The Diversity Visa Lottery—A Cycle of Unintended Consequences in United States Immigration Policy

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Each year since 1988, the federal government of the United States runs an unusual lottery—not a lottery that awards cash, but one that awards 50,000 visas to nationals of a special list of designated countries that are deemed "underrepresented" in the current legal immigration system. The lucky winners of the visa lottery are granted a visa to enter the United States, lawful permanent residence status (the coveted green card), and the recipients eventually qualify for naturalization. Many immigration analysts and others in the public may have heard by now of this small and obscure provision.[1] What is not known is the true origin of the provision including the impetus for its creation, and how far the program has strayed from its originally intended purpose. How did such a bizarre program that contradicts the philosophy of American immigration admissions become a temporary, and then later a permanent part of the Immigration and Nationality Act?

This article argues that the factors that created the push for the diversity lottery in existence today had its roots in the changed immigration patterns wrought by the Immigration Act of 1965. The diversity lottery idea actually dates much further back in time than the late 1980s when the program first met with legislative success. This article further argues that the chain of unanticipated consequences emanating from the 1965 Act led to the creation of the diversity lottery, a policy which itself, spawned further unintended consequences in the shifting group of beneficiaries. Using Congressional hearing reports, other government documents, and personal interviews with actors who took part in creating and implementing the diversity lottery, this article traces the creation and evolution of the lottery and the role of several key Congressmen who sought to create a policy to benefit their ethnic constituents in the time honored practice of pork barrel politics.

Impact of the 1965 Act

To truly understand the reason for the existence of the diversity lottery today, one must understand the impetus for the policy that dates back to the passage of the Immigration Act of 1965 because today's lottery is actually a direct response to these changes.[2] The present lottery system is also a cobbling together of different concepts and strategies devised by many different Congressmen over the years who were responding to the changed immigration patterns.

The Immigration Act of 1965 was viewed as a watershed act and one of the most liberal and expansive reforms to the American system because of its abolition of race, ethnicity and national origin from the immigration selection process.[3] The 1965 Act revamped the entire immigration selection system by replacing national origin considerations with a seven-category preference system. This preference system prioritized immigrant admissions based primarily on close family relationships to a United States citizen or a lawful permanent resident (a green-card holder), and secondarily on considerations for employment skills. The 1965 Act completely abolished race, ethnicity and national origin as criteria for immigrant admissions and replaced it with the neutral preference system and a 20,000 per country limit within the Eastern Hemisphere, which also had an overall hemisphere limit of 170,000. Originally, the 1965 act did not place per country limits on the Western Hemisphere, although the region was capped at 170,000. In 1978, Congress passed a law without controversy that brought the Western Hemisphere countries under a worldwide cap and imposed a 20,000 per country limit on all countries worldwide. With this change, the reforms begun in 1965 were finally complete.[4]

As will become clear, the call for the creation of the diversity lottery arose from a group of politically well-situated Irish and Italian-American Members of Congress who sought to benefit their ethnic constituents by rigging the immigration system in favor of these ethnic groups. To comprehend why these two particular groups led the charge, one needs to understand some of the unforeseen circumstances that resulted from the overhaul of the immigration system in 1965 and their connection to the movement to create the diversity lottery in the late 1980s.

Unanticipated Results of the 1965 Act and Early Remedies

One major unforeseen, and certainly unintended, result of the 1965 Act was that it precipitated a huge shift in the ethnic and racial composition of the immigrant flow. Architects of the 1965 Act expected Europeans to be the main beneficiaries of the new preference system since it was expected that the groups who were already in the United States in large numbers would be the ones to petition for their relatives and not the small numbers of racial minorities like the Asians and Africans, for example. In a Department of Justice form letter sent to members of the public who wrote to the Johnson Administration regarding the 1965 Act and also in an informal briefing book sent out to Congressional staff, the Administration addressed the racists' and xenophobes' charge that "the bill would let in hordes of Africans and Asiatics"

> The bill would not let in hordes from anywhere at all. Persons from Africa and Asia would continue to be in effect, quota immigrants, as they were under present law, but would be treated like everyone else . . . but immigrants will have to compete and to qualify to get in, and immigration will not be predominantly from Asia and Africa . . . The simple fact is that nations differ greatly in the number of their people who have occupational attainment, or the family ties in the United States, to obtain a preference . . . Indeed very few people from certain areas could even pay the cost of tickets to come here.[5]

The statement shows that the Administration and authors of the 1965 Act did not anticipate the shift in the national origin composition of immigrants that happened after the 1965 reforms.[6] Whereas the previous immigrant flow was largely from Northern and Western Europe, the 1965 Act led to a modest increase in Eastern and Southern immigration, but an explosion in immigration from Asia and Latin America. By 1975, immigrants from Asia and Latin America accounted for about two-thirds of the immigration to the United States.[7]

Lottery supporters have often cited the empirically observable shift as justification for their approach to distributing immigration visas, the logic being that older immigrant groups like the Italians and Irish were being shut out of the system due to the shift toward Asian and Latino admissions that was facilitated by the 1965 changes. While Asian and Latino immigration rose, immigration from Ireland went on a steep decline after 1965, and Italy developed large waiting lists in family preference categories. The *INS Statistical Yearbook* reports that while immigration from Ireland was an average of 4,836 per year in the decade 1951–1960, and 8,597 per year in 1961–1970, the numbers decreased precipitously in 1971–1980 to 1,149 per year. By 1985, on the eve of the debate over the first version of the lottery provision legal immigration from Ireland numbered 1,397.[8]

However, to focus on the observable increase in numbers of legal immigrants from Asia and Latin America, and the decline of Irish immigrants and the growing demand for Italian immigration, is to focus on the symptoms of the phenomena and not the root causes. Two particular provisions in the 1965 Act directly caused the drop in Irish and Italian immigration as well as backlogs[9] under the fifth family preference (brothers and sisters of United States citizens): the labor certification requirement and the lack of a preference system governing Western Hemisphere immigration after the 1965 changes. In finding solutions to these problems that plagued Irish and Italian immigration in the late 1960s, several enterprising Congressmen devised initial approaches to benefiting their ethnic constituents that lay the groundwork for what is the diversity lottery today.

The Irish and Labor Certification

The connection between the labor certification requirement which was created by the 1965 Act and the rise of the diversity visa movement is a little known fact.[10] Prior to the labor certification requirement created by the 1965 Act, the labor certification was a negative requirement; an alien was ineligible for immigration only if the Secretary of Labor determined that qualified United States workers were available for the job or the alien's employment would adversely affect American workers in the same line of employment. Under this system, it was rare for the Secretary of Labor to take this type of action and the labor certification "requirement" was not really any kind of screen on immigration at all. After the passage of the 1965 Act that amended section 212(a)(14) of the Immigration and Nationality Act, the labor certification requirement (which was a last minute addition to the Act) became an affirmative requirement. An alien could immigrate only if he/she obtained, *prior to the issuance of their visa,* the Secretary of Labor's pre-clearance that they would not adversely affect the job market for United States workers.[11]

The pre-1965 system also had a loose version of the preference system in place before and after 1965. Under this system, there was a "non-preference" category of immigrants to which no percentage was assigned, but who would receive all the unused numbers of the preference categories. For countries with high immigration in comparison to their quota, the non-preference route was foreclosed. For instance, Italy with its pre-1965 annual quota of 5,600 always had more demand for immigration than supply of visas so there were no non-preference numbers left. The case in Ireland however was very different. It was a high quota country with a demand for immigration that was below the supply of visas. Most Irish immigrants utilized this non-preference category to get to the United States. The procedure for non-preference immigrants to get a visa was fairly simple and "pretty much any Irish man or woman who wanted to immigrate could just pick up and do so, with relative ease."[12]

In fact, for most of the Irish, the non-preference route to immigration was the only route available to them. The majority of the Irish who wanted to immigrate had only distant relatives in the United States (cousins, aunts, uncles) and none close enough to petition for them.[13] Those who had no relatives to

petition for them could theoretically obtain a visa by qualifying through one of the employment preferences, but few of the Irish possessed the skills and education to qualify via an employment preference. The last nail in the coffin was that now the new "affirmative" labor certification requirement was in place and the requirement applied fully to non-preference immigrants. The labor certification requirement devastated Irish non-preference immigration. With no close relatives to petition for them, unskilled, semi-skilled, and even some skilled workers had great difficulty qualifying under the employment preferences.[14]

The Department of Labor pre-clearance requirement prevented many Irish intending immigrants from coming to the United States, which led to a drastic decline in admission numbers from 1968 forward. From 1971 forward, Ireland ranked among the highest of the countries that did not use up their annual quotas and among the countries that had a huge gap in the number of immigrants the country was actually sending and the number of visas allotted annually to that country. In his testimony before the House Immigration Subcommittee in 1973, John P. Collins, on behalf of the American Irish National Immigration Committee,[15] testified to that effect when he noted that individuals who were seeking to escape the civil unrest in Ireland were prevented from doing so by the immigration laws:

> These individuals, not yet large in number, have aunts, uncles and cousins in the United States. Lacking sisters and brothers who are U.S. citizens, they cannot qualify for fifth preference visas. Nor can they meet the requirement of the other family related preferences. The stringent application of labor clearance makes it impossible for them to qualify for a nonpreference, third preference, or sixth preference visa. Their only hope is to seek asylum here and obtain status as a refugee.[16]

Collins' also offered anecdotes and documents from the INS in his testimony indicating that the Irish attempts at applying for political asylum were by and large being rejected. One of the letters to his client from the INS that Collins quoted noted that the Irishman was ineligible for asylum because he was not coming from a Communist country. Collins' testimony fits the pattern of United States asylum policy before the 1980 reforms in which asylum policy was an extension of United States cold war foreign policy, where almost any and all applicants for asylum from Communist countries were successful and few nationals from non-Communist countries were successful.

The labor pre-clearance policy created by the 1965 Act prevented many Irish from immigrating through the formerly heavily utilized non-preference category, effectively cutting off the most popular way of legally immigrating to the United States. In an earlier appearance before Congress, Collins also confirmed the direct effect of the labor certification requirement on Irish immigration, "there is no doubt that section 212(a)(14) of the act has caused a decrease in Irish immigration to the United States, as many Irish visa applicants are unskilled or semi-skilled workers, they are unable to qualify."[17]

As a byproduct of their inability to qualify for family, employment, or non-preference immigration, a large number of Irish entered the United States under temporary, nonimmigrant visas and overstayed their visas with the implicit consent of the United States consulate. In his 17 June 1973 testimony before the House Subcommittee on Immigration, Collins was asked what he thought about the large number of Irish "tourists" who were coming to the states. The questioning went as follows:

> Mr. Cline. We understand, Mr. Collins that there are approximately 20,000 visitor visas issued in the Republic of Ireland each year. I wonder whether there is intent to immigrate rather than a temporary visit, if they know they could apply somehow for 234(h) and stay deportation. If so, would many people from the six counties come to Southern Ireland and attempt to obtain visitor visas?
>
> Mr. Collins. That is possible. The fact that there are 20,000 visitors coming to this country from Ireland, I think is one of the problems inherent in the present law. I think, we would be kidding ourselves and this committee be kidding itself, if it believed that all these 20,000 coming here from Ireland were just coming here, in fact, just as visitors.[18]

Collins and the members of Congress were aware of the growing illegal Irish population in the United States and seemed to look the other way. Another source also confirmed that the United States consulate in Ireland was "issuing nonimmigrant visas left and right."[19] The American consulate personnel appeared complicit in creating an undocumented Irish population in the United States. The growth and presence of this illegal Irish population would eventually be another source of pressure for the creation of the diversity lottery.

The Italians and the Fifth Preference Backlog

Italian migration patterns under the changes created by the 1965 Act were quite different from the Irish. The problem plaguing Italian immigration was oversubscribed categories that led to backlogs, especially in the fifth preference (brothers and sisters of United States citizens).[20] Prior to 1965, Italy had an annual quota of 5,600, which was heavily oversubscribed.[21] When the 1965 Act was passed, the people on the waiting list simply got transferred over to the new waiting list. The new system prescribed by the 1965 Act did not actually take full effect until 1968. In the interim, there was a transitional system where the old quotas remained, but unused quota numbers were assigned to a pool that would go toward clearing backlogs. There was "an expectation" that the Italian backlog numbers would go down during the transition period. However, this did not happen and by 1 July 1968, there were still about 100,000 Italians on the fifth preference waiting list.[22]

By 1970, there was a call to "do something for the Italians," the rationale being that the system was not working as intended to reduce backlogs, and that Italian families should not be kept apart. Rev. Joseph Cogo, representing the American Committee on Italian Migration, appeared as a witness to testify about the fifth preference backlog and other immigration

issues relating to the Italians. In 1973, he appeared before the House Subcommittee on Immigration to testify in favor of the preference system (like the one already in place in the Eastern hemisphere) being imposed on the Western Hemisphere. While endorsing many of the changes created by the 1965 Act, Cogo explained why he supported a preference system for the Western Hemisphere.

> We fully support the establishment of a preference system for natives of the Western Hemisphere. The present 18-month backlogs experienced by qualified applicants from the Western Hemisphere are deplorable. Moreover, to treat all applicants subject to the numerical limitation identically without regard to closeness of family ties or job skills inflicts great hardship upon applicants.[23]

Cogo was referring to Italy's backlogs in the fifth preference that existed from 1970 to a portion of 1973 and voicing his support for a preference system that would at least prioritize the clearing of the backlog. Without a preference system, all intending immigrants were granted visa priority dates according to a first come first serve basis, not based on the closeness of ties to relatives in the United States.

Although the rhetoric emphasized the urgent need to "do something for the Italians," the fact was that many Italians eventually lost interest in immigrating to the United States by the early 1970s. The Department of State (DOS) visa office tried to show the distinction between people on the backlog waiting list and those whose turn had been reached but not yet issued a visa. From the visa office's point of view, the application was valid indefinitely, or for as long as the relationship between the United States petitioner and Italian beneficiary existed. The DOS had no idea why people were not responding when they got the call that their priorities date had been reached. Some could have moved without a forwarding address, others could have died, but whatever the case, many of the eligible immigrants who were contacted by the DOS were not responding.[24] One might suspect this drop in interest was due to the improving economic conditions in Italy (and in Europe more generally) and the fact that Italy was an original member of the European Community (later the European Union), thus making it easier for their nationals to travel to other parts of Europe rather than come to the United States.

In any event, the demand for Italian visas dropped considerably and at a 1976 hearing, Congressman Joshua Eilberg (D-PA) expressed gratification that the backlog in the fifth preference for Italy was no longer a problem. He asked Reverend Cogo to explain the reason for the clearance of the backlog. Cogo responded:

> In my opinion, the primary reason for the tremendous fallout under fifth preference is the fact that the American citizen is more anxious to give his counterpart Italian brother or sister a chance to migrate here than the Italian is actually to come. . . . Another great factor for the fallout is the present uncertain situation of the American economy and the poverty of job opportunities.[25]

Cogo too realized that the demand for immigration from Italy was decreasing. While he was a frequent witness at Congressional hearings on immigration to press the Italian cause (appearing nine times before Congress between 1970 and 1989) the reality was that by 1970 many of the Italians had lost interest in coming. Yet, the *idea* of continuing to admit Italian immigrants had taken on a life of its own. When the DOS visa office tried to explain that their letters offering American visas were not being answered, their efforts to explain "fell on deaf ears, and, in fact, simply infuriated many people, both because the explanation was complicated" and because it was a politically unpopular idea that the Italians simply had no interest in coming.[26] So the efforts to "do something for the Italians" continued.

Joining Forces and the Rhetoric of "Reform"

The Irish had the labor certification problem and the Italians, for a while, had the backlog problem. They decided to join forces to increase their political strength and because the two groups' goals were very similar—to amend the Immigration and Nationality Act specifically to benefit nationals from Italy and Ireland. The two groups also faced the same political and public relations problems of justifying the rigging of the system to benefit certain countries, which in fact constituted a return to the national origins principle that the 1965 Act had both wiped out and renounced.

At this point, several policy entrepreneurs[27] stepped in to champion the causes of the Irish and Italians. One of the first was William "Frits" Ryan (D-NY), a member of the House immigration subcommittee, who repeatedly attempted from 1968 to 1973 to introduce bills to benefit the Irish, but without success. H.R. 165 introduced in 1969 is an example of one of Ryan's bills. This bill attempted to place a floor on the level of immigration for each country in the Eastern Hemisphere of which Ireland was a part. The floor would be computed as 75 percent of the average annual number of immigrant visas made available to each country during the 10-year period preceding the 1965 Act. If a country after 1965 did not use up its annual allotment, the difference between that number and the floor would result in extra visas outside of the numerical limit of 20,000 per country and would be exempted from the labor certification requirement.[28] In so doing, Ryan was attempting to address the low usage of Irish visa numbers and deal directly with the source of the problem by eliminating the labor certification requirement that was preventing the majority of the Irish from immigrating.

While Ryan was trying to help the Irish, Peter Rodino (D-NJ) tried to pass bills to benefit the Italians and Irish, first in 1968, again in 1969 and several times after that. Examples of his attempts were H.R. 10618 and H.R. 2118, both introduced in 1968. This bill would be a three-year temporary measure, not a permanent measure like the one Ryan was suggesting. The approach Rodino took was to authorize the utilization of available but unused visa numbers for a three-year period beginning in 1968. These additional visas would also be exempt from the labor certification requirement. H.R. 10618 though intended to aid the Irish and Italians, was neutral in language, and it sought

to confer benefits on any other "disadvantaged countries" who did not use up their annual allotment of visas in 1968. These extra visas would be issued on a first come first serve basis, not by country. Rodino argued that without this legislation, the unused numbers would simply be lost.[29] The Irish interest groups however, favored Ryan's bill citing the temporary nature of Rodino's bill as insufficient to alleviate the Irish problem in the long run.

In the late 1960s and through the 1970s, Ryan, Rodino and Emmanuel Celler (D-NY)[30] wrote bills to benefit the Irish and Italians. These seasoned politicians realized that to argue for additional visas for a group of what could be generally characterized as unskilled, not well educated workers, and with no close family ties to those in the United States, but who wished to immigrate, was not a politically savvy or viable move. Instead they adopted two rhetorical strategies to champion their cause. One was to introduce the concept of "new seed immigrants," an idea that was largely Celler's invention.[31] "New seed immigrants" or "independent immigrants" were young, single immigrants who would be allowed to immigrate under a "new seed" visa category and who would be exempt from labor certification. Using the concept was a clever way to distract from the fact that these immigrants had neither close family ties to the United States nor qualifying job skills, and otherwise did not qualify for immigration. Celler and others argued that a number of seed immigrants should be admitted each year because there was something valuable in someone who simply wanted to come to the United States not because of family relations or work skills, but because of their pioneering spirit and immigrant work ethic.

A related rhetorical strategy was to wax nostalgic about the great contributions to this country by the earliest immigrant groups. For example, in one of his appearances before Congress, Collins catalogued the Irish and their historical contributions in the American Revolution, the Civil War, and of Andrew Jackson, the first American President of partial Irish extraction. Collins added:

> If the handiwork of the Irish were painted green, the average American city would be splashed in all sides with emerald hues. . . . It is safe to say that all the Irish have done for America has never been fully told . . . but despite these facts we now find that the restrictive new immigration law has drastically reduced the issuance of immigration visas to Ireland.[32]

Similarly, Edward J. Sussman, National Secretary of the Steuben Society of America[33] stated:

> We cannot conceive that Congress or the people want a law which would all but "dry up" immigration from all of northern Europe. It is inequitable and unjust to those components of the American people who contributed most generously to the founding and building of the nation.[34]

The rhetoric of "seed immigrants" fused with the "we built this country" rhetoric became the verbal strategy of the Irish and Italian pro-immigration forces.

The champions of the diversity lottery also used a third rhetorical strategy, one of a claim of discrimination against these two groups. This strategy was to present the observable decline in Irish and Italian immigration as *prima facie* evidence that the post-1965 system constituted discrimination (intentional or not) against these two groups, even if the 20,000 per country limit was designed to guard against national origin discrimination. Some of this language of discrimination rose to the level of hyperbole, comparing the present immigration laws to the Chinese Exclusion Acts. Philip O'Rourke, Chairman of the California branch of the American Irish Immigration Committee asserted, "Having corrected such past inequities as the 'Chinese Exclusion Act,' it surely was not the intent of Congress that there be an 'Irish Exclusion Act' contained in the present law."[35] What the language of "new seed," "we built this country" and "discrimination" had in common was simply that the rhetoric was a calculated way to gain support for what was purely pork barrel politics and to mask the reality of a return to a national origins based system which privileged some countries over others in the immigration system.

The rhetorical efforts and other political maneuvering by the pro-Irish and Italian immigration congressmen culminated in a House bill that was passed on 17 March 1973, not coincidentally, on St. Patrick's Day. The bill contained specific provisions to benefit the Irish and Italians. The plan was to take a historical average of the number of visas that adversely affected countries that had been issued prior to 1965, and then to restore those visa numbers to make up for the drop off in numbers in the post-1965 period.[36] However, the bill got no further than the House. Sen. James Eastland (D-MS), then chair of the Senate Judiciary committee, a staunch foe of increased immigration and a supporter of national origins quotas, was not about to let another immigration bill remain active in wake of the results of the 1965 Act. Between 1966 and 1976, Eastland did not hold a single hearing on any immigration bill and any bill that was sent to his committee got bottled up there and died.[37]

The 1980s and the Immigration Reform and Control Act of 1986 (IRCA)

The issue lay untouched for many years after Ryan's death in 1976 and was not taken up again until the mid 1980s. No bills came to the floor in the 1980s to address the Italian and Irish question because the nation's attention had by then turned to the question of illegal immigration.[38] There was no movement on the Irish/Italian immigration until the swirl of politics involving the passage of IRCA in 1986.

By the mid 1980s, the Italians had thoroughly lost interest in immigrating but the Irish had not due in large part to the sizeable illegal population in the United States seeking legal status and the worsening economic conditions in Ireland. Representative Brian J. Donnelly (D-MA) and others stepped in and took over Frits Ryan's role as champion of

Irish immigration. These new advocates of Irish and Italian immigration adopted such concepts as "new seed immigration," "adversely affected countries," and "discrimination" from the late 1960s and 1970s and worked them into their bills. Donnelly's program called NP-5, sought to amend section 314 of the Immigration and Nationality Act.[39] The Donnelly amendment provided 10,000 visas for nationals of "adversely affected countries." Edward Kennedy (D-MA) filed companion legislation in the Senate. Donnelly and Kennedy's efforts also received an important and timely boost from then Speaker of the House, Tip O'Neal. As Speaker, he had great influence over the House Rules Committee that determines which bills would be allowed to the floor for debate. When Rodino, chair of the Judiciary Committee, went to see O'Neal about scheduling IRCA for floor debate, O'Neal told Rodino that the before the bill came out of committee there had better be something in the bill for the Irish or the bill would never see floor action.[40] Rodino agreed and allowed the Donnelly/Kennedy amendment to remain, O'Neal waived the necessary points of order, and the Donnelly/Kennedy provision became part of the law when IRCA eventually passed. From a timely *quid pro quo* was born the first incarnation of the diversity visa lottery.

Donnelly's NP-5 program benefited persons from "adversely affected countries." A list of "adversely affected countries" would be generated with such a country defined as any country that did not use more than 25 percent of its 20,000 annual allotment of visas. The Department of State was charged with compiling the statistics to determine which countries were the top thirty-six "adversely affected countries." After crunching the numbers, these countries were designated as "adversely affected": Albania, Algeria, Argentina, Austria, Belgium, Bermuda, Canada, Czechoslovakia, Denmark, Estonia, Finland, France, The Federal Republic of Germany, the German Democratic Republic, Great Britain and Northern Ireland, Guadeloupe, Hungary, Iceland, Indonesia, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, the Netherlands, New Caledonia, Norway, Poland, San Marino, Sweden, Switzerland, and Tunisia.[41] Nationals of these predominantly European and African countries would be allowed to submit their names and the first 10,000 applicants who were drawn based on their applications' arrival time in the mail would obtain immigration visas.

The Department of State received a whopping 1.4 million applications for the NP-5 program during a seven-day registration period in January 1987! The NP-5 results showed that, the countries that benefited the most from the program and the respective number of lottery winners were: Ireland (3,112), Canada (2,078), and Great Britain (1,181).[42] The high success rate of the Irish was due to their well-planned and coordinated efforts that involved that country chartering planes and literally depositing the applications in post office boxes on Capitol Hill.[43]

Donnelly, like previous proponents before him argued that there was a great need for such a program because certain countries, especially Ireland, were being "shut out" under the current admission system. Donnelly gave three reasons for introducing the visa lottery. First he noted, "our Nation must reintroduce into the immigrant stream those countries that have been determined to be adversely affected by the reform act of 1965 and face the same barriers with the passage of the 1986 reform bill." Second, he added that the NP-5 program held out the possibility of legal immigration for those who would normally come illegally (or who were presently illegally residing in the United States). Third, Donnelly noted that NP-5 would allow for natives of the adversely affected thirty-six countries to compete in a more "equitable" manner with other nationalities. Donnelly agreed that the goal of the 1965 Act was admirable in ending discrimination against immigrants based on national origins and added that it was "a principle I would not wish to change." However, Donnelly asserted that "the southern and eastern Europeans who are expected to benefit from the 1965 law are now effectively excluded from the immigrant pool on an equal basis with residents of northern and western Europe."[44] In his rhetoric, Donnelly simply drew from and adopted the ideas of Ryan, Celler and Cogo that had been floating around for a while and until then, had not met with legislative success.

After the NP-5 program and during the debate leading up to the Immigration Act of 1990 (IMMACT '90) Donnelly was counseled to add the diversity concept as a political tactic to gain the support of Asian and Latino ethnic groups and employers who were all lobbying for different provisions to be included in IMMACT '90.[45] These groups were not at all fooled by the politically correct language, as evident in their testimonies before Congress.[46] Of course the politics surrounding the entire diversity lottery itself, going back to its origins in the late 1960s, cast serious doubt on the sincerity and commitment of the provisions supporters of true diversity. Perhaps by utilizing the term "diversity" Donnelly and his supporters hoped to tap into the popularity and influence of the multicultural movement that was in vogue in the 1980s. But the use of the terms "diversity," "independent immigrant" and "new seed immigrant" to describe the NP-5 and its progeny, glossed over the real return to national origin considerations represented in these programs.

The Immigration Act of 1990 (Immact '90)

After major legislation concerning illegal immigration was enacted in the Immigration Reform and Control Act of 1986, Congress turned its attention to legal immigration. Legal or permanent immigration became an issue for two reasons. First, there was concern over the imbalance between the overwhelming majorities of immigrants admitted on family reunification track as opposed to the number of "independent immigrants." The diversity lottery in the 1990s was partially a response to the claim that Asians and Latinos have a "lock" on the family-based preferences. Others have raised the accusation that the diversity lottery actually had more sinister intentions to carefully calibrate the lottery to minimize Mexican and Asian migration while maximizing the migration of European and African immigrants.[47] I found no evidence that this was the case, although the strange classification of Mexico as a country in South/Central America rather than North America was curious.

Second, there was concern over the backlogs under the family-based immigration petition preference system, specifically the second preference (spouses, and minor children of permanent residents; and also unmarried sons and daughters of lawful permanent residents); and the fifth preference (brothers and sisters of United States citizens). This time, the backlogs were hurting Asian and Latino families and intending immigrants.

Reflecting these concerns, the primary focus on IMMACT '90 was the numerical limits and preference systems that regulate the current permanent legal immigration admission system. IMMACT '90 established a three track preference system for the admission of immigrants: family-sponsored, employment-sponsored, and an independent track. Highlights of IMMACT '90 included an increase in the worldwide cap, an increase in employment-based visas from 54,000 to 140,000, and a *permanent* provision for the diversity lottery.[48]

Many different interest groups in addition to the Irish and Italians organized to affect the outcome of IMMACT '90, including Asians and Latinos. While Asian and Latino interests found the diversity lottery idea repugnant because of its clear return to national origin considerations, potentially the most damaging proposals in IMMACT '90 from these groups' point of view were proposals to cut back on numbers on the second preferences (spouses, children and unmarried sons and daughters of lawful permanent residents) and to eliminate altogether the fifth preference (brothers and sisters of United States citizens). These were and continue to be the admissions preferences most heavily used by Asians and Latinos. The rationale for cutting back on these two categories was to minimize "chain migration." In particular, some Congressmen argued that brothers and sisters and adult children were not nuclear family members and that the system should not allow an immigrant to bring "extended" family members.[49]

It is necessary to understand how important the family preference issues were to Asian and Latino interests and how much they had at stake because the battles over these provisions eventually eclipsed their efforts to defeat the diversity provision, thus allowing the lottery to eventually pass. Asian and Latino interests were victorious in preventing the constriction of the family preferences and the second and fifth preferences remained intact. However, despite their opposition (and others) to the diversity lottery, the provision became a part of IMMACT '90.

Legislative History of the "Diversity Lottery" in Immact '90

The diversity lottery that is in existence today was a relatively obscure provision buried in a huge omnibus immigration bill. The diversity lottery, being neither a family nor employment-based policy, was classified under the independent immigration track. It is precisely because the lottery was neither family nor employment based that made the provision extremely controversial. The fact that such a provision was even under consideration at all was highly unusual given the primary goals of American immigration to reunify families and secondarily to address employment needs of the country. Even during the era of national origins and Chinese exclusion, American immigration policy had always operated on the understanding that this nation purposefully and deliberately selects immigrants based on their family ties to those already in the country and based on the jobs skills they will contribute. But the lottery approach to immigration admissions dispenses with the affirmative selection of immigrants by introducing a random selection process.

In effect, there were two diversity programs. One program was a transitional program that ran in fiscal years 1991 to 1994. This transitional program provided for 40,000 visas for each fiscal year. At this point, the program was changed from a first come first serve basis to a true lottery where applications received would be assigned a number and a computer would randomly draw numbers from the total applications received. As testament to the influence of the bill's architects, during the transitional programs, *40 percent (18,000) of the 40,000 visas for each fiscal year 1992 through 1994 would be reserved for Ireland.* Beginning in fiscal year 1995, 50,000 visas would be allotted each year for the diversity lottery with the top ten countries that have contributed the most immigrants to the United States (after the 1965 reforms), excluded from eligibility. These ineligible countries are China, Taiwan, Colombia, Dominican Republic, India, Jamaica, Korea, Mexico, Philippines, Great Britain, Guyana, and Haiti. The only requirements of lottery applicants was that they have either a high school education or at least two years of work experience in an occupation which requires two years of training or experience. Applicants would be selected randomly by computer and would have to re-register each year if not selected.[50]

In the debate leading up to the passage of IMMACT '90 in 1987, Congressman Donnelly again introduced legislation that sought to make the visa lottery a permanent part of the immigration system since the NP-5 program was to expire after the 1988 fiscal year. Donnelly further justified the need for the permanent lottery system citing the tremendous response to the NP-5 program, especially from natives of "older sources of immigration" such as Canada, Ireland, Italy, and other nations in Europe. In a 1987 Congressional hearing before the subcommittee on Immigration, Donnelly stated:

> The cumulative effect of the policy for the last twenty years has been to discriminate against any of the peoples who have traditionally made up our immigrant stock . . . Today we have an opportunity to correct these imbalances in immigration and open our doors once again to legal immigration slammed shut on those nations that enjoy long historic and family ties with our country.[51]

In the question and answer period following Donnelly's testimony, Chairman Romano Mazzolli (D-NY) probed Donnelly on his motivation for introducing the lottery and asked whether there were many illegals on the Eastern seaboard. Donnelly admitted that the program was intended as a backdoor amnesty program for the Irish when he answered:

> [B]ecause we were unable to extend the amnesty program, they would still have an undocumented illegal status like any other—most especially I think you are indicating the

> young Irish undocumented workers . . . of which I have in my constituency alone over 10,000.[52]

Even if his illegal constituents could not vote, Donnelly as an elected official was in the position to help them in a direct way through creative law making.

On the Senate side, the main supporters of the lottery approach to visa allocation were Senators Edward Kennedy (D-MA) and Daniel P. Moynihan (D-NY); and Senator Alfonse D'Amato (R-NY), all with considerable seniority and influence. In addition, Senator Kennedy was a member of the Judiciary Subcommittee on Immigration, Refugees, and International Affairs. Senator Kennedy introduced companion legislation to the House bill to redress the "unforeseen problems" posed by the 1965 Act that inadvertently restricted immigration from "old seed sources of our heritage."[53] Meanwhile, Senator Moynihan argued, "fairness is at issue" and added "we need to help the descendants of our forefathers, to open the doors to opportunity for them also."[54] Senator D'Amato, another supporter of the lottery, charged that the current visa system dominated by Asian and Latin American countries "is an injustice which I believe we should work to correct . . . it is simply not fair to penalize so many countries, and it is not in our self-interest."[55] Again, the same mantras of discrimination, new seed immigration, and nostalgia for the past permeated their rhetoric, divorced from the reality of the pork barrel politics that was going on.

While Donnelly took the initiative in creating the NP-5 program, the move to make it a permanent part of the immigration system required the lottery provision to be passed as part of an overall immigration act. Enter Congressman Bruce Morrison (D-CT) who was then the first term chairman of the Judiciary's Subcommittee on Immigration, Refugees and International Law. Morrison has been credited as the author and "prime architect" of IMMACT '90. Although he worked closely with Senators Edward Kennedy and Alan Simpson (R-WY) Morrison reportedly "galled some of his colleagues by his single-handed steering of the legislation." Morrison saw to it that when his bill was being scaled back that the lottery provision remained intact. Opponents of the measure dubbed the lottery provision the "Irish Amnesty Provision."[56]

But this time, the pro-Irish lobby met not opposition in the form of a James Eastland, but in other ethnic interests. Asians and Latinos, through their interest group representatives, vigorously protested against the lottery system arguing that it would represent a backsliding in immigration policy and a reintroduction of discriminatory national origins considerations into immigrant admissions policy. In a statement before the Senate Judiciary Committee, a representative of the Mexican American Legal Defense [and Education] Fund (MALDEF) said:

> If Congress lends its imprimatur to the legislation, it will signal a major reversal of policy in which national origins will once again play a role in determining which persons can be admitted into the United States.[57]

Many other groups joined MALDEF and individuals in their protest against the lottery provision or any point system that would award extra points for English language ability, and award extra points to nationals from "adversely affected countries." *La Raza,* the Asian American Legal Defense Fund, Organization of Chinese Americans, and Japanese American Citizens League were other ethnic lobbies that protested against both the lottery system and a point system that would favor Europeans.

The Asian and Latino interests were not the only groups that objected to the diversity lottery. Other non-Latino and non-Asian groups and individuals found the diversity lottery equally objectionable on principle, even if they did not have a personal stake in the matter. Also posing objections to the lottery were the American Immigration Lawyers Association, Doris Meissner (of the Carnegie Endowment for International Peace and former INS Commissioner) and Lawrence Fuchs of Brandeis University, a well-known scholar of American immigration. Fuchs asserted that the visa lottery made no sense because it was based on the idea that "nations and countries immigrated, rather than individuals." Reminding the committee of the progress made in the abolition of national origins by the 1965 act he said, "we should seek them as immigrants because they are desirable for their attributes as persons, and not because of their national origins backgrounds."[58] Fuchs underscored a fact that the lottery proponents were trying to conceal, that "the Filipino, Mexican, or Chinese who lacked employment skills or close relatives were in the same predicament as the Irish and Italian"—any bias in the system was not nation specific but specific to the individual circumstances of the intending immigrant.[59] Like many other observers, Fuchs realized that the lottery was an attempt to legalize the illegal Irish population since many of the illegal Irish had missed the eligibility cutoff date for the 1986 amnesty program, a second chance amnesty and a throwback to national origins based immigration.[60]

Despite objections from many sectors, the diversity lottery passed and remains a part of today's immigration system. Several factors contributed to the lottery's legislative success. The first, was the leadership of Morrison who was in a key position of power as the Immigration Subcommittee Chair, and the tireless efforts of Donnelly and the support of other senior members of Congress. The second, was the neutralizing of the opposition in Asian and Latino interests who had their hands full fighting the cutbacks on family preferences. Despite attempts to cut back on the second and fifth preferences, those preferences remained untouched in IMMACT '90. The Asian and Latino communities considered this development a huge victory for them since they had all along viewed the preservation of these preferences as their first priority in the IMMACT '90 debate. When these provisions of the law remained untouched or when their "piece of the pie" was given back they were willing to stomach the passage of the diversity lottery. Finally, the relatively small number of visas (44,000 for the first three years, and 50,000 thereafter) as well as the temporary nature of the pro-Irish bias made the lottery more palatable.

Post Immact '90—Variation on a Theme of Unintended Consequences

After the passage of IMMACT '90, interest in the diversity lottery issue seemed to fade from the political radar screen.[61] There were no further hearings on the subject after 1990 and there were no serious efforts to remove the provision from the immigration law. By 1996, the attention of the policy and immigrant communities had again shifted to much larger issues such as the preservation of alien welfare rights and the fate of criminal aliens as Congress debated and eventually passed the [Illegal] Immigration Reform and Immigrant Responsibility Act (IIRIRA), Anti-Terrorism and Death [Effective] Penalty Act (AEDPA), and sweeping welfare reform legislation in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). Later, in 2001, the Bush Administration's discussion of the possibility of another amnesty or "regularization" for approximately 3 million illegal immigrants from Mexico (and potentially other groups) took center stage. The amnesty proposal was in turn eclipsed by the terrorist attacks on 11 September 2001. These two events relegated the comparatively insignificant 50,000 diversity visas to the back burner for policymakers.

Eventually, the Irish also lost interest in the visa lottery that was created for them. The economic situation in Ireland greatly improved by 1995. The *Financial Times* reported, "Ireland's crippling unemployment problem eased sharply in 1994–95 as the economy created 49,000 new jobs, the biggest annual increase since 1972." The same article also noted that the improved economy in Ireland had slowed the flow of emigration, "The recent economic recovery has also stemmed the flow of net migration, which reached a peak of 43,900 in 1989."[62] Also, because Ireland was admitted to the European Union in 1973, their nationals, like the Italians are now able to travel and work in other parts of Europe which may in turn have further cut down on Irish emigration to the U.S. After the improved economy beginning in 1995, the Irish abandonment of the diversity lottery was clear and the stark statistics tell the story. As late as 1994, the last year of the diversity lottery transition program, a total of 16,344 Irish immigrated via the diversity lottery. But by 1996, the number dropped to 963, by 1997 it was 359 and by 1998 the number was 318![63]

Perhaps one of the strangest footnotes to the diversity lottery odyssey is that the lottery unintentionally came to benefit many more nationalities than its original target beneficiaries. The neutral mathematical formula devised by the Department of State to determine which were the adversely affected countries produced a list that in addition to Italy and Ireland included many African and European countries, and a few Asian countries. Although the largest beneficiaries were the Irish in the NP-5 program and transitional programs, the most recent Immigration and Naturalization statistics from 1996 through 1998 show that the latest beneficiaries of the lottery have been largely the nationals of other European and African nations. More specifically, in fiscal year 1996 nationals from Nigeria, Ghana, Bangladesh, Ethiopia, and Poland were the most successful in the lottery. In fiscal year 1997, the top diversity visa receiving countries were Albania, Poland, Bangladesh, Ethiopia and Nigeria. And in fiscal year 1998 (the most recent and complete set of INS statistics available) the top diversity visa receiving countries were: Albania, Nigeria, Bulgaria, Bangladesh, and Romania.[64] Although the official numbers are not yet available for the 1999 and 2000 lotteries, *This Day,* a Nigerian newspaper in Lagos, reported that Nigerian nationals received approximately 6,000 visas in the fiscal year 2000 visa lottery, a number up from the approximately 4,000 figure in 1999.[65] These numbers place Nigeria as first or second among diversity visa receiving countries in 1999 and 2000. A program that was created by and intended for the Irish and Italians and then abandoned by those two groups has become a permanent part of the immigration system benefitting entirely different groups of individuals.[66]

Conclusion

The story of policy making in general, and American immigration policy in particular, is often marked by unintended consequences that flow from previously implemented policies. The diversity lottery is an example of the efforts of a group of policy entrepreneurs who had the will and the way to mitigate the unintended effects of the 1965 Act that had foreclosed using national origins as a selection criterion. The end result of their efforts led to even more unpredictable outcomes. The unanticipated consequences emanating from the Immigration Act of 1965 begot the diversity lottery which in turn, went on autopilot, and begot an unanticipated group of beneficiaries. Perhaps the biggest irony of the diversity visa lottery is that the lottery, conceived for less than principled purposes, is in fact producing a stream of immigrants from countries that are very different than the ones that currently dominate the immigration system.

Notes

I wish to thank Sandy Levinson, Cara Wong, Lawrence Fuchs, Gary Freeman, and the anonymous reviewer(s) who read earlier drafts of the essay and provided helpful suggestions. I am also indebted to Cornelius "Dick" Scully, Arthur "Skip" Endres, Brett Endres, and Edward Skerrett for providing me with information crucial to the essay.

1. See for example Stephen Legomsky, *Immigration and Refugee Law and Policy,* 2nd ed. (New York, 1997), pp. 204–211, Walter Jacob, "Note: Diversity Visas: Muddled Thinking and Pork Barrel Politics," *Georgetown Immigration Law Journal* (June 1992) and numerous articles in the print media and ethnic media. Jacob attributes the origin of the diversity lottery idea to the recommendations of the Select Commission on Immigration and Refugee Policy that existed in the mid-1980s.
2. I am very grateful to Cornelius "Dick" Scully for pointing out to me that the roots of the lottery go much further back than the late 1980s.
3. David Reimers, *Still the Golden Door—The Third World Comes to America.* (New York, 1985), pp. 80–81.

4. David Reimers, "An Unintended Reform: The 1965 Immigration Act and Third World Immigration to the United States," *Journal of American Ethnic History,* 3 (Fall 1983): 80, 87, 89.
5. Letter in Q & A form from Norbert A. Schlei, Assistant Attorney General, Office of Legal Counsel to "Fellow Citizens" in response to the public writing in about the immigration act. Also published in the *Congressional Record* of the 89th Congress, 28 April 1965. "Legislative Background Immigration Law 1965" Box 1. Folder "Road to Final Passage" Lyndon Baines Johnson Presidential Library, Austin, Texas.
6. See also Reimers, "An Unintended Reform." Reimers lays out in detail how the unintended shift in the ethnicity in immigrants came about.
7. U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Services, 1994* (Washington, D.C., 1996), p. 12.
8. U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 1994* (Washington, D.C., 1996), pp. 27–28.
9. Due to the implementation of the 20,000 per country limit for immigrant admissions, some countries had developed large backlogs in certain family petition categories because there are more people who wish to immigrate per year than there are available visa numbers. For example, U.S. citizens petitioning for their unmarried brothers and sisters in the Philippines or China must wait 18–20 years before their brothers and sisters will have a current visa priority date that would allow them to enter the U.S. and obtain permanent residence (get a greencard). Some argued that these lengthy backlogs undermine the credibility of the system.
10. Dick Scully explained in detail what this connection was. Cornelius "Dick" Scully, telephone conversation with author, 28 June 2001.
11. Cornelius "Dick" Scully, telephone conversation with the author, 28 June 2001 and email communication to the author, 26 July 2001. Mr. Scully (now retired) was a career civil servant at the Department of State between 1968 and 1997. He was for many years, the Director of the Office of Legislation, Regulations and Advisory Assistance, which was the technical section of the visa office at State. While at his position, Mr. Scully was responsible for writing all the regulatory orders to implement all the various lotteries, including the current one. Given the many years he was at the Department of State's visa section, Mr. Scully is truly the institutional memory of the place.
12. Additionally, the process for immigrating under the non-preference quota was quick. One simply wrote a letter to the consular officer stating their desire to immigrate; the officer would send them a biographical information form to fill out. Upon receipt of the form the officer would check whether there were actual numbers available for the non-preference applicant. If there were, which was always the case in Ireland, the applicant was sent information to prepare for a visa interview. If the interview went smoothly, the visa would be issued on the spot and the applicant could travel to the US. (Scully, email communication to author 26 July 01.)
13. Under U.S. immigration law, only close relatives such as spouses, sons and daughters, and brothers/sisters have petitioning rights—not more distant relatives like cousins, aunts, uncles or grandparents.
14. David Reimers "An Unintended Reform," pp. 73–74 and Scully, telephone interview with author 28 June 2001.
15. This umbrella organization was composed of members of all the major Irish American organizations in the U.S. including the Ancient Order of Hibernians, the Knights of Equity, and the Gaelic Athletic Association.
16. Testimony of John P. Collins, House Subcommittee on Immigration, *Western Hemisphere Immigration Hearing on H.R. 981,* 93rd cong., 1st session, 1973, p. 324.
17. Testimony of John P. Collins. Subcommittee No. I of the Committee on the Judiciary, House of Representatives, *The Effect of the Act of October 5, 1965, on Immigration From Ireland and Northern Europe,* 91st cong., 1st session, 1969, p. 15.
18. Testimony of John P. Collins, House Subcommittee on Immigration, *Western Hemisphere Immigration Hearings on H.R. 981,* 93rd cong., 1st sess., 1973, p. 323.
19. Arthur "Skip" Endres, phone interview with author, 11 July 2001. Mr. Endres was Chief Counsel to Congressman Peter Rodino (D-NJ) when Rodino was first Chair of the House Immigration Subcommittee and then Chair of the full Judiciary Committee. Rodino and his staff played active leadership roles in the passage of the 1986 Immigration Reform and Control Act and the Immigration Act of 1990.
20. Backlogs result when more persons than 20,000 wish to immigrate each year to a particular country. If the 20,000 slots are already used up that year, the persons must wait on a wait list until the year a slot opens up for them.
21. Dick Scully reports that at one point, there were well over 100,000 registrants on the Italian waiting list for brothers and sisters of U.S. citizens. (Scully, email communication to author 26 July 2001.)
22. Scully, email communication to author, 26 July 2001.
23. Testimony of Rev. Joseph A. Cogo, *Western Hemisphere Immigration,* 1975, p. 313. Reimers notes the Italians were also in favor of the 20,000 per country limit even though it meant an increase in backlogs because the general feeling at the time was that no country should dominate the immigration system and a set per country limit would be the fairest way to ensure that goal. (Reimers, "An Unintended Reform," p. 74.)
24. Scully, email communication to author, 26 July 2001. Scully adds that in the late 1960s the U.S. government took the extraordinary step of instructing the Italian postal service to find the persons whom the visa approval letters had been sent to and get them into the immigration process.
25. Testimony of Rev. Joseph A. Cogo, House Immigration Subcommittee Hearing on H.R. 981, *Western Hemisphere Immigration,* 1973, p. 320.
26. Scully, email communication to author, 26 July 2001.
27. In the political science literature, policy entrepreneurs are described as "advocates who are willing to invest their resources—time, energy, reputation, and money—to promote a position in return for anticipated future gain in the form of material, purposive or solidary benefits." Kingdon further articulates three common qualities of such entrepreneurs. They have some claim to a hearing as a representative of a group or an "authoritative decision-making position; they are known for their political connections and negotiating skills, and they are persistent and tenacious." John Kingdon, *Agendas, Alternatives, and Public Policies,* (New York, 1995), pp. 179–181. One will see that Kingdon's description of policy entrepreneurs quite aptly describes the Members of Congress who negotiated previous and present versions of the diversity lottery.

28. Opening statement of Michael Feighan, Hearings of the U.S. House, Committee on the Judiciary, Subcommittee No. 1, *The Effect of the Act of October 3, 1965 on the Immigration from Ireland and Northern Europe,* 91st cong., 1st sess., 1969, pp. 2–3.
29. Opening remarks of Peter Rodino. *The Effect of the Act of October 3, 1965 on the Immigration from Ireland and Northern Europe,* 1969, pp. 4–5, 8–9.
30. Celler, and later Rodino, served first as chair of the House Immigration Subcommittee then the House Judiciary committee.
31. Endres, telephone interview with author, 11 July 2001.
32. Testimony of John P. Collins, Hearings of the U.S. House Committee on the Judiciary, Subcommittee, *The Effect of the Act of October 3, 1965 on the Immigration from Ireland and Northern Europe,* 1969, pp. 11–12.
33. The society is a national organization of American citizens wholly or in part of Germanic origin and who have been actively interested in U.S. immigration issues.
34. Testimony of Edward J. Sussman, U.S. House, Committee on the Judiciary, Subcommittee on Immigration, *The Effect of the Act of October 3, 1965 on the Immigration from Ireland and Northern Europe.* 1969, pp. 26–27.
35. Statement of Philip O'Rourke, U.S. House, Committee on the Judiciary, Subcommittee No. 1, *The Effect of the Act of October 3, 1965 on the Immigration from Ireland and Northern Europe,* 1969, p. 30.
36. Endres, phone interview with author, 11 July 2001.
37. Scully, email communication to author, 26 July 2001. Scully speculated that Eastland bottled up all immigration legislation because he felt he would lose control of an immigration bill if it went to the floor.
38. Endres, telephone interview with author, 11 July 2001.
39. House Report 100-1038, *Immigration Amendments of 1988,* Document submitted by Peter Rodino to accompany H.R. 5115.
40. Endres, telephone interview with author, 11 July 2001. Mr. Endres, as chief counsel of the Judiciary, was present at the meeting between O'Neal and Rodino when this deal transpired.
41. 52 *Federal Register* 1,449 (1987).
42. U.S. Senate, Committee on the Judiciary, *Diversity Lottery Program, 1987: Hearings on S. 161,* 101st cong., 1st sess., 1987, p. 4.
43. Endres, telephone interview with author, 11 July 2001. It was clear that the Irish government took a very active interest in this lottery given the depressing economic situation in that country. Endres reports that during the events leading up to the passage of IRCA, he asked Donnelly whether the Irish are interested in the provision and why Rodino had not heard from the Irish consulate. Rodino received a call the following day from the Irish Prime Minister.
44. Testimony of Brian J. Donnelly, U.S. House, Subcommittee on Immigration, Refugees, and International Law, 100th cong., 2nd sess., 1988, p. 7.
45. Walter Jacob, "Note: Diversity Visas," p. 313. Jacob writes that Harris Miller, the chief lobbyist for the Irish Immigration Reform Movement told him that the diversity language was used to gain support from the other interest groups.
46. See the statements of objection to the diversity provision in the testimonies from representatives from the Organization of Chinese Americans, La Raza, Mexican American Legal Defense Fund, and the Japanese American Citizens League among others in U.S. Senate, Subcommittee on Immigration, *Hearings on S 161—the Diversity Lottery Program,* 101st cong., 1st sess., 1987.
47. Scully pointed out that no Administration had ever treated Mexico as anything but a North American country. (Scully, telephone interview with author 28 June 2001) The gerrymandering of Mexico into South/Central America seems to lend credence to the charge that the current lottery is a reaction against Latino migration. With Mexico in another hemisphere, the only three countries left in the Northern Hemisphere are the U.S., Canada and the Bahamas. Under the present diversity lottery rules, each hemisphere has a cap and each country has a cap. Moving Mexico to another hemisphere would free up more visas for the remaining countries in North America.
48. Joyce Vialet and Larry Eig, *Immigration Act of 1990* (P.L. 101-649) Congressional Research Service report to Congress, 1990 (no. 90–601), pp. 1–2.
49. Asian and Latino interests strenuously fought the proposals that would cut back on family preferences. Both these groups criticized the proposal's definition of "nuclear family" as Eurocentric and culturally insensitive. Asian interest groups also argued that it was too soon to cut back on these preferences especially when their communities had just recently begun to enjoy the benefits of the liberalized immigration laws provided by the 1965 Act after they had been discriminated for so long under the Asia-Pacific Triangle system.
50. U.S. Department of State, *Visa Bulletin Number* 2a Volume VII, p. 3.
51. Statement of Brian Donnelly, U.S. House, Subcommittee on Immigration, *Hearings on S. 161, Diversity Lottery Program,* 101st cong., 1st sess., 1987, p. 52.
52. Statement of Brian Donnelly, U.S. House, Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary House of Rep., 100th cong., 2nd sess., 1988, p. 11. The Immigration Reform and Control Act (IRCA) in 1986 granted amnesty to illegal aliens who were residing in the country but most of the illegal Irish missed the cut-off date for eligibility because the economic problems in Ireland that precipitated a large number of illegals coming to the U.S. occurred *after* the amnesty cut-off date. Since IRCA was intended as a one-time only amnesty opportunity that could not be repeated, the diversity lottery was designed as a "back door amnesty" for the Irish illegals.
53. Statement of Edward Kennedy, U.S. House, Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary, 100th cong., 2nd sess., 1988, p. 2.
54. Statement of Patrick Moynihan, U.S. House, Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary, 100th cong., 2nd sess., 1988, pp. 37, 40.
55. Statement of Alfonse D'Amato, U.S. House, Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary. 100th cong., 2nd sess., 1988, p. 41.
56. Dick Kirschten, "Opening the Door," *National Journal* (1990): 2003.
57. Statement of MALDEF. U.S. House, Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary, 100th cong., 2nd sess., 1988, p. 519.
58. Testimony of Lawrence Fuchs, U.S. House, Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary, 100th cong., 2nd sess., 1988, p. 180.

59. I have elsewhere written about Fuchs' objection to the provision and the logic inconsistencies of the lottery defenders' arguments. Anna O. Law, "Race, Ethnicity and National Origins in Public Policy—When Should it Matter?" *Georgetown Immigration Law Journal* (1986) vol. 10: 71, 75.
60. Lawrence Fuchs, telephone interview with the author, 13 March 1998. Fuchs added that there was no illusion on the part of the sponsors of the bill that the lottery provision could be justified on principle. All the rhetoric about diversity was "just window dressing."
61. Scully's view was that by the time IMMACT '90 passed, the interest groups and the policy community were more generally worn out over the battle and gave up on attacking the lottery. He notes that even the Federation for American Immigration Reform, a restrictionist group, has stopped attacking the diversity lottery (email communication with author 19 July 2001). Between 1996 and the present, the *New York Times* ran fewer than a dozen stories on the diversity lottery. Most of these stories were about the effects of the lottery on individuals' lives or on neighborhoods and communities. However, I suspect the lottery received far more coverage in the ethnic media, especially in countries that were meeting with high rates of success with the lottery.
62. John Murray Brown, "Irish economic recovery brings biggest rise in jobs since 1972," *Financial Times* (London, 25 October 1995).
63. U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 1994* (Washington, D.C.,) (1994, p. 44, 1996, p. 46, 1997, p. 44, 1998, p. 32) INS Statistical Yearbooks for 1999–2000 are not yet available.
64. U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 1994* (Washington, D.C.,) (1996, pp. 46–47, 1997, p. 44–45 1998, 32–33) INS Statistical Yearbooks for 1999–2000 are not yet available.
65. Chidi Uzor, "US Embassy Issues 3000 Diversity Visas to Nigerians," *This Day,* (Lagos, Nigeria) 5 April 2001.
66. It is unclear whether there is a constituency supporting the diversity lottery today and who that constituency may be because there has been no serious policy discussion about the lottery since 1990. However, one might suspect that new interest groups (other than the Irish and Italian ones) would emerge to defend the lottery if the provision was under attack.

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