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break the informal rules of neighborhood and civic life as much as the formal rules of legislatures and courts. But because the resulting strains are not felt evenly across society, and indeed because many Americans see themselves benefiting from illegal immigration, responses to these

The specific details of any such status would obviously need to be determined through the back and forth of the legislative process. But several points are worth considering now. The conditions for eligibility should be minimal — for example, excluding only those undocumented immigrants with serious criminal records. This new legal status should be granted on a one-time basis to as many of the undocumented as possible, as quickly as possible. Of course, to be eligible, illegals now in the U.S. would have to prove that they had begun residing here before some set date. But this date should be as recent as possible in order to maximize the number of individuals legalized.



There have at times been controversies about the legal and constitutional statuses of each of these entities. Nevertheless, these anomalies have proved stable and acceptable over time—both for the individuals involved and for the nation at large. We are clearly able to handle complex legal arrangements that arise from complicated historical circumstances.

A second objection to this proposal concerns the benefits and obligations attached to permanent non-citizen resident status. These of course would depend on the specifics of the policy, which Congress would have considerable (though hardly unlimited) latitude to formulate. To a lesser degree, so would the states. At this point, then, any discussion of these details is necessarily hypothetical. But the distinctions drawn between citizens and legal permanent residents (green-card holders) in current law and policy offer some informative examples.

In some cases, legal permanent residents are treated substantially the same as citizens. For example, the wage and overtime protections of the Fair Labor Standards Act apply to both. So do the free-speech protections of the First Amendment. Permanent residents are similarly eligible for various social-welfare programs, including the Earned Income Tax Credit and Social Security benefits (subject to a few con

time their coverage is at the discretion of individual states. Similarly, legal permanent residents who have contributed to Social Security and are otherwise entitled to benefits may have them suspended if they remain outside the United States for more than six consecutive months.

In fact, travel outside the U.S. is a major issue for these immigrants. Especially when they leave for extended periods, perhaps visiting relatives back in their countries of origin, green-card holders risk not being allowed to re-enter. As Motomura concludes, under current rulings, “the Constitution protects a returning lawful immigrant no more than a first-time entrant.” More generally, permanent residents have no absolute assurance that they will be allowed to remain here. Failing to keep documents current or committing various crimes — including tax evasion and shoplifting — could result in their deportation. The status of such immigrants is therefore highly contingent, both on their own behavior and on global politics.



we must ask whose interests are at issue — those of the undocumented or those of their advocates?

Others have ignored evidence of ambivalence or indifference toward citizenship among illegals because it does not sit easily with our fondest immigration myths. Americans find it difficult, perhaps even offensive, to believe that immigrants might cling to the notion of eventually returning home or spurn the opportunity to become Americans. Now, however, these very preferences may point the way out of the ethical and political dilemma that confronts us.

Even though the overwhelming majority of illegal immigrants would

immigrant advocates or the machinations of greedy businessmen. While these and other interests have often exerted disproportionate influence on immigration policy, what this debate has long lacked is a willingness on everyone's part to acknowledge ownership of the outcomes, however imperfect, of a political process that is fundamentally fair and just. Without that acknowledgment, our policy failures will always just be the other guy's fault, and will never be remedied.

This insight brings us back to Alexander Bickel's wise warnings about the limits of abstract, formal understandings of citizenship and his corresponding emphasis on its informal social and political underpinnings. In the ongoing debate over illegal immigrants, we Americans have fixated on legal formalisms in what has often seemed like an effort to escape the social complexity of the problem. The circumstances of the 11 million undocumented immigrants in America pose a set of social challenges—to our nation and to the immigrants themselves—that are at least as important as the legal issues involved. The proposal presented here, culminating in permanent non-citizen resident status, is intended to address both dimensions of this seemingly intractable dilemma. We cannot hope for a lasting solution if we ignore either one.