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# Cultural Communities in a Global Labor Market: Immigration Restrictions as Residential Segregation

*Howard F. Chang*<sup>†</sup>

When economists speak of a globalizing world, they have in mind first and foremost the dramatic moves we have made toward a global common market; that is, our evolution toward a world economy integrated across national boundaries. Our progress in this direction has been especially dramatic in the liberalization of international trade in goods. Since multilateral trade negotiations produced the General Agreement on Tariffs and Trade ("GATT")<sup>1</sup> in 1947, subsequent rounds of negotiations have steadily reduced trade barriers among states.

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. Gains from trade arise because different countries will produce goods at different costs. When countries restrict trade, the price of a good will be low in countries that can produce it at low cost but high in countries that can only produce it at high cost. Liberalized trade allows both countries to gain. The high-price country can gain by importing the good at a lower price than it would cost to produce it at home, while the low-price country can gain by exporting the good at a higher price than it would fetch at home.

Economists also recognize that the same theory that applies to goods also applies to international trade in other markets. Na-

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<sup>†</sup> Earle Hepburn Professor of Law, University of Pennsylvania Law School. Copyright © 2007 by Howard F. Chang. I would like to thank Matthew Lister, Gideon Parchomovsky, Stephen Perry, conference participants at the University of Chicago, Washington University, the University of Pennsylvania, Tulane University, Sacramento State University, and the 2005 meeting of the American Law and Economics Association, and seminar participants at Stanford University, Georgetown University, and the University of Akron for helpful comments.

<sup>1</sup> General Agreement on Tariffs and Trade, Oct 30, 1947, 61 Stat pt 5, TIAS No 1700.

tions can gain through not only the free movement of goods across national boundaries but also the free movement of services, capital, and labor across national boundaries. In particular, consider the economic effects of labor migration in world labor markets. We would expect labor to migrate from low-wage countries to high-wage countries in pursuit of higher wages. 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. That is, higher wages for the same worker mean that the worker produces more value in the host country than in the source country. Because labor flows to the country where it has the higher-value use, labor migration generally leads to net gains in wealth for the world as a whole.<sup>2</sup> An efficient global labor market would allow labor to move freely to the country where it earns the highest return. Market forces would thus direct labor to the market where its marginal product is highest. For this reason, economic theory raises a presumption in favor of the free movement of labor.

Immigration barriers interfere with the free flow of labor internationally and thereby cause wage rates for the same class of labor to diverge widely among different countries.<sup>3</sup> For any given class of labor, high-wage countries could gain by employing more immigrant labor, and residents of low-wage countries could gain by selling more of their labor to employers in high-wage countries.<sup>4</sup> Immigration 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. 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 large international differences in wages, it should be apparent that the potential gains from liberalized labor migration—and the costs that the world bears as a result of immigration barriers—are huge.

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<sup>2</sup> See Paul R. Krugman and Maurice Obstfeld, *International Economics: Theory and Policy* 158–59 (Harper Collins 2d ed 1991).

<sup>3</sup> See *Mexican Deportees Report Good Treatment*, UPI (Apr 21, 1996), (reporting that Mexican immigrants received an average of \$278 per week in the United States, compared with \$30.81 per week in Mexico).

<sup>4</sup> See Howard F. Chang, *Liberalized Immigration as Free Trade: Economic Welfare and the Optimal Immigration Policy*, 145 U Pa L Rev 1147, 1149 (1997).

In fact, some economists have attempted to estimate the gains that the world could enjoy by liberalizing migration. These studies suggest that the gains to the world economy from removing migration barriers could well be enormous and would now greatly exceed the gains from removing trade barriers. Bob Hamilton and John Whalley, for example, provide estimates that suggest that the gains from the free migration of labor could more than double worldwide real income.<sup>5</sup> Their analysis also indicates that the free migration of labor would greatly improve the global distribution of income by raising real wages dramatically for the world's poorest workers.<sup>6</sup> Despite the presumption that economic theory raises in favor of international labor mobility, the nations of the world maintain restrictions on immigration and show little inclination to liberalize these barriers significantly. As Kitty Calavita has observed, "the irony is that in this period of globalization marked by its free movement of capital and goods, the movement of labor is subject to greater restrictions than at the dawn of the Industrial Revolution."<sup>7</sup>

To some degree, however, globalization proceeds in the labor market despite the immigration barriers that states raise. In the United States, for example, there are probably over ten million unauthorized immigrants residing among us today, accounting for over 3 percent of the total U.S. population, with seven-hundred thousand more unauthorized immigrants arriving each

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<sup>5</sup> See Bob Hamilton and John Whalley, *Efficiency and Distributional Implications of Global Restrictions on Labour Mobility*, 14 J Dev Econ 61, 70 (1984). This early study used data from 1977. See id at 67. A recent study applying the same assumptions to 1998 data produced similar results, finding that "the estimated efficiency gains from liberalizing immigration controls have only increased over time." Jonathon W. Moses and Bjørn Letnes, *The Economic Costs to International Labor Restrictions: Revisiting the Empirical Discussion*, 32 World Dev 1609, 1610 (2004). The authors attribute the increase in estimated efficiency gains to the increase in "wage . . . inequalities over the past 20 years." Id at 1619. For a survey of the empirical evidence regarding the economic effects of immigration restrictions, see Howard F. Chang, *The Economic Impact of International Labor Migration: Recent Estimates and Policy Implications*, 16 Temple Polit & Civ Rts L Rev (forthcoming 2007).

<sup>6</sup> See Hamilton and Whalley, 14 J Dev Econ at 69, 73–74 (cited in note 5) (providing estimates of wage increases in less developed countries ranging from 374 to 1718 percent); Moses and Letnes, 32 World Dev at 1620 (cited in note 5) (suggesting that "international migration may be one of the most effective means of shrinking the income gap that separates rich and poor countries"). Kevin O'Rourke provides empirical evidence that international migration in the late 19th century was quite effective in raising living standards in poor countries. See Kevin H. O'Rourke, *The Era of Free Migration: Lessons for Today* (unpublished manuscript on file with U Chi Legal F).

<sup>7</sup> Kitty Calavita, *U.S. Immigration Policy: Contradictions and Projections for the Future*, 2 Ind J Global Legal Stud 143, 152 (1994).

year.<sup>8</sup> Thus, the global labor market resists attempts by states to restrict the flow of labor across borders.

Most unauthorized immigrants in the United States come from Mexico,<sup>9</sup> where workers earn one-ninth what they can earn in the United States.<sup>10</sup> Given the disparity in wages between these labor markets and the tight restrictions on the legal entry of workers, the incentives for illegal immigration are enormous. Indeed, in recent years, hundreds of unauthorized immigrants have died each year attempting to enter the United States from Mexico under dangerous conditions, and these deaths have given a sense of urgency to the campaign for liberalized immigration laws.<sup>11</sup>

Efforts to liberalize the restrictions on the flow of workers into the United States have picked up momentum recently as President George Bush has proposed an expanded guest-worker program that would allow unauthorized immigrants to legalize their status as guest workers.<sup>12</sup> The Senate passed a bill in 2006 that would establish such a guest-worker program and also expand opportunities for legal immigration and permanent residence, gathering broad bipartisan support and embracing a top

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<sup>8</sup> See Jeffrey S. Passel, *Unauthorized Migrants: Numbers and Characteristics* 6 (Pew Hispanic Center, June 14, 2005), available at <<http://pewhispanic.org/files/reports/46.pdf>> (last visited Jan 20, 2007) (reporting estimated population numbers and characteristics of the unauthorized immigrant population in the United States in 2005). The Census Bureau estimates that the total population of the United States reached 300 million in October 2006. See Sam Roberts, *A 300 Millionth American. Don't Ask Who*, NY Times 15 (Oct 18, 2006).

<sup>9</sup> Passel, *Unauthorized Migrants* at 4 (cited in note 8). Thus, "labor integration between the United States and Mexico is occurring from the bottom up, with U.S. employers and Mexican workers moving in this direction," as "[e]fforts to bar the employment of undocumented workers have been largely ineffective." Kevin R. Johnson, *Open Borders?*, 51 UCLA L Rev 193, 243 (2003).

<sup>10</sup> See *Mexican Deportees Report Good Treatment* (cited in note 3) (reporting that the average wage for a sampling of Mexican deportees was \$278 per week in the United States, compared to \$30.81 per week at their previous job in Mexico).

<sup>11</sup> See, for example, *Senate Committee Conducts Hearing on Immigration Reform Legislation*, 82 Interpreter Releases 1243, 1244 (2005) (comments of Senator John McCain) (describing the number of immigrants who died while trying to illegally cross the southern border of the United States); Johnson, 51 UCLA L Rev at 221 (cited in note 9) ("Military-style operations on the Southwest border have channeled immigrants into remote, desolate locations where thousands have died agonizing deaths from heat, cold, and thirst.").

<sup>12</sup> See, for example, *President Bush Announces Immigration Initiative*, 81 Interpreter Releases 33 (2004) (detailing President Bush's immigration proposal); *Pres. Bush Renews Call for a Temporary Worker Program*, 82 Interpreter Releases 274 (2005) (reporting that during his State of the Union address, President Bush asked Congress to cooperate to enact immigration reform).

priority for immigrant activists and labor unions.<sup>13</sup> Although the Republican majority in the House of Representatives failed to support the Senate bill, the November 2006 elections, which shifted control of the House to the Democrats, improved the prospects for liberalized.<sup>14</sup>

Nevertheless, countries of immigration generally resist the extension of the case for free trade to the labor market. Even if we adopt the maximization of global social welfare as our policy objective, there may be many reasons to distinguish trade in goods from trade in the labor market and to take a more restrictive approach to the migration of workers than we take to the movement of goods. This Article, however, will focus on only one set of objections to the free movement of workers, namely, concerns about the effect of labor mobility on cultural communities.

In particular, I offer a critique of the claims that the communitarian political theorist Michael Walzer makes in defense of immigration restrictions. Walzer defends the power of “the sovereign state . . . to make its own admissions policy, to control and sometimes restrain the flow of immigrants,” because “[t]he distinctiveness of cultures and groups depends upon closure,” and “most people . . . seem to believe” that “this distinctiveness is a value.”<sup>15</sup> Although Walzer expresses common intuitions, I draw on insights from the economic literature to question his claims: Must states impose restrictions on immigration in order to ensure the “distinctiveness of cultures and groups” in the world? If people value distinctive cultural communities, then why would we expect their free movement to undermine those communities?

In Part I of this Article, I begin with a critique from an economic perspective. I take the maximization of global economic welfare to be the objective, then explore whether the value of distinctive cultural communities can justify immigration restric-

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<sup>13</sup> See *Senate Passes Immigration Bill, Conference Needed to Resolve Senate and House Differences*, 83 Interpreter Releases 1037 (2006) (discussing the similarities and differences between the different immigration bills passed by the Senate and the House of Representatives).

<sup>14</sup> See Randal C. Archibold, *Democratic Victory Raises Spirits of Those Favoring Citizenship for Illegal Aliens*, NY Times 27 (Nov 10, 2006) (describing optimism that Democratic leadership in both houses of Congress will lead to changes in immigration law favorable to unauthorized immigrants).

<sup>15</sup> Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* 39 (Basic Books 1983). Recognizing Walzer's defense of immigration restrictions as one of the most important and influential in political theory, a leading immigration law casebook includes an extensive set of excerpts from Walzer's book. See Thomas Alexander Aleinikoff, et al, *Immigration and Citizenship: Process and Policy* 225–32 (West 5th ed 2003) (quoting Walzer, *Spheres of Justice* at 31–34, 37–40, 45, 47–49, 61–62).

tions. A focus on global economic welfare, rather than the economic welfare of the country of immigration, is more consistent with the spirit of Walzer's defense of immigration restrictions, as he argues that immigration restrictions are good for humankind in general, not merely that they are good for residents of countries of immigration.<sup>16</sup> This "global" perspective has a "long and distinguished tradition" in economics and in utilitarianism,<sup>17</sup> and many have argued that normative analysis requires such a cosmopolitan perspective.<sup>18</sup> My goal in this Article is not to enter that debate or to defend the cosmopolitan perspective against its critics.<sup>19</sup> Instead, I simply assume that we seek to maximize global economic welfare, then explore the policy implications of that normative criterion.

First, I assume that Walzer is right to value the segregation of people into distinctive cultural communities, but I suggest that immigration restrictions are not the optimal means for maintaining such communities. I argue that individuals with heterogeneous preferences would segregate themselves voluntarily into distinctive communities. This voluntary segregation would allow individuals to enjoy gains from trade in the labor market, whereas immigration restrictions would sacrifice these gains.

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<sup>16</sup> See, for example, Walzer, *Spheres of Justice* at 39 (cited in note 15) (claiming that a world of free movement would be "a world of radically deracinated men and women").

<sup>17</sup> Alan O. Sykes, *The Welfare Economics of Immigration Law: A Theoretical Survey with an Analysis of U.S. Policy*, in Warren F. Schwartz, ed., *Justice in Immigration* 158, 162 (Cambridge 1995) (noting that both the "global" and "national" perspectives "have a long and distinguished tradition in the discussion of international economic policy").

<sup>18</sup> See, for example, Joseph H. Carens, *Aliens and Citizens: The Case for Open Borders*, 49 *Rev Pol* 251, 263 (1987) (noting that "the utilitarian commitment to moral equality is reflected in the assumption that everyone is to count for one and no one for more than one when utility is calculated," so that "current citizens would enjoy no privileged position" in a calculation of the welfare effects of immigration policy); Gillian K. Hadfield, *Just Borders: Normative Economics and Immigration Law*, in Schwartz, *Justice in Immigration* at 201, 205 (cited in note 17) (arguing that "[i]f economists are to participate in the normative debate over immigration . . . there can be no starting point other than a global social welfare function," because only that perspective "avoids the question begging raised by a national social welfare function"). Following in this tradition, I have argued elsewhere in favor of a global welfare objective from the standpoint of liberal ideals. See, for example, Howard F. Chang, *The Economics of International Labor Migration and the Case for Global Distributive Justice in Liberal Political Theory*, 40 *Cornell Int'l L J* (forthcoming 2007); Howard F. Chang, *The Immigration Paradox: Poverty, Distributive Justice, and Liberal Egalitarianism*, 52 *DePaul L Rev* 759, 768-73 (2003).

<sup>19</sup> Cosmopolitan political theorists and philosophers have advanced cogent arguments for theories of global justice that extend equal concern to the interests of all individuals throughout the world. See, for example, Charles R. Beitz, *Political Theory and International Relations* (Princeton 1979); Thomas W. Pogge, *Realizing Rawls* 240-80 (Cornell 1989); Peter Singer, *One World* (Yale 2002).

Next in Part II, I turn to a moral critique from a liberal perspective. I argue that even if immigration restrictions satisfy the preferences of incumbent residents for more extensive or more stable segregation of cultural communities than voluntary segregation can provide, this effect cannot justify immigration restrictions in a society committed to liberal ideals. Just as we condemn segregation at the local level for undermining equality of opportunity in the domestic context, I suggest, we should condemn immigration restrictions for undermining global equality of opportunity. Concerns about the cultural effects of immigration in a liberal state can justify only limited restrictions on immigration: Finally, I conclude with implications for immigration policies in liberal states.

### I. GLOBAL ECONOMIC WELFARE AND CULTURAL COMMUNITIES

Suppose we assume that our goal is to maximize global economic welfare, taking all preferences of all individuals as equally worthy of satisfaction. I will first draw on economic models of residential segregation to suggest that individuals are likely to sort themselves into distinctive cultural communities without any regulations mandating such segregation. Given the distortions that immigration restrictions introduce in the global labor market, I question whether we should expect immigration restrictions to increase global economic welfare compared to the alternative of voluntary segregation.

#### A. Heterogeneous Preferences for Public Goods

We would expect freely mobile individuals with heterogeneous preferences to segregate themselves voluntarily into distinctive communities. The economist Charles Tiebout suggested the classic model of this sorting process, in which individuals prefer different bundles of local public goods and move to communities that provide the bundles that they desire.<sup>20</sup> If the set of available communities spans the full range of bundles desired by these individuals, the result of free mobility is a Pareto efficient equilibrium in which each individual resides in a homogeneous community providing the ideal bundle of local public goods for its residents.<sup>21</sup>

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<sup>20</sup> See Charles M. Tiebout, *The Pure Theory of Local Expenditures*, 64 *J Polit Econ* 416 (1956).

<sup>21</sup> See *id* at 421 (noting that if the number of communities is unlimited, and each



If we think of a community as providing its culture as a local public good, then why not expect free movement to generate an equilibrium in which distinctive cultural communities thrive? In the Tiebout model, far from being a threat to distinctive communities, free mobility is a necessary condition for the efficient segregation of residents into such communities.<sup>22</sup> Restrictions on mobility only serve to trap individuals in communities that they would prefer to leave and to prevent them from joining communities more closely matching their preferences. Under conditions of free mobility, people with similar tastes can “vote with their feet” and thus live together in communities tailored to satisfying their preferences for public goods, services, policies, and institutions.<sup>23</sup> Those who prefer to have government services delivered in a particular language, for example, would form communities that can efficiently provide those services in their own language.

Although the conditions necessary for Pareto efficiency in the Tiebout model are strong, even under more relaxed assumptions, one would expect segregation into distinctive communities. It should not be surprising that the empirical evidence is consistent with this hypothesis. People in the United States, for example, exhibit a high degree of mobility.<sup>24</sup> Studies of major metropolitan areas in the United States reveal patterns of segregation in which a diverse population sorts itself into a diverse set of local communities with more homogeneous preferences.<sup>25</sup>

Walzer recognizes the alternative of segregation at the local level rather than at the national level. He rejects this alternative, however, based on two claims. First, he makes the empirical claim that in order to ensure distinctive communities, the right to control immigration, or “closure” as he puts it, “must be permitted somewhere,” that is, “[a]t some level of political organization.”<sup>26</sup> Second, he asserts as a normative matter that we should

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announces “a different pattern of expenditures on public goods,” then “the consumer-voter will move to that community which *exactly* satisfies their preferences”).

<sup>22</sup> Tiebout’s first assumption is that each individual is “fully mobile and will move to that community where their preference patterns . . . are best satisfied.” *Id.* at 419.

<sup>23</sup> Harvey S. Rosen, *Public Finance* 529 (Irwin 3d ed 1992).

<sup>24</sup> For example, the U.S. Bureau of the Census found that 41.5 million U.S. residents, or 17 percent of the U.S. population, moved in the year leading to March 1991, and 7 million of those moved between states. See *In Search of Security*, *The Economist* 25–26 (Oct 16, 1993). This rate of movement is a “persistent pattern” in the United States. Rosen, *Public Finance* at 532 (cited in note 23).

<sup>25</sup> For empirical evidence of the Tiebout hypothesis, see Edward M. Gramlich and Daniel L. Rubinfeld, *Micro Estimates of Public Spending Demand Functions and Tests of the Tiebout and Median-Voter Hypotheses*, 90 *J Polit Econ* 536 (1982).

<sup>26</sup> Walzer, *Spheres of Justice* at 39 (cited in note 15).

prefer such "closure" at the national level rather than the local level because "individual choice is most dependent upon local mobility."<sup>27</sup> The Tiebout model and the evidence of the Tiebout process in the real world, however, cast doubt on both of Walzer's claims.

First, the evidence of voluntary segregation into distinctive cultural communities within nation-states suggests that the type of immigration restriction practiced at the national level is not necessary to produce such communities. As Yael Tamir notes:

Cultural uniqueness is preserved in Quebec, in Belgium, and in many other places, without an actual geographical border. Scattered peoples like the Jews or Armenians, and immigrant groups such as Hispanics in Southern California, Cubans in Miami, Algerians in France, and Pakistanis in England, and religious sects like the Mormons in Utah, the Amish in Pennsylvania, or the ultra-Orthodox Jewish community in Jerusalem, also manage to preserve their identity without tangible boundaries.<sup>28</sup>

In the United States, we observe cities with large immigrant populations, in which different ethnic groups readily form their own communities without any migration regulations mandating such segregation. As George Borjas notes, "[e]thnic neighborhoods have long been a dominant feature of American cities (and of cities in many other countries)."<sup>29</sup> Using data for the United States, Borjas documents "substantial residential segregation by ethnicity."<sup>30</sup> We also observe similar patterns of residential segregation in other countries receiving immigrants.<sup>31</sup> This evidence of voluntary segregation based on ethnicity casts doubt on Walzer's claim that communities need immigration restrictions to remain distinctive.<sup>32</sup>

<sup>27</sup> Id.

<sup>28</sup> Yael Tamir, *Liberal Nationalism* 166 (Princeton 1993).

<sup>29</sup> George J. Borjas, *Ethnicity, Neighborhoods, and Human-Capital Externalities*, 85 *Am Econ Rev* 365, 365 (1995).

<sup>30</sup> Id at 388. He finds "a strong likelihood that persons belonging to a particular ethnic group reside in a neighborhood where a relatively high number of persons share the same ethnic background." Id. For example, "the average Mexican lived in a neighborhood that was 50.3 percent Mexican." Id at 371.

<sup>31</sup> See, for example, Philip Johnston, *Whites "Leaving Cities as Migrants Move In,"* *Daily Telegraph* 1 (London) (Feb 10, 2005) (discussing reports that "[w]hite and ethnic minority populations are becoming increasingly separated" in urban areas of the United Kingdom as a result of "growing levels of population movement and immigration").

<sup>32</sup> See Phillip Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigra-*

Second, the Tiebout model suggests that we should prefer residential segregation at the local level. Residential segregation at the local level allows individuals to enjoy the benefits of living in a community matching their preferences while still enjoying access to labor markets in other communities nearby. One condition for the Tiebout efficiency result is that individuals can choose their communities without sacrificing access to employment opportunities.<sup>33</sup> We are more likely to meet this condition within a small geographic area, where a resident can live in one community and commute to work in another community.<sup>34</sup> Residential segregation within commuting distances allows residents to enjoy both the gains from trade in the labor market and the value of living in distinctive communities. The type of segregation that Walzer defends, enforced at the national level through immigration restrictions, cuts workers off from valuable employment opportunities and sacrifices gains from trade in the global labor market.<sup>35</sup>

To put it another way, to ensure an efficient outcome, Tiebout assumes that individuals have a wide range of alternative communities from which to choose.<sup>36</sup> The greater the menu of choices, the more closely individuals can match their chosen communities to their preferences.<sup>37</sup> Segregation into cultural communities at the local level is more likely to provide a diverse

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tion 74 (Edinburgh 2000) (casting doubt on Walzer's claim with the observation that "within any cosmopolitan city throughout the globe," a neighborhood will often "have a distinct character" and "does not need border controls to do it").

<sup>33</sup> Tiebout did not consider restrictions on mobility "due to employment opportunities." Tiebout, 64 *J Polit Econ* at 419 (cited in note 20). Instead, he assumed that each person can choose where to reside without any impact on that person's income. See *id.* Once individuals must trade off their preferences over jurisdictions in which to reside against their employment opportunities, there is no longer any guarantee that voluntary segregation will produce optimal results. See James M. Buchanan and Charles J. Goetz, *Efficiency Limits of Fiscal Mobility: An Assessment of the Tiebout Model*, 1 *J Pub Econ* 25 (1972) (noting limits on Tiebout's efficiency results).

<sup>34</sup> See David N. Hyman, *Public Finance: A Contemporary Application of Theory to Policy* 606 (Harcourt Brace Jovanovich 4th ed 1993) (noting that the "Tiebout hypothesis" is most likely to hold "within a constrained geographic area," where "a citizen can change her place of residence to one in a neighboring political jurisdiction while maintaining her employment in her old political jurisdiction").

<sup>35</sup> See Howard F. Chang, *Immigration and the Workplace: Immigration Restrictions as Employment Discrimination*, 78 *Chi-Kent L Rev* 291, 293 (2003) (arguing that immigration restrictions "curtail alien access to employment opportunities" and create "a substantial barrier to the free flow of alien labor").

<sup>36</sup> See Tiebout, 64 *J Polit Econ* at 419 (cited in note 20) (assuming "a large number of communities" among which individuals may choose).

<sup>37</sup> See *id.* at 418 ("The greater the number of communities and the greater the variance among them, the closer the consumer will come to fully realizing his preference position.").

set of options within each local labor market than segregation at the national level. This cultural diversity within local labor markets is especially likely if residential segregation is voluntary rather than mandated by immigration restrictions, because a regime of free mobility would allow immigrants attracted by the local labor market to form their own local communities. If we instead constrain residential options through immigration restrictions at the national level, so that individuals live in their own cultural communities only by forgoing valuable employment opportunities, then we obtain residential segregation by sacrificing efficiency in the labor market.

Trade in the labor market may be possible among local communities, but even among these communities, commuting is not costless. Nevertheless, commuting costs among local communities are generally smaller than they are among nations or states. Thus, any significant wage inequality among local communities would induce workers to commute, thereby increasing the supply of labor where it is relatively scarce and decreasing its supply where it is relatively abundant, which in turn would prevent wages from becoming even more unequal. Therefore, there is a limit to how much wage inequality local residential segregation would permit in a local labor market, and thus a limit to how much such segregation would distort the local labor market away from an efficient allocation.

A regime of free mobility would allow residential segregation at the local level while minimizing distortions in both the global labor market and local labor markets. Residential segregation maintained through local immigration restrictions would minimize distortions in local labor markets but could introduce distortions in the global labor market by preventing the rise of new ethnic communities formed by new immigrant groups. To the extent that local immigration restrictions allow a diversity of cultural communities to flourish within local labor markets, however, this regime can allow migration between local labor markets while still ensuring residential segregation, thus maintaining distinctive cultural communities at the local level while minimizing distortions of the global labor market.

Segregation into nation-states, enforced with immigration restrictions, on the other hand, has allowed much greater wage inequality to persist internationally than could persist in a local labor market. To achieve segregation into cultural communities at the national level, we must segregate people into larger geographic units, which inhibits trade among these communities in

the global labor market. That is, we can mandate this more coarse segregation only by distorting the global labor market. Thus, the type of segregation Walzer defends creates much greater inequalities worldwide, much greater inefficiencies in the global labor market, and much greater losses in social welfare than local segregation would imply.

Walzer suggests that because "individual choice is most dependent upon local mobility," a regime of immigration restrictions at the national level, with free mobility limited to the local level, "would seem to be the preferred arrangement in a society like our own."<sup>38</sup> For the worker excluded by immigration restrictions from valuable employment opportunities in national labor markets, however, local mobility may be worth very little compared to the gains that international migration would produce. Immigration restrictions at the national level might "seem to be the preferred arrangement," but only from the perspective of a worker who already lives in a wealthy "society like our own" and thus has little to gain from international migration.<sup>39</sup>

#### B. Culture and Language in the Private Sector

Given transportation costs, employment opportunities may influence a worker's choice of residence, even among local communities. Once we introduce economic opportunities as a consideration in residential choices, can we count on voluntary segregation to maintain distinctive cultural communities? If economic opportunities lead some to migrate into communities with a culture different from the migrants' native culture, then this migration would undermine the homogeneity of the community that becomes more diverse as a result of immigration. Insofar as residents value this homogeneity, immigration can impose costs on that community.

Residents may prefer a monocultural community, for example, because markets may work most efficiently with a culturally homogeneous population. As Edward Lazear explains:

Trade between individuals is facilitated when all traders share a common culture and language. A common culture

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<sup>38</sup> Walzer, *Spheres of Justice* at 39 (cited in note 15).

<sup>39</sup> Will Kymlicka also seems to adopt the perspective of those who already enjoy important social and economic advantages when he asserts that "[m]ost people in liberal democracies clearly favour" a world with immigration restrictions, "even if this means they have less freedom to work and vote elsewhere." Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* 93 (Oxford 1995).

allows individuals to trade with one another without intermediaries. In the case of language, this is most clear. If two agents speak the same language, they can negotiate a contract without the use of a translator. A common culture allows the traders to have common expectations and customs, which enhances trust.<sup>40</sup>

Trade may be possible in the absence of a common culture or language, but it would entail greater transaction costs.<sup>41</sup>

By undermining cohesion, cultural diversity might undermine the efficient working of markets as well as other social and political institutions. "The existence of more than one culture or language imposes a cost on a society," Lazear suggests, because "[i]n a multicultural society, individuals suffer when they cannot deal with differently cultured individuals."<sup>42</sup> These transaction costs arise not only in labor markets but also in markets for goods and services. Not only workers and employers but also merchants and consumers may bear costs when market participants are culturally diverse.

On the other hand, because migrants would bear some of these costs, we would expect people to anticipate them and take them into account in deciding where to live. Given transportation costs, people prefer to live near those with whom they expect to trade the most: "Individuals tend to cluster with others from their own culture," Lazear suggests, "in large part because doing so enhances trade."<sup>43</sup> In the United States, for example, those "who are not fluent in English are probably more likely to move to areas in which there are many others who speak their own

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<sup>40</sup> Edward P. Lazear, *Culture and Language*, 107 *J Polit Econ* S95, S97 (1999). See Gianmarco I.P. Ottaviano and Giovanni Peri, *The Economic Value of Cultural Diversity: Evidence from U.S. Cities*, 6 *J Econ Geo* 9, 10 (2005) (suggesting that in "a multi-cultural environment," cultural diversity could "reduce productivity" by generating "intercultural frictions").

<sup>41</sup> See Lazear, 107 *J Polit Econ* at S98 (cited in note 40) ("In reality, trade can occur between individuals with different cultures or languages. In the case of language, a translator can be used. In the case of culture, mistrust and misunderstandings can be avoided by hiring individuals who are bicultural to act as liaisons. But such activity is costly . . ."); Gianmarco I.P. Ottaviano and Giovanni Peri, *Cities and Cultures*, 58 *J Urban Econ* 304, 305 (2005) (noting that "linguistic diversity has a clear 'communication' cost, due to the imperfect communication between groups"); *id.* at 307 ("Combining workers whose countries of origin have different cultures, legal systems, and languages imposes costs on the firm that would not be present if all the workers had similar backgrounds."); *id.* at 333 (noting that "difficulties in integration and communication across different groups . . . may harm aggregate productivity").

<sup>42</sup> Lazear, 107 *J Polit Econ* at S113 (cited in note 40).

<sup>43</sup> *Id.* at S99.

language.”<sup>44</sup> Individuals sort themselves geographically by language “precisely because they cannot interact with others unless they do,”<sup>45</sup> and Lazear finds empirical evidence of this “sorting” in 1990 census data for the United States.<sup>46</sup> Thus, transportation costs and the transaction costs that individuals bear in a multicultural marketplace provide more reasons, in addition to heterogeneous preferences for local public goods, for us to expect free mobility to lead to voluntary segregation into distinctive cultural communities.

Even if purely voluntary residential choices would maintain distinctive cultural communities, however, they would not necessarily produce the socially optimal degree of segregation. If economic incentives are great enough, then immigrants will move into a community that does not share their culture.<sup>47</sup> If wages prevailing in one community are higher than those in another, for example, workers may choose to migrate into the community with more lucrative employment opportunities. Migration may allow workers to enjoy greater access to those employment opportunities. Reducing the distance between home and work would reduce commuting costs.

The migration of workers would produce gains from trade in the labor market and reduce social costs, including commuting costs. The worker would weigh these benefits as well as the costs of living as a member of a minority in a community in which the majority of the residents share a culture different from the worker’s. Given that the worker will weigh these costs and benefits in deciding whether to migrate, how would we expect the worker’s decision to deviate from the social optimum? What market failure would lead residents to undermine socially optimal segregation through their decentralized individual choices regarding where to live?

One possibility is the presence of externalities from the migration of workers. If workers impose external costs on other residents in communities to which they migrate, then we cannot

<sup>44</sup> *Id.* at S103.

<sup>45</sup> *Id.* at S104. “Ghettos . . . are a natural consequence of the desire to trade,” Lazear suggests, because members of cultural minorities “can increase the probability that trade occurs by living in areas in which they will encounter only individuals who share their culture.” Lazear, 107 *J Polit Econ* at S119–20 (cited in note 40). See *id.* at S124 (“Self-induced concentration of minority members into neighborhoods is a natural consequence of the desire to trade.”).

<sup>46</sup> *Id.* at S104.

<sup>47</sup> Thus, if “a trade outside the ghetto” is “worth more than a trade inside,” then a minority member may “want to live outside the ghetto.” *Id.* at S120.

ensure that their private choices will be socially optimal. We can only infer that the private benefits from migration exceed the private costs. The worker may bear only a portion of the social cost from migration. Insofar as residents gain from living in a monocultural community, and immigrants undermine the homogeneous local culture when they enter the community, this effect on the local culture may represent a negative externality.

On the other hand, residents may also gain from living in a more diverse community "if different cultures bring enriched trading opportunities that would be absent in a single-culture society."<sup>48</sup> For example, as Gianmarco Ottaviano and Giovanni Peri note, "cultural diversity may increase the variety of available goods and services."<sup>49</sup> Given "a taste for variety," this effect "may increase the value of total production" in the local economy.<sup>50</sup> Furthermore, "the skills and abilities of foreign-born workers and thinkers may complement those of native workers and thus boost problem solving and efficiency in the workplace."<sup>51</sup> Indeed, "by bringing together complementary skills, different abilities and alternative approaches to problem solving, diversity may [ ] boost creativity, innovation, and ultimately growth."<sup>52</sup> Thus, "complementarity between workers, in terms of skills, can more than offset the costs of cross-cultural interaction."<sup>53</sup> In fact, Ottaviano and Peri present empirical evidence

<sup>48</sup> Lazear, 107 *J Polit Econ* at S113 (cited in note 40). Lazear points to the "wide variety of cuisines" and the "many different kinds of restaurants" in the United States as an example of how cultural diversity produces more social value for consumers. *Id.* In such a case, "the value of a trade is higher in multicultural societies than in single-culture societies." *Id.*

<sup>49</sup> Ottaviano and Peri, 58 *J Urban Econ* at 333 (cited in note 41).

<sup>50</sup> Ottaviano and Peri, 6 *J Econ Geo* at 39 (cited in note 40). They explain that "foreign-born workers may provide services that are not perfectly substitutable with those of natives." *Id.* See also *id.* at 10 ("The foreign born conceivably have different sets of skills and abilities than the US born, and therefore could serve as valuable factors in the production of differentiated goods and services."). They suggest, for example, that "[a]n Italian stylist, a Mexican cook and a Russian dancer simply provide different services that their US-born counterparts cannot." *Id.* at 39. "Italian restaurants, French beauty shops, German breweries, Belgian chocolate stores, Russian ballets, Chinese markets, and Indian tea houses all constitute valuable consumption amenities that would be inaccessible to Americans were it not for their foreign-born residents." *Id.* at 10.

<sup>51</sup> *Id.* at 10. See *id.* at 39 ("Even at the same level of education, problem solving, creativity and adaptability may differ between native and foreign-born workers so that reciprocal learning may take place.").

<sup>52</sup> Ottaviano and Peri, 58 *J Urban Econ* at 305 (cited in note 41). See *id.* at 307 (suggesting that "higher diversity can lead to more innovation and creativity by increasing the number of ways groups frame problems, thus producing a richer set of alternative solutions and consequently better decisions").

<sup>53</sup> *Id.*



that the net effect of local cultural diversity is to increase the productivity and wages of native workers in the United States.<sup>54</sup>

To the extent that the economic reward for migration internalizes these costs and benefits, the market would provide appropriate incentives to the worker contemplating a move. If the social value of trade is higher in the community receiving an immigrant worker, for example, then this value would imply a higher wage for the worker. Insofar as this wage reflects a higher marginal product of labor, the immigrant would internalize this social benefit of immigration in the form of the wage increase. Similarly, to the extent that cultural barriers reduce opportunities for trade in the labor market or increase the costs of trade, these would also reduce the expected wages and the economic reward for the migrating worker.

What *external* cost does an immigrant worker impose on the community that becomes more diverse as a result of the migration? In Lazear's formal model, market participants encounter one another at random so that a multicultural community bears an opportunity cost in the form of lost trades when individuals from different cultures encounter one another.<sup>55</sup> Each party bears an opportunity cost in such an encounter, but each bears only a portion of the total social cost. In the real world, however, one can reduce search costs through advertisements and marketing directed at those workers or consumers with whom one is most likely to trade. Nevertheless, an influx of those from another culture who speak a foreign language may increase search costs or otherwise reduce the efficiency of markets as they increase the cultural diversity in the community receiving the immigrants.

Furthermore, Lazear defines "trade" so broadly as "to include nonmarket interaction as well."<sup>56</sup> If we understand the so-

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<sup>54</sup> Specifically, their study of cities in the United States reveals "a significant and robust positive correlation between cultural diversity and the wages of white US-born workers" that is "compatible only with a dominant positive correlation between productivity and diversity," and their results from "instrumental variable estimation support[ ] the idea of causation going from the latter to the former." *Id.* at 333. See Ottaviano and Peri, 6 *J Econ Geo* at 38 (cited in note 40) (concluding that "our data support the hypothesis of a positive productivity effect of diversity with causation running from diversity to productivity of US workers"); *id.* at 39 (concluding that their findings "are consistent with" the hypothesis that "a more multicultural urban environment makes US-born citizens more productive").

<sup>55</sup> See Lazear, 107 *J Polit Econ* at S97 (cited in note 40) (assuming that "an individual randomly encounters one and only one other individual in each period" and that "for trade to occur, an individual must encounter another individual with his own culture").

<sup>56</sup> *Id.*

cial costs and benefits of cultural diversity to include its impact on “nonmarket” encounters, including social and political interactions, then economic incentives provided through markets would not internalize these costs and benefits. Here, cultural diversity may generate negative externalities because “heterogeneous preferences or distaste for different groups may decrease utility or trigger social conflicts.”<sup>57</sup> Ottaviano and Peri also suggest that “communities with a higher degree of ethnic fragmentation” may be “less willing to pool their resources for public goods provision” because “each ethnic group cares less about the provisions granted to other ethnic groups.”<sup>58</sup> Do these various externalities imply a systematic tendency toward excessive immigration of members of cultural minorities? Do they suggest the need for immigration restrictions in order to preserve distinctive cultural communities, where residents have “some special commitment to one another and some special sense of their common life,” as Walzer puts it?<sup>59</sup>

### C. Externalities

If residents enjoy any benefits or bear any costs that are a function of the population of cultural minorities—for example, because these minorities affect the local culture when they enter the community—then we can translate these costs and benefits into residents’ preferences regarding the minority population. Conversely, if residents have preferences regarding this population for any reason, we can model these preferences as either costs or benefits for residents that are a function of this popula-

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<sup>57</sup> Ottaviano and Peri, 58 *J Urban Econ* at 333 (cited in note 41). See *id* at 305 (noting that “cultural diversity can generate costs from potential conflicts of preferences, hurdles to communication, or outright racism, prejudice or fear of other groups”); Ottaviano and Peri, 6 *J Econ Geo* at 10 (cited in note 40) (“[N]atives may not enjoy living in a multi-cultural environment if they feel that their own cultural values are being endangered.”).

<sup>58</sup> Ottaviano and Peri, 58 *J Urban Econ* at 331–32 (cited in note 41). In fact, their study of cities in the United States produces empirical evidence that “racial diversity has a negative and significant impact on public spending,” but “linguistic diversity . . . has no significant impact.” *Id* at 332. They suggest their results reflect “the particularly disadvantaged and segregated position of the African American community.” *Id* at 333.

<sup>59</sup> Walzer, *Spheres of Justice* at 62 (cited in note 15). “For the liberal welfare state to enlist the active public support necessary if it is to do its . . . work,” Peter Schuck suggests, “some such community is essential.” Peter H. Schuck, *The Transformation of Immigration Law*, 84 *Colum L Rev* 1, 88 (1984). Expressing similar concerns, David Miller argues that “states are likely to function most effectively when they embrace just a single national community,” appealing to “the political consequences of solidarity and cultural homogeneity.” David Miller, *On Nationality* 90 (Oxford 1995). See also *id* at 83–85, 93 (suggesting that multinational states find it difficult to promote “social justice” through transfers).

tion. Insofar as migrants do not internalize these costs or benefits, these effects represent externalities generated by migration.

We can understand the classic model of residential segregation developed by Thomas Schelling as a model of migration externalities.<sup>60</sup> Suppose people are divided into two different types, and individuals have preferences regarding the composition of the population in their local neighborhood and are free to move to neighborhoods that are more attractive in light of these preferences. Suppose also that these types represent membership in different cultural groups. Do we expect people to hold preferences that will generate migration that undermines socially valuable distinctive communities?

Suppose people of each type are averse to being in the minority. That is, people enjoy a benefit from being in the majority and bear a cost as a result of being in the minority. For example, if each resident generates a positive externality for other residents of the same type and a negative externality for other residents of the opposite type, then each would prefer to be in the majority. If the benefit of majority status is large enough, members may prefer to move if necessary to ensure this status. If members of each group insist on being in the majority in their own local communities, then only complete segregation would be an equilibrium.<sup>61</sup> Thus, a strong preference for being in the majority would hardly undermine the stability of distinctive communities.

Suppose instead that each type can tolerate minority status, but groups still place a limit on how small a minority they are willing to be. They may even prefer to live in integrated communities rather than homogeneous communities, but their aversion to minority status dominates once they find themselves in a sufficiently small minority.<sup>62</sup> That is, as a minority shrinks, the costs of minority status eventually exceed the benefits that minority members derive from cultural diversity. If we start from complete segregation, then we will remain there because no one will be willing to move into a neighborhood so overwhelmingly

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<sup>60</sup> See Thomas C. Schelling, *Micromotives and Macrobehavior* 137–66 (Norton 1978); Thomas C. Schelling, *Dynamic Models of Segregation*, 1 *J Math Soc* 143 (1972).

<sup>61</sup> See Schelling, *Micromotives and Macrobehavior* at 141 (cited in note 60) (“[I]f each insists on being a local majority, there is only one mixture that will satisfy them—complete segregation.”); Schelling, 1 *J Math Soc* at 147 (cited in note 60) (same).

<sup>62</sup> See Schelling, *Micromotives and Macrobehavior* at 143 (cited in note 60) (assuming that each type “may not mind each other’s presence,” and “may even prefer integration, but may nevertheless wish to avoid minority status”); Schelling, 1 *J Math Soc* at 148 (cited in note 60) (same).

dominated by the other type.<sup>63</sup> That neighborhood might even welcome the entry of some immigrants of a different type because residents there would prefer some integration, but the prospective immigrant would not take this positive externality from immigration into account. Even if some neighborhoods begin with some minority members, those who find themselves in minorities too small to tolerate would move, and if they prefer to move to communities where they are in the majority, then they may increase those majorities and induce the minority there to leave.<sup>64</sup> Here the migration may increase segregation, which would be a negative externality in the presence of preferences for more integration.

Schelling extends his model to allow individuals within each population to have varying degrees of toleration for integration in a local neighborhood.<sup>65</sup> If the proportion of residents of the opposite type in this neighborhood exceeds a resident's "tolerance" limit, then that resident will choose to move out of the neighborhood to an alternative location.<sup>66</sup> Schelling develops a dynamic model of segregation and presents examples in which the resulting equilibrium is complete segregation, even if virtually all residents "actually prefer mixed neighborhoods."<sup>67</sup> Weak assumptions regarding preferences are sufficient to produce complete segregation as an equilibrium: "Surprisingly, the results generated by this analysis do not depend upon . . . a preference for living separately. They do not even depend on a preference for being in the majority!"<sup>68</sup> As long as their preference for integration at some point is "outweighed" by their aversion to their "minority

<sup>63</sup> See Schelling, *Micromotives and Macrobehavior* at 143 (cited in note 60) ("Complete segregation is then a stable equilibrium."); Schelling, 1 J Math Soc at 148 (cited in note 60) (same).

<sup>64</sup> See Schelling, *Micromotives and Macrobehavior* at 143 (cited in note 60) (noting that "if those who leave move to where they constitute a majority, they will increase the majority there and may cause the other" type "to evacuate"); Schelling, 1 J Math Soc at 148 (cited in note 60) (same).

<sup>65</sup> See Schelling, *Micromotives and Macrobehavior* at 155-66 (cited in note 60); Schelling, 1 J Math Soc at 167-86 (cited in note 60); Thomas C. Schelling, *A Process of Residential Segregation: Neighborhood Tipping*, in Anthony H. Pascal, ed, *Racial Discrimination in Economic Life* 157 (Lexington 1972).

<sup>66</sup> Schelling, *Micromotives and Macrobehavior* at 155-56 (cited in note 60); Schelling, 1 J Math Soc at 167 (cited in note 60); Schelling, *Process of Residential Segregation* at 160 (cited in note 65).

<sup>67</sup> Schelling, *Micromotives and Macrobehavior* at 165 (cited in note 60); Schelling, 1 J Math Soc at 180 (cited in note 60).

<sup>68</sup> Schelling, *Micromotives and Macrobehavior* at 164 (cited in note 60); Schelling, 1 J Math Soc at 180 (cited in note 60).

status (or to their inadequate-majority status),” the result is the same.<sup>69</sup>

Schelling uses his model to explain the phenomenon of “tipping,” which occurs “when some recognizable minority group in a neighborhood reaches a size that motivates the other residents to begin leaving.”<sup>70</sup> The least tolerant members of the majority leave first, moving to a more homogeneous neighborhood, and the vacancies they leave behind are filled with the minority members from the outside who are the most tolerant of living as a minority in that neighborhood. Assuming some pressing demand for housing for this minority group, the result of the departures is an increase in the minority population in the neighborhood. This increase in turn causes more members of the majority to leave as they find that the minority population now exceeds their tolerance limits. The immigration of minority members and the emigration of majority members impose a negative externality on the remaining residents of the majority type, which triggers another wave of migration. In extreme cases, the process continues until what was once the minority type occupies the entire neighborhood.

Thus, if it is important to people to live with a significant number of their own type, then there will be a strong tendency toward segregation, and complete segregation will be a stable equilibrium. Indeed, such a segregated equilibrium could result even if almost everyone prefers to live in more integrated neighborhoods. In these cases, the external effects of migration and free mobility lead to socially excessive segregation, not socially excessive integration.

Schelling’s results are not merely theoretical possibilities. He begins by making plausible assumptions about people’s preferences and generates results that seem consistent with observed patterns of residential segregation in the United States.<sup>71</sup> As David Cutler and Edward Glaeser have observed, “[r]acial segre-

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<sup>69</sup> Schelling, *Micromotives and Macrobehavior* at 165 (cited in note 60). See Schelling, 1 J Math Soc at 180 (cited in note 60).

<sup>70</sup> Schelling, *Process of Residential Segregation* at 157 (cited in note 65). See Schelling, 1 J Math Soc at 181 (cited in note 60) (“‘Tipping’ is said to occur when a recognizable new minority enters a neighborhood in sufficient numbers to cause the earlier residents to begin evacuating.”).

<sup>71</sup> See W.A.V. Clark, *Residential Preferences and Neighborhood Racial Segregation: A Test of the Schelling Segregation Model*, 28 *Demography* 1, 17 (1991) (concluding from data on residential preferences of whites, blacks, and Hispanics that “it is unrealistic to expect large levels of integration across neighborhoods”).

gation is the norm in urban America."<sup>72</sup> What is striking if you look at our metropolitan areas is not the scarcity of racially homogeneous neighborhoods but the scarcity of neighborhoods that are close to being evenly divided between whites and racial minorities.<sup>73</sup> Indeed, it is widely assumed that the degree of residential segregation that prevails is excessive and that our goal as a society should be to reduce this segregation, not to promote it.

Abraham Bell and Gideon Parchomovsky, for example, note with disappointment that "urban America is only marginally less segregated today than it was in the 1960s and 1970s, during the height of racial rioting."<sup>74</sup> They also observe that this segregation persists despite the fact that "[n]umerous studies indicate that a majority of both whites and blacks prefers, or at least, does not object to, residential integration."<sup>75</sup> Surveying the empirical evidence, they find that "the conclusion that generally both whites and blacks prefer to live in integrated neighborhoods is ineluctable."<sup>76</sup> Describing segregation as a "troubling" pathology,<sup>77</sup> Bell and Parchomovsky formulate policy proposals designed to encourage more integrated neighborhoods.<sup>78</sup>

#### D. What's Wrong with Free Movement?

Walzer is not blind to the possibility of distinctive local communities formed and maintained without local migration restrictions, but he finds that such communities are not permanent enough to satisfy him. He complains: "Neighborhoods might maintain some cohesive culture for a generation or two on a voluntary basis, but people would move in, people would move out; soon the cohesion would be gone."<sup>79</sup> For Walzer, it seems impor-

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<sup>72</sup> David M. Cutler and Edward L. Glaeser, *Are Ghettos Good or Bad?*, 112 Q J Econ 827, 827 (1997). "In the average American city," Cutler and Glaeser note, "60 percent of blacks would have to change residences to create an even distribution of the races across neighborhoods, and the average black lives in a neighborhood that is 57 percent black." *Id.*

<sup>73</sup> See Schelling, *Micromotives and Macrobehavior* at 141 (cited in note 60) ("The demographic map of almost any American metropolitan area suggests that it is easy to find residential areas that are all white or nearly so . . . but hard to find localities in which neither whites nor nonwhites are more than, say, three-quarters of the total."); Schelling, 1 J Math Soc at 146 (cited in note 60) (same).

<sup>74</sup> Abraham Bell and Gideon Parchomovsky, *The Integration Game*, 100 Colum L Rev 1965, 1966 (2000).

<sup>75</sup> *Id.* at 1986.

<sup>76</sup> *Id.* at 1987.

<sup>77</sup> *Id.* at 1975.

<sup>78</sup> Bell and Parchomovsky, 100 Colum L Rev at 2005-18 (cited in note 74).

<sup>79</sup> Walzer, *Spheres of Justice* at 39 (cited in note 15).

tant that these communities not only remain distinct but also persist indefinitely in the same geographic space.<sup>80</sup> Thus, Walzer insists that cultural communities must erect immigration barriers to maintain their distinctiveness as “a stable feature of human life.”<sup>81</sup>

If residents value the stability of their cultural community in a particular geographic location, then why would we expect them to move away, thereby undermining this stability and introducing instability into their own lives? After all, we would generally expect those who are most attached to a particular place to outbid others for the privilege of living there. Incumbent residents would sell their homes only if offered enough to compensate them for the utility they derive from living in that community. If people choose to move, then why not infer that they value greater mobility over greater stability for their cultural community?

Walzer may defend “communal cohesion” as a moral value in “non-utilitarian terms.”<sup>82</sup> Thus, Walzer may attach moral value to “communal cohesion” even if the residents of a community themselves do not attach value to it. Nevertheless, readers concerned with social welfare may ask whether we should share Walzer’s concern. Why not allow people to form communities that disband when residents no longer find it in their interests to live together?

Schelling’s “tipping” model may help illustrate how the dynamics of segregation may fail to produce socially optimal results. Minority members may migrate into communities dominated by the majority in order to gain access to valuable employment opportunities or to take advantage of attractive housing. Suppose that instead of preferences for integration, the incumbent residents strongly prefer that their cultural community remain intact in that particular geographic location. Some members of the majority, however, are either so intolerant of the minority or so drawn by economic opportunities elsewhere that they leave despite their preference for a stable community. Their

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<sup>80</sup> Walzer stresses that “the link between people and land is a crucial feature of national identity.” *Id.* at 44. As Stephen Perry notes, however, “this response equates ‘community’ with ‘nation,’ and that simply begs the question; within North America, for example, cultural communities tend not to be nations with a territorial base.” Stephen R. Perry, *Immigration, Justice, and Culture* in Schwartz, *Justice in Immigration* 94, 119 (cited in note 17). See Miller, *On Nationality* at 27 (cited in note 59) (defining “national identity” as “connected to a particular territory,” which is one of five elements that “serve to distinguish nationality from other collective sources of personal identity”).

<sup>81</sup> Walzer, *Spheres of Justice* at 39 (cited in note 15).

<sup>82</sup> *Id.* at 37.

choice may be privately optimal but socially costly, because their departure allows the minority population to rise, which in turn may cause more members of the majority to leave. Each member of the majority may desire that his cultural group remain in the majority, but each may depart when it becomes privately optimal to do so, hoping that other members of their group will stay. The continuation of that cultural community in that location may be a public good for members of the majority, with each emigrating resident hoping that those left behind will provide this public good. Given strong economic incentives to immigrate, minorities may eventually arrive in such numbers as to challenge the majority status of the previously dominant group. An entire cultural group may evacuate, despite a universal preference of its membership that the community remain in place. Perhaps it is this kind of scenario that Walzer envisions when he fears that free mobility will threaten the stability of valuable cultural communities.

Even if the incumbent majority retains its majority status, the influx of minorities may be unwelcome. To the extent that incumbent residents find moving to be costly or are otherwise not entirely free to move, the tendency toward segregation that Schelling identifies may not produce complete segregation.<sup>83</sup> If people are attached to their current location, for example, or need to stay close to where they work, then they might tolerate living in a community that is more diverse than they would prefer. The fact that they choose to stay does not mean that they are content with the increasing cultural diversity in their neighborhood. They may worry about the effect that the presence of minorities has on the local culture. They may find that this presence imposes significant costs on them. They may be so committed to their current location, however, that they choose to bear these costs rather than leave.<sup>84</sup> "They experience a tension be-

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<sup>83</sup> Schelling presents examples in which integration is a possible equilibrium in his dynamic model. See Schelling, *Micromotives and Macrobehavior* at 161-62 (cited in note 60) (finding stable equilibria at mixed numbers of blacks and whites under alternative assumptions regarding tolerance); Schelling, 1 J Math Soc at 171-72 (cited in note 60) (same). Bell and Parchomovsky stress the possibility of equilibria with integration. See Bell and Parchomovsky, 100 Colum L Rev at 1988-93 (cited in note 74).

<sup>84</sup> Schelling stresses that "tolerance" in any given neighborhood is "specific to this location," so that members of the majority "who appear, in this location, to be less tolerant" of the minority than other members of the majority "may be merely more tolerant of the alternative locations." Schelling, *Micromotives and Macrobehavior* at 155 (cited in note 60). See Schelling, 1 J Math Soc at 167 (cited in note 60). Thus, the "more tolerant" member of the majority is either more tolerant of the minority or "less tolerant of moving." Schelling, *Process of Residential Segregation* at 183 n 2 (cited in note 65). Thus, "we



tween love of place and the discomforts of a particular place," Walzer explains, so they "stay where they are and resent the foreigners in their own land."<sup>85</sup>

Here we see that the objection to free mobility is not that it would fail to segregate residents into distinctive cultural communities, but that it would fail to tie these communities permanently to particular geographic locations, or that it would fail to maintain the desired degree of ethnic purity in all communities. If some communities are not satisfied by the degree of segregation that results from a regime of free mobility of labor, or if they want to preserve their cultural community in its current geographic location, then neighborhoods may seek to erect local immigration barriers "to defend their local politics and culture against strangers."<sup>86</sup> Why not deem local immigration barriers to be an appropriate response when externalities imply that free mobility is not socially optimal? Schelling, after all, only demonstrates that excessive segregation is likely under certain conditions. With a change in the assumptions, excessive integration may be the outcome instead. Why not allow local communities to respond to their specific circumstances as they see fit?

Walzer warns that the result may be "a thousand petty fortresses" instead of "a world without walls."<sup>87</sup> He concedes that these "fortresses, too, could be torn down," but "the result would be . . . a world of radically deracinated men and women," without the stable communal cohesion that he considers so important.<sup>88</sup> Walzer concludes that immigration restrictions at the national level are an appropriate response to these concerns. The alternative of segregation at the local level, however, suggests two problems with this line of reasoning. One problem is a question of economics; the other problem is a moral question.

First, to the extent that people can segregate at the local level into distinct communities within commuting distances, they can reside in a cultural community that matches their preferences with minimal interference with their access to employment opportunities. Voluntary segregation at the local level would distort the global labor market less than immigration restrictions at the national level would. If we really believe that it is important

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could as well call it 'immobility.' It is a tolerance/mobility ratio." Id.

<sup>85</sup> Walzer, *Spheres of Justice* at 38 (cited in note 15).

<sup>86</sup> Id.

<sup>87</sup> Id at 39.

<sup>88</sup> Id.

to preserve cultural communities in particular places and with specific degrees of ethnic purity, and that voluntary segregation would be inadequate for these purposes, then we could allow local communities to raise barriers to the immigration of cultural minorities.<sup>89</sup> If we actually wanted to satisfy their segregationist preferences, we could allow them to use zoning ordinances or restrictive covenants, for example, much like those used by whites to exclude blacks in the recent history of racial segregation in the United States.<sup>90</sup> If we are really concerned about the adverse effects of diversity on support for the funding of public goods, including public schools,<sup>91</sup> then this residential segregation would have the benefit of segregating facilities such as public schools and allowing more homogeneous local communities to fund these public goods separately.<sup>92</sup> Although a regime of *de jure* segregation would not ensure a diversity of cultural communities within any given labor market, insofar as it at least allows for this possibility, it can minimize distortions in the global labor market by allowing members of different cultural communities to gain from trade with one another in local markets. Immigration restrictions at the national level, however, would prevent the entry of a worker even if a local community would be willing to admit the

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<sup>89</sup> Tamir suggests that multinational states turn to "solutions such as local autonomies" or "federative or confederative arrangements," which "would then lead to a world in which traditional nation-states wither away, surrendering . . . their power to structure cultural policies to local national communities." Tamir, *Liberal Nationalism* at 151 (cited in note 28). At the same time, Tamir suggests that a national community may restrict immigration "to preserve cultural homogeneity," but "only if it has fulfilled its global obligation to assure equality among nations" through "efforts to improve standards of living in poorer countries." *Id.* at 161–62.

<sup>90</sup> See Richard H. Sander, *Individual Rights and Demographic Realities: The Problem of Fair Housing*, 82 *Nw U L Rev* 874, 877–79 (1988) (outlining the history of the use of zoning ordinances and restrictive covenants in the United States in the twentieth century). As explained in Part II of this article, it is appropriate that we reject these segregationist policies in the United States as violations of our principles of liberal toleration and equality. I will argue, however, that we should also regard our current immigration restrictions as violations of these same principles.

<sup>91</sup> In their study of cities in the United States, Ottaviano and Peri find that "racial diversity decreases expenditures in public education," but the effect of "linguistic diversity . . . is not significant." Ottaviano and Peri, 58 *J Urban Econ* at 332 (cited in note 41).

<sup>92</sup> Compare Miller, *On Nationality* at 85 (cited in note 59) (suggesting that a multinational state could embrace "a form of federalism, making each constituent nationality responsible for promoting social justice within its own area through . . . social insurance or poverty relief programmes"); Chandran Kukathas, *The Case for Open Immigration*, in Andrew I. Cohen and Christopher Heath Wellman, eds, *Contemporary Debates in Applied Ethics* 207, 216 (Blackwell 2005) (questioning whether "the nation-state is the appropriate site for the settlement of questions of distributive justice" given that the diversity that makes "social solidarity" and distributive justice "problematic" already exists "within the nation-state").

worker and thus give that worker access to the local labor market.

Given the alternative of segregation at the local level, immigration at the national level seems unlikely to undermine the ability of residents to live in a cultural community satisfying their preferences, unless we understand those preferences to include preferences regarding the composition of the population of the entire country, not just of their local community. Through national immigration restrictions, residents in local communities can influence the migration of aliens into local communities other than their own. Insofar as local communities have heterogeneous preferences on these matters, however, many residents are likely to find that immigration restrictions imposed by outsiders to their own local community fail to satisfy local preferences, so that national immigration restrictions are likely to prove costly. Furthermore, once we turn to preferences regarding the cultural traits of the population on a national scale, the impact of those traits on one's personal associational interests seems far more remote and attenuated, especially in a country as large as the United States. Not only do the social costs of immigration restriction at the national level seem greater than those of residential segregation at the local level, but the social benefit produced by immigration restriction at the national level seems much less weighty compared to that produced by segregation at the local level.<sup>93</sup>

Furthermore, there is no reason to assume that a nation raising an immigration barrier will do what is socially optimal from a global perspective.<sup>94</sup> A nation may well decide that its residents attach enough value to maintaining the cultural status quo to make it worthwhile for that nation to forego the gains from trade that more immigration would yield. The nation's decision to restrict immigration, however, is unlikely to give equal

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<sup>93</sup> For any public policy, the more attenuated the national interest compared to local interests, and the greater the diversity in local preferences, the stronger the case for decentralized control over that policy. See Wallace E. Oates, *Fiscal Federalism* 11 (Harvard Brace Jovanovich 1972) (stating the "economic case for decentralized government" with "variations that would . . . reflect the differences in tastes for the constituencies of the communities"); Robert P. Inman and Daniel L. Rubinfeld, *Rethinking Federalism*, 11 *J Econ Persp* 43, 43, 55 (1997) (stating the principle of "economic federalism," which prefers decentralization when "spillovers" among "small jurisdictions" are "limited or absent").

<sup>94</sup> See Chang, 145 *U Pa L Rev* at 1232-38 (cited in note 4) (describing the immigration policies that would maximize global economic welfare and comparing them with those that would maximize national economic welfare).

weight to the interests of outsiders. From the standpoint of global economic efficiency, for example, the question for the United States is whether those who favor our current immigration restrictions attach so much value to these restrictions, despite the option of voluntary segregation at the local level, that they would actually be willing to pay enough to compensate everyone in the world harmed by our exclusion of prospective immigrants. Moreover, even if our policies were to pass this test of economic efficiency, they would not necessarily be optimal from the standpoint of global economic welfare, assuming that our welfare objectives also include considerations of distributive justice.

As Walzer observes: "Human beings . . . move about a great deal, but not because they love to move. They are, most of them, inclined to stay where they are unless their life is very difficult there."<sup>95</sup> Given all the substantial benefits that an individual enjoys by remaining in a community that shares that individual's culture, no one would choose to immigrate into a community with an alien culture unless there were something quite important to gain. The immigrant seeks a better life, with significantly better social and economic opportunities. Typically, the immigrant flees poverty, having been born into disadvantaged circumstances. Walzer is prepared to recognize "the claims of necessitous strangers,"<sup>96</sup> but insists that "there must be some limit" and that communities "will still have a right" to exclude those outsiders seeking access to the same social and economic opportunities enjoyed by incumbent residents.<sup>97</sup> For Walzer, "the claims of distributive justice" do not ensure full equality of opportunity: "Some places in the world will still be more desirable than others . . . . Some places will still be uncomfortable for at least some of their inhabitants."<sup>98</sup> In the face of such inequality, however, why should we satisfy the preferences of those incumbent residents who are more advantaged at the expense of the needs of the less advantaged who seek to immigrate?

This question brings us to the moral issue. Why should the preferences of incumbent residents who are intolerant of cultural diversity at the national level take precedence over the preferences of migrants for better employment opportunities? Given

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<sup>95</sup> Walzer, *Spheres of Justice* at 38 (cited in note 15).

<sup>96</sup> *Id.* at 47.

<sup>97</sup> *Id.* at 48.

<sup>98</sup> *Id.*

the disadvantaged circumstances that many immigrants seek to escape, considerations of distributive justice suggest that if we should favor anyone's interests, it is the claim of the immigrant seeking equal access to valuable economic opportunities.

## II. EQUALITY OF OPPORTUNITY AND LIBERAL IDEALS

To the extent that residential segregation at the local level and equal opportunity do prove to be inconsistent, we normally give equality priority. When it comes to racial segregation at the local level, we condemn segregation for keeping disadvantaged groups in an underclass cut off from valuable social and economic opportunities.<sup>99</sup> We hold equality of opportunity to be more important than the preferences of the privileged for their racially homogeneous communities. Here I relax the assumption that all preferences are equally worthy of satisfaction through public policies and ask whether principles of liberal toleration may place moral constraints on the objectives that a society may pursue through the state and the enforcement of its laws.<sup>100</sup> For example, we do not believe that the desire of residents to maintain a white neighborhood justifies the enforcement of zoning ordinances or racially restrictive covenants that exclude blacks.<sup>101</sup>

We would not consider such laws or covenants any more acceptable if they excluded aliens or cultural minorities rather

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<sup>99</sup> See, for example, Bell and Parchomovsky, 100 Colum L Rev at 1975 (cited in note 74) ("Segregation restricts employment opportunities for minorities, perpetuates education gaps, and creates an environment congenial to crime and a host of other social pathologies."); Sander, *Individual Rights and Demographic Realities* at 875 (cited in note 90) (stating that "[t]he ghetto undermines much of the progress in race relations" and "isolates many blacks from employment opportunities in the suburbs, perpetuates segregation in the schools, and creates an environment where crime, gangs, drug use, and a range of other social problems flourish"). The empirical evidence confirms that residential segregation inflicts significant harm on blacks in the United States. See Cutler and Glaeser, 112 Q J Econ at 828 (cited in note 72) ("As segregation increases, blacks have lower high school graduation rates, are more likely to be idle (neither in school nor working), earn less income, and are more likely to become single mothers."); Keith R. Ihlanfeldt and David L. Sjoquist, *Job Accessibility and Racial Differences in Youth Employment Rates*, 80 Am Econ Rev 267, 268 (1990) (concluding that the fact that black youths live further from jobs than white youths explains between 33 percent and 54 percent of the gap in their employment rates in the Philadelphia metropolitan area).

<sup>100</sup> See Ronald Dworkin, *Taking Rights Seriously* 234–38 (Harvard 1977) (arguing that a calculation of social welfare should exclude intolerant preferences if it is to justify a public policy); Howard F. Chang, *A Liberal Theory of Social Welfare: Fairness, Utility, and the Pareto Principle*, 110 Yale L J 173, 179–96 (2000) (same).

<sup>101</sup> See *Shelley v Kraemer*, 334 US 1 (1948) (holding that the Fourteenth Amendment prohibits states from enforcing racially restrictive covenants); *Buchanan v Warley*, 245 US 60 (1917) (holding that the Fourteenth Amendment prohibits laws that forbid blacks to reside in white neighborhoods).

than racial minorities from local communities.<sup>102</sup> We normally reject associational preferences as a justification for such discrimination against minorities. If we would reject such exclusionary practices as violations of principles of equality and of liberal toleration, then why should the same impulse to exclude be any more legitimate when the exclusion occurs on a national scale rather than at the local level?

Walzer warns of the “rigidities that would be forced” on “sectional cultures and ethnic communities” by exclusionary practices at the local level, yet he seems complacent regarding the “rigidities” that immigration restrictions impose at the national level.<sup>103</sup> Why are these rigidities any more acceptable at the national level? Why should it be less troubling to exclude an alien from an entire country rather than from a single neighborhood? Expanding the geographic scope of the community from which we exclude the alien only broadens the range of opportunities that we thereby deny that alien. When segregation at the national level, enforced by immigration restrictions, keeps disadvantaged groups in conditions of poverty and cuts them off from valuable social and economic opportunities, why should we defend this segregation as necessary to preserve distinctive cultural communities?<sup>104</sup>

Immigration restrictions at the national level do not seem truly necessary to maintain distinctive cultural communities.

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<sup>102</sup> See *Graham v Richardson*, 403 US 365, 372 (1971) (declaring that “classifications based on alienage, like those based on . . . race, are inherently suspect”). Justice Blackmun, who authored the *Graham* opinion, later explained that “aliens often have been the victims of irrational discrimination” and “historically have been disabled by the prejudice of the majority,” which “led the Court to conclude that alienage classifications ‘in themselves supply a reason to infer antipathy’ . . . and therefore demand close judicial scrutiny.” *Toll v Moreno*, 458 US 1, 20–21 (Blackmun concurring), (quoting *Personnel Administrator v Feeney*, 442 US 256, 272 (1979)). The *Graham* Court struck down state laws conditioning access to welfare benefits on either U.S. citizenship or residence in the United States for a specified number of years. *Graham*, 403 US at 382–83. Recognizing the tension between the *Graham* reasoning and federal immigration restrictions, however, the Supreme Court would later refuse to apply the same scrutiny to federal laws discriminating against aliens. See *Mathews v Diaz*, 426 US 67, 81–87 (1976).

<sup>103</sup> Walzer, *Spheres of Justice* at 39 (cited in note 15).

<sup>104</sup> See Roger Nett, *The Civil Right We Are Not Ready For: The Right of Free Movement of People on the Face of the Earth*, 81 *Ethics* 212, 224 (1971) (“May we expect the lesson which the Negro has taught his fellow Americans about denial of fair opportunities to be repeated on a broader scale, with the underprivileged of the earth demanding ‘de-segregation’ of nation states?”). The analogy between racial segregation and immigration restrictions suggests that we should view the campaign for liberalized immigration policies as a natural extension of the civil rights movement. See Kevin R. Johnson and Bill Ong Hing, *The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement*, 547 *Harv CR-CL L Rev* (forthcoming 2007).

Voluntary segregation at both the local and national level seems likely to ensure that such distinctive communities continue to thrive. Instead, immigration restrictions seem designed to preserve a particular cultural status quo in the countries that are most likely to be the destination of economic migrants seeking employment opportunities.<sup>105</sup> This objective is difficult to justify, at least in liberal states like the United States that supposedly seek to remain neutral among individual conceptions of the good.<sup>106</sup>

In a society committed to liberal values, preferences for the cultural status quo cannot justify immigration restrictions.<sup>107</sup> As Mark Tushnet observes, "limitations on entry attempt to preserve the existing distribution of values in a society, in a way inconsistent with a liberal state's commitment to the possibility of revising its own values as the values of its members change."<sup>108</sup> He concludes that "[t]here is therefore no principled reason to object to the transformation of the polity that will occur when those with different values enter."<sup>109</sup>

Consider, for example, the infamous "national origins" quota system that the United States used to regulate immigration from 1921 to 1965—a quota system heavily biased in favor of immi-

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<sup>105</sup> Many natives in the United States, for example, "believe immigrants are changing American culture and values when they ought to be adopting them." *Immigration: Summary of Findings*, NPR/Kaiser/Kennedy School Poll 2 (Oct 2004), available at <<http://www.npr.org/news/specials/polls/2004/immigration/summary.pdf>> (last visited Jan 27, 2007).

<sup>106</sup> In a liberal state, no one can justify a legal regime by claiming that "his conception of the good is better than that asserted by any of his fellow citizens." Bruce A. Ackerman, *Social Justice in the Liberal State* 11 (Yale 1980). "The public philosophy of contemporary American politics is a version of this liberal tradition of thought," which holds that "government should be neutral toward the moral and religious views its citizens espouse" and "should not affirm in law any particular vision of the good life." Michael J. Sandel, *Democracy's Discontent: America in Search of a Public Philosophy* 4–5 (Harvard 1996). Thus, the U.S. Supreme Court struck down a compulsory flag salute as unconstitutional, declaring that "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." *West Virginia State Board of Education v Barnette*, 319 US 624, 642 (1943). Mark Tushnet takes the United States to be an exemplary liberal state, "constituted by commitments to liberal toleration." Mark Tushnet, *Immigration Policy in Liberal Political Theory* in Schwartz, *Justice in Immigration* 147, 154 (cited in note 17).

<sup>107</sup> See Howard F. Chang, *Immigration Policy, Liberal Principles, and the Republican Tradition*, 85 Georgetown L J 2105, 2114–15 (1997) (detailing how liberal principles are inconsistent with immigration restrictions).

<sup>108</sup> Tushnet, *Immigration Policy in Liberal Political Theory* at 153 (cited in note 106). See id. at 154 ("[V]alue-based exclusions assume that the values constituting a polity are fixed, yet that assumption seems unfounded and arguably inconsistent with liberalism's basic commitments.").

<sup>109</sup> Id. at 155.

gration from Northern and Western Europe and against immigration from elsewhere. In fact, the Senate Judiciary Committee defended this system in 1950 as "a rational and logical method of . . . restricting immigration in such a manner as to best preserve the sociological and cultural balance in the population of the United States."<sup>110</sup> It was our recognition of the illegitimacy of our preferences for some ethnic groups over others, however, that motivated Congress in 1965 to eliminate this quota system.<sup>111</sup> If cultural concerns could not justify policies so closely tailored to maintaining the ethnic status quo, then how can they be any more acceptable as a reason to restrict immigration generally?<sup>112</sup>

Walzer explains his preference for national immigration restrictions rather than segregation at the local level by asserting that "[t]he politics and the culture of a modern democracy probably require the kind of largeness, and also the kind of boundedness, that states provide."<sup>113</sup> Even if we concede the need for "largeness," which is certainly not obvious, we may still ask why

<sup>110</sup> S Rep No 1515, 81st Cong, 2d Sess 455 (1950).

<sup>111</sup> See Nicasio Dimas, Jr., Donald Chou, and Phyllis K. Fong, *The Tarnished Golden Door: Civil Rights Issues in Immigration* 11 (U.S. Commission on Civil Rights 1980) ("The national origins immigration quota system generated opposition from the time of its inception, condemned for its attempts to maintain the existing racial composition of the United States.").

<sup>112</sup> Gerald Rosberg argues that the exclusion of aliens from the United States on the basis of race or national origin should be subject to strict judicial scrutiny, "because of the injury to American citizens of the same race or national origin who are stigmatized by the classification." Gerald M. Rosberg, *The Protection of Aliens from Discriminatory Treatment by the National Government*, 1977 Sup Ct Rev 275, 327. He explains that "[w]hen Congress declares that aliens of Chinese or Irish or Polish origin are excludable on the grounds of ancestry alone, it fixes a badge of opprobrium on citizens of the same ancestry." *Id.* See Michael Blake, *Discretionary Immigration*, 30 Phil Topics 273, 284 (2002) (noting that "a message that one racial group is to be preferred over another in immigration" is "a public statement" that "undermines the ability of citizens with the disfavored racial identity to see themselves as full participants in the project of self-rule"); Kevin R. Johnson and Bill Ong Hing, Book Review, *National Identity in a Multicultural Nation: The Challenge of Immigration Law and Immigrants*, 103 Mich L Rev 1347, 1386 (2005), (reviewing Samuel P. Huntington, *Who Are We? The Challenges to America's National Identity* (Simon & Schuster 2004)) ("Such exclusions stigmatize and harm domestic groups who share the same characteristics as the persons excluded."); Hiroshi Motomura, Book Review, *Whose Alien Nation?: Two Models of Constitutional Immigration Law*, 94 Mich L Rev 1927, 1947-48 (1996) (reviewing Peter Brimelow, *Alien Nation: Common Sense About America's Immigration Disaster* (Random House 1995) (noting that "an immigration law that excludes members of a particular race or ethnic group may cast a stigma on that group," which "violates the bedrock equal protection prohibition against treating any person as inferior to another by virtue of race or ethnicity," and that such a "policy may extinguish or stunt the growth of a racial or ethnic community"). Restrictions on immigration in general, however, have the same stigmatizing effect when justified as an indirect means of achieving the same objective: controlling the population of minority ethnic groups.

<sup>113</sup> Walzer, *Spheres of Justice* at 39 (cited in note 15).



“a modern democracy” requires “boundedness” in the form of national immigration restrictions. On this question, Walzer seems to allude to the empirical claim that “perfect mobility makes for authoritarianism” because “authoritarian regimes” are the “sorts of regimes” that “thrive in the absence of communal cohesion.”<sup>114</sup> But if the claim is that a democracy requires the cohesion that comes from cultural homogeneity, then as Stephen Perry notes, this suggestion “is, empirically, an implausible claim.”<sup>115</sup> Perry observes that “there are enough examples of liberal, well-governed, and relatively harmonious multicultural states to make it difficult to maintain that cultural homogeneity is a prerequisite for either political stability or the preservation of liberal/democratic institutions.”<sup>116</sup>

Indeed, as Perry notes, the “entrenchment of a particular culture within the political framework of a state,” if pursued

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<sup>114</sup> Id at 38. Similarly Peter Schuck worries that high levels of immigration may bring “social and cultural fragmentation, intergroup hostility, distributional inequities, and intensified political conflict,” which “will at some point degrade the quality of American democracy.” Schuck, 84 *Colum L Rev* at 89 (cited in note 59). He argues that “the tension between liberalism’s universal aspirations and our need as a society to achieve the degree of solidarity that effective activist government requires must be resolved at *some* level of exclusion,” but he adds that “it remains unclear what this level should be.” Id. Why not prefer local immigration restrictions over national immigration restrictions? Perhaps Walzer worries that the “rigidities” generated by local immigration restrictions would prove fatal to the cohesion necessary for a harmonious democratic state at the national level. Walzer, *Spheres of Justice* at 39 (cited in note 15). Even if the only alternative to national immigration restrictions were local immigration restrictions, however, we might ask whether closed nation-states would produce greater harmony than that alternative. Citing the role of nation-states in “generating vicious wars, politically sponsored attempts at genocide, and economically damaging trade wars,” Jean Hampton asks what is gained when “groups, which had previously sought to damage one another inside a state, now do it in wars between states.” Jean Hampton, *Immigration, Identity, and Justice*, in Schwartz, ed, *Justice in Immigration* 67, 86 (cited in note 17). Similarly, if we restrict immigration to maintain the homogeneity deemed necessary to sustain redistribution and the provision of public goods within states, then we simultaneously segregate states along lines that undermine global distributive justice and the provision of international public goods. See Kukathas, *The Case for Open Immigration* at 217 (cited in note 92) (noting that “[i]f the price of social justice is exclusion of the worst-off from the lands that offer the greatest opportunity, this may be a mark against the ideal of social justice” that some seek to defend through immigration restrictions).

<sup>115</sup> Perry, *Immigration, Justice, and Culture* at 113 (cited in note 80). See Tamir, *Liberal Nationalism* at 163 (cited in note 28) (noting “several widely held fallacies,” including the claims “that free institutions can only operate within a homogeneous nation-state . . . and that economic development and modernization require cultural homogenization”).

<sup>116</sup> Perry, *Immigration, Justice, and Culture* at 113 (cited in note 80). See Miller, *On Nationality* at 94–96, 98 (cited in note 59) (citing Belgium, Canada, and Switzerland as successful multicultural democracies with effective systems of public welfare). “The true nation-state, in which a homogeneous cultural community coincides fairly closely with the associated political community,” Perry notes, “is the exception rather than the rule in the modern world.” Perry, *Immigration, Justice, and Culture* at 113 (cited in note 80).

“simply to serve and protect the shared culture,” would itself be “contrary to liberal thought.”<sup>117</sup> Nevertheless, Perry identifies two concerns regarding the cultural effects of immigration that suggest reasons for a liberal state to restrict immigration. Each concern, however, provides only a limited justification for immigration restrictions.

First, Perry notes that “a liberal state is presumably not bound to take in a large number of persons from groups espousing illiberal or undemocratic principles who might, if admitted on a sufficiently large scale, pose a real risk to the existence or character of a liberal democracy.”<sup>118</sup> This observation, however, fails to justify the restrictions we currently impose on immigration. As Perry suggests, “it would presumably take a manyfold increase in the levels of immigration to, say, the United States or Canada before such a risk could be regarded as anything more than a theoretical possibility.”<sup>119</sup>

Indeed, insofar as those who choose to migrate to liberal democratic states do so because they appreciate the benefits of living in a liberal democracy, these immigrants will not be inclined to change existing institutions in the host country.<sup>120</sup> Immigrants, perhaps more than natives, appreciate the value of these institutions in their host countries, because they can compare these institutions with those that have produced the conditions that they are fleeing in their countries of origin.<sup>121</sup> This self-selection process reduces the threat that any given level of immi-

<sup>117</sup> Perry, *Immigration, Justice, and Culture* at 111 (cited in note 80).

<sup>118</sup> *Id.* at 114. See also Carens, 49 *Rev Pol* at 262 (cited in note 18) (arguing that “the effect of immigration on the particular culture and history of the society would not be a relevant moral consideration, so long as there was no threat to basic liberal democratic values”); Tushnet, *Immigration Policy in Liberal Political Theory* at 157 n 25 (cited in note 106) (adding “the qualification that the community must satisfy minimum norms of political justice—the ‘no tyranny’ requirement” to the principle of liberal neutrality). Similarly, Bruce Ackerman concludes that the only legitimate reason for a liberal state to restrict immigration is to protect the liberal state itself. See Ackerman, *Social Justice in the Liberal State* at 95 (cited in note 106) (“The only reason for restricting immigration is to protect the ongoing process of liberal conversation itself. Can our present immigration practices be rationalized on this ground?”).

<sup>119</sup> Perry, *Immigration, Justice, and Culture* at 114 (cited in note 80).

<sup>120</sup> See Johnson and Hing, 103 *Mich L Rev* at 1352 (cited in note 112) (noting that “most immigrants come to the United States because they embrace American political values and economic freedoms”).

<sup>121</sup> See Peter H. Schuck, *Book Review, Alien Ruminations*, 105 *Yale L J* 1963, 1996 and n 176 (1996), (reviewing Peter Brimelow, *Alien Nation: Common Sense About America's Immigration Disaster* (Random House 1995) (noting that “most of those who have chosen America presumably identify at least as strongly with its ideals and institutions as those who just happened to be born here” and that “many . . . are refugees fleeing cruel regimes in harsh societies”).

gration may pose to the character of our liberal democracy. Furthermore, immigrants exposed to liberal democratic values in the host country will tend to absorb these values, especially as advances in telecommunication technologies increasingly spread these values around the globe to reach many prospective migrants in countries of emigration before they migrate.<sup>122</sup>

Second, Perry notes that “a certain degree of cultural stability and cohesiveness is necessary to preserve either general social and political stability or the liberal/democratic character of existing political institutions,” and therefore “immigration may be restricted accordingly.”<sup>123</sup> Here, however, “the core issue” is “the rate of cultural change, not the preservation of an existing culture or cultural mix.”<sup>124</sup> Thus, a liberal state may impose immigration restrictions “to ensure that cultural change within the state is not too rapid and present social forms are not simply overwhelmed,” but may not otherwise seek to prevent cultural change.<sup>125</sup>

This second rationale for immigration restrictions, based on “a demand for cultural continuity,” seems especially limited once we recognize that “the character and the extent of the restrictions that might be necessary to maintain cultural and social stability” will depend on “a variety of factors, including . . . current cultural makeup” and “the existing degree of cultural heterogeneity.”<sup>126</sup> As immigrants from foreign cultures enter, they

<sup>122</sup> See Johnson and Hing, 103 Mich L Rev at 1380 (cited in note 112) (“Even before coming to the United States, immigrants have been exposed to American culture due to its pervasiveness in the global media.”).

<sup>123</sup> Perry, *Immigration, Justice, and Culture* at 113–14 (cited in note 80).

<sup>124</sup> *Id.* at 114. See *id.* (“What is at stake is cultural continuity rather than the substance of the dominant culture or cultures.”). See also Miller, *On Nationality* at 128 (cited in note 59) (“Why should immigrants pose a threat to national identity once it is recognized that that identity is always in flux, and is moulded by various sub-cultures that exist within the national society?”); Kukathas, *The Case for Open Immigration* at 215 (cited in note 92) (noting that “many societies have experienced significant cultural or social transformations and not only survived but prospered”).

<sup>125</sup> Perry, *Immigration, Justice, and Culture* at 114 (cited in note 80). Similarly, Carens concedes that “public order” may require “some restrictions on immigration,” but notes that “the need for some restriction would not justify any level of restriction whatsoever or restrictions for other reasons, but only that level of restriction essential to maintain public order.” Carens, 49 Rev Pol at 260 (cited in note 18). He also stresses that a “hypothetical possibility of a threat to public order is not enough.” *Id.* at 259. These considerations “would surely imply a much less restrictive policy than the one currently in force which is shaped by so many other considerations besides the need to maintain public order.” *Id.* at 260.

<sup>126</sup> Perry, *Immigration, Justice, and Culture* at 114–15 (cited in note 80). This cultural continuity may be important not only for “liberal and/or democratic institutions” but also for “the individual well-being of current citizens.” *Id.* at 112. Will Kymlicka, for example,

will change the “cultural makeup” of the country of immigration by making its society more multicultural. As this society becomes more diverse, more immigrants from those cultures would pose less of a threat to cultural continuity and social stability, eventually allowing still higher levels of immigration. Ultimately, immigration policies may be liberal enough to allow the global labor market to reach an equilibrium in which the free movement of workers would no longer pose a threat to social stability. After all, the prospect of free movement may seem threatening under current circumstances only because we assume that existing immigration restrictions have distorted the global labor market so far from equilibrium that the elimination of these barriers would unleash a flood of migrants.<sup>127</sup> If immigration policies were liberalized enough to allow the global labor market to equi-

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argues that “cultural structure” is important because it provides a person with “a context of choice.” Will Kymlicka, *Liberalism, Community, and Culture* 167 (Oxford 1989). He claims that “some limits on immigration can be justified if we recognize that liberal states exist, not only to protect standard rights and opportunities of individuals, but also to protect people’s cultural membership.” Kymlicka, *Multicultural Citizenship* at 125 (cited in note 39).

<sup>127</sup> See Ana Maria Iregui, *Efficiency Gains from the Elimination of Global Restrictions on Labour Mobility: An Analysis Using a Multiregional CGE Model*, in George J. Borjas and Jeff Crisp, eds, *Poverty, International Migration and Asylum* 211, 224 (2004) (estimating that about half of the workers in developing countries would have to migrate in order to eliminate international wage inequalities); Jonathon W. Moses and Bjørn Letnes, *If People Were Money: Estimating the Gains and Scope of Free Migration*, in George J. Borjas and Jeff Crisp, eds, *Poverty, International Migration and Asylum* 188, 197–98 (estimating that more than two-thirds of the population in developing countries would have to migrate in order to eliminate international wage inequalities). It is not clear, however, how many workers would actually choose to migrate if allowed to do so freely. See Phillippe Legrain, *Immigrants: Your Country Needs Them* 327–28 (Little, Brown 2006) (reporting that after the United Kingdom opened its borders to workers from Eastern Europe, little net migration followed, despite wages in Britain five times higher than those in Poland); Johnson, 51 *UCLA L Rev* at 263 (cited in note 9) (suggesting that it is “far from evident” that “open borders” would lead to “a drastic increase in immigration”). A “general affinity for family and homeland” and “human inertia” tend to inhibit migration even in the face of substantial economic incentives. *Id.* at 202. Ethnocentric or nationalistic biases may lead us to overestimate the number of aliens who would immigrate if given the opportunity to do so legally. See *id.* at 201 (suggesting that fears “that millions of immigrants from around the world will overwhelm the United States” if we were to open our borders “betray an attitude of U.S. superiority” in assuming that people around the world “could not resist coming to the best of all countries if the opportunity existed”). We would expect the costs of migration to imply less immigration than would occur under complete convergence in wages. See Iregui, *Efficiency Gains from the Elimination of Global Restrictions on Labour Mobility* at 226–27 (estimating that for wages in developing countries to reach 70 or 90 percent of wages in the developed countries, as little as 23 or 30 percent of the labor force in developing countries would have to migrate). Jonathon Moses and Bjørn Letnes, however, estimate that for international wage differences to fall by 30 percent, more than a billion people would have to migrate. See Moses and Letnes, *If People Were Money* at 198 (cited in note 127). While this flow would be less than a third of the population of the source countries, this scenario would still imply that immigrants would outnumber natives in developed countries. See *id.*

brate, then there would no longer be any pent-up demand for immigration for us to fear. Thus, the immigration restrictions that can be justified by the need for cultural continuity seem likely to be temporary, in place only to ensure an orderly transition from the status quo to a regime of generally free labor mobility.

Both the justification based on social stability and the justification based on the preservation of a liberal democracy, however, may be abused to rationalize excessively restrictive and intolerant immigration policies. Given the ugly role that racism and xenophobia have played in the formulation of immigration policies in the past, we should be reluctant to endorse these cultural concerns as a justification for our immigration restrictions today.<sup>128</sup> Our analysis of the cultural effects of immigration, even if conducted in good faith, seems likely to be tainted by a bias against foreigners.<sup>129</sup>

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<sup>128</sup> See Carens, 49 Rev Pol at 260 (cited in note 18) (noting that such “arguments were used in the nineteenth century against Catholics and Jews from Europe and against all Asians and Africans” and suggesting that “we should be wary of resurrecting them”); Tushnet, *Immigration Policy in Liberal Political Theory* at 150 (cited in note 106) (“A more realistic view, informed by the history of immigration policy, would be more skeptical . . . . Rather than admirable efforts to . . . preserve morally valuable communities, present immigration practices seem racist and ethnocentric.”). Michael Trebilcock criticizes Walzer’s justification for immigration restrictions “on grounds of preserving cultural homogeneity—‘they are not like us,’” noting that “[t]his form of communitarianism has been invoked in the past to justify some of the most egregious forms of racial and religious discrimination in the history of Canada and the United States.” Michael J. Trebilcock, *The Case for a Liberal Immigration Policy*, in Schwartz, ed, *Justice in Immigration* 219, 240 (cited in note 17). See Tushnet, *Immigration Policy in Liberal Political Theory* at 157 n 20 (cited in note 106) (“[T]he value-based exclusion might serve as a mask for a race-based exclusion: we might say that some people are ‘not like us’ because of their values when we really believe that they are ‘not like us’ because of their race.”); Dimas, Chou, and Fong, *Tarnished Golden Door* at 7–12 (cited in note 111) (reviewing the history of discrimination in US immigration policies).

<sup>129</sup> Jody Armour notes that “[t]he tendency of individuals to credit only those statistics and images which confirm their preexisting biases exacerbates [ ] irrational influences” such as “cultural stereotypes” and “racial antagonisms.” Jody D. Armour, *Race Ipsa Loquitur: Of Reasonable Racists, Intelligent Bayesians, and Involuntary Negrophobes*, 46 Stan L Rev 781, 791 (1994). Thus, Armour worries that “factfinders will inevitably exaggerate the *weight* properly accorded” to facts that are consistent with these prior biases. Id. Prejudice against foreigners is widespread enough to raise doubts about claims of adverse effects of immigration on the national culture. See, for example, Peter Brimelow, *Alien Nation: Common Sense About America’s Immigration Disaster* 178–81 (Random House 1995) (raising concerns about the cultural consequences of immigration, the cultural traits of immigrant groups, and the implications of those traits for economic success); id at 59–73 (describing white America as caught between the “pincers” of Hispanic and Asian immigration). We should instead take care to give due weight to evidence of the positive contributions that immigrants make to our culture. See, for example, Schuck, 105 Yale L J at 2012 (cited in note 121) (concluding that “America desperately needs what so many immigrants possess—optimism and energy, orientation to the future, faith in education as the ladder upward, hunger for their own and their children’s success, and

It is telling that we ordinarily reject the risk of social strife and instability as a justification for compulsory residential segregation in the domestic context.<sup>130</sup> We refuse to allow intolerant residents to dictate public policies through the threat of social strife; we instead seek to promote liberal toleration. In setting immigration policies, a liberal state should similarly refuse to accept or to legitimize intolerance as part of "the social status quo" and instead seek "to encourage . . . the development of more tolerant public attitudes."<sup>131</sup>

### CONCLUSION

I have argued that the justifications for immigration restrictions based on cultural effects are more limited than commonly supposed. Immigration restrictions at the national level do not seem truly necessary to maintain distinctive cultural communities. Voluntary segregation at both the local and national level seems likely to ensure that such distinctive communities continue to thrive while also allowing members of different communities to enjoy gains from trade in the labor market. Instead, national immigration restrictions seem to reflect the preferences of incumbent residents for the cultural status quo in their countries. It seems doubtful that such preferences can justify existing immigration restrictions as policies maximizing global economic welfare, at least in the face of significant inequalities in economic opportunity that give migrants an important interest in access to labor markets in countries of immigration.

The preferences of incumbent residents who are intolerant of foreign cultures are especially unlikely to justify existing immigration restrictions in societies like our own that are committed

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devotion to a dynamic, hopeful vision of America that has lost focus for many native-born citizens").

<sup>130</sup> In *Buchanan v Warley*, 245 US 60 (1917), the U.S. Supreme Court struck down a law forbidding blacks to occupy homes in white neighborhoods, rejecting the justification "that this proposed segregation will promote the public peace by preventing race conflicts." *Id.* at 81. Similarly, in *Palmore v Sidoti*, 466 US 429 (1984), the Supreme Court held that a state cannot deny a divorced mother custody of her child on the basis of her interracial remarriage, even if the persistence of racial prejudice in society implies that "a child living with a stepparent of a different race may be subject to a variety of pressures and stresses not present if the child were living with parents of the same racial or ethnic origin." *Id.* at 433. The court stressed: "Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect." *Id.*

<sup>131</sup> Perry, *Immigration, Justice, and Culture* at 115 (cited in note 80). See Johnson, 51 UCLA L Rev at 252 (cited in note 9) (suggesting that "we should strive to welcome and accept people of different cultures and backgrounds and races, not keep them out because some segments of our society might act in discriminatory ways").

to liberal principles. It is telling that we normally reject intolerant preferences as justifications for public policies mandating residential segregation at the local level. Instead, we choose to give equality of opportunity priority over the preferences of incumbent residents for the status quo in their communities. A liberal society should give equality the same priority when it comes to the question of immigration restrictions.

This suggestion does not imply that liberal states must throw open their borders overnight. There may well be other reasons, such as concerns for social stability and for the preservation of liberal democratic institutions, to maintain some immigration restrictions under current circumstances and in the near future. I do mean to suggest, however, that liberal states should seek to liberalize their immigration policies, thereby reducing global inequalities in economic opportunity, and that these states should continue to liberalize their restrictions over time unless further liberalization would pose risks substantial enough to outweigh the interests of migrants in equal access to economic and social opportunities.<sup>132</sup> It is incumbent upon liberal states to pursue such reforms if they are to remain faithful to the egalitarian ideals that they espouse.

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<sup>132</sup> The immigration bill debated by the Senate in 2006 would have liberalized the ceiling on the number of guest-worker visas annually in response to excess demand for those visas. See *Senate Resumes Comprehensive Immigration Reform Debate*, 83 Interpreter Releases 981–82 (2006) (describing the amendments adopted during Senate debate to an immigration reform bill in May of 2006). Before passing that bill, however, the Senate amended the bill to fix that ceiling at 200,000 per year. See *id.* at 981.