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INTERNATIONAL MIGRATION AND TRADE: A MULTI-DISCIPLINARY SYNTHESIS

*Jagdeep S. Bhandari**

I: INTRODUCTION

This paper examines the inter-relationship between international migration and international trade in goods and services. Specifically, a central theme is the effect of trade liberalization on incentives to migrate across countries and, conversely, the effects of international migration on the need for trade liberalization. Does trade policy liberalization lead to greater incentives to migrate across countries? Or, is such trade reform likely to dampen such incentives and effectively replace migration, including illegal immigration? Similarly, does a more liberalized immigration regime create or replace international trade in goods and services between the relevant countries?

These issues are of immediate relevance to policymakers in crafting and evaluating appropriate trade and migration policies. Unless the inter-relationship was properly understood, trade reform may easily undo and undermine the effects of an independently chosen immigration stance. History itself provides several examples of trade and immigration liberalization occurring simultaneously at certain periods in time, in certain countries, as well as the opposite relationship in the United States (i.e., trade liberalization coupled with immigration restrictions). How can these varying policy stances be explained or reconciled, and what insights does scholarship in various disciplines offer in this regard?

While various disciplines, including law, political science, economics, sociology, ethnic studies, demography, and international relations, have extensively studied migration and trade, the theoretical and policy inter-relationship between the two have received very little attention.¹ Additionally, the bulk of the vast literature on trade and migration is targeted to professional trade theorists, labor economists, public choice scholars, political scientists, and sociologists and is unlikely to be easily accessible to the legal profession, to the policy-

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¹ Some of the few exceptions that exist are cited at appropriate points below.

maker, or to inter-disciplinarians in general. This paper is intended to fill this lacuna in the literature.

The paper analytically surveys and synthesizes the existing literature on trade and migration, particularly their inter-relationship, from the perspective of several disciplines. In many areas, scholarship on the trade-migration relationship is either incomplete or non-existent. To the extent possible, I have attempted to fairly deduce implications for this relationship from existing analyses in several disciplines and marry them in order to present the reader (especially the policymaker) with a richer framework than has previously existed. I offer the outline of a multi-disciplinary synthesis of the inter-relationship between trade and migration.

Both the scope and the intended audience for this paper are much broader than the targeted readership of previous authors. For the convenience of the reader, I have attempted to precede the principal discussion in each section by a brief roadmap. In each section, the trade-migration relationship is emphasized to ensure that the reader is not unduly distracted by the details of the wealth of material presented.

Section II contains a discussion of the recent policy debates involving international migration and trade which will set the stage for the subsequent analytical discussion. While the European Union chose to address both trade and migration (along with other “freedoms”) simultaneously, the United States pursued a piecemeal approach to trade liberalization and immigration reform in both public discourse and legislative enactments.

I discuss historical trends in patterns of trade and cross-border flows of labor and capital in Section III. Despite the ceaseless current emphasis on “globalization” and integration, the *belle époque*² of integration was, in fact, a time that ended on the eve of the First World War. For a period of some fifty years prior to that date, the Old and New Worlds experienced integration in each of trade, finance, and migration flows to a far larger relative extent than in the closing years of the last century.

In Section IV, I present and discuss the principal theoretical constructs proposed by trade and labor theorists that may be capable of generating falsifiable hypotheses regarding the inter-relationship between trade and migration. Notably, as originally proposed in these fields, this inter-relationship has not been at the forefront of attention. This section illustrates that the inter-relationship between trade liberalization and immigration reform can only be unequivocally narrowed to the simplest theoretical structures. Additional applied and quanti-

² An era of artistic and cultural refinement in a society, especially in France at the beginning of the 20th century.

tative work is necessary to determine the contours of this relationship in more realistic contexts.

In Section V, I turn to a public choice, or political economy, framework. Section VI is an omnibus section that examines some of the literature pertinent to trade and migration in the areas of sociology, anthropology, and international relations or international political economy. Public choice analysis has dealt primarily with migration policy rather than trade and has focused on the type of migration policy that might be preferred by the enfranchised electorate in liberal democracies. Surprisingly, in many cases, the average voter prefers a limited amount of illegal migration; this preference is then articulated by the state through selective enforcement of immigration laws at both the border and in the interior. Anthropological and political studies provide additional valuable insights into migration by analyzing both the social networks that catalyze both legal and illegal migration and the role of such networks in socio-economic, linguistic, cultural, and, ultimately, political assimilation and incorporation of immigrants into host society. When a sufficient number of new immigrants gain meaningful political membership in the host state, the very meanings of national borders and state sovereignty may be questioned. This is the domain of international relations scholars.

In Section VII, I briefly discuss empirical evidence regarding the relationship between trade and migration. A limited amount work exists so far; it has mainly dealt with examining the relationship between trade and net immigration flows in simple time-series and cross-section data. Existing empirical analysis indicates that there is no apparent or consistent relationship between trade and migration flows or policies. In part, this finding may be attributed to the limitations and paucity of empirical work thus far performed. The last section offers some concluding observations.

II: RECENT PUBLIC POLICY DEBATES

While the relationship between trade and migration has been theoretically discussed since the 1930s, its policy implications have only come to occupy the attention of the public and policy-makers recently.³ In the United States, the debate appears to have reached the

³ The theoretical underpinnings in economics pertaining to this issue will be discussed in further detail below for the benefit of the non-specialist reader. At this stage, it should be pointed out that readers who are sophisticated in international economics may find some of the discussion and explanations to be unnecessary or even over-simplified. For this, I apologize in advance; however, as indicated above, the intended readership for this paper covers a broad range of professionals in various disciplines. The genesis of the modern theory of international trade is commonly attributed to a paper published in Swedish by Eli Heckscher in 1919 and

level of legislators, various “watchdogs,” and lobbyists just prior to the regional trade accords between the United States and Canada and the North American Free Trade Agreement (NAFTA).⁴ The public policy debate prior to the ratification of NAFTA in the United States made for strange bedfellows on either side. Most economists and business

then translated into English some thirty years later. The original work was extended and refined and explicated by Heckscher’s student Bertil Ohlin. Further refinements to the basic Heckscher-Ohlin framework was carried out by T.M. Rybczynski in 1955, Ronald Jones in 1965 and by Paul Samuelson, often considered the *wunderkind* of the Harvard Ph.D. generation of the 1930s. See generally Eli Heckscher, *The Effect of Foreign Trade on the Distribution of Income*, 11 *EKONOMISK TIDSKRIFT* 497 (The American Economic Association trans., Richard D. Irwin, Inc. 1963) (1919); BERTIL OHLIN, *INTERREGIONAL AND INTERNATIONAL TRADE* (Harvard University Press 1933) (1967); T.M. Rybczynski, *Factor Endowments and Relative Commodity Prices*, 22 *ECONOMICA* 336 (1955); Wolfgang Stolper & Paul A. Samuelson, *Protection and Real Wages*, 9 *REV. ECON. STUD.* 58 (1941); Ronald Jones, *The Structure of Simple General Equilibrium Models*, 73 *J. POL. ECON.* 557 (1965). The basic Heckscher-Ohlin framework, as it is universally known, provides a simple and very stylized framework with two countries, each producing two goods by using productive processes utilizing labor and capital. Labor and capital are inputs into the production process (and there may be others such as land, or entrepreneurial talent etc.). Each country is capable of producing both goods (outputs), but the cost and price structure for producing the goods differs across countries. Hence, countries have differing comparative advantages in producing the goods and absent tariffs and transport impediments, the pattern of free trade can be readily predicted. Countries will export those good that they can produce at a comparative advantage, vis-à-vis their trading partners and will import the other goods. This is no more than an implication of the benefits of specialization. The non-specialist reader is referred to an excellent non-technical but authoritative source such as the *THE NEW PALGRAVE: A DICTIONARY OF ECONOMICS* (John Eatwell, Murray Milgate & Peter Newman eds., 2002) (Palgrave-Macmillan Reference) for further explanation. The interested reader may also refer to standard texts in international economics such as PAUL KRUGMAN & MAURICE OBSTFELD, *INTERNATIONAL ECONOMICS: THEORY AND POLICY* (6th ed., Addison Wesley 6th ed. 2002), or RICHARD CAVES, JEFFREY FRANKEL & RONALD JONES, *WORLD TRADE AND PAYMENTS* (9th ed., Addison Wesley 9th ed. 2001). See also *HISTORY OF WORLD TRADE SINCE 1450* (John J. McCusker ed., Thompson Gale Publishing 2005).

⁴ The Canada–United States Free Trade Agreement, Jan. 2, 1988, 27 I.L.M. 281 (1989) entered into force on January 1, 1989, while the trilateral accord that included Mexico, i.e. the Canada-Mexico-United States: North American Free Trade Agreement, Dec. 8-17, 1992, 32 I.L.M. 289 (1993) entered into force on January 1, 1994. Both accords are Congressional-Executive agreements and their treaty status, in particular that of NAFTA, under Art. 2 of the U.S. Constitution have been occasionally questioned. See, e.g., Bruce Ackerman & David Golove, *Is NAFTA Constitutional?* 108 *HARV. L. REV.* 801 (1995). A much more ambitious pan-American free trade accord (Free Trade Area of the Americas (FTAA)), involves thirty-four countries in the Americas, and as yet, involves a work in progress.

interests supported the agreement, while certain environmental groups, human rights activists, and organized labor opposed it.⁵

Strangely, the relationship between trade policy and migration was, at least during the earlier phases of the public debate, neglected. In part, this may have been because the NAFTA accord itself included virtually no provisions regarding migration.⁶ Later in the course of the debate, some proponents of the trade accord argued that increased inter-regional trade, as contemplated by NAFTA, would serve to mitigate the pressures for illegal migration from Mexico to the United States.⁷ Conspicuously absent in the public discourse was any mention of illegal immigration from Canada or of legal immigration from either Mexico or Canada.⁸

⁵ See e.g., James F. Smith, *NAFTA and Human Rights: A Necessary Linkage*, 27 U.C. DAVIS L. REV. 793 (1994); Steve Charnovitz, *The North American Free Trade Agreement: Green Law or Green Spin?* 26 LAW & POL'Y INT'L BUS. 1 (1994) (concluding that there is very little green about the NAFTA and that much of the Administration's rhetoric was false among very many other papers). The AFL-CIO website lists a host of anti-NAFTA articles. See AFL-CIO website, <http://www.aflcio.org>. An unlikely set of coalitions has also emerged to protest the activities of the World Trade Organization (WTO) and has regularly attempted to disrupt the activities of its ministerial meetings as well as those of other international organizations.

⁶ Chapter 16 of the NAFTA accord (entitled "Temporary Entry for Business Persons") contains a number of relatively minor changes to U.S. immigration provisions, principally concerning easing of restrictions on certain classes of non-immigrant visa applicants, such as business visitors, treaty traders, intra-company transferees and skilled professionals. Chapter 12 of the Agreement clearly states that the accord imposes no general obligations regarding immigration or access to employment upon the state signatories. For a discussion of the labor provisions of NAFTA, see e.g., Noemi Gal-Or, *Labor Mobility Under NAFTA: Regulatory Policy Spearheading the Social Supplemental to the International Trade Regime*, 15 ARIZ. J. INT'L & COMP. L. 365 (1996) (suggesting that NAFTA simply provides a strategic super-structure waiting for the addition of labor provisions).

⁷ For an excellent treatment of the lack of labor mobility provisions on NAFTA, see Kevin R. Johnson, *Free Trade and Closed Borders: NAFTA and Mexican Immigration to the United States*, 27 U.C. DAVIS L. REV. 937, 965 (1994) (citing a host of references and arguing that the dichotomy between trade and movement of people in the NAFTA is a false separation since "labor migration and capital flow are related to international trade . . . [and that] . . . [i]n the absence of protectionism, trade among countries with different factor endowments is a *substitute* for migration") (emphasis in original). The present paper deals precisely with this issue, namely, the relationship between trade and migration policy.

⁸ Illegal immigration from Canada to the United States is not insignificant. This is especially so since alien smugglers seeking to bring undocumented aliens into the U.S. increasingly prefer to operate at the U.S.-Canada border rather than at the much more heavily-patrolled Southwest border of the U.S. See *Combating Illegal Immigration: A Progress Report: Hearing Before the Subcomm. on Immigration*

The separation of trade policy and migration, both in the policy debates and accord instruments, appears consistent with two possible positions from an analytical viewpoint. Policy makers in the United States (and its trade partners) had either determined (consciously or by default) that trade and migration were independent of and unrelated to each other (with respect to their effects) or that they were substitutes. The former position is not supported by any conceptual framework of which I am aware and need not be discussed further. The second position (i.e., the “substitutability” hypothesis) can be restated as follows: trade liberalization (accomplished via a free trade accord) is functionally equivalent to the liberalization of restrictions on labor mobility (migration). Hence, it is unnecessary to liberalize both trade and migration restrictions simultaneously; either one will accomplish the same end. A corollary proposition that follows is that trade liberalization will reduce the incentives for migration of labor.⁹ In the popular discourse preceding the implementation NAFTA, this position appears to have advanced primarily with respect to illegal im-

and Claims of the H. Comm. on the Judiciary, 105th Cong. (1997) (testimony of Associate Commissioner George Regan before the Judiciary Committee of the U.S. House of Representatives). Security of the 5000 mile U.S.-Canada border (in particular from threats of terrorism) was at the forefront of attention of the U.S. when it entered into an executive agreement with Canada – Smart Border Declaration – in December 2001. See also 2004 U.S. CUSTOMS AND BORDER PROTECTION PER. AND ANN. REP 1., available at <http://www.mipt.org/source.asp?id=365> (last visited Nov. 19, 2006).

⁹ The hypothesis that trade and labor mobility are substitutes (in their impact upon factor prices such as wage and rates of return on capital) is a direct implication of the simplest trade models discussed in Section IV below. More specifically stated, free trade in goods and services will tend to equalize wage rates and returns to capital (rental rates) across trading partners in the same manner as would cross-national migration of persons (or capital) from a labor (capital)-abundant country to one in which labor (capital) is scarce. It is in this sense, that trade and migration may be substitutes (or equivalent). The proposition regarding wage and rental rates referred to above is known in the international trade literature as “factor price equalization.” A corollary proposition is that protectionism in a country benefits the relatively scarce factor input, and in converse, free trade would tend to lower the returns to the scarce factor. Originally stated and proved by Stolper & Samuelson, *supra* note 3, this result follows from the basic Heckscher-Ohlin framework mentioned in note 3 (which is further discussed in Section IV). The policy implications of the work by Stolper and Samuelson can be readily reconciled with the policy stance adopted by various groups and coalitions in the U.S., prior to the NAFTA accord. For example, compared with Mexico, the U.S. is a labor-scarce economy. Import protection would benefit labor in the U.S., by permitting real wages to stay at high levels, while free trade would erode labor’s privileged position. It is hardly surprising then, that organized labor groups in the U.S. such as the AFL-CIO vociferously opposed the trade accord.

migration from Mexico.¹⁰ Neither policy-makers, political coalitions, nor other participants in the debate appear to have expended much effort in arguing that trade liberalization as envisioned by NAFTA would work as a substitute for labor movement in general, i.e., labor flows including legal migration.¹¹

International trade theorists have supported NAFTA, but their evaluation appears to be a general endorsement that free trade is mutually beneficial to trade economies.¹² Literature in the field of labor economics has recently attempted to gauge the net effects of legal and

¹⁰ In fact, the entire debate over immigration in the U.S. appears to have evolved in recent times, into one primarily about illegal entrants and undocumented aliens. For example, the widely-watched TV talk show on CNN ("Lou Dobbs Tonight") has focused virtually nightly on "broken borders" in the U.S. There is a large amount of literature on estimating the number of illegal aliens residing in the U.S. and the probable net inflow of such persons. Estimates are typically made from apprehensions made by the U.S. Border Patrol and from U.S. Census data. Recent estimates for 2005 made by independent entities such as the Center for Immigration Studies (CIS), the Pew Hispanic Center and the Federation for American Immigration Reform (FAIR) range from 10-12 million to as high as 20 million. See Robert Justich & Betty Ng, *The Underground Labor Force is Rising to the Surface*, *Bear Stearns Report*, Jan. 3, BEAR STEARNS ASSET MANAGEMENT INC. (2005), <http://www.bearstearns.com/bscportals/pdfs/underground.pdf> (last visited Nov. 19, 2006). As of the time of this writing, the media and Congress appear to have accepted the figure of 12 million for the total stock of undocumented migrants now present in the U.S.

¹¹ This is not to say that informed writers and officials were unaware of the interdependence between trade and labor flows in general. See, e.g., Johnson, *supra* note 6 at 955-956, 961-962, 964. See also Gene McNary, *Moving Goods and People in International Commerce*, 2 DUKE J. COMP. & INT'L L. 247, 247 (1992) (speech delivered February 6, 1992 at Duke University where the honorable Gene McNary, U.S. Commissioner for the INS said, "I feel more than a bit confident in acknowledging that if immigration is not formally on the table, someone at the table will sooner or later realize as a practical matter, that moving goods and services in international commerce involves moving people who trade in these goods and services.") See also GARY HUFBAUER ET AL., *NAFTA RE-VISITED: ACHIEVEMENTS AND CHALLENGES* 111 (Institute for International Economics, ed. (2005). During the course of the public debate leading up to enactment of NAFTA, President Vincente Fox of Mexico is reported to have remarked that, "the U.S. can choose to import tomatoes or accept tomato-pickers from Mexico").

¹² The "optimality" of free trade for a small country unable to affect its terms of trade (roughly, world prices for its exportables and importables), under relatively restrictive assumptions of perfect competition, full information, etc., is an elementary proposition in international trade. At bottom, the increase in economy wide (and worldwide) welfare with free trade in goods is traceable to the gains from specialization in the production of goods. See, e.g., KRUGMAN & OBSTFELD, *supra* note 3 at 150-51, 222-23.

illegal migration on both host and source countries.¹³ Researchers have specifically been interested in the impact of migration on host country wages, the distribution of income and employment, and the fiscal impact upon state level finances for those states disproportionately affected by immigrant flows.¹⁴ The source country has also been studied to determine the effects of migration, especially in the context of development prospects for the migrating country and the “brain drain.”¹⁵

Unfortunately, economic literature has kept the strands of trade and labor independent from each another and other disciplines. Academics have employed frameworks that focus on either labor markets or the market for traded goods, specifically imports and exports.¹⁶

¹³ Even a semblance of a comprehensive list of references in this area is likely to occupy an article length manuscript. A seminal contribution in this area is a set of studies published under the auspices of the National Research Council (NRC). See generally COMM’N ON BEHAVIORIAL & SOC. SCI. & EDUC., NAT’L ACAD. PRESS, THE NEW AMERICANS: ECONOMIC, DEMOGRAPHIC AND FISCAL EFFECTS OF IMMIGRATION (James Smith & Barry Edmonston, eds., 1997); COMM’N ON BEHAVIORIAL & SOC. SCI. & EDUC., NAT’L ACAD. PRESS, THE IMMIGRATION DEBATE: STUDIES ON THE ECONOMIC, DEMOGRAPHIC AND FISCAL EFFECTS OF IMMIGRATION (James Smith & Barry Edmonston eds., 1998); GEORGE BORJAS, HEAVEN’S DOOR: IMMIGRATION POLICY AND THE AMERICAN ECONOMY (Princeton Univ. Press 2001).

¹⁴ In fact, several States (for example, New Jersey, Florida, and Texas) filed suit against the United States for failing to prevent illegal immigration and seeking to recover funds expended for educating children of illegal aliens (as required by federal law) and associated expenses. Not surprisingly, none of the lawsuits resulted in any judicial relief for the States. See, e.g., *Texas v. United States*, 106 F.3d 661, 663 (5th Cir. 1997); *Chiles v. United States*, 1874 F. Supp 1334, 1334 (S.D. Fla. 1994); *New Jersey v. United States*, 91 F.3d 463, 465 (3d Cir. 1996). The U.S. Supreme Court case establishing the obligation of States with respect to public education of children of illegal aliens is *Plyler v. Doe*, 457 U.S. 202, 202 (1982).

¹⁵ The “brain drain” refers to the migration of skilled workers from developing countries to the advanced Western economies such as the United States. Immigration policies of developed countries are specifically geared to permitting, or even encouraging such immigration to meet their own demands for skilled workers. Under U.S. law, skilled professionals or certain priority workers receive categorization in the first or second employment preference as immigrants and are consequently, subject to much shorter waiting times to enter the U.S. Highly-skilled non-immigrants are also granted favorable treatment with respect to entry. Similarly, worker skills count toward the “points” needed by immigrants to gain immigration into Australia, Canada, and the United Kingdom. The brain drain ironically involves a direct transfer from poorer to richer countries, both currently and prospectively. See also Jones, *infra* note 88 at 72-75, 81-82. For an overview of U.S. immigration law, the non-specialist may refer to, Stephen Yale-Loehr, *Overview of U.S. Immigration Law*, 1477 PLI/CORP 49 (2005).

¹⁶ For a framework embodying interactions and second-order effects across markets and sectors, see generally R. Faini, J-M. Grether & J. De Melo, *Globalization*

Research in other disciplines, such as political science, sociology, demography, anthropology, and international relations, has also remained dichotomous in nature by failing to integrate migration and trade or address their mutual inter-relationships.¹⁷

Recently, however, a few economists and some public choice scholars have devoted renewed attention to the inter-relationship between trade and migration policies, particularly whether trade and immigration policies substitute or complement one another.¹⁸ If substitutable, as previously indicated, trade liberalization alone could accomplish both free trade and reduced immigration (if these are viewed as desirable policy goals). Alternatively, if these policies are complementary, the twin goals of free trade and immigration restrictions would necessitate simultaneous reforms in both trade policy and immigration regime. Even from a purely economic lens, a substitute relationship between trade and migration emerges only in the simplest of trade models; once the stark assumptions of such models are modified, the effects of trade liberalization on incentives to migrate are highly complex and dependent on the current framework. Clearly additional work, specifically empirical analysis, is needed before more definitive judgments can be made.

Ironically, legal scholars, rather than empirical social scientists have called for integration of trade and migration policies in the United States. Even before NAFTA's ratification, various legal scholars realized that trade accords would not have addressed consequences

and Migratory Pressures from Developing Countries, in *MIGRATION* (R. Faini, J. De Melo & K. Zimmerman, eds., Cambridge Univ. Press 1999).

¹⁷ For the most part, many of these disciplines have contributed to understanding migration and societal assimilation of newcomers. Hence, demographers or anthropologists have had little occasion to study international trade. By contrast, political scientists and international relations theorists have examined both migration and trade, albeit separately. The interested reader is referred to the following materials for a sampling of work in these disciplines: in sociology, see generally FRANK BEAN & GILLIAN STEVENS, *AMERICA'S NEWCOMERS AND THE DYNAMICS OF DIVERSITY* (Russell Sage 2003); SASKIA SAASEN, *GUESTS AND ALIENS* (New Press 2000); RICHARD ALBA & VICTOR NEE, *REMAKING THE AMERICAN MAINSTREAM: ASSIMILATION AND CONTEMPORARY IMMIGRATION* (Harvard Univ. Press 2005); in political science and political economy see generally I.M. DESTLER, *AMERICAN TRADE POLITICS* (4th ed., Inst. for Int'l Econ. 2005); WAYNE CORNELIUS ET AL., *CONTROLLING IMMIGRATION: A GLOBAL PERSPECTIVE* (Stanford Univ. Press 2004); in international relations and political economy see generally TOMAS HAMMAR ET AL., *INTERNATIONAL MIGRATION: MULTIDISCIPLINARY PERSPECTIVES* (Berg Press 1997); and in anthropology and social demography, see generally CAROLINE BRETTELL, *ANTHROPOLOGY AND MIGRATION; ESSAYS ON TRANSNATIONALISM, ETHNICITY AND IDENTITY* (Altamira Press 2003), among others.

¹⁸ See generally *MIGRATION*, *supra* note 16. Additional work is cited in Section V below.

to migration.¹⁹ For example, Johnson observes, “[i]n my view, NAFTA opponents advocating the linkage of immigration and NAFTA correctly argued that the trade agreement implicated migration issues. . . . For many reasons, most notably history and geography, the trade/migration separation is a false dichotomy. . . .”²⁰ Other authors have directly stated that not only are trade and migration inter-related, but that their relationship is also one of substitutability.²¹ Even the U.S. Commission for the Study of International Migration created in 1986 appeared to blithely assume the existence of a substitutability relationship between trade and migration.²² The report of the Commission stated, “[t]he issues for many countries is stark; *they either export goods and services to create jobs at home, or they export people.*”²³

As previously mentioned, relatively little basis exists in either public choice theory or economics to assume that trade and migration (labor mobility) are functionally equivalent or substitutes, except in

¹⁹ See, e.g., Alan C. Nelson, *NAFTA: Immigration Issues Must Be Addressed*, 27 U.C. DAVIS L. REV. 987 (1994); McNary, *supra* note 11; Johnson, *supra* note 7. Writers have noted that the omission of immigration reform in conjunction with implementation of NAFTA is to be rationalized in terms of the political accommodations that were expedient at the time. As it stood, NAFTA passed Congress only narrowly; the political coalitions in the U.S. that supported the NAFTA would have been quite insufficient to overcome anti-immigrant lobbies to permit coupling of the trade accord with labor mobility provisions. All parties agreed that NAFTA would have some immigration implications, but it was strategically expedient to not delve into this issue too deeply. The fact that the state parties to NAFTA included certain accords with respect to environmental and labor standards issues indicates that it was not necessary to limit NAFTA to trade issues alone. In fact, this “tactical issue linkage” may have been necessary to garner sufficient support to enable Congressional passage of the accord. Environmental issues are dealt with in Ch. 27 and labor protection issues in Ch. 28 of the NAFTA accord. At the same time, the plain text of the accord expressly reserves national autonomy of immigration policies to each sovereign state party.

²⁰ Johnson, *supra* note 7, at 942.

²¹ See, e.g., Dolores Acevedo & Thomas Espenshade, *Implications of a North America Free Trade Agreement for Mexican Migration into the United States*, 18 POPULATION & DEV. REV. 729, 730 (1992), *cited in id.* at 965-66 (observing that “in the absence of protectionism, trade among countries with different factor endowments is a substitute for migration. In other words, if countries with an abundance of labor can specialize in the production of labor-intensive goods, there need not be labor migration to more developed countries”)

²² UNITED STATES COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT, UNAUTHORIZED MIGRATION: AN ECONOMIC DEVELOPMENT RESPONSE (1990) (report of bipartisan commission created by Congress under the Immigration Reform and Control Act of 1986 (“IRCA”).

²³ *Id.* at 7 (emphasis added).

the very simplest trade models or constructs of early vintage.²⁴ Nor does an examination of the historical evolution of trade and migration patterns in many parts of the world suggest the consistent existence of such a relationship.²⁵ In fact, both modern theoretical analyses and empirical historical evidence indicate that, in many cases, trade liberalization is complementary to increased international mobility of labor and capital (i.e., increased migration of labor and/or increased cross border capital flows).²⁶ Logically, if trade liberalization and migration truly are (or were) substitute policies, that alone would imply that a trade liberalizing accord could well ignore addressing migration issues, if, and only if, all concerned policy-makers are purely concerned with the economic impact of such measures. Events in the United States subsequent to ratification of NAFTA belie the substitutability hypothesis, and, in particular, suggest that trade liberalization and increased migration (especially illegal immigration) were popularly viewed as complementary.²⁷

Examination of immigration and trade legislation enacted in the U.S. from the mid-1980s to the present suggests that, excepting the 1990 enactments, the immigration regime became increasingly restrictive despite trade policy continuing its already established liberalizing trend. The U.S. engagement in trade agreements over this period included its continued participation in the multilateral 1986-1994 Uruguay Round (culminating in the World Trade Organization accord in 1994 together with supplemental agreements reached in 1997), followed by the Doha Round of negotiations that commenced in Doha, Qatar in 2001.²⁸ At the same time, the United States also nego-

²⁴ See generally ROBERT J. FLANAGAN, *GLOBALIZATION AND LABOR CONDITIONS* (Oxford University Press 2006).

²⁵ See generally KEVIN H. O'ROURKE & JEFFERY G. WILLIAMSON, *GLOBALIZATION AND HISTORY: THE EVOLUTION OF A NINETEENTH-CENTURY ATLANTIC ECONOMY* (MIT Press, 1999).

²⁶ See generally Flanagan, *supra* note 24.

²⁷ Initially, economists assessing the impact of NAFTA on the U.S. economy appear to have generally concluded, that enactment of NAFTA would only marginally increase illegal immigration into the U.S., and that too on a temporary basis. See, e.g., GARY C. HUFBAUER & JEFFREY J. SCHOTT, *NAFTA: AN ASSESSMENT* (Inst. for Int'l Econ. revised ed. 1993). Later work though, appears to suggest NAFTA might contribute to a measurable degree to an "illegal migration hump" in that rural dislocations traceable to NAFTA might increase illegal migration from Mexico to the U.S. for a period of 10-15 years before changing demographics and economic development in Mexico reduced the pressure to migrate northward from Mexico. See NAFTA RE-VISITED, *supra* note 11.

²⁸ See, e.g., RUTH ELLEN WASEM, *IMMIGRATION ISSUES IN TRADE AGREEMENTS* (Congressional Research Service, 2005); *Country Trade Agreements*, U.S. Dep't of Agric. Foreign Agric. Serv. (2006), available at <http://www.fas.usda.gov/itp/agreements/country.asp> (last visited Nov. 19, 2006).

tiated a number of regional trade agreements with several countries, including three with Arab countries.²⁹

Although no fewer than ninety pieces of legislation have been enacted into public law in the United States since 1985 (many containing technical amendments or appropriations provisions), not to mention others that are pending, four enactments deserve special mention. In 1986, Congress specifically aimed at the undocumented alien problem and enacted the Immigration and Reform Control Act (IRCA).³⁰ For the first time in U.S. immigration history, U.S. employers who knowingly employed undocumented workers faced penalties and sanctions.³¹ Interestingly, no corresponding penalties were imposed on the workers themselves. Even more significantly, some 2.7 million illegal aliens were concurrently “amnestied” (including some 1.1 million special agricultural workers).³² By imposing employer penalties, Congress obviously hoped to reduce unscrupulous employers’ demand for illegal aliens in the United States. In turn, these impositions were also expected to reduce the ultimate inflow of such persons into the U.S.³³

Shortly thereafter, Congress enacted the Immigration Act of 1990 (IMMACT90).³⁴ This Act did not reflect any specific Congressional concern with undocumented aliens. Instead, it increased the worldwide annual quota of legal immigrants to be admitted to the U.S. by over thirty percent to 700,000 per year for the fiscal years 1992-94

²⁹ These include free trade agreements reached with Israel (1985), Canada (1989), NAFTA (1994), Jordan (2000), Singapore (2003), Australia (2004), Bahrain (2004), Chile (2004), Morocco (2004) and the seven-nation plurilateral accord, DR-CAFTA, in mid-2005. See, e.g., Country Trade Agreements, *supra* note 28. Still pending is the thirty-four nation FTAA Pan-American accord, which was originally scheduled to be completed by end of 2005.

³⁰ Immigration and Reform Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended at 8 U.S.C. § 1324a).

³¹ *Id.*

³² Karen A. Woodrow-Lafield, *Estimating Authorized Migration*, in 2 MIGRATION BETWEEN MEXICO AND THE UNITED STATES: BINATIONAL STUDY 619 (Mexican Ministry of Foreign Affairs & U.S. Commission on Immigration Reform eds., 1998).

³³ The actual ultimate inflow is a combination of both the demand for such persons by U.S. employers and of the supply of workers willing to relocate illegally to the U.S. The extent of illegal immigration cannot be known with certainty, but is usually proxied by a multiple of border apprehensions. See, e.g., Gordon Hanson & Antonio Spilimbergo, *Illegal Immigration, Border Enforcement and Relative Wages: Evidence from the Apprehensions at the US-Mexico Border* (Nat’l Bureau of Econ. Research, Working Paper No. 5592) (1996).

³⁴ Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (codified in scattered sections of 8 & 29 U.S.C.).

and to 675,000 thereafter.³⁵ Congress' decision to increase the worldwide quota for employment-based immigrants reflected changing economic realities in the world workplace and the apparent shortage of skilled workers and professionals in the U.S. labor force. This quota more than doubled, jumping from 54,000 to 140,000; at the same time, liberalizing provisions in certain non-immigrant visa categories (such as H-1B) were added.³⁶ Although IMMACT90 was a milestone in the liberalization of U.S. immigration policy, it did not specifically address illegal immigration. IMMACT90 was enacted just one year after the Canada-U.S. Free Trade Accord of 1989, but NAFTA wasn't ratified until several years later in 1994.

Some years later, following the 1993 World Trade Center bombing in New York and the Oklahoma City federal building bombing in 1995, Congress further streamlined the procedures for removal of criminal aliens charged with terrorism. The passage of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) effectuated this objective and placed great limits on the scope of habeas corpus appeals in such cases.³⁷ By itself, AEDPA was largely symbolic, and by 1998 when the AEDPA was in full effect, only 61,000 criminal aliens were removed from the U.S.³⁸ This number is clearly inconsequential when compared with the both government removal of almost twice that many non-criminal aliens in the same span of time and the entry of perhaps 800,000 illegal aliens in 1996 alone.³⁹

That year was a particularly busy one for immigration reform. Congress also enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Title V of which amended and re-incorporated the new Personal Responsibility and Work Opportunity Act.⁴⁰ IIRIRA was enacted precisely ten years after IRCA and took aim at

³⁵ The actual number of immigrants admitted in fact, exceeds the quota amount, because a number of immigrants (such as refugees and "immediate relatives" of U.S. citizens) are exempt from the quota. See Population Resource Center, Executive Summary: U.S. Immigration: A Legislative History (2004), <http://www.prcdc.org/summaries/usimmighistory/usimmighistory.html> (last visited Nov. 19, 2006).

³⁶ See Miguel Lawson & Marianne Lin, *The Immigration Act of 1990*, *Pub. L. No. 101-649*, 33 HARV. INT'L L.J. 255, 258 (1992) (summarizing the main provisions of IMMACT90).

³⁷ Antiterrorism and Effective Death Penalty Act of 1996, *Pub. L. No. 104-132*, 110 Stat. 1214.

³⁸ See OFFICE OF IMMIGRATION STATISTICS, U.S. DEPARTMENT OF HOMELAND SECURITY, 2003 YEARBOOK OF IMMIGRATION STATISTICS, Table 43 (2004).

³⁹ See OFFICE OF POLICY & PLANNING SERVICE, U.S. IMMIGRATION & NATURALIZATION SERV., ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE US: 1990-2000, at Chart 2.

⁴⁰ Illegal Immigration and Immigrant Responsibility Act of 1996, *Pub. L. No. 104-208*, 110 Stat. 3009.

both illegal and legal immigrants. In addition to increasing appropriations for border patrol personnel,⁴¹ IIRIRA removed illegal aliens from most means-tested federal public assistance programs⁴² (although the States remained free to fill in the gaps to the extent of their limited fiscal capabilities). Additionally, legal immigrants entering the United States were also barred from such means-tested programs for a five-year period. IIRIRA also contained a host of other restrictive amendments and innovations, including some relating to improved monitoring of aliens known to be present in the U.S.

As is well-known, intelligence gathering with respect to certain aliens received a much stronger boost in the USA PATRIOT Act of 2001.⁴³ Congressional concern with international terrorism and alien entry into the United States (whether lawful or surreptitious), continued to be reflected in the Intelligence Reform and Terrorism Prevention Act of 2004.⁴⁴ As of this writing, the issue of amnesty or legalization of unlawfully present aliens is once again high on the Congressional agenda and at the forefront of attention of the media and general public; only this time there may be as many 12 million persons who are *migrants irrèguliers* instead of 3 million, as in 1986.⁴⁵

⁴¹ *Id.* § 101.

⁴² *Id.* §§504, 510.

⁴³ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

⁴⁴ Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638.

⁴⁵ As of this writing, both the House and Senate have passed varying, but far-reaching immigration bills. The House bill (Sensenbrenner-King bill, H.R. 4437, 109th Cong. (2005)), passed on December 16, 2005, focuses almost entirely on immigration enforcement and contains no amnesty provisions for currently present unauthorized migrants. On May 25, 2006, the Senate passed the Hagel-Martinez bill, (S. 2611, 109th Cong. (2006)), of which an important component deals with legalization and possible eventual citizenship of an estimated 11-12 million undocumented aliens. Among other provisions, the House version would make continued presence of undocumented aliens in the U.S. a federal crime, while under current law, only the initial entry is unlawful. It would also delegate considerable immigration enforcement authority to state and local authorities and would seek to statutorily overturn or limit prior court rulings such as *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Clark v. Martinez*, 543 U.S. 371 (2005) by permitting unreviewable, potentially indefinite detention of certain aliens. Apart from the amnesty provisions, the Senate version is far more liberal by also authorizing a very substantial increase in legal immigration in the future (for example, by more than doubling the quota for employment-based immigrants and by creating a new H-2C visa permitting 200,000 low skills workers annually to work in the U.S., for up to six years. The liberalization provisions reflect the sense of the Senate of a growing shortage in the U.S. of both low-skills and high-skills workers. Given the sharp

This piecemeal approach employed in the United States, with respect to trade policy and immigration reform, is consistent with the view (at least among relevant policy makers and legislators) that trade liberalization with Mexico was not likely to produce much of a favorable impact upon incentives to migrate to the United States, i.e., that these policies were not substitutes. Moreover, the sequential approach employed in the United States to trade and migration reform starkly contrasted to the European Union's approach. The well known "four freedoms" envisioned by the Treaty of Rome and its subsequent instruments encompass the free movement of goods, services, capital, and persons within the Member States of the European Union.⁴⁶ While the phase-in periods for full implementation of these four freedoms have varied because of capital account liberalization occurring somewhat later than trade liberalization, of interest is the supranational structure of the European Union's decision-making machinery permitting the establishment of at least a theoretical blueprint and simultaneously encompassing current account and capital account liberalization, as well as free labor mobility.^{47,48}

differences in the bills, it appears unlikely that a compromise version will be reached until after the 2006 elections.

⁴⁶ These "four freedoms" form the pillars of the European integration. See Treaty Establishing the European Community, Feb. 7, 1992, [1992] 1 C.M.L.R. 573, (*Incorporating changes made by the Treaty on European Union*, Feb. 7, 1992, O.J. C. 224/1 (1992), [1992] 1 C.M.L.R. 719, 31 I.L.M. 247 (hereinafter TEU)). The TEU, *id.*, amended the Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11, 1973 Gr. Brit. T.S. No. 1 (Cmd. 5179-II) (the original instrument for European integration) as amended by Single European Act, O.J.L. 169/1 (1987), [1987] 2 C.M.L.R. 741 in *Treaties Establishing the European Communities* (EC Off'l Pub. Off. 1987). The facilitation of free movement of persons within the European Union and the elimination of border checks for persons already admitted to one member state was sought to be addressed in the Schengen Accords. See Schengen Agreement on the Gradual Abolition of Checks at Their Common Borders and the Convention Applying the Agreement, Jan. 1991, 30 I.L.M. 68, 69, 73, 84 (in four parts). The Schengen Accords were later modified by the Treaty of Amsterdam Amending the Treaty on European Union, Oct. 2, 1997, 1997 O.J. (C 340) 1.

⁴⁷ The terms current account and capital account may be described as follows: the current account and capital account of a country together comprise the balance of payments. The latter is a systematic record of a country's economic transactions with the rest of the world over a period of time (such as a quarter or a year). Inflows and outflows of capital movements are recorded in the capital account. Capital movements can either involve foreign direct investment (FDI) (such as acquisition of physical capital assets abroad) or portfolio investment (which represents sales or purchases across countries of financial assets, such as bonds or equities). The current account is composed primarily of the trade balance and the service account. Of these, the trade account is more commonly known to non-spe-

In the next Section, I turn to an examination of historical trends in trade flows and factor flows (migration of labor and capital). Analytical constructs or models are usefully evaluated in terms of their ability to first explain the historical record and then to be used for their possible predictive power for the future.

III: HISTORICAL TRENDS

In this Section, I discuss historical trends and empirical regularities in the patterns of trade flows, flows of capital, and international migration of labor. These trends indicate that increased trade in goods and services accompanied a vastly increased international mobility of both capital and labor flows during an earlier period that ended on the eve of the First World War; the relationship between

cialists; it records the values of imports and exports of goods and services of a particular country. The service account records payments and receipts of interest (for example on previous capital transactions), dividends, royalties, patent, franchise, license fees, etc. For additional details, the interested reader may consult sources such as *THE NEW PALGRAVE: A DICTIONARY OF ECONOMICS*, *supra* note 3 or *KRUGMAN & OBSTFELD*, *supra* note 3.

⁴⁸ There is very considerable literature (both in development economics and in law and development) on the “sequencing” of reforms, with most mainstream economists and legal policy makers recommending trade or current account liberalization first, followed by domestic financial reform (including the domestic banking system) and only then, external capital account liberalization. Current account liberalization refers both to the reduction of tariffs, as well as, the elimination of restrictions on payments for current account transactions. Domestic financial reform includes elimination of “financial repression” (repressive regulations that inhibit free competition), “crony capitalism” (the practice of permitting or requiring state-influenced banks make loans of dubious quality to uncreditworthy cronies of government bureaucrats), and the maintenance of adequate capital reserves against outstanding loans. Capital account restrictions are those that implicitly or explicitly tax or limit outflows or inflows of capital and are not permitted under the IMF Articles of Agreement. *See* International Monetary Fund Articles of Agreement, art. VI (3), Jul. 22, 1944 (“[m]embers may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions.”). *Id.* Cross-border movements of short-term “speculative” capital can be especially destabilizing and can lead to the “twin crises” of currency and stock market collapse, accompanied by banking failures. More complete treatments can be found in several sources including the following: *PIERRE-RICHARD AGENOR & PETER MONTIEL, DEVELOPMENT MACROECONOMICS* (2d ed., Princeton Univ. Press 1999); *HANDBOOK OF INTERNATIONAL ECONOMICS, VOL. III* (Gene Grossman & Kenneth Rogoff eds., Elsevier Science 1997); *CAPITAL FLOWS AND EMERGING ECONOMICS: THEORY, EVIDENCE AND CONTROVERSIES* (Sebastian Edwards ed., Univ. Chi. Press 2000).

trade and migration was complementary.⁴⁹ Contrary to a commonly held belief, global integration achieved during the closing years of the twentieth century was less impressive in scope and extent than in the earlier period (the *belle époque*).⁵⁰ While trade and capital flows across countries registered large increases during the later period, international mobility of labor, measured in relative terms, has not kept pace with the growth in trade and capital flows.⁵¹ Historical evidence does not support the existence of a complementary relationship between trade and immigration flows in recent times.⁵²

A: *Recent Trends in Trade in Goods and Services*

International flows of goods and cross-border flows of services have grown much more rapidly than output or Gross Domestic Product (GDP) in the latter part of the twentieth century. This is true whether comparisons are made for trade flows for most countries individually or in terms of world trade flows on a gross basis.⁵³ For example, world trade flows, measured in real terms, grew at an annualized rate of 4.1 percent during the 1980s and at a rate of 9.1 percent annually over the 1990s, while world real output growth was, respectively, 3.1 percent and 2.6 percent.⁵⁴ Within trade in goods and services, international trade in services has grown much more rapidly than merchandise exports and imports. Traditional services, transport, insurance, and travel, account for approximately half of total trade in services. However, growth in trade of newer services, such as computer and information services, has been especially rapid since the 1990s.

⁴⁹ See generally MIGRATION, *supra* note 16; OECD in Figures, in OECD OBSERVER (OECD, et al. eds., 2005); Organization of Economic Cooperation and Development, *OECD Factbook* (2005); OFFICE OF IMMIGRATION STATISTICS, YEARBOOK OF IMMIGRATION STATISTICS; United Nations Conference on Trade and Development, Geneva, Switz., *UNCTAD Handbook of Statistics* (2004); United Nations Conference on Trade and Development, Geneva, Switz., *Development and Globalization: Facts and Figures* (2004); United States Census Bureau Reports, Foreign Direct Investment database, http://stats.unctad.org/fdi/ReportFolders/ReportFolders.aspx?CS_referer=&CS_ChosenLang=en (last visited Nov. 19, 2006); Source OECD, <http://titania.sourceoecd.org/vl=1085826/cl=23/nw=1/rpsv/home.htm> (last visited Nov. 19, 2006).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Gross terms means exports plus imports. Alternatively, it is possible to examine trends in the average level of exports and imports (when adjusted for differing units).

⁵⁴ See United Nations Conference on Trade and Development, Geneva, Switz., *UNCTAD Handbook of Statistics* at Table 7.2 (2004).

Clearly, this rapid growth in trade flows compared with output suggests increased “openness” of the economies in question.⁵⁵ Notably, while most industrial economies have indeed experienced a recent increase in openness as measured by the ratio of gross trade to output, it is by no means true that openness or globalization is exclusively a late twentieth century phenomenon. A number of historians, particularly economic historians, have convincingly demonstrated the emergence and existence of a strongly integrated Atlantic economy prior to the First World War. In fact, by the early twentieth century, the combined old and new industrialized worlds had already attained an impressive degree of openness.⁵⁶ Following this golden era of globalization, the industrial world underwent rapid de-globalization until after the end of the Second World War. Thereafter, the advent of the Cold War and the proliferation of socialist or Marxist economic and political philosophies in several countries caused a slow re-globalization. Therefore, the final years of the twentieth century can be viewed as a partial recovery from the de-globalization that occurred after the 1920s. It does still remain true, however, that national borders matter for trade and commerce to a surprisingly large extent.⁵⁷

B: Recent Trends in Flows of Capital and Labor

Have flows of capital and labor become as internationally mobile or migratory as flows of good and services? Defining capital is more difficult than defining labor because capital encompasses both

⁵⁵ There are several measures of “openness.” A simple (and very limited) economic measure is the proportion of gross trade to total output. Other economic measures relate to “financial openness” of the country in question, measured perhaps by the degree of foreign penetration of local banking and related financial systems. To scholars in disciplines other than economics openness (or inter-connectedness with the rest of the world) conjures up different images and measures. Thus, the sociologist might examine the penetration by foreign multinationals, extent of foreign tourism, international telephone calls made or received, etc. The demographer and anthropologist would likely focus on the changing ethnic mix of the local country’s population, linguistic and culinary transformations, extent of inter-marriages and related measures. To the political economist and to the international relations theorist, openness may be consonant with erosion of national political sovereignty and the increasing ascendancy of international norms and legal cultures.

⁵⁶ See, e.g., GLOBALIZATION IN HISTORICAL PERSPECTIVE (Michael Bordo, Alan Taylor & Jeffrey Williamson eds., Univ. of Chicago Press 2003); JEFFREY WILLIAMSON & KEVIN O’ROURKE, GLOBALIZATION AND HISTORY: THE FOUNDATIONS OF A 19TH CENTURY ATLANTIC ECONOMY (MIT Press 1999); JAMES FOREMAN-PECK, HISTORICAL FOUNDATIONS OF GLOBALIZATION (Edward Elgar Publishing 1998).

⁵⁷ See e.g. JOHN HELLIWELL, HOW MUCH DO NATIONAL BORDERS MATTER? (Brookings Inst. Press 1998).

physical capital and financial portfolio investment. Capital can include transnational transactions of an ever-increasing variety of financial instruments such as stocks, bonds, options, futures, derivatives, etc.

Growth in cross-border foreign direct investment during the last years of the twentieth century has been even faster than growth in merchandise trade. United Nations UNCATAD FDI Database Reports state that annual inflows of world foreign direct investment increased approximately 400 percent between 1980 and 1990 and close to another 650 percent between 1990 and 2000.⁵⁸ Similarly, cross-border portfolio capital transactions have exhibited an accelerating rate of growth during the same period.⁵⁹ Thus, capital flows, whether of physical or financial capital, appear to have become much more migratory across national borders; this parallels or exceeds the worldwide increase in merchandise and service trade.⁶⁰

Turning now to international migration, cross-border flows of labor have been the laggard in the globalization process characterizing trade and capital movements over the last decades of the twentieth century. Except for the United States, the percentages of foreign-born and foreign populations in most developed countries (excepting perhaps Italy) have exhibited relatively little change during the last twenty years of the last century. The following figures are adapted from various issues of official OECD publications.

⁵⁸ See Foreign Direct Investment database, Major FDI Indicators, <http://stats.unctad.org/FDI/TableView/tableView.aspx?ReportId=5> (last visited Nov. 19, 2006).

⁵⁹ Cross-border mergers and acquisitions also occurred at an increasing pace over this period. In 1990, approximately 5,000 cross-border mergers and acquisitions were notified to UNCTAD and in 2000, there were 15,000 such mergers. See United Nations Conference on Trade and Development, *World Investment Report 2005* (2005); Foreign Direct Investment database, http://stats.unctad.org/fdi/ReportFolders/ReportFolders.aspx?CS_referer=&CS_ChosenLang=en (last visited Nov. 19, 2006).

⁶⁰ The reasons for the increase in both trade and capital flows have been myriad. With respect to trade flows, the chief reasons are reductions in transport and communication costs and the consciously liberalizing trade regimes adopted in many countries. Average transport costs for imports fell from approximately 8 percent of total import costs in 1970 to about 3 percent in 2002. See Mark Dean & Maria Sebastia-Barriel, *Why Has World Trade Grown Faster Than World Output?* Quarterly Bulletin, Bank of England (Autumn 2004). It should also be observed that, in part, the recorded increase in trade is due to increased specialization in production and the growth in intra-industry trade or input trade caused by "splicing up" of production processes across several countries. See Paul Krugman, *Growing World Trade: Causes and Consequences*, 1 BROOKINGS PAPERS ON ECON. ACTIVITY 327 (1995); Richard Feenstra, *Integration of Trade and Disintegration of Production in the Global Economy*, 12 J. ECON. PERSPECTIVES 31 (1998).

PERCENTAGES OF FOREIGN-BORN AND FOREIGN POPULATIONS IN TOTAL POPULATION⁶¹

	Early 1980s	Early 1990s	2001
Belgium	9.0	9.1	8.2
France	6.8	6.3	5.6*
Germany	7.4	8.5**	8.9
Italy	0.7	1.7	2.4
UK	2.8	3.5	4.3
USA	6.2	7.9	11.1
Canada	16.1	16.1	18.2

* Refers to 1999

** Refers to unified Germany

The relative stagnancy in the percentages of foreign-born and foreign populations of the developed nations is even more noteworthy in light of the sharp decline in transport and communication costs during this period, particularly with the growing disparities between income levels across rich and poor nations.⁶² Much of the economic literature on internal and international migration has stressed the importance of differences in expected wage levels as an explanation of migration flows.⁶³ By contrast, sociologists and researchers in other fields have emphasized “network effects” and similar “social capital” in explaining migration.⁶⁴ The relative international immobility of labor, despite the increased incentives to migrate on account of perceived wage differentials, closer social “networks,” etc., can be rationalized in

⁶¹ *Trends in International Migration*, ANN. REP. (Org. Econ. Co-operation Dev., Paris).

⁶² Available evidence suggests that, if anything, per capita income gaps between the rich and poor countries and, in particular, gaps in other broader indicators of human development or “wellness” have widened in recent years. See Human Development Reports, United Nations Development Programme (UNDP), Various Issues and the World Development Report 2006; EQUITY AND DEVELOPMENT, World Bank (2005).

⁶³ Internal migration literature of early vintage can be traced to the now-classic work of Harris and Todaro among others; John Harris & Michael Todaro, *Migration, Unemployment and Development: A Two-Sector Analysis*, 60 AM. ECON. REV. 126 (1970). More recent literature on migration includes ODED STARK, *THE MIGRATION OF LABOR* (Basil Blackwell 1991) and ALTRUISM AND BEYOND (Cambridge Univ. Press 1999). See also, George Borjas, *The Economics of Immigration*, 32 J. ECON. LITERATURE 1667 (1994); ISSUES IN THE ECONOMICS OF IMMIGRATION (George Borjas ed. Univ. of Chicago Press 2000).

⁶⁴ See discussion *infra* Sections V and VI.

terms of more effective policing of borders in most developed countries over the relevant time period.⁶⁵⁶⁶

It appears that in the closing years of the twentieth century, trade flows and flows of capital stood in a complementary relationship; increased trade was associated with increased cross-border capital flows. On the other hand, international migration of labor did not exhibit a similar increase or any appreciable increase relative to base population over the same time period. This pattern – increased trade and capital flows without a corresponding increase in labor flows – contrasts with the earlier phase of globalization of the late nineteenth and early twentieth centuries.⁶⁷

C: Historical Patterns in the Nineteenth and Early Twentieth Century

The discussion turns now to the period before World War I. Exports in the industrialized world between 1870 and 1913 grew at an average annual rate of 4 percent while output increased at a growth rate of 2.6 percent per year.⁶⁸ However, in contrast to the present, increased goods market and capital market integration in the earlier

⁶⁵ It should be emphasized that the text refers to immobility of labor flows across borders, relative to the much greater mobility across borders of goods and of capital. In absolute numbers, cross-border labor flows, on a worldwide basis, have indeed been increasing steadily. However, the rate of growth of international labor flows has been far smaller than that for growth in cross border trade in goods, services, and capital.

⁶⁶ Beginning in the mid-eighties of the last century, cross-border labor flows have increasingly included an illegal component. In some countries, inbound immigration, especially illegal immigration, has been a new experience. In the past, such countries had traditionally been sending countries. For example, countries in the Southern Cone of Europe, such as Greece, Italy, Spain, and Portugal, appear to have experienced substantial amounts illegal immigration from Latin America, Eastern Europe and Asia. For example, Italy and Greece have experienced large flows of immigrants from Albania, while Spain has witnessed illegal immigration from the Dominican Republic and El Salvador. The novelty of the phenomenon in these countries is underscored by the fact that they did not have either asylum or amnesty programs (termed “regularization programmes” in Europe) until very recently. See, e.g., *IMMIGRATION AND THE INFORMAL ECONOMY IN SOUTHERN EUROPE* (Martin Baldwin-Edwards & Joaquin Arango eds., Frank Cass Publishers 1999); *SOUTHERN EUROPE AND THE NEW IMMIGRATIONS* (Russell King & Richard Black eds., Sussex Acad. Press 1999); *IMMIGRANTS AT THE MARGINS: RACE, LAW AND EXCLUSION IN SOUTHERN EUROPE, KITTY CALAVITA* (Cambridge University Press 2005).

⁶⁷ See KRUGMAN, *supra* note 43; Jeffrey Sachs and Jeffrey A. Warner, *Economic Reform and the Process of Global Integration*, 1 *BROOKINGS PAPERS ON ECONOMIC ACTIVITY* 1-95 (1995).

⁶⁸ See KRUGMAN, *supra* note 43; *MIGRATION*, *supra* note 16.

period was also accompanied by considerable international labor mobility or migration flows. The following tables present data on inter-continental migration flows from Europe to the New World from the perspective of both the sending and destination countries.

EMIGRATION AS PERCENTAGE OF HOME COUNTRY POPULATION⁶⁹

	1871-80	1901-1910	1913
Austria-Hungary	0.03	0.48	0.61
Germany	0.15	0.05	0.04
Ireland	0.67	0.70	0.68
Italy	0.11	1.08	1.63
Spain	0.36	0.57	1.05
United Kingdom	0.50	0.65	1.04

EUROPEAN IMMIGRATION AS PERCENTAGE OF HOME COUNTRY POPULATION⁷⁰

	1871-80	1901-1910	1913
Argentina	1.17	2.92	3.83
Canada	0.55	1.68	3.84
USA	0.55	1.02	1.22

The next table reports the percentage of various European countries' population[s] in 1900 that emigrated over a 75-year period spanning 1846-1924.

PERCENTAGE OF 1900 POPULATION⁷¹

Austria-Hungary	10.4
British Isles (UK)	40.9
France	1.3
Germany	8.0
Italy	29.2
Norway	35.9
Portugal	30.9
Spain	23.2
Sweden	13.2

⁶⁹ Imre Ferenczi and Walter Willcox, eds., *International Migrations*, vol. 1, *Statistics* (New York: National Bureau of Economic Research, 1929), p. 1028.

⁷⁰ *Id.*

⁷¹ Douglas Massey, *International Migration and Economic Development in Comparative Perspective*, 14 *POPULATION & DEV. REV.* 383 (1988).

Migration of labor as a percentage of sending countries' population and redundant of host countries' population witnessed a sharply increasing trend between 1870-1913. For example, Italian emigration (as a percentage of total base population) increased almost fifteen-fold (from .11 percent to 1.63 percent) over this period. Similarly, European immigration as a percentage of host country populations more than doubled in the United States and increased approximately 700 percent in Canada over the same period.⁷² Figures for total emigration as a percentage of population in 1900 (for selected countries) over the 75-year period (1846-1924) are instructive. Over this period, more than 40 percent of the total population in Britain had emigrated, with similarly high percentages for Italy, Spain, Portugal, and Norway. France and Germany apparently did not participate in empire-building through colonization and emigration to the same extent as Britain, Spain and Portugal.⁷³

Turning specifically to immigration into the United States, I report below the figures for net immigration, U.S. total population and the immigration rate (in percentages) for a number of years between 1880-2004.⁷⁴

Year	Net Immigration	Population	Immigration Rate (%)
1880	457.257	50,155.783	0.91
1890	455.302	62,622.250	0.71
1900	488.572	75,994.575	0.64
1905	1,026.499	83,822.000	1.22
1910	1,041.570	91,972.266	1.13
1914	1,218.480	99,111.000	1.22
1960	265.398	179,325.671	0.15
1970	373.326	203,210.158	0.18
1980	530.639	226,545.805	0.23
1990	1,536.483	248,709.873	0.62
2000	849.807	281,421.906	0.30
2004	946.142	293,656.842	0.32

NOTE: Figures are in hundreds of thousands. Rates in the last column are in percentages.

Figures for the United States make it clear that even in terms of levels the total numbers of immigrants admitted to the United States in last ten years fall short of levels attained almost a hundred years ago between 1905-1914. In terms of rates, the contrast is even

⁷² See table in the text.

⁷³ It was only in the middle and late 1930s that the German government began to implement its *rocambollesque* notion of empire-building by militarily seeking *lebensraum* (living space).

⁷⁴ U.S. CENSUS BUREAU, YEARBOOK OF IMMIGRATION STATISTICS (2004).

more telling since the total U.S. population is currently much larger. Immigration rates (immigration relative to total population) in the United States are now less than one third of the corresponding rates in the early part of the last century despite vast reductions in transportation and communication costs across borders.

Consequently, the earlier period of world integration was characterized by a universality of rapid integration of goods, capital, and labor markets. Cross-border flows of goods, labor, and capital increased substantially relative to output. Thus, trade, capital and migration flows complemented each other during this period of globalization. In contrast, the recent phase of globalization in the late twentieth century proceeded without exhibiting a complementary relationship between trade and migration of labor.

Shortly after the end of the First World War, the doors of open immigration policies in the New World began to slam shut; this corresponds roughly to the end of the expansion of the New Frontier in the American West and the end of the Prairie Boom in Canada. It was to take several years more, however, before the switch to closed borders was to be completed, both in the New World and in Europe.⁷⁵

IV: TRADE AND MIGRATION: THEORETICAL UNDERPINNINGS IN ECONOMICS

As discussed above, the observed links between trade flows and international migration have not exhibited a consistent pattern over time. This section discusses the theoretical constructs in economic theory that generate testable hypotheses about these links.⁷⁶

⁷⁵ The first U.S. legislation that imposed numerical restrictions on immigrants was the Quota Law of 1921, 42 Stat. 5 (1921). At that time, quota immigrants were limited primarily to Western and Northern Europe. In 1952, the McCarran-Walters Act was the first comprehensive immigration legislation in the U.S. Immigration and Nationality Act of 1952, 66 Stat. 163 (1952). The INA of 1952 retained the discriminatory national origins quota system that was finally repealed in the 1965 Amendments. INA Amendments of October 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965). Passport requirements to enter the U.S. were not instituted until an executive order in 1915. For an excellent history of the 1965 Amendments see Gabriel Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. REV. 273 (1996). See also MAE NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* (2005) (discussing various statutory enactments in the context of the emergence of the legal and social category of illegal migrants in the U.S.).

⁷⁶ It should be pointed out that the ostensible purpose of both trade and immigration laws is grounded in economics. The overwhelming majority of trade legislation is directed at leveling the playing field, i.e., permitting free market forces to determine the patterns and extent of trade, based upon interference-free determination of comparative advantage in production. To this end, there exist anti-dump-

A: General Comments and Conclusions

The principal conclusion of this analysis is that, in a highly stylized setting with several simplifying assumptions, free trade or increased trade between nations is a substitute for international migration. However, in a more general setting, and once certain stark simplifying assumptions are relaxed, the theoretical relationship between trade flows and migration is ambiguous and highly dependent upon the framework of the analysis. This conclusion implies that further empirical work is required to determine the suitability of models or constructs to particular countries and contexts.⁷⁷

Even on a casual basis, the relationship between trade and migration policies exhibits inter-relationships on multiple levels, i.e., a two-way relationship exists between the policy stance and the effects of the policy. For example, immigration policy⁷⁸ is itself responsive to immigration flows. Large undesired flows of immigrants precipitate a more restrictive immigration policy. In turn, restrictive immigration policy⁷⁹ affects actual immigrant inflows into the country in question.

ing statutes, countervailing duty laws, unfair trade practices remedies and Escape Clause relief, etc. Unlike trade, migration is determined, in part, by absolute rather than comparative advantage. Migrants move across borders, partly in response to perceived absolute compensation differentials, although there may be (unlike trade), significant non-economic reasons as well, such as familial ties and affection. In the post-modern world of today, ethnic homogeneity is no longer a defensible reason that can palatably be offered by the majority of lawmakers in crafting immigration policy. Instead, public policy debates on immigration focus on the deleterious economic effects (if any), of immigration, for example, upon natives' jobs and wages, fiscal burdens upon the host state and occasionally, upon increased criminal activity that may accompany an influx of foreigners. Racist and religious resentment and exclusion of certain aliens has had a long history in the United States. The literacy test requirement (passed by Congress in 1917, over President Wilson's veto) was meant to slow down immigration from Eastern and Southern Europe. The "inferiority" of the Mediterranean races was in fact, assumed by the Dillingham Commission of 1910 that issued a 42-volume report. Social and scientific Darwinism was in full flower in the United States at that time. The Dillingham Commission Report and other scholars warned repeatedly against the acceptance of "beaten members of beaten breeds." See, e.g., MALDWIN JONES, *AMERICAN IMMIGRATION* (2d ed. Univ. Chicago Press 1992); JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860-1925* (2d ed. Rutgers Univ. Press 1988).

⁷⁷ For instance, it could be the case that the basic Heckscher-Ohlin model of trade, *infra* part IV.B., is more suited to analysis of U.S. policy rather than that in the European Union. This might be because labor markets in the U.S. are generally viewed as being more flexible (i.e., more competitive) than those in Europe.

⁷⁸ For example, entry quotas.

⁷⁹ If successfully implemented through border interdictions or deportation.

This occurs, both directly and indirectly, through “demonstration effects” on other would-be emigrants in the source country.

Similarly, trade liberalization increases the flows of imports and exports with consequent effects upon domestic industries producing competing goods.⁸⁰ When trade liberalization is too successful and leads to large increases in imports, domestic producers in import-competing industries may be expected to lobby legislators to restrict unfair trade.⁸¹

Recognition of these types of feedback effects between policy regimes and their effects has interested political scientists and public choice theorists and will be discussed below.⁸² However, the concern in this section is the feedback, or linkage, between trade flows and migration flows, known more generally as “factor flows.” Specifically, what is the effect of increased trade flows on incentives to migrate and, conversely, the effect of factor flows (i.e., labor and capital flows) on incentives to trade goods and services between countries? As indicated previously, trade and migration may be conceptually viewed as substitutes, if increased trade flows reduce incentives to migrate. (In other words, trade in goods can take the place of movements of labor.) On the other hand, when increased trade leads to more migration, trade and migration can be said to be complement to each other.

B: Classic Vintage Models

What insights regarding the trade-migration relationship follow from the simplest theoretical frameworks constructed by trade scholars? Trade models of early vintage are unambiguous with respect to their implications for the trade-migration relationship; trade in goods is a substitute for migration of factors of production, such as labor.⁸³

⁸⁰ Domestic industries that compete with imports experience a double blow from trade liberalization. First, cheaper imports threaten such industries directly. Second, as domestic exports increase to supply the world market, wage rates begin to rise across the entire economy, further squeezing the profit margins of import-competing industries.

⁸¹ This phenomenon is precisely what is currently observed in the U.S. with respect to its bilateral trade with China. A similar phenomenon and response is observed with respect to outsourcing of high-tech services to India. See, e.g., *India: Back Office to the World*, THE ECONOMIST, May 3, 2001; *The Rise of Nearshoring*, THE ECONOMIST, Dec. 1, 2005 (discussing the recent phenomenon of outsourcing to Eastern Europe).

⁸² Economic analysis, on the other hand, typically assumes that the policy stance is given and fixed (i.e., exogenous).

⁸³ Hence, the often repeated statement that a country can import goods or it can import people, voluntarily or involuntarily. Authors writing in fields such as law, political science, or sociology appear to have assumed that trade and migration are

At the most elementary level, the *raison d'être* for mutually profitable trade opportunities, is the fact that countries (or areas) are different in their comparative advantage in producing different goods and services. Differences in comparative advantage manifest themselves in differences in relative prices of goods across countries if they did not engage in free trade.⁸⁴ A model, or theoretical construct, must therefore explain the reason for differing relative prices of goods across countries in the absence of trade.

Theoretical Considerations

Elementary trade theory identifies at least two such explanations: one based upon technological differences (specifically, labor productivity) between countries and the other upon different countries natural endowments⁸⁵ of labor and capital. The latter model is the usual workhorse of elementary trade theory. This framework – known as the Heckscher-Ohlin model – assumes that countries are naturally endowed with capital and labor in differing proportions. At the same time, goods are distinct in their technological requirements of labor and capital for production. A simple statement of the Heckscher-Ohlin prediction of trade patterns is that countries will export those goods that are relatively intensive in using the factors of production with which they are generously endowed.⁸⁶

inevitably substitutes. As seen below, the substitutability paradigm is only valid in the most simple trade models of early vintage and both history and empirical analysis appear to reject such a relationship. For a sample of legal scholars who have perfunctorily assumed that trade and migration are inevitably substitutes, see for example, Johnson, *supra* note 7; Acevedo & Espenshade, *supra* note 21. See, e.g., James Hollifield, *Migration, Trade and the Nation-State: The Myth of Globalization*, 3 UCLA J. INT'L L. & FOREIGN AFF. 595, 597 (“[C]onventional economic wisdom has it that in the long run, trade can substitute for migration.”); M. Jeanette Yakamavich, *NAFTA on the Move: The United States and Mexico on a Journey Toward Free Movement of Workers*, 8 LAW & BUS. REV. AM. 463, 478 (2002) (“Economists point to the inescapable connection between trade and migration issues and question whether NAFTA states can sustain the tension between free trade objectives and restrictionist immigration policies”).

⁸⁴ Thus, if there are two countries A and B, each capable of producing goods X and Y, and if the relative price of X (compared with the price of good Y) were lower in country A, then country A has a comparative advantage in producing good X, while country B has a similar comparative advantage with respect to good Y. It is logically impossible for any country to possess a comparative advantage in all goods, and what matters for trade is the existence of a comparative advantage, not an absolute advantage.

⁸⁵ The term “natural endowments” refers to the existing relative stocks of capital, labor or land in a given country.

⁸⁶ For example, if country A is relatively well-endowed with capital compared to country B and if good X requires capital intensive methods of production (in both

Standard assumptions, such as perfect competition and constant returns to scale, ensure that rates of return on labor and capital (i.e., wage and rental rates) in the two countries are aligned with their relative abundance. Thus, in country A, wage rates will be higher, as it is labor-scarce. On the other hand, if labor is relatively abundant in country B, then wage rates in that country would be low. The incentives for the migration of production factors (labor and capital) are now perfectly clear; unless wage and rental rates change, country A will prove to be a magnet for immigrant labor from country B unless there are effective restrictions on movements of labor.⁸⁷

The implications of this simple framework for trade liberalization are well-known. If free trade (or increased trade) occurs between countries A and B, country A expands its production of the capital-intensive good X in which it possesses a comparative advantage, and conversely, country B expands its production of good Y. Increased production of the exportable good in each country is a natural consequence of serving a larger world market rather than the home market alone. Capital constraints and increasing marginal costs of production ensure that the process of increased production for export lead to capital becoming more expensive in country A and labor more expensive in country B. Thus, returns to capital rise in country A, while wage rates decline in country B. This phenomenon is known as “factor price equalization.”

Implications for the Trade-Migration Relationship

The necessary implications for migration in the face of free trade are now readily apparent; prices of factors (labor and capital) in various countries start to converge, i.e., free trade dampens the incentives to migrate. The push-pull factors leading to migration of labor (and capital) are diluted. The same result would have occurred if, instead of free trade in goods, a large amount of labor were allowed to migrate from country B to A; relative wage rates in country A would fall, and those in country B would rise. In this sense, trade in goods and services works as a substitute for trade in labor and capital.

countries), then country A will have a comparative advantage in the production of good X; country A will export good X and import good Y. This follows directly because good X will cost less in country A, compared to country B.

⁸⁷ At the same time, capital is expected to flow from country A, where it is relatively abundant, to country B. In reality, capital flows may require much more supportive public infrastructure (such as assurances against expropriation, adequately developed financial markets and freedom of repatriation of profits) than the migration of labor; the latter is easily facilitated through the existence of private infrastructure, such as migrant networks.

Consistency with Observed Historical Patterns

Before discussing theoretical constructs, it is useful to inquire if the traditional framework discussed above is consistent with the observed pattern of European-U.S. migration in the late 19th century. During this period, the United States may be regarded as being labor scarce and land abundant. By contrast, the opposite configuration existed in Europe so that America would tend to be a magnet for labor migration from Europe. At the same time, trade liberalization and/or falling trade costs would, according to the basic model discussed above, reduce the incentives for labor migration. In stark contrast to the predicted pattern, however, trade and labor flows into the United States increased simultaneously over this period. The actual observed relationship was that of complementary, not substitute, flows of trade and labor.

C: Extensions of the Basic Framework

Extensions of the simple framework discussed above have been of at least two types. Early extensions of the Heckscher-Ohlin model retained the basic assumption of competitive conditions in all markets and focused on enriching the model by introducing the assumption that labor and capital are specialized in their usefulness and productivity in different sectors or industries.⁸⁸ More recent literature beginning in the 1980s, has focused instead on relaxing the assumption of perfect competition by permitting various types of market imperfections and distortions, including monopolistic competition, "prime mover advantages," increasing returns to scale, as well as various restraints and imperfections in labor markets.⁸⁹ In either case, the predicted theoretical relationship between trade and migration flows becomes much richer and more complex and admits the possibility of

⁸⁸ This is known as the specific factors model (i.e., factors of production are specific to certain sectors of the economy and not easily transferable across sectors or industries). This formulation is commonly attributed to the seminal work of Ronald Jones. See Ronald Jones, *A Three-Factor Model in Theory, Trade and History*, in *TRADE, BALANCE OF PAYMENTS AND GROWTH* 3-5 (Jagdish Bhagwati ed., North Holland 1971). Thus, for example, coal miners in Appalachia are not likely to be productive as software developers in Silicon and the capital used in coal mines (such as hydraulic lifts and forks) is not much use in the computer industry.

⁸⁹ Much of the work in the context of increasing returns to scale and other externalities was pioneered by Krugman and Helpman. See, e.g., ELHANAN HELPMAN & PAUL KRUGMAN, *MARKET STRUCTURE AND FOREIGN TRADE: INCREASING RETURNS, IMPERFECT COMPETITION, AND THE INTERNATIONAL ECONOMY* 2-4, 34 (1985); PAUL KRUGMAN, *GEOGRAPHY AND TRADE* 6-7 (1993).

either substitutability or complementarity, depending upon empirical parameters.⁹⁰

1: *Extensions: Competitive Models*

The specific or specialized factor model, as indicated above, retains the basic assumption of full competition in product and factor markets. In its simplest version, there are only two factors of production, labor and capital, which are specialized by industry or sector.⁹¹ A result that follows from this framework is that the effects of trade liberalization upon incentives to migrate are ambiguous and can be shown to depend upon the effects of increased trade upon real wages of labor. In turn, the effect upon real wages depends upon the weight of importable goods in the consumption basket.⁹² It is quite possible therefore, for trade and migration to be in a complementary relationship in this framework, i.e. trade liberalization will be accompanied by increased incentives for migration.

Further extensions of the specific factor framework in more recent years yield similar, indeterminate results with respect to the trade-migration relationship. Modifications to the basic framework to account for factor specialization or specificity, in conjunction with the incorporation of an additional input can alter the result as well. For example, one can hypothesize the existence of three inputs, one of which (capital) is inter-sectorally mobile, while the other inputs (labor) are sector-specific (for example, in the traded and non-traded sectors). It is also possible to incorporate the assumption that one type of labor

⁹⁰ See note 60 *supra*, discussing the fact that scholars in fields other than economics have unfortunately not been careful to take account of the implications of work in international trade theory beyond its elementary propositions.

⁹¹ Specialization in certain occupations or sectors is more likely to affect labor, rather than capital. Harry Hansmann, Reinier Kraakman & Richard Squire, *Law and the Rise of the Firm*, 119 HARV. L. REV. 1333, 1358 (2006). Trade liberalization inevitably causes the import-competing sector to shrink and the labor employed in that sector to be laid off. Jide O. Nzelibe, *Interest Groups, Power Politics, and the Risks of WTO Mission Creep*, 28 HARV. J. L. & PUB. POL'Y 89, 92 (2004). It is precisely the recognition of these adverse effects of trade upon certain types of labor that is the basis of trade adjustment assistance programs in the U.S. The current statute is the Trade Adjustment Reform Act of 2002, Pub. L. No. 107-210, 116 Stat. 933 (2002) (codified 19 U.S.C. 26). The Department of Labor, Management Information Systems (DTAA MIS) reports that in 2004, 2918 petitions for adjustment relief were received; of these 1734 were approved. U.S. TRADE REPRESENTATIVE, TRADE ENFORCEMENT ACTIVITIES 253, 272 (2005) available at http://www.ustr.gov/assets/document_Library/Reports_Publications/2005/2005_Trade_Policy_Agenda/asset_upload_file_431_7316.pdf.

⁹² Michael S. Knoll & Thomas D. Griffith, *Taxing Sunny Days: Adjusting Taxes for Regional Living Costs and Amenities*, 116 HARV. L. REV. 987, 1019 (2003).

(such as highly skilled labor) is mobile across national borders. Models of this type are capable of explaining emigration of skilled labor from developing nations to rich countries following trade liberalization.⁹³ This phenomenon has received enormous attention in the literature on the “brain drain.”⁹⁴

I turn next to a brief discussion of more recently developed trade models and their possible implications for the trade-migration relationship. As mentioned earlier, the more recent literature is characterized by its attention to non-competitive features, such as monopolistic competition and increasing returns to scale.

⁹³ An example of a specific factor that is internationally mobile could be highly skilled information services workers or medical personnel. Anupam Chander, *Homeward Bound*, 81 N.Y.U. L. REV. 60, 67 (2006). U.S. immigration policy explicitly accounts for the importation of highly-trained labor, both as non-immigrants or as permanent immigrants. Bill Ong Hing, *Immigration Policies: Messages of Exclusion to African Americans*, 37 HOW. L. J. 237, 266 (1994). For example, due to a perceived shortage of nurses in the U.S., foreign nurses have been the beneficiaries of special visa categories and other *ad hoc* legislation, such as the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. No. 106-95, 113 STAT. 1312 (1999). Enid Trucios-Haynes, *Temporary Workers and Future Immigration Policy Conflicts: Protecting U.S. Workers and Satisfying the Demand for Global Human Capital*, 40 BRANDEIS L. J. 967, 996 (2002).

⁹⁴ The literature on the “brain drain” is too extensive to be surveyed or extensively referenced in this paper. The notion of the brain drain involves a paradoxical subsidy from poorer to richer nations. Secondary and tertiary education in most developing countries is provided at public expense. To this extent, the public in these countries has “invested” in training professionals and skilled workers, but the benefits of the educational investment are only captured by the richer host countries. At the same time, the latter countries also stand to gain expected tax revenues when these professional workers commence employment in the host countries. The early seminal work on the brain drain of Jagdish Bhagwati proposed a tax on professionals emigrating from developing countries, in order to compensate the latter. See TAXING THE BRAIN DRAIN: A PROPOSAL 3 (Jagdish Bhagwati & Martin Partington eds., North Holland 1976). An offsetting factor might be the remittances that immigrants (once settled in the host countries) transfer to relatives left behind in the source country. See Dilip Ratha, World Bank, *Workers’ Remittances: An Important and Stable Source of External Development Finance*, GLOBAL DEV. FIN. 2003, ch. 7, 158 (2003). For a survey of the issues and the literature on the brain drain, see Simon Commander et al, *The Brain Drain, Curse or Boon? A Survey of the Literature*, in CHALLENGES TO GLOBALIZATION: ANALYZING THE ECONOMICS 236 (Robert Baldwin & L. Alan Winters eds., Univ. of Chicago Press 2004); Richard Adams Jr., *International Migration, Remittances and the Brain Drain: A Study of 24 Labor-Exporting Countries*, World Bank Policy Research Paper No. 3069, 1 (2003). The drain of talent is by no means limited to scientific professionals. In addition, sports enthusiasts will no doubt note the presence of foreign athletes in U.S. professional sports such as basketball and soccer.

2: Extensions: Non-Competitive Models

A basic assumption of the classic trade framework outlined above and its specific factor variants is that of perfect competition and of constant returns to scale in all sectors. Starting in the 1980s, trade economists began to construct models embodying increasing returns to scale and/or monopolistic competition.⁹⁵ While a survey of the rich results that may now emerge is beyond the scope of this paper, the following brief observations may be made. First, there are new forces at work in determining wage and rental rates and thus on incentives to migrate. More precisely, both absolute and relative factor endowments matter in determining production costs and hence, comparative advantage. Second, because of intra-industry trade and scale effects, firms tend to locate in areas characterized by large expenditures. In turn, this leads to an agglomeration effect, i.e. there are exploitable gains from cumulatively moving factors of production and production bases to the larger economy. Factor immobility in this context can impede complete agglomeration, and can lead instead to accentuation of differences between countries. Hence, the conclusion is that if country size is allowed to feed into lower costs via increasing returns to scale, then factor mobility can be destabilizing and can lead to concentration of economic activity in one country called the “core,” around which there is a “periphery” of economic satellites. Trade liberalization in such a context is accompanied by increased migration to the core country, i.e. trade and migration flows are complementary in nature. In addition, these labor flows can include outflows of skilled labor from skilled labor scarce areas, i.e. this framework is also fully capable of generating an observed “brain drain.”

In conclusion of this sub-section, it is seen that economic analysis does not unequivocally pin down the direction of the trade-migration relationship. Early competitive models predict that the relationship is of substitutability, but more complex structures can result in trade flows and migration being complements (as they were in the nineteenth century). One may conjecture that models embodying imperfect competition (characterized, for example by labor market rigidities) may be more applicable to European economies than to the United States. To this extent, the empirical researcher would be more likely to discover a substitutability relationship between trade and migration in the U.S., rather than in the structurally more rigid economies of Europe.

⁹⁵ See for example, HELPMAN AND KRUGMAN, *supra* note 89; James Markusen, *Multinational Firms and the Theory of International Trade* 1 (MIT Press 2002).

V: POLITICAL ECONOMY AND PUBLIC CHOICE PERSPECTIVES

I have observed above that while both trade and labor economists have worked extensively on the consequences of expanding trade and immigration respectively, there has been relatively little work in the economics literature that has explicitly examined the trade-migration relationship. To this extent, the previous section was intended to fill a gap in the literature. In the area of political economy (or its more formal cousin, public choice), scholars have attempted to incorporate non-economic factors, such as cultural and interest group preferences or voter choices to explain (or endogenize) immigration policy and trade policy. This is a step beyond that taken by economists, who generally assume that trade policy (for example, the level of tariffs or non-tariff barriers) or immigration policy (for instance, the type and level of entry restrictions imposed) is exogenous and fixed. The work of public choice theorists is a valuable step forward in recognizing the mutual feedback effects that exist between the policy stance and its effects. For example, a given immigration policy (represented perhaps, by numerical quotas or the degree of border enforcement) determines the extent of immigration inflows. However, at the same time, as immigration flows proceed, newly arrived immigrants form coalitions, perhaps along with certain "natives," and in turn, such interest groups may exert an effect upon future immigration policy. In similar fashion, trade policy as represented by tariff levels or quantitative restrictions, determines the flows of imports and exports. Over time as trade continues, import competing industries in the importing country are adversely affected and often lobby for import restrictions in the form of "safeguard measures" or anti-dumping duties etc.⁹⁶ Thus, while free trade may initially enjoy a broad consensus, "too much" success in liberalizing trade erodes the initial consensus with calls for protectionism.

While public choice theorists and political economists have indeed constructed models or frameworks to incorporate such feedback effects, the trade-migration relationship has received very little, if any, attention in this strand of the literature, just as with economic analysis discussed in the previous section. For the most part, public choice models that attempt to explain (or endogenize) trade policy or immigration policy have developed separately, with the vast majority of work in this area being devoted to frameworks that discuss and analyze the preferences of states and their constituent voters with respect

⁹⁶ See *supra* note 92 for a discussion of trade adjustment relief petitions. The term "safeguard measures" generically encompasses antidumping actions, 19 U.S.C. §§ 1671, Escape Clause actions, 19 U.S.C. §§ 2251 and Unfair Trade actions under Section 301, 19 U.S.C. §§ 2411.

to *immigration policy*, rather than trade policy.⁹⁷ I turn now to some of the theses explaining individual and collective decisions regarding migration in political choice frameworks and to the implications for the trade-migration relationship that can be fairly deduced from these analyses.

As a starting point, it will first be recalled that archetypical economic analyses of international migration is premised upon the existence of a large and attractive differential between expected earnings prospects between the source and source countries. However, an exclusive focus upon expected earnings differentials as the principal driver of international migration is inadequate for the U.S., for at least two reasons. First, only 20 percent or so, of the U.S. annual legal immigration quota is allocated to employment-based visas, with over 70 percent are allocated to family preferences.⁹⁸ Second, and more importantly, fluctuations in the real wage differential between the U.S. and source country appear to be poorly correlated with the volumes of migrant flows into the U.S. from such source countries.⁹⁹ This is true of both, legal immigration and illegal immigration. Clearly, traditional

⁹⁷ Perhaps this is so, because interest groups and voters may be more easily organized around visible and tangible symbols of integration in the form of immigration of persons, rather than the ubiquitous presence of foreign goods that are consumed. Immigration of persons, their assimilation and political incorporation, fits comfortably within the political economist's paradigm; issues relating to trade in goods do not enjoy any such comfortable niche in the paradigmatic toolkit of political economists and public choice theorists.

⁹⁸ Under current immigration law, of the 675,000 annual limit of immigration into the U.S., 480,000 visas are allocated to family preferences and 140,000 to employment visas. Myron N. Kramer, *Immigration Selection System and Governing Agencies Involving Immigration*, SC38 A.L.I. 1, 3 (1998). Actual entrants into the U.S. exceed this total number, since "immediate relatives" are exempt from the quotas. Michael Maggio, Larry S. Rifkin & Sheila T. Starkey, *Immigration Fundamentals for International Lawyers*, 13 AM. U. INT'L L. REV. 857, 877 (1998). On the other hand, the U.S. system is dichotomous; an alien may be admitted under a family preference *or* under an employment-based preference. By contrast, Australia, Canada and the United Kingdom each employ a "points-based" system, which allows consideration of both familial ties and work skills in determining immigration eligibility. See for example, Mary Crock, *Contract or Compact: Skilled Migration and the Dictates of Politics and Ideology*, 16 GEO. IMMGR. L.J. 133, 144 (2001) (discussing Australian immigration policy) and NINETTEE KELLEY AND MICHAEL TREBILCOCK, *THE MAKING OF THE MOSAIC: A HISTORY OF CANADIAN IMMIGRATION POLICY* 348-349 (University of Toronto Press 1998).

⁹⁹ It has been noted, for example, that during the 1980s, U.S. unemployment was on the increase and U.S. real wages declining, while in Mexico, opposite trends were at work. Nevertheless, Mexican migration to the U.S. increased sharply during this period. See Douglas Massey & Felicia Garcia Espana, *The Social Process of International Migration*, 237 SCIENCE 733 (1987).

economic analysis could benefit by incorporating additional factors such as socio-political and other considerations as determinants of migration. Recent work has focused precisely on such extensions.¹⁰⁰

A: Non-Economic Factors Bearing Upon Migration: Relative Deprivation

One of the recent, sophisticated attempts to incorporate extra-economic factors in the analysis of international migration at the level of the individual is by Stark and Taylor (1991).¹⁰¹ Building on early work by Stark in the context of rural-urban migration in an economy internally, Stark and Taylor postulate that the incentives that matter for migration are not so much the disparity in domestic and foreign wages, but an individual or household's perception of *relative deprivation* (i.e. a "peer reference effect") in an appropriate reference group or socio-economic class.¹⁰² In the context of international migration, the relative deprivation hypothesis assumes special importance and can lead to results that are quite different from those that emerge from simpler economic frameworks. Relative deprivation is defined in terms of one's perceived standing in a chosen reference group (for example, the local village or community). Households are risk-averse and seek to diversify risks, as well as, improve their lot in the relevant reference group. This could be achieved by permitting or encouraging some, but not all, working family members to emigrate to seek greener pastures elsewhere, while pooling risks by retaining a core base at home.

Moreover, and more interestingly, the reference group is not a static concept. For example, the reference group (with respect to which the relative deprivation is defined), may be the local community or village to start with, but it is quite possible that owing to "demonstration effects," the reference group may change to encompass com-

¹⁰⁰ For example, recent work in sociology and anthropology has attempted to introduce quantitative proxies for social networks in estimating migration probabilities. This body of work is concerned in the main, with the causes of immigration decisions made at the *individual* level. By contrast, political economy or public choice analyses have concerned themselves with the *state's* choice of immigration policy. See *infra* Section VI.

¹⁰¹ Oded Stark & J. Edward Taylor, *Migration Incentives, Migration Types: The Role of Relative Deprivation*, 101 *ECON. J.* 1163, 1178 (1991).

¹⁰² Previous work on internal migration in a country has focused on absolute differentials in wage levels across the rural and urban sectors, costs of migration, probability of securing an urban job etc. These factors may be summarized as differentials in the present value of expected incomes in the rural and urban sectors respectively. See also *supra* note 47.

munities in the host country, rather than the country of origin.¹⁰³ In such a case, relative deprivation increases as migration proceeds, leading to even more migration. Thus, immigration into the host country gathers its own momentum, which may be quite independent of the initial conditions that motivated early migration. In addition, the progressive development and deepening of social and kinship networks adds to this cumulative process.¹⁰⁴

In the international context, the substitutability of reference groups may be more limited than initially supposed, because international dissimilarities may be much greater and “mental” migration is much more difficult than across sectors internally in a country. Discontinuities in labor markets and the socio-cultural environment will therefore temper the role of relative deprivation when considering international migration. This may be especially so in the case of illegal migration and as some authors have pointed out, the possibility of detection and deportation greatly lowers the rate of return to human capital investment by the illegal entrant. This explains why undocumented aliens remit earnings to the home country in large amounts, and remain at their original skill levels, rather than engaging in formal vocational or other training, even when they are not resource-constrained.¹⁰⁵

Empirical tests of the relative deprivation hypothesis in the context of Mexican migration to the U.S. generally validate the hy-

¹⁰³ In more concrete terms, in the case of Mexico to U.S. migration, the initial reference group may be the local community in Mexico of the would-be emigrant. Over time, as more Mexicans leave their villages to join communities in the U.S. (and if they are adequately assimilated), the reference group for the households of the Mexican emigrants might well include members of the local community in the U.S. This is so, as the recently-arrived immigrants begin to mentally identify with and “compete” with their new geographical neighbors. This phenomenon is termed “reference group substitution.” See Stark & Taylor, *supra* note 101, at 1166.

¹⁰⁴ U.S. immigration law formally permits “chain migration” through its emphasis on family reunification. Thus, an initial immigrant into the U.S. may be accompanied by his/her spouse and minor children, all as permanent residents. In time, if both the husband and wife naturalize, they may each petition for permanent resident status for their respective siblings.

¹⁰⁵ In addition, in the U.S. at least, there are a host of barriers imposed by immigration regulations that limit schooling opportunities for undocumented residents. Children of undocumented aliens may not be denied free basic public school education under the *Plyler* decision. *Plyler v. Doe*, 457 U.S. 202 (1982). *Plyler* did not address the provision of post-secondary (high school) education, which is left up to the states. No federal law prohibits undocumented aliens from attending public or private colleges or universities. However, accredited public and private institutions are required to verify the visa status of an alien, and generally, only holders of valid student visas may attend U.S. schools on a full-time basis.

pothesis.¹⁰⁶ The tests also establish several interesting findings that are consistent with the hypothesis. First, the effects of relative deprivation upon international migration are not the same across all income points of the sending household. The poorest village households, being occupied with subsistence concerns, are not emigrant units. Emigrants originate from middle-income households.¹⁰⁷ Second, the overwhelming majority of immigrants from Mexico to the U.S. originate in households with other adult members in the unit or village, who remain behind. This is consistent with risk-pooling for the village unit. Finally, households with kinship networks already in place in the U.S. are more likely to send additional members to the U.S. In the context of framework discussed above, the existence of social or kinship networks reduces the risks of migration and may also, facilitate speedier reference group substitution. In both instances, initial emigration can be self-propelling.

What implications follow for the trade migration relationship in the context of the relative deprivation framework? The cumulative effects of increased migration feeding upon increased relative deprivation and yet more migration, may be of importance in deducing the relationship of these factors to international trade. It may well be the case that the strength of the migration-relative deprivation effects, which generate self-propelling migration, are sufficient to overwhelm the tendency of trade and migration to be substitutes, even in the simplest economic models discussed previously. To my knowledge however, no one has formally demonstrated this proposition to date and this work is to be regarded at present, as unfinished business.

B: Interest Groups

The relative deprivation and relative wage differential hypotheses discussed above, focus on the self-interest of the emigrant decision unit. If emigration appears to be a "winning proposition", potential migrants uproot themselves and absorb the risks of departure and assimilation in the host country. However, there are winners and losers in the host country as well. On a basic economic level, the proximate losers in the host country are other (usually unskilled or semi-skilled) workers who must now compete with undocumented workers with far lower wage expectations. Liberalized trade with the source country would have initially displaced workers in the import-competing industries in the host country in the same manner. On the other hand, certain sectors in the host country benefit both from legal and illegal

¹⁰⁶ Stark & Taylor, *supra* note 101, at 1177.

¹⁰⁷ Households with very high incomes are also not likely to be sending units, as members of such households can enjoy a comfortable existence at home, without assuming the risks of international migration.

immigration as well as from trade liberalization. Thus, the exportable industry in the liberalizing country will expand to meet greater world demand and will generally present more favorable wage and employment conditions. Similarly, certain host country employers may stand to benefit from clandestine hiring of low-wage undocumented aliens.

Interest group analysis in public choice theory seeks to identify the self-interests of various groups in society. Because interest groups are free to engage in political lobbying under a democratic franchise, the ultimate immigration and trade policies adopted by the state will be the result of a political contest (or a "repeated game") between various factions. I turn now to this strand of the literature, especially with regard to immigration policy.

The introduction of interest group considerations to explain the distinctive features of nineteenth century immigration policy in Europe and the New World yields some useful insights.¹⁰⁸ The key questions in this context are: who gains and who loses from immigration, and who is in a position to affect immigration policy? Later work along these lines has built on interest group analysis by constructing a median voter model to capture the preferences of the average citizen.¹⁰⁹

During most of the nineteenth century, European migration into the New World (both North and South America) was encouraged by the host countries. Purely economic or sociological explanations are inadequate to explain the observed variations in patterns of immigration. For example, race-based explanations played a role, and may explain the restriction of Asian migrants to tropical areas in which the Europeans had no interest in settling. However, the range of immigration policies pursued by host countries (as between North and South America, for example) is not capable of being explained solely by racial

¹⁰⁸ See James Foreman-Peck, *A Political Economy Model of International Migration 1815-1914*, LX MANCHESTER SCH. 359, No. 4, Dec. 1992.

¹⁰⁹ The median voter model has a long and venerable vintage in political choice theory and is the simplest model of majoritarian decision-making. Social decision-making rules seek to "aggregate" or somehow account for preferences of individuals, in constructing group decision rule. The majority voting rule necessarily accounts for the preferences of all members. There was no clear exposition of the median voter theorem until the work of Duncan Black and its extension thereafter, to representative democracies by Anthony Downs. See generally Duncan Black, *On the Rationale of Group Decision-Making* 56 J. POL. ECON. 23 (1948); ANTHONY DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* (Harper & Row 1957). Black's work was shortly followed by the seminal demonstration of the "impossibility theorem" by Nobel Laureate Kenneth Arrow. See generally KENNETH J. ARROW, *SOCIAL CHOICE AND INDIVIDUAL VALUES* (2d ed., 1963). The seminal work of Buchanan and his colleagues in this area should also be noted. See generally JAMES M. BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY* (Univ. of Michigan Press 1962).

or ethnic preferences.¹¹⁰ Similarly, economic factors alone, such as wage differentials, do not explain the inflow into the Americas. Economic historians have demonstrated that despite steadily eroding wage differentials between Europe and North America, immigration into the latter continued unabated, and, in fact, may have accelerated during the latter part of the nineteenth century.¹¹¹ Clearly, neither race relations nor economic theory alone is capable of reconciliation with observed historical reality.

Interest groups in such a framework are broadly configured as landowners and owners of labor. Self-interest dictates that factory owners seek to prevent reduction of returns to that input (through demand side considerations or increases in the supply of that input). Therefore, input owners (i.e. owners of capital and labor) generally prefer policies that expand the supply of *other* inputs, which may cause a re-distribution of national income to the former. Thus, capital owners would prefer, *ceteris paribus*, to see an increase in the supply of labor as this raises the relative returns to capital and alters income distribution in favor of capital.¹¹² A pro-labor state would protect labor income, which in turn would require emigration and/or discouraging immigration of labor with similar skills.¹¹³ On the other hand, a landowner-influenced state would clearly encourage immigration, since this has at least two beneficial effects for the landowner. First, immigration holds down labor wages. Second, relative scarcity of land and a greater labor force results in a larger portion of national income accruing to landowners as rents.

The next key link in the framework is to specify the nature of the policy-maker. Under a true democratic franchise, national policies with respect to immigration would be determined by the number of electors that were landowners or labor owners. However, fully democratic franchises were scarce in the nineteenth century, given the limited existence of elected institutions.¹¹⁴ Most constitutions (to the extent they existed) were effectively controlled by the wealthy, who

¹¹⁰ For example, Canada initially pursued less favorable immigration policies than did Argentina. See generally, KELLEY & TREBILCOCK, *supra* note 98; DONALD S. CASTRO, *THE DEVELOPMENT AND POLITICS OF ARGENTINE IMMIGRATION POLICY 1852-1914: TO GOVERN IS TO POPULATE* (Mellen Research Univ. Press 1991).

¹¹¹ See, e.g., WILLIAMSON & O'ROURKE, *supra* note 56.

¹¹² See generally, William F. Shughart II et al., *The Political Economy of Immigration Restrictions*, 4 YALE J. ON REG. 79 (1986) (examining immigration policy using the interest group theory).

¹¹³ See F. H. Buckley, *The Political Economy of Immigration Policies*, 16 INT'L REV. L. & ECON. 81, 96-97 (1996) (citing VERNON M. BRIGGS, *IMMIGRATION POLICY AND THE AMERICAN LABOR FORCE 22-49* (John Hopkins Univ. Press 1984)).

¹¹⁴ Cf. Eric A. Posner & Adrian Vermeule, *Transitional Justice as Ordinary Justice*, 117 HARV. L. REV. 761, 770-71 (2004) (citing SAMUEL P. HUNTINGTON, *THE*

were predominantly landed gentry, or by monarchies that had little interest in wage incomes of commoners. Thus, when land ownership and political control are tightly concentrated, an increase in the scarcity of labor relative to land (resulting from expanding frontiers both in North and South America) leads the landowner-controlled government to encourage immigration, either by directly subsidizing immigration or immigrant travel, or by recognizing indenture contracts (such as serfdom and its more odious variations).¹¹⁵ Treaty obligations or colonial concerns may cause variations in the policies actually adopted. For instance, empire-building might be a strong concern that places a premium on cultural homogeneity and fealty to the colonial monarch, thereby imposing a selection bias on would-be immigrants.¹¹⁶

For international migration to take place, accommodating policies must be in place in both the sending and receiving countries. As indicated previously, nineteenth century European countries and the Americas were likely both dominated by powerful landed interests. Such interests would actively encourage immigration into the Americas, but the source states in Europe would generally discourage emi-

THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY 16-17 (Univ. Okla. Press 1991).

¹¹⁵ Cf. Hadley Blake, *Guess Who's Coming to Dinner: Federal Disaster Relief for Undocumented Aliens*, 48 WASH. U. J. URB. & CONTEMP. L. 217, 217 (1995) (citing KITTY CALAVITA, U.S. IMMIGRATION LAW AND THE CONTROL OF LABOR: 1820-1924 at 1 (Academic Press 1984)). Another variation of this theme is that the host country may welcome low skill immigrants in order to place them in occupations with little job security. As a result, the overall labor market is more flexible and in a recession, the disenfranchised can easily be "dumped" without political cost. See Lamar Smith & Edward R. Grant, *Immigration Reform: Seeking the Right Reasons*, 28 ST. MARY'S L.J. 883, 922-23 (1997).

¹¹⁶ For example, immigrants from the former French colony of Algeria, on whom "French culture, education, and political institutions" had been imposed, were admitted to France on more liberal terms than those from other areas during the period up to and following The Evian Accords of 1962, which ended French colonization of Algeria and allowed Algerians to freely immigrate to France. However, as later generations evinced more of their Algerian culture and beliefs, France's immigration policy became more restrictive. Richard Klein, *Immigration Laws as Instruments of Discrimination: Legislation Designed to Limit Chinese Immigration into the United Kingdom*, 7 Touro INT'L L. REV. 1, 6-10 (1997). Similarly, colonial subjects, "to the extent they had the economic means, could, for the most part, travel to and from Britain as they desired." Devon W. Carbado, *Motherhood and Work in Cultural Context: One Woman's Patriarchal Bargain*, 21 HARV. WOMEN'S L.J. 1, 6 (1998) (citing British Nationality Act, (1948) 11 Geo. 6, c. 56 (Eng.)).

gration in order to prevent local wage rates from rising.¹¹⁷ An abundance of labor in the Old World however, effectively constrained wages anyway, and no country in Europe adopted policies to seriously stem the flow of labor to the Americas. During the nineteenth century, most European countries refused to recognize a citizen's naturalization in the Americas.¹¹⁸

This framework of interest-group coalitions corresponds well with observed immigration policy in the New World. For example, land-owning oligarchies in Argentina and Brazil actively supported immigrant travel subsidies as the frontiers opened and the effective supply of land expanded.¹¹⁹ Political scientists have observed, however, that U.S. immigration policy is not quite consistent with the proposed interest group analysis.¹²⁰ By approximately 1890, the U.S. western frontier was closing, leading one to suppose that this period would mark the beginning of immigrant controls.¹²¹ Although there had been isolated pieces of U.S. legislation directed at certain types of immigrants, no general U.S. restriction was enacted until the 1921 Quota Act. In part, the continuing openness of the U.S. economy could be due to the fact that European immigrants possessed a different portfolio of skills than native labor in the U.S., and were therefore, complementary to domestic labor, instead of being substitutable. If so, domestic labor, enfranchised or not, would have benefited along with landowners from continued European immigration. Examination of U.S. Census data for occupational and industry groups appears to support this complimentary hypothesis.¹²²

¹¹⁷ Cf. Myron Weiner, *Migration and State Response: A Security Perspective on International Migration*, 20 FLETCHER FORUM WORLD AFF. 17, 30-31 (1996) (asserting that when wages rise, emigration pressures decrease).

¹¹⁸ David Fitzgerald, *Rethinking Emigrant Citizenship*, 81 N.Y.U. L. REV. 90, 92 (2006).

¹¹⁹ Cf. Marvin H. Morse & Lucy M. Moran, *Troubling the Waters: Human Cargos*, 33 J. MAR. L. & COMM. 1, 27 n.142 (2002) (citing ALAN M. KRAUT, *THE HUDDLED MASSES: THE IMMIGRANT IN AMERICAN SOCIETY 1880-1921*, at 10-11 (Harlan Davidson, 2nd ed. 2001) (1982)).

¹²⁰ Foreman-Peck, *supra* note 108.

¹²¹ See Shannon Roesler, *Who are "We the People"?: The Legal Response to Twentieth-Century Migration in Germany and the United States*, 1 CHI.-KENT J. INT'L & COMP. L. 92, (2001) (citing Gerald L. Neuman, "We are the People": *Alien Suffrage in German and American Perspective*, 13 MICH. J. INT'L. L. 259, 299-300 (1992)).

¹²² See generally Stephen Nicholas & Peter R. Shergold, *Intercountry Labour Mobility During the Industrial Revolution: Evidence from Australian Transportation Records*, 39 OXFORD ECON. PAPERS 624 (1987); Peter R. Shergold, *Relative Skill and Income Levels of Natives and Foreign Born Workers: A Re-examination*, 13 EXPLORATIONS IN ECON. HIST. 451 (1976); Barry Eichengreen & Henry A. Gemery, *The Earnings of Skilled and Unskilled Immigrants at the End of the Nineteenth Century*, 46 J. ECON. HIST. 441 (1986).

What are the implications of the interest-group public choice framework for the trade-migration relationship, which is the focus of this paper? Most migration that occurred in the nineteenth century was between Europe and the New World, i.e. areas that already participated in substantial international trade.¹²³ In such circumstances, movement of goods and of factors of production (labor and capital), are substitutes, and the introduction of public choice considerations does not materially affect the predictions of the basic framework discussed earlier. As long as trading economies have access to similar technologies, more migration is likely to reduce comparative advantage, and therefore reduce the exports of capital-intensive goods from the host country of migrants. As this proceeds, wages and rents in the host and source countries tend to equalize, aside from transport costs and tariffs. Immigration controls alone would be ineffective in protecting labor incomes, regardless of the preferences of ruling government. Higher tariffs would also be necessary to protect wages.¹²⁴ Hence, the implications of the basic framework discussed in Section IV (that is, trade and migration are substitutes) are not fundamentally altered with the introduction of public choice considerations along these lines.

C: *The Median Voter*

A framework such as the one described above, with broadly-configured interest groups may be quite suitable to the prototypical nineteenth-century government. With wider democratic enfranchisement in the first half of the twentieth century, following the end of monarchical rule in several European states, a framework in which the state is more responsive to the average or median voter is desirable. The median voter model is such a construct, and has been applied to determining immigration policy.¹²⁵ The starting point is the observation that both immigrants and natives are heterogeneously endowed with labor skills and capital. Natives choose immigration policy by means of majority voting. While cultural and ethnocentric preferences

¹²³ See Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CAL. L. REV. 863 app. 918 (1993) (citing EDWARD P. HUTCHINSON, LEGISLATIVE HISTORY OF AMERICAN IMMIGRATION POLICY 1798-1965 at 483-84 (Univ. Pa. Press 1981)).

¹²⁴ As is well-known, the U.S. did increase tariffs sharply at the onset of the Great Depression in 1930 by enacting the Smoot-Hawley Tariff Act. More than sixty U.S. trade partners retaliated with like increases in their tariffs upon U.S. goods, leading to a precipitous decline in worldwide trade. See John Linarelli, *International Trade Relations and Separation of Powers Under the United States Constitution*, 13 DICK. J. INT'L L. 203, 210-11 (1995).

¹²⁵ See Jess Benhabib, *On the Political Economy of Immigration*, 40 EUR. ECON. REV. 1737, 1737-43 (1996).

are no doubt important in determining individuals' voting behavior, the framework focuses solely on economic well-being as measured by income. The framework produces the interesting implication that with majority voting and heterogeneous labor and capital skills, the native population will be polarized between those who favor and those who oppose free skilled labor immigration.¹²⁶ In an economy with a highly-skilled labor force, such as the United States, the median voter prefers selective immigration of low-skilled labor (possibly including undocumented aliens) that does not compete in the domestic labor market with natives.¹²⁷

There are a number of possible extensions of this median voter framework that may be of interest, but have yet to be pursued. First, newly-arrived immigrants tend to specialize both in destination choice and in occupational choice, i.e. they do not compete with native labor in many sectors of the host economy. In fact, field studies conducted by sociologists, anthropologists and other social scientists indicate that such immigrants often concentrate in certain niche sectors of the host economy and in certain occupational and geographical areas, relying on and reinforcing existing social networks. If so, the native voter's preferences may not be quite as polarized as suggested by the basic framework. Next, natives' preferences for future immigrants could be defined over both the mix of labor skills and capital endowments of prospective immigrants, as well as, overall numerical limits (i.e. quotas). Voting on the volume of immigrants, as well as, the skills set of immigrants would require the incorporation of a rationing mechanism. In particular, quotas on future immigrant admissions may be diverse as to family-based and employment based immigration, as is the case in the U.S. A framework incorporating tastes or preferences for various classes of immigrants (such as relatives and employees) in the context of voting by the median voter has yet to be developed.

Finally, the framework incorporates only one-shot choices (or referendums). Over time, as immigrants become settled in, many acquire voting rights through naturalization and the nature of the native median voter must be re-defined. This dynamic process of transforma-

¹²⁶ See Claudia Goldin, *The Political Economy of Immigration Restrictions in the United States 1890-1921* 25-26, (Nat'l Bureau of Econ. Research, Working Paper No. 4345, (1993).

¹²⁷ This result is not inconsistent with the preference of business employers in developed nations to import highly-skilled labor, for example, through specialty visas or a "points" system of immigration. When there is a shortage of such skilled workers in the native labor force, the median voter in the receiving country is not threatened by immigration of skilled labor. The model and its results are also consistent with the median voter's preference to tolerate unskilled labor immigration, including undocumented aliens in certain sectors of the economy. See also *infra* Part V.D.

tion of the median voter over time, through political incorporation in the host state, as well as, socio-economic, linguistic, culinary and cultural assimilation is the life-blood of work on immigration by anthropologists, sociologists and ethnicity/race scholars. Again however, the formal referendum (median voter) model of the public choice scholar has not, to my knowledge, been incorporated in existing work on immigrant assimilation by researchers in other areas.

Simple as this framework may be, it is a useful advance over existing literature in explicitly incorporating voter preferences and in marrying at least two disciplines (i.e. economics and public choice). It also provides the easily verifiable implication that the native population will be sharply divided in its immigration preferences. In fact, some natives may benefit from future illegal immigration of low-skilled labor. The illegality permits selective enforcement of restrictive immigration laws that confine illegal immigrants to employment in sectors where the median voter benefits from the immigrants' presence. In effect, immigrants are transformed from mobile factors of production who might compete in domestic labor markets with the median voter, to sector-specific factors of production whose presence is beneficial to the median voter. Examples include domestic housework, child care, farm work, work in food processing, the textile industry, elder care (in Israel in particular), and bar hostess jobs (in Japan), to name a few. Some recent evidence indicates that in the U.S., illegally present Mexicans are seven times more likely to be apprehended at work in manufacturing industries than in agriculture, while apprehension in the service sector is even more rare than in agriculture.¹²⁸ There is plainly selective official tolerance of undocumented aliens as manifested by the above examples and by the resources allocated to enforcement.¹²⁹

¹²⁸ See Alberto Dávila & Josè A. Pagán, *The Effectiveness of Selective INS Monitoring Strategies on the Industrial Employment Choice and Earnings of Recent Immigrants*, 35 *ECON. INQUIRY* 138, 141 (1997).

¹²⁹ In the U.S., no search warrants are needed to conduct immigration workplace raids (under the "special needs" exception for warrantless searches for purposes of the Fourth Amendment), except for raids on agricultural farms. For the warrant requirement to conduct immigration workplace raids upon agricultural operations, see 8 U.S.C. § 1357(e) (2000). Apart from farms, enforcement can be lax on other sectors of the economy where there is a labor shortage, for example, meat-packing, domestic help, housekeeping, restaurants, etc. The availability of low-cost undocumented aliens in these sectors benefits both the median consumer and business interests in these sectors. Enforcement activities of immigration officials in the U.S. are reported in the *Yearbook of Immigration Statistics* (Department of Homeland Security). OFFICE OF IMMIG. STAT., 2003 Y.B. OF IMMIGR. STAT. 144-52 (2004), available at <http://149.101.23.2/graphics/shared/statistics/archives/index.htm>. The 2003 *Yearbook* reports that cases completed for Employer Investiga-

D: Can The Median Voter Prefer Selective Illegal Immigration?

The incorporation of officially tolerated illegal immigration, in conjunction with legal immigration in a formal framework has been a fruitful line of research that has been recently pursued.¹³⁰ While illegal workers can be implicitly accommodated in the simple median voter framework described above, more recent analysis explicitly allows for the existence of illegally present labor along with legally resident labor. The latter are in the majority and are assumed to be mobile across sectors (as is capital). On the other hand, selective enforcement of immigration laws ensures that illegal workers can be confined to certain sectors and are therefore, occupationally immobile.¹³¹ The analysis demonstrates that the attitude of the median voter (who represents the legal majority) depends upon initial conditions. If little or no undocumented aliens are initially present, the median voter opposes *all* immigration, legal or not. When undocumented aliens are already present, however, voters may hypothetically elect between various alternatives: an amnesty for current illegal workers with no further immigration of any type, permit illegal aliens to remain without an amnesty (i.e. permissible illegal immigration), a ban on all future immigration, mass expulsion of all currently present illegal workers, and permit illegal workers to remain without an amnesty and permit still more illegal immigration through imperfect border and interior enforcement. It turns out that the policy choice that commands majority support in any pair-wise referendum is the last one, permitting illegal workers to remain in the host country without legalization and furthermore, permitting additional limited illegal immigration.

Upon reflection, it should be clear that this outcome of a hypothetical referendum vote is not without intuitive basis. If illegal workers can be confined to certain sectors of the economy in which they do not compete with resident labor, the effect upon the latter's wages will be small. At the same time, the work performed by illegal immigrants is complementary to that of legal workers. Voters still prefer to retain illegal immigrants in a state of unamnestied limbo, in order to assure confinement to desired sectors upon pain of apprehension and possible deportation. The fact that illegal workers may be found in large num-

tions (which include workplace raids) declined from 7,537 in 1997 to 2,194 in 2003 (with a low of 1,595 in 2001). Workplace arrests declined even more sharply over the same period, from 17,554 in 1997 to just 445 in 2003. *Id.* at 157.

¹³⁰ See, e.g., Arye L. Hillman & Avi Weiss, *A Theory of Permissible Legal Immigration*, 15 EUR. J. POL. ECON. 585 (1999).

¹³¹ In the U.S., the I-9 employer verification system of lawful work status implements the occupational immobility by regulation. The I-9 verification and employer sanctions were added to U.S. immigration law by the 1986 IRCA reforms. See 8 U.S.C. § 1324(a) (2000); 8 C.F.R. § 274a.2 (2006).

bers, particularly in service sectors in several countries, i.e. sectors that produce non-traded goods, can also be rationalized. Most illegal immigrants have low incomes and their propensity to consume services such as restaurant services, cleaning services on their own is limited, if not non-existent. When illegal workers proliferate in the non-traded goods sector and add to output in that sector without consuming any of the latter's output, relative prices of non-traded goods fall, benefiting enfranchised legal voters. Finally, guest-workers (*Gastarbeiter*) or temporary specialized workers can be comfortably accommodated in such a framework. While guest-workers are lawfully present, they are usually confined to certain occupations and sectors under the terms of their temporary visas.¹³²

E: Can Public Choice or Game Theoretic Considerations Explain Immigration Quotas?

In previous sections of this paper, I have referred, at several points, to the existence of statutory immigration quotas for lawful immigrants. But what determines the quota limits set by legislatures or by the executive branch (as is the case in Australia and Canada)? The current U.S. immigration quota limits were established more than a decade ago. In some cases, annual allotments of immigrants have been adjusted on an *ad hoc* basis by Congress for humanitarian purposes or to meet temporary personnel shortfalls. Formal analysis of quota levels in the public choice literature is extremely recent and utilizes game theory. The use of game theory in applications to the law is neither new nor controversial by any means. Specifically, game-theoretic analysis has been utilized in the areas of bankruptcy, trade negotiations, antitrust, conflict resolution, litigation strategies and in international political economy.¹³³ The game-theoretic model posits that immigration quotas are determined as the result of a lobbying contest between concerned parties. Such a framework is an extension of the median voter model discussed previously in that the latter does not allow for intensity of preferences to be registered, as is true of most voting models. By contrast, in a costly lobbying contest, the magni-

¹³² The guest worker program began on a significant scale in the U.S. with the Bracero Program in the U.S. that extended over 1942-1964 and permitted agricultural workers in Mexico to temporarily work in the U.S. agricultural sector. Many scholars believe that the network links that the Braceros established during this period of sojourning established the foundation for future clandestine immigration into the U.S. For example, Germany began its *Gastarbeiter* and *Fremdarbeiter* programs by signing a Bilateral Recruitment Agreement with Italy in 1955. Similar articulation agreements were subsequently executed with Spain, and Greece in 1960 and then with Turkey in 1961.

¹³³ See, e.g., DOUGLAS G. BAIRD, ROBERT H. GERTNER & RANDAL C. PICKER, *GAME THEORY AND THE LAW* (Harvard University Press 1995).

tude of resources devoted to lobbying can proxy the intensity of the participant's preference for a specific outcome.

Participants in the contest naturally comprise coalitions of interest groups with potentially competing views, such as firms and labor unions. One simple approach is to focus on immigrant quotas in the context of an all-pay (winner-take-all) contest between these interest groups.¹³⁴ The participant with the highest expenditures on the lobbying contest wins the game as to the ultimate quota amount. Because neither party is aware *ex ante*, of the other's likely expenditure on the contest and expenditures must be pre-committed, players must choose their pay strategies without knowledge of the opponent's counter-strategy. The game is solved backwards in two stages, as is standard in such models. First, the union and the firm bargain over the optimal immigration quota. Once this amount is known, the political lobbying sub-game is solved in the second stage. The framework produces some interesting results. For example, the larger the labor union size, the smaller the expected immigration quota. It would be straightforward and of interest to empirically test this proposition, but as yet, there has been no such attempt. Two other results are of interest. First, immigration quotas are correlated with the stage of the business cycle in that during boom times, such quotas will increase.¹³⁵ Second, during periods of relative economic slumps in sending countries, the asking wage ("reservation wage") of immigrants decline, leading to an increase in expected immigration quotas. It should be noted however, that this framework is static. Over time, immigrants may join labor unions or form coalitions with firms. Extensions along these lines have yet to be pursued.

But, what of trade in good and services and its relationship with the many aspects of migration discussed above? As with interest group analysis, the median voter framework and its game-theoretic extensions discussed in this section have not been extended to explicitly incorporate trade in goods and services. Nevertheless, a few general observations are possible. Unlike immigration, which can be described as discrete and "lumpy", trade flows are continuous in nature. In the context of the simple competitive models discussed earlier, free trade leads to a convergence in factor prices. Thus, the disparity between wage rates of native and immigrant labor tends to become eroded, as discussed earlier. In turn, this has implications for the preferences of native labor and for the results of the "referendum" vote on future immigration. In particular, as wage and rental rates across natives and

¹³⁴ J. Atsu Amegsahie, *A Political Economy Model of Immigration Quotas*, 5 *ECON. GOVERNANCE* 255 (2004).

¹³⁵ See William F. Shugart, Robert D. Tollison & Mwangi S. Kimenyi, *The Political Economy of Immigration Restriction* 4 *YALE J. ON REG.* 79, 97 (1986).

prospective immigrants converge, voters become less polarized with respect to their preferences regarding immigration policy. This implies that the engine that drives immigration policy (i.e. diverse voter preferences) must slow down. In this sense, trade flows may eliminate or reduce the alternative basis for immigration that is based upon preferences of natives, i.e., over time, "substitution effects" between trade and immigration policy once again begin to emerge. It should be noted however, that this inference is limited to the basic trade model discussed previously.

The implications of marrying endogenous immigration preferences relating to amnesties, permissible illegality or quotas with more complex models of trade, such as those incorporating either strategic trade or monopolistic competition are at present, as entirely uncharted territory.

VI: OTHER APPROACHES: SOCIOLOGY, INTERNATIONAL POLITICAL ECONOMY AND INTERNATIONAL RELATIONS

In this section I draw upon literature in law, sociology, anthropology, demography, international political economy and international relations with regard to migration and trade. Until very recently, there was very little inter-disciplinary pollination in the work of sociologists, demographers, international relations theorists and economists.¹³⁶

A: Areas Commonly Examined in Various Disciplines:

Traditionally, sociologists working in the area of migration focus on assimilation of foreigners into the host society, as well as related issues of segregation and marginalization. Anthropologists have examined the links and networks retained between immigrants and their countries of origin. The recent immigration reforms in many Latin American countries that permit dual citizenship with the U.S. have strengthened those links.¹³⁷ Some countries, such as Mexico and the Dominican Republic, now even permit their expatriates to vote in domestic elections.¹³⁸ Political scientists deal with the political incor-

¹³⁶ *But see* IMMIGRATION RESEARCH FOR A NEW CENTURY: MULTIDISCIPLINARY PERSPECTIVES (Nancy Foner et al. eds. [hereinafter NEW CENTURY] for a promising start of interdisciplinary scholarship in the area of migration.

¹³⁷ *See generally* Stanley A. Renshon, *Dual Citizens in America: An Issue of Vast Proportions and Broad Significance*, BACKGROUNDER (Center for Immigration Studies, Washington, D.C.), July 2000, at 3 (noting that in a 1996 survey of seventeen Latin American countries, only seven allowed multiple citizenship, but by 2000, fourteen of the seventeen countries allowed multiple citizenship).

¹³⁸ Ruth Rubio-Marin, *Transnational Politics and the Democratic Nation State: Normative Challenges of Expatriate Voting and Nationality Retention of Immi-*

poration of immigrants into host societies. Such political membership generally follows socio-economic assimilation and incorporation.¹³⁹ Unequal political membership of various ethnic groups in the host state and unequal “voice” may lead to unbalanced political development. Historians attempt to isolate the accidents and contingencies of developments across time and their implications for migration and re-settlement. Finally, legal and international relations scholars deal with issues such as the definition of the sovereign nation-state, individual rights that transcend borders, and dual nationality. If immigration transforms the effective boundaries of the state monopoly over sovereignty, it may be necessary to re-evaluate the very notion of national immigration policy.

The various bodies of work referred to above are capable of fruitful cross-fertilization. The work of sociologists, for instance, in the area of social, linguistic and cultural assimilation, is related to economic assimilation and to the broader concept of political membership and participation examined by political scientists. Similarly, one of the contingencies of historical development can be discord and disharmony sown by perceived unequal opportunities for political participation. On an even wider level, political incorporation of immigrants may ultimately confer rights that span traditional national borders and thus create the groundwork for studies in international relations. Likewise, recent scholarship by immigration law authors on multiple citizenship and sovereignty relates directly to the work in political science and international relations, mentioned above. Social networks studied by anthropologists have an obvious effect upon the actual and perceived costs of migration, which can easily be incorporated into the quantitative and qualitative work of economists who focus on the costs and returns of international migration. Urban studies scholars’ analyses of spatial segregation of immigrant communities can contribute to sociologists work on community integration and assimilation. Finally, emerging work of ethnic studies scholars on “whiteness” is related to barriers to assimilation.¹⁴⁰

grants, 81 N.Y.U. L. Rev. 117, 126-7 & n.42 (2006) (identifying Mexico and the Dominican Republic as states that permit non-residents to vote, so long as they return home to cast their ballot).

¹³⁹ There have been only a few empirical studies of the political incorporation of immigrants by ethnic origin. For one such interesting work, see Jane Junn, *Participation in Liberal Democracy: The Political Assimilation of Immigrants and Ethnic Minorities in the United States*, in *NEW CENTURY*, *supra* note 136 (finding that while Asian-Americans have the most education among various ethnic groups and higher median incomes, they are the least politically active of all groups).

¹⁴⁰ “Whiteness” in ethnic studies is a relational concept, rather than a biological one. See generally MATTHEW FRYE JACOBSON, *WHITENESS OF A DIFFERENT COLOR* (199) (examining the role of “whiteness” in the context of immigrant assimilation).

B: Examples of Possible Syntheses

In Section V, I examined political economy and public choice frameworks in some detail. As indicated above, interest groups and the median voter are intimately related to issues of political membership and incorporation into the host society. Thus, the models discussed in the previous section combine public choice concepts with formal methods in economic theory. In this sub-section, I describe an alternative form of synthesis using acculturation and locational theory as examples.

Immigration (other than purely mental migration or anticipatory acculturation) necessarily involves locational re-settlement along with appropriate acculturation. Thus, one approach is to start by examining locational frameworks in disciplines in which they were first developed. Initially, locational preferences of individuals (for either cultural or economic reasons) were formally modeled in Tiebout-type locational choice models in regional economics.¹⁴¹ Scholars in other disciplines, such as sociology, anthropology, and demography have added content to locational preferences by observing that cultural preferences may originate in social networks or in safety nets.¹⁴² In Tiebout's original framework, jurisdictions exclude outsiders from free access to collectively provided goods, thus mimicking "rivalrous" consumption and excludability which are essential characteristics of private markets.¹⁴³ In the context of international migration, the "charge" for access to a jurisdiction is the implicit fee for belonging to a social network. This "charge" is often a social bond that embodies reciprocal obligations of trust, loyalty and mutual support. Because of these network effects, people with similar cultural preferences tend to congregate together.¹⁴⁴ Thus, when culture is a locationally-provided public good, one is likely to observe agglomeration effects similar to the effects in core-periphery models of trade, as discussed above. Even the most cursory examination of data reveals this to be the case for international migrants, regardless of their countries of origin or destination. Cultural preferences have also been embedded in national im-

¹⁴¹ See generally Charles Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956); Ayre L. Hillman, *The Political Economy of Migration Policy, in MIGRATION: A CHALLENGE FOR EUROPE* (Horst Siebert ed., 1993).

¹⁴² See, e.g., GLOBAL NETWORKS, LINKED CITIES 43 (Saskia Sassen ed., 2001).

¹⁴³ See generally Tiebout, *supra* note 141. The characteristics of markets for public and private goods are discussed in detail in any standard text on law and economics. See, e.g., ROBERT COOTER & THOMAS ULEN, *LAW AND ECONOMICS* (4th ed., 2003).

¹⁴⁴ See GLOBAL NETWORKS, LINKED CITIES, *supra* note 142, at 43; see also SASKIA SAASEN, *THE GLOBAL CITY* 251 (2d ed., 2001); MANUEL CASTELLS, *THE RISE OF THE NETWORK SOCIETY* 172 (2d ed., 2000).

migration policies: for example, the "White Australia" policy, or the United States' hemispheric quotas on immigration.¹⁴⁵

Cultural preferences of prospective migrants may often be supplemented with other selection criteria, imposed by either the host or source country or both. For example, the "brain drain" models mentioned earlier describe how differentiated populations in poorer countries are often subject to varying immigration incentives set by the receiving country. It is also possible to conceive of strategic self-selection criteria, imposed by the prospective immigrants themselves; for example, family pressure upon individuals migrating abroad to maintain sizable remittances to those remaining at home can be viewed as a selection device to keep low-skilled workers from emigrating.

With respect to the trade-migration relationship, researchers have not yet formally combined Tiebout-type locational choice or cultural preference models with the trade models discussed above. One might conjecture, however, that if cultural or locational preferences regarding migration are largely independent of economic considerations, the locational choice would likely weaken the interchangeable relationship between trade and migration, or strengthen a complementary relationship. On the other hand, positive economic factors may reinforce locational choice, and thus reinforce the relationships between trade and migration predicted by trade models. Thus, the implications of embedding locational choice or cultural preferences in trade models depend upon whether they are affected positively by the same economic considerations (namely, disparities in expected wages between source and recipient countries) that affect trade in goods and services.

C: International Relations, Law and Political Economy

Scholarship on migration in the disciplines of international political economy and international relations is relatively recent, dating perhaps to the 1980s.¹⁴⁶ Furthermore, integration of migration and trade in these disciplines is, as yet, not developed.¹⁴⁷ Nevertheless, international political economy and international relations theory of-

¹⁴⁵ The latter was repealed in 1965. Immigration and Nationality Act Amendments, Pub. L. No. 89-236, § 201(d)-(e), 79 Stat. 911 (1965). The White Australia policy was discontinued in the 1970s. See generally Fact Sheet, Department of Immigration & Multicultural Affairs, Australian Government (June 28, 2006), <http://www.immi.gov.au/media/fact-sheets/08abolition.htm>.

¹⁴⁶ See *MIGRATION THEORY: TALKING ACROSS DISCIPLINES* (Carol B. Bretell & James Hollifield eds., 2000) for a useful attempt at cross-fertilization of various disciplines.

¹⁴⁷ For the most part, scholarship in international relations deals with migration through its focus on political participation and sovereignty. A discussion of trade issues does not fit comfortably within its tools of analysis.

fer a perspective on migration that is distinct from that in economics or in public choice.

Creation of interest groups is also an ingredient of international relations analyses as it is in public choice. The creation of coalitions that are large enough may affect national identity and the very definition of the sovereign state itself.¹⁴⁸ With the development of social, kinship, informational, and institutional networks, transnational communities emerge that render the once clear physical boundaries of the nation-state increasingly irrelevant. From the emergence of transnational communities, it is a short step to the creation of rights of transnational citizenship. While many of these rights are usually created by independent judiciaries in the receiving state, interest groups with powerful political connections may also play a key role.¹⁴⁹ As a consequence, the capacity of liberal democracies to control migration is eroded.¹⁵⁰ International relations scholars emphasize that coalition

¹⁴⁸ It was only in the sixteenth and seventeenth centuries in Europe that the notion of tying populations to specific territorial units developed. In turn, this concept may be related to Weber's definition of sovereignty under which a nation-state can only exist when the sovereign has monopoly over the legitimate use of force over a given territory. Weber's definition of state sovereignty was mentioned by him originally in a lecture in 1918. MAX WEBER, *POLITIKS ALS BERUF [POLITICS AS A VOCATION]* 2-3 (H.H. Gerth & Wright Mills trans., Fortress Press 1968) (1918). For a recent survey of nationality and associated sovereignty policies of various countries, see *CITIZENSHIP TODAY: GLOBAL PERSPECTIVES AND PRACTICES* (Thomas Aleinikoff & Douglas Klusmeyer eds. Carnegie Endowment for Int'l Peace 2001). For sample work on immigration and transnational rights see Schiller Glick, Linda Basch & Cristina Szanton-Blanc, *From Immigrant to Transmigrant: Theorizing Transnational Migration*, 68 *ANTHROPOLOGICAL Q.* 48 (1995).

¹⁴⁹ Sociologists such as Massey have long emphasized the role of social networks in both sending and receiving countries. See, e.g., *INTERNATIONAL MIGRATION: PROSPECTS AND POLICIES IN A GLOBAL MARKET* (Douglas Massey & J. Edward Taylor eds., Oxford Univ. Press 2004); *WORLDS IN MOTION: UNDERSTANDING INTERNATIONAL MIGRATION* (Douglas Massey, Joaquin Arango & Graeme Hugo eds., Oxford Univ. Press 1999). The role of transnational communities in explaining migration has been explored by several authors, including, Alejandro Portes, *Immigration Theory for a New Century*, 31 *INT'L MIGRATION REV.* 799-825 (1997); Alejandro Portes, *Transnational Communities: Their Emergence and Significance in the Contemporary World System*, in *LATIN AMERICA IN THE WORLD ECONOMY* (R. P. Koreniewidez & W.C. Smith eds., 1996); SASKIA SAASEN, *LOSING CONTROL: SOVEREIGNTY IN AN AGE OF GLOBALIZATION* (1996).

¹⁵⁰ See Gary Freeman, *Modes of Immigration Politics in Liberal Democratic States* 19 *INT'L MIGRATION REV.* 881 (1995); Gary Freeman, *Can Liberal States Control Unwanted Migration*, 534 *ANNALS AM. ACAD. POL. & SOC. SCI.* 17 (1994). For work dealing with the U.S. context see DANIEL TISCHENOR, *The Politics of Immigration Reform in the United States 1981-1992*, 26 *POLITY* 333 (1994) and DAVID PLOTKE, *Immigration and Political Incorporation in the Contemporary United States in*

building or interest group creation is influenced by three considerations: ideational/cultural factors, economic interests (which are linked to factor rewards) and by common transnational rights which evolve in liberal democracies.¹⁵¹ In this sense, international relations theory proposes a broader framework of analysis than either economics or public choice.

Scholars in the law – particularly, immigration lawyers – have been late to realize the intermingling of international relations and political economy in the context of migration and state cohesion. For example, earlier works by political thinkers such as Claude Levi-Strauss and Myron Weiner have been of interest to legal scholars studying the area of migration and national security, or alternatively known as “assimilation crisis.”¹⁵² Concepts such as logrolling in political choice have found application in “tactical issue linkage” (“international logrolling”), for instance through the appendage of labor and environmental side-agreements to the NAFTA trade accord. Other scholars have noted that the recent softening of official attitudes toward dual or multiple citizenship in developed and developing countries alike is a necessary reaction to changing realities of the meaning of citizenship and national fidelity, brought upon by the larger forces of global integration.¹⁵³ De-centralization of central state control over

HANDBOOK OF INT’L MIGRATION (Charles Hirschman, Philip Kasinitz and Josh Dewind eds., 1999).

¹⁵¹ A contrary school of thought suggests that central national authority over immigration may have been deliberately ceded to local “gatekeepers” including local municipal authorities, and private, non-state actors. This view goes beyond the monolithic vision of the central state as being the sole gatekeeper of immigration policy. For example, in France, de-centralization of immigration enforcement has been in progress for a quarter century. Since the *Deferre* laws were enacted in 1982, French municipal town hall authorities have had the authority to examine validity of marriages between French citizens and aliens. On the other hand, in the U.S., detecting marriage fraud (committed for purposes of securing immigration benefits) remains the sole prerogative of federal immigration authorities. Employer sanctions in the U.S. and Europe, are yet another example of delegation of immigration enforcement to non-state actors which have existed in most OECD countries since the 1970s. I leave it up to the reader to decide whether ceding immigration controls to local authorities and to non-state actors represents the weakening of central state authority, or instead, an extension of central power.

¹⁵² CLAUDE LEVI-STRAUSS, *THE SAVAGE MIND* 268-269 (1968); INTERNATIONAL MIGRATION AND SECURITY (Myron Weiner, ed. 1993).

¹⁵³ See, e.g., Christopher Rudolph, *Globalization, Sovereignty and Migration: A Conceptual Framework*, 3 *UCLA J. INT’L L. & FOREIGN AFF.* 325, 340, 352 (1998-99); Peter Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 *EMORY L. J.* 1411, 1453 (1997) (discussing the historical animosity of states toward multiple nationality and recent changes in several countries). See generally Linda Bosniak, *Exclusion and Membership: The Dual Identity of the Undocumented Worker Under*

migration and the rise of non-state actors in creating transnational rights have also occupied the attention of legal scholars working at the intersection of immigration and foreign affairs.¹⁵⁴

Despite the existence of a growing body of work on migration employing methods and concepts from international relations or international political economy, there is presently no general, formal analysis of international trade in these disciplines. What analysis there is of trade in the context of transnational networks has largely focused on the emergence of regional mega-centers or “global cities” such as New York, London, Paris or Los Angeles.¹⁵⁵ More pertinently to the present paper, the inter-relationship between international trade and migration in the context of an international relations framework also remains for now, undiscovered territory. It may be surmised however, that the creation of transnational communities is most likely to lead to enhanced trade in goods and services across areas with physically distinct boundaries delineating nation-states, even though as indicated earlier, the nation-state itself may have begun to lose some of its Weberian attributes of sovereignty. In this sense, it would be reasonable to expect that migration, creation of transnational communities and international trade in services and goods are mutually self-reinforcing phenomena.

United States Law, 1988 WIS. L. REV. 955 (1988); Linda Bosniak, *Multiple Nationality and the Postnational Transformation of Citizenship*, 42 VA. J. INT'L L. 979 (2002).

¹⁵⁴ See, e.g., Peter H. Schuck, *Citizenship in Federal Systems*, 48 AM. J. COMP. L. 195, 204 (2000) (noting four dimensions of citizenship (political, legal, psychological and sociological) and examining the cases of the U.S., Canada, Germany and Switzerland); Peter Spiro, *Non State Actors in Global Politics*, 92 AM. J. INT'L L. 808, 810-811 (1998) (reviewing three books on the de-centralization of central authority and observing the emergence of accommodative international regimes that include state, sub-state and institutional actors, particularly in matters such as trade and migration); Peter Spiro, *Tracing the International Insinuation of International Law*, 95 AM. SOC'Y INT'L L. PROC. 50, 50-51 (2001) (discussing the disaggregation of national power); see also Thomas Franck, *Clan and Superclan*, 90 AM. J. INT'L L. 359, 378-82 (1996) (noting that states in Germany—i.e. the *Länder*—have considerable authority over matters such as multiple citizenship).

¹⁵⁵ See SASSEN, *THE GLOBAL CITY* *supra* note 142, at 3-6. As Sassen observes, global cities are characterized by inter-relationships among each other to a much larger extent than the relationships between these cities and other cities in the national territories where these mega-cities are located. In addition, global cities may be characterized by the presence of a roving transnational executive class whose work assignments may require them to spend portions of their work time in several cities, on a continuing basis.

VII: EMPIRICAL REGULARITIES AND EVIDENCE

Section III above reviewed empirical data on historical trends in trade, labor and migration flows over a number of years. Somewhat surprisingly, there have been hardly any rigorous tests of the substitutability or complementarity relationship between trade and factor flows, in particular between trade flows and migration. An exception is the work by the economic historian Jeffrey Williamson and his colleagues, and in this section, I draw upon some of their work.¹⁵⁶

Conceptually, the relationship between trade and migration can be addressed in one of two alternative ways. First, considering an initial position of little or no trade in goods and services, what is the effect of trade liberalization upon incentives to migrate? As indicated in Section IV above, in the simplest type of trade models, the answer is unambiguous. Trade liberalization leads to a decline in incentives to migrate, implying that trade and migration are substitutes. However, the issue may be phrased alternatively as well. Given an initial position of factor immobility (accomplished by effective restrictions on labor and capital movements), what is the effect of permitting free factor mobility (such as for example, within the European Union), upon trade in goods and services? In the context of the basic trade models discussed in Section IV, the same answer emerges, namely, increased capital and labor mobility equalizes capital-labor ratios across countries and eliminates the basis for trade. Once again, migration (and capital movements) is a substitute for trade in goods and services.

These classical results are subject to change when any of the simplifying assumptions of the basic framework are altered. Thus, if the basis for trade is something other than differential factor endowments, if there are increasing returns to scale, specific factors or inputs (other than labor and capital), imperfections in goods or factor markets, then the predicted relationship between trade and migration is ambiguous and highly model-dependent.¹⁵⁷ These complexities were discussed in Section IV above. However, in a very stylized frame-

¹⁵⁶ See generally William Collins, Kevin O'Rourke & Jeffrey Williamson, *Were Trade and Factor Mobility Substitutes in History?* (Nat'l Bureau of Econ. Research, Working Paper No. 6059, 1997), available at <http://www.nber.org/papers/w6059> [hereinafter *Trade and Factor Mobility*]; Timothy Hatton & Jeffrey Williamson, *What Fundamentals Drive World Migration* (Nat'l Bureau of Econ. Research, Working Paper No. 8159, 2003), <http://econrsss.anu.edu.au/pdf/DP458.pdf> [hereinafter *Fundamentals*]; Jeffrey Williamson, *Winners and Losers Over Two Centuries of Globalization* (Nat'l Bureau of Econ. Research, Working Paper No. 9161, 2002), <http://www.nber.org/papers/29161.pdf>.

¹⁵⁷ See generally Collins *et al.*, *supra* note 156, at 1 (stating generally that "theory is ambiguous" as to the substitutability of trade and factor mobility); *Fundamentals*, *supra* note 156, at 5 (discussing the impact of increasing returns to scale).

work, the presence of an additional input, say, land, can be shown to lead to trade-factor flow complementarity, particularly, if the additional input is subject to natural increase.¹⁵⁸ If land is the additional input, the land frontier may be subject to expansion.¹⁵⁹ Such an assumption is particularly realistic for the New World, certainly until the end of the nineteenth century in the western United States and for a few years later in the rest of the New World.

Interestingly, the concept of an endogenous land frontier lends itself to application in the context of today's Third World as well.¹⁶⁰ For example, with increasing globalization and a boom in the exports of labor-intensive manufactured goods, Third World cities are likely to experience rapid growth in size and associated infrastructure.¹⁶¹ As a consequence, the relative rate of return on capital increases, thereby attracting foreign capital inflows, i.e., increased trade flows are complemented by increased capital flows in this context.¹⁶²

(A): *Time Series Tests*

It is possible to perform simple time series regression tests over the period 1870-1939 (truncated into two time periods, in order to exclude the inter-war years 1914-1918).¹⁶³ By the late 1930s, the looming clouds of the Second World War had disrupted normal trade patterns so that the period after the 1930s is excluded as well.

The basic estimating equation regresses real absolute trade flows (defined as the deflated sum of exports plus imports) on a variety of explanatory variables including, gross migration flows, net capital flows (measured by the absolute amount of the current account imbalance), time trend variables, deflated tariff revenue and a transport cost variable.¹⁶⁴ Symbolically, the regression equation is:

$$\text{Real Trade Flows} = \alpha + \beta_1 \text{MIG} + \beta_2 \text{CAP} + \beta_3 \text{TR} + \beta_4 \text{TF} + t + \varepsilon$$

Where MIG is gross migration, CAP is the net deflated absolute current account, TR is a measure of tariff revenue, and TF is an index of transport costs and t a time trend variable.

Aside from possible misspecification and the presence of non-stationarity in the long-term time series, a possible shortcoming of the estimating equation is the fact that the key dependent variables are

¹⁵⁸ See Collins *et al*, *supra* note 156, at 5-6 (discussing the different implications of owning land).

¹⁵⁹ *Id.* at 7.

¹⁶⁰ *Id.* at 8.

¹⁶¹ ALLEN KELLEY & JEFFREY WILLIAMSON, WHAT DRIVES THIRD WORLD CITY GROWTH? 27-31 (1984).

¹⁶² *Id.* at 34-37; see also *Fundamentals*, *supra* note 156, at 5.

¹⁶³ Collins *et al*, *supra* note 156, at 1, 13.

¹⁶⁴ *Id.* at 11-13.

not independent of each other.¹⁶⁵ For example, labor and capital flows are expected to be related to each other.¹⁶⁶ As a consequence of such interdependence, estimated values for the coefficients in the above regression relationship are likely to be biased. Nevertheless, estimation of the equation may be useful in providing at least some insight into the trade-migration relationship.

The results of the time series analysis for the U.S., Canada, Australia and the United Kingdom (i.e. including both the New World and the dominant Old World country at that time) do not support the hypothesis of substitutability between trade flows and factor flows.¹⁶⁷ The equation is estimated separately for two time periods, i.e. 1872-1913 and 1919-1939, in order to account for the possible effect of an endogenous land frontier.¹⁶⁸ In order to be consistent with the substitutability hypothesis, the estimated coefficients β_1 and β_2 in the above relationship would be expected to be statistically negative.¹⁶⁹ At the standard 5 percent level of significance, this hypothesis fails to find any empirical support.¹⁷⁰ If there is a relationship at all between trade flows and factor flows, it is one of complementarity between trade flows and migration, especially over the earlier period 1872-1913.¹⁷¹

(B): *Cross-Section Panel Data Tests*

Pooled cross-section data tests over the period 1870-1940 have also been performed.¹⁷² The estimating equation now is:

$$(\text{Trade/GDP}) = \alpha + \gamma_1 \text{NETMIG} + \gamma_2 (\text{CA/GDP}) + \gamma^3 \text{TR} + \gamma_4 \text{TF} + \text{Scale Variables} + \varepsilon$$

Where tariff and transport cost variables are defined as earlier and NETMIG is a measure of net migration, while (CA/GDP) is the current account to GDP ratio for each decade in the time period. Similarly,

¹⁶⁵ To econometricians, this is known as the presence of multicollinearity. An appropriate technique to obtain unbiased estimates in this case, is by means of "instrumental variables". In the present case, it is not at all clear if suitable "instruments" can be found.

¹⁶⁶ In part, this may stem from the fact that skilled labor embodies "human capital." In addition, migrating flows of labor may also be accompanied by financial or physical capital. For example, investment visas or employment-creation visas are made available to potential entrants under U.S. immigration laws who have invested substantial at risk capital in the U.S.

¹⁶⁷ Collins *et al*, *supra* note 156, at 15.

¹⁶⁸ *Id.* at 13.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 14.

¹⁷¹ *Id.*

¹⁷² *Id.* at 17.

trade flows are deflated by GDP in order to account for country size variations.¹⁷³ One would expect the same concerns about dependence between migration flows and capital flows as mentioned earlier (i.e. the presence of “multicollinearity”). However, as indicated above, the equation is estimated without suitable instrumental variables to correct for serial correlation over each decade separately.

The empirical results yield a statistically significant negative estimate for the tariff variable, as expected.¹⁷⁴ Higher tariffs are expected to inhibit trade flows. However, the key relationship of interest here – the relationship between trade and factor flows – exhibits an empirically weak association.¹⁷⁵ Once again, there is little or no empirical support (in these tests) for the substitutability hypothesis between trade and migration, and if anything, there may be some evidence of mild complementarity between trade and capital flows.¹⁷⁶

These results demonstrate to a limited extent, that accounting only for economic factors, trade flows and migration flows do not appear to be empirically related (at least as substitutes) over historical periods. The strong prediction of simple economic frameworks is scarcely vindicated. For present purposes, these results may be taken to indicate both that more empirical testing is necessary and that economic factors alone are insufficient to explain the complex set of relationships between trade and factor flows.¹⁷⁷

C: Empirical Results From The Political Economy of Immigration

In previous sections, I have offered perspectives on the trade-migration relationship drawn from several other disciplines, such as public choice, anthropology, sociology, and international relations. At the time of publication, there has been virtually no attempt to analytically combine approaches from different disciplines in a comprehensive empirically testable framework. There is, however, a body of empirical literature on the political economy of immigration which combines two disciplines, namely, political choice and economics. Examples include work by economic historians such as Timmer and Williamson. These authors investigate whether over long historical periods, policy-makers and legislators behaved *as though* they believed that trade and migration were substitutes.¹⁷⁸ In other words, these

¹⁷³ *Id.* at 15.

¹⁷⁴ *Id.* at 18.

¹⁷⁵ *Id.*

¹⁷⁶ *See id.* at 25.

¹⁷⁷ *See id.* at 24-25.

¹⁷⁸ Ashley Timmer & Jeffrey Williamson, *Immigration Policy Prior to the 1930s: Labor Markets, Policy Interactions and Globalization Backlash*, 24 POPULATION & DEV. REV. 739, 739 (1998) [hereinafter *Immigration Policy Prior to the 1930s*];

authors attempt to construct an index of restrictiveness of immigration policy which is then related to proxy measures of the stance of trade policy, in addition to certain other factors that may be relevant to explaining the degree of immigration restrictiveness of a particular nation.¹⁷⁹

Recall first that the closing of the open land frontiers in the New World may have significant implications on the stance of immigration policy. More specifically, other things being equal, an open frontier is likely to mean that immigration policy is more liberal toward prospective newcomers. On the other hand, closing the open frontier would be expected to lead to more restrictive immigration policies as the native population begins to experience pressure because of sociological, economic and cultural reasons, to limit the influx of newcomers.

While the experiences of various New World countries differed somewhat in terms of timing of closing of their frontiers, they are qualitatively similar. Thus, the existence of an open western frontier in the U.S. may have come to an end in the 1890s,¹⁸⁰ and the Pampas of Argentina filled up shortly thereafter.¹⁸¹ The end of Canada's Prairie Boom in the 1920s may be viewed as the closing of the early open frontier in that country.¹⁸²

In general, immigration of low-skilled labor from the Old World into the New World would be expected to increase income inequality in the rich New World countries, in the same manner as would imports of unskilled labor-intensive goods into the latter.¹⁸³ Assuming the existence of at least a partially democratic franchise in the recipient countries, the question of interest is the nature of the appropriate response by host country governments. If trade and migration were complements in the pre-1920 New World, governments in the latter needed to utilize only one policy, i.e. they would need to restrict immigration or

Ashley Timmer & Jeffrey Williamson, *Racism, Xenophobia or Markets? The Political Economy of Immigration Policy Prior to the 1930s* 22-23 (Nat'l Bureau of Econ. Research, Working Paper No. 5867, 1996), <http://www.nber.org/papers/w5867.pdf> [hereinafter *Racism, Xenophobia or Markets?*].

¹⁷⁹ *Immigration Policy Prior to the 1930s*, *supra* note 178, at 740-742.

¹⁸⁰ *Id.* at 739; see also Collins *et al*, *supra* note 156, at 21.

¹⁸¹ Collins *et al*, *supra* note 156, at 21. For additional details on immigration patterns in Argentina, see, Andres Solimano, *Development Cycles, Political Regimes and International Migration: Argentina in the Twentieth Century* (Economic Development Division, Paper LC/P 1847-P, United Nations Office in Chile).

¹⁸² See *Racism, Xenophobia and Markets?*, *supra* note 178, at 28.

¹⁸³ *Immigration Policy Prior to the 1930s*, *supra* note 178, at 748; see also *Fundamentals*, *supra* note 156, at 11-12 (discussing how opening the doors to lower skilled workers from poorer parts of the world skewed United States income distribution).

restrict imports of unskilled labor-intensive goods, but not necessarily both. What did New World governments actually do over this period?

In order to test for the influence of various economic and other variables, including trade and immigration policies, a summary measure of the stance of immigration policy must first be constructed. The index used by Timmer and Williamson ranges from -5.0 (very anti-immigration) to 5.0 (very liberal).¹⁸⁴ The immigration policy variable is then regressed on variables intended to capture both economic and non-economic factors, over the period 1860-1930 in the New World countries. Results indicate the presence of statistically significant lagged dependent variable (indicating "persistence" or time-delayed changes in immigration policy), as well as, the significance of the lagged relative position of unskilled labor in income distribution, as predicted *a priori*.¹⁸⁵ In other words, when the relative position of unskilled labor in income distribution in the host country improves, i.e. unskilled labor becomes more scarce, immigration policy becomes more liberal toward newcomers, but after a time lag.¹⁸⁶ A time lag is consistent with the generally slow pace of legislative enactments.¹⁸⁷ On the other hand, the larger the wage difference between unskilled labor in the source and host countries, the more restrictive is host country immigration policy.¹⁸⁸ The latter result can be reconciled with the existing literature on "quality" of immigrants, in the sense that a lower immigrant wage rate signals lower "quality" of immigrants, which through the socio-political process generates an anti-immigration sentiment.¹⁸⁹ Most telling, however, is the result that the ratio of trade to GDP is found to be insignificant in explaining immigration policy.¹⁹⁰ There is no evidence in these tests of any systematic relationship between trade policy and immigration policy, or at least, policy-makers did not appear to act as though trade and immigration policies were substitutable during the period of an open frontier in the New World.

VIII: CONCLUSION

This paper has examined the relationship between international trade and international migration from a variety of perspectives. Although there has been a prodigious amount of scholarship in

¹⁸⁴ *Immigration Policy Prior to the 1930s*, *supra* note 178, at 740-41.

¹⁸⁵ *Id.* at 751.

¹⁸⁶ *See id.*; *Racism, Xenophobia and Markets?*, *supra* note 178, at 30.

¹⁸⁷ *Immigration Policy Prior to the 1930s*, *supra* note 178, at 751.

¹⁸⁸ *Racism, Xenophobia and Markets?*, *supra* note 178, at 30-31; *see also Immigration Policy Prior to the 1930s*, *supra* note 178, at 753, 760.

¹⁸⁹ *See Immigration Policy Prior to the 1930s*, *supra* note 178, at 756-57.

¹⁹⁰ *Racism, Xenophobia and Markets?*, *supra* note 178, *Id.* at 30.

various disciplines in both of these areas, there has been very little effort to synthesize them, either within a particular discipline or across disciplines. A specific issue of focus has been the effect of trade liberalization upon incentives to migrate, and conversely, the effect of liberal international migration upon the patterns and extent of international trade. Such a query is of immediate relevance to policy-makers to ensure consistency and coordination across various policies adopted by law-makers. Unless the inter-relationship between trade and migration is both well-defined and known, it is quite possible for a policy regarding international trade, for example, to undermine the results desired from extant immigration policy.

History itself offers examples of diverse policies pursued across countries and over time. For example, the European Union chose to pursue both trade liberalization and free mobility of labor (along with other "freedoms") simultaneously during the formation of the Community. On the other hand, the United States negotiated and implemented the NAFTA trade agreement with Canada and Mexico, but NAFTA itself was concerned with free trade between these nations; immigration matters were specifically excluded from the treaty and left to other legislation. Over the course of history, nations have variously chosen to couple and de-couple trade and migration policies over different periods of time. Until the early years of the twentieth century, the United States generally promoted both free trade and free immigration, but in the latter part of the twentieth century and continuing to the present, it has chosen to actively pursue a free trade agenda, while simultaneously restricting inbound immigration.

Scholars in various disciplines have had varying levels of interest in trade and migration and have applied methods of varying degrees of rigor in analyzing trade and migration. For example, the work of sociologists, anthropologists and demographers has been principally concerned with issues related to migration, such as acculturation and assimilation of outsiders within a host country, rather than international trade in goods and services. In the past, methods used in these disciplines have primarily utilized case or cohort field studies of sample groups of individuals. More recently however, a newer generation of researchers in these disciplines has begun to turn to utilize the formal techniques of empirical economists to study assimilation and incorporation of aliens and related issues.

Political and socio-economic incorporation of aliens has also been of interest to international relations theorists and to political scientists. Political and economic incorporation of aliens, along with unimpeded transnational migration, has implications for the very definition of the sovereign state. International relations scholars have concerned themselves with the possible loss of sovereignty in the face of such migration and the acquisition of rights of transnational citizen-

ship by immigrants and others. Political scientists and public choice theorists have similarly dealt with incorporation of aliens through lobbying and ultimate political enfranchisement. Over time, the profile of the representative voter in representative democracies undergoes change and the preferred immigration policy itself evolves.

It should be observed that the disciplines mentioned above have principally dealt with various facets of the causes and consequences of migration and immigration policy. Issues relating to the inter-relationship between international trade and trade policy are conspicuously absent in most of this literature. To the extent possible, I have attempted to offer reasonable conjectures of the policy implications that might emerge when the existence of both trade and migration is embedded in frameworks proposed in political science, sociology or international relations.

In contrast to the latter disciplines, scholarship in economics has a long history of using formal analytical and empirical methods in examining trade and migration. For the most part, however, economic researchers working in these areas have proceeded along different lines and have remained largely within their sub-fields. Trade theorists have generally been concerned with explaining patterns and consequences of trade, with peripheral attention to migration. Migration has been studied by labor economists, whose dominant focus has been the effort of migration upon host country wage and skill levels, and the impact upon fiscal finances in the latter country. However, just as the immigration of workers with particular skills sets and lower wage demands is apt to displace native workers with similar skills, so too with import of goods from low wage countries. Indeed, on this basic level, importing goods or workers who produce those goods results in similar painful and disruptive consequences for certain workers in the importing country. In terms of immediate economic impacts, there is an intimate relation between trade in goods and the migration of persons.

However, even within this field, more complex and realistic structures can undermine this intimate relationship. If effects other than immediate short-term economic impacts are considered, it is clear, even to the casual observer, that trade with low wage countries is vastly different than importing low wage workers from these same countries. Unlike importation of goods, migration of persons has wide-ranging implications for cultural, linguistic, spatial and socio-political assimilation and incorporation.

A satisfactory analysis of the relationship between trade and migration with attention to economic and socio-cultural aspects of the relationship requires the integration and synthesis of work from several disciplines. At present, such a comprehensive framework does not exist. In time, one would expect more significant cross-fertilization and discourse across disciplines, and the possible emergence of a more

comprehensive framework that may be capable of empirical validation. In the present paper and for now, I have endeavored to provide an outline of a blueprint for such a synthetic framework.