

**An Analysis of Immigration Reform: Lessons Learned from the
French Exceptional Regularization of 1981-82**

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I. Executive Summary

This report analyzes the design and implementation of immigration policy in order to apply those lessons to immigration reform in the United States. In order to do this, the author takes a comparative analysis approach, by making an asynchronic comparison across time and space (Dodds, 2010, p. 324) to specifically analyze the use of regularization provisions in immigration reform policy. The analysis dives deep into the design and implementation of one of the premier regularization policies in Europe, the French Exceptional Regularization of 1981-82. The case is then compared to the United States Immigration Reform and Control Act of 1986. Lessons learned from the comparison are then applied to a proposal for how the United States could design and implement immigration reform centered around an amnesty policy.

The analysis finds that both policies were quite similar in their basic components, however they differed in a number of notable ways. First, the stated goal of the French policy was one of integration, in which the intent was to bring the undocumented migrants out of their precarious situation as well as reduce illegal migration. The amnesty policy in the US in contrast was intended to stop the flow of illegal migration into the country, which was seen as a failure after the policy's implementation.

The second difference between the cases is the policymakers' view of regularization as an inevitable necessity or as a failed policy. Illegal migration into France dropped following the implementation of the regularization policy in 1982, however it eventually began to increase and reached a moment in 1995 when the French saw the need to implement a second regularization. Whereas in the United States, illegal migration into the country only continued to grow following the 1986 policy, which led to a more punitive immigration reform policy in 1996.

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I. Recipients/Reason for Report

Immigration policy is grounded in the concept of state sovereignty, in which policymakers design policy which establishes the boundaries of the state and as well as the value of citizenship. Immigration policy therefore holds a special semi-permanent place on the policy agenda, one in which it is always present with episodes of heightened importance. Moreover, the resilience of the issue area stems from its complexity. As Lelio Mármora, a representative of the International Organization for Migration wrote “the attempt to impose an ideal, bureaucratic-administrative logic on a reality whose logic and reproduction actually derive from a complex web of socio-economic processes is nearly impossible” (1999, p. 45). Mármora further highlights how the policy design must always balance between “satisfying the interests and rights of the States and the interests and rights of the migrants” (1999, p. 160).

Given the universality of immigration policy across all nations it is primed for comparative analysis. Cornelius et al conducted a comparative analysis in which they posit a convergence theory of immigration policies across the industrial nations (1992, p. 3). The authors claim these countries tend to choose similar policy instruments among other similarities. Cornelius et al additionally argue that these nations see similar gaps between the intended goal of their immigration policies and their outcomes (p.3).

Immigration control policies adopted by many industrialized countries over the past several decades, including the United States, have included amnesty, or regularization policy tools by which a portion of the undocumented immigrant population is awarded a pathway to citizenship (Levinson, 2005). This paper will take a comparative analysis approach, by making an asynchronic comparison across time and space (Dodds, 2010, p. 324) to specifically analyze the use of regularization provisions in immigration reform policy. Regularization has been widely used across OECD countries since the 1970s. Numerous studies have compared the various permutations of the policies across nations, providing lessons as well as identifying consistencies across cases.¹

The analysis conducted here will dive deep into one of the premier regularization policies in Europe, the French Exceptional Regularization of 1981-82. While the immigration and refugee crisis of today may differ greatly from that of the early 1980s, much can be learned from

¹ See: Apap, de Bruycker and Schmitter 2000; Bick 2011; Brochmann, G., Hammar, T. 1999; Horowitz 1985; Levinson 2005; Meissner et al 1987.

this case since it was one of the early immigration control policy mixes centered around an amnesty policy tool. The French case provides an opportunity to learn what Anneliese Dodds calls “free lessons” (2013, p. 5) from the development and implementation of the French policy, which was a relatively novel approach to immigration control policy for its time. Following the analysis of the French case there is a short section regarding the United States amnesty conducted in 1986, which was the largest amnesty effort conducted in history. Lessons learned from the French case are then incorporated into a proposal for how the United States may yet again develop an immigration reform policy which includes an amnesty provision.

II. Challenges of Choosing Immigration Reform Policy Tools

Analysis into the effective use of policy tools which address immigration is intriguing and important given the current patterns of migration. The significant flow of immigrants and refugees into OECD countries is putting extreme pressure on those states. In choosing the best immigration control policy tools, policymakers must take into consideration various factors such as the economy, security, the welfare of the citizens, as well as international norms and standards of human rights. Moreover, policymakers must also consider the varied dependence on immigration for foreign labor or for population growth.

Lelio Mármora argues the use of highly restrictive immigration policies over the years “gave rise to the appearance of the ‘illegal migrant’” (1999, p. 177). She argues the creation of an illegal class of migrants was thus the necessary condition for amnesty or regularization policies to be considered and implemented once the number of illegal migrants reached a critical point. Neither highly restrictive policies nor the response of amnesty policy have shown to reduce illegal entries of migrants, however countries have repeatedly run such programs out of sheer need to temporarily rectify the situation.

Analyzing amnesty policy is intriguing for several reasons. The first reason stems from Levinson’s analysis of regularization across nine countries, in which she concludes that “it is difficult to identify a country that has had a model regularization programme” (Levinson, 2005, p.10). Despite the lack of a good model however countries across the OECD continue to use this policy. As Mármora points out, amnesty policy is not a choice of if, rather it is a choice of when to implement given that the flow of “illegal migrants” is not likely to abate. Moreover, Nancy Chau argues, regularization policy is arguably “an essential component of a credible immigration

reform package” because it prevents harm done to the level of productivity caused by the deportation of immigrants (2001, p. 607).

Given that regularization has attracted scholarly attention, various typologies and frameworks have been developed on the subject. Amanda Levinson identifies seven common challenges of developing and implementing amnesty programs. The seven challenges are: publicity, overly strict requirements, application fraud, corruption, lack of administrative preparation, reversion to undocumented status, and the decision to implement or not implement employer sanctions (Levinson, 2005, p. 6-7).

This paper will focus the analysis on how best to design a regularization or amnesty provisions in an immigration policy mix. Of course, the use of amnesty is in and of itself a policy decision which warrants its own analysis. However, the analysis conducted here takes the position that amnesty is an inevitable policy choice so that the analysis can focus solely on how best to design such a policy. The following section will examine the regularization program in France from 1981-82 in order to learn from its strengths and weaknesses with the goal of applying those lessons to a proposal for the United States. The proposal is followed by a discussion of possible limitations and uncertainties.

III. Comparative Analysis: France and the United States

The following section begins with the basic definitions related to regularization. This is followed by a detailed look at the regularization effort in France between 1981-1982. Then there is a short history of the United States’ amnesty effort in 1986. Following this section on evidence, lessons learned are then applied in a proposal for the United states.

a. Definitions

Regularization or amnesty can be defined as "the granting, on the part of the State, of a residence permit to a person of foreign nationality residing illegally within its territory” (Apap et al., 2000, p.263). Regularization can be implemented in a number of ways. Apap et al identified five types and found that often the final policy will be a combination of those five types. The types are: permanent or one-off, fait accompli or for protection, individual or collective, out of expedience or obligation, and an organized or informal procedure (2000, p. 266)

b. The French Case – Exceptional Regularization of 1982-82

Between 1981-82, France ran what was called the Exceptional Regularization, which was one of several immigration control policies implemented throughout the first fifteen months of a new socialist administration. This regularization was not the first in French history, however it was the largest regularization effort in its history thus far and the most broad reaching. It can be characterized as both a permanent or one-off regularization policy as well as a *fait accompli*, given the stated goal of the policy being to bring immigrants out of their precarious living conditions. What made this policy differ from its predecessors was in the past regularization policies required that employers apply for the regularization on their employees behalf, whereas in 1981, workers were permitted to apply independently.

The policy unfolded in three stages. First, on May 27th, 1981, the government suspended all expulsions for the time being and announced the coming of a regularization campaign in the near future. Then on July 6th, the government ordered that all prefects issue three month resident permits to all those who ask, both legal and illegal foreigners. The government additionally suspending all expulsion of children born in France or children who entered the country before the age of ten. Only those who posed “a serious threat to public order” (DeLay, 1983, p. 202) could be expelled, and each expulsion was to be considered on a case by case basis taking into consideration those foreigners who had been in the country longer.

Finally, through a circular issued on August 11th, the details of the regularization were released. According to the circular, the purpose of the Exceptional Regularization was “to put an end to the precariousness suffered by many immigrants” (p. 206). All those who had entered the country before January 1, 1981, were eligible to apply. Applicants were required to provide proof of a work contract for a least one year or stable employment, with an application deadline set for December 31, 1981. The deadline was later extended for seasonal workers to February 26, 1982, and for all others to January 15, 1982 (p. 207). For those foreigners who were unable to provide all the required paperwork, their case would be heard in front of a commission. The commission was “composed of elected officials, judges, civil servants, and representatives of the immigrant association” (Wenden, 1984, p. 201).

i. Overarching goals and Additional Immigration Policies

The two overarching goals of the new immigration policy agenda were: 1.) to limit or stop additional immigration into the country especially during the period of economic crisis, 2.)

“to end the precariousness which has characterized the existence of the many immigrant families in France” (DeLay, 1983, p. 201). Aside from the Exceptional Regularization, measures were taken to improve border security as well as improve immigrants living conditions in the country through measures addressing issues of housing, education and integration (Wenden, 1984, p. 201).

Three additional policies addressing immigration in France were issued throughout the month of October. On October 9th, the government granted foreigners the freedom to associate, a right never before granted to the immigrant community. On October 17th, a policy was issued which reinforced employer sanctions in order to disincentive employers from taking advantage of foreign workers. Sanctions were directed at the employer rather than the illegal worker. In fact, the policy granted illegal foreign workers social and monetary benefits equal to those awarded to legal workers. The goal of the policy was to protect foreign workers from being fired if they were to apply for regularization by making firing them costly for employers (Wenden & Costa-Lascoux, 1984, p. 616).

Employers were offered a grace period during the regularization, however once the regularization period was complete, strict sanctions were implemented. Employment of illegal foreigners would now be a regular offense with an increased fine and prison sentence. Convictions of employers could be publicized, and tools as well as products produced by the foreign labor could be confiscated. If convicted, employers were now required to pay benefits retroactively for the entire period of time a worker could show they were employed illegally (DeLay, 1983, p. 204). This policy also allowed unions to support foreign workers who may be exploited by their employer such as providing low wages or withholding benefits. Unions were allowed “to take legal action against recalcitrant employers if the foreign worker in question did not explicitly oppose it” (Wenden, 1984, p. 201).

The third policy issued on the 29th of October protected additional categories of foreigners from expulsion and strengthened due process of law in all legal proceedings for foreigners. The policy improved the conditions of detention for foreigners and urged “judicial authorities to take into consideration the personal situation of the individual in question” as well as favor family immigration (DeLay, 1983, p. 203-204).

ii. Adjustments Made and Problems Faced During Implementation

Adjustments to the regularization policy were necessary midway through the implementation due to unexpected challenges. Employers resisted cooperating with their workers who sought regularization and needed the required paperwork from their current employer. As a result, third party declarations were authorized. And while originally the campaign was focused on those foreigners established and working illegally, the eligibility was expanded to include “such additional categories of illegals as temporary or seasonal employees, the jobless, the infirm, out-of-status students, trainees, and apprentices” (Meissner, North, & Papademetriou, 1987, p. 425).

The policy implementation was faced with a number of problems. Communication failures and inconsistent administrative rulings led to certain applications being denied under one body only to be accepted at a different department level. This resulted in some applications being accepted which may not have been qualified. Additionally, news of the opportunity to gain legal status did attract foreigners from outside the country, particularly from West Germany (Wenden, 1984, p. 204-205). In some cases, workers who had gained legal status were replaced in their jobs by other illegal foreigners. A market for false contracts developed, leading to administrators of the policy being provided fraudulent documents (Wenden & Costa-Lascoux, 1984, p. 616). Due to the employers’ aversion for the policy some actively resisted cooperation by denying their relationship with their employees, some fired employees who sought legalization and hired willing illegal workers instead. This behavior from the employers made some workers fearful of the consequences of applying for legal status and so they chose not to, which eventually kept them in their precariousness state and made attaining stable employment more challenging overall (DeLay, 1983, p. 208).

Further issues of implementation included the regulation of the underground economy which was weakened by the lack of support for the Work Inspectors, who were tasked with the enforcement of labor laws. These inspectors lacked the legal powers to bring charges against violators and thus they were reluctant to enforce the law. Furthermore, a lack of coordination between the police, Labor inspectors and Treasury authorities negatively affected the implementation of the policy. Finally, the courts predominantly in rural areas, were found to be more lenient on employers in violation of labor laws, due to political pressure (Wenden & Costa-Lascoux, 1984, p. 615).

iii. Implementation Successes

According to the public authorities the implementation of the regularization policy succeeded in a number of ways. First, an important and wide reaching information campaign supported the regularization effort by specifically targeting foreigners and their associates via immigrant organizations and mass media (Wenden & Costa-Lascoux, 1984, p. 615 & Meissner, North, & Papademetriou, 1987, p. 425-426). This campaign not only informed foreigners of the details of the policy but also served to inform the French citizens of the positive aspects of the policy. This effort resulted in a building of solidarity between the French people and the migrant community (Meissner, North, & Papademetriou, 1987, p. 425-426).

Second, a “mobilization of administrative personnel and the cooperation of the administration with various social partners,” (Wenden & Costa-Lascoux, 1984, p. 615) played a significant role in supporting the massive effort. Additionally, the decentralized approach to implementation led to it being implemented efficiently (Meissner, North, & Papademetriou, 1987, p. 425-426). Third, while some employers refused to cooperate, some found the grace period on sanctions encouraging enough to support the effort (Wenden & Costa-Lascoux, 1984, p. 615). Finally, aside from the accomplishments listed by the authorities the roll out of the regularization policy did allow for a more open dialogue between the immigrant community and the government (Meissner, North, & Papademetriou, 1987, p. 425-426).

iv. Policy Outcomes

By the completion of the regularization effort 149,707 foreigners applied for legalization, 126,096 foreigners were accepted (DeLay, 1983, p. 207). Before the policy was implemented, the illegal foreigner population was estimated to be 300,000, “leaving 174,000 clandestine foreigners in the country” (p. 211) after regularization.

An important outcome of regularization was the opportunity to collect data regarding the makeup of illegal foreigners as well as shed light on the underground market for illegal workers. The government stated that the program “provided a better understanding and an awareness of the diversity of the situations of clandestine foreigners and of the diversity of the difficulties which they encounter” (p. 208). The data collected showed a different picture than what was previously believed to be the case regarding the underground workforce.

The breakdown of those who received legal status through regularization was as follows: 80% were less than 32 years old, 88% arrived after 1975, 40% arrived after 1980, approximately

18% were women, 30% worked in construction, 15% in domestics or cleaning services, 12% in restaurants and hotels, 11% agriculture, 10% commerce, and 8% textile (Wenden, 1984, p. 205). The foreigners were primarily “Tunisians, Moroccans, Portuguese, black Africans and Turks” (p. 205).

The effect of the policy on immigration flows show a spike in immigration during the two year period of the policy, and a significant drop following the policy in 1983 (Gross, 2002, p. 1973). In a study conducted by Dominique M. Gross on immigration flows and the French labor market between 1970 and the mid-1990s, she notes that this is a pattern of immigration flow for France. Throughout the period of study she finds periods of increased flows, often during regularization, are followed by drops in immigration. This trend repeats itself again in 1995 during another regularization effort.

Immigration policy is often developed in response to economic pressures, specifically calls from citizens for restrictive policies during periods of high unemployment. However, Gross reports that the long term effects of immigration did not in fact harm the unemployment rate in France. Gross reports that, “in the long run, both legal and amnestied immigrant workers, and immigrant families lower the unemployment rate permanently” (p. 1969). While in the short run the unemployment rate increases, it is only slightly (p. 1969). The results of the study showed that “immigration flows and unemployment are negatively related in the long run... Moreover, the results hold whether immigrant workers enter France with a work permit or receive an amnesty” (p. 1970). Finally, Gross reports in her study that “there is no direct evidence that using amnesties as a channel for immigration is detrimental to the labour market” in France (p. 1981).

c. A Short History of Recent US Immigration Reform and the Use of Amnesty

The United States has taken a varied approach to immigration reform over the past several decades. The Immigration Reform and Control Act of 1986 (IRCA) combined increased border protection and employer sanctions along with the largest one-off amnesty programs ever conducted, in which approximately 2.7 million undocumented immigrants were granted legal status. The primary objective of IRCA was to reduce the flow of illegal immigrants, which was seen as being overwhelming. However, in the years that followed IRCA the United States saw a significant increase in illegal immigration (U.S. Commission on Civil Rights, 2015). In 1986, there were an estimated 3-5 million undocumented immigrants in the country, this number significantly increased to 11 million by 2015 (2015). This would inevitably lead to the pendulum

swinging swiftly to the other side, with the adoption of the Illegal Immigrant Responsibility Act in 1986, which took a more punitive approach to immigration control policy.

The 1986 amnesty benefited from a “widespread campaign in all the media, through voluntary associations, and political parties” (Mármora, 1999, p. 213). However, amnesty was challenged by the level of fraudulent documents used, as well as a gap between the date the government set for eligibility and the start date of the policy, leaving many immigrants not covered by the policy. This gap in eligibility was one of the weaknesses found in the program in a comparative study done by SOPEMI in 1989 (Levinson, 2005, p. 18).

IV. Proposal

Given the migrant crisis as well as the long history of immigration in the United States, it is unlikely that immigration flows will reduce much in the future. Policymakers are thus challenged to find a way to manage the flows of migrants as well as a way to address the 11 million undocumented immigrants in the country today. There are two primary proposed lessons the United States could learn from the French case of 1981-82. The first is to avoid the gap between eligibility date and the policy implementation date. The second, is to design immigration reform around amnesty with a more unified message and goal of integration.

Much of the French regularization of 1981 and the United States’ amnesty of 1986 is similar. Both were implemented in a similar fashion, as a one-off policy, both included employer sanctions and mass media outreach to inform possible applicants of the policy. Both policy designs included increased border security as well. An important difference between the policies was the gap between the eligibility date and the policy implementation date. The United States’ amnesty did not cover a large number of immigrants under the 1986 amnesty, which resulted in many immigrants remaining in their precarious immigration status.

The regularization program in France was one component of a larger immigration reform effort which dramatically altered the government’s approach to immigration control policy. The decade prior to the policy could be characterized as anti-immigrant, with the use of highly restrictive policies including high levels of deportation, closed borders, and many anti-immigrant policies issued at the local level.² The United States currently finds itself in a similar era of

² For more regarding this period of time please see the precursor to this report “Passing Immigration Reform: Lessons Learned from the French Exceptional Regularization of 1981-82.”

policy to the decade prior to Exceptional Regularization in France, with high levels of deportations, closed border policies, and anti-immigrant policies issued at the local level. Regularization was used by the Socialist government in France as a response to the unsustainable situation of growing immigration, a strong underground workforce and the poor and deteriorating living conditions in the migrant communities. Therefore, the United States is likely to find itself facing the same untenable situation requiring a response. Applying the lessons learned from the French case, the United States should respond to the current era of restrictive immigration policy with one of more liberal policies based on integration centered around amnesty.

The primary difference between the cases is the stated goal and focus of the French policy to bring the immigrant community out of their precarious living conditions. In order to achieve this goal the French regularization policy was one of many in the first fifteen months of the new socialist government which focused on integration efforts. These policies were focused on granting immigrants more rights in society, more access to benefits, better housing as well as better education.

In order for the United States to implement an effective immigration reform policy which includes amnesty it will need to learn from the French case by ensuring the policy design includes efforts to support the migrants not only to gain legal status but in integration.

V. Uncertainty, Tradeoffs, Durability

While the 1986 amnesty program in the United States was in fact the largest ever conducted, it did not have the intended outcome, in fact unauthorized immigration only increased. Therefore it will be a challenge to incorporate amnesty into future policies in the United States given its perceived failure. However the policy tool has been widely used and it has been argued that it may be “an essential component of a credible immigration reform package” (Chau, 2001, p. 607). Furthermore, its continued use illustrates to a certain degree a necessary cycle of immigration reform. As the French case shows, the government found it important to use regularization again in 1995 once the situation at yet again reached a critical point.

Failure of a policy is determined by the ability to achieve a set goal. In the case of the 1986 US the stated policy goal was to reduce the flow of illegal immigration. It failed to achieve

this goal, however if we had set a goal of integration and improvement of life for the underground workforce, the policy would have been seen as a success. According to a number of studies, the United States amnesty program had a “positive impact on the wages, occupational mobility, and integration of migrants” (Levinson, p. 9). Therefore, one should consider the importance of problem definition when choosing to use a amnesty provision in immigration reform.

VI. Summary

Regularization has been widely used across OECD countries. France was one of the earliest to adopt this policy tool as a response to growing migration flows and a growing underground market of labor. The new French government conducted the Exceptional Regularization as one part of a larger shift in the country’s immigration policy. The larger immigration reform consisted of tightening of borders and increased employer sanctions, as well as a number of policies aimed at integration of migrants. Following the follow implementation immigration flows reduced, but eventually in 1995 the population has grown to a point which the government found required another regularization effort.

The United States conducted the largest amnesty program in history through the Immigration Reform and Control act of 1986, which legalized approximately 3 million immigrants. The stated goal of IRCA was to reduce the flow of illegal migration into the country. The reform consisted of stronger border protection, increased employer sanctions, as well as amnesty. Many argue the IRCA failed to achieve its intended goal because illegal migration flows continued to grow.

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