

The Morality of Immigration Policy

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What does morality dictate with respect to U.S. immigration policy? How strong is the case for making instrumental considerations, specifically national economic self-interest, even more important in immigration policymaking than such considerations are now? What would such a policy look like? Which competing values would such a policy compromise or undermine?

These are the main questions that I tackle in this Article. In doing so, I present the two standard types of moral arguments: deontological and instrumental-consequentialist. I devote the bulk of my analysis to the latter, however, because I find that the former has comparatively little power to resolve debates over immigration; deontological analysis does not lead us in any particular policy direction. It may call our attention to some of the competing values that immigration implicates, but it provides little or no guidance as to what these values mean on the contested ground of immigration policy debates, much less about how we should trade them off against one another. To be sure, empirical evidence about the actual consequences of our current and alternative immigration regime have their own deep indeterminacies, which I shall discuss in some detail below. But this evidence can at least enlighten us about the terms of trade among the competing consequences and values and can thereby help to narrow somewhat the remaining areas of dispute.

In Part I, I discuss five kinds of deontological arguments that a moralist might advance in debating the ideal nature of our immigration policy. In Part II, I take a more instrumentalist-consequentialist approach to immigration policy analysis. Before doing so, however, I briefly note some of the familiar methodological and cognitive limitations of applying this approach to complex public policy issues of this kind, limitations that remind us of the irreducible importance of normative considerations and judgments to such policy assessments. I then go on to identify the three main sets of empirical controversies that figure most prominently in immigration debates, and summarize the empirical evidence bearing on those controversies. In Part III, I contend that although national economic growth is a highly imperfect measure of the instrumental value of immigration, an immigration policy that is moral in the consequentialist sense would nevertheless place greater weight on economic growth than the current system does. In Part IV, I discuss some policy changes that might move us in that direction.

I present all of this in a nontendentious spirit, reflecting my genuine uncertainty and humility about how our society should assess and address the rights and wrongs of these complex matters.

I. MORALITY AND IMMIGRATION

There is something in us that likes to moralize about immigration, to view it as an activity as to which strong normative views, including feelings of right and wrong, not merely prudence or wisdom, are both natural and appropriate. This moralizing impulse in public policy assessment is hardly unique to immigration. Nor am I suggesting that moral considerations actually dominate immigration policy outcomes. In fact, the role of such arguments in any particular situation depends on many factors.¹ Instead, I simply mean that moral claims are inevitably a part, and sometimes an important or even decisive part, of the *lingua franca* of immigration debates. The clearest example, but certainly not the only one, is the bitter division over the status and treatment of undocumented immigrants, which I shall discuss below.²

Before developing the arguments, let me briefly define my terms.

A. *Morality*

What do I mean by *morality*? I define it, most simply, as a concern to do the right thing, to be ethically scrupulous, to avoid doing wrong or acting unjustly. I distinguish it from a concern merely to avoid doing a misguided or harmful thing.

But what is the right thing that morality seeks to advance? Broadly and conventionally speaking, there are two competing answers to this question: deontology and consequentialism. Deontology defines moral conduct as action that is right in itself, with rightness in turn being defined in terms of certain antecedent and abstract principles or values—for example, human dignity, equality, and flourishing. Consequentialism defines the morality or rightness of a policy in terms of its actual, real-world effects—for example, wealth creation or production of other forms of well-being.

There are, of course, as many different conceptions of rightness-in-itself as there are diverse people engaged self-consciously in deontological moral reflection. Before proceeding, I wish to be clear that I am not a moral philosopher or even particularly well-read in moral philosophy. I recognize, moreover, that an immense professional literature exists that

1. See, e.g., PETER H. SCHUCK, *The Politics of Rapid Legal Change: Immigration Policy, 1980–1990*, in CITIZENS, STRANGERS, AND IN-BETWEENS: ESSAYS ON IMMIGRATION AND CITIZENSHIP 91, 99–100, 133–38 (1998).

2. See generally JUSTICE IN IMMIGRATION (Warren F. Schwartz ed., 1995).

seeks to elucidate the relationship between deontology and consequentialism, a literature with which I am not prepared to engage here.³ Fortunately, my main points in this Article in no way depend on whether I am right about the nature of this relationship.

That said, I believe that any deontological claim in the realm of practical or applied ethics, the subject of this Article, must ultimately devolve for its proof on some set of consequentialist claims.⁴ If the content of what is right-in-itself is, say, some notion of human flourishing, then in assessing a policy alternative in light of that norm, it becomes necessary at some point to defend that alternative in consequentialist terms by showing that certain conduct does, or does not, in fact conduce to human flourishing, however defined. If one seeks to justify a law permitting gay marriage, for example, as moral action on deontological grounds because it instantiates the value of, say, dignity or equality, then at some pivotal point in the argument one must show that the law's effects will in fact promote the dignity or equality of the couple—perhaps by giving them as much pleasure or self-respect as other couples receive from marriage. The deontological claim may constrain the kinds of consequences that are relevant to its justification, but once the claim is elaborated conceptually and normatively as deeply as the analysis permits, the claim's validity must ultimately rest on propositions about its actual effects in the real world.⁵

3. See, e.g., DAVID CUMMISKEY, *KANTIAN CONSEQUENTIALISM* 3 (1996) (arguing that Kant's theories, despite their deontological trappings, are compatible with consequentialism); SHELLY KAGAN, *NORMATIVE ETHICS* 59–94 (1998) (describing consequentialism and deontology); J. J. C. SMART & BERNARD WILLIAMS, *UTILITARIANISM: FOR AND AGAINST* (1973) (outlining and critiquing utilitarianism, a form of consequentialism); cf. CHRISTINE M. KORSGAARD, *Two Distinctions in Goodness*, in *CREATING THE KINGDOM OF ENDS* 249, 249 (1996) (describing “the distinction between intrinsic and extrinsic goodness, and the distinction between ends or final goods, and means or instrumental goods” and discussing the work of Ross, Moore, and Kant on this subject).

4. This, of course, is a controversial claim. Some deontologists might argue that moral choices are based on universal rules whose value is defined without reference to their consequences. In some cases, pursuing deontological ethics may even lead to unnecessary harm or suffering. SMART, *An Outline of a System of Utilitarian Ethics*, in *UTILITARIANISM: FOR AND AGAINST*, *supra* note 3, at 3–5. Moreover, strict or absolute deontologists would argue that there can be no deviation from these universal rules, regardless of the outcome a given rule generates in a particular case. Kant's Formula of Humanity, for instance, posits that humanity is an end in itself and that “as an unconditional end it must *never* be acted against. It is not one end among others, to be weighed along with the rest.” KORSGAARD, *Kant's Formula of Humanity*, in *CREATING THE KINGDOM OF ENDS*, *supra* note 3, at 106, 125. More moderate deontologists, however, maintain that one can be a deontologist without accepting deontological absolutism, despite the critique that such a position ultimately devolves into consequentialism itself. See KAGAN, *supra* note 3, at 80 (discussing the constraint against doing harm).

5. In a recent example, the U.S. Supreme Court divided sharply over whether “dignity” was in fact promoted by denying a defendant who was mentally ill but competent to stand trial the right to represent himself in court, or whether his dignity was

By adopting a consequentialist approach, I emphatically do not dismiss the importance of deontological approaches. Indeed, consequentialism would be less attractive without an underlying, perhaps deontological, conception of the good.⁶ Deontological approaches help us to decide which ends we wish to pursue a priori. I do not, therefore, subscribe to consequentialism monistically. I simply argue that as a descriptive matter, consequentialism can shed much light on which among the competing ends we should choose. As Shelly Kagan notes, “the goodness of an act’s consequences is at least one morally relevant factor in determining the moral status of that act,” but the goodness of consequences requires a theory of the good to ground the comparison.⁷

Even if my logical or methodological assertion here could be questioned, I still maintain that consequentialism is a more personally congenial, and generally a more illuminating, way to analyze and assess the morality of immigration policy. This is true, I believe, even when one considers consequentialism’s characteristic limitations, as I shall do below.

Nevertheless, the deontological-consequentialist distinction remains useful here, so I do not want to collapse it entirely. My reason is that a policy justification invoking anticipated consequences that will predictably advance one’s own well-being, other than one’s interest in acting morally, is importantly different from a justification that invokes relatively disinterested reasons favoring the well-being of others in the nation or some other morally-relevant community. When I speak of moral argument in the immigration debate, then, I am referring to the

affirmed by protecting his right to do so. *Indiana v. Edwards*, 128 S. Ct. 2379, 2387 (2008).

6. Strict consequentialism, for example, would hold that “goodness of outcomes is the *only* morally relevant factor in determining the status of a given act.” KAGAN, *supra* note 3, at 60. Among the critiques of this version of consequentialism is, as Kagan points out, that “you can never be absolutely certain as to what all the consequences of your act will be” and that it has no logical end point. *Id.* at 64. “If consequences are the only things that matter for determining the moral status of an act, then doesn’t it follow that the agent will have to be forever calculating the consequences of his acts?” *Id.* at 66; *see also* Bernard Williams, *A Critique of Utilitarianism*, in UTILITARIANISM: FOR AND AGAINST, *supra* note 3, at 75, 82. Finally, this view of consequentialism does not account for the morality of the individual actor because “all that matters is [sic] the results—and not how they come about.” KAGAN, *supra* note 3, at 95; *see also* Bernard Williams, *A Critique of Utilitarianism*, in UTILITARIANISM: FOR AND AGAINST, *supra* note 3, at 75, 99. However, the more modest consequentialist approach through which I assess the morality of immigration policy avoids these criticisms.

7. KAGAN, *supra* note 3, at 60.

latter. I do so, moreover, even though moral and non-moral arguments are intertwined rhetorically in ways that may make them difficult to distinguish analytically, and sometime empirically, in any particular case.

B. Immigration Policy Interests

Immigration policy involves numerous actors and interests other than the immigrants themselves and their families: the local, regional, and national communities in the states of origin;⁸ the communities in the receiving states; the identity and ethos of these communities; the immigrants' competitors for jobs, space, social services, status goods, and so forth.

The impacts on these groups are enormous at both the macro and micro levels. Some of these impacts are beneficial, some are detrimental, and some are both simultaneously. Judgments about benefit and detriment depend, among other things, on the units of analysis that the analyst employs and the distributive calculus for assessing those effects across those units. The evidence strongly suggests, for example, that immigration is, on balance, beneficial to the United States as a whole, yet makes some individual Americans—and immigrants—worse off, particularly at the lower socioeconomic levels. Because a serious consequentialist analysis shows that immigration's effects are vast, difficult to define, and perhaps impossible to measure, such an analysis is inevitably controversial and vulnerable to criticism, which further encourages critics of any particular position to aggressively join the debate. And when they do so, they are likely to employ moralistic arguments as well as fact-invoking, consequentialist ones. Such critics will use these moralistic arguments in order to exploit the empirical uncertainties and to draw on the persuasive power of claims that seem more disinterested and that appeal to our highest ideals and most elevated self-conceptions.

C. Some Deontological Tropes

In immigration policy debates, this moralism manifests itself in a number of familiar, and overlapping, rhetorical tropes or motifs. Call them the (1) human rights, (2) historical continuity, (3) family unity, (4) fairness, and (5) sovereignty themes.

8. See the contributions to *CITIZENSHIP AND THOSE WHO LEAVE: THE POLITICS OF EMIGRATION AND EXPATRIATION* (Nancy L. Green & François Weil eds., 2007); see also Symposium, *A Tribute to the Work of Kim Barry: The Construction of Citizenship in an Emigration Context*, 81 N.Y.U. L. REV. 1 (2006).

1. *Human Rights*

Immigrants often have compelling claims based on human rights principles grounded in noninstrumental notions of personal dignity and social solidarity. This is most obvious with those who seek refugee status, either as refugees overseas or as asylees at the border or in the U.S. interior. In such cases, they are, by legal definition, claiming that they have a well-founded fear of persecution in their country of origin based on their race, religion, national origin, political opinion, or membership in a particular social group.⁹ As noted below, however, the human rights defense of immigration is not confined to those fleeing persecution; it extends as well to close family members of the immigrant.

The rhetorical trope here is an exceedingly powerful one. The putative refugee has already endured persecution, has no safe alternatives, and through no fault of the refugee's own, will suffer deprivations of life, bodily security, or freedom if returned to the country of origin. Sometimes, this moral claim is strengthened by a contention that U.S. foreign policy has played a role in creating the persecutory environment—as, for example, with the civil wars in Central America during the 1980s, or the Iraq conflict today. In the latter case, the U.S. government's failure to process and approve more of the claims by endangered individuals who worked with the occupying forces or whom we placed at grave risk for our own policy purposes is particularly egregious and reprehensible, as Congress and the administration have belatedly recognized—so far, without much apparent effect on the number or speed of their processing and protection.¹⁰

2. *Historical Continuity*

All Americans, with the possible exception of the Native Americans, are immigrants or the descendants of immigrants. This obvious fact has enormous affective, rhetorical, and political implications. Not only is there a deep reservoir of public sympathy for immigrants—even extending to those undocumented workers who are otherwise law abiding.

9. "Membership in a particular group" is an elastic category that has sometimes been interpreted to include labor unions, draft-age youth in civil wars, Muslim women who refuse to wear *hijab*, and so forth. See generally FORCED MIGRATION LAW AND POLICY (David A. Martin et al. eds., 2007).

10. Conrad Mulcahy, *Officers Battle Visa Hurdles for Iraq Aides*, N.Y. TIMES, May 14, 2008, at A1.

Americans also insist that “we are a nation of immigrants” and proudly self-identify as such. This phrase carries with it the power of cliché—the reflexive, almost instinctual response to preserve those traditions and ideals when they are challenged by those who seek to restrict immigration. Because we have historically been receptive to immigrants and our society has prospered, as the reasoning and rhetoric seem to go, we must continue to do so.¹¹

This strong defense of our immigration ethos is fortified, perhaps paradoxically, by newer works of immigration history that provide decidedly less uplifting narratives of immigration policy and immigrant reception. Recent books by Rogers Smith, Mae Ngai, Aristide Zolberg, and Daniel Kanstroom exemplify this revisionist genre.¹² They suggest, first, that our openness to immigration has been discontinuous—notably, the forty-five year pause from 1921–1965 when the national origins quotas prevailed¹³—and second, that hostility to immigrants was at least as common a response as welcome.¹⁴ Yet these historical accounts, as their authors no doubt intended, elicit deep shame and regret on the part of U.S. policymaking elites and they reinforce a corresponding conviction that we must not repeat these mistakes in the future. Indeed, because few immigration restrictionists today will publicly defend the thoroughly discredited system of national origins quotas,¹⁵ their call for a new pause places them at an immense, morally grounded rhetorical disadvantage.

3. Family Unity

Family-based immigration utterly, and increasingly, dominates our legal immigration system.¹⁶ This preference system gives a clear priority to the close family members of U.S. citizens and of legal permanent residents.

11. See, e.g., ARISTIDE R. ZOLBERG, *A NATION BY DESIGN: IMMIGRATION POLICY IN THE FASHIONING OF AMERICA* 453–59 (2006).

12. DANIEL KANSTROOM, *DEPORTATION NATION: OUTSIDERS IN AMERICAN HISTORY* 28–29 (2007); MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* 17–19 (2004); ROGERS M. SMITH, *CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY* 15–16 (1997); ZOLBERG, *supra* note 11, at 243.

13. See, e.g., KANSTROOM, *supra* note 12, at 225; NGAI, *supra* note 12, at 3, 17; SMITH, *supra* note 12, at 24, 337; ZOLBERG, *supra* note 11, at 243, 337. For a historical account of the quota system emphasizing the role of advocates for more liberal, inclusive, and nondiscriminatory versions of the system, see Son-Thierry Ly & Patrick Weil, *The Antiracist Origin of the Quota System* (Nov. 8, 2008) (unpublished manuscript, on file with Patrick Weil, Yale University).

14. See, e.g., KANSTROOM, *supra* note 12, at 28–29; NGAI, *supra* note 12, at 19, 108; SMITH, *supra* note 12, at 15; ZOLBERG, *supra* note 11, at 16.

15. For a brief description of the system, see *IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY* 170–71 (T. Alexander Aleinikoff et al. eds., 6th ed. 2008).

16. To a far lesser extent, this is also true of our undocumented migration flows.

In 2007, almost 66% of new permanent visas were granted on the basis of family relationships, up from 63% in 2006 and 58% in 2005.¹⁷ This contrasts with Australia, another immigration-receiving country, since the 1970s, where 70% of the new permanent immigrants will be admitted on the basis of their labor skills, not family ties.¹⁸ The institution of birthright citizenship, which takes perhaps its more liberal form in the United States, extending even to the U.S.-born children of undocumented aliens, is similarly based on a concern, among other rationales, for family integrity.¹⁹

From a moral point of view, this strong pro-family bias in our immigration policy has both deontological and consequentialist support. Virtually no one doubts that family stability and unity are values in and of themselves, helping to constitute our sense of self and of the world. But families also stand at the very heart of social life and individual well-being. It is hardly surprising, then, that so many Americans think that any policy that fails to advance these core values is morally and socially unacceptable. For this reason, U.S. immigration policy has extended immigration rights quite far—even to the spouses and children of previously undocumented aliens who manage to gain legal status. Indeed, immigration advocates often argue that family unification is not merely a sound public policy but an international human right protected by international conventions to which the United States is a party.²⁰

17. KELLY JEFFERYS & RANDALL MONGER, OFFICE OF IMMIGRATION STATISTICS, DEP'T OF HOMELAND SEC., U.S. LEGAL PERMANENT RESIDENTS: 2007, ANNUAL FLOW REPORT 3 tbl.2 (2008), http://www.dhs.gov/xlibrary/assets/statistics/publications/LPR_FR_2007.pdf. In fact, the true percentages are significantly higher because many of those who are admitted under other categories come as family members accompanying the main visa holder.

18. *Australia's Skills Shortage: Give Us Your Huddled Masses, Mate*, ECONOMIST, May 31, 2008, at 47, 48.

19. See generally PETER H. SCHUCK & ROGERS M. SMITH, CITIZENSHIP WITHOUT CONSENT: ILLEGAL ALIENS IN THE AMERICAN POLITY ch. 4 (1985); PETER J. SPIRO, BEYOND CITIZENSHIP: AMERICAN IDENTITY AFTER GLOBALIZATION ch. 1 (2008).

20. See, e.g., Jacqueline Bhabha, *The 'Mere Fortuity of Birth'? Children, Mothers, Borders, and the Meaning of Citizenship*, in MIGRATIONS AND MOBILITIES: CITIZENSHIP, BORDERS, AND GENDER (Seyla Benhabib & Judith Resnik eds., forthcoming 2009).

4. Fairness

Many moralistic arguments in favor of immigration are premised on some notion of fairness. All people, in Ronald Dworkin's formulation of this deontological view, have a right to equal concern and respect simply by virtue of their humanity, a right that would be violated by any immigration restriction that discriminates on the basis of race or some other arbitrary characteristic.²¹ A related fairness-based argument rests on the nondiscrimination principle. This principle, to which almost all Americans claim to subscribe, likewise requires equal treatment of all people who are subject to governmental power.²² Most other fairness arguments derive more or less directly from such anti-exploitation and nondiscrimination arguments.

Some of the arguments from fairness, however, begin with consequentialist premises. They often invoke fairness considerations to support expansionist immigration policies. One such argument, for example, emphasizes that immigrants pay taxes, claim relatively few benefits, and increase the wealth of our society and hence that fairness dictates—through a kind of quid pro quo or anti-exploitation logic—that they be assured the opportunity to participate in our social life.²³ Pursuing this same logic to what they view as its logical conclusion, some immigration proponents contend that immigrants should have an equal right to receive all social benefits and even the franchise.²⁴

Not all fairness arguments, however, favor more immigration; some militate *against* it. This is particularly true of those that emphasize our greater responsibility to the most vulnerable of our own people. Usually linked to a consequentialist claim that immigrants hold down the wages of low-skill Americans, especially among vulnerable minorities, much of this opposition points to the moral imperative of favoring the interests of our families and our own people over the interests of strangers.²⁵

21. See RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 179–82 (1977).

22. See *id.* at 272–73.

23. KEVIN R. JOHNSON, OPENING THE FLOODGATES: WHY AMERICA NEEDS TO RETHINK ITS BORDERS AND IMMIGRATION LAWS 119–30 (2007); SPIRO, *supra* note 19, at 16.

24. See, e.g., LINDA BOSNIAK, THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP 37–76, 90–100 (2006); JOHNSON, *supra* note 23, at 87–193; HIROSHI MOTOMURA, AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES 198–200 (2006); SPIRO, *supra* note 19, at 16–17, 30–31.

25. JOHNSON, *supra* note 23, at 119–30.

5. *Sovereignty*

The cherished principle of national sovereignty has always generated a number of restrictionist arguments based on, in Alexander Bickel's phrase, the morality of consent.²⁶ This is the notion that a free and autonomous subject—here, the nation—must be free to decide for itself how to limit its own freedom by taking on responsibilities to others. The nation, in this understanding, possesses the unlimited power to decide whether, under what conditions, and with what effects it would consent to enter into a relationship with a stranger.²⁷ On this view, the fact that a stranger is desperate to enter, and has invested a great deal in the effort, is as immaterial as the reasons that prompt the government to refuse admission to the stranger.²⁸ This conception of sovereignty implies that the nation may decide to accept as few or as many immigrants as it likes in such categories and under such conditions as it wishes to impose.²⁹

In recent decades, the United States has found its national sovereignty increasingly constrained by a number of factors that are more or less beyond its control: migratory movements, geopolitical changes, international law regimes, globalization of the economy, the rise of competing national powers, and so forth.³⁰ Yet the American public has not yet accepted this fact, much less all of its implications for immigration policy. Indeed, politicians and the mass media often characterize immigration as an alarming “flood” or “invasion,” implying a sudden breach in the wall that surrounds the nation and protects its autonomy. This metaphor helps to explain the demand for a physically impregnable, and legally overriding, fence on the Mexican border.³¹ It manifests the ever-more desperate assertion of national sovereignty even as our control has grown steadily more incomplete and contestable.

26. ALEXANDER M. BICKEL, *THE MORALITY OF CONSENT* (1975).

27. See Peter H. Schuck, *The Transformation of Immigration Law*, 84 COLUM. L. REV. 1, 6–7 (1984); see also STEPHEN D. KRASNER, *SOVEREIGNTY: ORGANIZED HYPOCRISY* 20 (1999).

28. Schuck, *supra* note 27, at 6.

29. An exception would be made for special obligations that the nation has voluntarily undertaken, such as the Refugee Convention. See KRASNER, *supra* note 27, at 20, 22.

30. See, e.g., FAREED ZAKARIA, *THE POST-AMERICAN WORLD* 4, 42, 44–45 (2008).

31. See Adam Liptak, *Border Fence Project Can Void Any Law, But Challenges Arise*, N.Y. TIMES, Apr. 8, 2008, at A1.

II. CONSEQUENTIALIST ARGUMENTS

Reviewing the literature on public opinion concerning immigration as of the late 1990s, I summarized the findings as follows:

Most Americans . . . are pragmatic restrictionists, although one cannot be certain. That is, they favor lower levels of immigration but are open to argument and evidence about what those levels should be and about what immigration's actual effects are. Thus their views about the wisdom and level of restriction are capable of being changed. . . .

....

Some of the evidence of ambivalent or conflicting American attitudes toward immigration may reflect this propensity to draw subtle but important distinctions. According to the survey data, for example, Americans like immigrants more than they like immigration, favor past immigration more than recent immigration, prefer legal immigrants to illegal ones, prefer refugees to other immigrants, support immigrants' access to educational and health benefits but not to welfare or Social Security, and feel that immigrants' distinctive cultures have contributed positively to American life and that diversity continues to strengthen American society today. At the same time, they overwhelmingly resist any conception of multiculturalism that discourages immigrants from learning and using the English language.³²

These sorts of considerations lend themselves to arguments based on empirical evidence concerning the actual effects of immigration policies on American society. Pragmatic people, of course, can be influenced by both moral and functional arguments. My limited claim, based in part on my experience and on the famously pragmatic character of American culture, is that moral arguments tend to dissolve into functional ones.

Even so, it is important to recognize that consequentialist arguments do not always, or perhaps even usually, resolve debates in areas as controversial as immigration policy. Just as deontological argumentation often leads us into a normative cul-de-sac, consequentialism suffers from certain chronic analytical limitations that leave plenty of rhetorical space for normative arguments. Because the nature of these limitations has been fully explained in the extensive literature on rationalistic decisionmaking methods, most notably cost-benefit analysis, I shall briefly note only a few of them here.³³

32. PETER H. SCHUCK, *CITIZENS, STRANGERS, AND IN-BETWEENS: ESSAYS ON IMMIGRATION AND CITIZENSHIP* 8–9 (1998).

33. For a flavor of the contemporary debate, see FRANK ACKERMAN & LISA HEINZERLING, *PRICELESS: ON KNOWING THE PRICE OF EVERYTHING AND THE VALUE OF NOTHING* (2004); MATTHEW D. ADLER & ERIC A. POSNER, *NEW FOUNDATIONS OF COST-BENEFIT ANALYSIS* (2006); RICHARD L. REVESZ & MICHAEL A. LIVERMORE, *RETAKING RATIONALITY: HOW COST-BENEFIT ANALYSIS CAN BETTER PROTECT THE ENVIRONMENT AND OUR HEALTH* (2008); Sidney A. Shapiro & Christopher H. Schroeder, *Beyond Cost-Benefit Analysis: A Pragmatic Reorientation*, 32 *HARV. ENVTL. L. REV.* 433 (2008).

First, the factual evidence needed to support a consequentialist claim is often unavailable; even if available, it may be weak, indeterminate, conflicting, or otherwise inconclusive.³⁴ Moreover, a key question—how best to interpret that evidence—may be eminently debatable. Part of that interpretive debate will inevitably involve normative disagreements of the following kinds: Which are the relevant consequences? How should they be defined and understood? What values should be assigned to these consequences? How much weight should they be accorded relative to other values? How can they best be instantiated in policy?³⁵

In addition, even relatively clear-cut empirical evidence will be subject to a social-psychological process known as “cultural cognition,” in which the individuals who apprehend this evidence tend to assimilate it in ways designed to render it congruent with the particular pre-existing cultural frames or paradigms that, for a variety of reasons, they already happen to embrace.³⁶ Finally, the consequentialist analyst must choose which of particular consequences the analyst will consider. This is an important choice because in practice, an analyst can only consider a small proportion of the myriad effects that any significant public policy engenders in the world.

Which kinds of consequentialist arguments are typically made in debates over immigration? In my brief survey of these arguments, my purpose is not to resolve them but rather to provide a flavor of how they proceed—and also to suggest some of the interpretive and normative issues that surround the empirical data. In order to make this task manageable, I draw on a 1998 article in which I analyzed the arguments advanced by prominent restrictionist Peter Brimelow in his provocative book *Alien Nation*.³⁷ Here, I have truncated that discussion to focus on

34. See, e.g., ACKERMAN & HEINZERLING, *supra* note 33, at 36–37.

35. How rigorously and consistently one answers these questions will determine whether one is merely a “cafeteria consequentialist,” to use Michael Blake’s disparaging term. Michael Blake, Comment at Institute for Law & Philosophy Conference: National Borders and Immigration, University of San Diego School of Law (Apr. 25, 2008).

36. See, e.g., MARY DOUGLAS & AARON WILDAVSKY, RISK AND CULTURE: AN ESSAY ON THE SELECTION OF TECHNICAL AND ENVIRONMENTAL DANGERS 80–82 (1982); TIMOTHY D. LYTTON, HOLDING BISHOPS ACCOUNTABLE: HOW LAWSUITS HELPED THE CATHOLIC CHURCH CONFRONT CLERGY SEXUAL ABUSE chs. 4–5 (2008) (discussing the conceptual framing of issues); Dan M. Kahan & Donald Braman, *Cultural Cognition and Public Policy*, 24 YALE L. & POL’Y REV. 149, 150 (2006).

37. SCHUCK, *Alien Ruminations: What Immigrants Have Wrought in America*, in CITIZENS, STRANGERS, AND IN-BETWEENS, *supra* note 1, at 326, 326–58 (reviewing PETER BRIMELOW, ALIEN NATION: COMMON SENSE ABOUT AMERICA’S IMMIGRATION

three of the leading consequentialist arguments for restriction, based on demography, economy, and cultural assimilation. Although different restrictionists may make different arguments, I take Brimelow's claims to be fairly representative of the genre.³⁸

A. Demography

Arguments about demography invariably begin with the numbers. The number of legal admissions—over one million a year recently—is very high by historical standards in absolute terms, but not as a proportion of today's much larger U.S. population.³⁹ Estimates of the number of unauthorized migrants who reside in the United States more or less permanently tend to converge around 11–12 million in 2006, a total that traditionally increased by roughly 250,000 each year.⁴⁰ There are indications that the unauthorized flow has recently diminished somewhat in response to the economic crisis in the United States and more vigorous border and interior enforcement.⁴¹ The proportion of the population that is foreign-born is steadily rising toward the record level of almost fifteen percent reached before World War I, but even that level would remain well below that of many other countries such as Canada, Switzerland, and Israel. Still, the fact that one in eight persons in the United States is a first-generation immigrant gives immigration a much higher profile today than it possessed in 1970 when fewer than one in twenty were foreign-born.

In addition to arguments about which numbers are most revealing for policy purposes, there are debates over the numerical trajectory and its significance. Historically, the United States has not admitted steady streams of immigrants. Instead, the pattern has been more punctuated—occasional spurts followed by short-term pauses or longer lulls, resulting from the convulsions of war and the business cycle and, between 1920

DISASTER (1995)). I shall also draw on another review of the empirical literature by Christopher Jencks, *Who Should Get In?*, N.Y. REV., Nov. 29, 2001, at 57–63, and Christopher Jencks, *Who Should Get In? Part II*, N.Y. REV., Dec. 20, 2001, at 94–102.

38. For a discussion of the different species of restrictionists, see SCHUCK, *The Immigration System Today*, in CITIZENS, STRANGERS, AND IN-BETWEENS, *supra* note 1, at 3, 4–11.

39. U.S. Department of Homeland Security, Yearbook of Immigration Statistics: 2007, Table 1, <http://www.dhs.gov/ximgtn/statistics/publications/LPR07.shtm> (last visited Nov. 2, 2008).

40. JEFFREY S. PASSEL, PEW HISPANIC CENTER, SIZE AND CHARACTERISTICS OF THE UNAUTHORIZED MIGRANT POPULATION IN THE U.S. (2006) (estimating 11.5–12 million as of March 2006).

41. Miriam Jordan, *Crossings by Migrants Slow as Job Picture Dims*, WALL ST. J., Apr. 9, 2008, at A1; Ginger Thompson, *Fewer People Are Entering U.S. Illegally, Report Says*, N.Y. TIMES, Oct. 3, 2008, at A17.

and 1965, from legislation restricting immigration.⁴² But far from being wave-like, the post-1965 legal immigration flow has waxed but, short-term fluctuations aside, never really waned. Until very recently, the volume increased pretty much regardless of the business cycle.⁴³ Even now, amid what promises to be a deep recession, a large enduring decline seems unlikely.

In light of this trajectory, some restrictionists have called for a new pause, which might facilitate the successful assimilation of the more recent arrivals, much as the pre-1920s cohort benefited from the previous lull between 1920 and 1965.⁴⁴ Such a pause might also ease immigration-related social anxieties resulting from the constant addition of newcomers. Social mobility theory, the historical pattern of assimilation, and common sense lend plausibility to this notion.⁴⁵ It is intriguing that immigrants themselves—by a large majority—believe that immigration should either be kept at present levels or reduced, and support for this position increases with their time in the country. Whether immigrants possess some special insight into how large-scale, continuing immigration retards the assimilation of recent immigrants, or simply wish for selfish reasons to pull up the ladder now that they have climbed aboard, is unclear.

Restrictionists also point to projections of population growth, particularly from the Third World countries that have dominated the post-1965 flow, and predict that these immigrants will bring new—and in some cases, old—diseases, high rates of fertility and crime, and low rates of education and skill.⁴⁶ They will crowd out the rest of us, swamping our classrooms, extending our slums, polluting our air, and destroying our amenities and communities. On the other hand, straight-line extrapolations in demographic matters seldom prove to be correct.⁴⁷ Long-term demographic projections necessarily assume that human choices are more fixed than

42. See ZOLBERG, *supra* note 11, at 461.

43. U.S. Department of Homeland Security, Yearbook of Immigration Statistics: 2007, Table 1, <http://www.dhs.gov/ximgrn/statistics/publications/LPR07.shtm> (last visited Nov. 2, 2008); Jordan, *supra* note 41, at A1; Thompson, *supra* note 41, at A17.

44. See, e.g., PETER BRIMELOW, *ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER* 262 (1995).

45. *Id.* at 271.

46. STEVEN A. CAMAROTA, *CTR. FOR IMMIGRATION STUDIES, 100 MILLION MORE: PROJECTING THE IMPACT OF IMMIGRATION ON THE U.S. POPULATION, 2007 TO 2060*, at 1, 11–13 (2007), <http://www.cis.org/articles/2007/back707.pdf>.

47. NICHOLAS EBERSTADT, *AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH, GLOBAL DEMOGRAPHIC OUTLOOK TO 2025: RISKS AND OPPORTUNITIES FOR THE WORLD ECONOMY* (2007), http://www.aei.org/publications/pubID.25454/pub_detail.asp.

they actually are and that the future will therefore be much like the recent past and present. In fact, immigrant fertility rates generally converge with those of the native population by the second or third generation.⁴⁸ The important questions, therefore, are how quickly this occurs and what fertility levels are optimal in a society that must support a growing cohort of longer-lived retirees.

Concerns about immigration-related overcrowding are also debatable. The United States today remains a country with a relatively low population density. This does not simply reflect the vast uninhabited—and at present uninhabitable—spaces in the American West. Even America’s largest and densest cities are thinly populated relative to other cities in the world, including the most famously attractive ones.⁴⁹ Indeed, the population density of New York City is about half what it was a century ago; other major cities are also less densely populated.⁵⁰ We have a long way to go before we reach density levels that other western democracies find perfectly acceptable, even desirable. Our standards of acceptable density may be different from those in Europe, but our standards are not immutable, as the historical urbanization, suburbanization, and “edge city” cycles in the United States attest.⁵¹

Demographic extrapolations are further confounded by the dynamics of markets, politics, and other powerful social processes that respond to developments that impose widespread social costs. These processes do not sit idly by while change unfolds but instead shape and constrain change, thereby altering its future trajectory. Demographic models cannot readily incorporate this fact, which is nicely captured in “Stein’s Law”: If a trend cannot go on forever, it will stop.⁵² Population growth, for example, bids up the prices of housing, education, and other goods; people therefore tend to have fewer children, other things being equal. If increased job competition pushes unemployment high enough for long enough, immigrants will tend not to migrate here. If competition for natural resources and other environmental goods becomes more intense, those

48. See Tamara K. Hareven & John Modell, *Family Patterns*, in HARVARD ENCYCLOPEDIA OF AMERICAN ETHNIC GROUPS 345, 348–49 (Stephan Thernstrom et al. eds., 1980).

49. See Demographia, World Urban Population Density by Country & Area, <http://demographia.com/db-intlua-area2000.htm> (last visited Nov. 2, 2008); see also SCHUCK, *Alien Ruminations: What Immigrants Have Wrought in America*, in CITIZENS, STRANGERS, AND IN-BETWEENS, *supra* note 1, at 326, 336.

50. Schuck, *Alien Ruminations: What Immigrants Have Wrought in America*, in CITIZENS, STRANGERS, AND IN-BETWEENS, *supra* note 1, at 326, 336–37.

51. The term comes from JOEL GARREAU, *EDGE CITY: LIFE ON THE NEW FRONTIER* (1988).

52. Herbert Stein, *Herbert Stein’s Unfamiliar Quotations*, SLATE, May 16, 1997, <http://www.slate.com/id/2561/>.

goods will become more costly, which both rations their use and attracts additional supply; these behavioral responses in turn tend to reduce the price. If policymakers perceive that population growth harms the environment, the economy, and other areas of public concern, they will propose policy changes accordingly. If our politics and markets are supple and responsive enough to react swiftly and intelligently to population pressures and other strains, the future need not unduly arouse our fears. Indeed, since 1965, our social institutions have preformed reasonably well in responding to new challenges, refuting the Chicken Littles of environmental pessimism. Or so one may plausibly argue.

B. Economy

Brimelow, labor economists George Borjas and Vernon Briggs, and other restrictionists argue that the post-1965 migration flow has uncoupled legal immigration from the needs of the U.S. economy.⁵³ This claim is actually a composite of four separate claims. The first is that labor market skills play a small and shrinking role in admissions policy. Second, the post-1965 cohort is less skilled than earlier cohorts. Third and related, this cohort drains the economy more than earlier cohorts because its members, especially illegal aliens, are more likely to demand public assistance and displace native workers. Fourth, this displacement imposes particularly heavy burdens on current and potential black workers.

The first claim is correct, as noted earlier, and I discuss it further in Part III. The second claim—that the *quality* of immigrants has declined since the 1965 reforms—is much more difficult to assess. Good data on immigrant labor markets are hard to come by, and analyses are very sensitive to methodology. More to the point, labor economists disagree about the nature and validity of some of Borjas's data, methodology, and conclusions.⁵⁴ Methodological issues abound. One concerns the extent to which the *immigrant* category should be disaggregated. Different subcategories of immigrants—family-based admittees, skills-based admittees,

53. The claims in this paragraph are advanced in GEORGE J. BORJAS, HEAVEN'S DOOR: IMMIGRATION POLICY AND THE AMERICAN ECONOMY chs. 4–5 (1999); VERNON M. BRIGGS, JR., MASS IMMIGRATION AND THE NATIONAL INTEREST: POLICY DIRECTIONS FOR THE NEW CENTURY (3d ed. 2003); BRIMELOW, *supra* note 44, at 5.

54. For a popular account of the dispute between Borjas and economist David Card, see Roger Lowenstein, *The Immigration Equation*, N.Y. TIMES MAG., July 9, 2006, at 36.

refugees and asylees, age groups, source region or country groups, legals versus illegals—in a given cohort exhibit quite different characteristics. Lumping some or all of these subcategories together can significantly affect the outcome of the analysis. Reliance on census data, which employ rather crude, self-reported ethnic categories and do not include off-the-books income, is also controversial.

These and other methodological issues make it difficult to resolve authoritatively some of the most fundamental empirical, policy-relevant questions: Do immigrants take jobs that low-skilled American workers reject, and if so, why do they reject them? Is it because immigration has severely depressed wages for these jobs, or because of some cultural factor? To what extent is immigrant labor a complement to native labor, enhancing the latter's productivity, and to what extent is it a substitute, displacing native labor? How large is the wage gap between various subgroups of immigrant workers and native workers? To what extent is this gap affected by the exit of native workers from labor markets experiencing an influx of immigrant workers? Consider this discussion of the evidence on changing migration patterns, both internal and external:

A century ago immigrants went to high-wage cities, while natives often remained in low-wage rural areas. Today, . . . immigrants go where their co-ethnics are, while American-born migrants go where wages are highest. . . .

If unskilled Americans respond to large-scale immigration by moving elsewhere, analyzing wage changes in the cities or states where immigrants settle cannot tell us how immigration affects wages. . . . [Borjas] estimates that almost half [the large increase in the wage gap between high school dropouts and graduates] was caused by the fact that American-born high school dropouts faced more competition from immigrants than any other group of American-born workers. Whether immigration contributed to the growth of inequality among better-educated workers remains an unexplored question.⁵⁵

The validity of Brimelow's third consequentialist claim—that immigration is a net “drain on the economy”—depends not only on the answers to labor market questions such as these, but also on immigrants' use of public services, their tax payments, and their effects on prices and productivity. The extent of immigrants' receipt of welfare, Social Security Income, food stamps, and other public assistance also depends on methodological choices; refugees, for example, are relatively welfare-dependent, and some states have much more generous programs than others. To compare immigrants' utilization with that of natives, one must carefully specify the control variables, especially health, income, skill, and family structure factors.

55. Jencks, *Who Should Get In?*, *supra* note 37, at 62.

Attempting to take into account all of these economic factors, a National Research Council report published in 1997 concluded that immigration makes Americans as a whole slightly wealthier.⁵⁶ As Christopher Jencks summarizes this finding: “The big effects of immigration are on the distribution of income. Under America’s current immigration policy, the winners are employers who get cheaper labor, skilled workers who pay less for their burgers and nannies, and immigrants themselves. The losers are unskilled American-born workers.”⁵⁷ The fact that assessing this tradeoff—between increased wealth and the regressive distributional effects—is not an empirical question but a normative one illustrates an important fact about the immigration debate: Even as moral arguments tend to devolve into consequentialist ones, consequentialist ones can also devolve into moral ones.

C. Cultural Assimilation

Brimelow suggests that the post-1965 immigrants bear, and presumably transmit to their children, different and less attractive values than did the earlier waves of immigrants.⁵⁸ Although he is a bit vague about the indicia of the decline in immigrants’ moral and cultural values, he does mention three areas of particular concern: crime, limited English proficiency (particularly among Hispanics), and high illegitimacy rates (particularly among Mexican immigrants and Mexican-Americans). Each of these areas is certainly worth worrying about, and they do rest on empirical claims.

Crimes committed by aliens drive much public hostility to immigration.⁵⁹ Government Accountability Office (GAO) reports in 2005 suggest the magnitude of the problem.⁶⁰ The number of aliens incarcerated in federal

56. THE NEW AMERICANS: ECONOMIC, DEMOGRAPHIC, AND FISCAL EFFECTS OF IMMIGRATION 4, 5–6 (James P. Smith & Barry Edmonston eds., 1997).

57. Jencks, *supra* note 37, at 63.

58. BRIMELOW, *supra* note 44, at 5. For another argument that American identity is threatened by Hispanic immigration, see SAMUEL P. HUNTINGTON, WHO ARE WE? THE CHALLENGES TO AMERICA’S NATIONAL IDENTITY ch. 9 (2004). Huntington’s claim has in turn been challenged empirically. See, e.g., Jack Citrin et al., *Testing Huntington: Is Hispanic Immigration a Threat to American Identity?*, in 5 PERSPECTIVES ON POLITICS 31 (2007).

59. This paragraph and the one following are taken from my chapter in Peter H. Schuck, *Immigration*, in UNDERSTANDING AMERICA: THE ANATOMY OF AN EXCEPTIONAL NATION 341, 362–63 (Peter H. Schuck & James Q. Wilson eds., 2008).

60. RICHARD M. STANA, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, INFORMATION ON CRIMINAL ALIENS INCARCERATED IN FEDERAL AND STATE PRISONS AND LOCAL JAILS

facilities increased from about 42,000 in 2001 to about 49,000 in 2004, a 15% increase. Aliens are about 27% of all federal prisoners, accounting for approximately \$1.2 billion in federal costs in 2004. In a study of more than 55,000 illegal aliens in federal prisons, the GAO found that the average one had about eight arrests (for thirteen offenses); 26% of them had eleven or more arrests. About 45% of the offenses committed by this population were for drug or immigration crimes, but 12% were for violent crimes such as murder, robbery, assault, and sex-related crimes, and 15% were for property-related crimes. These statistics, of course, do not include the very large number of aliens in state prisons and local jails. In California, more than 20% of the inmates during the mid-1990s were thought to be foreign-born, with roughly the same share in Los Angeles County jails.⁶¹

These statistics reflect the high levels of immigration in recent years, but they do *not* mean that immigrants are more prone to crime. In fact, incarceration rates for foreign-born men aged eighteen to thirty-nine are much lower than for native-born men (in 2000, 0.7% versus 3.5%); moreover, this difference has increased substantially since 1990. Indeed, if we exclude island-born Puerto Ricans, who have far higher crime rates but are citizens, the foreign-born rate is even lower and the difference correspondingly greater. The crime problem arises chiefly in the second generation; the incarceration rates of the U.S.-born children of immigrants are higher than those of both their parents and of non-Hispanic white citizens, and their incarceration rates generally increase the longer they are in the country.⁶² Strikingly, these patterns hold even controlling for age, education, race or ethnicity, and citizenship.⁶³

On English language proficiency, the evidence is mixed but generally encouraging, as market pressures, schooling in the United States, and the surrounding Anglophone culture do their work.⁶⁴ Most studies find that the immigrant generation acquires fluency at roughly the same rate as

(2005), <http://www.gao.gov/new.items/d05337r.pdf>; RICHARD M. STANA, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, INFORMATION ON CERTAIN ILLEGAL ALIENS ARRESTED IN THE UNITED STATES (2005), <http://www.gao.gov/new.items/d05646r.pdf>.

61. Peter H. Schuck & John Williams, *Removing Criminal Aliens: The Pitfalls and Promises of Federalism*, 22 HARV. J.L. & PUB. POL'Y 367, 376–82 (1999).

62. See Ruben G. Rumbaut et al., *Debunking the Myth of Immigrant Criminality: Imprisonment Among First- and Second-Generation Young Men*, June 1, 2006, <http://contact.migrationpolicy.org/site/R?i=vhS06zFz8ttwehKjdrEprA>. Indeed, immigration may be a major cause of the declining homicide rates since 1990. Robert J. Sampson, *Open Doors Don't Invite Criminals*, N.Y. TIMES, Mar. 11, 2006, at A15.

63. E-mail from Kristin F. Butcher, Associate Professor of Economics, Wellesley College, to Peter H. Schuck, Simeon E. Baldwin Professor of Law, Yale University (Mar. 6, 2006) (on file with author).

64. BARRY R. CHISWICK & PAUL W. MILLER, THE ECONOMICS OF LANGUAGE: INTERNATIONAL ANALYSES 39 (2007).

earlier waves did, that the one-and-a-half generation, immigrants' foreign-born children who arrive at a young age, learn it at school and strongly prefer it to their parents' native language, that virtually all of the second generation speak it proficiently by the end of high school, and that the third generation is largely monolingual in English and likes it that way.⁶⁵ But this optimistic picture is marred by the estimated 3 million or more U.S.-born students with Limited English Proficiency (LEP), despite—or because of—bilingual education programs.⁶⁶ Among the native-born who speak another language at home, earnings are lower than among monolingual native-born English speakers, presumably because of their limited proficiency in English.⁶⁷ Indeed, 10% of LEP students are *third-generation* Americans, and the 1990 Census found that almost 8 million households, 8.3% of the United States total, were linguistically isolated, meaning that no person age fourteen or older spoke English well.⁶⁸

The rates of interethnic marriage—a strong sign, as well as a contributing cause, of cultural integration—are very high, particularly marriages between Asian women and Hispanic and white males, and the residential integration of those groups into white-majority urban and suburban communities is growing rapidly.⁶⁹ Also important to the integration of immigrants are the allure and ethnic diversity of a powerful mass media and popular culture, including minority-dominated sports teams, and the receptiveness of America's religious communities to newcomers who in turn are reinvigorating and often transforming these communities.

Recent studies of assimilation patterns over time suggest that the most recent immigrants are assimilating as quickly as those of earlier decades,

65. *Id.*

66. PETER SCHUCK, *DIVERSITY IN AMERICA: KEEPING GOVERNMENT AT A SAFE DISTANCE* 110 (2003).

67. CHISWICK & MILLER, *supra* note 64, at 416–21. According to Chiswick, “The characteristics of those immigrants (and presumably their children) who lag behind in English are interesting—recent migrants low education, migrated at an older age, sojourners (move back & forth), intend to stay a short period of time, come from countries a shorter distance from the U.S., able to avoid using English (live in linguistic concentration area, access to origin language media) and origin language linguistically distant from English. Hence, we see those of Hispanic origin lagging behind as they are more likely to have characteristics associated with low proficiency.” E-mail from Barry R. Chiswick, UIC Distinguished Professor of Economics, University of Illinois at Chicago, to Peter H. Schuck, Simeon E. Baldwin Professor of Law, Yale University (Oct. 10, 2008, 23:11 EST) (on file with author).

68. SCHUCK, *supra* note 66, at 110 n.159.

69. *Id.* at 208 nn.25–26.

although perhaps more slowly than those of a century ago.⁷⁰ Although this swift and steady pace of assimilation is generally desirable, one aspect of it has a darker side. In a process that sociologists of immigration call downward or segmented assimilation, very young immigrants and the young children of immigrants often adopt norms and conduct—gang membership and violence, rejection of parental and other authority, scorn for academic achievement, “gangsta” talk, and the like—all too common and dysfunctional in the United States, that may impede their future mobility and integration.⁷¹ Among at least some immigrant groups, such as the Vietnamese, the best academic achievers are usually those who assimilate more *slowly* to American culture, while the delinquent youngsters are quicker to abandon their ethnic heritage.⁷²

III. NATIONAL ECONOMIC GROWTH

In my view, the overall growth of our economy—its production of goods and services—is the single most important goal of a rational and morally-justified immigration policy. This is emphatically not to say that it is the only legitimate goal, nor is it to deny the moral imperative of a generous level of humanitarian admissions, mainly refugees and asylees, who among all the legal immigration categories generally possess the lowest economic skills.⁷³ But it is to say that economic growth engenders immense social value in many forms: higher standard of living; accumulation of skills, education, and other kinds of human capital; social optimism; technological advancement; philanthropy; and many more. This social value, moreover, tends to be widely distributed across the American population, and has the added virtue of also enriching immigrants’ communities of origin abroad through financial remittances, technology transfers, and other valuable social developmental processes.⁷⁴

70. JACOB L. VIGDOR, CENTER FOR CIVIC INNOVATION MANHATTAN INSTITUTE, CIVIC REPORT NO. 53, MEASURING IMMIGRANT ASSIMILATION IN THE UNITED STATES I (2008), http://www.manhattan-institute.org/pdf/cr_53.pdf. Different ethnic groups, however, are assimilating at varying rates. PHILIP KASINITZ ET AL., INHERITING THE CITY: THE CHILDREN OF IMMIGRANTS COME OF AGE (2008).

71. See generally ALEJANDRO PORTES & RUBEN G. RUMBAUT, LEGACIES: THE STORY OF THE IMMIGRANT SECOND GENERATION (2001); MARY C. WATERS, BLACK IDENTITIES: WEST INDIAN IMMIGRANT DREAMS AND AMERICAN REALITIES (1999).

72. PORTES & RUMBAUT, *supra* note 71, at 1–15.

73. BORJAS, *supra* note 53, at ch. 5.

74. See MICHAEL J. TREBILCOCK & ROBERT HOWSE, THE REGULATION OF INTERNATIONAL TRADE 618 (3d. ed. 2005) (estimating \$105.2 billion in remittances in 1999, \$65.3 billion of which is to developing countries). It may well be that, all things considered, these remittances are generally a more effective form of foreign aid than government-to-government programs.

Economic growth is also socially desirable because by enlarging the pie, it increases the attractiveness and public acceptance of what may fairly be called “noneconomic” goods or values. A wealthier society, for example, is more likely to support increased environmental protection, occupational safety, education for the poor, civil rights for the disabled and other minorities, cultural activity, refugee protection, philanthropy, tolerance for dissent and diversity, and many other social goals that, while often conducive to economic growth, are best justified in noneconomic terms.⁷⁵ In addition, a wealthier society is likely to feel less threatened by immigration and thus be more receptive to newcomers, and perhaps to support increased levels of immigration.⁷⁶ In fact, an important part of any explanation of the expansiveness of our immigration policy in recent decades must be American society’s growing awareness and valuation of these noneconomic goods.⁷⁷ These attitudinal changes in turn reflect the immense economic and educational gains achieved in the United States during this period.⁷⁸

Current U.S. immigration policy gives enormous—and probably excessive, as I shall suggest—weight to the noneconomic goods flowing from economic growth. As noted earlier, almost two-thirds of the more than one million legal admissions in 2007 were based not on skills or economic potential but solely on the immigrant’s family relationships with U.S. citizens or legal permanent residents. Another 13% were refugees, asylees, and other humanitarian admissions, and 6% were based on diversity and other noneconomic factors.⁷⁹ Only 15.4% were accepted in the employment-based categories—which include visa-qualifying investors. Even this 15.4% share exaggerates the weight of economic factors in our current green card allocation system. Most members of this group were admitted not because of their own economic value but

75. For development of this argument, see AARON WILDAVSKY, *SEARCHING FOR SAFETY* 59–75 (1988). *But see* REVESZ & LIVERMORE, *supra* note 33, at 67–76 (disputing Wildavsky’s claim).

76. REVESZ & LIVERMORE, *supra* note 33, at 67–76.

77. This is not to say, however, that the American public fully understands the extent to which immigration may be responsible for the increase in these goods. *See generally* Peter H. Schuck, *The Disconnect Between Public Attitudes and Policy Outcomes in Immigration*, in *DEBATING IMMIGRATION* 17, 30–31 (Carol M. Swain ed., 2007).

78. For documentation of these gains, see Benjamin M. Friedman, *The Economic System*, in *UNDERSTANDING AMERICA*, *supra* note 59, at 87, 94, 100, and Paul E. Peterson, *Education*, in *UNDERSTANDING AMERICA*, *supra* note 59, at 411, 433.

79. JEFFERYS & MONGER, *supra* note 17, at 3 tbl.2.

solely because they were spouses or minor children accompanying a skills-based immigrant.⁸⁰ To be sure, some of these accompanying family members will work productively in the United States, and their mere presence and familial support will presumably increase the main worker's productivity. But these possibilities are irrelevant to their admission.

In short, noneconomic considerations utterly dwarf economic ones in the current allocation of permanent immigration visas.⁸¹ Strikingly and perhaps ironically, other major immigrant-receiving countries accord much more importance to economic factors than the comparatively market-oriented United States does. Canada, for example, admits approximately half of its immigrants under a point system that emphasizes economic productivity potential.⁸² Australia employs a similar system,⁸³ and the United Kingdom began its own in 2008.⁸⁴ To the extent that the United States' privileging of noneconomic factors actually reduces economic growth—humanitarian admissions aside—it is out of proper balance and should be reconsidered. I do so in Part IV.

While emphasizing the value of immigration-related economic growth, however, I do not suggest that it is either an unalloyed good or an uncontroversial one. First, it does not necessarily, or perhaps even usually, make everyone in the society better off. Few if any significant policy changes are Pareto optimal in this sense, entailing no losers. Even free trade enthusiasts, for example, should concede that such changes will almost always produce a smaller slice of the pie for some people—for example, those who lose their jobs due to imports and cannot find equally good work thereafter—and that those people are most likely to be the ones who are already highly vulnerable to welfare

80. Specifically, for fiscal year 2007, the number of employment-based permanent admissions who were dependents was 89,300, or 55.1% of the total. E-mail from Nancy Rytna, Deputy Director, Office of Immigration Statistics/Policy, U.S. Dep't of Homeland Sec., to Peter H. Schuck, Simeon E. Baldwin Professor of Law, Yale Law School (Apr. 14, 2008) (on file with author).

81. Economic factors do loom larger in the granting of “nonimmigrant” visas for many different categories of temporary visitors. Of the more than 33 million temporary (“nonimmigrant”) visas issued in 2006, 20.1% were based on labor market skills. OFFICE OF IMMIGRATION STATISTICS, DEP'T OF HOMELAND SEC., TEMPORARY ADMISSIONS OF NONIMMIGRANTS TO THE UNITED STATES: 2006, ANNUAL FLOW REPORT (2007), http://www.dhs.gov/xlibrary/assets/statistics/publications/NI_FR_2006_508_final.pdf. Moreover, the in-country expenditures by tourists and other temporary visitors clearly add to the national economy.

82. See, e.g., Christopher Mason & Julia Preston, *Canada's Policy on Immigrants Brings Backlog*, N.Y. TIMES, June 27, 2007, at A1.

83. Australia Immigration, <http://www.workpermit.com/australia/australian-immigration.htm> (last visited Nov. 2, 2008).

84. HomeOffice.gov.uk, New Points-Based Immigration System Starts Next Year (Apr. 18, 2007), <http://www.homeoffice.gov.uk/about-us/news/points-based-system>.

losses. In the case of new immigration, the most likely losers are low-skilled American workers and other immigrant workers.

Second, in thinking about immigration's effects, we must recognize the fact that, as Max Frisch famously observed about post-war Europe's demand for foreign labor, "We asked for workers but human beings came."⁸⁵ Once here, immigrants cannot be treated as if they were simply wealth-creating machines that can be discarded as soon as they have exhausted their economic value. Similarly, a policy causing adverse effects to American workers is more troubling than one causing adverse effects on goods—and this is true, as a political matter if not a moral one, even if free trade in goods has similar or even identical economic effects in terms of reducing jobs for our workers. In the case of native workers displaced by foreign ones, those displacement effects tend to be more direct and visible to the rest of society than in the case of trade policies that disadvantage competing American goods and hence the workers who produce them. In both cases, this causal opacity can serve the purposes of politicians and policymakers who hope to obscure the identity of the groups and individuals who will bear most of the costs of worker-displacing policies that the politicians and policymakers support.⁸⁶ This same opacity, for perhaps more psychological reasons, may also comfort ordinary citizens who would rather not know that there are cost-bearers, much less who they are.

A third reason why immigration's contributions to economic growth are controversial is that conventional macroeconomic measures of growth do not usually take account of its negative externalities, such as production-related pollution and congestion costs for which the producers are not charged. These and other externalities reduce *pro tanto* our otherwise growth-enhanced quality of life.

Fourth, there is the much disputed empirical question of how large the economic effects of immigration actually are—setting to one side the questions of how these effects are and should be distributed. The most authoritative study of this question, published by the National Academy of Sciences' National Research Council in 1997, found economic benefits

85. This phrase is quoted in James F. Hollifield, *The Politics of International Migration: How Can We "Bring the State Back In?"*, in *MIGRATION THEORY: TALKING ACROSS DISCIPLINES* 183, 196 (Caroline B. Brettell & James F. Hollifield eds., 2d ed. 2008).

86. Indeed, the ability to throw up this kind of causal fog is a valuable skill for all political entrepreneurs.

of up to \$10 billion a year.⁸⁷ This is a large number, but it amounts to only a tiny fraction of the almost \$14 trillion (in 2007) American economy.⁸⁸ Perhaps needless to say, there are numerous ways to challenge this \$10 billion figure, in both directions. For present purposes, what matters most is the relative weight to be given to economic growth in fashioning immigration policy. I do not know precisely what that weight should be; my claim is only that it should be greater than it is.

Finally, however one resolves these definitional, methodological, and empirical questions about immigration's effects on economic growth, a deep and vexing normative question of distributive justice will remain—even for a steadfast consequentialist assessor of immigration policy: Why should she count only immigration's effects on Americans, without taking account of its effects, for both good and ill, on the much larger number of people in the rest of the world? As a factual matter, it seems clear that most Americans much prefer the welfare of their fellow citizens and permanent residents to the welfare of outsiders. Supporting this positive claim is a positive fact: Congress directs only a tiny and declining percentage of U.S. government revenues to foreign aid.⁸⁹

This proposition, of course, speaks only to what popular attitudes are, not what they should be under some normative theory. Cosmopolitan communitarians and *post-national* moralists are likely to regard this strong preference for one's *own* as selfish, parochial, arbitrary, and unjust. Others, however, will view it as self-evidently justified, indeed, as logically implied by the very nature of a common nationhood. They may acknowledge a moral duty of benevolence to *outsiders* but feel that this duty is best discharged through some combination of foreign aid, private remittances, and private philanthropy.

I shall not seek to resolve these moral, and empirical, perplexities. For my mainly consequentialist purposes here, the point is that the difficulty of authoritatively resolving them helps to explain why one might argue, without obvious inconsistency, (1) that we should allocate a larger share

87. NAT'L RESEARCH COUNCIL, *THE NEW AMERICANS: ECONOMIC, DEMOGRAPHIC, AND FISCAL EFFECTS OF IMMIGRATION* 1, 6, 153, 220 (James P. Smith & Barry Edmonston eds., 1997).

88. Bureau of Economic Analysis, National Economic Accounts, Current Dollar and "Real" GDP, <http://www.bea.gov/national/index.htm> (last visited Nov. 2, 2008).

89. Two points about this fact are worth making. First, Americans may limit foreign aid not because they care less about foreigners than about their countrymen—although I think they do—but because they believe that such aid is ineffective in helping foreigners due to corruption, perverse incentives, or other reasons. Second, Americans engage in an immense amount of private philanthropy, much of which goes to foreigners. See Arthur C. Brooks, *Philanthropy and the Non-Profit Sector*, in *UNDERSTANDING AMERICA*, *supra* note 59, at 539, 542–43.

of our annual immigrant admissions to those immigrants who are most likely to enhance national wealth, (2) that our immigration policy should also promote some of the noneconomic values discussed earlier, whether those values are held for deontological or instrumental reasons, and (3) that some zero-sum trade-off between these economic and noneconomic goals is likely to exist at any given level of admissions.

IV. INCREASING IMMIGRATION-RELATED ECONOMIC GROWTH

If we wished to increase the role of national economic self-interest in immigration policy, how might we do so? For present purposes of illustration and provocation, I shall briefly discuss five possible reforms here: (1) increase the number of temporary and permanent employment-related visas; (2) auction off those visas; (3) allow U.S. citizens and legal residents to bid for priority processing of amnesty for specific undocumented aliens; (4) encourage private participation in enforcement; and (5) raise visa processing fees. Needless to say, even to advance any serious proposals along these lines—not to mention effectively defending them—would require far greater detail and attention to possible objections than I can provide here. I discuss them here without necessarily endorsing them.

A. Increasing Employment-Related Visas

From a purely economic point of view, the optimal immigration policy would grant visas to all foreign workers whose production value is likely to exceed the social costs of their presence here.⁹⁰ So long as immigrants remain ineligible for social welfare benefits, an important and controversial issue not pursued here, the principal costs would include congestion, environmental burdens, higher prices resulting from additional demand, and immigration-induced unemployment or reduced wage effects on American workers—or on other immigrants, as the discussion of the empirical data in Part II strongly suggests.

The precise wage and unemployment effects of immigration on workers in the United States are of course highly controversial among labor economists, and I am in no position to resolve them. For present

90. See, e.g., Howard F. Chang, *Migration as International Trade: The Economic Gains from the Liberalized Movement of Labor*, 3 UCLA J. INT'L L. & FOREIGN AFF. 371, 379–90 (1998).

purposes, and vastly simplifying the analysis, I make two points. First, even assuming such adverse effects on American workers, the optimally efficient immigration policy is to import more cost-effective workers—as just defined—and then use the fruits of the resulting efficiency gains to retrain or otherwise compensate the disadvantaged U.S. workers. Not surprisingly, this position mirrors the logic of free trade in goods and services. Second, although market efficiency is not—and should not be—the sole immigration policy goal and must therefore be traded off against other policy goals, economic growth is nevertheless highly-valued in American society, which makes a strong case for giving employment-based visas a significantly larger share of the total and family-based visas a correspondingly lower share. As noted earlier, the easiest way to accomplish this politically is to enlarge the total number of visas, thus easing the zero-sum competition with family-based visas. Another way, prominent in the systems of other immigrant-receiving countries, as noted earlier, is to adopt a point system in which characteristics associated with high economic potential are given great weight. Such a system has received some bipartisan support in Congress but has not yet been enacted.⁹¹

B. Auctioning Visas

A visa to the United States is the most valuable resource that mobile foreigners can ever hope to obtain—the right to permanent residence, citizenship, and further family migration here. Receiving a family-based or employment-based visa is a huge emotional or economic windfall, or both, to those who receive it. This is true, moreover, regardless of the immigrant’s individual merit and regardless of the fact that the immigrant’s receipt of the visa is also valuable to those family members or employers in the United States who petitioned for it. As Gary Becker, Julian Simon, and some other economists have proposed, the most straightforward, non-discretionary way to determine (1) which aliens would benefit most from the visas in the United States, and (2) which of them would be valued most highly by the people in the United States who want them here, is to auction off the visas to the highest bidder meeting the legally-specified eligibility requirements.⁹² The current

91. See S. 1639, 110th Cong. § 502 (2007).

92. See JULIAN SIMON, *THE ECONOMIC CONSEQUENCES OF IMMIGRATION* 307 (1989); Alan O. Sykes, *The Welfare Economics of Immigration Law: A Theoretical Survey with an Analysis of U.S. Policy*, in *JUSTICE IN IMMIGRATION*, *supra* note 2, at 158, 181–83; Gary S. Becker, *An Open Door for Immigrants: The Auction*, *WALL ST. J.*, Oct. 14, 1992, at A14.

system eschews such targeting criteria in favor of very crude categories, which are administered in a notoriously inept fashion.⁹³

No convincing conception of justice demands that this precious windfall should be distributed, as under the current system, to eligible aliens on a first-come, first-served basis rather than by willingness to pay for it at an auction—I will discuss the ability-to-pay consideration in a moment. Still less is there any justification for distributing 50,000 of these valuable visas by lottery, which is how the so-called “diversity” visa program works.⁹⁴ No other country allocates its visas by lottery.⁹⁵ Instead, those relatively few countries that accept permanent immigrants distribute their visas on the basis of national interest criteria, usually economic or ethnic. I put humanitarian admissions to one side here.

Suppose, then, that the government decided to auction off some subset of its visa quotas to the highest eligible bidder. The most compelling case for this approach clearly is employment-based visas, where the would-be employer now petitions, at significant cost, to import certain workers who possess or can readily acquire the skills needed by the firm. The government would specify the criteria that bidders, for example firms that wish to employ immigrants, or perhaps the immigrants themselves, must satisfy in terms of job skills, language competency, years spent on a visa waiting list, or other desiderata, and then allow all eligibles to bid for the available visas—subject, of course, to the usual grounds of excludability applicable to all intending immigrants. In an auction, the enormous surplus value of a visa—its value in excess of the bidder’s opportunity cost—would be captured not by the immigrant but by the government, which could then use the surplus to upgrade American workers’ job skills or for other social purposes. It seems likely that these visas would be won by the most productive workers whose labor most helps the U.S. economy, as they would find it easiest to finance their bids. These arguments, moreover, are by no means confined to allocating permanent employment-based visas. Indeed, an auction might be even

93. In the case of employment-based visas, organized labor and other interests have rendered the required labor certification process notoriously bureaucratic, inefficient, costly, and slow in order to obstruct the hiring of foreign workers. This process, which forces time-sensitive employers to try to circumvent the system, now burdens both immigrant and American workers, consumers, and the economy.

94. I have discussed the absurdity and maladministration of this program in SCHUCK, *supra* note 66, at 123–31, where I urge that it be abolished and the 50,000 visas be redistributed among the other visa categories.

95. *Id.* at 128.

more desirable for temporary work visas, where time is of the essence and the number of visas has been severely limited.⁹⁶

To address ability-to-pay constraints or other fairness concerns, the government might subsidize or partly finance the bids of productive workers who for good reasons cannot fully finance their own. Moreover, fairness concerns must answer the *compared with what* question. One must compare any perceived unfairness of this auction scheme with the existing system, which favors workers who are in the United States already, often illegally, and who can get employer sponsors and lawyers to navigate the immigration and labor bureaucracies on their behalf. If the auctioned visas were added to the existing ones, no one in line would be worse off and those who have been waiting for visas might be better off.

Any auction proposal, of course, will face strong political and ideological objections. Opponents will disparage it as allowing people to buy their way into the United States, which is thought to be anathema to our traditions, and to do so when close family members of U.S. residents must wait for years to rejoin them here. Proponents would respond by pointing to the investor visa program, which already allows people to obtain visas by agreeing to create new jobs in the United States, and by explaining how the existing system actually operates much more unfairly than appears on paper. These defenses of an auction, however, are unlikely to assuage public misgivings—and perhaps they should not. Miss Liberty holding aloft an auctioneer’s gavel rather than holding a torch of liberty would be a less inspiring icon.

C. Auctioning Certain Amnesties

Elsewhere, I have advocated a generous amnesty—or *earned legalization*, if you prefer, for most of the roughly 12 million undocumented aliens in the United States today.⁹⁷ I—and many other amnesty proponents—base this case on a combination of economic, fairness, and pragmatic considerations. Assuming that some form of amnesty is desirable public policy, many issues of eligibility and administration must be resolved. For present purposes, I want to bypass these issues and focus on the question of how we should select or prioritize candidates for amnesty who are eligible.

96. See Julia Preston, *Many Visas Are Sought for Skilled*, N.Y. TIMES, Apr. 11, 2008, at A18 (noting that employers filed 163,000 H-1B petitions in the first five days when petitions could be filed, more than twice as many as can be granted during the entire fiscal year 2009).

97. Peter H. Schuck, *Bordering on Folly*, AM. LAW., Oct. 2007, at 83, 84.

As with visa processing, an auction could help to determine which applications the government will process first. Suitable safeguards for anonymity, which were a feature of earlier amnesties, are necessary lest fear of detection discourage applications. In the vast majority of cases, I suppose, the applicants who most deserve amnesty will be those whose labor in the United States is most valuable, whose removal would thus be most costly to their American employers, and whose employers should therefore be expected to bid the most for the right to retain them. These economic factors likely correlate, more or less strongly, with certain other factors—the duration of their illegal stay in the United States, their English proficiency, their compliance with the (non-immigration) laws, and their ties to family and friends here—that amnesty programs have directly or indirectly taken into account. In addition, the size of their bids should roughly reflect these same factors.

Again, those seeking amnesty, like those seeking employment-based visas, will vary in their financial resources and thus in their ability to bid. But here too, those whose employers, family members, and community organizations are most anxious for them to gain amnesty will help to support their bids—and their eagerness to do so would itself signal the applicant's desirability. Although this would place the less well-connected of the undocumented at a relative disadvantage, recall that I am proposing this merely as a prioritization technique, not as the exclusive method for obtaining amnesty.

D. Private Participation in Enforcement

The persistent failures of federal immigration enforcement are well-documented.⁹⁸ The most serious of these failures are its chronic ineffectiveness in apprehending illegal entrants at the border and visa abusers in the interior, its inability to reduce the very high absconding rate by aliens whom the government does not detain pending removal proceedings or pending actual removal, and the large number of criminal aliens in government custody or under criminal justice system supervision who are not promptly removed from the United States. Because so little progress has been made in these areas despite large infusions of budget, new personnel, and legal authority, I conclude that the problem is more

98. See, e.g., Peter H. Schuck, *Law and the Study of Migration*, in *MIGRATION THEORY: TALKING ACROSS DISCIPLINES*, *supra* note 85, at 239, 246–50; Schuck & Williams, *supra* note 61, at 399.

or less endemic. Some underenforcement is surely optimal.⁹⁹ But whichever level of effective immigration enforcement the federal government actually targets, it seems manifestly unable or unwilling to provide it.

There is good reason, then, to consider ways to augment federal enforcement with resources drawn from other quarters. There are two possibilities. I have argued elsewhere for greater state and local involvement in immigration enforcement.¹⁰⁰ I have also urged serious consideration of a larger role for private profit-motivated agencies in monitoring, identifying, and pursuing removable aliens.¹⁰¹ Jeffrey Manns, drawing on the theoretical law-and-economics literature on gatekeepers, has developed this idea in imaginative detail.¹⁰² He gives special attention to marshalling private incentives to implement employer sanctions, a program that is inevitably central to immigration enforcement but one that has been notoriously ineffective.¹⁰³

E. Raise Visa Processing Fees

The logic of this approach is similar to that of the auctions and so requires little additional discussion. Although some visa processing fees were raised recently, they do not begin to cover the costs of visa administration. Since it is the immigrant who receives by far the greatest economic and other benefits from obtaining a visa, the processing fee should cover a larger proportion of that value, which would also enable the government to hire more staff and reduce backlogs for visas, naturalization, and other immigrant services. There is always political resistance to raising the fees, mainly on the ground that some immigrants cannot afford it. But as between the immigrant who reaps a vast windfall from the visa, and the taxpayer who benefits only indirectly and slightly, both economic principle and common morality dictate that the immigrant should bear most, if not all, of the cost. Provision for fee waivers in unusual hardship cases can be made.

99. Schuck, *Law and the Study of Migration*, in *MIGRATION THEORY: TALKING ACROSS DISCIPLINES*, *supra* note 85, at 249–50.

100. See Schuck & Williams, *supra* note 61, at 458–60; see also Peter H. Schuck, *Taking Immigration Federalism Seriously*, 2007 U. CHI. LEGAL F. 57, 71–77.

101. Peter H. Schuck, *INS Detention and Removal: A White Paper*, 11 GEO. IMMIGR. L.J. 667, 682 (1997).

102. Jeffrey Manns, *Private Monitoring of Gatekeepers: The Case of Immigration Enforcement*, 2006 U. ILL. L. REV. 887, 946.

103. On the ineffectiveness of employer sanctions, see also Schuck, *supra* note 97, at 83.

V. CONCLUSION

Any rigorous moralizing about immigration must ultimately grapple—among other things—with its empirical consequences. The analysis in Parts II and III indicates that although our understanding of those consequences is growing, our ignorance remains vast. Until that halcyon day when social scientists can dispel this ignorance—and perhaps even then—the nation’s economic growth will constitute a major social goal and our immigration policy will be a very important means for achieving it.¹⁰⁴ That being so, we are well-advised to consider, as Part IV has sought to do, ways in which economic incentives can be used to make immigration policy a more effective instrument in advancing that goal without unduly sacrificing others. It certainly is not the only goal worth pursuing, but it is probably the one on whose specific meanings and general desirability a diverse nation can most readily agree.

104. This Article was written before the global economic crisis struck in the summer and fall of 2008. This crisis, of course, only increases each society’s stakes in using immigration policy to enhance economic growth, subject to the other goals and constraints discussed above.

