

# **Understanding the Implications of the Hart-Celler Act**

By

Paul Manuel Lazarescu

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Supervisor: Professor Zoltan Miklosi

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## Abstract

The Hart-Celler Act, formally known as the Immigration and Nationality Act of 1965, has had a thought-provokingly stellar impact on U.S. immigration. This act eliminated discrimination against certain ethnic groups that had persisted since the Immigration Act of 1924 which established the National Origins Formula. Under the National Origins Formula, immigration quotas were put into place in order to limit the number of immigrants from regions of the world that would negatively alter the ethnic distribution of the United States. The era within which the Hart-Celler Act was passed was one of a great change in the psyche of the U.S. demos towards a more liberal, global way of thinking by removing these quotas and creating a better system through which residency could be acquired. The changing of times and inability to address it since, however, has led to immigration becoming a forefront of political debate in the United States today. This has culminated in the presidential campaign and subsequent election of Donald J. Trump, whose primary campaign issue revolved around racially charged sentiments and the problems of immigration. My aim here is to assess, from relevant data and evidence, the impact of the Hart-Celler Act by examining a) how it improved or faulted as legislation upon its predecessor – via reallocation of immigration slots from Northern Europe to 3<sup>rd</sup> world inhabitants or the creation of chain migration – and b) the economic and social consequences that have occurred in the fifty years following. I shall follow this up by developing a normative scale upon which to judge the competing immigration theories, which is succeeded by taking a look at philosophical literature in search of providing a clearer picture regarding the moral debate surrounding immigration today. I conclude a) that Congress passed a law improving on many of the shortcomings of its predecessor, though it has not been spared criticism on pragmatic grounds; and b) that the legislative changes cultivated fairly positive economic consequences. Additionally, I assert that sole adherence to either theory of immigration is too narrow in approaching the problem of reform and that collaborative measures that are understanding of both sides' interpretations of justice is the most suitable path forward.

## **Acknowledgements**

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## I. Introduction

*"Give me your tired, your poor,  
Your huddled masses yearning to breathe free,  
The wretched refuse of your teeming shore.  
Send these, the homeless, tempest-tossed to me,  
I lift my lamp beside the golden door!"*

- Emma Lazarus

This iconic quote has been echoed for over a century in American politics. It is, in fact, a stanza taken from a sonnet titled *The New Colossus*, written by Jewish-American poet Emma Lazarus in 1884. The notoriety of the quote, which was subsequently forgotten following its unveiling, extends further than its immortalization upon a bronze plaque at the foothill of the Statue of Liberty in 1903. What it stands for are the liberal ideals of multiculturalism, diversity and inclusion. It represents a country welcoming of all those who have been victims of circumstance, of oppression, of inequality and of strife. Lazarus' *The New Colossus* is a masked poem, one whose underlying purport represents the fleeing cause of Jewish immigrants during a time of persecution to a land of perceived acceptance and redemption (Marom 2000). The United States of America has had an ever-evolving relationship with the concept of immigration and immigrants alike. The acceptance of them has typically revolved around the need for a greater economic workforce in a growing country mixed in with the humanitarian desire to act as a bastion of freedom for the world.<sup>1</sup> However, misconceptions about the identities of certain groups and a misunderstanding of what they bring to the U.S. economically and socially has infiltrated every discussion we have had about migration since the first pieces of legislation.

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<sup>1</sup> "The United States' goals in receiving them included the need for new citizens who would participate in national economic and political growth, as well as the humanitarian desire to provide a refuge for the oppressed of other lands. During this period, there were few restrictions on the entering immigrants..." (Violet 1980, 1).

Contention over federal immigration law and how it should be established has persisted ever since the first pieces of legislation were passed, which identified the nation and its associative political power as formal (meaning they were imbued as legitimate) when Chinese immigrants were excluded entirely from coming to the U.S. in the late 19<sup>th</sup> century.<sup>2</sup> Fast-forward to today, and the sitting presidential administration is embroiled in its own [political and judicial] battles over migration policy. While congressional inaction has impeded the ability of the Trump administration to substantively reform the legal immigration system, the administration has made several changes that increase the vetting of potential immigrants and slow legal admissions (Pierce et. al. 2018, 7). This includes judicial battles over the administration's recent Migrant Protection Protocol and "wealth test" policies, both instituted with the purpose of curtailing incoming migrants' access to shelter and resources. This is not a new phenomenon exclusive to the Trump administration. There have been numerous attempts at reform in the preceding decades under each administration (ranging from the Reagan administration when consequences initially started presenting themselves to our current administration) (Krutchik 2008). What all these attempts at reform, successful or otherwise, have exhibited is the desire of the government to modernize the country's immigration system, bringing it into the 21<sup>st</sup> century. The principle objective that has alluded this country for over fifty years, though, is comprehensive reform in a manner which would allow us to move into a new cosmopolitan era of thinking.

On October 3, 1965, President Lyndon B. Johnson signed into law the Immigration Act of 1965 (Kennedy 1966, 138). Colloquially, it is known as the Hart-Celler Act, as it was sponsored in the House of Representatives by Representative Emanuel Celler and in the Senate by Senator

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<sup>2</sup> "The popular view of Chinese as criminals and prostitutes led to the enactment of the first federal statute restricting immigration in 1875" (Ting 1995, 303).



Philip Hart.<sup>3</sup> In what will be covered in the third and fourth chapters of this project in more detail, the recognized intent of this act was to repeal [and replace] the National Origins Formula, the federal immigration system considered bigoted by many modern historians. This system was established by the 1924 Immigration Act and reinforced Immigration and Nationality Act of 1952 (Hayes 2012). An aspect of this immigratory system was that 81.6 percent of the total numerical quota was assigned to Western European countries (Hatton 2014, 349). The [Hart-Celler Act] abolished the quota system, which critics condemned as a racist contradiction of fundamental American values (Kammer 2015, 1). Beyond the elimination of prior restrictions, more purposeful and humanitarian immigration elements were implemented, such as the development of a preferential acceptance of skilled individuals system (H-1B) and the allowance of family reunifications. As a result, one can trace current socioeconomic trends and beliefs about immigration back to this monumental act. This act may also be traced back to when the issue of immigration assumed the status as an issue of liberty with economic considerations rather than just being an issue of security. Thus, the over fifty-year period we have experienced since its passing has generated two camps with rather diametrically opposed views, and different attempts at legislative action have been the call of some of these economic or ideological interests.<sup>4</sup>

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<sup>3</sup> Wolgin, Philip E. "Re-Forming the Gates: Postwar Immigration Policy in the United States Through the Hart-Celler Act of 1965." *Wanted and Welcome? Immigrants and Minorities, Politics and Policy*. Springer, New York, NY (2013): 61-81 (72).

<sup>4</sup> "However, most existing evidence suggests that conservatives are less likely than liberals to support immigration, despite conservative antipathy for government intervention in markets... different aspects of general liberal-conservative ideology will have a differential bearing on different types of immigration legislation" (Milner and Tingley 2011, 11-13).

## II. Research Questions

The debate surrounding immigration today can be broken down into two opposing blocs: those on the right who have historically held a more traditional, protectionist belief grounded in a mix of moral, ethical-political, and realist concerns; and those on the left who argue not from an inherent position of altruism, but rather from the position of *universalism*<sup>5</sup>. In this case, the participatory scheme of reference is allowed access and citizenship in the United States. It is Bader (2005) who identifies five central premises with which advocates of closed borders build off of. Borders should be closed, so it is said, (i) because moral priority should be given to compatriots, and because states have an important role in the allocation of duties; (ii) because fundamental civil and (iii) political rights (including democratic political culture and virtues) can only be guaranteed in this way; (iv) because social rights and welfare arrangements have to be defended; and (v) because ethno-national cultures have to be protected (Bader 2005, 344). Virtually all discussion points fall under this five-point classification umbrella. Yet, advocates of these positions fail to capture the full picture of events. The writings of Michael Walzer and David Miller, amongst others, that have helped form the ideological beliefs of those on the right are objectively fine, but the formation and application of these beliefs are grounded in subjective views of the world, and as a result not respectful enough of oppositional concerns and arguments in a proper context.

Those on the left argue in a manner conducive to cosmopolitan democracy ideals. That is, the ethos of their premises is rooted in a humanitarian, egalitarian idea of democracy.<sup>6</sup> Bader

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<sup>5</sup> "*Universalism*" implies the non-exclusion of anybody on the basis of unchosen characteristics such as sex, race, nationality, etc. from a participatory scheme. See also Gewirth (1988), Laclau (1992), Stanley and Brickhouse (1994), Schwartz (2007).

<sup>6</sup> Seglow (2005, 329-330) provides a general encompassing notion of the argument that is a mixture of various authors' views.

(2005) identifies two key principles under which advocates of open borders make their case: (i) the notion that free mobility is an important moral principle and (ii) that more prosperous states have a moral and legal obligation to let people in as long as and to the degree that they do not live up to their minimal moral obligations to guarantee basic human rights to safety and subsistence for all human beings irrespective of nationality (Bader 2005, 337). Akin to the beliefs held by those on the right, those who support the ideas of liberal thinkers such as Joseph Carens, Charles R. Beitz, and Sarah Fine amongst others also suffer from a similar lack of awareness. Both sides can be critiqued in their approaches for being far too narrow or shortsighted, which limits potential compromise in deliberation talks. Politicians who use liberal and liberal egalitarian grounds to debate for open borders bear the responsibility of potentially alienating native population and creating a society where the whims of the bounded majority are ignored. Conservative support for closed borders, or what has been more positively referred to as the conventional view<sup>7</sup> on immigration, runs the possibility of reinforcing xenophobia in the nation or in alienating its [foreign-born] population. My assessment will come in leveling different criticisms at both theories and explaining how neither is substantively suitable in developing a ground for prospective immigration legislation. This will take the form of a normative evaluation and it will function as the principal research question.

Lastly, it is important to note that the application of these theories is done to the case of the United States, a nation-state where in its short history has sparked the fiercest debates on the morality and efficacy of restrictive or expansive immigration policy. A knowledge of the roots of the history of immigration in the U.S. strengthens one's understanding of why the normative

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<sup>7</sup> "The conventional view on immigration maintains that states have a broad right to control their borders, including a right to regulate immigration in accordance with national priorities (Wilcox 2009, 814)." Re: Michael Walzer, *Spheres of Justice*.

political debate surrounding immigration today is so split into these two narrowly focused camps. This historical evaluation will encompass the (i) analysis of predecessor immigration legislation, (ii) a conceptualization of American values and beliefs, (iii) a definitive look at the changes implemented by the Hart-Celler Act, and (iv) its socioeconomic outcomes and will serve as the ancillary research question. It cannot tell us much about the just/unjust nature of the different provisions of these acts, though. Prior to defining and reconstructing the arguments for open borders or restrictions, I shall devise a theoretical framework upon which to evaluate these arguments. It will be based upon a historical and contemporary analysis of United States immigration policy and values [regarding the matter] to be explored in the subsequent two chapters. This normative framework should in essence provide a “scale for policies” which should provide clarity in understanding the evaluation process in arriving to what are the most ideal principles.

### III. A Bygone Predecessor: The National Origins Formula

Before beginning a discussion about the Hart-Celler Act proper, this section will serve the purpose of providing a brief historical breakdown of the era in American history dedicated to restrictionism and self-preservation. I deem three points of interest here: An acknowledgement of this formula's roots and the purpose(s) behind its passage, a look at its key provisions, and a breakdown of the philosophical mindset held by America during this time.

#### *a) Introduction*

The Immigration Act of 1924 reluctantly signed into law May 26, 1924, by President Calvin Coolidge is usually considered by immigration historians in the context of growing American Nativism concern with the rising tide of immigration emanating from Southern Europe and the Mediterranean (Makela 2003, 51). It made permanent the national origin system and, in combination with the Immigration Act of 1917, [it] governed U.S. immigration policy until 1952 (Greenwood and McDowell 1999, 23). This act functioned as a synthesis of the Immigration Act of 1917 and the Immigration Act of 1921, more formally codifying the two under a single umbrella.<sup>8</sup> Furthermore, to the extent that the "inhabitants in continental United States in 1920" constituted a legal representation of the American nation, the law excised all nonwhite, non-European peoples from that vision, erasing them from the American nationality (Ngai 1999, 72). The Immigration Act of 1924 may be said to have had two major purposes: first, to limit further the total number of aliens who should be allowed to enter and second, to introduce a complex system that shall further restrict the total number of entrants and provide greater representation to peoples of Nordic origin (Jessup 1926, 706).

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<sup>8</sup> See Jessup (1926), 705-706.

b) *Key Features: The Legislation in Detail*

The first of three observable items that changed under the Immigration Act of 1924 was the new allocation of immigrants allowed into the country being set at roughly 164,667.<sup>9</sup> In order to set the quota system to a time prior to a mass exodus of Southern and Eastern Europeans to the continental U.S., national quotas were set based on census data from 1890.<sup>10</sup> This allowed priorly reinforced immigration restrictions against much of Asia to be coupled with new restrictions now enforced on a non-Anglo-European population as well, thus protecting existing racial homogeneity. After a few years of deliberation, a hard limit of 150,000<sup>11</sup> allocations, in accordance with 1920 census data, was put into place. Another provision of the INA of 1924, which is representative of an American society that was protective of itself and its identity, was the creation of the U.S. Border Patrol.<sup>12</sup> This was done with the purpose of having a formal security force tasked with any crossing-related matters. Lastly, family reunification was also allotted to be more of a privilege for those of Nordic or Anglo-European background.

c) *Contentiousness*

Changing population dynamics fueled these ethnic and racial fears that prompted legislative action.<sup>13</sup> The ‘solution’ as pursued in the 1924 Immigration Act was to ban such ‘degenerate’ groups on grounds that they were racially inferior, unassimilable, carried various ‘diseases’, and

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<sup>9</sup> Ibid. p. 11 (Greenwood and McDowell 1999, pg. 23).

<sup>10</sup> Livingston (1993) states that, “The Act of 1924 set national quotas based upon the number of foreign-born in the country in 1890 and reduced the percentage to two percent.” *Two percent* is in reference to the maximum number of immigrants to be allowed in from a country in accordance with 1890 census data.

<sup>11</sup> See Ngai (1999), 67. Greenwood and McDowell (1999) further note that from July 1, 1927, (but later postponed to July 1, 1929) until December 31, 1952, it set the annual quota for any country or nationality; the quota number had the same relation to 150,000 as the number of inhabitants in the continental United States in 1920 having that national origin did to the total population of the continental United States in 1920.

<sup>12</sup> “The United States Congress established the U.S. Border Patrol on May 28, 1924” (Hernandez 2010, 26).

<sup>13</sup> Ward (1924) points out in “Our New Immigration Policy” between pgs. 101-102 the huge increase in new immigration from Southern and Eastern Europe and near Asia (from 180,000 to over 10,000,000 in a few decades) and the reality of these immigrants being less intellectually refined as well as less culturally adaptive.

were therefore inherently dangerous to the ethno-racial fabric of the US (Streich 2008, 275). Indeed the belief of the era *was* in the perceived inferiority of new-wave immigrants, which is a stark contrast to the general attitude of indifference exhibited to these foreigners prior to their arrival in large numbers. The National Origins Formula succeeded in its goals of dialing back the “pollution” of the existing ethnic proportions in the country. Spengler (1929) wrote in opposition to the National Origins Formula being based off nationality for the belief that it would breed ill-will.<sup>14</sup> He argued that acceptance of immigrants should come down to their health and ability to provide value to the country instead. His contentions would fall on deaf ears though, as the Immigration and Nationality Act of 1952<sup>15</sup> would go on to revise provisions of its predecessor only mildly, although a big transformation was soon to come for America.

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<sup>14</sup> “Basing quotas upon the census of 1890 is preferable to national origins... (Spengler 1929, 170).”

<sup>15</sup> See Orlow (1956).

#### IV. Hart-Celler Act and Contemporary Socioeconomic Consequences

It is of no surprise that there has been much written in the past half-century about the principles of justice. The post-war period gave rise to an era that cultivated many thoughts and ideas about how societies should be structured. Theorist John Rawls may not have been the first to ever write on philosophical matters such as equality, egalitarianism, utilitarianism or humanitarianism, but he laid the foundation for these matters to be discussed in a far more serious manner. Indeed, it is in this time frame around the mid-20<sup>th</sup> century that the Hart-Celler Act came into existence<sup>16</sup>. Many legislators contended that the laws should be changed because racial and national distinctions were bad in principle (Chin 1996, 115). Upon that premise, I shall highlight key changes it brought upon the immigration system, assess the socioeconomic consequences, show the reasons for its positive and negative attributes, and lastly take a quick look at how American values have been formed up until the current day.

##### a) *Legislative Components*

Greenwood and McDowell (1999) identify five major provisions of the INA of 1965:

1. It abolished the national origin quota system that had been established in 1924 and reaffirmed in 1952, thus eliminating national origin, race, or ancestry as a basis for exclusion.
2. It established a seven-category preference system for numerically restricted immigrants.<sup>17</sup>

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<sup>16</sup> Its implementation, similar to the Immigration Act of 1924, took a few years.

<sup>17</sup> "These preferences (Table 2.2) provided for the reunification of families—the first, second, fourth, and fifth preferences, called the relative preferences—and for entry of persons with special occupational talents—the third and sixth preferences, which have come to be called the occupational preferences (Greenwood and McDowell 1999, 25)."



3. It established a group of immigrants exempt from quota limitations: a) immediate relatives of U.S. citizens, i.e., the spouses, children, and parents of U.S. citizens 21 years of age and older, and b) special immigrants, including ministers and others.
4. It established an annual Eastern Hemisphere quota of 170,000 and a Western Hemisphere quota of 120,000.
5. Finally, it required that the Secretary of Labor certify that an alien attempting to enter as a worker would not replace a worker in the United States or adversely influence either the wages or working conditions of individuals similarly employed in the United States.<sup>18</sup>

Below is a table provided by Greenwood and McDowell (1999) that showed how immigrant visas were allocated during a quarter-century period.<sup>19</sup>

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<sup>18</sup> "This condition introduced a process known as *labor certification* that was applied to the third and sixth preference categories (Greenwood and McDowell 1999, 27)."

<sup>19</sup> This preference system as well as the numbers allotted changed over time, but more contemporary revisions have kept to the same idea that it originally presented.

**Table 2.2 Immigrant Visa Allocation System (1968–1991)<sup>a</sup>**

	Preference/provision	Limit
<b>Numerically limited immigrants: 270,000<sup>b</sup></b>		
1st:	Unmarried sons and daughters of U.S. citizens and their children	20% or 54,000
2nd:	Spouses and unmarried sons and daughters of permanent resident aliens	26% or 70,200 <sup>c</sup>
3rd:	Members of the professions of exceptional ability and their spouses and children	10% or 27,000
4th:	Married sons and daughters of U.S. citizens, their spouses and children	10% or 27,000 <sup>c</sup>
5th:	Brothers and sisters of U.S. citizens (at least 21 years of age) and their spouses and children	24% or 64,800 <sup>c</sup>
6th:	Workers in skilled or unskilled occupations in which laborers are in short supply in the United States, their spouses and children	10% or 27,000
Nonpref.:	Other qualified applicants	Any numbers not used above <sup>c</sup>

**Figure 4.1***b) Economic Impact*

Economically, the impact the Hart-Celler Act has had on the U.S. immigration system has yielded generally positive outcomes. While it may be debated<sup>20</sup> that an increase in the number of low-skilled migrants will lower wages for low-skilled native workers, contention over the idea boils down to the reality that 1) any decrease is typically quite insignificant, and 2) it depends considerably on the makeup of the immigrant groups examined.<sup>21</sup> First, there is no evidence that immigrants crowd out U.S.-born workers in either the short or long run (Peri 2010, 3).<sup>22</sup> The typical motivation behind migration is the desire for a more economically-advantageous life,

<sup>20</sup> Dustmann, Christian, Schönberg, Uta, and Stuhler, Jan. "The Impact of Immigration: Why Do Studies Reach Such Different Results?" *Journal of Economic Perspectives* 30, no. 4 (2016): 31-56 (31). See also Bauer (1998) and Gavosto, Venturini, and Villosio (1999) for an example of opposing findings (in foreign countries).

<sup>21</sup> "The economic consequences of immigration to the United States are far-reaching, and they depend upon the characteristics of the immigrants (Greenwood and McDowell 1999, 13). See also Borjas and Tienda (1987).

<sup>22</sup> The comparative advantage U.S.-born workers have over immigrants allows different segments (dependent on education, literacy, etc.) of the workforce to specialize in certain fields. This promotes efficiency and leads to a long-run benefit for U.S.-born workers. See Giovanni Peri (2010), pgs. 2-4.

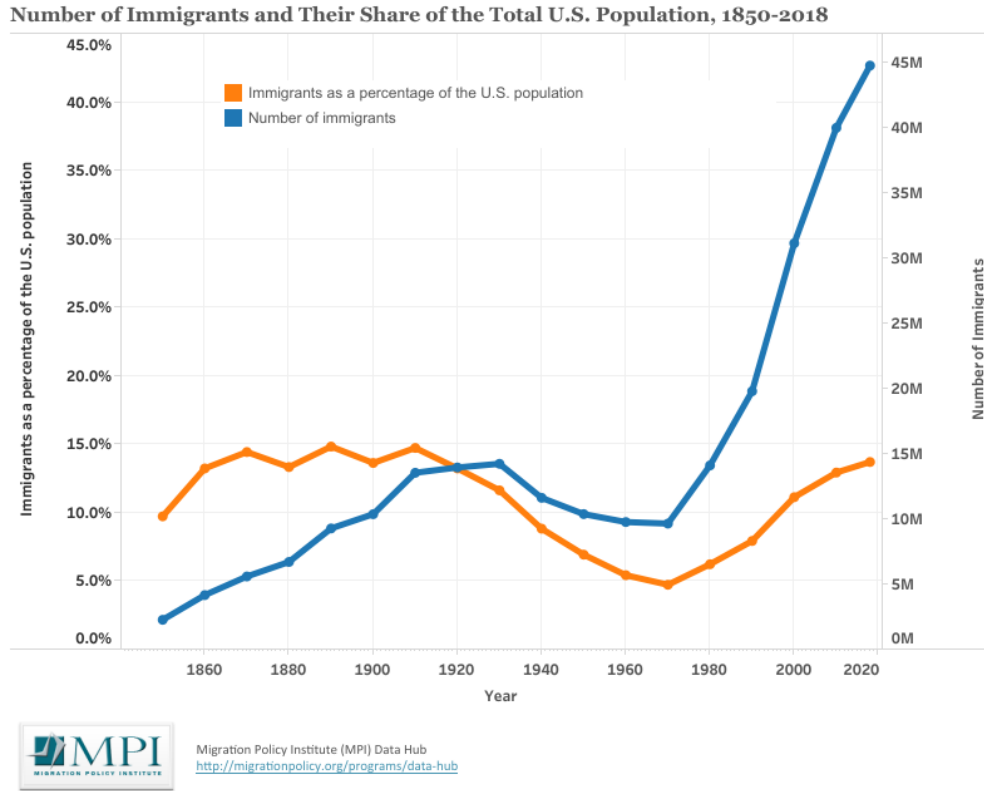
amongst other considerations such as a desire for better education, security, and political representation.<sup>23</sup> Indeed, in the case of America, immigrants open businesses at a higher rate, create more job opportunities, increase the nation's capacity to develop new ideas, and overall improve competitiveness.<sup>24</sup> Fifty-years on from its passage, the number of foreign-born people in the U.S. is near an all-time high.<sup>25</sup> Yet from an economic perspective, the displacement of native workers is typically offset by factors such as a leap to more white-collar professions or the creation of new jobs (a result of increased economic growth) that these workers take up. As will be covered in the following section, perception also plays a role beyond just direct statistical observance.

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<sup>23</sup> See Huinink, Vidal, and Kley (2010), pgs. 8, 10. See also Levy and Wadycki (1974), Miller (1976), Hagen-Zanker (2008).

<sup>24</sup> United States Securities and Exchange Commissioner Luis A. Aguilar spoke on the reality that immigrants have, and historically, always provided benefits that have improved the economy on an aggregate.

<sup>25</sup> See Figure 4.2. Migration Policy Institute (MPI) tabulation of data from U.S. Census Bureau, 2010-2018 American Community Surveys (ACS), and 1970, 1990, and 2000 Decennial Census. All other data are from Campbell J. Gibson and Emily Lennon, "Historical Census Statistics on the Foreign-Born Population of the United States: 1850 to 1990" (Working Paper no. 29., U.S. Census Bureau, Washington, DC, 1999).



**Figure 4.2** – As of 2018, the immigrants share of the total U.S. population sits at 13.7%.

*c) Social Impact*

I contend that part of the perception why immigration is considered a negative for society is the mathematical fact that the foreign-born now occupy nearly 15% of the population of the United States. This has taken away from the homogeneity and political strength (via loss of numbers) that the (predominantly white) majority has held since the Civil Rights Era. [President] Lyndon B. Johnson did not expect the United States to be fundamentally altered (Lee 2015, 529). Indeed, a complete reversal of the post-1920's trend might not have been expected, but socio-evolutionary trends about growing levels of cosmopolitanism and humanitarian attitudes is

something that might have been foreseen.<sup>26</sup> Race or ethnic clashes may arise due to a cultural disconnect that begins to manifest itself in the attitudes of select groups that constitute society, buoyed by xenophobia. Similar to the manifestation of the idea that members of the African American community are unethically targeted by law enforcement, minority groups on a whole begin to adopt similar attitudes if there are legislative attempts<sup>27</sup> (furthered by impact of rhetoric) aimed at restraining an enclave of society. Those discriminated against feel as though they live in a society where equality may exist on paper in the court of law but does not go for the rest of the walks of life.

*d) Improvements and Shortcomings*

It is of no debate that the Immigration and Nationality Act of 1965 improved upon its predecessors. Gone was the National Origins Formula that assigned quotas upon unchangeable, inherited characteristics and perpetrated ideas of “inferior” races. Gone was a system that promoted racial and ethnic homogeneousness instead of promoting assimilation as a value. The U.S. had entered a new era that promoted the democratic ideals<sup>28</sup> it had long stood for only figuratively. It will provide a sound basis upon which we can build in developing an immigration law that serves the national interest and reflects in every detail the principles of equality and human dignity to which our nation subscribes.<sup>29</sup>

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<sup>26</sup> “Since cosmopolitanism is associated with growing proportions of the population, this suggests that attitudes toward immigrants may become more favorable in the future (Haubert and Fussell 2006, 490).”

<sup>27</sup> McKanders, Karla M. “The Constitutionality of State and Local Laws Targeting Immigrants.” *University of Arkansas at Little Rock Law Review* 31, nr. 4 (2009): 579-600 (580).

<sup>28</sup> Lee (2015) does question the drive behind legislators’ motifs, as it seemed not many foresaw such a transformation not just within the U.S. demography, but the psyche of the country as a whole, but I argue that hindsight is 20/20 in this scenario and that this was John F. Kennedy’s vision, the original architect of the bill.

<sup>29</sup> Excerpt from President John F. Kennedy’s letter to the president of the senate and speaker of the house on revision of the immigration laws, July 23, 1963.

The development of the H-1B visa program helped in filling gaps when labor shortages were running higher in select industries. This was no truer than in the late 1990's, when a big boom in the technology sector created a need for highly-skilled laborers on a temporary basis.<sup>30</sup> Similarly, the visa lottery program came about as a consequence of the act. Its purpose was to assist prospective Irish and Italian immigrants in arriving to the country that was made difficult given some of the new provisions favoring migration from non-European theatres.<sup>31</sup> It succeeded in diversifying a portion of the incoming migrant population because there was no moral judgement passed upon any winners, and it created a program that offers hope to individuals with no familial ties or discernable work abilities.

A distinct shortcoming, one that was initially positive because of its humanitarian aspect, is the family preferences provision. Otherwise referred to as chain migration, its basic premise is to allow for the family of visa (green card) holders to be sponsored for their own access into the U.S. Because chain migrants could reduce the probability of failure through their associations with relatives in the destination country, they were able to insure themselves against very bad outcomes; with family involvement more risk-averse types would thus find migration to be a viable investment (Wegge 1998, 963). Since the act's passage, this provision has gradually resulted in a greater and greater number of legal, permanent migrants.<sup>32</sup> The number of foreign born citizens in terms of population percentage is on pace to reach new historical highs in a charge led by immigration from Latin America (O'Connor, Batalova and Bolter 2019; Passel,

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<sup>30</sup> "The U.S. and many other governments obliged, making it easier for highly skilled workers to enter and fill jobs (Martin 2002, 130).

<sup>31</sup> One of the strategies used by champions of this program was the statistical discrimination against them via the decline in numbers of Irish and Italian migrants post-1965. See Law (2002), pg. 11.

<sup>32</sup> "In 1970 and 1980, 25% and 40% of legal permanent immigration resulted from family reunification, respectively, and in the 1990s, about 55% of legal permanent residents used family preference for immigration. In the decade from 2001 to 2010, family reunification represented nearly two-thirds of total documented immigration to the United States (Lee 2015, 529)."

Cohn and Gonzalez-Barrera 2012; Massey and Espinosa 1997; U.S. Census Bureau 2012). This has triggered a large shift in the demographic make-up of the country, one in which the proportion of ethnonational whites in the population has experienced a steady decline. While one may not be able to judge the morality of this, the practicality of it is that it emboldens estrangement if weak assimilation leads to isolated communities.

*e) Conclusion*

Immigration to the United States will always remain an attractive option for foreigners predicated on the perception that the value of equality remains strong within the nation. In what surely drives the foreign-born population more so than the native, the idea of the “American Dream” still motivates many to come to the country and work hard. The Declaration of Independence, the first official document of this great nation, proudly proclaims that “All Men Are Created Equal”. As such, the United States has an obligation to assure the most prosperous, welcoming environment for all newcomers. What *is* up for contention is who should be allowed entrance and how stringent the policy should be in allowing them in. The underlying purpose of what has been covered in the previous two chapters is to inform the creation of the scale I shall use to judge the two competing concepts in the following chapters.

## V. Normative Scale

### a) Purpose

A normative scale of moral and philosophical judgements based upon the history of the United States' relationship with immigrants shall provide the framework for preferable policy provisions and guidance along the way which to refer back to. The two opposing theories on migration have both been individually and comparatively critiqued to a great extent, but there has been a minimal amount written on their direct applications to the case of the United States and its historically muddled relationship with the issue of immigration. What in fact *is right or wrong* concerning migration restriction is not exactly straightforward. Maybe in a vacuum, certain visions are objectively better (more good) and hold more weight than others, but within a context this delineation of *right and wrong* takes on the circumstances of the environment it operates in. Call it quasi-moral particularism, there are still indeed certain duties and obligations that determine the appropriate standards. Naturally, the United States holds many definite beliefs as a nation. Certain beliefs have evolved over time while others have remained steadfastly indoctrinated in the mindset of America. It is to an adherence of these beliefs that this scale shall derive its formation from.

### b) Parameters

1. Individuality: The identity of the United States of America is that of a highly independent, strongly individualistic nation. This idea of individual autonomy harkens back to the rights vested in its citizens by the Constitution. It may be extended further (by virtue of people making up the fabric of the nation) to the national level in an argument for national autonomy. As a result, the very nature of the United States is of a nation that has a right to actively utilize its associative powers, for those that constitute this great nation themselves



hold this right. The presumption that there is an *obligation* to accept foreigners into the country under non-refugee guises is a strenuous one to make.

2. Patriotism: Patriotism, or the strong advocacy of one's nation by virtue of citizenship<sup>33</sup>, is another strong belief that should inform appropriate policy. In fact, it may be partially to blame for the strong anti-foreigner sentiment that helped guide bigoted anti-immigratory policy towards implementation in the first half of the 20<sup>th</sup> century. As a patriot, one is steadfast in campaigning for various aspects of his or her nation. Although the desire to maintain an ethno-national culture equilibrium is strong, the desire to keep existing social rights and welfare arrangements in place also plays a part in motivating one's attitude towards more restrictive [immigration] policy. It further insinuates the existence of a "bounded" national attitude towards foreigners that creates friction when devising policy. It is vital to ensure a non-discriminatory validation when utilizing this premise to oppose open migration, otherwise an already disconcerted public would find immediate issue.
3. Diversity: For a considerable portion of first-generation immigrants, a usually inseparable component of their identity is pride in their country of origin. It is part of what contributes to the idea of this nation being a melting pot, for if everyone were to renounce their preexisting cultural ties and align themselves with a homogenous ethno-centric cultural ideal, this nation would lose its aura of heterogeneity. Perhaps a federally authorized assimilation system designed to teach new citizens about some of the core tenets of what it means to be American without ostensibly washing away their identity would set a positive standard to

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<sup>33</sup> "Patriotism by contrast is defined in terms of a kind of loyalty to a particular nation which only those possessing that particular nationality can exhibit (MacIntyre 1984, 4)."

follow. Otherwise, the diversity of this country is something intrinsically linked to its DNA and is something that should not be seen as something to be forewarned about.

4. **Internal Civil Equality:** The Civil Rights Era marked the beginning of a long road towards greater equality amongst citizens of the U.S. As stated earlier, it followed in a general world trend towards more cosmopolitanism and humanitarianism. As equality rose between the ethnic minorities in the nation and the white majority, it also rose on a global scale in terms of equality among different races and classes. In the practical sense, boundaries between those in poorer, more mixed nations and those in affluent, Western democracies have begun to recede.<sup>34</sup> Philosophically, discussions about the merits of justice, especially within a bounded system, began to arise. How is one to determine the fairness of our circumstances thrust upon us by the country of our birth? Is this pre-ordained societal agreement just? A case can be made for immigration policies to be more reflective of the time we live in now, or even, potentially, to be forward thinking in an attempt to promote unity amongst all members (think: regional coalitions) as well as limit class stratification.
  
5. **External Obligation:** The United States assumes a special duty of upholding liberty and acting as the leading light of the free world<sup>35</sup>. It shall provide a climate of equality and fairness to all who are allowed access as well as appropriate access to existing distributive justice. Restriction upon unchangeable factors such as ancestry or socioeconomic background go against this nation's mantra of [presumably] accepting all those that seek a better life for themselves. As such, it only seems appropriate to (at the very least) present the

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<sup>34</sup> The European Union and its ancillary projects are premier examples of this trend towards a more cosmopolitan world with less division amongst members and non-members alike.

<sup>35</sup> As a result of being the longest enduring and strongest democratic state in the world. It assumed this mantle, first held by Great Britain, following World War 2.

opportunity of access into this nation, be it via an unbiased lottery system, equal quota allotments irrespective of world geography (i.e. percentage-based off the sender country's population), or any type of temporary work-related visa.

6. Capitalistic: An open immigration policy, as shown by the Immigration and Nationality Act of 1965, leads to a greater net prosperity for the nation as well as for the greatest number of people. This is in line with a more utilitarian view of the issue, rather than an egalitarian one where the wills/whims of those on a lower rung economically in the country are prioritized. This does create the potential pitfall of alienating a segment of the population that is [comparatively] struggling. As such and akin to patriotism, framing plays a key role when entering a discussion over the practical and normative (re: comparative struggle to those in less well-off countries) aspects of a generally positive approach.

## VI. Conventional View of Immigration

Whilst multiple philosophical renditions exist in defense of or in opposition to restriction, the aggregate of these principles allow us to simply define immigration theories along an axis with two opposing poles.<sup>36</sup> This simplification also benefits later application to the case of the United States and the country's political reality. This approach assists in narrowing down the diversified range of principles that comes from a host of theoretically different approaches.<sup>37</sup> I will approach restrictive philosophies towards immigration first as I believe they are the more contested of the two, as contingent on the history of the United States.

### a) Literature

Proponents of this view typically draw their arguments from a few key works. This is in contrast to the use of a multitude of moral arguments devised by different authors, although there still remains a decent amount of crossover among various works with various backgrounds. The reason these arguments are used is often the ease of understandability and marketability. These central ideas are framed within a context that improves their appeal and places a greater focus on traditionality<sup>38</sup>. No discussion about a concept so closely tied to boundaries is complete without bringing up the chapter "Membership" from Michael Walzer's pioneering *Spheres of Justice*. Up until this point, the makeup of a cooperative scheme had rarely been discussed in depth; the discussion about justice revolved mainly around how to allot the distribution of it within a set

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<sup>36</sup> Song (2018) offers up a binary classification of these competing philosophies as well as a succinct understanding of the different types of political advocates.

<sup>37</sup> Just among "particularists" or "protectionists", there are a multitude of approaches to the ethics of migration. "[These] approaches are also highly diversified and range from liberal Democratic or moderate patriotism (Nathanson, Fletcher) and liberal nationalism (Whelan, Miller, Tamir, Kymlicka) to defenders of social-democratic welfare states (Walzer, Føllesdal, Offe, Streeck) to tougher communitarianism and more exclusive patriotism (MacIntyre), neo-Hegelianism (Frost), and extreme or "nasty" nationalism (Bader 2005, 335)."

<sup>38</sup> "Traditionality" is in reference the maintenance of what has been the status-quo for the respective nation. Arguments on both rational and moral grounds serve to further this maintaining of existing community dichotomies. This is often associated with a harkening back to the "good old days", see Hagerty (2003).

community. Walzer (1983) opened up a new avenue for a discussion on the global merits of democracy, the morality of socioeconomic disparities, and the freedoms of movement and association.

David Miller's *Immigration: The Case for Limits*, Christopher H. Wellman's *Immigration and Freedom of Association*, and Igor Primoratz contribution on patriotism are three premier works that I believe encapsulate proponents' thoughts on restricting immigration. I shall utilize these works, amongst others, in an attempt to build up an understanding of the central themes that are used to argue on behalf of restrictive immigration. What shall follow is the application of these positions to the political construct of the United States and a breakdown of their shortcomings and feasibility.

*b) Analysis*

The maiden argument used in defense of closed borders is one that prioritizes the citizen and his importance. Its utilization is done with the purpose of exhibiting what is *real*, in the sense that his political power and his voice supersede that of any exertive outside force. Extrapolating this to a majority constituency that all vote accordingly, the value of the citizen's voice is (near) absolute. The case for a state's right to control immigration might seem straight-forward: just as an individual has a right to determine whom (if anyone) he or she would like to marry, a group of fellow-citizens has a right to determine whom (if anyone) it would like to invite into its political community (Wellman 2008, 110-111). Through a strictly utilitarian lens with the premise that democratic nations do not hold any intergovernmental obligations, this approach is a sensible one. Realist logic implies that one has the authority over his own person to decide with whom he wants to associate with. Therefore, a narrative of closed borders prioritizes the individual (the citizen) over any ostensive obligation or presupposed duty.

The preceding argument carries into the next where a discussion over the limits of democracy begins. Say individuals, and by extension liberal democracies, do have moral obligations<sup>39</sup> of varying strength to one another. In a more egalitarian light, the purpose of these obligations is to induce a more equal society, regardless of borders. The issue we arrive at is one of membership and the subsequent distribution of justice. At what point does the integrity of my desire to exercise my freedoms stop while the morality of the state and its allocative duties begin? Bader (2005) acknowledges the importance of providing closure to the difference schemes.<sup>40</sup> As a basic rule of biological inception, the higher level you go up on the democratic scale, the less unity and cohesion will exist. The more people involved in a scheme (a project), the more cohabitation begins to prevail versus cooperation. Without boundaries to any civic, political, or socioeconomic group, the less investment will be made on the part of its “members”. If we did not provide for one another, if we recognized no distinction between members and strangers, we would have no reason to form and maintain political communities (Walzer 1983, 78). Without strictly defined memberships, as alluded to by the multiple analogies regarding neighborhoods and clubs<sup>41</sup>, the more difficult it becomes to properly allocate justice.<sup>42</sup> In parallel to this is if equality is achievable via the breakdown of borders, a disconnect is assured to occur between natives and immigrants because of cultural differences. This disconnect lends itself to a relationship not built on trust, but rather opportunity (be it economic, familial, social).

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<sup>39</sup> For to a certain extent, we all benefit off of each other in some way, shape, or form.

<sup>40</sup> Ibid. p. 8 (Bader 2005, pg. 344).

<sup>41</sup> See Walzer (1983), Miller (2005), Wellman (2008).

<sup>42</sup> “The idea of distributive justice presupposes a bounded world within which distributions take place: a group of people committed to dividing, exchanging, and sharing social goods, first of all among themselves (Walzer 1983, 46).

The third most common moral sticking point used in favor of closed borders has to do with the preservation of an ethnocultural society.<sup>43</sup> [States] require a common public culture that in part constitutes the political identity of their members, and that serves valuable functions in supporting democracy and other social goals (Miller 2005, 199). It serves the benefit of the host nation to maintain stability when it comes to cultural changes.<sup>44</sup> The public culture is something that people have an interest in controlling: they want to be able to shape the way that their nation develops, including the values that are contained in the public culture (Miller 2005, 200). This line of thought ties us into the other main ideas discussed earlier: the value an autonomous citizen has in relation to the democratic state he presides in and the closure of any community requiring membership. It would be incorrect to perceive a raised focus on the self and one's community as a "narrow" view of the world. Rather, this motivated preservation is akin to *ethical patriotism*. *Ethical patriotism* is a type of position which exhibits more concern and advocates for the moral wellbeing of one's country.<sup>45</sup> The implication is a pride in the upholding of positive principles (justice, respect, concern for human dignity) in one's own country more-so than in the general implementation of these principles on a universal level.

c) *Application to the United States*

As previously alluded to, the defense of the conventional view of migration and closed borders is one taken up by the political right in America. Although usually associated with and identified as principle concern of conservatism, restrictive immigration also has its defenders

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<sup>43</sup> This depends considerably upon group dynamics. This idea of preservation of a select few characteristics is simply an extension beyond traditional American identity markers. See Fussell (2014, 490-491).

<sup>44</sup> "Cultural continuity is perfectly compatible with cultural pluralism and cultural stability includes cultural change. The core issue is not the preservation of an existing culture or an existing 'plurality of nomoi,' but the rate of cultural change or, more precisely, the avoidance of externally enforced, excessive cultural disruption (Bader 2005, 352)." This implies that diversity is not a negative and that immigration in moderate amounts is net beneficial for the evolution of a society.

<sup>45</sup> "A patriot of this, distinctively ethical type, would want to see justice done, rights respected, human solidarity at work at any time and in any place (Primoratz 2009 [2017])."

in the liberal egalitarian and corporate preservationist camps. Regardless of the political affiliation proponents of this view align themselves with, approaches firmly grounded in the philosophical beliefs discussed above do not make for fixing the issues that currently exist. Moreover, perception of the issue deals a huge blow to any prospective legislation conceived by conservatives and other advocates. Policy in line with the conventional view cannot be applied in its entirety. There are certain principles that, when used as the basis of legislation, do not adequately suffice for the political realities and social sensibilities of present-day America.

d) *Legislative Morality and Shortcomings*

To preface any discussion on restriction, especially within a Western democratic context, completely closed borders are not the intention nor are they feasible. Any prospective policy is constrained either politically by the democratic party or by public reason.<sup>46</sup> There is a level of contingency on the era we live in; what may have seemed acceptable or reasonable a century ago is looked upon more harshly today. One is hard pressed to make a case for strict control as it is not a standard that would be accepted. Even lesser forms of restrictive policy must fall in line with what society deems most appropriate, rather than having an objectively impartial decider. This necessitates the need for a middle ground reflective of not just historically instilled values, but of contemporary public values as well. In the next few paragraphs I shall proceed to critique aspects that either lack political feasibility or are not in accordance with the framework for policy provided in the previous chapter.

The logical yet still altruistic approach to the case of immigrants that have been victims of extreme strife is one which does not impede on the rights of anybody nor present an overreach

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<sup>46</sup> Public reason, as defined by John Rawls in 1993's *Political Liberalism* reads as, "Citizens engaged in certain political activities have a duty of civility to be able to justify their decisions on fundamental political issues by reference only to public values and public standards." See (Wenar 2008).



by the democratic institutions. Positive assistance must be provided to foreigners outside the territory if it is “urgently needed” and the risks or costs of giving it are relatively low. Wealthy countries can usually fulfill this duty by sending aid to poorer countries, but in the case of “persecuted and stateless” people, the duty can be met only by taking them in (Walzer 1983, pp. 33, 45, as cited in Song 2018, 388).” In order to ensure a more united global community for the benefit of fostering good trade relations and humanitarian unity, all countries have some inherent obligation to transnationalism. Noted on the scale, the United States assumes the role of a country the rest of the world should look up to. America being a leading light to the world is something its very people expect it to be. On restricting immigration proper, doing it beyond a certain point would not be in line with the moral obligation the U.S. has to the rest of the world. Therefore, any prospective plan on migration must readily make room for an indeterminate proportion of refugees and asylum seekers.<sup>47</sup>

The debate between individuality and equality, as it is framed, is a rather difficult one to assess. This critique is in response to the first two principles and any prospective policy founded on them. In philosophy, there has always been a great focus on the individual, from how he functions within the microcosm of power to the duties and obligations incurred (which may contextually vary). Equality itself is a hot-button concept to discuss and worthy of its own epics as to its feasibility<sup>48</sup>, but it is within this sense of a “context” that the United States arrives at a crossroads worthy of deep contemplation. In both a practical and philosophical sense, the native citizen of a state should rightfully assume a more important role in the state’s affairs than

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<sup>47</sup> Even Michael Walzer’s (1983) recommendation of fiscal aid, which does not solve the issue of fulfilling the moral duty expected of the U.S., would find difficulty in coming to fruition. Due to their fiscal nature, conservative policymakers often lean towards cutting foreign aid abroad, thus compounding the objection.

<sup>48</sup> Even within a bounded context, inequality persists in the socioeconomic sense; immediate feasibility of equality remains if it is seen in the eyes of the law, but that proceeds as an afterthought as (more-so in a Western democratic context) it has already been achieved.

members<sup>49</sup> of foreign states. This is more so a fact of this era of nation-states in history we currently reside in, at the heart of a liberal universalism versus democratic particularism debate.<sup>50</sup> Whether this means that there should exist strict territorial bounds contingent on the individuals' freedom of association in spurn of the potential duties required in the name of equality is a dubious assertion. Exemplative restrictive policy does run the risk of alienation of foreign-born population because of the possible perception of masked racism. It also risks the infringement of peoples' God-given right to self-determination. These implications rebut the fourth assertion made on the scale. The entire premise of equality, a principle proudly proclaimed as a virtue in nearly every single one of the country's early documents, never directly presupposed itself within a boundary. Operating under the assumption that this country has some sort of duty to cosmopolitanism and humanitarianism, it would only imply it be accepting of a free number of migrants. Its virtues of equality and self-determination are not static, having evolved to encompass a member less world. It indeed comes in direct clash with an individual's assertive rights, a very distinct aspect of the regular American citizenry, but this individualism can be argued as itself being bounded by the moral obligations held by the state. The conservative design of closing off this country's borders, be it by complete annulment of the family reunification provisions, being selective about the creed of potential entrants, or not providing adequate pathways to citizenship to those on profession-related visas is not conducive this country's identity as a heterogenous melting pot welcoming of all, illustrated by the third

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<sup>49</sup> This includes foreigner prospects that want to be part of the United States' membership.

<sup>50</sup> "While liberalism is supposed to refer to a set of universal rights enjoyed by persons qua human beings, democracy is supposed to refer to a set of civil or political rights enjoyed by persons qua members of particular political communities. The putative difference over borders, then, can be understood to be the logical consequence of the fundamental difference between liberalism and democratic theory: while liberalism requires hypothetical justification, the democratic principle of self-determination demands actual, institutionalized discursive political processes dependent on mobilizing citizens' participation as a democratic people (Abizadeh 2008, 43)."

assertion on the scale. The search for a middle ground requires an adequate distribution of acknowledgement to all relevant interests (be it security concerns, humanitarian, concerns over autonomy, etc.) otherwise new comprehensive immigration reform will continue to come up short both in the public sphere and in the political arena.<sup>51</sup>

American society has the distinct feature of being very patriotic. Being patriotic implies deeply held convictions regarding one's country, but these convictions are not equally held by all members of American society. As Primoratz (2009) discusses, patriotism can come in different forms and they vary in strength. Patriotism may vary from extreme, with an unwavering dedication to any directive handed down by one's country in a morally abhorrent manner, to moderate and deflated versions that bring more into discussion a debate about unifying beliefs and comradery. The ethical patriotism discussed prior can supersede boundaries in the same way support for an opposing nation's football club supersedes national boundaries, as this form of patriotism is tied more-so to principles upheld by one's state than to the state itself per se. With that being said, not every member of society holds the same view of different contracts holding society together. There also does not exist a set-point of closure for various communities (civic, cultural, etc.) as explicitly written down or agreed upon. How morally justifiable is the case for the preservation of various communities and constructs in the eyes of purposefully excluding others on grounds of strictly controlling cultural and societal membership? Nevertheless, native citizens are still able to maintain their strong patriotism and be accepting of immigrants under the notion that their patriotism does not function as a form of discrimination undermining the tenants of liberalism that this nation is grounded upon.

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<sup>51</sup> Put simply, there has not been an adequate enough coalescence (re: give and take) for comprehensive, society-changing legislation to have been passed. See Wasem (2013).

*e) Conclusion*

The issue of immigration and the ensuing discussion over a state's right to unilaterally control its own borders is difficult to fully conceptualize because of the amount of variation in possible approaches. Just viewed philosophically, it is an issue of the proper reach of state authority as a matter of political theory (Brilmayer 1991, 1). But the issue is far more dynamic than that, especially when contextualized. Strongly held beliefs over individual associative rights clash with collectively held beliefs over the freedoms of movement and self-determination. The divergence of different moral, ethnocultural, prudential or realist perceptions make it difficult to derive an equation and arrive at a fixed answer.<sup>52</sup> The two paths we can ultimately go down are either the continuation of the one we are currently going down now, only amplified dependent on if migration policy is relaxed even further, and one where we seek to reverse or taper off the current trend referenced in figure 4.2. Ultimately, a markedly right-wing approach to the issue of migration suffers from a naivety that does not translate to practicality<sup>53</sup>, nor does the approach align itself with certain standards this nation holds on normative grounds. In the following chapter I shall consider the arguments made by liberal thinkers and supported by those on the left and draw some marked conclusions from them as was done here.

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<sup>52</sup> See Bader (2005), pg. 353.

<sup>53</sup> "For decades, white voters have tended to lean Republican while non-whites have been strongly Democratic, so the swiftly falling ratio of the former to the latter has become a source of major concern, even alarm, within the top ranks of the GOP... (Unz 2011, 13)."

## VII. Theory of Open Borders

The theoretical conception of allowing free migration across borders goes back long before any formal discussion on the merits of equality and ethics of justice began, but it was with the inception of the Rawlsian case for open borders, indirectly conceived by John Rawls but formally explicated by Joseph Carens, that it would see its development into a major sociopolitical sticking point. What Carens (1987) set out to do was modify Rawls' "veil of ignorance" approach<sup>54</sup> from being strictly bounded to have a more global appeal. The approach towards open borders is likened to the universalist approach, which exhibits a focus on global cosmopolitan equality rather than strict national sovereignty. It is with this premise that I shall follow a similar pattern as was done with the conventional view on migration and provide a look at the literature, analyze the key arguments in favor of this view, and identify why it offers no better of a solution, be it feasible or not, in regards to prospective policy for amending immigration in the United States.

### a) Literature

There has been considerably more written in favor of the relaxation of border control than for the strengthening of them. This may partially be attributed to the nature of the type of philosophical thought engaged in liberal democratic societies. There is an intrinsic focus on the importance of moral principles and human rights. Specifically, there is a focus on reducing political, social, and economic inequalities, up until the point and sometimes even intruding on the rights of individuals. It begins with John Rawls' account of dealing with state allocative duties in *Spheres of Justice*, but the next step is taken when his principles of justice are

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<sup>54</sup> Choosing the principles of justice behind a veil of ignorance is done with the purpose of ensuring that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. The choice is a result of a fair agreement or bargain by all rational members on equal footing. See Rawls (1971), pg. 11.

superimposed on the transnational context. This was done by Charles R. Beitz' *Justice and International Relations* in 1975 and served as the first widely-recognizable step in the advocacy for continuation of the type of liberal ideas that helped bring into existence the Hart-Celler Act a decade prior.

Following Beitz' (1975) contribution and prior to Joseph Carens' later contributions, Michael Walzer provided the first principle communitarian defense of what was later to be referred to as the conventional view of immigration, thus laying the ground for this (classification purposes) left-right debate to begin. Beyond Carens' (1987) contribution<sup>55</sup>, I shall also touch upon his back and forth with John Isbister as it provides a quaint encapsulation of the philosophical debate on state sovereignty and migration control. Other important authors that assist in structuring this theoretical approach to migration come from Kieran Oberman and Sarah Fine respectively. In terms of assimilatory tactics, Will Kymlicka also offers up an interesting take that warrants observation. Kymlicka's (2011) *Multicultural Citizenship within Multination States* stresses the importance of inclusive citizenship agendas in a worthy discussion that supports an open borders view of immigration but also sees its importance echoed from a restrictive approach.

*b) Analysis*

While the citizen is prioritized in arguments pro-restrictionism, equality is prioritized as taking precedence over the individual whims citizens of a state have, respectively. In an egalitarian light, liberal principles (of which equality is a premier) are [expected] to disparage privileges.<sup>56</sup> The exclusionary effects of citizenship, as Bader (2005) puts it, are incompatible with equality and are morally indefensible. Indeed, we do not choose the nationality we are born

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<sup>55</sup> On Western democratic identity alone, Joseph Carens assigns a "moral personality" that is the view of all people being free and equal moral persons. See Carens (1987), pg. 256.

<sup>56</sup> See Bader (2005), pg. 337.

into, so under a hypothetical “veil of ignorance” our predisposition would be to select the most forgiving, least restrictive type of society. This is the argument Carens (1987) carries forward and labels the original position. Regardless of creed, color, sex, or any other characteristics that serve to divide us, it is expected that human beings be equally respectful of each other as moral persons.<sup>57</sup> A respectable objection on liberal grounds is elucidated by John Isbister to this, though. “The heart of the argument against open borders is that equal moral standing does not necessarily commit us to the equal treatment of each person (Isbister 2000, 630).” I understand this objection as it still being possible to view each other as having equal worth without having to open borders and deal with the issues of unbalanced welfare efficiency, the appropriate allocation of justice depending on circumstances, and other possible issues. Carens (2000) response varies from an illustration that disparages the exhibition of any preferential treatment shown even to family members (in response to Isbister’s, and indirectly, to Michael Walzer’s neighborhood and extended family analogies) to providing a frame to immigration debate in that a degree of moral reflection is of utmost importance if any of the problems Isbister (2000) brought up were to be remedied. What this back and forth illustrates is that, occasionally, advocates may hold similar philosophical beliefs (i.e. liberal egalitarian) about society but disagree on the particulars. Beyond internal arguments on how to address immigration (i.e. to what extent shall equality be sought), external arguments (i.e. national autonomy taking precedence over desires to achieve equality) between those in different camps still persist.

The subsequent, commonly used argument is one that appeals to a more worldly, global view of human society. Globalism has connected people from the furthest corners of the Earth. The level of economic interconnectedness especially has created a global system that supersedes

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<sup>57</sup> “Indeed our commitment to civic equality is derived from our convictions about moral equality, not vice versa (Carens 1987, 256-257).”

nationally imposed borders.<sup>58</sup> Further extrapolating the nationally bounded principles of justice to a global scheme, the freedoms and rights we have should allow for the freedom of movement across borders to occur. “The human right to immigrate follows from the human right to internal freedom of movement (Oberman 2016, 35).” Oberman (2016) mentions two interests for this: a personal interest that makes the simple argument of freedom of movement allowing for the greatest amount of life choices and opportunities to the absolute greatest number of people possible. The second is a political interest which, although the reasoning is subpar, creates a climate in which the free exchange of liberal ideas can more readily occur, thus alleviating the worry of incohesive cultures clashing. This idea insists that democracy should not be bounded but rather hopefully encompassing and altruistic regarding the spread of its ideas.

Carens (1987, 2000) alludes to the concept of humanitarianism indirectly as a form of generosity.<sup>59</sup> Disregarding foreign aid provisions for a moment, the perception that immigrants seek to migrate with inherently negative motives (i.e. to abuse host country’s welfare system, to not pay taxes, purposefully not integrating) does an injustice to these people. Wealth drives the world, and immigration is no different. Abject poverty in particular is an incredibly strong driving force, and many prospective immigrants simply want to escape their unsafe and insecure surroundings for greener pastures. That is why an approach that uses weak cosmopolitanism<sup>60</sup> is unfair.

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<sup>58</sup> “Economic interdependence, then, involves a pattern of relationships which are largely nonvoluntary from the point of view of the worse-off participants, and which produce benefits for some while imposing burdens on others. These facts, by now part of the conventional wisdom of international relations, describe a world in which national boundaries can no longer be regarded as the outer limits of social cooperation (Beitz 1975, 374).”

<sup>59</sup> “The idea of generosity presupposes a background in which we know what we owe to others as a matter of right. Generosity involves giving others more than what they are due (Carens 2000, 639).”

<sup>60</sup> Sarah Fine (2017) applies this label to David Miller’s realist view of how the political and socioeconomic realities of the world constrain would-be unrestrictive immigration policy options.



Promoting a sense of citizenship amongst their long-term residents, native-born or foreign-born, is a legitimate task of all democratic states (Kymlicka 2011, 282). Regardless of the levels of homogeneity in a nation or how restrictive their immigration policy is, a common sense of citizenship is important. A sense of citizenship with universal underpinnings that does not advocate for any beliefs based in ethnonationalism would be the ultimate goal of a state with an open borders policy. This allows for the greatest level of respect towards all of its individual members while still maintaining a community-type of aspect to a nation. This is further buoyed by the notion that successful forms of multinational citizenship address underlying national dynamics rather than shying away from them.<sup>61</sup>

*c) Application to the United States*

The desire to allow more free migration into the country and proverbially open up borders is one that falls upon the political left in the United States. The initiation and passage of the Hart-Celler Act by Presidents Kennedy and Johnson, respectively, is an exhibition of how strongly the Democratic party and liberals in general champion this cause. It is their belief that part of being a liberal democracy, and more importantly a strong democracy, is upholding duties to your fellow man, specifically those requiring help or those in need. It is a multi-faceted drive combining cosmopolitanism, altruism, and egalitarianism that pushes the pursuance of policy to go the extra step. It is regrettably in a similar vein to the analysis carried out in the previous chapter that the left's desires are misguided, politically uncondusive to compromise, and unlikely to be socially accepted in this country.

*d) Legislative Morality and Shortcomings*

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<sup>61</sup> See Kymlicka (2011), pg. 293.

As discussed previously, any discussion surrounding equality is victim of contentious amounts of disagreement. Before arriving at the concept's position in the American psyche, a more intrinsic look at the philosophical debate over it is required. Writers have long disagreed about how to achieve equality, what constitutes it, and whether or not its pursuance is feasible in the non-ideal world we live in. I presuppose few would disagree that the world we live in is not perfect, nor will it ever be. As a result, attempting to achieve the perfect, ideal world is a fruitless endeavor. The pursuit of perfection itself (be it at any metaphysical level) is noble in and of itself, but it has the potential to create a mentality of inferiority or dissatisfaction with what is real and what is good in the world. Equality itself is an unattainable ideal. That is the premise that should precede any discussion on it. That should not take away from the desire to insist upon and create a more equal society, but our very own individuality as humans (and the subsequent role luck plays) means that certain types of equality cannot fully be achieved. A point to be made against open borders is that economic<sup>62</sup> inequality exists even within the smallest nation-states, let alone more expansive, less homogenous states that have to further deal with instances of political inequality or civil inequality. This is not an argument that equality should not be sought, but rather to temper one's expectations to account for a degree of imperfection.

Equality in the eyes of the law is a type of societal standard that should be readily encouraged. A sense of obligation shall fall upon strong western liberal democracies to ensure the establishment of this most basic form of equality, for a strong judicial system is the backbone for any successful democratic nation. The desire to assist in improving the different kinds of equality in other nations, specifically equality of opportunity, can be achieved without having to sacrifice one's own perceived birthright privileges though. Specific to the case of the United

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<sup>62</sup> In reference to the type of equality where there is a minimum standard of living between those in Western democratic societies and less well-off non-Western democracies.

States, be it in bad moral taste or not, just the extent to which its citizens value the identity of being American makes it difficult for any transnational idea to appeal to its people. The American people are dedicated, above all other transnational obligations, to themselves, their fellow countryman, and their country. This self-sufficiency<sup>63</sup> has gone hand in hand with the growth of capitalism and liberalism in this nation. Therefore, legislation favorable to prospective immigrants has to balance several of society's interests in a task that leaves no room for partisan politics.

A case can be made for immigration policy to be more reflective of the time we live in now. A case can also be made that that policy be more adaptive (if not restrictive) as contingent on the current trends that Figure 4.2 exhibits. Gradual societal change is a point welcomed by many philosophers up until a point where it begins to affect the host nation and its sustainability and culture negatively. Change, as well as an acceptance of the level of multinationalism, are important aspects of this nation. The United States prides itself not just on its current political, social, or economic bright points but also its ability to adapt. Yet precaution comes on to the scene when thinking about the level of dedication to humanitarianism and cosmopolitanism regarding opening up one's borders in adapting to a more interconnected world. Carens (1987, pg. 260) insists (specifically, for the United States itself) that the essential level of restriction to maintain public order would surely imply a much less restrictive policy than the one currently in force which is shaped by so many other considerations besides the need to maintain public order. He is not clear on what a minimum level of restrictive policy entails and if it is contingent on the national context or if there is a set threshold for all Western liberal democracies. Public order is held in check as long as there is an appropriate distribution of land, wealth, and resources

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<sup>63</sup> The common trope "Pull yourself up by your bootstraps" is an encapsulation of this attitude.

amongst its citizens. If these things are shifted in order to accommodate foreigners and “do away” with superfluous claims, then the public order of the country would be considerably threatened (which may outweigh the economic benefits the native population would be gaining). Once again, there must be some limit, short (and probably considerably short) of simple equality, else communal wealth would be subject to indefinite drainage (Walzer 1983, 62).<sup>64</sup> Fairly open borders are more likely to be accepted by the native population of a more socialist state with a more consistent history of redistributive policies, but within the United States public order is something that could risk being adversely affected by any policy that has a divisive guise.

*e) Conclusion*

There is a presumption that the present nation-state phase of history is inherently, morally flawed. J. Carens (2000) uses a severe justification to assert that we have an obligation to judge the moral character of our current societal schemes.<sup>65</sup> He conflates an impartial, neutral role to what exists around oneself and the natural duty man has to one another in calling upon individuals to question the [life] constructs within which they reside.<sup>66</sup> Schemes and constructs will always be fundamentally wrong to some degree as much as they can be fundamentally right, as negativity bias is a part of human nature.<sup>67</sup> Not to disregard any attempts at trying to improve, but this idea carries forward into the incorrect mindset, I believe, that we are all complacent

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<sup>64</sup> “Once again, there must be some limit, short (and probably considerably short) of simple equality, else communal wealth would be subject to indefinite drainage (Walzer 1983, 62).” I find it noteworthy that both Michael Walzer and Joseph Carens agree on the need for a limit to exist, yet M. Walzer furthers his case by insisting on wealth’s definite proportions (which would grant one the case to argue for a stricter public order threshold).

<sup>65</sup> “Was it possible to live a quiet, morally decent life as a white in apartheid South Africa or an “Aryan” in Nazi Germany? I [do not] think so. To live an ordinary life in these contexts was inevitably to cooperate with the evils of the regime... Sometimes, we are put in situations where simple justice requires behavior that is remarkably generous in conventional terms (Carens 2000, 640).”

<sup>66</sup> If my interpretation does his word justice, this “calling” is the point of the open borders argument according to Carens.

<sup>67</sup> Negative events and [contextualized] negative perceptions take precedence cognitively. See also Ito, Larsen, Smith, and Cacioppo (1998), Rozin and Royzman (2001).

while injustice and inequalities occur all over the world; one should not succumb to a sense of guilt that the overwhelming majority of non-American citizens are comparatively less-well off. The liberal approach is too much of a physical and mental stretch for a majority of the U.S. population as this country's very ethos is deeply grounded in the contemporary nation-state construct. In observance, attempts at pushing beyond this current worldwide construct would be seen as too rash; likewise, humanitarian attempts at providing aid might be seen as not doing enough. What the concluding portion of this project shall look to achieve is a summarization of the historical portion, to conceptualize and provide a final word on the normative and practical aspects of immigration, and to take a look at the morality of compromise-making on a whole.

## VIII. Conclusion and Final Considerations

The Hart-Celler Act proper can be considered one of several distinct pieces of legislation that significantly altered the future of this country.<sup>68</sup> During a strong phase of globalization in the mid-to-latter half of the 20<sup>th</sup> century, the United States faced pressure to amend its immigration laws on grounds that they could be considered a form of institutionalized racism. Indeed, and formally codified by the Immigration Act of 1924, these restrictive laws judging people on the basis of their intelligence, creed, and background were a form of racism that was no longer an acceptable standard. Public reason prevailed and the Immigration and Nationality Act of 1965 was born into existence. This act abolished the negative provisions of its predecessor and implemented a preference system still in place today. It represented a positive shift in the psyche of the American people and was followed, in its aftermath, by an increase in the overall economic wellbeing of the nation as well as with a significant shift in its demography. What led to its passage were promises by political proponents that these new immigration laws giving way to increased diversity would not lead to significant alterations of existing population dynamics, thus alleviating worries held by opponents. It was this alleviation coupled with exterior pressure of a changing world around us that led to a warm compromise.

Any debates on immigration and policy implementation in the U.S. ultimately suffer from issues of framing.<sup>69</sup> I alluded to this in the previous two sections in that there are various superfluous interests layered over the central discussion of individual/state autonomy versus obligations to equality. In practical application, a collective action problem arises. “The benefits

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<sup>68</sup> A shortlist of these society-altering decisions would include the 14<sup>th</sup> Amendment, the Supreme Court decision in *Lochner v. New York*, and more recently the Supreme Court’s decision in *Obergefell v. Hodges*.

<sup>69</sup> There is a degree of relativism to contemporary immigration debate, and as Fukuyama (2006) notes, its expansion in recent decades has made political (as well as societal and economic) collaborations more difficult to achieve.

of immigration (such as cheap labor or reunited families) are concentrated, while its costs (such as increased social expenses or overpopulation) are diffused [across the majority population] (Joppke 1998, 270).” Even when suggesting the abolishment of chain migration and insinuating a rise (or even removal) of the hard cap as replacement and a way of satisfying opposing constituencies, disagreement will still persist. Immigration serves as a microcosm of the grander discussion over what the ideal theory of justice is. One may wonder whether theories of ideal justice are of relevance when we confront the moral problems of the real world. An important fact about the real world is that people deeply disagree about the requirements of justice (just like theorists of ideal justice disagree among each other) (Wendt 2013, 475).” In the case of the United States, there persists a divide between a more cosmopolitan segment of the population that believes in the transcendence of liberal ideals and the stringent obligations we have to them versus a communitarian/liberal nationalist-backed segment that argues the importance of national rights to self-determination.<sup>70</sup> Both sides do, to certain extents, adhere to the different moralistic ideals and standards this country holds. This divide, though, cannot be alleviated by a partisan right or left-wing approach to immigration itself, especially when there is not enough sacrifice by either side during deliberation and if the climate (re: external pressures) is not conducive enough to warrant substantial-enough cooperation.

To conclude, I provide an afterthought on the morality of compromise-making and attempt to draw out the shape of a possible compromise. Enzo Rossi asks, “but if, as political philosophers tend to do, we take a step back from worldly politics, is there still something (theoretically salient) that compromise does for us (Rossi 2013, 558)?” An epistemological answer says that we are all committed to certain epistemological norms spelled out in ‘folk

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<sup>70</sup> See Hutchings (2000).

epistemology'<sup>71</sup> and that these norms encourage compromise. Compromise is as much a game of “everybody wins” as it is a game of “everybody loses”, but its merits show that those willing to engage in it exhibit a higher level of responsibility and personal integrity.<sup>72</sup> In the philosophical sense, compromise entails an abandonment of one’s truly held moral beliefs; yet in the practical sense, it is the most adequate instrument proponents can use to arrive at their closest idealized policy. “Compromise” on immigration would allow for a middle ground to be found that, even if the concept of a middle ground is hypothetical in and of itself, manages to weigh all the various interests involved and hopefully give way to a mutually acceptable outcome. That is difficult because in this contemporary climate of divisiveness plaguing the nation, what is truly lost is an understanding of the orators behind the arguments. By this, I imply that there is an inadequate level of understanding and compassion for the people making their case (be it for more open borders, against police brutality, or whatever the cause may be); the focus is on the arguments’ proper, yet understanding why these arguments are made and where they come from broadens the scope from which one may see things and allows us to view the debate from the opposition’s perspective. If we grant the theoretical, the practical shall follow: By accepting the opposition’s viewpoint as having the potential to be objectively valid rather than dismissing it as incorrect or incoherent, it creates a footing where a morally desirable outcome can be sought.<sup>73</sup> Amongst more in-depth details that fall upon the shoulders of Congress to develop, an immigration policy for the new age should ideally be one that is framed not as a security issue (even in the

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<sup>71</sup> “Besides personal epistemic norms, there are also social epistemic norms, namely discursive norms and institutional norms (Wendt 2013, 477-478).” The folk epistemic argument, as given by R.B. Talisse (2013), begins from a minimal conception of what beliefs are, and then argues that there is a kind of normativity governing our doxastic lives; these epistemic norms are then employed in constructing an argument for certain social epistemic norms, which in turn provide a case for certain democratic political norms (Talisse 2013, 507-508).

<sup>72</sup> Goodstein, Jerry D. “Moral Compromise and Personal Integrity: Exploring the Ethical Issues of Deciding Together in Organizations.” *Business Ethics Quarterly* 10, no. 4 (2000): 805-19 (808).

<sup>73</sup> In a very similar light to the ongoing racial and civil protests throughout the country, a lack of “sitting down and talking” between opposing parties, from the ground level to congressional level, remains the key issue.



circumstance of increasing border security to curtail illegal immigration) but as a nationalistic-humanitarian one that pays respect to various moral interests and political realities; substantively it should provide continued opportunities to citizenship in line with what best suits the nation. An entailment of this could be the narrowing of the family preference provisions while also instituting an incrementally increasing hard cap on total number of immigrants to be allowed in (potentially alongside an expansion of both the specialty visa and visa lottery programs). This would be done as way of balancing out the interests of those that desire to limit immigration from certain parts of the world that are culturally dissimilar and those wanting an increase in the numbers and diversification of people who look at transnational movement as a ways of achieving better, more equal lives. Although my conclusions are not unassailable and are open to inquiry, I hope to have presented a legible enough analysis as to understanding the frailties in the debate on immigration in the United States.

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