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Liberal Paradox: Immigrants, Markets and Rights in the United States, The

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With the gradual rollback of the national origins quota system in the 1950s and its eventual repeal in 1965, U.S. immigration policy became increasingly liberal and expansive. This liberalization continued throughout the 1980s and was reinforced by the passage of the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990, both of which opened the door even wider to immigration. But shortly after the passage of the 1990 Act, the political and economic climate changed dramatically, ushering in a new era of restrictionism. What sustained the long period of expansion in U.S. immigration and refugee policy? And what has led to a rise in restrictionist policies, whether in the area of legal or illegal immigration in the 1990s and early 2000s?

One explanation is that immigration is closely tied to the business cycle and the performance of labor markets in the sending and receiving countries. What we have found is that economic (push-pull) forces explain much of the variation in levels of immigration (flows) until the 1950s. From the end of the 1950s, however, policy effects (on flows) have increased. We argue that these increasing effects and the break with the business cycle are linked to the rise of rights-based politics and an increasingly active federal judiciary which moved away from the tradition of non-interference in immigration policy.

We are able to document the rise and decline of "rights-markets" coalitions through an analysis of roll-call voting in Congress. We demonstrate the impact of civil rights politics on immigration and refugee policy from the 1965 Act through the 1986 and 1990 Acts. The coalitions which formed around issues of rights and markets (votes on trade and immigration in particular) create what can be called "strange bedfellows" coalitions, of left-liberals and libertarian-conservatives. These coalitions helped to sustain liberal immigration and refugee policies until the end of the Cold War, but the end of the Cold War has led to the breakdown of these coalitions, leading to new isolationist and protectionist tendencies in foreign policy.
I. INTRODUCTION

SINCE the end of World War II, immigration in the core industrial democracies has been increasing. The rise in immigration is a function of market forces (demand-pull and supply-push) and kinship networks, which reduce the transaction costs of moving from one society to another. These economic and sociological forces are the necessary conditions for migration to occur, but the sufficient conditions are legal and political. States must be willing to accept immigration and to grant rights to outsiders. How then do free market, industrial democracies like the United States regulate migration in the face of economic forces that push them toward greater openness, while security concerns and powerful political forces push them toward closure? These states are trapped in a "liberal" paradox—in order to maintain a competitive advantage, they must keep their economies and societies open to trade, investment, and migration.1 But unlike goods, capital, and services, the movement of people involves greater political risks.2 Since the end of World War II, international economic forces—trade, investment, and migration—have been pushing the industrial democracies toward greater openness, while the international state system and powerful (domestic) political forces push states towards greater closure.3 This is a liberal paradox because it highlights some of the contradictions inherent in liberalism—the quintessentially modern political and economic philosophy and a defining feature of globalization. States must maintain control of their borders (a degree of political and legal closure), else they risk undermining the social contract and the liberal state itself.4 The central challenge is how to maintain openness and at the same time protect the rights of individuals and citizens as well as denizens.

With the gradual rollback of the national origins quota system in the 1950s and its eventual repeal in 1965, U.S. immigration policy became increasingly liberal and expansive. This liberalization continued throughout the 1980s and was reinforced by the passage of the Immigration Reform and Control Act ("IRCA") of 19865 and the Immigration Act of 1990,6 both of which opened the door even wider to immigration. A new round of restrictionism began in the 1990s with the passage of Proposition 187 in California,7 designed to limit access of immigrants to public services, and the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996,8 which curtailed welfare and due process rights

2. Id. at 8.
3. Id. at 41.
4. Id. at 10.
of legal and illegal immigrants. Despite these new restrictionist policies, the fourth wave of immigration in U.S. history continued unabated into the twenty-first century. What has sustained this long period of expansion in U.S. immigration policy?

One explanation is that immigration is closely tied to the business cycle and the performance of labor markets in the sending and receiving countries. What we have found is that economic (push-pull) forces explain much of the variation in levels of immigration (flows) until the 1950s. From the end of the 1950s, however, policy effects (on flows) have increased. We argue that these increasing effects and the break with the business cycle are linked to the rise of rights-based politics and an increasingly active federal judiciary, which moved away from the tradition of non-interference in immigration policy. We are able to document the rise and decline of “rights-markets” coalitions through an analysis of roll-call voting in Congress. We demonstrate the impact of civil rights politics on immigration and refugee policy, from the 1965 Act through the 1986 and 1990 Acts. The coalitions which formed around issues of rights and markets (votes on trade and immigration in particular) create what has been called “strange bedfellow” coalitions of left-liberals (Democrats) and libertarian-conservatives (Republicans). These coalitions helped to sustain liberal immigration and refugee policies until the end of the Cold War, but the end of the Cold War has led to the breakdown of these coalitions.

In much of the immigration literature, politics and states are assigned, at best, a marginal role in migration theory. According to the logic of push-pull, changing economic conditions in sending and receiving countries largely dictate levels of immigration in countries like the United States. Likewise, the sociological literature on immigration stresses the growth of transnational, informational, and kinship networks which facilitate cross-border movements. Since there has been a virtually unlimited supply of migrants ready to cross international borders in the postwar period (a more or less constant supply-push), most adherents to the eco-

nomic model contend that shifting demand for foreign labor is the primary determinant of immigration flows (a variable demand-pull). According to this logic, major shifts in the volume of immigration are driven by the labor market demands and the business cycles in receiving countries. At the same time, the economic model assumes that government actions designed to control immigration are of little or no explanatory importance. Either policy interventions by national states merely rubber-stamp labor market demands and the business cycle, or they defy these determining economic forces. Sociological theories of immigration to some extent replicate the basic microeconomic logic of push-pull, but with the major innovation that international migration is heavily dependent on the development of informational and kinship networks between the sending and receiving communities. Neither economic nor sociological arguments leave much room for the state or public policy as major factors affecting immigration flows.

Our research on immigration to the United States demonstrates the independent effects of policy change on immigration flows. Employing a time-series model that enables us to separate economic and political effects on immigration to the United States from 1891 to 2003, we find that both policy interventions and changing U.S. economic conditions have a significant impact on legal immigration flows. In particular, our model suggests that shifts in unemployment and Gross Domestic Product ("GDP") had a sizeable and significant effect on levels of legal immigration until 1945. During the postwar years of 1946 to 2003, however, the effects of unemployment and GDP on immigration flows weaken over time, while the impact of government interventions significantly increase.

These findings, we argue, are supported by considerable evidence that federal policies, which significantly influenced immigration flows after World War II, won important support from national officials whose goals reached well beyond the demands of the labor market or business cycle. Against the backdrop of Cold War competition, executive and congressional officials after 1945 came to view immigration control as an important instrument for advancing American foreign policy objectives. Anti-communism animated contending immigration policy camps in the late 1940s and 1950s. Congressional isolationists successfully defended biased national origins quotas and established new ideological exclusions in the early 1950s, despite economic conditions that were conducive to large-scale immigration. By contrast, internationalists in the White

15. See id. at 343–44.
House and Congress expanded refugee admissions and ended Asian exclusion in order to enhance American power and prestige abroad.

By the 1960s, New Frontier and Great Society reformers dismantled restrictive national origins quotas in the name of advancing racial justice and equal rights. Immigration reform in 1965 expanded alien admissions to reunify families and provide haven for refugees fleeing communist regimes, and to offer new immigration opportunities for ethnic and racial groups long discriminated against in American immigration law. During the 1980s, new reforms more dramatically expanded immigration. They were propelled by an unlikely coalition of liberal lawmakers who embraced human rights and ethnic fairness in national immigration policy and free market conservatives in Congress and the executive branch who saw immigration restriction as antithetical to "regulatory relief" and open markets. Finally, the federal courts became increasingly active after the 1960s in protecting the due process rights of aliens in admissions, asylum, and deportation proceedings. The development of American immigration policy in the postwar era, then, captures changing U.S. economic conditions as often less consequential than policy interventions by various actors of the national state. Indeed, as we shall see below, national officials at times have promoted immigration policies that run counter to economic trends in the United States.

The strong impact of changing U.S. economic conditions on immigration flows before 1945 and the larger significance of state actions in subsequent years underscore the need for greater theoretical balance in the scholarly literature on immigration. In the pages that follow, we will develop the concept of the migration state and examine U.S. immigration trends from the late nineteenth century until 2003 in light of labor market dynamics and the business cycle. We then look at the emergence of the United States as a migration state and the rise of rights-based politics and rights-markets coalitions in the period from 1945 to 1990. These coalitions in the U.S. Congress are key to understanding immigration policy outputs and outcomes. The argument can be generalized to cover other liberal democracies in Western Europe, Canada, and Australia.

II. IMMIGRATION AND THE U.S. ECONOMY: BEFORE AND AFTER WORLD WAR II

Many immigration scholars ignore politics and presume or assert that immigration is a function of market forces, as defined by the supply-push of sending countries and the demand-pull of receiving countries. While supply-push factors in sending countries undoubtedly influence immigration flows, an unlimited supply of migrants have been ready to cross national borders when opportunities have presented themselves in receiving

countries throughout the past century. As a result, changing economic conditions in receiving countries are assumed to have the greatest effect on immigration. Martin and Midgley, for instance, neatly capture these theoretical predilections and findings in much immigration research. Their work aims to show that the number of immigrants who have come to the United States over time has fluctuated largely with economic conditions. Such assumptions are not reserved to academic circles; they abound in popular discourse and in the media. Popular newspapers and magazines such as *The Economist* and *The Wall Street Journal* have observed that immigration to the United States is best understood as a function of changing economic conditions.

But it is our contention that the state and public policy have over time had an important impact on flows, and we seek to understand the relationship between immigration and the business cycles in the United States. We want to know how the actions and policies of the American state have influenced immigration independent of economic conditions. Figures 1-4 depict trends in legal immigration to the United States, percent change in real GDP, and fluctuations in the unemployment rate. Immigration decreased from about 600,000 per annum in 1892 to 250,000 by the end of the decade. This decline coincided with the recession spanning from 1893 to 1897, affirming the responsiveness of immigration flows to economic conditions.

Immigration rebounded strongly at the turn of the century, as did the economy, reflected in positive growth trends, and shorter and shallower economic cycles (excepting 1908). Meanwhile, in the labor market, unemployment rates were historically well below the average. In short, demand-pull factors were especially conducive, and immigration flows reached record levels. Indeed, the foreign-born population of the United States climbed to fifteen percent, an all-time high. No major immigration legislation was passed during this period except for literacy tests imposed by Congress in 1917—restrictions that were rendered moot by the effects of World War I, which, parenthetically, abruptly ended the so-called "third wave" of American immigration.

In the interwar years, immigration revived but fluctuated markedly—perhaps in reaction to the volatile economic conditions of the "Roaring '20s". The Immigration Act of 1924 (also known as the Johnson-Reed Act) brought the nation's first permanent and sweeping numerical limits on immigration. These restrictive measures codified the *national origins quota system*, writing racial bias (in favor of northern and western Europeans) into law. The new measures also introduced skill-based,
FIGURE 2. LEGAL IMMIGRATION TO THE UNITED STATES, FY 1946-2003
FIGURE 3. UNEMPLOYMENT, RATE IN THE UNITED STATES, 1946-2003
human capital criteria into immigration policy for the first time.\textsuperscript{25} Nevertheless, countervailing economic forces (for example, low unemployment) apparently dampened the effects of the 1924 Act. The migration mix began to shift away from Europe and toward the Western Hemisphere, with Canadians and Mexicans comprising the largest number of newcomers.

The onset of the Great Depression in 1929 demonstrates quite clearly the powerful effect of business cycles on immigration flows in the pre-1945 period. Demand-pull forces ceased virtually overnight, as the economy shrank and unemployment soared (see Figure 1). Annual immigration remained markedly low during the economic hard times of the 1930s. The recovery of the American economy during World War II led to a rapid decline in unemployment rates and a surge in GDP, but no real increase in legal immigration. Adherents of the push-pull model can account for these outcomes by emphasizing the anomalous and exceptional effects of global warfare that cut the United States off from traditional sources of immigrant labor. Tellingly, various U.S. employers turned to Mexican and Central American guestworkers to address growing labor market demands—a trend that was codified in the 1942 Bracero program that continued until 1963.\textsuperscript{26} As a way of further illustrating the relationship between immigration and the business cycle during the period from 1890 to 1945, bivariate correlations were calculated. These reveal no significant association between percent change in real GDP and immigration flows; however, there is a correlation ($r = -0.425$; significant at .01 level) with changes in the unemployment rate. This suggests that immigration was sensitive to demand-pull forces, even though the overall performance of the American economy (in terms of national income) had less effect in this regard.

During the postwar years of 1945 to 2003, we see in Figure 2 that immigration has slowly trended upward for virtually the entire era, producing the so-called “fourth wave” in the 1970s and 1980s. The United States is now well into the fourth great wave of immigration in its history. Strikingly, immigration flows did not expand markedly in the early 1950s (1950 and 1952 witnessed declining immigration numbers), despite significant increases in GDP and new lows in unemployment—economic conditions deemed conducive by the economic push-pull model to increased immigration. Just as intriguing is the gradual increase in immigration during the 1970s and early 1980s, a time when unemployment levels were rising in connection with the two oil shocks and the steep recession that followed. U.S. immigration, however, began to soar in the late 1980s amid declining unemployment and fluctuating GDP, whereas sharply ris-

\textsuperscript{25} § 6(a)(2), 43 Stat. at 155.

\textsuperscript{26} See Kitty Calavita, Inside the State: The Bracero Program, Immigration, and the I.N.S. 18–19 (1992).
ing immigration continued unabated in the 1990s, despite increased unemployment and substantial drops in GDP.

If we look at simple bivariate correlations for the postwar period (1946 to 2003), we again find no significant relationship between percent change in GDP and flows. Although there seems to be a significant relationship between labor market performance (as measured by the unemployment rate) and immigration flows, the correlation (0.27, significant at the .01 level) is the opposite of what we would expect. How can we account for U.S. immigration trends over the past century that defy or elude the predictions of the economic push-pull model? The influence of policy interventions by the American government on immigration may help us fill in some of these theoretical gaps, a subject to which we now turn.

III. THE ROLE OF POLICY IN REGULATING IMMIGRATION

Throughout its history, the United States has relied heavily upon immigration for purposes of westward expansion, settlement, colonization, and economic development. It is no exaggeration to say that immigration has played a critical role in national development and the U.S. grand strategy, and the country is now well into the fourth great wave of immigration in its history. The question we seek to answer in this section is to what extent was immigration a function of economic pull, growth, and development—mirroring the business cycle—and to what extent was it promoted, managed, and regulated by the American state.

From the 1890s through World War II, levels of immigration to the United States correspond closely with the performance of the American economy. Indeed, the time-series model we present below suggests that shifts in levels of unemployment and real GDP were among the most significant influences on annual immigration totals before 1945. Yet even as the traditional push-pull model goes far in helping us to explain U.S. immigration trends before mid-century, the unprecedented activism of the national state in these decades had a marked effect on the nature of immigration flows. The dramatic decline of immigration during American involvement in the First and Second World Wars highlights the extent to which the U.S. government’s pursuit of foreign policy objectives may profoundly transform migration trends. Moreover, if changes in the American labor market and business cycle before mid-century go far in helping us to explain how many immigrants were admitted in these years—the immigration volume—they do not help us understand significant shifts in who was granted entry during these decades—the immigration composition.

For most of the nineteenth century, the U.S. federal government maintained an essentially laissez-faire immigration policy, with most regula-
tory authority devolving to states and localities.\textsuperscript{27} When the national state first developed the legal and administrative means to regulate immigration in the late nineteenth century, its efforts to control immigration were often motivated as much by a devotion to ethnic and racial hierarchy as by a concern for the country’s economic and national security interests.\textsuperscript{28} Against the backdrop of intense electoral competition during the post-Reconstruction period, congressional and executive officials of both parties clamored to curry favor with Sinophobic voters of the Far West by enacting the first Chinese exclusion laws in the 1880s.\textsuperscript{29} During the interwar years, the economic impact of immigration figured prominently in the minds of national officials, and they wasted no time in slowing immigration to all but a trickle during the 1920s and ‘30s. But the centerpiece of this period’s restrictive immigration policies—a so-called national origins quota system—was deeply informed by a new scientific theory—eugenics—that reinvigorated old distinctions between desirable and unworthy immigrants on the basis of race, ethnicity, and religion.\textsuperscript{30}

The new quota system was explicitly planned to favor northern and western European immigrants and to exclude Asians and Africans, as well as southern and eastern Europeans. At the same time, Mexican migrants were viewed by most officials as a returnable labor force—due to a contiguous border—which could meet the nation’s shifting demands for low-skill labor without making any permanent claims for membership in U.S. society.\textsuperscript{31} Until the 1960s, U.S. immigration essentially reflected these policy goals: northern and western Europeans comprised most overseas immigration to the country, while Mexican and other Latin American newcomers were typically admitted as guestworkers subject to removal whenever their labor was not in demand.\textsuperscript{32}

\begin{thebibliography}{99}
\bibitem{28} See King, \textit{Making Americans}, \textit{supra} note 24, at 163–64; King, \textit{The Liberty of Strangers}, \textit{supra} note 24, at 60–61; Rogers M. Smith, \textit{Civic Ideals: Conflicting Visions of Citizenship in U.S. History} 138 (1997); Fuchs, \textit{supra} note 27, at 114.
\bibitem{31} See Calavita, \textit{supra} note 26, at 21; Mark Reisler, \textit{By the Sweat of Their Brow: Mexican Immigrant Labor in the United States}, 1900-1940, at 12 (1976).
\end{thebibliography}
state's influence on immigration flows before 1945, then, captures not only its responsiveness to changing economic conditions, but also its pursuit of foreign policy interests and ascriptive and hierarchic visions of racial order, which cannot be explained simply in economic terms.

Whereas shifts in the U.S. business cycle comport well with immigration trends before the Second World War, they have diverged sharply on several occasions during the past sixty years. Despite an impressive postwar economic recovery, underscored by low unemployment rates and surges in GDP during the 1950s, the modest levels of U.S. immigration remained relatively stable. Immigration flows not only failed to keep pace with the postwar economic expansion as predicted by the push-pull model, but they in fact declined in the early 1950s. To understand declining immigration amidst economic growth requires knowledge of how government policies shaped immigrant admissions, independent of postwar economic developments. Although both the Truman and Eisenhower administrations called for more expansive immigration policies, their efforts were derailed by restrictionist committee chairs in Congress who vigilantly defended national origins quotas. During the early 1950s, anticommmunist isolationists in Congress secured legislation that reaffirmed national origins quotas while constructing new immigration barriers intended to tighten national security. In short, McCarthyism overshadowed economic growth in the immigration realm. Later in the 1950s, the Eisenhower administration took autonomous executive action to grant admissions above the existing quota ceiling, not in response to changing economic conditions, but to offer refuge to Hungarians and others fleeing communism—in this instance foreign policy trumped immigration policy.

The demise of the national origins quota system finally came with the enactment of the Hart-Celler Act of 1965, an event that was undoubtedly fortified by national prosperity. But reformers in the executive and legislative branches had far more than the economic utility of immigration in mind when they embraced a new visa preference system. In making immigration reform an important feature of the Great Society juggernaut, the White House and its congressional allies argued that discriminatory national origins quotas—like domestic racial barriers—undermined American global prestige and influence amidst urgent Cold War competition. Civil rights and foreign policy interests loomed large in immigration policy-making of the 1960s. The 1965 law replaced national origin quotas with a new emphasis on uniting families, providing an unlimited number of immigrant visas to immediate family members of U.S. citizens and most numerically-limited visas to other close relatives of citizens and the immediate family of permanent resident aliens. Re-

35. Tichenor, supra note 33, at 349.
main ing visa slots were allocated to refugees and skilled workers. Policy-makers were careful to stipulate that the 1965 immigration reform was strictly designed to remove ethnic, racial, and religious biases from the immigration code—not to expand the volume of annual legal admissions.

Although expected by its architects to primarily benefit European migrants, the family-based system established in 1965 would spur unprecedented Third World immigration to the United States as a result of unanticipated chain migration during the next quarter-century. When asked at a Senate hearing whether the new law would alter the composition of immigrant flows, bringing more immigrants from Latin America and Asia, then-Attorney General Robert Kennedy insisted that the law would have little impact on flows from non-traditional areas. But we now know that the Hart-Celler Act contributed to a dramatic shift in the composition of U.S. immigration, even though it did not substantially expand legal immigration. Somewhat surprisingly, annual admissions increased only incrementally during the decade following its passage (see Figure 2).

Against the backdrop of economic stagnation in the 1970s, characterized by high levels of inflation and unemployment, public opinion strongly supported significant decreases in legal immigration. Illegal immigration also drew attention as a prominent policy problem. New calls for immigration restriction and stronger border control were consistent with the economic logic of the push-pull model. Economic stagnation and decline in the United States and other receiving countries in the 1970s brought renewed pressure for lower levels of immigration. Yet the push-pull model could not anticipate formidable political resistance from a number of strategically-situated lawmakers and special interests, like the growers in California and the Southwest, who supported large-scale immigration and who postponed policy action during economic hard times by brokering support for a bipartisan commission to study immigration—the Select Commission on Immigration and Refugee Policy.

After several years of political stalemate, Congress finally enacted the Immigration Reform and Control Act ("IRCA") in 1986 to address illegal immigration. Initially designed to discourage unlawful entries by se-

37. Id. § 3.
39. Id. at 77.
40. Id. at 69.
41. JOEL S. FETZER, PUBLIC ATTITUDES TOWARD IMMIGRATION IN THE UNITED STATES, FRANCE, AND GERMANY 42-43 (2000).
verely penalizing U.S. employers who knowingly hired undocumented aliens, the law's final employer sanctions provision lacked sufficient teeth to meet its purposes.\textsuperscript{44} IRCA's most significant legacy was an amnesty program that granted legal status to record numbers of undocumented immigrants residing in the country.\textsuperscript{45} Troubled by the civil liberties violations and discriminatory effect of past deportation campaigns, national officials embraced amnesty as a more palatable policy solution.\textsuperscript{46} This would not be the case in the failed immigration reforms early in the twenty-first century. In fact, the inability of the federal government to implement employer sanctions and step up internal enforcement was a major reason for opposition to amnesty in the 2007 immigration debate.\textsuperscript{47}

Even as illegal immigration continued unchecked and unemployment levels swelled as a result of recession in the early 1990s, national policy-makers passed the Immigration Act of 1990, which expanded immigration admissions.\textsuperscript{48} Increasing annual visas for immigrants with family ties to U.S. citizens and permanent resident aliens, those with needed job skills, and those from countries disadvantaged under the 1965 preference system, policy-makers defied the push-pull model in 1990 by substantially expanding legal immigration opportunities despite an important economic downturn.\textsuperscript{49} However, increased public concern regarding both legal and illegal immigration—especially the passage of the California ballot initiative, Proposition 187, in 1994\textsuperscript{50}—prompted national policy-makers to consider restrictive immigration measures. In 1996, Congress came close to passing a bill that would have significantly scaled back annual legal immigration against the backdrop of robust economic growth and scant unemployment. In the end, however, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") targeted immigrants (both legal and illegal) through the mechanism of welfare reform and restriction of due process rights.\textsuperscript{51} But, thanks to the intense lobbying efforts of high-tech industries, such as Intel and Microsoft, legal immigration levels were left unchanged, and skilled immigration received a boost through the H1-B program, while new measures were adopted to curtail illegal immigration. Apart from increased border controls and a small pilot program to force employers to check the legal status of workers before hiring them, the main impact of the IIRIRA was to cut Aid for Dependent Children ("AFDC") and Supplemental Security Income ("SSI") for legal immigrant residents—cutbacks that were, at the insis-

\begin{itemize}
\item \textsuperscript{44} Id. § 101.
\item \textsuperscript{45} Id. § 201.
\item \textsuperscript{46} Tichenor, supra note 33, at 342.
\item \textsuperscript{47} See Robert Pear, '86 Law Looms Over Immigration Fight, N.Y. TIMES, June 12, 2007, at A15.
\item \textsuperscript{49} Id. §§ 111-12, 121-24, 131-34; see also Peter H. Schuck, The New Immigration and the Old Civil Rights, THE AMERICAN PROSPECT, Fall 1993, at 102, 103-04.
\item \textsuperscript{50} Proposition 187, 1994 Cal. Legis. Serv. Prop. 187 (West).
\end{itemize}
tence of the Clinton administration, eventually restored for certain
groups of resident aliens.

The consequential interests and actions of the American state concern-
ing immigration more than occasionally have transcended the economic
predictors of the push-pull model, as well as straight interest-based expla-
nations à la Freeman.\textsuperscript{52} Reducing U.S. immigration levels to a basic eco-
nomic causality or to a strict interest group dynamic is inadequate in both
explanatory and predictive terms. The United States, like other major
immigrant receiving countries in the post-World War II era, is trapped in
a liberal paradox, needing to maintain adequate supplies of foreign labor
(skilled and unskilled), while struggling to maintain control of its borders,
preserve the social contract, and protect the rights of immigrants. We
gain little by denying the powerful influence of changing domestic eco-
nomic conditions over immigration. But understanding the political
economy of immigration requires us to weigh the relative importance of
economic and political factors. To understand and distinguish the influ-
ence of economic forces and government actions on U.S. immigration re-
quires us to develop a preliminary (multivariate) model that incorporates
the two.

IV. LEGAL IMMIGRATION AND BUSINESS CYCLES

Toward this end, we constructed a time-series model that enabled us to
separate economic and political effects. The results of these analyses are
presented in Tables 1-3. We used the logarithm of legal immigration flows
(the dependent variable) in our models in order to meet the model re-
quirements of linearity and stationarity. We then calculated an impact
range from the coefficients of each predictor variable by multiplying the
coefficient by the highest and lowest value of that variable. This impact
range allowed for a greater ease of interpretation and discussion of the
model results. Both the coefficients and the impact range are reported in
the tables.

The first thing to note is that, conforming to the conventional wisdom,
economic conditions in the receiving country—in this case the United
States—have a significant impact on legal immigration flows. Specific-
cally, demand-pull forces, as measured by unemployment rates, had a
modest impact on flows in the United States for the period of 1891 to
2003. The coefficient which assesses the influence of a unit change (here
1\%) in unemployment on immigration flows (logged annual legal immi-
gration) is \(-.03\) and significant at the .05 level. In the model, we con-
trolled for a variety of policy interventions (specified as the five most
important immigration acts passed during this time-span), as well as the
dampening effects of World Wars I and II. Note that labor market condi-
tions have almost twice the impact of changes in the other predictor, real
GDP, which, again, conforms to the economic literature.

\textsuperscript{52} See Freeman, supra note 42, at 885.
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<th>Impact</th>
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<th>Impact Range (low-high)</th>
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<td>-.40 -8.22</td>
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<td><strong>Real GDP</strong></td>
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<td>(% change)</td>
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<td></td>
<td>(.05)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

N=113  \( r^2 = .90 \)  D-W=1.8  F=125.7  Sig.=.00  
DV=logged annual legal immigration

* Significant at the .05 level, one directional test (standard errors in parentheses)  
** Significant at the .10 level

Immigration policies changed in the post-World War II period to reflect the rise of rights-based politics, a new legal culture, and more expansive definitions of citizenship and membership, especially during the 1950s and 1960s. To take account of the rise of rights-based politics, we segmented the data into two periods (pre- and postwar). Table 2 reports the effects of political and economic change on flows from 1891 to 1945. Once again, we found a highly significant labor market effect, while real GDP registered no statistically significant effect on legal immigration flows. Percent change in unemployment had a strong, inverse relationship with legal immigration flows (\( \beta = -.03 \), significant at the .05 level). The corresponding impact range indicates that for every one percent change in unemployment, there was a decrease in the logged values of immigration ranging from -.04 to -.75 of a one point change. When we

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53. See Schuck, supra note 18, at 12; Cornelius, Martin & Hollifield, supra note 9, at 3, 8–9.
Table 2.
Labor Market and Policy Effects on Immigration, 1891–1945

<table>
<thead>
<tr>
<th></th>
<th>Impact</th>
<th>T</th>
<th>Impact Range (low-high)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor Market (% Unemployed)</td>
<td>-.03</td>
<td>-2.8*</td>
<td>-.04 -.75</td>
</tr>
<tr>
<td>Real GDP (% change)</td>
<td>-.01</td>
<td>-.76</td>
<td>.09 -.13</td>
</tr>
<tr>
<td>WWI</td>
<td>-.56</td>
<td>-2.9*</td>
<td>0.0 -.56</td>
</tr>
<tr>
<td>WWII</td>
<td>-.32</td>
<td>-1.5</td>
<td>0.0 -.32</td>
</tr>
<tr>
<td>1924 Johnson-Reed Act</td>
<td>-.46</td>
<td>-2.5*</td>
<td>0.0 -.46</td>
</tr>
<tr>
<td>Lagged Logged Immigration</td>
<td>.71</td>
<td>8.8*</td>
<td>7.1 9.93</td>
</tr>
</tbody>
</table>

N=55 r2=.90 D-W=1.8 F=82.4 Sig=.00
Dependent Variable: logged annual immigration

* Significant at the .05 level, one directional test (standard errors in parentheses)
** Significant at the .10 level

refer back to the actual annual immigration levels, this corresponds to the level range from a low of 23,068 immigrants in this period to a high of 1,285,349 immigrants. In the pre-war period, percent change in real GDP had no statistical significance.

We also controlled for the effects of World Wars I and II and the 1924 National Origins Act (the Johnson-Reed Act), which wrote into law the principle of racial/ethnic exclusivity. The First World War had an obvious and highly significant effect on immigration flows, as did the 1924 policy intervention. We measured policy interventions as dummy variables (0,1), so that the calculation of the minimum value will always be zero. The ranges for both World War I and for the 1924 Johnson-Reed Act reflect our expectations. The First World War curtailed flows during this period (as evidenced by the negative sign), and the 1924 Act also reduced immigration dramatically (with a coefficient of -.46), showing the power of the state to restrict immigration flows during this period, marked by isolationism (in foreign policy), protectionism (in trade policy), and restriction of immigration. World War II, however, did not have a statistically significant impact on flows. This meets our expectations that as policies and World War II curtailed immigration flows, these

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54. TICHENOR, supra note 17, at 145–46.
55. Id. at 138, 144–46.
56. See id. at 43–45.
Table 3.

<table>
<thead>
<tr>
<th></th>
<th>Impact (low-high)</th>
<th>T</th>
<th>Impact Range (low-high)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor Market (Unemployed)</td>
<td>0.02 (.02)</td>
<td>.9</td>
<td>0.06 .18</td>
</tr>
<tr>
<td>Real GDP (% change)</td>
<td>-0.01 (.01)</td>
<td>-0.7</td>
<td>0.08 .06</td>
</tr>
<tr>
<td>1952 McCarran-Walter Act</td>
<td>0.00 (.09)</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>1965 Hart-Celler Act</td>
<td>0.24 (.11)</td>
<td>2.2*</td>
<td>0.0 .24</td>
</tr>
<tr>
<td>1986 IRCA/1990 Imm. Act</td>
<td>0.30 (.10)</td>
<td>3.1*</td>
<td>0.0 .3</td>
</tr>
<tr>
<td>Lagged Logged Immigration</td>
<td>0.55 (.09)</td>
<td>5.8*</td>
<td>5.73 7.86</td>
</tr>
</tbody>
</table>

N=58  r2=.90  D-W=1.78  F=93.56  Sig=.00
Dependent variable: logged annual legal immigration

* Significant at the .05 level, one directional test (standard errors in parentheses)
** Significant at the .10 level

 interventions decreased the capacity of prior immigration streams to draw more immigrants into the country. Mean immigration for the entire period averaged 4.3% per annum. Thus, even when controlling for policy interventions and both world wars, labor market conditions had a sizeable and significant impact on immigration flows in the prewar period—a reflection in part of the contracting of the U.S. economy during the Great Depression.57

Table 3 reports the results for the period from 1946 to 2003. Several interesting and counterintuitive findings stand out. Tellingly, economic demand-pull effects in the United States continue to weaken over time, despite a more highly integrated global labor market, associated improvements in transportation and communication, and more efficient migration networks much in evidence.58 Indeed, the coefficients for unemployment and real GDP change showed no significant effect for the postwar period. The McCarran-Walter Act of 195259 was not statistically significant. The contours of the Act corroborate the statistical evidence. The McCarran-Walter Act resulted in only marginal changes to key restrictionist quota

58. See Massey et al., supra note 13; Massey, Durand & Malone, supra note 16, at 145–47; Sassen, supra note 13, at 40, 76–77.
provisions of the 1924 National Origins Quota Act.\textsuperscript{60}

A number of policy interventions, by contrast, were significant. Surprisingly, the Immigration and Nationality Act Amendments of 1965 (Hart-Celler),\textsuperscript{61} which often is cited as the most important immigration reform since the 1924 law,\textsuperscript{62} had less of an empirical effect on legal immigration flows than other postwar reforms. The caveat, of course, is that the 1965 Act led to a gradual change in the composition of these flows by stimulating family unification (which was, after all, the purpose of the law) and encouraging larger flows from non-European sources (which was an unintended consequence).\textsuperscript{63} Two major immigration reforms of the late twentieth century, the Immigration Reform and Control Act of 1986 (IRCA)\textsuperscript{64} and the 1990 Immigration Act,\textsuperscript{65} however, combined to have an influence on legal immigration that simply dwarfed all others modeled here. In sum, our model shows the significant influence of economic factors on legal immigration until 1946 and the growing impact of government actions on flows in the postwar period. Our time-series analysis fundamentally challenges presumptions of much of the economic and sociological literature on immigration—that policy interventions of the American state have had at best a marginal effect on immigration levels. It underscores the influence of both changing economic conditions and government actions on legal immigration during the past century.

While business cycles had a greater impact on legal immigration flows in the period before World War II, as our analysis indicates, the influence of business cycles post-1945 was attenuated to the point of almost disappearing. This can be attributed to three factors: (1) the fact that business cycles after World War II were not as extreme as they were in the first half of the twentieth century (not to mention the nineteenth); (2) macroeconomic regulation during the Keynesian era—roughly 1945 to 1973—helped to smooth out business cycles, and, as we have seen, there was a loosening or liberalizing of immigration policy during this period; and (3) from the 1970s to the present, there has been a steady rise in illegal immigration.\textsuperscript{66} If there was a break between business cycles and legal immigration, this may be attributable in part to the fact that illegal immigration came to play an increasingly important role in the American labor market.\textsuperscript{67} By the time of the 1986 amnesty (under the IRCA), millions of illegal (mostly Mexican) immigrants had found their way into the

\begin{thebibliography}{99}
\bibitem{60} See Reimers, \textit{supra} note 38, at 20.
\bibitem{62} See id. at 91--94.
\bibitem{63} See Massey, Durand \& Malone, \textit{supra} note 16, at 89--90.
\bibitem{64} See id. at 91--92.
\bibitem{65} See Hollifield, \textit{supra} note 11, at 149.
\end{thebibliography}
American labor market. The 1986 amnesty itself can be seen as part and parcel of the rise of rights-based politics, which entailed the extension of civil rights, including rights of residence and citizenship, to denizens as well as legal permanent residents.

**FIGURE 5. LEGAL V. ILLEGAL IMMIGRATION**

![Figure 5. Legal vs. Illegal Immigration](source)

Source: Jeffrey Passel and Roberto Suro, Pew Hispanic Center (2005)

By the 1990s, we can see that illegal immigration came to play an important structural role in the U.S. labor market (see Figure 5). Looking at the composition of immigration flows, as measured by Jeffrey Passel and his colleagues at the Pew Hispanic Center, we can see that by 1990, illegal immigration had come to rival legal immigration, and that, when combined, these flows seem to mirror the business cycle during this period. But a note of caution is in order, because measures of illegal immigration are only estimates based on census data; hence, we do not know the exact level of these flows. Moreover, as we have seen with legal immigration flows, it is important to model policy effects in combination with changing economic conditions. Still, it is important to recognize that the size of the undocumented population in the United States has soared since the 1980s—Passel and his colleagues estimate that almost one-third of the foreign born population in the United States is undocumented.

This development poses an enormous problem for a liberal state like the United States: How long can a liberal democracy afford to leave such a large population outside of the bounds of formal membership in society, and what will the consequences be for the liberal polity itself? The

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68. See Fuchs, *supra* note 27, at 112–13, 123.
70. See *id.* at 3.
debate over immigrant rights shifted dramatically during the 1990s away from legal to illegal immigration.\textsuperscript{71} Does this foreshadow a decline in rights-based politics and a roll-back of civil rights for immigrants, legal as well as illegal? What are the prospects for rights-markets coalitions that were so important in the passage of Cold War immigration laws, from the 1965 Hart-Celler Act to the 1986 IRCA and the 1990 Immigration Act? We now turn our attention to analysis of the changing role of rights-market coalitions and their impact on U.S. immigration policy.

V. RIGHTS-MARKETS COALITIONS

Policy interventions, by themselves, are perhaps not the best measures of the rise of rights-based politics. As a proxy measure of rights-based politics and its impact on immigration flows, we incorporated an electoral (left versus right) effect into our time series model, using Democratic and Republican administrations. Not surprisingly, we found no significant association between the two. Looking at the history of immigration politics and policy, it is hard to find a clear partisan split, with both parties lurching from one consensus to another—for restriction or admission—depending upon the historical context.\textsuperscript{72} Indeed, as noted by Zolberg, immigration politics in the United States often creates strange bedfellows of the (economically liberal) Republican right, and the (politically liberal) Democratic left.\textsuperscript{73}

As a way of exploring this rights-markets dynamic, we looked at the history of voting on civil rights, immigration, and trade in the Congress from the 1964 Civil Rights Act through various trade and immigration measures in the 1990s, including NAFTA and Fast-Track authorization, as well as the 1990 and 1996 immigration acts. What we expected to find was a great deal of consistency in voting on these issues over a roughly thirty-year period, but with a breakdown of the coalition starting in 1990 with the end of the Cold War. To this end, we looked dyadically at voting on eight bills in the Senate and the House: (1) the Civil Rights Act of 1964\textsuperscript{74} and the 1965 Immigration and Nationality Act;\textsuperscript{75} (2) the 1986 Immigration Reform and Control Act ("IRCA")\textsuperscript{76} and the 1988 American Free Trade Agreement ("CAFTA");\textsuperscript{77} (3) the Immigration Act

\textsuperscript{71} See Cornelius, Martin & Hollifield, supra note 9, at 6.
\textsuperscript{72} See Tichenor, supra note 17, at 2, 8; Fuchs, supra note 27, at 124–25; see Tichenor, supra note 33, at 339.
\textsuperscript{73} Zolberg, supra note 10.
of 199078 and the North American Free Trade Agreement ("NAFTA");79
and (4) the act implementing the 1994 General Agreements on Tariffs
and Trade ("GATT")80 and the 1996 Illegal Immigration Reform and Im-
migrant Responsibility Act ("IIRIRA").81

Table 4 displays the comparisons of roll call voting on the bills in the
Senate. By dyad and starting with the Senate, we found that the Civil
Rights Act and the 1965 INA passed by exactly the same vote (76 aye and
18 nay), with the principal opposition coming from Southern Democrats,
who voted (4 to 18) against the Civil Rights Act and (9 to 13) against the
INA. 82% (N=75) voted the same way on both bills, indicative of a grow-
ing rights coalition and a close affinity between issues of civil rights and
immigration, with the boll weevils in the minority.82 Over twenty years
later, the rights-markets coalition, including left-liberal Democrats and
right-liberal or libertarian (free-market) Republicans, is still intact.
When we look at voting on the next dyad, IRCA and CAFTA, the vote
was 75 to 21 for the former and 83 to 9 for the latter. Here, we see more
dissent on the immigration issue and less on trade, perhaps because trade
with Canada is not viewed as terribly threatening for any major interest
or constituency. Still, the coalition is not as strong as it was in the 1960s,
with only 68% of the senators voting the same way on the two bills
(N=54). If we break out seven high immigration states (California, Texas,
Florida, New York, Illinois, New Jersey, and Massachusetts), we find
overwhelming support for both measures, with only one dissenting vote
(on IRCA) among senators from these states.

Voting on the third dyad (the 1990 Act and NAFTA) in the Senate
shows the continued strength of the rights-markets coalition, even well
into the post-Cold War period. The vote was 81 to 17 in favor of the 1990
Act and 61 to 38 for NAFTA. In this case, 71% of the senators (N=45)
voted the same way. In the seven high immigration states (see above),
the vote was more nuanced, 7 to 5 in favor of NAFTA and 10 to 2 for the
1990 Act. In the last dyad (GATT and the 1996 Immigration Act), we see
a reversal in policy direction in regard to the immigration act, but a main-
tenance in the strength of the rights-markets coalition. The votes for the
two acts are 76 to 24 for GATT and 97 to 3 for the new restrictive immi-
gration act, which was supposed to focus on illegal immigration, but in-
cluded provisions for limiting legal immigrant access to social service
benefits. The Republican vote on the IIRIRA was 53 to 0 and 35 to 11
for the enactment of the GATT agreements, compared to the Democratic
tally of 44 to 3 for the 1996 Act and 41-13 for GATT. 73% of the Sena-

289 (1993), implemented by North American Free Trade Agreement Implementation Act,
82. A "boll weevil" is a conservative Democrat who supported Ronald Reagan's poli-
cies and opposed desegregation and the Civil Rights movement.
Table 4.
Roll Call Voting on Rights, Markets, and Immigration Issues, U.S. Senate

<table>
<thead>
<tr>
<th>1964 Civil Rights Act and 1965 Immigration and Nationalization Act</th>
<th>Rights</th>
<th>INA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>76-18</td>
<td>76-18</td>
</tr>
<tr>
<td>D</td>
<td>46-18</td>
<td>52-15</td>
</tr>
<tr>
<td>R</td>
<td>30-0</td>
<td>24-3</td>
</tr>
<tr>
<td>SD+</td>
<td>4-18</td>
<td>9-19</td>
</tr>
</tbody>
</table>

Same-way voting: 82% (N=75)

<table>
<thead>
<tr>
<th>Canadian-American Free Trade Agreement and the Immigration Reform and Control Act</th>
<th>Markets</th>
<th>IRCA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>83-9</td>
<td>75-21</td>
</tr>
<tr>
<td>D</td>
<td>43-7</td>
<td>41-4</td>
</tr>
<tr>
<td>R</td>
<td>40-2</td>
<td>34-17</td>
</tr>
<tr>
<td>SD+</td>
<td>10-0</td>
<td>11-1</td>
</tr>
</tbody>
</table>

Same-way voting 68% (N=54)

<table>
<thead>
<tr>
<th>North American Free Trade Agreement and Visa Quota Restriction Act</th>
<th>Markets</th>
<th>VQR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>61-38</td>
<td>81-17</td>
</tr>
<tr>
<td>D</td>
<td>27-18</td>
<td>40-14</td>
</tr>
<tr>
<td>R</td>
<td>23-10</td>
<td>41-3</td>
</tr>
<tr>
<td>M*</td>
<td>7-5</td>
<td>10-2</td>
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</table>

Same-way voting: 71% (N=45)

<table>
<thead>
<tr>
<th>General Agreements on Tariffs and Trade and Illegal Immigration Reform and Immigrant Responsibility Act</th>
<th>Markets</th>
<th>IIRAIRA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>76-24</td>
<td>97-3</td>
</tr>
<tr>
<td>D</td>
<td>41-13</td>
<td>44-3</td>
</tr>
<tr>
<td>R</td>
<td>35-11</td>
<td>53-0</td>
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<tr>
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<td>10-2</td>
<td>10-2</td>
</tr>
<tr>
<td>M*</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Same-way voting: 74% (N=88)

Notes: +Southern Democrat.
*Major immigration state.
Source: The Congressional Record.


tors voted the same way on both measures (N=88). Thus, at least in the Senate, the rights-markets coalition has remained relatively strong.
throughout the period, with two-thirds to three-fourths of the members voting the same way on issues of rights, markets, and immigration.

However, this pattern does not hold in the House, the body which has a history of being more protectionist on trade issues and more nativist/restrictionist on immigration. Table 5 shows House roll-call voting on these issues. With the first dyad (Civil Rights Act of 1964 and 1965 INA), the House votes were 289 to 126 for Civil Rights Act and 320 to 69 for immigration, again with chief opposition to both bills coming from the boll weevils. Southern Democrats voted 12 to 88 against civil rights and 36 to 52 against immigration. On this dyad in the House, voting consistency was 65% (N=222), not nearly as high as in the Senate.

On the second dyad (IRCA and CAFTA), the tallies in the House were 230 to 166 on the immigration issue (note that IRCA was designed to deal primarily with the problem of illegal immigration) and 366 to 40 on the issue of freer trade with Canada. Unlike the Senate, we do not find strong bipartisan support for these measures. Republicans in the House opposed the IRCA by a vote of 62 to 105, and votes in the seven high immigration states were much closer: 91 to 61 on NAFTA, compared to 136 to 9 on CAFTA. This is almost certainly an interest/constituency driven vote, in the sense that freer trade with Mexico is viewed as much more threatening than freer trade with Canada. 52% of the representatives (N=153) voted the same way on IRCA and CAFTA. We can see more volatility in the coalition and the beginning of the breakdown of bipartisan, rights-markets (or strange bedfellows) coalitions.

On the third dyad (the 1990 Act and NAFTA), the vote on reforming legal immigration was opposed by Republicans (45 to 127), as was the case with the IRCA; but it passed anyway, by a vote of 231 to 192; whereas the vote on NAFTA was a bit closer (234 to 200), with Democrats leading the opposition to this trade agreement—they voted 102 to 156 against it. If we break out the major immigration states, we can see that on balance they favored the immigration bill (101 to 57), as well as the trade agreement (93 to 76). Overall, only 34% of the House members (N=92) voted the same way on the 1990 Immigration Act and NAFTA.

In the fourth and final dyad, we can see significant division between Republicans and Democrats on the 1996 IIRIRA, but more coalition cohesion on the passage of the GATT agreement. IIRIRA passed the House with a 305 to 123 vote. The vote count for GATT was much closer: 288 members supported, while 146 members opposed the measure. Democrats opposed the immigration measure by a vote of 76 to 117, but Republicans overwhelmingly favored the bill (229 to 5). Democratic opposition to GATT was less severe than their opposition to the immigration act. Both Democrats and Republicans favored GATT. The enactment had Democratic support of 167 to 89 and Republican support

84. See Tichenor, supra note 17, at 30–33.
Table 5. Roll Call Voting on Rights, Markets, and Immigration Issues, U.S. House

<table>
<thead>
<tr>
<th>1964 Civil Rights and 1965 Immigration and National Act</th>
<th>Rights</th>
<th>INA</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>289-126</td>
<td>320-69</td>
</tr>
<tr>
<td>R</td>
<td>159-91</td>
<td>202-59</td>
</tr>
<tr>
<td>SD+</td>
<td>136-35</td>
<td>118-10</td>
</tr>
<tr>
<td></td>
<td>12-88</td>
<td>36-52</td>
</tr>
</tbody>
</table>

Same-way voting: 65% (N=222)

<table>
<thead>
<tr>
<th>Canadian-American Free Trade Agreement and the 1986 Immigration Reform and Control Act</th>
<th>Markets</th>
<th>IRCA</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>336-40</td>
<td>230-166</td>
</tr>
<tr>
<td>R</td>
<td>215-30</td>
<td>168-61</td>
</tr>
<tr>
<td>SD+</td>
<td>151-10</td>
<td>62-105</td>
</tr>
<tr>
<td></td>
<td>136-9</td>
<td>91-61</td>
</tr>
</tbody>
</table>

Same-way voting: 52% (N=153)

<table>
<thead>
<tr>
<th>North American Free Trade Agreement and Visa Quota Restriction Act</th>
<th>Markets</th>
<th>VQR</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>234-200</td>
<td>231-192</td>
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<tr>
<td>R</td>
<td>102-156</td>
<td>186-65</td>
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<tr>
<td>M*</td>
<td>132-43</td>
<td>45-127</td>
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<td></td>
<td>93-76</td>
<td>101-57</td>
</tr>
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</table>

Same-way voting: 34% (N=92)

<table>
<thead>
<tr>
<th>General Agreements on Tariffs and Trade and Illegal Immigration Reform and Immigrant Responsibility Act</th>
<th>Markets</th>
<th>IIRAIRA</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>288-146</td>
<td>305-123</td>
</tr>
<tr>
<td>R</td>
<td>167-89</td>
<td>76-117</td>
</tr>
<tr>
<td></td>
<td>121-56</td>
<td>229-5</td>
</tr>
</tbody>
</table>

Same-way voting: 58% (N=340)

Notes: +Southern Democrat.
*Major immigration state.
Source: The Congressional Record.

of 121 to 56 votes. 58% (N-340) of members voted the same way on these two measures.
We can see a distinct difference between the two legislative bodies on trade and migration issues. The rights-markets coalition held together much better in the Senate, even with the end of the Cold War, whereas it fell apart in the House. How can we explain this divergence? At least three explanations are possible: First, the Senate is simply less partisan (more bipartisan) than the House; Second—closely linked to the first—is that the Senate is capable of taking a longer-term-view (that is, less driven by an electoral dynamic) of trade and migration, both of which have important foreign policy dimensions; Third, as noted above, the House is driven more directly by the interests of much smaller districts/constituencies and is, therefore, more sensitive to any distributional, or allocational consequences of trade and migration policies. Moreover, in the House, Democrats seem to form rights-markets coalitions in support of trade and migration issues, but the Republicans, who continue to support freer trade, have lost their attachment to rights, especially in the immigration area. This is born out in congressional votes on welfare reform legislation, particularly the IIRIRA, as the Republican-controlled House pushed for eliminating welfare benefits for legal as well as illegal immigrants.

VI. CONCLUSION

The last half of the twentieth century has marked an important new chapter in the history of globalization. With advances in travel and communications technology, migration has accelerated, reaching levels not seen since the end of the nineteenth century. At the beginning of the twenty-first century, according to the United Nations, roughly 200 million people are living outside of their country of birth or citizenship. Even though this figure constitutes less than three percent of the world's population, the perception is that international migration is rising at an exponential rate, and that it is a permanent feature of the global economy. It seems that economic forces compelling people to move are intensifying. Supply-push forces remain strong, while the ease of communication and travel have reinforced migrant networks, making it easier than ever before for potential migrants to gather the information that they need in order to make a decision about whether or not to move.

To some extent, supply-push forces are constant or rising and have been for many decades. However, demand-pull forces are variable, and

85. Destler, supra note 83, at 68–69; see also Tichenor, supra note 17, at 69.
86. See Schuck, supra note 18, at 3.
as we can see in the case of the United States, political dynamics have an enormous influence on the direction, composition, and flow of immigrants. The emphasis our model places on markets, states, and rights improves on the prevailing economic and sociological theories. It incorporates economic, political, and legal effects in a manner that distinguishes their relative influence and provides a stronger overall account of immigration flows. Economic forces alone clearly are insufficient for this task. Bringing the state into immigration analysis offers greater promise for understanding the direction, composition, and flow of immigrants. As we have seen in our analysis of the U.S. case, electoral, foreign policy, and national security interests figure prominently in immigration politics, while focusing on economics and business cycles offers only a partial explanation at best.

A model that integrates immigrants, markets, and rights is more promising than push-pull or transnational models alone in accounting for the volume and composition of immigration flows. These findings are consistent with other studies of the political economy of immigration in Europe. While they do not contradict the emerging literature in political economy that focuses on interest-based explanations for changes in immigration policy, they do offer us an alternative, rights-based, and institutional explanation for the rapid rise in immigration among industrial democracies in the late twentieth century. The liberal state has played and will continue to play a vital role in regulating levels of immigration.

In the advanced industrial democracies, immigration has been trending upward for most of the post-World War II period, to the point that well over 40% of the world’s migrant population resides in Europe and America, where roughly 10% of the population is foreign born. International migration is likely to increase in the coming decades, unless there is some cataclysmic international event, like war or economic depression. Even after the September 11 terrorist attack on the United States, the liberal democracies have remained relatively open to international migration. Global economic inequalities mean that supply-push forces remain strong, while at the same time, demand-pull forces are intensifying. The growing demand for highly-skilled workers, in the United States and other Organization for Economic Cooperation and Development Countries, and the demographic decline in the industrial democracies, create economic opportunities for migrants. Transnational networks have become more dense and efficient, linking the sending and receiving societies. These networks help to lower the costs and the risks

89. See Hollifield, supra note 1, at 13–14, 169.
90. See Freeman, supra note 42, at 885–86.
91. See Hollifield, supra note 11.
92. United Nations Dep’t of Econ. & Soc. Affairs, supra note 87.
94. See id. at 8–10.
95. See id. at 14.
of migration, making it easier for people to move across borders and over long distances.\textsuperscript{96} Moreover, when legal migration is not an option, migrants have increasingly turned to professional smugglers, and a global industry of migrant smuggling—often with the involvement of organized crime—has sprung up, especially in the last decade of the twentieth century.\textsuperscript{97} In the twenty-first century, "nearly every week has brought stories of the deaths of clandestine migrants somewhere in the world . . . [as a result of] horrendous acts of violence or simple miscalculations on the part of smugglers or the migrants themselves as they attempt to evade the authorities."\textsuperscript{98}

But migration, like any type of transnational economic activity (such as trade and foreign investment), cannot and does not take place in a legal or institutional void. As we can see in the U.S. case, states have been and still are deeply involved in organizing and regulating migration, and the extension of rights to non-nationals has been an extremely important part of the story of international migration in the post-World War II period. For the most part, rights that accrue to migrants come from the legal and constitutional protections guaranteed to all "members" of society.\textsuperscript{99} Thus, if an individual migrant is able to establish some claim to residence on the territory of a liberal state, his or her chances of being able to remain and settle will increase. At the same time, developments in international human rights law have helped to solidify the position of individuals vis-à-vis the nation-state, to the point that individuals, and certain groups, have acquired a sort of international legal personality, leading some analysts to speculate that we are entering a post-national era, characterized by "universal personhood,"\textsuperscript{100} the expansion of "rights across borders,"\textsuperscript{101} and even "transnational citizenship."\textsuperscript{102} Others have argued that migrants have become transnational because so many no longer reside exclusively on the territory of one state,\textsuperscript{103} opting to shuttle between a place of origin and destination. This line of argument gives priority to agency as a defining feature of contemporary migrations, but it ignores the extent to which state policies have shaped the choices that migrants make. The migration state is almost by definition a liberal state, inasmuch as it creates a legal

\textsuperscript{96} See id. at 14–15.

\textsuperscript{97} David Kyle & Rey Koslowski, Introduction, in Global Human Smuggling: Comparative Perspectives 1, 2 (David Kyle & Rey Koslowski eds., 2001).

\textsuperscript{98} See id.

\textsuperscript{99} See Hollifield, supra note 1, at 170–71; James F. Hollifield, Ideas, Institutions and Civil Society: On the Limits of Immigration Control in Liberal Democracies, IMIS-Beiträge, Jan. 1999, at 57, 57–59 (Ger.).

\textsuperscript{100} See Yasemin Soysal, Limits of Citizenship: Migrants and Postnational Membership in Europe 137 (1994).


\textsuperscript{102} Rainer Bauböck, Transnational Citizenship: Membership and Rights in International Migration (1994).

and regulatory environment in which migrants can pursue individual strategies of accumulation.

But, as we have seen in the case of the United States, regulating international migration requires liberal states to be attentive to the human or civil rights of the individual. If rights are ignored or trampled upon, then the liberal state risks undermining its own legitimacy, and raison d'être and anti-immigration policies may come into conflict with raison d'État. As international migration and transnationalism increase, pressures build upon liberal states to find new and creative ways to cooperate and to manage flows. The definition of the national interest and raison d'État have to take this reality into account, as rights become more and more a central feature of domestic and foreign policy. New international regimes will be necessary if states are to risk more openness, and rights-based international politics will be the order of the day.

In short, the global integration of markets for goods, services, and capital, along with the rise of rights-based politics at the domestic as well as the international level, entail higher levels of international migration; therefore, if states want to promote liberal economic policies—freer trade and investment—and democratic politics generally, they must be prepared to manage higher levels of migration. Many states (like the United States, Canada, and other Organization for Economic Cooperation and Development ("OECD") countries) are willing, if not eager, to sponsor high-end migration, because the numbers are manageable and there is likely to be less political resistance to the importation of highly skilled individuals. However, mass migration of unskilled and less educated workers is likely to meet with greater political resistance, even in situations and in sectors, like construction or health care, where there is a high demand for this type of labor. In these instances—as we have seen in the U.S. immigration debates in 2007—the tendency is for governments to go back to the old guest worker models in hopes of bringing in just enough temporary workers to fill gaps in the labor market, but with strict contracts between foreign workers and their employers that limit the

104. See Hollifield, supra note 99, at 58.
108. See Bimal Ghosh, Towards a New International Regime for Orderly Movements of People, in MANAGING MIGRATION: TIME FOR A NEW INTERNATIONAL REGIME?, supra note 105, at 6, 12.
109. See id.
length of stay and prohibit settlement or family reunification. The alternative is illegal immigration and a growing black market for labor—a Hobson's choice.

The emphasis our argument places on markets and rights improves on the prevailing economic and sociological theories of immigration in three significant ways. First, it incorporates economic and political/policy/legal effects in a manner that distinguishes their relative influence and provides a stronger overall account of immigration flows. Economic forces alone clearly are insufficient for this task. Second, bringing the policy and rights into immigration analysis offers greater promise for understanding the restrictionist turn in American politics in recent years and its potential to curtail immigration despite economic prosperity. Electoral and national security interests of government officials figure prominently in today's restrictive politics, while low levels of unemployment and increases in real GDP offer few clues.

Finally, an immigration model that integrates both markets and rights is far more promising than push-pull or transnational models alone in accounting for the volume and composition of legal and illegal immigration flows. These findings are consistent with other studies of the political economy of immigration in Europe. While they do not contradict the emerging literature in political economy that focuses on interest-based explanations for changes in immigration policy, they do offer us an alternative, rights-based, legal, and institutional explanation for the rapid rise in immigration among industrial democracies in the late twentieth century. The liberal state has played and will continue to play a vital role in regulating levels of immigration, and democratic states are likely to remain trapped in a liberal paradox for decades to come.

111. At the time of publication, the U.S. Congress has failed to pass so-called comprehensive immigration reform, which included a new guest worker program.
112. See Hollifield, supra note 1, at 13–14.
113. See Freeman, supra note 42, at 885–86.
114. See Hollifield, supra note 11, at 148.