy had attempted to merge the hemispheric quotas since as early as 1970, but had proposed higher per-country caps for Mexico and Canada. Similarly, the Select Commission on Western Hemisphere Migration had suggested a minimum ceiling of 40,000 per country, if numerical limitations were required at all. The imposition of the 20,000 cap, as Mae Ngai points out, at a time when combined annual permanent and temporary labor migration represented more than ten times that number, pushed greater numbers of Mexicans to enter the country as undocumented migrants, and increasingly stigmatized Mexican immigration as “illegal.”¹⁰⁷

According to Gilbert Yochum and Vinod Agarwal, the 1976 Act made it increasingly difficult for anyone not already in the United States, (and thus unlikely to procure a job,) to receive labor certification. These changes especially benefited foreign students, who could procure employment from within the country. Applications on the whole fell by half by the early 1980s, with the bulk of the drop in those applying from outside the United States. The Eilberg Act then completed what Hart-Celler had started: restricting entrance to the labor market by those abroad. Finally in 1978 Congress did away with separate hemispheric quotas, creating one combined quota of 290,000.¹⁰⁸

The next major piece of immigration legislation, the Immigration Reform and Control Act (IRCA) of 1986 attempted to reform the H-2 temporary labor category for urgently needed workers, by creating the H-2A for agricultural workers. Two years later, in 1988, Congress implemented a 50,000 person-per-year “diversity lottery,” for countries underrepresented by immigrant admissions.¹⁰⁹ As Anna Law argues, much of the impetus for the lottery came through the lobbying of Italian and Irish groups that felt disadvantaged by the limitations on nonpreference applicants and strong labor certification provisions of the 1965 law. As greater numbers of Irish immigrants entered the country illegally in the 1970s and 1980s, pressure for reform from ethnic lobby groups grew as well. Many of those pushing for passage of the diversity lottery drew on the arguments about new seed pioneered by Congressmen like Rodino and Celler. The Immigration Act of 1990 made the lottery permanent.¹¹⁰

The major shift in labor migration preferences, both permanent and temporary, arrived with the Immigration Act of 1990. The Act raised the number of permanent labor visas, while imposing a cap of 65,000 on H-1B temporary visas per year.¹¹¹ It also required employers to provide attestations as to prevailing wages and labor standards (much like

¹⁰⁷ Austin T. Fragomen, Jr. “1976 Amendments to the Immigration & Nationality Act,” *International Migration Review*, Vol. 11, No. 1 (Spring, 1977), 95; Edward M. Kennedy, “Immigration Law: Some Refinements and New Reforms,” *International Migration Review*, Vol. 4., No. 3 (Summer, 1970), 6; Ngai, *Impossible Subjects*, 261.

¹⁰⁸ Yochum and Agarwal, “Permanent Labor Certifications.”

¹⁰⁹ Defined as anyone entering from a country that has sent less than 50,000 people to the U.S. in the past five years. Section 131 of the Immigration Act of 1990.

¹¹⁰ Law, “Diversity Visa Lottery.”

¹¹¹ The category was renamed H1-B after Congress added an H1-A category for foreign nurses in 1989. The H1-A provision expired in 1995.

the requirements for permanent immigration visas.) Still, the reforms also made some liberalizations to the category, removing the requirement that H-1B holders be temporary migrants, allowing even those with intent to stay to obtain a visa. Since the 1990 Act emerged partially from concern about the growing backlog in the employment classes, it nearly tripled the number of permanent visas for labor. The percentage of labor-to-family visas remained the same as in 1965 (20 percent/74 percent,) but with the overall total immigration raised, labor-based preferences grew from 59,000 possible visas under the 1965 system, to 140,000 under the 1990. The Act also split the labor preference into five categories (table 7). Since 1998, Congress has passed a series of temporary increases to the H1-B cap in the face of business community lobbying for greater numbers. With backlogs for permanent labor migration and lag times for certification, Lindsay Lowell argues that many permanent immigrants prefer the H1-B as an easier method of entry. The little known and utilized category of temporary skilled workers created in 1952 has now become one of the centerpieces of labor admissions.¹¹²

Table 7 – Labor Preferences Under the 1990 Immigration Act

<u>Category</u>	<u>Number of Visas</u>	<u>Percentage of Total</u>
All Labor Preferences	140,000	20% ^a
1 st Preference: Workers with Extraordinary Skills	40,000	6%
2 nd Preference: Advanced degree holders and those with special skills	40,000	6%
3 rd Preference: skilled, professional, and other urgently needed laborers	40,000	6%
4 th preference: special immigrants and religious workers	10,000	1% ^b
5 th preference: investors willing to create at least ten jobs.	10,000	1% ^b

a – As part of the 1990 Act, the total number of family-sponsored immigrants stood at 520,000 through 1994, and then dropped to 480,000. Labor preferences stayed the same throughout, but because of the change, represented 21% of all visas, rather than 20%, after 1995.

b – 1.5% after 1995.

Source: Gimpel and Edwards, *Congressional Politics of Immigration Reform*, 198.

Conclusion

On the whole, the transition from a system that barred foreigners with employment in hand, to the strict labor certification and job assurance requirements after 1965, spoke to

¹¹² Lowell, “Foreign Temporary Workforce”; James G. Gimpel and James R. Edwards, Jr., *The Congressional Politics of Immigration Reform*, Boston: Allyn and Bacon, 1999, 196-199.

what many contemporary policymakers saw as the changing character of the American economy. From the first contract labor law in 1885, exemptions had been made for skilled labor, but in the cold war world, and especially in the post-*Sputnik* era, immigration law increasingly shut out the unskilled from labor preferences, while privileging the highly skilled and professional. Legislators worried, as James Hennessy testified in 1968, that with the end to national origins, nonpreference applications would quickly overwhelm bureaucratic capabilities. Likewise the rejection of new seed immigration, which bureaucrats like Roderic O'Connor linked to the closing American frontier and changing industrial landscape, represented a shift from a liberal ideology of individual choice in immigration, to a system of economic and logistical pragmatism.¹¹³ Now admissions procedures judged immigrants primarily on the basis of what they offered the United States (skills; family ties; or, in the case of refugees, foreign policy gains,) rather than the needs, in the words of Emma Lazarus, of the “huddled masses yearning to breathe free.”

And yet, the exclusion of unskilled immigration did not arrive without consequences, many of them unintended. David Reimers and E.P. Hutchinson have argued that the 1965 limitation of employment visas to only 20 percent of the total represented a clear victory for organized labor.¹¹⁴ This victory would quickly turn into a pyrrhic one. First and foremost, while the limitations on labor migration did constrict the total number of workers able to immigrate, it also ensured that only 20 percent of all permanent immigrants (in the Eastern Hemisphere, and after 1976, in both hemispheres,) went through the labor certification provisions. Thus while organized labor certainly won the battle to enhance procedures for protecting the American workforce and economy, it ultimately lost the war, as far greater numbers entered every year as family preference migrants, not subject to any protective provisions. Ironically, during the postwar debates the AFL-CIO continually argued in favor of family reunification as a basis for immigration law, concerning itself more with the entry of labor migrants, and not commenting on the possibility of circumventing the certification system through family ties. Instead, they merely noted that only one out of every four or five total immigrants actually entered the labor force, while all became consumers.¹¹⁵

With patterns of chain migration, the family preference system has become a de facto labor admissions system, especially for unskilled workers.¹¹⁶ Family reunification categories are significantly over-subscribed, particularly for Mexico, the Philippines,

¹¹³ “Statement of Farrell”; O'Connor, “Our Immigration Policies.”

¹¹⁴ Hutchinson, *Legislative History*, 366-379; Reimers, *Still the Golden Door*, 73-80.

¹¹⁵ See, for example: AFL-CIO, “A Democratic Immigration Policy.”

¹¹⁶ Mae Ngai, for example, views the problem with the family reunification system as stemming from restrictive labor based admissions procedures and untenable backlogs in the family preference system as a whole. She argues for reforms that would ease admissions procedures, such as the changing of the current 2A category (parents and children of Legal Permanent Residents,) to immediate relative status. Remarks of Mae Ngai, Thursday, October 22, 2009, “Fixing a Broken Immigration System: Historical and Contemporary Perspectives on Reform,” Woodrow Wilson International Center for Scholars, and personal correspondence with the author, 10/24/09.

China, and India.¹¹⁷ As Aristide Zolberg and Mae Ngai argue, the shift toward discouraging unskilled migration and strengthening certification provisions from the western hemisphere, has only increased and incentivized illegal entry. Cutting down on the number of unskilled visas has not cut down on demand for their labor in the U.S., nor supply of it in sending countries, and has served only to solidify the quagmire of undocumented immigration. Under current law, unskilled immigrants without immediate relatives in the United States can enter only under the five thousand permanent visa slots set for their labor, or under the highly restrictive H-2A and H-2B temporary visas categories. According to Gordon Hanson of the Migration Policy Institute, the total number of low-skilled workers admissible under immigration law is less than 1 percent of the present unauthorized population.¹¹⁸

Equally important is the fact that while Congress in 1965 largely overlooked the temporary visa system that it created with the McCarran-Walter Act of 1952, by severely constricting the numbers of permanent labor visas available, they ensured that when demand for greater numbers of foreign labor grew (whether highly skilled labor during IT boom, or unskilled agricultural labor from the end of the *bracero* program onward,) this immigration would enter under temporary nonimmigrant categories. Even taking into account the lag between passage of Hart-Celler and increases in H1-B usage in the 1980s, the fact that temporary visas play such a large role in contemporary reform, while garnering almost no controversy at the time, points to the unintended consequences of immigration reform.

In the case of family preferences, the series of piecemeal reforms and enlargements to the quota system led to a policy trajectory that allowed liberals to break apart the national origins system. This incrementalism also constrained policymaking, forcing legislators to focus on alleviating hardships, rather than on creating a balanced admissions system (for example, in the allocation of more visas to brothers and sisters of citizens than to all labor classes.) For labor preferences, the story is less about incremental change, and more about the shortsightedness of reform efforts. Like family preferences, the imposition of job assurances that began with the DP Acts ultimately created a language and normative structure for talking about the need for greater certification procedures. Concurrently, economic and geopolitical circumstances pushed legislators toward the admission of the highly skilled and professionals over other categories. The lessons from family preferences about the constriction of policymaking apply here as well: closing one door, in this case the rejection of new seed immigration from permanent immigration policy, only forces open another, as temporary immigrant visas became a major source of labor-based admissions.

¹¹⁷ Ramah McKay, "Family Reunification," Migration Policy Institute, May 2003.

(<http://www.migrationinformation.org/Feature/display.cfm?ID=122>, accessed 1/6/10),

¹¹⁸ Ngai, *Impossible Subjects*, 265-66; Zolberg, *Nation by Design*, 335-36; Gordon H. Hanson, "The Economics and Policy of Illegal Immigration in the United States," Migration Policy Institute, December 2009, 1. On the economics of unskilled migration to the U.S., see: Harry J. Holzer, "Immigration Policy and Less-Skilled Workers in the United States: Reflections on Future Directions for Reform." Washington DC: Migration Policy Institute, January 2011.

Chapter 5: By “the Least Troublesome Method”: The Development of U.S. Refugee Policy, 1948-1968.

Introduction

In February of 1954, two members of the Eisenhower Administration – Cabinet Secretary Maxwell Rabb and Scott McLeod, the State Department’s Administrator of Security and Consular Affairs – considered expanding the statutory definition of a refugee. Only a few months earlier, Congress had passed the Refugee Relief Act (RRA) of 1953, which created a permanent refugee bureaucracy under McLeod’s direction. “As we previously discussed,” Rabb wrote on February 17th, “the use of the National Calamity Clause [of the RRA] could properly and effectively be utilized here to give wider scope to the “refugee definition.”” One week later McLeod responded to say that “there has never been any question in our minds that the Refugee Relief Act would be construed to include as refugees the earthquake victims in Greece, the flood victims in Holland, the Po River Valley flood victims in Italy and the flood victims in Japan.”¹

This exchange between Rabb and McLeod presents a quandary for students of the development of admissions policy within the United States. The Refugee Relief Act had placed refugees firmly within the context of the Cold War, and the main beneficiaries of RRA visas were those fleeing communist and communist dominated countries. Humanitarian intervention, if it entered U.S. refugee policy at all during the early Cold War era, began with the Azorean Refugee Act in 1958, when the U.S. admitted the Portuguese victims of an earthquake in the Azores. Even the Hart-Celler Act of 1965 dealt primarily with the victims of Communism and turmoil in the Middle East, rather than the victims of natural disaster.² If the U.S. did not incorporate humanitarian intervention into refugee politics until at least 1958, why and for what purpose did Rabb and McLeod seek to enlarge the definition of a refugee in 1954?

The Rabb-McLeod correspondence points to an under-studied aspect of the development of refugee policy: the intertwining of refugee admissions with the constrictions of the

¹ Maxwell Rabb, Memo, February 17, 1954, and Maxwell Rabb to Scott McLeod, February 24, 1954. Maxwell Rabb Papers, Box 33, McLeod, Scott (3), Dwight D. Eisenhower Presidential Library (hereinafter: DDE).

² On the RRA of 1953, see: Gil Loescher and John A. Scanlan, *Calculated Kindness: Refugees and America’s Half-Open Door, 1945-Present* (New York: The Free Press, 1986), 44-48; Carl J. Bon Tempo, *Americans At the Gate: The United States and Refugees during the Cold War* (Princeton: Princeton University Press, 2008), Chapter 3; and Norman L. Zucker and Naomi Flink Zucker, *The Guarded Gate: The Reality of American Refugee Policy* (San Diego: Harcourt Brace Jovanovich, 1987), 31-32. On the Azorean Refugee Act, see: E.P. Hutchinson, *Legislative History of American Immigration Policy 1798-1965* (Philadelphia: University of Pennsylvania Press, 1981), 528-529. On the refugee provisions of the Hart-Celler Act of 1965, see: Loescher and Scanlan, *Calculated Kindness*, 72-74; Bon Tempo, *Americans At the Gate*, 90-97, Zucker and Zucker, *The Guarded Gate*, 35-38, and Deborah E. Anker and Michael H. Posner, “The Forty Year Crisis: A Legislative History of the Refugee Act of 1980,” *San Diego Law Review* 19(9) 1981-1982, 17-19. Like the RRA of 1953, the Hart-Celler Act included the victims of natural disaster in its definition of a refugee, but refugee admissions after 1965 were still heavily weighted toward those fleeing communist and communist-dominated countries.

national origins quota system. Only a year and a half prior to the RRA, Congress had passed the McCarran-Walter Act of 1952, which reaffirmed the U.S.'s commitment to the national origins quota system and restrictions on southern and eastern Europeans. The countries highlighted by McLeod – Italy, Portugal, Greece, and the Netherlands – received some of the smallest quota allotments under the system, and had amassed the longest backlogs of people waiting to immigrate.³ The 1954 discussion over refugee definitions then took place within a context of limited visa availability.

In this chapter I argue that even in the early 1950s, the executive branch viewed refugee policy more than as an anti-Communism tool. Successive Administrations harnessed refugee admissions as a way to circumvent the strictures of the national origins quota system, and to admit a greater number of immigrants from the overpopulated and backlogged countries of southern and eastern Europe. It is not surprising that McLeod's enlargement of the refugee definition to include the victims of natural disaster focused on the countries most in need under the immigration quotas – Italy, Greece, the Netherlands, and Japan.⁴

In contrast to the other major priorities for admission set in place with the Hart-Celler Act of 1965 – family reunification and labor-market needs – scholars have largely kept the story of the development of refugee policy separate from that of immigration.⁵ But as the

³ According to State Department records, Greece, for example, had a quota of only 307 under the national origins system. By 1954, the country had 2,815 people waiting for family preference visas (2nd through 4th preference under the McCarran-Walter Act.) Italy had a quota of 5,645, and a backlog of 38,624 in the family preference categories by 1954. See: James W. Morgan to Drury Blain, March 17, 1954. RG 59, Records of the Bureau of Security and Consular Affairs Decimal Files, Box 9, Implementation of the Refugee Relief Act, NARA II.

⁴ See, for example: "Italian Over-Population and Migration", "The Greek Population Problem and Emigration," and "Netherlands Emigration Problems," June 6, 1950, RG 353, Records of the European Migration Working Group, Box 136, MWG Documents. NARA II. On Eisenhower Administration RRA strategy, see: John Foster Dulles to Eisenhower, "Emergency Immigration Legislation," March 26, 1953. DDE Papers, Ann Whitman File, Dulles-Herter Series, Box 1, March 1953, DDE.

⁵ Gil Loescher and John Scanlan's *Calculated Kindness* or Norman and Naomi Zucker's *The Guarded Gate*, study refugee policy as a discrete subject. Refugees, Zucker and Zucker point out, constitute a separate category from legal and illegal immigrants. The authors make a distinction between immigrants, who are "drawn to", and refugees who are "driven from", a country. While this distinction between drawn and driven oversimplifies the complexities of modern push and pull factors, it does represent the emergency and expediency involved in refugee migration. Scholars approaching refugee admissions from the legal tradition similarly see a separation between refugee policy, with its roots in international law and United Nations conventions, and immigration policy, with its roots in domestic law. Loescher and Scanlan, *Calculated Kindness* and Zucker and Zucker, *The Guarded Gate*, Chapter 1. For legal scholars and the split between immigration and refugee law, see: Bill Ong Hing, *Making and Remaking Asian American Through Immigration Policy, 1850-1990* (Stanford: Stanford University Press, 1993), 122, and Guy S. Goodwin-Gill, *The Refugee in International Law* (Oxford: Oxford University Press, 1996), Chapter 1.

In addition to scholars of refugees, those studying the development of immigration also mark a distinction between immigrant and refugee policy. Keith Fitzgerald, in *The Face of the Nation*, splits admissions into three spheres: front-gate immigration, for permanent immigrants; side-gate, for refugees; and back-door, for unauthorized migrant labor. Each of these spheres operates through different mechanisms, such as "competing societal interests" for front-gate admissions; "realism" for side gate, where the State pursues its own agenda first and foremost; and "class conflict" for back-door immigration. Aristide Zolberg, building on Fitzgerald, argues that the processes that govern each of these spheres often overlap, pointing out that while foreign policy decisions have often been the deciding factor in refugee

Rabb-McLeod discussion highlights, refugee admissions played a key role in the development of immigration preferences. True, refugee policy had an outward focus, especially with regard to Cold War diplomacy: inflicting a psychological blow to the Soviet Union through escapee resettlement weighed heavily on the minds of legislators. But refugees also formed a category of admission, and however legislators viewed the public goals of refugee *policy*, they saw refugee *admissions* as deeply interconnected and interdependent with immigrant admissions.

In telling the story of refugee policy development as a distinct category of admission, and as a part of the larger Hart-Celler preference system, I focus on three main issues. (a) First, the failure to admit an adequate number of immigrants from southern and eastern Europe, as well as from East Asian territories such as Hong Kong, under the quota system, spurred successive Administrations to utilize refugee policy instead. As in the family and labor preferences, the combination of strict quotas and preferences created the context in which policy, and the bureaucratic apparatus for refugee admissions, developed.⁶

To mark the connections between immigration and refugee reform, (b) I place the debates over East Asian refugees alongside those in Europe and the Western Hemisphere, using Hong Kong as my entry point. I argue that the course of U.S. refugee policy toward East Asia mirrored and even preceded many of the debates over Asian exclusion occurring in

admissions, pressure from ethnic groups and domestic security concerns have also played a role. Still, even while recognizing the inseparability of these three groups, Zolberg arranges his own narrative in tandem with these same groupings – for example discussing under separate headings the front, back, and side door factors that lead to the McCarran-Walter Act of 1952. Keith Fitzgerald, *The Face of the Nation: Immigration, the State, and the National Identity* (Stanford: Stanford University Press, 1996); Aristide R. Zolberg, *A Nation By Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2006), 20-23.

⁶ Most scholars of refugee policy argue that foreign policy prerogatives, above all else, drove refugee decision-making. Gil Loescher and John Scanlan, for example, argue that the United States has conceived of its refugee policy according to a sense of “calculated kindness”, where refugees are accepted only where politically useful. For most of the post-WWII period, the U.S. accepted refugees fleeing communism, while blocking those fleeing authoritarian regimes allied with the country. Thus the U.S. admitted Cuban refugees en masse, while largely turning away those fleeing Haiti. Norman Zucker and Naomi Zucker argue that while foreign policy has been the main determinant for who is *eligible* for refugee status, who gains admission has more to do with numbers, cost, and likelihood of resettlement without domestic option.

In the most recent study of U.S. refugee policy history, Carl J. Bon Tempo rejects the assumption that foreign policy alone drove refugee admissions, and argues that domestic considerations, especially concerns over national security, have shaped refugee politics. His study examines the links between refugee policy and the bureaucracies set up to choose and admit refugees, arguing that the shape of American political culture and questions of American identity drove decision-making as much as did internationalist concerns. Even while President Johnson signed the Hart-Celler Act of 1965 for example, he welcomed all Cubans willing to flee the communist country, outside of legal limits. Thus at crucial moments where immigration and refugee policy would seem to overlap, Cold War considerations took precedence, and refugees stood apart from other immigrant arrivals. In this chapter I draw on Bon Tempo’s idea that domestic concerns, as much as foreign policy prerogatives, shaped the development of refugee policy. But while Bon Tempo places his emphasis on domestic factors such as McCarthyism, changing notions of human rights, and questions of American identity, I focus on the intertwining of immigration and refugee policy during the early Cold War period. Loescher and Scanlan, *Calculated Kindness*, xvi-xviii; Zucker and Zucker, *The Guarded Gate*, xvi-xvii; and Bon Tempo, *Americans at the Gate*, Chapter 2 and 5.

permanent immigration policy. This evolution mirrored a larger foreign policy shift toward Asia, as especially in the mid-1950s the U.S. began to see Asian democracies as a critical bulwark in the fight against Global Communism.⁷ The refugee debates in East Asia offer a window into the changing landscape of Asians in immigration policy as a whole, and an opening into the development of admissions policy through the Hart-Celler Act in 1965.⁸

In addition to the larger argument that national origins restrictions spurred growth in the refugee policy-sector, (c) I argue that refugee policy developed first within the executive branch bureaucracy (in this case within the State Department,) and was only later written into legislation. Whereas the long backlogs in family preference categories caused by the McCarran-Walter Act's preferences galvanized opposition to the quota system, here backlogs forced Administration and bureaucratic officials in the 1950s to find new ways to admit southern and eastern Europeans. Throughout the 1950s legislators passed a series of ad hoc bills that advanced the definition of a refugee and augmented a burgeoning bureaucracy within the State Department. (Table 5.1) Though fiscal appropriations and resettlement operations became all the more permanent by the early 1960s, refugee *admissions* did not become part of the preference system until 1965. The Hart-Celler Act of 1965 culminated the enshrinement of refugee policy within immigrant admissions, for the first time aligning the preference categories, and giving refugees a permanent allotment (7th preference and 6 percent of all visas,) alongside family and labor.

⁷ As Christina Klein has argued, the U.S. in the 1950s traded an ideology of difference for one of interdependence, attempting to integrate Asian democracies into an American-led free world order. Christina Klein, *Cold War Orientalism: Asia in the Middlebrow Imagination, 1945-1961* (Berkeley: University of California Press, 2003).

⁸ Most scholars have focused on Europe and the Western Hemisphere (particularly Cuba) in their accounts of refugee policy in the early Cold War. Loescher and Scanlan and Zucker and Zucker, for example, all but leave out Asia in their accounts, not turning to the continent until the 1970s and the aftermath of U.S. intervention in the Vietnam War. Bon Tempo spends his first four chapters discussing Europe, moving on to Cuban refugees in the 1960s, and only arriving at Asia in Chapter 6, as part of the broadening of refugee crises and policymaking in the 1970s. U.S. policymaker priorities in the era largely mirrored this emphasis on Europe, viewing modern refugee policy as a distinctly European phenomenon, emerging from the displaced persons crisis of World War II. Even the United Nations Convention on the Status of Refugees contained geographically oriented language that restricted its functions to Europe (UN Convention on the Status of Refugees, Section B(1)(a) and (b) <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>, accessed 3/18/10.) Furthermore, as U.S. policy evolved to encompass anti-Communism, most in Congress and the Executive Branch worried most about producing escapees from the Soviet Union, and later from Cuba. But as Zolberg et al. point out, by the early 1960s, Hong Kong alone had over one million refugees, many of whom had fled the mainland after the Chinese Revolution in 1949, making it the single largest refugee crisis in the world, and the largest bastion of refugees from Communism. During the 1950s in particular, as policymakers established a refugee bureaucracy in the U.S., they also increasingly turned their sights toward Asian refugees alongside Europeans. Loescher and Scanlan, *Calculated Kindness*; Zucker and Zucker, *The Guarded Gate*; Aristide R. Zolberg, Astri Suhrke, and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (New York: Oxford University Press, 1989), 126.

Table 5.1 U.S. Legislative Refugee Policy After WWII

<u>Year</u>	<u>Title</u>	<u>Description</u>
1948/1950	DP Acts	First Act in 1948 allows 202,000 admissions over two years, and mortgages DP admissions against future quotas. Also contains preferences for agricultural and skilled laborers. Amended in 1950 to raise the ceiling to 400,000 admissions and remove the agricultural priorities.
1951	UN Convention on the Status of Refugees	Creates the modern definition of a refugee as someone outside of his/her country, "owing to a well founded fear of persecution." Contains geographic and temporal restrictions, and is not ratified by the U.S.
1953	Refugee Relief Act	Temporary legislation passed to admit refugees from Communism, and overcrowding in Europe. Admits 214,000 people, and expires at the end of 1965. Creates a permanent refugee bureaucracy within the State Department.
1956	Hungarian Refugee Crisis	First use of parole power to bring in a large group of refugees. Admits approximately 38,000.
1957	Refugee-Escapee Act	Broadens the definition of a refugee to include (a) those fleeing Communism, (b) those fleeing turmoil in the Middle East, and (c) those fleeing natural disaster.
1958	Azorean and Indonesian Refugee Act	First major Act to explicitly single out humanitarian intervention as a goal of refugee policy, here involving the victims of natural disaster.
1960	World Refugee Year and Fair Share Act	Sets out funding priorities for World Refugee Year, and allows the U.S. to admit 25% of the total number of DPs resettled by other countries.
1962	Migration and Refugee Assistance Act	Provides permanent funding allocations for refugee assistance, partially in response to the large numbers of Cuban refugees entering the U.S.
1965	Hart-Celler Act	Makes refugees part of the permanent admission system, allotting them 7 th preference, and 6% of all visas (17,400 per year).
1967	UN Protocol on the Status of Refugees	Removes the geographic and temporal limitations on the 1951 Convention. Ratified by the U.S. in 1968.
1975	Indochina Migration and Refugee Assistance Act	Granted special relocation funding and admissions status to refugees from Southeast Asia.
1980	Refugee Act	Adopts the UN definition for a refugee;

	separates refugee policy from immigration, and sets a yearly quota of 50,000 admissions per year; reaffirms refugee funding priorities.
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But while refugee and immigrant admission were interdependent in the postwar era, with reform (or lack-thereof) in one realm affecting reform in another, the actual intertwining of the two categories under the law in 1965 failed to anticipate the special needs of refugee crises. The unified preference system, with both immigrant and refugee admissions combined, lasted only twelve years. In the late-1960s and 1970s legislators realized that interdependence of policy goals did not necessarily mean that refugee and immigrant admissions should draw from the same pool of visas. Thus the Refugee Act of 1980, while retaining the permanence of refugee policy established in 1965, once again separated refugee admissions from immigration.⁹

The Foundations of U.S. Refugee Policy through WWII

From the time of its founding as a nation, the United States positioned itself as a haven for those fleeing persecution in Europe. Late-19th century laws designed to bar the entry of criminals contained a special classification for those protesting the actions of their government, considering them political refugees not subject to exclusion.¹⁰ The Immigration Act of 1917, which established the literacy test for entry into the country, provided an exemption for those seeking asylum from religious persecution. This exemption continued into the post-World War II era.¹¹ In the international sphere, prior to World War II, the concept of a refugee turned on a largely political definition set out by the League of Nations. The League, according to legal scholar Guy Goodwin-Gil, adopted a group-oriented (rather than individual) notion of refugee status, defining refugees as those outside of their country of origin, and without the protection of the government of that nation.¹²

The modern notion of a refugee, along with the U.S.’s institutionalization of refugee admissions within immigration law, began with World War II. Prior to the war, the U.S. as a whole remained heavily isolationist and restrictionist, closing its doors to immigrants and those fleeing Nazism. In a poll taken in 1939, 71 percent of Americans stated that they did not think that the United States should allow large quantities of Jewish exiles into the country; 83 percent believed that Congress should not open the nation’s doors to

⁹ On the Refugee Act of 1980, see: Anker and Posner, “The Forty Year Crisis”; Bon Tempo, *Americans At the Gate*, Chapter 7; Zucker and Zucker, *The Guarded Gate*, Chapter 2; Loescher and Scanlan, *Calculated Kindness*, 153-55.

¹⁰ For example, Section 1 of the Act of March 3, 1891 stated “That nothing in this act shall be construed to apply to or exclude persons convicted of a political offense, notwithstanding said political offense may be designated as a “felony, crime, infamous crime, or misdemeanor, involving moral turpitude” by the laws of the land whence he came or by the court convicting.” Quoted in: Hutchinson, *Legislative History*, 522.

¹¹ *Ibid.*, 521-525.

¹² Goodwin-Gil, *Refugee in International Law*, 3.

European displaced persons (DP).¹³ Historian Haim Genizi states that the public was wary of refugee admissions because they felt “the problem was basically a Jewish one, since most of the refugees were Jews.”¹⁴ During the war itself, proponents of displaced persons admissions made very little progress, with the Roosevelt administration giving only lukewarm sympathy to the victims of Nazism. Restrictionists such as Assistant Secretary of State Breckinridge Long made it almost impossible for European refugees to enter above quota limitations.¹⁵

The international community as well was slow to respond to the challenges of refugee relief created by the war. Even before World War II ended, the situation in Europe’s displaced persons camps had deteriorated to crisis levels. Allied forces estimated the number of DPs to be over eight million in Germany, Austria, and Italy alone. Complicating an already difficult process of resettlement, the closing of the Iron Curtain and intensified anti-Semitism in eastern Europe made repatriation impossible for a portion of the victims. The DPs in Germany and Austria included several thousand Jews uprooted from their homes, a large number of Baltic residents who had fled from the advancing Soviet army, and the *volksdeutsche*, ethnic Germans expelled from eastern Europe. While some European refugees were resettled quickly, many more languished in an ambiguous status, stuck in displaced persons camps throughout Europe.¹⁶

After the war, in light of the earlier failure to rescue the victims of Nazism, the western democracies began to move toward formal recognition of the refugee as a distinct legal category with rights and protections.¹⁷ The United Nations established the UN Relief and Rehabilitation Administration (UNRRA) in November of 1943 to help the victims of the conflict. The UNRRA closed its doors in 1946, with the refugee relief and resettlement functions transferred to the newly formed International Refugee Organization (IRO). The IRO would also prove to be short-lived, being replaced in 1950 by the permanent United Nations High Commissioner for Refugees (UNHCR). At its start, the UNHCR concerned itself primarily with Europeans. Other refugee flows, such as those from India after 1947,

¹³ Quoted in: Rita J. Simon, *Public Opinion and the Immigrant: Print Media Coverage, 1880-1980* (Lexington: Lexington Books, 1985), 35.

¹⁴ Haim Genizi, *America’s Fair Share: The Admission and Resettlement of Displaced Persons, 1945-1952* (Detroit: Wayne State University Press, 1993), 8.

¹⁵ Scholars debate whether FDR and the U.S. could have done more to help the Jewish victims of Nazism. Daniel Tichenor concisely sums up the current thinking by stating that although public opinion and restrictionists in Congress hindered FDR’s abilities to bring in Jews above the quota limits, the State Department actively discriminated against Jews in the allotment of quota visas. See: Daniel Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002), 151; According to Congressman Emmanuel Celler, Breckinridge Long was the least sympathetic member of the State Department to European refugees. See: Leonard Dinnerstein, *America and the Survivors of the Holocaust* (New York: Columbia University Press, 1982), 3, and Alan M. Kraut, Richard Breitman, and Thomas W. Imhoof, “The State Department, the Labor Department, and Germany Jewish Immigration, 1930-1940” *Journal of American Ethnic History*, 3 No. 2, Spring 1984.

¹⁶ Loescher and Scanlan, *Calculated Kindness* 1-2.

¹⁷ Aristide R. Zolberg, “Response to Crisis – Refugee Policy in the United States and Canada,” in: *Immigration, Language, and Ethnicity: Canada and the United States*, Barry R. Chiswick, ed. (Washington D.C.: The AEI Press, 1992), 55.

and those from Palestine in 1948 remained outside the scope of the UNHCR (though the latter would later fall under the UN Relief and Works Agency.)¹⁸

By the early 1950s, most in the international community believed that refugee relief would end once the survivors of World War II had been resettled. The UN Convention Relating to the Status of Refugees, approved in July of 1951, adopted this emphasis on past rather than future conflicts, even as the definition of a refugee it codified became the standard for future refugee claims. Article One of the Convention classified a refugee as a person who,

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence...is unable or, owing to such fear, is unwilling to return to it.¹⁹

The Convention protections applied only to those people who became refugees prior to January 1, 1951, and contained geographic restrictions, allowing nations adopting the treaty to choose to restrict their refugee support to Europe alone.²⁰ The United States chose not to accede to the Convention, fearing that international supervision would restrict its ability to control its entrance and deportation. The U.S. would continue to resist the UN definition until the passage of the 1980 Refugee Act.²¹

Resettlement of displaced persons in the United States remained contentious even after armistice, and most Americans continued to oppose refugee admissions.²² The United States faced a conflict between the need for humanitarian aid and international leadership, and concerns about the effects of admissions on national security and domestic politics. As policymakers discussed the merit and structure of displaced persons legislation, proponents of admission created the Citizen's Committee on Displaced Persons (CCDP) to lobby in their favor. Though avowedly nonsectarian, the CCDP emerged from the American Jewish Committee (AJC) and the American Council on Judaism (ACJ). Recognizing that a Jewish-led crusade for displaced persons would only exacerbate existing anti-Semitism, Jewish leaders assembled a nondenominational lobbying arm. The predominantly non-Jewish committee included leading Catholic and Protestant figures as well as business and labor leaders. The CCDP shunned all connections between DPs and Jewishness to the point that, according to historian Leonard Dinnerstein, its publications avoided mentioning even occupations popularly linked to Jews, such as physicians or tailors.²³

¹⁸ Zolberg et al., *Escape from Crisis*, 23

¹⁹ UN Convention, 1951.

²⁰ *Ibid.*, Article 1(B)(1)

²¹ Zucker and Zucker, *The Guarded Gate*. Zolberg, "Response to Crisis," 65.

²² Simon, *Public Opinion and the Immigrant*, 35.

²³ Dinnerstein, *America and the Survivors*, 131-33.

In early 1947, Representative William Stratton (R-IL) introduced a bill authored by the CCDP to admit 400,000 DPs into the country over a period of four years. In arriving at this number, the CCDP calculated the number of quota slots unused during the war, believing that this constituted 'America's fair share' of the refugees.²⁴ Throughout 1947 the House Judiciary Committee sat on the bill, issuing a report that, in the words of historian Robert A. Divine, labeled the refugee crisis a "planned migration organized by Jewish agencies in the United States and in Europe."²⁵ Although Stratton's bill died in committee, by 1947 the CCDP had convinced the nation of the need for DP legislation, and in 1948 Congress was ready to act.

The resulting bill, the Displaced Persons Act of 1948, limited admissions to 202,000 over two years, and technically did not admit anyone over quota allotments. Instead, legislators mortgaged DP admissions against future quotas.²⁶ First preference, and thirty percent of all visas went to agricultural workers, followed by a second preference for skilled labor. Contemporary critics charged that legislators added these preferences to limit Jewish admissions, as Jews were underrepresented in the categories.²⁷ In addition to these caveats, the Act allowed only those who had entered Germany or Austria before December 22, 1945 to emigrate, further restricting the number of Jewish and Catholic refugees, many of whom entered Allied territory only after that date. President Truman signed the bill with reluctance, noting that the bill disadvantaged these religious groups.

Immediately after passage, the fight to amend began. In 1949 liberals introduced a bill to raise the number of admissions to 400,000, and to advance the cutoff date for eligibility to 1949. An end date in 1947 would have placated advocates of Jewish admissions, but legislators chose the later date to include the growing number of refugees entering Europe from within the Iron Curtain. In April of 1950 liberals won passage of a revised DP Act. The new bill set an end date of January 1, 1949, and removed the agricultural priorities. Altogether the DP Acts made allowances for 344,000 DPs, 54,744 German expellees or *volksdeutsche*, and 20,000 orphans to enter. With the inclusion of refugees

²⁴ Sheldon M. Neuringer, *American Jewry and United States Immigration Policy, 1881-1953* (New York: Arno Press, 1980), 284.

²⁵ Robert A. Divine, *American Immigration Policy, 1924-1952* (New Haven: Yale University Press, 1957), 112.

²⁶ The Refugee-Escapee Act of 1957 repealed quota mortgaging, but the immediate effects of this policy served to limit immigration from the already overtaxed countries of eastern and southern Europe. Roger Daniels argues that although mortgaging was a concession to nativists in Congress, "Congress pretended that these mortgages would be paid off. It is difficult to believe that any but the most naïve members of Congress thought that this would occur. To take an extreme case, within four years, the tiny Latvian annual quota of 286 persons had been mortgaged to the year 2274." Daniels thus concludes that the refugee acts did in fact poke holes in the national origins system. See: Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants since 1882* (New York: Hill and Wang, 2004), 109.

²⁷ "From the point of view of Jewish immigration," according to John Slawson, Executive Vice President of the American Jewish Committee, the bill "is a calamity. From a tactical point of view it is worse than no immigration at all, because it is designed to discriminate against Jews." Quoted in Genizi, *Fair Share*, 81. See also: Hutchinson, *Legislative History*, 525-526.

from under the Iron Curtain, the amended DP Act foreshadowed the shift in American refugee policy away from World War II, and toward the cold war.²⁸

The debate over DP legislation established the divide over refugee policy that would characterize the era. Proponents of admissions, such as those on the Displaced Persons Commission (charged with administering the acts,) situated the Acts within the context of America's obligations to the rest of the world, referring to them as "a declaration of the responsibility of nations of wealth."²⁹ Restrictionists such as Senator Pat McCarran (D-NV), on the other hand, worried that allowing DPs into the country would bring in "millions of aliens, from the turbulent populations of the entire world."³⁰ Opponents also charged that these refugees would compete with the native-born for jobs, or worse, would end up becoming public charges. In an effort to combat these fears, legislators mandated rigorous screening and welfare guarantees prior to admission.

Congressional restrictionists though were not unified in their opposition to refugee admissions, especially when compared to their opposition to the entrance of immigrants. Representative Francis Walter (D-PA), for example, was more receptive to humanitarian appeals and emergency refugee admissions than permanent immigration, even sponsoring the DP legislation in the House. Representative Frank Chelf (D-KY) one of the more ardent defenders of the national quota system through 1965, was an orphan himself, and after taking a tour of the European DP camps, became a strong supporter of DP legislation. But not all restrictionists went along with refugee admissions: while Chelf returned from his European trip a changed man, Pat McCarran, Chairman of the Senate Judiciary Committee, returned from a 1950 European visit to publish a scathing report on refugee resettlement entitled *Displaced Persons: Fact Versus Fiction*.³¹

In addition to admitting European DPs, The DP Acts created the first bureaucratic apparatus for refugee admissions to the United States, the Displaced Persons Commission (DPC). Though the Commission was only temporary, operating between 1948 and 1952, it set many of the benchmarks for the permanent refugee bureaucracy that Congress would create with the Refugee Relief Act of 1953.³² President Truman nominated three

²⁸ Divine, *American Immigration Policy*, 134; Dinnerstein, *America and the Survivors*, 247; Daniels, *Guarding the Golden Door*, 110.

²⁹ Displaced Persons Commission. *Memo to America: The DP Story: the Final Report of the U.S. Displaced Persons Commission* (Washington D.C.: U. S. Govt. Print. Off., 1952), v.

³⁰ Pat McCarran, *Displaced Persons: Facts Versus Fiction. Statement by Senator Pat McCarran of Nevada in the Senate of the United States, Friday, January 6, 1950* (Washington D.C.: U.S. Govt. Print. Off., 1950), 3.

³¹ Stephen Thomas Wagner, "The Lingering Death of the National Origins Quota System: A Political History of United States Immigration Policy, 1952-1965" (Ph.D. Dissertation, Harvard University, 1986), 33 and 43-44; Divine, *American Immigration Policy*, 138.

³² For example, in a 1954 memo from the State Department's SCA to the Senate Subcommittee on Immigration and Nationality, James W. Morgan estimated that the number of individuals (including spouses and children) that would theoretically enter with each Refugee Relief Act visa at 2.4 people, a figure derived from estimations of the Displaced Persons Program. Here State Department officials attempted to discern the total number of people that would enter the United States – including the primary beneficiaries of RRA visas and their families – from the earlier experiences under the DP Act. See: Morgan to Blain, March 17, 1954.

commissioners to the DPC, each with a considerable record of public service: Ugo Carusi, a lawyer and former Commissioner of Immigration and Naturalization; Edward M. O'Connor, a leader of the National Catholic Welfare Conference; and Harry N. Rosenfeld, a lawyer, bureaucrat, and expert on immigration and education policy. The commissioners, according to Leonard Dinnerstein, interpreted the law in the most liberal way possible, to admit as many DPs as possible. At first they kept to the letter of the original law, ensuring the necessary percentage of Baltic and agricultural workers. The commissioners quickly realized that to move more than 200,000 people through the security, job, and housing screenings, they would have to jettison the preference categories, and process refugees on a first come, first served basis.³³ McCarran fought arduously against the DPC, testifying from the floor of the Senate of its “complete breakdown in the administration of the law.”³⁴

The DP crisis also established what would become the norm for refugee resettlement in the United States – voluntary agencies would identify, register, and interview refugees abroad to determine their eligibility and, once a visa had been secured, arranged for transportation, local resettlement, and social services in the United States. Many of these agencies ministered to a specific religious or ethnic group, such as the United Hebrew Immigrant Aid Society (HIAS) Service, Catholic Relief Services, or Ukrainian American Relief Committee, though others such as the International Rescue Committee and United States Committee for Refugees, were nonsectarian. This public-private partnership, where the federal government relied on voluntary agencies to handle the bulk of the load, while providing central planning and some funding, continued well beyond the postwar period.³⁵

During the tenure of displaced persons legislation, the U.S. government also established two linked programs to encourage the defection of those under Communism. First, the National Security Council promulgated NSC 86/1 in 1951, to encourage defections from the Soviet Union and Soviet Bloc countries. Though the program targeted high-value political defectors, the NSC interpreted its mandate to provide assistance to all those escaping from Communism, as a way to encourage further defection, and to demoralize the Soviets. NSC status memos on 86/1 argued that encouraging defection would be a valuable method for helping to defeat the Soviet Union. In addition, the Mutual Security Act of 1951 created the United States Escapee Program (USEP), as a way to fund, transfer, and resettle those fleeing Communism. Much of the actual work for resettlement occurred within the voluntary agencies, and so the USEP became a way to provide

³³ Dinnerstein, *America and the Survivors*, 183 and 191.

³⁴ McCarran, *Displaced Persons*, 6.

³⁵ For an overview of the role of voluntary agencies in the postwar period, see: Richard Ferree Smith, “Refugees,” *Annals of the American Academy of Political and Social Science*. Vo. 367, September 1966; Norman L. Zucker, “Refugee Resettlement in the United States: The Role of the Voluntary Agencies,” 3 *Michigan Yearbook of International Legal Studies*, 155 1982; and Robert G. Wright, “Voluntary Agencies and the Resettlement of Refugees,” *International Migration Review*, Vol. 15, No. 1/2 (Spring-Summer 1981). As Wright argues, while the agencies play a central role in refugee resettlement, they were not mentioned in immigration law prior to the Refugee Act of 1980. He does, however, point to the inherent advantage that non-governmental actors like the voluntary agencies have in helping refugees, in their ability to respond with little or no prior notice.

funding and governmental coordination, without actually becoming involved with individual refugee cases. With both programs focused on foreign policy and intelligence objectives, they helped to orient refugee policy away from a focus on WWII, and toward the war against global communism.³⁶

Officials in the Truman Administration also recognized that expanding refugee policy could help to solve one of the most pressing issues in the emerging Cold War: overpopulation in Europe. In June, the State Department's Intra-departmental European Migration Working Group studied the growing problem of overpopulation and economic decline in Italy, Greece, and the Netherlands. Italy, the State Department estimated, had a surplus population of between 1.5 and 2 million, "in spite of the emigration of a total of 300,000 Italians in 1947 and 1948." Much of this excess population came from returning migrants from Italy's former colonial territories. Italy's annual population growth of roughly 400,000 people per year would only exacerbate the precarious economic situation, and so the working group concluded that "during the next decade Italy must look toward the traditional outlet of migration for a solution to its current surplus." Likewise in Greece, a combination of population boom and relatively low industrial development had led to severe unemployment. Here too, the State Department recommended increased emigration as the best course of action, and lamented the fact that the annual U.S. quota for all of Greece was only 307 people. While State was primarily concerned with the economic effects of population surplus, as well as the balance of trade payments, they argued that these issues were hampering Europe's recovery from the war.³⁷

In addition to economic effects, the State Department worried that chronic unemployment and overpopulation would lead to unrest, and open the door to Communist revolution. The 1953 Italian elections in particular caused significant concern within the foreign policy community.³⁸ The best solution to the overpopulation crisis, according to Irwin Tobin of the State Department's European division, would be a revision of the quota system to allow in greater numbers of southern and eastern Europeans. Barring comprehensive reform, Tobin also suggested to the members of the Working Group the possibility of an ad hoc "absorption of large numbers from overpopulated countries like Italy in the same manner in which a large number of DP's are now being admitted." Tobin recognized that refugee programs like the DP Act could be used to circumvent

³⁶ NSC 5706/01 and 5706/02 superseded NSC 86/1 in 1957. On NSC 86/1, see, for example: Operations Coordinating Board, "Progress Report on NSC 86/1, United States Policy on Soviet and Satellite Defectors, covering the period Dec. 17, 1954 – April 18, 1956. RG 59, Bureau of the Administrator, Refugee Relief Program Box 99, Escapee Program Policy Documents, NARA II. Michael Gill Davis argues that the USEP became a model for American refugee affairs, with the government supporting private voluntary associations. Walter: Michael Gill Davis, "The Cold War, Refugees, and U.S. Immigration Policy, 1952-1965" (Ph.D. diss., Vanderbilt University, 1996), 20.

³⁷ "Italian Over-Population and Migration" (Quotes on 1 and 3) and "The Greek Population Problem and Emigration." Although the Netherlands had, comparatively, the least pressing problems in the postwar era, with the State Department arguing that until 1949 the Netherlands had low unemployment rates, by the end of 1949 a large number of unskilled workers and agriculturalists were out of jobs, while the immigration quota for the country was so oversubscribed that, according to the report, "the estimated waiting time for recent registrants is indefinite." "Netherlands Emigration Problems," June 6, 1950, 3.

³⁸ Bon Tempo, *Americans At the Gate*, 35-37.

national origins strictures and help solve larger problems such as the stabilization of European democracies through emigration. Once the McCarran-Walter Act failed to liberalize the quota system, and the Cold War struggle deepened in the U.S., proposals like Tobin's became the bedrock of refugee policy, culminating in the Refugee Relief Act of 1953.³⁹

Refugee Relief Legislation in the Early 1950s

While legislators left refugee policy out of the McCarran-Walter Act, much of the calculus for defining and utilizing refugee admissions throughout the 1950s would emerge from the 1952 Act's failure to revise the national origins system. Two provisions in particular shaped the development of refugee policy through the Hart-Celler Act in 1965. First and foremost, the 1952 bill implemented the visa preference system within the national origins quotas, which allotted first preference and half of all permanent visas to labor categories, with the remainder to family reunification. The combination of quotas and preferences further limited usage of visas, especially for unskilled immigrants without family ties, and created long backlogs for many of the same overcrowded southern and eastern European countries about which the European Working Group had worried in 1950. The small number of quota slots hampered the Administration's efforts to use immigrant admissions to further foreign policy and anti-Communist goals, and pushed policymakers toward refugee admissions as a palliative. Secondly, the McCarran-Walter Act subsumed many of the dominant Cold War and McCarthyist security discourses of the early 1950s. The Act adopted most of the provisions of the 1950 Internal Security Act, allowing for the exclusion and deportation of an expanded list of potential subversives. This emphasis on internal security, and concerns over communist infiltration, would define the emergency refugee programs of the early 1950s.

In March of 1952 President Truman sent a special message to Congress for a program to admit 300,000 nonquota refugees from communism and natives of overpopulated countries, such as Italy, Greece, and the Netherlands, not surprisingly countries with the longest backlogs of immigrants waiting to enter the U.S. Much like the State Department's European Migration Working Group reports in 1950, H.R. 7376, introduced by Emanuel Celler, took into account the small number of visas available to southern and eastern Europe under the national origins quota system. The bill proposed granting 117,000 nonquota visas to ethnic Germans living in West Germany and Austria, (many of whom had been expelled from eastern Europe after World War II); 117,000 visas to Italians; 22,500 visas to Greeks; 22,500 to Dutch; and 22,500 to Turkish refugees. Members of the State Department's interdepartmental Policy on Immigration and Naturalization (PIN) Committee such as Daniel Goot explicitly argued that the Administration should portray the temporary refugee program in terms of foreign policy

³⁹ Irwin Tobin, "Possible Revision of United States Quota System," June 22, 1950. RG 353, Records of the European Migration Working Group, Box 136, MWG Documents. NARA II.

goals, while avoiding discussing domestic concerns such as manpower and employment, in an attempt to win trade union support for the program.⁴⁰

This avoidance strategy paid off, and Walter Mason of the American Federation of Labor (AFL) testified in June 1952 hearings on H.R. 7376, that the bill was “a very important one from the standpoint of strengthening the free world in the continuing fight against the tyranny of Communist totalitarianism.” The AFL, normally opposed to immigrant admissions (for example, opposing changes to the quota system during the McCarran-Walter debates),⁴¹ here argued that 300,000 new refugees could easily be absorbed. Like the Truman Administration, in framing its support for the new refugee legislation, the AFL drew on the earlier DP program, stating that “America has not been injured but, on the contrary, has been substantially strengthened,” by DP admissions. But, though the Administration succeeded in convincing the AFL of the merits of the bill, no one in the Senate would sponsor the legislation, and so it was set aside during the passage of the omnibus immigration reform.⁴²

As with the DP Acts, restrictionist Francis Walter was willing to make an exception for refugees, introducing his own bill, H.R. 2991, in February of 1953. The legislation had a far more limited scope than the Administration’s, and would have admitted 25,000 Dutch Farmers, the victims of flooding in the Netherlands.⁴³ Interestingly, Walter’s bill explicitly provided refugee slots for humanitarian purposes, rather than the anti-Communist and overpopulation focus of most in Congress. Still, the beneficiaries of this humanitarian aid comprised a narrow group. As Walter argued while introducing his bill, “a nation that the Dutch helped to establish must not pause in a gesture of commiseration.” Furthermore, Walter proposed giving visas exclusively to those “dependable Dutch farmers and close relatives of Americans who trace their ancestry to the Netherlands.”⁴⁴ Walter’s focus on northern European refugees mirrored the labor-centric priorities of the quota system that he had helped reinforce one year earlier with the McCarran-Walter Act. While members of the State Department in the early 1950s had bundled the Netherlands into a group of countries in need of greater immigration rights, including southern European nations such as Greece and Italy, Walter’s intent was much more in line with the priorities of the quota system itself, which favored northern

⁴⁰ Policymakers arrived at the figure of 300,000 visas by using the yearly admissions estimates from the DPC. See: Minutes of the PIN Committee, March 5, 1952, “Presidential Message on Special New Immigration Program,” RG 353 Box 1, Minutes 1947-1952 2 of 3, NARA II.

⁴¹ Tichenor, *Dividing Lines*, 191.

⁴² “Statement of Walter J. Mason, Member, National Legislative Committee, American Federation of Labor, Before the Subcommittee on Immigration of the House Judiciary Committee on the Special Migration Act of 1952 (H.R. 7376), June 3, 1952,” quote on 1. RG21-001, Box 27, Folder 14, AFL-CIO Archives. Stephen Wagner argues that while Catholic groups supported the bill, Jewish and Protestant groups were lukewarm, preferring to focus their efforts on the McCarran-Walter Act proposals. “Lingering Death,” 81-82.

⁴³ On January 31 through February 1, 1953 a massive storm battered northern Europe, wrecking the southwest of the Netherlands. According to the Dutch government, roughly one million people were affected over an area of 275,000 acres. See: Daniel L. Schorr, “Dutch Mass Ships for Flood Rescues,” February 3, 1953, *The New York Times*, 4.

⁴⁴ “Statement by Francis Walter, 2/12/1953,” Francis Walter Papers, Carton 9, H.R. 2991 83rd 1st, Lehigh University Archives.

Europeans.⁴⁵ Secretary of State John Foster Dulles argued against the bill, and pushed for a more expansive refugee program, reasoning that the U.S. could not single out the Netherlands from other countries with severe overpopulation needs, such as Italy. Like Truman's 1952 attempt, Walter's bill did not succeed.⁴⁶

President Eisenhower began a renewed effort to admit 240,000 refugees in 1953, which culminated in the passage of the Refugee Relief Act on August 7, 1953. In his letter to Congress introducing the bill, Eisenhower referenced "the tragic developments of the past several years," as well as the recent "steady flow of escapees who have braved death to escape from behind the Iron Curtain." Like H.R. 7376 in 1952, here Eisenhower explained that in addition to saving escapees from communism, his refugee program would solve "the problem of population pressures [which] continues to be a source of urgent concern in several friendly countries in Europe."⁴⁷ Three main groups would benefit from the new legislation: expellees of German descent from eastern Europe; escapees from Communism; and those living in the overpopulated countries of western Europe, including West Germany, Italy, and Greece. While Eisenhower and liberals like Emanuel Celler viewed refugee policy as part-and-parcel of anti-Communist activities, they also saw it as a way to circumvent the national origins quotas, and to admit greater numbers of Europeans without new immigration reform.⁴⁸

Passing the 1953 Act proved far easier than omnibus reform had the year before. Restrictionist groups like the American Legion, notoriously opposed to open immigration, made an exception for the emergency legislation, framing its support for "the United States' fair share of this humanitarian task." The approval of the historically restrictionist Legion points to one of the key aspects of refugee admissions in the 1950s: its impermanence.⁴⁹ Confidential strategy memos written by Maxwell Rabb, the Eisenhower official in charge of shepherding the legislation through Congress, argued that both McCarran and Walter felt that making a permanent allotment for refugees, even

⁴⁵ Eisenhower aid Maxwell Rabb also reported that Walter disliked Italians, believing that much of his electoral trouble stemmed from them. "Chronological Record of Immigration Hearings," 3, Maxwell Rabb Papers, Box 46, Immigration Hearing, Chron. Record, DDE. Stephen Wagner writes that intense criticism of the 1952 Act made Walter extremely defensive, to the point where he would not submit to any major changes to the immigration system. Wagner does state that Walter supported expanding refugee status beyond Europe to Asia, and had a history of working with Walter Judd on Asian immigration. "Lingering Death," 101 and 218-219.

⁴⁶ Dulles to Eisenhower, "Emergency Immigration Legislation," March 26, 1953.

⁴⁷ U.S. Congress, Senate Committee on the Judiciary, *Emergency Migration of Escapees, Expellees, and Refugees. Hearings before the Subcommittee of the Committee on the Judiciary, United States Senate, Eighty-Third Congress, First Session, on S. 1917, a Bill to Authorize the Issuance of Two Hundred and Forty Thousand Special Quota Immigrant Visas to Certain Escapees, German Expellees, and Nationals of Italy, Greece, and the Netherlands, and for Other Purposes* (Washington: U.S. Govt. Print. Off., 1953), 2; (hereinafter: Senate Refugee Hearings, 1953.)

⁴⁸ Bon Tempo, *Americans at the Gate*, 37. See also: Loescher and Scanlan, *Calculated Kindness*, 45 and Neuringer, *American Jewry*, 363.

⁴⁹ United States Congress, House Committee on the Judiciary, Subcommittee No. 1, *Emergency Immigration Program. Hearings, Eighty-Third Congress, First Session, on H.R. 361, H.R. 1702, H.R. 2076, H.R. 2991, H.R. 3201, H.R. 3845, H.R. 4044, H.R. 4842, H.R. 4925, H.R. 4935, H.R. 5001, H.J. Res. 178. May 21-22, June 8-10, July 9, 1953* (Washington: U. S. Govt. Print. Off., 1953), 135; (hereinafter: House Refugee Hearings, 1953.)

for those fleeing Communism, would “reflect unfavorably upon the Omnibus bill,” and the national origins system. Thus, as with war brides, where ad hoc legislation helped to break apart the racial foundations of the law, here the Administration chose to enact temporary legislation, and stress the ad hoc nature of the refugee procedures, to win its ultimate goals.⁵⁰

As originally introduced in May of 1953, the Administration’s bill, S. 1917, proposed admitting 240,000 immigrants over a two year period, including 108,000 escapees and expellees in West Germany; 15,000 escapees in NATO countries; 73,000 distressed persons⁵¹ of Italian origin; 19,500 distressed persons Greek origin; 19,500 distressed persons of Dutch origin; and 5,000 escapees from the Far East. The congressional committee markup largely left the structure of the visas alone, but scaled back the number of visas to the Far East to only 1,000, redistributing the other 4,000 visas to Germans, Italians, and Greeks. In mid-July, Pat McCarran presented his own version of the bill, which contained a much stronger security apparatus, and limited the total number of admissions to only 124,000.⁵² His proposal also limited refugee admissions to 38,000 per year, and stipulated that the second year’s authorization of 38,000 would only be available if the other nations of the free world committed themselves to admitting 80,000 refugees. Pat McCarran’s assistant and former HUAC Staff Director Richard Arens had little sympathy for the Administration’s refugee bill, agreeing to let Italians into the bill only if they could be classified as refugees, and consciously blocking the Administration’s attempt to widen the definition of a refugee to include quota-deficient nations such as Italy. He also blocked the inclusion of any reference to overpopulation, presumably because of a concern over greater numbers of admissions, and what Maxwell Rabb termed an ‘anxiousness’ to protect the McCarran-Walter Act from criticism. Thus even as the Eisenhower Administration sought to bypass quota restrictions through emergency refugee legislation, powerful restrictionists in Congress like Pat McCarran worked to limit these attempts.⁵³

Compared to the DP Acts, the Refugee Relief Act passed quickly, within only a few months of the start of hearings. The final bill represented a compromise between the Administration and McCarran positions: 214,000 total visas, mainly for refugees, but also with some openings for overpopulation, and without the mortgaging provisions of the DP Acts. Congress also accepted the enhanced screening and security provisions. Each refugee had to be sponsored by an individual, had to have employment and housing

⁵⁰ “Report on Immigration Steps taken by Mr. Rabb, April 22-May 6,” 1-2, Maxwell Rabb Papers, Box 46, Immigration Hearing, Chron. Record, DDE.

⁵¹ Defined as “any person who because of war, aftermath of war, natural calamity, or national catastrophe is in urgent need of assistance for the essentials of life,” presumably including victims of overpopulation. See: “Draft Copy of the Committee Print of the Hearings on the Emergency Migration Act of 1953 (S.1917),” 3. RG 46, Judiciary Committee, 83rd Congress 1st Session, Box 35, S. 1917. NARA I.

⁵² Including 114,000 refugees from Europe; 6,000 refugees from Asia; and 4,000 orphans.

⁵³ Gerald Morgan, “Memo for the President: Refugee Legislation,” July 6, 1953. DDE Papers, Central File, Official File, Box 577, Refugees – Displaced Persons – 1953, DDE; Maxwell Rabb, “Chronological Record of Immigration Hearings,” “Steps taken by Mr. Rabb re Immigration Legislation,” June 1, 1953, and “Report on Immigration Steps Taken by Mr. Rabb,” Maxwell Rabb Papers, Box 46, Immigration Hearing, Chron. Record, DDE.

assurances, and had to pass through rigid security screenings prior to admission.⁵⁴ Crucially, the bill split the allotments for Italy, Greece, and the Netherlands into two categories: refugees – i.e. those fleeing Communism or natural disaster – and those of each ethnic origin otherwise eligible for a family preference slot, but unable to obtain a quota visa. The latter group received far fewer numbers. So while not tackling the problem of overpopulation by name, the bill did allow for more than just refugees to enter the country, specifically helping those affected by long backlogs.⁵⁵

The passage of the Refugee Relief Act completed the shift from the displaced persons of the immediate post-World War II period to the refugees from Communism that would dominate much of postwar era.⁵⁶ Refugee admissions though took root in this early period within the policy framework created by the failure to revise the national origins quota system in 1952. Just as with the development of family reunification preferences, backlogs in the preference visa system would widen the definition of a refugee, and further entrench refugee admissions within U.S. law.

REFUGEES FROM ASIA IN THE EARLY 1950S

Most legislators and advocates testifying on the Refugee Relief Act focused on Europe, but a minority in Congress spoke out against the hypocrisy of a refugee policy that rescued only Europeans. “We are engaged in a worldwide struggle with communism,” stated Alfred Kohlberg of the American China Policy Association. “In this struggle Asia is neither more important than Europe, nor less important. It is equally important.”⁵⁷ Kohlberg was an ardent anti-Communist, and opponent of the PRC.⁵⁸ Testifying that “there are more human beings enslaved behind the Iron Curtain in Asia than in Europe,” Kohlberg called for an equal number of visas to be given to Asian refugees – either half

⁵⁴ “The Immigration and Nationality Act of 1952 as Amended Through 1961, Legislative Background” *International Migration Digest*, 1 (Spring, 1964), 131-33.

⁵⁵ P.L. 83-203. Visa allotments: 90,000 to German expellees and escapees; 10,000 to escapees in NATO countries; 2,000 to members of the armed forces of the Republic of Poland residing in Britain; 45,000 to Italian refugees; 15,000 to Italians who qualify for family preference categories; 15,000 to Greek refugees; 2,000 to Greek family preference categories; 15,000 to Dutch refugees; and 2,000 to Dutch family preferences. The bill also allotted 2,000 visas to refugees from the Far East; 2,000 to Chinese refugees with passports endorsed by the Chinese Nationalist Government; 2,000 to be used by the UNRWA; and 4,000 for orphans.

⁵⁶ Scholars such as Marion Bennett have singled out the 1953 Act as one of the first to poke holes in the McCarran-Walter Act and national origins quota system, but as Desmond King points out, though emergency legislation succeeded, the basic structure of immigration law remained the same. Marion T. Bennett, *American Immigration Policies, a History* (Washington: Public Affairs Press, 1963), 175; Loescher and Scanlan, *Calculated Kindness*, 25-28; King, *Making Americans*, 283; Wagner argues that the Administration struck a deal with the Senate leadership to pass refugee legislation, stipulating that no attempts to revise the McCarran-Walter Act would occur during the lifetime of the RRA. Wagner, “Lingering Death,” 220.

⁵⁷ Carl Bon Tempo has argued that passage of the Refugee Relief Act ‘cemented’ the definition of a refugee as the European victims of Communism, but the Act included some Asian refugees as well. Bon Tempo, *Americans at the Gate*, 34; Senate Refugee Hearings, 1953, 50.

⁵⁸ Michael J. Ybarra, *Washington Gone Crazy: Senator Pat McCarran and the Great American Communist Hunt* (Hanover: Steerforth Press, 2004), 439.

of the proposed 240,000 slots, or an additional 240,000. Representative Walter Judd (R-MN), the main proponent of Asian immigration rights in Congress, echoed Kohlberg's sentiment, but called for far fewer admissions, as a symbolic addition to the legislation. "If the bill purports to be taking care of escapees from Communist tyranny," he testified, "it is ignoring the largest and neediest group in the whole world who come under this qualification." So distraught was Judd at this potential duplicity that he continued, "if it were to become law in its present form, it would be the worst act of racial discrimination and exclusion in our immigration laws since the disastrous 1924 so-called Exclusion Act, which also ignored one-half of the people in the world." Through a last minute floor amendment, Judd succeeded in adding five thousand visas for Asian refugees – 2,000 for China, and 3,000 for other refugees from the Far East.⁵⁹

Like Judd's symbolic recognition of Asian refugees, most in the Administration viewed the refugee problem in the Far East as separate from that of Europe. The President's Commission on Immigration and Naturalization, established by President Truman with his veto of the McCarran-Walter Act to provide a basis for liberal reform efforts, issued a 1953 report entitled *Whom We Shall Welcome* that weighed in on the Asian refugee issue. Even in a document working to discredit national origins, the distinction between Europe and Asia is clear. "The situation in Asia is completely different" from that of Europe, stated the Commission. The contrasting "structure and birth rate of the Asian populations, and the stage of economic development of their countries," made it impossible, in the Commission's eyes, to alleviate overpopulation in Asia as in Europe. It would be foolish to think that the two hundred thousand refugee admissions would seriously alleviate the problems of overpopulation in Europe, but there liberals jumped at the chance to help out. Indeed many arguments for refugee admissions from Europe focused more on generating favorable propaganda than on alleviating overpopulation. When it came to Asia, even while stressing that "discriminatory racial and national restrictions in immigration law have made enemies for the United States in the past," the commission balked at winning a similar propaganda battle. The international community as well would remain focused on Europe, with the UNHCR not opening an office in the Far East until December of 1952.⁶⁰

Establishing a Refugee Bureaucracy: The Interim Period: 1954-1957

Though the Refugee Relief Act created a temporary refugee admissions program, it implemented the first permanent *bureaucracy* to coordinate entry, assurances, and future policy. While the Eisenhower Administration and Congressional allies had stressed the impermanent nature of the refugee program, in reality, it laid the groundwork for a durable refugee apparatus within the State Department. In the mid-1950s, this bureaucracy would grow to cover groups other than Europeans, such as Chinese refugees in Hong Kong, and the victims of natural disaster. During this period of institution

⁵⁹ Senate Refugee Hearings, 1953, 50, 51, and 83. On the final Refugee Relief Act allowances, see: Davis, "The Cold War, Refugees," 95-98 and 219.

⁶⁰ President's Commission on Immigration and Naturalization, *Whom We Shall Welcome* (Washington: U. S. Govt. Print. Off., 1953), 64, 64, and 70.

building, the calculus surrounding admissions would again be filtered through the prism of national origins strictures.

Legislators placed control of the Refugee Relief Program (RRP) in the State Department's Bureau of Security and Consular Affairs (SCA), created by the McCarran-Walter Act. The SCA, in addition to all things visa related, was also charged with performing the McCarthyist security screenings for the entire State Department. John Foster Dulles appointed Scott McLeod, an ex-FBI agent, to head the new Bureau. McLeod was a contentious figure – David Oshinsky, in his work on McCarthyism *A Conspiracy So Immense*, labels him “a belligerent superpatriot” and a “true believer” of the quest to rid the government of homosexuals and communists.⁶¹ President Eisenhower lamented having to make such an appointment, but by giving in to Congressional restrictionists and McCarthy-allies like Pat McCarran, McLeod's leadership mollified critics of refugee admissions.⁶²

The figure of Scott McLeod presents a puzzle for the development of refugee policy in the 1950s. On the one hand he was McCarthy's man in the State Department, pursuing anti-Communist investigations with zeal. He also was no fan of Congressional liberals like Emanuel Celler, and according to memos from Maxwell Rabb, allowed little flexibility in the processing of assurances from voluntary organizations.⁶³ On the other hand, policy memos from McLeod to members of the Eisenhower Administration reveal a keen awareness of the difficulties facing RRP operations, and a willingness to revise the program to make it more efficient. In February of 1954, for example, McLeod would tell Rabb that “there has never been any question in our minds that the Refugee Relief Act would be construed to include as refugees the earthquake victims in Greece,” and flood victims in Holland, Italy, and Japan. While the Refugee Relief Act included the victims of natural calamity, it had, to this point, only been used for the victims of Communism. Likewise in a 1955 memo he argued that the RRA could be utilized as a “useful instrument” in combating the problems of overpopulation in Europe.⁶⁴ Most importantly McLeod recognized the difficulties that the national origins strictures and long backlogs imposed on foreign relations with countries like Italy, and put forth a number of proposals in the 1954 to 1957 period to reform the entire immigration system, including an early amendment to the RRA that allowed visas for Italian and other European

⁶¹ David M. Oshinsky, *A Conspiracy So Immense: The World of Joe McCarthy* (New York: The Free Press, 1983), 262-264.

⁶² Bon Tempo, *Americans At the Gate*, 47.

⁶³ Maxwell Rabb to Dwight Eisenhower, “Operations of the Refugee Relief Program,” December 2, 1954. Maxwell Rabb Papers, Box 33, McLeod, Scott (2), DDE. Additionally, as Carl Bon Tempo illustrates, refugees seeking admission underwent a “political litmus test,” of their anti-Communist credentials. Bon Tempo, *Americans At the Gate*, 56.

⁶⁴ Quoted in: Maxwell Rabb to Scott McLeod, February 24, 1954. Maxwell Rabb Papers, Box 33, McLeod, Scott (3), DDE. A second memo from Rabb on February 17 explicitly stated that “As we previously discussed, the use of the National Calamity Clause could properly and effectively be utilized here to give wider scope to the “refugee” definition”. Scott McLeod to the Secretary, May 14, 1955, “Proposed Amendment to the Refugee Relief Act,” 2. RG 59, Records of the Bureau of the SCA, Decimal Files, Box 9, Implementation of Refugee Relief Act, NARA II.

refugees to be used to clear backlogged family cases.⁶⁵ While McLeod certainly acted in a more conservative manner than the DPC commissioners, who jettisoned the legal requirements of the DP Acts to admit as many refugees as possible, in light of these proposed reforms, his actions cannot be viewed simply as part-and-parcel of McCarthy-era national security concerns.⁶⁶

Certainly McLeod's strengths lay more in the field of investigation than in immigrant and refugee admissions, and the RRP issued only 17,000 visas by the end of 1954. Critics of the program and its the sluggishness argued that McLeod's leadership was to blame, charging him with deliberate attempts to slow down admissions.⁶⁷ McLeod constantly defended the program, countering that the slow start had more to do with the immense difficulties of creating a refugee bureaucracy from scratch; finding sponsorship and assurances for work, housing, and welfare; and processing the necessary security investigations. In July of 1954, a full year after passage of the original RRA, McLeod would complain to Maxwell Rabb that proper funding had still not been allocated to cover the cost of security screenings in Germany and Austria, due to a conflict between the Bureau of the Budget and the Army.⁶⁸

⁶⁵ Bon Tempo, *Americans At the Gate*, 56. McLeod would argue in a July 1954 memo to General Wilton B. Persons of the Eisenhower Administration that he was doubtful that under the current refugee definition more than 15,000 actual refugees could be found in Italy. Instead he argued that amendment of the legislation, "which would enable administrative discretion, would be most helpful." The emphasis on administrative discretion is, I believe, most telling of McLeod's willingness to be flexible in his position within the State Department. McLeod to Persons, July 10, 1954. DDE Papers, Central Files, Official File, Box 578, 116-G 1954 (2), DDE. McLeod, along with his deputy Frank Auerbach from the State Department's Visa Office, authored the Eisenhower immigration reform plan for 1956 and 1957, which included an attempt to pool unused quota slots and raise the ceiling on immigration, to mitigate the effects of the quota system. In a memo to the Secretary of State, McLeod argued that "we feel that it would be better to admit the discrimination [of the quota system], recommend that Congress improve the formula for basic distribution of numbers and pin the Administration's case on a new system of redistribution." Scott McLeod to the Secretary, January 17, 1956, RG 353, UD 26, PIN Committee, Box 3, D-46 through D-49/2, NARA II. In my reading of McLeod's memos, he showed a keen understanding of the issues facing overcrowded and backlogged countries like Italy, arguing in a January 1956 memo that quick fixes, such as extending the life of the RRA, would not solve the larger problem of admitting Italian immigrants, only revision of the quota system would do so. Scott McLeod to Loy Henderson, January 4, 1956. RG 59, Security and Consular Affairs Decimal File, Box 49, Immigration and Nationality Act Amendments, NARA II.

⁶⁶ It is important to note as well that one of the biggest backers of Joseph McCarthy in the Senate was Pat McCarran, the ardent restrictionist. So while McCarthyism did not explicitly mean anti-immigrant sentiment per se, its backers certainly aligned with that position. On McCarran, see: Ybarra, *Washington Gone Crazy*.

⁶⁷ Some criticism of the Act emanated from the fact that after the 1954 Amendments to the RRA, which allowed refugee visas to be used for family preference migrants in Italy, Greece, and Holland, almost no RRA visas went to actual refugees in these countries. As Antonio Micocci wrote to his boss Scott McLeod in November of 1954, many voluntary agencies that had sponsored assurances for refugees in Greece and Italy were annoyed at the lack of entrants in these categories. Antonio Micocci to Scott McLeod, November 3, 1954. RG 59, Records of the Bureau of the SCA, Decimal Files, Box 9, Implementation of Refugee Relief Act, NARA II.

⁶⁸ Bon Tempo, *Americans at the Gate*, 49. Scott McLeod to Maxwell Rabb, July 23, 1954. Maxwell Rabb Papers, Box 33, McLeod, Scott (3), DDE.

The question of McLeod's leadership erupted at the end of 1954, as the Eisenhower Administration attempted to speed up the rate of admissions under the RRP. Secretary of State John Foster Dulles installed liberal former Commissioner of Immigration Edward Corsi as McLeod's deputy, in the hope that Corsi would energize the program. The two immediately clashed, and after only three months, Corsi was forced out of the department. While McLeod had originally suggested him for the position, Corsi had no plans on serving as second in command. Additionally, the "Corsi affair," as it came to be known, became entangled in a power struggle between liberal Emanuel Celler and conservative Francis Walter. Celler fanned the flames by publicly announcing that Corsi was being groomed to replace McLeod, while Walter shot back and accused Corsi of Communist ties. The situation ended with liberals accusing Dulles and Walter of selling Corsi out to the McCarthyites, and with Senator William Langer (R-ND) investigating the incident in his refugee subcommittee.⁶⁹

In the wake of the Corsi affair, and a failed 1955 attempt by the Eisenhower Administration to reform the RRA through legislative action, the State Department brought on Pierce J. Gerety as McLeod's deputy. Gerety had previously been the general counsel of the Civil Service Commission, and chairman of the International Organizations Employees Loyalty Board, investigating possible communist affiliations of Americans in organizations like the UN.⁷⁰ Unlike Corsi, Dulles gave Gerety control over the entire RRP, and he was able to finally get the program moving. He quickly took a tour of overseas refugee sites and, in an attempt to streamline operations, oversaw a shift in policy so that voluntary organizations could co-sponsor refugee assurance applications. After Gerety's takeover, the RRP kicked into high gear, processing 118,000 admissions in 1956 alone, and filling just under 90 percent of available visas by the end of the year.⁷¹

The Hungarian Revolution of 1956, occurring the same year that the Refugee Relief Act was set to expire, created a new test for domestic refugee policy, and ultimately helped to give new life to the refugee bureaucracy. Though Hungary had been under Soviet control since the end of World War II, by the mid-1950s it had achieved a degree of sovereignty. After Poland succeeded in winning increased autonomy from the Soviet Union in 1956, Hungary demanded the same. Radio Free Europe implored the Hungarians to rise up, hinting that the United States would come to their aid. But when students and protestors revolted in October of 1956, the Soviet Union decided to forcibly put down the revolution, and regain its hold on the Satellite States. The U.S. chose not to intervene directly, and once the Soviet army invaded on November 4, 1956, thousands of Hungarians fled to Austria. Within days, President Eisenhower announced that he would extend 5,000 unused Refugee Relief Act visas to the Hungarian escapees, and three weeks later he pledged to admit a total of 21,500 people. Of this number, 6,500 would enter through RRA Act visas, while the remaining 15,000 gained admissions under a

⁶⁹ Stephen Wagner has the most detailed account of the Corsi affair. "Lingering Death," 258-278.

⁷⁰ W.H. Lawrence, "Lawyer Named to Refugee Post with Orders to Speed Entries," *New York Times*, June 10, 1955. Pg. 1

⁷¹ Bon Tempo writes that while Gerety had led anti-Communist security investigations as chairman of the International Organizations Loyalty Board, he had no real ties to McCarthy, Walter, or McCarran, and was generally well liked by liberals. *Americans At the Gate*, 56-58.

special provision in the Walter-McCarran Act that allowed the Attorney General to temporarily ‘parole’ refugees into the country in times of extreme need. The President had to seek Congressional approval to adjust the status of these parolees to permanent residents, but as Congress was not in session at the time of the crisis, it could not stop him from exercising his authority. In all, resettlement efforts brought in over 38,000 Hungarian refugees in just over a year.⁷²

The U.S. response to the events of 1956, as with the passage of the RRA in 1953, was intimately linked with the fight against Communism. Yet 1956 differed in a few crucial aspects. While overpopulation and mass migration from eastern Europe drove the 1953 Act, in 1956 the President responded to direct action from the Soviet Union. The Hungarian Revolution signaled to many policymakers that eastern Europe would not be retaken with ease, forcing the United States to rethink its previous Cold War strategies. While in 1953 advocates of refugees spoke of token numbers of admissions to win the battle for the ‘hearts and minds’ of those under Communism, the Hungarian crisis posed a new challenge: large numbers of escapees in imminent danger. Additionally, because of the nature of the crisis, the Hungarian refugee program proceeded largely through Executive Branch direction than Congressional involvement. Possibly because of the mindset and guilt of Americans after the fall of Hungary, even restrictionists called for America to open its doors to these freedom fighters. Refugee admissions became an easier way to intervene in Hungary, without taking military action. Whereas under the RRA each refugee had to undergo intense security screenings, here an entire group was moved to the country en masse, and only processed once at Camp Kilmer in New Jersey.⁷³

This spirit of open borders did not last long, and once Congress returned to session, conservatives called for an end to admissions. Restrictionists rehashed many of the same arguments about national and economic security, but in moving quickly and taking advantage of the public sentiment, the President managed to admit thousands of Hungarians outside of quota limitations. Even if the crisis did not fully open America’s doors to refugees or rewrite the nation’s immigration policy, the willingness of even restrictionists to consider an open refugee policy at the beginning of the crisis points to a new era where international affairs took precedence over domestic concerns of security, numbers, and resettlement.

The Hungarian crisis produced the first American flexible and group-based admissions in response to immediate events, but it also gave life to two new tools in the U.S.’s refugee apparatus: the Office of Refugee and Migration Affairs (ORM), and parole authority. The RRA had created the basis for a refugee bureaucracy within the State Department’s

⁷² Parole authority is granted under section 212(d)(5) of the INA of 1952. Little has been written about the Hungarian Refugee Crisis. The most comprehensive reviews are Bon Tempo, *Americans At the Gate*, Chapter 3 and Arthur A. Markowitz, “Humanitarianism versus Restrictionism: The United States and the Hungarian Refugees,” *International Migration Review* 7 (Spring 1973) See also: Loescher and Scanlan, *Calculated Kindness*, 50 and 211-12; Leslie Konnyu, *Hungarians in the United States: an Immigration Study* (St. Louis: American Hungarian Review, 1967) and Alexander S. Weinstock, *Acculturation and Occupation: A Study of the 1956 Hungarian Refugees in the United States* (The Hague: Nijhoff, 1969).

⁷³ Markowitz, “Humanitarianism,” 50.

Bureau of Security and Consular Affairs, but the office charged with running the RRP, the Office of Refugee and Migration Affairs, existed only on paper in November of 1956. Instead most of the operations on the RRA ran through McLeod and his deputies directly. The Hungarian crisis led McLeod and other members of the State Department to operationalize the ORM as a wing of SCA, separating the functions of the RRP from those relating to the U.S. Escapee Program and Intergovernmental Committee on European Immigration. This change, emerging from what Pierce Gerety termed a “lack of clear lines of authority,” spoke to a growing concern, especially in the wake of the troubles running the Refugee Relief Program, about further amplifying the refugee bureaucracy. Here, as in 1953, the day-to-day operations of refugee admissions pushed policymakers to create a more substantial home for refugee policy, creating a new division within the State Department’s office handling immigration and consular affairs, a home that would become the foundations for admissions into the 1960s and beyond.⁷⁴

The second major change from the Hungarian crisis, the use of Presidential parole authority, would become the dominant structure for admitting groups of refugees through the Refugee Act of 1980. Legislators added the obscure parole authority into the 1952 McCarran-Walter Act⁷⁵ to provide an outlet for admitting individuals that would otherwise be inadmissible into the U.S. The Attorney General had the right to parole any alien into the country “for emergent reasons or for reasons deemed strictly in the public interest.” Francis Walter himself first suggested use of parole authority for the Hungarians, and INS Chief Joseph Swing backed the decision. Technically, parole admissions were temporary, and the Act explicitly stated that “such parole of such alien shall not be regarded as an admission of the alien.” Once the circumstances behind the parole ceased to exist, the alien was supposed to return to their country, or be treated under the immigration system like anyone else applying to enter the country.⁷⁶

The temporariness of the parole provision never hindered its use for long-term admissions. Instead, Congress had to pass separate legislation to adjust the status of paroled individuals to legal permanent residence. This authority would be used to bring in individuals migrating from Cuba, as well as large-scale group migration from South-East Asia in the wake of the Vietnam War. It would also become a source of political tension over control of refugee admissions between the Executive Branch and Congress. Here though political expediency, and the disconnect between permanent immigration policy and the U.S. need to respond to an anti-Communist refugee crisis, led to the creation of an enduring admissions authority.⁷⁷

The issue of adjusting the status of the Hungarian parolees continued to smolder even as the crisis itself faded. As the Eisenhower Administration failed to reform the quota

⁷⁴ Pierce J. Gerety to Scott McLeod, “Responsibility for Refugee Activities Within SCA,” November 6, 1956. RG 59, Records of the Bureau of the SCA, Decimal Files, Box 8, Establishment of Office of Refugee and Migration Affairs, NARA II.

⁷⁵ Section 212(d)(5)

⁷⁶ P.L. 82-414, Section 212(d)(5). Anker and Posner, “The Forty Year Crisis,” 15.

⁷⁷ Wagner also points out that Francis Walter’s efforts to show how the 1952 Act could be used for emergencies like that in Hungary only made it harder for the Eisenhower Administration to push for reform. Wagner, “Lingering Death,” 305-306.

system with the 1957 Refugee-Escapee Act, it also failed to push Congress to regularize the status of the Hungarian parolees to legal permanent residents. American public opinion was split on whether to adjust their status, while restrictionists in Congress like Francis Walter worried that the refugees had not been properly screened prior to admission, opening the country to Communist infiltration. When Congress finally passed a normalization program in 1958, it contained a number of stipulations: a parolee, after two years in the United States, could apply for permanent residence, but would have to undergo a thorough security investigation by the INS first.⁷⁸

REFUGEES FROM ASIA DURING THE PERIOD OF INSTITUTIONAL BUILDING

By the mid-1950s, attitudes toward the refugee crisis outside of Europe, especially in Asia, had shifted significantly, driven by leaders in the executive branch bureaucracies. For one, the international community recognized the enormity of the global refugee situation, and began to petition for greater support. While the UNHCR had been slow to recognize and respond to refugee issues in Asia, only beginning to study the situation in the Far East in 1953, it published an extensive report on Hong Kong in 1955.⁷⁹ By 1956, the State Department estimated that there were 670,000 refugees in Hong Kong, roughly 40 percent of the estimated 1.7 million refugees from Communism in the free world.⁸⁰ One year later, UNHCR memos argued that the numbers of refugees entering Hong Kong from China, about 350 each month, had greatly increased, leading to strains on the financial stability of refugee operations in the colony. As the situation deteriorated, a UN General Assembly resolution in February of 1958 called for the international community to increase its financing of Hong Kong refugee efforts.⁸¹ Likewise the State Department, in its survey of world refugee problems for 1958, argued that the estimated 1,000,000 refugees in Hong Kong and Macau formed “the largest single bloc of anti-Communist refugees in the world.”⁸²

⁷⁸ Bon Tempo argues that Walter seemed more intent on frustrating the Eisenhower Administration than blocking regularization, though he did believe that the parolees had not been properly screened for Communist ties. *Americans At the Gate*, 83-85.

⁷⁹ UN efforts to assist refugees fleeing China also faced delays as Hong Kong represented an anomaly, with two governments claiming sovereignty over the territory. Due to a technicality based on Article 6(B) of the UNHCR charter, Chinese refugees in the territory could not be considered true refugees. According to the State Department, those governments that recognized the Chinese Nationalist government could not consider people in Hong Kong refugees, because they did not fear the persecution from the Chinese Nationalist government. On the other hand, countries like Great Britain, which both administered the territory of Hong Kong and recognized the Communist government, could not allow the Nationalist Government to offer its protection to the refugees. See: Department of State, Office of Refugee and Migration Affairs, Bureau of Security and Consular Affairs, “Refugee Problems, World Survey,” October 10, 1958. Emanuel Celler Papers (hereinafter: ECP), Box 258, Refugees 1957-1960 (2), Library of Congress.

⁸⁰ “A Report to the OCB on Assistance Programs in Behalf of Refugees and Escapees of Interest Under NSC 86/1” April 18, 1956, 2. RG 59, Bureau of Administration, Refugee Relief Program, Box 99, Escapee Program Policy Documents, NARA II.

⁸¹ UNHCR Memo, September 24, 1957, RG 59 Central Decimal Files, 320.42, Box 1275, 7-257, NARA II; UNHCR to the Secretary of State, 12 Feb. 1958, RG 59 Central Decimal Files, 320.42, Box 1275, 1-258, NARA II.

⁸² Department of State, “Refugee Problems, World Survey,” 10.

As the number of refugees in Hong Kong grew, U.S. bureaucrats took notice. As part of his trip to visit refugee operations abroad in 1955, newly installed head of the RRP Pierce Gerety visited Hong Kong, and saw the overcrowding and squalid conditions first hand. As part of the turn-around in the RRP, by January of 1956, State Department officials worked to admit the 4,000 Asian refugees proscribed by law.⁸³ Most critically though, in assessing the world refugee situation, Walter McConaghy of the State Department argued in 1957 that “Chinese and other Asian refugees [should] be given treatment as equal as possible to that accorded refugees.” McConaghy’s rationales for treating Asians and Europeans equally connected many of the arguments that had been made for immigration reform with these foreign policy concerns. Equitable treatment would, according to McConaghy, “help silence Asian criticism that, despite our professions of belief in racial equality, we in fact are more concerned with Europeans than with Asians.” A second State Department report from 1958 also argued that ignoring Asian refugee concerns would only “confirm the claims of Communist propagandists that the United States...holds the yellow peoples in contempt,” a belief that increasingly clashed with U.S. attempts to bring East Asian democracies into an American-led free world order.⁸⁴

Liberal legislators had voiced similar concerns about America’s public image in Asia when attempting to remove Asian exclusion in 1952, and again while trying secure slots for Asian refugees in the RRA in 1953. But though these fears had been articulated in the early 1950s, immigration policy within the legislative branch had remained skewed toward Europe – the McCarran-Walter Act in particular, revisited racial discrimination through the imposition of the Asia-Pacific Triangle, even as it ended outright exclusion.⁸⁵ From the mid-1950s onward, when the U.S. began to view Asian democracies as a critical part of the war against Communism, liberalization would develop as a foreign policy goal in both immigration and refugee policy.

A second rationale for the Department of State’s new position on Asian refugees emerged from a growing concern about the power of Communist China, no doubt informed by events such as Chinese intervention in the Korean War. As McConaghy pointed out in the same memo, giving equal weight to Asian refugees would “highlight Communist China as a land of oppression from where there is a refugee exodus, and...would tend to encourage defection,” in a similar manner as the U.S. encouraged defection from the Soviet Union.⁸⁶ Since Hong Kong received the bulk of refugees fleeing mainland China,

⁸³ See: Halleck Rose to Pierce Gerety, “Refugee Relief Program/Far East,” January 31, 1956, and Jean Chenard to Pierce Gerety, “Briefing Materials for Hong Kong,” January 31, 1956, RG 59, Bureau of Population, Refugees, and Migration, Subject Files, Box 98, Far East, NARA II.

⁸⁴ Department of State, “Refugee Problems, World Survey, 16.

⁸⁵ The Triangle provided for 2,000 base slots for all of Asia, plus 100 for the Triangle as a whole (for those with parents from two different Triangle countries or a colony), 105 for China, and 185 for Japan, for a maximum of 2,390 Asians per year. While immigrants from elsewhere entered under the quota country of their birth, Asians alone possessed blood-based ancestry under the law, and had to enter under the much smaller quotas for Asia. See: David M. Reimers, *Still the Golden Door: The Third World Comes to America* (New York: Columbia University Press, 1992 [1985]), 17-18.

⁸⁶ Walter McConaghy to J.W. Bennett, “Chinese Refugees in Hong Kong,” Feb 14 1957, RG 59, Records of the Office of Chinese Affairs, Box 5, UNHCR, NARA II.

it became the prime location where the free world could highlight Communist oppression in Asia by encouraging defection. Domestic factors, such as lingering racism, pushed U.S. policymakers to remain sluggish about admitting larger numbers of Asian refugees, but the changing recognition of the problem in Hong Kong marked a significant evolution in how policymakers conceptualized the definition of a refugee.⁸⁷

Expanding Definitions and Permanent Allocations: The Late 1950s and Early 1960s

In the late-1950s and early-1960s, shifts in immigration law advanced the definition of a refugee; admitted, for the first time, a group of refugees fleeing natural disaster; and institutionalized permanent financial allocations for international refugee relief. These changes continued to build on the foundations of temporary refugee policy from the early 1950s, while still operating within the constraints on admissions created by the national origins quotas and preference system.

In the wake of a failed attempt by the Eisenhower Administration to achieve a comprehensive overhaul of the immigration system, legislators in 1957 passed the Refugee-Escapee Act.⁸⁸ Amidst proposals to modify the national origins quota system, the Administration asked Congress to authorize a parole authority for up to 62,000 refugees per year. This proposal would not have created a set number of normal flow admissions, but it was an attempt by the Administration to come to terms with use of the parole power for large groups, rather than for its original and individual-centric intent.⁸⁹ In the face of pushback against the Eisenhower plan from restrictionists like Francis Walter and Senator James Eastland (D-MS), Senator John F. Kennedy (D-MA) successfully introduced a more limited, but ultimately successful bill.⁹⁰

Scholars of refugee policy have relegated the Refugee-Escapee Act to brief mentions, as it failed to accomplish most of its goals, including modification of the national origins quota system, regularization Hungarian admissions, and implementation of a permanent yearly refugee parole figure.⁹¹ And yet, the bill made a number of important changes, primarily through the linkage of immigrant and refugee admissions. First and foremost, it

⁸⁷ White House memos from 1962 also make it clear that the United States viewed the magnitude of the refugee problem in Hong Kong, with over one million refugees, as easily overwhelmed by the limited funding available. Thus they preferred to aid those high profile refugees and projects that would help the largest number of people. See, for example: White House to James Farley, March 30, 1962, White House Central Files, Subject File, Box 58, CO112 Hong Kong Executive, John F. Kennedy Presidential Library (hereinafter: JFK).

⁸⁸ Act of September 11, 1957, P.L. 85-316.

⁸⁹ Bon Tempo, *Americans At the Gate*, 82.

⁹⁰ Zolberg, *Nation By Design*, 325. The bill also allowed for approximately 60,000 immigrants from small quota countries to adjust to nonquota status, primarily benefiting Italy and Greece. All told, approximately 18,000 visas left over from the RRA would be available for issue. See: John F. Kennedy Press Release, August 29, 1957. John F. Kennedy Pre-Presidential Files, Senate Files, Box 630, 86th 1st Immigration, JFK.

⁹¹ Loescher and Scanlan, for example, do not mention the Refugee-Escapee Act in *Calculated Kindness*, while Carl Bon Tempo and Stephen Wager, in the most comprehensive treatments of refugee history, spend only a few pages each on the subject. See: Bon Tempo, *Americans At the Gate*, 82-83 and Wagner, "Lingering Death," 318-336.

repealed the quota mortgaging provisions of the DP Acts. Restrictionists like Pat McCarran had introduced mortgaging as a way to cut down on the total number of admissions, and stop admissions outside of the quota system. As Roger Daniels points out, with regards to *immigration* reform, the 1957 Act's elimination of quota mortgaging was a key change – for small-quota countries like Latvia, these provisions meant that they would be unable to bring in immigrants through 2274. By repealing mortgaging, the Refugee-Escapee Act freed up approximately 300,000 visa slots for use by southern and eastern Europe.⁹² The 1957 Act also advanced the definition of a refugee. The term refugee-escapee added those fleeing tyranny in the Middle East to the Communist-centric definition from the RRA of 1953. This new conception of a refugee, still very much aligned with Cold War-era foreign policy, would remain the dominant definition through 1980, when the Refugee Act of that year adopted the UN's non-ideological definition.⁹³

With the Refugee-Escapee Act in 1957, as in 1953 with the RRA, policymakers recognized the interconnectedness of immigration and refugee policy. So while the bill became known as the *Refugee-Escapee Act*, its first fourteen sections dealt with immigration provisions, with only the last section discussing refugee issues. In fact, though the bill did not modify the national origins system, it expanded provisions for orphan adoptions; revised admissibility requirements; and allowed anyone registered on a waiting list for a first, second, or third preference visa under the 1952 McCarran-Walter Act to convert to a nonquota visa for immediate admission. The latter provision provided for approximately 60,000 new admissions. The press release by Senator John F. Kennedy introducing the proposal singled out two countries in particular to receive new refugee visas: Italy, with 20,000 visas, and Greece, with 4,000.⁹⁴ That Kennedy would single out these two countries by name, countries whose immigration had been severely limited by the quota system, points again to how refugee legislation worked to fix refugee *and* immigration issues in the period.

Though the 1957 legislation focused on refugees fleeing Communism and the Middle East, in 1958 Kennedy championed another refugee bill, for the Portuguese victims of an earthquake in the Azores, and Dutch colonial immigrants returning from Indonesia. Section 2 of P.L. 85-892 allowed for 1,500 nonquota visas to be given to Portuguese nationals who were “out of their usual place of abode...and who [were] in urgent need for assistance for the essentials of life.” This allotting of visas to the victims of natural disaster, the first stand-alone piece of legislation of its kind, and the first piece of legislation explicitly targeting a group fleeing humanitarian disaster, echoed and advanced the sentiment of Max Rabb and Scott McLeod, who had argued in 1954 that the victims of natural disaster should be included in refugee status.⁹⁵

⁹² Zolberg, *Nation By Design*, 325. See fn 26.

⁹³ P.L. 85-316, Section 15(c). The Act also included a clause in section 7 that exempted those refugees who had to falsify their identification papers to escape from their countries from exclusion and deportation provisions. See: Hutchinson, *Legislative History*, 524.

⁹⁴ John F. Kennedy Press Release, August 29, 1957.

⁹⁵ See fn 1. While Rabb and McLeod had, in 1954, suggested interpreting the Refugee Relief Act statutes to include humanitarianism, the Azorean Refugee Act was the first to explicitly write this type of admissions into legislation.

The focus on the victims of Azorean disaster, at least among legislators like Kennedy, emerged from the inability to admit Portuguese migrants through the national origins quota system, and from the political calculus surrounding the numbers of Portuguese immigrants in Kennedy's home district. Internal State Department correspondence illustrates that the Department had "no reason to believe that [the Azoreans] are permanently displaced or in "urgent need of assistance for the essentials of life,"" the basic criteria for attaining refugee status. And, despite "the apparent lack of any real need for this legislation and the likelihood that its passage would annoy the Portuguese Government," by suggesting that they could not care for their own people, Herbert Thompson of State argued that the bill had little chance of ever being approved by Congress. Thompson recommended that the State Department notify the Chairman of the Senate Judiciary Committee that they have no objection to the bill, as a way to avoiding having to openly criticize the bill.⁹⁶ Though Thompson was incorrect about the prospects of passage, the combination of natural disaster and the inability to get refugees through the small and backlogged Portuguese quota pushed Kennedy to support legislative action.

Just as in 1954, this expansion of refugee rights to humanitarian intervention spoke to the efforts of liberal legislators to use refugee admissions to circumvent national origins strictures. Prior to suggesting legislative action for the Azoreans, Kennedy first solicited feedback from INS Commissioner Joseph Swing about the possibility of utilizing parole authority. "Although the distress of these persons was caused by a sudden natural catastrophe," replied Swing, "there are throughout the world today thousands of persons suffering in varying degrees." According to Swing, "it would not be in the national interest to single out this group for parole." Certainly political pressure from the significant number of Portuguese residents in his district pushed JFK to seek the entry of these refugees above all others, but as Swing points out, the crisis in the Azores did not, in-and-of-itself present a reason for the use of parole authority. Here the bureaucracy actually attempted to stop an effort to liberalize the quota system, but was overruled by legislative action.⁹⁷

CUBANS, CHINESE, AND REFUGEE POLICY IN THE LATE-1950S AND EARLY-1960S

The Cuban refugee crisis, which began in January of 1959 with the Cuban Revolution and Fidel Castro's assumption of power, marked a retrenchment of the Cold War framework for refugee admissions, even as it greatly expanded the number of admissions under parole authority. According to David Reimers, the 1960 census listed less than 125,000 Cubans living in the United States. But between January of 1959, when Castro opened the doors to those who wanted to leave, and October of 1962, when he closed the doors during the Cuban Missile Crisis, approximately 200,000 Cubans entered the

⁹⁶ Herbert Thompson to Robert Cavanaugh, "S.3942, 85th Congress, 2d Session, for the Relief of Certain Residents of the Azores Islands," RG 59 E. 5296, European Affairs, Records Relating to Portugal, Box 2, PL 85-892, NARA II.

⁹⁷ Joseph Swing to John F. Kennedy, June 25, 1958, JFK Pre-Presidential Papers, Senate Files, Box 695, Immigration 6/5/58-7/31/58, JFK. On the Azorean Refugee Act, see: Hutchinson, *Legislative History*, 528.

country.⁹⁸ The Cuban refugee crisis marked the first time that the United States played a role as the country of first asylum, with refugees arriving directly in the U.S. Concurrent with continued efforts to overthrow the Castro regime, the U.S. allowed in all those seeking entry, and stopped deportation of those already in the country. Administration officials, starting with Eisenhower and continuing with Kennedy, and the Cuban refugees themselves initially viewed the exodus as temporary. At first the U.S. required everyone entering to go through regular security screening procedures, but as relations with Cuba deteriorated, especially in the wake of the Bay of Pigs fiasco, officials began to jettison these requirements.⁹⁹

Expedited entry signaled a relaxing of the anti-Communist background checks and assurance requirements that had marked earlier McCarthy-era programs such as the RRP.¹⁰⁰ U.S. officials believed that encouraging any and all refugees from Cuba would help to destabilize the regime. Other factors, including domestic ties with Cuban culture, a history of U.S. intervention into Cuban affairs, and the largely white and educated population of exiles contributed to acceptance of these refugees. But while Cuban refugees fit the distinction of those fleeing a Communist regime, many left the country because of Castro's economic reforms. Carl Bon Tempo concludes that the Cuban refugees were the first group to "muddy the distinction between economic and political refugees."¹⁰¹

Yet though the definition of a refugee had expanded, the Cold War constraints on refugee policy continued. This continuity is most clearly illustrated in the contrast between U.S. policy toward Cuban and Haitian refugees. While Cuban refugees benefited from the strong anti-Communist stance of successive American governments, U.S. support for François Duvalier led to a reluctance to classify those leaving Haiti as political refugees. Policymakers implemented a policy of interdiction at sea for those Haitians attempting to make it into the U.S., in even stronger contrast to the open policies toward Cubans.¹⁰²

In response to the United Nation's declaration of 1960 as World Refugee Year, Francis Walter guided passage of the Fair Share Refugee Act through Congress.¹⁰³ World Refugee Year itself was a massive undertaking within the United Nations, with ninety-seven nations participating. According to Secretary General Dag Hammarskjöld, it had one of the highest levels of participation for a UN program.¹⁰⁴ Since the passage of the Refugee Escapee Act of 1957, the American voluntary agencies responsible for refugee resettlement had been pushing the Eisenhower Administration to do more to alleviate the

⁹⁸ Reimers, *Still the Golden Door*, 159.

⁹⁹ Loescher and Scanlan, *Calculated Kindness*, 61-71; Bon Tempo, *Americans At the Gate*, 106-115.

¹⁰⁰ Note that as Bon Tempo points out, the government still required Cuban refugees to pledge their opposition to communism, and attempted to screen out potential subversives. Still, investigators did not care about *previous* communist loyalties, and did not spend much time on the political backgrounds of the entrants. *Americans At the Gate* 106-107 and 115-121.

¹⁰¹ Bon Tempo, *Americans At the Gate*, 106-115, quote on 113. See also: Reimers, *Still the Golden Door*, 165-66.

¹⁰² Loescher and Scanlan, *Calculated Kindness*, 69-70.

¹⁰³ Act of July 14, 1960, P.L. 86-648.

¹⁰⁴ Davis, "The Cold War, Refugees" 191-192.

crisis in Europe. The International Rescue Committee spearheaded efforts to study the question of refugee resettlement, and the resulting Zellerbach Commission, under the guidance of San Francisco businessman Harold Zellerbach, included representatives from the IRC, AFL-CIO, and the Episcopal Church, among others, and published a series of reports from the Commission from 1957 through 1959. The Commission helped to push the Eisenhower Administration into supporting new refugee legislation.¹⁰⁵

Prior to the passage of the Fair Share Act, the Eisenhower Administration held a two-day conference on World Refugee Year, from May 21 through May 22, 1959. The conference included 175 people, including representatives from organized labor, business interests, resettlement agencies, religious organizations, and members of the government. In addition to messages from President Eisenhower and Vice President Nixon, Francis Walter spoke on the need for greater numbers of refugee admissions. Nixon in particular drew on his experiences visiting refugee camps in Austria during the Hungarian Refugee Crisis of 1956, and touched on his efforts to bring the plight of refugees to the American public.¹⁰⁶

The Fair Share Act made two major contributions to refugee resettlement, and a number of minor provisions, such as removing the ban on Tubercular refugees. Firstly, it authorized the United States to take in its “fair share” of the world’s refugees (as in 1957, only those fleeing Communism or the Middle East,) defined as one-quarter of the total refugees resettled by the free nations of the world for the two year life of the bill.¹⁰⁷ The bill also set up a procedure whereby after two years in the United States, paroled refugee-escapees could undergo an inspection process and be granted permanent residence status, ending the previous practice of requiring separate Congressional legislation for each parolee or group of parolees. This adjustment provision would be duplicated in future refugee legislation.¹⁰⁸

During the hearings on the Joint Congressional Resolution (H.J. 397) to participate in World Refugee Year, the issue of the national origins quota system played a central role. Edward B. Marks of the U.S. Committee for Refugees argued that while his agency “[did] not favor parole as a method of normal admission,” they were “ready to concede its value in making possible, under our laws, the earlier welcome of those who have chosen freedom.” Here the disconnect between the quota restrictions and the ability for the U.S. to accomplish its international goals is clear.¹⁰⁹

¹⁰⁵ On the Zellberbach Commission, see: Davis, “The Cold War, Refugees” 176-186.

¹⁰⁶ “White House Meeting—World Refugee Year, May 21, 1959-May 22, 1959” and “Remarks – Vice President Richard M. Nixon, White House Refugee Meeting, May 21, 1959.” RG 46, Sen.86A-F12, Box 17, World Refugee Year, NARA I.

¹⁰⁷ Though Emanuel Celler introduced his own version of the bill, H.R. 4336, that would have set a ceiling of 50,000 admissions per year, (just under one-third of the total estimated refugees and DPs left in western European refugee camps,) Francis Walter opposed numerical limitations. “Celler Introduces Bill for Admission of 50,000 Refugees” August 6, 1959. Emanuel Celler Papers, Box 384, H.R. 4336 86th, Library of Congress.

¹⁰⁸ Section 3, P.L. 86-648.

¹⁰⁹ “Admission of Refugees on Parole: Hearings Before Subcommittee No. 1 of the Committee on the Judiciary, House of Representatives, 86th Congress, on H.J. Res. 397, Joint Resolution Enabling the United States to Participate in the Resettlement of Certain Refugees, July 15, 1959, March 24, 1960,” 43. Among

The refugee resettlement agencies also highlighted the plight of Chinese refugees in Hong Kong during the World Refugee Year hearings, with Marks arguing that efforts in that part of the world represented a “program which we feel desperately needs help.” Interestingly, Marks argued that for Hong Kong’s refugees, “there are few resettlement outlets,” and instead argued that “they can be aided to be integrated where they are.” He did not elaborate on the reasons for difficulties in resettlement, though the sheer numbers – estimated at one million people – certainly played a role.¹¹⁰ Francis Walter as well specifically singled out the role that the resettlement agencies played in helping refugees in Hong Kong, telling Monsignor Edward Swannstrom, of the American Council of Voluntary Agencies for Foreign Service¹¹¹ that “it is a magnificent effort and it is thrilling to those who know about it.” But as Marks’s statement highlights, most of the work of American agencies had been to alleviate the problems within the territory, rather than to resettle Chinese refugees to the United States.¹¹²

While some Asian refugees had been admitted through the 1950s, under programs such as the Refugee Relief Act and Refugee-Escapee Act of 1957 the government feared public and Congressional uproar at a large-scale Asian refugee program, and instead relied on providing monetary relief and support efforts in the countries of first settlement.¹¹³ Senator Hiram Fong (R-HI) attempted to remedy this situation by amending the Fair Share Act to admit 4,500 Asian and Arab refugees over two years. In particular, Fong pointed to the fact that while he understood that the bill was primarily intended to solve the European refugee crisis, he hoped that adding Asian admissions would help to dissuade the notion that the U.S. ignored the rest of the world. The amendment passed the Senate, but failed in the House, where Walter blocked it.¹¹⁴ While

the changes that the U.S. Committee for Refugees and the umbrella group the American Council of Voluntary Agencies for Foreign Service pushed for with refugee legislation, was a change from only recognizing those refugees under the mandate of the UN High Commissioner for Refugees, to also including other ad hoc refugee groups, especially those pushed out of their territory by virtue of nationality – Dutch refugees from Indonesia, for example.

¹¹⁰ “European and Arab Refugee Problems, Hearing held before the Subcommittee on Refugees and Escapees of the Committee on the Judiciary, United States Senate,” 1959, 14. William J. Vanden Heuvel, President of the International Rescue Committee, would argue during 1962 hearings on the Hong Kong Refugee situation that “I think we are fooling ourselves if we think that any kind of mass immigration or migration is going to substantially reduce the problem that confronts Hong Kong.” “Refugee Problem in Hong Kong and Macao. Hearings before the Subcommittee to Investigate Problems Connected with Refugees and Escapees of the Committee on the Judiciary, United States Senate, 87th Congress, 2nd Session, May 29, June 7, 8, 28, and July 10, 1962,” 54.

¹¹¹ An umbrella group representing 28 of the largest voluntary agencies.

¹¹² “Admission of Refugees on Parole,” 55.

¹¹³ The RRA admitted just under 5,000 Asians, while the Refugee-Escapee Act admitted just under 11,000 Asian refugees. See: Immigration and Naturalization Service, *Annual Report of the Immigration and Naturalization Service*, 1958, Table 6B, and 1963, Table 6c. These numbers paled in comparison to the estimated one million refugees in Hong Kong by the 1960s, but Richard Brown of the State Department’s Office of Refugee and Migration Affairs argued in 1962 hearings that these figures represented more Asian refugees resettled than any other country. By contrast, Donald E. Anderson, Director of the Lutheran Immigration Service argued that “it is virtually impossible, or extremely difficult, for all except a limited few to obtain visas for entry into any country as permanent residents.” “Refugee Problem in Hong Kong and Macao,” 18, and 108-109.

¹¹⁴ Davis, “The Cold War, Refugees,” 24-25.

this legislative attempt failed, it did lay the groundwork for the Kennedy Administration to utilize parole authority for Chinese refugees just two years later.¹¹⁵

In 1962, when conditions in Hong Kong deteriorated, and large numbers of Chinese fled the mainland, the Kennedy Administration opened the doors to the first group-parole of Asian refugees. Severe food shortages and famine after the imposition of the Great Leap Forward caused a significant increase in the number of refugees crossing into Hong Kong between April and May of 1962. Refugee overcrowding in Hong Kong was not a new phenomenon, with the majority of the over one million refugees in the territory having arrived shortly after the Chinese Revolution in 1949. For reasons which are not entirely clear, Chinese border guards relaxed their normally strict restrictions on exit. All told, the British authorities allowed in around 150,000 Chinese refugees in the two-month period. These added numbers only accelerated an already deteriorated living situation Hong Kong, and the Chinese Nationalist government warned the U.N. that the new refugees would be returned to Communist China unless the West agreed to resettle them.¹¹⁶

In response to this threat, the Kennedy Administration agreed to parole in just over 14,000 people with close family relatives already approved for, but unable to procure, a quota visa. The choice to link new admissions to the relatives of people in the United States speaks both to an emphasis on making sure the new arrivals could integrate into the U.S., as well as the growing power that reunification had as a foundation of admissions policy as a whole. The linkages between concerns over large numbers of Chinese admissions, and the new foundations of a family-based immigration system arose during June 1962 Senate hearings on the situation in Hong Kong. James MacCracken, for example, Director of Immigration Services of Church World Service, singled out the small Chinese quotas, as well as Fong's attempt to add Chinese refugees to the Fair Share Act from 1959. Importantly, he continued by stating that "we in Church World Service do not believe in irresponsible immigration into this country," and instead argued that "greater attention can be meritoriously be paid to refugees, family reunion, and special skill categories," the very three preferences that became the basis for the Hart-Celler Act three years later. "We would wish to see these provisions," MacCracken concluded, "as permanent segments of our immigration statutes."¹¹⁷

Even if the 1962 resettlement emerged from a specific crisis, and resettled only those already waiting for a visa, it signaled an expansion of parole authority to Asia. INS

¹¹⁵ James MacCracken, Director of Immigration Services of the Church World Service, for example, referenced this exact attempt to let in greater numbers of Chinese immigrants to help solve the refugee problem in Hong Kong, during 1962 hearings on the refugee issues in Hong Kong and Macao. "Refugee Problem in Hong Kong and Macao," 29.

¹¹⁶ Zolberg et al., *Escape from Violence*, 157-159.

¹¹⁷ NSC documents indicate that Kennedy's advisors cautioned him against a new refugee policy for these Chinese refugees, because of delicate relations with the Government of Hong Kong and the British Government, and a reluctance to encourage greater numbers to leave China for Hong Kong, thus exacerbating an already overcrowded territory. See: Incoming Telegram, Hong Kong Embassy to Secretary of State, June 21, 1962, National Security Files, Box 23, China 6/19/62, JFK, and "Memorandum on Refugees, May 23, 1962" in *Ibid.*, China 4/62-5/62. See also: Roger Hilsman to Allen S. Whiting, "Hong Kong Refugees," May 23, 1962. Roger Hilsman Papers, Box 1, Communist China – Refugees, JFK; "Refugee Problem in Hong Kong and Macao," 30.

memos indicate that the Administration limited admission to approved visa petitions “in order to resolve the competing equities among the excess of one million refugees” in the territory.¹¹⁸ Legislators had written in similar priorities into the RRA of 1953 for the victims of overcrowding in Europe,¹¹⁹ and so the usage of family relations here as a way to allot visas is not surprising. What is notable is the fact that again in 1962, as with the 1958 Azorean Refugee Act, the normal flow of Chinese quota admission – only 105 per year – left lawmakers unable to deal with the emergency crisis. The Kennedy Administration thus turned to refugee policy to deal with the crisis abroad.¹²⁰

With the Cuban refugee crisis and other situations such as that of Hong Kong weighing on the minds of legislators, the Kennedy Administration sought to institutionalize a response to a global refugee crisis that would be continued and ongoing, rather than ad hoc and temporary.¹²¹ In June of 1962 the Administration passed the Migration and Refugee Assistance Act. Though the bill made no attempt to bring refugees into permanent immigration admissions, it did mark the evolution of refugee policy as a whole from piecemeal legislation to permanent law.¹²² The Act granted yearly permanent budgetary allocations for international refugee organizations such as the UNHCR and the Intergovernmental Committee for European Migration (ICEM), which up until this point had been accomplished through separate, one-time allocations. It also created a \$10 million contingency fund for the President to use in case of future refugee emergencies.¹²³

By 1962 then, in addition to the fixed refugee bureaucracy created in the early 1950s, the U.S. also had a permanent budget allocation for refugee resettlement, and funding for emergency refugee crises. And just as temporary funding allotments, under arrangements such as the U.S. Escapee Program, preceded temporary refugee admissions programs such as the Refugee Relief Act of 1953, here permanent funding allotments preceded

¹¹⁸ Raymond J. Farrell to Donald C. Bruce, June 1, 1962. White House Central Files, Subject Files, Box 147, FG135-9 INS Executive, JFK. Farrell was Commissioner of the INS.

¹¹⁹ Sections 4(a)(6), (8), and (10), P.L. 83-203.

¹²⁰ According to a State Department cable from the Consulate General in Hong Kong from November of 1963, the parole program helped to increase Hong Kong residents’ image of America. Amcongeng Hong Kong, “Hong Kong Chinese Attitudes Toward the United States,” November 22, 1963, RG 59, Central Decimal Files 646g.115, 1950-1954, Box 3924, POL HK-A, NARA II.

¹²¹ Loescher and Scanlan, *Calculated Kindness*, 71.

¹²² Writing in 1968, Abba Schwartz argued that the 1962 Act omitted reference to refugees from Communism or Communist-occupied areas, which purposefully “broadened our national perspective on the origin and cause of refugee movements, and implied our willingness to assist all who have fled their homes.” He points to this change as “important in view of developing refugee problems in Africa and Elsewhere.” While the language of the Act itself may have been ideologically neutral, considering that the U.S. continued to define a refugee as those fleeing Communism even in the 1965 Hart-Celler Act, and continued this definition, albeit in a de facto manner, even after ratifying the UN Protocol on the Status of a Refugee in 1968, I doubt that the Migration and Refugee Assistance Act was intended, or received as a change in policy direction. *The Open Society* (New York: William Morrow & Company, Inc., 1968), 142.

¹²³ Through these allocations, the Act created the Cuban Refugee Program (CRP), providing a more permanent basis for Cuban refugee resettlement. The CRP, located within the department of Housing, Education, and Welfare (HEW) worked to assist the refugees with health, employment, and resettlement needs, as well as to engender U.S. public support for Cuban refugee resettlement. See: Bon Tempo, *Americans at the Gate*, 121-127.

permanent admissions. It would take the 1965 Hart-Celler Act to complete this institutionalization, by bringing refugees into permanent and regular admissions procedures.

Hart-Celler and Refugee Policy in the Late 1960s

The Hart-Celler Act of 1965 signaled the culmination of an entrenched refugee apparatus that had begun in the early 1950s. By removing the national origins quota system, and replacing it with a preference system heavily weighted toward family reunification, the Hart-Celler Act of 1965 significantly revised U.S. immigration law and practice. With regard to refugee admissions, the 1965 Act allotted 7th preference, and 6 percent of all permanent visas to refugees.¹²⁴

Both the 1964 and 1965 Administration proposals for reforming immigration policy, H.R. 7700 and H.R. 2580 respectively, allotted half of all visas to family categories, and half to labor. For refugees, the 1964 bill contained a provision whereby the President, in consultation with a seven-member immigration board, could set aside up to 20 percent of all permanent visas (32,000) each year for refugee admissions. The Administration reduced this figure to 10 percent when H.R. 2580 was reintroduced in 1965, in an effort to stave off criticism of large numbers of admissions. According to Emanuel Celler, the Administration constructed the refugee provision as deliberately flexible because “many refugees, almost by definition, are uprooted suddenly,” thus making advanced planning and numerical limitations impossible.¹²⁵ The need for flexibility almost certainly reflected the way that parole power had been used up until this point, as a response to refugee emergencies as they developed, rather than as a regular and set provision for admitting refugees. But this flexible system, which would have given added power to the President to set refugee priorities, ran up against a struggle between the executive and congressional branches.

In June of 1965, Michael Feighan introduced his own version of immigration reform, H.R. 8662, which provided for an enlarged visa system with seven total preferences, including the 7th preference for refugee admissions. Feighan had been attempting, since as early as 1957, to include a permanent refugee allotment in immigration law. During the hearings on World Refugee Year legislation in 1959, he argued that “we must face up to the prospect that the likelihood exists that so long as a conspiracy of communism continues...we will have refugees who will plead with us for political and religious asylum.” His original proposal, to have a commission report to Congress each year with recommendations on numbers of refugee admissions did not succeed, but it does point to

¹²⁴ Section 203(a)(7) of the INA of 1952, as amended by the 1965 Act. The law also provided that no more than one-half of the total number of refugee visas be made available for adjustment of status (rather than conditional entry,) for those who had been in the country at least two years prior to petitioning for adjustment.

¹²⁵ Zolberg, *Nation By Design*, 329; *Congressional Record*, 89th Congress, 1st Session: 648. The Administration’s provisions also modified the Fair Share Act by expanding the area of North Africa eligible for refugee status, and by removing a provision that stated that eligible refugees had to be under the mandate of the UNHCR. *Congressional Record*, 89th Congress, 1st Session: 649.

a growing mindset among the framers of Hart-Celler for the need for permanent visa allotments, rather than ad hoc parole movements.¹²⁶ Instead of an immigration board and Presidential power to set aside visas for refugees, the Feighan bill reasserted Congress's authority to regulate entrance, by setting a fixed allotment of visas for refugee admissions. This vision of immigration reform ultimately won out.¹²⁷

The 7th preference provided conditional entry to those receiving refugee slots, rather than immediate permanent residence. Continuing the practice developed with the Fair Share Law in 1960, after two years in the country, a refugee could apply for legal permanent residence, subject to INS inspection. The 1965 Act also incorporated a refugee definition similar to that of the 1957 Refugee-Escapee Act, limiting refugee status to those who had fled a Communist or Communist-dominated area and the Middle East, as well as the victims of natural disaster. Judiciary Committee reports in the House and Senate both argued that with a fixed allotment for refugees, parole authority should return to its original intent, for use only in individual (rather than group) and emergency circumstances. Ultimately though, Congress left presidential parole authority intact.¹²⁸

While the creation of the 7th preference meant that the U.S. now admitted a fixed entry of refugees per year, the actual number of visas allotted did not, even in 1965, reflect the scope of worldwide refugee crises. Scholars point to the inability to set a realistic target for yearly admissions as one of the impetuses that pushed successive presidents to continue the use of parole authority for an ever-growing number of refugees.¹²⁹ Additionally, the visa preference system only applied to the eastern Hemisphere, and as such 7th preference determinations could not be made for those entering from western Hemisphere countries such as Cuba.

But even beyond the size of the refugee admissions authorized under the 7th preference, Hart-Celler contained a second important restriction, which has been overlooked by scholars of refugee policy. As part of an attempt to limit any one country from monopolizing more than its fair share of the total yearly visas for all categories, legislators imposed a per-country cap of 20,000 immigrants per year. The cap applied to refugee as well as immigrant admissions, and so each refugee entering the country removed a potential slot for a corresponding immigrant from the same country.

This cap would prove difficult for the Johnson Administration almost immediately, as it debated how to aid the Sicilian victims of an earthquake in February of 1968. When the earthquake hit Sicily, Italy already had a significant number of immigrants waiting to

¹²⁶ During the same hearings Feighan expressed his unease with the status quo, stating that "I believe the parolee section of our permanent immigration law should not be used on a permanent basis." "Admission of Refugees on Parole," 45.

¹²⁷ Roger Daniels, writing on Kennedy's 1963 proposal (H.R. 7700) and the Presidential Immigration Board, argues that "there is no reason to believe that Congress would give up so much of its power over immigration to any president." *Guarding the Golden Door*, 132.

¹²⁸ By castigating the use of parole authority but not limiting it legislatively, Loescher and Scanlan conclude that Congress continued to abdicate decision-making authority in the refugee sphere to the President. Loescher and Scanlan, *Calculated Kindness*, 73-74.

¹²⁹ Bon Tempo, *Americans At the Gate*, 98; Anker and Posner, "The Forty Year Crisis," 17.

enter the United States. Prior to 1965, under the national origins quota system, Italy had amassed over 125,000 people waiting for quota slots, primarily through family reunification categories. Though legislators intended these backlogs to be cleared by the three-year transition period following the passage of Hart-Celler, the 20,000-person cap on admissions, and demand for visas over and beyond expectations, hindered completion of the clearing. In 1968 Italy still had over 100,000 immigrants waiting for 1st through 6th preference visas.¹³⁰

The Johnson Administration struggled to find a solution for admitting these earthquake refugees. In a memo to the President, advisor Joseph Califano laid out the two available options: declaring the victims eligible for 7th preference admissions, or supporting legislation by Emanuel Celler and Senator Robert Kennedy (D-NY) to admit 5,000 Sicilians outside of the annual Italian cap of 20,000. The former, stated Califano, would be the most expedient option, as the INS could begin admitting Sicilians immediately. But since Italy's quota had been almost completely utilized already, Califano argued that "admitting persons under this section will displease as many – or more – people as are benefited." Thus he argued instead that the legislative route, while cumbersome, would be "the least troublesome method in the long run."¹³¹ So while the 7th preference signaled the beginning of yearly normal flow refugee admissions to deal contained situations, the case of the Sicilian earthquake points to the fact that the provision could not handle emergency situations.¹³²

And, from the moment that President Johnson signed Hart-Celler into law, he signaled that the U.S. would continue to use parole authority to admit large groups of refugees outside of numerical limitations. Though he argued in his signing speech that "the days of

¹³⁰ The Administration's proposals for the Hart-Celler Act contained a five-year transition period, after which, according to the Department of State, Italy would still have a backlog of approximately 25,000 people. Department of State, SCA "Effect of Proposed Legislation on Selected Quotas," February 1, 1965, Abba P. Schwartz Papers, Box 6, Proposed Immigration Legislation Press Releases 1/65-2/65, JFK Presidential Library. On the issues with the transition period, see: Abba P. Schwartz, "The Role of the State Department in the Administration and Enforcement of the New Immigration Law," *Annals of the American Academy of Political and Social Science*, Vol. 367 (Sep. 1966), 93-104. On 1968 backlogs, see: William B. Macomber, Jr. to Emanuel Celler, February 5, 1968, 1. RG 233, 90th Congress, Judiciary Committee Box 149, HR 14807, NARA I.

¹³¹ Joseph Califano, "Memorandum for the President," February 2, 1968. White House Central Files, DI 3, Box 4, DI 3/CO, Lyndon Baines Johnson Presidential Library (hereinafter: LBJ). Though the Italian case showed the limits of the 7th preference, another refugee movement, of Czechoslovakian refugees from Communism in the wake of the Soviet repression of the Prague Spring, brought approximately 12,000 people, mainly through the preference system (both 7th preference, and normal flow immigrants.) Loescher and Scanlan, *Calculated Kindness*, 86-87. As the authors point out, unlike the Hungarian refugee crisis, the resettlement of Czechoslovakian refugees "went virtually unnoticed."

¹³² Interestingly the 10,200 visas (6 percent of the 170,000 possible visas) allocated under the Hart-Celler Act was not that far off from the Johnson Administration's proposed 10 percent flexible admissions ceiling (16,000 visas) under the original H.R. 2580. And, even under the Administration's plan, the total number of refugee visas would be deducted from the regular immigration preferences for family reunification and labor-market needs. Thus both systems failed to anticipate the emergency movement of refugees, as in the 1968 Italian earthquake case, though the Hart-Celler system did, at least in theory, give Congress a modicum of control over refugee admissions by setting a yearly cap. Inadequacies aside, the 1965 system brought into permanent law the idea of admitting a fixed number of normal flow refugees each year, a process that would continue through the contemporary era.

unlimited immigration are past,” Johnson dedicated the second half of his speech to the topic of “asylum for Cuban refugees,” declaring that all “those who seek refugee here in America will find it.” He directed the refugee bureaucracy in the Departments of State, Justice, and Housing, Education, and Welfare (HEW) to “immediately make all the necessary arrangements to permit those in Cuba who seek freedom to make an orderly entry into the United States of America,” and announced a drive to make \$12.6 million available in supplementary funds. Even while writing into law provisions to stabilize refugee admissions every year, Johnson sidestepped the system, declaring his commitment to parole authority.¹³³

The renewed movement of Cuban refugees to the U.S. began toward the end of 1965. After Castro opened the ports for those leaving by boat, the U.S. and Cuba signed a memorandum of understanding, which allowed for renewed flights between Havana and Miami. Most of those entering in this wave, in contrast to those seeking admission prior to 1962, were not political refugees, Nevertheless, U.S. officials argued that the Cuban refugees had voted with their feet, and believed that this exodus would hopefully encourage resistance within the country.¹³⁴

In 1968, the same year that Hart-Celler’s full provisions went into effect, Senator Edward Kennedy (D-MA) spearheaded a drive to ratify the 1967 UN Protocol on the Status of Refugees. The 1951 UN Convention had defined refugees as those who became such because of events prior to 1951, but the ensuing sixteen years had proven that refugee concerns would only continue. In 1967, the UN passed the Protocol to remove the time-bound provisions. While the U.S. had not signed the 1951 UN Convention on refugees, by 1968, pressure from voluntary organizations, the relative power of Senator Kennedy, and a strong Democratic majority in Congress allowed for ratification. In addition, the Johnson Administration viewed the legislation as a way to show the U.S. commitment to International Human Rights Year.¹³⁵

Interestingly, while U.S. refugee law under the Hart-Celler Act defined a refugee quite differently than the legally binding UN Protocol (with the U.S. retaining an anti-Communist focus,) the only reservations that the Department of State had with the

¹³³ “President Lyndon B. Johnson’s Remarks at the Singing of the Immigration Bill, Liberty Island, New York,” October 3, 1965. Lyndon Baines Johnson Library and Museum, (<http://www.lbilib.utexas.edu/johnson/archives.hom/speeches.hom/651003.asp>, accessed 3/16/10); Anker and Posner, “The Thirty Year Crisis,” 18-19.

¹³⁴ Loescher and Scanlan, 74-78. The authors argue that while American policymakers viewed the refugee influx as weakening Cuba, with political opponents of the Castro regime leaving in great numbers, the refugee situation may have actually helped the island nation, by ridding it of dissidents. The Senate voted to cut funding for the airlifts in June of 1971, and in 1974 Cuba cancelled the flights entirely. In November of 1966 Congress passed the Cuban Status Adjustment Act, which stated that any Cuban paroled into the U.S. since January 1, 1959 and in the country for at least two years, would be eligible for adjustment to permanent resident status. Section 2 of the law also allowed adjustees to apply up to thirty months of their time in the U.S. to the five-year citizenship requirement. Act of November 2, 1966, P.L. 89-732. Bon Tempo, *Americans At the Gate*, 127-132. Bon Tempo points out that giving citizenship to the Cuban refugees (who policymakers constantly argued would be returning to Cuba,) marked a watershed, as previously the government had never allowed dual loyalties in citizenship.

¹³⁵ Zolberg, *Nation By Design*, 345.

Protocol dealt with issues of taxation and social security requirements for new arrivals, and had nothing to do with who qualified for refugee status. “The Federal Government,” as Department of State Executive Secretary Benjamin H. Reed argued, “will be able to carry out its obligations under the Protocol within the framework of existing legislation.” Most tellingly, the White House press release upon ratification argued that “most refugees in the United States already enjoy the protection and rights accorded by the Protocol...our accession to the Protocol will, it is hoped, encourage like commitment by nations whose refugee protection and guarantees are presently less generous than our own.”¹³⁶ Thus Administration and bureaucratic officials viewed the UN Protocol as a symbolic change at best, hoping that accession, if nothing else, would push other nations to augment their own standards, rather than signal a reformulation of U.S. refugee policy.

By 1968 the U.S. had a refugee admissions system that was part and parcel of general immigration law, in the form of the 7th preference. Additionally, by ratifying the UN Convention on the Status of Refugees, the nation had, at least on paper, accepted the more expansive UN definition of a refugee, without the Cold War strictures written into the Hart-Celler Act. In reality, as the treatment of Haitian refugees versus Cuban refugees illustrates, the U.S. continued to view refugee admission through Cold War lines. And, as Deborah Anker and Michael Posner argue, the 7th preference allocation “was inadequate even as it was written,” not providing enough normal flow refugee visas to deal with the refugee emergencies that would inevitably crop up.¹³⁷ Though the 7th preference was capable of admitting a small group of Czechoslovakian refugees in 1968, the post-1965 Cuban case shows that U.S. policymakers had no qualms about sidestepping permanent law when necessary. As refugee crises only grew in the 1970s, refugee law and parole authority issues came to a head.¹³⁸

Epilogue

The renewed Cuban crisis and Sicilian Earthquake in the late-1960s foreshadowed larger stresses on the U.S. refugee system in the 1970s. During this decade, the frequency and geographic location of refugee crises expanded rapidly. As the numbers seeking admission grew, and as the executive branch increasingly relied on parole authority, policymakers began to rethink the foundations of the admissions system. Ultimately legislators would separate refugee and immigrant admissions in 1980; remove the ideological definition of a refugee; and provide for a more flexible response to new challenges, such as greater numbers of asylum seekers and new categories of people seeking refuge. Since 1980, the challenges facing U.S. refugee policy have only grown, and policymakers have struggled to catch up.

¹³⁶ Benjamin H. Reed to Walt W. Rostow, October 9, 1968. White House Central Files, Immigration – Naturalization Box 1, EX IM 9/1/68, LBJ Presidential Library; Press Release, October 15, 1968. White House Central Files, ND 19-2 Box 418, ND 19-2 Displaced Persons Refugees, LBJ.

¹³⁷ Anker and Posner, “The Thirty Year Crisis,” 19.

¹³⁸ Loescher and Scanlan, *Calculated Kindness*, 86-87.

The fall of Saigon and the American exit from the Vietnam War created a new and pressing refugee crisis in Southeast Asia in the mid-1970s. Many legislators saw the resettlement of refugees from Vietnam, Cambodia, and Laos (many of whom had collaborated with the U.S. government,) as part and parcel of postwar responsibilities. In 1975 Congress passed the Indochina Migration and Refugee Assistance Act. The Act authorized funding and admissions for two years, but as the U.S. was in the midst of a recession, Congressional and public sentiment for arrivals was low. Toward the end of the decade, as the situation in Southeast Asia further deteriorated, President Carter began to parole in an ever-growing number of refugees. All told, the U.S. used parole authority more than ten separate times between 1975 and 1979.¹³⁹

By the late-1970s, many Congressional leaders had come to believe that parole authority could not adequately respond to modern emergency refugee crises. Legally, parole could only be used in exceptional circumstances, and thus the government could not plan in advance for these admissions. The general procedure had become that the government would wait until refugee problems became too great in the countries of first settlement to issue a parole, and then wait for the situation to repeat itself before issuing another one. For proponents of refugee admissions, the continued use of parole authority illustrated the need for a more established and flexible refugee admissions program; for opponents, the expansion of parole power signaled a need to curb executive branch discretion in dictating admissions.¹⁴⁰

In response to the increased parole usage, and the failures of the legal apparatus for refugee policy and admissions to handle the challenges of the 1970s, Congress passed a new Refugee Act in 1980. Prior to 1976, with restrictionist James Eastland in charge of the Senate Judiciary Committee, no immigration bills had passed the Senate. But with Ted Kennedy assuming the leadership in 1976, some progress could be made. In 1979 Ted Kennedy and Representative Elizabeth Holtzman (D-NY), along with former Senator Dick Clark, newly appointed by President Carter to the newly formed U.S. Coordinator for Refugee Affairs, guided the new Act through Congress.¹⁴¹

The Refugee Act made a number of important changes to refugee policy. First and foremost it codified the UN definition for a refugee, and jettisoned the earlier emphasis on refugees from Communism. Witnesses testifying before the House and Senate committees on the bill, including Norman Hill, Executive Director of the A. Philip Randolph Institute, the AFL-CIO, and Ambassador Dick Clark all argued that the new definition, (to quote Clark,) “acknowledges the size and diversity of the current refugee population,” and “corresponds more closely to the situation that we now face.”¹⁴² The bill removed refugee admissions from the 7th preference, and created a normal flow ceiling of 50,000 refugee admissions per year, not subject to quota restrictions. The Act also set up

¹³⁹ Loescher and Scanlan, *Calculated Kindness*, 114-115; Bon Tempo, *Americans At the Gate*, 145-55.

¹⁴⁰ Loescher and Scanlan, *Calculated Kindness*,” 153-154; Bon Tempo, *Americans At the Gate*, 168-172.

¹⁴¹ Anker and Posner, “The Forty Year Crisis,” 20-21; Loescher and Scanlan, *Calculated Kindness*,” 153-154. On the impetuses for reform, see also: Bon Tempo, *Americans At the Gate*, 168-172.

¹⁴² “The Refugee Act of 1979, S. 643” “Hearing before the Committee on the Judiciary, United States Senate, Ninety-Sixth Congress, First Session, March 14, 1979”, 11.

the U.S. Coordinator for Refugee Affairs to guide refugee admissions.¹⁴³ Finally, the legislation ordered the Attorney General to develop procedures for asylum screening and admissions, which had been absent from U.S. law up to this point.¹⁴⁴

Even as the Refugee Act of 1980 represented a step forward toward a flexible system that could deal with ongoing and emergency refugee issues, U.S. policymakers continued to interpret refugee law through the prism of foreign policy and domestic priorities. President Reagan privileged refugees from Communism first and foremost, putting those fleeing Europe and Asia far above those fleeing places such as Africa. Additionally, the Reagan Administration extended the earlier practice of turning away Haitians seeking asylum, and also of doing little to help even those with a credible fear of persecution, but seeking asylum from America's allies. Central Americans from countries such as El Salvador, Guatemala, and Nicaragua found themselves in an especially precarious position, as the INS and Administration did what they could to sidestep refugee provisions and deport those who made it into the country.¹⁴⁵

In response to the perceived indifference by the Administration to those fleeing turmoil in Central America, church and religious groups across the country founded the sanctuary movement, to aid and shelter those facing deportation. By 1987, there were close to 400 declared sanctuaries, mainly individual organizations, but also entire cities, and the States of New Mexico and New York.¹⁴⁶ On the asylum front, similar criticisms about the handling of claims within a foreign policy framework led to administrative changes. For the first decade after the passage of the Refugee Act, the INS handled all asylum determinations. But in response to criticism that the INS admitted asylees based on Cold War prerogatives, rather than the UN definition of those seeking refuge, the government established the Asylum Officers Corps in October of 1990. These officers were,

¹⁴³ Bon Tempo, *Americans At the Gate*, 173-78. Scholars like Bon Tempo view the 1980 Act as a reassertion of Congressional authority over refugee law, as well as an attempt to stabilize emergency refugee policy from the earlier ad hoc usage of parole authority. In 1980 though, as in 1965, Congress chose not to limit further use of parole power, by allowing the President to admit refugees for humanitarian concerns or for those in the national interest. And, while Congress and the President haggled over how to institutionalize Congressional consultation over the use of parole provisions, the Act did not subject Presidential decisions to Congressional veto. Importantly though the Act did not curb parole authority per se, it did enlarge the normal flow of admissible refugees created with the 1965 Act, and gave the President, in consultation with Congress, the authority to set a higher yearly cap.

¹⁴⁴ Prior to the Refugee Act of 1980, only a few thousand people annually applied for asylum through the 1970s. This number quickly exploded to over 175,000 by 1983. As Carl Bon Tempo points out, the Refugee Act did not place a cap on the number of people that could seek asylum per year, even as refugee admissions were capped at 50,000. *Americans At the Gate*, 179. On the asylum provisions of the 1980 Act, see: Zucker and Zucker, *The Guarded Gate*, Chapter 4.

¹⁴⁵ Bon Tempo, *Americans At the Gate*, 184-191.

¹⁴⁶ Bon Tempo also argues that the U.S. response to crises in southern Africa and Central America, especially in places like Rwanda, represented at best a failure to intervene. The Clinton Administration, he concludes, interpreted the Refugee Act in much the same way that Reagan did. Still, between 1990 and 2000, the U.S. admitted over one million refugees. *Americans At the Gate*, 198-199. On the sanctuary movement see: Zucker and Zucker, *The Guarded Gate*, Chapter 7. Statistics on 246. Zucker and Zucker argue that the sanctuary movement "functions as a kind of shadow refugee program," with a similar set of determinations about refugee status and resettlement made, albeit in this case by voluntary workers, rather than the INS.

according to the regulations, “to receive special training in international human rights law, conditions in countries of origin, and other relevant national and international law.”¹⁴⁷ So while the Refugee Act of 1980 represented a significant breakthrough in advancing refugee law to handle the contemporary landscape of refugee issues, events throughout the 1980s and 1990s proved that bureaucratic interpretation mattered equally as much as legislative action.

The next major development in refugee policy arrived in 1996, when Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRA-IRA.) The Act strengthened security provisions for those entering the country, and toughened the statutes for those seeking asylum. The law imposed a one-year filing deadline from the time of entry for those claiming asylum. Even those refugees who fit the UN definition of having a “well founded fear” of persecution could, under the 1996 provisions, be precluded from asylum status. Many refugees experience physical and emotional trauma in their home countries, making it difficult, if not impossible to talk about their persecution upon arrival – a necessary step for a successful claim. Human Rights First, an advocacy organization based in New York, estimates that more than 79,000 applicants have been rejected because of the one-year cutoff. IIRA-IRA also legislated mandatory detention for all those arriving at ports of entry without adequate documentation, but did not provide for prompt review of detention or asylum claims, leading to refugees languishing in jails while awaiting adjudication.¹⁴⁸ Additionally, and especially since September 11, 2001, the exclusion of refugees under terrorism related provisions has greatly increased. In particular, the bar for those providing “material support,” to terrorists or terror groups has been widely construed to cover even those innocent of actual crimes, including, for example, those forced to provide medical care to wounded combatants or terrorists.¹⁴⁹

¹⁴⁷ Gregg A. Beyer states that criticism of INS asylum procedures came from within the government as well. Many felt that the INS was overwhelmed and backlogged with the number of refugees seeking asylum, first from Haiti and Cuba around the passage of the Refugee Act, and then from Central America during the 1980s. “Establishing the United States Asylum Officer Corps: A First Report,” *International Journal of Refugee Law*, Vol. 4, No. 4 (1992). Text of the regulations in: American Immigration Law Center, “History of the United States Asylum Officer Corps,” <http://www.aile.com/services/asylum/history.htm>, accessed 3/25/10, Section E.

¹⁴⁸ Human Rights First, “Renewing U.S. Commitment to Refugee Protection: Recommendations for Reform on the 30th Anniversary of the Refugee Act,” March 2010, 9-11. On the provisions of IIRA-IRA, see: James G. Gimpel and James R. Edwards, Jr., *The Congressional Politics of Immigration Reform* (Boston: Allyn and Bacon, 1999), 274-276 and 289-294. Asylum seekers have continued to find their claims for refuge tied up with national security issues. While normal flow immigration can be somewhat controlled and screened by the government through the U.S. Refugee Resettlement Program, asylum seekers arrive unannounced. In theory, under the principle of non-refoulement, no nation can return an alien to a country in which they have a well-founded fear of persecution. IIRA-IRA though created the concept of “expedited removal,” where an immigration officer can immediately deport anyone arriving in the U.S. without proper documentation. The Department of Homeland Security is required to give a hearing to those claiming asylum, but if the Asylum Officer deems that the alien does not have a credible fear, he or she can deport them immediately, without review.

¹⁴⁹ Human Rights First, “Renewing U.S. Commitment,” 15-16. On the intertwining of admissions law and national security after 9/11, see: Edward Alden, *The Closing of the American Border: Terrorism, Immigration, and Security Since 9/11* (New York: HarperCollins, 2008), and Bon Tempo, *Americans At the Gate*, 203-206.

In the last thirty years the sources of refugees have again expanded, from those fleeing Rwanda and the Sudan in Africa, to Burmese refugees in South East Asia, and Iraqi refugees in the Middle East.¹⁵⁰ The types of refugee claims have also expanded since 1980. The UN Convention includes as those qualifying for refugee status those members of “a particular social group.”¹⁵¹ But whether gender-based asylum claims, such as for people fleeing forced marriage or Female Genital Mutilation (FGM), count as members of a persecuted social group has not been solidified by U.S. or international law. The UNHCR has argued that “sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently than men,” and the U.S. published guidelines in 1995 that recognized gender-based persecution as grounds for asylum status.¹⁵² But, as the UC Hastings Center for Gender and Refugee Studies points out, these latter U.S. recommendations were issued for advisory purposes only. Without clear and binding guidelines, refugee adjudicators continue to deny gender-based claims. Similarly, the U.S. is only now beginning to grapple with the issue of queer asylum.¹⁵³

On the thirtieth anniversary of the Refugee Act of 1980, Senators Patrick Leahy (D-VT) and Carl Levin (D-MI) introduced the Refugee Protection Act of 2010, to update refugee protections and provisions for the modern era. According to Senator Leahy, the bill “makes common sense changes to refugee adjudication and resettlement.” Among its many provisions, the bill would eliminate the one-year application requirement; increase fairness and reporting within the asylum process and reform the expedited removal process; modify the definition of terrorism as a basis for exclusion “to ensure that innocent asylum seekers and refugees are not unfairly denied protection”; and increase

¹⁵⁰ According to UNHCR statistics, Iraqis currently comprise the largest group of asylum seekers in the world. “UNHCR, “UNHCR stats show Iraqis, Afghans and Somalis topping list of asylum-seekers in industrialized world,” October 21, 2009. <http://www.unhcr.org/4adf12516.html>, accessed 3/17/10. On the issues facing Iraqi refugee resettlement, see: Human Rights Action and Human Rights Institute, Georgetown University Law School, “Refugee Crisis in America: Iraqis and their Resettlement Experience,” 2009, http://www.law.georgetown.edu/news/releases/documents/RefugeeCrisisinAmerica_000.pdf, accessed 4/11/10.

¹⁵¹ Article 1A(2), UN Convention on the Status of Refugees / UN Protocol on the Status of Refugees.

¹⁵² UNHCR, “Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees,” May 7, 2002. http://cgrrs.uchastings.edu/documents/legal/unhcr_psg-guidelines.doc, accessed 3/17/10; On the 1995 Guidelines see: Phyllis Coven, Department of Justice, “Considerations for Asylum Officers Adjudicating Asylum Claims from Women,” May 26, 1995. http://cgrrs.uchastings.edu/documents/legal/guidelines_us.pdf, accessed 3/17/10.

¹⁵³ See: Center for Gender and Refugee Studies, “Background on Gender and Asylum Issues,” <http://cgrrs.uchastings.edu/background.php>, accessed 3/17/10. UNHCR statistics approximate that there are 16 million refugees and asylum seekers and 26 million internally displaced people as of June 2009. See: UNHCR Press Release, “UNHCR annual report shows 42 million people uprooted worldwide,” June 16, 2009, <http://www.unhcr.org/4a2fd52412d.html>, accessed 3/17/10. Other pressing issues in U.S. refugee law include, but are not limited to: issues of access to legal representation, wide disparities between Asylum Officers and Immigration Courts in granting refugee status, and issues of Refugee Detention.

subsidy grants for refugees resettled in the U.S. The bill failed to emerge from committee during the 111th Congress.¹⁵⁴

Conclusion

The introduction of the Refugee Protection Act of 2010 illustrates just how much worldwide refugee crises, as well as U.S. law and policy, have expanded since World War II. While refugee provisions first emerged from the experience of dealing with WWII displaced persons, they quickly grew to encompass refugees from Communism and those fleeing natural disaster. Concurrent with the expansion of the definition of a refugee came an expansion of the bureaucracy dealing with refugees – from the short-lived Displaced Persons Commission to the seedlings of a refugee bureaucracy within the State Department’s Bureau of Security and Consular Affairs. Even while legislators continued to conceptualize refugee law as a series of ad hoc procedures, outside of permanent law, the apparatus designed to admit refugees took root within the executive branch. Well before the 1965 Act brought refugee and immigrant admissions together into one system, the bureaucracy had already recognized the importance of and necessity for permanent and continued refugee policy. And though the foreign policy roots of much of U.S. refugee policy have continued into the contemporary era, the number and diversity of groups seeking and finding refugee status has expanded as well.

As in the case of family reunification preferences, the inability of legislators to come to terms with the national origins quota system, and the backlogs in southern and eastern European countries as well as in Asia, drove an expansion of refugee policymaking. This is not to say that policymakers designed refugee policy solely with an eye toward the quota system – the anti-Communist focus of much of U.S. refugee policy clearly illustrates otherwise. Rather, many of the expansions of refugee policy, from the 1958 Azorean refugee act, (which extended refugee rights to the victims of natural disaster and brought humanitarianism into refugee policy,) or the 1962 Hong Kong refugee resettlement, (which opened the doors to the first major group of Asian refugees,) occurred because of the inability to otherwise admit these refugees through normal immigration channels. Whether or not the series of temporary refugee laws in the 1950s helped to break apart the national origins quota system, the development of refugee policy during the 1950s and 1960s was intimately intertwined with the development of immigration policy, with the former growing because of a lack of movement in the latter.

As refugee relief became more complicated in the 1950s and 1960s, policymakers brought the categories of immigrant and refugee together into one admissions system in 1965. Considering the interdependence of refugee and immigrant policy, and the fact that the foundations for a permanent refugee apparatus had already been laid within the

¹⁵⁴ Patrick Leahy, “Leahy Introduces Landmark Refugee Protection Act,” March 15, 2010 and “Statement of Senator Patrick Leahy (D-VT), Chairman, Senate Judiciary Committee, on the Introduction of the Refugee Protection Act of 2010,” March 15, 2010. http://leahy.senate.gov/press/press_releases/release/?id=ea7b1d65-e893-4998-b121-65ab874eaf8b, accessed 3/17/10.

bureaucracy, the move to create a unified admissions system made sense. But even if refugee and immigration policy grew symbiotically, with gains and losses in one venue offset by those in another, the combined preference system showed just how different refugee admissions – as opposed to refugee policy – were from immigration. While the goals of policymaking in both realms may have been similar – to admit those people most advantageous to the U.S. – treating refugees like immigrants discounted the emergency nature of much of refugee policy. By setting a fixed number of refugee admissions per year, and by counting those refugees toward the 20,000-person cap on any sending country, legislators created a system untenable from the start. Even by the 1968 earthquake in Sicily, policymakers realized the need for a revised system. Thus in 1980 the solution was not to simply raise the number of refugees admitted per year, but to once again separate refugees from immigrants.

As in labor preferences, where unskilled immigrants were excluded from permanent admissions categories only to enter through unauthorized and temporary channels, from the signing of Hart-Celler, Presidents from Johnson on continued sidestep the permanent admissions system through parole authority. The introduction of the Refugee Protection Act of 2010 shows that the creation of a refugee policy that is responsive to the challenges of the modern era remains elusive.

Chapter 6: Conclusion

On October 3, 1965, President Lyndon B. Johnson signed into law the Immigration Act of 1965. This event marked a victory for the forces of common sense and decency, and for the cumulative efforts over many years of dedicated individuals in government and throughout American citizenry. The reform accomplished in Public Law 89-236 broadens a central theme in American history – equality of opportunity. It stands with legislation in other fields – civil rights, poverty, education, and health – to reaffirm in the 1960's our nation's continuing pursuit of justice, equality, and freedom.

- *Senator Edward M. Kennedy (D-MA), 1966*¹

Reviewing the Hart-Celler Act for the *Annals of the American Academy of Political and Social Science*, Senator Edward Kennedy spoke of the Act as a “victory for the forces of common sense and decency,” and a reform a long time in the making. His article examined the long demise of the national origins quota system, a policy which he argued was “conceived in a radical period of our history – a period when bigotry and prejudice stalked our streets.” Kennedy marked the beginning of the reform process as starting with President Truman’s veto of the McCarran-Walter Act of 1952, and understood that reform did not emerge fully-formed in 1965, but rather began almost a decade and a half prior, and progressed into the 1960s.²

Kennedy spoke of the final bill as the product of a compromise and consensus that “neutraliz[ed] any significant opposition both within and without the Congress.” Still, according to him, “it was felt in many quarters...that the Administration perhaps paid a needlessly heavy price,” to achieve the compromise that secured passage of the bill. This compromise allowed Representative Michael Feighan (D-OH) to substitute his revised preference system, with its strong emphasis on family reunification, reduced visas for labor-market needs, and fixed allotments for refugees.³

Kennedy’s narrative of coalition building and compromise is, as I have argued in this dissertation, only one part of the story of the development of immigration policy in the postwar period. While the Hart-Celler bill and removal of the national origins quota system emerged from these consensus efforts, the shape of the admissions system that replaced the quotas evolved along a different trajectory, one that progressed over time and largely beneath the radar. The three major preference categories – family, labor, and refugee – developed through a set of policy feedback loops that began after World War II, and continued up to and beyond the passage of Hart-Celler. Far from being the product of last-minute horse trading to pass legislation, the Hart-Celler preferences emerged from twenty years of political development. Understanding how policymakers came to

¹ Edward M. Kennedy, “The Immigration Act of 1965,” *Annals of the American Academy of Political and Social Science* Vol. 367 (Sep. 1966), 138.

² *Ibid.*, 138.

³ *Ibid.*, 149, and 145.

privilege the unique set of family, labor, and refugee immigrants in 1965 is, I argue, critical to understanding the shape of postwar and contemporary policymaking.⁴

The development of each individual preference category shared a number of important connections and operated within one overarching admissions system. Similar forces, such as the effects of the national origins quota system and Cold War foreign policy goals, set the context in which the categories developed. Importantly as well, all three evolved within a symbiotic system. Restrictions on visa allocations in one category affected allotments in the other two.

But even if the three categories formed one unified system, they evolved along different trajectories. Temporally, the family and labor preferences followed similar paths, with many of the concrete changes occurring in the immediate post-World War II period, and again just before passage of the Hart-Celler Act. (Table 6.1) In family reunification, for example, the early period saw the rise of legislation for war brides, while starting in the late-1950s, legislators passed a series of small bills to admit greater numbers of family members waiting for backlogged quota visas. The refugee category, by contrast, developed incrementally over the entire period, with legislation and refugee movements driving its evolution throughout the late-1940s, 1950s, and 1960s.

Table 6.1: Family, Labor, and Refugee Preferences

	<u>Family</u>	<u>Labor</u>	<u>Refugee</u>
<i>Timeframe</i>	1945-1952 1957-1968	1948-1952 1962-1968	1948-1968
<i>Foundation</i>	Legislation	Legislation	Bureaucracy

Similarly, the foundations from which the categories developed differed. I have argued that the bureaucracy played a critical role in the development of all the preferences, but the constrictions on family and labor visa allocations began first through legislative efforts, and only later emanated from the bureaucracy. The refugee category progressed on the opposite trajectory. Legislators first created labor preferences within the Displaced Persons Act of 1948 and McCarran-Walter Act of 1952. Afterward the Department of Labor developed regulations to delineate who qualified as skilled and professional immigrants – the Schedule A and B of the post-1965 immigration regime. Refugee legislation on the other hand, was ad hoc and temporary through the 1950s, with no

⁴ Note that in contrast to many studies of policy feedback loops, which focus on the mechanisms of policy evolution such as the building of core constituencies, or the entrenchment of interest groups, here I argue that a confluence of small policy decisions, defenses, and reform attempts, created a self-reinforcing loop, narrowing the options for future reform. At times, interest groups such as those representing Italian immigrants, proved crucial to advancing policy. But more importantly, the iterative form of policymaking in the postwar period provided the mechanism that changed policymakers’ notion of their ideal immigrant – for example elevating family reunification above labor migration. This shift in turn shaped the Hart-Celler preference system. On path dependencies and positive feedback loops, see: Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press, 2004). For studies focused on the role of constituencies, see, for example: Andrea Louise Campbell, *How Policies Make Citizens: Senior Citizen Activism and the American Welfare State* (Princeton University Press, 2003).

permanent admissions program passed until 1965. Unlike the other two categories, the bureaucracy charged with developing refugee policy took root far earlier, with a permanent apparatus created in the State Department in the early 1950s, and permanent financial disbursements implemented by the early 1960s. This bureaucracy helped to drive the ultimate definition of a refugee in the 1965 Act, far more than in the other categories.

If all three categories responded to similar forces, and formed part of one admissions system, why did they develop along different temporal and institutional lines? The first part of this chapter examines these variations, asking two questions: (1) why did family and labor preference development occur along similar timelines, while the refugee category diverged? And (2) why did the development of the labor and family, and refugee preferences occur on opposite spectrums, with legislation leading labor and family, and bureaucratic decision-making leading refugees? In answering these questions, I focus on three factors: (a) transactional costs for expanding the number of visas in each category; (b) the relationship between the national origins system and racial discrimination as a whole; and finally (c) how the push-and-pull of policy incrementalism through successful defense of older policies and failed reform played out in each category.

To draw on Edward Kennedy once more, he ended his article by stating that “a measure of greatness for any nation is its ability to recognize past errors in judgment and its willingness to reform its public policy.”⁵ And yet the ability to recognize and remedy errors in immigration politics is not simply a product of the relative “greatness” of policymakers, but is instead subject to the forces of path dependency and feedback loops that shaped the admissions system in the first place. The second part of this chapter examines how the postwar development of the three preference categories affects our understanding of contemporary immigration politics. I also discuss the ramifications of my work to an understanding of the fields of diplomatic history, Cold War history, and American Political Development, and conclude by offering avenues for further exploration.

Part I – Explaining Divergence in Preference Category Development

TRANSACTIONAL COSTS AND VISA POLICY

In illustrating the differences between policy development in each of the preference categories, I first examine the basic factors driving change: how difficult was it for policymakers to privilege one category over the others, what were the transactional costs involved in expanding the number of visas given to a particular category, and what forces decided these costs?

⁵ Kennedy, “The Immigration Act of 1965,” 149.

Table 6.2: Aspects of Admissions Reform

	<u>Family</u>	<u>Refugee</u>	<u>Labor</u>
<i>Primary Force</i>	Universal Appeal	External Factors	Universal Fear
<i>Transactional Cost for Expansion</i>	Low	Medium	High
<i>Visa Allotment</i>	Expansion	Expansion	Constriction

Table 6.2 lists the factors that went into the evolution of the preference system. The first line explains the primary force that drove expansion in each of the three categories. The universal and uncontroversial nature of appeals to the plight of the family made it an ideal category on which to base preference admissions. Even as restrictionists worked to stymie attempts to raise the number of admissions per year, they recognized the importance of family reunification. During the debates over the 1952 Act for example, both Senator Pat McCarran (D-NV) and Representative Francis Walter (D-PA) drew on the hardships of family members kept apart to push for passage of their bills. Walter urged his fellow congressmen to overturn President Truman’s veto of the Act, stating that “if the President’s veto is sustained, the GI in Japan or in Korea will not be permitted to bring his Oriental wife into this country.”⁶ In the late-1950s, while restrictionists like Senator James Eastland (D-MS) blocked any changes to the national origins system as a whole, they did allow the passage of a series of minor bills that widened quota exemptions for family members.⁷

The impetuses driving the evolution of the labor-market category, on the other hand, came from two universal fears on the part of policymakers. On the one hand, as James Hennessy of the Immigration and Naturalization Service (INS) testified during the 1965 debates, legislators feared that removing the quota system would open the floodgates to large numbers of immigrants, the vast majority of whom would be unskilled.⁸ Selecting immigrants by means of skill level and training did have its issues, and bureaucrats like Abba Schwartz of the State Department realized early on that restricting the number of

⁶ *Congressional Record*, 82nd Congress, 2nd session: 8215.

⁷ The Refugee-Escapee Act of 1959 (P.L. 316, 71 Stat. 639,) allowed anyone waiting for a 1st, 2nd, or 3rd preference visa under the McCarran-Walter Act of 1952 to convert to nonquota status and receive immediate entry. In 1959, P.L. 363, 73 Stat. 644, doubled the number of visas available under the 4th preference, from 25 percent of unused visas to 50 percent, and allowed anyone waiting for the family preferences, (2nd through 4th preference,) and registered prior to December 31, 1953, to enter immediately under nonquota status. In 1961, P.L. 301, 75 Stat. 650, allowed anyone still waiting for a 2nd or 3rd preference petition, to enter immediately under nonquota status. Finally in 1962, P.L. 885, 76 Stat. 1247, advanced the cut-off date from the 1959 Act to allow anyone waiting for a family preference visa prior to March 31, 1954 to enter immediately under nonquota status.

⁸ In response to questions from Congressman Michael Feighan (D-OH) about unskilled migration, Hennessy answered “This is the problem. But, when you abolish the national origins quota, you have a worldwide potential of persons desiring to come here, the large bulk of whom I would assume are unskilled...Any percentage allocation that you would give to unskilled would obviously not come remotely close to meeting the demand.” ““Immigration” Hearings before Subcommittee No. 1 of the Committee on the Judiciary, House of Representatives, 90th Congress, 2nd Session. Review of the Operation of the Immigration and Nationality Act as Amended by the Act of October 3, 1965.” April 8 – June 13, 1968, 69.

labor migrants would severely limit entrance from many countries. Still, like Hennessy, most legislators believed that reducing labor migration would stem the tide of entrants, without the use of race-based provisions.⁹ Groups like organized labor stoked fears about the unskilled, and pressed policymakers to exclude them.¹⁰ Likewise, a second fear emerged from the Cold War, as policymakers, especially in the executive branch, recognized the need to admit a greater number of scientists and technicians to win the arms race with the Soviet Union. This fear pushed successive presidential administrations, from Eisenhower through Johnson, to focus on only the most highly skilled workers.¹¹

Finally, the development of the refugee category was the most explicitly centered on international events. Foreign policy needs entered into both the family and labor preferences, but Cold War goals, ranging from encouraging defectors from the Soviet Union, to dealing with questions of overpopulation and democratic stability in Europe, affected refugee admissions most prominently. When the existing national origins quotas could not handle the needs of successive Administrations, they turned to refugee policy as a way to handle potentially explosive situations, such as extreme unemployment and overpopulation in Italy in the run-up to its 1953 elections, or the exodus of Chinese refugees from the People's Republic of China to Hong Kong in 1962, which severely taxed the colony's resources. Importantly as well, the White House took the lead on emergent refugee situations, (far more than in the family or labor categories,) as was evident with Hungary in 1956, where the Eisenhower Administration responded to a crisis by first paroling in thousands of refugees, and only later consulting with Congress. Even within the legislative branch, ardent restrictionists like Francis Walter were willing

⁹ In a 1966 article Schwartz argued that with strict labor certification and exclusion of the unskilled, immigrants from the western hemisphere, as well as those countries such as Ireland that had sent a majority of their immigrants through the nonpreference category prior to 1965, would be heavily restricted by the new law. See: Abba P. Schwartz, "The Role of the State Department in the Administration and Enforcement of the New Immigration Law," *Annals of the American Academy of Political and Social Science* Vol. 367 (Sep. 1966).

¹⁰ On organized labor's concern with unskilled labor, see, for example: Walter J. Mason to Harley M. Kilgore, November 22, 1955, in which Mason argued that while the McCarran-Walter Act protected against those laborers whose entrance may harm wages or workers, it contained no safeguards as to the destinations of immigrant laborers, allowing them to enter and then move to another destination. See also: "A Democratic Immigration Policy," Resolution No. 170, Adopted at the Third Constitutional Convention of the AFL-CIO, September, 1959, which warned against the importation of temporary workers. Both documents in: AFL-CIO records, RG21-001, Box 27, Folders 16 and 28, respectively, National Labor College.

¹¹ On the role of the cold war and Sputnik in privileging the role of science in national defense, see: Department of State, Press Release, "Address by Roderic L. O'Connor, Administrator, Bureau of Security and Consular Affairs, Before the National Council on Naturalization and Citizenship, "Our Immigration Policies and the International Scene,"" 2. RG 21-001, Box 27 Folder 23, AFL-CIO Records. See also: John L. Rudolph, *Scientists in the Classroom: The Cold War Reconstruction of American Science Education* (New York: Palgrave, 2002); Robert A. Divine, *The Sputnik Challenge* (New York: Oxford University Press, 1993); and Barbara Barksdale Clowse, *Brainpower for the Cold War: The Sputnik Crisis and National Defense Education Act of 1958* (Westport: Greenwood Press, 1981).

to make exceptions in their opposition to accepting new entrants when it came to refugee policy.¹²

Lines two and three of table 6.2 detail the transactional costs associated with raising the number of admissions, as well as the ultimate outcome of policymaking. With such universal appeal in the family categories, and legislators from both sides of the aisle appealing to the plight of family members kept out of the country, the costs for liberals *and* conservatives to raise the number of family immigrants were extremely low. Representative Noah Mason (R-IL), for example, argued in favor of the War Brides Act in 1945, stating that “such strong equities run in favor of these servicemen and women in the right of having their families with them.”¹³ For reformers like President Dwight Eisenhower, appealing to family reunification provided a wedge to break apart the national origins quota system. In pushing for reform in 1957, he drew on the “moral principle involved when we keep children and spouses apart from fathers and husbands.” Restrictionists had their own reasons to privilege reunion, since many believed that by granting the bulk of all permanent visas to family in 1965, the racial and ethnic composition of new arrivals would remain similar to the largely white and European population already in the nation. For legislators at the time, family reunification became the best way to ensure a continued influx of European immigrants, far better than retaining the previously equal emphasis on family *and* labor.¹⁴ With both sides pushing for reunification as their primary goal, the family category saw an expansion in the number of visas allotted to it in 1965.¹⁵

¹² On the goal of encouraging defection, see, for example: “A Report to the Operations Coordinating Board on Assistance Programs on Behalf of Refugees and Escapees of Interest Under NSC 86/1”, April 18, 1956. The report stated that “NSC 86/1 reaffirmed the policy of asylum and stated that the objective of U.S. policy toward Soviet and satellite nationals who escape from the orbit is to contribute to the achievement of general U.S. objectives and aims toward the USSR.” NSC 86/1 was put in place in 1951. RG 59, E.5496 Records of the State Department, Bureau of Administration, Refugee Relief Program, Box 99, Escapee Program Policy Documents, NARA II. On the Italian election, see: Carl J. Bon Tempo, *Americans At the Gate: The United States and Refugees During the Cold War* (Princeton: Princeton University Press, 2008), 35-37; On the Hong Kong refugee crisis, see: Aristide R. Zolberg, Astri Suhrke, and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (New York: Oxford University Press, 1989), 157-159.

¹³ 79th Congress, 1st session, House Report No. 1320, “Expediting the Admission to the United States of Alien Spouses and Alien Minor Children of Citizen Members of the United States Armed Forces,” November 30, 1945, 2. Mason was no liberal, opposing all attempts to increase the size of the federal government, or hinder states rights. See: Jack A. Samosky, “Congressman Noah Morgan Mason: Illinois’ Conservative Spokesman,” *Journal of the Illinois State Historical Society* Vol. 76, No. 1 (Spring, 1983).

¹⁴ Undated, draft of a press conference speech of the President, 1. Maxwell Rabb Papers, Box 46, Immigration Legislation, 1957. Eisenhower Presidential Library. On family as a limiting factor, see for example, the statement of Congressman Emanuel Celler, who argued that “since the peoples of Africa and Asia have very few relatives here, comparatively few could immigrate.” Restrictionist Senator Sam Ervin (D-NC) argued as well that with the new restrictions, “the bill does not open the doors for the admission of all the people all over the face of the earth.” *Congressional Record*, 89th Congress, 1st Session, 1965: 21758 and 24780.

¹⁵ Here I am speaking only about the overall expansion in the relative weight of family reunification, to encompass 74 percent of all visas after 1965. The evolution of the idea of family reunification to include siblings as the most pressing concern – receiving 24 percent of all visas after 1965, larger than any other category – emerged less from the category’s universal appeal, than from the preponderance of interminable

In contrast to the low transactional costs to raising the number of family visas per year, the costs to expanding the labor category were quite high. Even though legislators had allotted 50 percent of all visas to labor-based migration in 1952, they constricted the preference to only 20 percent in 1965. The high cost of implementing a system based first and foremost on labor is best exemplified by the failed Kennedy-Johnson reform proposal. The original bill offered by President Kennedy for the Hart-Celler Act proposed allotting an equal number of visas (50 percent) to labor and family categories. And yet most of the witnesses testifying before Congress chose family reunification as their primary concern, while even co-sponsors of the bill, such as Representative Harold Ryan (D-MI), wondered from the floor of the House that “sometimes I think perhaps [skills] should be the second basis, and the first one should be given to close relations of the U.S. citizens and resident aliens.”¹⁶ With groups like organized labor opposed to expansions of labor migration, legislators ultimately restricted admissions in the category.

With the refugee category, the transactional costs to expansion were in-between that of family and labor. Restrictionists like Francis Walter, who opposed most immigrant admissions, felt strongly about the need for refugee policy, and thus allowed for temporary legislation to move forward.¹⁷ The United States’s goals on the international front, including winning the Cold War by encouraging defection and portraying its democratic ideals through a robust refugee policy, pushed policymakers to see the utility in creating a strong refugee resettlement apparatus. Likewise, while in the family and labor categories the number of admissions could be estimated based on demand and waiting lists, the emergent nature of refugee crises such as that in Hungary in 1956 and the Azores in 1958 made advanced planning difficult.

Still, both liberals and conservatives understood that any refugee legislation, even temporary bills, signaled higher net admissions into the nation. Thus throughout the 1950s, while the transactional costs for augmenting the refugee bureaucracy and funding international refugee operations were low, the costs for creating permanent admissions within the immigration framework were far higher.¹⁸ Ultimately the continued presence

backlogs for the category in the 1950s and 1960s, and interest group lobbying behalf of these immigrants. See chapter 3.

¹⁶ “Statement of Hon. Harold M. Ryan,” “Immigration,” Hearings before Subcommittee No. 1, of the Committee on the Judiciary, House of Representatives, Eighty-Eighth Congress, Second Session on H.R. 7700 and 55 identical bills to Amend the Immigration and Nationality Act and for other purposes, 1964, 209.

¹⁷ On Walter’s views on refugee policy, see: Michael Gill Davis, “The Cold War, Refugees, and U.S. Immigration Policy, 1952-1965” (Ph.D. diss., Vanderbilt University, 1996).

¹⁸ The debates around the Refugee Relief Act of 1953 are especially indicative of the reluctance to make refugee admissions permanent, as well as the fight over numbers of admissions. After the failure to secure refugee visas in the McCarran-Walter Act of 1952, President Eisenhower started a drive to admit 240,000 refugees outside of quota restrictions. Even the notoriously restrictionist American Legion came out in favor of the legislation, but conservatives like Pat McCarran worried about the overall numbers, and attempted to limit visa allotment to only 124,000 per year. McCarran ultimately capitulated, and the final Act contained 214,000 visas, allocated over three years. See: Gil Loescher and John A. Scanlan, *Calculated Kindness: Refugees and America’s Half-Open Door, 1945-Present* (New York: The Free Press, 1986), 44-48; Bon Tempo, *Americans At the Gate*, Chapter 3; and Norman L. Zucker and Naomi Flink Zucker, *The*

of refugee troubles around the world, as well as a Congressional attempt to tamp down on executive use of parole power, pushed legislators to add refugees to the permanent admissions framework in 1965.¹⁹

Transactional costs provide a useful metric for understanding why the family and refugee categories expanded, while the labor category did not. Still, these explanations can only explain the ultimate allocation of visas allotted to each preference, and why the postwar climate was favorable to family reunification and refugees, and less so to labor migration. To understand why the timelines for reform differed, and why change in the family and labor categories began in the legislative branch, while in the bureaucracy in the refugee category, I next turn to a comparison of how the national origins quota system affected the development of each preference.

THE NATIONAL ORIGINS QUOTA SYSTEM AND POLICY DEVELOPMENT

The national origins quotas lay at the heart of the postwar efforts at immigration reform, both those designed to retain older versions of restriction, and those designed to liberalize admissions. By the 1960s, the singular focus among policymakers on eradicating national origins eclipsed many of the other debates that might have occurred, including the place of siblings of U.S. citizens or unskilled workers within permanent immigrant admissions. Still, how each of the three categories related to the quota system and its race-based restrictions differed.

Family and labor preferences would not form a major part of immigrant admissions until 1952, with the McCarran-Walter Act. Nevertheless, they had been written into the quota system since its creation in the 1920s, in the form of exemptions for immediate relatives and preferences for agricultural workers. Because provisions for family and labor had already existed in immigration law, the evolution of these two categories mirrored legislative efforts, occurring primarily in the periods immediately preceding and postdating the major immigration bills of the period. The presence of a large number of military spouses after World War II began the process that would ultimately bring family reunification rights without regard for race into the McCarran-Walter Act. Labor preferences as well began to take shape immediately after World War II, when legislators jettisoned the late-19th century policy of barring contract labor, to instead require all displaced persons to have employment, housing, and welfare assurances prior to entry. In 1952, legislators used these categories to create a preference system within the national origins quotas, allotting 50 percent of all visas to skilled and urgently needed labor, and 50 percent to three family categories.

After the passage of the McCarran-Walter Act, both categories saw a lull in legislative efforts. During the mid-1950s, context and circumstance, much of it based around the

Guarded Gate: The Reality of American Refugee Policy (San Diego: Harcourt Brace Jovanovich, 1987), 31-32.

¹⁹ Deborah E. Anker and Michael H. Posner, "The Forty Year Crisis: A Legislative History of the Refugee Act of 1980," *San Diego Law Review* 19(9) 1981-1982.

national origins system, shaped the evolution of the preferences. During this interim period, the ramifications of the new visa preference system became clear, as the family preferences garnered long backlogs of people waiting to enter, especially for small quota countries like Italy. The labor categories, by contrast, remained underutilized by most of the world, with only one-tenth of all permanent immigrants actually using the 1st preference visas. Nevertheless, while most of world did not access the U.S. through the 1952 labor preference requirements, nor had to deal with their restrictions, in the extremely limited quota areas of the Asia-Pacific Triangle, the first preference for skilled labor quickly amassed similarly untenable waiting times.²⁰ These backlogs, especially in the family categories, galvanized interest and ethnic group lobbying in favor of the oversubscribed preferences, and pushed Congress to pass a series of laws in the late-1950s to admit a greater number of immigrants.²¹

Context also mattered in the mid-1950s, particularly the Cold War arms race. With the new emphasis on recruiting highly-skilled scientists and technicians, especially in the post-*Sputnik* era, it is not surprising that one of the series of small laws to clear the backlogs, P.L. 87-885 in 1962, admitted approximately 6,900 Chinese 1st preference workers in the defense industry, at a time when all of Asia could send just over 2,000 people per year.²² With these minor bills, the family and labor categories reemerged as a very public part of the discourse around immigration reform.

Refugee admissions had the most tenuous connection to the national origins system and reforms, as well as the most need, because of emergency refugee crises worldwide, for ongoing efforts throughout the period. Movements like the 1958 Azorean refugee crises, in which Senator John F. Kennedy pushed through legislation in the face of resistance from the INS and State Department, marked one such instance when the inability to

²⁰ Using Table 4 of the *Annual Report of the Immigration and Naturalization Service* for FY 1954 through 1965, I have estimated that out of a total of 100 percent of all quota visas given to the preference categories, only 19.12 percent of immigrants entered under any of the preferences. Out of the 50 percent allotted to labor migration, only 5.55 percent actually utilized the category. By 1962 the backlogs for the 1st preference for skilled labor in China was 1,387 people, while for the 4th preference for the siblings of U.S. citizens, Italy had 136,858 people waiting. Even though the total number of people waiting for the Chinese preference was far lower, the waiting periods were long enough to make entry seem impossible. With 105 quota slots per year, only half of which could be allotted to 1st preference, it would take at least twenty-six years to clear the backlog. With an Italian quota of 5,666 people per year – and only 50 percent of visas allotted to the fourth preference, and then only if no one applied for any of the first three preferences – it would take close to fifty years to clear the backlog. See: Department of State, Visa Office Bulletin, Number 91, March 2, 1962 “Quota Immigrants Registered Under Oversubscribed Quotas. As reported on February 1, 1962.” RG 233, 87th Congress, Box 261, HR 11911 (2), NARA I.

²¹ On Italian lobbying, see, for example: see: Memorandum of Conversation, “Italian Emigration to the United States,” December 15, 1955, and Scott McLeod to Loy W. Henderson, “Changes of Immigration and Nationality Act Proposed by the Italian Government,” January 4, 1956. RG 59, A1 E 1509, SCA Decimal File, Box 49, Immigration and Nationality Act Amendments, NARA II; LBJ to Joseph DeSerto, December 13, 1963, White House Central Files, Immigration-Naturalization, IM Box 1, IM 11/23/63-7/31/65, LBJ Presidential Library; and Joseph Cogo, ACIM to Ramsey Clark, May 22, 1968, White House Aides Files, James Gaiter, Box 14, Immigration and Naturalization Laws, LBJ Presidential Library.

²² On P.L. 87-885, see: Department of Justice to James Eastland, August 13, 1962, RG 46, Sen 87A-E12, Committee on the Judiciary, Box 40, S.3361, NARA I. Quote on 2; Speech of Francis Walter: *Congressional Record*, 82nd Congress, 2nd Session, 1962: 22606.

admit an adequate number of people through regular channels pushed lawmakers to focus on refugee policy. Likewise even as Lyndon Johnson signed the Hart-Celler Act in 1965, which established a permanent ceiling on refugee admissions, he circumvented the new law by welcoming all Cubans seeking asylum in the U.S. The refugee category then was beholden to the national origins quota system, but with continuous refugee emergencies – in Hungary in 1956, in Cuba in 1959, and in Hong Kong in 1962, for example – it was the least tied to the major legislative cycles of reform.²³

The fact that during this period much of the impetus for refugee admissions emerged from the bureaucracy, rather than Congress, is not surprising considering the foreign policy implications and the inherently uncontrollable nature of refugee admissions. More mundane concerns, such as U.S. obligations to international organizations such as the United Nations High Commissioner for Refugees (UNHCR) and the Intergovernmental Committee for European Migration (ICEM), also played a role. The very presence of fixed quota allotments for labor and family preferences after 1952 meant that the number of people entering each year, as well as the number waiting, could be easily verifiable. Though the Displaced Persons Act of 1948 and Refugee Relief Act of 1953 did legislate refugee admissions to solve discrete problems, such as severe overpopulation and displaced groups living primarily in Europe, the bureaucratic structures available to regulate refugee policy far outstripped those for family or labor admissions, where Congressional authority played for more of a role. Parole authority in particular, which granted the Attorney General the ability to bring in refugees on an as-needed basis to deal with global crises, theoretically provided an unlimited number of admissions outside of Congressional control. Likewise the State Department had more of direct influence in prompting the White House to admit greater numbers of refugees than the Department of Labor did, for example, for skilled immigrants. Only legislative action, by contrast, could help to clear the backlog of family and labor migrants.²⁴

And while in the family and labor categories it was the creation of legislative preferences in 1952 that drove their expansion, the refugee bureaucracy was, in many instances, on the scene abroad long before legislation created permanent admissions slots. The case of Chinese refugees in Hong Kong provides an example of bureaucratic initiative. The first significant movement of Chinese refugees to the U.S. came in 1962, but during the previous decade, the UNHCR and State Department had recognized the gravity of the

²³ On the Azorean Refugee Act, see: E.P. Hutchinson, *Legislative History of American Immigration Policy, 1798-1965* (Philadelphia: University of Philadelphia Press, 1981), 528. On bureaucratic reticence to admit Azoreans, see: Joseph Swing to John F. Kennedy, June 25, 1958, JFK Pre-Presidential Papers, Senate Files, Box 695, Immigration 6/5/58-7/31/58, JFK Presidential Library, and Herbert Thompson to Robert Cavanaugh, “S.3942, 85th Congress, 2d Session, for the Relief of Certain Residents of the Azores Islands,” RG 59 E. 5296, European Affairs, Records Relating to Portugal, Box 2, PL 85-892, NARA II. “President Lyndon B. Johnson’s Remarks at the Signing of the Immigration Bill, Liberty Island, New York, October 3, 1965.” Lyndon B. Johnson Library and Museum, <http://www.lbjlib.utexas.edu/Johnson/archives.hom/speeches.hom/651003.asp> (accessed 6/15/10).

²⁴ Parole authority stems from section 212(d)(5) of the McCarran-Walter Act of 1952, and grants the Attorney General the authority to temporarily bring people into the country in situations of extreme need. On the development of parole authority, see: Anker and Posner, “The Forty Year Crisis,” 15, and Stephen Thomas Wagner, “The Lingering Death of the National Origins Quota System: A Political History of United States Immigration Policy, 1952-1965” Ph.D. Dissertation, Harvard University, 1986, 305-306.

situation, with State arguing that the estimated one million refugees in Hong Kong and Macau formed the “largest single bloc of anti-Communist refugees in the world.” Pierce Gerety, head of the Refugee Relief Program, visited Hong Kong as part of his 1955 tour of worldwide refugee sites, to make sure that the 4,000 visas available under the Refugee Relief Act for Asia would be utilized. Even in an era when the Asia-Pacific Triangle still heavily limited immigration from Asia, State Department officials argued in 1957 and 1958 that Asian refugees needed to receive equal treatment as Europeans. Here bureaucratic entrepreneurship preceded legislative efforts.²⁵

To return to the labor category, the robust regulatory system for admitting labor migrants, in the form of the Schedule A and B to define which immigrants would receive automatic labor certification and which could never receive certification, were created *after* legislative reform. The Department of Labor did have limited powers to decide who qualified as an acceptable laborer prior to 1965, but the system of labor certifications written into the McCarran-Walter Act of 1952 only worked in the negative – the Department had to affirmatively certify that an immigrant would harm the American economy or American wages for him or her to be barred from entry. Unlike the broad powers given to the refugee bureaucracy within the State Department, the Department of Labor only received the power to check and certify all labor immigrants after 1965.²⁶

In the end then, for the family and labor categories, the relationship to the national origins quota system, as well as the emphasis on development through legislation, set in motion feedback loops that were most active around the time of the McCarran-Walter and Hart-Celler Acts. The refugee category, by contrast, developed incrementally over a longer period of time, with much of the expansion arriving from a bureaucratic apparatus rather than from legislation. The next section will compare the push-and-pull forces at the heart of each category’s feedback loop.

PUSH-AND-PULL: SUCCESSFUL DEFENSES OF OLDER POLICIES AND FAILED ATTEMPTS AT REFORM

In this dissertation I have argued that the key to understanding the development of the preference categories was the largely silent interplay between a series of successful defenses of older policies by restrictionists, and failed attempts at reform by liberals in

²⁵ Department of State, Office of Refugee and Migration Affairs, Bureau of Security and Consular Affairs, “Refugee Problems, World Survey,” October 10, 1958. Emanuel Celler Papers, Box 258, Refugees 1957-1960 (2), Library of Congress, 10 and 16, and Walter McConaghy to J.W. Bennett, “Chinese Refugees in Hong Kong,” Feb 14 1957, RG 59, Records of the Office of Chinese Affairs, Box 5, UNHCR, NARA II.

²⁶ The AFL-CIO, for example, argued in June of 1965 that the Department of Labor needed more authority to define eligible occupations for immigrants than the 1952 Immigration Act provided. Frank Cassell of the Department of Labor argued in a 1966 article that the enhanced certification procedures from the Hart-Celler Act “forged a stronger link between immigration policy and national manpower by virtue of broader Department of Labor participation.” Kevin Butler to Andrew Biemiller and Kenneth Meiklejohn, June 15, 1965, AFL-CIO Records, RG 21-001, Box 27, Folder 31, National Labor College; Frank H. Cassell, “Immigration and the Department of Labor,” *Annals of the American Academy of Political and Social Sciences*, Vo. 367 (Sep. 1966), 106.

the late-1940s through the early-1960s. This section will detail and compare the push-and-pull mechanisms at play in each of the three categories.

For both the family and labor categories, the McCarran-Walter Act of 1952 formed the first concrete defense of an older policy. First and foremost, the Act retained the national origins quota system, updating it for the new postwar circumstances. Senator Pat McCarran, for example, dropped a language of racial difference for one of assimilation, arguing that admitting immigrants in proportion to their ethnic makeup in the nation would ease integration, while downplaying the hierarchical nature of the quota system.²⁷ This new admissions system, with half of all visas given to skilled labor, and half to family reunion, primarily affected those countries already disadvantaged by the national origins system (such as Italy or China,) by further limiting their quota usage through preference allotments.²⁸

Even within this defense of the national origins system, the right to family reunification rose to the forefront of the debate. Francis Walter, writing the House report for the Act, argued that “adequate provision is made for the preferential treatment of close relatives,” in the new law, which was “consistent with the well established policy of maintaining the family unit whenever possible.”²⁹ Compared to the Hart-Celler Act, the notion of family reunification here was limited, with only spouses and minor children of citizens receiving nonquota entry, and only the parents of citizens and the spouses and children of legal permanent residents receiving quota visas. The brothers and sisters and adult children of U.S. citizens, while included in the preference system, received no fixed number of visas, only a portion of those left over from the other categories. Even in this explicit defense of the national origins system, the rhetoric of the family was paramount. Liberals and conservatives differed on whether to expand or contract immigration, but all recognized the need for and uncontroversial nature of reunification.

Unlike the family category, the defense of the quota system in 1952 did not appeal to the need for labor migration, but instead formed, for many legislators, a way to limit total overall immigration to the nation. Pat McCarran argued that the new preference structure “provides a more thorough screening in order to insure that the admission of aliens...will serve the national interest,” even though by State Department estimates only 3,200 people a year would enter under the skills-based provisions – a far cry from the 50 percent, or 77,000 visas, allotted to the category. The 100 percent preference system (split between

²⁷ Daniel Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002), 192-193.

²⁸ For the large-quota countries of Germany, Great Britain, and Ireland, (the nations that sent three-quarters of all immigrants to America every year,) the 1952 changes made little difference. None of the three utilized their entire quota allotments, with Great Britain and Ireland using only 39 and 36 percent, respectively. Aggregated from: *Annual Report of the Immigration and Naturalization Service, FY 1953-1965*, Table 7: Annual Quota and Quota Immigrants Admitted.

²⁹ 82nd Congress, 2nd Session, House Report No. 1365, “Revising the Laws Relating to Immigration, Naturalization, and Nationality,” February 14, 1952, 38-39.

the labor and family categories,) was, according to Emanuel Celler, “an ingenious method of hermetically sealing our shores against immigration.”³⁰

With the vast majority of immigrants arriving outside of quota restrictions every year, and less than 6 percent of all migrants entering under the labor category,³¹ Celler’s fears about shutting off immigration were unwarranted. And yet, the low-labor usage helped to shape the development of the labor category as well. Labor migration was far less popular with reformers than family reunification, and the fact that most labor slots went unused after 1952 did not make the category any more attractive. Importantly as well, those pushing for a greater number of slots for the siblings of citizens had good reason to do so, by virtue of the backlogs that had developed. These long waits coalesced a defined constituency of pressure groups, especially for those representing the Italian immigrants most disadvantaged by the long waits. Backlogs *would* develop for the labor category, but primarily only for those skilled workers entering from Asia. With no backlog for unskilled migrants, the aftermath of the McCarran-Walter Act’s preference system worked to further push the group from the minds of legislators, and ultimately from permanent admissions. Irish immigrants, who would vigorously protest the exclusion of their unskilled brethren after 1965, faced no real barriers to entry under the quota system, and thus had no impetus to retain visa allocations for the unskilled. Liberal legislators like Celler also lost the battle to keep open avenues for new seed immigration to enter the country.³²

The clearest example of an attempt to defend the older, limited notion of family reunification rights arrived in 1962, in the form of a letter from Francis Walter to the United-Italian American Labor Council. Walter responded to a request to clear a backlog of 4th preference immigrants, the siblings of citizens, waiting to immigrate. The congressman laid out a definition of family reunification that gave preference to immediate relatives first and foremost, which would live and work under one roof, as single family units. Siblings, by contrast, constituted “new family units, seeking employment opportunities and their own homes in this country.” “Fourth preference categories,” he concluded, “most definitely [do] not belong in the notion of “family reunion.”³³ Walter’s letter to the Labor Council is the clearest statement defining family reunification that I have found, and the most transparent attempt to retain a more limited notion of family reunification, as was found in the McCarran-Walter Act of 1952. Critically though, while restrictionists successfully staved off attacks on the national origins quota system with the McCarran-Walter Act, Walter’s defense of the 4th

³⁰ McCarran quote in: Sidney Kansas, *Immigration and Nationality Act Annotated* (New York: Immigration Publications, 1953), iii. These estimates were provided by Emanuel Celler during the 1952 hearings. “Revision of Immigration, Naturalization, and Nationality Laws,” Joint Hearings before the Subcommittees of the Committees of the Judiciary, 82nd Congress, 1st Session, on S.716, H.R. 2379, and H.R. 2816”, March-April, 1951, 359.

³¹ See fn 20.

³² On Irish and lobbying in favor of greater numbers of unskilled immigrants after 1965, see: Anna O. Law, “The Diversity Visa Lottery – A Cycle of Unintended Consequences in United States Immigration Policy.” *Journal of American Ethnic History*, Vol. 21, No. 4 (Summer 2002).

³³ Francis Walter to Luigi Antonini, January 22, 1962. Ralph Dungan White House Staff Files, Box 1, Immigration, JFK Presidential Library.

preference came too late in the process of reform. By 1962, long backlogs and small pieces of reformist legislation had started a feedback loop in favor of family reunification and more specifically, of siblings, within the visa preferences. In 1965, policymakers would give more visas to the brothers and sisters of citizens than any other category.³⁴

While the refugee category developed more incrementally than family or labor, defenses of older policies still helped to shape its evolution. When the McCarran-Walter Act failed to revise the quota system, bureaucrats and liberal legislators suggested temporary refugee bills, such as the Refugee Relief Act of 1953, to fill the void. The State Department first recognized the dangers that overcrowding and numbers of refugees had for European democracy, and first suggested refugee policy in 1950 as a way around the quota system. It would take until 1953, after the passage of the policy defense in 1952, for this vision of refugee policy to succeed.³⁵ The defense of national origins in 1952 then led to an immediate augmentation of the refugee apparatus with the Refugee Relief Act and Refugee Relief Program.³⁶

Other expansions to the refugee bureaucracy and definition of a refugee also emerged from older defenses of policymaking. Parole authority in particular, which would become the primary way that the United States admitted refugees, especially once worldwide refugee crises exploded in the 1970s, was written into immigration law with the McCarran-Walter Act, and first suggested for use in the Hungarian refugee crisis of 1956 by Francis Walter. Though Walter initiated the use of parole for the Hungarians, he balked at immediately adjusting their status to permanent residence, arguing that the security protocols in place with other refugee movements had not been taken into account. Still, though Walter was unhappy with the relative ease of admissions in 1956, parole authority ultimately opened a space for unchecked admissions programs, as Presidents from Eisenhower on would welcome large groups of refugees, especially Cubans.³⁷

On the other side of the push-and-pull coin, the Refugee-Escapee Act of 1957 provides one of the clearest examples of how unsuccessful reform efforts helped to advance the preference categories. The Act emerged from an Eisenhower Administration drive for comprehensive reform that commenced as early as 1955. Eisenhower proposed a regional quota-pooling scheme that would have mitigated the effects of the national origins system, by allowing unused visas to be utilized by immigrants from oversubscribed countries. Ultimately, restrictionists were able to block any change to the quota system, and the drive for *immigration* reform, ended up with a *refugee-escapee* bill instead. But while full-scale reform failed, the bill did accomplish a number of important things, most notably starting to clear the preference backlogs, and advancing the definition of a refugee. The Act granted immediate entry to anyone waiting for a 1st, 2nd, or 3rd

³⁴ On the 1959, 1961, and 1962 Acts, see fn 7.

³⁵ See, for example: "Italian Over-Population and Migration", "The Greek Population Problem and Emigration," and "Netherlands Emigration Problems," June 6, 1950, RG 353, Records of the European Migration Working Group, Box 136, MWG Documents, NARA II.

³⁶ On the basic contours of the RRP, see: Bon Tempo, *Americans At the Gate*, Chapter 2.

³⁷ On parole authority and the 1950s, see: Anker and Posner, "The Forty Year Crisis," and Wagner, "Lingering Death," 305-306.

preference category, with an approved petition filed prior to July 1, 1957. It also included those fleeing turmoil in the Middle East to the older Communist-centric refugee definition.³⁸ While the bill disappointed senators like John O. Pastore (D-RI), who argued that the 60,000 people eligible failed to “measure up to all my hopes,” its passage opened the door to further small changes in 1959, 1961, and 1962.³⁹ Like the Refugee-Escapee Act, each of these bills started out life as failed comprehensive reform attempts, but ultimately worked to solve the issues of family-preference waiting times first and foremost, with legislators achieving small clearings of the backlogs in each. By privileging reunification, these bills helped to enshrine a notion of family as the driving force behind policymaking.

Unsuccessful reform efforts also touched on the labor category, and helped to further enshrine a notion of the highly skilled and professional as the ideal labor migrant. While the 1957 bill cleared the 1st preference backlog prior to July 1, 1957, within five years, the State Department estimated that 6,900 skilled and professional Chinese workers alone were waiting for the 1st preference. The second section of P.L. 87-885 of 1962 spoke directly to this preference, allowing all those waiting for the 1st preference to enter immediately. Francis Walter, co-sponsor of P.L. 885, was emphatic that “nothing in my bill would permit the entry of recent Chinese refugees who entered Hong Kong or any other place.” He continued by stating that he was “opposed to the admission of any of those people as I fully realize that this country is unable to absorb them,” and made it clear that his bill would only benefit those Chinese specialists deemed urgently needed by American employers – mainly in the business, defense, and medical fields.⁴⁰ Here even as Walter passed legislation to admit more than three times the yearly rate of immigrants from *all* of Asia in one shot, he stated emphatically that he was only interested in bringing in one type of immigrant – the highly skilled.⁴¹ As in the 1952 Act, when both restrictionists and liberals used similar rhetoric about the need for family reunification, this expansion of labor migration followed a similar pattern, with restrictionists and liberals both pushing for greater numbers, here under the guise of 1st preference workers.

Finally, failed attempts at reform helped drive the evolution of the refugee category, as they did in family and labor. The idea of a setting a permanent allotment for refugee admissions emerged during the Refugee-Escapee Act debates in 1957, when the Eisenhower Administration asked for the authority to parole in up to 62,000 people per year. Restrictionists scuttled the idea of setting a fixed number, but the idea of placing a ceiling on admissions as a way to tamp down on refugee admissions remained in the orbit of admissions policymaking into the 1960s.⁴² Thus when President Kennedy suggested a special board to determine refugee admissions in the Hart-Celler Act, which would have

³⁸ On the Refugee-Escapee Act, see: Bon Tempo, *Americans At the Gate*, 82-83 and Wagner, “Lingering Death,” 318-336.

³⁹ *Congressional Record*, 85th Congress, 1st Session: 15497.

⁴⁰ “Form Letter Used by Honorable Francis E. Walter, M.C., regarding his bill, H.R. 11911, introduced on May 24, 1962,” RG 233, 87A-D9, Judiciary Committee, Box 261, HR 11911 (3 of 3), NARA I.

⁴¹ The Asia-Pacific Triangle, in operation from 1952 to 1965, limited immigration to just over 2,000 people per year from the area. See: David M. Reimers, *Still the Golden Door: The Third World Comes to America* (New York: Columbia University Press, 1992 [1985]), 17-18.

⁴² Bon Tempo, *Americans At the Gate*, 82.

removed this authority from Congress, the groundwork had been set for Congress to reassert its power, by excising the board and instead setting a permanent allotment for refugees. The 6 percent figure included in the 1965 Act ultimately proved too small to handle world refugee crises, as the numbers of refugees seeking entrance only increased in the 1970s. In the wake of the Vietnam War and Soviet Jewry crisis, legislators in 1980 augmented the conservative figure from 1965, to a baseline of at least 50,000 immigrants per year. Here again, this first permanent figure emerged from a failed attempt at reform in 1957.⁴³

LESSONS FROM POLICY DEFENSE AND FAILED REFORM

A number of important lessons emerge from this comparison of push-and-pull factors in the postwar era. While defense and reform were central to all three categories, only in the family preference did both defense *and* reform attempts draw on the necessity of a robust reunification policy. While the two camps debating legislation differed in their ideas over who should qualify for reunification – most notably Francis Walter’s 1962 letter excluding siblings from visa policy – the fact that both sides agreed upon the notion of keeping family members together was more important in the development of the category and its ultimate place at the forefront of the visa preference system, than anything else. *Thus regardless of intentionality, a focus on one aspect of the immigration debate by all parties helps to enshrine some version of that reform, even in the face of opposition.* Critically, this one-sided rhetorical focus had to combine with large backlogs – i.e. a substantive group attempting to immigrate, with a defined constituency – to win a place in the 1965 reforms. Unskilled immigrants and the new seed, whose numbers were under- rather than over-utilized after 1952, could not buck the negative trend toward labor admissions.

On the other hand, the push-and-pull forces in the labor category illustrate that the feedback loops at work in the postwar era did not simply mean that the most rhetorically dominant issues made their way into comprehensive reform. While unskilled immigrants lost out in the Hart-Celler reforms, temporary work programs were left intact. Like the debate over family reunification, discussions of guest worker programs were decidedly one-sided during the 1960s. While conservative senators like Pat McCarran and James Eastland (D-MS) fought to keep guest worker agreements like the *bracero* program alive, groups like organized labor railed against the importation of any such temporary migrants. The *bracero* program garnered intense criticism throughout the 1950s, and President Johnson finally terminated it in 1964.⁴⁴ But for all of the criticism of temporary work visas, legislators ignored the category in the Hart-Celler reforms, preferring to focus on permanent admissions. As Norbert Schlei of the Johnson Administration would state in a January 1965 briefing on the Hart-Celler Act, “we get primarily educated, skilled people...we just don’t get illiterate people. They can’t afford to come to the United

⁴³ Anker and Posner, “The Forty Year Crisis.”

⁴⁴ On the *bracero* program, see: Kitty Calavita, *Inside the State: The Bracero Program, Immigration, and the I.N.S.* (New York: Routledge, 1992) and Reimers, *Still the Golden Door*, Chapter 2.

States, and they can't make the arrangements to come here on any basis."⁴⁵ While legislators increasingly excluded the unskilled from permanent admissions, they felt no pressure to do the same for temporary work visa programs.

Finally the course of defense and failed reform in the refugee category illustrates that while a catalyst is ultimately necessary for comprehensive reform to pass (like the confluence of factors that combined and built up to open a space for the Hart-Celler Act,⁴⁶ it does not necessarily have to emerge from an overtly discriminatory policy such as the national origins quota system. The 1965 reforms instituted a cap on refugee admission that was too small to be effective for U.S. foreign policy goals and international obligations, and thus policymakers after 1965 returned to parole authority to admit greater numbers into the country. When parole usage exploded in the 1970s, legislators passed an updated Refugee Act in 1980, raising the ceiling on admissions to at least 50,000 people per year, adopting a more expansive and non-ideological definition of a refugee, and implementing the country's first asylum protocols. Here then experience under the 1965 system led to new reforms in 1980. The next section will expand on these lessons, and connect the postwar reforms with the contemporary efforts at immigration reform.⁴⁷

Part II – Hart-Celler, Historiography, and Contemporary Immigration Reform

HISTORIOGRAPHY

The development of immigration and refugee policy in the postwar era touches on one of the most important aspects of political development: how the nation-state projects its power abroad, and sets its boundaries internally. This sense of authority is operationalized through multiple forces, including international views on the relative openness of American borders, and the multiple aspects of American identity, including

⁴⁵ Norbert A. Schlei, "Background Briefing on a bill to amend the Immigration and Nationality Act," January 12, 1965, 28. White House Press Office Files, Box 80, Background Briefings, January 7, 1965-January 18, 1965, LBJ Presidential Library.

⁴⁶ There are almost as many opinions as to the contributing factors for change in 1965 as there are students of the process. At the risk of oversimplifying, most cite some or all of the following: the fight against Nazism and the discrediting of race science; international decolonization; the creation of the United Nations and the increasing voice of third world nations in the international sphere; and the Cold War and fight against Communism. The Civil Rights Movement facilitated changing ideas about immigrants and minorities, and as scholars such as John Skrentny have pointed out, it is not surprising that Hart-Celler arrived concurrently with the landmark Civil Rights Act of 1964 and Voting Rights Act of 1965. Scholars such as Daniel Tichenor have also singled out the work of strong presidents such as Kennedy and Johnson, an overwhelmingly Democratic Congress after 1964, and the death of a staunch restrictionist, Congressman Francis Walter, as factors driving change. See: Desmond King, *Making Americans: Immigration, Race, and the Origins of the Diverse Democracy* (Cambridge: Harvard University Press, 2000); Loescher and Scanlan, *Calculated Kindness*; Tichenor, *Dividing Lines*; Zolberg, *Nation By Design*; John D. Skrentny, *The Minority Rights Revolution* (Cambridge: Belknap Press of Harvard University Press, 2002).

⁴⁷ On the provisions of the Refugee Act of 1980 and the debates that led up to its passage, see: Anker and Posner, "The Forty Year Crisis," and Bon Tempo, *Americans At the Gate*, Chapter 7.

its ethnic and racial makeup, economic force, and labor power. At times in this story conservative attempts to shut the gates interfered with executive branch priorities to win the fight against global communism. At other times, most notably the shift to including humanitarian intervention in refugee policy, decisions about admissions policy pushed the United States to further develop a conscious sense of its obligations in the field of human rights. I argue that the development of the three preference categories, and their enshrinement in the Hart-Celler Act of 1965 altered key functions of the nation-state, augmenting some of its power over admissions and foreign relations, while limiting others.

In the first place, while the exclusion of the unskilled from immigration policy meant that the bulk of all permanent immigrants arrived outside of the Department of Labor's regulatory authority to safeguard the American workforce, the same reforms gave teeth to these labor and employment standards. The Hart-Celler Act laid the foundation for a series of criteria and regulations to choose which labor-based immigrants could and could not be admitted, strengthening the defenses for the American economy. Similarly, the robust refugee bureaucracy created during the postwar period and tested during the 1970s proved malleable enough for new reforms to occur in 1980. The Refugee Act of 1980 implemented a more expansive resettlement program, and initiated asylum determination procedures. While the definition of a refugee has at times still trended more toward American interests (for example resisting classifying Haitians or Salvadorans as refugees, because of the close ties with their dictators,) than international obligations, the overall evolution of the category has enshrined in the United States a set of humanitarian standards for dealing with people fleeing turmoil aboard.

Furthermore, the development of the preference categories speaks to the diplomatic history field of "U.S. and the World." Scholars working within the U.S. and the World paradigm have revised the history of American foreign relations away from a traditional focus on major events, wars, and diplomatic breakthroughs, and toward more bottom-up and transnational histories.⁴⁸ The course of immigration and refugee policy during the Cold War, which bridged the gaps between foreign and domestic policy, illustrates the need for more history-from-below narratives of diplomatic relations, which consider how such small and individual issues such as visa allocations change the course of U.S. foreign policy. The State Department's balancing of the humanitarian refugee crisis in Hong Kong with a domestic situation still hostile to Asian immigration, provides one such example of the importance of studying immigration and refugee policy. Similarly, debates around who would receive greater or fewer quota slots in the early Cold War era were as critical to defining postwar foreign relations as were larger, and more noticeable efforts such to rebuild Europe, such as the Marshall Plan. Certainly the push to alleviate overcrowding in European nations in the early 1950s, with an eye to the march of global Communism, illuminates the important role that visa policy plays in foreign relations.

⁴⁸ On the expansion of diplomatic history from top-down narratives to emphasize a wide range of studies, see: Thomas W. Zeiler, "The Diplomatic History Bandwagon: A State of the Field," *The Journal of American History*, Vol. 95 (March 2009) No. 4, and Michael J. Hogan ed., *America in the World: The Historiography of American Foreign Relations since 1941* (Cambridge: Cambridge University Press, 1995).

My dissertation also highlights the important place that individuals within the foreign policy bureaucracy had in developing admissions policy. While foreign affairs play a role in most scholars' narratives of immigration politics, it forms only a portion of the story, alongside various other questions about economic need, perceived social and cultural attributes of the newcomers, and shared markers of national identity.⁴⁹ I argue that the key (and often times most important) role that many State Department officials played in drafting immigration and refugee policy – including Robert Alexander's work on the McCarran-Walter Act in 1952, Scott McLeod's work on immigration and refugee legislation and policy throughout the 1950s, and Abba Schwartz's work on Hart-Celler in the 1960s – belies an even greater importance of foreign relations in domestic policymaking. All three individuals, by virtue of their positions within the State Department, and their work in designing Executive Branch policy, had a keen understanding of the domestic *and* international ramifications of policymaking, far greater than their colleagues in other branches of the bureaucracy such as the Departments of Justice and Labor. The policy prescriptions of Alexander, McLeod, and Schwartz did not always emerge untouched in the legislative process – certainly Michael Feighan's substitution of a revised preference system in 1965 negates any notion of a straight line of continuity from the bureaucracy to Congress. Nonetheless these individuals, and the State Department as a whole, stood at the heart of the immigration and refugee debates. I argue that diplomatic scholars would do well to consider more closely the debates around immigration, which are all too often relegated to political historians.⁵⁰

ECHOES OF HART-CELLER: CONTEMPORARY REFORM

With this brief description of how the development of immigration policy during the postwar era speaks to the fields of American Political Development and U.S. and the World, I now turn to examining the ramification of my work on contemporary policymaking. The lessons from older defenses of policymaking and unsuccessful reform efforts provide a number of models for contemporary immigration politics, and a number of avenues for further study.

It is important to note here just how much the context for immigration reform has shifted in the past few decades. These changes emerged partially from the Hart-Celler Act, and partially from the course of post-Hart-Celler reforms. In the first place, Hart-Celler did not resolve many of the most pressing issues at play before its passage. The 1965 Act failed to clear the backlogs in the family preferences, which only continued into the

⁴⁹ See, for example, the multiple axes of immigration policy laid out in: Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2006), 11-23.

⁵⁰ A search through the archives of *Diplomatic History*, the journal of the Society for Historians of American Foreign Relations (SHAFR), the premier organization for historians working on American foreign policy and U.S. and the World, uncovered only seven articles whose primary subject was immigration or refugee policy published between 2000 and 2010, four articles on immigration, and three on refugees. Search terms: immigra*, refuge*, asylum, migra*, conducted on 8/24/10.

1970s. The original Kennedy-Johnson proposal for reform included a five year transition period, during which time the number of visas allotted to the quotas would be stepped down gradually, and all unused and nonquota visas would be given over to oversubscribed countries. The Feighan substitute bill only contained three years of transition. Even with more visas given to the siblings' category than any other, the demand for overflow visas far outstripped supply after 1965. On the eve of Hart-Celler's implementation on July 1, 1968, there was still a backlog of 100,000 people for the siblings' category, and 50,000 for the 3rd preference for skilled and urgently needed labor.⁵¹ After Hart-Celler, The Immigration Reform and Control Act (IRCA) of 1986 in particular set the stage for many of the current conflicts. IRCA provided for the legalization of around three million undocumented immigrants, to deal with the question of those already in the country; expansions to the H-2 temporary work visa, to deal with the question of demand for entry; and an employer sanctions program, designed to clamp down on further illegal entry, by cutting off supply of employment. These employer sanctions were never given adequate regulatory authority to make them viable, and so by not dealing with the issue of supply, scholars argue that the IRCA reforms led to an increase, rather than a decrease, in entry outside of legal status.⁵²

The current outlook for immigration reform is more perilous than ever. Public rhetoric today has become increasingly polarized between those who believe the only way to solve the immigration problem is to regularize the status of unauthorized immigrants in the country, versus those who believe that immigrants take American jobs and hurt the economy, and that the only way to solve the immigration crisis is to militarize the border. This latter group views earned legalization programs as, in the words of political scientist Daniel Tichenor, "unethical rewards to those who break the rules," that provides "stimulants to new waves of undocumented immigrants anticipating similar treatment." Though the actual issues at hand, as well as public opinion about immigrants (legal *and* undocumented,) are far more complicated, these two positions monopolize much of the public debate. A number of factors have given rise to this ever-growing schism, including the 24-hour news cycle, which has brought the issue of undocumented entry and border security to the forefront of public opinion; the rising influence of Latino voters in American politics; and the shape of post-1965 immigration reforms.⁵³

Still, while the current political context may have changed, the cautionary lessons for contemporary policy from the Hart-Celler Act are clear. Much of the emphasis for omnibus reform in 1965 emerged from the growing disconnect between an explicitly

⁵¹ On the post-Hart-Celler backlogs, see: Abba P. Schwartz, *The Open Society* (New York: William Morrow & Company, Inc., 1968), 130-131.

⁵² On the post-IRCA landscape for immigration reform, see also: Zolberg, *Nation By Design*, Chapter 11, and James G. Gimpel and James R. Edwards, Jr., *The Congressional Politics of Immigration Reform* (Boston: Allyn and Bacon, 1999), Chapter 7. Daniel J. Tichenor, "Navigating an American Minefield: The Politics of Illegal Immigration," *The Forum* Vol. 7 No. 3, 2009, 11.

⁵³ Tichenor concludes that many of the current proposals for reform "appear inadequate, too costly, unpopular, or likely to have unintended consequences," leading to resistance by advocates on both sides of the issue to comprehensive reform efforts. Tichenor, "Navigating an American Minefield," 5 and 11.

race-based hierarchical admissions system and the changing 1960s circumstances.⁵⁴ While the quota system is no longer in existence, the path dependencies set in motion by its demise are still in place today. Here I examine four parts of the contemporary immigration debate, (a) backlogs, (b) border security, (c) the DREAM Act, and (d) refugee policy, to discuss the linkages between my work and contemporary politics.

In the first place, the shape of the Hart-Celler reforms suggests that wiping away preference backlogs is no simple process. The current waiting time for the siblings of U.S. citizens is no less than 11 years, and as many as 23 years for natives of the Philippines.⁵⁵ And yet the most recent attempt at comprehensive reform, the “Conceptual Framework for Immigration Reform,” laid out by Senators Harry Reid (D-NV), Chuck Schumer (D-NY), and Robert Menendez (D-NJ) in April of 2010, relies on just such a clearing. Visa reform under the proposal occurs in two phases: first through “the recapture of immigrant visas lost to bureaucratic delay.” By this process, the proposal continues, “the family immigration backlog will be cleared over the course of eight years.” The lessons of history suggest that such a quick erasure of the backlog would be difficult at best, and close to impossible at worst.

Moreover, miscalculating the durability of visa backlogs carries important policy consequences. The provisions in contemporary comprehensive reform proposals relating to adjustment to legal status for unauthorized aliens are dependent on this clearing of the backlog, to allow these immigrants to ‘get to the back of the line.’ The proposals use the clearing of the backlogs as a precursor to implementing this legalization, making the stakes for achieving the desired policy result incredibly high.⁵⁶

Policymakers in the early 1960s faced a similarly long set of backlogs, and a corresponding need to wipe them clean prior to reform. By 1965 there were hundreds of thousands of people waiting for preference visas, and to solve this problem, legislators shaping Hart-Celler implemented a three-year transition period, during which time the quotas would gradually be reduced, with the unused visas being put into a quota pool to be used by oversubscribed countries like Italy, Greece, and Portugal. The demand for these pooled visas was so great that by 1968, when the full Hart-Celler system went into effect, there were still over 150,000 people waiting for visas – 50,000 waiting for the 3rd preference for the highly skilled (mainly from Asian countries that had faced severe quota limitations prior to 1965,) and 100,000 for the 5th preference for siblings of

⁵⁴ On the changing circumstances surrounding the passage of the Hart-Celler Act, see: Reimers, *Still the Golden Door*, Chapter 3; Tichenor, *Dividing Lines*, 207-218; and Zolberg, *Nation By Design*, 324-336.

⁵⁵ As of February 2011, visas are available for those brothers and sisters of citizens who registered for a visa prior to: January 1988 for the Philippines; January 1996, for Mexico; and January 2000, for the rest of the world. Data on waiting times for visas from: Department of State, “Visa Bulletin for February 2011,” Number 29, Vol. 9, http://www.travel.state.gov/visa/bulletin/bulletin_5228.html, accessed 2/1/11.

⁵⁶ Senators Reid, Schumer, and Menendez, “Conceptual Proposal for Immigration Reform,” April 29, 2010, 1 (<http://jeffmanuel.net/files/ReidSchumerMenendezImmigDraft2010.pdf>, accessed 8/24/10), 22-23. The pathway to earned legalization in the framework has two phases: phase 1 includes granting “Lawful Prospective Immigrant” (LPI) status to eligible unauthorized immigrants, which gives them the ability to work and travel. Phase 2, where immigrants on LPI status can transition to LPR, is slated “to take place in eight years after current visa backlogs have cleared (the “back of the line” provision.)

citizens, mainly from Italy. The post-Hart-Celler visa system began not with all preferences on an equal footing, but instead with steep backlogs for certain preferences.⁵⁷

To further complicate an easy process of wiping away the contemporary waiting lists, various commissions and legislative proposals to curtail the reunification categories have run into stiff opposition. Groups representing Asian and Latino immigrants in particular, have fought to maintain the current preference for the siblings of U.S. citizens.⁵⁸ The Immigration Act of 1990 provides one example of a failed attempt to reorient immigration priorities to curtail family and expand labor. Sustained opposition from church groups, ethnic organizations, and employers all pressured Congress to raise, not lower, total overall immigration. The 1990 Act kept the same proportion of visas, 70 percent for family, and 20 percent for labor, even while expanding the overall number of visas from 290,000 to 675,000. As in the postwar period, the backlog in the siblings' preference will be difficult to remedy.⁵⁹

The current debate over border security provides an analog to the postwar development of the family preference. Just as both sides harnessed the rhetoric of the family to different ends, so too today both Democrats and Republicans talk about securing the border to different ends. During the second session of the 111th Congress, in 2010, border security preceded all other efforts. For Republicans, border security had to precede any action on comprehensive reform, with Senators like Jon Kyl (R-AZ) discussing an "enforcement first" strategy that would augment funding and manpower. Senators Kyl and John McCain (R-AZ) attempted unsuccessfully to pass a bill in May of 2010 that would have added 6,000 extra troops to the U.S.-Mexico border.⁶⁰

On the Democratic side, Congressman Luis Gutierrez's (D-IL) bill, H.R. 4321, the "Comprehensive Immigration Reform ASAP Act (CIR-ASAP), introduced in December of 2009, proposed "Border Security and Enforcement" before any other provision. While the bill called for humane border proposals that take into account issues of "civil rights, family unity, private property rights, privacy rights, and civil liberties," the priorities of enforcement first, and all else second, are telling.⁶¹ Similarly, the Reid-Schumer-

⁵⁷ See fn 51.

⁵⁸ The U.S. Commission on Immigration (Jordan Commission,) created with the Immigration Act of 1990, suggested that the fifth preference (siblings of citizens,) be eliminated because, among other reasons "unless there is a compelling national interest to do otherwise, immigrants should be chosen on the basis of the skills they contribute to the U.S. economy. The Commission believes that admission of nuclear family members and refugees provide such a compelling national interest. Reunification of adult children and siblings of adult citizens solely because of their family relationship is not as compelling." U.S. Commission on Immigration Reform, *Legal Immigration: Setting Priorities* (Washington, D.C.: Government Printing Office, 1995), Pg. 19. Quote from the executive summary: (<http://www.utexas.edu/lbj/uscir/exesum95.pdf>, accessed 10/29/09). On the 1990 Act in general, see: Gimpel and Edwards, *Congressional Politics of Immigration Reform*, 185-199.

⁵⁹ Zolberg, *Nation By Design*, 375-376.

⁶⁰ Jon Kyl, "Border Security," http://kyl.senate.gov/legis_center/border.cfm, accessed 8/24/10. Paul Kane, "McCain Border Security Plan Falls Short in Senate," *Washington Post*, May 28, 2010.

⁶¹ H.R. 4321, "Comprehensive Immigration Reform ASAP Act of 2009", introduced December 15, 2009. <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.4321>; accessed 8/24/10. "Title I—Border Security and Enforcement." Quote about civil rights and border security in Sec. 111(b)(6).

Menendez framework for immigration reform in the Senate argued that “securing the border” must come first, “before any action can be taken to change the status of people in the United States illegally.” Here Democratic proposals attempted to utilize border security debates to win their ultimate goal of comprehensive reform, while Republicans attempted to delay programs like earned legalization until the border could be fully secured.⁶²

Even though statistics from the U.S. Customs and Border Patrol illustrate that border apprehensions dropped 23 percent from 2008 to 2009, while Immigration and Customs Enforcement expected to deport 10 percent more individuals in 2010 than in 2008, and 25 percent more than in 2007, executive and legislative branch actions on immigration reform in 2010 focused first and foremost on adding more manpower and funding to the border.⁶³ In May of 2010, President Obama ordered 1,200 National Guard troops to augment security on the U.S.-Mexico Border, in a move that *Politico* described as “designed to blunt the amendment in the Senate by Sen. John McCain” to add 6,000 troops. Ultimately, the one and only immigration bill to pass both houses of Congress for the 2010, H.R. 6080, the “Emergency Border Security Supplemental Appropriations Act of 2010,” added \$600 million in funding for border security, without touching any other aspects of reform.⁶⁴

This is not to argue for or against the need for border security, or to downplay the scope of legislative possibility in an election year trending toward the right. Furthermore, the passage of Arizona’s S.B. 1070, “The Support Our Law Enforcement and Safe Neighborhoods Act,” which imposed strict penalties on all undocumented immigrants in the state, and grants Arizona’s police broad powers to deal with illegal immigration, furthered limited the possibilities for reform. S.B. 1070 generated controversy over provisions that could open the door to racial profiling, and the most problematic portions were stayed by a federal judge on July 28, 2010.⁶⁵ But just as both sides in the border security debate agreed on the need for greater enforcement, both liberal and conservative commentators in the wake of S.B. 1070 agreed that the one thing Arizona illustrated was that the current immigration regime needed fixing.⁶⁶ Just as the long and bi-partisan

⁶² Reid et al., “Conceptual Proposal,” 1.

⁶³ Department of Homeland Security, “Immigration Enforcement Actions: 2009,” August 2010, http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_2009.pdf, accessed 8/24/10; Peter Slevin, “Deportation of Illegal Immigrants Increases under Obama Administration,” *Washington Post*, July 26, 2010. It is important to note that the deep recession beginning around 2008 contributed to the attrition of immigrants from the nation.

⁶⁴ Josh Gerstein and Jonathan Allen, “Barack Obama Orders Guard to Mexican Border,” *Politico*, May 25, 2010; Jim Abrams, “Obama to Sign \$600M Border Security Bill Friday,” *The Associated Press*, August 12, 2010.

⁶⁵ For a roundup of criticism against the Arizona bill, see: Seth Hoy, “Turning Up the Heat on Immigration: New Arizona Law Spurs Need for Immigration Reform,” Immigration Policy Center, Immigration Impact Blog, April 22, 2010. <http://immigrationimpact.com/2010/04/22/turning-up-the-heat-on-immigration-new-arizona-law-spurs-need-for-immigration-reform/>, accessed 8/24/10. Randal C. Archibold, “Judge Blocks Arizona’s Immigration Law,” *New York Times*, July 28, 2010.

⁶⁶ For a liberal critique of the need for comprehensive reform, see: Hoy, “Turning Up the Heat.” For conservative critiques, Governor Jan Brewer, for example, argued that “decades of federal inaction and misguided policy have created a dangerous and unacceptable situation” helped to justify her reasons for

emphasis in the postwar era on family reunification worked to make it one of the cornerstones of the 1965 Act, the discussions around border security opened the door for only border security legislation to pass in 2010, eclipsing the rest of the immigration reform discussion.⁶⁷

While border security made inroads into the 2010 legislative agenda, the Development, Relief, and Education for Alien Minors (DREAM) Act, which would provide legal status to undocumented children who complete some college training or military service, failed to pass. Senators Orrin Hatch (R-UT) and Richard Durbin (D-IL) first introduced the DREAM Act in 2001, and again in 2003, with little success. The proposal contains two parts: first, students brought to the United States prior to age 16, present in the United States for at least five consecutive years, and who have completed high school in the U.S., receive conditional status. If the student completes two years of higher education, or two years in the armed forces, and can prove good moral character, he or she can convert to legal permanent resident status after five years. Proponents like Senator Hatch have argued that it would be unfair to penalize children who “did not make the decision to enter the United States illegally.” Hatch proposed instead that the U.S. should provide “the opportunity to earn the privilege of remaining here legally.”⁶⁸

According to estimates by the Migration Policy Institute, roughly 2.1 million youths would be eligible for legal status under the legislation, though they believe that only around 38 percent of the total, or 825,000 people, would ultimately do so.⁶⁹ Critics charged Republicans with pandering to the Latino vote, or even worse, with taking educational opportunities away from American students. The restrictionist group Federation for American Immigration Reform (FAIR) has specifically opposed provisions that would give in-state tuition to undocumented immigrants as an unfair handout, which it feels does nothing to deter entry outside of legal status.⁷⁰

signing S.B. 1070 into law. Governor Jan Brewer, “Statement by Governor Jan Brewer,” April 23, 2010 http://www.azgovernor.gov/dms/upload/PR_042310_StatementByGovernorOnSB1070.pdf, accessed 8/24/10.

⁶⁷ It is important to note that the former program, in 1965, ultimately brought about a liberalization of the immigration regime, while the latter, in 2010, solely ushered in restriction. Still, the overwhelming rhetorical emphasis in both created a feedback loop that ultimately locked-in the terms of the debate.

⁶⁸ The original DREAM Act, as proposed in 2001, did not provide for military service as a pathway to citizenship. Jeffrey N. Poulin, “Development in the Legislative Branch: The Piecemeal Approach Falls Short of Achieving the DREAM of Immigration Reform” 22 *Georgetown Immigration Law Journal* 353 (2007-2008), quote from Hatch on 335.

⁶⁹ Mainly through of a combination of economic, linguistic, and educational hardships. Jeanne Batalova and Margie McHugh, Migration Policy Institute, “DREAM vs. Reality: An Analysis of Potential DREAM Act Beneficiaries,” July 2010 <http://www.migrationpolicy.org/pubs/DREAM-Insight-July2010.pdf>, accessed 8/20/10.

⁷⁰ For a discussion of the criticism surrounding the Act, see Katie Annand, “Still Waiting for the DREAM: The Justice of Punishing Undocumented Immigrant Students,” 59 *U.C. Hastings Law Journal* 683 (2007-2008). On FAIR’s opposition to the DREAM Act, see, for example: Federation for American Immigration Reform, “The Dream Act Illegal Alien Amnesty: A Bad Idea at the Worst Possible Time, Says FAIR,” March 27, 2009 http://www.fairus.org/site/News2?page=NewsArticle&id=20209&security=1601&news_iv_ctrl=1741, accessed 8/20/10. Hatch ultimately voted against the DREAM Act when it came before the Senate in

The DREAM Act provides an example of a bi-partisan issue (with Senator Hatch initially supporting the bill, and now Senator Richard Lugar (R-IN) as one of its most prominent champions,) under the influences of a contemporary set of push-and-pull defenses and reforms. While the DREAM Act failed to pass in 2001 or 2003, legislators included it in both comprehensive reform attempts in 2006 (S.2611) and 2007 (S.1348). When these comprehensive attempts failed, Congress turned back to the same type of piecemeal lawmaking that occurred during the postwar era. Senator Durbin attempted to pass the Act in 2007, first as part of a defense bill, and then on its own accord, but it failed to receive the necessary votes to overcome a filibuster. The DREAM Act was reintroduced in 2009, and narrowly failed to overcome a Republican Senate filibuster during the lame-duck session of the 111th Congress.⁷¹

Whether or not passage of the DREAM Act would pave the way for further reforms, the possibility of its success has only become stronger as successive Congresses introduce the provisions. More importantly, by keeping the issue in the legislative sphere, and by forcing restrictionist groups to defend their opposition to an inherently sympathetic group – the children of unauthorized immigrants – in a manner similar to those pushing for greater family reunification rights for GIs did in the postwar era, student legalization has become the go-to piece of interim and piecemeal legislation when comprehensive reform fails.⁷²

The refugee category illustrates the clearest linkages between the feedback loops from the postwar era and contemporary policymaking. Even though much of the politics of admissions after Hart-Celler revolved around the issue of illegal entry, the 1970s provided a new impetus for refugee policymaking, stemming from a rise in parole activity in the wake of the Vietnam War. The Refugee Act of 1980 removed refugee admissions from the rest of the visa preference system, and set a separate minimum ceiling of 50,000 resettlements per year. It also adopted the UN's non-ideological definition of a refugee, and devised the nation's first asylum provisions. Here circumstances in East Asia pushed legislators to clamp down on parole usage, specifically by increasing permanent intakes. The postwar trend of moving toward greater

December of 2010. David M. Herszenhorn, "Senate Blocks Bill for Young Illegal Immigrants," *New York Times*, December 18, 2010.

⁷¹ Poulin, "Development in the Legislative Branch"; Batalova and McHugh, "DREAM vs. Reality."

⁷² Some scholars and activists have portrayed the DREAM Act as the first step to passing comprehensive immigration reform, while others, especially in the wake of the failed effort for comprehensive reform in 2010, have called for the Act to be passed first, as a down payment on CIR. See, for example: Aimee Deverall, "Make the Dream A Reality: Why Passing the DREAM Act is the Logical First Step in Achieving Comprehensive Immigration Reform," 41 *John Marshall Law Review* 1251 (2007-2008); Krissah Thompson, "Immigrant Rights Groups Adjust Focus to Passage of AgJobs, Dream Act," *Washington Post*, July 27, 2010; Winnie Stachelberg and Angela M. Kelley, Center for American Progress Action Fund to Senator Harry Reid, "DREAM Act Support," August 2, 2010 http://images2.americanprogress.org/campus/CAPAF_letter_Senator_Reid_DREAM.pdf, accessed 8/20/10; Reform Immigration FOR America, "Yes, we support the DREAM Act," 2010 <http://reformimmigrationforamerica.org/blog/blog/yes-we-support-the-dream-act/>, accessed 8/20/10.

institutionalization of a permanent refugee admissions regime, rather than ad hoc movements of people from abroad, has only continued.⁷³

The refugee category has had the most movement since the 1980 Act, with the creation of the asylum corps in 1990; limitations on asylum seekers and strict exclusions for anyone providing material support to terrorist groups in 1996; and the introduction of the Refugee Protection Act of 2010 by Senators Patrick Leahy (D-VT) and Carl Levin (D-MI). The 2010 bill, the product of a number of years of interest group lobbying (mainly from the voluntary agencies involved in resettlement,) and study, remedies many of the issues that have arisen in the thirty years since the 1980 law. It would not change the number of people admitted each year, or the idea of permanent yearly admission, but like many of the small bills passed in the postwar period, it would update the 1980 provisions, to increase the protections for asylum seekers, and to raise the monetary grants given to resettled refugees, to match the current economy.⁷⁴

These four cases provide examples of how the lessons of defense and failed reform can play out in contemporary politics. Refugee policy provides the most obvious example of the continuation of the postwar feedback loops in contemporary policy. The introduction of the Refugee Protection Act of 2010 exemplifies the ongoing attempts for reforms based on the experiences under older policies. On the other side of the equation, border security provides an example of how negative images of immigrants, shared by both sides of the debate, can ultimately ensure that legislation follows suit. Finally the DREAM Act illustrates that policy defense and reform can make incremental change possible, helping to enshrine a notion of eligibility within the nation, even as the larger debate focuses on exclusion and border protections.

Moving Forward

This dissertation has explained the evolution of the preference system during the postwar period, focusing on the policy feedback loops that shaped what type of family, labor, and refugee migrants entered the nation. In explaining the push-and-pull forces of successful defenses of older policies and failed attempts at reform, a number of questions remain. Here I want to discuss some avenues for further research, as well as how this dissertation affects our understanding of the field.

Scholars such as Mary Dudziak have illustrated how the Cold War opened a space for civil rights reform, while also narrowing the field for such changes to occur. Policymakers primarily pursued those reforms that portrayed the nation in a more positive light to the international community. Penny Von Eschen adds that many of the opportunities for civil rights gains within the nation came at the expense of international solidarity movements – African American leaders focusing on the black struggle in the

⁷³ Anker and Posner, “The Forty Year Crisis”; Bon Tempo, *Americans At the Gate*, Chapter 6.

⁷⁴ Senator Patrick Leahy, Press Release, “Leahy Introduces Landmark Refugee Protection Act,” March 15, 2010, http://leahy.senate.gov/press/press_releases/release/?id=ea7b1d65-e893-4998-b121-65ab874eaf8b, accessed 8/25/10.

United States saw movement during the Cold War, but the international struggle, especially around decolonization often became entangled with McCarthyism and anti-Communism.⁷⁵ In immigration, the Cold War opened a number of avenues for change, as the development of visa policy – whether for family members, laborers, or refugees – deeply affected relations with other countries. The drive to end Asian exclusion in the late-1940s and early 1950s, as well as the slow inclusion of escapees from Communist China in U.S. refugee admissions in the late-1950s and early-1960s, provides two such openings. Similarly the Cold War focus on winning the scientific race with the Soviet Union helped to tip the scales of labor admission toward the highly skilled and professional.

As I have argued, the key bureaucrats involved in drafting immigration law had a keen understanding of the stakes of admissions on foreign policy. And yet, while the archival record has a smattering of evidence of when and where foreign countries consulted and were consulted on immigration reform, the mechanisms by which international relations affected domestic policymaking on a micro-level still requires more study. In particular the issue of Asia, the area at the heart of many of the national origins discriminations, and at the center of reforms throughout the period, provides a fertile, and largely untapped ground, to ask how the United States portrayed its immigration policies to the international community. How did the U.S. policymakers sell defenses of older policies to allied nations who had been largely excluded since the late-19th century? How did they deal with the piecemeal legislative reforms that have been so crucial to this story, when developing international and consular affairs?

Secondly, this dissertation has begun to study how the executive branch bureaucracies in charge of immigration – the Immigration and Naturalization Service and Department of Justice, the Department of Labor, and the State Department – shaped and influenced policymaking. Bureaucratic organizations such as the Displaced Persons Commission proved critical to making the legislative package of DP reforms workable, and similarly, officials in charge of the Security and Consular Affairs branch of the State Department, from Scott McLeod to Abba Schwartz, were the point people in developing much of the legislation of the period. These same individuals also provided many of the innovative expansions in the definition of the categories, such as the inclusion of humanitarianism in refugee law, or the need for a fixed allotment of visas for the siblings of U.S. citizens. The role of the bureaucracy in immigration has been largely overlooked by historians, outside of a spate of studies on the INS and Border Patrol.⁷⁶ The Departments of State and Labor provide important windows into how the issues of foreign relations, domestic politics and labor needs, as well as the role of individual bureaucrats affected the policymaking process. Further research is needed into how these individuals and

⁷⁵ Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton: Princeton University Press, 2000); Penny M. Von Eschen, *Race Against Empire: Black Americans and Anticolonialism, 1937-1957* (Ithaca: Cornell University Press, 1997).

⁷⁶ See, for example: Calavita, *Inside the State*; S. Deborah Kang, “The Legal Construction of the Borderlands: The INS, Immigration Law, and Immigrant Rights on the United States-Mexico Border, 1917-1954” Ph.D. Dissertation, University of California, Berkeley, 2005; Lisa Magana, *Straddling the Border: Immigration Policy and the INS* (Austin: The University of Texas Press, 2003); and Kelly Lytle Hernandez, *Migra! A History of the U.S. Border Patrol* (Berkeley: University of California Press, 2010).

organizations act and interact with the larger policymaking process, and just how much influence regulatory decision-making has on legislative action.⁷⁷

Thirdly, there are a number of debates that began during or right after the period covered by my dissertation that have become critical to immigration reform in the last few decades. The modern system of student visas, for example, were created during the period, but received no attention from legislators during the 1950s and 1960s. In the last few decades they have become a critical entrance-point into the nation, and into securing employment and a labor-visa after graduation. The category has also become highly contentious, especially after September 11, 2001, when many of the hijackers entered on these visas. How then, did policymakers in the postwar era conceptualize student immigrants as fitting into the larger immigration system, and into the landscape of American life and the American economy?⁷⁸ Concerns over the global “brain drain”, or of decimating the intellectual resources of other countries began right around the time that Congress passed the Hart-Celler Act, with explicit hearings on the issue in 1968.⁷⁹ Like student visas, rhetoric about the brain drain has only continued to grow since the 1960s.⁸⁰

Finally, with the immigration debate finding its way into the heart of the contemporary culture wars, and providing fodder on all sides of the political spectrum and public opinion, more research is needed on how feedback loops, and the largely silent process of

⁷⁷ Daniel Carpenter, for example, suggests in *The Forging of Bureaucratic Autonomy* that bureaucrats are able to obtain a significant amount of freedom from Congressional or Presidential oversight, and are able to expand upon the mission of their organization, by tapping into networks of lobby groups, and by portraying themselves as having a unique and distinct service. Carpenter argues that bureaucrats gain power by winning over interest groups and organizations to their mission. Similar questions about how officials in the Departments of State and Labor navigated American politics and the landscape of interest group lobbying, while still keeping an eye on foreign policy and domestic economic needs, can be asked for immigration policymaking. Daniel P. Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovations in Executive Agencies, 1862-1928* (Princeton: Princeton University Press, 2001).

⁷⁸ Gilbert Yochum and Vinod Agarwal, “Permanent Labor Certifications for Alien Professionals, 1975-1982,” *International Migration Review* Vol. 22, No. 2 (Summer, 1988). On the 9/11 hijackers and student visas, see, for example: National Commission on Terrorist Attacks Upon the United States, “Entry of the 9/11 Hijackers into the United States, Staff Statement No. 1,” http://www.9-11commission.gov/staff_statements/staff_statement_1.pdf, accessed 2/1/11.

⁷⁹ “The Brain Drain of Scientists, Engineers, and Physicians from the Developing Countries into the United States,” Hearings before a Subcommittee of the Committee on Government Operations, House of Representatives, 90th Congress, 2nd Session, January 23, 1968.”

⁸⁰ For contemporary debates on the brain drain, see: Dhananjayan Sriskandarajah, “Reassessing the Impacts of Brain Drain on Developing Countries,” August 2005, <http://www.migrationinformation.org/Feature/display.cfm?ID=324>, accessed 2/1/11; Michael A. Clemens and David McKenzie, “Think Again: Brain Drain,” *Foreign Policy*, October 22, 2009, http://www.foreignpolicy.com/articles/2009/10/22/think_again_brain_drain, accessed 2/1/11; and John Gibson and David McKenzie, “The Economic Consequences of “Brain Drain” of the Best and Brightest: Microeconomic Evidence from Five Countries,” The World Bank, International Migration and Development, August 1, 2010, http://econ.worldbank.org/external/default/main?ImgPagePK=64202990&entityID=000158349_20100803134804&menuPK=64210521&pagePK=64210502&theSitePK=1572893&piPK=64210520, accessed 2/1/11.

bureaucratic policymaking, affect the contemporary immigration debates. I have argued that the presence of a racially discriminatory system like the national origins quotas, while at the heart of the postwar issues, was not in-and-of-itself a necessary precondition for comprehensive immigration reform. And yet without a blockbuster issue like the quotas, what will provide the impetus for future reform efforts? Refugee politics provides evidence of one such pathway, in the shape of large numbers in need of resettlement and seeking asylum. But with the contemporary debate more polarized, future admissions reform will have to take into account more robust public and political participation, and a more protracted Congressional stance, than ever before.

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