

# AMNESTY IN ACTION: THE POLITICAL AND POLICY SITUATION SURROUNDING THE AMNESTY DEBATE

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## Abstract

*This paper will break down the debate surrounding illegal immigration, highlight the process by which amnesty came to the national policy agenda, and discuss the current political spectrum as it regards the future of immigration law. The study is concerned mostly with the background of how amnesty has been pursued in the past, how it is presently being discussed, and how it may affect the future of the nation. This paper will retain neutrality on the morality and political feasibility of the issue until it draws conclusions, and will attempt to explain other major opinions on the matter. This study will conclude that there is an inverse relationship between the policy and political streams in immigration, and that the challenges of tackling immigration through amnesty or other means will be incredibly challenging.*

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## Introduction

American immigration policy was a quiet front at its inception. The nation welcomed newcomers with wide open doors, hoping that these immigrants would help lift it off the ground. Not until the wake of the Civil War did America revise its immigration policies. From the 1870's onward, the landscape of American immigration became more restrictive—and, correspondingly, violations of those restrictions rose. However, only in more recent years has the United States seen a substantial problem with undocumented residencies. Ever since, colorful discussions about the treatment and status of those individuals have been a hallmark of American politics.

This paper will discuss the nature of amnesty and analyze its political history in the hopes of drawing conclusions about its viability and morality as a policy. In that process, the author will walk through the major immigration reforms of history, specifically tailoring the bulk of the discussion to amnesty reforms from the 1980's until now. This will hopefully illuminate the political backdrop of the amnesty debate, and will help readers to appreciate the political maneuvering required to make such massive reforms reality. While the moral or ethical dimensions of amnesty reform will be discussed, they will be analyzed inasmuch as they are relevant to highlighting the political discussion surrounding legislation. Such conclusions will also be contained until the end of the paper, after an objective understanding of the facts has been established.

## Literature Review

As a nation founded through the toils of immigrants, America has historically held a favorable outlook on the role that immigrants play in America. However, it is now commonplace for immigrants to be stereotyped as criminals and economic leeches. Pew Research found that more than 70% of Republicans believe immigrants increase crime, and half of Independents would affirm that immigrants harm the economy (Krogstad, 2015). Of course, this perception magnified by the fact that more than 11 million undocumented residents currently live within the US borders (Baker, Rytina, 2013).

At certain points in history, various political actors within the United States have taken actions to offer what is known as amnesty to undocumented and purely illegal immigrants. It seems that amnesty takes on a variety of forms, depending on whom you ask. Some consider amnesty to include a pathway to citizenship, while some see it merely as a baseline pardon of an illegal act, such as immigrating to the United States without papers or with expired ones (Woodruff, 2016). For the purposes of this paper, amnesty will be construed to mean any action that pardons

the previous, illegal action of an immigrant, or one that also opens a pathway to citizenship.

Having established this definition, it is worth discussing some past amnesty actions. In the mid-1970s, a clear majority of the voting-age population felt that immigration was an issue that must be addressed (Simpson, 1984). Various polling agencies like Roper and Gallup and NBC all indicated that up to 90% of Americans were in favor of some measure of immigration reform (Simpson, 1984). In the year 1983, border apprehensions of illegal immigrants rose by 40%, which brought the issue to the forefront of the public's mind (Simpson, 1984). America was faced with a challenging task: "restore control over burgeoning immigration" (Baker, 1997).

Finally, in 1986, the Immigration Reform and Control Act passed both houses of Congress and became law (Simpson, 1984). The bill concentrated on offering limited amnesty to certain individuals who fulfilled a residency requirement and who had worked in certain industries in the United States (USCIS, 2015). It also offered sanctions against those employers who willingly and knowingly hired undocumented workers (USCIS, 2015). It seemed that the bill could offer solutions for both sides of the immigration debate: amnesty and rule of law.

To better understand current policy, the political climate surrounding this foundational law should be further elucidated. The Carter administration had attempted immigration reform back in 1977, but this measure (which was far more lenient than was President Reagan's proposal) failed (Cornelius, 1981). Along with the previously mentioned political ripeness during the 1980s, Reagan's proposal was also more palatable because it was far less forgiving than Carter's. Instead of allowing an immediate path to citizenship, Reagan's policy allowed amnesty, but delayed requests for permanent residence and amnesty for ten years (Cornelius, 1981).

This policy fit the understanding that change had to happen to satiate political desires, but was also expected to affect only a small contingent of immigrants after it was passed (Cornelius, 1981). The Representatives and Senators from the State of California were some of the most tepid supporters, considering the large number of undocumented workers in that state. However, with the proper amount of political negotiation behind the scenes, the California delegation began to support it (Baker, 1997).

Now, some thirty years later, President Obama has announced a measure that would effectively offer amnesty to nearly 5 million of the 11 million undocumented residents in the United States (White House Press, 2014). Of course, the action is not without its controversy; twenty-six governors have sued the President for an unconstitutional use of executive power (Foley, 2015). However, rather than examine the legality of the President's plan, the remainder of this study will analyze the political merits of the President's plan. In addition to comparing Obama's executive action to previous examples of amnesty, the

plan will also be compared alongside several policy models, including Group Theory, Incrementalism, Institutional Model, and Herbert Simon's Bounded Rationality (Dye, 2012).

## Research

The research for this paper will be broken up into three segments: analyzing the political stream related to Obama's action, the policy stream, and the national mood surrounding the action. Each of these phrases will be further defined in turn. The national mood segment will also address certain affected demographics in order to further elucidate the ramifications of the proposed plan. Conclusions about the effectiveness and propriety of the action will follow this research.

John Kingdon's political stream can be understood as a measure of the political environment in which an action takes place. It is not purely confined to elected actors, but can also include the electorate, regulatory agencies, and the state of international and domestic affairs (Kingdon, 1984). As it regards Obama's immigration plan, the political stream is most evidently barricaded by an overt conflict between Republicans and Democrats over the issue. Republican representatives like Sam Johnson from Texas say that the President's executive action in 2014 gives out "amnesty bonuses," which these representatives assumed that their base would largely see that as inherently wrong (Ohlemacher, 2015). For example, Senator Ben Sasse of Nebraska called giving out social security numbers to immigrants giving "lip service to enforcing the law." This action was then portrayed as something that would "increase the burden on the taxpayer" (Ohlemacher, 2015).

Unsurprisingly, this divide is not just among elected officials. It also exists among the voter base in the parties. According to Pew Research, two-thirds of Republicans are in favor of decreasing immigration into the United States, whereas only one-third of the Democratic base would be in favor of decreasing immigration (Krogstad, 2015). Eighty-one percent of self-identified Republicans believe that immigrants want to retain customs from their home country and do not want to assimilate into America (Krogstad, 2015). Further, the same study showed that 71% of Republicans surveyed believe that immigrants were making crime worse in the United States.

Compare these statistics to the Democratic voters surveyed. Only a third of Democratic base sees an adverse effect on the economy due to immigrants, and that same amount foresees increased criminal activity associated with immigrants (Krogstad, 2015). Those numbers are less than half the amount of Republicans who expect the same detriments; the difference in the voting base opinion could not be starker. This could partially explain why President Obama announced the use of executive order to affect change after Republicans blocked his favored actions in Congress. Either way, this action highlights the

correlation between President Obama's executive action and the polarized state of the political stream (Boyer, 2014).

Past actions further highlight this connection. In 2012, President Obama initiated what is known as DACA, or the Deferred Action for Childhood Arrivals (The American Immigration Council, 2012). DACA was a selective enforcement measure for prosecutorial discretion that delayed deportation for those who met slim exceptions to immigration laws (USCIS, 2015). This action caused both backlash and publicity. A coalition of 49 Republican senators and governors filed Amicus briefs in support of a court challenge against DACA (Hernandez, 2016). The existence of this case demonstrates the tension underlying President Obama's 2014 actions, and set the stage for similar, party-based resistance two years later.

The next portion of this study is dedicated to what Kingdon would call the policy stream. For the purposes of this paper, the policy stream includes three components: the method through which the policy was established, practical considerations, and the policy itself. Each will be considered in turn.

In the past, whenever an amnesty action was taken, it was undertaken by the United States' Congress. The largest measure in recent history, the Immigration Reform and Control Act (IRCA), offered amnesty to nearly 2.7 million undocumented residents (Orrenius, Zavodny, 2003). However, executive action is not necessarily outside of the realm of possibility. As evidenced by the previous petition against the President's executive action, it is clear that there is some pushback towards the President's use of executive power to enact major immigration changes. Nevertheless, some have pointed out that his predecessor, President George W. Bush used executive orders extensively to accomplish his purposes (Wiles, 2015). Thus, we know that this element of the policy stream was on the table before President Obama exercised it.

To gain insight into the practical implications of President Obama's proposed action, it might be useful to refer to the 1986 legislation signed into law by President Reagan. Several questions were raised in the process of that bill's passage that might be useful to ask again. These questions range from who was brought in and who was left out, to whether the pardoned individuals and the United States gained from the action, and to how legalization would affect the workplace (Baker, 2013). Thankfully, the study that Baker conducted in *The International Migration Review* attempts to answer these exact questions with regards to the IRCA. As it happened, there appeared to be very little market change after amnesty was offered to millions of immigrants in the 80's, according to Baker's research on the topic (Baker, 2013).

The national mood is another key element of amnesty reform on a macro-level. Since the data here is most relevant to potential, forthcoming reforms, the bulk of this analysis will surround recent years and present times. The discussion of national mood originates with Kingdon, and for the purposes of this paper will

engage in a dialogue of who amnesty affects, and how people in different positions would react to such immigration policies. After all, amnesty stretches far beyond the reach of the immigrants it exempts.

The undocumented resident population within the United States has hovered steadily at or near 11 million for approximately a decade now (Cohn, Passel, 2015). These numbers are helpful in the discussion of who amnesty measures affect, because the number of the direct targets of amnesty has stayed constant for so long. However, this long term stability has caused comfort within the American workforce for those who are here illegally (Cohn, Passel, Krogstad, Gonzales-Barrera, 2015). In fact, 62% of the undocumented residents in America have lived in the United States for more than a decade (Cohn, Passel, Krogstad, and Gonzales-Barrera). This makes it seem incredibly unpalatable to deport these individuals. From a purely empathetic perspective, it is truly challenging to compel people who have made their livelihood in the United States for a full decade to return to very little in their previous homeland. National mood would inevitably be affected by such a deportation. Amnesty is put forward as a solution to that potential issue.

Amnesty does not only affect workers, but also mothers and fathers. Four million of those eleven million undocumented residents are living with their US-born son or daughter who happens to be a minor (Cohn, Passel, Krogstad, and Gonzales-Barrera). If amnesty were not offered, and these people were systematically deported over a long period of time after having been settled into a way of life raising their children in America, and they would have to leave the nation and start over against from scratch. Perhaps these reasons are why the national mood favors a pathway to citizenship rather than deportation. In fact, 68% of the American population believes that undocumented residents ought to be offered a pathway to secure American citizenship (Cohn, Passel, Krogstad, Gonzales-Barrera, 2015).

Even in the wake of the IRCA in the 1980's, the public indicated that immigration was a key priority for them (Baker, 1997). Fast-forward 30 years and 68% of Americans believe a pathway to citizenship ought to be offered. It seems that the national mood, in this respect, has not altered substantially. However, it should be noted that political affiliation has seemed to affect the perception of some immigrants (Krogstad). Republicans are more than twice as likely as Democrats to see Middle Easterner/Islamic immigrants unfavorably. There is a similar divide over Latin American immigrants (Krogstad, 2015).

## **Findings**

Based on the data from the 1980's amnesty, we can know that mass amnesty does not disrupt the United States' job market (Orrenius, Zavodny, 2003). Since DACA and DAPA have also been enacted recently, America has had the opportunity

to see how the immigration problem reacts to acts of amnesty and delayed action. Unsurprisingly, the number of undocumented residents in the country has not changed (Cohn, Passel, 2015). This seems to refute the argument that if America offered amnesty to people already here, then new waves of immigrants would flood the nation. Thus, as far as the problem stream goes, it does not appear that amnesty measures would increase the problem. Instead, amnesty measures seem to solve for the fact that 5% of America's static and unmoving workforce is undocumented.

These findings would not be complete if they did not address the evolution of amnesty measures over time. It appears that while there has been substantial difference in opinion over the years about what "amnesty" truly is, actions taken to extend grace at least do not make the issue of illegal immigration more egregious. In fact, it may have the effect of granting peace of mind to those who had no control over their migratory status, or to those who have been here so long that it would hurt both them and the country if they were to return to place of origin. Consequently, amnesty actions seem to have a neutral or positive effect on the problem stream of illegal immigration.

Inversely, it appears that amnesty actions have a neutral or negative effect on the political stream along party lines. As previously discussed, the electorate and the elected both are strongly divided on the issue of illegal immigration, stretching from what they want to do with undocumented residents, to even their perceptions of the character of undocumented residents. This means that even if the problem stream may be helped by amnesty actions in Congress or via the executive, it may come at the expense of a fractured political system. Whether or not a fractured political system was inevitable because of other intervening variables can be the subject of future research. The only finding that this paper discovers is that there seems to be an inverse relationship between action to solve immigration issues, and the political system that tries to take these measures.

## Conclusion

Amnesty is not a simple issue. Emotions, policies, politics, and cultures clash into a single, difficult-to-remedy legal problem. This paper's purpose, then, is to break down this issue into its various streams and demonstrate the relationships between past amnesty actions, current amnesty perceptions, and the potential future of the immigration debate. It would be reckless and irresponsible for the United States to pretend as if the problem stream does not exist. *Something* has to be done.

We are no longer the same nation we used to be. America has lost its ability to enforce its limitations on immigration, and this problem demands a response. The way in which the government responds – through amnesty, deportation or some other solution – will determine the future of America for years to come. Because the

consequences are so severe, we must be measured in our response. The polarization so heavily featured in this study has the capacity to tear the nation apart at its seams, if taken to the extreme.



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