

ONUS OR OPPORTUNITY? CONSERVATISM AND ILLEGAL IMMIGRATION IN UTAH

We conclude that there is nothing extraordinary about illegal immigrants, who are otherwise law-abiding members of our community. We confidently recommend that Utah public policy should seek to fully assimilate otherwise law-abiding illegal immigrants already residing here.

PREFACE

THIS ESSAY ELUCIDATES THE SUTHERLAND INSTI- TUTE POSITION ON ILLEGAL IMMIGRATION IN UTAH

Of the many issues that the Sutherland Institute has considered in its thirteen years of operations, few have compared with illegal immigration in complexity and intensity. It has been a highly-debated issue inside our organization for a year now. And it has been a thorough debate.

The Sutherland Institute's Board of Trustees and the Board's Policy Committee are comprised of many of the smartest and insightful minds in Utah. Quite naturally, within any such group of sincere, thoughtful, and (very) opinionated people, there will be disagreements. It is to be expected. We are a vibrant think tank – batting ideas around is what we do, and do well.

This essay elucidates the Sutherland Institute position on illegal immigration in Utah.

As conservatives, we view this issue morally as much as we view it socially, culturally, and eco-

nomically. It is not a policy abstraction or objectification. We are talking about real people, not unlike every Utahn. They share our aspirations for a better life. They have problems like we do. They seek happiness like we do. And, most of all, they want to be the masters of their own destinies, just as we do.

We know our position will feel controversial to some people, even surprising. But there should be no surprises. The Sutherland Institute strives to reflect an authentic conservatism. This essay does just that.

As the local debate continues over time, we hope this paper constructively adds to the debate. In fact, we hope it spurs deeper and more contemplative dialogue and, ultimately, touches as many hearts as minds.

Paul T. Mero, President

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The contentious debate over illegal immigration has tested the authenticity of conservative thought. Nationally, self-identified conservatives are often at war over this issue.¹ And here in Utah, the reddest of red states, where elected officials (and the people who elect a vast majority of them) wear their brands of conservatism as an unquestioned free-pass to conduct all sorts of political and legislative business, we are no exception in the war of words.²

The legislative debate over *Illegal Immigration* (SB 81, 2008), an “enforcement-first” approach, and *Immigration Task Force* (SB 97, 2008), a “measure-twice-cut-once” approach, put this divide on display. Utah businessmen were pitted against several politically conservative state legislators. Our own Sutherland Institute drew the ire of some of those legislators because of testimony in favor of SB 97 using this language and tone,

We have noticed that there is an implicit assumption that all “conservative” remedies to the issue of illegal immigration are framed by a strict law-and-order approach. Our Sutherland Institute is a conservative think tank; our business is to understand authentic conservative thought and translate this thinking into sound public policy.

We support SB 97 for many reasons, but the primary reason is that we feel authentic conservative thought has not been well-represented in this debate and that a Task Force would allow us to provide this perspective in its fullness. As much as we have heard about the importance of the rule of law, and it is vital, there are several other conservative principles of good government that must be given equal priority.

While the national debate regarding a federal-level response to illegal immigration evidences a growing schism

within conservatism, at least as this schism informs the deeper debate over the integrity of conservative philosophy and intellectualism, the debate in Utah is at once more basic and yet more nuanced.

This paper is the Sutherland Institute’s attempt, as Utah’s conservative leader, to explain an authentic conservative view of illegal immigration in Utah.

REALITY, NOT IDEOLOGY, IS WHAT
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The concern of the Institute, in mission and principle, is policy not politics. Furthermore, Sutherland is interested in conservative public policy and authentic conservative thought. Utahns who self-identify as con-

servatives can be found arguing stridently on both sides of this issue. And so we ask, does one authentic conservative view exist on the issue of illegal immigrants already living in Utah?

CONSERVATIVES CHOOSE UP SIDES

Conservatives on the national scene have faced this issue and pit themselves in terms of “enforcement-first” versus the “assimilationists.” The former group believe noted economist Thomas Sowell when he writes,

It will take time to see how various new border control methods work out in practice and there is no reason to rush ahead to deal with people already illegally in this country before the facts are in on how well the borders have been secured.³

An open letter circulated by John Fonte of the Hudson Institute and signed by the likes of William Bennett, Robert Bork, William F. Buckley, Newt Gingrich and Phyllis Schlafly, to name just a few, called on President Bush, Senator Frist, and House Speaker Hastert to take care of “first things first” and employ policy “sequencing” that begins and ends with a focus on enforcement. “We need proof that enforcement

(both at the border and in the interior) is successful before anything else happens.”⁴

In response, another group of conservatives, thirty-three to be exact, signed a statement distributed through *The Wall Street Journal* titled, “Enforcement Isn’t Enough.”⁵ Invoking the spirit of Ronald Reagan’s “shining city on a hill,” signers including Jack Kemp, Jeanne Kirkpatrick, Grover Norquist, Bill Kristol, Arthur Laffer, Clint Bolick, Martin Anderson, J.C. Watts, and Steve Forbes, wrote,

At this critical moment in the immigration debate [the Senate bill in 2006], conservatives need to examine the role we are playing in the great national issue. In many respects, the way we position ourselves on immigration will determine whether we can retain the mantle of majority leadership. What side of history do conservatives want to be on?

Conservatives have always prided themselves on acknowledging, in the words of John Adams, that “facts are stubborn things.” Well, immigration – both the robust annual flow required to keep our economy growing and the 12 million illegal immigrants already in the country – is a fact of life in the U.S. today. And the only practical way to deal with these stubborn realities is with a comprehensive solution....

Many Utah lawmakers fall into the former camp, the “enforcement first” group of conservatives. For them, the answer to this question – what do we do about immigrants already here illegally? – is simply an extension of their sentiments about federal border policy: remove every internal economic incentive for those people to come to Utah or to stay here – no jobs, no welfare benefits, no reason to be here, no illegal immigrants, problem solved.

How these Utah lawmakers would like to go about implementing enforcement policies was outlined in the initial ver-

sion of SB 81. Among other things this bill, as introduced, would have repealed the nonresident tuition waiver for qualified children of illegal immigrants, removed ineligibility for a host of other benefits in the normal course of getting a college education, punished businessmen who hire illegal immigrants, issued official documentation to prove citizenship, forced state and local governments to verify citizenship and prohibit employing illegal immigrants, created a discriminatory employment practice to discharge a lawful employee if an illegal immigrant remains in employ, required anyone applying for state or local welfare benefits to prove they are a legal citizen, prevented any local government entity from passing a law limiting the ability of government employees to turn in fellow employees thought to be illegal, and required the state Attorney General’s Office to negotiate with the federal government to allow state law enforcement officers to apply federal immigration laws.

That’s what “enforcement-first” looks like in practice in Utah – an uncharacteristically piecemeal, intrusive, government-first approach. It can be argued that such proposals blur the lines of federalism as they seek to foist the federal responsibility for immigration control upon states. While an issue that is certainly fodder for debate, this mongrelizing of the principle of federalism should not be taken lightly and only adds to the perception that this brand of conservative activist cares more about abstract ideals (and making a narrow point) than about real people or practical realities.

Primarily through SB 81, political conservatives in the Utah State Legislature have identified with the “enforcement-first” approach (there are always notable exceptions in such matters). But *political* conservatism, often connected to state Republican politics, is not necessarily the same thing as authentic, philosophical, or intellectual conservatism. In fact, politics is hardly an accurate measurement of anything characteristically authentic. By definition and from inception, *political* means compromised, for good or ill. And however obvious the associated problems are to *political* con-

servatives, or however logical solutions to these problems seem to be for them, for many other equally-thoughtful *philosophical* conservatives this black-and-white approach seems to be ineffective, needlessly divisive, government-driven and, unfortunately, often irrational.

HAVE THE GODS SPOKEN?

While political conservatives of our day have had their say on this matter, any person seeking an authentic conservative opinion would be wise to discover what conservatism's forefathers – Kirk, Nisbet, Meyer, Burnham, Hayek, etc. – have communicated. If we are seeking authenticity, we should go to the source.

For instance, we should review the over-200 issues of *Modern Age*,⁶ the conservative intellectual journal now housed at the Intercollegiate Studies Institute and the publication founded by Russell Kirk in 1957. As it happens, there is not one essay on immigration in the entire collection. Nor are there any writings (books or independent publications) from any of these conservative forefathers specifically addressing the matter of illegal immigration. As conservative scholar Allan C. Carlson explains, "The problem is that immigration into the U.S. was mostly choked off between 1924 and 1965...and so it was a non-issue for Kirk, the early Buckley, Nisbet, etc. I am not sure what [free-market economist Wilhelm] Roepke had to say. I also don't know what they had to say (if anything) when Congress voted to end the old quota system in 1965."⁷

Carlson mentions "the early Buckley." William F. Buckley, Jr. remains the sole exception to this dearth of commentary, and not just any exception. Though Bill Buckley was born in New York City in 1925 he was raised in Mexico, France and England. He learned to speak Spanish and French before he spoke a word of English. His father, William F. Buckley, Sr.,

was born in Washington-on-the-Brazos, Texas, in 1881 and fought the Mexican government at every turn while drilling for oil. In 1921, he was expelled from Mexico for allegedly undermining the Obregon government.

Bill Buckley's tenure as a conservative icon spanned the generations between Russell Kirk and current conservative scholars such as Allan Carlson and Utah's own Bryce Christensen.⁸ As such, Buckley has had many opportunities to speak up. In a recent Newsmax.com article, James H. Walsh

collected the following remarks by Buckley on immigration.⁹ Mr. Walsh writes (referring to Buckley as "WFB"),

"AN IMMIGRANT CAN LIVE IN
FRANCE BUT NOT BECOME A
FRENCHMAN; HE CAN LIVE IN
GERMANY BUT NOT BECOME A
GERMAN; HE CAN LIVE IN JAPAN
BUT NOT BECOME JAPANESE, BUT
ANYONE FROM ANY PART OF THE
WORLD CAN COME TO AMERICA
AND BECOME AN AMERICAN."
— RONALD REAGAN

Commenting on the 2000 Republican Convention, WFB opined that the gathering "made it clear not only the need to commend the Republican Party to the favor of Hispanic voters, but also the evanescence [disappearance] in America of ethnocentrism."

In 2004 WFB wrote, "Beginning in 1965, we simply surrendered on the subject of Western Hemisphere immigration" ...and concluded that no new immigration laws would be able to resolve illegal entries.

He questioned repeatedly the reality and effectiveness of the Employer Sanctions legislation and concluded that deportation of illegal aliens would be "as wrenching as the uprooting of blacks 300 years ago."

WFB held that failure to obey the law must result in defined penalties. He identified the failure of the U.S. congresses from 1965 to the present to enact immigration legislation reflecting U.S. culture, heritage, and values as the cause of the present "immigration morass." Yet William F. Buckley, Jr. offered no simple solution to the illegal aliens crashing U.S. borders

in waves that threaten the downfall of his beloved country. Recognizing the enormity of the problem, he left us with this caution: “Laws attempting to seal the border were in the tradition of King Canute ordering the tide to stop.”

Beyond Buckley, the book *American Conservatism: An Encyclopedia* explains that “immigration has posed special problems for conservatives because it highlights tensions between tradition and freedom. The debate generally turns on whether the nation can successfully transform immigrants through a process of assimilation or whether the sheer number of immigrants disfigures the American culture.”¹⁰ It notes that “there is a strong anti-immigration tradition on the Right...The arguments against immigrants were and remain manifold: anti-Catholicism, theories of racial superiority, fears of Bolshevism, economic concerns about wage depression, and general worries about cultural erosion.”

The book also notes that there is a strong tradition among conservatives in support of immigration “on the grounds that [it] is fundamentally about human rights.” Quoting Ronald Reagan, “An immigrant can live in France but not become a Frenchman; he can live in Germany but not become a German; he can live in Japan but not become Japanese, but anyone from any part of the world can come to America and become an American.”¹¹

That the issue of illegal immigration is causing fractures among conservatives is obvious. That our intellectual forefathers had little to nothing to say about the issue does not help in constructing an authentic conservative opinion. Nor has it stopped all contenders to the throne of intellectual conservatism from voicing authoritative opinions. *National Review's* John Podhoretz decrees, “Debate is essential, not close-minded assertions that there is only one way to think about an issue that is clearly more ambiguous than that. You want a warning label? Here’s a warning label: There is no one *conservative* position on immigration.”¹² (his italics)

On the other hand, Podhoretz’s *NR* colleague, Jonah Goldberg begs to disagree,

He [Podhoretz] says there is no conservative position on immigration. This strikes me as untrue. There are, I believe, some minimal principles all conservatives agree on and I think those who disagree really aren’t conservatives. Conservatives agree that citizenship has a definition and that there are rules, rights and responsibilities if immigrants didn’t come here illegally. Conservatives agree that there is something called American culture (though we debate its adaptability and power to assimilate). Beyond that, I think John’s right to say there’s no single conservative position on immigration *policy*. (his italics) But if you disagree with these principles you’re either simply confused or you’re an adherent of some other orientation or ideology.¹³

In searching for other nuggets of authenticity, the congressional debate over the 1965 immigration bill also can provide an anecdotal, small, glimpse of how at least one prominent *political* conservative leader of the day, Senator Everett Dirksen, addressed this issue. Dirksen, as most people are aware, was a very outspoken conservative – defender of Senator Joseph McCarthy, supporter of Robert A. Taft for president, and most remembered for saying, “A billion here, a billion there, pretty soon, you’re talking about real money.” He also viewed the 1965 immigration bill (sponsored by Senator Edward Kennedy), as he did the 1965 Civil Rights Act, in very human terms.¹⁴

As part of a very lengthy floor speech, Dirksen shared this personal story,

The master of a freighter steamship jumped ship [an illegal immigrant], his own ship, in New York, mingled with the crowd, and finally found his way to Chicago. He eventually came to my hometown.

Nobody paid too much attention to him. He was a very thrifty, able, frugal worker. He got himself a dinner bucket job in a factory and, by dint of sheer diligence and devotion to his job, he finally became one of the top foremen. In a short space of time, he was being invited to come to luncheon clubs and other organizations to give speeches.

Back in those days, or at about that time, I was a district commander in the American Legion, and the Legion post in that area used to invite this man to tell about his war experiences. He had a fabulous record.

This man addressed many of the luncheon clubs. Nobody ever worried about his identity. Nobody cared whether he had a social security number. We took him into the bosom of the municipal family.

One night there was a knock on my door and there he stood. When he came into my study and told me his story, here was a man with broad shoulders, a mature man, weeping like a baby. His problem was that his wife and youngsters were still in the old country and he wanted to get them here. He said, "I will build a new house; I can pay for it in cash. I will buy the finest furniture; I can pay for it in cash. I want my family."

Mr. President, it took me over a year, *sometimes by devious effort*, to work it out. However, I was there the day that that family was reunited, and what a blessed thing it really was."¹⁵ (italics added)

At another point in the same debate he described a situation of Basque immigrant sheepherders who settled in Idaho and praised them as "among the best citizens there," and added, "It was a job to bring them in, but it was a piece of patchwork we accomplished."¹⁶ Immigration laws always have been a "patchwork" and this conservative stal-

wart knew that these laws were about welcoming people of good will to America. He was no Pollyanna. His first congressional committee assignment in 1933 was on the House immigration committee, nine years after Congress voted to significantly restrict immigration. Thirty-two years after manning his post he voted to undo what had been done in 1924. The 1965 Immigration and Naturalization Amendments Act passed the Senate (and ultimately became law) by a vote of 76-18, the nay votes mostly falling on the Southern senators.

Even Ronald Reagan, nearly deified by political and intellectual conservatives alike, signed the 1986 immigration bill, now much-despised by many movement conservatives and talk-radio hosts, and while he had high hopes for equal portions of tough border restrictions, more liberal policies on legal immigration and, horror of horrors, amnesty for immigrants already living here illegally, he clearly embraced the spirit of open immigration. The early Reagan (circa 1952) said,

I have thought of America as a place in the divine scheme of things that was set aside as a promised land...and the price of admission was very simple... *any* place in the world and *any* person from these places; any person with the courage, with the desire to tear up their roots, to strive for freedom, to attempt and dare to live in a strange and foreign place, to travel halfway across the world was welcome here...I believe that God in shedding His grace on this country has always in this divine scheme of things kept an eye on our land and guided it as a promised land for these people.¹⁷ (italics added)

As he left the Oval Office, in his farewell address, he repeated an oft-spoken appeal that marked his presidency,

I've spoken of the shining city all my political life, but I don't know if I ever quite communicated what I

saw when I said it. But in my mind was a tall, proud city built on rocks stronger than oceans, wind-swept, God-blessed, and teeming with people of all kinds living in harmony and peace; a city with free ports that hummed with commerce and creativity. *And if there had to be city walls, the walls had doors and the doors were open to anyone with the will and the heart to get here. That's how I saw it, and see it still.*

And how stands the city on this winter night? More prosperous, more secure, and happier than it was eight years ago...she's still a beacon, *still a magnet* for all who must have freedom, for all the pilgrims from all the lost places who are hurtling through the darkness, toward home.¹⁸ (italics added)

While the public debate over immigration, historically, can fill volumes, there was not much added to it by conservative intellectuals in the formative years of the modern conservative movement. Certainly there is not enough material to indicate an explicit conservative position. Even so, this doesn't mean that nothing was said that can inform our current conversation; nor does it mean that these conservative intellectual leaders didn't expressly address other principles that could be used effectively in any attempt to construct an authentic conservative position.

The fact remains that Utah conservatives have an unavoidable question to answer within an increasingly contentious debate: Is there an authentic conservative policy response to those people already living in Utah illegally? The Sutherland Institute trustees, staff, and colleagues are confident that a reasonable authentic conservative position can be constructed. But to do so rigorously we must first deconstruct what already stands as conventional wisdom about Utah's current "conservative" approach to the matter.

DECONSTRUCTING THE ENFORCEMENT-FIRST APPROACH

Oversimplification of complex issues is a hallmark of strident advocacy. Many of the currently high-profile, anti-immigration advocates are not immune from oversimplification as evidenced by this use of an off-hand remark from the late Milton Friedman, "It's just obvious that you can't have free immigration and a welfare state."¹⁹ Their assumption being that "free," "open," or more liberal "assimilationist" immigration policies are destructive to our American culture and economy and must be reformed. Actually, what should *not* be so obvious for authentic conservatives is why we assume the problem is immigration and not the modern welfare state. If given the choice between banishing our fellow human beings from our communities and dismantling the welfare state, wouldn't every sensible conservative choose the latter policy?

This same oversimplification is at the heart of the "enforcement-first" formulation: what don't we understand about the word "illegal"?

In this spirit, having immigrants here illegally creates a menagerie of social and cultural disincentives prohibiting immigrants' constructive assimilation. Critics have pointed out that modern immigrants create isolated ethnic enclaves detrimental to prosperous and integrated communities, that they are and remain a burdensome underclass, that they dilute American culture with unnecessarily strident multiculturalist attitudes, that they cost taxpayers more in welfare benefits than they return in taxes, that they are not and cannot become good citizens (despite the hopes of both political parties, these people don't vote), that they only simulate but do not deliver strong family values, that they threaten our national sovereignty and, while suppressing real wages, they exploit the worst sort of greedy self-

interest within the hearts (and wallets) of already penny-pinching American businessmen.

These points have been researched, articulated, and advocated by the volume²⁰ and, frankly, there are surface justifications that validate them. Both in theory and in practice positive assimilation into society is extremely difficult for any person, let alone an entire population, who is by definition an elusive criminal. Assimilation is a moving target because it is a function of a social absorption rate measured by degree, any point from “sapped” to “saturated.” Of course, no one really knows where this perfect “social dew point,” or balance, lies between too little immigration and too much. But anti-immigration advocates nationally argue as if they know for certain that the scale has been tipped in the direction of too much, and certainly would not hesitate to say that *illegal* immigration does not help policy makers in exacting an already elusive balance.

In response to this obvious dilemma, these advocates pressure the federal government to react with equal obviousness to seal the border between the United States and Mexico. Voices in their midst even argue for another moratorium, reminiscent of the 40 years between 1924 and 1965, to allow for positive assimilation and thorough absorption. On this point of policy, at the border and centered on *legal* immigration policies, there remains a healthy, if not resolvable, debate among conservatives.

While Utah is certainly in the middle of this real-life drama being played out, for us the contentious debate actually transcends what is happening on America’s southern border. *The debate for Utah remains exclusively an issue centered on those people living, working, and raising their families in our midst.* It is about our neighbors, not south of the border, but now right next door to us – people shop-

ping in our stores, working in our restaurants and on our construction sites, attending our public schools, and, yes, very often finding themselves on our welfare roles and in our jails. They are as human as we are.

This reality – the plusses as well as the minuses – is the essence in constructing an authentic conservative approach to this issue. Reality, not ideology, is what makes the issue of illegal immigration such an ideal opportunity for authentic conservatives to make a constructive difference – we have a clear vision of the kind of healthy society we seek²¹ and we have the experiential knowledge and insight to get us there.

But to get there we must first tear down several ideological obstacles in our way.

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THE NATURE OF NATURALIZATION

The first step in deconstructing the “enforcement-first” approach, on the road to revealing an authentic conservative immigration policy, is to understand the nature and context of our immigration laws.

It is not cliché to say that America is a nation of immigrants. It is a truism. Outside of Native Americans (though including even them in Utah’s Mormon understanding), everyone comes from immigrant stock. While America has been a land of “ordered liberty” it has been an immigrant nation. The very first immigration law, from Massachusetts, required all shipmasters to provide a “bond” to ensure that any passenger brought to the new world would not end up as a public charge. This wise proscription for its day should not mislead us. The inherent policy that has driven any immigration restriction is open immigration. From the colonial period up to 1880, American immigration policy could best be described as “unrestricted admission.”

What is historically, and now somewhat derogatorily, referred to as *nativism* is an implicit acknowledgment that the whole idea of America, the “American ideal,” begins with open immigration. Nativism has been nothing more than a political expression of those immigrants already settled and living here to limit the flow of new immigrants for a variety of reasons, some rational and some not-so-rational.

We can catalogue the history of immigration laws, a history of all sorts of proscriptions, but all of them lead us back to one overriding concept: American immigration policy began with a single presumption – this nation is open to any person of good will. On December 2, 1783, George Washington asserted this point when he wrote, “The bosom of America is open to receive not only the Opulent and respected Stranger, but the oppressed and persecuted of all Nations and Religions; whom we shall welcome to a participation of all our rights and privileges, *if by decency and propriety of conduct they appear to merit the enjoyment.*”²² (italics added)

So central to the very identity of this nation, the U.S. Constitution authorizes Congress to “establish a uniform rule of naturalization”²³ and, when it did, Congress promulgated that aliens who have “resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen....”²⁴ Far more than a mere history lesson, this latter reference points out the obvious policy that people not only lived in the United States prior to becoming citizens, they were *expected* to live here without being citizens. The 1790 law requiring two years of residency was amended in 1795 to five years. Again, more than being viewed as an added burden to hopeful immigrants, this is further proof that living in the United States while not a citizen was far from criminal. By 1798 the *residency* requirement was fourteen years. A new immigrant had to “declare and prove...that he has resided within the United States fourteen years....”²⁵

American immigration laws were not designed, in spirit or letter, to prevent people from coming to the United States.²⁶ Proscriptions on open entry were in place to qualify people of good will and the only way to know if someone was a person of good will or not was to give them the opportunity of proving it by living side-by-side with citizens.

Authentic conservatives should examine what they are “conserving.” Consistent with the historic purpose or intent of naturalization, authentic conservatives are clearly pointed in the direction of conserving the principle of open immigration. This policy is unarguably the spirit and letter of our nation’s founding.

A HUMANE RULE OF LAW

The second step in deconstructing the “enforcement-first” approach, especially in Utah,²⁷ is to clarify what we mean by “the rule of law.” Ignoring for a moment the very real nativistic sentiments that have redirected immigration reforms from its original meaning, the current concern of most Americans about *illegal* immigration is not that we don’t want brown-skinned individuals and their families in our country. Our current concern is an issue of justice and fairness. We simply don’t like people “cheating” our system.

Again, let’s be perfectly clear. In an environment of open immigration, there are no such people as “cheaters.” Restrictive and closed immigration policies create cheaters. This is a very important point in understanding the charge that illegal immigrants, and those conservatives who value assimilation, are violating a cherished rule of law. The desire to come to America, we can and must assume until proven otherwise, is a sincere, heart-felt sentiment to better lives. With all due apologies to “original sinners,” human nature didn’t create cheating; human nature created our fierce instincts for survival and for bettering our circumstances in life.

Yet, when faced with a very similar legal scenario, immigration critics fail to draw any useful comparisons. For instance, a speed limit law is the same genus as an immigration law. Both are positive laws, meaning they are “man-made,” based upon human judgment, and not moral law. It is telling, for purposes of this subject, that when honest, law-abiding people exceed the posted speed limit on any American road or highway they do not feel the need to confess their “sin” to clergy or even turn themselves in to authorities. The law is the law, but such a positive law inherently carries the risk that the posted limit will not reflect human experience or action and, hence, will create law-breakers out of otherwise innocent, law-abiding citizens.

Not one of us who exceed the speed limit would call ourselves “criminals.” Likewise, we can be quite sure that persons entering our country illegally, who are otherwise, law-abiding “people of good will” would not consider themselves to be “criminals” either.

Just as with any violation of our speed limit laws, any violation of federal immigration laws is a denigration of that particular law. No doubt. It is not, however, a denigration of the rule of law. In these cases, it is the poorly-estimated crafting of the law that actually denigrates the rule of law – it ignores or miscalculates actual human experience and fails to anticipate (or even effectively control) individual human action.

Highways, for example, are built to move people in a hurry. A speed limit law is designed, presumably, to move people in a hurry but orderly and safely. For better or worse, individual drivers on our highways ultimately determine their own safety. A law cannot do that. As one law professor explained,

IN AN ENVIRONMENT OF OPEN
IMMIGRATION, THERE ARE NO SUCH
PEOPLE AS “CHEATERS.”

When you get right down to it, the rule of law only exists because enough of us believe in it and insist that everyone, even the non-believers, behave as if it exists. The minute enough of us stop believing, stop insisting that the law protects us all, and that every single one of us is accountable to the law – in that moment, the rule of law will be gone.²⁸

In this sense, the rule of law must be based on an accurate accounting of human nature and actual human experience to maintain its integrity, broad appeal, and nearly universal compliance. The fact that millions of people, both foreign and domestic, don’t seem to have too big of a problem with the violation of current federal immigration laws is the high-sign that law-makers have violated the integrity of the rule of law.

Further evidence of this characteristic in the rule of law is that efforts to assist those persons already here in violation of federal immigration laws are not seen by every American as encouraging lawlessness or even discouraging law-abiding people who have sacrificed much to obey federal immigration laws. No one is saying to those who obey such laws, “go ahead and violate the law because other people do,” any more than we encourage our neighbors to violate speed limit laws when we, individually, exceed the set limits. The rule of law remains intact, both in spirit and letter, up to the point that the set limit feels reasonable to people. If everyone is violating the 55 m.p.h. speed limit, a lasting answer that responds to real human experience would be to increase the speed limit rather than put more police on the highway to capture and convict everyone. This decision is the difference between continuing to live within a rule-of-law framework of ordered liberty and a police state.

We are the ones who have changed the rules of the immigration game, not the tired, poor and huddled masses

yearning to join us. *We* are the ones who have created a broken system that no longer works to accommodate the real-life needs and desires (and timing) of people today wanting to join our way of life. The desires of immigrants, whatever their color or ethnicity, have not changed. Our politics have changed, and repeatedly.

An authentic conservative approach to illegal immigration not only respects the rule of law, it understands its essential nature. It understands that any effective rule of law must insinuate the human experience, it must be humane (absent of ideology) and, at least in America where people are allowed great latitude to “work out their salvation,” it must err on the side of freedom, not punishment.

Authentic conservatives cherish the rule of law. On the other hand, we eschew a police state. We punish when we must, not because we like to or because we can or because it’s easier than being charitable. While a free society requires that *specific* laws be exact, this same free society requires that our general rule of law be characterized by a spirit of patience, fluidity, and transformative processes – it must be characterized by a sense of assimilation where all people are permitted to *become* free, not simply stamped “LEGAL.”

THE POT CALLING THE KETTLE BROWN

The third step in deconstructing the “enforcement-first” approach is to challenge the sweeping claim that immigration is inherently counter-cultural and, hence, destructive to our American way of life. So, what is our American way of life?

At least from a philosophically conservative perspective, especially here in Utah, our American way of life surely includes family formation. We cherish our families. We appreciate the sacrifices that couples make to marry, have children, and stay married. Certainly the citizens of Utah ex-

emplify this way of life. But what about illegal immigrants living here?

- Sixty-seven percent (67%) of all adult Utahns are married; sixty-nine percent (69%) of all adult “Hispanic non-citizens” in Utah are married.²⁹
- The average family size in Utah is 4.18 persons; the average family size in Utah of “Hispanic non-citizens” is 4.67 persons.³⁰
- The divorce rate among all adults in Utah is just over ten percent (10.8%); the divorce rate among all adult “Hispanic non-citizens” is four percent (4%).³¹

But aren’t illegal immigrants free-loaders simply coming here to take advantage of our generous welfare benefits?

- Looking at labor force participation rates in Utah (the “work ethic” factor, or the “laziness index,” depending on your worldview), “Hispanic non-citizens” have the highest rate of work participation, seventy-seven percent (77%); among all Utah adults it is sixty-eight percent (68%).³²

Despite those random emails you get from crazy Aunt Helen about the “brown scourge” consuming federal welfare by the ton, illegal immigrants are not eligible for most federal benefits, except certain emergency services such as in hospitals and child services through public schools.³³ They *cannot* receive food stamps, Supplemental Social Security (SSI), Temporary Assistance for Needy Families (TANF), or Medicaid (except in emergency situations). The 1996 federal welfare reform bill also bars illegal immigrants from receiving most state- and local-funded benefits, including government contracts, licenses, grants, loans, and assistance.³⁴ They *can* receive treatment for emergency conditions, short-term, in-kind emergency disaster relief, immunization against communicable diseases, and private charitable services designated under law.

But aren't most of them are criminals? Well, if they are, they aren't very good at it.

- Between 1995 and 2005, while the Hispanic proportion of Utah's population grew by one-hundred thirty-three percent (133%), the Index Crime Rate fell by thirty-three percent (33%), the Violent Crime Rate fell by thirty-one percent (31%), and the Property Crime Rate fell thirty-three percent (33%).³⁵
- Likewise, between 2000 and 2005, while the "Hispanic non-citizens" proportion of the population grew by fifty-two percent (52%), the Index Crime Rate fell by eight percent (8%), the Violent Crime Rate fell by eleven percent (11%), and the Property Crime Rate fell by eight percent (8%).³⁶

There is no question that status as an "illegal" person, even in the kindest of communities, has its adverse affects on human capacity, productivity, and success. While social characteristics such as family formation and crime are matters of personal choice and responsibility, wholly in the hands and control of these immigrants, economic characteristics such as employment are largely matters external to the individual. Illegal immigrants are typically lower-skilled workers with limited access to the job market. It is not surprising that unemployment is higher for illegal immigrants in Utah.³⁷ Limited work-scope plus limited access equals fewer work opportunities.

There is a third sphere of impact among illegal immigrants, neither social nor economic but clearly influencing both: education. Certainly, many more Hispanic students in Utah's public schools fail than the norm, and we must assume that some of them, perhaps many, are the children of illegal immigrants. Approximately forty-three percent (43%) of these students fail to graduate Utah high schools

with a diploma. Of course these failings *impact* our culture (and economy), but they also *reflect* our culture – specifically our public school culture. From a philosophically conservative perspective, the public school system is precisely the American institution created to help disadvantaged and dissimilated students such as these. And yet it is failing them. While there is a growing discontent and effort among concerned Utahns to address this issue,³⁸ it is unclear which is the bigger problem – the obvious educational disadvantage of children whose families are pronounced "illegal" or an American institution that has had 200 years to evolve and still cannot manage to help those it was specifically designed to help?

For authentic conservatives, not only must we discern the sort of culture worth conserving, we must not discriminate among those who violate our cultural norms. If being an illegal immigrant on welfare is detrimental to society, so too must it be for any citizen. If committing a crime is a serious character flaw for an illegal immigrant, so too must it be for any citizen. If having babies out-of-wedlock is a sign of moral turpitude for an illegal immigrant, so too must it be for any citizen. In other words, being an illegal immigrant in and of itself does not violate any cultural norm. And yet some immigration critics still cannot seem to draw this distinction.

Here is an example of this discriminatory logic, in this case the opening sentence of an essay from noted anti-immigration "conservative" Heather Mac Donald,

Some of the most violent criminals at large today are illegal aliens.³⁹

Okay, debate over! Except that most of our violent criminals are young white and black males *who are also citizens*.

DESPITE THOSE RANDOM EMAILS YOU GET FROM CRAZY AUNT HELEN ABOUT THE "BROWN SCOURGE" CONSUMING FEDERAL WELFARE BY THE TON, ILLEGAL IMMIGRANTS ARE NOT ELIGIBLE FOR MOST FEDERAL BENEFITS.

Is her point to suggest that somehow illegal immigrants exceed the norm? Or is it, simply, that she doesn't like illegal immigrants?

It is this sort of illogic from otherwise seemingly intelligent people that draws charges of nativism. An "enforcement-first" approach seems to exacerbate this negative perception as it seeks to impose a measure of human expectation upon immigrants that it cannot safely ensure for its own native people. It incessantly mischaracterizes all illegal immigrants as freeloaders whose sole motive is to live as a *dependent* people under the comfortable blanket of America's modern welfare state. And yet it has no answer as to why its own people (citizens) should be permitted to so burden society – an especially uncomfortable silence given that, in Friedman's dichotomy between free immigration and free welfare, its adherents choose to fight people struggling for a better life while conspicuously avoiding any mention of reforming the very creature they claim serves as a magnet for these "free-loading" immigrants.

So what about the cost of illegal immigration? That's the wrong question. The right question for conservatives ought to focus on the overall costs and entitlement-thinking of the welfare state as applied to *all* people. There is an appropriate, but grossly overemphasized, nexus being drawn between illegal immigrants and rising welfare costs. The more appropriate nexus for authentic conservatives to draw would be between *any person* and the nearly unconditional entitlement laws that permit any citizen to join the legions of dependency without first exhausting every corner of civil society to find lasting community solutions to their problems. A careful look at demographic data would suggest that the generation of baby boomers now entering retirement will do more to strain the entitlement system than will the population of illegal immigrants. Who, then, is the greater danger to society by this yardstick?

In challenging the humanity of these mischaracterizations, what else is a rational person to think when activists choose to stigmatize an entire population rather than put their collective energies into reclaiming an entire nation in which everyone can play a part? Instead, these activists roll out a long list of horrors to justify their universal condemnation of an entire people and then display draconian attitudes (if not policies) to relieve American society of this plague.

On the list of "cultures" that authentic conservatives should seek to conserve, this illogical, irrational, objectifying nativistic expression should never be found. We should much prefer to preserve the sentiments expressed on our Statue of Liberty and eschew fear, ignorance, and prejudice.

SHEDDING THE ONUS, SEIZING THE OPPORTUNITY

Herein lies the crux of the disagreement between authentic conservatives and anti-immigration activists: authentic conservatives view new immigrants (*preferably legal* but necessarily including illegal) as an opportunity to reclaim and renew vital American institutions, while anti-immigration activists view new immigrants (*always illegal* but, for some, surprisingly including legal) as an onus, an insurmountable burden, and an ill-intentioned threat to destroy our American way of life.

Authentic conservatives are left with the work of offering constructive solutions, and the policy context for these recommendations will necessarily focus on *the political economy of illegal immigration* and the new opportunities it creates for Americans to reclaim freedoms lost, reacclimate ourselves to limited government, and restore our weakened, but vital, institutions of civil society.

An authentic conservative view of illegal immigration for Utah transcends nativism, looks to the institutions of civil

society to solve community problems and reclaim crumbling lives, celebrates free markets within a social framework, and accepts a realistic perspective of human nature, its universal value, and its ultimate redemption. This broadly integrated and practical view is what will eventually put this pressing issue quietly and happily behind us in Utah.

An authentic conservative approach to illegal immigration would conserve a person's humanity and anything good that person brings to our community. It also would mitigate anything bad that people bring to our community. It would turn onus into opportunity.

In seeking opportunities to constructively assimilate illegal immigrants into Utah, we face a real paradox. The federal government has passed laws creating illegal immigrants and, yet, has not found a reasonable way to stop illegal immigration. It has created a criminal that it has allowed to wander freely within its borders.

The "enforcement-first" approach is to collapse this paradox by having Utahns do what the federal government has not been able to do. In other words, these advocates want Utahns to do within our local communities, with all of their social, legal, and economic complexities, what the federal government has been unable (or unwilling) to do at the border where the issues are very black and white.

On the other hand, an authentic conservative approach would discourage Utah (and any state) from assuming this federal role. Not only would this path violate principles of federalism, it would aggravate existing complexities created by the federal paradox. If authentic conservatism would build community, this other path would destroy it. If authentic conservatism would promote free markets, this other path would encourage government intrusions into the marketplace. If authentic

conservatism would call for personal responsibility, this other path would call on government to expand its reach and influence.

IT'S TIME TO DO THE RIGHT THING

The Sutherland Institute is guided by seven Governing Principles that inform our brand of conservatism:

- Personal Responsibility as the basis of self-government
- Family as the fundamental unit of society
- Private Property as the cornerstone of economic freedom
- Religion as the moral compass of human progress
- Charity as the wellspring of a caring community
- Free Markets as the engine of economic prosperity
- Limited Government as the essence of good government

We attempt to conform to what we understand to be historical, or authentic, conservatism. Our view of immigration complements our Mission Statement⁴⁰ and reflects our Governing Principles. In terms of policy focus, it also examines what Utahns actually can do about illegal immigration already in our midst.

We conclude that there is nothing extraordinary about illegal immigrants, who are otherwise law-abiding members of our community. They are as real as every other

Utahn in their daily lives and aspirations for their families. While we look forward to more cost-benefit analyses of the economic impact of this population in our state (to further help, not hinder, their progress), we confidently recommend that Utah public policy should seek to fully assimilate otherwise law-abiding illegal immigrants already residing here.

WE SHOULD MUCH PREFER TO
PRESERVE THE SENTIMENTS
EXPRESSED ON OUR STATUE
OF LIBERTY AND ESCHEW FEAR,
IGNORANCE, AND PREJUDICE.

Local solutions to this problem must acknowledge and then accept the federal paradox that, unfortunately, has been created. Further, our local solutions cannot be constrained by the paradox. That is, Utah must be unencumbered in our ability to address this issue for our own best interests. In some minor ways, Utahns have already worked to transcend the paradox. We have given certain immigrants in-state tuition rates for higher education and we have carved out a unique driver's license. In doing so, we have tip-toed around it. We are rightly concerned about following federal laws AND we are rightly outraged that the federal government has allowed these new neighbors to come to us under these unfortunate and trying circumstances. The paradox already has given implicit permission for Utah policy makers to become innovative in turning onus into opportunity.

Seeking to conserve 1) an original vision of immigration, 2) a humane rule of law, and 3) an uplifting and healthy culture for Utah, the Sutherland Institute offers several policy recommendations to address our new neighbors who have immigrated illegally:

1. Request a federal waiver permitting Utahns to explicitly address illegal immigration in a manner that preserves families, builds communities, and creates productive citizens.
2. Create an in-state work permit.
3. Focus public education on our most needy students.
4. Establish a broad network of authentic charity care clinics.
5. Coordinate private outreach to strengthen faith and family relationships.
6. Coordinate public/private efforts to teach the full scope of citizenship.
7. Lobby our state's congressional delegation to support more humane *legal* immigration policies.

Request a federal waiver permitting Utahns to explicitly address illegal immigration in a manner that preserves families, builds communities, and creates productive citizens.

While Congress musters the moral courage to address legal immigration and policies directed at controlling our sovereign borders, the Utah State Legislature, local elected officials, and community leaders should request a federal waiver permitting Utah to take matters related to assimilation into our own hands. A federal waiver authorizing efforts to assimilate these immigrants does not violate the principle of federalism and still allows us to make the best of an unfortunate circumstance.

In doing so, Utah could become a model for other states to act wisely and humanely, preserving the best interests of the state, in addressing illegal immigrants already living among us.

Create an in-state work permit.

A compelling, though disingenuous, argument from anti-immigration advocates has been that despite the limited extension of in-state tuition rates for higher education to the children of illegal immigrants, these students still face an insurmountable task of finding legal employment. Opponents add that this is a cruel promise of a better life.

In our opinion, the answer isn't to build walls but to tear them down. Rather than dashing anyone's hopes we recommend an obvious solution: offer an in-state work permit for illegal immigrants residing in Utah.

This new permit would encourage these residents to safely and productively assimilate into Utah's economy. It would encourage personal responsibility as they struggle like the

rest of us to make a better life for their families. And it would remove any extra burdens from Utah's employers who are reluctantly being deputized to expose such residents and then penalized for simply going about their business when they don't. A new in-state work permit would allow employers to be involved constructively in the normal workday lives of these struggling residents, instead of becoming an additionally destructive influence in their lives. In other words, when the choice is clearly in our hands, why would we choose to turn Utah's employers into potential criminals (or deputize them as additional law enforcement officers), rather than helping them, to help us, expand economic opportunity for all of our neighbors?

A new in-state work permit would allow currently-marginalized illegal immigrants to constructively assimilate into our communities. This policy momentum would drive people to the surface of society, not underground, and would enhance their abilities to add value to our state.

Focus public education on our most needy students.

We are rightly concerned about the abnormally poor academic performance in our Hispanic communities. There is no reason to doubt that many of these struggling students come from the homes of illegal immigrants. An authentic conservative approach would be to create innovative education reforms that focus on their success.

Sutherland's support for innovative public school reform should come as no surprise. What surprises those of us who work here is the incongruity between the ideals championed by public school advocates and the lack of focused attention on the system's most struggling students. It is time to align ideal with reality. Our limited tax dollars and educational services ought to flow to the most needy students in the public school system and, among many other innovative reforms, we should focus on performance and differential pay enhancements for the best teachers and

principals who choose to help these struggling students and their schools perform better.

This new focus also means, for the rest of the public school population, that efforts should be made to unburden the system wherever possible. It will do no good to shift focus and resources to these struggling students if taxpayers and parents of *successful* students whine about it. A "public" school system is either about helping our neighbors in need (a true safety net) or it is about endlessly pitting the poor against the rich amidst the politics of school funding in the name of "equity." If it's the latter, the poor will always lose.

Wonderful school programs such as the Dual Immersion Charter School and Horizonte Instruction and Training Center (Salt Lake School District's fourth high school) can be modeled and perfected, along with many new and innovative approaches, to reach these struggling students.

Establish a broad network of authentic charity care clinics.

We are rightly concerned about the growing problem of affordable and available health care for the poorest among us. Certainly the families of illegal immigrants would be included in this category. An authentic conservative approach would be to expand private charity care clinics. As we do so, we also reap the social benefits of community involvement in their lives.

Typically, illegal immigrants end up in hospital emergency rooms, the most expensive point in the health care system. Systemic health care costs could be reduced dramatically through the creation of a state-wide network of authentic charity care clinics – not only serving the families of illegal immigrants but, more so, our indigent and needy uninsured populations. The few existing clinics in Utah, such as Maliheh Free Clinic and Shriners Hospital,

serve their clients well and at much lower costs than fee-for-service, for-profit, and even not-for-profit (insurance-driven) health care providers.

The policy is straight-forward: let the market address those who can pay and let charity care address those who can't. Conversely, let industry people make money on patients and clients who can pay and let them save money on those who can't pay by supporting charity care clinics. While clinics providing basic care would not solve every health care need, they certainly would reduce costs and unburden Utah's health care providers – and an added bonus is that authentic charity care builds community as registered health care providers and private community groups volunteer to help in these clinics, and the rest of us generously support their efforts.

Coordinate private outreach to strengthen faith and family relationships.

The life of an illegal immigrant family is a story of remarkable perseverance. At a time when even many citizen-families often struggle in their marriages and with their troubled children, imagine the stress and strain placed on the families of illegal immigrants. The difference between citizen-families and illegal immigrant families is often the network of support that surrounds each. In the case of illegal immigrant families, the reality is that they often do not have that extra layer of familial or community support.

Most illegal immigrant families in Utah are Hispanic families. As we have mentioned, they live a family culture that has become a central part of Utah's historic identity. But even the strongest families can have their problems.

We are rightly concerned about the breakdown of *all* Utah families and the resulting social and economic costs rain-

ing down upon taxpayers and tax-funded institutions. We don't give up on citizen-families when they fall into disarray and we shouldn't immediately assign Hispanic families to the heap-bin of opportunities lost. The same institutions of civil society – religions, voluntary associations, and private charities specifically – that have supported citizen-families should be called upon and mustered to become integral in the lives of immigrant families when needed.

THE LIFE OF AN ILLEGAL IMMIGRANT FAMILY IS A STORY OF REMARKABLE PERSEVERANCE.

Both the Church of Jesus Christ of Latter-day Saints and the Catholic Church in Utah are committed to assisting these neighbors in need. But much more can be done. Furthermore, much still needs to be done to coordinate efforts among many non-religious Hispanic immigrant families in Utah.

In policy terms, we must get away from the "income solves everything" model of assisting people. Strong family structure – with the support of extended family, neighborhood solidarity, and religious spiritual counseling – will save more families from poverty, violence, academic failure, social dysfunction, and personal unhappiness than any monetary hand-out or government entitlement.

To anti-immigration advocates who chide Hispanic and illegal immigrant families for any shortcomings or failures, helping these families privately (without government intrusions) will move them in the right direction. The answer is not to point a finger, but to extend a helping hand.

Coordinate public/private efforts to teach the full scope of citizenship.

The spirit of America's immigration laws has been welcoming. They have required immigrants to physically *reside* in the United States before becoming an American citizen. While thoroughly unintended in terms of federal policies

and laws to the contrary, Utah's immigrant population has been residing along side our citizens for years. And so we ask, why aren't we helping them *become* citizens? Just because they aren't doesn't mean they can't be treated that way or held up to citizen-like expectations.

Through public/private efforts Utahns could organize numerous civic opportunities to educate and train illegal immigrants in the meaning of citizenship. They are here – we might as well help them to understand what it means to be an American. Civic and fraternal groups that have been gentrifying and, sadly, dying off (groups such as the Lion's Club or the Rotary Club) could play a huge role in this effort and rejuvenate their ranks in the process. Not to mention that thriving community groups such as the PTA could play a large role as well.

The State of Utah has a wonderful, but under-utilized, character and civics education program that could serve as a model for such programs. But the point is that we should try – we (citizens) deserve this neighborly respect as do our immigrant neighbors. This sort of effort is assimilation at its best.

Lobby our state's congressional delegation to support more humane legal immigration policies.

Finally, but not least, we recognize that *legal* immigration policy – policy at our borders – is a matter entirely for the federal government. As we have written here, if our immigration policies are being ignored without regard for the law, perhaps our federal representatives ought to reevaluate the substance of those laws. As a federal matter we should call on our federal representatives – our congressmen and senators – to courageously engage this difficult issue.

A comprehensive approach to legal immigration, not simply an "enforcement-first" approach to illegal immigration, is what is needed. Utah's federal representatives should be expected to put their full weight of office behind immigration reform. It is at the federal level that border security should be addressed, where immigrant-worker programs should be enhanced, and where federal waivers should be approved allowing states such as Utah to accomplish the harder work of constructive assimilation.

CONCLUSION

In each of these particulars, the "enforcement-first" approach is in intellectual retreat. Its only answer is to continue to marginalize a community of people that will not go away.

Authentic conservatism will strive to uplift struggling neighbors and make good people better. It will seek solutions to their problems that promote civil society (i.e. private initiative) and prevent further expansion of needless government intrusions into all of our lives. The problem of illegal immigration is an opportunity for Utahns to return to our roots where outcasts among us are welcomed and encouraged to become a constructive part of our society.

For much too long this issue has been co-opted by "enforcement-first" advocates who claim to represent authentic conservative thought, or who get upset when their politics are questioned. There is nothing conservative about the "enforcement-first" approach to immigrants already living here illegally. It is time for authentic conservatives to step forward and accept responsibility to address this issue in principled terms, as opportunity not onus.

LEGAL IMMIGRATION POLICY IS A MATTER ENTIRELY FOR THE FEDERAL GOVERNMENT.

ENDNOTES

1. Perhaps the best (or worst) example of this contention among conservatives has been displayed in an ongoing argument between Hispanic, conservative activist Linda Chavez and a host of conservative pundits writing for *National Review Online*. See Linda Chavez, "Latino Fear and Loathing," *Townhall.com*, May 25, 2007 and Ms. Chavez again at "Latino Fear and Loathing, Part II," *Jewish World Review*, June 1, 2007; see also, Linda Chavez, "The Company You Keep," *National Review Online*, June 11, 2007 and an *National Review Online* Symposium, "Re: The Company You Keep," *National Review Online*, June 12, 2007.
2. Even among Sutherland Institute trustees, staff, and associates this matter has been vigorously debated. While the vast majority of the "team" endorses the approach in this essay, there are always differences of opinion about specifics or minutia, and those differing opinions are valued and respected. To a large degree, this ability to dialogue civilly and constructively, and still disagree at the end of the day and remain valued colleagues, is a hallmark of the Sutherland brand.
3. *National Review Online* editors, "Enforcement First: The right way to reform immigration," *National Review Online*, June 19, 2006.
4. *Ibid.*
5. *The Wall Street Journal* editors, "Enforcement Isn't Enough," *The Wall Street Journal*, July 10, 2006.
6. All back issues of *Modern Age* can be found at www.isi.org.
7. Personal email to Paul T. Mero, April 10, 2008.
8. Bryce Christensen teaches English at Southern Utah University in Cedar City, Utah. He is the author of many conservative essays including "Confronting the Family Implications of the Immigration Debate: Remembering the Laws of Man Y Las Leyes De La Naturaleza," January 18, 2007, <http://www.sutherlandinstitute.org/uploads/confrontingthefamily.pdf>, with reprint permission from The Howard Center for Family, Religion, and Society, 2006.
9. James H. Walsh, "Buckley and the Immigration Morass," *Newsmax.com*, March 17, 2008.
10. Bruce Frohnen, Jeremy Beer and Jeffrey O. Nelson, "Immigration," *American Conservatism: An Encyclopedia*, ISI Books, Wilmington, Delaware, 2006, pg. 422.
11. *Ibid.* pg. 423.
12. John Podhoretz, *National Review Online*, January 16, 2007.
13. *Ibid.*
14. As Senate Majority Leader, Dirksen helped to break cloture on the 1965 Civil Rights Act with these powerful words, "The time has come for equality of opportunity in sharing of government, in education, and in employment. It must not be stayed or denied." Wikipedia page on Everett Dirksen.
15. Remarks by Senator Everett Dirksen, *Congressional Record*, September 22, 1965, pg. 24762.
16. *Ibid.* pg. 24763.
17. Lou Cannon, *Governor Reagan: His Rise to Power*, Public Affairs Books, New York, NY, pg. 119.
18. President Ronald Reagan's farewell address, January 11, 1989, broadcast at 9:02 pm (EST) from the Oval Office at the White House.
19. Heather Mac Donald, Victor Davis Hanson, Steven Malanga, *The Immigration Solution: A Better Plan Than Today's*, Ivan R. Dee/Chicago, 2007, pg. 32.
20. See the research of organizations such as the Center for Immigration Studies, www.cis.org.
21. In testimony before the Senate Government Operations and Political Subdivisions Standing Committee, February 13, 2008, Sutherland Institute President Paul T. Mero said, "I have to tell you, as someone who quite often gets described as a leading conservative in this state, for me, this issue boils down to a matter of what kind of society I want to live in – do I want to live in a society that feeds off of distrust where neighbor spies on neighbor, or where our businessmen are deputized to do the work of federal law enforcement officials? Or do I want to live in a society that has the wisdom to differentiate between perceived criminals and real ones; a society that welcomes people of good

will or one that shuns them; or a society that believes in community solutions driven by civil society versus solutions that only demand more government intrusions into our lives. These are conservative issues.”

22. Michael Lemay and Elliott Robert Barkan, eds., *U.S. Immigration and Naturalization Laws and Issues: A Documentary History*, Greenwood Press, Connecticut, 1999, pg. 10.
23. Article 1, Section 8, Clause 4.
24. An Act to Establish a Uniform Rule of Naturalization, March 26, 1790.
25. Act of June 18, 1798, Amends Naturalization Act of 1795.
26. Anti-immigration advocates can argue that the history of immigration laws is largely a history of proscription. Actually, proscriptions show deference to open immigration. Each proscription (restriction upon open immigration policy) necessarily has been qualified or defended on its rational merits. For instance, proscriptions regarding insane or sick people are reasonably rational and were adopted early in American history. Other proscriptions were passed in times of crisis such as war. In hindsight, those proscriptions are now seen as irrational and motivated by fear or ignorance, if not bigotry or racism. If the goal of our immigration laws truly were to keep people out, such distinctions would be irrelevant. That we consciously draw these distinctions to this day is a testament to our adherence to the principle of open immigration.
27. Utah is comprised nearly two-thirds of Latter-day Saints. For faithful members of the Church of Jesus Christ of Latter-day Saints the 12th Article of Faith has special meaning. Our history relies on a steady and just rule of law. We do believe in “obeying, honoring, and sustaining the law.” For many faithful Saints the issue of illegal immigration has put these words to the test. The word alone, illegal, denotes an obvious status to people who come to the United States in violation of federal immigration laws.

Under heavy “legal” persecution, Brigham Young instructed the Saints to understand that some laws are unjust because they do not reflect either God’s law, our innate human desires to better our situations, or plain human experience. To the point, President Young never taught the Saints to violate a *humane* rule of law. On the contrary, he taught them to establish such law. Notwithstanding that the Saints were the recipients of legal brutality, they were always instructed to obey the law – humane and just laws.

Yes, Saints are taught today to obey the law of the land in which they live – even in countries not as free as the United States of America. We also are taught to help establish the law. Faithful Saints will work tirelessly to establish a humane rule of law wherever they reside.

Two key guideposts should help any Latter-day Saint who struggles over how to interact with their new neighbors now living here in violation of federal immigration law. First, they should know that this violation alone does not preclude any of these people from being baptized, having worthy males receive the priesthood, or receiving temple blessings. Second, on a personal level, if they consider themselves to be law-abiding Americans, they should check their consciences and ask themselves, if illegal immigrants are truly “criminals,” why, then, don’t they turn their neighbor over to federal immigration officers? Why do they continue to help them? Why do they continue to serve them as a home or visiting teacher? Why do LDS bishops serve them and assist them just as they would any other member of their wards? The reason is because these people are children of God and, let’s stress this point, they are not “criminals” or “unworthy” in the eyes of God or His servants on this basis of “status” alone.

28. Michael Mullane, “The Rule of Law,” a *This I Believe* essay on National Public Radio, June 5, 2006; <http://www.npr.org/templates/story/story.php?storyId=5442573>

29. 2006 American Community Survey, U.S. Census Bureau.
30. Ibid.
31. Ibid.
32. Ibid.
33. Wasem, Ruth Ellen, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, Congressional Research Service: Washington, D.C., January 19, 2007.
34. Public Law 104-193.
35. U.S. Census Bureau Data and the Utah Commission on Criminal and Juvenile Justice. All crime rates are number of crimes per 100,000 population.
36. Ibid.
37. 2006 American Community Survey, U.S. Census Bureau; percentage of all adult Utahns unemployed is 3.5% and percentage of all adult Utahns in the category of "Hispanic non-citizens" is 6.5% (a natural unemployment rate is approximately 4%).
38. A group of Utahns, including the author of this essay, have combined to form The Jerushon Project to uncover and discover effective ways to increase the educational success of Utah's Hispanic community.
39. Ibid. *The Immigration Solution*, pg. 75.
40. "The Sutherland Institute is a conservative public policy think tank committed to shaping Utah law and policy based on a core set of governing principles. We strive to make Utah an example of good government for the rest of the nation and a great place to live, work, and raise a family."



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