

Should Local Police Enforce Federal Immigration Laws?

Comparing Canadian, Mexican and U.S. Policies

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Staff Photographer/Reuters

Mounted surveillance on the Arizona border with Mexico.

National governments around the world claim sole authority to make immigration policy, but it is more difficult to enforce those rules as economies globalize, increasing the number of visitors, transnational workers and temporary residents. The September 11, 2001 terrorist attack on the World Trade Center has put additional pressure on national governments to deal with inefficiencies in their systems of control. One attractive option is to devolve enforcement authority to the local level, inviting municipalities to assist in the effort to remove unauthorized immigrants.

Devolution of federal enforcement authority to the local level creates an unprecedented opportunity for localities to shape immigration policy toward their own needs. The question is: How will localities respond to this opportunity? What

are local interests with respect to immigration, and how capable are cities of managing these responsibilities? Local engagement in immigration control raises questions, not just about local interests and capacities, but about justice. What level of local engagement is appropriate in light of the basic purposes of city governments and their duties to residents?

Cities ambitious for growth and development face an interesting dilemma. As they compete with each other to attract capital investment, they must inevitably open their doors to foreigners. They want to draw in headquarters of multinational companies, foreign investors and a highly skilled workforce, all of which require cultivation of cosmopolitan values and flexibility. Rapid growth also requires workers who will accept low pay and insecure working conditions, which necessitates easy immigration rules.

These requirements may not jibe with national migration policy or local public opinion. The issue is especially contentious because tightening or loosening restrictions on

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unauthorized work has implications for the wages and working conditions of established citizens, and for the racial and ethnic composition of cities. Cities, in short, are constrained by:

- a) National laws setting immigration levels and status requirements;
- b) Internal tensions between workers and employers; and
- c) Internal tensions over racial and ethnic change.

How do these issues work out in practice? To what extent is power-sharing in immigration enforcement already a reality? This article considers the cases of Canada, Mexico, and the United States, the three neighboring nations that have committed themselves to free trade and investment under the North American Free Trade Agreement (NAFTA). These nations are similar, not just in their desire to increase trade and investment in their economies, but also in some important political respects. They are all constitutional republics, with federal systems of government. Their constitutions protect the civil rights of all inhabitants, not just citizens. There are nevertheless many important differences in the organization of domestic affairs and in the meaning of federalism within each nation. These differences have implications for how each of them confronts unauthorized immigration.

DIFFERENCES IN APPROACHES TO IMMIGRATION IN CANADA AND MEXICO

Local authority over immigration enforcement is an established and accepted reality in both Canada and Mexico. The role of local police is quite different in the two, however. The reasons begin with profound differences between the two nations in legal immigration policy. Canada, unlike Mexico, has embraced immigration as a key to its development. National leaders constantly reinforce the idea that immigration from around the world links Canada to the global economy and increases its competitiveness. The emphasis is on permanent immigration, though temporary workers are a part of the mix. Canada encourages legal residents to become citizens through rapid naturalization procedures and investment in English language classes. The national policy of multi-culturalism discourages xenophobia in the media schools. Foreign-born voters help make politicians sensitive to the needs of immigrants. Canada has developed an elaborate regulatory structure of immigration targets, which it adjusts

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yearly to accommodate economic changes, such as the need for more construction workers in the oil fields of Alberta. It allows localities to admit additional immigrant workers for specific jobs under its Provincial Nominee program.

Mexico has no immigration goals or quotas and no messages coming from authorities about the desirability of immigration for economic growth. Immigrants are welcome, but not sought after. Government does not take an active role in their integration into the local community. Instead, the preoccupation is with keeping skilled young people and improving working conditions for the domestic work force. There is some concern with protecting the basic human rights of immigrants and transients, but the major focus of these policies is on citizens.

In their different ways, both Mexico and Canada are seeking to protect themselves from the potentially pernicious effects of the large, dynamic U.S. economy. Canadians can easily identify with Porfirio Díaz's famous remark, "Poor Mexico, so far from God and so close to the United States!"

Unauthorized immigration is considered a problem in both Canada and Mexico, and both countries, at the national level, have mechanisms to deal with it. A person without status in Canada or Mexico can apply for regularization without risk of detention and immediate deportation. The process in both nations can be lengthy, with significant administrative discretionality, which can be arbitrary or abused by officials. But, significantly, both countries recognize the reality of unauthorized immigration and provide for regularization.

LOCAL POLICE AND UNAUTHORIZED IMMIGRATION IN CANADA

The Canadian policy of rapid growth through relatively easy legal immigration means that there is little compassion or concern for those who enter the country illegally. The prevailing view is that it is so easy to come in legally, why are you here illegally? This is true at the local level, even in rapidly

growing cities that need more workers than can come in legally. Vancouver, for example, has a construction boom associated with the 2010 Winter Olympics and an acute need for workers. Unauthorized immigrants can find jobs there, but they risk deportation if they come to the attention of local police. Vancouver police readily and enthusiastically assist in immigration control by checking legal status and notifying federal authorities. This is relatively easy because local police officers have computers in their cars that tell them if a person has an outstanding warrant for overstaying a visa or failing to report to immigration authorities. Anyone who cannot produce papers indicating legal status will be ordered to do so at a federal immigration office, and if he or she fails to report, an arrest warrant will be issued.

Racial profiling is an accepted practice to detect unauthorized immigrants. A person who speaks with an accent or “looks foreign” may be asked to prove their right to be in the country, even if they have no connection with criminal activity. Requesting directions or complaining to the police, for example, can prompt an inquiry about immigration status. This policy also prevails, not surprisingly, with the (federal) Royal Canadian Mounted Police, who serve as local peace officers in smaller towns and cities throughout Canada.

This locally enforced policy has important implications for those attracted to Canada by job opportunities. They can find work because employers are not afraid to hire them on a cash basis. Canada’s immigration authorities and police protect employers by not investigating and fining companies that hire people without work permits. Unauthorized immigrants, however, are considered expendable. They must avoid the attention of local police in order to remain. To the extent that they stand out from local populations because of language, dress or skin-color differences, they are especially vulnerable to police questioning and subsequent deportation actions.

LOCAL POLICE AND UNAUTHORIZED IMMIGRATION IN MEXICO

Unauthorized immigrants must also avoid the local police in Mexico, but for different reasons. Local and state-level police are to be feared for their actions outside legal bounds, not for their authority within those bounds. National immigration law in Mexico distinguishes between the federal police, who have authority to assist in the control of unauthorized

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immigration, and state and local police, who have no such authority unless under specific orders from federal authorities to assist in particular enforcement actions. Mexico’s National Human Rights Commission drew attention to the importance of maintaining this distinction in its 2005 report.

Nevertheless, persons suspected of being in the country without authorization are often targeted by local police for extortion, abuse and detention. The lack of controls on local police and the vulnerability of these immigrants create tempting opportunities for exploitation, and there is no consistent, countervailing disapproving message from local or federal authorities.

An interesting exception to this general rule of official disinterest and toleration of police misconduct regarding unauthorized immigrants is the mayor of Ecatepec, a city of about three million residents that is part of the huge metropolitan area of Mexico City. Mayor José Luis Gutiérrez Cureño has proclaimed that Ecatepec will be a sanctuary for immigrants in transit to the United States, and presumably, for those deciding to settle in the city. He has ordered local police forces not to participate in federal immigration enforcement and has opened local facilities, including the hospital, to serve unauthorized immigrants on humanitarian grounds.

THE UNITED STATES: A MIXED CASE

The United States is somewhere in between its two neighbors in its attitude toward immigration. The U.S. is known as a country of immigrants, and it is, statistically speaking. It has an active refugee policy and about 14 percent of the nation is foreign born. This compares with 20 percent in Canada and less than 12 percent in Mexico. Employment opportunities for both legal and illegal immigrants abound in the U.S., thanks to a strong economy and a relatively lax approach to enforcing hiring rules against employers. The federal emphasis has been, and remains, on border control,

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not on federal policing of unauthorized immigrants who have already settled in the country. But public opinion has always been mixed about the desirability of immigration, which has led to occasional drastic shifts in policy. As immigration has increased in recent years, so have anxieties about the government's capacity to control the flow of new residents. The presence of about 12 million unauthorized immigrants and the rate of unauthorized, virtually uncontrolled immigration from Mexico and Latin America have drawn particular attention. The terrorist attack on the World Trade Center has helped to make border control a political priority. The United States is at a policy crossroads. The U.S. tradition of direct legislative control over immigration policy tends to discourage a coherent approach to either legal or illegal immigration. Yet, the absence of a flexible, rational, legal immigration policy encourages (and helps to legitimize) unauthorized immigration. Current prospects for comprehensive immigration reform are bleak.

Into this policy void have stepped states and localities passing local ordinances to discourage unauthorized residents from settling in their areas. Many of these laws require proof of citizenship for jobs, social services, housing and schooling. Trespassing laws are being developed to control day-labor sites, and some jurisdictions are placing restrictions on bail and other rights of the criminally accused. The number of state laws enacted in 2007 (240) was nearly triple the number enacted the previous year. State legislators in 46 of the 50 states considered immigration bills. Law enforcement was a major topic, not far behind employment and drivers licenses.¹

LOCAL IMMIGRATION POLICING IN THE UNITED STATES

Some cities are attempting to engage their police departments in removing unauthorized immigrants through closer links with federal immigration authorities. Most departments

already report those incarcerated for serious violations to immigration authorities, but there is pressure for more comprehensive efforts. The Arizona state legislature, for example, is currently considering a proposal to require police to inquire about immigration status at every opportunity. A few local law-enforcement organizations have taken this initiative themselves. The overall picture, however, is considerably varied, with some departments resisting immigration-law enforcement as inconsistent with their responsibilities to community policing, which is built upon the trust and confidence of residents.

The effort to engage local police in the hunt for unauthorized immigrants represents a sharp break with past practice. Localism and independence from federal authorities are traditional in U.S. police work. In this respect, the U.S. differs from both its Canadian and Mexican neighbors.

It is difficult to know how far the movement to engage local police in immigration control will go. U.S. cities vary enormously in their demographics, their politics and their local economies. In cities dominated by elites who favor immigration and imagine themselves as potential global centers, there is little interest. The immigration policing movement has its strongest support in smaller cities and towns that cannot aspire to global status. These localities are concerned about maintaining their communities in the face of an uncertain economy that is increasingly dominated by multinational corporations and international banks.

One can gain a sense of the current situation from a survey of police chiefs in cities across the U.S. recently conducted by one of the authors and three colleagues at Arizona State University. The survey went to police chiefs in cities of 60,000 or more.² Only six percent report formal arrangements with federal authorities to assist in immigration control. Thirteen percent report that they do not assist federal authorities at all. Seventy-four percent report that they contact federal authorities on an informal basis only when they are holding suspects who they believe to be undocumented.

Most departments identify closely with the concept of community policing and report active efforts to gain community trust, including regular meetings with residents and bicycle and foot patrols. Most also report that their officers avoid immigration enforcement in routine activities. Fully 83 percent report that their departments take no action to control day-labor sites; and most say that their officers would not check immigration status at a traffic stop or in interviewing a crime victim, complainant or witness. This survey suggests, however, that policies regarding local enforcement

are in a state of flux. Only 32 percent have a written or unwritten policy, and 46 percent report that their local government has no policy. Those local governments that do have policies appear to be quite evenly split, with 19 percent of chiefs noting a formal or informal policy against police inquiries about immigration status, and 12 percent stating that they are expected to actively deter unauthorized immigration in all of their activities.

CONCLUSION

Will the local police in the United States, like those in Canada and Mexico, become fully engaged in immigration policing? The undertaking would be much more consequential, given the much larger number of settled, but unauthorized immigrants in the U.S. (4 percent of the population, as opposed to perhaps 0.5 to 1 percent in Canada and an even smaller proportion in Mexico). Such initiatives are also unjust. The

United States has, implicitly at least, invited workers without legal authorization by making work available. There is no clear-cut route to regularization, however, for those already in the country. A fairer solution would be to allow people to regularize their status by introducing a “right of repose” that would automatically take effect after a period of living and working without incident. Local police should be prohibited from inquiring about immigration status in non-criminal encounters with residents. At the same time, they should become advocates for legalizing migrants’ status, a far more appropriate role for those charged with community safety. **MM**

NOTES

¹ National Conference of State Legislatures, “2007 Enacted State Legislation Related to Immigrants and Immigration,” January 31, 2008, <http://www.ncsl.org/print/immig/2007Immigrationfinal.pdf>.

² The survey produced 285 valid responses, a response rate of approximately 50 percent for both the Arizona and national population of police chiefs surveyed.