High-Skilled Immigration Reform in Historical Context:
New Opportunities and Enduring Constraints

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Introduction

Few issues in American politics have inspired more conflict, intense debate, and tenacious policy stalemate over time than immigration. Comprehensive immigration reform, for example, has languished for more than a decade despite a near consensus that the nation’s immigration system is “broken.” At first blush, an expansion in high-skilled immigration promises a targeted exception to contentious politics-as-usual. In recent years, the need for the country to expand opportunities for high-skilled immigration is a reform initiative that has drawn broad expert agreement and unusual bipartisan political support.

Economists and other experts have for some time highlighted the productive potential for national economies of high-skilled immigration and retention of foreign students in science, technology, engineering, and mathematics (STEM) fields. Against the backdrop of “the Great Recession,” the recruitment of these talented, well-trained individuals is viewed as essential to promoting economic competitiveness abroad and job creation at home. In the decades following World War II, the United States boasted the world’s most highly skilled workforce and dominated in technological innovation and production. Today American companies struggle to fill more than 3.5 million high-skill job openings, as demand for skilled labor far outstrips supply. High-technology companies like Microsoft – desperate to address more than 6,000 unfilled researcher, engineering, and developer positions – have even offered to pay new fees of $10,000 per H-1B visa (for highly skilled workers) to be used for enhancing domestic STEM education. Moreover, at a time when budget deficits and fiscal cliffs haunt national politics, high-skilled immigrants in STEM fields produce a positive net fiscal balance by regularly paying more in taxes than they receive in welfare support, health care, education, and other public benefits.

Whereas Democrats and Republicans during the 2012 campaign were poles apart over what to do about unauthorized immigrants and porous borders, they readily agreed on the value of expanding high-skilled immigration. “The business community continues to be concerned about getting enough high-skilled workers,” said President Barack Obama in his first post-election news conference. “And I am a believer that if you’ve got a PhD in physics, or computer science who wants to stay here, and start a business here, we shouldn’t make it harder for them to stay here, we should try to encourage him to contribute to this society.” Across Pennsylvania Avenue, party leaders and immigration wonks in both houses of Congress have endorsed skilled immigration reform.
Yet even as advocates of high-skilled immigration urge national lawmakers to “seize the moment,” it is useful to place these aspirations in broader historical context and to understand why the United States developed a legal immigration preference system markedly different from skills-oriented alternatives such as the so-called point systems of Canada and Australia. My primary aim in this paper is to provide historical perspective on American high-skilled immigration policy and politics, one that underscores a distinctive set of opportunities and barriers for skills-based reform today. Although some scholars contend that the United States has never been hospitable to admitting immigrants on the basis of their skills, the first part of this paper serves to remind us that an emphasis on highly skilled immigration is hardly new and can be traced to Hamiltonian traditions of the early American republic and to subsequent periods when immigrant education, occupations, and skills were given priority. One of the most prominent of these periods was the migration of an extraordinarily talented and influential wave of intellectual refugees fleeing fascist repression in Europe during the 1930s and early 1940s – one that transformed the arts and sciences in America. In the second part of this paper, I explain why immigrant skills have been overshadowed by other goals in the development of America’s legal immigration preference system over time. Special attention is devoted to two historical moments when skilled immigration was high on the public agenda but ultimately overshadowed by family unity goals, both culminating in major legislation that remade the nation’s legal immigration preference system: the Hart-Celler Act of 1965 and the Immigration Act of 1990. The final portion of this paper considers high-skilled immigration proposals in terms of targeted versus comprehensive immigration reform, exploring the complications of larger coalitional and grand bargain politics for policy change. This concluding part of the paper also discusses why legal immigration politics fought as zero-sum games bode ill for robust skills-based reform.

I. High-Skilled Immigration Traditions: Hamiltonian Blueprints, Occupational Preferences, and Intellectual Refugees

Advancing high-skilled immigration as a prominent goal in national admissions policy may strike various critics as unduly elitist, contradicting a long history of welcoming newcomers of limited education and modest means. More than a few Americans think of immigration opportunities in terms captured famously by Emma Lazarus’ poem engraved on the pedestal of the Statue of Liberty: “Give me your tired, your poor; Your huddled masses yearning to breathe free. The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door.” One of the most familiar and celebrated narratives at the heart of the American dream derives from Horatio Alger stories of Gilded Age immigrants and their children who become successful by dint of hard work, penny-pinching, and determination. These rags-to-riches stories of immigrant social mobility
continue to inspire Americans, as evidenced by the buzz generated by the primetime speeches of two rising political stars – Republican Senator Marco Rubio of Florida and Democratic Mayor Julian Castro of San Antonio – at their respective national party conventions this summer. In parallel passages of their national debuts, Rubio paid tribute to his bartender father who “stood behind a bar in the back of the room all those years so one day I could stand behind a podium in the front of a room,” while Castro honored his mother who “fought hard for civil rights so that instead of a mop, I could hold this microphone.”

Creating new opportunities for high-skilled immigrants does not fit neatly with these stirring rags-to-riches narratives of upward mobility (although STEM workers in fact promise to enhance this mobility today by increasing the employment and earnings prospects of lower skilled workers). Yet from the earliest days of the American republic, there is evidence that several key founders, most notably Alexander Hamilton, saw value in facilitating the immigration of educated and highly skilled people for national economic development. In addition, occupational exemptions and preferences meant to favor skilled immigrants emerged in American immigration law of the late nineteenth and early twentieth centuries. Despite sweeping restrictions on immigrant admissions *writ large*, these preferences would make possible an influx of exceptionally talented Central European refugees between 1933 and the end of World War II. These refugees fleeing Nazi Germany possessed extraordinary educational backgrounds and professional skills that ultimately transformed the humanities, social and natural sciences, and medicine in America. It is to these forgotten traditions of high-skilled immigration that we now turn.

*Contemplating Talented Immigrants: Hamiltonian Blueprints for National Industrial Development*

The pursuit of talented immigrants is hardly a new phenomenon in human history. The migration of scholars and teachers made Athens a center of science, philosophy, and art in 388 B.C. when Plato founded the Academy, a process of intellectual migration that played itself out again in Alexandria of ancient Egypt around 300 B.C. Efforts to facilitate immigration of highly skilled people also emerged early in the American experience. Far removed from the intellectual centers of Europe, resourceful leaders in eighteenth-century colonial America looked to educated and skilled British immigrants as useful means of importing valuable foreign technology and trained labor. Tellingly, to stop such transfers of technology and talent, the British government in 1719 prohibited the emigration of skilled workers in steel, iron, brass, watch making, wool and other key industries of the time. The legal ban on skilled emigration imposed fines and jail time on those who recruited these immigrants, and punished skilled immigrants who failed to return to Britain within six months after departure with confiscation of their property and loss of citizenship. This formal prohibition on skilled British emigration was not repealed until 1825.
During the Constitutional Convention of 1787, the question of eligibility for elective office spurred a broad-ranging debate over the relative merits of immigrant admissions and rights during their Philadelphia deliberations in 1787. While delegates such as Elbridge Gerry and Governeur Morris advanced a more restrictive view of the subject, others such as James Wilson, Benjamin Franklin, and James Madison argued that the delegates should take an expansive view of immigrant rights lest they “give a tincture of illiberality to the Constitution.” Madison also famously observed that those states that encouraged European immigration most had “advanced the most rapidly in population, agriculture, and the arts.” He added that a constitutional government properly constructed would attract “great numbers of respectable Europeans,” especially “foreigners of merit and republican principles.”

Wilson noted that nearly all of the leading officers who served Pennsylvania during the Revolution were immigrants of “merit” and that more than a few of the Constitutional Convention’s delegates were themselves talented foreign-born. During these deliberations, Alexander Hamilton chimed in that “the advantage of encouraging foreigners was obvious” and expressed his hope that “persons of modest fortune in Europe will be fond of coming here where they will be on a level with the first Citizens.”

As the country’s first Treasury Secretary, Hamilton was convinced that robust European immigration was critical to national economic growth. In his audacious “Report on Manufacturers” of 1791, Hamilton saw these newcomers as more than menial workers to fill low-skill manufacturing and agricultural labor needs. Indeed, he was most taken with attracting skilled European immigrants to the young republic to help build what he saw as its enormous industrial potential. His optimism regarding skilled European immigrants was fueled by his own observations of how they already enhanced the quality of the nation’s workforce:

Whoever inspects, with a careful eye, the composition of our towns will be made sensible to what an extent this resource may be relied upon. They exhibit a large proportion of ingenious and valuable workmen, in different arts and trades, who by expatriating from Europe, improved their own condition, and added to the industry and wealth of the United States.

 Particularly striking here is Hamilton’s focus on these European newcomers as “ingenious and valuable workmen, in different arts and trades...” (emphasis added).

Only a few years earlier, Franklin described the United States as the perfect environs for agriculture and simple production of raw materials but too undeveloped for “great
establishments of manufacture.” Hamilton’s Report turned this logic on its head, arguing that these conditions were especially favorable for expanding industry in America and that they could serve as a potent magnet for European investors and skilled workers to relocate to the United States. In particular, he hoped that “manufacturers, who listening to the powerful invitations of a better price for their fabrics, or their labour, of greater cheapness of provisions and raw materials,” would find these conditions especially alluring. Hamilton also embraced the notion that mass immigration would allow poor immigrants to do arduous factory work that many Americans might spurn. Yet equally important, Hamilton thought it crucial to the nation’s economic future to persuade skilled European workers of “continuing with more benefit the callings, to which they had been educated,” in America. These valuable workers, he concluded, “would probably flock from Europe to the United States to pursue their own trades and professions, if they were once made sensible of the advantages they would enjoy, and were inspired with an assurance of encouragement and employment.” In short, European immigrants who were skilled, educated, or well-to-do figured prominently in Hamilton’s blueprints for American industrial development. He later urged the federal government to use public funds raised from tariffs on British-U.S. trade to support a board dedicated to recruiting skilled foreign workers and importing foreign technology. In the end, Hamilton’s call to “open every possible avenue to emigration from abroad” was realized in later decades, but his plans for facilitating large-scale immigration of European tradesmen, artisans, scholars, and investors was largely a road not taken.

Unskilled Immigrant Labor and Visions of Professional Migration: Occupational Exemptions and Preferences in Early U.S. Immigration Law

According to occupational data collected at the time of entry, the overwhelming majority of legal immigrants to the United States during the nineteenth and early twentieth centuries were low-skilled laborers. The largest occupational grouping of new immigrants from 1841 through World War I fell in the low-skilled category of general labor and domestic service (see Table 1). The other major job categories for newly arrived immigrants were also low-skilled ones: occupations in agriculture and manual labor in industry and mining. A significant number of immigrants reported no occupation; these included spouses and children as well as persons with “occupation unknown.” Across this period of mass immigration, less than 2 percent of newcomers fell into the higher-skilled occupational category then designated as “liberal professions and public service.”

At the same time as low-skilled immigration dominated in nineteenth and early twentieth century America, national policymakers made some effort to carve out space
Table 1: Immigrants by Occupation at Time of Entry, 1841-1920

<table>
<thead>
<tr>
<th>Period</th>
<th>Total (Thousands)</th>
<th>Total Reporting Occupations (Thousands)</th>
<th>Percent Reporting Occup.</th>
<th>Domestic Service and General Labor</th>
<th>Agric.</th>
<th>Industry and Mining</th>
<th>Transport and Commerce</th>
<th>Liberal Profess. and Public Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>1841-1850</td>
<td>1,703</td>
<td>766</td>
<td>45.0%</td>
<td>38.2%</td>
<td>32.4%</td>
<td>21.8%</td>
<td>6.7%</td>
<td>0.9%</td>
</tr>
<tr>
<td>1851-1860</td>
<td>2,940</td>
<td>1,355</td>
<td>46.1%</td>
<td>41.5%</td>
<td>30.5%</td>
<td>17.2%</td>
<td>10.2%</td>
<td>0.5%</td>
</tr>
<tr>
<td>1861-1870</td>
<td>2,660</td>
<td>1,241</td>
<td>46.6%</td>
<td>49.3%</td>
<td>17.5%</td>
<td>21.0%</td>
<td>11.0%</td>
<td>1.2%</td>
</tr>
<tr>
<td>1871-1880</td>
<td>2,812</td>
<td>1,382</td>
<td>49.1%</td>
<td>51.5%</td>
<td>18.9%</td>
<td>21.5%</td>
<td>6.6%</td>
<td>1.5%</td>
</tr>
<tr>
<td>1881-1890</td>
<td>5,247</td>
<td>2,602</td>
<td>49.6%</td>
<td>61.0%</td>
<td>14.5%</td>
<td>18.3%</td>
<td>5.2%</td>
<td>1.0%</td>
</tr>
<tr>
<td>1891-1900</td>
<td>3,844</td>
<td>2,147</td>
<td>55.8%</td>
<td>63.5%</td>
<td>11.9%</td>
<td>17.4%</td>
<td>6.1%</td>
<td>1.0%</td>
</tr>
<tr>
<td>1901-1910</td>
<td>8,795</td>
<td>6,478</td>
<td>73.6%</td>
<td>49.4%</td>
<td>26.7%</td>
<td>17.8%</td>
<td>4.7%</td>
<td>1.5%</td>
</tr>
<tr>
<td>1911-1920</td>
<td>5,736</td>
<td>3,924</td>
<td>68.4%</td>
<td>42.5%</td>
<td>29.8%</td>
<td>18.3%</td>
<td>6.7%</td>
<td>2.7%</td>
</tr>
</tbody>
</table>

Source: *International Migrations: Statistics*, edited by Walter Wilcox, volume I (New York, 1929), pp. 399-400. Note that the specific occupation category figures are the percent distribution of total reporting occupation at time of arrival.
for more highly skilled migrants. Initially, the desire to facilitate skilled immigration emerged as occupational exemptions to legal bans on contract labor. When Congress prohibited unskilled contract labor in 1885, for example, the legislation created exemptions for immigrants with skills needed for new industries, those with professional backgrounds in short supply in the United States, as well as professional actors, artists, and lecturers. By 1891, lawmakers expanded these occupational exemptions to include “ministers of any religious denomination…persons belonging to any recognized profession, [and] professors for colleges and seminaries.”

Significantly, it was in the context of unprecedented restrictions on mass immigration from Europe with passage of literacy test legislation in 1917 and a series of Quota Acts in the 1920s, that national policy gave preferential treatment to immigrants with special skills or professional status. At the same time as the Immigration Act of 1917 created new excludable categories for immigrants and imposed literacy test requirements, it also established occupational exemptions for “skilled labor…if labor of the like kind…can not be found in this country,” as well as for “professors for colleges or seminaries,” and “persons belonging to any recognized learned profession…” The Quota Acts of the 1920s infamously established a national origins quota system that imposed draconian limits on the number of immigrants admitted to the U.S. on the basis of racial and ethnic hierarchy. Yet these laws also were designed to facilitate the entry of immigrants with higher occupational and educational backgrounds in spite of quota limitations. The Quota Act of 1921 clarified that certain immigrants with special skills or talents could be admitted in excess of the quota for their nationality: “aliens who are professional actors, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, [or] aliens belonging to any recognized learned profession…” In 1924, lawmakers took care to extend non-quota status for any immigrant who was a “professor of a college, academy, seminary, or university; and his wife, and his unmarried children under eighteen years of age, if accompanying or following to join him.” In the first decade of the twentieth century, more than half (54 percent) of new immigrants had occupational backgrounds in the lower-skilled categories of farm laborers, domestic servants, and other manual laborers. Two decades later, these lower-skilled workers comprised just 16 percent of new arrivals. As we shall see, amidst sharp restrictions on overseas immigration, occupational preferences in the law helped expand the proportion of U.S. immigrants with special skills and professional backgrounds during the 1930s. Refugee scholars and professionals fleeing Hitler’s Europe would leave an indelible mark on American intellectual life.
The Intellectual Migration of the 1930s and Post-World War II Preferences for High-Skilled Immigration

In the decade of 1921 to 1930, more than four million people immigrated to the United States. In the next decade of 1931-1940, after the harsh restrictions of national origins quotas went into effect, the number plummeted to roughly half of a million (see Table 2). The U.S. ultimately admitted only a tiny fraction of the millions of Europeans uprooted by fascist repression after the rise of the Nazi regime. Yet the relatively small wave of twenty thousand professional Europeans who found refuge in the country during the 1930s and early 1940s were extraordinary in their talent, educational background, professional skills, and creative power. German scientists, scholars, architects, writers, artists and composers came first, followed by Austrians, then Hungarians, Czechoslovakiens, and Italians, and finally Russians and Poles.

These intellectual and professional refugees included seven émigrés who arrived as Nobel Prize winners and eleven others who received the award after they settled in America. The most celebrated of these remarkable scientists and scholars was Albert Einstein, “a symbol of persecuted European genius and a measure of the stature of the immigration.” Their number included other towering figures such as the novelist Thomas Mann, mathematician John von Neumann, composer Igor Stravinsky, theologian Paul Tillich, psychoanalyst Franz Alexander, psychologist Bruno Bettelheim, economist Karl Polanyi, architect Erich Mendelsohn, film director and screenwriter Billy Wilder, political philosophers Hannah Arendt and Leo Strauss, physicists Enrico Fermi and Victor Hess, pharmacologist Otto Loewi, and biophysicist Max Delbruck, to name just a few. As the New York University chair of the Institute of Fine Arts regularly quipped in the 1930s, “Hitler is my best friend: he shakes the tree, and I collect the apples.” The intellectual and professional refugees who escaped Europe from the early 1930s through World War II left few areas of American arts and sciences untouched.

These exceptional refugees were nothing like the poor and largely unskilled immigrants who came to the United States in earlier decades. They were, as one chronicler of the period noted, “men and women who came to America full made, with their Ph.D.’s or diplomas from art academies or music conservatories in their pocket.” Historians of this intellectual migration observe that the gifted émigrés arrived at an ideal time since American scholars in the arts, social sciences, natural sciences, and

Table 2: Number of Immigrants and Professional Immigrants Admitted, 1906-1945

9
<table>
<thead>
<tr>
<th>Time Period</th>
<th>Total number of immigrants admitted</th>
<th>Number of professional Immigrants</th>
<th>Percentage of professional immigrants</th>
</tr>
</thead>
<tbody>
<tr>
<td>1906-1910</td>
<td>4,946,310</td>
<td>52,827</td>
<td>1.06</td>
</tr>
<tr>
<td>1911-1915</td>
<td>4,459,831</td>
<td>59,647</td>
<td>1.34</td>
</tr>
<tr>
<td>1916-1920</td>
<td>1,275,980</td>
<td>35,853</td>
<td>2.81</td>
</tr>
<tr>
<td>1921-1925</td>
<td>2,678,913</td>
<td>66,342</td>
<td>2.51</td>
</tr>
<tr>
<td>1926-1930</td>
<td>1,468,296</td>
<td>45,795</td>
<td>3.12</td>
</tr>
<tr>
<td>1931-1935</td>
<td>220,209</td>
<td>12,180</td>
<td>5.53</td>
</tr>
<tr>
<td>1936-1940</td>
<td>308,222</td>
<td>26,133</td>
<td>8.47</td>
</tr>
<tr>
<td>1941-1945</td>
<td>170,952</td>
<td>17,913</td>
<td>10.48</td>
</tr>
</tbody>
</table>


medicine had already developed centers of learning that were ripe for the collaborative advances that followed. Indeed, the foreign-born themselves are astounded by how much the accomplished,” one such refugee noted, “and are the first to assert that they would not have accomplished as much had they remained in their homelands.” This was especially true in the fields of physics and psychoanalysis, since these were stigmatized as Jewish disciplines in Germany. Not all skilled Central European refugees thrived in their adopted home. Whereas engineers, physicists, mathematically sophisticated economists and other technically trained specialists had easily transferable skills, prominent European lawyers and doctors struggled to attain the same professional status they enjoyed in their source countries. More than a few refugee scholars in the social sciences and humanities also had to lower their expectations of professional prestige in their new academic setting. It was an early version of the “brain waste” problem often discussed today in countries like Canada and Australia that place an emphasis on high-skilled immigration.

As captured by the data in Table 2, during a period of sharp reductions in total legal immigrant admissions in the wake of the Quota Acts, the overall proportion of U.S. immigrants with professional training and skills grew. During the nineteenth century, skilled and
professional immigrants regularly comprised less than one percent of the newcomers settling in the country. During the first two decades, this proportion increased incrementally. But a focus on subsequent five-year periods shows that immigrants with professional skills increased to 5.53 percent in 1931-1935, 8.47 percent in 1936-1940, and 10.48 percent in 1941-1945.

After World War II, professional skills again were given priority in the Displaced Persons Act of 1948, national legislation targeting Jewish Holocaust survivors and other dispossessed Europeans for refugee relief. The law extended preferred treatment to displaced persons “possessing special educational, scientific, technological or professional qualifications.” Four years later, immigration restrictionists in Congress won passage of the Immigration and Nationality Act of 1952 that retained discriminatory national origins quotas as the cornerstone of American immigration policy. Within this context of durable quota restrictions, the new law made skilled immigration its first preference. Fifty percent of each national quota was reserved for immigrants “needed urgently in the United States because of the high education, technical training, specialized experience, or occupational ability of such immigrants.” An emphasis on immigrants with high levels of education and strong professional skills, dominant lawmakers concluded, would be “substantially beneficial prospectively to the national economy, cultural interests, or welfare of the United States.” Within the draconian strictures of the national origins quota system, professional and high-skilled immigration were granted a privileged position.

II. High-Skilled Immigration and the Legal Preference System: The 1965 Hart-Celler Act and the Road Not Taken

During the nineteenth and early twentieth centuries, U.S. and Canadian immigration policies followed roughly similar trajectories. European immigration to Canada was largely unfettered during the nineteenth-century, similar to the essentially laissez-faire approach taken by the U.S. federal government toward European inflows. The Irish Potato Famine of the 1840s brought large waves of Irish immigrants to both Canada and the United States. Both governments took steps to encourage Europeans to help settle their frontiers, sometimes in mirror age: Canada’s Dominion Lands Act of 1872, for example, copied the U.S. Homestead Act of 1862 by offering 160 acres of land free to men over 18 or any female heads of household if they lived on and improved the plot. After the turn of the century, Canada adopted a series of laws that excluded the Chinese and restricted admission to “white” American, British, and other applicants who could trace their ethnic and racial origins to Europe. It bore a close resemblance to the Chinese exclusion and national origins quotas codified in the United States from the Gilded Age through the 1920s.
During the post-World War II decades, however, Canadian and U.S. immigration policy began to diverge. In the 1960s, Canada dismantled racially-exclusionary policies in favor of a points system that encourage entry for educated English and French speakers of working age. Legislation in 1976 stressed immigrant admissions to promote family reunification, refugee relief, and economic needs, the latter facilitated by an independent category for immigrants with strong education, job skills, and language abilities. The Immigration and Refugee Protection Act of 2001 placed emphasis more squarely on admitting newcomers who are younger, bilingual, educated, and high-skilled. In the decade that followed, the majority of Canadian immigrants were highly educated and skilled. Today roughly half of the country’s foreign-born hold a university degree, compared to around 20 percent of those born in Canada.xlii

In the past half-century, the United States developed a legal immigration preference system that allocated visas differently than its northern neighbor. In both the 1960s and late 1980s, high-skilled immigration and economic needs were high on the agenda as Congress contemplated major policy reform. Indeed, talent, education, and professional skills almost became the chief criteria for allocating immigrant visas when U.S. policy makers began to dismantle national origins quotas in the 1960s. But as we shall see, these economic priorities were ultimately constrained by ethnic and racial concerns and by strong support for family-based preferences. Efforts to give greater priority to skilled immigration in the late 1980s also were derailed by various defenders of family-based preferences. In short, the development of two of the nation’s most important immigration laws – the Hart-Celler Act of 1965 and the Immigration Act of 1990 – illuminate both paths not taken and the possibilities of future high-skilled immigration reform.

Race, Skill, and the Rise of Family-Based Preferences: The Hart-Celler Act of 1965

After World War II, the harsh U.S. immigration restrictions adopted during the early twentieth-century were eroded by presidential efforts to rescue refugees from communist regimes and by hundreds of special immigration bills. In 1963, President John F. Kennedy called on Congress to dismantle the racist system of national origins quotas. He also proposed legislation that would increase annual immigration to 165,000 and that would remove discriminatory per-country quotas in favor of a preference system allocating fifty percent of visas on the basis of special skills or education that benefited national economic interests. Remaining visas would be distributed to refugees and those with close family ties to U.S. citizens or legal permanent residents (LPRs). Kennedy’s plans for advancing high-skilled immigration in place of national origins quotas were an unmistakable feature of his 1963 immigration message to Congress. “At present, [the national origins system] prevents talented people from applying for visas to enter the United States,” Kennedy observed. “It often
deprives us of immigrants who would be helpful to our economy and our culture.” Legal preferences, he argued, “should be liberalized so that highly trained or skilled persons may obtain a preference without requiring that they secure employment here before emigrating.”

The next year, Lyndon Johnson endorsed the slain president’s immigration proposal as part of his Great Society reform plans. He used the occasion of his 1964 State of the Union message to reaffirm the importance of supplanting national origins quotas with skilled-immigration: “In establishing preferences, a nation that was built by immigrants of all lands can ask those who now seek admission: ‘What can you do for our country?’ But we should not be asking: ‘In what country were you born?’” Immigrant merit and skills were to trump discriminatory restrictions based on race, ethnicity, religion or nationality.

Yet as the administration’s immigration reform bill worked its way through Congress, it encountered potent resistance from a member of Johnson’s own party: the chair of the House immigration committee, Michael Feighan (D-OH). Initially, reporters speculated that he opposed the bill because he was a friend of patriotic associations that supported national origins quotas and because he also was an ardent anti-Communist who preferred sweeping restrictions. Nevertheless, under pressure from colleagues and constituents, Feighan eventually agreed that the national origins quota system must be dismantled. This pivotal player in House immigration politics did not surrender entirely, however. His own immigration reform bill directly challenged the administration’s emphasis on individual skills by making family reunification the strongest priority of a new preference system, with skills, education, and professional occupations a far less important consideration.

Convinced that family-based immigration was far preferable to discriminatory national origins quotas, the Johnson White House eventually acceded to Feighan’s demand to make skilled-immigration secondary to family ties. It was a momentous shift in plans for a new preference system. As The Washington Post observed, “the most important change, in fact, was in direction, shuffling the preference categories to give first consideration to relatives of American citizens instead of to specially-skilled persons. This had more emotional appeal and, perhaps more to the point, insured that the new immigration pattern would not stray radically from the old one.” The expectation that family-based preferences would not significantly alter previous immigration patterns was crucial. Ironically for a reform intended to remove ethnic and racial hierarchies in national immigration law, one of the core reasons that Feighan and his allies altered the preference categories to emphasize family ties was to discourage nonwhite, non-European immigration. As the American Legion reassured its membership, “nobody is quite so apt to be of the same national origins of our present citizens as are members of their immediate families, and the great bulk of immigrants henceforth, will not merely hail from the
same parent countries as our present citizens, but will be their closer relatives.”xlvii To the
Japanese American Citizenship League, the shift from labor skills to family ties was designed to
perpetuate racial bias in American immigrant admissions policy:

Inasmuch as the total Asian population of the United States is only about one half of 1
percent of the total American population, this means that there are very few of Asia-
Pacific origin in this country who are entitled to provide the specific preference priorities
to family members and close relatives residing abroad….Thus, it would seem that,
although the immigration bill eliminated race as a matter of principle, in actual
operation immigration will still be controlled by the now discredited national origins
system and the general pattern of immigration which exists today will continue for
many years yet to come.xlviii

The Hart-Celler Act of 1965 ended explicit ethnic and racial quotas, but replaced them with
preferences that progressive reformers thought would perpetuate these biases in practice.

Feighan’s success in making close family ties the centerpiece of the new legal
immigration preference system was also seen as a victory for organized labor, which was leery
of employment-based admissions. In this vein, the new law included a requirement that the
Department of Labor oversee economic-based preference categories. Before the 1965 law, the
Secretary of Labor had the capacity to bar foreign labor if it was deemed that it would adversely
affect the job prospects, wages, and working conditions of American workers. But this occurred
only on “rare occasion.”xlvi Under the Feighan bill, the Labor Secretary was charged with issuing
clearances for foreign labor before issuing a visa. This requirement later made obtaining an
employment-based visa for many occupations arduous; only about 10 percent of new
immigrant workers arrived with Labor Department certification after the law was enacted.
Over time, 80 percent of new workers came as family-based or refugees and thereby cleared
from having to satisfy labor certification requirements.

In the end, the so-called Hart-Celler Act of 1965 raised the ceiling on legal immigration
to 170,000 visas for those originating from countries in the Eastern Hemisphere and 120,000 for
those coming from the Western Hemisphere. The new legal preference system established four
preference categories for family reunification, which were reserved 74 percent of total annual
visas. Spouses, minor children, and parents of U.S. citizens over the age of twenty-one were
granted admission without visa limits. Two preferences were established for economic goals,
including a preference not to exceed 10 percent of the annual visas for “qualified immigrants
who are members of the professions, or who because of their exceptional ability in the sciences
or the arts will substantially benefit prospectively the national economy, cultural interests, or
welfare of the United States.” The Hart-Celler Act left 20 percent of annual visas for economic-based admissions and the remaining 6 percent for refugees. Strikingly, a reform law that was initially designed to promote high-skilled immigration made family reunification its top priority. Few members of Congress anticipated that the new preference system would facilitate an unprecedented surge of Asian and Latin American immigration.

III. The Immigration Act of 1990: Skilled Immigration, Family Preferences, and the Perils of a Zero-Sum Game

One of the key lessons of past immigration policy battles is that the chances and extent of high skill immigration reform hinges on whether it is viewed as either supplanting or complimenting family-based visas in the legal preference system. This was particularly true for the Immigration Act of 1990. During the late 1980s, proposals to cutback existing preferences to benefit high-skilled immigration touched off a firestorm of resistance from various policymakers and advocacy groups defending constituencies benefiting from family reunification visas. So long as the policy choices were framed as a zero-sum game (more employment or skills based visas require fewer family visas or vice versa), reform plans went nowhere. As we shall see, the 1990 law’s passage relied on an expansion of total visas by 40 percent and a framing of new employment-based preferences as complimenting family categories.

In the late 1980s, Senators Alan Simpson (R-WY) and Edward Kennedy (D-MA) cosponsored legislation that would recast the legal immigration system. Their proposal called for an increase in the annual ceiling to 590,000 (Kennedy’s goal) combined with a firm annual cap (Simpson’s goal). But they also hoped to transform the structure and allocation levels of the legal preference system. One goal was to carve out room for so-called diversity visas and another was to expand high-skilled immigration. During the 1980s, Kennedy and other Northeastern lawmakers were lobbied heavily by Irish American groups to facilitate the entry of more Irish nationals. Most potential Irish immigrants were said to be “disadvantaged” by the existing family-based preferences because they lacked the close family ties to U.S. citizens win entry. In 1986, pro-Irish representatives won a controversial two-year program to distribute 10,000 visas to foreign nationals of countries “adversely affected” by the existing family-based system. In his new bill, Kennedy inserted a provision with visa set-asides for Irish foreign nationals. Simpson’s main goal was to expand immigration opportunities for immigrants possessing desirable job skills and education. As early as 1982, he expressed sympathy for high-tech firms and peak business associations like the U.S. Business Roundtable, who argued that global economic competition made it imperative for U.S. businesses to have access to the world’s most skilled workers. Simpson emerged as a champion of legal
immigration reform that cut in two directions: limiting total legal immigration via a firm cap on annual admissions and expanding opportunities for high-skilled immigration.

Kennedy and Simpson merged their interests in Irish nationals and skilled workers under a so-called independent category which would distribute “points” to foreign applicants based on education, job skills, English language fluency, and “source country diversity” – the latter a euphemism for allocating points to foreign nationals from Ireland and other countries which did not benefit from family-based preferences. To make room for this independent category under the proposed cap, the bill substantially cut the number visas allocated to the 1965 law’s second preference for spouses and minor children of legal permanent residents and restricted its fifth preference to never-married siblings of U.S. citizens (the existing fifth preference provided visas to brothers and sisters of American citizens, as well as to the spouses and children of those siblings). While Kennedy said the new independent category would promote “diversity” by setting aside visas for countries “under-represented” in the existing system, Latino and Asian groups attacked these reform blueprints as hostile to nonwhite, non-European newcomers. In the short run, however, ethnic lobbies and civil rights groups had little time to mobilize opposition in the Senate, where the Kennedy-Simpson bill passed easily.iii

In the House, at the urging of Asian, Latino and other advocacy groups, most Democrats refused to lend their support to the Senate’s bipartisan compromise. As one key Democratic staffer explained, “For generations we only admitted white, European immigrants, and then, after Asians and Latin Americans finally have an opportunity to get in, there’s this proposal to limit their numbers. We simply weren’t going to support something so racially biased.”liv

Instead, House Democrats tried to appease Irish American lobbies by offering a special lottery for foreign nationals from countries “adversely affected” by the existing preference system. Meanwhile, with the active encouragement of Latino, Asian, and immigrant rights groups, the Senate Bill died in the House. They were determined that high-skilled immigration reform and diversity visas would not come at the expense of family-based preferences that benefited their constituencies.

Beyond the halls of Congress, the American Immigration Lawyers Association (AILA) led by Warren Leiden fashioned its own strategy toward legal immigration reform, one that richly informed the actions of most pro-immigration advocates in coming months. Legal immigration reform as envisioned by Simpson placed AILA in a potentially impossible position. It had long-standing ties with Asian, Latino, immigrant rights, and religious groups that defended family-based immigration tooth and nail. Yet AILA also represented multinational firms, high-tech companies, and other business interests that supported Simpson’s plan to increase high-skilled immigration. “We realized that if each side thought of immigration
reform as a zero-sum game in which visas for one group were seen as a loss for the other, there would be an ugly fight and someone would lose,” Leiden recalls.\textsuperscript{iv} Shuttling between both sides, Leiden and his allies persuaded each camp to support increases in both employment-based and family-based immigration. In order to harmonize the “business” and “family” coalitions, as they became known to policy community insiders, it was critical to defeat Simpson’s plan for a firm cap on legal immigration. “The solution was to work together to make the pie bigger,” Leiden explained.\textsuperscript{viii}

Undaunted by their initial failure, Kennedy and Simpson teamed again in 1989 with a bipartisan bill that looked quite similar to the previous version. Yet Simpson’s plan to alter the second and fifth preferences encountered new resistance in the Senate from both liberals like Paul Simon (D-IL) and Orrin Hatch (R-UT) who now aligned themselves to the joint expansions now being advocated by the “family” and “business” coalitions. “I am not being ethnically evil,” Simpson responded defensively. “I have yet to see, under our definition in this country of a nuclear family, how that includes brothers and sisters of U.S. adult citizens.”\textsuperscript{vii} In the end, Simpson’s efforts to restrict the second and fifth preferences lost in committee. Colleagues also assailed points for English-language fluency. “You know, my grandparents came over here from Italy and they settled in Vermont and neither one of them spoke English,” Patrick Leahy (D-VT) said. “Yet they started a granite business and became one of the bigger employers in the small town they are in.”\textsuperscript{viii} Other senators offered similar testimonials. The English-language points proposal failed by a lopsided 12-2 vote in committee. Speaking for business groups eager to expand employment-based immigration, Arlen Specter (R-PA) warned Simpson that his annual cap plan also faced “potential danger ahead” since “our national welfare” would be boosted by “a lot more immigrants.”\textsuperscript{lix}

While many Democrats highlighted the importance of reuniting families, most Republicans spoke of the critical importance of facilitating high-skilled immigration to enhance American economic competitiveness. Reform proponents in both parties emphasized the findings of the Select Commission on Immigration and Refugee Policy, various economists, and a new study sponsored by the Labor Department, Workforce 2000, that suggested the United States faced a major skilled labor shortage in the future which threatened the nation’s standing in a global marketplace.\textsuperscript{x} A prominent General Accounting Office report also linked American economic health to boosting immigration, especially for high-skilled migrants. “Increasing immigration to meet the needs of the U.S. economy,” the report concluded, “may help increase its international competitiveness, solve labor problems associated with low birth rates, and deal with the weaknesses in the education of young U.S. workers.”\textsuperscript{xi}

In the end, a compromise package easily passed the Senate that reaffirmed robust
family-based preferences, expanded skills-based immigration, created a diversity category, and raised the annual legal immigration ceiling to 630,000 (which could be “pierced” for immediate relatives of U.S. citizens). In a joint statement, Kennedy, Simpson and Simon hailed the compromise bill as “a balanced attempt to serve the national interest; it preserves the immigration rights of those who have close family connections in this country; it stimulates immigration from earlier sources of immigration to our country that have contributed so much to America in the past; and it promotes the entry of those who are selected specifically for their ability to contribute their needed skills and talents to the development of our country.”

In the House, chair of the immigration subcommittee, Bruce Morrison (D-CT) introduced the Family Unity and Employment Opportunity Act. His bill expanded family-based admissions as well as “diversity” visas for Irish and other foreign nationals “adversely affected” by 1965 preference system, while including a more flexible and expanded system of employment-based admissions for skilled and needed workers. The Wall Street Journal praised Morrison’s bill for its potential contributions to the nation’s economy, hailing “Democrats for Vitality.” When Simpson threatened a filibuster to keep legal immigrant numbers down and to restrict family-based categories once again, the Wall Street Journal attacked “Stonewall Simpson.” Under pressure from both sides of the aisle, Simpson eventually relented.

The final version of the Immigration Act of 1990 reflected a Kennedy plan for increasing legal immigration to 700,000 for first three years and 675,000 thereafter. This cap could be exceeded for the immediate family of U.S. citizens. Employment-based preferences were expanded to 140,000, but they still represented 20-21 percent of annual admissions. Family-based preferences were not only retained but increased to 480,000, or 71 percent of total annual admissions. A new permanent diversity preference was created for 55,000, or 8 percent annually. “This turkey gets more feathers every day,” Simpson quipped in disgust. The compromise was celebrated by its supporters as a triumph for “family unity,” “job creation,” and “cultural diversity.” Overall, the Immigration Act of 1990 expanded annual immigration by 40 percent. By avoiding a confrontation with supporters of family-based immigration, the advocates of high-skilled immigration won increases in employment-based admissions, although their share of annual visas remained virtually unchanged.

IV. Challenges and Opportunities of High-Skilled Immigration: Comprehensive Immigration Reform and Zero-Sum Politics Redux

During the heat of the 2012 presidential campaign, the prospects of expanding high-skilled immigration looked bright as Obama, Romney, and congressional leaders of both parties endorsed targeted reform legislation. Bipartisan support continues to be strong for more high-
skilled immigration in general and for creating special visas to foreign-born STEM graduates of American universities in particular. However, two important potential challenges for high-skilled immigration reform have emerged in recent months. First, the perceived demographic power and impact of Latino voters in the election has translated into new momentum for comprehensive immigration reform (CIR). When it is decoupled from comprehensive policy negotiations, high-skilled immigration reform recently has yielded a robust Left-Right coalition – one that is not bedeviled by the same ideological polarization and flawed policy solutions associated with addressing unauthorized immigration. Second, recent efforts to trade new STEM visas for the existing diversity visa category threaten to produce zero-sum political battles that undermine majority support in Congress for high-skilled immigration reform. They do so by potentially reigniting old conflicts over the legacies of ethnic and racial bias in American immigration law, harkening battles of the late 1980s. Let us consider each of these new but familiar challenges in turn.

Comprehensive Immigration Reform as a Political and Policy Minefield

Even before the dust settled on the 2012 election, political pundits agreed that CIR had finally landed on the front burner of the Washington agenda. The reason was obvious: more than 70 percent of Latino voters supported Obama. Latinos are the fastest-growing ethnic group in the United States and a crucial voting bloc that many Republican leaders quickly acknowledged they could no longer turn off by opposing a grand bargain on immigration reform. "We’re getting an ever-dwindling percent of the Hispanic vote,” Republican Senator Rand Paul (KY) told reporters. "We have to let people know, Hispanics in particular, we’re not putting you on a bus and shipping you home.”Republican House Speaker John Boehner (OH) also recently commented that “a comprehensive approach is long overdue….It’s time to get the job done.” Prominent GOP strategists recently announced the creation of a super-PAC, called Republicans for Immigration Reform, to distance the party from enforcement-only hardliners. Meanwhile, President Obama and other Democratic leaders have vowed anew to pursue earned citizenship for 10-12 million undocumented immigrants living in the country. New demographic realities have persuaded both major parties to curry favor with immigrant voters and kindred ethnic groups, especially Latinos. And both are convinced that CIR is the best means to do so. “We will get immigration reform,” David Gergen confidently told CNN viewers. “Democrats want it and Republicans now need it.”

How does new momentum for CIR influence the chances of high-skilled immigration reform? Expanding high-skilled immigration has been a key feature of CIR proposals in the past, such as the 1982 Simpson-Mazzoli proposal to scale back family unity visas in favor of skilled workers or the 2006 Kennedy-McCain plan to significantly expand the annual ceiling for immigrants with extraordinary abilities, advanced degrees, and special professional skills. Yet
targeted high-skilled immigration reform, decoupled from other immigration proposals, may represent a far more promising avenue than inclusion in a larger compromise package. It has demonstrated a capacity to draw support from both the Left and Right. Nevertheless, the fortunes of high-skilled proposals are likely to hinge upon whether questions of unauthorized immigration dominate Capitol Hill in the months ahead. Even with new electoral imperatives, two dangers loom large if congressional action is tied to comprehensive immigration reform: ideological polarization and prolonged negotiations.

The rival interests and values unleashed by unauthorized immigration make the formation of majority coalitions in Congress a tall order. National policymakers are well aware of the tortured path that earlier reformers traversed to secure comprehensive legislation on illegal immigration. False starts, grueling negotiations and unappealing compromises have been par for the course, at least during the past quarter-century. Past reform campaigns also have encouraged pitched battles both within and between each major party.

For much of the 1970s, Rep. Peter Rodino, a liberal Democrat, waged a quixotic campaign for employer sanctions legislation to discourage unauthorized entries. This effort to punish employers who knowingly hired undocumented aliens was strongly endorsed by the AFL-CIO and labor unions. But organized agricultural interests initially succeeded in stalling Rodino’s legislation in the Senate, where Sen. James Eastland, a conservative Democrat, refused to allow the Judiciary Committee he chaired to take action. When Rodino again pressed the initiative later in the decade, new resistance emerged in both the House and Senate from liberal Democrats, who warned that the measure would lead to job discrimination against Latinos, Asians and anyone who looked or sounded foreign. Most Latino organizations and civil rights groups then lined up in opposition to employer sanctions.

During the 1980s, as discussed earlier, Simpson and Mazzoli took the lead in pressing for immigration reform. Early in 1982, the bipartisan pair introduced omnibus legislation on illegal and legal immigration. However, the measure met strong resistance from a broad coalition of business interests, ethnic and civil rights groups, the American Civil Liberties Union, religious lobbies and a new immigrant rights organization, the National Immigration Forum. In Washington, opposition to the Simpson-Mazzoli initiative arose on both the right and left: Key figures in the Reagan administration saw employer sanctions and national identification cards working at cross-purposes with its regulatory relief agenda, while House Democrats, led by the Hispanic and Black Caucuses, raised familiar concerns about cutting family-based visas and the discriminatory impact of sanctions.
For five years, Simpson and Mazzoli’s efforts got nowhere, until eleventh-hour deal-making produced the compromise Immigration Reform and Control Act of 1986 (IRCA). The political gridlock was overcome by a package of watered-down employer sanctions, legalization for undocumented aliens living in the country since Jan. 1, 1982, and a new seasonal agricultural worker program to appease agricultural interests. Final vote tallies were tight, and major components of the “grand bargain” were almost undone during bruising amendment battles on the floor. This history of painful negotiations and compromises underscores the challenges of securing comprehensive reform that addresses the complex and controversial problems associated with unauthorized immigration.\textsuperscript{xxi}

Reform campaigns during the past decade reveal familiar ideological conflicts on how to address comprehensive reform in general and unauthorized immigration in particular. Indeed, they capture fundamentally different assumptions and beliefs about how to define the problem. In recent years, powerful organized interests and competing constituencies – ranging from agribusinesses, service industries and Microsoft to labor unions, ethnic and civil rights advocates, church groups and anti-immigrant activists of the Minuteman Project and Tea Party movement -- regularly mobilize and clash over immigration reform. As in the past, the resulting battles not only pit leaders, interest groups, and constituencies aligned with the Republican Party against those tied to the Democratic Party, they also divide organized interests within these partisan coalitions.

For pro-immigration liberals, the problem is not the presence of millions of undocumented aliens in the United States, but rather their status as vulnerable, second-class persons. The chief imperative for these activists is to make the estimated 12 million unauthorized migrants living in the country eligible for legal residence. “What we want is a pathway to their legalization,” Rep. Luis Gutierrez (D-IL) explains, “so that they can come out of the shadows of darkness, of discrimination, of bigotry, of exploitation, and join us fully.”\textsuperscript{xxii} Legalization, or “earned citizenship,” initiatives draw strong support today from immigrant advocacy and civil rights groups; Latino, Asian and other organizations; religious associations; and the leading federations of organized labor.

Economic protectionists warn that undocumented immigration has enhanced the wealth of corporate and professional America with little concern for the consequences for blue-collar workers and the unemployed. These critics endorse sanctions against unscrupulous employers who knowingly hire undocumented aliens, and they vehemently oppose guest-worker programs, which they associate with a captive workforce subject to exploitation, abuse and permanent marginalization. In this vein, cable newsman Lou Dobbs regularly claims that illegal immigration has “a calamitous effect on working citizens and their families” and “that the
industries in which illegal aliens are employed in the greatest percentages also are suffering the largest wage declines.” These views resonate with many white working-class Americans.

To pro-immigration conservatives devoted to business growth, the chief problem is that existing federal policies fail to address “the reality,” as former President George W. Bush put it, “that there are many people on the other side of our border who will do anything to come to America to work.” In short, the U.S. economy has grown dependent on this supply of cheap, unskilled labor. For this camp, the solution lies in regularizing employers’ access to this vital foreign labor. If the “back door” represented by illegal immigration is to be closed effectively, then this labor supply must be secured through temporary worker programs and an expansion of employment-based legal immigration. Powerful business groups also oppose employer sanctions and eligibility verification requirements as an unwelcome and unfair regulatory burden placed on American businesses large and small.

Finally, border hawks today see the illegal immigration problem as nothing short of an unprecedented breakdown of American sovereignty, which compromises national security, the rule of law, job opportunities for citizens, public education and social services. Mobilized by conservative talk radio, columnists and television commentators, many conservative Republicans have been outraged that the nation’s fundamental interest in border control and law enforcement has been trumped by the power of immigrant labor and concern for immigrants’ rights and votes. Border hawks believe enforcement must come first. They endorse a strategy of attrition that uses targeted deportation efforts, workplace crackdowns, identity checks and denial of social services and other public benefits to persuade many unauthorized migrants to return home. Even in the wake of the election, Republican leaders in this camp remain hostile to compromise packages. “Right now, there are well-meaning people - including some in my own party - who are advocating a grand bargain in which the American people would be promised border security in exchange for the granting of amnesty to tens of millions of illegal aliens,” said Arizona Governor Janet Brewer. “We’ve been here before…secure our border first.”

Historically, major immigration reform in the United States has routinely required strange bedfellow coalitions to succeed. Special visas for foreign-born graduates with STEM degrees and other high-skilled immigration reform initiatives represent a rare source of political valence in an otherwise polarizing policy realm. “It makes no sense for us to educate the world’s brightest students and then ship them back to their home countries to compete against us,” declared Democratic Representative Zoe Lofgren (CA), ranking member of the House’s Subcommittee on Immigration Policy and Enforcement. Her Republican colleague Jeff Flake, Arizona House member and incoming freshman senator, agreed: “Unless we want to see
the next Google or Intel created overseas, we’ve got to enact legal immigration reforms that allow foreign-born, U.S. educated students who have earned advanced degrees to remain and work in the country after they’ve graduated.”

By contrast, despite fresh post-election momentum, any renewed effort to secure comprehensive immigration reform will have to overcome fierce political divisions on the issue in Washington and at the grassroots; past implementation failures that have bred deep cynicism about controlling the nation’s borders; and flawed options for policy change. The rival interests and values unleashed by unauthorized immigration make the formation of majority coalitions in Congress challenging even amidst fresh electoral incentives to do so. National policymakers are well aware of the tortured path that earlier reformers traversed to secure comprehensive legislation on unauthorized immigration. False starts, grueling negotiations, and unappealing compromises have been par for the course, at least during the past quarter-century. Efforts to address the most bedeviling problems associated with unauthorized immigration enjoy new momentum on Capitol Hill following the election, representing an opportunity for comprehensive reform that might include expanded opportunities for high-skilled immigration. But if congressional action is tied to CIR, it might also hold STEM visa proposals hostage if national immigration politics becomes a free-for-all.

The Renewed Perils of Zero-Sum Politics

In late September, House Judiciary Committee chair Lamar Smith (R-TX) introduced the STEM Jobs Act to provide 55,000 annual visas to foreign-born doctoral and master’s graduates in science, technology, engineering, and math disciplines from U.S. universities. High-tech companies and lobbyists threw their support behind the measure. Smith’s bill failed, despite the fact that expanding STEM visas enjoys broad bipartisan support from the White House to Capitol Hill. The sticking point was Smith’s insistence that new STEM visas required the elimination of the so-called diversity category. Under the diversity preference category, people from countries with low rates of immigration to the U.S. are randomly selected by lottery to receive green cards.

Most experts and ordinary Americans alike perceive the admission of STEM graduates as more valuable than randomly distributing visas to certain foreign nationals in order to enhance the diversity of U.S. immigration. The defeat of Smith’s bill also defied the influential support for Smith’s STEM Jobs Act from high-tech lobbies and other business groups. This oppositional politics is hardly surprising, however, when we place it in the historical context of similar fights of the past. When reforms to the legal immigration preference system have been framed as zero-sum games where increases in one category must be balanced by decreases in another, battle lines form on Capitol Hill. Recall that the Immigration Act of 1990 went nowhere, despite formidable support for increasing employment-based immigration, until
threats to family-based preferences were neutralized in favor of a 40 percent increase in annual legal immigration. “I would like to improve the STEM visa program without doing damage to other parts of our immigration system,” explained Rep. Luis Gutierrez. “The president has made this a priority and I am prepared to support a clean STEM increase because it will help our economy and create jobs. Republicans are only willing to increase legal immigration for immigrants they want by eliminating legal immigration for immigrants they don’t want.”

The reallocation of visas from either the diversity lottery or family-based categories to high-skilled immigration is especially fraught because they regularly inflame old conflicts over the legacies of ethnic and racial bias in American immigration law. In the late-1980s struggles over legal immigration, defenders of family-based preferences argued that these visas were crucial to reuniting families primarily from Asia and Latin American source countries. Recent conflict over gutting the diversity program inspired its strong and unified resistance from the Congressional Tri-Caucus: the Congressional Black Caucus (CBC), the Congressional Hispanic Caucus (CHC), and the Congressional Asian Pacific American Caucus (CAPAC). Speaking for various ethnic and civil rights groups and grassroots constituencies, the Tri-Caucus defended the diversity lottery as one of the few means for African immigrants to gain entry. “I don’t think that…minorities in this country can afford to sit silently when there is legislation, whether intentional or not, that will reduce the number of people coming into this country who are making contributions,” declared Emanuel Cleaver (D-MO), chair of the CBC. Strikingly, ethnic and racial biases led Feighan and his supporters to press for a legal immigration system that emphasized family ties. Decades later, advocates of Irish immigration fought to carve out special openings for their fellow ethnics in the name of diversity. Today, both the dominant family preferences and the smaller diversity lottery are championed by those who understand these categories to offer significant opportunities for nonwhite immigrants from source countries beyond Europe. The fact that high-skilled immigration reform is likely to bring numerous Asian migrants to the country, or that such policies are consistent with John Kennedy’s original reform emphasis on merit and talent, has not mitigated these concerns among immigrant rights, civil rights, and ethnic organizations.

**Conclusion**

Placing high-skilled American immigration policy and politics in historical context illuminates a distinctive set of opportunities and constraints. In addition to being a nation of mass immigration, the first part of this paper underscores an American emphasis on highly skilled immigration that can be traced to Hamiltonian traditions and early policies giving priority to those with desirable educational and occupational backgrounds. It also reminds us that one of the most important waves of immigration brought a relatively small yet
extraordinarily talented group of intellectual refugees to American shores in the 1930s and early
1940s who profoundly transformed the nation’s arts and sciences. The next two parts of this
paper show how the development of the U.S. legal immigration system ultimately made
immigrant skills and education less important than other preferences. Major immigration
reforms in 1965 and 1990 began with an emphasis on high-skilled immigration and culminated
for very different reasons with a preference system dominated by family ties. The final part of
this paper focuses on the promise of expanding STEM visas and the potential challenges posed
by comprehensive immigration reform and zero-sum politics. High-skilled immigration reform
currently enjoys broad academic support (165 university presidents recently sent a letter to
President Obama urging more STEM visas), strong bipartisan enthusiasm on Capitol Hill
during a period of intense polarization, and the backing of three-quarters of ordinary
Americans. Its future, however, is tied to the politics and legacies of earlier policy choices.  As
William Faulkner wryly observed, “The past is never dead. It’s not even past.”

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