Border wars

Pressure is building to do something about immigration. But what?

Sidney M. Milkis & David Leblang

University of Virginia

Whoever moves into the White House in 2017 will face enormous pressure to take decisive action on how immigration admissions and rights are governed. But the experts who contributed essays to this First Year volume on immigration differ substantially in their prescriptions.

This election marks the first time in 50 years that Americans rank immigration among their top concerns, observes Gary Freeman of the University of Texas/Austin. Although the presumptive Republican nominee, Donald Trump, has been largely responsible for this salience, his calls for the building of a massive wall on the Mexican border and the banning of Muslims from the United States have tapped into demographic and political conditions that historically have made immigration a fraught issue: a surge in America's foreign population, economic dislocation, and clear party differences over how to respond to these major changes.

Meanwhile, the historical lessons drawn from the essays of Anna Law of Brooklyn College and Daniel Tichenor of the University of Oregon reveal that the two most important immigration laws enacted during presidential first years represent the polarized positions in the ongoing struggle over how welcoming our nation should be to the foreign born who seek our shores.

The 1882 Chinese Exclusion Act, passed during the first year of Chester A. Arthur's presidency (he replaced the slain James A. Garfield in September, 1881) was the first national immigration law to prohibit a specific ethnic group from migrating to the United States. It established a nativist precedent the led over the next half century to the enactment of several restrictive immigration laws, culminating in the 1924 legislation that imposed "national origin quotas," which slowed immigration from southern and eastern Europe to a trickle and barred nearly all Asians from coming to America.

By contrast, the 1965 Immigration and Nationality Act (INA), pushed through Congress amid a flurry of reforms during Lyndon Johnson's first year in the White House after he won election to the presidency in his own right, did away with the xenophobic national origins quotas, but unintentionally loosed a flood of documented and undocumented immigration.

The surge of immigration from Latin America – especially Mexico – and Asia over the past 50 years has brought the percentage of foreign-born residents in the United States to 14 percent, the highest level since the early part of the 20ᵗʰ Century (when it was approximately 15 percent). It is no coincidence that immigration has proven a flash point for presidential elections, and a nettlesome problem for presidents, during the two periods in American history when the foreign-born population spiked and the country experienced major disruptions in the labor market.

The immigration volume of the First Year project highlights three major themes that are likely to affect the next president's efforts to tackle this highly contentious issue in the first 365 days. First, although immigration policy and indeed much of American politics has been dominated by "clientele politics," interest groups that have been central to migration policy for much of American history – business and labor – have at times given way to more populist and polarized factions that have elevated immigration policy to a nation-defining issue. The tumultuous 2016 election suggests that America is presently in one of these unsettling, momentous times.

Amid what he calls this "ugly and polarized campaign," David Martin of the University of Virginia foresees objective conditions in 2017, most notably a shrinking undocumented population, that could prove auspicious for comprehensive immigration reform. He urges the next president to pursue a grand bargain that combines long-term enforcement with humane reforms that will create "earned legalization" for those who have long been residing in the United States.

Yet Freeman strongly rejects Martin's clarion call for the next president to "go comprehensive, go bold." He warns that even sophisticated and balanced efforts at comprehensive reform will degenerate into the same destructive rituals that have thwarted the attempts of George W. Bush and Barack Obama to solve the immigration conundrum. Instead, he urges immediate attention to what he asserts is the threat immigration poses to America's national interest. He suggests avoiding "feel good platitudes" – to wit, "America is a country of immigrants" -- which "only harden polarized attitudes on the issue." Beyond calling for the next president to launch a serious debate about the hard challenges large influxes of immigrants pose to economic and homeland security, Freeman calls for some incremental changes that will shore up America's border. For example, he recommends a more careful vetting of refugees and settling as many of them as possible temporarily in camps and other territories where their safety can be guaranteed and they can be repatriated as soon as conditions permit.

Although she is more optimistic about reform than is Freeman, Law, whose scholarship is steeped in the deep historical roots of nativism, shares his view that immigration policy must be forged on a meaningful dialogue that "de-escalates" the inflamed national discourse.

"Regardless of what one thinks of Trump's immigration positions," she acknowledges, "a significant portion of the American electorate believes immigrants are to blame for the nation's economic and social ills." Like Freeman, she anticipates that the next president will face a divided electorate "with some who will continue to demonize immigrants, while others see it as the civil rights cause of this generation." This fractious political context differs considerably from the one that Tichenor describes in chronicling LBJ's "monumental" achievement. The INA, he cautions, was the result of the "exceptional advantages" Johnson enjoyed in championing it, including its close association with his martyred predecessor and a broader civil rights agenda.

A second important theme addressed by these essays is the profoundly important demographic shifts in the country, described by Freeman as "breathtaking and ominous," that have raised the stakes of immigration politics and policy. Whereas the surge of foreign-born residents at the turn of the 20th Century brought especially large numbers of Europeans to America, new immigration since 1965 has dramatically altered the nation's racial composition. In 1965, 84 percent of Americans were non-Hispanic whites. By 2015, that share had declined to 62 percent. Meanwhile, the Hispanic share of the U.S. population rose from 4 percent in 1965 to 18 percent in 2015. Asians also saw their share rise, from less than 1 percent in 1965 to 6 percent in 2015.

Up to this point, the Democrats have gained the advantage of this demographic shift. Echoing President Obama, Hillary Clinton has embraced this growing diversity as an essential development in the arc of the American idea of social justice, symbolized by the Statute of Liberty where Johnson signed the 1965 immigration reform legislation. But demographics are not destiny: Neither Latinos nor Asians have yet developed deep allegiances to the Democratic party, and there are cross-cutting economic and cultural pressures that make their political support uncertain.

It is difficult to see how a President Trump could repair the breach with Latino and Asian-American voters. But as Law points out, there are prominent Republicans, including Speaker of the House Paul Ryan, who have expressed support for immigration reform in the past and who might be eager to repair their "party brand." In the service of such rapprochement, Law suggests that one the next president's first appointments might be Margaret Stock as Secretary of Homeland Security, a member of the conservative Federalist Society with a strong background in national security issues and immigration policy. Stock won a 2013 MacArthur "genius grant" for her work on immigration issues with military families.

A third and final theme that runs through all of the essays is the important constitutional issues that the next president will be forced to confront during the first year. With Congress paralyzed by partisan gridlock, Obama has pursued major immigration reforms through executive action. In June 2012, his Deferred Action for Childhood Arrivals (DACA) gave deportation relief and economic benefits to the so-called "Dreamers" – undocumented immigrants who came to the United States as children. In November 2014, the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) extended these reforms to parents of citizens or legal residents, an initiative that is presently blocked by the federal courts. These initiatives, affecting more than 5 million undocumented immigrants, will certainly be a major agenda item for the next president, Democrat or Republican.

All the authors warn against the next president pursuing immigration reform alone, cautioning that such unilateral measures are, as Tichenor says, "at best a band aid measure that satisfies few, or at worst a crassly partisan maneuver that is constitutionally suspect and worthy of harsh Congressional, judicial, and popular sanctions."

Rather than staunchly defending or repealing the Obama administration's actions, Law urges the next president to make a strong push during the first 100 days to codify those features of the executive initiatives that help a sympathetic group of beneficiaries. In particular, she urges legislation that would protect the Dreamers. Democrats and Republican should agree on the idea, she insists, that "one should not attribute the sins of the parents on to their children."

The political and constitutional stakes, then, could hardly be greater for the next president as he or she considers what to do about the combustible and pressing issue of immigration.

Sidney M. Milkis, co-editor of the immigration volume, is the White Burkett Miller Professor of the Department of Politics and Faculty Associate at the Miller Center at the University of Virginia. His books include "The President and the Parties: The Transformation of the American Party System Since the New Deal" (1993); "Political Parties and Constitutional Government: Remaking American Democracy" (1999); "Presidential Greatness" (2000), coauthored with Marc Landy;" The American Presidency: Origins and Development, 1776-2014" (2015), 7th edition, coauthored with Michael Nelson; "Theodore Roosevelt, the Progressive Party, and the Transformation of American Democracy" (2009); and "The Politics of Major Policy Reform Since the Second World War," co-edited with Jeffery Jenkins (2014).

David Leblang, co-editor of the immigration volume, is Professor of Politics at the University of Virginia and is a Faculty Associate at the Miller Center, where he is the J. Wilson Newman Professor of Governance. He is also a Professor of Public Policy at the university's Batten School for Leadership and Public Policy, where he directs the Global Policy Center. Since 2010 he has served as Chair of the Department of Politics. He has expertise in international immigration, financial crises, and international political economy. In 2006 he co-authored "Democratic Processes and Financial Markets" with William Bernhard.

This essay is part of First Year 2017, a project of the nonpartisan Miller Center at the University of Virginia focusing on the key issues the next president must confront, viewed through the clarifying lens of history and amplified with actionable advice from leading scholars, former administration officials, and policy experts.