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**COMPREHENSIVE IMMIGRATION
REFORM POSTPONED:**

Lessons from the Senate 2004-2010

Diplomová práce

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Anotace

Diplomová práca „*Comprehensive Immigration Reform Postponed: Lessons from the Senate 2004-2010*“ pojednáva o príčinách brániacich prijatiu rozsiahlej reforme imigračnej politiky Spojených Štátov Amerických počas rokov 2004 až 2010. Cieľom práce je pozorovať prípadné dopady polarizácie politickej scény a prehľbovania rozdielov medzi Demokratickou a Republikánskou stranou na vyjadrovanie senátorov zasadajúcich v kľúčovom Právnom výbore Senátu a zaznamenať zmeny medzi dvomi obdobiami, konkrétne medzi rokmi 109teho Senátu a 111teho Senátu. Zameranie sa na Právny výbor je zdôvodnené rolou ktorú zohrávajú jeho členovia v prípravných rokovaníach o jednotlivých reformných návrhoch a samotná miera polarizácie je hodnotená na základne súhrnných hodnôt hlavných naratívov zaoberajúcich sa otázkou imigrácie. Vyjadrenia senátorov sú prehodnotené v kontexte kľúčových súdobých faktorov ovplyvňujúcich polarizáciu Americkej politickej scény a imigračnej politiky ako aj faktorov presahujúcich vnútroštátne dianie.

Annotation

The M.A. thesis „*Comprehensive Immigration Reform Postponed: Lessons from the Senate 2004-2010*“ elaborates upon the causes hindering in the years 2004 to 2010 the adoption of a comprehensive immigration reform in the United States of America. The main goal of the thesis is to assess the consequences of the polarization of the American political scene on the immigration reform and to evaluate the party divide on the matter upon the floor remarks made by the members of Senate Committee on the Judiciary taking in account the differences in between the 109th and 111th Senate. The focus on the Committee on the Judiciary is justified by the role played by its members in the drafting process of particular reform proposals. The scope of the polarization of the Committee is assessed upon the aggravated means attributed to the most dominant narratives used by the senators. The remarks used in the evaluation are addressed in the context of the most significant contemporary factors influencing the polarization of American political scene as well as under the light of the development surpassing the domestic affairs.

Klíčová slova

imigrace, imigrant, Spojené státy, reforma, Senát, koalice, polarizace, naratív, preference

Keywords

immigration, immigrant, United States, reform, Senate, coalition, polarization, narrative, preference

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Poděkování:

V prvom rade by som chcel poďakovať vedúcemu práce PhDr. Kryštofovi Kozákovi, PhD., za mimoriadne pochopenie pre mnou zvolený spôsob spracovania témy, ústretový prístup počas písania práce a konštruktívnu kritiku ktorá rozhodne zvýšila kvalitu predkladanej práce. Zároveň by som chcel zdôrazniť, že za nedostatky práce zodpovedá výhradne jej autor a že bez vedenia pána Kozáka by rozhodne nebolo možné vyvarovať sa ďalších.

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1. Introduction

The importance of the immigration for the development of the United States of America is indisputable. From the very first days of the colonies to the Statue of Liberty's welcome of "huddled masses yearning to breathe free", immigration has accompanied American politics and, as argued by Seymour Martin Lipset, and more recently by John Kingdon, it contributed significantly to the particular development path of the United States.¹ Recent waves of immigration, however, pose a challenge. The huddled masses are numerous as never before and their origin raises poignant questions about the future of American national identity.

After the culmination of restrictive laws in 1920s, U.S. immigration policy lacked coherency or at least a clear long term goal. The consecutive reforms enacted after World War II were tailored to address contemporary preferences and one might thus easily agree with the conclusion of Elisabeth Cohen that "despite its lengthy history as an immigrant-receiving nation, the United States has as yet failed to produce a well-articulated philosophy of immigration"² Moreover, in spite of a voluminous and well-grounded literature confirming the opposite, conservative like late Samuel P. Huntington continue to argue against the very importance of immigration for American identity and some, like Peter Brimelow, demand rapid reduction, or even overall cessation of immigration altogether.³

The disparity between the legal acts based upon contemporary consensus on immigration policy and a clear-cut stance of particular political groups reflected significantly upon the latest attempts to pass a comprehensive reform. While in the past the coalition of the pro-market Republicans and pro-civil rights Democrats passed several pieces of important immigration legislature, efforts of 109th, 110th and 111th U.S. Congresses earned labels as strongly partisan initiatives. Surprisingly, the bipartisan coalition favoring immigration was not replaced by a more restrictive one and core party blocks articulate their own proposals despite proclaiming similar goals. And, consequently, due to the lack of cooperation between the parties, a new political order regarding the immigration policy reform emerges.

Upon addressing the development and narratives accompanying the immigration reform attempts in the U.S. Senate during the years 2004-2010 I aim to clarify the intricate shift from a

¹ Lipset, Seymour Martin: *The First New Nation* (New York: W.W: Norton, 1979); and John Kingdon, *America the Unusual* (New York: St. Martin Press, 1999), pp. 85-94

² Cohen, Elisabeth F.: p. 32

³ Huntington, Samuel P.: *Who Are We: The Challenges to America's National Identity* (Simon & Schuster, New York, 2004), Brimelow, Peter: *Alien Nation: Common Sense About America's Immigration Disaster* (HarperCollinsPublishers, New York, 1996)

bipartisan cooperation on comprehensive reforms to a more specific, partisan, legislative process. By focusing on the Senate I plan to assess also a relatively marginal positions on immigration that stem from regional preferences and by limiting my analysis to the three latest Senates I plan to cover in detail only the issues which are the most relevant for future development. My evaluation of coalition potential will be based upon the comparison of narratives used during the floor remarks accompanying the last two significant attempts to pass a reform, namely the ill-fated Comprehensive Immigration Reform Act (CIRA) of 2006 impaired by conservative Republicans, and the proposals brought up by Democrats of the 111th Senate leading to the Menendez-Leahy bill.

The choice of of CIR 2006 and the Menendez-Leahy bill of 2010 (S.3932) stems form an attempt to emphasize the dissolution of bipartisan cooperation. While other proposals only aspired for the label comprehensive immigration reform (f.e. S. 1348 and S. 1639 discussed in the 110th Senate), the CIRA 2006 was the latest senatorial initiative that came close to passing. Menendez-Leahy bill, on the other hand, remains to be the latest attempt for a reform that has to be yet tested in both chambers. It was, however, preceded by an intriguing debate which turned from a bipartisan cooperation of Senators Charles E. Schumer (D-NY) and Lindsey O. Graham (R-NC) to a strictly Democratic proposal covering highly polarizing issues. While the CIRA 2006 passed the vote in the Senate with a bipartisan support, the Mendedez's and Leahy's proposal failed to gain support even from the moderate Democrats. The turn of events that led to a highly polarizing piece of legislative reflects the overall lack of cooperation and, in following pages, I will address the question whether there still is a potential for bipartisan cooperation on immigration reform or whether a partisan initiative is more likely to succeed.

First, in following subchapter 1.1 *Immigration Reform Coalition*, I will introduce the two dimensional model of immigration policy preferences used, among others, by Daniel Tichenor and I will put it in the context of recent reform attempts.⁴ The dimensions reflecting the preferences regarding the number of admissions and the rights given to those admitted serve as a simplified model of coalition potential that will be used in upcoming chapters. Secondly, in subchapter 1.2 *Senate as Immigration Policy Forum* I will explain the choice of U.S. Senate Committee on Judiciary for the evaluation of coalition potential and in subchapter 1.3 *Evaluation of Coalition Potential* I will elaborate upon the evaluation of coalition potential based upon the comparison of polarizing narratives used in floor speeches. The narrative analysis regarding American immigration policy will be derived from the work of Lina Newton and used to determine the extent of polarization in the Senate.⁵

The chapter 2. *The Challenges for a Comprehensive Reform* will recapitulate most important

⁴ Tichenor, Daniel: pp 35-37

⁵ Newton, Lina: *Illegal, Alien, or Immigrant: The Politics of Immigration Reform*

reforms and main reasons due to which a comprehensive immigration reform has been postponed. The chapters *3.109th Senate : Republican Discord* and *4.The Development under 110th and 111th Senates* will cover the most significant issues shaping the immigration policy debate and their impact on political narratives. Last chapter, *5.The Lessons for a Comprehensive Reform* will serve as a counterpart for a previous chronological description and will address the actual potential for a bipartisan cooperation amidst a polarized political scene. While far from proposing an outline for future reform, the sole ambition of this paper rests in answering the question what are the main factors impeding the bipartisan cooperation in a Senate Committee on Judiciary. As an par excellence example of a body where a nascent coalition potential should be observable, the Senate Committee of Judiciary will serve as mean of distinguishing the most important of the all factors addressed in the greater detail in the respective chapters.

1.1 Immigration Reform Coalition

The U.S. Congress has never been renown for strong party discipline. Party lines and ad hoc alliances have always shifted according to the personal preferences of particular Congressman and no political leader could count for automatic support on every issue of the day. Yet the differences between two major parties clearly do exist . The Democrats and the GOP are clearly opposing each other on the topics like abortion and military spending and albeit their elected representatives might not always act in a single file, large majority of both parties agree with particular party position on the issue. Through out the history, immigration policy used to be an issue of strong party consensus. First, during the first great wave of immigration, party machines like the Tammany Hall effectively utilized the votes of recent immigrants and in the early 20th century the Democrats rose to position of a stout defendant of domestic workers demanding restrictions while the GOP advocated a more open labor market.

Contemporary situation is, however, strikingly different. As noted by among others by Nicholas Mills; "the immigration debate has not broken down along the usual political lines. These days we might expect liberals to favor relatively open immigration, seeing it in the terms of a politics of compassion, and we might expect conservatives , worried about multiculturalism and an expanding welfare state, to want a severe restrictions on immigration." ⁶ Moreover, the notions of conservatism and liberalism in politics do not stipulate a clear position on all aspects of immigration policy and vary from context to context and, furthermore, a real life politician rarely falls under a neat theoretical definition. Among self described liberals and conservative we might therefore find both the defendants and opponent of particular policy regime and opportunities for cross- party

⁶ Mills, Nicolas: p.14

cooperation clearly exist. An evaluation of coalition potential must thus rest on dominant policy area rather than party affiliation and the two dimensional model used by Daniel Tichenor proves to be especially useful. First dimension reflects political preferences towards the admission of immigrants and spans horizontally from maximum support for expanding the number of accepted on the left to maximum support for restricting of admissions on the right. The second dimension focuses on the rights granted to the newcomers, with a vertical continuum spanning from maximum support for a generous policy on the top to maximum support for restriction of the rights granted to aliens(Figure 1).⁷ The two dimensional model thus divides political spectrum to four groups with different preferences regarding immigration that originated as a distinct ideological traditions in the very first days of the Independence.

The Politics of Alien Admissions and Rights (A Two-Dimensional Model)

		<i>Alien Admissions Should Be</i>	
		<i>Expanded or Maintained</i>	<i>Restricted</i>
<i>Alien Rights Should Be</i>	<i>Expansive</i>	Cosmopolitans William James Jane Addams Edward Kennedy Xavier Becerra Immigration Protective League, American Jewish Committee, MALDEF, National Immigration Forum	Nationalist Egalitarians Frederick Douglass Samuel Gompers Barbara Jordan Richard Lamm AFL (1900–1956), population control and environmental groups
	<i>Restrictive</i>	Free-Market Expansionists Andrew Carnegie William Howard Taft Ronald Reagan Spencer Abraham American Farm Bureau Federation, National Association of Manufacturers, CATO Institute	Classic Exclusionists Henry Cabot Lodge Madison Grant Patrick Buchanan Peter Brimelow Immigration Restriction League, Federation for American Immigration Reform

Figure 1: The politics of Alien Admissions and Rights (A Two-Dimensional Model)
 (source Tichenor, Daniel: Dividing Lines, p.36)

The Cosmopolitans derive their tradition from the authors like Thomas Paine, who urged the

⁷ Tichenor, Daniel: p. 35

new nation to “surmount the force of local prejudices as we enlarge our acquaintance with the world.” Advocates of expanding both admissions and right believe in the universality of American Creed and unlimited ability of the United States to accommodate immigrants of various backgrounds. Secondly, The Nationalist Egalitarians, a tradition founded by Thomas Jefferson, endorse the rights for those already residing within U.S. borders, but demand lower admissions due to the impact of newcomers on the social, economical and political status of previous immigrants and other challenged segments of American population. The third group, the Free-Market Expansionists, trace their argumentation to Alexander Hamilton who praised immigration as a resource for economy and they strongly prefer entrepreneurial and self-sufficient immigrant from those more likely to depend of welfare, hence the 1990s slogan „Immigration yes, welfare no”. Finally, the Classic Exclusionist may base their arguments upon the antifederalist Agrippa papers written by James Winthrop and they perceive loosely restricted immigration as a threat to national unity, sovereignty, and security.⁸

All four distinct group have their representatives among currently active politicians and pundits and albeit some are composed mostly of supporters of particular party, none is elusively partisan.⁹ Furthermore, none is numerous enough to enact a significant piece of legislature on its own and coalition emerge according to a common preference. For example, the debates predeceasing the IRCA of 1986 witnessed cooperation in between the Cosmopolitans and the Free-Market Expansionists and the IIRIRA of 1996 was appealing for Classic Exclusionist as well for the Nationalist Egalitarians. The notion of bipartisan ad hoc coalitions is far from unique for the immigration policy, but the model based on the two major dimensions of immigration policy showed in the post WWII remarkable coherency. Even though other policy dimensions like the impact on economy play a crucial role in inner party divides, the odd alliances that coin particular reform share a common goal rather than a same reasons for supporting particular measure.

In late 20th and early 21st century determine all four ideological traditions their support in transformed political scene. Social conservatives like Pat Buchanan and Peter Brimelow slowly but surely leave the scene, but the exclusionist movement is invigorated by the Tea party movement. The cosmopolitan liberals achieved unprecedented success in the grass root support for President Obama, but the daily bread of politics disfranchised many voters from further support. The Free-Market Expansionists lack a charismatic leader to fill the shoes of Ronald Reagan and stumble under the burden of NAFTA shortcomings, but they maintain a potential appeal for any self-made man in the USA. Egalitarians of all sorts achieved a boost by expanded welfare, but vis-a-vis the

⁸ Tichenor, Daniel: Testimony before the U.S. House of Representatives Committee on the Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law March 30, 2007, p. 1-3

⁹ Fukuyama, Francis: pp. 151-152

opposition against the late Health Care bill, one has but to wonder about the expansion of any social rights. If a bipartisan cooperation will prevail during the next immigration reform attempt, cooperation of two of these groups is still more than likely, but the polarization of American scene might herald a new era in immigration policy making.

1.2 Senate as Immigration Policy Forum

As noted before, the U.S. Senate remains to be an unique political forum shaping the future of immigration policy. Equal number of senators from all states alike contributes to a relatively higher influence of states with lower overall population in several steps of the legislative process. While in the House, both the Committee on the Judiciary and its Subcommittees dealing with the immigration are dominated by Representatives from populous states with large immigrant population (f.e. CA, NY, TX), the Senate Committee on the Judiciary had always reflected a broader spectrum of regional preferences.¹⁰ Smaller states with proportionally large immigrant populations and states with no significant foreign born minorities have in the long run the same access to the earliest stages of Subcommittee work as the populous states dominating the House and their power in the matter is further emphasized during voting on particular bills.

The legislative process starts, and often ends, in the Congressional Committees on the Judiciary in which is the difference in representation easily observable. In the 109th, 110th and 111th Congresses, the representatives of states with large population controlled majority in both the House Committees on the Judiciary and its Subcommittee for Immigration, Citizenship, Refugees, Border Security, and International Law. Specifically, five largest states California, Texas, New York, Florida and Illinois, controlled in the 111th House 21 of 39 seats in the Committee on the Judiciary. The dominance of few large states was even more apparent in the Subcommittee where 11 of 17 seat were occupied by Representatives from five largest states.¹¹ In Senate, the control above the crucial committee rests in hands of representatives who are from states with *proportionally* large immigrant populations. Senators from populous states still take a portion of the seats, but they a majority only with help of senators from states like Hawaii and Rhode Island. Furthermore, when party affiliations influence or when senators from states with no significant

¹⁰ The title of the subcommittees dealing with the immigration and their size might vary from Congress to Congress. For example, the Senatorial Immigration, Refugees and Border Security Subcommittee lost 4 member seats after the rearrangement in 110th Senate. The House subcommittee was renamed from the Subcommittee for Immigration, Citizenship, Refugees, Border Security, and International Law to the Subcommittee on Immigration Policy and Enforcement after the 2010 elections. Nevertheless, in my assessment I use the names and provisions ruling during in between 2004 and 2010.

¹¹ Compared to the Senate Committees on the Judiciary, the House Committees on the Judiciary offers only partial records of past subcommittee composition. Used data from [HTTP://WWW.SOURCEWATCH.ORG/INDEX.PHP?TITLE=HOUSE_COMMITTEE_ON_THE_JUDICIARY](http://www.sourcewatch.org/index.php?title=House_Committee_on_the_Judiciary)

immigration profoundly contribute to the bill, a nascent coalition of interests is observable.

A greater variety of origins thus contributes, as will be discussed later, to vivid committee debates. Moreover, the preferences of the members of the Senate Committees on the Judiciary reflect to an extent the coalition potential of particular bill. To be able to cooperate, senators must express opinions close to each other at at least one of the axis of the two dimensional model. Therefore, in following pages, I will put emphasis on the political narrative of the remarks made on the floor of Senate by the members of the Senate Committees on the Judiciary and I will attribute values to them according to expressed preference regarding the admission and rights of immigrants. Upon the clusters of senators using similar political language I will assess to what extent do the party affiliation, state of origin and its population matter and I will estimate the potential for future cooperation.

1.3 Evaluation of Coalition Potential

Albeit the basic two dimensional model enables better understanding of the common goals behind a reform coalition, it does not, *per se*, offer means to assess the coalition potential. For further evaluation, it has to be put in perspective of actual narratives addressing the immigration policy. While the value attributed to a narrative is, to an extent, an arbitrary mean, it still reflects relative position between stated preferences of different senators. A call for a lower number of admission is obviously less restrictive than a demand for a ban on immigration and their relative position to each other might be marked on the horizontal axis of the model. The same is true for the vertical “rights” axis and, so as to enable to evaluation of coalition potential, a value might be attributed to particular position according to the three types of expressed preferences. A legislator can demand either restriction or expansion of current levels of admission and granted rights, or he or she express a relatively neutral opinion concerning discussed policy change. For the purpose of allowing aggregation of individual stated preferences, following assessment of coalition potential will apply negative value of -1 to narrative demanding restrictions, value of 0 to neutral remarks and value of 1 to narratives calling for expansion of either the number of admitted or more rights for them.

Due to varying activity and preferred topics of the senators on the floor, I will focus on the aggregate preference regarding crucial topics within the immigration reform discourse like, for example, the legalization of undocumented immigrants, which will be identified upon the number of relative floor remarks accessed through the Library of Congress website.¹² The search will be

¹² [HTTP://THOMAS.LOC.GOV/HOME/THOMAS.PHP](http://thomas.loc.gov/home/thomas.php)

limited to two key terms “immigration” and “immigrant” and remarks made directly by the members of the Senate Committee of Judiciary due the limited scope of a thesis research. As will be showed, the search through the Congressional Record list occasionally up to 200 results per term and senator and the actual remarks are accessed only after browsing of specific pages of the Congressional record. Therefore I will focus on the aggregate preference only in a three specific policy areas, namely the issue of legalization, the rights of non-citizens in courts and the depiction of immigrant as either victims or perpetrators of criminal acts. While the issue of border security and temporary working visas have been undoubtedly present in the reform discourse, they do not divide as much as above mentioned policy areas. And, furthermore, the preferences regarding the legalization might be easily applied to the admission axis while the same is true for the status in court and rights axis and the symbolic language of victimization vs criminalization allows secondary measure of overall polarization.

Albeit to an extent arbitrary, my analysis will include values attributed to particular long term preference. According to the most commonly used narratives, each senator will be attributed a mean value (-1,0,1) for each of the polarizing policy areas. If not addressed in detail or if adopting neutral stance, a senator will be attributed neutral 0 preference on the area. Furthermore, the means will be attributed in also two periods of time, for the 109th Congress controlled by the Republicans and second for 111th Congresses in which the Democrats possessed overwhelming majority. The distribution of means representing the preferences of the senators according to their party affiliation or state will be then used to assess the actual potential for mutual cooperation, first in particular policy area, and then used in the clarification of the impact of the polarization of American political scene on the legislative process when identical or similar values of means will be interpreted as a potential for cooperation and means of opposing value as the lack of it.

The evaluation of coalition potential based upon the distribution of means representing long term preferences of the members of Committee on Judiciary requires, however, secondary verification. First, variety of preferences in different policy areas has to be taken into account because a single committee does not necessarily represent the overall political spectrum, and, secondly, the changes in Committee membership have to be addressed. Furthermore, a mean aggregated for all remarks regardless of context might curb the preferences of a senator whose preferences vary according to policy area. Therefore, the comparison of aggregated means in specific policy areas will be put in the context of factors impairing bipartisan cooperation, contemporary development and, foremost, the party affiliation. Secondly, Chapters 3 and 4 will introduce narratives that will be used jointly for determining the preference on a policy issue so as to offer broader background for assessment in Chapter 5 which will provide more of illustrative

insight in the division of the Committee and American political scene that exact quantification of how divide the Committee is.

Proposed methodology reflects the belief the focus on Senate Judiciary Committee enables an assessment of nascent coalition potential and the comparison of the language of particular proposals and narratives used by the members of the Committee determines the capability of the senators sponsoring the bill to reach a compromise. If the polarization and dissolution of bipartisan cooperation actually influenced the outcome of legislative efforts, it should be observable in the language of floor remarks made by the supporters and the opponents of particular reform attempt. If senators use mostly the same narrative, the potential for a bipartisan reform prevails, but if two distinguishable narrative mirroring the party lined developed, major reform with significant support from both parties is postponed and either a partisan bill or a reform addressing specific policy area is more likely.

1.4 A note about used literature and sources

Even though the literature addressing the immigration in the United States is indeed abundant, the quality and number of sources varies according to the specific field of research. The more specific the research topic becomes, the less available the literature is and author relies either on direct sources and news articles or on few rare pieces that address his interests. The focus on narrative analysis of floor remarks in the context on contemporary development is a genuine example of a topic with few literary sources and in following, pages I therefore relied mostly on few literary sources and depended on a more direct means, but several pieces of immigration policy literature deserve proper mentioning.

While addressing past policy reforms, I could rely on Deniel Tichenor's *Dividing Lines: The Politics of Immigration Control in America* (2002) and *The congressional politics of immigration reform* (1999) by James Gimpel and James Edwards which offer both insights the development of immigration policy after the WW II and a added by value by a model of policy regime change (Tichenor) or by detailed examination of the legislative politics leading to a particular reform bill (Gimpel and Edwards). In comparison with these two books over other used sources like Debra DeLaet's *U.S. immigration policy in an age of rights* (2000) only limited insight it the process of articulation of a policy and were used so as to second opinion to conclusion of Tichenor, Gimpel and Edwards. The same might be concluded also about books which do not deal directly with the development of immigration policy and often address past reform briefly to offer background for the assessment of more specific issue. The *Immigration in America's future : social science*

findings and the policy debate (1996) by David Heer and *Illegal, Alien, or Immigrant* (2008) by Lina Newton were used in this manner as well.

Newton's book was, however, crucial by for the choice of narrative analysis for the evaluation of immigration coalition potential. Albeit not addressing the bipartisan coalition *per se*, Lina Newton justified in her book the use of an aggregate narrative for the assessment of political preferences driving particular reforms in past. Another methodologically inspirational book on immigration policy is undoubtedly Hetherington's and Weiler's *Authoritarianism and Polarization in American Politics* (2009) addressing the issue of polarization of American political scene in great detail. Hetherington and Weiler illustrate the deepening divide between the parties also in the issue of immigration and served as a second inspiration for the choice of thesis topic. Other books and journal articles were used scarcely and for my sources I depended more on contemporary newspaper articles and when possible, I limited my research to two national papers, The Washington Post and the The New York Times. Furthermore, I frequently used the Gallup estimates and report of the Pew Hispanic Center, and the later mentioned had been chosen predominately for exquisite graphic figures and first hand assessment of census results.

I tried to rely as much as possible on direct source and, as was already, noted, the most complication arose from the use of the Congressional Record search engine. First of all, the preliminary results list only the caption of the topic of general discussion with no other detail than the date. Browsing into them does not necessary open the particular floor remark by which was the particular page of Congressional Record identified for the search and further manual browsing is required. Furthermore, the search itself tends to temp out and a repetitive search is often required and quickened only by focus on most discussion accompanying the most relevant proposals.. Compared to the effort of browsing literary thousands of results are the actual results quite unsatisfactory and a more advanced form of search would be welcomed. In other words, the use of Congressional Record as prime source requires both patience and at least advanced experience with the search engine and more advanced features of the search would be appreciated.

2. The Challenges for a Comprehensive Reform

Passing a comprehensive immigration reform remains to be at the beginning of 21st century a truly herculean task. Merely the scope of issues influenced by the reform prevents an expeditious action and the legislative process is further impeded by three important factors. The experience derived from the post-World War II immigration reforms calls for a throughout scrutiny of unintended consequences of a comprehensive reform. The very character of current immigration in the United States poses a challenge to legislators trying to accommodate the preferences of various constituencies. And, lastly, the development in American economy and society hinders to a great extent measures that might have been perceived as acceptable before the 11/9 world.

While far from independent from the influence of a globalized world, the legislative process addressing the immigration reform in the United States on a federal level is, in other words, predominately delimited by the limited success of past reforms, changed patterns of immigration and domestic development in the United States. In following Chapter I will address all three factors independently with the emphasis on the relation with the coalition potential in U.S. Senate.

2.1 Legacy of Past Reforms

Current immigration policy was undoubtedly shaped by a successive shift that took place after the World War and led from a quote system towards a more family based immigration. The initial steps leading to the overhaul of previous immigration policy were, however, marked more by the contemporary geopolitical circumstances and the need to adapt to current domestic situation rather than by broad political and popular support for equality of all potential immigrants. The refugee laws passed prior to the landmark Hart-Celler Act of 1965 were clearly aimed, with a raising tendency, against the communist regimes rather than against all oppressive governments abroad.¹³ And, while accompanied by vivid discussions and postponed by presidential veto, the McCarran-Walter Immigration and Nationality Act of 1952 reflected a prevailing will of U.S. Congress to uphold a restrictive policy.¹⁴

Despite the raising potential of yet nascent civil rights movement, the discussions preceding

¹³ Displaced Persons Act of 1948, Refugee Relief Act of 1953, Refugee Escape Act of 1957, Cuban Refugee Act of 1960, Refugee Assistance Act of 1963

¹⁴ DeLaet, Debra L., p. 37

the Hart-Celler Act reflected the actual necessity for a comprehensive reform rather than high ideals. Several immigrant policies, like the renowned Bracero program, were obsolete and the ethnically based quotas favoring West Europeans were becoming unacceptable due to gradual assimilation of European Catholics and Jews.¹⁵ Furthermore, the strength of conservative party factions like the Southern Democrats, the Dixiecrats, effectively prevented any purely idealistic attempts and thus any truly comprehensive reform required the bipartisan cooperation of moderates. Therefore, the new immigration policy was hardly expected to be a radical shift, but its consequences outreached original intentions and the Immigration Reform Act of 1965 rose to be a first of four major comprehensive reforms determining the current character of immigration policy.

2.1.1 Immigration Reform Act of 1965

The Hart-Celler Act of 1965 is generally regarded as a new chapter in American immigration policy due to three of its measures. It dismantled the national origins quota, enacted a system based on seven preferences and put emphasis on family reunification.¹⁶ But the significance of the Hart-Celler Act of 1965 rests especially in its unintended consequences. As broadly recognized, the Act enabled mass immigration from Asia and Latin America and exposed both the inertial opposition against non-European immigrants and the necessity of further reforms. Furthermore, the overwhelming support for the bill in Congress, in the Senate it passed by a voice vote and the House voted 326 to 69 in favor, poses an important lesson from the perspective of political support.

The most ardent supporters of the reforms, among others the Kennedy brothers, shared, to the great dismay of the civil rights movement, surprisingly similar goals with the conservative opposition. On one hand the reform abolished national quotas, but on the same time it introduced measures aimed, as described by their advocates, at maintaining a dominantly European migration.¹⁷ In a hearing in front of the House subcommittee, Attorney General Robert Kennedy proclaimed that the immigration from Asia will reach only small proportion of 5000 immigrants and that the most important impact of the reform would be immigration from south Europe.¹⁸ In the end, family unification gained the support of conservatives groups like the Daughters of Revolution and the American League while Asian American organizations vehemently opposed it. The reform itself was thus only egalitarian in the sense of incorporating new European influences in a greater American self the despite great impact of overwhelmingly Democratic Congress.

¹⁵ The Bracero program was terminated in 1964, but it waned already in the 1950s.

¹⁶ Tichenor, David: p. 4

¹⁷ Hing, Bill O.: p. 94

¹⁸ Heer, David M. p. 54

Advocates of civil right expansion had yet to remedy many openly discriminatory aspects of immigration policy. For example, American immigration authorities had for decades attempted to exclude gays and lesbians from eligibility under the clause of psychopathic personality. In 1962, the federal Ninth Court of Appeals in *Fleuty v. Rosenberg* deemed such term to be too vague and the Congress replied in 1965 by listing “sexual deviation” among causes for statutory exclusion.¹⁹ The liberal agenda had, however, better audience in academia and youth than in general population or the Congress. Contemporary public opinion surveys clearly reflected strong convictions against liberal immigration policy and key congressional leaders like the chair of the Senate Judiciary Committee and Immigration Subcommittee James Eastland had actively delayed the reform.²⁰ The support for the Hart-Celler Act is thus better explained by the low importance of immigration policy for voters that gave legislators freedom to enact new law and by the image of an egalitarian reform only for the nations of South and East Europe that appealed for moderate conservatives.

The realization of what was the actual outcome of changed immigration policy was postponed for a whole decade. Occupied by the Vietnam turmoil and president Nixon's misdoings, American media noticed the unplanned shift towards mass migration from Asia and Latin America only from mid 1970s and started to cover the topic in greater detail.²¹ Besides the raising numbers of migrants from Latin America, the shortcomings of preferential system rose to prominence too. The distribution of annual limits on first come first serve basis led to rapid accumulation of backlogs and by 1976 the waiting list of migrants falling under the relatives category reached over 300 000. Furthermore, the immigration officials exacerbated the situation by allocating refugee visas under the hemisphere limits and the failure to accommodate in due time persons willing to immigrate under set numerical limits exacerbated illegal immigration.²²

Already increasing before the reform of 1965, the number of clandestine border crossings stemmed from unavailability of legal temporal work and passivity of INS officials. While during the tenure of general Joseph Swing in late 1950s INS worked rather vigorously, Swing's successor Raymond Farrell preferred to downplay all problems despite the soaring number of apprehensions in late 1960s (Figure 2). The passivity of authorities responsible for illegal labor force had been more than welcomed by agribusiness supported by, in the words of Daniel Tichenor, “an increasingly anachronistic subgovernment” personified in Senator Eastland.²³ Consequently, the dependence of agriculture on unofficial source of cheap labor and the willingness of authorities to

¹⁹ Hing, Bill O. p 83.

²⁰ Gimpel Edwards: pp. 99-109

²¹ As Leo Chavez notes, “it took almost ten years for immigration to surface as a topic warranting a magazine cover. Chavez, Leo: p.83

²² Hing, Bill O.: pp 97-99

²³ Tichenor, Daniel: pp. 224-230

turn blind eye vis-a-vis raising levels of undocumented migration remained to be a Gordian knot for the next immigration reform.

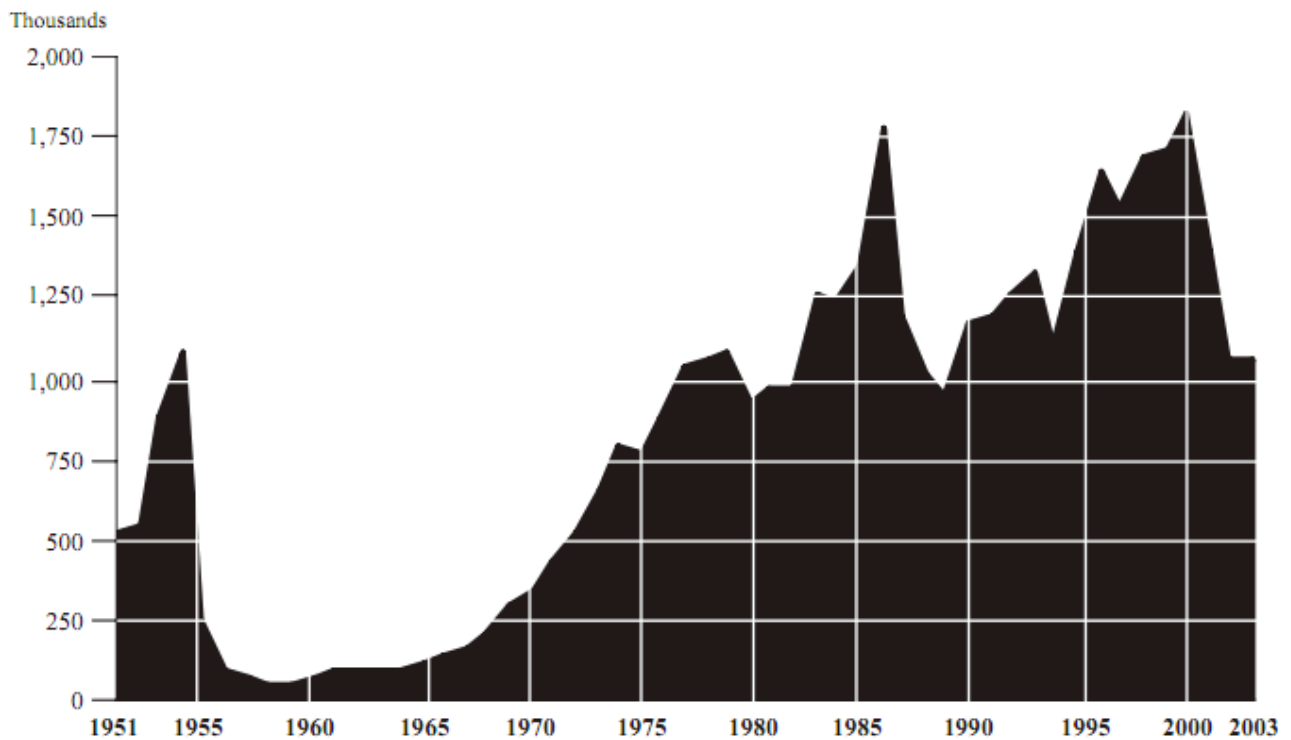


Figure 2: Number of Aliens Apprehended in Fiscal Years 1951-2003
(source 2003 Year book of Immigration Statistics, Office of Immigration Statistics, p.145)

Even though the Hart-Celler Act of 1965 had been introduced as an egalitarian reform tailored to suit Europeans, it failed to fulfill most expectations. Albeit removing the national quota, it failed to be either genuinely liberal or to serve as a measure maintaining contemporary composition of immigrants. Furthermore, it exposed and exacerbated several long term problems of U.S. immigration policy like mutually exclusive preferences of agribusiness and civil right movement and established precedent for future reforms as a comprehensive reform that fail to anticipate own consequences. And after the Act, as Nathan Glazer quizzically phrased it, Americans had “insensibly reverted to mass immigration without ever having made a decision to do so.”²⁴

²⁴ Glazer, j in Mills , Nicolaus: p. 46

2.1.2 *Immigration Reform and Control Act of 1986*

Despite the obvious failure to achieve its goal and raising levels of illegal immigration, U.S. immigration policy articulated by the the Hart-Celler Act prevailed until the mid 1980s . After a decade of halfhearted attempts to address the issue, the Select Commission on Immigration and Refugee Policy (SCIRP) was created to study and recommend changes in U.S. Immigration Policy. In its final report submitted to Congress in 1981, the SCIRP recommenced to maintain the emphasis on family reunification and to expand the category of eligible family members under a moderately increased quotas.²⁵ Furthermore, the final report included suggested an amnesty for undocumented immigrants that had arrived prior to 1980 and tougher enforcement of labor law accompanied by sanctions for those knowingly employing illegal workers.

The role to steer the reform fell to two recently appointed politicians; Senator Alan Simpson (R-WY) and Representative Romano Mazzoli (D- KY). Both were eager to prove themselves, in words of Senator Simpson “to put stamp on a policy area”.²⁶ Their efforts, however met immediately with strong opposition. The inclusion of immediate relatives under quotas aggravated ethnics groups and civil rights advocates, the exclusion of other categories and amnesty for illegals vexed conservatives. Secondly, employer associations asked strongly for a expansion of legal temporal working visas and opposed all kinds of sanctions.²⁷ Furthermore, public opinion was vehemently against any liberalization; in 1980 91 percent of polled Americans supported an “all-out effort” to stop illegal immigration and 80 percent wanted to reduce even the number of those residing legally.²⁸ To put a stamp on immigration policy, Simson and Mazzoli had to find a common ground among seemingly opposing interest.

Before President Reagan signed the IRCA into law on November 6, 1986, the Congress witness a two year long struggle for reconciliation. Despite the coordination by Simson and Mazzoli, both chambers drafted quite different proposals and a grand compromise was reached only at the expense of rendering several measures proposed by the reform powerless. The provision demanding a warrant allowing an INS raid of fields prevented effective control of illegal agricultural workforce. The effect of employer sanctions, that were enacted to balance out the legalization of undocumented residents, was impossible to measure; the legalization lowered the potential number of apprehended and control of agricultural sector remained minimal.²⁹ Moreover, the IRCA of 1986 omitted to address situation of the undocumented who were not eligible for

²⁵ The Report of Select Commission on Immigration and Refugee Policy p. 112-122

²⁶ An interview with Daniel Tichenor published as an Appendix in Tichenor, D.: *Dividing Lines*

²⁷ DeLeat , Debra: p.86

²⁸ Martin, Phillip L. p. 31

²⁹ Heer, David M. : pp. 61-62

amnesty and, despite increased funding of the border patrol, the clandestine crossings continued to provide population with ambiguous legal status.³⁰ For some the IRCA of 1986 earned a label of the least imperfect reform,³¹ but the outcome of reform merely reflected the limits of bipartisan cooperation.

The legislative cooperation between the parties remained limited despite the transformation of American conservatives. By mid 1980s, Southern Democrats were diminished to a fringe group within the party and among the GOP underwent invigorating change under the leadership of Ronald Reagan, who endorsed a vision of free trade encompassing free movement of workers.³² The original form of Simson-Mazzoli bill based upon the SCIRP recommendations, lacked, however, support from the Reagan administration as a measure implementing too many government controls and only after reintroduction and several amendments achieved the bill approval by both the free market advocates and pro-rights liberals alike. The compromise downplayed the somewhat restrictive tone of SCIRP report and led to a patchwork reform. Free market expansionist represented by the executive gained loose control of employers and available workforce and the Democrats pushed through agricultural interests and broader eligibility for amnesty important for cosmopolitans like Ted Kennedy.³³ The most widely recognized results of this coalition mirrored the axis of their cooperation; the amnesty program brought unprecedented allowed approximately 3 million of the undocumented to gain permanent residence and while perceived as a crucial reform by all, the conservative describe the IRCA of 1986 only as amnesty and total failure.³⁴

2.1.3 *Immigration Act of 1990*

While the IRCA of 1986 exposed both the limits of and reasons for cooperation between parts of GOP and the Democrats, reforms following in the 1990s delimited the limits of this coalition. As the mass illegal immigration prevailed, the free labor market enthusiasm of 1980s simply seemed out of context and the proposal to amend the Constitution by pompous “There shall be open borders” suggested by the Wall Street Journal editorial in Jul, 1983, became an absurd laissez-faire pipe dream.³⁵ The strength of Reagan's apostles turned to economic liberalization under the NAFTA and the immigrant alliance was gradually rearranged. However, the pro immigration coalitions managed to pass one last reform utilizing the inertial support accumulated

³⁰ Hayes, Helen: pp 5, 73

³¹ Hing, Bill O.: p 158

³² Tichenor, Daniel. : p. 255

³³ Tichenor, Daniel: pp. 249-262

³⁴ “No. 1, they agree it was amnesty. And No. 2, they agree it was a complete and total failure. “ Senator Cornyn, John, page S2551, IMMIGRATION REFORM debate (Senate - March 30, 2006)

³⁵ The Wall Street Journal editorial, (Eastern edition). New York, N.Y.: JUL 3, 1984. pg 1

in previous decade .³⁶ The bill substantially liberalized several quotas, most notably the quota for employment based immigration which were raised from 54,000 to 140,000 beginning the fiscal year 1992. Compared to previous legislature, the Immigration Act of 1990 was enacted expeditiously and with little discussion during the overall preoccupation with situation in Kuwait, despite increasing the immigration of all categories besides refugees.³⁷

Initially, the law was due to its low public profile unopposed and was perceived to be a part of a successful immigration regulation the flow of immigrants.³⁸ It catered to the interest to the interests of both the civil rights advocate groups and business associations and shifted slightly the proportion of visa in favor of business-related category of visas while introducing a new diversity preference (6% of all visas) increasing moderately the overall visa cap to 700,000 (675,000 after 1995).³⁹ However, as soon as the preliminary results of the IRCA 1986 began to be more observable (Figure 2), the Immigration Act of 1990 became inherently associated with numerous frauds and high levels of illegal immigration that took place in the aftermath of IRCA 1986. In early 1990s, conservative and anti-immigrant interest group gradually gained significant recognition be elected representatives and the discussions surrounding various restrictive state legislature indicated the potential for a change in immigration policy.

2.1.4 Illegal Immigration Reform and Immigration Responsibility Act of 1996

Unrelated to the enactment of the Immigration Act of 1990, the Congress underwent in the early 1990s significant personal change that redefined the lines of immigration reform coalition. The overwhelming victory in the 1994 midterm elections known best as the Republican Revolution enabled the GOP to implement new philosophy set forth in the “Contract with America”. Among other implications for bipartisan cooperation, the Republican Revolution stressed fiscal conservatism to the extent of pitting “taxpayers” against “tax recipients” and contributed to a stigmatization of welfare programs aimed at immigrants. Cutting down the welfare benefits became a new motive for a immigration reform steered by, due to their strength in Congress, the fiscal conservatives. Furthermore, a decade after its enactment, the IRCA of 1996 became an epitome of amnesty accompanied by numerous frauds and the next reform had to

³⁶ Tichenor, Daniel J.: p. 250-274.

³⁷ Heer, David M. : p. 63

³⁸ DeLeat, Debra: p.96

³⁹ Gimpel, Edwards: pp. 196 - 197

propose measures addressing its shortcomings.

The initiative concluded in the 1996 by the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA) which contrasted with previous two reforms in its imminent aims and one important detail. Both the IRCA and Immigration Act of 1990 were derived from the SCIRP report and reflected at least partly contemporary scientific knowledge about immigration. On the other hand, in the aftermath of the Republican Revolution no advisory body was formed and, as Lina Newton notes, the legislators addressed the topic of illegal immigration from changed perspective without justification by a significantly altered scientific knowledge.⁴⁰ In other words, a more partisan approach reflecting the “Contract with America” was adopted instead of more inclusive strategy based upon on advisory body. Furthermore, reports of various agency available at the Congress prior to the enactment of the IIRIRA hinted absence of conclusive data on the very matter targeted by the reform, the cost of illegal immigration.⁴¹

The absence of a single set of data remains to be prominent in the immigration reform discourse and the politicians of both major parties commonly use estimates from various sources. Numeric discrepancies had, however, never inhibited bipartisan cooperation per se, but they put in doubt the specific measures enacted by particular reform. The IIRIRA had introduced several provisions with specific measures and the absence of an advisory body cast shadow of doubt whether further enlargement would have brought better results or whether the same results could have been achieved for less. Besides limiting the access to public benefits, the IIRIRA had foremost dealt with the border protection following a simple guideline “the more the better”. It put in order gradual increase of the Border Patrol by 4.000 men and 300 support personnel, reinforced and sanctioned construction of barriers even in areas protected by National Environmental Policy and authorized the use of any available federal equipment upon the request of General Attorney as well as the increase of detention capacities.⁴²

The IIRIRA in other words withdrew financial support from immigrants and granted larger budget for the enforcement despite the commitment of fiscal conservatives to lower the budget. Secondly, the attempt to prevent illegal immigration failed in several aspects and while the fences and troops limited the clandestine crossings in most populated areas, the crossings moved to a less controlled parts of the border and illegal immigration continued to increase (Figure 2, page 21). Albeit decreasing the border crossing in previously most frequent areas, the IIRIRA failed due to the misunderstanding of the phenomenon of illegal immigration and the limited success of all four important reform attempts that took place in the second half of 20th century raises doubts about the

⁴⁰ Newton, Lina: p. 9

⁴¹ Newton, Lina: p. 54

⁴² 104th Cong., 2nd session, Statutes at Large, P.L. 104-132

actual potential of any comprehensive reform to anticipate the very consequences of own enactment. However, the gap between the intentions of official immigration policies and actual policy outcomes is neither unique for particular comprehensive reform nor for the United States of America and challenges all attempts to articulate a policy lasting infallibly for decades.⁴³

The experience with IIRIRA emphasized the seemingly simple truth about most federal policies. To be successful, a reform must cover a wide scope of issues in a sufficient detail, it has to be comprehensive and backed up by a strong coalition of political interests. While U.S. legislators are well aware of the challenges of a narrowly articulated reform,⁴⁴ the sheer complexity of the phenomenon of migration limits issues that might be covered by a single bill. Furthermore, constant change in size and composition of the immigration flows complicate the articulation of a long lasting policy further and in following subchapters I will cover the most significant challenges for a comprehensive from both the temporal and structural perspective.

2.2 Changed patterns of migration

The legislative changes adopted after the World War II reshaped gradually the very character of immigration to the United States. Despite professed intentions, the source of immigration turned away from Europe towards Asia and Latin America and the absolute number of migrants reached unprecedented heights. In the attempt to curb the changing patterns, U.S. legislators had consequently enacted measures delimiting the access to legal permanent residence indirectly contributing to the expansion of illegal immigration.⁴⁵ The illegal status of many immigrants is far from the only concern of the Capitol Hill. Newly arriving migrants, legal and illegal alike, have established a flourishing minority enclaves posing as a thorn in side of many ardent advocates of a more traditional perception of America. Furthermore, the concentration of recent immigrants burdens several states with associated welfare costs and contributes to disputes about federal and

⁴³ The “gap hypothesis” is one of the central theses of *Controlling immigration : a global perspective*, edited by Wayne Cornelius, comparing state immigration policies. Cornelius 4 The fact that most governments fail to accomplish all of the goals intended by immigration policies explains the hesitancy consciously is that significant and persistent gaps exist between official immigration policies and actual policy outcomes. The second, the “convergence hypothesis”, claims that there is growing similarity among labor importing countries in terms of: (1) the policies that their governments have adopted to control immigration; (2) policies designed to integrate immigrants into host societies by providing them with social services as well as political, economic, and social rights; and (3) attitudes toward immigrants and immigration policy preferences among general public.

⁴⁴ Among other, Senator Sam Brownback summarized the Scylla and Charybdis of narrow Immigration policy on September 21, 2006: In 1986, there was an amnesty bill, but it did not deal with border enforcement at that point in time. That did not work. In 1996, we had an enforcement-only bill, but it did not deal with the future flow or did not deal with the people who were here in an undocumented status at that point in time. We come, then, to 2006 (SECURE FENCE ACT OF 2006--MOTION TO PROCEED, Senate - September 21, 2006 [Page: S9880])

⁴⁵ DeSipio, Louis - De La Garza, Rodolfo O.: *Making Americans, Remaking America: Immigration and Immigrant Policy*, (Oxford: Westview Press, 1998), s. 49.

state jurisdiction especially after the IIRIRA cuts shifted the responsibility to state governments.⁴⁶

As the Hispanics slowly, but surely, become recognized as the most numerous minority group, the Mexican Americans, the most numerous group among the Hispanics, stand out as an epitome of the problems with current immigration policy. Albeit providing the bulk of illegal immigrants, the Mexico-born population suffers from a significant misinterpretations concerning the source and status of Mexicans residing in the USA and is often victim of over simplification. In general Hispanic minority emerges as an important player in U.S. election both due to its size and concentration and the dual status of seemingly troublesome, but influential minority, remains to be one of the most easily observable aspects of changing patterns in immigration to USA.

2.2.1 Numbers and origin of current migrants

The most noted change in immigration pattern that occurred in the 20th century is the shift in source and size of immigration flows easily observable in the decennial census. While in 1970 the population of foreign-born reached 9.6 million (4.7%), it had continuously grown to 14.1 million (6.2%) in 1980, to 19.8 million (7.9%) in 1990 and to 31.1 million (11.1%) in 2000. In 2009, the American Community Survey presumed that the number of immigrant residents reached 38.5 million representing 12.5 percent of the total population.⁴⁷ While it can be argued that the proportion of immigrants was in the history of the United States even higher, the dominance of Asian and Latin American countries providing the bulk of all immigrants was till four decades ago unprecedented. Furthermore, the numbers and origins of current migrants deserve closer attention especially in the perspective of aging native born population. As the the baby boomers retire, the influx of predominantly young immigrant helps to maintain the labor force and, in the long run ,also the age structure of U.S. population.

Currently, the population growth in the United States merely benefits from immigrants and the second and third generations descended from immigrants that maintain a hyphenated identity. According to the 2010 Census, Hispanic population reached in 2010 50.5 million and composed 16 % of the total population providing more than a half of total population growth. In 2000, the 35.3 million of Hispanics made up only 13 % of total population and the growth by more than 15 million accounts only for those self defines as Hispanics.⁴⁸ The aspect of self definition will be

⁴⁶ Hayes, Helene: p. 38

⁴⁷ [HTTP://WWW.CENSUS.GOV/PROD/2010PUBS/ACSB09-15.PDF](http://www.census.gov/prod/2010pubs/ACSB09-15.pdf) page 1

⁴⁸ Overview of Race and Hispanic Origin: 2010, 2010 Census Briefs, Issued March 3, 2011

addressed later, but regarding the population growth in the USA won't be likely maintained even with a prominent native born Hispanic minority. Without the current levels of immigration, the nativity of U.S. population that up to recently had provided two thirds of growth would eventually result in a decline of U.S. population by 2048.⁴⁹ However, the very opposite is more likely and high levels of immigration will, as the Pew Research Center projects, contribute to 82% of the increase between 2005 and 2050 when 67 million of new citizens “will be the immigrants themselves and 50 million will be their U.S.-born children or grandchildren.”⁵⁰

The future American will therefore be proportionally more descended from non-European immigrants and the majority of non-Hispanic whites is far from assured. Even with in a low immigration scenario calculated by Jeffery S. Passel and D'Vera Cohn, immigrants will continue to compose approximately 13% and Hispanics 26% of the population. High immigration scenario, on the other hand, expects in 2050 a 23% share by first generation immigrants and 32% by the Hispanics.⁵¹ However, the demographic predictions mentioned above reflect only one side of the immigration phenomenon and the actual supply of people willing to immigrate might decrease based upon the developments abroad. The fertility of Mexicans who currently provide the bulk of immigrants decreased significantly to a ratio of births per woman common in more developed states (Figure 3) and the decrease of population growth in Mexico will likely contribute in future to a proportional decrease of Mexicans in overall immigration. And, as a smaller families become standard in Mexico, even those moving to the USA will likely adopt lower fertility rates common for Hispanics in the USA making a high population growth predictions less credible.

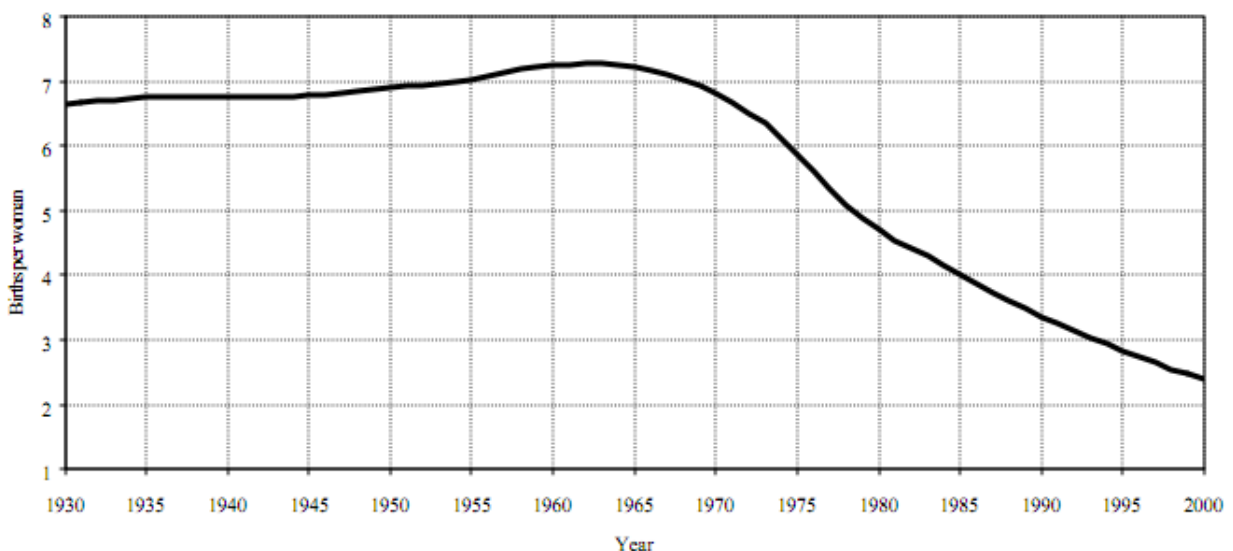


Figure 3: Total fertility rate, Mexico, 1930-2000

Source: Estimates by Mexico's National Population Council used in Tuiran, Rodolfo; Partida, Virgilio; Mojarro

⁴⁹ [HTTP://WWW.PRB.ORG/ARTICLES/2009/USPOPULATIONGROWTH.ASPX](http://www.prb.org/articles/2009/uspopulationgrowth.aspx)

⁵⁰ [HTTP://PEWRESEARCH.ORG/PUBS/729/UNITED-STATES-POPULATION-PROJECTIONS](http://pewresearch.org/pubs/729/united-states-population-projections)

⁵¹ Jeffery S. Passel and D'Vera Cohn, *U.S. Population Projections: 2005-2050* (Washington, DC: Pew Research Center, 2008), accessed online at www.pewhispanic.org/files/reports/85.pdf, page 11

In following decade, however, the demographic structure of immigration won't change significantly unless, of course, a major comprehensive reform is adopted. As already noted, the most numerous immigrant group originates in Latin America and Asia, but the respective figures vary significantly according to the means of entrance. In 2008, 36% of all new permanent residents came from Asia and 44,4 % from North and South America. In 2009, 36,5% came from Asia and 42,3 from America and in 2010 the percentage changed to 40,5% and 40,7% respectively. The relative decrease of legal immigration from Latin America is more apparent in the country statistics, where, for example, the proportion of immigration from Mexico decreased from 17,2% in 2008 to 13,3% in 2010, while the absolute number of new legal residents decreased from 1, 107, 136 in 2008 to 1,042,625 in 2010.⁵² The statistics of apprehended illegal immigrants are, however, dominated by the Mexicans. In 2008 they composed 87,6% of apprehended, in 2009 86,2% and in 2010 82,8%.⁵³ In absolute numbers, the number of apprehended Mexicans decreased by 38% from 693,592 in 2008 to 427,940 in 2010, but nevertheless Mexican remain to be the epitome of illegal immigrant.

While the number of apprehended exaggerates the numbers due to repetitive apprehensions of the same person on U.S. border, the composition of illegal population residing in the United States confirms the overall dominance of Mexicans (Figure 4). However, in recent years, due to the economic crisis and lower population pressure abroad, even illegal immigration decreased. The estimated annual inflow dropped from 850 thousand prior to March 2005 to 300 thousand after March 2007.⁵⁴ Surprisingly, the decrease of both legal and undocumented immigration have not, as will be seen in later chapters, yet changed the narratives accompanying the discussions about immigration reform. The high fertility of first and second generations of immigrant, the sheer number of residents with ambiguous legal status and prevailing misconceptions about the immigration contribute to the inertia of several older arguments and especially the situation of the most dominant minority and immigrant group, the Mexicans, has to be addressed in greater detail.

⁵² [HTTP://WWW.DHS.GOV/XLIBRARY/ASSETS/STATISTICS/PUBLICATIONS/LPR_FR_2010.PDF](http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2010.pdf) page 4

⁵³ [HTTP://WWW.DHS.GOV/XLIBRARY/ASSETS/STATISTICS/PUBLICATIONS/ENFORCEMENT-AR-2010.PDF](http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf) page 3

⁵⁴ [HTTP://PEWHISPANIC.ORG/REPORTS/REPORT.PHP?REPORTID=126](http://pewhispanic.org/reports/report.php?reportid=126)

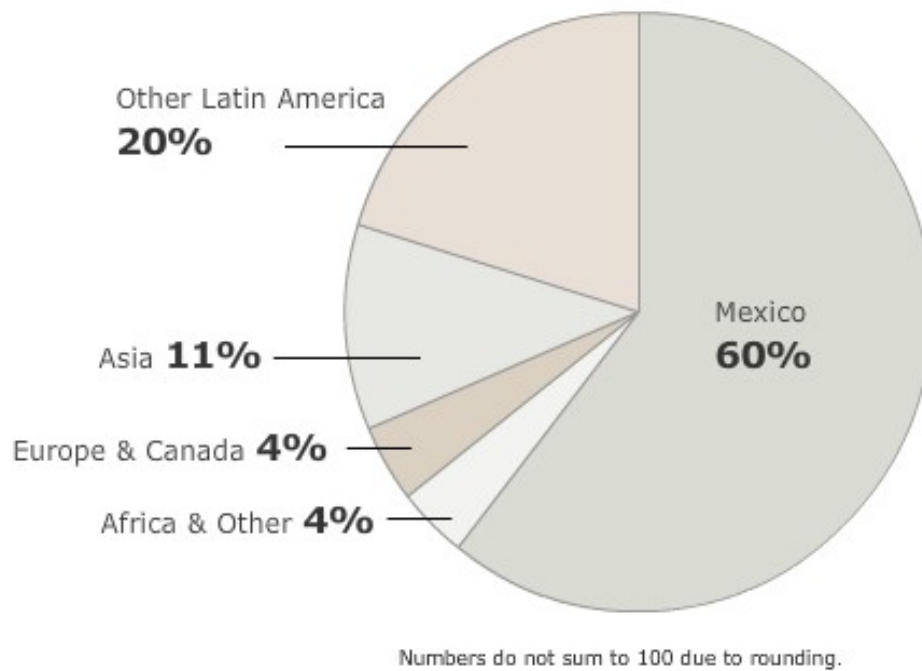


Figure 4: Area of origin, U.S. unauthorized immigrants in 2009

Source: [HTTP://PEWHISPANIC.ORG/UNAUTHORIZED-IMMIGRATION/](http://PEWHISPANIC.ORG/UNAUTHORIZED-IMMIGRATION/)

2.2.2 *The Eternal Immigrant Mexican American*

Furthermore, recent changes of immigration contributed to the reiteration political narratives used by the opponents of mass immigration. The overall imagery accompanying the issue of illegal immigration is simplified to a single picture of an unskilled Mexican worker. As “permanent foreigner” and “criminal alien”, the image of “temporary Mexican” serves as epitome for all negative aspects of current immigration and is commonly evoked due to the easiness with which it resonates in broader public.⁵⁵ The handpicking of a single ethnicity as the symbol of threat is neither new nor unique to the United States. In 1750s Benjamin Franklin ranted against the Germans as “the most ignorant Stupid Sort of their own Nation”.⁵⁶ In the 19th century, the Irish and the Germans, and later the Italians and the Chinese passed along the torch of least favorite immigrant ethnic with the Jews and East Europeans taking their turns in early 20th century. Nowadays, their numbers and concentration made the Mexican the newest synonym with the

⁵⁵ Newton, Lina p. 23

⁵⁶ The Support of the Poor, a letter To Peter Collinson , Sir Philadelphia May 9th. 1753, from The Writings of Benjamin Franklin: Philadelphia, 1726 - 1757 published on <http://www.historycarper.com/resources/twobf2/letter18.htm>

“problem” of immigration. ⁵⁷

The simplified perception of Mexican Americans as predominantly illegal fruit pickers, construction workers and house maids burdens the discussion about policy reform for two main reasons. First, while many Mexican immigrated only relatively recently, and Mexican immigrants are neither as skilled and educated as other immigrant groups and compose the bulk of illegal immigrants, Mexicans living in the USA are far more varied group than the scapegoating image suggests. Secondly, clandestine crossing of the border is far from being the sole source of illegal immigration and is not an exclusively Mexican phenomenon. The voyage of Golden Venture seems to be all but forgotten in the narratives depicting illegal immigration and the actual number of those crossing border seems to a less of burden when compared to the issue of millions unauthorized foreigners residing already in the USA many of whom are indeed born in Mexico. As Lina Newton notes: “While most illegal immigrants are from Mexico, most Mexican immigrants are not illegal.”⁵⁸

Recently, the growth of Mexican American population stems from births in the United States rather than from migration of any kind (Figure 5). The Pew Hispanic Center estimates that the Mexican Americans compose 63% of the U.S. Hispanic population when 31,674,000 out of 48,348,000 Hispanics have Mexican nativity.⁵⁹ But the numbers themselves reflect the composition of Hispanic community very poorly. Some Americans of Hispanic descent pass as white Americans in most surveys as long as they do not identify themselves as Hispanics. Others are perceived as members of a racial or ethnic minority despite their wishes. Mixtec people, for example, who in great numbers work in the field in the Southwest, are labeled as Mexicans despite prevailing Native American identity. The definition of Mexican American and Hispanics in general thus varies between self proclaimed hyphenated identity and labeling by non Hispanics based upon “foreign” appearance and the use of Spanish and the need to perceive oneself as one.

⁵⁷ Hing, Bill O. 115

⁵⁸ Newton, Lina p: 28

⁵⁹ [HTTP://PEWHISPANIC.ORG/DATA/ORIGINS/](http://PEWHISPANIC.ORG/DATA/ORIGINS/)

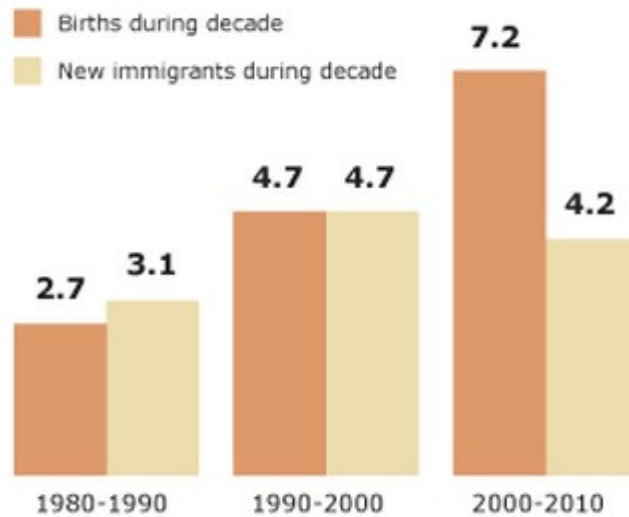


Figure 5: Mexican American Population Growth 1980-2010 in millions
 Source: Pew Research Center⁶⁰

The absence of a clearer categorization for the purposes of, among others, local educational policy, and is further complicated by the contrasting narratives used to depict the Hispanic community either as a victim of Latin American autocracies or as the eternal culprit braking the law. The Mexican American community, on the other hand, is composed of a great variety of backgrounds: descendants of settlers who became U.S. citizens after the USA annexed pieces of Mexico's territory, descendants of workers migrating prior to immigration restrictions, political refugees, first and second generations of immigrants and, in a scarce number, members of flourishing Mexican underworld. Furthermore, among Mexican count U.S.-born citizens, naturalized citizens, legal resident aliens, temporary workers, and unauthorized immigrants.⁶¹ And yet in the discourse about the immigration reform Mexican identity is often boiled down to one of an illegal immigrant.

The understanding of while Mexican Americans prevail to be seen as the “problem” rests in the commonly used narratives describing *who* is illegal. Mexicans crossing the border stand out as symbol in the absence of other images of unauthorized immigrants from the debates such as the university students who decide to stay in the United States past the expiration of their temporary permits or the tourists who violate the terms of their visas. While the evidence in both the 1981 and 1994 task force reports stated that temporary visa overstays produced up to 40% of the resident undocumented population, students and tourist were not mentioned, much less demonized by congressional reformers. Such omission is possible because neither students nor tourists fit the profile of who is “illegal” in the United States, they constitute only relatively marginal source of

⁶⁰ The Mexican-American Boom: Births Overtake Immigration, Report published on 14.7. 2011, Pew Research Center, [HTTP://PEWHISPANIC.ORG/REPORTS/REPORT.PHP?REPORTID=144](http://PEWHISPANIC.ORG/REPORTS/REPORT.PHP?REPORTID=144)

⁶¹ Newton, Lina: p. 28

illegal immigration and undergo at least limited scrutiny prior to the entrance in the United States. And as the border crossings symbolize illegal immigration, the most numerous group crossing the border, the Mexicans, serve in the Congress as an epitome of the whole phenomenon.⁶²

Oversimplification of illegal immigration to a Mexican “problem” tempts to perceive the challenge of immigration reform as an issue between Mexico and USA. Albeit important, factors determined by bilateral relations are far from the only issue that have to be addressed and the limited success of the IIRIRA of 1996 warns from any narrowly articulated reform. Furthermore, as the projections estimate further growth of Hispanic population up to 29% of the U.S. population in 2050,⁶³ the Hispanics and even Mexicans themselves will become as electorate even more important actor in domestic issues of the United States and misinterpretations of all sorts might emphasize the contrasts rather in offer inclusive American Creed. Or as stressed by Luis DeSipio and Rodolfo De La Garza: “By not distinguishing immigrants from minorities, the United States runs the risk of encouraging immigrant to behave as minorities, in opposition o the dominant society.”⁶⁴

2.2.3 Issues of Regional concentration

The already easily observable changes in the size and origin of immigrants are further underlined by their concentration in the South and Southwest regions of the United States. Attracted by the job in agriculture and in industries dependent on unskilled labor and by the thriving minority communities on the Pacific shore, immigrants had in recent years significantly contributed towards the rapid population growth in the respective areas.⁶⁵ The settlement in metropolitan areas is well documented also in the Northeast part of United States, but while in the past immigrants contributed towards the population boom in cities like, for example, New York, Chicago or Boston, contemporary levels of immigration in the Northeast pale in comparison with the Southern and Western regions and the population shift is easily observable in metropolitan, county and state statistics alike.⁶⁶

The growth of population influenced by immigration is even more remarkable when the ethnicity of the most rapidly growing part of American population is taken into account. Almost a half of the Hispanics, 17,636,222 lived in 2000 in two states, Texas and California and seven states with immigrant population above one million (Texas, California, New York, Florida, Arizona,

⁶² Newton, Lina: p. 146

⁶³ [HTTP://PEWRESEARCH.ORG/PUBS/729/UNITED-STATES-POPULATION-PROJECTIONS](http://PEWRESEARCH.ORG/PUBS/729/UNITED-STATES-POPULATION-PROJECTIONS)

⁶⁴ DeSipio, Louis - De La Garza, Rodolfo O: ,p. 123

⁶⁵ DeSipio, Louis - De La Garza, Rodolfo O: p. 51., Hing, Bill O.: pp. 269-270.

⁶⁶ Figures 3.4. and 5 in Population Distribution and Change: 2000 to 2010, 2010 Census Briefs, Issued March 2011

Illinois and New Jersey) houses 77% of Hispanics.⁶⁷ In these states, as will be addressed in following subchapter, the immigrant and ethnic voting blocks might play important active role, but the concentration of Hispanic Americans poses also a challenge for state administration and exposes various regional specifics that might to an extent play role in federal politics. State might, like Arizona recently, adopt an independent strategy vis-à-vis immigration levels or their federal representative simply represent common regional sentiments on federal level.

Besides the levels of immigration, state administrations often feel compelled to act due to the distribution of welfare costs for immigrant population. While many illegal immigrants, who as the low-income residents might depend on affordable health care and welfare, pay Social Security and Medicare taxes, the income from them goes to Washington rather than to local administration which are responsible for immigrants when their lives go awry. Furthermore, even though the immigrants pay more in taxes than they as a group receive through welfare, the proportionally larger number of low-incomers among them lead to the perception of the opponents of immigration that they do not pay their share for public goods like infrastructure and for costs of services provided to them.⁶⁸ Albeit such conclusions are generally disputed,⁶⁹ they contribute to the anti-immigrant sentiment that commonly occurs vis-à-vis mass immigration and are reflected in the discrepancies in between the approach of various states to immigration policy.

Independent approach occurs both in isolated incidents and in public uproar behind state law as the notorious California Proposition 187 or the Arizona SB 1070. Isolated incidents of independent action are observable in the way local officials interpret federal laws. Administrations in charge of immigration and naturalization possess significant freedom in granting the statuses and in the studies conducted in late 1980s the rates of INS district office administrative denials varied extremely from 3,1 % of Denver applicants to 27,2% of Miami applicants.⁷⁰ Such differences are easily interpretable in the light of the size and composition of residing immigrant population and the reaction of majority public to their presence. Adverse action is, however, far from limited to the zealous public officials and often exaggeratedly mimics the development on federal level .

In the 1990s, anti-immigrant sentiment led to the IIRIRA act of 1996 which, among other consequences, exacerbated the distribution of costs between federal and state governments⁷¹ The notion behind limiting the access to *any* welfare was, however, ardently defended also in by the advocates of California Proposition 187, but California had its own anti- immigrant legislature

⁶⁷ U.S. Census Bureau Fact Finder, data from 2000 Census

⁶⁸ Mills 78 (NALEO 1988, 1991) studies

⁶⁹ For example see Does Immigration Help or Hurt Less-Educated Americans? TESTIMONY OF HARRY J. HOLZER, JUDICIARY COMMITTEE, U.S. SENATE, APRIL 25, 2006

⁷⁰ DeSipio, Louis - De La Garza, Rodolfo O: p. 7

⁷¹ Hayes, Helene: p. 38

already in 1972.⁷² The long term opposition against generous access to welfare merely culminated after the Los Angeles 1992 riots, but the potential for a highly controversial pieces of legislature prevails and as the states become more diverse and as the Hispanics replace the African Americans as the largest minority, any tensions between ethnics will affect the immigration policy with which are the Hispanics commonly associated. But the immigrant are far from passive objects of legislative changes and in the end might shape future federal and state policies more effectively than the proponents of restrictive approach.

2.2.4 Electoral importance

The regional concentration has, however, one important implication that has to be addressed separately, namely the importance of foreign-born U.S. citizens and their descendants in elections. While the American public widely accepts the idea of hyphenated identity, the voting strength and behavior between remarkable minorities of the past and present differs in several important details. First, the sheer number of recent immigrants speaking Spanish turned Hispanics to the largest minority residing in the USA and their distribution emphasizes the electoral importance further. Secondly, while the most prominent ethnic minorities like, e.g. the Irish, the Italian and the German Americans, originated in a relatively distant country, while contemporary largest ethnic minority, the Mexican Americans, reside predominately close to the border with Mexico and are considered to be a part of Mexican nation by prominent Mexican politicians regardless of their citizenship. And, furthermore, the very character of globalized world enables to maintain a dual identity in second and following generations by both media and personal transnational networks.

All in all, the Hispanics and especially the most prominent Hispanic ethnicity, the Mexican Americans, form a compact and numerous group that will likely remain to be distinguishable from Americans descended from other nations. As such, they present an important target group during the elections in most populous areas of the United States and, consequently, their influence is easily observable also in the federal elections. In presidential elections are the three states with the proportion of foreign-born population above 20%, California, New York and New Jersey, represented by 98 electors and the nine others with the proportion above national average (Nevada, Florida, Hawaii, Texas, Massachusetts, Arizona, Illinois, Connecticut, and Maryland) by 136 electors. The 12 states with proportionally largest immigrant populations thus control 43% of the electoral college and after the adjustments based on the 2010 Census, they will gain three more electors. In the House are these states represented by approximately 48% of all Representatives and

⁷² Hing, Bill O. : p.156

the changes adopted based upon the latest Census will tip the proportion towards 49%.⁷³

The potential strength of immigrant voting is rooted in the very mechanic of the redistribution of electoral votes. The states attracting the labor force will inevitably attract also immigration and the gain of population from both international and interstate migration will enable these states to gain electoral votes at the expense of states failing to attract labor force. In other words, as long as the immigrants reflect upon economic opportunities, they follow the flow of labor force settling consequently in a states gaining population and thus the electoral votes. The results of 2010 Census increases the representation of eight states, Texas (+4), Florida (+2), Arizona, Georgia, Nevada, South Carolina, Utah and Washington (each +1). Each of these states except South Caroline has the percentage of immigrant population above 6% at they gain their electors mostly at the expense of states failing to attract migration of any sorts.⁷⁴ Albeit populous states like New York and New Jersey lost some representatives but due to the high concentration of immigrants it can be argued that the immigration prevented even larger loses. Immigrants thus gain foothold in states with either already high population or in states that will likely gain population proportional electoral votes.

The potential to influence the elections is, as argues by some, already felt in the lack of success to toughen the immigration policy as the Congressmen cater to the immigrant constituencies and especially to the “Hispanic voting bloc”.⁷⁵ But the electoral strength should not be simplified either to the first generation immigrants or to a particular ethnic. As noted before, the Mexican Americans come from different backgrounds and the variety of Hispanics is even broader. Recent migrants from Mexico share culture with Hispanic population residing in the United States, but prefer expansion of immigration additions and rights granting access to legal residency and better wages preferred, *ex vi termini*, by all immigrants. In hypothetical situation, specifics of a particular immigration reform will suit recent immigrants more than any particular minority of the United States and the first generation Mexican Americans will be torn in between the immigrant and Hispanic identities. Hyphenated identity does not automatically invoke support for expansion of immigration policy and ethnic or immigrant voting blocs should be therefore perceived more narrowly as partly overlapping and yet different categories.

As mentioned before, the failure to distinguish immigrants from minorities exacerbates the divide between the major population and both groups, and from the perspective of electoral strength, the understanding of the difference between an immigrant constituency and ethnic constituency becomes a necessity for a successful political campaign. As had the 1992 L.A . riots

⁷³ [HTTP://2010.CENSUS.GOV/NEWS/PDF/APPORT2010_TABLE1.PDF](http://2010.census.gov/news/pdf/apport2010_table1.pdf)

⁷⁴ [HTTP://WWW.CENSUS.GOV/PROD/2010PUBS/ACSB09-15.PDF](http://www.census.gov/prod/2010pubs/acsbr09-15.pdf) page 4

⁷⁵ *U.S. News & World Report* 31 quoted in Chavez, Leo: 239

proven, ethnic minorities do not see each other eye to eye all the time and skillful politician should be able to distinguish various groups of voters. In the narratives that will be evaluated in Chapters 3, 4 and 5 should be the differences observable in the comments made by senators from states with significant immigrant or ethnic populations with raising potential to determine the elections. And the preferences of groups with hyphenated identities a regarding immigration are already observable, the June 9-12 2011 Gallup poll recorded 18% support, the historical high, for increased immigration.⁷⁶

2.3 Structural Challenges for Comprehensive Reform

Any attempt to reform current immigration policy in the United States faces several fundamental structural challenges. First of all, the character of illegal immigration inhibits constructive dialogue and exposes several paradoxes of American economy and society. On one hand, United States is a country of immigrants and depend on immigrant labor, both legal and illegal. But on the other hand, doubts about the proper number and kind of immigrants admitted to the USA reflect real problems in welfare and employment legitimizing narrative labeling on nativism. Any reform thus faces dissent either as too restrictive or too expansive, but the paradox of choice has even more pragmatic implications. As deftly summarized by Wayne Cornelius, most developed countries are facing “a trade-off between the sociocultural costs of admitting more foreigners – many of whom will settle permanently – and the economic costs of *not* importing them.”⁷⁷ In other words, solving one ill of immigration brings problems in another matter.

In following pages I will first introduce the structural challenges related to illegal immigration. While often simplified to a phenomenon that has to be prevented at all costs, illegal immigration serves as perfect litmus test of polarized political narratives and as a perfect example of the complexity of immigration policy. Two most relevant paradoxes related to the illegal immigration, dependence of U.S. economy on immigrant labor and polarization of American society, will be expanded in following subchapters. Besides the noted dependence, U.S. economy is closely interwoven with the economy of Mexico and omission of this relation inhibits successful reform in any matter related to labor market. And, lastly, the polarization of American society exposes a challenge to any bipartisan cooperation and provides at least a partial background for the narratives that will be described in following chapters.

⁷⁶ <http://www.gallup.com/poll/148154/Americans-Views-Immigration-Holding-Steady.aspx>

⁷⁷ Cornelius, Wayne: p. 41

2.3.1 *Illegal immigration*

No other topic related to the immigration policy draws as much emotions as the illegal immigration. The image of insecure borders flooded by masses ignoring the law contributes both to the most passionate political narratives bordering on fear mongering and to the recurring attempts to curb immigration by extensive controls despite the lack of evidence justifying such measures. Civil advocates, on the other hand, promote counter-narratives depicting illegal immigrants as a victims rather than criminals and prefer terms clandestine or undocumented immigrant. Nevertheless, political affiliation had never prevented politician from addressing the issue and from the late 1970s, when the shortcomings of the 1965 Hart-Celler Act became easily observable, every single federal legislature and executive attempted to decrease the numbers of illegal immigrants in the United States.⁷⁸ Contrary to the goals of every reform bill passed, illegal immigration continues to haunt future reforms in several aspects besides the already mention numbers and concentration.

As a very polarizing topic, illegal immigration is accompanied by two parallel political narratives. While the conservative part of political spectrum perceives illegal immigrant as criminal disregarding U.S. law. As such, they are expected to be prosecuted, prevented both from entrance to the U.S. and disqualified from legal residence in the United States. The civil rights advocates, on the other hand, prefer the terms clandestine or undocumented migrants and describe them both as a victims of global economy and unscrupulous employers exploiting their status. Furthermore, the concerns about the impact of immigration has never overcome reverence for immigrants.⁷⁹ Consequently, the arguments of both groups miss a common ground enabling cooperation - different definitions of what exactly is the problem of illegal immigration leads to few rare opportunities to propose a measure supported by both archetype groups. Furthermore, the term illegal immigrants surpassed recently its narrow definition and became a symbol used in as various context as the cause of fiscal crisis and the relations with Mexico.⁸⁰ Unless being able to narrow down the common understanding of what illegal immigration is, any reform addressing issues related to it will have to deal with a very loose concept inhibiting effective implementation of future policy.

Secondly, besides the problem with conceptual approach, illegal immigration challenges the reform attempts by the sheer complexity of issues influenced by it. As will be later addressed in greater detail, U.S. economy depends and flourishes from undocumented workforce and, moreover,

⁷⁸ Cornelius, Wayne: pp 52-60.

⁷⁹ DeSipio, Louis - De La Garza, Rodolfo O: p 59

⁸⁰ Newton, Lina p. 19

the immigrants present one of the most polarizing issues mixing great reverence for ingenuity and own ancestry with the concerns about job competition and culture heterogeneity.⁸¹ While both the polarization and the relations with economy will be addressed in respective subchapters, the complexity of the illegal immigration is far from limited to these matters. The financial benefits and costs of immigration are disproportionally distributed in between local, state and federal governments. The number of clandestine crossing put border security in doubt while the proportionally larger source of illegal immigration, the violation of different temporal entrance visas, questions the screening process. The education, health and social costs for the children of illegal immigrants challenges the very principles of achieving citizenship. And, as pointed out by former Secretary of Labor Robert Reich, the reemerging sweatshops thrive from illegal immigrants linking their status closely to union and labor policy affairs.⁸²

In other words, almost every single policy are discussed in the Congress is one way or the other related to the issue of illegal immigration and thus to immigration policy in general. The diversity of context in which is the immigration addressed delimits reciprocally the range of issue covered by any comprehensive reform of immigration policy. As a culturally polarizing issue with both positive and negative economic consequences, illegal immigration emerges as a par excellence example of a topic widely discussed yet scarcely addressed in an inspirational manner. Current policy is by all means obsolete and still the solution lingers. The U.S. insistence on maintaining such ineffective immigration control policies prompts Philip Martin justly asks whether current efforts are mainly enacted to “manage public opinion by crating an illusion that illegal immigration is under control.⁸³” And the same might be whimsically said about the hesitance to enact a comprehensive immigration reform bill in general.

2.3.2 Economic Factors

Contemporary U.S. economy seems to inhibit two contradicting notions that prevent long term support for particular immigration policy. First, immigrant workforce, legal and illegal alike,

⁸¹ DeSipio, Louis - De La Garza, Rodolfo O: p 59

⁸² Hayes, Helen: p.2

⁸³ Cornelius, Wayne: p. 20

puts pressure on wages and indirect costs for low-skilled Americans, especially Native-born minority and especially African-American men.⁸⁴ This pressure is limited to specific industries and short-term in nature, but even the slightest bump in one of the most closely watched outputs of economy calls for an easy scapegoat and the inertial slowdown of the latest crisis puts easily the blame on the immigrants. Secondly, several segments of American agriculture and industry depend on the immigrant labor. While the business itself profits from the cheap labor and weak unions, the discussion regarding the impact on immigration surpasses both the topics of wages and the strength of the flagships of American industry. Furthermore, the influence of U.S. economy spreads over the borders and vis-à-vis the flood of Mexican workers in USA, the impact of NAFTA on the North American labor market deserves closer attention. In the the discussion about the future of immigration policy emerge several archetype narratives regarding this aspects of American economy and while most will be addressed in following chapters describing the development in the three Congresses between 2004 and 2010, several most important determinants shaping the discussions have to be addressing prior to the assessment of the narratives themselves.

Foremost, to put it bluntly, American economy depends on immigrant labor force and the segments of industry most dependent on cheap uneducated labor force will do their best to achieve some kind of exclusive deal providing such workforce. Consequently, if no provision in current policy enables the saturation of these needs, the employers are willing to opt for illegal labor. The lobby groups representing the interests of employers are in the USA especially close to the government and thus neither the GOP or the Democrats advocate significant changes to the status quo favoring immigrant-hungry employers.⁸⁵ The strength of the employers is easily observable in two parts of immigration policy, the temporary visa working visa programs and the sanctions for employer employing illegal workforce. While risk of substantial sanctions avoids the employer by miles, the temporary working programs H-2A and H-2B seem to be tailored to the needs of business to the inch. The INS was left understaffed to perform all duties thoughtfully by the IRCA of 1986 and current fines for knowing employment of undocumented workers fail to deter any unscrupulous businessman from what remains to be a relatively low risk crime.⁸⁶ While the number of agents have been already raised, they are deployed foremost at the border rather than as labor control.

The supply of cheap labor suits employers well, but the very character of arriving workforce, as noted in previous subchapter, poses a challenge for immigration policy. The real wage differential in between two of the NAFTA partners, USA and Mexico, increased tremendously despite the original intentions to do the contrary. In the first decade of the agreement, the growth of

⁸⁴ Does Immigration Help or Hurt Less-Educated Americans? TESTIMONY OF HARRY J. HOLZER, JUDICIARY COMMITTEE, U.S. SENATE, APRIL 25, 2006

⁸⁵ Cornelius , Wayne p. 12

⁸⁶ Newton ,Lina p. 52

wage in the USA was 10% higher than the growth of wages in Mexico and, at least temporarily, NAFTA seems contribute to migration rather to prevent it.⁸⁷ The striking difference in income leads to everlasting influx of Mexicans in the United States and as long as the demand for Mexican labor remains, numbers of Hispanic immigrants will, as Wayne Cornelius notes, “find a way to circumvent a government's immigration laws, border controls, and any other obstacle placed in their path.”⁸⁸ And, as long as the demand prevails, attempts to restrict the flow of migrant workforce will only motivate the workers to come illegally and divert them to the gray economy.

However, the impact of NAFTA is not limited to the demand side of labor market. The conditions in Mexican factories erected under special provisions known as maquiladoras and as well in the fields to which many American producers diverted their business are grave at best. American and other foreign companies effectively escaped the remnant influence of unions and the threat of being outsourced to Asia prevents most attempts to enact most aspects of standard employment contracts.⁸⁹ The grim prospects at home aggravated by the rampart drug trade wars contribute to the decision of numerous workers to seek their fortune elsewhere and the sheer proximity of United States provides an obvious target of migration despite the dangers of illegal crossing of the border and limited access to the social services.⁹⁰ Extended ties ease the decision even further, but as long as the backlogs in family quotas and limited visas for temporary work prevent legal residence in the USA, clandestine crossing of the border and L.A. sweatshops remain to be an acceptable alternative to the perspective offered, for example, in Baja California even for those who would have entered the United States legally under different circumstances.⁹¹

The mobility of labor is mirrored in the mobility of the very industries employing them and a short supply of cheap workforce will with great probability contribute to outsourcing in labor dependent segments of agriculture and industry. For example, the horticulture occupies only a 1 percent of U.S. farmland, but is labor-intensive and consumes 40 percent of total farm wages.⁹² The With the NAFTA in place, main U.S producers of fruit, vegetable and nuts diversified their sources by shifting the most labor dependent production of goods with short shelf life to Mexico. Lost of jobs, albeit those predominately occupied by immigrants, is in in long term politically unacceptable especially when the easy access to higher education for the majority of U.S. population delimits the native born source of unskilled labor. The dependency on immigrant labor is considered by some to be a myth, but is has to be noted that in specific segments of industry and agriculture, like the

⁸⁷ Cornelius, Wayne: p. 10-1,

⁸⁸ Cornelius, Wayne: p. 10

⁸⁹ Bacon, David: The Children of NAFTA: Labor Wars on the U.S./Mexico Border

⁹⁰ Hayes, Helene: p. XXI

⁹¹ Hing, Bill O.: p 137

⁹² Rothstein, Richard : p. 58

horticulture, labor cannot be simply replaced by machinery and, surely, not by teenagers in their free time as suggested by some more nostalgic pundits.⁹³

The impact of immigration on the U.S. economy greatly surpasses the simplified view of greedy businessmen, desperate immigrants and seemingly clueless government. Albeit the employer undoubtedly prefer cheap and numerous labor force, the rationale of globalized world contradicts the notion that there is a great potential for increase of wages in industries based on unskilled labor. Suggestive studies may easily prove that the employers are motivated by profit rather than by fear of going bankrupt when they hire foreign workers rather than pay competitive wages to native born workers.⁹⁴ However, limiting the access to immigrant workforce, legal and illegal alike, is a double-edged sword. First of all, as long as all employers in the market are denied cheap labor, the costs of their products and offered services mirror the raise in offered wages. And, secondly, as long as able to move their operations either to Mexico or even further abroad. In other words, a significant decrease of immigration will contribute either to the raised prices of products from industries dependent on cheap labor or to transfer of these industries abroad. And neither seems to be politically feasible even vis-à-vis the ills of immigration.

2.3.3 Polarization of American Society

The third important structural factor inhibiting close cooperation between two parties in the polarization of American society observed repeatedly in as different policy areas as the marriage and the use of force in armed conflicts. As Marc Hetherington and Jonathan Weiler argue, the polarization reflects a difference in personal approval for authoritarianism which might be observable also in the approach toward immigration.⁹⁵ The proportionality of governmental engagement is a key concept for several of the groups of the two dimensional model, but while the Free-Market Expansionist advocate a *laissez faire* minimum, majority of the political scene perceived current policy either as ill-adjusted or too benevolent. As noted, the dissatisfaction with immigration policy is accentuated by the economic crisis, but the polarization in preference towards immigration can not be simplified to a perceived threat by arriving workforce and several structural aspects of American society aggravate the divide further.

Firstly, the divide mirroring the preference towards expansion of legislature is emphasized by the recurring tensions between the federal and state jurisdictions. Facing a failure of particular

⁹³ Chiswick, Barry: pp 4-5

⁹⁴ Hayes, Helene: p. 31

⁹⁵ Hetherington, Marc J.; Weiler, J.D. :.Authoritarianism and Polarization in American Politics

aspect of immigration policy, stated adopt measures of their own to tackle the issue perceived as the cornerstone of current ills. In the 1990s, the “Save our State” California Proposition 184 gained quite a reputation and the latest example of state vs. federal legislation remains to be the renown Arizona SB 1070 law. But the legislative activity of a state infringing upon federal jurisdiction is far from the only reaction on a failure of adopted policy. States might opt for lax enforcement of federal measure or simply not comply to it.⁹⁶ The opposition towards federal immigration policy is understandable especially in the light of allocation of costs for immigration when two-thirds of all taxes paid by legal and illegal immigrants alike go directly to the Washington, while the social, education and health services remain to be overwhelmingly funded by state and local governments.⁹⁷

Secondly, the very character of the narrative used in the discussions propels further polarization. Interest groups and engaged politicians articulate positions disproportional to actual evidence leading to a paradox situation when both sides of the argument used own data and poll results justifying their claims. The trickery of public polls has been, however, widely discussed. Polls targeting immigration specificity show significantly clearer preferences regarding the immigration policy due to a suggestive formulation of the poll question while open questionnaires list immigration as an issue of the day only in low percentage of those asked.⁹⁸ Gallop polls asking whether should immigration be kept at current level, increased or decreased, show a long term plurality support for a decrease.⁹⁹ Compared to the results of polls, academic specialists in the field expressed quite a reserved opinion regarding the overhaul of immigration policy,¹⁰⁰ but nevertheless, consensus in all details do not exist even among the scholars, who also depend greatly on the choice of data and articulation of research question.¹⁰¹ The approach chosen in a research predetermines to an extent the results serving as base for further research leading to an inertial self-proving circle.

The passionate argumentation based on mutually irrefutable claims mirrored in past the polarization of party elites articulating specific policies. Ordinary party members and registered voters rarely expressed strong preferences regarding the immigration policy, but the recently the broader acceptance of a partisan positions became more evident.¹⁰² Albeit the views of party

⁹⁶ Cornelius, Wayne: p 15

⁹⁷ Hayes, Helene: p. 38

⁹⁸ In the late 1990s, only 1 to 2 % of those polled listed immigration as particularly important issue and during the 2006 congressional debates the percentage did not exceed 3% DeSipio, Louis - De La Garza, Rodolfo O: p. 131. Swain, Carol: p. 29

⁹⁹ <http://www.gallup.com/poll/148154/Americans-Views-Immigration-Holding-Steady.aspx>

¹⁰⁰ Swain, Carol: p. 27

¹⁰¹ It may be argued that even the renown dispute between Julian Simon and George Borjas suffered from different research focuses and data sets used by both respective scholars.

¹⁰² Hetherington, Weiler: p. 161, 166-167

members are not extremely different, the Republicans show clear preference for decreasing immigration (Figure 6).¹⁰³ While the party members express moderate levels of polarization on the issue which can be interpreted as an adoption of an overall party preference, the party elites elected to the Congress show little if any party unity and are divided over several issues. The practicality of labels applied to various party fractions remains to be limited, but the two dimensional model offers significant focus on two core aspects of immigration policy, the approach to rights and admissions, to be used for analysis.

	% Should be increased	% Should be kept at present level	% Should be decreased
Democrats	21	37	37
Independents	20	37	41
Republicans	15	31	49

Figure 6: Views of Immigration, by Political Party
Gallup, June 9-12 2011

¹⁰³ <http://www.gallup.com/poll/148154/Americans-Views-Immigration-Holding-Steady.aspx>

3. 109th Senate : Republican Discord

Despite wielding strong political mandate and possessing comfortable majority in both chambers of the Congress, the Republicans of the 109th Congress failed to reform immigration beyond the aspects directly related to national security. Following heated debates, both chambers introduced strikingly different proposals offering only limited space for a reconciliation between the two different bills. The House dominated by Representatives from the more conservative branches of the GOP proposed a significantly securitized approach to the immigration policy under the bill *HR 4437 Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005*. Furthermore, the worldview evolution of conservative Republican voters base contributed to a stronger anti-immigrant preferences.¹⁰⁴ In Senate, on the other hand, the CIRA 2006 was articulated after a cooperation between moderate Republicans and Democrats and witnessed all important narratives the determine the discourse about immigration reform.

The GOP underwent a during 109th Congress crucial transformation. In 2000, future president George W. Bush had pulled in his gubernatorial campaign away from the anti-immigrant rhetoric rooted to an extend in the “Contract with America” and increased the proportion of Latino vote by more 20% percent in between his two gubernatorial campaigns.¹⁰⁵ But mere 6 years later, the leading figure of moderate Republicans advocating more comprehensive approach to immigration, Sen. John McCain, reiterated in early stages of his presidential campaign his position towards the issue to suit the more restriction-oriented voters marking thus important milestone in bipartisan cooperation on comprehensive immigration reform.

3.1 Immigration Reform after 9/11

In the summer of 2001, the possibility of the legalization of undocumented immigrant surfaced anew and after Mexico's President Vicente Fox called passionately for an expeditious amnesty, Republican administration reacted sympathetically. The summer Gallup polls conducted in 2000, public support for current immigration policy surpassed the opposition asking for a lower number of those admitted and 13% of Americans demanded expansion of current policy.¹⁰⁶

¹⁰⁴ Hetherington, Weiler: p. 161

¹⁰⁵ Newton, Lina: p. 171

¹⁰⁶ <http://www.gallup.com/poll/148154/Americans-Views-Immigration-Holding-Steady.aspx>

President George W. Bush and congressmen alike pledged sincerely that they would attend to the issue by the end of the year, but in the turmoil of the days to come, their pledge faded in prominence.¹⁰⁷ The attacks of September 2001 annulled most of contemporary political initiatives and so as other policies even remotely related to the national security, immigration legislature had to be reopened in the new perspective.

In the light of terrorism, all calls for the amnesty became obsolete and even less controversial pro-immigration agendas had to be postponed. The fact that the perpetrators entered U.S. soil legally demanded a better evaluation of the visa policy and put in doubt the motives of immigrants. Even though most Americans concurred with the stipulation of James W. Ziglar, commissioner of the U.S. Immigration and Naturalization Service that: “These weren't immigrants. They were terrorists”, immigration policy clearly slipped under the scope of national security.¹⁰⁸ Both as a part of several bills addressing national security and in actual implementation, immigration policy was, at best, sidetracked to a dimension of security policy and, at worst, diminished to a anti-terrorist measure as during the detention of up to 2000 arrested mostly on immigration charges in post September fervor.¹⁰⁹ Any following attempts for comprehensive immigration reform thus addressed strongly securitized issues and had to reiterate immigration policy accordingly and the first major change was introduced by the *Homeland Security Act of 2002* which abolished the Immigration and Naturalization Service (INS) of the Department of Justice and moved its jurisdiction under the Department of Homeland Security.

However, surprisingly, on January 7 2004, president Bush introduced the concept of a comprehensive reform proposed by the administrative which advocated a complex approach towards the “broken system” by “matching willing workers with willing employers”. The rather ambiguous figures of speech were backed by a more detailed proposal including a new non-sector specific temporary worker program open to both new workers from abroad and unauthorized immigrants currently living in the US and were considered to be quite ambitious.¹¹⁰ The program would offer renewable and portable visas according to the availability of jobs; administer a fee for legalization for the undocumented; allow to leave and reenter the country at will; allow to apply for permanent resident status; and introduce *de facto* tax cuts for those temporary workers who would return home after a period of time. The proposal also advocated a "reasonable" annual increase in legal immigrant admissions and re-evaluation of the citizenship test and oath of allegiance. The reactions to the proposal were mixed at best and while some experts and legislators welcomed a

¹⁰⁷ Hing, Bill O.p 266

¹⁰⁸ Martin, Philip L. The United States: The Continuing Immigration Debate: p. 51

¹⁰⁹ Hing, Bill O.: p 266

¹¹⁰ Hetherington, Welller: p. 164

new incentive in the reform discourse, others pointed out the already overburdened application system and the failure of past amnesties to curb the ills of immigration.¹¹¹

Less surprisingly, the arguments introduced by President Bush's administration contributed to the divide in the GOP. The conservative wing was appalled by any notion of more generous terms for what is widely perceived as criminal conduct. Secondly, the neo-conservative hawks with significant influence in the administration itself demanded a clear focus on the security aspects of immigration policy. The Free-Market Expansionist, on the other hand, welcomed the market oriented parts of proposals while moderates of all sorts, labeled often as mavericks due to independent action, welcomed the discussion in general. Consequently, the division within the party prevented the success of two reform proposals introduced in the 109th Congress and influenced the different approaches to issues of the day as well as the following debates.

3.1.1 Reform as Border Security

The development in the 109th Congress contributed to a specific situation in which was the party division of the GOP most easily observable by the comparison of different proposals drafted by both chambers. Even though the voting pattern of Republican senators seemed to reflect a more moderate stance than the voting of their Representative counterparts, renown conservative senators like Jon Kyl led the opposition against the CIRA 2006 and expressed preference for the House proposal. In other words, the essentials of *HR 4437 Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005* mirrored the narratives of the senators opposing the The Comprehensive Immigration Reform Act (CIRA, S. 2611). The debates accompanying both proposals have witnessed all important narratives that shape the immigration reform discourse and offer key insights in the overall political debates mirrored also in the Senate Committee on the Judiciary.

The main goal of the *HR 4437 Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005* is easily observable in the very titles under which it had been repeatedly reintroduced in the amendment process. Best known are the titles Border Security bill, SAFE for America Act, Security and Fairness Enhancement for America Act of 2005 and TAKE AIM Act of 2005.¹¹² Notions of security, safety and militaristic rhetoric hinted that the immigration reform proposed by the *HR 4437* perceived the issue as a part on national security. Compared to CIRA

¹¹¹ [HTTP://WWW.MIGRATIONINFORMATION.ORG/FEATURE/DISPLAY.CFM?ID=202](http://www.migrationinformation.org/feature/display.cfm?id=202)

¹¹² [HTTP://WWW.GOVTRACK.US/CONGRESS/BILL.XPD?BILL=H109-4437](http://www.govtrack.us/congress/bill.xpd?bill=h109-4437)

2006, the *HR 4437* never proposed means leading to the legalization of undocumented population residing in the USA and called for more personnel and fence construction near border with Mexico.

Opposed by a coalition of pro-immigration organization, the bill passed the House on December 16, 2005, and exposed the division between the parties. While 203 Republican Representatives voted in favor and 17 against, only 16 Democrats supported the measure with 164 opposing.¹¹³ While President Bush surprisingly welcomed the passage of the bill which bear little resemblance to his approach to comprehensive reform, he confirmed his preference for a more comprehensive reform during the final debates about the CIRA 2006 in May, 2006.¹¹⁴ The measures included in the House bill had been discussed as soon as was the *HR 4437* introduced in Senate Committee on the Judiciary which opted rather for own, more comprehensive piece of legislature. The members of the Committee were divided on the issue and while the Committee passed a bill S.2611, Senators John Cornyn and Jon Kyl proffered their bill known as The Comprehensive Enforcement and Immigration Reform Act of 2005 (S. 1438) that was discussed in July 2005 and which resembled the House initiative focusing on enforcement. The division between conservative and moderate Republicans was thus apparent.

3.1.2 Comprehensive Immigration Reform Act of 2006

While the Republican Representatives had opted for more restriction-oriented measures and failed to hear the plea of President Bush for a more complex approach, several prominent members of the GOP proposed in coalition with the Democrats a comprehensive reform of their own on the floor of U.S. Senate. The main sponsor of bill S. 2611 was Sen. Arlen Specter (R-PA) and the cosponsors were senators Charles Hagel (R-NE), Mel Martinez (R-FL), John McCain (R-AZ), Edward Kennedy (D-MA), Lindsey Graham (R-SC), and Sam. Brownback (R-KS). Derived from the McCain-Kennedy bill *S 1033* and the plan of President Bush, the bill covered all aspects of immigration reform that had been identified as cornerstone for success. So as the *HR 4437*, the S. 2611 dealt with the enforcement of immigration laws and border security, but in general opted for construction of fewer fences and less direct engagement on the border. The enforcement measures were balanced by a legalization process available for most undocumented and proposed new temporary working visas available for those ineligible for legalization.

¹¹³ [HTTP://CLERK.HOUSE.GOV/EVS/2005/ROLL661.XML](http://clerk.house.gov/evs/2005/roll661.xml)

¹¹⁴ [HTTP://WWW.NYTIMES.COM/2006/05/15/WASHINGTON/15TEXT-BUSH.HTML](http://www.nytimes.com/2006/05/15/washington/15text-bush.html)

The bill introduced to Senate on April, 7 2006 and passed on May, 25 after two months of passionate debates accompanying the 227 proposed amendments and covered in more than 800 pages broad variety of topics from agriculture visas AgJOBS, Katrina relief program, border security to legalization by the DREAM Act.¹¹⁵ The amended bill was a compromise that was labeled as amnesty by the Republican conservatives and even though the senators who voted in favor recognized its cumbersomeness in many aspects, they welcomed imperfect reform from none. As Senator Richard Durbin (D-Ill) summed up his reasons for voting in favor CIRA 2006 was “is not a perfect bill. It is a compromise. I strongly support some provisions of this bill and I have serious concerns about others, but, on balance, I believe it is worthy of support.”¹¹⁶

Conservatives labeled, to the great dismay of more constructive Republicans, any kind of legalization as an amnesty preventing closer cooperation and effectively dividing the party in the matter.¹¹⁷ Leading conservative Senator Jon Kyl, however, repeatedly emphasized the principality of laws even to the extent of not offering no means of legalization for the undocumented. The proponents of the bill repeatedly explained, that proposed legislature does not offer blank amnesty for all and demands fines, paying back taxes and clean record for 11 years,¹¹⁸ but the argumentation of Senator Kyl clearly suggests that while the sponsors perceived the undocumented immigrants as redeemable by compliance with law, conservatives abhorred the idea of granting citizenship to someone who entered the USA by breaking one of its laws. The Republicans in the control of the House shared this perception of illegal immigrants and stopped the CIRA 2006 in before it could be amended in joint conference. As the midterm elections approached, House passed in September 2006 the Secure Fence Act of 2006 (H.R. 6061) sanctioning construction of 700 miles of border fences and on September 19 U.S. Senate passed the legislation by vote of 80 yeas and 19 nays.¹¹⁹

The failure of the CIRA 2006 led to a dismay of its supported who perceived, as Senator Patrick Leahy (D-Vt), the follow up bill Secure Fence Act of 2006 as insufficient and unbalanced:

¹¹⁵ [HTTP://WWW.GOVTRACK.US/CONGRESS/BILL.XPD?BILL=S109-2611](http://www.govtrack.us/congress/bill.xpd?bill=s109-2611)

¹¹⁶ A Senate floor remark, Congressional Record, page S172, 25.5.2006

¹¹⁷ Westhead, James: *Immigration tears Republicans in two*, (BBC News, Washington, May 17, 2006), 20.10.2006, available at: <http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/4991090.stm> or

Murray, Shailagh, Babington, Charles: *Splits Over Immigration Reform on Display From Coast to Coast*, (Washington Post, July 6, 2006), 25.11.2006, available at:

[HTTP://WWW.WASHINGTONPOST.COM/WP-DYN/CONTENT/ARTICLE/2006/07/05/AR2006070501549_Pf.HTML](http://www.washingtonpost.com/wp-dyn/content/article/2006/07/05/AR2006070501549_pf.html) or

Swarns, Rachel: *Republican Split on Immigration Reflects Nation's Struggle*, (New York Times, March 29, 2006), 30.10.2006, available at:

[HTTP://WWW.NYTIMES.COM/2006/03/29/NATIONAL/29POLICY.HTML?_R=2&OREF=SLOGIN&OREF=SLOGIN](http://www.nytimes.com/2006/03/29/national/29policy.html?_r=2&oref=slogin&oref=slogin).

¹¹⁸ It Isn't Amnesty, editorial, Washington Post, march 19, 2006

[HTTP://WWW.NYTIMES.COM/2006/03/29/OPINION/29WED1.HTML](http://www.nytimes.com/2006/03/29/opinion/29wed1.html)

¹¹⁹ [HTTP://WWW.GOVTRACK.US/CONGRESS/VOTE.XPD?VOTE=S2006-262](http://www.govtrack.us/congress/vote.xpd?vote=s2006-262)

Senators and staff worked tirelessly to negotiate and pass that bill, which was a comprehensive, fair solution that respected human dignity, and recognized the need for strong border security. The response we got from the majority in the House of Representatives was obstruction. Rather than proceed to a conference to try to hammer out a meaningful solution, the House leadership ignored our calls to proceed and spent the month of August holding sham hearings on the Senate's bill meant only to undermine the work we completed and inflame anti-immigrant passions. Now the House leadership, enabled by the majority leader, asks us to forget all about the efforts we made and take up and pass a narrow, unbalanced bill to help their election chances.¹²⁰

Even though most members of the Senate Committee on the Judiciary voted in favor of the indeed narrowly articulated bill, they were well aware of its limitation preferring some measure from none.

3.2 Narratives used in the 109th Senate

The narratives used on Senate floor by the members of the Senate Committee on Judiciary were to a great extent determined by the topics they were addressing and divided the senators on three broad policy aspects, one the axis of admissions and two on the axis of rights. First one was the issue of legalization of the undocumented and while the conservative Republicans perceived any form of legalization as unjust amnesty, most members of the Committee stressed the difference between crossing border or false Social Security number and actual criminal conduct. Second narrative group addressed the rights of immigrants in various trials and while moderates stressed the rights of the trialed and the dangers they might face after deportation, the restriction-oriented senators pointed out the overburdened courts and ineffective legislature. The third group of narratives evoked two common symbolic images that tend to be applied to immigrant, namely the images of a criminal and a victim.

These three groups of narratives illustrated the divide in the Committee which split the GOP in halves rather than party affiliations. Senators had found common ground in the question of border security, when the Democrats emphasized the need for inclusion of other measures (e.g. latest technology) and criticized the efficiency of fences in prohibiting border crossing. Therefore the divide in matter diminished to the issue of the character and sized of barriers and so as in case of narratives that did not spark abundant exchange of remarks, the border fence narrative won't be analyzed further. The evaluation of the coalition potential will be in greater detailed addressed in Chapter 5 The Lessons for Comprehensive Reform.

¹²⁰ Leahy, Patrick A floor remark on the Secure Fence Act of 2006 (H.R. 6061), September 29, 2006 CONGRESSIONAL RECORD— SENATE S10609 [HTTP://WWW.GPO.GOV/FDSYS/PKG/CREC-2006-09-29/PDF/CREC-2006-09-29-pt1-PGS10608-2.PDF#PAGE=2](http://www.gpo.gov/fdsys/pkg/CREC-2006-09-29/pdf/CREC-2006-09-29-pt1-PGS10608-2.pdf#PAGE=2)

3.2.1 Redeemable Illegals or Deportation

One of the most commonly used narratives in the 109th Senate was the repeatedly used explanation of proposed form of legalization as a mean of rewarding hardworking and law abiding residents (a). Despite initial breach of a law and despite the use of forged documentation, undocumented immigrants were depicted as an integral part of American society. (b) Another common phrases in the positive narrative were implying that immigrant need means “to get out the shadow” and that 10 millions of undocumented require legal means to rearrange their status.(c) The counter-narratives opposing the measure stressed repeatedly either the initial breach of law or use of forged documents as a reason for the denial of access to legal residence (d) and commonly warned that an undeserved amnesty will only aggravate the broken immigration system further. (e,f)

(a) Who are these people? They are people we always see but seldom come to know. They are our neighbors. They sit next to us in church; they send their kids to the same school as our kids. They probably cooked your breakfast this morning. They probably washed your dishes and cleaned your hotel room. They are watching your children at daycare and they are changing your aging mother's soiled bed in the nursing home. They make sure your putting green is perfect, and they stand for hours every day in a damp and cold place, watching a production line of chicken carcasses come by, so you can invite friends for a barbecue this weekend.

They often live in crowded homes. They deny themselves many things. They sacrifice for their children and in the hopes that, at the end of the week, they might be able to send a small check home to their families in other countries.

Their children are in our military--thousands of them, wearing the uniform of the United States of America. Some have been killed serving our country. At their funerals, people in uniform come forward and present to the grieving parents a flag as a token of their heroism and bravery and their commitment to America.

Now from this Republican-controlled House of Representatives, we learn the way to treat these people is to declare them criminals--criminals. These 11 million undocumented people, according to the Sensenbrenner bill which passed the U.S. House of Representatives, would be branded and prosecuted as aggravated felons, treated the same as armed robbers and rapists--11 million people. That is the bill that came over.¹²¹

(b) Some say we are a nation defined by the rule of law and that has been flagrantly violated by the 11 million people who have come to this country without conforming to the U.S. law. Many others who have come on visas have overstayed their leave. And, at the same time, we pride ourselves on being a compassionate nation. No one can deny that the United States of America is a nation built by immigrants. No one can deny that.¹²²

(c.) We must be realistic about how to deal with the millions of undocumented immigrants currently in this country. It is not realistic to deport them all. For those hardworking, law-abiding people who have been here for years and set down roots in our communities, it is reasonable to allow them to earn citizenship over a significant time period. This is not amnesty, and it is not automatic legalization. Under this bill, if they pay thousands of dollars in fines for violating our immigration laws, work for a number of years, learn English, and pay any taxes they may owe, only then do they go to the back of the citizenship line. They are asked to earn their legalization over the course of eleven or twelve years and demonstrate that they deserve

¹²¹ Dick Durbin, **IMMIGRATION REFORM -- (Senate - March 27, 2006)**

[Page: S2402]

¹²² Spector, Alan. 29.03.06

to be an American.¹²³

(d) We have not done what we need to do in this body, in the House or through the administration, to enforce the laws of this country. It is illegal to come here and we should not reward illegal behavior.¹²⁴

(e) We are, it is often said, a nation of immigrants but a nation of laws. What do we mean by that? We mean that when we go to an intersection and the light is green, what do we know? We know we can drive on through because the people who have the red light will obey the law. We do that with everything in our society. We have contracts with each other that are very loose because we have a rule of law that if anything goes wrong, we have a way of resolving that legally. Everything we do, we do because of trust with each other based upon the rule of law. That is the way it works in our society. When everybody obeys the law, we can get along great. Once people disobey the law, bad things happen. You need more and more laws and enforcement, and you get into a situation like we are with illegal immigration . That is why we have to get back to the rule of law. People in America have to have confidence in their Government, in the businesses, in their fellow citizens, and they will if they know everybody is operating within the rule of law.¹²⁵

(f) The idea that a legalization or amnesty can be given to potentially millions of illegal immigrants, who arrived illegally in this country before January of 2004, is to undermine the very principles of legality upon which our entire immigration system is founded.¹²⁶

3.2.2 *Just Procedure or Burden for Courts*

The discussions regarding the rights of undocumented residents encompassed two main insights in the matter. First, senators disputed the issue of right of non residents to appeal and the actual conditions under which they may do so and how should be the system improve. Secondly, the positive and negative narratives divide upon the issue, whether occasional injustice in individual case prohibits a more efficient enforcement of the law. On the later issue, the advocates of human rights defended the necessity to protect the rights and life of single individual (g) and addressed the shortcomings of blind justice (h), the conservative demanded expeditious denial even at the cost of occasional negative consequences for the individual (k). In attempt to increase the efficiency of courts of appeal, conservatives proposed amendments allowing expeditious deportations and stressed that the deported might still appeal from abroad (j) while most Senators doubted both practicality of such measures and the safety of deported individual (i)

(g) Some will argue that this provision will prevent aliens from abusing the system by filing frivolous appeals simply to gain the stay of deportation. But it is unwise for us to sweep aside decent and humanitarian treatment for many meritorious petitioners to prevent a few from

¹²³ Kohl, Herb 26.5.06

¹²⁴ Coburn, Tom 13.4.2006

¹²⁵ Kyl, Jon A floor remark, March 30, 2006 CONGRESSIONAL RECORD— SENATE S2571,
[HTTP://WWW.GPO.GOV/FDSYS/PKG/CREC-2006-03-30/PDF/CREC-2006-03-30-PT1-PGS2553-2.PDF#PAGE=19](http://www.gpo.gov/fdsys/pkg/CREC-2006-03-30/pdf/CREC-2006-03-30-pt1-PGS2553-2.pdf#PAGE=19)

¹²⁶ Hatch, Orin 25.5.06

abusing the system. I think we need to consider very carefully whether we want to mandate that our Federal courts get into the business of remanding even one potentially meritorious petitioner back to certain torture or death before his or her appeal is finally decided. I hope others share my faith in the integrity with which our Federal judges carry out their duties and that these men and women are eminently capable of identifying and rejecting fraudulent or abusive cases without the need for the restrictive provision contained in the bill.¹²⁷

(h) Even in situations where the issue on appeal is subject to a very deferential standard of review, it makes no sense to require an immigrant to meet the stringent "clear and convincing evidence" standard of review at such a preliminary stage of the case. As one court has pointed out, the appellant may not even have obtained a copy of the administrative record that early in the case. How can appellants prove by clear and convincing evidence that they will win their appeal when they may not even have a copy of the administrative record?¹²⁸

(i) At the whim of an immigration judge's discretion, refugees would be required to produce corroborative evidence of their claims of persecution or prove that the central intent of their persecutors was to punish them for their race, religion or political beliefs even in cases where the refugee's testimony was already credible.¹²⁹

(j) They are not denied the right to continue their appeal. But they are allowed to go back home to their home country and to pursue their appeal otherwise through their lawyers in the appropriate way¹³⁰

(k) Is it possible that somebody could be denied entry into this country and have a negative consequence? Yes. But it is far more likely there is going to be a tremendous negative consequence to us in costs and to our children as we allow this system to continue to go on and be perpetuated the way that it is.¹³¹

3.2.3 *Hardworking residents, victims and criminals*

The issue of illegal immigration is undoubtedly a polarizing topic and while the members of the Senate Committee on Judiciary avoided generalizations, the dominance of two key terms in their remarks often hinted a preference between those two. Some identified more easily with the plight of impoverished victims of globalization and human trafficking, while others associated illegal immigration with criminal conduct despite stressing that not all are equally guilty. The perception of undocumented migrants as a victim was derived either from the character of illegal immigration which leaves the migrant vulnerable to the smugglers and criminals (l), or from the exploitation by unscrupulous employers in the United States (m). The use of the term criminal, on the other hand, was used in two very different ways. First, it merely implied that all undocumented immigrants staying in the USA are criminals committing a misdemeanor (n). Albeit obviously a true statement, the preference to depict undocumented immigrants as petty criminals suggests a stricter stance on their

¹²⁷ Leahy Patrick 25.5.06

¹²⁸ Feingold, Russ May 25, 2006 CONGRESSIONAL RECORD— SENATE S5147

[HTTP://WWW.GPO.GOV/FDSYS/PKG/CREC-2006-05-25/PDF/CREC-2006-05-25-PT1-PGS5135-6.PDF#PAGE=13](http://www.gpo.gov/fdsys/pkg/CREC-2006-05-25/pdf/CREC-2006-05-25-pt1-pgs5135-6.pdf#page=13)

¹²⁹ Brownback, Sam > 10.5.05

¹³⁰ Sessions, Jeff on rights of deported 25.5.06

¹³¹ Tom Coburn 25.5.06

legalization of their legal status in general especially in contrast with the generosity offered for a victims of a crime. Second way to address the immigrant as actual criminals committing serious offenses what even with the disclaimer that not all are equally guilty clearly suggests a very limited form of amnesty if any at all.(o)

(l) It would ensure that victims of trafficking are supported with measures such as permitting their families to join them in certain circumstances, expanding the duration of a T-visa, and providing resources to victims who assist in investigations or prosecutions of trafficking cases brought by State or Federal authorities.¹³²

(m) For decades, this country has turned a blind eye to the plight of the stranger in our midst, and looked away in indifference as undocumented immigrants have been exploited at the workplace and have been forced with their families to live in constant fear of detection and deportation.¹³³

(n) We are beginning to take tax policy focusing on one group of people and tying it to criminal behavior disproportionate to the crime, and we are beginning to set the stage for a different kind of America. Not only is it ill-conceived, it is dangerous. You can rape someone, you can murder someone, you can be a convicted child molester, and our tax laws allow you to get a refund. What kind of crime are we talking about here? Coming across the border illegally, breaking in line to try to get ahead, because here you can do really well and on the other side of the border you do really poorly. I am sorry people did that. They need to pay for their crime of coming across the border, which is a misdemeanor with no specific fine set, with a 6-month cap on punishment..¹³⁴

(o) I noted before that between 10 and 15 percent of the apprehensions of illegal immigrants today are people who have criminal records. And they are serious criminal records. We are talking about murder, homicide, kidnapping, drug offenses, rape, assaults, and the like. These are serious criminals. In Arizona, my own State--the most recent figures are about a year old--almost one in six inmates is a Mexican citizen. I don't mean to suggest by this that Mexican citizens are somehow more prone to be committing crimes. I don't have the statistics for foreign nationals of other countries. But the bottom line is, from only one foreign country, we have almost one in six inmates in Arizona prisons of this one foreign country. If you add the others, the number, obviously, will be larger.¹³⁵

¹³² Biden, Joseph, 8/06/06

¹³³ Kennedy, Edward 29.5.06

¹³⁴ Graham, lindey May 25, 2006 CONGRESSIONAL RECORD— SENATE S5163

[HTTP://WWW.GPO.GOV/FDSYS/PKG/CREC-2006-05-25/PDF/CREC-2006-05-25-PT1-PGS5135-6.PDF#PAGE=29](http://www.gpo.gov/fdsys/pkg/CREC-2006-05-25/pdf/CREC-2006-05-25-pt1-PGS5135-6.pdf#page=29)

¹³⁵ Kyl, Jon 30.3.06

4. The Development under 110th and 111th Senates

Compared to the legislative fervor in late 109th Congress, the months after the midterm elections brought an intermission in the attempts to pass an immigrant reform. First of all, the Republicans lost in the midterm elections 6 seats and lost the control of Senate as the Democrats formed the majority caucus with the independent senators. Secondly, due to the falling public approval of President Bush administration,¹³⁶ the relative success of GOP candidates with more partisan profile had been interpreted as a one of reason to embrace more get-tough-on-immigration approach. Suddenly, center leaning senators like Sen. Arlen Specter became to feel ostracized in own party and either engaged in bilateral cooperation regarding the immigration more hesitantly or, like Sen. John McCain, even re-articulated own positions in the matter to suit the excited conservative party base.

The Democrats, on the other hand, gained momentum from the elections, but due to the Republican turn to right and soon-to-begin bitter party presidential primaries, they lacked the necessary means to enact a law significantly changing the immigration policy even with the occasional help of moderate Republicans. The following election invigorated the Democratic party further, but even with President Obama in the White House and solid control of both chambers, the 111th Congress had also witnessed limited success in the adoption of new comprehensive reform. While several attempts emerged, most promising initiative of Senators Schumer and Graham failed to bear a fruit even though it attracted initially support of other crucial Republican in Senate Committee on Judiciary, Sen. John Cornyn.¹³⁷ Facing the raising strength of the Tea Party movement, both Republicans had consequently followed the example of Senator McCain and withdrew their support from a drafting bipartisan bill.

The Democrats possessed the strength to pass a bill on their own, but this potential had been utilized in the renown Health Care reform of 2010 and the stimulus package American Recovery and Reinvestment Act of 2009 which preoccupied the party till the spring of 2010. Furthermore, as Sen. Arlen Specter gained quite peculiar position in own party and as the health of Sen. Edward Kennedy prevented him to engage in legislative process the way he used before, the comprehensive immigration reform lacked strong leader and advocate who would steer the bill in a ever more divided Senate. The bipartisan initiative was replaced by two more partisan bills but even relatively uncontroversial DREAM Act of 2010 (S.3992) run into filibuster and approaching

¹³⁶ [HTTP://ONLINE.WSJ.COM/PUBLIC/RESOURCES/DOCUMENTS/INFO-PRESAPP0605-31.HTML](http://online.wsj.com/public/resources/documents/info-presapp0605-31.html)

¹³⁷ [HTTP://NEWS.FEETINTWOWORLDS.ORG/2010/03/19/SCHUMER-GRAHAM-IMMIGRATION-REFORM-PLAN-MAY-HAVE-FOUND-2ND-GOP-SUPPORTER-IN-CORNYN/](http://news.feetintwoworlds.org/2010/03/19/schumer-graham-immigration-reform-plan-may-have-found-2nd-gop-supporter-in-cornyn/)

elections postponed all efforts to the next year.

4.1 The Empowering Presidential Campaigns

The 110th Congress is rightly associated with the landmark presidential election of 2008. First the Democratic primaries and then the actual election of President Barack Hussein Obama to office invigorated American political scene and carried a promise that many policies will be soon changes. The campaigns of presidential candidates were, however, preceded by the deterioration of support for moderate positions in Republican Party exacerbated by the overwhelming success in congressional election in 2008 which led some Democrats to believe that immigration reform will be possible even with only limited support and even in lame duck season.¹³⁸ Following the election in 2010, the capabilities of Democrat controlled 111th Congress were directed to yet another important piece of legislature and albeit the Don't Ask, Don't Tell Repeal Act of 2010 (S.4010) became a cornerstone of Democratic legislature, it left scarce room to address another polarizing policy.

4.1.1 Republican shift to right: from John McCain to Lindsey Graham

The impact on 2006 midterm elections on the immigration reform coalition in Senate became apparent from the very first day of the 110th Senate. Among the 6 Republican Senators losing their seats was Sen. Mike DeWine from Ohio, a member of the Senate Judicial Committee and a prominent centrist in the GOP. DeWine's bid for reelection had been described by Richard Cohen as tough, but Senator DeWine managed to gain the party nomination and initial support.¹³⁹ In October 2006, however, the GOP leaders decided to reduce the financial support for his race due his lagging behind Democrat candidate Sherrod Brown and focus on states with more conservative electoral base.¹⁴⁰ Diminished funding effectively impair the chance for the reelection, but even a preliminary poll results could not remove the doubt that DeWine's membership in Gang of 14 might have played role in the decision. Sen. Lincoln Chafee (R-I), another one of the fourteen Republican senators, who in 2005 orchestrated the failure of nuclear option and who opposed the strategy of

¹³⁸ Among others, President Obama openly discussed this option, but the most renowned proponent of a relatively polarizing partisan bill proposed to the end of 111th Senate was undoubtedly Senator Robert Menendez
[HTTP://WWW.ALTERNET.ORG/IMMIGRATION/148419/MENENDEZ_CALLS_FOR_2010_IMMIGRATION_REFORM_IN_LAME_DUCK_SESSION](http://www.alternet.org/immigration/148419/menendez_calls_for_2010_immigration_reform_in_lame_duck_session)
[HTTP://CONTENT.USATODAY.COM/COMMUNITIES/THEOVAL/POST/2010/11/OBAMA-PONDERS-IMMIGRATION-BILL-DURING-LAME-DUCK-SESSION/1](http://content.usatoday.com/communities/theoval/post/2010/11/obama-ponders-immigration-bill-during-lame-duck-session/1)

¹³⁹ Cohen, Richard E: Down the Middle, Special Report: 2005 vote rating, National Journal, Feb. 24, 2006
[HTTP://NEWLIVE.NATIONALJOURNAL.COM/MEMBERS/NEWS/2006/VOTERATINGS/COVERSTORY.HTM](http://newlive.nationaljournal.com/members/news/2006/voteratings/coverstory.htm)

¹⁴⁰ [HTTP://WWW.NYTIMES.COM/2006/10/16/US/POLITICS/16SPEND.HTML?_R=2&OREF=SLOGIN&PAGEWANTED=PRINT](http://www.nytimes.com/2006/10/16/us/politics/16spend.html?_r=2&oref=slogin&pagewanted=print)

own party, lost his reelection too and the chances for any moderate Republican in upcoming presidential primaries look grim at best.

The nomination of Senator John McCain (Arizona) thus came as mild surprise. Sen. McCain, labeled as independently acting maverick and a member of the Gang of 14, re-articulated in the bid for nomination his position on several key policies, among others also on the immigration policy. In May 2005, Senator McCain coauthored with Senator Ted Kennedy bill known as Secure America and Orderly Immigration Act (S 1033) which, even though it never reached floor, introduced to Senate a bill a comprehensive approach to immigration reform addressing the legalization of undocumented immigrants, temporary work programs as well as the border enforcement.¹⁴¹ The S 1033 became an significant inspiration for the Comprehensive Immigration Reform Act of 2006, which was, unsurprisingly, cosponsored by Senator McCain.¹⁴² The real surprise, concerning McCain's voting record, came after his presidential bid when he, while wooing the conservative factions of GOP, proclaimed that he withdraws all support for the vary legislation he helped to draft.

Furthermore, instead of advocating at least another complex approach to the matter, he began to advocate strictly only the enforcement of immigration laws without any compensation for the undocumented.¹⁴³ McCain's conservative evolution progressed further and in February 2011 he was listed by the National Journal's 2010 vote ratings as tied for the place of the most conservative senator of the 111th Senate.¹⁴⁴ The development of the 2008 Republican presidential nominee is far from unique, but other moderate senators advocating more comprehensive approach reacted to raising conservatism of party base differently. The Chairmen of Judiciary Committee Sen. Arlen Specter switched in 2009 party affiliation due to his "political philosophy *being* more in line with Democrats than Republicans (italics added),¹⁴⁵ only to loose his seat in 2010 elections. Lindsey Graham, on other hand, remained to cooperate on bipartisan legislature till April, 24, 2010, when he withdrew his support stressing that the Democrats use immigration policy cynically in electoral campaign.¹⁴⁶

¹⁴¹ Secure America and Orderly Immigration Act (S 1033)[HTTP://THOMAS.LOC.GOV/CGI-BIN/BDQUERY/Z?D109:S1033](http://thomas.loc.gov/cgi-bin/bdquery/z?d109:s1033):

¹⁴² Cosponsors of the CIRA 2006 [HTTP://THOMAS.LOC.GOV/CGI-BIN/BDQUERY/Z?D109:SN02611:@@@P](http://thomas.loc.gov/cgi-bin/bdquery/z?d109:sn02611:@@@P)

¹⁴³ Hetherington , Marc J.; Weiler, J.D.: p.167

¹⁴⁴ Wilson, Reid: McCain's Shift Makes Him Senate's Most Conservative, National Journal, Feb. 24. 2011, [HTTP://HOTLINEONCALL.NATIONALJOURNAL.COM/ARCHIVES/2011/02/MCCAINS-SHIFT-MAKES-HIM-SENATES-MOST-CONSERVATIVE.PHP](http://hotlineoncall.nationaljournal.com/archives/2011/02/mccains-shift-makes-him-senates-most-conservative.php)

¹⁴⁵ Cillizza , Chris: Specter To Switch Parties, The Washington Post, April, 28, 2009 [HTTP://VOICES.WASHINGTONPOST.COM/44/2009/04/28/SPECTER_TO_SWITCH_PARTIES.HTML?WPRSS=44](http://voices.washingtonpost.com/44/2009/04/28/specter_to_switch_parties.html?wprss=44)

¹⁴⁶ Eilperin, Juliet: Graham withdraws support for climate change regulation, Washington Post, April 25, 2010 [HTTP://WWW.WASHINGTONPOST.COM/WP-DYN/CONTENT/ARTICLE/2010/04/24/AR2010042402193.HTML](http://www.washingtonpost.com/wp-dyn/content/article/2010/04/24/AR2010042402193.html)

4.1.2 *Electorate Preferences*

The commitment to woo the more conservative part of the electorate has to be addressed in greater details especially due to the imminent consequences of this shift on the results of the congressional elections. The tough-on-immigration policy proved to be, as part of the shift to the right, electorally quite disastrous for the Republicans. In 2006, they lost in congressional elections 6 seats in the Senate and 27 in the House, in 2008 another 8 in the Senate and 20 in the House. Furthermore, the apparent wooing of the conservative base deterred other voters, especially the Hispanics. Their support dropped by at least 10% from the levels prior to 2004 presidential elections when President Bush had already have low public image trailed significantly behind the post 11/9 levels of support. The 2008 presidential election distanced Republicans even further from the Spanish speaking electorate; exit polls suggest that President Obama carried Hispanic vote by two to one margin and his success cannot be solely attributed to a invigorating campaign because the GOP fared poorly also in other contemporary elections loosing several traditional strongholds in the Southwest. Democrats gained support in all states with large Hispanic minority and in the 111th Senate were represented by 5 out of 6 senators from these states and led as governors also state governments in both Colorado and New Mexico.¹⁴⁷

The extent of the loss of Hispanic support is quite astonishing, considering the preferences of this minority in several key policies. The Spanish speaking community is, for example, divided on the issue of legalization of illegal immigration who, especially in economic recession, pose a competition on the labor market for the already legally residing Hispanics. In 2010, the worries about what to do with the undocumented divided the Hispanics. Surprisingly, only 28% advocated no punishment at all, 53% proffered legalization after a moderate fine, and 13% called for deportation. Furthermore, while in 2007, 50% of polled Hispanics perceive illegal immigration as a positive phenomenon for them, in October 2010 only 20% thought so, while 31% believed in the very opposite.¹⁴⁸ In other words, as long as the Republican propose a moderate punishment for illegals and strong border enforcement, they possess the potential to attract approximately a half of Hispanic voters. The calls for restrictive legislature in the matter, however, distant the Spanish speaking community and the embracing of the most restriction-oriented part of electorate spectrum, the Tea Party movement, contributes towards the uneasiness with which do the Hispanics view the

¹⁴⁷ Hetherington, Marc J.; Weiler, J.D.: p.172

¹⁴⁸ Lopez, Mark Hugo; Taylor, Paul; Morin, Rich : *Illegal Immigration Backlash Worries, Divides Latinos*, Pew Research Center, 28.10.2010, [HTTP://PEWRESEARCH.ORG/PUBS/1781/SURVEY-HISPANICS-UNAUTHORIZED-IMMIGRATION-POLICY-DISCRIMINATION-DEPORTATION-POLITICS](http://PEWRESEARCH.ORG/PUBS/1781/SURVEY-HISPANICS-UNAUTHORIZED-IMMIGRATION-POLICY-DISCRIMINATION-DEPORTATION-POLITICS)

Republican Party.

The strong plurality of Republican voters, however, demanded in 2010 a more restrictive approach towards immigration. While those identifying themselves as Democrats, list among the priorities for legislative changes reform of financial practices of Wall Street and related institutions (47%) or issues of the day like the energy and environment legislature (27%) and list immigration as the last of the three (24%), Republicans are divided to 37%, 45% and 15% respectively on the chosen topics.¹⁴⁹ The different preferences are more easily observable in approach to the controversial Arizona Immigration Law enacted in April 2010, 45% of Democrats oppose the measure while 62% of Republicans support it and these diverse preferences concerning the restriction-oriented approach explain to an extent the development in 110th and 111th Congresses.¹⁵⁰

4.2 CIRA 2010: From bipartisan support to a filibuster

While the 2008 congressional elections empowered the already strong Democratic mandate, the party used this potential in other policy areas than the immigration reform. First, the Stimulus package of 2009 required a strong party unity and curbed the enthusiasm of more fiscally conservative Democrats, and later, the renowned reform of the Health Care utilized the majority potential to its very extent. Sidetracked to a role of less important policy, the immigration was on the floor of Congress discussed rarely compared to the 109th Senate (Chyba: Zdroj odkazu nenájdený, Chapter 5) As as vividly discussed issue, immigration emerged only to the very end of the Senate's second session. Albeit mentioned during the amendment process on previous bills, the failure to address immigration separately prior to the 2010 adaptation of the DREAM Act, clearly reflected that the immigration reform had to be postponed in favor of the health care. Such postponement led together with the hastened attempt to pass at least partial reform legalizing the young immigrant on universities and in army to a belief of many Republicans that the bipartisan cooperation on the matter is over. As expressed by Senator Cornyn:

I also believe that these tactics show a lack of respect for those of us who want to see credible immigration reform. We all know that the majority--as well as the White House--have not kept their promises on immigration reform. They clearly hope a last-minute push for the DREAM Act during a lameluck session will outweigh 2 years of inaction and broken promises on this issue. These tactics clearly represent political gamesmanship: a cynical attempt to play on the hearts and minds of those who want real reform.¹⁵¹

¹⁴⁹ Newport, Frank: Republicans Prioritize Immigration; Dems, Financial Reform, April 30, 2010, Gallup <http://www.gallup.com/poll/127607/Republicans-Prioritize-Immigration-Dems-Financial-Reform.aspx>

¹⁵⁰ Jones, Jeffrey M.: More Americans Favor Than Oppose Arizona Immigration Law, April 29, 2010, Gallup <HTTP://WWW.GALLUP.COM/POLL/127598/AMERICANS-FAVOR-OPPOSE-ARIZONA-IMMIGRATION-LAW.ASPX>

¹⁵¹ Cornyn, John, S8596 CONGRESSIONAL RECORD — SENATE December 7, 2010

4.2.1 Early Initiatives

Among the first rare opportunities to discuss the immigration policy was the Children's Health Insurance Program Reauthorization Act of 2009 which addressed, among of course its main goals, the conditions under which should be the young immigrants or the children of immigrants eligible for the health care. As part of the overall health care reform, the floor remarks addressing the bill and the vote on the bill itself exposed to preferences mirroring the party affiliations.¹⁵² Only 8 Republicans Alexander (R-TN), Collins (R-ME), Corker (R-TN), (R-TX), Lugar (R-IN), Martinez (R-FL) Murkowski(R-AK), Snowe (R-ME), Specter (R-PA) voted in favor of the bill, while all Democrats but absent Edward Kennedy called aye. While only playing a minor role in the overall bill, the decision to offer generous terms of health care for immigrants without addressing the topic separately contributed to the decision of some of the opposing senators as Charles Grassley to not support the bill despite the previous commitment to the matter.

You have an election in between, but it seems to me, kind of, comity would dictate if that was a good statement to make in 2007, it would hold true for 2009 as well. This should have been an easy and quick bill to pick up and pass this year. Our bipartisan coalition fought side by side to get the Children's Health Insurance Program done in 2007. Picking up that baton and carrying it across the finish line should have been a straightforward exercise. For somebody like me in the Republican Party who went against his own caucus to get a bipartisan agreement, to stand against my own President and work hard in the House of Representatives to get a few more Republican votes, it kind of leaves us dangling out there. Without a show of appreciation, how can you work in a bipartisan way?¹⁵³

In its first session the Senate witnessed attempts to introduce bill dealing specifically immigration policy, but these proposals were either postponed by the all encompassing Health Care Reform, as the DREAM Act, or wholly abandoned. The DREAM Act was, however introduced as S3992 the following year.

¹⁵² [HTTP://WWW.SENATE.GOV/LEGISLATIVE/LIS/ROLL_CALL_LISTS/ROLL_CALL_VOTE_CFM.CFM?
CONGRESS=111&SESSION=1&VOTE=00031#POSITION](http://www.senate.gov/legislative/lis/roll_call_lists/roll_call_vote_cfm.cfm?congress=111&session=1&vote=00031#position)

¹⁵³ Grassley, Charles, A floor remark on Children's Health Insurance Program, S952 CONGRESSIONAL RECORD — SENATE January 28, 2009 [HTTP://WWW.GPO.GOV/FDSYS/PKG/CREC-2009-01-28/PDF/CREC-2009-01-28-PT1-PgS950-2.PDF#PAGE=3](http://www.gpo.gov/fdsys/pkg/CREC-2009-01-28/pdf/CREC-2009-01-28-pt1-PgS950-2.pdf#page=3)

4.2.2 *The Dream Act and late CIRA 2010*

The year 2010 began quite promising, concerning the immigration reform, as Senators Charles E. Schumer, a Democratic senator from New York, and Lindsey O. Graham, a Republican senator from South Carolina, made repeatedly joint press statements and submitted articles advocating bipartisan cooperation of the reform bill.¹⁵⁴ Their plan had in the essence resembled the CIRA of 2006, but the very fact that these particular senators emerged as proponents of bipartisan cooperation doubted the actual commitment of their parties to their plan. First, Senator Schumer's tendency to address a broad variety of issues with little success and his far-left political leaning challenged the belief that he could easily fill the shoes of the likes of Edward Kennedy.¹⁵⁵ Lindsey Graham, on the other hand, was for long the sole Republican senators committed to a bipartisan immigration bill in 2010 and he hardly represented the preferences of the core party voters. In other words, Sen. Schumer was expected to steer the Democratic majority towards immigration policy so that Senator Graham and maybe one other Republican could cosponsor the bill in Senate Committee on Judiciary.

At first, the initiative showed promise when both President Obama and Senators Schumer and Graham discussed informally to possibility of support of two influential Republican leaders, Senators John McCain and Tom Coburn.¹⁵⁶ The former presidential hopeful, Senator McCain, however remained to express more restrictive preferences and, as mentioned before, preferred a two step solution implementing first better enforcement prior to any discussions about amnesty. The possibility of Sen. Coburn's co-sponsorship was slightly more promising and as a second relatively moderate Republican member of the Committee on Judiciary, Coburn could have provided the leadership and appeal that the more a more ostracized Graham could not. However, the hopes of Coburn's pledge to cooperate turned to dust and, consequently, even the last Republican proponent of bipartisan immigration reform, Sen Lindsey Graham, withdrew his support on April, 24, 2010, citing the cynical approach to reform as a reason.¹⁵⁷

Senator Charles Schumer continued to work on the proposal with Senators Bob Menendez (D-NJ) and the Senate Majority Leader Henry Reid,¹⁵⁸ but their proposal known as the Reid-Schumer-Menendez bill never reached the Congress. The mantle of leadership of the reform was

¹⁵⁴ [HTTP://WWW.WASHINGTONPOST.COM/WP-DYN/CONTENT/ARTICLE/2010/03/17/AR2010031703115.HTML](http://www.washingtonpost.com/wp-dyn/content/article/2010/03/17/AR2010031703115.html)

¹⁵⁵ Senator Schumer is listed as the least successful sponsor among the senators currently in office.
[HTTP://WWW.GOVTRACK.US/CONGRESS/PERSON.XPD?ID=300087](http://www.govtrack.us/congress/person.xpd?id=300087)

¹⁵⁶ [HTTP://USBORDERSECURITY.INFO/GRAHAM-SCHUMER-TEAM-UP-AGAIN-TO-PUSH-AMNESTY](http://usbordersecurity.info/graham-schumer-team-up-again-to-push-amnesty)

¹⁵⁷ Eilperin, Juliet: Graham withdraws support for climate change regulation, Washington Post, April 25, 2010
[HTTP://WWW.WASHINGTONPOST.COM/WP-DYN/CONTENT/ARTICLE/2010/04/24/AR2010042402193.HTML](http://www.washingtonpost.com/wp-dyn/content/article/2010/04/24/AR2010042402193.html)

¹⁵⁸ [HTTP://NEWS.FIREDOGLAKE.COM/2010/04/29/REID-SCHUMER-MENENDEZ-DEMOCRATS-START-WRITING-THEIR-OWN-IMMIGRATION-BILL/](http://news.firedoglake.com/2010/04/29/reid-schumer-menendez-democrats-start-writing-their-own-immigration-bill/)

picked up by Bob Menendez and Senator Patrick Leahy (D-Vt) who introduced to public the over 800 hundred page long bill in September 2010.¹⁵⁹ The bill, however, was not articulated in mind of wooing the last few moderate Republicans and incorporated measures like the Uniting American Families Acts granting the legal residency to same-sex partners of U.S. citizens.¹⁶⁰ Unsurprisingly, after the lack of support expressed to the Menendez-Leahy proposal, the Democratic majority opted for more narrow and more popular piece of legislature, the DREAM act, which albeit passing the House, faced a 55-41 vote against in Senate and was effectively postponement to next Congress.

4.3 Dominant Narratives and Counter-narratives

Compared to the debates accompanying the immigration reform in the 109th Senate, the rare occasion on which the senators addressed immigration in the 111th Senate did not witness as numerous narratives and counter-narratives. In general, both parties adopted the use of two narratives which, moreover, did not reflect actual discussion about specifics of immigration policy and served more as constant reaffirmation of a party position. The Democrats, on one hand, repeatedly stressed the need to address the situation of those facing deportation as a part of broader discussion about the rights of immigrants, while the Republicans in the Senate rebutted with the reminder that they won't take part in any legislative process that would not enact a better border security enforcement prior to any extension of current immigrant rights. While in the 109th Senate members of both parties mostly agreed upon the issue of a new temporary working visa program and on better law enforcement and were divided on the rights in legal process and the conditions for legalization, four years later the discussions essentially boiled down to a mere repetition of overall party position of the matter.

Furthermore, while previously at least three pairs of dual narratives and counter-narratives might have identified upon the remarks made by the members of the Senate Committee on Judiciary and several Republican senators had spoken in favor of the reform, in the the 111th Senate the divide in expressed preferences mirrored party allegiance when no Republican senator had spoken repeatedly in favor of the Democratic proposals and the Democrats themselves adopted a more partisan argumentation. In the absence of a further divide according to the preference on admissions and rights, the potential of bipartisan coalition all but vanished in the heated disputed about the most promising immigration reform initiative, the DREAM Act of 2010. Due to the

¹⁵⁹ [HTTP://WWW.MICEVHILL.COM/ATTACHMENTS/IMMIGRATION_DOCUMENTS/HOSTED_DOCUMENTS/TEXTOFMENENDEZCOMPREHENSIVEIMMIGRATIONREFORMBILL.PDF](http://www.micevhill.com/attachments/immigration_documents/hosted_documents/textofmenendezcomprehensiveimmigrationreformbill.pdf)

¹⁶⁰ [HTTP://NEWS.CHANGE.ORG/STORIES/SENATOR-MENENDEZ-FINALLY-UNVEILS-IMMIGRATION-REFORM-BILL](http://news.change.org/stories/senator-menendez-finally-unveils-immigration-reform-bill)

striking decrease of total number of remarks that will be addressed in following chapter and the lack of two sided discussion on either the rights or the number of admissions, the floor remarks cannot be divided to specific narrative and only the particular party position on immigration reform will be mentioned.

Moreover, it has to be stressed, that the opportunities to address the immigration were few and far between compared to the 109th Congress and the two occasion on which was the immigration discussed the most determined the language used in the discourse. Immigration was first discussed, albeit only briefly and only by some, as a part of broader health care reform debate during the augmentation of the Children's Health Insurance Program Reauthorization Act of 2009 in late January 2009 and the second and far more important occasion was the reintroduction of the DREAM Act. The DREAM Act was first part of a broader National Defense Authorization Act for the Fiscal Year 2011, but due to a Senate filibuster unsuccessfully reintroduced also separately.¹⁶¹ The attachment to a National Defense Act thus influenced the focus on the role of legalization in the context of defense forces and the first occasion, a health care bill, witnessed remarks addressing immigration in a prism of health care costs.

4.3.1 A call for justice

The positive narrative encompassing the remarks made by most Democratic members of the Committee on Judiciary resembled the arguments used in the 109th Senate to the extent of using the very same symbols and language and albeit failing to address to issue from a perspective enabling the cooperation with the few remaining moderate Republicans, the prevailing arguments in the remarks made by the 11 Democrats and an independent Amy Klobuchar resembled those used four years ago and suggest that under different circumstances most Democrats would be willing to take a part in drafting of a more comprehensive reform.¹⁶² The main premise of the narrative used by the Democrats reflected the belief that even a partial reform should be adopted to address the situation of the undocumented who fall through the cracks of broken immigration system despite not committing other offense than the crossing of the border. Due to the very character of the DREAM act, the positive image of the hardworking and law-abiding immigrant (o)encompassed in the 111th Senate floor remarks highlighting immigrant loyalty to the USA from the very young age and, as had been common four years before, used the image of the shadow of ambiguous legal status (p) or the vulnerable status of of some of the recently arrived immigrants (q).

¹⁶¹ [HTTP://THOMAS.LOC.GOV/CGI-BIN/BDQUERY/Z?D111:S.3827:](http://thomas.loc.gov/cgi-bin/bdquery/z?d111:s.3827)

¹⁶² Senator Specter changed his party affiliation and will be counted among the Democrats rather than to Republicans despite de fact that he was elected in his office as Republican.

(o) We are dealing with equality on two scores today, in two areas. One is in the military. One of the great things about our military, No. 1, is they defend us and risk their lives for our freedom. But the second is, it has always been an integrating, positive force in America. Any policy that says you cannot serve even though you want to be an American, you are an American, is wrong; bad for our military service and bad for the country.¹⁶³

(p) There will be a vote, as well, on whether the Senate will stand by thousands of children in America who live in the shadows and dream of greatness. They are children who have been raised in this country. They stand in the classrooms and pledge allegiance to our flag. They sing our Star Spangled Banner, our national anthem. They believe in their heart of hearts this is home. This is the only country they have ever known. All they are asking for is a chance to serve this Nation. That is what the DREAM Act is all about.¹⁶⁴

(q) Prior to the corrective amendment contained in this legislation, a foreign national widow or widower of a U.S. citizen was put into the untenable position of not only losing their spouse but losing their lawful permanent residence and path to U.S. citizenship. To underscore the nature of this injustice: In cases where a marriage was entered in good faith and without any fraud or ill intent, if the U.S. citizen spouse passed away during the period of conditional residency, the immigration agency took the position that the widow or widower no longer had standing to become a lawful permanent resident.¹⁶⁵

4.3.2 *No reform before better control*

Compared to the narrative used by the Democrats, the comments made on the Senate floor by the seven remaining remaining Republican members of the Senate Committee on Judiciary seem far less constructive. Instead of engaging in actual argumentation, they have repeatedly used an *a priori* opposing stance, but such reaction should be perceived as expected due to the conservatism of the seven Republican senators and due to the more polarizing content of the bills in comparison to the content of the CIRA 2006. Furthermore, under the pressure, even Senator Graham gravitated towards the core party block and without a single Republican commitment towards the discussed bill, greater diversity in expressed opinions was hardly to occur. Albeit not taking part in actual drafting of the bill, Republican senators had repeatedly returned to the arguments used four years ago (r) and the emphasis on criminality (s, t), but in general reacted to the proposed measures by opposing the idea of a partial reform prior a proper border control is

¹⁶³ Schumer, Charles:S10656 CONGRESSIONAL RECORD — SENATE December 18, 2010
[HTTP://WWW.GPO.GOV/FDSYS/PKG/CREC-2010-12-18/PDF/CREC-2010-12-18-PT1-PGS10649-3.PDF#PAGE=9](http://www.gpo.gov/fdsys/pkg/CREC-2010-12-18/pdf/CREC-2010-12-18-pt1-PgS10649-3.pdf#page=9)

¹⁶⁴ Durbin, Richard December 18, 2010 CONGRESSIONAL RECORD — SENATE S10661
[HTTP://WWW.GPO.GOV/FDSYS/PKG/CREC-2010-12-18/PDF/CREC-2010-12-18-PT1-PGS10649-3.PDF#PAGE=13](http://www.gpo.gov/fdsys/pkg/CREC-2010-12-18/pdf/CREC-2010-12-18-pt1-PgS10649-3.pdf#page=13)

¹⁶⁵ Leahy, Patrick:S10546 CONGRESSIONAL RECORD — SENATE October 20, 2009
[HTTP://WWW.GPO.GOV/FDSYS/PKG/CREC-2009-10-20/PDF/CREC-2009-10-20-PT1-PGS10544-2.PDF#PAGE=3](http://www.gpo.gov/fdsys/pkg/CREC-2009-10-20/pdf/CREC-2009-10-20-pt1-PgS10544-2.pdf#page=3)

established (u).

(r.) The bill would immediately put an estimated 1 to 2 million illegal immigrants on a path to citizenship, a number which will only grow because there is neither a cap nor sunset in the legislation. These people would then have access to a variety of other Federal programs, Federal welfare programs, student loans, Federal work study programs, and the like. ¹⁶⁶

(s) Many have expressed concerns that our borders, which are still too porous, will allow people to come across but not just people who want to work. Our porous borders will allow people to enter who want to smuggle drugs, smuggle weapons, and who potentially want to do us harm. Last year alone, about 50,000--or closer to 45,000 individuals from countries other than Mexico--so-called OTMs--have been detained coming across our southern border. These OTMs have come from countries such as Somalia, Yemen, Afghanistan, Iran, China--you name it. The southern border is being used as a means to enter our country without detection and in violation of our laws. ¹⁶⁷

(t) Today, these folks do not feel they can sleep at night or move around without carrying weapons. They need to travel in pairs. This is the area in which an extraordinarily difficult tragedy occurred when a long-time resident of the area was slain, it is believed by one of the drug cartels or other smugglers who frequent the area. ¹⁶⁸

(u) There is a war raging in Mexico that is compromising our national security. I would argue that the best thing for the Senate to do, the House to do, the administration to do, is work together to secure our borders before we do anything else. ¹⁶⁹

¹⁶⁶ Kyl, Jon S10656 CONGRESSIONAL RECORD — SENATE December 18, 2010
[HTTP://WWW.GPO.GOV/FDSYS/PKG/CREC-2010-12-18/PDF/CREC-2010-12-18-PT1-PGS10649-3.PDF#PAGE=8](http://www.gpo.gov/fdsys/pkg/CREC-2010-12-18/pdf/CREC-2010-12-18-pt1-PgS10649-3.pdf#page=8)

¹⁶⁷ Cornyn, John June 24, 2010 CONGRESSIONAL RECORD — SENATE S5389
[HTTP://WWW.GPO.GOV/FDSYS/PKG/CREC-2010-06-24/PDF/CREC-2010-06-24-PT1-PGS5388.PDF#PAGE=2](http://www.gpo.gov/fdsys/pkg/CREC-2010-06-24/pdf/CREC-2010-06-24-pt1-PgS5388.pdf#page=2)

¹⁶⁸ Kyl, John S5228 CONGRESSIONAL RECORD — SENATE June 22, 2010
[HTTP://WWW.GPO.GOV/FDSYS/PKG/CREC-2010-06-22/PDF/CREC-2010-06-22-PT1-PGS5227.PDF#PAGE=2](http://www.gpo.gov/fdsys/pkg/CREC-2010-06-22/pdf/CREC-2010-06-22-pt1-PgS5227.pdf#page=2)

¹⁶⁹ Graham, Lindsey S10652 CONGRESSIONAL RECORD — SENATE December 18, 2010
[HTTP://WWW.GPO.GOV/FDSYS/PKG/CREC-2010-12-18/PDF/CREC-2010-12-18-PT1-PGS10649-3.PDF#PAGE=4](http://www.gpo.gov/fdsys/pkg/CREC-2010-12-18/pdf/CREC-2010-12-18-pt1-PgS10649-3.pdf#page=4)

5. Lessons for a Comprehensive Reform

A comprehensive reform of a particular policy is a truly herculean task and as the Democratic party focused its efforts to pass a reform of the health care, other policy area received less attention that they might have received under different circumstances. The immigration reform was one of the sidetracked issues and despite the attempt to pass a bill addressing the matter in the lame duck season, the 111th Congress failed to enact legislation changing the broken immigration system in a profound manner. The shift in legislative priorities, structural and newly emerged factors inhibited the chances for a expeditious reform further, but the span of four years from an almost successful attempt to change the policy comprehensively and the overwhelming strength with which the Democrats controlled the 111th Congress raised the hoped for at least partial reform. However, the few rare opportunities during which was the immigration discussed in greater detail witnessed a significant divide of preferences on the matter mirroring the party affiliation and in the Committee on Judiciary not a single senator dissented to agree upon policy with the members of the other party.

Compared to the 109th Senate, only two archetype narratives emerged and were limited to either to a full support of a proposed measure or to unyielding opposition against it. Republican senators who under different circumstances might have had support a bipartisan bill were either dissatisfied with inclusion of highly partisan and polarizing agenda in discussed proposals (Sen.Coburn, Sen Grassley), or adopted a more partisan stance despite a previous statements static an interest in a reform (Sen. Graham) or, as in rare case of Senator Arlen Specter, had changed their party affiliation according to personal preference. The Democrats, on the other hand contributed to the failure of the scarce attempts to change immigration policy by including measures that could not be expected to be supported by the Republicans or the socially conservative wing members of the party like equaling same sex and married couples in the immigration policy. Secondly, the party as a whole was committed too little and too late to the issue and one has to but wonder, what an impact on the reform late Senator Kennedy might have had.

5.1 Coalition potential in 111th Senate Committee on Judiciary

From the perspective of evaluation of coalition potential, the change of priorities of the party in control, the Democrats, led to too few occasions offering sufficient scope of remarks for the attribution of a value. While in the 109th Senate, senators commented often and in great detail on five different bills,¹⁷⁰ in the 111th reacted the members of the Committee on Judiciary in greater detail only on two bills, on the Dream Act as it was attached to the National Defense Authorization Act for the Fiscal Year 2011, and Children's Health Insurance Program Reauthorization Act of 2009.¹⁷¹ Due to the lack of opportunities, the number of the floor remarks addressing the immigration dropped to a point preventing the attribution of values. In between the the evaluated Senates, the number for the total search results for the terms “immigration” and “immigrant” decreased from 166,78 to 100,26 per senator. Taking into account, that a significant proportion of remarks either only mentioned the terms without expressing a clear preference of matter, that the search results partly overlapped and that they addressed mostly a single proposal, the DREAM Act, the actual number of remarks that could be used for the attribution of aggregated remark value dropped to point preventing this mean of evaluation of coalition potential.

However, the fact that such decrease took place might be interpreted as the an evidence how divided and polarized had the American political scene became. This conclusion is supported by the personal changed that took place in between the two evaluated Senate Committees on Judiciary especially after comparison of the values attributed to senators in 109th Senate (Figure 7)and the positive/negative approach adopted by the Committee members in the 111th Senate. From the three Republicans who expressed a positively valued preferences in the 109th Senate, one, Sen. Sam Brownback (R-Ka), was no longer a member of the Committee, another, Sen. Arlen Specter, changed party affiliation, and third, Sen. Lindsey Graham, called for a reform addressing first the border security (floor remark (u), previous chapter), rather than the typical Free Market Expansionist stance he advocated four years ago, when he opposed a Democrat, Senator Jeff Bingaman (D-NM) on the issue how many immigrant might be absorbed by the US labor market:

The fundamental disagreement between me and the Heritage Foundation and Senator Bingaman is I believe that immigration is going to be regulated by the needs of our economy. When our economy gets to the point that we can't tolerate more people, the numbers are going to change. The Heritage Foundation assumed escalations in numbers apart from supply and demand. To my good friend from New Mexico, the 11 million to 12 million--whatever number it is--have already been assimilated into our workforce without damage to our workforce because

¹⁷⁰ COMPREHENSIVE IMMIGRATION REFORM ACT OF 2006 May 2006
DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2006. July 2005
SECURING AMERICA'S BORDERS ACT March/April 2006
DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2007 July06
SECURE FENCE ACT OF 2006 Sept 06

¹⁷¹ For example, Sen. Cornyn reacted also on different occasions and in a quite great detail

we have historically low unemployment, and the economy is humming, from a Republican sound bite point of view. This is about as good as it will ever get.¹⁷²

In, other words the only Republican in 111th Senate Committee who had previously called for an expansion of admissions, adopted a different position preventing cooperation on a bill guarantying too many rights for too many immigrants.

	Legalization	Rights	Imagery
Joe Biden (D-Del)	0	1	1
Sam Brownback (R-Kan)	1	1	1
Tom Coburn (R-Okla)	-1	-1	0
John Cornyn (R-Tex)	-1	-1	-1
Mike DeWine (R-Ohio)	0	0	0
Richard Durbin (D-Ill)	1	1	1
Russ Feingold (D-Wis)	1	1	0
Dianne Feinstein (D-Cal)	1	0	0
Lindsey Graham (R-SC)	1	1	0
Charles Grassley (R-Iowa)	-1	0	-1
Orrin Hatch (R-Utah)	-1	0	-1
Ted Kennedy (D-Mass)	1	1	1
Herb Kohl (D-Wis)	1	0	0
Jon Kyl (R-Ari)	-1	-1	-1
Patrick Leahy (D-Vt) RM	1	1	1
Chuck Schumer (D-NY)	1	0	0
Jeff Sessions (R-Ala)	-1	-1	0
Arlen Specter (R-Pa) CH	1	0	0

Figure 7: Aggregated Preferences, The 109th Senate Committee on Judiciary

Value Attribution upon predominant expressed preferences:

1 – in favor, positive, -1 – against, negative, 0 – neutral,

or not possible to attribute due to lack of repeatedly expressed preferences on the matter (Sen. DeWine)

5.2 Main Factors Preventing Bipartisan Cooperation

The shift in preferences of Sen. Lindsey Graham explains a lot about one of the reasons for the lack of bipartisan cooperation on a comprehensive reform of immigration policy. During an economic recession, the legislators are expected to address the economy first and as the 111th Congress had been already committed to enact the Health Care reform, senators could not be expected to articulate a reform of the scope demanded by an comprehensive immigration reform. However, even vis-à-vis a stumbling economy and a comprehensive overhaul of another policy, a reform of particular policy area, e.g. temporary working visa, remains to be feasible especially when a single party is in control of both chambers of the Congress. However, the 111th Congress

¹⁷² Graham, Lindsey S5144 CONGRESSIONAL RECORD— SENATE May 25, 2006

had seen only a single attempt to do so and the DREAM Act came to late for the taste of several senators and several factors have to be briefly assessed from the perspective of the Senate so as to clarify the reasons for a failure.

5.2.1 *It's the Economy, ...*

The catchphrase of the President Bill Clinton era, “It's the economy, stupid”, explains a lot about the hesitancy of many legislators to take a part on a bill as broad as was the CIRA 2006. As long as the reform aspires for the title “comprehensive” it has on way or the other address the situation of at least 10 million undocumented workers participating on the U.S. labor market. As long as the unemployment remains low, the idea of granting the access to legal labor market to the undocumented loses its appeal for any legislator with a proportionally large blue collar worker constituency. As it had been already explained in the subchapter 2.3.2 Economic Factors, the actual impact of illegal immigration on wages and employment is in a long term disputed, but the politician seeking pragmatically reelection follows rather the whims of his constituency and contemporary results rather than a scientific hypothesis for the next decade. Furthermore, granting legal access to jobs to the undocumented is generally unacceptable as long as the native born population continues to lose jobs.

Even though, as was noted in the Chapter 2.2 Changed Patterns of Migration, both illegal and legal immigration decreased in recent years and the Mexican overpopulation pressure was lifted, even a lower rate of immigration doesn't solve the problem of what to do with the population already present in the United States and as the US economy entered recession, senators who were previously committed to a comprehensive reform realized that the premises for their support had changed. Such changed preferences became observable especially in the remarks made by senators who had previously advocated a reform from a Free-Market Expansionist viewpoint. In 2006, with 4.7% unemployment, Sen. Graham supported a legalization for most immigrants stating, that “ 11 million undocumented workers have assimilated into our economy” because the “ the economy *was* as good as it is ever going to get in your lifetime”.¹⁷³ But in 2010 was the situation, as stressed by Senator Cornyn, strikingly different:

Last week, we learned that the unemployment rate went back up to 9.8 percent in November--and more than 15 million Americans cannot find a job. In the Hispanic community, things are even worse. The unemployment rate is up to an astonishing 13.2 percent the highest rate in 27 years. And it has been above double digits every month since the stimulus bill became law in February 2009.

That's why I agree with my Republican colleagues that the only items on our agenda during this lameduck session should be time-sensitive issues focused on the economy. Those time-sensitive issues include passing a continuing resolution to keep the government running,

¹⁷³ Italics added, change of tense, Graham, Lindsey, 25.5.2006

as well as preventing the largest tax hike in U.S. history. Everything else that can wait should wait until the new Congress convenes in January.¹⁷⁴

The economy was far from being as good as it could get and, moreover, as contemporary data suggested, even the new jobs created in the aftermath of the stimulus did not help the native born population proportionally as much as they did the foreign born (Chyba: Zdroj odkazu nenájdený). Any senators seeking reelection would thus had to justify his or her support for allowing the undocumented to compete for the jobs harder than ever before.¹⁷⁵

5.2.2 Polarization

Albeit undoubtedly a hindrance for a generous legalization program, the weak performance of U.S. economy does not, *per se*, explain the failure to enact at least a partial reform. The main reason, besides the already mentioned issue of Health Care reform cost for other comprehensive reforms, rested in the overwhelming party polarization. It became quite apparent also in the Senate Committee on Judiciary, when not a single Republicans expressed a will to cooperation compared to three Republican senators who took part in the CIRA 2006 bipartisan coalition. While a more moderate Republican senators like Sen. Olympia Snowe remain to bring the glimpse of hope for bipartisan legislature, Republican party base and the shift of expressed preferences of the likes of Sen. Graham doubt that the bipartisanship will be embraced by many. Furthermore, the issue of immigration remains to be one of the polarizing topics dividing the American political scene. Albeit the historic height of 18% Americans favor the increase of number of admitted immigrants, the number of Americans perceiving immigration as a bad thing is the highest since the upheaval after the 11/9.¹⁷⁶

Besides the gap in between the parties, the polarization contributed to a greater unity within the parties. In the 2006, four main (Biblical, Tax Cutting, Traditional Values and Anti-Washington blocks) and a half of dozen minor blocks could have been identified within the Republican Party. The Democrats were divided in even more groups with the core party blocks (Yellow dogs, Blue Collar, Older Voter block) being the second after the the Social Justice Coalition (Minority block, Fairness block and Social Moderate block).¹⁷⁷ In 2011, a different methodology led to identification of only two core blocks within the GOP and three among the Democrats, and despite the difference

¹⁷⁴ Cornyn, John , S8596 CONGRESSIONAL RECORD — SENATE December 7, 2010
[HTTP://WWW.GPO.GOV/FDSYS/PKG/CREC-2010-12-07/PDF/CREC-2010-12-07-PT1-PGS8596-3.PDF#PAGE=1](http://www.gpo.gov/fdsys/pkg/CREC-2010-12-07/pdf/CREC-2010-12-07-pt1-PgS8596-3.pdf#page=1)

¹⁷⁵ [HTTP://PEWRESEARCH.ORG/PUBS/1784/GREAT-RECESSION-FOREIGN-BORN-GAIN-JOBS-NATIVE-BORN-LOSE-JOBS](http://PEWRESEARCH.ORG/PUBS/1784/GREAT-RECESSION-FOREIGN-BORN-GAIN-JOBS-NATIVE-BORN-LOSE-JOBS)

¹⁷⁶ [HTTP://WWW.GALLUP.COM/POLL/148154/AMERICANS-VIEWS-IMMIGRATION-HOLDING-STEADY.ASPX](http://WWW.GALLUP.COM/POLL/148154/AMERICANS-VIEWS-IMMIGRATION-HOLDING-STEADY.ASPX)

¹⁷⁷ [HTTP://WWW.NYTIMES.COM/PACKAGES/KHTML/2006/10/01/WEEKINREVIEW/20061001_HERDS_GRAPHIC.HTML](http://WWW.NYTIMES.COM/PACKAGES/KHTML/2006/10/01/WEEKINREVIEW/20061001_HERDS_GRAPHIC.HTML)

in terminology used by the two estimates, two tendencies are easily identified.¹⁷⁸ First, the parties become increasingly united with core party blocks opposing each other bitterly and, secondly, numbers of independent voters suggest greater disaffection with the polarization of major parties.

¹⁷⁸ [HTTP://PEOPLE-PRESS.ORG/2011/05/04/BEYOND-RED-VS-BLUE-THE-POLITICAL-TYPOLOGY/](http://people-press.org/2011/05/04/beyond-red-vs-blue-the-political-typology/)

6. Conclusion

Unity and polarization of the parties justly put in doubt the idea of a bipartisan bill being enacted in a next few years, but the number of independent voters gives hope, that the politician elected as independents could serve as the bridge of increasingly divided major parties and in the end even provided the leadership necessary for a comprehensive immigration reform bill. The CIRA 2006 came close to passing only through personal incentive of Sen. Kennedy and due to the chairmanship of Arlen Specter who, as became obvious later, truly stood in between the GOP and the Democrats. Senator Specter supported the Committee bill despite having reservation about some of its aspects and only the willingness to support a compromise could lead to the adoption of a comprehensive reform. Currently, even strong party unity and a strong majority do not guarantee the success of bills with more specific scope, but the issue of immigration is far too important and current policy too broken, to be left unattended.

In May 2011, the Republicans reaffirmed their opposition to any measure besides enforcement by opposing the newest version of the DREAM Act and as the Democrats introduced the plan to pass the Comprehensive Immigration Reform Act of 2011 till the end of the year, one has but to wonder, what might the Tea Party supported congressmen find appealing on a bill refurbishing the Menendez-Leahy proposal submitted the year before.¹⁷⁹ The economy is far from booming, and as long as the unemployment rates remain relatively high, the segments of U.S. native born population which find themselves competing with foreign-born compatriots won't support in elections a candidate calling for generous legalization. Without a legalization of at least majority of the 12 million undocumented, the main challenge of broken immigration policy cannot be addressed and reform targeted at a specific policy area seems more likely to succeed. And, in the end, cooperation on the border enforcement might be in a short term the sole issue that might succeed to gain bipartisan support.

¹⁷⁹ [HTTP://LATINO.FOXNEWS.COM/LATINO/POLITICS/2011/06/22/ROBERT-MENENDEZ-SENATE-DEMOCRATS-RE-INTRODUCE-IMMIGRATION-BILL/](http://LATINO.FOXNEWS.COM/LATINO/POLITICS/2011/06/22/ROBERT-MENENDEZ-SENATE-DEMOCRATS-RE-INTRODUCE-IMMIGRATION-BILL/)

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