

Research Perspectives on Migration

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Immigration and the Justice System

Draw a Venn diagram on the topic of immigration and the justice system and you will find in the overlap at least three distinct concerns. The first would be immigrants as crime victims; the second, immigrants as criminals; and the third, the socio-cultural dimension of immigrants' relationship to the criminal justice system.

Each has its own sub-categories. Under the category of immigrants as crime victims, one might distinguish the following types of victimization:

- Hate crime on account of nativity status, national origin, or race, which is often provoked by economic issues;
 - Criminal exploitation, both by fellow nationals and by the native-born;
 - Routine victimization, perhaps exacerbated by immigrant propinquity to urban, high-crime neighborhoods;
- Here, the paramount policy questions concern the dimensions of the problems and how they might be diminished.

Immigrants as criminals would include the following types:

- Terrorists who target the U.S. or its allies, such as the World Trade Center bombers;
- Organized criminal syndicates, such as Russian Mafias, Vietnamese Triads, Central American and Mexican drug cartels, Mexican and Chinese people-smuggling rings, and so on;
- Individual felons, who commit a wide range of crimes, and who are by far the most numerous of the groups in this list;
- Youth criminal groups, particularly those involved in gang-related activity;
- Illegal aliens, who, although generally industrious, law-abiding individuals, often aggravate the "crime" of their unauthorized presence by other illegal acts, such as using fraudulent documents to obtain employment or other benefits. (Most observers, however, would insist that that whatever illegality is implied by an immigrant's unauthorized presence in this

country belongs at the furthest end of the spectrum from terrorist and organized crime activity.)

There are two very broad questions to be asked about this issue. First, what are the dimensions of the problem and how might they be alleviated, either through admission or integration policies? Second, what types of illegal behavior trigger—or ought to trigger—deportation proceedings?

Finally, there are a host of issues concerning how immigrants either access or become inadvertently involved in the criminal justice system. These issues arise out of the immigrants' and the host society's attitudes about each other's socio-cultural practices, or about crime and its enforcement. Two, particularly, stand out:

- Socio-cultural practices deemed unacceptable by the host society, such as those having to do with gender relations: the marriage of underage women or genital mutilation, for example. The discussions here center around how the host society can legitimately and sensitively enforce its laws within the bounds of a pluralistic society;
- The insular nature of many immigrant communities, which may complicate police-community relations, leading both to intergroup friction and to a failure of protection. This issue may be particularly salient if the immigrant community in question comes from a country in which authorities routinely violate international norms of due process and human rights.

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Executive Summary

*Data are incomplete on immigrants as victims of various types of criminal activity.

- It would appear that immigrants are victims of hate crime more as a result of their ethnicity or race than their nativity.
- Unauthorized immigrants are often victimized as a result of their status, often by co-ethnics.

*It has long been popularly believed that immigrants are disproportionately criminal. Some politicians today continue to actively promote this belief.

*Early studies on the link between immigrants and criminal activity found that immigrants were disproportionately unlikely to be criminal. However, these same studies suggested that the sons of immigrants might be disproportionately criminal.

*Contemporary immigrant communities can inadvertently provide a “refuge” or a “home” for international criminal

syndicates. The extent of this problem remains unknown; however, there is some reason to believe that it may be exaggerated.

*Immigrants themselves appear to be disproportionately unlikely to be criminal. Studies indicate that immigrants are one to two thirds as likely to be incarcerated as the native born.

*However, while the data are at best suggestive, unauthorized immigrants appear to be much more likely to be criminal than either the native born or their authorized brethren.

*One recent study suggests that immigrant neighborhoods are associated with slightly higher than average rates of violent crime. It is not clear, however, whether immigrants are victims or victimizers in this case.

*The link between criminality and the second generation, hypothesized by earlier studies, has not been studied recently, in large part because of the absence of viable data.

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Obviously, each element of these three issues entails different analytical and policy challenges, and a review of different sets of literature. Ironically, what prevents the discussion from becoming unwieldy is the paucity of data. For many reasons, including the fact that criminal activity is by its nature covert, information about the extent and nature of immigrants' relationship to the criminal justice system is patchy, at best. This article, therefore, is meant to be a tentative and by necessity incomplete exercise in mapping out the terrain.

There will, however, be an attempt to examine at least one issue in depth, and that is the extent of immigrant participation in “ordinary” criminal activity. There are several reasons for this focus. It is in the nature of democratic governance that public perceptions ultimately drive policy, and immigrant criminality is one of the more recurrent of the concerns that are voiced about immigration. More than most, it is also an issue that lends itself to demagoguery. The presence of strangers—and immigrants are, by definition, strangers—almost always heightens one's level of apprehension. That immigrants tend to settle in poorer, urban neighborhoods where crime tends to be highest probably exacerbates the appearance of a link between immigrants and crime. Furthermore, it is the issue that appears to be most amenable to improvement through the manipulation of admission policies. However spectacular, the participation of a few individual immigrants in some high-profile terrorist acts is not a plausible argument for reducing immigration levels, though more robust screening procedures may be called for at ports of entry. These issues can be much more

effectively addressed through more systematic and aggressive intelligence gathering and policing efforts, relying on the resources and comparative advantages of several law enforcement and intelligence agencies. But should immigrants be found to contribute disproportionately to domestic crime rates, this may, as some politicians have argued, constitute an argument for restricting, or otherwise reconsidering, current immigration policies.

Crime against Immigrants

Immigrant advocates sometimes argue that to focus on immigrants as perpetrators of crime is unfair and one-sided. What about immigrants as victims of crime, particularly of crimes that are committed against them at least in part because of their nativity status? The case of Vincent Chen, the Chinese American who was beaten to death in Detroit because three unemployed auto workers mistook him for Japanese, is often taken as paradigmatic. So, too, is the recent shooting death of Mauritanian immigrant Oumar Dia by “skin-head” Nathan Thrill in Denver, Colorado. However, it is not clear to what extent immigrants suffer from hate crime as a result of their nativity status. Usually, as in the case of Mr. Chen and Mr. Dia, immigrants are targeted because they belong to some racial, ethnic, or national origin group. (Nathan Thrill has stated that he shot Mr. Dia because he couldn't stand to “live in a world with blacks.”) None of the groups that track hate crime in the United States—the Anti-Defamation League of the B'nai Brith, the Southern Poverty Law Center, or the FBI—do so by nativity, and as a result, there are no firm statistics on the topic.

A rash of “anti-immigrant” incidents were reported in California in 1994, and were said to be the “ugly face” of what was for many an anti-immigrant political campaign. But nearly all of these incidents took place against Asians and Latin Americans, many of them native-born citizens; while no incidents, to our knowledge, took place against California’s rather large Canadian contingent—even though there are presumably many unauthorized immigrants among Canadians as well. It would appear that “the immigrant” becomes an object of antipathy in America primarily when he or she is viewed through the prism of ethnicity and race.

Immigrant participation in “ordinary” criminal activity would appear to be the issue most amenable to improvement through the manipulation of admission policies.

Anti-immigrant and anti-immigration sentiment in the United States is clearly a rope of many strands, some of which are tinged with prejudice or xenophobia. Disentangling these is an important research project, and should contribute to the health of the public discourse. This discourse has suffered from ambiguities that lead to charges and countercharges of bad faith and intellectual dishonesty. On the one hand, racism and xenophobia have such long and dishonorable traditions in the American body politic that it pays to be vigilant against them; on the other, it is wholly unfair to tar those who wish to raise legitimate concerns about immigration—about some of its local fiscal impacts, for example, or this country’s capacity to fully incorporate some immigrants economically—with the brush of racism. One research goal might be to develop a neutral mechanism to test which strands of the rope restrictionist politicians and columnists are pulling when they speak out against immigration or immigrants. Another might be to determine whether there is a causal relationship between anti-immigrant rhetoric and acts of violence against immigrants.

Immigrants, of course, are subject to many other sorts of victimization. Because they generally settle in poorer, urban neighborhoods, they are often victims of the everyday crime that has a disproportionate impact on these environments. There is some evidence, as will be discussed later, that violent crime also affects immigrant-dense urban neighborhoods disproportionately.

Immigrants—especially unauthorized immigrants—can also be victimized as a result of their status, often by co-ethnics. One major source: the immigrant smuggling rings that occasionally erupt in the news, as they did when the Golden Venture ran aground near New York in 1993. Last summer’s reports of deaf-mute Mexicans living and working in conditions of near-enslavement as subway beggars and streetcorner vendors in several US cities struck the same theme. Each year, thousands

of Chinese—estimates vary widely on the number—pay between \$35,000 and \$50,000 each to be smuggled to the United States. Notes one scholar: “The business is almost as lucrative as drug trafficking and less risky [to the trafficker].”

Sometimes, however, the people trade can be just as deadly. Newspaper accounts feature stories of immigrants pushed out of a speeding car by their smugglers to avoid arrest; abandoned in the desert by their guides to suffocate in a locked boxcar; or starved by their boat captains. Nor is their safety assured once they reach the US. Employers sometimes threaten to “call immigration” to deprive them of fair compensation for their services. Because many unauthorized immigrants must “work off” their payment to the smuggler after arriving in the US, some are forced into prostitution, while many others work on farms or in the needle trade for subsistence wages. Often, the smuggling rings threaten to harm the immigrants’ families back in the home country if they are not paid off. (In a sense, this represents the reemergence of indentured servitude, which, along with slavery, was supposed to have disappeared long ago.) According to some estimates, 50,000 immigrants toil in New York City sweatshops upwards of 70 hours a week for wages as low as \$1 per hour.

Immigrants and Criminality: A Brief History of Public Perceptions and Sociological Evidence

The link between immigration and crime has long been a matter of public and policy concern. The Industrial Commission of 1901 published a special report on “Immigration and the Foreign Born,” which, in one of its sections, looked at crime. It came to two central conclusions: first, that the foreign born were less likely to commit crimes than the native born; and second, that a disproportionate number of the incarcerated had foreign-born parents. Remarkably, the Commission argued that this second finding constituted “just as strong an argument as to the injurious effect of immigration as would be a high proportion [of criminals] among the foreign born themselves.”

A decade later, the Immigration Commission of 1911 reached similar conclusions, but couched them in more neutral terms: “No satisfactory evidence has yet been produced to show that immigration has resulted in an increase in crime disproportionate to the increase in adult population In fact, the figures seem to show a contrary result.” It too, however, found evidence that the offspring of the foreign born were disproportionately likely to be convicted of a crime.

In 1931, the National Commission on Law Observance and Enforcement assembled arrest and crime statistics in fifty-two cities and concluded that the available data “seem to disagree radically with the popular belief that a high percentage [of

crime] may be ascribed to the 'alien.'” Although it was unable to analyze similar statistics on the children of immigrants—then, as now, that data simply did not exist—it conducted extensive interviews with police officers, prosecutors, and judges, and found a consensus that the “sons” of immigrants, rather than the immigrants themselves, were the source of the “immigrant crime problem.”¹

The paradox implicit in these findings, confirmed over three decades of increasingly rigorous research, gave the fledgling discipline of sociology an opportunity to flex its interpretive muscle. The explanation proffered by such researchers as Reckless and Smith or Sutherland, was that immigrants were a self-selected lot given to hard work and deferring gratification, and more than willing to assume a subordinate social position in their new society in return for the vastly superior economic opportunities it provided them. Their sons, however, compared themselves to their American friends rather than to their cousins left behind in the old country, and found their position wanting. In addition, they faced a host of frustrations and constraints their fathers had not had to deal with: alienation from both the host and native culture; a lack of economically successful role models; ubiquitous gang activity; and economic aspirations that they could not realistically hope to satisfy. These were, it was said, the basis for youthful delinquency and a possible future career in criminality.

Skip ahead six decades, to Governor Pete Wilson’s come-from-behind gubernatorial victory of 1994. His championing of Proposition 187, which mandated sharp cuts in services to illegal immigrants, and a “three strikes and you’re out” sentencing policy boosted his popularity and played a major role in his reelection. These two “hot-button” issues were philosophically similar in that both represented a “get-tough” approach to social issues, particularly against people who were perceived to be threatening the public’s physical and economic security. But they were associated in more direct terms as well, since illegal aliens were thought to represent a major source of criminality. Section 1 of Proposition 187 proposed that “The People of California . . . have suffered and are suffering personal injury and damage caused by the criminal conduct of illegal aliens in this state.”

In championing get-tough measures on illegal immigrants and relating them to the crime problem, Wilson was exploiting widely held attitudes. A 1993 *Time* magazine poll found that 59 percent of respondents nationwide believed that immigrants “add to the crime problem.” Other politicians made similar claims. Senator Alan Simpson complained about the effects of both legal and illegal immigration when he declared that “taxpayers are being adversely affected—for example, by welfare abuse, schools that are overcrowded . . . [and] rising crime.” Pat Buchanan, who set new standards for rhetoric on this issue, campaigned aggressively on the social anxieties aroused by illegal immigrants: “Each year millions of illegal immigrants

pour across our southern border into the United States. Most come without job skills. Crime explodes. And who pays the cost of their health care, housing, welfare? You do.”

The New War?

The growth in the number and visibility of international criminal networks has focused attention on the role immigrants and immigrant communities may play in supporting them—if only by providing them with a sort of “camouflage.” The transnationalism of organized crime is abetted by one of the most common features of the globalizing world: the increasing salience of diasporas. As a result, it is much easier for criminals to embed their organizations in these immigrant communities and use them as a base from which to operate in foreign soil. “Headquartered” in countries where criminal syndicates and government authorities can sometimes be collaborators, these “businesses” include drug running and distribution, money lending and laundering, tax and currency fraud, alien smuggling, and extra-judicial contract enforcement. Whether it be the Russian mafia, Chinese Triads, or Nigerian, Mexican, and Colombian drug runners, these criminal enterprises pose extraordinary challenges to law enforcement agencies. The obstacles to successfully penetrating these enterprises include language, gaining access to often insular communities, official corruption, and tracing flows of money across international borders.

The inevitable dearth of data on this emerging issue has not deterred an abundance of speculation and commentary, much of it based on dramatic but anecdotal evidence. Because more is known about the Russian mafias than about most other immigrant criminal groups, they might serve to illustrate both the nature of the problem and its potential for exaggeration.

Russia’s post-Cold War lurch into capitalism is generally acknowledged to have been accompanied by pervasive criminality. Many circumstances contribute to this problem, which is one of the many negative historical legacies of Communist rule. Among them would be the emergence of a new, “robber baron” elite that, like the country’s former elite, arrogates extra-legal privileges to itself; and a tradition, often born of necessity, sometimes legitimate, and usually quite sophisticated, of circumventing the old Soviet system’s bureaucratic demands through fraud, forgery, corruption, smuggling, and other means. Given the weakness of the contemporary Russian state, the upshot has been the creation of a “buccaneer capitalism.”

Some analysts suggest that given these realities within Russia, the large flow of Russian immigrants into the United States may be reason for alarm. And indeed, a number of Russian mafias have sprouted offshoots in the US, where they are thought to engage in everything from currency violations, to motor fuel tax scams, to murder. The problem has of late attracted the inter-

est of Hollywood, which in these politically correct days is in constant need of credibly threatening caucasians.

But even if Hollywood is exaggerating its extent, the problem is increasingly serious, and worth monitoring. In New York City, home to the largest Russian community in the US, approximately 400 ex-Soviet immigrants were arrested in 1993. In 1994, there were 750 arrests, and in 1995, there were approximately 1,000. But it is important to maintain a sense of perspective. Ninety percent of these arrests were for misdemeanors or traffic offenses. Similar points might be made about immigrant ties to Asian Triads and Latin American and African drug cartels.

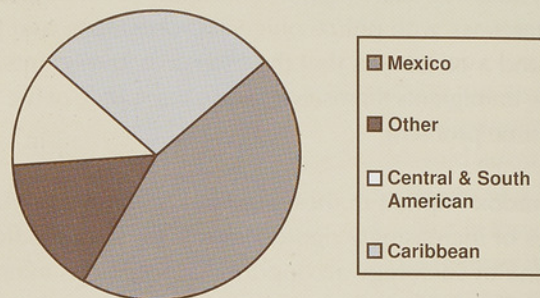
Of course, one might posit that it is because they don't get caught that organized criminals—foreign or domestic—pose such a danger. The problem, then, of course, is to avoid sounding merely alarmist: one doesn't want to declare that the proof that something is an especially subtle and insidious problem is precisely that we know so little about it. One might summarize the state of knowledge as follows: while foreign organized crime represents a growing threat, it is not clear to what extent these particular criminals are entering the nation via immigration visas, as opposed, say, to tourist or other visas.

Given the uncertainty in the data, the best policy response for the moment may be to remain vigilant. As FBI Director Louis Freeh has observed, "We made the mistake of ignoring La Cosa Nostra for more than 50 years in the United States, to the point where it became an entrenched and overwhelmingly criminal enterprise and presence. . . . We are not about to make the same mistake." And as Freeh acknowledged, the solution—or at least the management and control—of the problem lies to a large degree in a host of international law enforcement measures.

Is There a Link between Immigrants and Criminality?

The more relevant immigration policy question concerns the criminality of the regular immigrant stock. Here, the available statistics are misleading, inadequate, and sometimes contradictory: Most do not permit one to distinguish between immigrants and noncitizens, for example, or between legal and illegal immigrants. The difficulties these lacunae entail can be illustrated by the following. According to Bureau of Justice Statistics, in 1994 noncitizens constituted 21.6 percent of federal prison inmates; the federal government is estimated to have spent \$400 million incarcerating them that year. Furthermore, as a 1996 BOJ report delineates, the number of noncitizens incarcerated grew from 4,088 in 1984 to 18,929 in 1994. This represents an annualized growth rate of 15 percent, which compares unfavorably to the 10 percent growth rate for citi-

Percent of Alien Inmates in State Prisons



Source: DOJ Statistics, Survey of State Prison Population, 1991

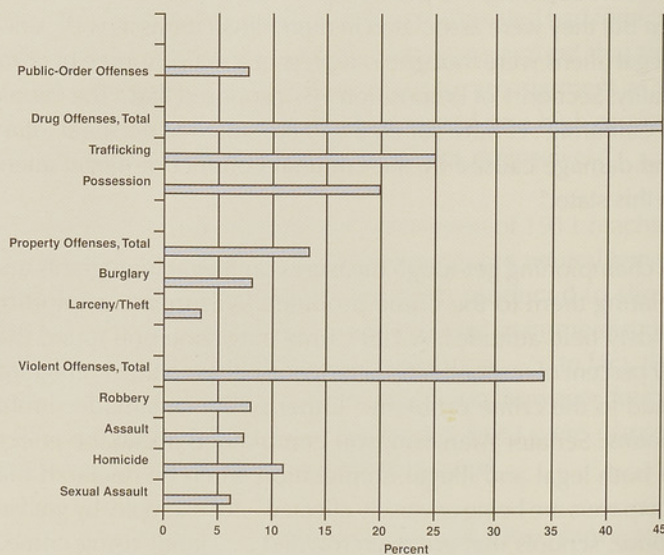
Figure 1

zens. (A large part of both increases resulted from the "war on drugs," which, beginning in the mid-1980s, resulted in the imposition of severe prison sentences for drug infractions.) Taken as a whole, these figures would appear to suggest the existence of a serious immigration-related crime problem.

However, according to the same BOJ report, 44 percent of noncitizens prosecuted in federal court in 1994 were charged with drug offenses; compared to citizens, they were more likely to have played a minor role in the drug conspiracy and were more likely to receive a lighter sentence. Furthermore, an additional 34 percent were prosecuted for immigration-related offenses, such as violating the terms of a visa. These are offenses citizens cannot commit. (However, reflecting the fact that drug offenses generally drew much longer sentences, 76 percent of incarcerated noncitizens were in jail for drug-related offenses.)

Furthermore, noncitizens are not a meaningful enough proxy for immigrants, since most noncitizens in the US are not immi-

Types of Offenses Alien Inmates



Sources: DOJ Statistics, Survey of State Prison Inmates, 1991

Figure 2

grants but visitors, or to use the proper term of art, “non-immigrants”. (Conversely, many immigrants are in fact citizens.) Indeed, it is impossible, from the statistics that are currently available, to determine what percentage of noncitizens incarcerated in federal facilities are immigrants, though there is reason to believe that some high proportion are not: 95 percent of noncitizens admitted each year to the United States are neither authorized nor unauthorized immigrants, but tourists, business people, and others, some of whom are authorized to remain in the US for several years. To the extent that one views federal incarceration rates of noncitizens as an issue requiring a policy response, it may be that the best answer is to tighten border controls and possibly engage in better screening of non-immigrant visa applicants.

The federal criminal justice system is, of course, only a small segment of the entire American justice system. The evidence with regard to other aspects of the justice system is equally ambiguous, however. On the one hand, a 1991 Bureau of Justice Statistics survey of state inmates concluded that only 4.1 percent were noncitizens. The national origin of these inmates are given in Figure 1. They were incarcerated for a variety of offenses, ranging in frequency from public order to property, violent and drug-related offenses [See Figure 2]. On the other hand, according to the recent INS Congressional testimony cited above, approximately 78,200 foreign-born persons were incarcerated in state prisons in 1996, which would represent approximately eight percent of the total incarcerated state prison population. (It is not at all clear why such differences should exist; one would not think that five years were sufficient to see a near-doubling in the proportion of noncitizens incarcerated.) And of the roughly five million people in the entire justice system in 1994—who are, that is, either in prison (at federal, state, county, or local levels) or on parole or probation—450,000, or nine percent, were noncitizens, roughly their percentage in the general population.

Despite these ambiguous and conflicting results, it may make sense to focus on state incarceration rates, for several reasons. First, states prosecute a broader range of crimes—including many of the serious crimes committed against person and property that most of us fear—so the state prison population arguably offers a better and more representative sampling of the degree to which immigrants commit these important crimes. More importantly, data exist for nativity status among the incarcerated in seven key states. (The Urban Institute chose to focus on these states because they have the highest numbers of illegal immigrants in their population. These data derive from an analysis by the Urban Institute on the fiscal impacts of undocumented aliens.) These data can be further broken down into those who were present legally or illegally at the time they committed their offense (LPs and ILPs).

The category of the legally present foreign-born can be further disaggregated into two subgroups: immigrants and non-immi-

grants (there are 21 such “non-immigrant” categories altogether). The Urban Institute conducted a survey of the foreign-born incarcerated in the state prison system that determined that the vast majority of non-immigrants committed their crimes after their authorized period of stay had elapsed. In other words, the number of non-immigrants who committed the crimes for which they were incarcerated while legally present in the US was negligible. Therefore, it is possible to treat the incarcerated LP population as a proxy for the incarcerated legal immigrant population.

The data on the number and percentage of foreign-born in state prisons for the seven states in question are displayed in Figure 3. They reveal interesting variations. Only 3.1 percent of the Texas state prison population is foreign-born, the lowest in the group, as opposed to 18.2 percent of California’s, the highest. And although the overall number of LPs and ILPs are virtually equal, there are nearly twice as many ILPs as LPs in California; on the other hand, there are nearly three times as many LPs as ILPs in New York.

Can these state-wide variations be explained by differences in the percentage of foreign-born and the proportion of those who are legal or illegal immigrants? Figure 4 calculates the number of foreign-born as a percent of the state’s total population, and breaks this figure down by legal status. It shows that 16.2 percent of the seven states’ population is foreign-born, with 12.8 percent legal immigrants and 3.4 percent illegal immigrants. Figure 5 then compares these numbers to the states’ incarceration rates. This comparison demonstrates a generally consistent pattern. The legal immigrant population is incarcerated at an average rate of 36.7 percent relative to the incarceration rate of the native-born population. In other words, legal immigrants are little more than a third as likely to be imprisoned as the native-born. There are two outliers: in Texas, immigrants are only 23.4 percent as likely to be incarcerated as the native born, while in New York, immigrants are 65.2 percent as likely. And though the data are not available, it is likely that were the socio-economic status of the native and foreign-born controlled for, immigrant status would further lessen the probability of incarceration.

When it comes to illegal immigrants, however, the data in Figure 5 are at best suggestive. This is because temporary overstayers—that is, those non-immigrants who are in the US past their visa dates but who do not intend to reside in the US—are counted among the illegally present incarcerated population, but it is impossible to tell how many of them are counted in the estimate of the total unauthorized immigrant population. There are no estimates that we are aware of on the total number of people who are only *temporarily* overstaying their visas. Nevertheless, the numbers suggest that unauthorized immigrants are more likely to be incarcerated than either natives or authorized immigrants, sometimes by a substantial margin. Certainly the extraordinary state-level variations in these figures suggest one avenue for further research.

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When Culture Is a Defense

In England, a Yoruba mother from Nigeria scars her infant boy's cheeks with a razor in a festive ceremony inducting him into the tribe. The woman is tried for child abuse and given a suspended sentence.

In France, a major cultural-political battle erupts when Muslim girls from North Africa insist on wearing their traditional headdress to state schools.

In Ohio, two Pakistani men in their 30s marry brides in junior high chosen for them by their families. Word leaks out in the small town where the Pakistani community has settled and the men are arrested for statutory rape. The marriages are quickly annulled.



Corbis View

Illegal immigrant being interrogated

In each case, immigrants operating on their own socio-cultural understandings about what was customary and right collided with mainstream norms and legal standards. Although it is no longer universal, many Yoruba continue to scarify their male children; in the above instance, the child's mother even complained that not to scarify him would be a form of child abuse. How, she asked, does Nigerian scarification differ materially from Jewish circumcision? The question can be put more generally: What to do when the immigrants' practices conflict with their adopted nation's laws and the moral beliefs that underlie them?

Some argue that the tolerance said to underlie Western democracies is weak tea indeed if it fails to accommodate pluralism when it counts: any society can tolerate those differences it doesn't find objectionable. Others argue the opposite: that implicit in the social contract between the immigrant and the nation in which they settle is an agreement that

the immigrants will—not only in their public, but in their private and communal lives—be governed by their adopted nation's laws, which inevitably reflect the perspectives of the dominant culture. Many who take this position push the argument a step further: the culture defense, they say, is often used to justify the cruel or oppressive practices that prompt some immigrants to migrate in the first place. Case in point: female genital mutilation.

Yet what an outsider views as oppression is often seen by the putative "victim" as one of the deepest and most cherished sources of his or her socio-cultural identity. Many Chinese women with bound feet viewed their mutilated limbs as a source of beauty and a signifier of class: not for them the arduous, backbreaking labor of peasant women. On what basis can the mainstream decide which of the immigrants' practices are oppressive? Ban foot binding, or suttee, and where do you stop? It doesn't require a Ph.D. in cultural studies to suspect that the Muslim head-dress girls from North Africa wear reflects their subordinate position in society and patriarchal control of their sexuality.

In practice, decisions about whether to intercede in immigrant socio-cultural practices that violate the law appear to revolve around four considerations: volition, privacy, visibility, and offensiveness. Because they are not self-actualizing choosers, children are deemed to require state protection in ways adults are not. Practices that occur within the closed doors of the family or community and affect only the individuals involved are given greater latitude than those that take place in public arenas. Similarly, the quieter the immigrant community keeps about some of its practices the less likely they are to be interfered with. But no amount of stealth or privacy will help an immigrant community if its practices deeply offend the majority. In Miami, Haitian immigrants who practice animal sacrifice as part of their voodoo religion petitioned the courts to give them a reprieve on animal cruelty laws, which, they claimed, interfered with their freedom of religion. The case was summarily dismissed. Rastafarians in New York have been equally unsuccessful in legalizing marijuana.

There are two lessons to be drawn, both of them ironic. First, nothing so reflects the mainstream legal system and its values—its competing drives to be both impartial and flexible—as the messy response that cultural differences provoke. Second, nothing so implicitly challenges the legal system's assumption that it rests on a-cultural, procedural norms of fairness and justice as an encounter with genuine otherness.

When Culture Is an Impediment

For months, a Vietnamese family in Washington, DC failed to report to authorities the repeated sexual molestation of their child by another adult member of their community. The child was finally killed by the abuser; only then were police summoned. When the police asked, through an interpreter, why they were not alerted to the problem earlier, the Vietnamese replied that they do not call upon strangers to settle delicate community problems.

Policing immigrant communities presents a variety of challenges to law

enforcement officials, of which language is only the most obvious. The customs, principles, and understandings that inform everyday encounters between police and the native born can be bewildering to newcomers, for they are the product of long, complex traditions. The mini-drama that ensues every time a cop pulls over a speeder enacts notions of authority and power that have been negotiated and re-negotiated throughout Western political history. Even nuances of body language can be booby trapped: The Vietnamese who averts his eyes when talking to a police officer may be showing respect, not behaving suspiciously.

Furthermore, the fact that many immigrant communities establish inward-looking enclaves can frustrate police efforts to establish effective law enforcement, even as their isolation makes them particularly vulnerable to criminal elements within and without.

One solution many police forces are currently experimenting with is to hire officers from within the immigrant communities. The National Crime Prevention Council (NCPC) examined the effectiveness of these efforts in a recent study "Lengthening the Stride: Employing Peace Officers from Newly Arrived Ethnic Groups."

The NCPC study begins by pointing out that police forces nationwide remain overwhelmingly white and male, even in areas of high minority and immigrant density. It then establishes the very real benefits that accrue from hiring newcomers, from avoiding cross-cultural mistrust, to increasing departmental expertise, to realizing significant cost savings and enhancing safety—for example, by overcoming witness reluctance to testify against fellow immigrants.

The NCPC then makes two basic observations. First, immigrant and law enforcement communities must work together to establish a cooperative, mutually beneficial relationship. Second, if they are to meet their goal of improving safety in all neighborhoods, the relevant law enforcement agencies must reflect the values and composition of the communities they serve.

Easily said, perhaps, but how to operationalize these admittedly general precepts? Without being overly prescriptive, the NCPC suggests the following:

- Police agencies work closely with newcomer groups to build a solid foundation of trust. This is the basis for encouraging immigrants to become partners in, and even members of, the law enforcement community.
- Recruiting, hiring, and retaining immigrant minority members often requires helping immigrants overcome at least two significant barriers: proficiency in spoken and written English, and familiarity with Western norms and values. Particularly promising candidates for police departments often come from the so-called "half generation," who arrived in the US as children or teenagers and who are generally familiar with both the host and the immigrant community.
- Successful policing of immigrant communities takes place in the

Suggested Reading

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- ♦ The Urban Institute. *Fiscal Impacts of Undocumented Aliens: Selected Estimates for Seven States*. September, 1994.
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context of police departments that are sensitive to a broad range of cultural, racial, and ethnic issues.

- Finally, employing community or neighborhood- (as opposed to response-oriented) police methods can multiply the benefits of the other recommendations, by helping to foster a cooperative partnership between the immigrant and law enforcement communities. 🌐

The Foreign-Born Prison Population as Percent of Total Prison Population

	Total PP	FB PP		FBPP as % of TPP		
	Total	II	L	Total	II	L
Total	448,625	42,776	21,395	9.5	4.8	4.7
Arizona	19,746	1,666	950	8.4	4.8	3.6
California	125,605	22,913	15,109	18.2	12.0	6.2
Florida	57,166	3,683	951	6.4	1.7	4.8
Illinois	38,531	1,259	348	3.3	0.9	2.4
New Jersey	24,632	1,376	285	5.6	1.2	4.4
New York	66,750	8,223	2,158	12.3	3.2	9.0
Texas	116,195	3,656	1,594	3.1	1.4	1.8

Figure 3

The Foreign Born as Percent of Total State Population

	Total SP in '000	FBSP in '000			FB as % of SP		
		Total	II	L	Total	II	L
Total	107,189	17,389	3,680	13,709	16.2	3.4	12.8
Arizona	4,235	489	105	384	11.5	2.5	9.0
California	31,730	7,755	1,800	5,955	24.4	5.7	18.8
Florida	14,273	2,037	310	1,727	14.3	2.2	12.1
Illinois	11,845	984	255	729	8.3	2.2	6.1
New Jersey	7,929	1,064	120	944	13.4	1.5	11.9
New York	18,245	2,986	475	2,511	16.4	2.6	13.8
Texas	18,932	2,074	615	1,459	11.0	3.2	7.7

Key

FB: Foreign Born PP: Prison Population L: Legally present II: Illegally present SP: State Population

Sources:

Total PP: Sourcebook of criminal justice statistics, 1995

FB PP: Fiscal Impacts of Undocumented Aliens, Urban Institute, 1994

Total SP: Selected Characteristics of the Population by citizenship, U.S. Bureau of the Census, 1995

FBSP: Totals from Selected Characteristics of the Population by citizenship, U.S. Bureau of the Census, 1995

Illegal breakdown from Estimates of the Undocumented Population Residing in the United States (October 1992 and October 1996 numbers were averaged to produce 1994 numbers)

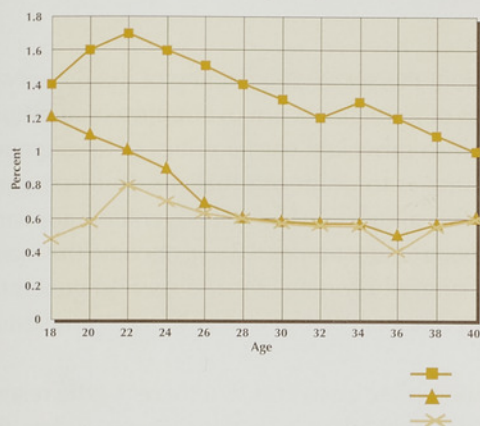
Figure 4

Rates of Criminality Among Legal Immigrants As Percentage of Native Born Rate (%FB of TPP/%FB of SP)

	Total	II	Legal Immigrants
Total	58.6	141.1	36.7
Arizona	73.0	192.0	40.0
California	74.6	210.5	33.0
Florida	44.8	77.3	39.7
Illinois	39.8	40.9	39.3
New Jersey	41.8	80.0	37.0
New York	75.0	123.1	65.2
Texas	28.2	43.8	23.4

Figure 5

Institutionalization by Age, 1980 Cohort



Sources: Butcher & Piehl, from 1980 5% Public Use Microdata Samples of the US Census

Figure 6a

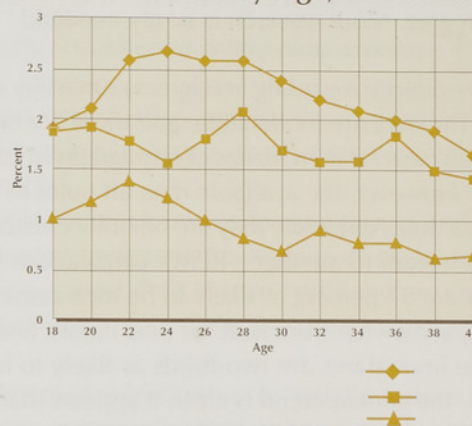
Two research teams that have studied immigrant criminality in depth recently have arrived at similar conclusions. In "Recent Immigrants: Unexpected Implications for Crime and Incarceration," Kristin Butcher, of Boston College, and Anne Piehl, of Harvard's Kennedy School of Government, survey the Public Use Microdata Samples of the 1980 and 1990 censuses for rates of institutionalization of young men (ages 18-40). These data sources do not provide incarceration rates per se; however, as Butcher and Piehl point out, for young men "institutionalization is an unambiguously bad outcome": over 70 percent are in correctional facilities, while most of the rest are in hospitals, drug treatment centers, mental institutions, and long-term care facilities.

Their conclusions are as follows.

- First, young male immigrants are only two thirds as likely to be institutionalized as natives [See Graphs 6a & 6b].
- Second, if "characteristics that correlate with labor market opportunities and criminal justice enforcement intensity" are controlled for (in other words, if you take into account that immigrants tend to live in poor city neighborhoods), the institutionalization rate for young male immigrants drops to one third the native-born rate.
- Third, more recent cohorts of immigrants are not only less likely to be institutionalized than earlier cohorts, but also appear to have lower rates of institutionalization than earlier cohorts after similar periods of time in the country: "Recent immigrants do not increase their institutionalization rates as quickly as one would predict from the experience of earlier immigrant cohorts," the authors note. To put this in plain and (by necessity) approximate terms, Butcher and Piehl's evidence suggests that while earlier immigrants had low crime rates, more recent immigrants have even lower crime rates.

In a second paper entitled "Cross-City Evidence on the Relationship between Immigration and Crime," Butcher and Piehl use data from the Uniform Crime Reports from 1979 to

Institutionalization by Age, 1990 Cohort



Sources: Butcher & Piehl, from 1990 5% Public Use Microdata Samples of the US Census

Figure 6b

1992 and the March Current Population Surveys of 1981-1984 and 1986-1990 to investigate whether an area's crime rate is associated with the size of its immigrant population. They find that cities with large immigrant populations indeed have high crime rates. However, they find no correlation between changes in crime rates and changes in the percentage of immigrants within a city, suggesting that the apparent overall relationship is spurious. In a second step in their analysis, Butcher and Piehl use data from the National Longitudinal Survey of Youth of 1980 to compare rates of self-reported criminal activity among native- and foreign-born youths. They find that the foreign-born are "significantly less likely than native-born to be criminally active," irrespective of background characteristics such as SES.

The second research team to have recently investigated criminality among immigrants consists of John Hagan, of the University of Toronto, and Alberto Palloni, of the University of Wisconsin-Madison. They argue that prison statistics greatly magnify the apparent criminality of immigrants because of "biases in processes that lead from pre-trial detention through sentencing." These biases, say Hagan and Palloni, result in large part from "a tendency to disproportionately detain immigrants as potential 'flight risks,' from the time of arrest to final court disposition." (Detention during the pre-trial period has been repeatedly shown to significantly increase the likelihood both of conviction and the severity of punishment in studies of the justice system.)

Based on a detailed statistical study of immigrants in the criminal justice systems of two cities, El Paso and San Diego, Hagan and Palloni find that immigrants are more likely to be detained prior to trial. Adjusting for distortions introduced by these biases, they conclude that incarceration rates for noncitizens exaggerate by a factor of three to seven times their rate of criminality compared to citizens. (It may be, however, that as border cities, El Paso and San Diego are unrepresentative of immigrants' experience in the justice systems elsewhere: Chicago

Removing Criminal Aliens

To the INS, a criminal alien is a noncitizen who has been convicted of a crime committed in this country for which he or she could be removed from the United States. Generally, those crimes consist of "aggravated felonies." The concept was originally introduced in the 1988 Anti-Drug Abuse Act (ADAA) to cover murder and other serious offenses related to the trafficking in drugs or weapons. It was expanded in 1990 to include crimes of violence for which a five-year imprisonment was imposed; it was expanded again in technical corrections to the INA in 1994, and once again in the Anti-Terrorism and Effective Death Penalty Act (anti-terrorism bill) and the Immigrant Responsibility Act (IIRAIRA) of 1996. It now covers virtually all crimes "for which the term of imprisonment [is] at least one-year," whether or not the punishment is actually imposed. The INS has responded to what one writer has termed the "increas-



Shackled foot of illegal immigrant.

ing criminalization of immigration law" in several ways. It is prosecuting more and more immigration law violations and apprehending and deporting more and more noncitizens who have criminal records. Occasionally, the results are alarming: stories abound of worthy individuals who had one brush with the law years ago and who are now caught up in detention and deportation proceedings. In 1992, it spent \$158,821,000 on deportations and detention; in 1997, it will spend \$277,835,000. Its main focus, however, has been on processing criminal aliens currently incarcerated in federal and state penitentiaries.

The primary vehicle for removing aggravated felons after they have completed their jail time is the Institutional Hearing Program [IHP], established under the ADAA. The goal is to initiate and complete the deportation proceedings against criminal aliens while they are serving their sentence so that they can be expeditiously removed at the end of it. Supporters argue that the IHP represents a win-win proposition: it means that criminal aliens don't end up serving additional detention time as they wait around for deportation, and it means lowered demand on INS detention space and savings for the taxpayer.

Yet the program has run into criticism from both the left and the right. From the right have come complaints that the IHP is hobbled

by poor management and record keeping, that it has been inadequately responsive to Congressional mandates, that its inefficiencies have resulted in additional detention costs, and that it continues to release criminal aliens back into US communities. Essentially, the complaint has been that the program is not growing as fast as its supporters would like. A recent GAO study determined that in the five states with the most criminal aliens, only 30 percent were being removed under the IHP program.

The INS responds that the IHP has seen an extraordinary growth rate: in 1988, 1,100 people were processed; in 1993, approximately 5,000 people were processed; in 1996, 10,233 were processed; and this year, 24,000 are expected to be processed and deported.

From the left have come complaints not so much about the IHP program but about the law's lack of flexibility and overreaching. Critics from this side argue that the law functions in essence as an additional criminal sanction on non-citizens, even for offenses that many would not regard as "particularly serious." Depending on the state, such crimes might now include turnstile jumping and orange stealing. To be convicted of an aggravated felony is not only grounds for deportation, but renders the convict ineligible for asylum, and, in certain instances, the restriction on removal relating to refugees. Depending on how it is applied, this law would appear to violate the 1967 Protocol Relating to the Status of Refugees, which explicitly forbids returning an alien to his or her country of origin if doing so would endanger him or her, unless the alien has been convicted of a "particularly serious crime." Finally, if the noncitizen is not a permanent resident, the IHP can be imposed administratively, without the supervision of an Immigration Judge.

As the definition of an aggravated felony has expanded, criminal lawyers have struggled to keep up with the immigration consequences of various types of criminal conviction. Because so many crimes now result in deportation, many noncitizens may choose not to accept plea bargains, but to take their chances at trial, thus imposing additional administrative challenges on an already overburdened legal system.

However, as the salience of the IHP program becomes clearer, so may two of the program's more notable "loopholes." The first is for the immigrant to lie: as it is now structured, the IHP depends on the foreign born to provide accurate information about their country of birth and citizenship to corrections personnel, usually at time of intake. It seems likely that as the sanction of deportation is more and more rigorously enforced, word will percolate among criminal aliens not to volunteer the information that they are not citizens. The second is through naturalization. As one immigration lawyer recently noted, "Attorneys should also counsel clients that, in the end, the easiest way to avoid the ultimate sanction of future removal from the US is to become a US citizen." It is fair game which is the more troubling. ☐