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MIGRATION AND TRADE POLICIES: SYMMETRY OR PARADOX?

Jagdeep S. Bhandari*

I. INTRODUCTION

Other than national security and international terrorism, few issues appear to have occupied the attention of the public and of policy makers to a larger extent than migration, in particular irregular migration (*migration irreguliere*) and to a smaller extent, international commerce and globalization.¹ Heightened concern about these issues (aside from the customary concerns about intensely local matters such as school education and medical care) may be observed both in the liberal democracies of Western Europe and the United States ("U.S."), as well as in other parts of the world, including Asia and Africa. Indeed, election results in the U.S. in 2008 are likely to be molded to a substantial extent by the issue of migration. In Europe, political parties with strong positions on immigration and asylum have led to the emergence of a "radical right" and such parties in France, Denmark, Austria and Germany among others, have reported strong electoral gains.²

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¹ See World Public Opinions: Program on International Policy Attitudes, at www.worldpublicopinion.org; Ipsos Group for the U.K., <http://www.ipsosmori.com/polls/2003/migration.shtml>; Migration Watch, www.migrationwatchuk.org; Pew Research Center and National Public Radio, <http://www.npr.org/templates/story/story.php?storyId=5312922>.

² Profile, Jean-Marie Le Pen, BBC NEWS, April 23, 2002, at <http://news.bbc.co.uk/2/hi/europe/1943193.stm>. In France, the National Front Party of Jean-Marie Le Pen captured about 17 percent of the presidential vote in early 2002. *Id.* While in Austria, the far-right Freedom Party of Jitrg Haider gained seats in the Austrian coalition government shortly before that. *Austria and the Haider Factor: Special Report*, BBC NEWS, May 4, 2000, at <http://news.bbc.co.uk/2/hi/europe/628521.stm>. Similar results are reported for the anti-immigration Danish People's Party ("DPP") with respect to seats in the Danish Parliament (the *Folketing*) and the National Democratic Party ("NDP") (successor party to the *Deutsche Reichspartei*) in Germany. Roland Nelles and Gabor Steingart. *Rise of German Right-Wing Party Evokes Ghosts of Past*, SPIEGEL ONLINE INT'L, Jan. 31, 2005, at <http://www.spiegel.de/international/spiegel/0,1518,339604,00.html>. For more detailed discussion, see TERRI GIVENS, *VOTING RADICAL RIGHT IN WESTERN EUROPE* (Cambridge: Cambridge University Press) (2005) and SIMON GREEN, *THE POLITICS OF EXCLUSION: INSTITUTIONS AND IMMIGRATION POLICY IN CONTEMPORARY GERMANY* (Manchester University Press) (2004).

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Although “globalization,” in particular “corporate globalization,” has preoccupied the public to a large extent, free trade has had a somewhat lower profile than migration in most countries. In the U.S., trade issues remain of concern to specific sectors and groups that perceive an economic threat to themselves but, perhaps owing to its more ubiquitous nature, not since the days of NAFTA (North America Free Trade Agreement) in 1993-94 has the American populace focused to a large extent on free trade pacts.³ Moreover, trade and migration are not popularly viewed in the U.S. as being intimately related.⁴ In Europe however, at least for policy-makers, trade and migration are not viewed dichotomously. In particular, with respect to accession *vel non* to the European Union treaty, which in principle assures free mobility of both goods and persons (in addition to the other two “freedoms” involving movement of services and of capital).⁵

Concern over the undesirable linkage between trade and migration, though expected to be temporary, is the precise reason why the core members of the European Union have delayed the full freedom of labor rights for new members such as Bulgaria and Romania. The latter countries joined the Union on January 1, 2007, but will not have full free movement of labor privileges for a five year period (i.e. until 2012). Thus, while the original core European

³ NAFTA became effective on January 1, 1994. The larger Central American Free Trade Agreement (CAFTA-DR), which includes five Central American nations, the Dominican Republic and the U.S., has delayed its original final implementation date. *Central American Free Trade Agreement Misses Implementation Date*, GLOBAL EXCHANGE, <http://www.globalexchange.org/campaigns/cafta/>. The even more ambitious Free Trade Area of the Americas (FTAA) Agreement also appears stalled for now. *U.S. Seeks Trade and Investment Agreement with Panama - With FTAA Stalled, U.S. Engages in NAFTA Extension Piece by Piece*, COMMON DREAMS PROGRESSIVE NEWSWIRE, April 26, 2004, at http://www.ustr.gov/Trade_Agreements/Bilateral/CAFTA/Section_Index.html.

⁴ During the debates leading to the ratification of NAFTA, some public officials and commentators had discussed the linkage between the trade pact and its consequences in mostly favorable terms, i.e., that the enactment of NAFTA would likely stem migration flows to the U.S. from Mexico. See Honorable Gene McNary, U.S. Comm'r for the INS, *Moving Goods and People in International Commerce*, Duke University (Feb. 6, 1992) in 2 DUKE J. COMP. & INT'L L. 247, 247 (1992). (“I feel more than a bit confident in acknowledging that, if immigration is not formally on the table, someone at the table will sooner or later realize as a practical matter that moving goods and services in international commerce involves moving people who trade in these goods and services.”). Other commentators, who may have proven more accurate, believed that NAFTA would exacerbate migration from Mexico to the U.S. in the short run, i.e., that there would likely exist a “migration hump.” See PHILIP MARTIN, *NAFTA AND MEXICO-U.S. MIGRATION* (2005), http://giannini.ucop.edu/Mex_USMigration.pdf.

⁵ See Treaty of Amsterdam Amending the Treaty of Rome, OJ 1997 C340/173, Art. 3.1(c). See Roger Goebel, *The European Union in Transition: The Treaty office in Effect; Enlargement in Sight: A Constitution in Doubt*, 27 FORDHAM INT. L.J. 455 (2004) (discussing the various amendments to the original European Community Treaties and associated protocols).

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Union members (West Germany, France, Italy, Belgium, Luxembourg and The Netherlands) pursued both free trade and free migration among each other, trade and migration policies have been dichotomized for many recent entrants into the Union for the present.⁶

What is the relationship between international migration and trade? Is liberalized trade likely to create or diminish incentives for additional migration? In the former case, trade and migration may be said to be complements and in the latter case, substitutes. If increased trade diminishes the incentives to migrate, then the present objectives of most developed nations of fostering free trade while restricting inbound migration could well be accomplished by the use of trade policy alone. Have policy makers and governments acted as though trade and migration policies were really different sides of the same economic coin? Are governments in more democratic societies more likely to be pro-immigration and pro-trade or conversely compared with less liberal democracies? Are the preferences (to the extent that meaningful franchise exists) of voters between trade and migration symmetrical, i.e. does being pro-trade normally imply that the voter in question is also likely to be pro-migration? What has been the impact of interest groups or coalitions of voters on articulated trade and migration policies historically? These are some of the several questions addressed in this multi-disciplinary article.

It will be observed that over the last two centuries, trade and migration policies have never been simultaneously liberal. One century ago, the policy mix was marked by relatively restrictive tariffs and a liberal migration regime. Shortly after the end of the Second World War, most advanced countries underwent a radical policy switch to one characterized by the opposite configuration of a liberalized trading order increasing restrictive migration policies. Simultaneous free trade and international labor mobility have, in fact, never existed over the past two hundred years, although there are periods during which labor and capital mobility have coexisted.

In what follows, the relationship between trade and migration policies will be examined, both on the basis of received doctrine in a number of disciplines and as actually implemented in most advanced countries. Work currently available in a number of fields, notably, law, economics, political science, public choice and to some extent, sociology and international relations are utilized. Broad interdisciplinary work of this type is still very much the exception and some of the analysis and conclusions should be regarded, at

⁶ See for example the release by the German Federal Foreign Office mentioning transitional periods for certain freedoms for the newest entrants to the European Union, Romania and Bulgaria on January 1, 2007 at <http://www.huliq.com/4162/bulgaria-and-romania-new-member-states-of-the-european-union>.

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present, as being tentative.

If there is a firm conclusion that may be reached it is this: All too often, authors in various disciplines, including law, appear to have unreservedly accepted the conclusions and

Implications of naïve (meaning of the vintage variety) economic frameworks that predict that trade and migration are interchangeable phenomena, in other words, countries can either trade goods or persons and the consequences are very similar. In fact though, trade and migration are quite different even with respect to purely economic implications and profoundly distinguishable in their non-economic, socio-political causes and consequences and there may not be any necessary close linkage between them. In this respect, the chorus of hand-wringing by a number of authors, notably in the law, regarding the "missed opportunities" for migration reform that should have been grafted on to the NAFTA accords is misplaced.⁷

Because of the scope and breadth of the present work, fuller details and exposition of some of the analysis must be left to a much longer paper. Where possible, the article attempts to simplify and abstract from unnecessary complexity in order to appeal to readers across a broad spectrum of interests and disciplines.

II. LAW

Unlike some areas such as Constitutional Law, Commercial Law and Criminal Law, or the Law of Evidence, legal doctrine by itself has no autonomous content and implications for social policy, either with respect to

⁷ See, Melinda McGehee, *Using Immigration as Protectionist Mechanism While Promoting Free Trade*, 8 L & BUS. REV. AM. 667 (2002); Alan Nelson, *NAFTA: Immigration Issues Must be Addressed*, 27 U.C. DAVIS L. REV. 987 (1994); James Smith, *NAFTA and Human Rights: A Necessary Linkage*, 27 U.C. DAVIS L. REV. 793 (1994); Dolores Acevedo & Thomas Espenshade, *Implications of a North America Free Trade Agreement for Mexican Migration into the United States*, 18 POPULATION & DEV. REV. 729, 730-31 (1992) (observing, "[i]n absence of protectionism, trade among countries with different factor endowments is a substitute for migration. In other words, if countries with an abundance of labor can specialize in the production of labor-intensive goods, there need not be labor migration to more developed countries."). In a well-cited paper Kevin Johnson observes that the dichotomy between trade and movement of people in the NAFTA is a "false separation" since "labor migration and capital flow are related to international trade ... [and that] [i]n the absence of protectionism, trade among countries with different factor endowments is a substitute for migration") (emphasis in original). Kevin Johnson, *Free Trade and Open Borders: NAFTA and Mexican Immigration to the United States*, 27 U.C. DAVIS L. REV. 937, 965 (1994); see also Howard Chang, *Liberalized Immigration and Free Trade: Economic Welfare and Optimal Immigration Policy*, 145 U. PA. L. REV. 1147 (1997); Howard Chang, *Migration as International Trade*, 12 U.C.L.A. J. INT'L L & FOREIGN AFF. 371 (1998-99).

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international trade or international migration (of persons or of capital).⁸ Virtually every independent nation has a body of law relating to external trade and migration, both “on the books” (as it is written) and as practiced or actually enforced.⁹ As alluded to above, public debates have often centered around perceived deficiencies of the legal regime, particularly, as enforced. For instance, current immigration debates in the U.S. have focused on the some 12 million or so undocumented aliens (irregular migrants) currently residing in the U.S.¹⁰ While such persons are subject to deportation and while U.S. employers employing any such persons are subject to civil and criminal sanctions, the overwhelming practical reality is that no such enforcement occurs in practice for a number of reasons not immediately relevant.¹¹

The motivation and content of both external trade and migration policies is derived from, and is dependent upon, received doctrine in *other* disciplines, notably economics, political science, public choice and other areas.

A. The Trading Regime

Trade law, both at the multilateral level and as domestically implemented, in the post-Keynesian, post-World War II period of “re-globalization” has been reformed in virtually every developed country, and to an increasing extent in other countries as well, by the twin principles of superiority of free trade coupled with “fair” trade. Free trade economists won

⁸ Authors such as Posner have questioned the autonomous existence of law as a separate discipline in general. See generally Richard Posner, *The Decline of Law as an Autonomous Discipline 1962-1987*, 100 HARV. L. REV. 767 (1987); RICHARD POSNER, *FRONTIERS OF LEGAL THEORY*, Harvard U. Press (2004).

⁹ In some cases, particularly in colonial times, nations existed, but were not permitted by the colonial rulers to establish their own trade or migration policies, for example, the case of India under the British Raj. See generally David Clingingsmith and Jeffrey Williamson, *India's De-Industrialization Under British Rule: New Ideas, New Evidence* (NBER Working Paper No. 10586, June 2004).

¹⁰ This figure appears to have been commonly accepted being as accurate for the U.S. for late 2005. See Jeffrey Passel, *The Size and Characteristics of the Unauthorized Migrant Population in the U.S.* (Pew Hispanic Center 2006), at <http://pewhispanic.org/reports/report.php?ReportID=61>; Michael Hoefer et al., *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2005* (Department of Homeland Security Report, Office of Immigration Statistics Policy Directorate, August 2006), http://www.dhs.gov/xlibrary/assets/statistics/publications/ILL_PE_2005.pdf. Figures such as these are subject to rapid obsolescence as some one million additional irregular migrants are estimated to enter the U.S. each year, net of those apprehended at the border.

¹¹ Readers may consult the work of populists such as Patrick Buchanan. See, e.g., PATRICK BUCHANAN, *STATE OF EMERGENCY: THE THIRD WORLD INVASION AND THE CONQUEST OF AMERICA* (Tomas Dunne Books 2006). More academic work along these lines includes work by the well-known Harvard sociologist, Samuel P. Huntington. SAMUEL P. HUNTINGTON, *WHO ARE WE? THE CHALLENGES OF AMERICA'S NATIONAL IDENTITY* (Simon & Schuster 2005).

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the day during establishment of a new world trading order and monetary system, following cessation of hostilities after the Second World War.¹² This was not always the case; in earlier times, economic and social policy was guided by the mistaken notion of “mercantilism” (roughly meaning that exports are “good” and imports are “bad”).¹³ Of course, the fallacy of composition exerts its inexorable influence here as well, for one country’s exports are another’s imports. In fact, the calamitous Depression of the 1930s in the U.S. and other industrialized nations was preceded by sharp tariff increases by the U.S. followed by retaliatory tariff measures by other countries, coupled with an equally misguided monetary contraction in the U.S.¹⁴

Even in more recent times, during the long Cold War and mistrust of American-style capitalism, several developing countries attempted to purposefully close their markets to external influences, pursuing “import substitution” rather than “export promotion”.¹⁵ The success of the export-oriented economies such as South Korea, Singapore and the other “Asian Tigers” in achieving rapid economic growth coalesced with the Reagan-Thatcher free market liberal revolution of the 1980s. Even India, long known for its regressive tariffs, began a period of rapid re-opening to international

¹² The decision to establish the International Monetary Fund and the World Bank was taken at the Bretton Woods Conference held in New Hampshire in December 1944, <http://www.ibiblio.org/pha/policy/1944/440722a.html>. By that time, the imminent defeat of Germany was apparent to world leaders. The Soviet Union did not enter the International Monetary Fund until 1991 (as Russia). See Daniel P. Erikson, *Bridging the Gap: IMF and World Bank Membership for Socialist Countries* (Inter-American Dialogue, ASCE 2003), http://www.thedialogue.org/publications/programs/haiti/bridging_erikson.pdf. The proposed International Trade Organization never came into being primarily owing to U.S. resistance surrendering American hegemony to a world body. However, a negotiating forum for trade issues, the General Agreement on Trade and Tariffs (GATT) was established in 1947. GATT was succeeded by the World Trade Organization (WTO) in 1995. See http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm. There has never existed comparable world migration organization or even a negotiating forum, despite the fact that most developed countries face common problems of unwanted unskilled migration coupled with a growing scarcity of needed “knowledge workers”.

¹³ See Laura LeHaye, *Mercantilism*, in *THE CONCISE ENCYCLOPEDIA OF ECONOMICS*, (The Library of Economics and Liberty 2002), at <http://www.econlib.org/library/enc/Mercantilism.html>.

¹⁴ See generally MILTON FRIEDMAN & ANNA JACOBSON SCHWARTZ, *A MONETARY HISTORY OF THE UNITED STATES, 1867-1960* (Princeton Univ. Press 1963).

¹⁵ In some respects, political independence was confused with economic isolation or autarky. See Diet Rothermund, *AN ECONOMIC HISTORY OF INDIA FROM PRE-COLONIAL TIME TO 1991* 30-60 (Routledge 1993). Thus emerged the “*dependencia*” models of Latin American economists such as Raúl Prebisch, which were grounded upon abhorrence of foreign investment and imports. See ALAN TAYLOR, *LATIN AMERICA AND FOREIGN CAPITAL IN THE TWENTIETH CENTURY: ECONOMICS, POLITICS AND INSTITUTIONAL CHANGE* (NBER Working Paper No. 7394, Oct. 1999) (discussing some of the pertinent theories, especially the “*Dependencia*” model)

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trade and foreign investment.¹⁶

The globally accepted preference for free trade has been articulated in legal terms by international treaties and conventions, notably the GATT/WTO accords, and by regional arrangements such as the Treaty of Rome (later the European Union treaty) and NAFTA.¹⁷ In fact, the proliferation of regional trading pacts may, in the view of some authors, seriously undermine the future relevance of multilateral accords such as the GATT/WTO.¹⁸ The legislative preference for free trade, through progressive lowering of tariffs, is discreetly contained in Article XXIX of the WTO Agreement, authorizing periodic tariff reductions (or concessions) and implemented through successive multilateral

¹⁶ See *A Survey of the World Economy: The New Titans*, THE ECONOMIST, Sept. 16, 2006, available at 2006 WLNR 15982733.

¹⁷ See 19 U.S.C. § 3311 (Approval and entry into force of the North American Free Trade Agreement (hereinafter "NAFTA")); see also http://www.wto.org/english/docs_e/legal_e/legal_e.htm (World Trade Organization website 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). North American Free Trade Agreement, Dec. 17, 1992, 32 I.L.M. 289; General Agreement on Tariffs and Trade 1994, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, 1867 U.N.T.S. 187, 33 I.L.M. 1153 [hereinafter GATT 1994], the original GATT Agreement and U.S. legislation implementing the accord be found at General Agreement on Tariffs and Trade, Oct. 30, 1947, 55 U.N.T.S. 187 (hereafter GATT), http://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm. GATT 1994 simply absorbs the 1947 GATT Agreement with the amendments agreed to until that time. GATT 1994 was then merged into the WTO accord of 1995. For ease of exposition, I shall refer as needed, to the article numbers in GATT 1994. The European Union Treaty (hereinafter "EU Treaty") was formally adopted in 1992 and amended the original instruments such as the Treaty of Rome; Maastricht Treaty on the European Union, Sept. 21, 1994, 31 I.L.M. 247. See Goebel, *supra* note 5 (The European Community (or "EC"), originally designated as the European Economic Community, was created by the Treaty of Rome, 298 U.N.T.S. 11 (signed March 25, 1957; effective January 1, 1958). The current consolidated text of the EC Treaty as amended appears in O.J. C 325/33 (Dec. 12, 2002)). See also A CITATION MANUAL FOR EUROPEAN COMMUNITY MATERIALS (6th ed.), 23 FORDHAM INT'L L.J. 935 (2000).

¹⁸ See generally, JAGDISH BHAGWATI, *THE WORLD TRADING SYSTEM AT RISK* (Princeton University Press 1991); JAGDISH BHAGWATI, *FREE TRADE TODAY* (Princeton University Press 2001). Bilateral and plurilateral accords to which the U.S. is a party are listed at the website of the United States Trade Representative (USTR), at www.ustr.gov/Trade_Agreements/Bilateral/Section_Index.html. Space considerations preclude extended discussion, however, for the trading partners themselves, the benefit of bilateral/regional accord is that each country is able to extract an immediate *quid pro quo* from its partners, in exchange for trade concessions, which is necessarily prohibited under the Unconditional Most Favored Nation (MFN) Clause of the GATT/WTO accords. See also GATT 1994, *supra* note 17, at art 1.1. Formation of regional trade accords is expressly authorized under GATT/WTO. See GATT 1994, *supra* note 17, at Art. XXIX.

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Rounds such as the completed Uruguay Round and the ongoing Doha Round.¹⁹ Meanwhile, regional accords such as NAFTA and the EU Treaty contain their own detailed tariff reduction and implementation schedules.

“Fair” trade rules are intended to preserve the confidence of trade system participants in the superiority of free trade, unencumbered and undistorted by market imperfections or “carve outs” that may be engineered by one or more trading partners.²⁰ Without such confidence in the “fairness” of the system, the voluntary nature of multilateral or bilateral trading regimes would quickly evaporate. Thus, both GATT/WTO agreements and the NAFTA and EU accords contain rules meant to permit derogation from free trade under certain circumstances. Such rules are generally described as “safeguard measures” and encompass Anti-dumping and Countervailing Duty measures, functioning to counter predatory pricing in export markets, various Emergency or Escape Clause measures used even in the absence of predation, but intended instead to limit the disruption caused by an unforeseen surge in imports.²¹ Likewise, exports are regulated in the trade accords through the familiar proscription on export subsidies which would distort free market forces and hence be “unfair.”²²

As observed earlier, international trade law has no autonomous co-independent theoretical basis of its own, and the content of trading rules is necessarily by other disciplines.²³ I shall turn to some of these disciplines in

¹⁹ The current Doha Round began in late 2001. The Uruguay Round extended over 1986-94. See Gary Hufbauer and Jeffrey Schott, *The Doha Round after Hong Kong*, POLICY BRIEF PB06-2 (Institute for International Economics, Washington D.C.) at <http://www.iie.com/publications/pb/pb06-2.pdf>. A simple timeline of the various GATT/WTO Rounds of negotiation is at the WTO website at http://www.wto.org/english/thewto_e/minist_e/min98_e/slide_e/slide_list.htm.

²⁰ Some very recent work suggests that many of today's advanced countries may have substituted non-tariff barriers to replace tariff reductions. See Daniel Y. Kono, *Optimal Obfuscation: Democracy and Trade Policy Transparency*, 100 AM. POL. SCI. REV. 369 (2006).

²¹ The GATT/WTO rules are contained in the Emergency Action and Anti-dumping and Countervailing Duties articles. GATT 1994, *supra* note 17, at arts. VI, XIX. For additional discussion and U.S. legislation implementing specific sections of the GATT accords, see generally Daniel K. Tarullo, *Beyond Normalcy in the Regulation of International Trade*, 100 HARV. L. REV. 546 (1987).

²² Export subsidy proscriptions are contained in Article XVI of the GATT/WTO accords. GATT 1994, *supra* note 17, at art. XVI. Legislation in the U.S. (and in other countries) also contains a plethora of usually opaque export classifications and regulations which may be scattered in different sections of the United States Code. See, e.g., Export Administration Act, 50 App. U.S.C. § 2403 (1979) (containing some of U.S. export control regulations pertaining to export license classifications). Other controls and regulations are scattered elsewhere. See, e.g., Peter Lichtenbaum, *Coping with U.S. Export Controls*, 872 PLI/COMM 345 (2004).

²³ Foreign affairs practice or international relations with other countries affect trade policy to a

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what follows.

B. Migration Rules and Regimes

In sharp contrast to the world trading order, there is no international migration regime or world migration body, other than a few conventions dealing with certain specific areas such as stateless persons, refugee status, human trafficking and a few others.²⁴ Instead, immigration and nationality policies are creatures of domestic legislation, the exception being isolated labor mobility accords, such as those between certain Scandinavian countries, Australia and New Zealand, and the still incompletely-implemented Schengen Agreements (pertaining to a common border policy) in the European Union.²⁵ Denmark and the United Kingdom for example, have still not acceded to the common border rules of the Schengen Agreement and the new periphery members of the Union (such as Bulgaria and Romania) are not expected to have access to labor markets of the inner core countries until at least 2012, much less to the common border accords of the Schengen Agreements. Domestic rules in each country, often a product of historical, geographical and cultural factors, determine the permissible types and amounts of permanent and temporary migration (relating to quotas and ceilings), nationality and citizenship rules (pertaining to acquisition or forfeiture of unitary or dual citizenship), refugee and asylum policies (rules dealing with classification or *refoulement*, etc), along

significant degree. For example, trade sanctions are predicated upon foreign policy considerations, not on economic grounds. For example, the decades long trade embargo of Cuba by the U.S. is grounded in U.S. displeasure with the Castro regime. Trade sanctions against Iran are discussed in Jeffrey Schott, *Economic Sanctions, Oil, and Iran* (Testimony before Congress on July 25, 2006) at <http://www.iie.com/publications/papers/paper.cfin?ResearchID=649>.

²⁴ See, e.g. Convention Relating to the Status of Stateless Persons, *adopted on* Sept. 9, 1954, 360 U.N.T.S. 117 (*entered into force* June 6, 1960), http://www.unhchr.ch/html/menu3/b/o_c_sp.htm; Convention Relating to the Status of Refugees, *adopted on* July 28, 1951, 189 U.N.T.S. 150 (*entered into force* Apr. 22, 1954), http://www.unhchr.ch/html/menu3/b/o_c_ref.htm; Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, *adopted on* Nov. 30, 2000, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001) (*entered into force* Dec. 25, 2003), <http://www.ohchr.org/english/law/protocoltraff.htm>.

²⁵ See, e.g., The Trans-Tasman Travel Agreement, at <http://www.mfat.govt.nz/Foreign-Relations/Australia/0-trans-tasman-travel.php>; see also Belgium-France-Federal Republic of Germany-Luxemburg-Netherlands: Schengen Agreement on the Gradual Abolition of Checks at Their Common Borders and the Convention Applying the Agreement, Agreement done at Schengen, June 14, 1985; Convention done at Schengen, June 19, 1990, 30 I.L.M. 68 (1991) and Treaty of Amsterdam amending the Treaty on European Union, 1997 O.J. (C 340) I, 141, <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf> (modifying the Schengen Agreement and integrating it into the framework of the Treaty on European Union).

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with other attributes of migration.²⁶

Unlike trading rules, migration rules are not squarely grounded in global economic considerations; if they were, and as demonstrated by a number of studies including a recent comprehensive report by the World Bank, free international mobility of persons would have been more prevalent and reflected in the official policies of states.²⁷ Instead, migration and citizenship rules are firmly rooted in considerations of history, demography (population pressures), political science (considerations of state sovereignty over defined areas including empire-building) and sociology (assimilative and cultural concerns).²⁸ There is also little doubt that parochial and sector-specific protectionist concerns have also played a large part in the "capture" of enacted immigration

²⁶ See, e.g., The Immigration and Nationality Act of 1952 §§ 201-204, 208, 310-320, 322, 324-344, 346-347, 349, 351, 356-357, 8 U.S.C §§ 1151-1154, 1158, 1421-1431, 1433, 1435-1455, 1457-1458, 1481, 1483, 1488-1489 (2000) (quotas are dealt with in I.N.A. §§ 201-204, nationality in §§ 310-357, while asylum and refugee status are covered in § 208).

²⁷ See THE WORLD BANK, GLOBAL ECONOMIC PROSPECTS 2006: ECONOMIC IMPLICATIONS OF REMITTANCES AND MIGRATION (World Bank Publications 2005), http://www-wds.worldbank.org/servlet/WDSCContentServer/WDSP/IB/2005/11/14/000112742_20051114174928/Rendered/PDF/343200GEP02006.pdf (listing the potential gains from international migration (based upon a large scale simulation model) and suggesting a conclusion, from the simulation results (which might well be underestimated), indicating that the potential worldwide gains from unimpeded migration are quite large, with larger benefits accruing to lowincome countries.). See also Bob Hamilton and John Whalley, *Efficiency and Distributional Implications of Global Restrictions on Labor Mobility*, 14 J. DEV. ECON. 61 (1984) (suggesting similar results from more free international labor mobility); Jonathon W. Moses and Bjørn Letnes, *The Economic Costs To International Labor Restrictions: Revisiting The Empirical Discussion*, 32 WORLD DEV. 1609 (2004); and Howard F. Chang, *The Economic Impact of International Labor Migration: Recent Estimates and Policy Implications*, 16 TEMP. POL. & CIV. RTS. L. REV. (forthcoming 2007).

²⁸ See Graziella Bertocchi & Chiara Strazzi, CITIZENSHIP LAWS AND INTERNATIONAL MIGRATION IN HISTORICAL PERSPECTIVE (Fondazione Eni Enrico Mattei, Working Paper No. 71.2005, 2005), available at <http://ideas.repec.org/p/fem/femwpa/2005.71.html> (follow "download info" hyperlink; then follow "download the selected file" hyperlink) (providing an excellent theoretical and empirical examination of the origin and evolution of citizenship rules in various nations). See also T. ALEXANDER ALEINIKOFF AND DOUGLAS KLUSMEYER, CITIZENSHIP POLICIES FOR AN AGE OF MIGRATION (Carnegie Endowment for International Peace 2002) (providing more legal perspectives on national citizenship). Assimilative and cultural concerns over continued immigration, even into the U.S., is hardly a new phenomenon. The literacy test requirement enacted in 1917 over President Wilson's veto was intended to curb migration from Southern and Eastern Europe. The "inferiority" of the Mediterranean races was in fact, assumed by the Dillingham Commission of 1910 that issued a 42-volume report. The Dillingham Commission report and other scholars warned repeatedly against the acceptance of "beaten members of beaten breeds." See MALDWYN A. JONES, AMERICAN IMMIGRATION (2nd ed. 1992); JOHN HIGHAM, STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860-1925, (2nd ed. 1998) (explaining that social and scientific Darwinism was already in full flower in the United States at that time).

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policies, both with respect to lawful and irregular migration.²⁹ Concerns over possible loss of jobs or wage erosion or imposition of fiscal burdens due to social transfers to arriving migrants have always loomed large in the cost-benefit ratio of migration for certain regions or sectors, at least in enfranchised liberal democracies.³⁰ This theme is discussed in greater detail in a later Section where it is observed that more autocratic regimes are likely to be more liberal with respect to immigration, precisely because such regimes are less responsive to the preferences of average citizens or median voters.

III. ECONOMIC CONSIDERATIONS

While international trade and migration are separate sub-fields among scholars in economics (international economics and labor economics respectively), theoretical constructs developed by trade theorists several decades ago are fully capable of generating testable hypotheses about the effects of trade liberalization upon incentives to migrate and conversely. Typical work in trade analysis has not however, proceeded along these lines, focusing instead on the predicted patterns of trade (i.e. which countries export which goods) and on the effects of free trade upon prices of goods, returns to inputs or factors of production such as labor, capital and land and on the aggregate distribution of income and welfare.³¹ However, the interrelationship between trade and

²⁹ For instance, the end of the *Bracero* program in the U.S. (which permitted Mexican farm labor to lawfully work on a temporary rotating basis in the U.S.) in 1964 may be largely attributable to political pressure exerted by powerful farm labor interests in the U.S.. See GARY C. HUFBAUER & JEFFREY J. SCHOTT, *NAFTA REVISITED: ACHIEVEMENTS AND CHALLENGES* (Institute for International Economics 2005). More than a century ago, the Chinese Exclusion Acts of the 1880s were a direct result of numerous complaints by U.S. business interests especially in the West over these foreign workers who "worked too hard". In more recent times, the ceiling on H-1B "specialty occupation" visas was temporarily raised in response to the expressed need of U.S. business for high-tech workers. See *H-1B visa a Bit Player in Immigration Debate*, May 26, 2006, at <http://www.itbusinessedge.com/item/?ci=16808>. A myriad of pending immigration bills too numerous to review here (and including Senate Bill S 2611 originally passed in May 2006) would also allocate a much larger number of temporary worker visas for certain skilled workers.

³⁰ The fiscal burdens associated with inbound migration are unevenly distributed across the various states in the U.S. and the tax burdens involved in such costs are directly reflected in voters' attitudes toward migration. For example, voters in states with relatively generous welfare systems and high state taxes are markedly more restrictionist in their views regarding further migration than voters in states where a meager welfare net does not impose a substantial cost of upon natives when new migrants arrive. See GORDON H. HANSON, *WHY DOES IMMIGRATION DIVIDE AMERICA? PUBLIC FINANCE AND OPPOSITION TO OPEN BORDERS* (Institute for International Economics 2005).

³¹ The genesis of the modern Heckscher-Ohlin theory of trade may be dated to a paper originally published in Swedish by Eli Heckscher in 1919 and translated into English some thirty years later. Heckscher's student, Bertil Ohlin (recipient of the 1977 Nobel Prize in economics) explicated the framework further. Refinements by Samuelson and Stolper in 1941, T.M. Rybczynski in 1955 and

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migration can readily be deduced from elementary models of trade, notably the Heckscher-Ohlin framework, which has been the standard workhorse of trade analysts for a number of decades.³² On the other hand, it is the work of labor economists that deals primarily with causes and effects of migration, both internally within a country and internationally, but most of this literature has no direct implications for patterns or consequences of international trade in goods and services.

A. Trade Frameworks

This sub-section demonstrates that the standard workhorse trade model generates a strong testable conclusion regarding trade and international migration, namely that trade in goods is a strong substitute for migration of persons. A nation may elect either route; either import goods and services or import the people whose labor is embodied in the goods (i.e. allow migration). Either policy will have the same equalizing effect upon wages and returns to capital in the importing and exporting countries. Thus, free trade alone will dampen the incentives to migrate internationally.³³ If true, these results are particularly attractive to policy makers. For example, the implication is that a free trade agreement such as the NAFTA would allow both the United States and Mexico to reap the well-known benefits of geographical specialization and at the same time, reduce, if not eliminate further migration from Mexico to the United States. There would be no need for additional immigration-restricting measures such as construction of a border fence or enhanced interior enforcement.

Reality however, is much more complex and the strong substitute relationship between trade and migration has not manifested itself, either in reality or in the policy stance actually adopted by governments over the last two hundred years.³⁴ While the vintage trade framework can be refined or extended

Ronald Jones in 1965 among others followed. See T.M. Rybczynski, *Factor Endowments and Relative Prices*, 22 *ECONOMICA* 336 (1955); Wolfgang F. Stopler & Paul A. Samuelson, *Protection and Real Wages*, 9 *REV. ECON. STUD.* 58 (1941); and Ronald W. Jones, *The Structure of Simple General Equilibrium Models*, 73 *J. POL. ECON.* 557 (1965). The interested reader may refer to any standard text in international economics for further details, for example, PAUL R. KRUGMAN AND MAURICE OBSTFELD, *INTERNATIONAL ECONOMICS: THEORY AND POLICY* (6th ed. 2002).

³² Rybczynski, *supra* note 31; Stopler & Samuelson, *supra* note 31; Jones, *supra* note 31.

³³ A corollary implication of this stark framework is that persons in both countries are fully symmetric in their preferences toward trade and migration. Depending upon their relative skill level, they are either both pro-trade and pro-migration or opposed to both. See discussion *infra* Part III.B.

³⁴ A hundred years ago, as noted above, most developed countries, especially those in the New World, followed relatively restrictive trade policies coupled with a liberal migration policy stance. Starting in the early twentieth century, the policy mix has reversed itself with the trading regime being liberal, while migration controls continue to be tightened. See TIMOTHY J. HATTON &

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to produce much more complex relationships between trade and migration, unfortunately, much of this more modern literature appears to have escaped writers in fields other than economics, particularly, international trade. Many authors writing in law-related journals and indeed many public officials have continued to assume that trade and migration are tied together as substitute, alternative policies.³⁵

The Vintage Framework

The demonstration of the stark implication of the vintage trade model regarding the patterns of trade and the trade-migration link is straightforward.³⁶ The standard Heckscher-Ohlin framework finds its most comfortable home in a highly stylized world in which there are only two countries, rich and poor (or North and South), only two inputs in the production process in each country, each of which is capable of producing two goods, but at different relative costs and prices.³⁷ For reasons of history, geography or natural accident, countries are assumed to be differentially endowed with these inputs and all differences in cost-price structures of the two goods are directly attributable to the relative endowments of the two inputs/factors in the two countries. Perfect competition and constant returns to scale exist in all markets.³⁸ These assumptions may appear highly restrictive; however, many can be relaxed without loss of generality in the results. Although, it is typical to assume that the two inputs in the productive process are labor and capital, instead the paradigm of unskilled and skilled labor will be utilized. If desired, the reader may assume that capital is simply “congealed” or embedded skilled labor (such as “knowledge workers”). The rich country is rich precisely because it is better endowed with skilled labor relative to unskilled labor, compared with the poor country. Because of the existence of competitive markets, wages of skilled labor relative to unskilled labor will be lower in the rich country compared with the poor country in the absence of trade. This is a natural consequence of the relative abundance of skilled labor in the rich country. Accordingly, the rich country has a comparative advantage in producing goods that intensively utilize skilled labor in the production process. If free trade, or some trade, is now allowed, the rich

JEFFREY G. WILLIAMSON, A DUAL POLICY PARADOX: WHY HAVE TRADE AND MIGRATION POLICIES ALWAYS DIFFERED IN LABOR-SCARCE ECONOMIES? (NBER Discussion Paper No. 2145, 2006).

³⁵ See, e.g., *supra* text accompanying note 5.

³⁶ There are several alternative methods to present the framework. The one utilized is particularly simplified for expository purposes. Standard textbooks usually rely upon more formalistic structures. See, e.g., KRUGMAN & OBSTFELD, *supra* note 31.

³⁷ See KRUGMAN & OBSTFELD, *supra* note 31.

³⁸ *Id.*

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country will export goods that are intensive in the use of skilled labor in the production process since it can produce such goods at a lower price than its trading partner.

What occurs as trade continues? As the rich country expands production of goods intensive in the use of skilled labor, given a finite supply of skilled labor and capacity and capital constraints, skilled labor gradually becomes more expensive in the rich country, with the opposite phenomenon occurring in the poor country, which would be expected to export goods intensive in the use of unskilled labor.³⁹ On both counts, differentials between relative wages of skilled to unskilled labor in the rich country narrow with free trade. This implication of course, is the quintessential reason why unskilled labor in rich countries would generally tend to oppose free trade. An alternative way of phrasing this is that protection, the opposite of free trade, benefits the scarce factor, which is unskilled labor in the rich country.⁴⁰ It should come as no surprise therefore, that groups such as the AFL-CIO, which generally represent unskilled or moderately skilled workers, have remained strident in their opposition to trade pacts such as NAFTA or CAFTA-DR.⁴¹

Although not normally presented as such, the standard workhorse model also implies symmetric conclusions regarding migration of persons, instead of trade in goods and services. If the migration policies of rich countries were to permit unimpeded and inexpensive migration of persons across countries, the relative wages of unskilled labor in the rich country, when compared with the poor country, would prove to be a magnet and such labor would migrate *en masse* from the poor to the rich country. The result would be identical to that observed for free trade in goods. Relative wages of skilled to unskilled labor in the two countries would tend to converge. Hence, a *symétrie élégante* emerges in this elementary framework. International trade and migration are indeed complete substitutes, with regard to their effects upon relative wages in the two countries. Free trade alone erodes the incentives to migrate and free labor mobility alone would eliminate the basis for mutually profitable trade.⁴²

³⁹ These are standard propositions in elementary trade theory. See KRUGMAN & OBSTFELD, *supra* note 31.

⁴⁰ This result – protection benefits the scarce factor – is termed the Samuelson-Stopler theorem. See Stopler & Samuelson, *supra* note 31.

⁴¹ See, e.g., *Labor Movement Declaration Concerning the United States-Central America Free Trade Agreement*, San Jose, Costa Rica, Nov. 18, 2002, at http://www.aflcio.org/issues/jobseconomy/globaleconomy/battle/cafta_declaration.cfm.

⁴² It is also easily observed that the loser from migration would be unskilled labor in the rich country which was initially scarce. Hence, unskilled labor in the rich country would be expected to oppose both free trade and liberal migration policies (with the opposite implications for skilled labor

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The fact that liberalized trade and migration are strong substitutes in their ultimate effects upon wages of skilled and unskilled labor has immediate, practical implications for policymakers. Free trade will certainly diminish the incentives for cross-country migration, but at the cost of eroding the relative wage advantage of skilled labor in rich countries. Immigration restrictions in the presence of free trade are not likely to protect domestic wages in the rich country, other than temporarily. This policy mix – free trade and closed or semi-closed borders is the policy stance currently adopted in all advanced countries.⁴³ If the assumptions of the vintage framework are accurate, there is only one way to fully protect domestic labor in rich countries and it is not economically nor politically palatable. Both trade and migration policies would need to be simultaneously restricted. Such is the inexorable logic of the strong substitute relationship implied by the standard trade framework.

More Modern Trade Structures

While the standard trade framework described above has proven to be useful in explaining observed reality, its stark assumptions of full information and perfect competition in all markets (in addition to the existence of only two inputs) have led theorists to pursue several more realistic extensions. While a detailed exposition of such extensions is not of immediate relevance to the present paper, it is important to observe that in most cases, more complex and realistic structures undermine, and can reverse, the strict substitutability trade-migration link noted above. It is quite possible therefore, for trade flows to be complementary to migration flows, i.e. increased trade in goods and services may, in fact, generate incentives for additional migration flows. In such cases, policy makers desiring liberalized trade but reduced migration (as is the case in most advanced nations) would necessarily have to deploy a judicious combination of trade and migration policies. One policy by itself will not do, even in theory.

One common extension of the standard framework involves the recognition of “specific factors,” i.e. the fact that certain inputs are specific to certain sectors or industries and are not easily transferable across sectors. This may be because of the existence of specialized capital equipment or specifically

in the rich country). Whether or not the preferences of workers are reflected in actual government policies is dependent upon the degree of voter enfranchisement and engagement in the political process.

⁴³ Immigration Trends and policies in advanced countries are documented in various reports of the Organization for Economic Cooperation and Development (OECD, Paris). *See generally*, INTERNATIONAL MIGRATION OUTLOOK 2006 (OECD, Paris 2006) and OECD FACTBOOK 2007 (OECD, Paris 2007).

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acquired skills.⁴⁴ Specificity of inputs may be limited to certain inputs, for example, fixed capital or unskilled/moderately-skilled labor, while highly skilled labor may be highly mobile, even across national boundaries. This would be the case for example, of “knowledge workers” who have migrated in increasingly large numbers from poorer to richer countries.⁴⁵

In frameworks such as those involving specific factors or where there are substantial departures from perfect competition, such as increasing returns to scale and/or monopolistic competition, a rich series of results may emerge.⁴⁶ Most of these are beyond the scope of the present article; however, it is quite possible for trade liberalization to lead to widened wage disparities and hence, to increased migration, legal or otherwise. Similarly, non-competitive structures such as increasing returns to scale could lead to accentuation of differences between countries and the emergence of “core-periphery” structures. Trade liberalization in this context will almost certainly lead to increased migration of skilled labor to the “core” country.⁴⁷

It is noteworthy that “core-periphery” or agglomeration frameworks generate or are consistent with “network effects” in an economic sense. Network effects, albeit of the socio-cultural type, are often crucial to sociological and anthropological explanations of migration patterns.⁴⁸

⁴⁴ One would not expect heavy machinery used in say, coal mining to be easily adaptable to the manufacture of memory chips, nor that coal miners could readily be usefully employed in software design. The seminal work in this area is Ronald Jones, *A Three-Factor Model in Theory, Trade and History*, in TRADE, BALANCE OF PAYMENTS AND GROWTH, (Jagdish Bhagwati ed., 1971). See also Anthony Venables & Victor Norman, *International Trade, Factor Mobility and Trade Costs*, 101 ECON. J. 1488 (1995). The existence of “adjustment costs” is the basis for trade adjustment programs in some countries. The current U.S. statute is the Trade Adjustment and Reform Act of 2002, Pub. L. No. 107-210, 116 stat. 933 (2002) (codified in scattered sections of 19 U.S.C. 26 (2002)). Information on the numbers of petitions for relief filed and those approved is maintained by the U.S. Department of Labor, *Trade Act Petitions*, <http://www.doleta.gov/tradeact/trade-data>.

⁴⁵ The latter phenomenon is the subject of much recent attention in literature on the “brain drain.” See Simon Commander et al., *The Brain Drain, Curse or Boon: A Survey of the Literature*, in CHALLENGES TO GLOBALIZATION: ANALYZING THE ECONOMICS 235 (Robert Baldwin & L. Alan Winters eds., (Univ. Chicago Press 2004)); see also PHILIP MARTIN ET AL., *MANAGING LABOR MIGRATION IN THE TWENTY FIRST CENTURY* (Yale Univ. Press 2005).

⁴⁶ A few of the classic references incorporate imperfect competition or increasing returns to scale. See e.g., PAUL KRUGMAN, *GEOGRAPHY AND TRADE* (MIT Press 1991); ELHANAN HELPMAN & PAUL KRUGMAN, *MARKET STRUCTURE AND FOREIGN TRADE: INCREASING RETURNS, IMPERFECT COMPETITION AND THE INTERNATIONAL ECONOMY* (MIT Press 1987); JAMES MARKUSEN, *MULTINATIONAL FIRMS AND THE THEORY OF INTERNATIONAL TRADE* (MIT Press 2002).

⁴⁷ See KRUGMAN, *GEOGRAPHY AND TRADE*, *supra* note 46; HELPMAN & KRUGMAN, *supra* note 46; MARKUSEN, *supra* note 46.

⁴⁸ See, e.g., NANCY FONER, REUBEN RUMBAUT & STEVEN GOLD, *IMMIGRATION RESEARCH FOR A NEW CENTURY: MULTIDISCIPLINARY PERSPECTIVES* (Russell Sage Foundation, 2003); GLOBAL

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Contrary to what may be all too commonly assumed by non-specialists, trade theory does not unequivocally pin down the direction of the trade-migration relationship. It is immediately apparent however, that the nature and direction of the link could not be more relevant to policy makers, for an incautiously chosen combination might render impotent both trade and migration policies. Empirical analysis alone can shed further light on the nature of the trade-migration relationship and these are discussed in the next Section.

Empirical Results

As indicated above, the trade-migration policy mix adopted by most developed countries underwent a major shift in the early twentieth century, from one of restrictive tariffs and liberal migration to liberalized trade and restrictive migration. Countries in the Old World generally adopted free trade policies before the New World, and New World countries, being the early recipients of inbound migration, imposed immigration restrictions prior to Old World countries.⁴⁹ Within the group of Old World and New World countries, there was considerable variation in the time of adoption of liberal or illiberal policies.⁵⁰ These facts would suggest the tailor-made possibility of empirical analysis. Surprisingly and unfortunately though, there has been very little in the way of empirical testing of the nature of the trade-migration relationship. An important exception is the work of the economic historian Jeffrey Williamson and his colleagues and in what follows, the empirical regularities observed by these authors is examined.⁵¹ An important caveat is that the work of Williamson, et al., is limited primarily to historical evidence for periods preceding the mid-twentieth century. Extension of this type of work to encompass the rest of the twentieth century still awaits further scholarly endeavor.

In an often-cited paper, Collins, et al., have performed both time-series and cross-section panel data tests to attempt to determine the nature and

NETWORKS, LINKED CITIES (Saskia Saasen ed., Routledge 2001); MANUEL CASTELLS, THE RISE OF THE NETWORK SOCIETY (2d ed. Blackwell 2000); DOUGLAS MASSEY & J. EDWARD TAYLOR, PROSPECTS AND POLICIES IN A GLOBAL MARKET (Oxford U. Press 2004).

⁴⁹ See HATTON AND WILLIAMSON, *supra* note 34.

⁵⁰ See generally TIMOTHY HATTON & JEFFREY WILLIAMSON, THE AGE OF MASS MIGRATION: CAUSES AND ECONOMIC IMPACT (Oxford Univ. Press 1998).

⁵¹ The key references are WILLIAM COLLINS ET AL., WERE TRADE AND FACTOR MOBILITY SUBSTITUTES IN HISTORY? (NBER Working Paper No. 6059, 1997); JEFFREY WILLIAMSON, WINNERS AND LOSERS OVER TWO CENTURIES OF GLOBALIZATION (NBER Working Paper No. 9161, 2002); ASHLEY TIMMER & JEFFREY WILLIAMSON, RACISM, XENOPHOBIA OR MARKETS: THE POLITICAL ECONOMY OF IMMIGRATION POLICY PRIOR TO THE THIRTIES (NBER Working Paper No. 5867, 1996).

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direction of the trade-migration link over the period 1870-1936, with the data set being truncated to exclude the war years of 1914-1918.⁵² Countries included in the empirical tests include New World labor receiving countries such as the U.S., Canada and Australia and the dominant industrialized countries of the time, of which the United Kingdom was the unquestioned leader.⁵³ Regressions of real absolute trade flows (i.e. exports plus imports) on a number of explanatory variables including gross migration, net capital flows, tariff revenue and a proxy for transportation costs fail to indicate that trade and migration flows are negatively related, which would be necessary if trade flows were truly a substitute for international migration.⁵⁴ If at all, the available evidence seems to support the hypothesis of a mild complementary relationship between trade and migration over the indicated period. In other words, increased trade flows were accompanied by increased migration to the New World.⁵⁵

Cross-section pooled regressions carried out for each decade separately over approximately the same period also fail to yield a negative association between trade flows (deflated by GDP) and net migration flows. There may be lurking statistical and econometric problems in the econometric procedure, such as correlation between some of the independent variables, for example, labor and capital flows. Nevertheless, the results are of interest in that even in a weak associational sense, there appears to be no support for the substitutability hypothesis between trade and migration flows. It may well be that omitted factors such as non-economic variables that may affect migration in particular (for instance, xenophobic or assimilative concerns) may need to be included in the empirical procedure to more fully explain the complex link between trade and migration. Work of this type remains unexplored territory at present.

Another possible perspective on the nature of a trade-migration link may be to inquire whether policy-makers acted as though they believed that trade and migration were substitutable. Timmer and Williamson have painstakingly examined the immigration policies of a number of New World countries (Argentina, Australia, Brazil, Canada and the United States) over long historical periods prior to the 1930s and have meticulously constructed measures of restrictiveness of such policies over the relevant periods.⁵⁶ Unfortunately, no such important work appears to have been performed in the post-WWII era. The immigration restrictiveness index is then regressed over various explanatory variables, including trade to GDP ratios, a host of

⁵² See COLLINS ET AL., *supra* note 51.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ See TIMMER & WILLIAMSON, *supra* note 51.

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macroeconomic variables, variables intended to capture the relative skills of immigrants versus natives, as well as some political variables, such as the degree of political participation.⁵⁷ The variable for relative skills of immigrants as compared to natives is intended to capture immigrant selectivity based upon "quality."⁵⁸ For the most part, migration to the New World during this period was of unskilled labor which would be expected to increase income inequality in the New World in the same manner as would imports of goods that were produced primarily by unskilled labor.

While the interested reader is referred to the works cited above for more details, the significant point for present purposes is that the ratio of trade to GDP is statistically insignificant in explaining the progressive change in New World immigration policies over long periods. Policy makers did not act as though they regarded trade and migration policies as being interchangeable. If they had done so, then the relative position of domestic labor could well have been protected by restrictive immigration policy alone or by only restricting imports of unskilled labor intensive goods, but not both.

B. Labor Market Frameworks

Unlike the trade frameworks or analytical constructs discussed above, labor market scholars have focused primarily on the migration of persons and typically contain no direct implications for international trade policy. If trade policy cannot "explain" the migration stance because it appears to be unrelated to migration as discussed above, perhaps immigrant selectivity based upon labor market considerations, in addition to a host of other non-economic socio-political factors, might offer a more satisfactory explanation of migration policies as they evolved over long periods.

Early analysis of migration of persons dates to the pioneering work of Harris and Todaro in the context of internal migration (rural to urban).⁵⁹ In this

⁵⁷ *Id.* at Appendices. (The scores for the immigration policy index, which range from -5 to +5, for the U.S. are presented in Appendix B of the Timmer & Williamson Working Paper. For example, the index was set at a neutral 0 in 1868 when indenture contracts were repealed in the U.S. By 1907, the increase in head taxes on arriving immigrants and the establishment of financial tests for admission to the U.S. lowered the score to -2. The literacy test established in 1917 reduced it to -3.5, and finally to -5 with the establishment of permanent immigration quotas).

⁵⁸ See TIMMER & WILLIAMSON, *supra* note 51.

⁵⁹ John Harris & Michael Todaro, *Migration, Unemployment and Development: A Two-Sector Analysis*, 60 AMER. ECON. REV. 126 (1970). The rural-urban migration framework is intimately related to analytical constructs emphasizing "dual" or segmented labor markets, for instance an informal sector in which employment is casual and wages are low and a formal, urban sector. In an international context, temporary worker ("Gastarbeiter") programs are based in part on the recognition that certain jobs can only be filled by immigrants and programs of this type often merely place the state's imprimatur on what already exists. See MARTIN ET AL., *supra* note 45; See

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framework, rural-urban migration is determined by the present discounted value of the rural-urban wage differential, net of anticipated migration and re-settlement costs.⁶⁰ Straightforward extension of this framework to international migration implies that the expected supply of migrants is determined by the domestic-foreign wage differential (appropriately cumulated and discounted), net of migration and assimilation costs, taking into account the new possibility of deportation from the host country.⁶¹ In a framework of this type, the continued migration from Mexico to the U.S. or from Albania to Italy is likely to continue unabated for now, given the large wage differentials and labor pools in the relevant countries.⁶²

The “self-selection” hypothesis of Borjas is another proposed source of immigration based upon relative market skills of immigrants and natives that has gained considerable support in the literature.⁶³ In fact, the relative skills of migrants have long been the focus of attention in the U.S. and most countries.⁶⁴ The literacy test enacted in 1917 by the U.S. was intended primarily to curb immigration from Southern and Eastern Europe, whose emigrants were thought to be of lower “quality” than of previous immigrants from Western and Northern Europe.⁶⁵ While some 80 percent of the annual quota for immigrants into the U.S. is based upon family ties, the 20 percent or less reserved for employment-based immigration is allocated to categories known as “preferences”.⁶⁶ Unskilled labor is allocated in smaller quotas than skilled labor

also RICHARD FLORIDA, *CITIES AND THE CREATIVE CLASS* (Routledge 2004).

⁶⁰ Harris & Todaro, *supra* note 59.

⁶¹ For a short, but excellent paper along these lines, see Douglas S. Massey & Felipe Garcia Espana, *The Social Process of International Migration*, 237 *SCIENCE* 733 (1987).

⁶² Projections of the labor pool available from Mexico, in view of the expected rise in Mexican incomes and decline in Mexican fertility rates seem to suggest however, that within a decade and a half at most, the “pull” of much higher U.S. wage rates and the “push” factor of lack of suitable employment in Mexico should both curb unlawful migration to the U.S., with or without border fences. See, e.g., HUFBAUER & SCHOTT, *supra* note 29. For an excellent review of U.S.-Mexico integration, SEE PHILIP MARTIN, *ECONOMIC INTEGRATION AND MIGRATION: THE MEXICO-U. S. CASE* (Wider Discussion Paper No. 2003/35), at <http://www.wider.unu.edu/publications/dps/dps2003/dp2003-35.pdf>. For Mexican population and migration forecasts, see DAVID A. BRAUER, *PROJECTIONS OF NET MIGRATION TO THE UNITED STATES*, CONG. BUDGET OFFICE PUB. NO. 2774 (2006), <http://www.cbo.gov/ftpdocs/72xx/doc7249/06-06-Immigration.pdf>.

⁶³ George J. Borjas, *Self Selection and the Earnings of Immigrants*, 77 *AM. ECON. REV.* 531 (1987).

⁶⁴ For a detailed discussion of various aspects of Mexican migration to the U.S., See GEORGE J. BORJAS, *MEXICAN IMMIGRATION TO THE UNITED STATES* (University of Chicago Press forthcoming 2007), <http://www.nber.org/books/mexico/index.html>.

⁶⁵ See JONES, *supra* note 28 at 222.

⁶⁶ Immigration and Naturalization Act § 203, 8 U.S.C. § 1153 (2006).

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and has much longer processing times.⁶⁷ In similar fashion, temporary visas allocated to unskilled labor are smaller and subject to much longer delays than those for skilled labor.⁶⁸

The “self-selection” hypothesis has clear implications for voter attitudes toward immigration in host countries and as discussed below, recent work on such attitudes appears to be consistent with the hypothesis.⁶⁹ The hypothesis predicts that international migration is closely related to two factors, the relative skills of migrants versus natives and the extant degrees of inequality in income distributions in the sending and receiving countries. Thus, there will be negative self-selection of migrants, meaning that low skilled workers would prefer to emigrate, into destination countries with more egalitarian income distributions than to those countries with highly skewed income distributions. Since migrants moving into countries with a more unequal income distribution tend to be higher skilled (i.e. positively selected) than those migrating to egalitarian host societies, it follows that skilled natives, who face competitive pressures from the inflow of skilled migrants, would tend to be more anti-immigrant than those in more equal societies.

Skill levels are highly correlated with educational attainment so that better educated natives in more unequal societies, such as the U.S., would be expected to oppose migration more so than well-educated natives in more egalitarian societies, such as those in Northern Europe.⁷⁰ Whether or not these predictions are currently borne out is an empirical matter addressed below in the Section on public choice.

⁶⁷ *Id.*

⁶⁸ See Department of State, Visa Bulletin Vol. VIII, No. 102 (Feb. 2007), http://travel.state.gov/visa/frvi/bulletin/bulletin_3111.html. Visa categories are defined in Section 203 of the I.N.A., *supra* note 66. Time delays in processing various applications are not the I.N.A., but the Department of State Visa Bulletin provides an approximation of current delays.

⁶⁹ For further discussion, see *infra* Section V. The literature on the changing patterns of skills of immigrants is simply too vast to be reviewed here. See, e.g., George J. Borjas, *The Economics of Immigration*, 32 J. ECON. LITERATURE 1667 (1994). Some earlier literature had suggested that informational failures might lead to a disproportionately large number of unskilled workers entering host countries, since their potential employers may not be able to accurately gauge their true lack of skills. See, e.g., Eliakim Katz and Oded Stark, *Migration and Asymmetric Information: Comment*, 74 AM. ECON. REV. 533 (1987).

⁷⁰ Data in income inequality may be obtained from several sources. See generally BRANKO MILANOVIC, *WORLDS APART: MEASURING INTERNATIONAL AND GLOBAL INEQUALITY* (Princeton University Press 2005); JAMES B. DAVIES ET AL., *THE WORLD DISTRIBUTION OF HOUSEHOLD WEALTH* (UNU-WIDER 2006), <http://www.wider.unu.edu/research/2006-2007/2006-2007-1/wider-wdhw-launch-5-12-2006/wider-wdhw-report-5-12-2006.pdf>.

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C. The Continuing Paradox

In the Introduction of this paper, it was noted that today's labor-scarce advanced economies have apparently never simultaneously maintained both free trade and liberal migration policies, at least over the last two hundred years. Typical accounts though, of the last two centuries often refer to the first global century (roughly 1860-1914) as being the *belle epoque* or the golden age of globalization, with trade, labor and capital all being freely internationally mobile.⁷¹ The second global century (approximately 1950-Present) is commonly regarded as being global with respect to rapid expansion in trade and cross-border capital flows, but not international labor flows.

Recent work indicates however, that the first global century was not so global after all, being characterized for the most part by restrictive tariffs coupled with relatively liberal international migration policies.⁷² By the end of the First World War, a major paradigm shift had occurred. Now, especially after 1950 free trade began to flourish along with international capital movements, to some extent, although the major boost to the latter occurred after the dismantling of remaining capital controls by advanced countries in the 1980s.⁷³ These observations suggest that, contrary to the classic trade model and contrary to what has been commonly assumed by non-specialists, trade and migration were never regarded as substitutes.

In the labor-scarce economies of the New World in Particular, an increase in tariffs would raise domestic wages and protect domestic labor, this being an elementary statement of the classic Samuelson-Stolper result. If trade and migration were in fact substitutes, then permitting unimpeded labor flows at the same time would certainly undo the protective effects of higher tariffs.

⁷¹ See MIGRATION: THE CONTROVERSIES AND THE EVIDENCE (R. Faini, Jaime de Melo and K. Zimmerman, eds., Cambridge University Press 1999). See HATTON & WILLIAMSON, *supra* note 34.

⁷² See JEFFREY G. WILLIAMSON, THE POLITICAL ECONOMY OF WORLD MASS MIGRATION: COMPARING TWO GLOBAL CENTURIES (American Enterprise Institute for Public Policy Research 2005); JEFFREY G. WILLIAMSON, GLOBALIZATION AND THE POOR PERIPHERY BEFORE 1950 (MIT Press 2006); NAT'L BUREAU OF ECON. RES. CONF. REP., GLOBALIZATION IN HISTORICAL PERSPECTIVE (M.D. Bordo, A.M. Taylor & J.G. Williamson, eds., U. Chicago Press 2005). Tariff rates in most of the New World (including the U.S.) during the first global century remained highly protective until 1914. In fact, as late as 1945, average tariffs on industrial goods in advanced countries stood at an astounding average of 40 percent. See HATTON & WILLIAMSON, *supra* note 34. The beginning of the free trade era or the *belle epoque* was not, as is commonly assumed, the famous Cobden-Chevalier Treaty between Britain and France of 1860. See Gregory Bresiger, *Trade Trumps War: How Two Ancient Enemies Turned Away From Bloodshed. More Trade or More Forts?*, Mar. 6, 2000, <http://www.antiwar.com/orig/bresiger1.html>.

⁷³ Capital and exchange controls of each country are summarized in the *Annual Report on Exchange Arrangements and Exchange Restrictions*, International Monetary Fund (Sept. 9, 2002).

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Trade and migration were not substitutes, but instead, stood in a complementary relationship in the first global century. Precisely the same logic applies to show that in the second global century, characterized by free trade and migration restrictions, trade and migration could not have been substitutes. If they had been, free trade itself would have eroded the incentives to migrate and there would be no need for fiscally and politically costly restrictive migration policies. Finally, as noted previously, immigration policies in the New World remained mildly pro-liberal or at least neutral, until the First World War. After that, the immigration restrictiveness index, compiled by Timmer and Williamson, demonstrates a sharp restriction of migration policy between 1917 and 1930.⁷⁴ No such index is available for the years beyond 1930, but it would be a rare scholar indeed who would question that in the second global century (after 1950), migration policies tightened much further in all advanced countries and continue to do so.⁷⁵

But why did the policy mix in advanced countries undergo a complete reversal in the early twentieth century? While several economic, quasi-economic and non-economic explanations may be offered, it is easier to confront economic explanations with empirical evidence. Other explanations, such as demographic, ethnic or socio-cultural reasonings no doubt played and continue to play an important part. However, rigorous empirical verification or falsification of such hypotheses is not usually possible because of the lack of appropriate quantitative data.

Three principal reasons can be hypothesized for the turnaround in the trade-migration policy combination a century ago. First is an explanation grounded in immigrant skills or immigrant “quality.”⁷⁶ As the poverty constraint in Europe eased, poorer and less skilled persons were able to migrate to the New World, with the result that unskilled or semi-skilled native workers were increasingly threatened by the newcomers.⁷⁷ During the early period too,

⁷⁴ See TIMMER & WILLIAMSON, *supra* note 51.

⁷⁵ Lacking a formal immigration policy index after 1930, one may examine the results of reports by national governments to the United Nations as to whether the policy objective in their respective states was to restrict or liberalize further inbound migration. See U.N. Dept. of Econ. and Soc. Aff., *International Migration Report 2002*, <http://www.un.org/esa/population/publications/publications.htm> (follow “International Migration Report 2002” hyperlink).

⁷⁶ See HATTON & WILLIAMSON, *supra* note 34.

⁷⁷ Proxy immigrant quality by the ratio of per capita GDP in the sending versus receiving country. For the U.S., the index of immigrant quality had dropped close to 50 percent over the period 1870-1920. In more recent times, immigrant quality has deteriorated much faster, with the result that most migrants, especially from Mexico, can only compete with natives at much lower effective wage rates. HATTON & WILLIAMSON, *supra* note 34, at 10.

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tariff revenue formed an important part of total fiscal receipts of most New World governments since vast, sparsely populated tracts of land made efficient tax collection from other sources difficult.⁷⁸ In addition, migration did not threaten the national treasuries of most receiving states in the early period since very little existed in the form of an active social welfare state, characterized by a tax and transfer system, until well into the twentieth century.⁷⁹

But in the post-WWII period, if not before, all of these fundamentals had changed. Lower transport, information and search costs coupled with the establishment of networks meant that at least in absolute terms, large numbers of unskilled persons could emigrate to advanced countries. At the same time, the rise of the social welfare state necessitated large transfers to incoming migrants, especially at the state level, with corresponding tax implications.⁸⁰ None of these changes would mean much however, if governments could safely ignore most of their average citizens. This was not the case. Many advanced countries had transformed their political regimes from autocratic forms of government to relatively liberal, enfranchised democracies that *per force* catered, however imperfectly, to the median voter.⁸¹ Faced with wage competition from low-wage demand migrants, higher tax burdens to support social transfers to the latter and the existence of at least partially voter-sensitive governments, it is not at all surprising that states have turned sharply restrictionist with respect to migration policies in recent times.

IV. POLITICAL SCIENCE CONSIDERATIONS

Widespread existence of voter-responsive liberal democracies is still very much a recent creation. While countries such as the United States and Britain (despite being a nominal monarch) have long had liberal democratic traditions, this has not been the case for many advanced countries of today, and even less so for the newly-industrialized economies of Asia. A number of organizations, such as Freedom House, publish data or rankings on political and

⁷⁸ It is reported that Alexander Hamilton observed that customs duties were more important as a fiscal tool for purposes of revenue than as a means to encourage domestic production of manufactured goods. HATTON & WILLIAMSON, *supra* note 34, at 12.

⁷⁹ In the United States, the series of programs initiated between 1933-1937 during the "New Deal" may be regarded as the beginning of a much larger, activist state characterized by a tax and transfer system.

⁸⁰ Estimates for social transfers to migrants and the vies of voters with respect to these are discussed more. See HANSON, *supra* note 30 (providing estimates for social transfers to migrants and the vies of voters).

⁸¹ See STANLEY ENGERMAN & K. SOLOKOFF, THE EVOLUTION OF SUFFRAGE INSTITUTIONS IN THE NEW WORLD, (NBER Working Paper No. W 8512, 2001) (Recent account of the development of suffrage in the New World.)

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civic freedoms.⁸² However, a standard, but exhaustive, source of regime types for most countries of the world is the seminal work of Charles Boix.⁸³ Thus, while the inner core European countries such as France, Italy, Austria, West Germany and Denmark can date their liberal democratic regimes to the mid-1940s, other European states such as Greece have had a more checkered history, with an uninterrupted democratic regime dating only to 1974, with Spain and Portugal following some two or three years later. A large number of former Eastern bloc states such as Poland, Hungary, the Czech and Slovak republics, Bulgaria and Romania among others can only claim this title beginning in the early 1990s. In Asia, democratic regimes emerged in South Korea only in 1988, in the Philippines in 1986 and in Turkey 1983.⁸⁴

A potentially fascinating area is the relationship between regime type and migration and trade policies. Are liberal democratic states more likely to be pro-migration than autocratic states and what does the data indicate? And, in a similar vein, is trade protectionism more likely to be observed in autocratic states or in more broadly enfranchised democratic nations? Issues such as these have only recently begun to be examined in political science and the results thus far, appear surprisingly counterintuitive.⁸⁵

Consider first the relationship between democracy and regime type (i.e. democracy versus authoritarianism) and migration policy. For a number of reasons, it is quite likely that authoritarian regimes, particularly those of rich nations, would adopt more liberal migration policies than their democratic counterparts. The starting point is to observe that democracies are characterized by contested elections and their governments are more likely to adopt policies

⁸² See, e.g., <http://www.freedomhouse.org/template.cfm?page=1>.

⁸³ See CHARLES BOIX, *DEMOCRACY AND FREEDOM* (Cambridge U. Press). (Appendix 2.1 in this work contains an exhaustive list of countries by regime type, i.e., democratic, authoritarian, transitional, etc). The standard work on European political institutions in the early 19th century is Paul Bairoch, *European trade policies: 1815-1914*, in *THE CAMBRIDGE ECONOMIC HISTORY OF EUROPE*, VOLUME 8 (Peter Mathias and Sidney Pollard eds., Cambridge Univ. Press 1989).

⁸⁴ *Id.*

⁸⁵ There has been some previous work on the relationship between general economic policies and regime types, but it has not been particularized to trade and migration policies. See, e.g., RONALD WINTROBE, *THE POLITICAL ECONOMY OF DICTATORSHIP* (Cambridge Univ. Press 1998), ADAM PRZEWORSKI ET AL., *DEMOCRACY AND DEVELOPMENT* (Cambridge Univ. Press 2000); Casey B. Mulligan et al., *Do Democracies Have Different Public Policies than Nondemocracies?*, 18 J. ECON. PERSPECTIVES 1 (2004),

<http://cas.uchicago.edu/workshops/cpoli/papers/mulligan.pdf>, NIKOLA MIRILOVIC, *REGIME TYPE AND IMMIGRATION* (Univ. of Chicago Working Paper, 2005),

http://harrisschool.uchicago.edu/Academic/workshops/pol_econ_papers/mirilovic-immigration.pdf; KEVIN H. O'ROURKE & ALAN M. TAYLOR, *DEMOCRACY AND PROTECTIONISM* (NBER Working Paper No. 12250, 2006), <http://www.wcfia.harvard.edu/seminars/pegroup/ORourkeTaylor2006.pdf>.

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reflecting the preferences of the median voter. However, the median voter class in most countries, rich or not, is likely to consist only of moderately skilled labor with modest resources compared with the elite class of capital owners or the landed gentry. As a factual matter, while a few migrants moving into rich countries are highly skilled (who might well be viewed as capital owners), most migrants are low skilled and directly threaten the wage levels of the native median voter. In turn, the latter would be expected to pressure their elected governments to restrict immigration. This effect is absent in rich autocratic regimes in which meaningful franchise is limited, if existing at all, and in which the state's policies are geared to a small elite ruling class that does not depend upon labor income. Hence, there is little pressure on the government in autocratic states to restrict immigration to mollify the average citizen.

An additional important reason for the expected pro-immigration stance of autocracies compared with democratic regimes relates to the existence of the welfare state. Authoritarian regimes are expected to spend less on social transfers than their democratic counterparts, since there are few, if any needy constituents to satisfy.⁸⁶ The cost of arriving immigrants (in terms of required social transfers for medical care, food stamps etc) and the fiscal constraints upon immigration, therefore, can be easily avoided in authoritarian regimes. The growth of the modern welfare state in modern times coupled with an increase in the efficiency of tax collection machinery in recent times, explains in part, why migration policies in the second half of the twentieth century became markedly more restrictive than say, fifty years prior to that when there was no welfare state to any extent. Finally, the inexorable fiscal burden of today's aging democracies characterized by declining fertility rates is expected to compound the tax burden further for the working populace.⁸⁷ If anything, this factor may be expected to lead democratic governments to further restrict migration of persons likely to require social transfers, while encouraging migration of younger, but highly skilled workers.⁸⁸

Are these hypotheses empirically validated? Indices of civic and political freedom are readily available, as indicated previously. Additionally, it

⁸⁶ See, e.g., PRZEWORSKI ET AL., *supra* note 85 (Pointing out that this might be one reason why autocratic regimes are characterized by higher population growth rates than democratic regimes). Because the social welfare net is limited people need to provide for old age security by having larger families. Another theme relates to less legitimate reasons for autocratic governments to expand population and geographical boundaries, i.e. those that refer to concept such as *Lebensraum* (living space). Readers will recall this ominous term from the expansionist policies pursued by Nationalist Socialist Germany in areas to its east.

⁸⁷ For long run projections of populations in various countries, see, e.g., United Nations Population Information Network, at <http://www.un.org/esa/population/unpop.htm>.

⁸⁸ See generally MARTIN ET AL., *supra* note 45.

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is possible to code Boix's listing of regime types as a binary, dummy variable.⁸⁹ For the years until 1930, the Timmer-Williamson index of restrictiveness of immigration policy may also be utilized.⁹⁰ A possible, but imperfect proxy for the permissiveness of immigration policy following that time period could be the share of foreign labor in total domestic employment.⁹¹ Cross-section and panel data tests performed appear to corroborate the principal hypothesis to a surprising degree for the last quarter of the twentieth century, i.e. democratic regimes are more likely to pursue more restrictive immigration policies than their authoritarian counterparts.⁹² These results are also corroborated for the period prior to 1930 upon examination of the index of immigration restrictiveness constructed by Timmer and Williamson.⁹³ Thus, the reported index of immigration policy permissiveness for the major democracies is -0.16 over the period 1850-1930, while for dictatorships, immigration policy was far more liberal, with the index being 1.8.⁹⁴

Consider next the relationship between regime type and protectionism of trade policy. Scholarly endeavor in this area too is still very limited.⁹⁵ One focus of inquiry is to examine, in a causal sense, whether broadening the voter franchise leads to more liberal trade policies (i.e. lower tariffs).⁹⁶ Extending voter franchise creates more voters and in most countries, including developed nations, the median voter is primarily one with labor skills and does not derive income primarily from capital or from land ownership. Hence, the effect of democratization is largely determined by whether the average voter stands to

⁸⁹ See BOIX, *supra* note 83.

⁹⁰ See *supra* text accompanying note 51.

⁹¹ This proxy is imperfect since several Middle Eastern countries have a large proportion of resident foreign labor and are not generally regarded as being characterized by democratic institutions. This limitation can be avoided by limiting empirical testing to advanced Western nations.

⁹² See MIRILOVIC, *supra* note 85.

⁹³ See TIMMER & WILLIAMSON, *supra* note 51.

⁹⁴ See *supra* text accompanying note 31 (Britain, although a democracy, is an outlier during this period and pursued pro-immigration policies, due perhaps to the special needs of colonialism and empire-building).

⁹⁵ An exception is O'ROURKE & TAYLOR, *supra* note 85. See also Harry Bliss & Bruce Russett, *Democratic Trading Partners: The Liberal Connection, 1962-1989*, 60 J. POL. 1126, 1126-47 (1998); James D. Morrow et al., *The Political Determinants of International Trade: The Major Powers, 1907-1990*, 92 AMER. POL. SCI. REV. 649 (1998). For more literature on the topic of democracy and general economic performance, see, e.g., Dani Rodrik and Romain Wacziarg, *Do Democratic Transitions Produce Bad Economic Outcomes?*, 95 AMER. ECON. REV. 50 (2005); TORSTEN PERSSON, FORMS OF DEMOCRACY, POLICY AND ECONOMIC DEVELOPMENT (CEPR Discussion Paper No. 4938, 2005).

⁹⁶ The reverse question of whether encouraging free trade promotes democracy is of interest to foreign relations scholars and to observers of globalization.

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gain or lose from liberalized trade. While the benefits of free trade in terms of cheaper access to a wider variety of goods are ubiquitous and dispersed, its costs are more narrowly imposed upon workers whose livelihood may be threatened by foreign competition. The vintage trade framework discussed in previous sections is instructive in this regard. In that framework, it will be recalled, it is protection that benefits the scarce factor or input. Thus, in advanced labor-scarce economies such as the United States or Canada, the average voter would lose from liberalized trade and extending democratic franchise would imply more pressure upon elected governments to satisfy constituents by restricting trade. By contrast, in the labor abundant economies of the Old World, land was scarce even in the late nineteenth and twentieth centuries and labor would have preferred free trade, while landed interests would have sought protection from trade. These observations are not without empirical support. As discussed earlier, the labor abundant economies of the Old World lowered their tariff rates much earlier than New World countries.⁹⁷ More sophisticated regression results for the period 1870-1914 for a data set including 35 countries also indicates that the extent of democratic franchise is a significant determinant of protectionism, once relative scarcities of land and labor in the relevant countries is taken into account.⁹⁸ Finally, when there is a third input, besides land or labor, such as capital, these effects are no longer as clear cut. Analysis of the effects of democratization upon trade policy in the context of a more complex framework has just begun and much remains to be done.

V. INTEREST GROUPS AND PUBLIC CHOICE

In Section III, it was discussed that in the standard Heckscher-Ohlin trade framework, trade and migration policies and their effects are characterized by an elegant symmetry. In Section IV, the relationship between types of regimes and the trade-migration policy stance was analyzed. In this Section, a more microscopic examination of the preferences of individual voters regarding trade and migration is utilized. Clearly, it is liberal democratic regimes that are expected to be responsive to voter preferences, rather than authoritarian regimes. Thus, the results discussed in this Section are primarily of relevance to liberal, democratic structures, whether rich or poor. Attitudes or preferences of median voters in such societies are translated by the governing regime, which must decide between pro- or anti- trade/migration policies.

Both trade and migration policies lead to identical effects upon returns to inputs, such as labor and land, the standard framework. Since rich countries

⁹⁷ See *supra* text accompanying note 72.

⁹⁸ See O'ROURKE & TAYLOR, *supra* note 85.

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are characterized by scarcity of unskilled labor (to use the paradigm utilized earlier), trade liberalization benefits the relatively abundant input, which is skilled labor in rich countries. Hence, skilled labor would be expected to be pro-trade in rich countries and conversely, it would be unskilled labor which would support trade liberalization in poor countries. Because open migration is a complete substitute for liberalized trade in the classic framework, as discussed earlier, skilled labor would also be liberal with respect to migration of unskilled labor into the rich country. In this case too, relative wages of skilled labor would increase following liberalization of migration policies. Hence, skilled workers are complete “globalists” in rich countries, preferring both liberalized trade and liberalized migration. Skilled labor in poor countries though, would display the precise opposite preferences. These properties with respect to attitudes of skilled and unskilled labor in the two countries are conveniently summarized in Table 1.

Table 1

	Rich Country	Poor Country
Skilled Labor	Pro-Trade Pro-Migration	Anti-Trade Anti-Migration
Unskilled Labor	Anti-Trade Anti-Migration	Pro-Trade Pro-Migration

Two observations regarding these simple results are in order. First, it may be easier for states in rich countries to garner support for general globalization (trade and migration) for the simple reason that skilled and richer workers would more easily be able to form coalitions and fund government platforms advocating globalization. This may result from the highly skilled being both better informed and educated and having access to more resources for political activism. On the other hand, in poor countries, liberal democracies attempting to promote globalization are likely to be opposed or blocked by powerful, well informed and wealthier voters who are decidedly opposed to globalization in every respect. It is no surprise then, that free trade agendas of the WTO are often reported to be obstructed or delayed by less developed countries rather than by the rich, industrialized nations.⁹⁹

Second, as in every theoretical construct, caveats are necessary and at least two are appropriate in this case. To the extent that migration from poor

⁹⁹ See, e.g., Jeffrey J. Schott, *Reviving the Doha Round*, INST. FOR INT'L ECON., May 2004, <http://www.iie.com/publications/papers/paper.cfm?ResearchID=207>; see also *The WTO under fire*, THE ECONOMIST, Sept. 18, 2003, <http://www.globalpolicy.org/soecon/bwi-wto/wto/2003/0918underfire.htm>.

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countries consists of skilled labor, in other words there is a “brain drain,” the results noted in the chart would be altered. For now, the emigration of skilled labor to rich countries would directly threaten skilled natives in the latter. A more complex setting would recognize that skilled workers in developed nations are likely to be selective in their migration preferences; unskilled labor migration, even that which may consist of unlawful migrants, may be encouraged or tolerated, while inbound migration of skilled labor would be disfavored. In addition, even without the complication of a possible “brain drain,” the classic framework is subject to several qualifications as noted earlier. In particular, factors such as market imperfections or increasing returns to scale might easily result in trade and migration being complements rather than substitutes and in fact, the empirical evidence cited earlier points to that conclusion.¹⁰⁰ If the strict substitutability relationship between trade and migration is undermined, so would the preference configurations listed in the summary chart above.

What does analysis of the empirical data demonstrate with respect to these propositions? Observe first that individual attitudes or preferences can only be gauged through responses to voter surveys or polls. At least three sets of cross country voter surveys have been utilized in the little empirical work that exists; those from the International Social Survey Programme, the World Values Survey and the European Social Survey.¹⁰¹

Preliminary empirical testing of voter attitudes toward immigration appears to be consistent with the classic trade framework, but the latter does not seem to capture all the determinants of voter attitudes.¹⁰² In general, the

¹⁰⁰ See *supra* text accompanying note 34.

¹⁰¹ For details regarding these international surveys, see www.issp.org; www.worldvaluessurvey.org; www.europeansocialsurvey.org

¹⁰² Consistency with the classic trade framework means that native voters' attitudes toward migration depend upon their skill levels relative to those of incoming migrants. See KEVIN H. O'ROURKE & RICHARD SINNOTT, THE DETERMINANTS OF INDIVIDUAL ATTITUDES TOWARD IMMIGRATION (Trinity College of Dublin Dept. of Econ., Paper No. 20042, 2001), http://www.tcd.ie/Economics/TEP/2004_papers/TEPNo2KOR24.pdf, ANNA MARIA MAYDA, WHO IS AGAINST IMMIGRATION? A CROSS-COUNTRY INVESTIGATION OF INDIVIDUAL ATTITUDES TOWARDS IMMIGRANTS (CEPR, Discussion Paper No. 5055, 2005), <http://www.georgetown.edu/faculty/amm223/revisedimmpolpref.pdf>; Jens Hainmueller & Michael J. Hiscox, *Educated Preferences: Explaining Attitudes Toward Immigration in Europe* (Kennedy School of Gov't, Harvard Univ. 2005), <http://www.people.fas.harvard.edu/~hiscox/EducatedPreferences.pdf>. Voter attitudes toward trade policy (protectionism in particular) have also been analyzed. See KEVIN H. O'ROURKE AND RICHARD SINNOTT, THE DETERMINANTS OF INDIVIDUAL TRADE POLICY PREFERENCES: INTERNATIONAL SURVEY EVIDENCE (Trinity College of Dublin, Dept. of Econ., Paper 200110, 2001), http://www.tcd.ie/Economics/TEP/2001_papers/TEPNo10K021.pdf; Kenneth F. Scheve &

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International Social Survey results seem to indicate that non-economic factors such as patriotism or chauvinism play a strong part in explaining voters' attitudes toward migration. Factors such as gender and religion may also have some impact.¹⁰³ For labor market participants, there appears to be qualified support for the classic framework; the high-skilled are less opposed to immigration than the unskilled. However, contrary to the results described in the chart, skilled labor everywhere (i.e. in both rich and poor countries) is more liberal with respect to migration than unskilled labor. In addition, as in the self-selection hypothesis, income inequality also plays a part.¹⁰⁴ When income distribution in the host country is highly skewed, there is positive selection of migrants (i.e. migrants have higher labor market skills) and skilled native labor in receiving countries turns anti-immigrant.

These results parallel those found for individual attitudes toward protectionist trade policy.¹⁰⁵ Again, nationalist sentiments play a large role in explaining attitudes toward protectionism and better skilled workers, especially those in rich countries who are likely to be pro-trade. Finally, there is surprisingly robust evidence of a gender gap in that women tend to be more protectionist everywhere as compared with men at equivalent skill levels.

The survey results reported above refer to cross-country data. Within a single country such as the U.S., there also appears to be a fairly wide disparity in attitudes toward immigration - particularly, illegal immigration - across the various states. How can this be explained in the face of a national or federal immigration policy? Models of trade such as the vintage trade framework discussed earlier are of no application to interstate variations in voters' attitudes toward immigration within a nation, and the equivalence between trade and migration as implied by earlier work in trade analysis and relied upon by many authors, is without relevance. In intriguing recent work, authors such as Hanson have begun to analyze varying attitudes toward migration across the several states of the U.S. in terms of three primary factors. First, migrant access to the state's welfare system (coupled with its tax burden), second, the existing proportion of migrants in the state's resident population and finally, labor

Matthew J. Slaughter, *What Determines Individual Trade-Policy Preferences?* 54 J. INT'L ECON. 267 (2001) Anna Maria Mayda & Dani Rodrik, *Why are Some People (and Countries) more Protectionist than Others?*, 49 EUR. ECON. REV. 1393 (2005).

¹⁰³ For a recent paper dealing with the impact of religious beliefs upon attitudes toward trade, see PATRICK LAM, RELIGION AND ATTITUDES TOWARD INTERNATIONAL TRADE: DOES RELIGIOUSITY INCREASE PROTECTIONISM? (Dept. of Gov't, Harvard Univ. Working Paper, 2006), <http://www.iq.harvard.edu/NewsEvents/Seminars-WShops/PEW/Fall06/Lam2006.pdf>.

¹⁰⁴ This result also finds support in European survey data. See Hainmueller & Hiscox, *supra*, note 102.

¹⁰⁵ See *supra* text accompanying note 102.

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market outcomes of increased migration.¹⁰⁶ Of these, the third factor is central to international trade models as well and has been discussed above. Specifically, the higher the skill and education levels of average workers in a state, the less likely it is that migration of unskilled labor could threaten natives' jobs and generate anti-immigration sentiment. The other two factors though, are not of relevance in standard trade analysis, which is conducted at a gross national level, but were touched upon in an earlier Section.

Space considerations preclude extended discussion; however, the following observations may be made: Data on attitudes of voters in different states in the U.S. for large samples is available from the National Election Studies project, covering 3400 observations over the 1990s.¹⁰⁷ There does not appear to be any such large scale studies for later periods. The statistical random sample of adults suggests that three factors affect public perceptions about additional migration; first, access to public assistance services coupled with the level of state taxes, second, the education level of respondents and third, the existing size of the state's immigrant population. Contrary to popular belief, residents of southern border states need not necessarily be more opposed to immigration than those in more distant states, such as New Jersey. In general, voters in states with a high proportion of existing migrants, high state taxes and generous state welfare systems are more likely to be opposed to additional migration, at least for respondents with equivalent education levels.¹⁰⁸

The effect of education in explaining variations in attitudes toward additional migration has been mentioned earlier and is relatively straightforward to rationalize. In general, education is a proxy for labor skills. The higher the level of education, and hence skills, of residents of a state's population, the less likely that unskilled labor migration could directly threaten natives' job security and conversely. States also vary a great deal by their degree of access to state welfare systems, with states such as Florida, Texas, North Carolina and Virginia being far less generous than others such as California, Maryland, New Jersey

¹⁰⁶ HANSON, *supra*, note 30.

¹⁰⁷ Virginia Sapiro et al., *National Election Studies Project* (Inter-University Consortium for Political Research, ICPSR Series 2536, CD Rom, Ann Arbor, 1998), www.chass.utoronto.ca/datalib/major/us_nes.htm.

¹⁰⁸ Access to state provided welfare became a more important factor after federal welfare for migrants was sharply curtailed in 1996. *See* Personal Responsibility and Work Opportunity Act of 1996, Pub. L. No. 104-193, § X, 110 Stat. 2105 (1996); Illegal Immigration Reform and Responsibility Act of 1996, Pub. L. No. 104-208, § X, 110 Stat. 3009-546 (1996) ("IIRIRA"). (Title V of the IIRIRA amends and re-incorporates the Personal Responsibility and Work Opportunity Act. The IIRIRA barred undocumented aliens from most means-tested public assistance programs and also limited access of legal immigrants to such benefits for a five year period. Following the federal initiative, several states restored many of the benefits through state-funded programs).

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and New York.¹⁰⁹ At the same time, state tax burdens tend to be relatively high in California and some northeastern states such as New Jersey as compared with Texas and Florida. It would not be surprising therefore, that the direct fiscal impact of additional migrants on natives would be more acute in California than in Texas or Florida. These propositions appear to be corroborated by recent empirical studies.¹¹⁰

CONCLUSION

In this article, the relationship between trade and migration policies was analyzed on a number of levels and across several disciplines. Contrary to assumptions often made by writers and scholars, including those in the law, increased trade liberalization does not have predictable effects upon international migration, which is a far broader and more complex phenomenon. Nations should pursue independent policies with respect to international trade and migration, as the United States has already done. There need not be any hand-wringing over the “missed opportunities” for migration reform in the U.S. during trade accords such as the NAFTA because of any necessary linkage between trade and migration. It may be possible in the future, to combine elements of trade and migration analyses and construct a richer analytical structure than exists currently. As a policy matter, on the levels of both theory and practice, there appears to be no need, at this time, to inevitably wed trade and migration reforms.

¹⁰⁹ See Wendy Zimmerman and Karen C. Tumlin, *Patchwork Policies: State Assistance for Immigrants Under Welfare Reform*, Occasional Paper No. 24 (The Urban Institute, 1999).

¹¹⁰ GORDON H. HANSON ET AL., LOCAL PUBLIC FINANCE AND INDIVIDUAL PREFERENCES OVER GLOBALIZATION STRATEGIES (NBER Working Paper 11028, 2005), <http://irpshome.ucsd.edu/faculty/gohanson/HSSImm&PF1204.pdf>.