

# WORLD MIGRATION AND TRADING REGIMES

*Jagdeep S. Bhandari\**

INTRODUCTION .....	170
I. LAW .....	179
<i>A. The Trading Order</i> .....	180
<i>B. Migration Rules and Regimes</i> .....	184
II. RECENT POLICY REFORMS AND THEIR SEQUENCE IN THE UNITED STATES AND EUROPE.....	188
<i>A. The United States and North American Free Trade         Agreement</i> .....	188
<i>B. The European Union</i> .....	193
III. ECONOMIC CONSIDERATIONS .....	198
<i>A. General Considerations and the Basic Trade Model</i> ...	202
<i>B. Extensions</i> .....	206
IV. SOCIAL-POLITICAL CONSIDERATIONS .....	207
V. INTEREST GROUPS OR COALITIONS .....	210
VI. OTHER DISCIPLINES: SOCIOLOGY, ANTHROPOLOGY, DEMOGRAPHY, AND INTERNATIONAL RELATIONS.....	212
CONCLUSION .....	217

---

\* Professor of Law, Florida Coastal School of Law; B.A. (Economics), M.A. (Math Economics), M.S. (Economics), University of Rochester; Ph.D. (International Economics), Southern Methodist University; LL.M. (International Law), Georgetown University Law Center; J.D., Duquesne University.

## INTRODUCTION

This paper examines the nature of the migration and trading regimes in Western industrialized nations (i.e., the United States and the European Union (EU)) through the lenses of various disciplines, including law. An important theme in the paper is the two-way relationship between the trading order and the migration regime. Specifically, I inquire into the linkage between liberalized trade and the incentives to migrate internationally. Conversely, does liberalized migration create or replace trade in goods and services across trading partners? While each of the trading and migration regimes is characterized by a labyrinth of legal rules, these regulatory aspects are firmly rooted in and reactive to other disciplines, including economics, political science, public choice, sociology, anthropology, criminology, and international relations.

Various disciplines have extensively studied both migration and trade in goods and services; but there has been very little attempt to embed the insights from various disciplines in a comprehensive framework, or even to present them in a single source that may, in time, form the blueprint for a unified analytical structure.<sup>1</sup> This gap in interdisciplinary dialogue is unsatisfactory, in that policy makers and analysts alike can profit from cross-pollination of disciplines. Understanding the link between trade and migration policies is of immediate relevance to policy makers. For example, trade liberalization may easily undo and undermine the effects of a separately chosen immigration policy if misunderstood. Thus, if policy makers were to liberalize the economy, both with respect to trade in goods and services and with respect to cross-border mobility of persons (goals of which

---

<sup>1</sup> In this sense, the experience of the physical sciences is similar in its lack of success to arrive at a unified theory of the known physical laws of nature. See, e.g., LEE SMOLIN, *THE TROUBLE WITH PHYSICS: THE RISE OF STRING THEORY, THE FALL OF A SCIENCE, AND WHAT COMES NEXT* ix–xiv (2006); PETER WOIT, *NOT EVEN WRONG: THE FAILURE OF STRING THEORY AND THE SEARCH FOR UNITY IN PHYSICAL LAW* 255–63 (2006) (both commenting on the apparent incompatibility between quantum mechanics and general relativity and the lack of success of string theory thus far in generating a grand unified “theory of everything.”). Unlike physicists, social scientists in different areas have not made serious attempts to “talk across disciplines.” But see *IMMIGRATION RESEARCH FOR A NEW CENTURY: MULTIDISCIPLINARY PERSPECTIVES* 6–7 (Nancy Foner et al. eds., 2000) [hereinafter *IMMIGRATION RESEARCH*]; Caroline Brettell & James F. Hollifield, *Migration Theory: Talking Across Disciplines*, in *MIGRATION THEORY: TALKING ACROSS DISCIPLINES* 1, 3–7 (Caroline B. Brettell & James F. Hollifield eds., 2000) [hereinafter *MIGRATION THEORY*].

are a foundational principle in the EU<sup>2</sup>), and if trade liberalization reduces the incentives to migrate, trade and migration policies may be said to be substitutable (at least *ex ante*), and it may not be possible to choose a fully autonomous migration policy.

Similar concerns apply if trade liberalization was to enhance the incentives to migrate (i.e., a complementary relationship). In fact, concern over liberalized trade leading to an undesirable increase in migration within the EU may have been at the heart of transitional labor mobility arrangements invoked by twelve of the original fifteen EU countries in the 2004 expansion of the EU (with respect to the so-called A8 countries) and the additional transitional restrictions then imposed on the latest accession countries, Bulgaria and Romania (the A2 countries) in 2007.<sup>3</sup> In the view of some, the creation of a layered concept of EU citizenship by limiting all four freedoms to only certain EU countries (the paradigm for the A8 and A2 countries in the *acquis* of European citizenship) is perhaps a needless cost because intra-EU mobility, even within the original core, remains minimal despite full worker mobility rights being accorded.<sup>4</sup> There was no deluge of workers from Spain, Portugal, or Greece during their accessions in the 1980s, despite the fact that these countries initially had per capita income levels of between one-quarter to one-half of some of the core EU countries, such as Denmark, France, and Germany.<sup>5</sup> With the availability of EU Structural

---

<sup>2</sup> See IMMIGRATION RESEARCH, *supra* note 1, at 222–23.

<sup>3</sup> The European Union expanded to twenty-five members in 2004 with the accession of ten new countries of which eight were formerly non-market economies. See Europa, *The History of the European Union, 2000–Today: A Decade of Further Expansion*, [http://europa.eu/abc/history/2000\\_today/index\\_en.htm](http://europa.eu/abc/history/2000_today/index_en.htm) (last visited Jan. 28, 2010) [hereinafter Europa.eu]. These A8 countries are Poland, Slovenia, Slovakia, Czech Republic, Estonia, Latvia, Lithuania, and Hungary. Bernard Ryan, *The Accession (Immigration and Worker Authorisation) Regulations 2006*, 37 INDUS. L.J. 75, 75 (2008). The other two countries in the 2004 expansion were Malta and Cyprus, and no labor restrictions were imposed on the latter. See Europa.eu, *supra*.

<sup>4</sup> See, e.g., Dimitry Kochenov, *IUS Tractum of Many Faces: European Citizenship and the Difficult Relationship Between Status and Rights*, 15 COLUM. J. EUR. L. 169, 214–19, 234–35 (2009); see also Marlene Wind, *Post-National Citizenship in Europe: The EU as a “Welfare Rights Generator”?*, 15 COLUM. J. EUR. L. 239, 248–49 (2009).

<sup>5</sup> In fact, Greece, Spain, and Portugal were also subject to transitional labor mobility restrictions. See Thomas Donohoe, *Here . . . Fishy, Fishy, Physician: The Effect of European Union Mandates on Physician Movement in the European Union*, 18 IND. INT’L & COMP. L. REV. 437, 466 n.270 (2008). Greece acceded to the EU in 1981 but did not receive full labor mobility rights until 1986, while Spain and Portugal were accorded full mobility rights in 1992, six years after

Funds for infrastructural and other support, both Spain and Greece have now reached per capita income levels close to eighty percent of the community-wide average.<sup>6</sup>

It is unclear whether the same rationale could usefully apply to U.S.-Mexican labor mobility. Mexican gross domestic product (GDP) per capita is less than one-sixth of that in the United States and the gap has, if anything, grown since the inception of the North American Free Trade Agreement (NAFTA) accords.<sup>7</sup> Mexican infrastructure, particularly its educational infrastructure, remains seriously inadequate and there are no structural funds available (of the type in the EU Structural Fund Facility) from the United States and Canada to assist Mexico.<sup>8</sup> In addition, some might argue that labor mobility already exists between the United States and Mexico to the extent that there is a continuing influx of low-skilled Mexicans to the United States.<sup>9</sup>

Trade in goods, however, is relatively ubiquitous in nature and primarily impacts specific sectors of producers, while migrants appear to be much more visible everywhere in the host country.<sup>10</sup> Both in the United States and in the EU, issues relating to migration have always been much more in the public (and legislative) spotlight than free trade pacts.<sup>11</sup>

Therefore, voters in liberal democracies are likely to have much

---

their 1986 accessions to the EU. *Id.*

<sup>6</sup> Press Release, European Union, European Structural Funds Contribute to Higher Growth, New Jobs and Sustainable Development in the Least Developed Regions (July 17, 2003), available at <http://europa.eu/rapid/PressReleasesAction.do?reference=IP/03/1034&format=PDF&aged=1&language=EN&guiLanguage=en>.

<sup>7</sup> Bradley J. Condon & J. Brad McBride, *Do You Know the Way to San José?: Resolving the Problem of Illegal Mexican Migration to the United States*, 17 GEO. IMMIGR. L.J. 251, 270 (2003).

<sup>8</sup> Stephen Zamora, *A Proposed North American Regional Development Fund: The Next Phase of North American Integration Under NAFTA*, 40 LOY. U. CHI. L.J. 93, 120–25 (2008).

<sup>9</sup> See, e.g., Joan M. Smith, *North American Free Trade and the Exploitation of Working Children*, 4 TEMP. POL. & CIV. RTS. L. REV. 57, 84 n.197 (1995).

<sup>10</sup> *Contra* Dina Francesca Haynes, *Exploitation Nation: The Thin and Grey Legal Lines Between Trafficked Persons and Abused Migrant Laborers*, 23 NOTRE DAME J.L. ETHICS & PUB. POL'Y 1, 21–22 (2009).

<sup>11</sup> Not since the early days of NAFTA in 1993–1994 have free trade issues occupied the attention of the American public to any significant degree, although its cousins, “off shoring” or “near shoring,” do receive mention. Similarly, the EU labor mobility has been the subject of heated debate (particularly in tabloids) more so than trade in goods. Perhaps this is because the creation of a single market for goods is essentially regarded as already completed business. See *Outsourcing in Eastern Europe: The Rise of Nearshoring*, ECONOMIST, Dec. 3, 2005, at 65; *Relocating the Back Office: Offshoring*, ECONOMIST, Dec. 13, 2003, at 65.

more clearly articulated preferences regarding migration than trade. Regardless of their expressed intensity, are voters and their elected representatives (to the extent that a meaningful democratic franchise exists) symmetrical in their preferences regarding trade and migration? Is the average voter likely to be both pro-trade and pro-migration, or is there a voting or preference paradox? It is only a short step from the preferences of voters to the formation and behavior (including lobbying efforts) of coalitions and interest groups. This area is the domain of public choice theorists and of some economists with crossover interests. Game theorists have also contributed to this strand of literature; coalitions and interest groups can be pitted against one another in a non-zero sum, non-cooperative game.

The work of public choice theorists and interest group analysts in examining the linkages between trade and migration policies and outcomes is still relatively recent in origin and, for that reason, not yet of encyclopedic dimensions. By contrast, the analysis of both trade and migration has an extensive and venerable lineage in the work of trade and labor theorists; although, here too trade economists have focused on the main gains from free trade in goods and its limitations, while labor economists have primarily dealt with the causes and consequences of immigration (and to some extent emigration, including the associated phenomena of the “brain drain” and remittances to source countries).<sup>12</sup>

Trade liberalization leads to a convergence in factor prices (returns to labor, land, and capital), which, in turn, diminishes the incentives of labor for economic migration.<sup>13</sup> Similarly, if

---

<sup>12</sup> TIMOTHY J. HATTON & JEFFREY G. WILLIAMSON, GLOBAL MIGRATION AND THE WORLD ECONOMY: TWO CENTURIES OF POLICY AND PERFORMANCE 313–37 (2005) [hereinafter GLOBAL MIGRATION AND THE WORLD ECONOMY]; IMMIGRATION RESEARCH, *supra* note 1, at 3; James F. Hollifield, *The Politics of International Migration: How Can We “Bring the State Back in”?*, in MIGRATION THEORY, *supra* note 1, at 137, 151.

<sup>13</sup> I use the qualifier “economic” in this context because a good deal of cross migration can occur for family unification. Indeed, the statutory quotas for family-based legal immigration in the United States are far greater than those for employer-based immigration. Immigration & Nationality Act (INA) § 201(c)–(d), 8 U.S.C. § 1151(c)–(d) (2006). Sometimes, mass migration occurs in response to catastrophic events such as wars or forced re-settlements and recent history is replete with such examples as the mass movements of people during and after World War II, the Balkan Conflict of 1992–1995, and the Rwandan exodus in Africa in 1994. See, e.g., Todd Howland, *Refoulement of Rwandan Refugees: The UNHCR’s Lost Opportunity to Ground Temporary Refuge in Human Rights Law*, 4 U.C. DAVIS J. INT’L L. & POL’Y 73, 73–75 (1998); Eric Rosand, *The Kosovo Crisis: Implications of the Right to Return*, 18 BERKELEY J.

workers were permitted free mobility across borders but trade was restricted, the same result would occur, i.e., wage and rental rates across countries would converge and eventually the basis for mutually gainful trade would be eliminated.<sup>14</sup> States may indeed, in this stark world, choose to trade in goods or people.

When confronted with actual evidence for transatlantic trade and migration for the period until the early twentieth century, the observed pattern was that of both increased trade and increased migration between the Old and New Worlds.<sup>15</sup> Empirical inconvenience aside, the classic model is based upon restrictive assumptions of principles such as perfect competition, full information, and no transition or transport costs.<sup>16</sup> Later work in the discipline of trade theory has progressively allowed for more realistic assumptions such as imperfect competition, factor immobility (i.e., the fact that certain factors of production are immobile across sectors), “core-periphery” or agglomeration structures, and other varieties of market rigidities or deviations from the competitive framework.<sup>17</sup> In each case, even on a theoretical basis, the predicted link between trade and migration is not of substitutability, but more plausibly that of complementarity. Hence, increased trade may lead to increased migration for sound economic reasons. On the other hand, the converse proposition that increased migration may lead to more

---

INT’L L. 229, 229–30 (2000); Kathleen Sarah Galbraith, Comment, *Moving People: Forced Migration & International Law*, 13 GEO. IMMIGR. L.J. 597, 597–602 (1999).

<sup>14</sup> This assumes that the *status quo ante* is that of both restricted trade and restricted migration. If trade were already substantially liberalized (as is the current case), but migration was not, the incremental gains (at least from the point of view of world welfare) from liberalization of migration may be much greater than whatever could be wrenched out of further reductions in already low trade barriers. See, e.g., WORLD BANK, GLOBAL ECONOMIC PROSPECTS: ECONOMIC IMPLICATIONS OF REMITTANCES AND MIGRATION 25–26 (2006), [http://www-wds.worldbank.org/external/default/WDSContentServer/WDS/IB/2005/11/14/000112742\\_20051114174928/Rendered/PDF/343200GEP02006.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDS/IB/2005/11/14/000112742_20051114174928/Rendered/PDF/343200GEP02006.pdf) [hereinafter GLOBAL ECONOMIC PROSPECTS]; Howard F. Chang, *The Economic Impact of International Labor Migration: Recent Estimates and Policy Implications*, 16 TEMP. POL. & CIV. RTS. L. REV. 321, 321 (2007).

<sup>15</sup> See, e.g., TIMOTHY J. HATTON & JEFFREY G. WILLIAMSON, THE AGE OF MASS MIGRATION: CAUSES AND ECONOMIC IMPACT 236–39 (1998); Timothy J. Hatton & Jeffrey G. Williamson, *A Dual Policy Paradox: Why Have Trade and Immigration Policies Always Differed in Labor-Scarce Economies?*, in THE NEW COMPARATIVE ECONOMIC HISTORY: ESSAYS IN HONOR OF JEFFREY WILLIAMSON 218–20, 224–25 (Timothy J. Hatton et al. eds., 2007) [hereinafter THE NEW COMPARATIVE ECONOMIC HISTORY].

<sup>16</sup> See Thomas L. Evans, *The Taxation of Nonshareholder Contributions to Capital: An Economic Analysis*, 45 VAND. L. REV. 1457, 1478 (1992).

<sup>17</sup> See PAUL KRUGMAN, GEOGRAPHY AND TRADE 5–7, 101 (1991).

trade is only weakly supported, if at all. However, these theoretical results from more sophisticated economic structures do not accord well with recent economic reality in the EU. It is well known that after the southern expansion of the EU in the 1980s, to include Greece and then Spain and Portugal, trade in goods and services certainly increased between the Southern Cone countries and the original EU-12, but there was no sharply increased migration between the new Southern Cone and the inner core group.<sup>18</sup> It appears that man is not a *homo economicus* alone and that in some cases sociological, cultural, or other similar reasons can overwhelm purely economic incentives.<sup>19</sup>

Political science and public choice scholars typically have not approached trade and migration policies in a single or comprehensive framework. Much of the political science literature deals with enfranchisement of once-foreign citizens and their participation in domestic political processes. Empirical scholars report interesting variations in political involvement at both local and wider levels by ethnic groups.<sup>20</sup> Most published works by political economists are focused on migration or labor mobility rather than on free trade issues.<sup>21</sup> In this context, I shall discuss the relative deprivation hypothesis which suggests that migration occurs more in response to perceived deprivation within one's reference group than because of actual aggregate differences in international per capita GDP levels, i.e., that powerful demonstration effects are at work. The relative deprivation hypothesis, in political theory, is a distant relative of the self-selection hypothesis for migration popularized by labor economists. In fact, the self-selection and relative deprivation hypotheses are important bridges to interest group analysis that deals with which groups in society are either pro- or anti-

---

<sup>18</sup> See Zamora, *supra* note 8, at 96–98.

<sup>19</sup> Alternatively, one may surmise that even the more sophisticated models of modern economics are still too simple to account for the full spectrum of rational or extra-rational economic incentives and behavior. Certainly, this hard lesson has been learned in the context of the seeming irrationality of the stock market in recent times. See GEORGE AKERLOF & ROBERT SHILLER, *ANIMAL SPIRITS: HOW HUMAN PSYCHOLOGY DRIVES THE ECONOMY AND WHY IT MATTERS FOR GLOBAL CAPITALISM* ix (2009).

<sup>20</sup> See Aida Paskeviciute & Christopher J. Anderson, *Immigrants, Citizenship, and Political Action: A Cross-National Study of 21 European Democracies* 1, 21 (Aug. 30, 2007), <http://www.apsanet.org/~ep/papers/2008winner.pdf>.

<sup>21</sup> See Jagdeep S. Bhandari, *Migration and Trade Policies: Symmetry Or Paradox?*, 6 J. INT'L BUS. & L. 17, 33 (2007) [hereinafter Bhandari, *Migration and Trade Policies*].

immigration/trade.

Both the relative deprivation hypothesis of political science and the interest group models of public choice theorists are founded upon economic issues or pocket-book issues of the affected groups in the source and host countries. As discussed in this paper, more recent work in international political economy or international relations suggests that traditional “push-pull” factors were probably significant in explaining cross-border migration until the end of World War II. Thereafter, the predominance of the trading state (in the words of the political philosopher Robert Rosecrance) in the United States was replaced by the importance of the liberal rights and the emergence of a “migration state,” and economic explanations took a back seat to political/ideological factors in explaining migration cycles in the ensuing decades after 1946.<sup>22</sup>

The self-selection hypothesis predicts that international migration is closely tied to two factors: the relative skills of prospective migrants versus natives, and the extant degrees of inequality in income distribution in the origin and destination countries.<sup>23</sup> Migrants moving to countries with more unequal income distributions will tend to be more highly skilled (i.e., positively selected) than those migrants who move to more egalitarian societies.<sup>24</sup> The result has clear implications for interest group theory in that skilled natives in destination countries with highly skewed income distributions will tend to be anti-immigrant in their attitudes. At the same time, the median or average voter in these countries is not at a high skill level and will oppose unskilled labor migration. A further implication is that liberal democratic societies tend to be responsive to the preferences of the median voter so that most such societies would be expected to oppose low skilled inbound labor migration. This effect is absent in rich autocratic regimes. Similarly, unskilled labor in liberal democracies is likely to oppose free trade with poorer countries because it is likely to threaten their economic security through low priced imports. Even if semi-skilled or unskilled labor (which comprises the bulk of the median voter class in industrialized countries)<sup>25</sup> is able to secure legislative

---

<sup>22</sup> See *id.*; see also Barry R. Chiswick, *Are Immigrants Favorably Self-Selected?: An Economic Analysis*, in *MIGRATION THEORY*, *supra* note 1, at 61, 70, 73.

<sup>23</sup> Chiswick, *supra* note 22, 71–72.

<sup>24</sup> See *id.*

<sup>25</sup> W. Stanley Siebert, *Labour Market Regulation in the EU-15: Causes &*

action to restrict low priced imports, new phenomena such as “offshoring” or “nearshoring” may be able to substitute for inbound migration.<sup>26</sup> Thus, there may be little in the way of long term escape for such workers in developed countries as they are faced with an inexorable onslaught of global integration. This configuration of voter preferences does tend to find support in repeated voter attitude surveys, both in the United States and the EU.<sup>27</sup>

This paper also discusses, to some extent, approaches to migration and trade in disciplines such as sociology, anthropology, international relations, and urban studies. Sociologists and anthropologists have examined areas such as assimilation of foreigners into the host society (which is an important government priority in several EU countries), as well as related issues of segregation and possible marginalization from economic and political society in host countries.<sup>28</sup> Marginalization and exclusion from mainstream society on the basis of race and ancestry is the domain of related disciplines of ethnic studies or urban analysis, which seek to analyze urban concentrations along socio-ethnic lines.<sup>29</sup> These agglomeration effects are reminiscent of core-periphery models of trade theory.<sup>30</sup>

International political economy or international relations theory offers perspectives on migration and trade that are distinct from those in economics, public choice, sociology, or anthropology. At the outset it may be noted that liberal democracies that are close trade partners seldom wage war with one another for the consequences of doing so would also include extremely costly disruption in beneficial trade and economic relations between them.<sup>31</sup> There have, of course, been contested

---

*Consequences-A Survey* 8 (Inst. for the Study of Labor, Discussion Paper No. 2430, 2006), <http://ftp.iza.org/dp2430.pdf>.

<sup>26</sup> See *Outsourcing in Eastern Europe: The Rise of Nearshoring*, *supra* note 11, at 65; *Relocating the Back Office: Offshoring*, *supra* note 11, at 65.

<sup>27</sup> See European Social Survey, <http://www.europeansocialsurvey.org> (last visited Jan. 28, 2010); International Social Survey Programme, <http://www.issp.org> (last visited Jan. 28, 2010); World Values Survey, <http://www.worldvaluessurvey.org> (last visited Jan. 28, 2010).

<sup>28</sup> See Jagdeep S. Bhandari, *International Migration and Trade: A Multi-Disciplinary Synthesis*, 6 RICH. J. GLOBAL L. & BUS. 113, 160 (2006) [hereinafter Bhandari, *International Migration and Trade*].

<sup>29</sup> *Id.* at 160–61.

<sup>30</sup> *Id.* at 161–63.

<sup>31</sup> Mansoob S. Mushed & Dawood Mamoon, *The Consequences of Not Loving Thy Neighbor as Thyself: Trade, Democracy and Military Explanations Behind India Pakistan Rivalry* 4–6 (Munich Pers. RePEc Archive, Paper No. 10429, 2008), <http://mpira.ub.uni-muenchen.de/10429/1/>

issues between countries with respect to trade that have led to low level economic belligerency in the form of trade sanctions.<sup>32</sup> Occasionally, countries do summon assistance from their military establishments to safeguard national borders from unwanted migrants.<sup>33</sup> Aside from this observation, creation of social or political groups or coalitions is also as important an ingredient in international relations analysis as it is in public choice. With creation of socio-political coalitions, transnational communities and accompanying notions of transnational rights or “universal personhood” emerge.<sup>34</sup>

Migration, unlike trade, can change the ethnic composition of societies and disrupt what political scientists describe as the “demographic boundary maintenance regime.”<sup>35</sup> Boundaries of the Weberian nation-state<sup>36</sup> start to become increasingly unimportant with respect to definition of the population, the labor force (a portion of which may be offshore), and even with regard to money in circulation and national wealth. States may persist in a form of “organized hypocrisy” (the term is that of the international relations theorist, Stephen Krasner) to define inviolate boundaries recognized in the Grotian tradition of international nationhood and sovereignty.<sup>37</sup> International political economy theorists argue, with some persuasiveness, that modern democracies are trapped in an unpleasant Hobson’s choice or a “liberal paradox.”<sup>38</sup> The economic logic is that of openness (to trade and migration), but powerful coalitions and nationalism dictate the political logic of closure and restrictionism.

Section I of this article briefly discusses the legal contours of trade and migration regimes. Section II briefly addresses the fitful liberalization of trade and migration in the United States

---

MPRA\_paper\_10429.pdf.

<sup>32</sup> See Peter H. Schuck, *Law and the Study of Migration*, in *MIGRATION THEORY*, *supra* note 1, at 187, 198.

<sup>33</sup> Hollifield, *supra* note 12, at 159.

<sup>34</sup> *Id.* at 158.

<sup>35</sup> See REY KOSLOWSKI, *MIGRANTS AND CITIZENS: DEMOGRAPHIC CHANGE IN THE EUROPEAN STATE SYSTEM* 9 (2000).

<sup>36</sup> DANIEL CHERNILO, *A SOCIAL THEORY OF THE NATION STATE* 49 (2007).

<sup>37</sup> STEPHEN D. KRASNER, *POWER, THE STATE, AND SOVEREIGNTY: ESSAYS ON INTERNATIONAL RELATIONS* 211 (2009).

<sup>38</sup> See James F. Hollifield et al., *The Liberal Paradox: Immigrants, Markets and Rights in the United States*, 61 *SMU L. REV.* 67, 67 (2008). A Hobson’s choice is an “apparently free choice when there is no real alternative.” See Merriam-Webster’s Online Dictionary, *Hobson’s Choice*, [http://www.merriam-webster.com/dictionary/Hobson’s](http://www.merriam-webster.com/dictionary/Hobson's) (last visited Jan. 28, 2010).

and EU. Section III discusses the principal theoretical underpinnings of the frameworks proposed by trade and labor theorists in generating predictions and hypotheses regarding the inter-relationship between trade and migration. Sections IV and V, respectively, turn to political science and public choice/interest group frameworks to examine the trade and migration linkage through the lenses of these disciplines. Section VI reviews the work and findings with respect to migration and trade in a variety of disciplines such as sociology, anthropology and international relations. The final section offers some concluding observations.

### I. LAW

In many respects, law itself is not an autonomous discipline.<sup>39</sup> This is all the more so in areas such as trade or migration.<sup>40</sup> All independent sovereign states have bodies of law relating to and governing external trade and migration with varying degrees of detail, both as actually “law on the books” or as enforced by custom or practice.<sup>41</sup> However, the substantive content of the trading regimes is derived (usually in piecemeal fashion) from other disciplines, notably economics, political science, public choice, criminology, and other related areas. The enforcement of regulations in these areas, moreover, is also reactive to political forces such as the “political business cycle” and budgetary considerations, which themselves are traceable to political

---

<sup>39</sup> See RICHARD A. POSNER, *FRONTIERS OF LEGAL THEORY* 159 (2001); Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962–1987*, 100 *HARV. L. REV.* 761, 767 (1987).

<sup>40</sup> Perhaps in procedural areas such as evidence or civil procedure, law may have autonomous legal content. This may also be the case in fields such as constitutional law in which legal analysis is informed by constitutional text and judicial precedent, although these too may be rooted in notions of ordered liberty and natural rights, such as extra-legal norms.

<sup>41</sup> Thus, traditional migration states such as the United States, Canada, and Australia have had immigration and refugee rules in effect for much longer than the new immigration countries in the Southern Cone of Europe, Italy, or Greece (which were once emigrant nations), or Japan and South Korea. See Shuck, *supra* note 32, at 190. See generally CANADIAN IMMIGRATION POLICY FOR THE 21ST CENTURY 1–18 (Charles M. Beach et al. eds., 2004). At one time, Canada and Australia (along with a host of now-independent states such as India, Sri Lanka (Ceylon), Myanmar (Burma), etc.) were crown colonies of the British Empire and were permitted little discretion in establishing their own trade or migration policies. See generally David Clingingsmith & Jeffrey G. Williamson, *India's De-Industrialization Under British Rule: New Ideas, New Evidence* 1–5 (Harvard Inst. of Econ. Research, Discussion Paper No. 2039, 2004), <http://www.economics.harvard.edu/pub/hier/2004/HIER2039.pdf>.

realities and the inexorable “guns or butter” tradeoffs of economics.

### A. *The Trading Order*

The trading regime, both at the multilateral and domestic levels, has been guided in the post-World War II period by the twin principles of superiority of free trade (which is grounded in economic principles) and “fair trade” (which is a bow both to the actual imperfection of the market and the importance of non-economic factors such as cultural assimilation, threats to nationhood and the like which may call for derogation from free trade).<sup>42</sup> Free traders won the day shortly prior to the cessation of hostilities in the world conflict, and, although the great powers (victors apparent) could not agree on the establishment of a world trading organization with teeth, the world monetary and payments system was to be based upon the principles and rules of the International Monetary Fund (IMF).<sup>43</sup> At the same time, the

---

<sup>42</sup> Chiswick, *supra* note 22, at 71–73.

<sup>43</sup> The decision to establish the IMF was made at the December 1944 Bretton Woods Conference. See GLOBAL HEALTH WATCH 2005-2006: AN ALTERNATIVE WORLD HEALTH REPORT 299 (2005), <http://www.ghwatch.org/2005report/ghw.pdf> [hereinafter GLOBAL HEALTH WATCH]. The Soviet Union did not accede to the Articles of Agreement of the IMF and it was not until the dissolution of the Soviet Union that Russia joined the IMF in 1992. Ervin Hexner, *The Soviet Union and the International Monetary Fund*, 40 AM. J. INT'L L. 637, 638–39 (1946); Michael Camdessus, Managing Dir., IMF, Address at the U.S.-Russia Business Council: Russia and the IMF: Meeting the Challenges of an Emerging Market and Transition Economy (Apr. 1, 1998), <http://www.imf.org/external/np/speeches/1998/040198.htm>. The International Bank for Reconstruction and Development (IBRD), of which the World Bank is one arm, was established at the same time as the IMF. See International Bank for Reconstruction and Development, <http://go.worldbank.org/SDUHVGE5S0> (last visited Jan. 28, 2010). The proposed International Trade Organization (ITO) never came into being due to American resistance to the idea of ceding any degree of sovereignty to a multilateral body. See Philip M. Nichols, *Extension of Standing in World Trade Organization Disputes to Nongovernment Parties*, 25 U. PA. J. INT'L ECON. L. 669, 677 n.40 (2004). The United States had no such similar objection to the establishment of the IMF or IBRD; both were to be based in Washington, D.C. and the world monetary system was anchored to the supremacy of the U.S. dollar and the U.S. economy. A negotiating forum for trade issues, the General Agreement on Trade and Tariffs (GATT) was established in 1947 (minus the USSR) and was succeeded in 1995 by the World Trade Organization (WTO). See KATHERINE TOPULOS, DUKE UNIV. SCH. OF LAW, RESEARCH GUIDES: GATT/WTO 1 (2009), <http://www.law.duke.edu/lib/researchguides/pdf/gatt.pdf>. But the WTO is still not the world trade equivalent of the IMF and lacks the latter's leverage over borrower countries. There never has been a world migration organization and, even within the EU, a common comprehensive migration policy still does not exist.

World Bank was to devote its resources to the reconstruction of war-ravaged Europe along market principles.<sup>44</sup> Countries in the Soviet “area of influence” (which was a euphemism used in an informal accord between Stalin and Churchill) were not members of either organization, both of which had a virtual Anglo-American voting bloc veto.<sup>45</sup> Nor was the Soviet Union likely to concede the market and political organization of countries in Europe that it had wrested back from Germany over the blood of some twenty million Soviet lives.<sup>46</sup>

Free trade, or free trade tempered by fair trade management, was not always the theoretical or political favorite. For several decades after the Industrial Revolution (in the late nineteenth century in Britain), “mercantilists” ruled the economic day; exports were “good” and imports “bad” because imports led to “specie” (which meant gold reserves) outflows or drain on national wealth.<sup>47</sup> Mercantilism rose to its zenith during the calamitous Great Depression of the 1930s in the United States and other industrialized countries as country after country raised tariff rates to exclude foreign imports.<sup>48</sup> United States and European tariff policies during this period were not the only causes of the Great Depression, for monetary policy in the United States (and in other industrial countries) was equally misguided in that economic decline was sought to be contained by severe monetary contraction.<sup>49</sup> Even in more recent times during the Cold War

---

<sup>44</sup> GLOBAL HEALTH WATCH, *supra* note 43, at 299.

<sup>45</sup> See William N. Gianaris, *Weighted Voting in the International Monetary Fund and the World Bank*, 14 *FORDHAM INT'L L.J.* 910, 918, 940 (1991).

<sup>46</sup> Kenneth J. Keith, *Rights and Responsibilities: Protecting the Victims of Armed Conflict*, 48 *DUKE L.J.* 1081, 1082 (1999).

<sup>47</sup> See Daniel J. Gifford, *Trade & Tensions*, 15 *MINN. J. INT'L L.* 297, 297–98 (2006).

<sup>48</sup> See Smoot-Hawley Tariff Act of 1930, ch. 497, 46 Stat. 590 (codified in scattered sections of the U.S.C.) (authorizing tariff increases). United States tariff increases led, as predicted, to a round of retaliatory European tariff increases on U.S. goods and a large overall contraction in world trade. See *Protectionism: The Battle of Smoot-Hawley*, *ECONOMIST*, Dec. 20, 2008, at 76. Economic contraction and labor unrest coupled with the terms of the Versailles Treaty may have sown the seeds for unrest leading to the empowerment of extremist parties in Germany and elsewhere. See MARGARET MACMILLAN, *PARIS 1919: SIX MONTHS THAT CHANGED THE WORLD* 479 (2003); RICHARD OVERY, *THE ORIGINS OF THE SECOND WORLD WAR* 3 (3d ed. 2008).

<sup>49</sup> See MILTON FRIEDMAN & ANNA J. SCHWARTZ, *A MONETARY HISTORY OF THE UNITED STATES 1867–1960*, at 300–01 (Princeton Univ. Press 1990) (1963). Once again, this was due to the fallacy of composition. While individual thrift might well be desirable in periods of personal economic deprivation, on an aggregate basis, national thrift or increased savings surely exacerbates economic contraction.

and mistrust of American-style capitalism, several developing countries purposely sought to close their economies to external influences through import substitution policies.<sup>50</sup> Closure to foreign trade with poor economic consequences was followed in countries such as India under Marxist Leninist influence, while the political thought influence of writers, such as Raul Prebisch, led to shunning foreign investment rationalized through the intellectual edifice of the Latin American “dependencia” models.<sup>51</sup> But starting with the ascendancy of the Reagan-Thatcher free market beliefs and the demise of the Soviet state, most nations in the world since the early 1990s have rapidly re-opened their economies to international trade and foreign investment as well as, inadvertently, to large cross-border migration flows.<sup>52</sup>

The global preference for liberal trade has been expressed in legal terms in several international trade treaties and conventions, notably, the General Agreement on Trade and Tariffs/World Trade Organization (GATT/WTO) accords, and in regional accords such as the Treaty of Rome (after Maastricht, the EU Treaty) and NAFTA.<sup>53</sup> Regional trading pacts number in

---

<sup>50</sup> See Eugene R. Carrasco, *Opposition, Justice, Structuralism, and Particularity: Intersections Between Latcrit Theory and Law and Development Studies*, 28 U. MIAMI INTER-AM. L. REV. 313, 323 (1997); Alan Taylor, *Latin America and Foreign Capital in the Twentieth Century: Economics, Politics and Institutional Change* 11–12, 16 (Hoover Inst., Working Paper No. E-98-1, 1999), <http://hoohila.stanford.edu/workingpapers/getWorkingPaper.php?filename=E-98-1.pdf>.

<sup>51</sup> See Taylor, *supra* note 50, at 19; see also Mary Kopczynski, *Robin Hood Versus the Bullies: Software Piracy and Developing Countries*, 33 RUTGERS COMPUTER & TECH L.J. 299, 317 (2007). A more extreme example of closure to the outside world (not merely economic closure) occurred during the Maoist years in China in the 1960s and later even in some European nations such as Albania under Hoxha. See Daniel Johnson, *East Seats West: China's Accession to the World Trade Organization and the Rise of a Potent Threat to the North Carolina Furniture Industry*, 29 N.C. J. INT'L L. & COM. REG. 83, 104 (2003); Rett R. Ludwikowski, *Constitution Making in the Countries of Former Soviet Dominance: Current Development*, 23 GA. J. INT'L & COMP. L. 155, 205–06 (1993).

<sup>52</sup> Most recently, during the world economic slowdown of 2008–2009, the presence of “contagion effects” (transmission of business cycles from one country to another) have led to a global contraction of trade. See WORLD BANK, *GLOBAL ECONOMIC PROSPECTS: COMMODITIES AT THE CROSSROADS* 34 (2009), [http://siteresources.worldbank.org/INTGEP2009/Resources/10363\\_WebPDF-w47.pdf](http://siteresources.worldbank.org/INTGEP2009/Resources/10363_WebPDF-w47.pdf). Anti-globalists have occasionally become shriller in their usual protests at the IMF-World Bank or at WTO meetings, for example, at the April 2009 G-20 London meetings. See Landon Thomas, Jr., *Protest in London's Financial District Turns Violent*, N.Y. TIMES, Apr. 2, 2009, at A14. Despite some rollback in international economic relations for a short cycle, there is no risk of reversion to the days of the Great Depression autarky or to Cold War isolationism.

<sup>53</sup> NAFTA was implemented into U.S. domestic legislation in 19 U.S.C. §

the scores by now and the special mutual concessions contained in them may, in the view of some authors, undermine the relevance of multilateral or worldwide trading accords such as the GATT/WTO.<sup>54</sup> The preference for regional accords is not difficult to explain. First, negotiating costs are inevitably lower with fewer parties involved (a handful at most instead of scores of countries).<sup>55</sup> Second, prospective regional partners are generally in close geographical proximity with each other and frequently have similar socio-political structures and values (for example, the United States and Canada).<sup>56</sup> And third, regional trading partners are not bound by the unconditional most favored nation clause of the GATT/WTO.<sup>57</sup> Thus regional trading negotiators may not be able to wait at the sidelines for trade concessions to come their way, by way of negotiations among remote partners, without offering concessions of their own.<sup>58</sup> The EU accords now include twenty-seven member states following the most recent accessions in 2007 and have come to possess international legal personality beyond trading rules alone.<sup>59</sup>

Fair trade rules are intended to preserve confidence in the

---

3311 and succeeded the Canada-U.S. Free Trade Agreement (CAFTA) to include Mexico. 19 U.S.C. § 3311 (2006); C. O'Neal Taylor, *Fast Track, Trade Policy, and Free Trade Agreements: Why the NAFTA Turned into a Battle*, 28 GEO. WASH. J. INT'L L. & ECON. 1, 8 (1995). 1994 and 1995 were watershed years for trade agreements. NAFTA was ratified in 1994; then in 1995, the WTO accord absorbed GATT 1994, which included all GATT amendments made until that time. See World Trade Organization, WTO Legal Texts, [http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm) (last visited Jan. 28, 2009) (providing digital versions of *The Uruguay Round Agreements*, Marrakesh Declaration of 15 April 1994, *Agreement Establishing the World Trade Organization*, GATT 1947, and other international agreements pertaining to transnational trade).

<sup>54</sup> See JAGDISH BHAGWATI, *THE WORLD TRADING SYSTEM AT RISK* 58, 73 (1991). Establishment of regional trading accords is expressly permitted under the GATT/WTO accords. See *Multilateral Agreements on Trade in Goods: Understanding on the Interpretation of Article XXIV of GATT 1994*, Apr. 5, 1994, *Agreement Establishing the World Trade Organization*, Annex 1A, Legal Instruments—Results of the Uruguay Round, 33 I.L.M. 1125, 1161 (1994).

<sup>55</sup> Chris Brummer, *The Ties that Bind? Regionalism, Commercial Treaties, and the Future of Global Economic Integration*, 60 VAND. L. REV. 1349, 1361 (2007).

<sup>56</sup> Sungjoon Cho, *Breaking the Barrier Between Regionalism and Multilateralism: A New Perspective on Trade Regionalism*, 42 HARV. INT'L L.J. 419, 425 (2001).

<sup>57</sup> See Loretta F. Smith, *The GATT and International Trade*, 39 BUFF. L. REV. 919, 941 (1991).

<sup>58</sup> General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A11, 55 U.N.T.S. 194 [hereinafter GATT].

<sup>59</sup> Francis J. Conte, *Sink or Swim Together: Citizenship, Sovereignty, and Free Movement in the European Union and the United States*, 61 U. MIAMI L. REV. 331, 343 (2007).

trading regime by permitting carve-outs or derogations in at least two types of circumstances.<sup>60</sup> In one set of circumstances, derogation from the play of free market forces is expressly permitted to protect certain privileged sectors or industries.<sup>61</sup> Both the EU and the United States have agricultural price support subsidies in place (termed the Common Agricultural Policy (CAP) in the EU).<sup>62</sup> Another example is the escape clause or emergency action to limit disruption caused by an unforeseen, but market-driven surge in imports.<sup>63</sup> Yet another set of fair trade rules are “market making” rules by design; they are intended to counter predatory pricing practices by countries or companies by authorizing countervailing duties or anti-dumping duties respectively and by prohibiting export subsidies.<sup>64</sup> Both anti-dumping and export subsidies interfere with the free play of market-determined prices and, hence, fair trade rules in this context are meant to safeguard against such predation and mimic free market behavior.<sup>65</sup>

As observed earlier, international trade law has no autonomous or independent theoretical basis of its own and the content of trade rules is derived from other disciplines, notably economics and interest group theory. I shall turn to these disciplines, and others, below.

### *B. Migration Rules and Regimes*

In contrast to the world trading order, there is no global migration regime or world migration body.<sup>66</sup> There are few UN

---

<sup>60</sup> Bhandari, *Migration and Trade Policies*, *supra* note 21, at 24.

<sup>61</sup> See, e.g., Frederick M. Abbot, *GATT and the European Community: A Formula for Peaceful Coexistence*, 12 MICH. J. INT'L L. 1, 36 (1990).

<sup>62</sup> See, e.g., Consolidated Version of the Treaty Establishing the European Community, art. 33, Dec. 24, 2002, 2002 O.J. (C 325) 48.

<sup>63</sup> See GATT, *supra* note 58, art. XIX.

<sup>64</sup> *Id.* art. VI.

<sup>65</sup> Anti-Dumping and Countervailing Duty rules are contained in Art. VI of the GATT. *Id.* art. VI. Export subsidy proscriptions are in Article XVI. *Id.* art. XVI. Domestic legislation in most countries in the EU and in the United States contain a plethora of other export control regulations for foreign policy and national security, many of which are scattered as piecemeal legislation. See Peter Lichtenbaum, *Export Controls in a Changing World*, in COPING WITH U.S. EXPORT CONTROLS 345, 347 (2004) (providing information on U.S. export control legislation).

<sup>66</sup> The International Organization for Migration is an intergovernmental secretariat based in Switzerland. The organization produces a number of publications and policy briefs, as well as data compilations. INT'L ORG. FOR MIGRATION, THE INTERNATIONAL ORGANIZATION FOR MIGRATION IN BRIEF (2010), <http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/publis>

Conventions that deal with specific areas, such as stateless persons, refugee status, and human trafficking.<sup>67</sup> Two conventions of the International Labour Organization (ILO) are of specific relevance to migrants.<sup>68</sup> Not many countries have ratified the ILO Conventions<sup>69</sup> and, even if ratified, it is unlikely that a breach of an ILO Convention could provide a cause of action either in the United States or in the EU without local implementing legislation.<sup>70</sup>

Immigration and nationality policies are, at this time, still creatures of domestic law and policy in North America.<sup>71</sup> Within the EU, a patchwork of provisions exists with respect to immigration rules.<sup>72</sup> Although the Maastricht Treaty created the concept of EU citizenship, national citizenship in one of the member countries is a primary condition, and nationality rules are still left entirely to member states.<sup>73</sup>

---

hed\_docs/books/iomfolder\_eng/iom\_in\_brief\_en.pdf.

<sup>67</sup> See, e.g., Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117 (entered into force June 6, 1960); Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II, U.N. Doc. A/RES/55/25 (Nov. 15, 2000).

<sup>68</sup> International Labour Organization (ILO), Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, C 143 (June 24, 1975), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C143>; ILO, Convention Concerning Migration for Employment Convention, C 97 (Jan. 7, 1949), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C097>.

<sup>69</sup> See ILO, Convention No. 97 Ratification, <http://www.ilo.org/ilolex/cgi-lex/ratifice.pl?c097> (last visited Jan. 28, 2010); ILO, Convention No. 143 Ratification, <http://www.ilo.org/ilolex/cgi-lex/ratifice.pl?c143> (last visited Jan. 28, 2010).

<sup>70</sup> See VIRGINIA A. LEARY, INTERNATIONAL LABOUR CONVENTIONS AND NATIONAL LAW: THE EFFECTIVENESS OF THE AUTOMATIC INCORPORATION OF TREATIES IN NATIONAL LEGAL SYSTEMS 117–18 (1982).

<sup>71</sup> See DONALD B. MARRON, CONGRESSIONAL BUDGET OFFICE, IMMIGRATION POLICY IN THE UNITED STATES 1 (2006), <http://www.cbo.gov/ftpdocs/70xx/doc7051/02-28-Immigration.pdf>.

<sup>72</sup> See Wayne A. Cornelius & Takeyuki Tsuda, *Controlling Immigration: The Limits of Government Intervention*, in CONTROLLING IMMIGRATION: A GLOBAL PERSPECTIVE 3, 33 (Wayne A. Cornelius et al. eds., 1994) [hereinafter CONTROLLING IMMIGRATION].

<sup>73</sup> See Jo Shaw, *E.U. Citizenship & Political Rights in an Evolving European Union*, 75 FORDHAM L. REV. 2549, 2550 (2007); see also GRAZIELLA BERTOCCHI & CHIARA STROZZI, CITIZENSHIP LAWS AND INTERNATIONAL MIGRATION IN HISTORICAL PERSPECTIVE 2–4 (2005), <http://www.iza.org/en/papers/Bertocchi10052005.pdf>; Graziella Bertocchi & Chiara Strozzi, *The Evolution of Citizenship: Economic and Institutional Determinants* 2–4 (Inst. for the Study of Labor, Discussion Paper No. 2510, 2006), <http://ftp.iza.org/dp2510.pdf>.

For nationals of EU countries, worker mobility and free mobility for non-workers exist without restriction for the EU-15 as previously mentioned. Transitional arrangements have been invoked for workers engaging in intra-EU movement for both the A8 and A2 countries by different countries in the EU-15 group.<sup>74</sup> Even within the original EU-15 group, rules of migration and permanent settlement differ between economically active workers and those not in the labor force.<sup>75</sup> For example, pensions are still not fully portable across countries even within the EU-15, which might limit worker mobility.<sup>76</sup>

Common border policies with respect to third country nationals are not yet universal within the EU. The Schengen Agreement of 1985 (implemented in 1995 and later modified and incorporated in the EU Treaty by the 1997 Treaty of Amsterdam) seeks to establish a common policy with respect to entry in the EU through any country in the EU, but is still incompletely ratified; for example, the United Kingdom (UK) has not acceded to it.<sup>77</sup> Countries even within the core inner group of the EU (i.e., the EU-15 or even the original EU-6) continue to differ with respect to rules for asylum and refugee status, *refoulement*, deportation or return of irregular migrants and other attributes of migration, such as integration or assimilation of even those lawfully admitted.<sup>78</sup>

Unlike trading rules, migration rules and policies are not squarely grounded principally in economic considerations. If they were, as demonstrated by a number of studies including a recent comprehensive World Bank report, the political gains for economic welfare from liberalized migration of persons could be quite large worldwide, and official state migration policies of the

---

<sup>74</sup> See Ryan, *supra* note 3, at 78.

<sup>75</sup> See Brian J. Woodruff, *The Qualified Right to Free Movement of Workers: How the Big Bang Accession Has Forever Changed a Fundamental EU Freedom*, 10 DUQ. BUS. L.J. 127, 137–38 (2008).

<sup>76</sup> European Commission, Pensions, <http://ec.europa.eu/social/main.jsp?catId=752&langId=en> (last visited Jan. 28, 2010) (providing information on EU pensions).

<sup>77</sup> Jean-François Bellis, *Introductory Note: Schengen Agreement on the Abolition of Checks at Their Common Borders*, 30 I.L.M. 68, 68 (1991); James B. Cronon, *Accession to a Surrender of Sovereign Autonomy in Law? The Effect of the European Union Membership Process Upon Romania*, 36 GA. J. INT'L & COMP. L. 189, 199 (2007).

<sup>78</sup> See James F. Hollifield, *Immigration & Republicanism in France: The Hidden Consensus*, in CONTROLLING IMMIGRATION, *supra* note 72, at 166–67; Marcelo M. Suárez-Orozco, *Anxious Neighbors: Belgium & Its Immigration Minorities*, in CONTROLLING IMMIGRATION, *supra* note 72, at 250.

developed world would be far more liberal than is the case.<sup>79</sup> But world economic welfare is apparently not of primary significance as it may be dwarfed in importance to immediate distributional concerns of affected groups in society. Instead, migration and citizenship rules are firmly rooted in considerations of history, demography (population pressures), political science (considerations of state sovereignty over defined areas), foreign affairs and empire building, and sociology and anthropology (assimilative and cultural concerns).<sup>80</sup>

Without doubt, parochial and sector-specific protectionist concerns have played a large part in the “capture” of enacted or enforced immigration policies, both with respect to regular and irregular migration. This is the domain of interest group theory discussed below.<sup>81</sup> Of course distributional issues in economics are also highly relevant for migration policy. Fiscal burdens due to social transfers to new migrants have always loomed large in the cost-benefit calculus of regions in republics. For example, voters in states with relatively generous welfare systems and high state taxes (such as California) are markedly more restrictionist with respect to future migration than states such as Texas where the welfare net is relatively meager so that newly arrived migrants do not place a high and visible burden on public coffers.<sup>82</sup> This theme is further elaborated in an upcoming section, which also points out that more autocratic regimes are likely to be more liberal with respect to immigration, precisely because such regimes are likely to be less responsive to the preferences of the median voter.

---

<sup>79</sup> GLOBAL ECONOMIC PROSPECTS, *supra* note 14, at 25–26; Bob Hamilton & John Whalley, *Efficiency and Distributional Implications of Global Restrictions on Labour Mobility: Calculations and Policy Implications*, 14 J. DEV. ECON. 61, 61 (1984).

<sup>80</sup> William Rogers Brubaker, *Immigration, Citizenship, and the Nation-State in France and Germany: A Comparative Historical Analysis*, 5 INT'L SOC. 379, 380 (1990).

<sup>81</sup> Bhandari, *International Migration and Trade*, *supra* note 28, at 150. A fascinating result from a branch of the literature is that the median voter in advanced societies may actually prefer a certain amount of irregular, unskilled immigration. *Id.* at 155.

<sup>82</sup> Wendy Zimmerman & Karen C. Tumlin, *Patchwork Policies: State Assistance for Immigrants Under Welfare Reform* 5, 11, 49 (Urban Inst., Occasional Paper No. 24, 1999), <http://www.urban.org/UploadedPDF/occ24.pdf>.

## II. RECENT POLICY REFORMS AND THEIR SEQUENCE IN THE UNITED STATES AND EUROPE

### A. *The United States and North American Free Trade Agreement*

Trade and migration policy have each been separately discussed in policy debates in the United States since the nineteenth century, with public discourse about migration being of more venerable vintage.<sup>83</sup> However, the link between them appears to have come to the attention of the public, legislators, and policy watchdogs just prior to the ratification of the Canada-U.S. Free Trade Agreement (CAFTA) and its trilateral successor, NAFTA.<sup>84</sup> While the public found that CAFTA was relatively uncontroversial, this was not the case with NAFTA, which was approved only narrowly by Congress.<sup>85</sup> An unusual coalition of interest groups joined forces on both sides of the debates prior to NAFTA's ratification; most economists and businesses supported the agreement while several environmental groups, human rights activists, and organized labor groups opposed it.<sup>86</sup>

---

<sup>83</sup> 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 forty-two 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." Editorial, *The "Lesser Breeds,"* 57 INDEPENDENT 1099, 1099-1100 (1904).

<sup>84</sup> North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (entered into force on Jan. 1, 1994) [hereinafter NAFTA]; Canada-United States Free Trade Agreement, U.S.-Can., Jan. 2, 1988, 27 I.L.M. 281 (entered into force on Jan. 1, 1989) [hereinafter CAFTA]; see U.S. DEP'T OF STATE, TREATIES IN FORCE: A LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES IN FORCE ON JANUARY 1, 2009, at 46, 183, 460 (2009), <http://www.state.gov/documents/organization/123747.pdf>. The United States has several other less visible trade accords which are listed on the official website of the U.S. Trade Representative. See Office of the United States Trade Representative, Trade Agreements, <http://www.ustr.gov/trade-agreements> (last visited Jan. 28, 2010).

<sup>85</sup> Leonard Bierman et al., *The North American Free Trade Agreement: A Market Analysis*, 27 VAND. J. TRANSNAT'L L. 719, 723 (1994).

<sup>86</sup> In the end, the Executive Branch was able to secure the support (or at least the non-opposition) of labor and environmental groups only by inclusion of "sweeteners," such as labor and environmental provisions, as side agreements to NAFTA. Neither one of these provisions has much teeth. See, e.g., Gabrielle E. Clark, Book Note, 43 LAW & SOC'Y REV. 439, 439 (2009) (reviewing JONATHAN GRAUBART, LEGALIZING TRANSNATIONAL ACTIVISM: THE STRUGGLE TO GAIN SOCIAL CHANGE FROM NAFTA'S CITIZEN PETITIONS (2008)); see also Zamora, *supra* note

Unlike the Treaty of Rome, NAFTA itself included virtually no provisions regarding labor mobility or migration.<sup>87</sup> Nor did public discourse about NAFTA initially include any meaningful discussion about the implications of the trade accord for migration (either lawful or irregular).<sup>88</sup> Only later in the debate, and in a seeming afterthought, did proponents of NAFTA argue that inter-regional trade would raise living standards and wages in Mexico and alleviate illegal migration from Mexico to the United States.<sup>89</sup> Yet both prior to NAFTA and some fifteen years after its implementation, Mexico “remains mired in poverty.”<sup>90</sup> Its per capita GDP in relation to the United States is, if anything, lower now than fifteen years ago, and Mexican real wages may have fallen during this period.<sup>91</sup> At the same time, illegal migration to the United States continues unabated (with the possible exception of the very recent period in which the U.S. recession may have induced some migrants to voluntarily depart).<sup>92</sup> Some authors argued that the implementation of NAFTA (with its phase-out of corn subsidies to inefficient Mexican farmers) may have caused a temporary dislocation in

---

8, at 114–17. Coupling full labor migration provisions (even if phased in over several years) with the main trade provisions of NAFTA would almost certainly have led to the defeat of NAFTA in Congress. All parties agreed in the end that NAFTA would have some immigration effects, but it was politically wise to not over-examine the issue. Bhandari, *International Migration and Trade*, *supra* note 28, at 122 n.19.

<sup>87</sup> Chapter 16 of the NAFTA accords (entitled “Temporary Entry for Business Persons”) contains a number of provisions primarily easing visa and entry restrictions on certain classes of non-immigrants and creating a new TN visa. NAFTA, *supra* note 84, at 664–65. Restrictions on Mexican nationals remain much tighter than on their Canadian counterparts. *See id.* at 670 app. 1603.D.4. Chapter 12 of the Agreement indicates that the NAFTA accord imposes no obligation on state parties regarding immigration or access to employment in the member countries for non-nationals. *See id.* art. 1201, at 649.

<sup>88</sup> Bhandari, *International Migration and Trade*, *supra* note 28, at 117.

<sup>89</sup> *See* Kevin R. Johnson, *Free Trade and Closed Borders: NAFTA and Mexican Immigration to the United States*, 27 U.C. DAVIS L. REV. 937, 965–66 (1994) (providing a good treatment of the labor mobility provisions of NAFTA, citing several references and observing that the dichotomy between trade and labor mobility in NAFTA is a false separation because “[l]abor 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”). The present paper deals in large part with precisely this issue—the relationship between trade and migration effects and policies.

<sup>90</sup> Zamora, *supra* note 8, at 94.

<sup>91</sup> *Id.* at 112, 117.

<sup>92</sup> STEVEN A. CAMAROTA & KAREN JENSENIUS, CTR. FOR IMMIGRATION STUDIES, A SHIFTING TIDE: RECENT TRENDS IN THE ILLEGAL IMMIGRANT POPULATION 1 (2009), <http://www.cis.org/articles/2009/shiftingtide.pdf>.

Mexico with the result that irregular migration from Mexico might cause a temporary “hump” or U-shaped pattern, as displaced corn farmers and other agricultural workers found no option but to take the risks of illegal migration to the United States.<sup>93</sup> Others, like the political sociologist Douglas S. Massey, suggested that fertility declines in Mexico over time would reduce the available labor force, and hence reduce illegal migration to the United States.<sup>94</sup>

The separation between trade policy and migration, both in the policy debates and in the accord instruments of NAFTA, is consistent with the position that trade liberalization is a strong substitute for migration. For instance, trade liberalization, accomplished via a free trade accord, is functionally equivalent to the liberalization of restrictions on migration. Hence, it is unnecessary to liberalize both trade and migration simultaneously, because either one will accomplish the same end.<sup>95</sup>

As indicated previously:

[R]elatively 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 the very simplest . . . [vintage] models . . . . [n]or does an examination of the historical evolution of trade and migration patterns in [several] parts of the

---

<sup>93</sup> GARY C. HUFBAUER & JEFFREY J. SCHOTT, NAFTA REVISITED: ACHIEVEMENTS AND CHALLENGES 460, 464 (2005).

<sup>94</sup> *Id.* at 464. See generally B. Lindsay Lowell et al., *The Demography of Mexico/U.S. Migration*, in MEXICO-U.S. MIGRATION MANAGEMENT 1, 7 (2008).

<sup>95</sup> The hypothesis that trade and labor mobility are substitutes (in their impact upon factor prices) is a direct implication of simple trade models in economics discussed in the next Section. Officials and policy makers at high levels apparently also espoused the substitutability hypothesis. For example, see the speech of Gene McNeary (former Commissioner of the Immigration and Naturalization Service) made on February 6, 1992 at Duke University or the remark attributed to President Vincente Fox of Mexico prior to ratification of NAFTA, “the U.S. can choose to import tomatoes or accept tomato pickers from Mexico.” Bhandari, *International Migration and Trade*, *supra* note 28, at 119 n.11; Gene McNeary, *Moving Goods and People in International Commerce*, 2 DUKE J. COMP. & INT’L L. 247 (1992). Ironically, it was not economists but legal writers at the time who noted without obfuscation that trade and migration issues (in NAFTA) must be addressed together (implying that trade and migration were not strong substitutes for each other). See, e.g., Alan Nelson, *NAFTA: Immigration Issues Must be Addressed*, 27 U.C. DAVIS L. REV. 987, 987–88 (1994); see also Johnson, *supra* note 89, at 942 (“NAFTA opponents advocating the linkage of immigration and NAFTA correctly argued that the trade agreement implicated migration issues . . . [f]or many reasons, most notably history and geography, the trade/migration separation is a false dichotomy . . .”).

world suggest the consistent existence of such a relationship.<sup>96</sup>

Indeed both modern theoretical analyses seem to indicate the existence of a complementary relationship between trade and migration flows, i.e., more trade may lead to increased cross-border migration.<sup>97</sup>

How did policy makers perceive trade and migration policies in the United States and in Europe and did governments act as though trade and migration were substitutable or complementary? Examination of immigration and trade legislation in the United States over the past two decades indicates that while trade policy in the United States became more liberal (both through agreements made via the GATT/WTO and the conclusion of several bilateral trade accords), immigration policy became gradually more restrictive,<sup>98</sup> other than the 1990 Immigration Act (IMMACT 1990) which increased the worldwide annual quota for legal immigration to the United States by twenty-five to thirty percent.<sup>99</sup> IMMACT 1990 was enacted just one year after CAFTA (with NAFTA being ratified in 1994).<sup>100</sup>

While neither this paper nor this section are intended to be a survey of U.S. immigration legislation in the recent past, a few additional enactments deserve mention, all of which were restrictive. Virtually all of these enactments were motivated by perceived concerns over criminal aliens, foreign terrorists (after September 11, 2001), and fiscal burdens associated with

---

<sup>96</sup> Bhandari, *International Migration and Trade*, *supra* note 28, at 122–23; see William J. Collins et al., *Were Trade and Factor Mobility Substitutes in History?*, in *MIGRATION: THE CONTROVERSIES AND THE EVIDENCE* 227, 252 (Riccardo Faini et al. eds., 1999) [hereinafter *MIGRATION*].

<sup>97</sup> See ROBERT J. FLANAGAN, *GLOBALIZATION AND LABOR CONDITIONS* 113–14 (2006).

<sup>98</sup> *Id.* at 113; see United States Department of Agriculture, Country Trade Agreements, <http://www.fas.usda.gov/itp/agreements/country.asp> (last visited Jan. 28, 2010) (containing the regional trade accords reached by the United States, including agreements with Israel (1985), Mexico (1994), Jordan (2000), Singapore (2003), Australia (2004), and Chile (2004), among others). At the same time, the Uruguay Round of the GATT also achieved liberalization in several areas such as services through the General Agreement on Trade in Services (GATS) and intellectual property as well as other areas. Mode IV of the service agreement of the GATS contains language permitting cross-border labor mobility. General Agreement on Trade in Services: Progressive Liberalization, Apr. 15, 1994, Agreements Establishing the World Trade Organization, Annex 1B, Legal Instruments—Results of the Uruguay Round, 33 I.L.M. 1125, 1180 (1994).

<sup>99</sup> Pub. L. No. 101-649, 104 Stat. 4978.

<sup>100</sup> § 101, 104 Stat. at 4980–81; see NAFTA, *supra* note 84; CAFTA, *supra* note 84.

migrants.<sup>101</sup> The year 1996 was a particularly busy one for the U.S. Congress, for in that year both the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) were enacted.<sup>102</sup> IIRIRA took aim at welfare assistance for both legal and irregular migrants and specifically barred irregular migrants from most means—testing federal public assistance programs, while barring even legal immigrants from such assistance for a period of five years.<sup>103</sup> States remained free to fill in the gaps and most of the federal cuts were restored by the states based on their welfare systems, which tend to vary widely in generosity, as noted above.<sup>104</sup>

In 2001, the USA PATRIOT Act focused on gathering intelligence pertaining to aliens.<sup>105</sup> The USA PATRIOT Act was a reflection of understandable congressional concerns with international terrorism. Additional surveillance powers were granted in the Intelligence Reform and Terrorism Prevention Act of 2004, with a number of other federal initiatives such as REAL ID or E-Verify (both designed to ascertain the identity of aliens) being proposed or enacted since that time.<sup>106</sup>

The piecemeal approach to the sequence of trade and immigration legislation employed in the United States is at least consistent with the view that trade liberalization with Mexico (which had a ten-year phase-in period) was not likely to produce much of a favorable impact upon incentives to migrate to the United States. More specifically, these policies were not substitutes and may even have been complementary in that trade liberalization might have increased unwanted migration—hence, the need for restrictive immigration legislation like that

---

<sup>101</sup> See generally IMMIGRATION AND CRIME: RACE, ETHNICITY AND VIOLENCE (Ramiro Martinez Jr. & Abel Valenzuela Jr. eds., 2006) (providing multiple essays discussing the connection between immigration and crime).

<sup>102</sup> Pub. L. No. 104-208, 110 Stat. 3009-546 (1996); Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214.

<sup>103</sup> Jennifer M. Chacón, *Unsecured Borders: Immigration Restrictions, Crime Control and National Security*, 39 CONN. L. REV. 1827, 1842 (2007).

<sup>104</sup> See *id.*

<sup>105</sup> 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.

<sup>106</sup> REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302; Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638; Basic Pilot Program Extension and Expansion Act of 2003, Pub. L. No. 108-156, 117 Stat. 1944; see U.S. CITIZENSHIP AND IMMIGRATION SERVS., FACT SHEET: E-VERIFY (2007), [www.uscis.gov/files/pressrelease/EVerifyFS25Sep07.pdf](http://www.uscis.gov/files/pressrelease/EVerifyFS25Sep07.pdf).

mentioned above.

### B. *The European Union*

The sequential method employed in the United States to trade and migration contrasts starkly with that in the EU. The “four freedoms” envisioned by the Treaty of Rome and its successor instruments encompass free movement of goods, services, capital, and persons within the member states of the EU.<sup>107</sup> In reality, the phase-in periods for full implementation of these four freedoms have varied with the freedom of movement of goods occurring first. Capital account liberalization occurred somewhat later than trade or current account liberalization. Even countries in the inner core, such as the UK, maintained capital controls into the late 1970s and early 1980s, with the early accession countries, such as Greece, maintaining such restrictions until the 1990s.<sup>108</sup> The mobility of persons had been subject to transitional arrangements for the Southern Cone countries for a period of six to seven years and remains restricted (although by different countries in the EU-15) for the 2004 A8 group and the 2007 A2 countries.<sup>109</sup> For example, the UK did not invoke any restrictive

---

<sup>107</sup> Woodruff, *supra* note 75, at 128; see Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC Treaty] (containing the original Treaty of Rome of 1957). Major amendments were made in 1987 in The Single European Act, Feb. 17, 1986, 1987 O.J. (L 169) 1. The European Union was born in the Treaty Establishing the European Community, Feb. 7, 1992, 1992 C.M.L.R. 573 [hereinafter EC Treaty], incorporating the Maastricht Treaty, or more formally, the Treaty on European Union, Treaty on European Union, Feb. 7, 1992, 1992 O.J. (C 224) 1 [hereinafter TEU]. The Schengen Agreement (in four parts), seeks to establish a common border policy. Schengen Agreement on the Gradual Abolition of Checks at Their Common Borders and the Convention Applying the Agreement, June 19, 1990, 30 I.L.M. 68 (1991). The Schengen Accords were modified by the Treaty of Amsterdam. Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Oct. 2, 1997, 1997 O.J. (C 340) 1. Other instruments include the rejected European Constitution Treaty and the Lisbon Treaty of 2007 (also called the Reform Treaty) which was rejected by an Irish referendum. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1, 1–2; Treaty Establishing a Constitution for Europe, Dec. 16, 2004, 2004 O.J. (C 310) 1, 351–53.

<sup>108</sup> PETER J. QUIRK & OWEN EVENS, CAPITAL ACCOUNT CONVERTIBILITY: REVIEW OF EXPERIENCE AND IMPLICATIONS FOR IMF POLICIES 11 (1995).

<sup>109</sup> The A8 countries are eight of the ten that acceded to the EU in May 1, 2004 and were formerly behind the Iron Curtain. Countries acceding to the EU must accept the so-called *Acquis Communautaire*, which is the entire body of EU law as contained in the Treaty instruments, EU Regulations and Directives, and the case law of the European Court of Justice (ECJ). See Woodruff, *supra* note

measures for workers of the A8 group, although it did so for the A2 countries.<sup>110</sup> On the other hand, A8 workers were restricted for a two-year period and then allowed free access into Finland, Greece, Italy, Portugal, and Spain in 2006, in addition to Luxembourg and the Netherlands in 2007.<sup>111</sup> Only Finland and Sweden allowed full labor access to A2 workers from the initial time of accession in 2007.<sup>112</sup>

Space limitations prevent an extensive discussion of worker mobility provisions in the EU, and the interested reader is referred to some of the sources cited in the footnotes. For present purposes, a few summary observations may be in order. The labor restricting provisions may last at most seven years (which may be invoked unilaterally) under the “2+3+2” formula; the last two-year extension is to be permitted only if a member state perceives a major disruption in its labor market and is certified as such to the EU.<sup>113</sup> While the restrictions were imposed no

---

75, at 135–36. In addition, acceding countries must meet the Copenhagen criteria developed by the European Commission (EC) in 1993 for full membership in the EU. *Id.* at 136. The Copenhagen criteria include the existence of a stable democracy, a functional market economy, and the ability to cope with competitive forces within the EU. *Id.* Additional criteria include respect for human rights and the protection of minorities. *Id.*

<sup>110</sup> See Ryan, *supra* note 3, at 75 (providing discussion on UK policy on A8 and A2 workers). A8 workers in Britain need only register prior to commencing employment, while A2 workers require work authorization for now. *Id.* at 76–77. The implementing regulations for the UK are contained in SI 2004 No. 1219 (for A8 workers) and in SI 2006 No. 3317 (for A2 workers). *Id.* at 75.

<sup>111</sup> *Id.* at 77.

<sup>112</sup> *Id.* Additional details can be found at the official website of the EC. European Commission, [http://ec.europa.eu/index\\_en.htm](http://ec.europa.eu/index_en.htm) (last visited Jan. 28, 2010). Since Maastricht, the EU has functioned under three pillars: the European Community (which contains the economic, social, and environmental charters), foreign affairs, and criminal matters. See Woodruff, *supra* note 75, at 135–36. The concept of EU citizenship is thus a part of the citizenship *acquis* of the Social Charter of the EU. See *id.* EU citizens have rights, but not duties, and one of the rights is the right to diplomatic protection by EU member states; this would fall under the foreign affairs pillar of the EU triad. See *id.* at 136–37.

<sup>113</sup> *Id.* at 139. The labor mobility restricting provisions are a permissible derogation of art. 39 of the TEU, *supra* note 107, which are also incorporated in title III of the EC Treaty, *supra* note 107. See Ryan, *supra* note 3, at 131. Freedom of movement of goods as originally contemplated in the Treaty of Rome is re-affirmed and re-incorporated in Part III of the EC Treaty. Compare EEC Treaty, *supra* note 107, with EC Treaty, *supra* note 107. Article 39 refers primarily to rights of free mobility of workers to move to accept already made offers of employment and, subject to a public policy exception, it also encompasses the anti-discrimination provisions of art. 12 of the EC Treaty. EC Treaty, *supra* note 107. Authority to implement free movement of workers was originally contained in EC Directive 1612/68 later reinforced by Directive 2004/38. See Woodruff, *supra* note 75, at 131–32 (describing Commission Regulation 1612/68 as the “legislative embodiment” of Article 39). Compare

doubt to prevent disorderly labor market conditions and to forestall a large influx of foreign workers from the newly acceding states to the EU, some authors suggest that they may have been an overreaction and have needlessly created a layered concept of the fragile notion of EU citizens, with less rights for some rather than others.<sup>114</sup> There was no mass influx of “Polish plumbers” or “Hungarian gypsies” into the UK as claimed by the British tabloids of the time, nor were the welfare coffers of the EU-15 drained by payments to underproductive A8 workers seeking state assistance.<sup>115</sup> Even the number of A8 worker registrations likely overstated the number of workers actually present in the labor forces of the member countries of the EU-15, because many new registrants simply returned home after a short time.<sup>116</sup> In fact, there may be positive evidence that the A8 workers who remained in the EU-15 group may have benefitted the economies of the UK, Ireland, and Sweden by filling previously unfilled jobs.<sup>117</sup>

Article 39 of the EU Treaty was characteristically parsimonious and did not define the crucial term “worker.”<sup>118</sup> There is no intimation in the Treaty itself whether the term intended to encompass part-time workers, trainees, graduate students, or those potential workers who had moved to solicit an offer of employment.<sup>119</sup> Case law of the European Court of Justice, however, has been liberal in this respect and has interpreted the term expansively.<sup>120</sup> Thus, part-time workers are covered by the term “worker,”<sup>121</sup> as are professional football

---

Commission Regulation 1612/68 on Freedom of Movement for Workers Within the Community, 1968 O.J. (L 257) (EEC), with Council Directive 2004/38 on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely Within the Territory of the Member States, 2004 O.J. (L 116) 1 (EU).

<sup>114</sup> See Woodruff, *supra* note 75, at 144–45; see also Paul O’Neill & Susan R. Sandler, *The EU Citizenship Acquis and the Court of Justice: Citizenship Vigilante or Merely Vigilant Treaty Guardian?*, 7 RICH. J. GLOBAL L. & BUS. 205, 239 (2008).

<sup>115</sup> Woodruff, *supra* note 75, at 135.

<sup>116</sup> See Ryan, *supra* note 3, at 76 (noting that the number of registrations reflects a stock number rather than the annual flow of new A8 entrants).

<sup>117</sup> Woodruff, *supra* note 75, at 140–41.

<sup>118</sup> D. Bruce Shine, *The European Union’s Right of Free Movement of Workers*, 30 U. MEM. L. REV. 817, 824 (2000).

<sup>119</sup> See *id.* at 824–27, 842.

<sup>120</sup> The case of *Lawrie-Blum v. Land Baden-Wurttemberg* defines workers clearly and seemingly excludes independent contractors working on their own account. Case 66/85, *Lawrie-Blum v. Land Baden-Wurttemberg*, 1986 E.C.R. 2121. For additional case law, see Woodruff, *supra* note 75, at 130–31.

<sup>121</sup> See Case 53/81, *Levin v. Staatssecretaris van Justitie*, 1982 E.C.R. 1035.

players,<sup>122</sup> and potential workers in search of employment in another member state.<sup>123</sup> An actual worker's spouse/civil partner and dependents are guaranteed the right to free mobility along with the principal worker under Regulation 1612/68.<sup>124</sup>

While the transitional labor mobility restriction provisions in the EU may seem reminiscent of the sequential approach to trade and migration liberalization employed in the United States (and NAFTA), in fact, the differences are profound. The mobility restrictions in the EU may last at most seven years under the "2+3+2" rules.<sup>125</sup> Since 1992, the Social Charter has been an increasingly important ingredient of the EU through its various accords, despite occasional setbacks.<sup>126</sup> In addition, the social cohesion policies of the EU (apart from the Social Charter), implemented in large part through the provision of the EU structural funds to promote infrastructure and other developments in the less wealthy members of the EU, have achieved their purpose remarkably well.<sup>127</sup> For example, at the time of their accession to the EU, Spain and Portugal had per capita incomes each of approximately one-quarter to one-half of that of Denmark or France and under seventy percent of the EU-wide average.<sup>128</sup> Some fifteen years later, Spain's per capita income was over eighty percent of the EU-15 average.<sup>129</sup> Nor was there much migration of persons from the Southern Cone

---

<sup>122</sup> See Case C-415/93, *Union Royale Belge des Soc'ys des Football Ass'n & Others v. Bosman*, 1995 E.C.R. I-4921.

<sup>123</sup> Case C-292/89, *R. v. Immigration Appeal Tribunal & Surinder Singh ex parte Atonissen*, 1991 E.C.R. I-745.

<sup>124</sup> See Commission Regulation, *supra* note 113; Ryan, *supra* note 3, at 83. Several other cases that expand the definition of worker or extend social benefits to them are: Case C-209/03, *Bidar v. London Borough of Ealing & Sec'y of State for Educ. & Skills*, 2005 E.C.R. I-2119 (upholding the right to move to pursue secondary education); Case C-85/96, *Martinez Sala v. Freistaat Bayern*, 1998 E.C.R. I-2691 (opening the door to granting benefits to economically non-active persons); Case C-214/94, *Boukhalfa v. Bundesrepublik Deutschland*, 1996 E.C.R. I-2253. The ECJ has been liberal in granting rights to third country nationals as well and in a remarkable holding upheld the right of a Chinese woman with resources to move to Ireland for the sole purpose of giving birth to a child in Ireland, and thereafter to remain in Ireland with the Irish citizen child. Case C-413/99, *Baumbast & R. v. Sec'y of State for the Home Dep't*, 2002 E.C.R. I-7091; see Case C-200/02, *Zhu & Chen v. Sec'y of State for the Home Dep't*, 2004 E.C.R. I-9925.

<sup>125</sup> See, e.g., Sergio Carrera, *What Does Free Movement Mean in Theory and Practice in an Enlarged EU?* 8 (Ctr. for Eur. Pol'y Studies, Working Document No. 208, 2004), [http://aei.pitt.edu/6643/01/1162\\_208.pdf](http://aei.pitt.edu/6643/01/1162_208.pdf).

<sup>126</sup> See Zamora, *supra* note 8, at 100-01.

<sup>127</sup> See *id.* at 103, 106-07.

<sup>128</sup> *Id.* at 96-97, 107.

<sup>129</sup> *Id.* at 106-07.

countries to the northern and western members of the EU, despite the initial income disparity.<sup>130</sup>

A similar catch-up phase had previously occurred in the case of Italy. Much of the catch-up in income and development for the Southern Cone, and previously for Italy, was due to the provision of EU Structural Funds and Social Cohesion funding.<sup>131</sup> In fact, such funding amounts to some thirty-five percent of the total EU budget for 2007–2013 (next only to the funds allocated for the CAP).<sup>132</sup> There is reason to expect, therefore, that the new accession countries of 2004 and 2007 will likewise be able to catch up with the rest of the EU, despite the fact that newer accession countries are at per capita GDP levels that are comparatively lower relative to the average than Greece and Portugal.<sup>133</sup> In addition, as noted earlier, the foreign policy and political union pillars of the EU continue to be implemented, even if haltingly, through accords such as the Treaty of Amsterdam, the Nice Agreements, the Lisbon Treaty, and the still unratified European Constitutional Treaty.<sup>134</sup>

On the other hand, NAFTA contains no meaningful social integration agenda, nor a pure commerce agreement. The three member states of NAFTA chose to not include the important pillars of mobility of workers, social cohesion, labor, and environmental rules to prevent “social dumping.”<sup>135</sup> The labor and environmental accords of NAFTA, the North American Agreement on Labor Cooperation and the North American Agreement on Environmental Cooperation are little more than agreements to agree and barely have functioning secretariats.<sup>136</sup> There was no provision made in NAFTA for regional development funds for Mexico of the EU Structural Funds type, with the result

---

<sup>130</sup> See *id.* at 97–98.

<sup>131</sup> See EUROPEAN UNION, EUROPEAN COHESION POLICY IN ITALY, [http://ec.europa.eu/regional\\_policy/sources/docgener/informat/country2009/it\\_en.pdf](http://ec.europa.eu/regional_policy/sources/docgener/informat/country2009/it_en.pdf); see also EUROPEAN UNION, EUROPEAN COHESION POLICY IN GREECE, [http://ec.europa.eu/regional\\_policy/sources/docgener/informat/country2009/el\\_en.pdf](http://ec.europa.eu/regional_policy/sources/docgener/informat/country2009/el_en.pdf).

<sup>132</sup> Zamora, *supra* note 8, at 103.

<sup>133</sup> See Günter Burghardt, Ambassador and Head of the Eur. Comm'n Delegation to the U.S., Address at the Executives' Club of Chicago: EU Enlargement and the Transatlantic Relationship (Mar. 11, 2004), <http://www.eurunion.org/News/speeches/2004/040311gb.htm>.

<sup>134</sup> See, e.g., Zamora, *supra* note 8, at 100.

<sup>135</sup> *Id.* at 94–95.

<sup>136</sup> See *id.* at 114–15; see also North American Agreement on Environmental Cooperation, U.S.-Can.-Mex., Sept. 14, 1993, 32 I.L.M. 1480 (1993); North American Agreement on Labor Cooperation, U.S.-Can.-Mex., Sept. 14, 1993, 32 I.L.M. 1499 (1993).

that NAFTA has, if anything, exacerbated income and regional disparities in Mexico contributing further to crime, corruption, and migration to the United States.<sup>137</sup> The North American Development Bank has remained chronically underfunded and is a study in failure and inattention.<sup>138</sup> Both physical and educational infrastructure in Mexico remains at woefully low levels some fifteen years into the post-NAFTA period and there is no evident bright prospect in the near future.<sup>139</sup>

In short, “NAFTA does not have a Social Charter” and is nothing like the EU blueprint because “the United States does not believe in social charters, Mexico does not have the resources to fund a social charter, and Canada is too divided between federal and social responsibilities for social welfare to demand a social charter.”<sup>140</sup>

### III. ECONOMIC CONSIDERATIONS

This section discusses the economic rationales for the liberalization of trade and migration and the predicted effects of such liberalization. In turn, the predicted effects may have normative implications for the desired sequence of trade and migration reforms (i.e., whether they should be concurrent or sequential). It should be observed at this point that the issue of the theoretically preferred sequence of reforms, or liberalization, is different from what policy makers actually implemented in the major countries of the relevant time period.

Prior to the discussion of the economic underpinning of liberalization, it is useful to summarize historical and recent trends or observed empirical regularities in the patterns of trade, service, capital, and persons. Increased integration between economies is labeled as the much overused term “globalization.”<sup>141</sup> The reader is referred to a recent publication by the Organisation for Economic Co-Operation and Development (OECD) for details

---

<sup>137</sup> Zamora, *supra* note 8, at 131 (quoting COUNCIL ON FOREIGN RELATIONS, BUILDING A NORTH AMERICAN COMMUNITY 5 (2005), [http://www.cfr.org/content/publications/attachments/NorthAmerica\\_TF\\_final.pdf](http://www.cfr.org/content/publications/attachments/NorthAmerica_TF_final.pdf)). *See generally* NAFTA, *supra* note 84.

<sup>138</sup> Zamora, *supra* note 8, at 132.

<sup>139</sup> *See generally* MEXICAN IMMIGRATION TO THE UNITED STATES 20–21, 172–76 (George Borjas ed., 2007) (discussing the educational attainment of Mexican migrants to the United States at length).

<sup>140</sup> Zamora, *supra* note 8, at 130.

<sup>141</sup> OECD, MEASURING GLOBALISATION: OECD HANDBOOK ON ECONOMIC GLOBALISATION INDICATORS 1 (2005).

regarding consistent measurement of the degree of integration.<sup>142</sup> It may be noted that economic integration is only one facet of integration between countries. Integration may have political or socio-anthropological dimensions, although quite often political integration or linkages lag behind economic integration. In the EU, for example, the construction of an economic community in 1957 under the auspices of the Treaty of Rome far preceded the political pillars put in place by the Single European Act of 1986, as previously indicated. Similarly, NAFTA has remained a pure commerce agreement thus far, and if it ever acquires any political teeth, they will have emerged long after the commerce agreement was implemented in the early 1990s.

Contrary to popular belief, economic integration reached its zenith, in terms of measurable indicators, during the late nineteenth and early twentieth centuries (the golden era or *belle époque* of globalization). By contrast, the closing years of the twentieth century and the early years of the twenty-first century (even with the previous two years being excepted due to the worldwide recession) were far less impressive in terms of measured economic assimilation. Trade and portfolio capital flows did increase at a rapid pace in the later period (i.e., the late twentieth century), but the international migration of persons has been the laggard in integration and has not kept pace with worldwide growth in trade and investment, despite the enlargement of the EU or the creation of NAFTA in recent years.<sup>143</sup> In fact, it is more accurate to consider the period after

---

<sup>142</sup> See generally *id.* at 12–13. The OECD Handbook proposes measurement of globalization from a variety of standpoints such as trade in goods, services (both final goods and intermediate goods), foreign direct investment, and integration through establishment of multinational operations. Reference and supplemental indicators in each of these categories are proposed in the Handbook. Labor market integration through international migration is not considered as one of the indicators in this volume. There are other facets to economic integration such as cross-border portfolio capital flows or cross-border mergers and acquisitions. As indicated *supra* in the text, economic globalization is but one aspect of integration; other attributes of integration of interest may include indicators such as ethnic composition populations, linguistic, cultural or culinary diversity and a host of other factors considered by sociologists, anthropologists, and other researchers.

<sup>143</sup> See, e.g., OECD, OECD FACTBOOK: ECONOMIC, ENVIRONMENTAL, AND SOCIAL STATISTICS 18–19 (2005); see also Riccardo Faini et al., *Trade and Migration: An Introduction*, in MIGRATION, *supra* note 96, at 1, 4–5 (providing an excellent source of data); OECD, INTERNATIONAL MIGRATION OUTLOOK: ANNUAL REPORT 26–48 (2006) (providing data on international migration and the foreign composition of national populations); UNCTAD, HANDBOOK OF STATISTICS ix, 360–68 tbl.7.5 (2004), [http://www.unctad.org/en/docs/tdstat29\\_enfr.pdf](http://www.unctad.org/en/docs/tdstat29_enfr.pdf).

1980 as a time of re-globalization of trade (not migration) or recovery from the isolationism of the Cold War and the disruption and dislocations caused by World War II and its aftermath. Available historical evidence does not support the existence of a mutually reinforcing or complementary relationship between trade and migration in recent times.<sup>144</sup>

In the latter part of the twentieth century and beyond (until around 2006), international flows of goods and services grew much faster than GDP. This is true at the country level of measurement or in terms of world trade flows and world GDP on a gross basis.<sup>145</sup> Thus, world trade flows measured in real terms increased at an annualized rate of 4.1% in the 1980s and accelerated to a clip of 9.1% annually over the 1990s, while real world output registered annual growth rates of 3.1% and 2.6% over the same periods.<sup>146</sup> Within the category of goods and services, cross-border growth in services has been especially vibrant since the 1990s, with improvements in information and telecommunications services. Trade in cross-border services is an aspect of “offshoring” or “nearshoring” of services ranging from legal and medical transcription, software development and support, radiological examination, and others too numerous to mention.<sup>147</sup>

An increase in the ratio of absolute exports and imports to GDP is a primary indicator of openness of an economy, or its degree of integration, with the rest of the world. But it is by no means true that openness was, or is, confined to recent times. A number of economic and other historians have convincingly demonstrated the existence of a well-integrated Atlantic economy prior to World War I. In fact, the period of 1870 to 1914 is generally regarded as the heyday of globalization in all relevant aspects, including trade and the migration of persons.<sup>148</sup> On a percentage basis, neither

---

<sup>144</sup> Faini et al., *supra* note 143, at 17–18.

<sup>145</sup> See UNCTAD, *supra* note 143, at ix, 314–19 tbl.7.1.

<sup>146</sup> See *id.* at 320–29 tbl.7.2.

<sup>147</sup> It should be observed that when services are “offshored” from, for example, the United States, the trade in question consists of imports of services to the United States with a payment to U.S. owners of royalties or license fees and the like, both of which are recorded in the current account of the balance of payments. See ROBERT C. FEENSTRA & ALAN M. TAYLOR, *INTERNATIONAL ECONOMICS* 230 (2008). The balance of payments is divided into the current account, capital account, and the official settlements balance. See *id.*

<sup>148</sup> Maurice Obstfeld & Alan M. Taylor, *Globalization and Capital Markets*, in *GLOBALIZATION IN HISTORICAL PERSPECTIVE* 121, 123–24 (Michael D. Bordo et al. eds., 2003); see KEVIN H. O’ROURKE & JEFFERY G. WILLIAMSON, *GLOBALIZATION AND HISTORY: THE EVOLUTION OF A NINETEENTH-CENTURY ATLANTIC ECONOMY* 14

the flows nor stocks of foreigners to total population have ever reached the high levels of 1910 to 1914.<sup>149</sup> In fact, except for the United States, the percentages of foreign-born populations in most destination (developed) countries, except perhaps Italy, exhibited little change from 1980 to 2001.<sup>150</sup> This relative stagnancy in the percentages of foreign-born populations in the major destination countries is curious in view of the rapid fall in information and communications costs over this period, and especially so because the economic returns of successful migration to advanced countries increased with widening disparity in per capita income levels between developed and less developed countries.<sup>151</sup>

In summary, the earlier period of world integration in the late nineteenth century was marked by universal integration of goods and labor markets. Cross-border flows of goods, services, capital, and labor increased rapidly in relation to output in most

---

(1999).

<sup>149</sup> Historical figures for the United States are available in OFFICE OF IMMIGRATION STATISTICS, U.S. DEPT OF HOMELAND SEC., 2004 YEARBOOK OF IMMIGRATION STATISTICS 5 (2006), <http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2004/Yearbook2004.pdf>; see Faini et al., *supra* note 143, at 4 (providing figures for other countries).

<sup>150</sup> Compare OECD, TRENDS IN INTERNATIONAL MIGRATION: ANNUAL REPORT 323 tbl.A.1.4, 334 tbl.A.1.5 (2005) [hereinafter 2005 TRENDS IN INTERNATIONAL MIGRATION] (reporting the percentage of foreign-born persons to total population as 18.2% for Canada, 8.2% for Belgium, and 8.9% for Germany, in 2001), with OECD, TRENDS IN INTERNATIONAL MIGRATION: ANNUAL REPORT 281 tbl.A.1.4, 282 tbl.A.1.5 (2001) [hereinafter 2001 TRENDS IN INTERNATIONAL MIGRATION] (reporting the percentage of foreign-born persons as 16.1% of the total population in Canada, 9.2% in Belgium, and 7.3% in Germany, in 1991). The outlier was the United States with a 6.2% foreign-born population in 1980, and a sharp increase to 11.1% in 2001. 2005 TRENDS IN INTERNATIONAL MIGRATION, *supra*, at 323 tbl.A.1.4; 2001 TRENDS IN INTERNATIONAL MIGRATION, *supra*, at 281 tbl.A.1.4. It is likely that the pre-eminent role of the United States in the world economy and its experience with a rapidly diversifying population over this period may have colored popular perceptions of recent globalization to a large extent. As indicated by the figures cited, the U.S. experience appears to be unique among the major destination countries, even compared with Canada, a traditional land of immigration. See Bhandari, *International Migration and Trade*, *supra* note 28, at 132 (providing a figure showing the percentages of foreign-born populations in total populations, for such countries as Canada, Belgium, Germany, and the United States).

<sup>151</sup> For disparities in human development indicators across countries, see UNDP, HUMAN DEVELOPMENT REPORT 2009, OVERCOMING BARRIERS: HUMAN MOBILITY AND DEVELOPMENT 143–46 tbl.A (2009), [http://hdr.undp.org/en/media/HDR\\_2009\\_EN\\_Complete.pdf](http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf), and WORLD BANK, WORLD BANK DEVELOPMENT REPORT 2006: EQUITY AND DEVELOPMENT 6–7 (2005), <http://siteresources.worldbank.org/INTWDR2006/Resources/477383-1127230817535/082136412X.pdf>.

developed countries of the day. Thus, trade and migration complemented each other during this era. By contrast, the second period of globalization in the late twentieth century was characterized by integration of product and service markets (including a substantial amount of raw materials trade), but without concomitant and equivalent migration flows. In fact, the doors to open migration had begun to slam shut in the early twentieth century with the end of expansion of the New Frontier in the American West, the end of the Prairie Boom in Canada, and the limits to open settlement in the fertile South American Pampas. The switch to closed borders, though, took several decades (until the 1950s or beyond) in both the United States and Europe with the enactment of comprehensive immigration legislation.<sup>152</sup>

*A. General Considerations and the Basic Trade Model*

Standard classical theoretical constructs in international trade establish that in a highly stylized setting with several simplifying assumptions, free trade or increased trade is a substitute for international migration. Thus, at this simple level, nations may choose to trade in goods or services, or in people. Either will lead to similar effects upon the returns to capital or labor (rental and wage rates) or on income distribution. In this sense, free trade has an “immigration bonus”: increased trade dampens the incentives to migrate, and thus may diminish unwanted immigration without the need for politically divisive and economically expensive interior or border enforcement.

The linkage between free trade and migration is not unidirectional. Thus, migration of persons with its effects upon wage and rental rates can surely be expected to alter or erode the conventional bases for trade in goods, which is predicated upon comparative cost or comparative advantage.<sup>153</sup> Similarly, a two-

---

<sup>152</sup> The first comprehensive U.S. immigration legislation was the McCarran-Walters Act otherwise known as the Immigration & Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163. Prior to that, immigration legislation in the United States was of a piecemeal variety, such as the Quota Law of 1921, Pub. L. No. 67-5, 42 Stat. 5, among others.

<sup>153</sup> This assumes that the *status quo ante* is that of both restricted trade and migration. If trade were already substantially liberalized (as is the current case), but migration was not, the incremental gains (at least from the point of view of world welfare) from liberalization of migration may be much greater than whatever could be wrenched out of further reductions in already low trade barriers. See, e.g., Howard F. Chang, *The Economic Impact of International Labor Migration: Recent Estimates and Policy Implications*, 16 TEMP. POL. &

way relationship exists between the policies adopted and their effects. For example, trade liberalization increases the flow of imports and exports and deals a double blow to domestic import competing industries. First, cheaper imports threaten such industries directly; and second, as exports expand, domestic wage rates rise across the entire domestic economy, further squeezing profit margins in import competing industries. Therefore, it is no surprise that trade liberalization often leads to calls by local producers for restrictive action under unfair trade laws, such as anti-dumping measures, escape clause actions, or outright quotas on foreign goods. It is recognition of such adverse effects upon labor in import competing industries that is the basis for trade adjustment assistance programs in most advanced countries.<sup>154</sup>

A similar two-way relationship also exists with respect to immigration policy and its effects. Thus, immigration policy itself is responsive, albeit with a lag to immigration flows. Large, undesired flows of immigrants catalyze a more restrictive immigration policy. In turn, more strictly enforced immigration policies (whether through border or interior enforcement) affect actual flows of immigrants, both directly and also indirectly by raising costs of illegal immigration and “demonstration effects” on other prospective emigrants in source countries.

Recognition of some of the feedback effects between policy regimes and their effects are of interest to political scientists and interest group theorists. But in most standard economic analyses, the policy stance is assumed to be fixed (or exogenous) and the focus is on the effects of liberalized trade on wages, prices, welfare, and income distribution from which the effects on the incentives to migrate can be deduced. Thus, the essential question reduces to: what is the effect of liberalized trade in goods and services upon incentives to migrate and, conversely, what is the effect of factor flows (labor and capital) on the incentives to trade across countries? As indicated at the beginning of this sub-

---

CIV. RTS. L. REV. 321, 323–24 (2007); *see also* GLOBAL ECONOMIC PROSPECTS, *supra* note 14, at 25, 34–39.

<sup>154</sup> Fair trade legislation in the United States includes anti-dumping actions under 19 U.S.C. § 1671 (2006), escape clause actions under § 2251, and Unfair Trade actions under § 2411. Imposition of new quotas is generally prohibited under existing GATT/WTO rules on the grounds that import quotas eliminate all forms of import competition and tend to breed corruption and graft. It may be observed however, that, in principle, all tariffs imply a theoretically equivalent quota; for example, a high enough tariff rate effectively generates a zero import quota. The current U.S. statute is the Trade Adjustment Reform Act of 2002, Pub. L. No. 107-210, 116 Stat. 933 (codified as amended at 19 U.S.C. § 2102 (2006)).

section, in the classic trade model, trade and migration can be shown to be substitutes in that increased trade reduces migration and increased migration also potentially reduces the incentive to trade in goods. The relationship between trade and migration would have been complementary if increased trade instead enhanced the incentives to migrate. Such complementarities emerge from more complex theoretical constructs once restrictive assumptions such as perfect competition and constant returns to scale are relaxed.

Both the standard model and many of its extensions are discussed in detail in the literature on international trade as well as in recent legal commentary suitable for legal audiences.<sup>155</sup> Therefore, a short summary will suffice for present purposes.

The standard model (known as the Heckscher-Ohlin model or the Heckscher-Ohlin-Vanek model) assumes that countries are naturally endowed differently with labor and capital, and other factors such as land.<sup>156</sup> Because of perfect competition in all markets and constant returns to scale, wages tend to be higher in the labor scarce country, while rental rates on capital (i.e., the return to capital) are lower than in the other country (which is capital scarce and labor abundant by assumption).<sup>157</sup> When combined with the assumption of identical production technologies across countries, it follows that the capital intensive good is relatively cheaper to produce in the capital abundant (labor scarce) country. This country then is said to have a comparative advantage in the production and export of the capital intensive product (e.g., tractors in America). Likewise, its trading partner will have a comparative advantage in the production and export of the labor intensive good (e.g., maize in Mexico).<sup>158</sup>

The incentives for migration are also perfectly clear. Unless wage and rental rates change, the labor-scarce country will prove to be a magnet for migration from the other country. However, as free trade proceeds, capital rental rates and wage rates start to

---

<sup>155</sup> See generally PAUL R. KRUGMAN & MAURICE OBSTFELD, INTERNATIONAL ECONOMICS: TRADE AND POLICY 67–92 (6th ed. 2004) (providing an entire chapter of information and detail on the Heckscher-Ohlin model).

<sup>156</sup> See *id.* at 67.

<sup>157</sup> ROBERT C. FEENSTRA, ADVANCED INTERNATIONAL TRADE: THEORY AND EVIDENCE 25 (2004); see FEENSTRA & TAYLOR, *supra* note 147, at 107–10.

<sup>158</sup> An important required assumption is that the same good is capital intensive or labor intensive in both countries. Obviously, this assumption is precarious at best. For example, maize production may be labor intensive in Mexico while it is highly capital intensive in American agro-business.

equalize across countries (i.e., factor price equalization occurs) and the incentives for migration are diluted. The same result would have occurred if instead of free trade in goods, laborers were permitted to migrate *en masse* to the labor-scarce county; relative wage rates in the labor-scarce country would fall and, conversely, rise in the labor-abundant country. As a consequence, the basis for trade (i.e., the relative prices of goods) would be eroded. Hence, trade and migration are indeed strong substitutes in this stark framework.

### B. Extensions

There are several types of extensions of the basic model. Incorporating additional countries to the framework is relatively straightforward, but mathematically cumbersome and by itself does not change the basic implications of the model. Nor is there much change in extending the model to multiple dimensions with “m” number of countries and “n” number of inputs as long as the basic assumptions of perfect competition in all markets and constant returns to scale are maintained.<sup>159</sup>

Other extensions such as the incorporation of specific factors of production (i.e., inputs which are specialized according to sector or industry) can easily destroy the strong substitute relationship between trade and migration.<sup>160</sup> It is quite possible for trade and migration to be in a complementary relationship in this setting, i.e., increased trade may be accompanied by increased incentives for migration. Incorporation of additional specific factors, such as highly skilled labor, which is internationally mobile along with capital and unskilled labor, can also generate the possibility of emigration of skilled labor from less developed to advanced countries, i.e., a “brain drain.”<sup>161</sup>

---

<sup>159</sup> See FEENSTRA & TAYLOR, *supra* note 147, at 5.

<sup>160</sup> For example, software designers are not likely to be as productive as bricklayers in the construction industry. Thus, labor in these two industries has sector-specific skills and its productivity is industry-specific. Similarly, heavy capital machinery used in auto assembly plants is unlikely to be of much use in law offices. For an interesting article in sector specialization, see Henry Hansmann et al., *Law and the Rise of the Firm*, 119 HARV. L. REV. 1333, 1357–58 (2006).

<sup>161</sup> “Brain drain” is the subject of much recent literature. See, e.g., PHILIP MARTIN ET AL., *MANAGING LABOR MIGRATION IN THE TWENTY-FIRST CENTURY* 58–61 (2006); Simon Commander et al., *The Brain Drain: Curse or Boon? A Survey of the Literature*, in *CHALLENGES TO GLOBALIZATION: ANALYZING THE ECONOMICS* 235, 235 (Robert E. Baldwin & L. Alan Winters eds., 2004). An example of a specific factor that is internationally mobile may be highly skilled information

Trade theorists have extended the basic trade model in a multitude of other ways other than the specific model. Most extensions of the basic model involve permitting the possibility of monopolistic competition or of an increasing return to scale. In turn, increasing return to scale can be shown to lead to concentration or agglomeration of certain sectors in particular countries or in specific locations. Thus, models of increasing returns to scale are closely related to the geography and trade structures developed in the 1980s.<sup>162</sup> Most of the analysis in this area is too involved for present purposes, but a brief summary is in order.

In contrast to the classic model, trade patterns are now determined by both absolute and comparative advantage. With absolute advantage being a relevant factor, initial size of sectors or countries can matter in determining trade patterns. When combined with increasing returns to scale, the implication is clear: large sectors have a built-in advantage which increases over time as trade occurs. The result may well be the development of a central core country (or sector) with a periphery of satellites. In addition, the core industry or country may feed on the periphery and drain them of labor resources as well. Thus, increased trade may be accomplished by increased migration, i.e., trade and migration are complementary in this setting.

Related to the core-periphery models that emerge from increasing returns to scale are models based upon "gravity equations."<sup>163</sup> In its simplest form, this model postulates that bilateral trade between two countries is directly proportional to the countries' GDP. Thus, large countries tend to trade more with each other and countries that are similar in size are also likely to be closer trading partners.<sup>164</sup>

At the time this article was written there did not appear to be

---

technology workers or highly trained medical personnel. For example, immigration policy in the United States and in many advanced countries makes special provisions for admission of highly skilled labor as both temporary and permanent immigrants. *Id.*; see Anupam Chander, *Homeward Bound*, 81 N.Y.U. L. REV. 60, 66-67 (2006).

<sup>162</sup> KRUGMAN, *supra* note 17, at 10. The seminal work on monopolistic competition and trade is ELHANAN HELPMAN & PAUL R. KRUGMAN, MARKET STRUCTURE AND FOREIGN TRADE: INCREASING RETURNS, IMPERFECT COMPETITION, AND THE INTERNATIONAL ECONOMY 36 (1985). See ELHANAN HELPMAN & PAUL R. KRUGMAN, TRADE POLICY AND MARKET STRUCTURE 134 (1989).

<sup>163</sup> FEENSTRA, *supra* note 157, at 137-73 (containing information on gravity models along with a wealth of references). Empirical testing of gravity models has proven to be quite satisfactory.

<sup>164</sup> *Id.* at 149.

any published work regarding gravity models and migration or the trade-migration relationship. Work in this area may be regarded as presently unfinished business.

#### IV. SOCIAL-POLITICAL CONSIDERATIONS

In this section, I briefly discuss social-political factors that may affect trade and immigration and their inter-relationship. If the trade regime is not related to migration policy, or at least if the relationship between them cannot be pinned down clearly as appears to be the case in modern models, labor market considerations grounded in economics, sociology, or political science might explain migration patterns.

Economic analysis of migration—rural, urban, and international—has a long and venerable lineage based upon the traditional “push-pull factors” first introduced by John Harris and Michael Todaro, and discussed by a great number of other scholars.<sup>165</sup> The economic calculations for the decision to migrate are simple in principle: a person migrates abroad if the net discounted present value gains to such migration exceed those in any other vocational choice.<sup>166</sup> There are both benefits (primarily, much higher income prospects) and costs (which may be relocation-based, educational, or other non-economic costs associated with alienation from one’s homeland) to migrating abroad. Large wage differentials between the source and destination countries clearly increase the net gains to migration.<sup>167</sup> Thus, widening income disparities between countries may be expected to exacerbate migratory pressures.

Social-economists such as Stark and Taylor emphasize the “relative deprivation hypothesis.”<sup>168</sup> The wage differentials that matter here are not absolute wage differences between source and destination countries for particular skill levels, but one’s income relative to the relevant reference group.<sup>169</sup> The reference group may be in one’s home area or one’s perceived peers in the

---

<sup>165</sup> See generally John R. Harris & Michael P. Todaro, *Migration, Unemployment and Development: A Two-Sector Analysis*, 60 AM. ECON. REV. 126, 126–27, 132 (1970). A more recent and important survey of the economic underpinnings of immigration is contained in George J. Borjas, *The Economics of Immigration*, 32 J. ECON. LITERATURE 1667, 1668 (1994).

<sup>166</sup> See Borjas, *supra* note 165, at 1687–89.

<sup>167</sup> See *id.* at 1678–80; Harris & Todaro, *supra* note 165, at 132 & n.12.

<sup>168</sup> Oded Stark & J. Edward Taylor, *Migration Incentives, Migration Types: The Role of Relative Deprivation*, 101 ECON. J. 1163, 1164–65 (1991).

<sup>169</sup> See *id.* at 1776–77.

destination country. Clearly, the reduction of information and communication costs may mean that one's relevant reference group may be larger and may even be located in another country.

The work of political scientists in the areas of trade and migration is closely related to that of public choice theorists or interest group analysts. I have previously, in this article, summarized some of the work of political scientists in the area of regime type (whether democratic or not) and its openness.<sup>170</sup> As discussed in that paper, it seems likely that non-democratic regimes, particularly those in rich nations, may adopt more open or liberal policies than their democratic counterparts.<sup>171</sup> This is because the democratic regimes are more likely to be responsive to voter preferences of the median voter who is not likely to be highly skilled.<sup>172</sup> Low-skilled individuals in rich countries are naturally expected to oppose migration from less developed countries which directly threatens their income prospects.<sup>173</sup> By contrast, autocratic regimes are more easily able to ignore the preferences of the median voter and cater primarily to the elite classes.<sup>174</sup>

Several authors have analyzed the preferences of the median voter in enfranchised societies. Pioneering work in this area is that of Jess Benhabib, who suggests that the median voter categorizes prospective migrants according to their labor skills and capital endowments.<sup>175</sup> Specifically, the native median voter prefers immigrants with complementary labor skill (and capital endowments) rather than substitutes for itself, which may threaten its financial well being.<sup>176</sup> If the median voter in advanced countries is not highly skilled, the average voter will prefer an immigration policy that admits highly skilled immigrants or those who are well-endowed with capital. The addition of complementary factors raises the marginal productivity of the existing median voter and its returns. Conversely, skilled domestic labor prefers unskilled migrants to

---

<sup>170</sup> See Bhandari, *International Migration and Trade*, *supra* note 28, at 145–60.

<sup>171</sup> *Id.* at 154–56.

<sup>172</sup> *Id.*

<sup>173</sup> Hatton & Williamson, *supra* note 15, at 237; see AFL-CIO, Labor Movement Declaration Concerning the United States-Central America Free Trade Agreement, San Jose, Costa Rica (Nov. 18, 2002), [http://www.aflcio.org/issues/jobseconomy/globaleconomy/battle/cafta\\_declaration.cfm](http://www.aflcio.org/issues/jobseconomy/globaleconomy/battle/cafta_declaration.cfm).

<sup>174</sup> See Hatton & Williamson, *supra* note 15, at 237.

<sup>175</sup> Jess Benhabib, *On the Political Economy of Immigration*, 40 EUR. ECON. REV. 1737, 1740–41 (1996).

<sup>176</sup> *Id.*

complement its own skill set. Continuous skill formation and job churning in vibrant advanced countries ensure that skills are always differentially distributed, i.e., there are always classes of skilled and unskilled labor. It is quite possible in this framework for the median voter to even prefer a limited amount of illegal (irregular) immigration to perform labor that even domestic unskilled labor does not prefer.

There are two shortcomings of this framework. First, because the model is static, it cannot account for the changing profile of the median voter over time. Presumably, as immigration occurs, some immigrants are naturalized and acquire voting rights. The nature of the median voter thus changes with time and the median voter of later years may prefer new migrants with different characteristics.<sup>177</sup> Second, Benhabib's framework can predict the nature or skill levels of new migrants, but not their magnitudes or quota levels.<sup>178</sup>

The median voter also has fiscal or monetary preferences which have clear implications for immigration and trade policies. Thus, natives in low tax rate states with meager state public assistance programs (such as Texas) are likely to be more favorably disposed to future unskilled migration than natives in states that have high existing tax burdens and generous public assistance.<sup>179</sup> Additional unskilled labor migration in the latter states is likely to impose a high fiscal cost which may be eventually passed on to natives in terms of even higher taxes.<sup>180</sup> In addition, the demographic profile of the existing workforce may also have immigration preference implications. Thus, a rapidly aging workforce with a growing dependency burden may prefer young migrants who can contribute to the public fiscally and preserve pension levels of existing workers.<sup>181</sup>

## V. INTEREST GROUPS OR COALITIONS

Interest groups or coalitions also affect both trade and migration policies. In fact, the effect of coalitions on trade policy pre-dates that of migration. For example, the "protection for sale"

---

<sup>177</sup> *Id.* at 1741–42.

<sup>178</sup> *But see* Francesc Ortega, *Immigration Quotas and Skill Upgrading*, 89 J. PUB. ECON. 1841, 1848–49 (2005).

<sup>179</sup> *See* Gordon H. Hanson et al., *Public Finance and Individual Preferences over Globalization Strategies*, 19 ECON. & POL. 1, 3–4 (2007).

<sup>180</sup> *See id.* at 3.

<sup>181</sup> *See id.* at 30; *see also* TIM KRIEGER, PUBLIC PENSIONS AND IMMIGRATION: A PUBLIC CHOICE APPROACH 12 (2005).

models of Grossman and Helpman precede analysis of lobbying for migration that is of more recent vintage.<sup>182</sup>

In very recent years, some authors, such as Anna Maria Mayda, have directed their attention to the formation and efforts of interest groups and their effects in shaping immigration policies.<sup>183</sup> At the theoretical level, one would expect that more lobbying by labor would reduce the demand for migrants in affected sectors and, conversely, increased lobbying efforts by businesses would have the opposite effects. In turn, changes in the demand for migrants due to lobbying efforts shape enacted immigration policy.<sup>184</sup>

On an anecdotal level, a number of migration priorities and policies appear to have been the direct result of lobbying efforts or expenditures by interested coalitions or interest groups. These range from the creation of H-1B visas to meet the demands of the software industry in the United States,<sup>185</sup> to the introduction of H-1C visas for nurses,<sup>186</sup> among others. Labor groups such as the American Federation of Labor and its predecessors were active in procuring anti-immigration legislation in the 1882 Chinese Exclusion Act and in the enactment of the literacy requirement to the 1917 immigration legislation (which was passed over a Presidential veto).<sup>187</sup> Other anecdotes may also be noted, such as

---

<sup>182</sup> Gene M. Grossman & Elhanan Helpman, *Protection for Sale*, 84 AM. ECON. REV. 833, 833 (1994). These models are also known as “endogenous trade policy” models, meaning that trade policy reacts to the state of the economy and is not assumed to be fixed. See generally GENE GROSSMAN & ELHANAN HELPMAN, SPECIAL INTEREST POLITICS 270 (2001) (dealing with interest groups and trade policy); Theo Eicher & Thomas Osang, *Protection for Sale: An Empirical Investigation*, 92 AM. ECON. REV. 1702, 1702 (2002) (providing empirical work on protection for sale models); Giovanni Facchini, *The Political Economy of International Trade and Factor Mobility*, 18 J. ECON. SURV. 1, 2, 17 (2004) (containing a detailed survey of the political economy of trade and immigration).

<sup>183</sup> See generally Giovanni Facchini & Anna Maria Mayda, *From Individual Attitudes Towards Migrants to Migration Policy Outcomes: Theory and Evidence*, 23 ECON. POL'Y 653, 655–56 (2008).

<sup>184</sup> Lobbying can be done in terms of expenditure or it may take the form of “informational lobbying,” which may be as effective as expense of funds through targeted contributions. See generally Morten Bennedsen & Sven E. Feldman, *Informational Lobbying and Political Contributions*, 90 J. PUB. ECON. 631, 631–33 (2006).

<sup>185</sup> See, e.g., Lizette Alvarez, *Congress Approves a Big Increase in Visas for Specialized Workers*, N.Y. TIMES, Oct. 4, 2000, at A1.

<sup>186</sup> See, e.g., 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, 995–96 & n.121 (2002).

<sup>187</sup> See Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58 (repealed 1943); Immigration Act of 1917, ch. 29, 39 Stat. 874 (repealed 1952).

the creation of the Q-1 visa meant for youths engaging in “international cultural exchange.”<sup>188</sup>

Reported lobbying expenses of various entities have been utilized by Giovanni Facchini to analyze their effects on U.S. immigration policy.<sup>189</sup> Facchini found that lobbying expenditures by both pro- and anti-immigration interest groups have a robust impact on U.S. migration policies.<sup>190</sup> Specifically, in a sector-specific study utilizing data from 2001 to 2005, these authors found that in sectors where labor unions are strong, barriers to immigration are high, and the converse, in sectors where business lobbying groups are active.<sup>191</sup> On a quantitative basis, a ten percent increase in union density is found to lead to a 3.2% decline in visas per native worker that are issued to foreign workers.<sup>192</sup> The interested reader is referred to this study for additional empirical findings.<sup>193</sup>

#### VI. OTHER DISCIPLINES: SOCIOLOGY, ANTHROPOLOGY, DEMOGRAPHY, AND INTERNATIONAL RELATIONS

In this section, I briefly draw upon literature in sociology, anthropology, international relations, and other areas with regard to migration and trade. As indicated previously, until

---

<sup>188</sup> See INA § 101(a)(15)(Q), 8 U.S.C. § 1101(a)(15)(Q) (2006). Another example of business interests active in securing their immigration needs is the creation of the H-2R visa (which is not subject to numerical quotas) for seafaring interests, primarily in Maryland. See Tsunami Relief Act, Pub. L. No. 109-13, 119 Stat. 231 (2005). The modern AFL-CIO has been active in opposing migration and free trade (both of which injure the economic interests of the average, unskilled union member. The AFL-CIO in a multitude of briefs, position papers, and statements (some authored by aligned think tanks such as the Economic Policy Institute) opposes migration and, in particular, free trade pacts such as NAFTA. As an example, see the statements regarding the “policy disaster” of NAFTA. AFL-CIO, *After NAFTA, FTAA Could Bring More Disaster*, Apr. 19, 2001, <http://www.aflcio.org/issues/jobseconomy/globaleconomy/ns04192001.cfm>. See generally Robert E. Scott et al., *Revisiting NAFTA: Still Not Working for North America's Workers* 2 (Econ. Pol’y Inst., Working Paper No. 173, 2006), <http://www.epi.org/publications/entry/bp173> (regarding job losses in all member countries attributed to NAFTA).

<sup>189</sup> See generally Giovanni Facchini et al., *Do Interest Groups Affect U.S. Immigration Policy?* 4–6 (Int’l Monetary Fund, Working Paper No. 244, 2008), <http://www.imf.org/external/pubs/ft/wp/2008/wp08244.pdf>.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* at 11.

<sup>192</sup> *Id.* at 6.

<sup>193</sup> See generally *id.* at 4 (providing “systematic empirical evidence on the political-economy determinants of today’s immigration to the United States and, in particular, on the role played by interest groups”).

recently, there has been very little “talk across disciplines.”<sup>194</sup> As the sociologist Silvia Pedraza once remarked, it is “in much the same fashion that one sometimes arrives at a party and is much surprised to find out who else is there.”<sup>195</sup> In a similar vein, another well-cited sociologist, Douglas Massey, stated the problem of lack of fertilization across disciplines as follows:

[s]ocial scientists do not approach the study of immigration from a shared paradigm, but from a variety of competing theoretical viewpoints fragmented across disciplines, regions, and ideologies. As a result, research on the subject tends to be narrow, [often] inefficient, and characterized by duplication, miscommunication, reinvention, and bickering about fundamentals [and terminology].<sup>196</sup>

It may be premature and likely unproductive to even attempt a blueprint for development of a comprehensive, interdisciplinary framework. For present purposes, it may be sufficient to note the convergence or divergence in how questions are posed in various disciplines, at what level the analyses are conducted, and the possible relationships between research across disciplines, especially with regard to migration and trade. Before turning to the discussion though, it may be emphasized that other than economics, and to some extent public choice and international relations, issues relating to trade generally take a backseat to migration in other fields such as sociology, anthropology, demography, urban studies, and so on.

Traditional social historians offer a narrative of how various groups settled in and shaped their communities in host societies.<sup>197</sup> For the most part, the narrative is descriptive rather than focused on analysis (or the causes of the migration process in abstract terms).<sup>198</sup> Hence, the individual migrant or groups of migrants are the unit of analysis.<sup>199</sup> Historical methods rely on archival sources. More recently, historians have turned to

---

<sup>194</sup> See generally Brettell & Hollifield, *supra* note 1, at 3–7.

<sup>195</sup> Silvia Pedraza-Bailey, *Immigration Research: A Conceptual Map*, 14 SOC. SCI. HIST. 43, 44 (1990).

<sup>196</sup> DOUGLAS S. MASSEY ET AL., *WORLDS IN MOTION: UNDERSTANDING INTERNATIONAL MIGRATION AT THE END OF THE MILLENNIUM* 69 (1998); Douglas S. Massey et al., *An Evaluation of International Migration Theory: The North American Case* 20 POPULATION & DEV. REV. 699, 700–01 (1994).

<sup>197</sup> DAVID E. KYVIG & MYRON A. MARTY, *NEARBY HISTORY: EXPLORING THE PAST AROUND YOU* 221 (2000).

<sup>198</sup> See *id.*

<sup>199</sup> One may find several fascinating accounts of, say, the Germans in America, etc. See TOM RANGE, SR., *THE PENNSYLVANIA DUTCH COUNTRY* 7 (2004); DON HEINRICH TOLZMANN, *THE GERMAN-AMERICAN EXPERIENCE* 18 (2000).

quantitative data analysis and drawn upon a richer array of data sources such as census data, ownership and housing records, passport registers, ship manifests, and local parish records.<sup>200</sup>

Economic historians such as Jeffrey Williamson and his colleagues have generated a treasure of valuable scholarship with painstaking empirical analysis of both migration and trade.<sup>201</sup> This body of work is differentiated from that of social historians by being both more analytical and empirically oriented and by its attention to both migration and trade—in particular, the historical relationship between trade and migration.

Geographers and students of urban studies focus on spatial relationships, almost by definition. Why do migrants settle in particular areas within nations, and why do urban centers sometimes have specific ethnic concentrations (such as Chinatown in San Francisco or the Kreuzberg district of Berlin)? Geographical and urban studies are related to the sub-disciplines of ethnic studies and “whiteness” studies.<sup>202</sup> Incorporation into society along spatial dimensions is an important area of interest to geographers and students of urban analysis. It should be apparent that incorporation into broader society or political society, which are of concern to sociologists and political scientists, are related areas and there is room for fruitful dialogue between these disciplines, at least with respect to incorporation and assimilation.

The central focus of demographers is the nature of population change.<sup>203</sup> Social demographers tend to borrow freely from other disciplines, while formal demography is much more technical, relying on elaborate mathematical models to predict future population change.<sup>204</sup> Relying upon data on births, deaths, immigration, and emigration, demographers attempt to predict

---

<sup>200</sup> See HASIA R. DINER, *ERIN'S DAUGHTERS IN AMERICA: IRISH IMMIGRANT WOMEN IN THE NINETEENTH CENTURY* 155 (2d ed. 1986); DONNA R. GABACCIA, *FROM SICILY TO ELIZABETH STREET: HOUSING AND SOCIAL CHANGE AMONG ITALIAN IMMIGRANTS, 1880–1930*, at 126–27 (1984). See generally MARIA BAGANHA, *PORTUGUESE EMIGRATION TO THE UNITED STATES, 1820–1930*, at xv (1990) (providing a list of tables displaying quantitative data regarding migration).

<sup>201</sup> See O'ROURKE & WILLIAMSON, *supra* note 148, at 5–28; see also GLOBAL MIGRATION AND THE WORLD ECONOMY, *supra* note 12, at 12–16; JEFFREY G. WILLIAMSON, *THE POLITICAL ECONOMY OF WORLD MASS MIGRATION: COMPARING TWO GLOBAL CENTURIES 1–8* (2005).

<sup>202</sup> Laura Y. Liu, *The Place of Immigration in Studies of Geography and Race*, 1 *SOC. & CULTURAL GEOGRAPHY* 169, 173 (2000).

<sup>203</sup> Michael S. Teitelbaum, *Demographic Analysis of International Migration*, in *MIGRATION THEORY*, *supra* note 1, at 51, 59.

<sup>204</sup> *Id.*

the ethnic composition of societies over long periods; thus, both social and formal demography have long-term perspectives.<sup>205</sup> Over the long term, migration may be expected to have a major impact upon societal structures and, with it, political structures and control, which are also the subject matter of political scientists. Evolution or explanation of trade patterns, even over long periods of time, has not been an area of study by demographers, but rather by economic historians.

A substantial portion of this paper dealt with the work of economists in the areas of both international trade and cross-border migration and need not be repeated. In general, economists have built predictive models for both trade and migration. As noted previously, questions typically asked are: why does trade occur and what are its consequences? Similarly, in the context of migration, economists have constructed the well-known “push-pull” models for migration, or the more recent “self selection” hypothesis of Borjas and others.<sup>206</sup> In general, the unit of analysis is the individual and the focus of inquiry is on who migrates and why. In addition, economists also examine the economic consequences of both migration and trade, such as their sector specific or macroeconomic impact (e.g., on wages or on income distribution).<sup>207</sup> Incorporation into society, assimilation, and acculturation is left to other disciplines, such as sociology and anthropology.

The focus of anthropological studies is almost exclusively on migration. Indeed other than consumption of or trade in “ethnic” goods, it is not clear whether anthropology has much to offer in the way of explanation or consequences of international trade in goods. Anthropologists focus on the experience of migrants as they depart from their native lands and attempt to assimilate into host societies.<sup>208</sup> Much more attention is paid to the transformation of the migrants in new settings than on the effects of the presence of migrants on native host societies. Migrants form or join social kinship networks which may be transnational; hence, migrants have indeed a dual existence simultaneously in the source and host countries.<sup>209</sup> They may physically reside in

---

<sup>205</sup> *Id.*

<sup>206</sup> See Barry R. Chiswick, *supra* note 22, at 63, 64.

<sup>207</sup> *Id.* at 72.

<sup>208</sup> CAROLINE BRETTELL, ANTHROPOLOGY AND MIGRATION: ESSAYS ON TRANSNATIONALISM, ETHNICITY AND IDENTITY 1 (2003).

<sup>209</sup> Rachel F. Moran, *The Transnational School*, 9 U.C. DAVIS J. INT'L L. & POL'Y 63, 76 (2002).

host societies without leaving their native cultures and networks.<sup>210</sup> The work of anthropologists such as Caroline Brettell is an important contribution for scholars in this area.<sup>211</sup>

Sociologists share a common classic framework of social and class theory of Karl Marx and Max Weber with anthropologists. However, the work of sociologists is of earlier vintage than that of anthropologists and their work primarily focuses on the receiving society or the host country. Immigrant incorporation or acculturation is a key question in sociology. It is not difficult to observe that incorporation can take place on many levels. Social transformation is the domain of sociologists and ethnic scholars, while political incorporation and its consequences for the meaning of state sovereignty are of interest to international relations theorists.

The study of social incorporation or assimilation is of venerable lineage owing much to the early work of Robert Park.<sup>212</sup> More recent work in the area has refined the concept of assimilation by postulating possibilities such as straight line assimilation, segmented assimilation, or development of ethnic niches or enclaves.<sup>213</sup>

---

<sup>210</sup> *Id.*

<sup>211</sup> *See, e.g.,* BRETTELL, *supra* note 208, at ix–xx; CROSSING BORDERS/CONSTRUCTING BOUNDARIES: RACE, ETHNICITY AND IMMIGRATION 1–16 (Caroline B. Brettell ed., 2007); Brettell & Hollifield, *supra* note 1, at 1–26.

<sup>212</sup> ROBERT E. PARK & EARNEST W. BURGESS, INTRODUCTION TO THE SCIENCE OF SOCIOLOGY v (3d ed. 1969).

<sup>213</sup> Barbara Schmitter Heisler, *The Sociology of Immigration: From Assimilation to Segmented Assimilation, from the American Experience to the Global Arena*, in MIGRATION THEORY, *supra* note 1, at 77, 88–90 (citing a great number of useful references in the area of assimilation); *see* RICHARD ALBA & VICTOR NEE, REMAKING THE AMERICAN MAINSTREAM: ASSIMILATION AND CONTEMPORARY IMMIGRATION 164–65 (2003); *see also* ETHNICITIES: CHILDREN OF IMMIGRANTS IN AMERICA 303 (Alejandro Portes & Ruben Rumbaut eds., 2001); INCORPORATING DIVERSITY: RETHINKING ASSIMILATION IN A MULTICULTURAL WORLD 20 (Peter Kivisto ed., 2005); Rogers Brubaker, *The Return of Assimilation? Changing Perspectives on Immigration and Its Sequels in France, Germany and the United States*, 24 ETHNIC & RACIAL STUDIES 531, 540–41 (2001); Stephen Castles, *Migration and Community Formation Under Conditions of Globalization*, 36 INT'L MIGRATION REV. 1143, 1160–61 (2002); Alejandro Portes, *Immigration Theory for a New Century: Some Problems and Opportunities*, 31 INT'L MIGRATION REV. 799, 802, 806 (1997); Erik Snel et al., *Transnational Involvement and Social Integration*, 6 GLOBAL NETWORKS 285, 290 (2006).

## CONCLUSION

This paper has examined the relationship between international trade and international migration from a variety of perspectives particularly in the context of NAFTA and the EU. One of the focal points of the paper 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. Unless the interrelationship between trade and migration is known, it is quite possible for a policy regarding international trade, for example, to undermine the results desired or expected from extant immigration policy.

As noted previously, the EU and NAFTA have sequenced trade and migration reforms quite differently. The EU chose to pursue both trade liberalization and free mobility of labor (along with other "freedoms") simultaneously during the formation of the community. The United States negotiated and implemented the NAFTA trade agreement with Canada and Mexico, but NAFTA itself was purely concerned with free trade between these nations, while immigration matters were specifically excluded from the treaty and left to other legislation. In time, it is expected that increased interdisciplinary work will generate a richer and deeper understanding of the linkage between trade and migration policies and their effects.