

# Immigrants, Markets, and Rights: The United States as an Emerging Migration State

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## INTRODUCTION

Since the end of World War II immigration in the core industrial democracies has been increasing. The rise in immigration is a function of market forces (demand-pull and supply-push) and kinship networks, which reduce the transaction costs of moving from one society to another. These economic and sociological forces are the necessary conditions for migration to occur, but the sufficient conditions are legal and political. States must be willing to accept immigration and to grant rights to outsiders. How then do states regulate migration, in the face of economic forces that push them toward greater openness, while security concerns and powerful political forces push them toward closure? States are trapped in a ‘liberal’ paradox—in order to maintain a competitive advantage, governments must keep their economies and societies open to trade, investment, and migration. But unlike goods, capital, and services, the movement of people involves greater political risks. States must maintain control of their borders (a degree of political and legal closure), lest they risk undermining the social contract and the liberal state itself. The central challenge is how to maintain openness and at the same time protect the rights of individuals, citizens as well as denizens.

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In the liberal democracies today, rights are the key to regulating migration, as states strive to fulfill three key functions: maintaining security, building trade and investment regimes, and regulating migration. The garrison state was linked with the trading state in the eighteenth and nineteenth centuries. The twentieth and twenty-first centuries have seen the emergence of the migration state, where regulation of international migration is as important as providing for the security of the state and the economic well being of the citizenry. In the case of the United States, with the gradual rollback of the national origins quota system in the 1950s and its eventual repeal in 1965, U.S. immigration policy became increasingly liberal and expansive. This liberalization continued throughout the 1980s and was reinforced by the passage of the Immigration Reform and Control Act (IRCA) of 1986<sup>1</sup> and the Immigration Act of 1990,<sup>2</sup> both of which opened the door even wider to immigration. A new round of restrictionism began in the 1990s with the passage of Proposition 187 in California,<sup>3</sup> designed to limit access of immigrants to public services, and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996,<sup>4</sup> which curtailed welfare and due process rights of legal and illegal immigrants. Despite these new restrictionist policies, the fourth wave of immigration in U.S. history continued unabated into the twenty-first century. What has sustained this long period of expansion in U.S. immigration policy?

One explanation is that immigration is closely tied to the business cycle and the performance of labor markets in the sending and receiving countries. What we have found is that economic (push-pull) forces explain much of the variation in levels of immigration (flows) until the 1950s. From the end of the 1950s, however, policy effects (on flows) have increased. We argue that these increasing effects and the break with the business cycle are linked to the rise of rights-based

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1. The Immigration Reform and Control Act (IRCA) of 1986, 8 U.S.C. §§ 1160, 1187–88, 1255a, 1324a–b, 1364–65 (2006).

2. The Immigration Act of 1990, 8 U.S.C. §§ 1186b, 1252b, 1254a, 1288, 1304, 1324c; 29 U.S.C. § 2920 (2006).

3. 1994 Cal. Legis. Serv. Prop. 187 (West).

4. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996, 8 U.S.C. §§ 1225a, 1229, 1229a–c, 1231, 1324d, 1363a, 1365a, 1366–74, 1623–24; 18 U.S.C. §§ 116, 611, 758 (2006).

politics and an increasingly active federal judiciary, which moved away from the tradition of non-interference in immigration policy. We are able to document the rise and decline of rights-markets coalitions through an analysis of roll-call voting in Congress. We demonstrate the impact of civil rights politics on immigration and refugee policy, from the 1965 Act through the 1986 and 1990 Acts. The coalitions which formed around issues of rights and markets (votes on trade and immigration in particular) create what has been called “strange bedfellow” coalitions, of left-liberals (Democrats) and libertarian-conservatives (Republicans).<sup>5</sup> These coalitions helped to sustain liberal immigration and refugee policies, until the end of the Cold War. But the end of the Cold War has led to the breakdown of these coalitions.

In much of the immigration literature, politics and states are assigned at best a marginal role in migration theory.<sup>6</sup> According to the logic of push-pull, changing economic conditions (demand-pull and supply-push) in sending and receiving countries largely dictate levels of immigration in countries like the United States.<sup>7</sup> Likewise the sociological literature on immigration stresses the growth of transnational, informational, and kinship networks, which facilitate cross-border movements.<sup>8</sup> Since there has been a virtually unlimited supply of migrants ready to cross international borders in the postwar period (a more or less constant supply-push), most adherents to the economic model contend that shifting demand for foreign labor is the primary determinant of immigration flows (a variable demand pull). In this logic, major shifts in the volume of immigration are driven by

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5. Aristide Zolberg, *Reforming the Back Door: Perspectives Historiques sur la Réforme de la Politique Américaine d'Immigration*, in LOGIQUES D'ETAT ET IMMIGRATION 221 (Paris: Editions Kimé, 1994).

6. See, e.g., James F. Hollifield, *Immigration and the French State*, 23 COMP. POL. STUD. 56, 56–79 (1990); Alejandro Portes, *Immigration Theory for a New Century: Some Problems and Opportunities*, 31 INT'L MIGRATION REV. 799, 799–825 (1997).

7. See Philip Martin & Elizabeth Midgley, *Immigration to the United States: Journey to an Uncertain Destination*, 49 POPULATION BULL. 2, 2–45 (1994).

8. See DOUGLAS S. MASSEY, RAFAEL ALARCON, JORGE DURAND & HUMBERTO GONZÁLEZ, RETURN TO AZTLAN: THE SOCIAL PROCESS OF INTERNATIONAL MIGRATION FROM WESTERN MEXICO (1987); SASKIA SASSEN, LOSING CONTROL? SOVEREIGNTY IN AN AGE OF GLOBALIZATION (1996); Alejandro Portes, *Transnational Communities: Their Emergence and Significance in the Contemporary World-System*, in LATIN AMERICA IN THE WORLD ECONOMY (1996).

the labor market demands and the business cycles in receiving countries. At the same time, the economic model assumes that government actions designed to control immigration are of little or no explanatory importance. Either policy interventions by national states merely rubber-stamp labor market demands and the business cycle, or they have no effect because they defy these determining economic forces.<sup>9</sup> Sociological theories of immigration to some extent replicate the basic microeconomic logic of push-pull, but with the major innovation that international migration is heavily dependent on the development of informational and kinship networks between the sending and receiving communities.<sup>10</sup> Neither economic nor sociological arguments leave much room for the state or public policy as major factors affecting immigration flows.

Our research on immigration to the United States demonstrates the independent effects of policy change on immigration flows. Employing a time-series model that enables us to separate economic and political effects on immigration to the United States from 1891 to 2003, we find that both policy interventions and changing U.S. economic conditions have a significant impact on legal immigration flows. In particular, our model suggests that shifts in unemployment and Gross Domestic Product (GDP) had a sizeable and significant effect on levels of legal immigration until 1945. During the postwar years of 1946–2003, however, the effects of unemployment and GDP on immigration flows weaken over time while the impact of government interventions significantly increases.

These findings, we argue, are supported by considerable evidence that federal policies, which significantly influenced immigration flows after the Second World War, won important support from national officials whose goals reached well beyond the demands of the labor market or business cycle. Against the backdrop of Cold War competition, executive and congressional officials after 1945 came to view immigration control as an important instrument for advancing

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9. See JULIAN SIMON, *THE ECONOMIC CONSEQUENCES OF IMMIGRATION* (1989).

10. See MASSEY, ALARCON, DURAND & GOZALEZ, *supra* note 8; Portes, *supra* note 8; DOUGLAS S. MASSEY, JORGE DURAND & NOLAN J. MALONE, *BEYOND SMOKE AND MIRRORS: MEXICAN IMMIGRATION IN AN ERA OF ECONOMIC INTEGRATION* 15–21 (2002).

American foreign policy objectives.<sup>11</sup> Anti-communism animated contending immigration policy camps in the late 1940s and 1950s.<sup>12</sup> Congressional isolationists successfully defended biased national origins quotas and established new ideological exclusions in the early 1950s, despite economic conditions that were conducive to large-scale immigration.<sup>13</sup> By contrast, internationalists in the White House and Congress expanded refugee admissions and ended Asian exclusion in order to enhance American power and prestige abroad.<sup>14</sup>

By the 1960s, New Frontier and Great Society reformers dismantled restrictive national origins quotas in the name of advancing racial justice and equal rights.<sup>15</sup> Immigration reform in 1965 expanded alien admissions to reunify families, provide a haven for refugees fleeing communist regimes, and to offer new immigration opportunities for ethnic and racial groups long discriminated against in American immigration law.<sup>16</sup> During the 1980s, new reforms dramatically expanded immigration. They were propelled by an unlikely coalition of liberal lawmakers, who embraced human rights and ethnic fairness in national immigration policy, and free market conservatives in Congress and the executive branch, who saw immigration restriction as antithetical to ‘regulatory relief’ and open markets. Finally, the federal courts became increasingly active after the 1960s in protecting the due process rights of aliens in admissions, asylum, and deportation proceedings.<sup>17</sup> The development of American immigration policy in the postwar era, then, captures changing U.S. economic conditions as often less consequential than policy interventions by various actors of the national state. Indeed, as we shall see below, national officials at times have promoted immigration policies that run counter to economic trends in the United States.

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11. DANIEL J. TICHENOR, *DIVIDING LINES: THE POLITICS OF IMMIGRATION CONTROL IN AMERICA 177–78* (2002).

12. *Id.* at 179.

13. *Id.*

14. TICHENOR, *supra* note 11.

15. *Id.* at 207–16.

16. *Id.* at 218.

17. PETER H. SCHUCK, *CITIZENS, STRANGERS, AND IN-BETWEENS* (1998).

The strong impact of changing U.S. economic conditions on immigration flows before 1945 and the larger significance of state actions in subsequent years underscore the need for greater theoretical balance in the scholarly literature on immigration. In the pages that follow, we will develop the concept of the migration state and examine U.S. immigration trends from the late nineteenth century up to 2003 in light of labor market dynamics and the business cycle. We then look at the emergence of the United States as a migration state and the rise of rights-based politics and rights-markets coalitions in the period from 1945 to 1990. These coalitions in the U.S. Congress are key to understanding immigration policy outputs and outcomes. The argument can be generalized to cover other liberal democracies in Western Europe, Canada, and Australia.

#### I. THE LIBERAL PARADOX

The United States, like other liberal democracies, is trapped in a “liberal paradox”.<sup>18</sup> Since the end of World War II, international economic forces (trade, investment, and migration) have been pushing these states toward greater openness, while the international state system and powerful (domestic) political forces push states towards greater closure. This is a distinctly liberal paradox because it highlights some of the contradictions inherent in liberalism—the quintessentially modern political and economic philosophy and a defining feature of globalization. Since the 18th century when Adam Smith laid down the precepts of economic liberalism in his treatise, *The Wealth of Nations*, the ideology of free trade has come to dominate international relations. With Britain’s rise to power—which reached its zenith in the Victorian era of the late 19th century—and America’s dominance of the post-World War II international system, it has become increasingly difficult to refute Smith’s argument that laissez-faire economics and free trade are the best ways to enhance the wealth, power, and security of the nation-state.<sup>19</sup> The debacle of

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18. JAMES F. HOLLIFIELD, IMMIGRANTS, MARKETS AND STATES: THE POLITICAL ECONOMY OF POSTWAR EUROPE (1992).

19. In this context, it is important to remember that Smith was not worried about high levels of international migration, because as he put it “man is of all sorts of luggage the most difficult to be transported.” ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE

World War I and its aftermath of isolationism, intense nationalism, protectionism, and depression only served to reinforce this lesson. After 1945, the victorious western democracies, led by the United Kingdom and the United States, were determined not to repeat the mistakes of the 1920s and 1930s, and set about constructing a new international order, based on liberal principles of free trade and respect for fundamental human rights.<sup>20</sup>

Despite these multilateral developments, the source of power and authority in international relations continues to revolve around the nation-state. Since the Peace of Westphalia in 1648, the international legal system has been based upon the inviolability of the nation-state. In the Grotian tradition of international law, in order for a state to exist, it must have a territory, a population, and the capacity for self-governance. Once a state has fulfilled these criteria, it may be recognized as independent and thus takes on the legal attribute of sovereignty, which Stephen Krasner wryly describes as “organized hypocrisy.”<sup>21</sup> If a state is sovereign, it has a legal personality and the capacity to enter into relations with other states.

Transnationalism, in the form of trade, cross-border investment, and migration, can challenge the sovereignty and authority of the nation-state. Migration in particular represents a challenge, in the sense that the (unauthorized) movement of individuals across national boundaries can violate the principle of sovereignty, which requires a degree of territorial closure.<sup>22</sup> In every region of the globe—with the partial exception of Western Europe—borders are sacrosanct and they represent a fundamental organizational feature of the international system.<sup>23</sup> Unlike trade in goods or the flow of international finance, migration can change the ethnic composition of

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WEALTH OF NATIONS 87 (Ludwig von Mises ed., Regnery Publishing 1999) (1776).

20. See generally RICHARD ROSECRANCE, *THE RISE OF THE TRADING STATE* (1986); DAVID JACOBSON, *RIGHTS ACROSS BORDERS: IMMIGRATION AND THE DECLINE OF CITIZENSHIP* (1996).

21. STEPHEN D. KRASNER, *SOVEREIGNTY: ORGANIZED HYPOCRISY* (1999).

22. See James F. Hollifield, *Entre Droit et Marché*, in *LE DEFILÉ MIGRATOIRE: QUESTIONS DE RELATIONS INTERNATIONALES* (1994) 59; SASSEN, *supra* note 8. See generally CHRISTIAN JOPPKE, *CHALLENGE TO THE NATION-STATE: IMMIGRATION IN WESTERN EUROPE AND THE UNITED STATES* (1998).

23. See generally PETER ANDREAS & TIMOTHY SNYDER, *THE WALL AROUND THE WEST: STATE BORDERS AND IMMIGRATION CONTROLS IN EUROPE AND NORTH AMERICA* (2000).

societies and disrupt what Rey Koslowski aptly describes as the “demographic boundary maintenance regime.”<sup>24</sup> If too many foreigners reside on the national territory, it may become difficult for a state to identify its population vis-à-vis other states. The national community may feel threatened, and there may be a social or political backlash against immigration. Finally—and this is most important from the standpoint of political liberalism—the citizenry or the *demos* may be transformed in such a way as to violate the social contract, undermine the legitimacy of the government, and challenge the sovereignty of the state itself.<sup>25</sup> Thus migration can be seen as a threat to national security and can lead to conflicts within and between states.<sup>26</sup> Hence the liberal paradox: the economic logic of liberalism is one of openness, but the political and legal logic is one of closure.<sup>27</sup>

To better understand the liberal paradox and how it drives immigration policy, especially in the United States, we look at the causes and consequences of immigration and the ways in which the United States has tried to regulate migration in an era of globalization, with an eye to understanding the evolution of the *migration state*. In international relations theory, states are defined primarily by their security or military function. The Westphalian state is above all else a *garrison state*. Realists like Hans Morgenthau<sup>28</sup> and neo-realists like Kenneth Waltz<sup>29</sup> view the state as a unitary rational actor, with the overriding responsibility to maximize power, protect its territory and people, and pursue its national interest. However, at least since the beginning of the industrial revolution in Europe, the state has increasingly taken on an economic function. Ensuring material wealth and power has required states to risk greater

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24. REY KOSLOWSKI, *MIGRANTS AND CITIZENS: DEMOGRAPHIC CHANGE IN THE EUROPEAN STATES SYSTEM* (2000).

25. *See generally* MICHAEL WALZER, *SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY* (1983).

26. *See generally* MYRON WEINER, *INTERNATIONAL MIGRATION AND SECURITY* (1993); Samuel P. Huntington, *The West: Unique, Not Universal*, 75 *FOREIGN AFF.* (No. 6) 28, 28–46 (1996).

27. James F. Hollifield, *Migration and the “New” International Order: The Missing Regime*, in *MANAGING MIGRATION: TIME FOR A NEW INTERNATIONAL REGIME* 75, 96 (Bimal Ghosh ed., 2000).

28. HANS J. MORGENTHAU, *POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE* (1978).

29. KENNETH N. WALTZ, *THEORY OF INTERNATIONAL POLITICS* (1979).



economic openness, and to pursue policies of free trade, giving rise to what Richard Rosecrance<sup>30</sup> has called the trading state. As a result, states have been partially liberated from their dependence on territory and the military as sources of power. International relations theory has moved away from the narrow realist view of the state, recognizing that in an increasingly interdependent world, power is more diffuse.<sup>31</sup> In this neo-liberal view, states are increasingly linked together by international trade and finance, forcing them to alter their grand strategies and seek new ways to cooperate. Here we argue that migration and trade are inextricably linked—two sides of the same coin. Hence the rise of the trading state necessarily entails the rise of the migration state, where considerations of power and interest are driven as much by migration (the movement of people) as they are by commerce and finance.

## II. IMMIGRATION AND THE BUSINESS CYCLE

Many immigration scholars ignore politics and presume or assert that immigration is a function of market forces, as defined by the supply-push of sending countries and the demand-pull of receiving countries.<sup>32</sup> While supply-push factors in sending countries undoubtedly influence immigration flows, an unlimited supply of migrants have been ready to cross national borders when opportunities have presented themselves in receiving countries throughout the past century. As a result, changing economic conditions in receiving countries are assumed to have the greatest effect on immigration. Martin and Midgley, for instance, neatly capture these theoretical predilections and findings in much immigration research. Their work aims to show that the number of immigrants who have come to the United States over time has fluctuated largely with economic conditions. Such assumptions are not reserved to academic circles; they abound in popular discourse and in the media. Popular newspapers like *The Economist* and *The*

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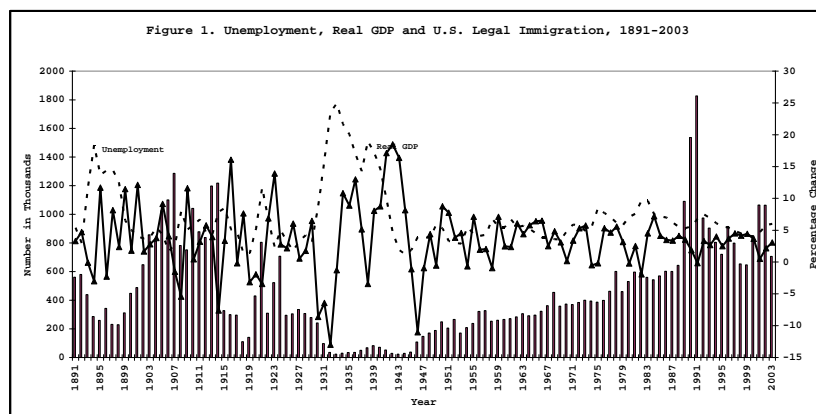
30. ROSECRANCE, *supra* note 20.

31. *See, e.g.*, ROBERT O. KEOHANE & JOSEPH S. NYE, POWER AND INDEPENDENCE: WORLD POLITICS IN TRANSITION (1977).

32. *See* Martin & Midgley, *supra* note 7, at 21; SIMON, *supra* note 9.

*Wall Street Journal* have observed that immigration to the United States is best understood as a function of changing economic conditions.

But it is our contention that the state and public policy have over time had an important impact on flows and we seek to understand the relationship between immigration and the business cycles in the United States. We want to know how the actions and policies of the American state have influenced immigration independent of economic conditions. Figures 1–4 depict trends in legal immigration to the United States, percent change in real GDP, and fluctuations in the unemployment rate. Immigration decreased from about 600,000 per annum in 1892 to 250,000 by the end of the decade. This decline coincided with the 1893–97 recession, affirming the responsiveness of immigration flows to economic conditions.



Immigration rebounded strongly at the turn of the century, as did the economy, reflected in positive growth trends, and shorter and shallower economic cycles (excepting 1908). Meanwhile in the labor market, unemployment rates were historically well below the average. In short, demand-pull factors were especially conducive, and immigration flows reached record levels. Indeed the foreign-born population of the United States climbed to 15%, an all-time high. No major immigration legislation was passed during this period, except for literacy tests imposed by Congress in 1917, restrictions that were rendered moot by the effects of the First World War, which

parenthetically abruptly ended the so-called third wave of American immigration.

In the interwar years, immigration revived but fluctuated markedly—perhaps in reaction to the volatile economic conditions of the ‘Roaring ‘20s’. The 1924 Immigration and Naturalization Act<sup>33</sup> (also known as the Johnson-Reed Act) brought the nation’s first permanent and sweeping numerical limits on immigration. These restrictive measures codified the national origins quota system, writing racial bias (in favor of northern and western Europeans) into law.<sup>34</sup> The new measures also introduced skill-based, human capital criteria into immigration policy for the first time. Nevertheless, countervailing economic forces, for example, low unemployment, apparently dampened the effects of the 1924 Act. The migration mix began to shift away from Europe and toward the Western Hemisphere, with Canadians and Mexicans comprising the largest number of newcomers.

The onset of the Great Depression in 1929–30 demonstrates quite clearly the powerful effect of business cycles on immigration flows in the pre-1945 period. Demand-pull forces ceased virtually overnight, as the economy shrank and unemployment soared (*see* Figure 1). Annual immigration remained markedly low during the economic hard times of the 1930s.

The recovery of the American economy during the Second World War led to a rapid decline in unemployment rates and a surge in GDP, but no real increase in legal immigration. Adherents of the push-pull model can account for these outcomes by emphasizing the anomalous and exceptional effects of global warfare that cut the United States off from traditional sources of immigrant labor. Tellingly, various U.S. employers turned to Mexican and Central American guestworkers to address growing labor market demands—a

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33. Immigration and Naturalization Act of 1924, ch. 190, 43 Stat. 153 (1924) (repealed 1952).

34. *See* DESMOND KING, MAKING AMERICANS: IMMIGRATION, RACE, AND THE ORIGINS OF THE DIVERSE DEMOCRACY 286 (2000) [hereinafter KING, DIVERSE DEMOCRACY]; DESMOND KING, THE LIBERTY OF STRANGERS: MAKING THE AMERICAN NATION 12 (2005) [hereinafter KING, AMERICAN NATION].

trend that was codified in the 1942 Bracero program that continued until 1963.<sup>35</sup>

As a way of further illustrating the relationship between immigration and the business cycle during the period from 1890 to 1945, bivariate correlations were calculated. These reveal no significant association between percent change in real GDP and immigration flows; however, there is a correlation ( $r = -0.425$ ; significant at .01 level) with changes in the unemployment rate. This suggests that immigration was sensitive to demand-pull forces, even though the overall performance of the American economy (in terms of national income) had less effect in this regard.

During the postwar years of 1945 to 2003, we see in Figure 2 that immigration has slowly trended upward for virtually the entire era, producing the so-called fourth wave in the 1970s and 1980s. The United States is now well into the fourth great wave of immigration in its history. Strikingly, immigration flows did not expand markedly in the early 1950s (1950 and 1952 witnessed declining immigration numbers) despite significant increases in GDP and new lows in unemployment—economic conditions deemed conducive by the economic push-pull model to increased immigration. Just as intriguing is the gradual increase in immigration during the 1970s and early 1980s, a time when unemployment levels were rising in connection with the two oil shocks and the steep recession that followed. U.S. immigration, however, began to soar in the late 1980s amid declining unemployment and fluctuating GDP; whereas sharply rising immigration continued unabated in the 1990s despite increased unemployment and substantial drops in GDP.



35. KITTY CALAVITA, *INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE INS* (1992).

Figure 3. Unemployment Rate in the United States, 1946-2003

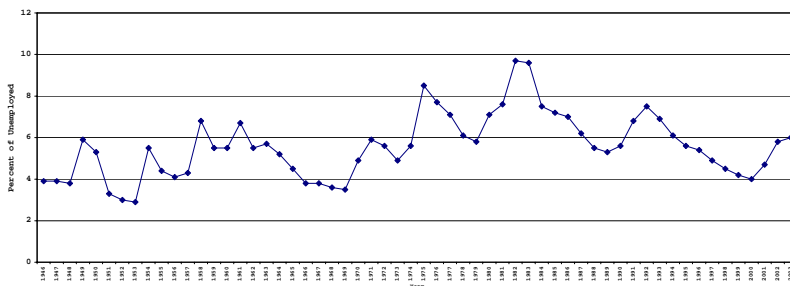
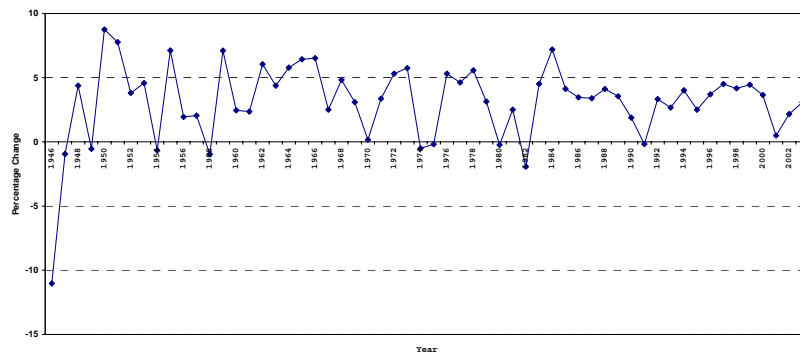


Figure 4. Annual Growth Rate of U.S. National Economy (Percentage Change of Real GDP), 1946-2003



If we look at simple bivariate correlations for the postwar period (1946–2003), we again find no significant relationship between percent change in GDP and flows. Although there seems to be a significant relationship between labor market performance (as measured by the unemployment rate) and immigration flows, the correlation (0.27, significant at the .01 level) is the opposite of what we would expect. How can we account for U.S. immigration trends over the past century that defy or elude the predictions of the economic push-pull model? The influence of policy interventions by the American government on immigration may help us fill in some of these theoretical gaps, a subject to which we now turn.

### III. THE UNITED STATES AS A MIGRATION STATE

Throughout its history the United States has relied heavily upon immigration for purposes of westward expansion, settlement, colonization, and economic development. It is no exaggeration to say that immigration has played a critical role in national development and U.S. grand strategy, and the country is now well into the fourth great wave of immigration in its history. The question we seek to answer in this section is to what extent immigration was a function of economic pull, growth and development—mirroring the business cycle—and to what extent it was promoted, managed, and regulated by the American state.

From the 1890s through the Second World War, levels of immigration to the United States correspond closely with the performance of the American economy. Indeed, the time-series model we present below suggests that shifts in levels of unemployment and real GDP were among the most significant influences on annual immigration totals before 1945. Yet even as the traditional push-pull model goes far in helping us to explain U.S. immigration trends before mid-century, the unprecedented activism of the national state in these decades had a marked effect on the nature of immigration flows. The dramatic decline of immigration during American involvement in the First and Second World Wars highlights the extent to which the U.S. government's pursuit of foreign policy objectives may profoundly transform migration trends. Moreover, if changes in the American labor market and business cycle before mid-century go far in helping us to explain how many immigrants were admitted in these years (immigration volume), they do not help us understand significant shifts in who was granted entry during these decades (immigration composition).

For most of the nineteenth century, the U.S. federal government maintained an essentially laissez-faire immigration policy, with most regulatory authority devolving to states and localities.<sup>36</sup> When the

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36. See EDWARD P. HUTCHINSON, LEGISLATIVE HISTORY OF AMERICAN IMMIGRATION POLICY, 1798–1965 (1981); Gerald L. Neuman, *The Lost Century of American Immigration Law (1776–1875)*, 93 COLUM. L. REV. 1833 (1993); LAWRENCE FUCHS, THE AMERICAN KALEIDOSCOPE: RACE, ETHNICITY, AND THE CIVIC CULTURE (1990); SCHUCK, *supra* note 17;

national state first developed the legal and administrative means to regulate immigration in the late nineteenth century, its efforts to control immigration often were motivated as much by a devotion to ethnic and racial hierarchy as by a concern for the country's economic and national security interests.<sup>37</sup> Against the backdrop of intense electoral competition during the post-Reconstruction period, congressional and executive officials of both parties clamored to curry favor with Sinophobic voters of the Far West by enacting the first Chinese exclusion laws in the 1880s.<sup>38</sup> During the interwar years, the economic impact of immigration figured prominently in the minds of national officials, and they wasted no time in slowing immigration to all but a trickle during the 1920s and 1930s. But the centerpiece of this period's restrictive immigration policies, a so-called national origins quota system, was deeply informed by a new scientific theory—eugenics—that reinvigorated old distinctions between desirable and unworthy immigrants on the basis of race, ethnicity, and religion.<sup>39</sup>

The new quota system was explicitly planned to favor northern and western European immigrants, and to exclude Asians, Africans, as well as southern and eastern Europeans. At the same time, Mexican migrants were viewed by most officials as a returnable labor force—due to a contiguous border—which could meet the nation's shifting demands for low-skill labor without making any permanent claims for membership in U.S. society.<sup>40</sup> Until the 1960s, U.S.

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TIMOTHY J. HATTON & JEFFREY G. WILLIAMSON, *THE AGE OF MASS MIGRATION: CAUSES AND ECONOMIC IMPACT* (1998).

37. See FUCHS, *supra* note 36; ROGERS M. SMITH, *CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY* (1997); KING, *DIVERSE DEMOCRACY*, *supra* note 34; KING, *AMERICAN NATION*, *supra* note 34.

38. See ELMER C. SANDMEYER, *THE ANTI-CHINESE MOVEMENT IN CALIFORNIA* (1973); GWENDOLYN MINK, *OLD LABOR AND NEW IMMIGRANTS IN AMERICAN POLITICAL DEVELOPMENT: UNION, PARTY, AND STATE, 1875–1920* (1986); ROGER DANIELS, *COMING TO AMERICA: A HISTORY OF IMMIGRATION AND ETHNICITY IN AMERICAN LIFE* (1990); KING, *DIVERSE DEMOCRACY*, *supra* note 34.

39. See JOHN HIGHAM, *SEND THESE TO ME: JEWS AND OTHER IMMIGRANTS IN URBAN AMERICA* (1975); FUCHS, *supra* note 36; SMITH, *supra* note 37; KING, *DIVERSE DEMOCRACY*, *supra* note 34.

40. MARK REISLER, *BY THE SWEAT OF THEIR BROW: MEXICAN IMMIGRANT LABOR IN THE UNITED STATES, 1900–1940* (1976); KITTY CALAVITA, *INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE INS* (1992).

immigration essentially reflected these policy goals; northern and western Europeans comprised most overseas immigration to the country, while Mexican and other Latin American newcomers were typically admitted as guestworkers subject to removal whenever their labor was not in demand.<sup>41</sup> The American state's influence on immigration flows before 1945 captures not only its responsiveness to changing economic conditions but also its pursuit of foreign policy interests and ascriptive and hierarchic visions of racial order, which cannot be explained simply in economic terms.

Whereas shifts in the U.S. business cycle comport well with immigration trends before the Second World War, they have diverged sharply on several occasions during the past sixty years. Despite an impressive postwar economic recovery, underscored by low unemployment rates and surges in GDP during the 1950s, the modest levels of U.S. immigration remained relatively stable. Immigration flows not only failed to keep pace with the postwar economic expansion as predicted by the push-pull model, but they in fact declined in the early 1950s. To understand declining immigration amidst economic growth requires knowledge of how government policies shaped immigrant admissions independently of postwar economic developments. Although both the Truman and Eisenhower administrations called for more expansive immigration policies, their efforts were derailed by restrictionist committee chairs in Congress who vigilantly defended national origins quotas. During the early 1950s, anticommunist isolationists in Congress secured legislation that reaffirmed national origins quotas while constructing new immigration barriers intended to tighten national security.<sup>42</sup> In short, McCarthyism overshadowed economic growth in the immigration realm. Later in the 1950s, the Eisenhower administration took autonomous executive action to grant admissions above the existing quota ceiling, not in response to changing economic conditions but to

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41. JUAN RAMON GARCIA, *OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954 169–70* (1980). MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* (2004).

42. Daniel J. Tichenor, *The Politics of Immigration Reform in the United States, 1981–1990*, 3 *POLITY* 333, 343–45 (1994); TICHENOR, *supra* note 11, at 176.



offer refuge to Hungarians and others fleeing Communism—in this instance foreign policy trumped immigration policy.

The demise of the national origins quota system finally came with the enactment of the Hart-Celler Act of 1965,<sup>43</sup> an event that was undoubtedly fortified by national prosperity. But reformers in the executive and legislative branches had far more than the economic utility of immigration in mind when they embraced a new visa preference system. In making immigration reform an important feature of the Great Society juggernaut, the White House and its congressional allies argued that discriminatory national origins quotas—like domestic racial barriers—undermined American global prestige and influence amidst urgent Cold War competition. Civil rights and foreign policy interests loomed large in immigration policymaking of the 1960s. The 1965 law replaced national origin quotas with a new emphasis on uniting families, providing an unlimited number of immigrant visas to immediate family members of U.S. citizens; most numerically-limited visas went to other close relatives of citizens and the immediate family of permanent resident aliens. Remaining visa slots were allocated to refugees and skilled workers. Policymakers were careful to stipulate that the 1965 immigration reform was strictly designed to remove ethnic, racial, and religious biases from the immigration code—not to expand the volume of annual legal admissions.<sup>44</sup>

Although expected by its architects primarily to benefit European migrants, the family-based system established in 1965 would spur unprecedented Third World immigration to the United States as a result of unanticipated chain migration during the next quarter-century. When asked at a Senate hearing whether the new law would alter the composition of immigrant flows, bringing more immigrants from Latin America and Asia, Attorney General Robert Kennedy insisted that the law would have little impact on flows from nontraditional areas.<sup>45</sup> But we now know that the Hart-Celler Act contributed to a dramatic shift in the composition of U.S.

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43. Hart-Celler Act, Pub. L. No. 89-236, 79 Stat. 911 (1965).

44. DAVID REIMERS, *STILL THE GOLDEN DOOR: THE THIRD WORLD COMES TO AMERICA* 67–70 (1985).

45. REIMERS, *supra* note 44, at 77.

immigration, even though it did not substantially expand legal immigration; somewhat surprisingly, annual admissions increased only incrementally during the decade following its passage.<sup>46</sup>

Against the backdrop of economic stagnation in the 1970s, characterized by high levels of inflation and unemployment, public opinion strongly supported significant decreases in legal immigration.<sup>47</sup> Illegal immigration also drew attention as a prominent policy problem. New calls for immigration restriction and stronger border control were consistent with the economic logic of the push-pull model. Economic stagnation and decline in the United States and other receiving countries in the 1970s brought renewed pressure for lower levels of immigration. Yet the push-pull model could not anticipate formidable political resistance from a number of strategically-situated lawmakers and special interests, like the growers in California and the Southwest, who supported large-scale immigration and who postponed policy action during economic hard times by brokering support for a bipartisan commission to study immigration—the Select Commission on Immigration and Refugee Policy.<sup>48</sup>

After several years of political stalemate, Congress finally enacted the Immigration Reform and Control Act<sup>49</sup> (IRCA) in 1986 to address illegal immigration. Initially designed to discourage unlawful entries by severely penalizing U.S. employers who knowingly hired undocumented aliens, the law's final employer sanctions provision lacked sufficient teeth to meet its purposes. IRCA's most significant legacy was an amnesty program that granted legal status to record numbers of undocumented immigrants residing in the country.<sup>50</sup> Troubled by the civil liberties violations and discriminatory effect of past deportation campaigns, national officials embraced amnesty as a

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46. *See supra* fig.2.

47. JOEL S. FEITZER, PUBLIC ATTITUDES TOWARD IMMIGRATION IN THE UNITED STATES, FRANCE, AND GERMANY (2000).

48. *See* FUCHS, *supra* note 36; ELLIS COSE, A NATION OF STRANGERS (1992); TICHENOR, *supra* note 11; Gary P. Freeman, *Modes of Immigration Politics in Liberal Democratic States*, 22 INT'L MIGRATION REV. 881, 886 (1995); Christian Joppke, *Why Liberal States Accept Unwanted Migration*, 50 WORLD POL. (VOL. 2) 266, 271–81 (1997).

49. 8 U.S.C. § 1101 (1986).

50. Joppke, *supra* note 48, at 276.

more palatable policy solution.<sup>51</sup> This would not be the case in the failed immigration reforms early in the twenty-first century. In fact, the inability of the federal government to implement employer sanctions and step up internal enforcement would be a major reason for opposition to amnesty in the 2007 immigration debate.

Even as illegal immigration continued unchecked and unemployment levels swelled as a result of recession in the early 1990s, national policy-makers passed a measure, the Immigration Act of 1990,<sup>52</sup> which expanded immigration admissions. Increasing annual visas for immigrants with family ties to U.S. citizens and permanent resident aliens, those with needed job skills, and those from countries disadvantaged under the 1965 preference system, policy-makers defied the push-pull model in 1990 by substantially expanding legal immigration opportunities despite an important economic downturn.<sup>53</sup> However, increased public concern regarding both legal and illegal immigration—especially the passage of the California ballot initiative, Proposition 187<sup>54</sup> in 1994—did prompt national policymakers to consider restrictive immigration measures. In 1996, Congress came close to passing a bill that would have significantly scaled back annual legal immigration against the backdrop of robust economic growth and scant unemployment. In the end, however, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act<sup>55</sup> (IIRAIRA) targeted immigrants (both legal and illegal) through the mechanism of welfare reform and restriction of due process rights.<sup>56</sup> But, thanks to the intense lobbying efforts of high-tech industries, such as Intel and Microsoft, legal immigration levels were left unchanged and skilled immigration received a boost through the H1-B program, while new measures were adopted to curtail illegal immigration. Apart from increased border controls and a small pilot program to force employers to check the legal status of workers before hiring them, the main impact of the IIRAIRA was to

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51. Tichenor, *supra* note 42, at 349.

52. 8 U.S.C. § 1182 (1990).

53. Peter H. Schuck, *The New Immigration and the Old Civil Rights*, 15 AM. PROSPECT 102, 102–11 (1993).

54. 1994 Cal. Legis. Serv. Prop. 187 (West).

55. Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

56. *Id.*

cut AFDC and SSI for legal immigrant residents—cutbacks that were, at the insistence of the Clinton administration, eventually restored for certain groups of resident aliens.

The consequential interests and actions of the American state concerning immigration more than occasionally have transcended the economic predictors of the push-pull model, as well as straight interest-based explanations à la Freeman.<sup>57</sup> Reducing U.S. immigration levels to a basic economic causality or to a strict interest group dynamic is inadequate in both explanatory and predictive terms. The United States, like other major immigrant receiving countries in the post-World War II era, is trapped in a liberal paradox, needing to maintain adequate supplies of (skilled and unskilled) foreign labor, while struggling to maintain control of its borders, preserve the social contract, and all the while protecting the rights of immigrants. We gain little by denying the powerful influence of changing domestic economic conditions over immigration. But understanding the political economy of immigration requires us to weigh the relative importance of economic and political factors. To understand and distinguish the influence of economic forces and government actions on U.S. immigration requires us to develop a preliminary (multivariate) model that incorporates the two.

#### IV. THE POLITICAL ECONOMY OF U.S. IMMIGRATION

Toward this end we constructed a time-series model that enables us to separate economic and political effects. The results of the analyses are presented in Tables 1–3. We used the log of immigration flows (the dependent variable) in our models in order to meet the model requirements of linearity and stationarity. We then calculate an impact range from the coefficients of each predictor variable by multiplying the coefficient by the highest and lowest value of that variable. This impact range allows for a greater ease of interpretation and discussion of the model results. Both the coefficients and the impact range are reported in the tables.

The first thing to note is that, conforming to the conventional wisdom, economic conditions in the receiving country, in this case

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57. See generally Freeman, *supra* note 48.

the United States, have a significant impact on legal immigration flows. Specifically demand-pull forces, as measured by unemployment rates have a modest impact on flows in the United States for the period 1891–2003. The coefficients, which assess the influence of a unit change (here 1%) in unemployment on immigration flows (logged annual legal immigration), is -.03 and significant at the .05 level. In the model, we control for a variety of policy interventions (specified as the five most important immigration acts passed during this time-span), as well as the dampening effects of World Wars I and II. Note that labor market conditions have almost twice the impact of changes in the other predictor, real GDP, which again conforms to the economic literature.

TABLE 1  
LABOR MARKET AND POLICY EFFECTS ON IMMIGRATION,  
1891–2003

	<b>Impact</b>	<b>T</b>	<b>Impact Range</b> (low–high)	
<b>Labor Market</b> (% Unemployed)	-.03 (.01)	-4.8**	-.40	-8.22
<b>Real GDP</b> (% change)	-.01 (.01)	-1.5	.12	-.17
<b>WWI</b>	-.56 (.15)	-3.8**	0.0	-.56
<b>WWII</b>	-.40 (.15)	-2.6**	0.0	-.50
<b>1924 Johnson-Reed Act</b>	-.39 (.12)	-3.4**	0.0	-.4
<b>1952 McCarran-Walter Act</b>	.10 (.12)	.9	0.0	.11
<b>1965 Hart-Celler Act</b>	-.07 (.09)	-.8	0.0	-.07
<b>1986 IRCA/ 1990 Imm. Act</b>	.15 (.10)	1.4	0.0	.15
<b>Lagged Logged Immigration</b>	.69 (.05)	12.7**	6.93	9.95
N=113 $r^2=.90$ D-W=1.8 F=125.7 Sig.=.00 DV=logged annual legal immigration				
*Significant at the .05 level, one directional test (standard errors in parentheses)				
**Significant at the .10 level				

TABLE 2  
LABOR MARKET AND POLICY EFFECTS ON IMMIGRATION, 1891–1945

	<b>Impact</b>	<b>T</b>	<b>Impact Range</b> (low-high)	
<b>Labor Market</b> (% Unemployed)	-.03 (.01)	-2.8*	-.04	-.75
<b>Real GDP</b> (% change)	-.01 (.00)	-.76	.09	-.13
<b>WWI</b>	-.56 (.18)	-2.9*	0.0	-.56
<b>WWII</b>	-.32 (.21)	-1.5	0.0	-.32
<b>1924 Johnson-Reed Act</b>	-.46 (.17)	-2.5*	0.0	-.46
<b>Lagged Logged Immigration</b>	.71 (.08)	8.8*	7.1	9.93
N=55 r <sup>2</sup> =.90 D-W=1.8 F=82.4 Sig=.00 Dependent Variable: logged annual immigration				
*Significant at the .05 level, one directional test (standard errors in parentheses)				
**Significant at the .10 level				

TABLE 3  
LABOR MARKET AND POLICY EFFECTS ON IMMIGRATION, 1946–2003

	<b>Impact</b>	<b>T</b>	<b>Impact Range</b> (low-high)	
<b>Labor Market</b> (% Unemployed)	.02 (.02)	.9	.06	.18
<b>Real GDP</b> (% change)	-.01 (.01)	-.7	.08	-.06
<b>1952 McCarran-Walter Act</b>	.00 (.09)	.0	0.0	.00
<b>1965 Hart-Celler Act</b>	.24 (.11)	2.2*	0.0	.24
<b>1986 IRCA/ 1990 Imm. Act</b>	.30 (.10)	3.1*	0.0	.3
<b>Lagged Logged Immigration</b>	.55 (.09)	5.8*	5.73	7.86
N=58 r <sup>2</sup> =.90 D-W=1.78 F=93.56 Sig=.00 Dependent variable: logged annual legal immigration				
*Significant at the .05 level, one directional test (standard errors in parentheses)				
**Significant at the .10 level				

Recalling our argument developed in the first sections of this Paper, we predicted a weakening of economic effects over time, as immigration policies changed to reflect the rise of rights-based politics, a new legal culture, and more expansive definitions of citizenship and membership,<sup>58</sup> especially during the 1950s and 1960s. Accordingly, we segmented the data into two (pre- and post-war) periods. Table 2 reports the effects of political and economic change on flows from 1891–1945. Once again, we find a highly significant labor market effect while real GDP registers no statistically significant effect. Percent change in unemployment has a strong, inverse relationship with legal immigration flows ( $\omega = -.03$ , significant at the .05 level). The corresponding impact range tells us that for every one percent change in unemployment, there is a decrease in the logged values of immigration ranging from -.04 to -.75 of a one point change. When we refer back to the actual annual immigration levels, this corresponds to the level range of a low of 23,068 immigrants in this period to a high of 1,285,349 immigrants. In the pre-war period, percent change in real GDP has no statistical significance.

We also controlled for the effects of World Wars I and II and the 1924 National Origins Act<sup>59</sup> (the Johnson-Reed Act), which wrote into law the principle of racial/ethnic exclusivity. The First World War had an obvious and highly significant effect on immigration flows, as did the 1924 policy intervention. We measure policy interventions as dummy variables (0,1) so that the calculation of the minimum value will always be zero. The ranges for both World War I and for the 1924 Johnson-Reed Act reflect our expectations. The First World War curtailed flows during this period (as evidenced by the negative sign). The 1924 Act also reduced immigration dramatically (with a coefficient of -.46), showing the power of the state to restrict immigration flows during this period, marked by isolationism (in foreign policy), protectionism (in trade policy), and restriction of immigration. World War II, however, does not have a

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58. See WAYNE A. CORNELIUS, PHILIP L. MARTIN & JAMES A. HOLLIFIELD, *CONTROLLING IMMIGRATION: A GLOBAL PERSPECTIVE* (2004); SCHUCK, *supra* note 17.

59. National Immigration Act of 1924, ch. 90, §§ 11(b), 13(c), 43 Stat. 153, 159 (National Origins Act) (repealed 1952).

statistically significant impact on flows. This meets our expectations that as policies and World War II curtailed immigration flows, these interventions decreased the capacity of prior immigration streams to draw more immigrants into the country. Mean immigration for the entire period averaged 4.3 percent per annum. Thus, even when controlling for policy interventions and both world wars, labor market conditions had a sizeable and significant impact on immigration flows in the prewar period—a reflection in part of the contracting of the U.S. economy during the Great Depression.

Table 3 reports the results for the period 1946–2003. Several interesting and counterintuitive findings stand out. Tellingly, economic demand-pull effects in the United States continue to weaken over time despite a more highly integrated global labor market, associated improvements in transportation and communication, and more efficient migration networks much in evidence.<sup>60</sup> Indeed, the coefficients for unemployment and real GDP change show no significant effect for the postwar period. The McCarran-Walter Act of 1952<sup>61</sup> is not statistically significant. The contours of the Act corroborate the statistical evidence. The McCarran-Walter Act<sup>62</sup> resulted in only marginal changes to key restrictionist quota provisions of the 1924 National Origins Quota Act.

A number of policy interventions, by contrast, are significant. Surprisingly the Immigration and Nationality Act of 1965<sup>63</sup> (Hart-Celler), which often is cited as the most important immigration reform since the 1924 law,<sup>64</sup> has less of an empirical effect on legal immigration flows than other postwar reforms. The caveat, of course, is that the 1965 Act led to a gradual change in the composition of these flows, by stimulating family unification (which was, after all,

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60. See MASSEY, ALARCON, DURAND & GOZALEZ, *supra* note 8; MASSEY, DURAND & MALONE, *supra* note 10; SASKIA SASSEN, *LOSING CONTROL? SOVEREIGNTY IN AN AGE OF GLOBALIZATION* (1996).

61. McCarran-Walter Act of 1952, Pub. L. No. 110–131, 66 Stat. 163 (codified as amended in scattered sections of 8 U.S.C.).

62. *Id.*

63. Immigration and Nationality Act of 1965, Pub. L. No. 89–236, 79 Stat. 911 (codified as amended in scattered sections of 8 U.S.C.).

64. See REIMERS, *supra* note 44.



the purpose of the law) and encouraging larger flows from non-European sources (which was an unintended consequence). Two major immigration reforms of the late twentieth century, the Immigration Reform and Control Act of 1986<sup>65</sup> (IRCA) and the 1990 Immigration Act,<sup>66</sup> however, combined to have an influence on immigration that simply dwarfed all others modeled here. In sum, our model shows the significant influence of economic factors on immigration until 1946 and the growing impact of government actions on flows in the postwar period. Our time-series analysis fundamentally challenges presumptions of much of the economic and sociological literature on immigration, that policy interventions of the American state have had at best a marginal effect on immigration levels. It underscores the influence of both changing economic conditions and government actions on U.S. immigration during the past century. In the post-World War II period, immigration flows are heavily influenced by the rise of rights-based politics and the increasing prominence of rights-markets coalitions in U.S. politics, especially during the cold war era (1947–1990). We now turn our attention to analysis of these coalitions and their impact on U.S. immigration policy and the emergence of the U.S. as a migration state.

#### V. RIGHTS-MARKETS COALITIONS

Policy interventions (by themselves) are perhaps not the best measures of the rise of rights-based politics. As a proxy measure of rights-based politics and its impact on immigration flows, we incorporated an electoral (left v. right) effect into our time series model, using democratic and republican administrations. Not surprisingly, we found no significant association between the two administrations. Looking at the history of immigration politics and policy, it is hard to find a clear partisan split, with both parties lurching from one consensus to another—for restriction or admission—depending upon the historical context.<sup>67</sup> Indeed as noted

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65. 8 U.S.C. §§ 1324(a)–(b), 1255(d), 1160, 1187–88, 1364–65 (1986).

66. 8 U.S.C. §§ 1186(b), 1252(b), 1254(a), 1288, 1304, 1324(c) (1986).

67. For a discussion of the historical context surrounding immigration reform, see FUCHS,

by Zolberg, immigration politics in the United States often creates strange bedfellows of the (economically liberal) Republican right, and the (politically liberal) Democratic left.<sup>68</sup>

As a way of exploring this rights-markets dynamic, we looked at the history of voting on civil rights, immigration and trade in the Congress, from the 1964 Civil Rights Act<sup>69</sup> through various trade and immigration measures in the 1990s, including NAFTA,<sup>70</sup> Fast-Track authorization, as well as the 1990 and 1996 immigration acts. What we expect to find is a great deal of consistency in voting on these issues over roughly a thirty-year period, but with a breakdown of the coalition starting in 1990 with the end of the Cold War. To this end we looked dyadically at voting on eight bills in the Senate and the House: (1) the 1964 Civil Rights Act<sup>71</sup> and the 1965 Immigration and Nationality Act,<sup>72</sup> (2) the 1986 Immigration Reform and Control Act<sup>73</sup> (IRCA) and the 1988 Canadian American Free Trade Agreement<sup>74</sup> (CAFTA); (3) the Immigration Act of 1990<sup>75</sup> and the North American Free Trade Agreement<sup>76</sup> (NAFTA); and (4) the 1994 General Agreements on Tariffs and Trade enactment<sup>77</sup> (GATT) and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act<sup>78</sup> (IIRAIRA).

*supra* note 36; Tichenor, *supra* note 42, at 343; Daniel J. Tichenor, *Immigration and Political Community in the United States*, in *NEW COMMUNITARIAN THINKING: PERSONS, VIRTUES, INSTITUTIONS, AND COMMUNITIES* Amitai Etzioni ed., 1995; TICHENOR, *supra* note 11, at 16.

68. Zolberg, *supra* note 5, at 221.

69. Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000e (1994)).

70. North America Free Trade Agreement (NAFTA), U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 296 (1993).

71. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000a-h (2000)).

72. Immigration and Nationality Act Amendments of 1965, Pub. L. No. 89-236, 79 Stat. 911 (codified as amended in scattered sections of 8 U.S.C.).

73. Immigration Reform and Control Act of 1986, Pub. L. 99-603, 100 Stat. 3359 (codified in scattered sections of 8 U.S.C.).

74. Central America-Dominion Republic-United States Free Trade Agreement (DR-CAFTA), Aug. 5, 2004, 119 Stat. 462, *available at* [http://www.ustr.gov/Trade-Agreements/Regional/CAFTA/CAFTA-DR-Final-texts/Section\\_Index.html](http://www.ustr.gov/Trade-Agreements/Regional/CAFTA/CAFTA-DR-Final-texts/Section_Index.html) (adopted by the United States on July 29, 2005).

75. 8 C.F.R. §§ 274a *et seq.*

76. NAFTA, *supra* note 70.

77. General Agreement on Tariffs and Trade, T.I.A.S. No. 1700, 55 U.N.T.S. 188 (1947).

78. Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), Div. C. Pub. L. No. 104-208, 110 Stat. 3009 (1996).

TABLE 4  
 ROLL CALL VOTING ON RIGHTS, MARKETS, AND IMMIGRATION  
 ISSUES, U.S. SENATE

<i>1964 Civil Rights and 1965 Immigration and National Acts</i>		
	Rights	INA
	76–18	76–18
D	46–18	52–15
R	30–0	24–3
SD+	4–18	9–19
Same-way voting: 82% (N=75)		
<i>Canadian-American Free Trade Agreement and the Immigration Reform and Control Acts</i>		
	Markets	IRCA
	83–9	75–21
D	43–7	41–4
R	40–2	34–17
SD+	10–0	11–1
Same-way voting: 68% (N=54)		
<i>North American Free Trade Agreement and Visa Quota Restriction Acts</i>		
	Markets	VQR
	61–38	81–17
D	27–18	40–14
R	23–10	41–3
M*	7–5	10–2
Same-way voting: 71% (N=45)		
<i>General Agreements on Tariffs and Trade and Illegal Immigration Reform and Immigrant Responsibility Acts</i>		
	Markets	IIRAIRA
	76–24	97–3
D	41–13	44–3
R	35–11	53–0
SD+	10–2	10–2
M*		
Same-way voting: 74% (N=88)		

**Notes:** +Southern Democrat. \*Major immigration state.

**Source:** *The Congressional Record*.

Table 4 displays the comparisons of roll call voting on the bills in the Senate. By dyad and starting with the Senate, we found that the Civil Rights Act and the 1965 INA passed by exactly the same vote (76 aye and 18 nay), with the principal opposition coming from

Southern Democrats, who voted 4–18 against Civil Rights and 9–13 against the INA. Eighty-two percent (N=75) voted the same way on the two bills, indicative of a growing rights coalition and a close affinity between issues of civil rights and immigration, with the bowl weevils in the minority. Over twenty years later, the rights-markets coalition, including left-liberal Democrats and right-liberal or libertarian (free market) Republicans, is still intact. When we look at voting on the next dyad, IRCA and CAFTA, the vote was 75–21 for the former and 83–9 for the latter. Here we see more dissent on the immigration issue and less on trade, perhaps because trade with Canada is not viewed as terribly threatening for any major interest or constituency. Still the coalition is not as strong as it was in the 1960s, with only sixty-eight percent of the senators voting the same way on the two bills (N=54). If we break out seven high immigration states (California, Texas, Florida, New York, Illinois, New Jersey, and Massachusetts), we find overwhelming support for both measures, with only one dissenting vote (on IRCA) among senators from these states.

Voting on the third dyad (the 1990 Act and NAFTA) in the Senate shows the continued strength of the rights-markets coalition, even well into the post-Cold War period. The vote was 81–17 in favor of the 1990 Act and 61–38 for the NAFTA. In this case seventy-one percent of the senators (N=45) voted the same way. In the seven high immigration states (see above), the vote was more nuanced, 7–5 in favor of NAFTA and 10–2 for the 1990 Act. In the last dyad (GATT and the 1996 Immigration Act), we see a reversal in policy direction in regards to the immigration act, but a maintenance in the strength of the right-markets coalition. The votes for the two acts are 76–24 for GATT and 97–3 for the new restrictive immigration act, which was supposed to focus on illegal immigration but included provisions for limiting legal immigrant access to social service benefits. The Republican vote on IIRAIRA was 53–0 and 35–11 for the enactment of the GATT agreements, compared to the Democratic tally of 44–3 for the 1996 immigration act and 41–13 for GATT. Seventy-three percent of the Senators voted the same way on the two measures (N=88). Thus, at least in the Senate, the rights-markets coalition has remained relatively strong throughout the period, with two thirds to

three fourths of the members voting the same way on issues of rights, markets, and immigration.

TABLE 5  
ROLL CALL VOTING ON RIGHTS, MARKETS, AND IMMIGRATION  
ISSUES, U.S. HOUSE

<i>1964 Civil Rights and 1965 Immigration and National Acts</i>		
	Rights	INA
	289–126	320–69
D	159–91	202–59
R	136–35	118–10
SD+	12–88	36–52
Same-way voting: 65% (N=222)		
<i>Canadian-American Free Trade Agreement and the Immigration Reform and Control Acts</i>		
	Markets	IRCA
	336–40	230–166
D	215–30	168–61
R	151–10	62–105
SD+	136–9	91–61
Same-way voting: 52% (N=153)		
<i>North American Free Trade Agreement and Visa Quota Restriction Acts</i>		
	Markets	VQR
	234–200	231–192
D	102–156	186–65
R	132–43	45–127
M*	93–76	101–57
Same-way voting: 34% (N=92)		
<i>General Agreements on Tariffs and Trade and Illegal Immigration Reform and Immigrant Responsibility Acts</i>		
	Markets	IIRAIRA
	288–146	305–123
D	167–89	76–117
R	121–56	229–5
Same-way voting: 58% (N=340)		

**Notes:** +Southern Democrat. \*Major immigration state.

**Source:** *The Congressional Record*.

However, this pattern does not hold in the House, the body which has a history of being more protectionist on trade issues<sup>79</sup> and more nativist/restrictionist on immigration matters.<sup>80</sup> Table 5 shows House roll-call voting on these issues. On the first dyad (1964 Civil Rights Act and 1965 INA), the House votes were 289–126 for civil rights and 320–69 for immigration, again with chief opposition on both bills coming from the boll weevils. Southern Democrats voted 12–88 against civil rights and 36–52 against immigration. In the House, voting consistency on this dyad was sixty-five percent (N=222), not nearly as high as in the Senate.

On the second dyad (IRCA and CAFTA), the tallies in the House were 230–166 on the immigration issue (note that IRCA was designed to deal primarily with the problem of *illegal* immigration) and 366–40 on the issue of freer trade with Canada. In contrast with the Senate, we do not find strong bi-partisan support for these measures in the House. Republicans in the House opposed the IRCA by a vote of 62–105, while votes in our seven high-immigration states were much closer: 91–61 on NAFTA, compared to 136–9 on CAFTA. This is almost certainly an interest/constituency driven vote, in the sense that freer trade with Mexico is viewed as much more threatening than freer trade with Canada. Fifty-two percent of the representatives (N=153) voted the same way on IRCA and CAFTA. We can see more volatility in the coalition and the beginning of the breakdown of bipartisan, rights-markets (or strange bedfellow) coalitions.

On the third dyad (the 1990 Act and NAFTA), the vote on reforming legal immigration was opposed by Republicans (45–127), as has been the case with the IRCA. Nevertheless, it passed by a vote of 231–192. The vote on NAFTA was a bit closer (234–200), with Democrats leading the opposition to this trade agreement. They voted 102–156 against it. If we separate out the major immigration states, we can see that, on balance, they favored the immigration bill (101–57), as well as the trade agreement (93–76). Overall, only thirty-four percent of the House members (N=92) voted the same way on the 1990 immigration act and NAFTA.

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79. See I.M. DESTLER, *AMERICAN TRADE POLITICS* (2005).

80. See TICHENOR, *supra* note 11.

In the fourth and final dyad, we can see significant division between Republicans and Democrats on the 1996 immigration act (IIRAIRA) but more coalition cohesion on the passage of the GATT agreement. IIRAIRA passed the House with a 305–123 vote. The vote count for GATT was much closer: 288 members supported while 146 members opposed the measure. Democrats opposed the immigration measure by a vote of 76–117, but Republicans overwhelmingly favored the bill (229–5). Democratic opposition to GATT was less severe than Democratic opposition to the immigration act. Both Democrats and Republicans favored GATT. The enactment had Democratic support of 167–89 and Republican support of 121–56 votes. Fifty-eight percent (N=340) of members voted the same way on these two measures.

We can see a distinct difference between the two legislative bodies on trade and migration issues. The rights-markets coalition held together much better in the Senate, even with the end of the Cold War, whereas it has fallen apart in the House. How can we explain this divergence? At least three explanations are possible. First is that the Senate is simply less partisan (more bipartisan) than the House. The second explanation, which is closely linked to the first, is that the Senate is capable of taking a longer-term view (i.e., one less driven by an electoral dynamic) on the issues of trade and migration, both of which have important foreign policy dimensions. Finally, as noted above, the House is driven more directly by the interests of much smaller districts/constituencies, and is therefore more sensitive to any distributional (or allocational) consequences of trade and migration policies.<sup>81</sup> Moreover, in the House, Democrats seem to form rights-markets coalitions in support of trade and migration issues, while Republicans, who continue to support freer trade, have lost their attachment to rights, particularly in the immigration area. This is borne out in congressional votes on welfare reform legislation, particularly the IIRAIRA of 1996, as the Republican-controlled House pushed for eliminating welfare benefits for legal as well as illegal immigrants.

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81. See DESTLER, *supra* note 79; TICHENOR, *supra* note 11.

## CONCLUSION

The last half of the 20th century has marked an important new chapter in the history of globalization. With advances in travel and communications technology, migration has accelerated, reaching levels not seen since the end of the 19th century. According to the United Nations, as of the beginning of the 21st century, roughly 200 million people are living outside of their country of birth or citizenship.<sup>82</sup> Even though this figure represents less than three percent of the world's population, the perception is that international migration is rising at an exponential rate, and that it is a permanent feature of the global economy. It seems that economic forces compelling people to move are intensifying. Supply-push forces remain strong, while the ease of communication and travel have reinforced migrant networks, making it easier than ever before for potential migrants to gather the information that they need in order to make a decision about whether or not to move.

To some extent supply-push forces are constant or rising and have been for many decades. However, demand-pull forces are variable, and as we can see in the case of the United States, political dynamics have an enormous influence on the direction, composition, and flow of immigrants. The emphasis our model places on markets, states and rights improves on the prevailing economic and sociological theories. It incorporates economic and political/legal effects in a manner that distinguishes their relative influence and provides a stronger overall account of immigration flows. Economic forces alone clearly are insufficient for this task. Bringing the state into immigration analysis offers greater promise for understanding the direction, composition, and flow of immigrants. As we have seen in our analysis of the U.S. case, electoral, foreign policy, and national security interests figure prominently in immigration politics, while focusing on economics and business cycles offers only a partial explanation at best.

A model that integrates immigrants, markets and rights is more promising than push-pull or transnational models alone in accounting

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82. The trend in international migration has been steadily upward since the end of World War II. INTERNATIONAL ORGANIZATION FOR MIGRATION, WORLD MIGRATION REPORT 2000 (2000); United Nations, *infra* note 86.



for the volume and composition of immigration flows. These findings are consistent with other studies of the political economy of immigration in Europe.<sup>83</sup> While they do not contradict the emerging literature in political economy that focuses on interest-based explanations for changes in immigration policy,<sup>84</sup> they do offer us an alternative, rights-based and institutional explanation for the rapid rise in immigration among industrial democracies in the late twentieth century.<sup>85</sup> The liberal state has played and will continue to play a vital role in regulating levels of immigration.

In the advanced industrial democracies, immigration has been trending upward for most of the post-World War II period, to the point that well over forty percent of the world's migrant population resides in Europe and America, where roughly ten percent of the population is foreign born.<sup>86</sup> International migration is likely to increase in coming decades, unless there is some cataclysmic international event, like war or economic depression. Even after the 9/11 terrorist attack on the United States, the liberal democracies have remained relatively open to international migration. Global economic inequalities mean that supply-push forces remain strong, while at the same time demand-pull forces are intensifying.<sup>87</sup> The growing demand for highly skilled workers, in the United States and across the OECD world, and the demographic decline in the industrial democracies create economic opportunities for migrants. Transnational networks have become more dense and efficient, linking the sending and receiving societies. These networks help to lower the costs and the risks of migration, making it easier for people to move across borders and over long distances. Moreover, when legal migration is not an option, migrants have increasingly turned to professional smugglers, and a global industry of migrant

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83. See HOLLIFIELD, *supra* note 18. Alan E. Kessler, *Distributional Coalitions, Trade, and the Politics of Postwar American Immigration* (1998) (paper presented at the Annual Meeting of the American Political Science Association, Boston, Mass.).

84. See Freeman, *supra* note 48; Kessler, *supra* note 83.

85. Kessler, *supra* note 83.

86. See U.N. Dep't of Soc. and Econ. Affairs, Population Div., *International Migration 2006*, U.N. Doc. ST/ESA/SER.A/256 (Mar. 2006), available at [http://www.un.org/esa/population/publications/2006Migration\\_Chart/Migration2006.pdf](http://www.un.org/esa/population/publications/2006Migration_Chart/Migration2006.pdf).

87. Jonas Widgren & Philip L. Martin, *International Migration: A Global Challenge*, 51 POPULATION BULL. (VOL. 1) 1, 1-48 (1996).

smuggling—often with the involvement of organized crime—has sprung up, especially in the last decade of the 20th century. In the twenty first century, hardly a week passes without some news of a tragic loss of life associated with migrant smuggling.<sup>88</sup>

But migration, like any type of transnational economic activity (such as trade and foreign investment), cannot and does not take place in a legal or institutional void. As we can see in the U.S. case, states have been and continue to be deeply involved in organizing and regulating migration. The extension of rights to non-nationals has been an extremely important part of the American story of international migration in the post-World War II period. For the most part, rights that accrue to migrants come from the legal and constitutional protections guaranteed to all “members” of society.<sup>89</sup> Thus if an individual migrant is able to establish some claim to residence on the territory of a liberal state, his or her chances of being able to remain and settle will increase. At the same time, developments in international human rights law have helped to solidify the position of individuals vis-à-vis the nation-state, to the point that individuals (and certain groups) have acquired a sort of international legal personality. This has led some analysts to speculate that we are entering a post-national era, characterized by “universal personhood”,<sup>90</sup> the expansion of “rights across borders”,<sup>91</sup> and even “transnational citizenship”.<sup>92</sup> Others have argued that migrants have become transnational, because so many no longer reside exclusively on the territory of one state,<sup>93</sup> opting to shuttle between a place of origin and destination. This line of argument gives priority to agency as a defining feature of contemporary migrations,

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88. DAVID KYLE & REY KOSLOWSKI, *GLOBAL HUMAN SMUGGLING: COMPARATIVE PERSPECTIVES* (2001).

89. See HOLLIFIELD, *supra* note 18; James F. Hollifield, *Ideas, Institutions, and Civil Society: On the Limits of Immigration Control in Liberal Democracies*, 10 *IMIS-BEITRÄGE* 57, 57–90 (1999).

90. YASEMIN SOYSAL, *LIMITS OF CITIZENSHIP* (1994).

91. JACOBSON, *supra* note 20.

92. RAINER BAUBÖCK, *TRANSNATIONAL CITIZENSHIP: MEMBERSHIP AND RIGHTS IN INTERNATIONAL MIGRATION* (1994).

93. See Nina Glick Schiller, *Transmigrants and Nation-States: Something Old and Something New in the U.S. Immigrant Experience*, in *THE HANDBOOK OF INTERNATIONAL MIGRATION: THE AMERICAN EXPERIENCE* (1999); PEGGY LEVITT, *THE TRANSNATIONAL VILLAGERS* (2001).

but it ignores the extent to which state policies have shaped the choices that migrants make. The migration state is almost by definition a liberal state, inasmuch as it creates a legal and regulatory environment in which migrants can pursue individual strategies of accumulation.

But, as we have seen in the U.S. case, regulating international migration requires liberal states to be attentive to the (human or civil) rights of the individual. If rights are ignored or trampled upon, then the liberal state risks undermining its own legitimacy and *raison d'être*<sup>94</sup> and anti-immigration policies may come into conflict with *raison d'Etat*. As international migration and transnationalism increase, pressures build upon liberal states to find new and creative ways to cooperate and to manage flows. The definition of the national interest and *raison d'Etat* have to take this reality into account, as rights become more and more a central feature of domestic and foreign policy. New international regimes will be necessary if states are to risk more openness, and rights-based (international) politics will be the order of the day.<sup>95</sup>

In short, the global integration of markets for goods, services and capital along with the rise of rights-based politics at the domestic as well as the international level entail higher levels of international migration; therefore, if states want to promote liberal economic policies—freer trade and investment—and democratic politics generally, they must be prepared to manage higher levels of migration. Many states (like the United States, Canada, and other OECD countries) are willing, if not eager, to sponsor high-end migration, because the numbers are manageable, and there is likely to be less political resistance to the importation of highly skilled individuals. However, mass migration of unskilled and less educated workers is likely to meet with greater political resistance, even in situations and in sectors, like construction or health care, where there is high demand for this type of labor. In these instances, as we have seen in the U.S. immigration debates in 2007, the tendency is for governments to go back to the old guest worker models, in hopes of bringing in just enough temporary workers to fill gaps in the labor

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94. Hollifield, *supra* note 89.

95. See HOLLIFIELD, *supra* note 18; Hollifield, *supra* note 22; Hollifield, *supra* note 27.

market, but with strict contracts between foreign workers and their employers that limit the length of stay and prohibit settlement or family reunification.<sup>96</sup> The alternative is illegal immigration and a growing black market for labor—a Hobson's choice.<sup>97</sup>

The 19th and 20th centuries saw the rise of what Richard Rosecrance has labeled the trading state.<sup>98</sup> The latter half of the 20th century has given rise to the migration *state*. In fact, from a strategic, economic and demographic standpoint, trade and migration go hand in hand. Because the wealth, power and stability of the state is now more than ever dependent on its willingness to risk both trade and migration,<sup>99</sup> as the U.S. case shows. In the twenty first century, as in the nineteenth, global competitiveness, power, and economic security are closely related to a willingness to accept immigrants, both skilled and unskilled. Many European and Asian countries, specifically Japan, have been reluctant to follow the Canadian, American, and Australian examples of expansive legal immigration policies designed to enhance their material power and wealth. But, in one important respect, Europe has an advantage over the United States, and Canada or Australia for that matter. The European Union is not only creating a free trade and investment zone, but also a free migration area. It remains to be seen whether North America (and East Asia) will follow the European example and create a common labor market.

Now more than ever, international security and stability are dependent on the capacity of states to manage migration. It is extremely difficult, if not impossible, for states to manage or control migration either unilaterally or bilaterally. Some type of multilateral/regional regime is required, similar to what the European Union has constructed for nationals of the member states. The E.U. model, as it has evolved from Rome to Maastricht to Amsterdam and

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96. MARK J. MILLER & PHILIP L. MARTIN, ADMINISTERING FOREIGN-WORKER PROGRAMS (1982).

97. At this writing (in summer 2008) the U.S. Congress had failed to pass so-called comprehensive immigration reform, which included a new guest worker program.

98. ROSECRANCE, *supra* note 20.

99. See MICHAEL LUSZTIG, RISKING FREE TRADE: THE POLITICS OF TRADE IN BRITAIN, CANADA, MEXICO, AND THE UNITED STATES (Bert A. Rockman ed., University of Pittsburgh Press 1996); Hollifield, *supra* note 27.

beyond, points the way to future international migration regimes, because it is not based purely on *homo economicus*, but incorporates rights for individual migrants and even a rudimentary citizenship, which continues to evolve. The problem, of course, in this type of regional migration regime is how to deal with third country nationals (TCNs). As the European Union expands and borders are relaxed, the issue of TCNs, immigrants, and ethnic minorities becomes ever more pressing, and new institutions, laws, and regulations must be created to deal with them.<sup>100</sup> In the end, the European Union, by creating a regional migration regime and a kind of supra-national authority to deal with migration and refugee issues, allows the member states to finesse, if not escape, the liberal paradox.<sup>101</sup> Playing the good cop/bad cop routine and using symbolic politics and policies to maintain the illusion of border control helps governments fend off the forces of closure, at least in the short run.<sup>102</sup> In the end, however, it is the nature of the liberal state itself and the degree to which openness is institutionalized and (constitutionally) protected from the “majority of the moment,” that will determine whether states will continue to risk trade and migration.<sup>103</sup>

International migration, like trade, is a fundamental feature of the postwar liberal order. As states and societies, like the United States, have become more liberal and open, migration has increased. Will this increase in migration be a vicious or a virtuous cycle? Will it be destabilizing, leading the international system into greater anarchy, disorder, and war; or will it lead to greater openness, wealth, and human development? Much will depend on how migration is managed by the more powerful liberal states, especially the United States, because they will set the trend for the rest of the globe. To avoid a domestic political backlash against immigration, the rights of migrants must be respected and states must cooperate in building

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100. ANDREW P. GEDDES, *THE POLITICS OF MIGRATION AND IMMIGRATION IN EUROPE* (2003).

101. HOLLIFIELD, *supra* note 18.

102. Christopher Rudolph, *Security and the Political Economy of International Migration*, 97 AM. POL. SCI. REV. 603, 603–20 (2003).

103. James F. Hollifield, *The Politics of International Migration: How Can We Bring the State Back In?*, in CAROLINE B. BRETTEL & JAMES F. HOLLIFIELD, *MIGRATION THEORY: TALKING ACROSS DISCIPLINES* (2000).

international and regional migration regimes. Even as states become more dependent on migration, they are likely to remain trapped in a liberal paradox for decades to come.