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# Disadvantages of Immigration Restriction as a Policy to Improve Income Distribution, The

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# THE DISADVANTAGES OF IMMIGRATION RESTRICTION AS A POLICY TO IMPROVE INCOME DISTRIBUTION

*Howard F. Chang\**

## ABSTRACT

*In this Article, I argue that tax and transfer policies are more efficient than immigration restrictions as instruments for raising the after-tax incomes of the least skilled native workers. Policies to protect these native workers from immigrant competition in the labor market do no better at promoting distributive justice and are likely to impose a greater economic burden on natives in the country of immigration than the tax alternative. These immigration restrictions are especially costly given the disproportionate burden that they place on households with working women, which discourages female participation in the labor force. This burden runs contrary to the teachings of optimal tax theory and introduces excessive distortions in the labor market because the supply of female labor is more elastic than the supply of male labor. Thus, the best response to concerns about the effect of immigration on the distribution of income among natives is to increase the progressivity of the tax system.*

## TABLE OF CONTENTS

I. THE ECONOMIC IMPACT OF INTERNATIONAL LABOR MIGRATION .....	26
A. THE GAINS FROM INTERNATIONAL TRADE IN THE LABOR MARKET .....	26
B. INCOME DISTRIBUTION AMONG NATIVES .....	28
II. PROTECTIONISM AND DISTRIBUTIVE JUSTICE ....	31
A. BEHAVIORAL ECONOMICS .....	34
B. HETEROGENEOUS INDIVIDUALS .....	34
1. <i>Equity</i> .....	35
2. <i>Economic Efficiency</i> .....	36
a. Optimal Tax Theory and Working Women ....	37
b. Immigration Restrictions and Working Women .....	37

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c. Immigration Restrictions Compared to the Tax Alternative .....	40
III. CONCLUSION .....	43

TO an economist, the international migration of workers is one facet of globalization, which economists understand to mean the development of a global common market—that is, our evolution toward a world economy that is integrated across national boundaries.<sup>1</sup> Our progress in this direction has been especially dramatic in the liberalization of international trade in goods. Economists generally welcome this development, prescribing free trade as the regime that maximizes global economic welfare. Economists also recommend liberalized trade as a policy that is likely to produce gains for each national economy.

Economists also recognize that the same theory that applies to goods also applies to international trade in other markets.<sup>2</sup> Nations can gain through not only the free movement of goods across national boundaries, but also the free movement of labor across national boundaries.<sup>3</sup> The basic intuition for this result derives from the gains from international trade in the labor market. We would expect labor to migrate from low-wage countries to high-wage countries in pursuit of higher wages.<sup>4</sup> As a result of this migration, world output rises. Higher wages in the host country imply that the marginal product of labor is higher there than in the source country.<sup>5</sup> That is, higher wages for the same worker means that the worker produces more value in the host country than in the source country.

Labor migration generally leads to net gains in wealth for the world as a whole, because labor flows to the country where it has the higher-value use. For this reason, economic theory raises a presumption in favor of the free movement of labor.<sup>6</sup> Migration restrictions distort the global labor market, producing a misallocation of labor among countries, thereby wasting human resources and creating unnecessary poverty in labor-abundant countries.<sup>7</sup>

Despite these considerations, some economists and many other observers favor immigration restriction as a policy designed to protect native workers from foreign competition.<sup>8</sup> These restrictionists often argue that

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1. I have explored this topic in my previous work, and this Article builds upon the foundation set out in Howard F. Chang, *The Economic Impact of International Labor Migration: Recent Estimates and Policy Implications*, 16 TEMP. POL. & CIV. RTS. L. REV. 321 (2007).

2. *Id.* at 322.

3. Howard F. Chang, *Liberalized Immigration as Free Trade: Economic Welfare and the Optimal Immigration Policy*, 145 U. PA. L. REV. 1147, 1148–50 (1997).

4. See PAUL R. KRUGMAN & MAURICE OBSTFELD, INTERNATIONAL ECONOMICS: THEORY AND POLICY 158–59 (2d ed. 1991).

5. Chang, *supra* note 1, at 322.

6. See KRUGMAN & OBSTFELD, *supra* note 4, at 158–59.

7. Chang, *supra* note 1, at 322.

8. *Id.* at 327.

the entry of immigrant workers increases income inequality among natives and that principles of distributive justice militate in favor of immigration restriction.<sup>9</sup> In this Article, I suggest that although the economic effects of immigration on native workers and distributive justice among natives are often advanced as reasons to reduce immigration, these concerns do not provide a sound justification for our restrictive immigration laws. Instead, the appropriate response to concerns about the distribution of income among natives is to increase the progressivity of our tax system.

In Part I of this Article, I briefly summarize the literature on the economic effects of labor migration, including some recent estimates of the magnitude of these effects.<sup>10</sup> In particular, this review focuses on the effects that migration produces for participants in national labor markets, assuming that fiscal policies do not change the distribution of costs and benefits among individuals. This background information lays the foundation for the analysis that follows in Part II of this Article, which introduces the option of redistribution through the public sector and focuses on a comparison of immigration restrictions with a set of tax reforms that have the same expected impact on the distribution of income among natives.

This comparison evaluates policy alternatives in terms of the economic welfare of natives alone. I assume a strictly nativist measure of national economic welfare, not because I believe that immigration policy should be guided solely by the interests of natives, but because their interests have in fact played a dominant role in the public debate over immigration policy.<sup>11</sup> I adopt this perspective for the sake of argument, not because I believe that it is morally defensible, but because this nativist welfare objective is commonly thought to provide a strong case in favor of immigration restriction.

My analysis suggests that even from this narrow perspective, which “stacks the deck” against the immigrant, immigration restrictions that protect the least skilled native workers from foreign competition are a costly response to concerns about income distribution. These restrictions are especially costly given the disproportionate burden that they place on households with working women, which discourages female participation in the labor force. As the supply of female labor is more elastic than the supply of male labor, the burden that immigration restrictions impose on working women runs contrary to the teachings of optimal tax theory and introduces excessive distortions in the labor market. I conclude that progressive tax reforms would be more efficient than immigration restric-

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9. *Id.*

10. For a more comprehensive survey of the empirical literature, see *id.* at 323–32.

11. See, e.g., S. REP. NO. 98–62, at 3 (1983) (“[T]he paramount obligation of any nation’s government, indeed the very reason for its existence and the justification for its power, is to promote the national interest—the long-term welfare of the majority of its citizens and their descendants.”).

tions as instruments for raising the after-tax incomes of the least skilled native workers.

In Part III, I discuss the normative implications of my economic analysis. I relax the assumption that our sole concern is the welfare of natives and address the welfare of immigrants and of aliens overseas. I conclude that protectionist immigration policies are not only likely to be relatively costly as an instrument for redistribution among natives but also perverse from the standpoint of global justice. Thus, considerations of economic efficiency and distributive justice both militate against immigration restrictions.

## I. THE ECONOMIC IMPACT OF INTERNATIONAL LABOR MIGRATION

To evaluate the use of immigration restrictions to achieve a desirable distribution of income, we must first understand both the economic costs that these restrictions impose and the benefits that they generate for some workers. Therefore, I begin my analysis of immigration restrictions with a review of the impact of labor migration on the private sector, setting aside the impact that immigrants may have on the public sector. For the time being, I will assume that fiscal policies do not offset the effects in the labor market by shifting costs and benefits among individuals in the country of immigration. Later, in Part II of this Article, I will introduce the possibility of redistribution through the public sector.

First, I review some of the latest estimates of the magnitude of the gains that the world could enjoy by liberalizing international migration. These estimates indicate that even partial liberalization would not only produce substantial increases in the world's real income but also improve its distribution by reducing international inequality. Furthermore, the gains from liberalization would be distributed such that if we examine the effects on natives in the countries of immigration, on the migrants, and on those left behind in the countries of emigration, we find that each group would enjoy significant gains.

Second, I turn to the question of the effects of immigration on the distribution of income among natives in the United States. In particular, I review recent estimates of the impact of immigration on the least skilled native workers. I suggest that under a fair reading of this economic literature, the best evidence available indicates that the adverse effect of immigration on the least skilled native workers is small.

### A. THE GAINS FROM INTERNATIONAL TRADE IN THE LABOR MARKET

The larger the inequality in wages between countries, the larger the distortion of global labor markets caused by migration restrictions, and the larger the economic gains from liberalizing labor migration. Given

the degree of wage inequality in the world today,<sup>12</sup> it should be apparent that the gains from liberalized migration are huge.<sup>13</sup> In fact, some economists have attempted to estimate the gains that the world could enjoy by liberalizing migration.

The World Bank, for example, has recently studied the potential gains from a modest increase in international migration.<sup>14</sup> The World Bank economists considered the effects of an increase in migration from “developing” countries to “high-income countries” sufficient to increase the labor force in the host countries by three percent by the year 2025.<sup>15</sup> They conclude that this scenario “would generate large increases in global welfare,”<sup>16</sup> increasing the world’s real income by \$356 billion in 2025.<sup>17</sup>

The gains from liberalization would be distributed such that if we examine the effects on natives in the countries of immigration, on the migrants, and on those left behind in the countries of emigration, we find that each group would enjoy significant gains. Furthermore, “the relative gains are much higher for developing-country households than high-income country households.”<sup>18</sup> That is, liberalization would not only increase the world’s real income but also reduce international income inequality.

First consider the effects of immigrant workers on natives in the country of immigration. If we examine the impact of immigrants in the labor market, we find that the natives of the host country, taken together, will gain from the immigration of labor.<sup>19</sup> Wages may fall for native workers who compete with immigrant labor,<sup>20</sup> but this loss for workers is a pure transfer among natives: it is offset by an equal gain for those who employ labor, and ultimately for consumers who obtain goods and services at lower cost.<sup>21</sup> Furthermore, natives gain from employing immigrant workers: they gain surplus in excess of what they pay immigrants for their labor. Thus, natives as a group enjoy a net gain from employing immigrants.<sup>22</sup> In fact, the World Bank economists estimate that the high-income countries receiving immigrants in their liberalization scenario

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12. See *Mexican Deportees Report Good Treatment*, UNITED PRESS INT’L, Apr. 21, 1996, at 1 (reporting the results of a survey of deported Mexican immigrants, who received an average of \$278 per week in the United States, compared with \$30.81 per week in Mexico).

13. Chang, *supra* note 1, at 322.

14. WORLD BANK, GLOBAL ECONOMIC PROSPECTS: ECONOMIC IMPLICATIONS OF REMITTANCES AND MIGRATION 25 (2006).

15. *Id.*

16. *Id.* at 26.

17. *Id.* at 31.

18. *Id.* at 25.

19. See NATIONAL RESEARCH COUNCIL, THE NEW AMERICANS: ECONOMIC, DEMOGRAPHIC, AND FISCAL EFFECTS OF IMMIGRATION 135–53 (James P. Smith & Barry Edmondson eds., 1997) [hereinafter NRC].

20. *Id.* at 137.

21. See *id.* at 138–39.

22. See *id.* at 139.

would enjoy an increase of \$139 billion in their real income.<sup>23</sup>

In theory, migration may make those left behind in the source countries worse off insofar as they no longer enjoy the gains from trade that they used to enjoy from employing the workers who have emigrated. Although workers left behind would enjoy an increase in wages as a result of the departure of competing workers, employers would lose more than the workers left behind would gain. As long as the migrants allowed to move under the liberalization analyzed by the World Bank send the same proportion of their income to those left behind as that sent by existing migrants, however, the World Bank estimates that with these remittances, those left behind would enjoy a gain of \$143 billion.<sup>24</sup>

It is the migrants themselves, however, who gain by far the most from their own migration. They obtain much higher wages in their host countries than they did in their source countries. In the scenario analyzed by the World Bank, the additional migrants allowed to move under liberalized immigration policies nearly triple their own real income on average, enjoying a gain of \$162 billion, even after subtracting remittances sent back to those left behind in their countries of origin.<sup>25</sup> In this sense, labor migration represents a form of international trade in which the source country exports labor to the host country. Like international trade in goods, labor migration allows foreign suppliers to sell their services to domestic buyers, allowing both parties to gain from trade.

#### B. INCOME DISTRIBUTION AMONG NATIVES

Nevertheless, countries often restrict immigration to protect native workers from the unemployment or the wage reductions that the entry of foreign workers would supposedly entail. In this sense, immigration barriers, like trade barriers, are protectionist: they are designed to protect natives from foreign competition.<sup>26</sup> Protectionists often defend these barriers as policies that promote a more equal distribution of income among natives, pointing to the adverse effects of immigration on the welfare of the least skilled native workers in particular.<sup>27</sup>

Although the economic effects of immigration on native workers and distributive justice are often advanced as reasons to reduce immigration,

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23. See WORLD BANK, *supra* note 14, at 34.

24. See *id.* at 33–34.

25. See *id.* at 34 (reporting that migrants would increase their real income by 199 percent).

26. In the United States, we have designed some of our immigration restrictions explicitly in terms of this objective. For example, we require “labor certification” for most categories of employment-based immigration visas, including even those for skilled workers holding advanced degrees. See 8 U.S.C. §§ 1153(b)(2)–(3), 1182(a)(5)(D) (2000). Labor certification requires the employer show that “there are not sufficient workers who are able, willing, qualified . . . and available” to perform the work in question and that the employment of the alien “will not adversely affect the wages and working conditions of workers in the United States similarly employed.” *Id.* § 1182(a)(5)(A)(i). We also impose quantitative restrictions on immigration visas, in part to protect native workers from foreign competition. See *id.* §§ 1151–53.

27. Chang, *supra* note 1, at 327.

these concerns for distributive justice do not provide a sound justification for restrictive immigration laws.<sup>28</sup> First, concerns regarding income inequality among natives do not justify any restrictions on skilled immigration, because skilled immigrants not only increase total wealth for natives, but also promote a more equitable distribution of income among natives. They are likely to have an adverse effect only on competing skilled natives and increase the real wages of everyone else, including less skilled natives, who enjoy the benefits of a greater supply of skilled labor. Therefore, the pursuit of a more equal distribution of income among natives would at most justify concerns regarding relatively unskilled immigration, which could have an adverse effect on the real wages of relatively unskilled native workers.<sup>29</sup>

Second, studies of the effects of immigration in labor markets in the United States and in other countries have shown little evidence of any significant effects on native wages or employment, even for the least skilled native workers.<sup>30</sup> Given the small effects of immigration on native wages and employment, protectionist policies seem particularly misguided. David Card's influential study of the effect of the Mariel Cubans on the Miami labor market, for example, produces fairly typical results for this literature: He found that the arrival of 125,000 Cubans in 1980, which increased the supply of labor in Miami by seven percent almost overnight, had virtually no effect on the wages and employment opportunities for workers in Miami, including the least skilled whites and the least skilled blacks.<sup>31</sup>

Why do immigrants have so little adverse impact on the wages and employment of natives? One reason is that the demand for labor does not remain fixed when immigrants enter the economy. Immigrant workers not only supply labor, for example; they also demand goods and services, and this demand will translate into greater demand for locally supplied labor. Furthermore, an influx of labor will create a profit opportunity for investors, which in turn will attract capital to the economic activities employing the immigrant labor. This expansion in the sector of the economy employing this labor will also increase the demand for that labor, which in turn would tend to offset the effect of increased supply.<sup>32</sup>

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28. *Id.* This Section expands on the foundation I set forth in Howard F. Chang, *Immigration and the Workplace: Immigration Restrictions as Employment Discrimination*, 78 CHI.-KENT L. REV. 291, 308–11 (2003).

29. Few relatively unskilled workers can obtain employment-based immigration visas to enter the United States: of the 140,000 visas allocated to employment-based immigration per year, only 10,000 may go to relatively unskilled workers. See 8 U.S.C. §§ 1151(d)(1)(A), 1153(b)(3)(A)(iii), (B) (2000).

30. See, e.g., NRC, *supra* note 19, at 223; George J. Borjas, *The Economics of Immigration*, 32 J. ECON. LITERATURE 1667, 1697–98 (1994); Rachel M. Friedberg & Jennifer Hunt, *The Impact of Immigrants on Host Country Wages, Employment and Growth*, J. ECON. PERSP., Spring 1995, at 23, 42.

31. See David Card, *The Impact of the Mariel Boatlift on the Miami Labor Market*, 43 INDUS. & LAB. REL. REV. 245, 256 (1990).

32. Thus, by shifting resources to the sectors of the economy employing immigrants, an economy can mitigate or even eliminate the adverse effects that immigrant workers may



Finally, the empirical evidence indicates that immigrants and natives are not perfect substitutes in the labor market, so they often do not compete for the same jobs.<sup>33</sup> For example, immigrants are likely to have different language skills than natives do, so that employers may find natives to be better suited for some tasks than immigrants are. In fact, labor markets are highly segregated, with immigrant labor concentrated in some occupations while natives are concentrated in others.<sup>34</sup> Immigrants compete with one another far more than they compete with natives.<sup>35</sup> Indeed, some immigrant labor can be a complement rather than a substitute for native labor, so that an increase in the supply of immigrant labor will increase the demand for native labor and thus have positive effects on native wages rather than negative effects.

Nevertheless, some economists claim that immigration has had a significant adverse impact on the least skilled native workers.<sup>36</sup> It is important, however, to interpret these claims carefully in light of the positive effects of immigration on the demand for native labor. Recent work by George Borjas, in particular, is widely cited by restrictionists for his large estimates of the effect of immigrants on native wages.<sup>37</sup> In a recent study, for example, he attempts to estimate the effects of all immigration between 1980 and 2000 on native workers in the United States, concluding that the large influx of workers over these two decades reduced the wage of the average native worker by 3.2 percent and the wage of high-school dropouts by 8.9 percent during this period.<sup>38</sup> These results, however, are based on a simulation that makes two extreme assumptions. First, he assumes that immigrants are *perfect* substitutes for natives as long as the workers have the same number of years of education and of experience.<sup>39</sup> Second, he assumes that the capital stock is fixed and does not respond to this immigration by increasing the supply of capital to the economic activ-

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have on the wages of competing native workers. See Noel Gaston & Douglas Nelson, *Immigration and Labour-Market Outcomes in the United States: A Political-Economy Puzzle*, 16 OXFORD REV. ECON. POL'Y 104, 108 (2000) (noting that "some of the adjustment . . . will occur via a change in the output mix, reducing the . . . costs to the competing factor (i.e. domestic unskilled labour)").

33. See Jean Baldwin Grossman, *The Substitutability of Natives and Immigrants in Production*, 64 REV. ECON. & STAT. 596, 600 (1982).

34. See NRC, *supra* note 19, at 218 (concluding that the data suggest that "the jobs of immigrant and native workers are different").

35. Thus, immigration does have a more substantial adverse effect on the wages of other immigrants, who are much closer substitutes for new immigrants. See *id.* at 223 ("The one group that appears to suffer significant negative effects from new immigrants are earlier waves of immigrants, according to many studies.").

36. See, e.g., GEORGE J. BORJAS, *HEAVEN'S DOOR: IMMIGRATION POLICY AND THE AMERICAN ECONOMY* 99 (1999) (claiming that immigration "transfers a substantial amount of wealth away from the workers who compete with immigrants to the natives who have skills or physical resources that benefit from the presence of immigrants" and that "it is the less-skilled natives who pay the price of immigration").

37. See George J. Borjas, *The Labor Demand Curve Is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market*, 118 Q.J. ECON. 1335, 1370 (2003).

38. *Id.* at 1368.

39. *Id.* at 1360.

ities employing immigrant labor.<sup>40</sup> Given these restrictive assumptions, his simulation is inherently biased in favor of finding large adverse effects on natives.<sup>41</sup>

A more recent study by Gianmarco Ottaviano and Giovanni Peri uses a simulation that instead allows the supply of capital to adjust and allows immigrants and natives with the same number of years of education and experience to be imperfect substitutes.<sup>42</sup> By relaxing the restrictive assumptions used by Borjas, they produce dramatically different results. Once they allow the capital stock to adjust fully, they estimate that all immigration into the United States from 1990 to 2004 increases the average wage of native workers by 1.8 percent and decreases the wage of native high-school dropouts by only 1.1 percent.<sup>43</sup> Indeed, they find that all native workers with at least a high-school education enjoy increased wages as a result of this immigration rather than reduced wages.<sup>44</sup> Thus, this influx of immigrants had only a small adverse effect on the shrinking minority of native workers with less than a high-school education.<sup>45</sup>

## II. PROTECTIONISM AND DISTRIBUTIVE JUSTICE

On the other hand, even if present levels of immigration have little effect on the wages of the least skilled natives, a more liberal immigration

40. *Id.* at 1368 (“[a]ssuming that the capital stock is constant”).

41. In a more recent simulation, George Borjas and Lawrence Katz allow the capital stock to adjust and produce much better results for native workers. See George J. Borjas & Lawrence F. Katz, *The Evolution of the Mexican-Born Workforce in the United States* 39 (Nat’l Bureau of Econ. Research, Working Paper No. 11281, 2005). After the capital market adjusts to the influx of immigrants between 1980 and 2000, the wage of the average worker rises slightly, and the wages of high-school dropouts falls by only 4.8 percent. See *id.* at 39–40, 63. Borjas and Katz have since reduced their estimate of this adverse effect on the wages of high-school dropouts down to 3.6 percent, “acknowledging that the original analysis used some statistically flimsy data.” Eduardo Porter, *Cost of Illegal Immigration May Be Less Than Meets the Eye*, N.Y. TIMES, Apr. 16, 2006, § 3 (Magazine), at 3. This “small impact . . . was likely swamped by all the other things that hit the economy,” including “the revolution in technology.” *Id.* Furthermore, all of these simulations maintain the restrictive assumption that immigrants and natives are perfect substitutes within each class of labor.

42. See Gianmarco I.P. Ottaviano & Giovanni Peri, *Rethinking the Effects of Immigration on Wages* 3–4 (Nat’l Bureau of Econ. Research, Working Paper No. 12497, 2006).

43. See *id.* at 4. These results are based on their median estimate for the “elasticity of substitution” between immigrants and natives. *Id.* at 18; see *id.* at 46 (Table 9). Ottaviano and Peri report the results of forty different regressions estimating this elasticity, and in all but one of these cases, which estimates this elasticity for male college graduates, they can reject the null hypothesis of perfect substitution. See *id.* at 42 (Table 5). But see George J. Borjas et al., *Immigration and African-American Employment Opportunities: The Response of Wages, Employment, and Incarceration to Labor Supply Shocks* 11 (Nat’l Bureau of Econ. Research, Working Paper No. 12518, 2006) (testing the hypothesis that immigrants and natives are perfect substitutes and finding “no evidence to support the hypothesis that immigrants and natives are imperfect substitutes”).

44. Ottaviano & Peri, *supra* note 42, at 4.

45. See BORJAS, *supra* note 36, at 27 (noting that “by 1998, only 9 percent of natives lacked a high school diploma” and showing how this percentage declined steadily over the preceding four decades); NRC, *supra* note 19, at 228 (noting that “[b]y 1995, high school dropouts represented less than 10 percent of the American workforce” and were “a declining group of American workers”).

policy might produce more significant effects, especially if relatively unskilled workers were to make up an increasingly large fraction of the flow of immigrants. Indeed, restrictionists often cite the need to protect the least skilled native workers from relatively unskilled immigrant competition in the labor market. Like trade barriers, however, immigration barriers sacrifice gains from trade and thus reduce the total wealth of natives as a group. In this sense, protectionism is a costly way to redistribute wealth from some natives to others.

This observation brings me to my main thesis: We could redistribute the same wealth through tax policies and transfer programs rather than through protectionism and probably would thereby make all classes of natives better off than they are under restrictive immigration policies, because immigration produces net gains for natives as a group.<sup>46</sup> Thus, concerns about the distribution of income among natives do not imply that protectionist immigration restrictions are in order. Instead, the appropriate response to these concerns is redistribution through progressive reforms of tax and transfer policies.

In the United States, for example, we could instead make Social Security and income taxes more progressive, or increase the earned income tax credit and liberalize its eligibility requirements. These progressive tax reforms can supplement the income of the least skilled native workers if relatively unskilled immigration drives down their real wages. This alternative could reduce deadweight loss while still redistributing the same amount of wealth that we currently transfer through costly protectionism.

If we wish to protect relatively unskilled native workers from adverse distributive effects, redistribution through fiscal policies is likely to be a less costly solution than protectionism. If so, then optimal policies would liberalize immigration insofar as it increases the total wealth of natives. As long as immigration increases total wealth, then those who gain from immigration can compensate those who lose and still be better off. That is, those natives who gain from an expanded demand for their own labor, capital, or real property, or by paying lower wages to employees, or by buying products and services at lower cost, can afford to pay enough to compensate those who find their wages falling relative to prices. Through redistribution, we can attempt to shift the costs of liberalized immigration to the many beneficiaries of liberalization.

For example, if the immigration of relatively unskilled workers reduces the wages of the least skilled natives, then raising taxes on those workers with higher incomes and reducing taxes on native workers with the lowest incomes could leave all classes of natives better off than they would be in the absence of immigration.<sup>47</sup> Those income classes that would pay higher taxes to compensate the least skilled native workers are likely to bear a still heavier burden under the protectionist alternative, which

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46. Chang, *supra* note 28, at 309-11.

47. See Barry R. Chiswick, *Illegal Immigration and Immigration Control*, J. ECON. PERSP., Summer 1988, at 101, 107.

raises the prices of goods and services for all consumers and reduces the real incomes of more skilled natives. That is, protectionist policies currently impose an implicit tax on natives that probably costs them more than the explicit tax that would be necessary to compensate the least skilled native workers for the effects of liberalized immigration policies. Once we recognize that protectionism is merely a disguised tax-and-transfer program, it should be apparent that there is no good reason to favor protectionism over less costly transfer policies.

Redistribution through the tax system would produce some costly distortions in the behavior of taxpayers, for example, because income taxes reduce the incentives to earn income either by working or by saving and investing. The deadweight loss of protectionism, however, is likely to be greater than the deadweight loss from taxes with the same effect on the overall distribution of real after-tax income. That is, protectionism is likely to be less efficient than the tax system in producing a desirable distribution of income, because protectionism not only produces the distortions associated with redistribution but also sacrifices the gains from immigration in the labor market.

This reasoning is a specific application in the immigration context of a claim advanced more generally by Louis Kaplow and Steven Shavell, who suggest that we can always replace an economically inefficient rule with an efficient rule without making any income class worse off, provided that we make the appropriate adjustments in income taxes.<sup>48</sup> They argue that “using legal rules to redistribute income distorts work incentives fully as much as the income tax system—because the distortion is caused by the redistribution itself—and also creates inefficiencies in the activities regulated by the legal rules.”<sup>49</sup> In the immigration context, protectionist restrictions are the inefficient legal rules, and liberalization is the efficient alternative.

The “double-distortion argument” advanced by Kaplow and Shavell, however, is subject to a number of important qualifications.<sup>50</sup> Critics have pointed out that legal rules are not always more costly than income taxes as responses to income inequality.<sup>51</sup> Nevertheless, the various objections raised by these critics do not imply that protectionist immigration restrictions are superior to redistribution through fiscal policies.

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48. See Louis Kaplow & Steven Shavell, *Why the Legal System is Less Efficient Than the Income Tax in Redistributing Income*, 23 J. LEGAL STUD. 667, 669 (1994); Steven Shavell, *A Note on Efficiency vs. Distributional Equity in Legal Rulemaking: Should Distributional Equity Matter Given Optimal Income Taxation?*, 71 AM. ECON. REV. (PAPERS & PROC.) 414, 414 (1981).

49. Kaplow & Shavell, *supra* note 48, at 667–68.

50. Chris William Sanchirico, *Deconstructing the New Efficiency Rationale*, 86 CORNELL L. REV. 1003, 1008–09 (2001). See also Richard S. Markovits, *Why Kaplow and Shavell's “Double-Distortion Argument” Articles Are Wrong*, 13 GEO. MASON L. REV. 511 (2005).

51. See, e.g., Sanchirico, *supra* note 50, at 1009.

## A. BEHAVIORAL ECONOMICS

Christine Jolls raises objections from the perspective of behavioral economics.<sup>52</sup> In particular, she suggests that if workers treat the cost of a legal rule as an expenditure out of income “rather than direct charges against income,” this mental accounting may reduce distortions in work incentives.<sup>53</sup> Thus, insofar as protectionist immigration policies transfer wealth from the rich by raising the costs of the goods and services they buy, rather than by reducing their nominal incomes as skilled workers or owners of capital, then these implicit transfers may distort their incentives to earn income less than a direct tax on that income. Insofar as this claim is true about the costs of protectionism, however, at most it would militate in favor of taxes on luxury goods rather than income taxes as our redistributive policy, not in favor of protectionist policies that needlessly sacrifice gains from immigration in the labor market. Furthermore, we would have to weigh this possible disadvantage of income taxes against the additional costs imposed by taxes on the consumption of luxury goods, whether they are explicit sales taxes or implicit taxes imposed by immigration restrictions, which distort consumption decisions as well as decisions to earn income. On balance, it still seems likely that income taxes would be more efficient than protectionist immigration restrictions as an instrument for redistribution.<sup>54</sup>

## B. HETEROGENEOUS INDIVIDUALS

Chris Sanchirico suggests that individuals may be heterogeneous in ways that make some legal rules superior to taxes, because these two policy alternatives may direct transfers from different parties and to different beneficiaries.<sup>55</sup> Note that I have suggested that in the United States, we could achieve redistribution more efficiently by expanding programs already in use under the existing tax system. I do not suggest that we identify workers displaced by immigrant competition in the labor market and target subsidies to those individuals, as we direct trade “adjustment assis-

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52. See Christine Jolls, *Behavioral Economics Analysis of Redistributive Legal Rules*, 51 VAND. L. REV. 1653, 1656 (1998).

53. *Id.* at 1670.

54. Jolls also suggests that some legal rules may achieve redistribution with less distortion in work incentives if individual workers bear the cost imposed by the legal rule with only low probability and are unduly optimistic. Thus, if a legal rule were to redistribute income only when some low-probability event (such as personal injury in an accident) occurs, then such transfers may have little effect on the behavior of workers, who may discount the probability that such a transfer will occur. See *id.* at 1658–63. Protectionist immigration restrictions, however, transfer wealth primarily through the same channel as taxes on income or on luxury goods, by changing a worker's real expected after-tax income. In this respect, protectionism has no obvious advantage over the tax alternatives, and Jolls's critique based on irrational optimism offers no defense for protectionism.

55. Sanchirico, *supra* note 50, at 1057–64; see Chris William Sanchirico, *Taxes Versus Legal Rules as Instruments for Equity: A More Equitable View*, 29 J. LEGAL STUD. 797 (2000).

tance” to those harmed by import competition in goods markets.<sup>56</sup> As Raj Bhala notes, trade adjustment programs have proven “nightmarishly complex” and “ineffectual.”<sup>57</sup> A similar program for workers displaced by immigrant competition would require a new bureaucracy and additional administrative costs. Instead, the measures that I propose would only modify existing tax policies to ensure that immigration liberalization does not increase overall after-tax income inequality.

These measures would not seek to compensate precisely every single individual affected adversely by liberalization so that immigration reform would make literally *no one* worse off. To insist that these reforms effect such a Pareto improvement over the status quo is to set too high a hurdle for reform. Such a requirement would prevent us from implementing virtually any reform in any public policy.

### 1. *Equity*

Not only is it infeasible as a practical matter to replicate exactly the redistribution produced by protectionism, but it is also not desirable as a normative matter that we do so. We can generally design progressive tax and transfer policies so that they redistribute income on the basis of morally relevant criteria, whereas the alternative of protectionism distributes its subsidy on a morally arbitrary basis. Protectionism subsidizes the unskilled native who happens to face immigrant competition in the labor market, but not the similarly unskilled native who does not. In this sense, protectionism is inferior to tax and transfer policies from the perspective of not only economic efficiency but also horizontal equity.

Sanchirico, however, suggests that some legal rules may enable us to target transfers in ways that taxes cannot and that are appealing from the perspective of distributive justice.<sup>58</sup> For example, if immigration restrictions were to target transfers disproportionately to black natives rather than white natives, we might regard this effect as desirable, given the disadvantages that blacks face relative to whites in our society. At the same time, legal constraints imposed by constitutional law in the United States, however, may prevent explicit discrimination in favor of blacks and against whites in tax rates.

In fact, a recent study by George Borjas, Jeffrey Grogger, and Gordon Hanson suggests that immigration drives down black employment rates to a greater extent than white employment rates.<sup>59</sup> Their study, however, indicates that this effect derives only from a greater elasticity of labor supply among blacks than among whites, so that a given wage impact

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56. See JOHN H. JACKSON ET AL., *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS* 669–75 (4th ed. 2002) (discussing trade adjustment assistance programs); RAJ BHALA, *INTERNATIONAL TRADE LAW: THEORY AND PRACTICE* 1580–89 (2d ed. 2001) (same).

57. BHALA, *supra* note 56, at 1582.

58. Sanchirico, *supra* note 55, at 816–20.

59. See Borjas et al., *supra* note 43, at 37.

from immigration has a greater employment effect among blacks.<sup>60</sup> Their results do not suggest that immigration has a greater wage effect on black workers than on white workers, after they control for education and experience. Given this evidence, even if we take all their results to be true, tax reforms that provide the same after-tax wage for each income class of native workers as protectionist immigration restrictions yield would be just as effective in preventing this adverse effect on black employment as the protectionist alternative. Thus, the study by Borjas, Grogger, and Hanson provides no reason to believe that protectionist immigration restrictions provide an advantage over the tax system from the standpoint of equity. Their results are better understood as a reason to adopt progressive tax reforms than as a reason to restrict immigration. Protectionism still derives no apparent justification from the fact that the transfers that it accomplishes do not fall on precisely the same individuals targeted by transfers through the tax system.

## 2. *Economic Efficiency*

Sanchirico also suggests that some legal rules may target transfers in a more efficient manner than taxes can.<sup>61</sup> This suggestion might apply to immigration restrictions if such policies happened to change the real wages, for example, of those with the least elastic supply of labor. According to principles of optimal taxation, redistribution should target workers with the least elastic supply of labor so as to minimize the distortions in labor supply associated with a given amount of redistribution. There seems to be no reason, however, to think that protectionism targets its transfers in such a way as to reduce the distortions associated with those transfers.

Sanchirico notes that although redistribution through legal rules may produce a second distortion in addition to the distortion produced by redistribution itself, a double distortion may be less costly than a single distortion because “[d]istortions may counteract one another.”<sup>62</sup> There seems to be no reason, however, to think that the distortions specific to protectionist immigration restrictions mitigate the distortions in work incentives associated with redistribution. Indeed, the empirical evidence gives us ample reason to think that protectionist immigration restrictions introduce additional distortions that instead aggravate the distortion in work incentives associated with redistribution.

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60. *See id.* (explaining that their results suggest that “the 1980-2000 immigrant influx had roughly similar impacts on wages by race, but had a bigger impact on both employment rates and incarceration rates for blacks”). Their proposed explanation for their results is that blacks shift more readily out of legitimate employment and into criminal activity than whites in the face of the same drop in wages. *See id.* at 17 (noting that “if the demand for labor in the crime sector is more elastic for blacks than for whites, immigration will have a larger negative impact on black market employment and a larger positive impact on black crime employment”).

61. Sanchirico, *supra* note 55, at 816–20.

62. Sanchirico, *supra* note 50, at 1017.

### a. Optimal Tax Theory and Working Women

Specifically, the costs of protectionist immigration restrictions in the United States may fall disproportionately on working women, whose labor supply is more elastic than that of men.<sup>63</sup> The decision of women to participate in the labor force is particularly sensitive to economic incentives compared to the same decision for men.<sup>64</sup> When taxation induces women to stay home and out of the labor market, society bears the costs of the depreciation of their labor market skills and of a less efficient allocation of labor in the economy.<sup>65</sup> Therefore, optimal tax principles suggest that redistribution should target male workers rather than female workers, so as to achieve a given quantity of redistribution with the minimum distortion in labor supply.

According to optimal tax theory, we should tax women at lower rates than we tax men, given the greater deadweight loss that results from the taxation of women.<sup>66</sup> Insofar as legal constraints, such as those imposed by constitutional law in the United States, prevent explicit sex discrimination in tax rates, other policies that achieve similar results in effect would increase social welfare. For example, favorable tax treatment or explicit subsidies for child-care expenses may reduce the distortion in female labor participation flowing from the taxation of women.<sup>67</sup> This reduction in behavior distortion would allow us to accomplish either the same redistribution with less deadweight loss or a more equal income distribution with the same deadweight loss.

### b. Immigration Restrictions and Working Women

When protectionist immigration restrictions reduce the supply of immigrant workers and thereby raise the cost of relatively unskilled labor, however, the result is precisely the opposite of what optimal tax theory would recommend, driving up the cost of services demanded dispropor-

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63. See EDWARD J. McCAFFERY, *TAXING WOMEN* 180–83 (1997) (surveying the empirical evidence of labor supply elasticities for men and women).

64. The decision to participate in the labor market is more sensitive to economic incentives than the choice of how many hours to work conditional on having accepted employment. See James J. Heckman, *What Has Been Learned About Labor Supply in the Past Twenty Years?*, 83 AM. ECON. REV. (PAPERS & PROC.) 116, 117 (1993) (“Participation (or employment) decisions generally manifest greater responsiveness to wage and income variation than do hours-of-work equations for workers.”). A survey of the empirical literature reveals that “the strongest empirical effects of wages and nonlabor income on labor supply are to be found at the extensive margin—at the margin of entry and exit.” *Id.* at 118.

65. See Janet C. Hunt, Charles D. DeLorme, Jr. & R. Carter Hill, *Taxation and the Wife’s Use of Time*, 34 INDUS. & LAB. REL. REV. 426, 432 (1981) (noting that “higher marginal tax rates reduce the amount of specialization in the economy” by reducing the labor supplied by wives outside the home, causing “a fall in real income,” and that a “real loss may occur in the form of human capital depreciation of wives because of reduced labor-time attachment and lower hours of market work”).

66. See Michael J. Boskin & Eytan Sheshinski, *Optimal Tax Treatment of the Family: Married Couples*, 20 J. PUB. ECON. 281, 296 (1983) (estimating that the optimal “tax rate on husbands would be roughly twice that on wives”).

67. See McCAFFERY, *supra* note 63, at 278 (noting that “optimal tax” principles support “a more generous child-care deduction or credit”).



tionately by households with working women. In the United States, for example, the National Research Council ("NRC") ranked low-education occupations in terms of the share of hours worked by immigrants. Among the top twenty such occupations, the NRC listed cooks, kitchen workers, bakers, and others who work in food preparation, housekeepers, maids, and others who clean private households, child-care workers, and waiters, waitresses, and their assistants.<sup>68</sup> Similarly, given the concern expressed by many restrictionists regarding low levels of education among Mexican immigrants in the United States, George Borjas and Lawrence Katz rank occupations according to the share of employment in the United States accounted for by Mexican immigrants in 2000.<sup>69</sup> Among the top ten occupations in this ranking, Borjas and Katz list cooks, gardeners, and those who work in private households.<sup>70</sup> In the United States in 1995, George Borjas reports, immigrant workers were more than four times as likely as native workers to work in private households.<sup>71</sup> "The degree to which immigrants dominate some of these fields is remarkable," the NRC concluded, adding that "[t]hese services would not exist on the same scale without immigrants, and the main economic impact may well be in the form of lower prices."<sup>72</sup>

Thus, immigrant workers provide services such as child care, house-keeping, and cooking, that are consumed by many households that would otherwise rely on a woman staying out of the work force to supply these services at home. By reducing the supply and driving up the cost of these services, protectionist restrictions on the immigration of relatively unskilled foreign workers impose an implicit tax on working women, increasing their incentives to leave the labor force and the incentives of other women to stay at home. By imposing the burden of redistribution disproportionately on working women, protectionist immigration restrictions distort labor supply more than necessary, contrary to the teachings of optimal tax theory.

Redistribution through protectionist immigration restrictions are inferior to the tax alternative, not only from the standpoint of economic efficiency, but also from the perspective of the feminist who would like to remove artificial obstacles to female participation in the labor force.<sup>73</sup>

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68. See NRC, *supra* note 19, at 213–14 (Table 5.18).

69. See George J. Borjas & Lawrence F. Katz, *The Evolution of the Mexican-Born Workforce in the United States*, in *MEXICAN IMMIGRATION TO THE UNITED STATES* 13, 23 (George J. Borjas ed., 2007).

70. *Id.*

71. See BORJAS, *supra* note 36, at 80 (Table 4-3).

72. NRC, *supra* note 19, at 215.

73. A welfarist might object to these obstacles based on gender equity if the welfarist believes that the following two conditions hold. First, women are worse off than men as a general matter. See McCaffery, *supra* note 63, at 237 (describing the status quo as "a world in which [women are] disproportionately poor, marginal, unhappy, overworked, underappreciated, and stressed"). Second, female participation in the labor market improves the welfare of women relative to men, so that removing obstacles to this participation would promote a more equitable distribution of welfare between the sexes. See *id.* at 268 ("Many women really do want to work outside as well as inside the home—they want the

Protectionism in this context raises another hurdle for many women entering the labor market by implicitly taxing working women and discriminating in favor of families organized along more traditional lines. For the feminist opposed to public policies that are biased in favor of traditional gender roles, the tendency of protectionist immigration laws to keep women at home should militate against those laws and in favor of transfers through the tax system instead.

On the other hand, there may also be those conservatives who believe that public policies that promote the traditional family, with women staying at home, increase social welfare.<sup>74</sup> These policies may produce benefits for children, for example, whose interests might not receive the consideration that they deserve from parents.<sup>75</sup> Perhaps child care provided by a parent at home increases human capital, raising children who will become more productive workers as adults, thereby generating benefits for society as a whole. These benefits may include positive externalities in the form of tax revenue for the public treasury, which may be a social benefit neglected by parents making private decisions regarding child care and participation in the labor market.

In any event, I do not intend to enter that debate here, other than to suggest that even if we were to decide to promote the traditional family, immigration restrictions would be a poor choice as an instrument with which to do so. It would probably be more efficient to do so through the tax system for the same reason that it would probably be more efficient to transfer income from the rich to the poor through the tax system: immigration restrictions needlessly destroy gains from trade in the labor market. We can subsidize traditional families directly through the tax system without the additional distortions in the labor market that are specific to immigration restrictions. Given this observation, I will set aside the promotion of the traditional family as a possible objective for immigration policy. Instead, I focus on an equitable distribution of income as the policy objective and maintain the standard assumption that we would like to achieve the desired income distribution with as little distortion in labor supply as possible.

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satisfaction, stimulation, prestige, engagement, and financial rewards of paid work, and they don't want to spend all of their time in the often exhausting, frustrating, underappreciated, and unpaid domestic sphere." According to Edward McCaffery, for example, women "who stay at home full time wish that they could get out of the house more, . . . to share some of the joys of the working world, to experience more diversity in their lives, and to earn some money and independence." *Id.* at 212.

74. Some observers believe "that traditional families with stay-at-home wives were good for society, for children, for men, even for women." *Id.* at 166.

75. Therefore, some may believe that it is "a good thing" if we encourage "parents to stay at home with their children," *id.* at 126, "because children benefit from being cared for at home," *id.* at 201. To the extent that this encouragement takes the form of an implicit or explicit tax on the use of professional child care, however, the claim that this encouragement produces net benefits for children seems dubious, because such a tax reduces the wealth of many households with children.

c. Immigration Restrictions Compared to the Tax Alternative

How can we be sure that immigration restrictions are less efficient than the current tax system in shifting income from the rich to the poor in the United States? As Edward McCaffery has explained, the current tax system in the United States also includes several features that tend to discourage female participation in the labor market. Given these features, the existing tax system causes more distortions than a system conforming to the principles of optimal tax theory.

For example, McCaffery notes how the United States system of joint filing for married couples discourages female participation in the workforce.<sup>76</sup> Suppose we refer to the spouse who earns less or is otherwise less committed to the labor market as the "secondary earner" in the household.<sup>77</sup> This spouse is most often the wife rather than the husband.<sup>78</sup> "For the most part, women are second earners simply because they earn less than their husbands," as McCaffery explains, noting that "[m]arried women make about 60 percent of what married men do."<sup>79</sup> When contemplating entry into the labor market, the secondary earner takes the participation of the primary earner as given, and therefore often faces a higher marginal tax rate. In many cases, the income of the primary earner has already pushed the household out of the lower tax brackets. The secondary earner does not enjoy the low marginal tax rates applied to the income brought in by the primary earner.

Thus, much of McCaffery's critique of the current tax system objects to its tendency to extend equal treatment to households with the same total income, whether that income is earned by one worker or two workers in the family. He points out how the secondary earner does not produce the same social security benefits<sup>80</sup> or fringe benefits<sup>81</sup> that the primary earner does for a family, because the tax system fails to double these benefits when a secondary earner adds income to the household. In essence, he observes that the tax system must treat a household with a secondary earner better than a household without one, even if these households have the same total income, in order to give the secondary earner the same incentive to participate in the labor market that the primary earner faces.

In this respect, restrictions on the immigration of relatively unskilled workers are even worse than the tax alternative as an instrument for income transfers. Whereas the tax system tends to treat the household with a secondary earner the same as the household without one, provided that the households have the same total income, immigration restrictions tend to treat the household with a secondary earner worse. This disparate im-

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76. *See id.* at 12-23.

77. *Id.* at 21.

78. *Id.* (noting that "there is apt to be a secondary earner in most families, and it is overwhelmingly likely to be the wife").

79. *Id.*

80. *See id.* at 94-96.

81. *See id.* at 126-29.

pact on households with working women implies that immigration restrictions cause greater distortions than tax reforms with the same effect on income distribution among natives would cause.

There is one respect, however, in which the current tax system may treat households with a secondary earner worse than those without: Housework performed by a woman for her own household in her own home avoids taxation, whereas the government would tax that same work performed by an employee or independent contractor that she hires as well as any income that she earns in the labor market.<sup>82</sup> As McCaffery notes, this feature of the tax system places a burden on working women and provides an implicit exemption for the woman who stays at home and does her own housework.<sup>83</sup> Thus, the tax system may burden a household with a secondary earner compared to a household with the same total income but without a secondary earner insofar as it taxes the income earned by the worker performing housework for compensation. The incidence of this tax falls at least in part on the household employing that worker.<sup>84</sup> That is, this tax increases the cost of going to the labor market for those services.

Nevertheless, restrictions on the immigration of relatively unskilled workers are still likely to place a greater burden on households with secondary earners than the tax alternative. Whereas restrictions on the immigration of relatively unskilled workers drive up the cost of services demanded by households with secondary earners, progressive tax reforms with the same impact on the distribution of income among natives are likely to reduce the cost of those services. After all, those tax reforms would cut taxes on the least skilled natives. By cutting taxes on those natives most likely to supply the services demanded by households with secondary earners, these reforms would tend to bring down the cost of those services rather than drive them up. Thus, despite the defects in the current tax system that discourage female participation in the labor market, immigration restrictions are likely to cause greater distortions than tax reforms producing the same improvement in the distribution of income among natives.

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82. *See id.* at 120–21.

83. *See id.* at 121.

84. Although public finance economists commonly assume that the incidence of income and payroll taxes falls on the employee and not on the employer, the elasticity of labor supply would have to be zero rather than positive for the employee to bear the full tax burden. Zero elasticity of labor supply may be a reasonable approximation for male workers or for hours of work conditional on employment, but is not a reasonable assumption for labor supply in general. *See Heckman, supra* note 64, at 118 (surveying the empirical evidence and concluding that although labor supply elasticities may be close to zero “for hours-of-work equations . . . estimated for those who are working,” these “elasticities are definitely not zero” if we look “at the extensive margin—at the margin of entry and exit”). Furthermore, if we nevertheless assume that the employer bears none of this tax burden, then this assumption implies that tax system treats the household with a secondary worker no worse than the household with the same total income but with no secondary worker. In this case, immigration restrictions impose a greater burden on the household with a secondary worker than the tax system does and are therefore less efficient as a means to transfer income from the rich to the poor.

The available empirical evidence bolsters our confidence in this conclusion. This evidence suggests that even immigration restrictions focused on excluding the relatively unskilled foreign workers would produce surprisingly small benefits for the least skilled native workers, because these immigrants and natives are imperfect substitutes in the labor market, because immigration tends to increase the demand for labor, and because immigration restrictions increase prices paid by the poor as well as the rich. These disadvantages make immigration restrictions relatively ineffectual as instruments for redistribution, compared to income taxes, which are not subject to these disadvantages. Given the small adverse effects of immigration and the small number of native workers who find their wages reduced by the influx of immigrant labor, a correspondingly small increase in the progressivity of our taxes would suffice to compensate the few who lose real income as a result of competition from immigrant workers. If only a small change in tax rates is required to replicate the redistribution effected by protectionist immigration restrictions, then this change would cause only correspondingly small distortions in the labor market. By the same token, protectionist immigration restrictions can improve the welfare of the least skilled natives by only a small amount, compared with the costs that those restrictions would impose on other natives.

Finally, there is no principled reason that we cannot reform the tax system to conform more closely to optimal tax principles.<sup>85</sup> If we can increase tax rates to effect more redistribution, then we can also make the tax system more efficient by eliminating those features that needlessly burden working women in particular. The costly features of the current tax system noted by McCaffery are neither immutable nor inherent in the notion of taxation. Indeed, McCaffery proposes various reforms that would eliminate or mitigate the problems that he identifies.<sup>86</sup> For example, he suggests that we allow spouses to file separately so that the secondary earner in a household would face the same marginal tax rates that the primary earner does when deciding whether to enter the labor market.<sup>87</sup> He also suggests favorable tax treatment for the secondary earner's income or for child care expenses as possible responses to the

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85. Moreover, if we are taking the current tax system as given, then the distortions caused by protectionist immigration restrictions are even more costly than they would be in the absence of that system. In general, the more distorted behavior is, the more costly further distortions in that behavior would be. As we move further away from the social optimum, the marginal cost of the distortion increases. Therefore, to the extent that women or men work less than would be economically efficient, any policy that aggravates that distortion is especially costly. We should keep in mind that this observation would be true of not only further increases in tax rates but also the use of protectionist immigration restrictions in addition to the existing tax system.

86. See McCaffery, *supra* note 63, at 278.

87. *Id.* (suggesting "a system of separate filing under the income tax" for spouses). He also suggests that we solve "[t]he problem with fringe benefits . . . by allowing secondary earners to opt out of certain coverages and get cash instead." *Id.* at 134. As a response to the problem with social security benefits, he suggests a "secondary-earner exemption" from social security taxes, *id.* at 102, or "earnings sharing" between spouses, *id.* at 103.

failure to tax work done at home for one's own household.<sup>88</sup> Ultimately, the ideal for which we should strive is redistribution through an optimal tax system, rather than through protectionist immigration restrictions.

We could also make immigration restrictions more efficient by tailoring them more narrowly so as to reduce the burden that they place on households with working women. We could, for example, restrict the immigration of relatively unskilled workers, but create exceptions for workers entering the United States to accept employment in food preparation, housekeeping, or child care. These exceptions, however, would simultaneously make our immigration restrictions less effective at protecting the least skilled native workers from foreign competition. Native workers who remained in those particular occupations would find immigration driving down their real wages. Those native workers who instead turn from those occupations to seek other lines of work requiring modest levels of skill would tend to drive down real wages for similarly skilled natives employed in those other lines of work. Given these effects, the impact of immigration policy on income distribution would be greatly reduced, and it remains likely that we could achieve the same modest impact at lower cost through the tax system. After all, even if we tailored immigration restrictions so as to eliminate the disparate impact that they have on households with working women, these immigration restrictions would still destroy gains from trade in the labor market, whereas progressive tax reforms would not.

### III. CONCLUSION

On the merits, protectionist immigration restrictions have little to recommend themselves as a policy to improve income distribution among natives, given the option of superior tax alternatives. My economic analysis indicates that tax and transfer policies are more efficient than immigration restrictions as instruments for raising the after-tax incomes of the least skilled native workers. Policies to protect these workers from immigrant competition in the labor market do no better at promoting distributive justice among natives and are likely to impose a greater economic burden on natives in the country of immigration than the tax alternative. These immigration restrictions are especially costly given the disproportionate burden that they impose on households with working women, which discourages female participation in the labor force. This burden runs contrary to the teachings of optimal tax theory and introduces excessive distortions in the labor market because the supply of female labor is more elastic than the supply of male labor. Thus, the best response to concerns about the effect of immigration on the distribution of income among natives is to increase the progressivity of the tax system.

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88. See *id.* at 133–34; *id.* at 278 (suggesting “greater secondary-earner relief” and “a more generous child-care deduction or credit”).

The preceding discussion of the effects of immigration on native workers has assumed that the welfare of immigrants is of no concern to us. Thus, this discussion has ignored the benefits that the immigrants themselves enjoy from their access to our labor markets. This nativist assumption also implies that we would exclude immigrants from the same access to transfer programs that natives enjoy, so as to ensure that immigrants do not impose a net cost on natives through the public sector.<sup>89</sup> Restrictions on immigrant access to public benefits can ensure that natives continue to enjoy the economic gains from employing immigrant workers without the fiscal burden that full access to transfers would impose on the public treasury.<sup>90</sup>

We can relax this nativist assumption and instead assume that our objectives reflect concern for the welfare of immigrants. This shift in our welfare objectives would imply greater immigrant access to public benefits than the nativist would favor, which in turn might well imply that the least skilled immigrants impose a net burden on natives. Once we drop the nativist assumption, however, we may consider this reduction in the welfare of natives to be a burden worth bearing. After all, we would only expand immigrant access to transfer programs if we thought that the benefit to immigrants outweighed the cost to natives in the first place.

If concern for the welfare of immigrants militates in favor of more liberal access to transfer programs, then it should also militate in favor of more liberal admissions policies. If we care about the welfare of the aliens whose immigration is under consideration, then we should respond by liberalizing our immigration laws.<sup>91</sup> Indeed, we might also care about the welfare of aliens abroad who are not seeking admission to our country, which should lead us to consider the impact of our immigration policies on those aliens as well.

Once we give any weight at all to the interests of those born outside our borders, then we have yet another reason to liberalize immigration. Once we recognize any moral obligation to reduce poverty abroad and to reduce global inequality, we must confront the significant economic harm

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89. Congress has in fact restricted immigrant access to a broad range of public benefits. See 8 U.S.C. §§ 1611–13 (2000); Chang, *supra* note 3, at 1178–80 (describing various restrictions on alien access to public benefits in the United States).

90. See Chang, *supra* note 28, at 313 (“Otherwise, transfers to immigrants could dissipate the economic gains to natives.”).

91. In my prior work, I have argued against theories of distributive justice that extend concern to immigrants only after we have decided to admit them. “If our admission policies are based only on the interests of natives and immigrants already here, then we would refuse to admit poor immigrants because we would anticipate the public benefits that they would consume and the fiscal burden that they would impose on incumbent residents.” Howard F. Chang, *The Immigration Paradox: Poverty, Distributive Justice, and Liberal Egalitarianism*, 52 DEPAUL L. REV. 759, 769 (2003). “This moral stance . . . produces an anomaly,” because the exclusion of poor aliens implies that “by agreeing to obligations of distributive justice toward them if admitted, we harm them.” *Id.* I suggest that we should avoid this “immigration paradox” by adopting “a cosmopolitan perspective that extends equal concern to all individuals, including aliens.” *Id.* at 772.

we inflict on those we exclude under our restrictive immigration laws.<sup>92</sup> Given the adverse effects of restrictive immigration policies on the poor abroad, considerations of global justice militate in favor of progressive fiscal policies and against protectionism as a method of addressing any concerns regarding the distribution of income among natives.

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92. I have argued elsewhere in favor of liberal immigration policies based on a cosmopolitan theory of global distributive justice that extends equal concern to all individuals worldwide. *See id.* at 769–73; Howard F. Chang, *The Economics of International Labor Migration and the Case for Global Distributive Justice in Liberal Political Theory*, 41 CORNELL INT'L L.J. (forthcoming 2008).



