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The International Movement of People:
the Fourth Economic Freedom

Max Planck Institute for the Study of
Religious and Ethnic Diversity

Max-Planck-Institut zur Erforschung multireligiöser
und multiethnischer Gesellschaften



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Abstract

The so-called four economic freedoms: cross-border movement of goods, cross-border movement of services, cross-border movement of capital, and cross-border movement of people are often viewed as central to the European integration enterprise, and reflect more broadly international trends towards economic integration (or globalization) in the post-war period. However, outside the EU, this process has been much more incremental, with much more fully developed international disciplines on cross-border movement of goods than cross-border movement of services, capital and people. While the economic case for the four economic freedoms rests on a single premise, i.e., that with fewer restrictions on the cross-border movement of goods, services, capital and people, resources will gravitate, over time to their most productive uses, hence increasing global economic output and global welfare, the conditions and qualifications attaching to this premise differ significantly, from one freedom to another. This paper focusses on the fourth economic freedom.

Keywords: migration, values, interests, institutions, costs and benefits, policy options

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1. Introduction

It is commonplace for European commentators to identify four economic freedoms as central to the European integration enterprise: 1) cross-border movement of goods, 2) cross-border movement of services, 3) cross-border movement of capital, and 4) cross-border movement of people. Indeed, beyond Europe, these four economic freedoms broadly describe the evolution and closer integration of the international economy over the post-war period. From an economic perspective, the unifying feature of these four economic freedoms is the assumption that with fewer restrictions on the cross-border movement of goods, services, capital, and people, resources will gravitate, over time, to their most productive uses, hence increasing global economic output and global welfare, *ceteris paribus*. However, the *ceteris paribus* condition is a crucially important qualifier that takes many different forms with respect to each of the four economic freedoms and hence suggest caution in treating them all as commensurable and inextricably intertwined in an all-or-nothing strategy, as reflected in broad-ranging debates over fair trade-versus free trade and the appropriate domains of domestic political sovereignty and international constraints thereon.¹ In this paper, I focus on the Fourth Freedom.

It is currently estimated that there are 244 million international migrants globally (or 3.3 percent, or about one in thirty people, of the world's population) – an increase from an estimated 172 million people in 2000 (2.8 percent of the world's population). By the end of 2016, there were a total of 22.5 million refugees (the highest number on record), including 5.5 million Syrian refugees.²

In many contemporary Western societies immigration is a prominent, even central source of consternation and contentiousness, reflected, in for example: the election of President Donald Trump in the US on a platform that would exclude most immigrants from a number of majority Muslim countries, would erect a wall along the southern US border with Mexico, and would deport a large number of illegal immigrants; the election of nationalist, anti-immigrant governments in Poland, Hungary and Italy; the rise of anti-immigrant parties and supportive public sentiment in

1 See, e.g., Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (W.w. Norton, 2011); Michael Trebilcock, "The Fracturing of the Post-War Free Trade Consensus: The Challenges of Constructing a New Consensus," IMF Conference, "Meeting Globalization's Challenges," Washington, D.C., October 11, 2017.

2 See International Organization for Migration, *World Migration Report*, Geneva, (2018), Chapter 2

countries as diverse as Austria, Denmark, Holland, France, Germany, Italy, Sweden, and Britain (with the latter's decision to exit from the EU in a referendum in June 2016 prompted primarily over concerns with unrestricted internal EU immigration).³ According to Yascha Mounk in a recent book, *The People vs. Democracy*, in 2016, 71 percent of Danes, 67 percent of Hungarians, and 57 percent of Germans selected immigration as the most pressing political issue.⁴ In only one out of twenty-seven EU member states did voters not mention immigration as one of the top two concerns. In the US, 70 percent of voters named immigration as very important to their vote in the 2016 election, up from 41 percent in 2012.

2. Ideas, Interests and Institutions in the Formulation and Administration of Immigration Policy

Immigration policies, both at any given point in time and over time, reflect complex sets of interactions between ideas (or values), interests, and the institutions (political, bureaucratic, and legal) through which ideas and interests are mediated.⁵

With respect to the role of ideas in the evolution of immigration policy, at least in Western democracies, two core ideas or values stand, to some irreducible degree, in opposition to each other: liberty and community. While theories of liberty and community present themselves with almost endless variations, the essence of the two ideas, in the context of immigration policy, can be fairly readily captured. All theories of liberty, as Joseph Carens points out, begin with some kind of assumption about the equal moral worth of individuals.⁶ In one way or another, all treat the individual as prior to the community. Carens then reviews three contemporary approaches to liberal theory: libertarianism, social, contractarianism and utilitarianism, and while

3 Rita Chin, *The Crisis of Multiculturalism in Europe: A History*. (Princeton University Press, 2017); Ivan Krastev, *After Europe*. (University of Pennsylvania Press, 2017); Christopher Caldwell, *Reflections on the Revolution in Europe: Immigration, Islam and the West*. (NY: Anchor Books 2009).

4 See Yascha Mounk, *The People vs. Democracy: Why Our Freedom is in Danger and How to Save It*. (Harvard University Press, 2008) chap. 6.

5 See Ninette Kelley & Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy* (Toronto: University of Toronto Press, 2010, 2nd ed.), chap. 1.

6 See Joseph Carens, 'Aliens and Citizens: The Case for Open Borders' (1987) 47 *Review of Politics* 251; Joseph Carens, *The Ethics of Immigration*. (Oxford University Press, 2015).

each has somewhat different implications for a country's ideal immigration policy, generally they would converge on relatively expansive immigration policies. From a libertarian point of view, if citizens choose to enter into contracts of employment with foreigners, or to sell them land, homes, or businesses, and if foreigners wish to move to another country they should be free to do so, provided that in doing so, they do not violate the rights of anyone else by imposing involuntary burdens on them. From a social contractarian perspective, an ideal social constitution would be constructed behind a veil of ignorance, where individuals know nothing about their own personal situations because natural and social contingencies are arbitrary from a moral point of view. From a Rawlsian social contract perspective, people in the original position would choose two principles: the first principle would guarantee equal liberty to all. The second would permit social and economic inequalities only so long as they were to the advantage of the least well off. If one adopts a global veil of ignorance (of which, it must be acknowledged, Rawls himself was not persuaded),⁷ the perspective of those who would be most disadvantaged by restrictions on immigration should be adopted, and hence few restrictions on immigration can be morally justified except for the sake of preserving the liberty of all, such as maintaining public order and security and preventing the metaphorical lifeboat from being swamped and sinking. From a utilitarian perspective, the utilities or disutilities experienced by both citizens and foreigners would be entered in the utilitarian calculus. Some citizens would gain from being able to enter into employment or other contractual relationships with prospective immigrants. Others, such as consumers, might benefit from access to cheaper goods, services, or labour. Scale effects in the private and public sectors that derive from a larger population base might benefit citizens generally. Immigration may also foster valuable trade and investment linkages with immigrants' home countries. Dependency effects might benefit local taxpayers if immigrants are over-represented in the wage-earning category relative to existing citizens, given declining fertility rates and an aging population in many countries, although some immigrants may impose net fiscal costs on receiving countries through illness, unemployment or criminality. In contrast, some citizens could lose if they were displaced from their jobs or if their wages were depressed through the additional competition that immigrants may bring to labour markets, although where immigrants are complements rather than substitutes for domestic workers they may enhance employment in a

7 See John Rawls, *The Law of Peoples*. (Harvard University Press, 1999); cf. Thomas Pogge, 'The Incoherence Between Rawls' Theories of Justice' (2003) 72 *Fordham L. Rev.* 1739.

receiving country.⁸ These costs and benefits accruing to citizens would have to be measured against the costs and benefits accruing to immigrants by being permitted entry. In most cases, one assumes that for them the benefits substantially outweigh the costs, otherwise they would not have chosen to bear the typically large personal costs of emigrating.⁹

In opposition to these liberal values stand the core values of community. Here, it is argued that in the context of immigration policy, controlling which strangers may enter is a powerful expression of a nation's identity and autonomy. According to Michael Walzer: "At stake is the shape of the community that acts in the world, exercises sovereignty, and so on. Admission and exclusion are the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be *communities of character*, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life".¹⁰ Walzer's views are reflected in many recent critiques of multiculturalism.¹¹

Two controversial features of this perspective are the notion that political sovereignty is a near absolute value, a view increasingly challenged by the evolution of international human rights norms; and the notion that the only communities of

8 For a review of the empirical evidence (especially labour market and fiscal effects) on the costs and benefits of immigration for existing citizens, see Michael Trebilcock, *Dealing with Losers: The Political Economy of Policy Transitions* (Oxford University Press, 2014) pp. 100-102 (generally finding, in the case of the U.S., that adverse labour market effects of immigration are minimal and that fiscal effects generally are positive (at least at prevailing levels of immigration))

9 See Robert Guest, *Borderless Economics: Chinese Sea Turtles, Indian Fridges, and the New Fruits of Global Capitalism*. (NY: Palgrave Macmillan, 2011).

10 See Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality*. (NY: Basic Books, 1983) pp. 61-62.

11 See Peter Brimelow, *Alien Nation: Common Sense About America's Immigration Disaster*. (Random House, 1995); Patrick Buchanan, *The Death of the West: How Dying Populations and Immigrant Invasions Imperil Our Country and Civilization*. (N.Y.: St. Martin's Press, 2002); Samuel Huntington, *Who Are We? Challenges to America's National Identity*. (Simon and Schuster, 2005); Arthur Schlesinger, *The Disuniting of America: Reflections on a Multicultural Society*. (W.W. Norton, 1992); Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism*. (Harvard University Press, 2002); Paul Collier, *Exodus: How Migration is Changing Our World*. (Oxford University Press, 2013); Reginald Bibby, *Mosaic Madness: Pluralism Without a Cause*. (Stoddart, Toronto, 1990); Neil Bissoondath, *Selling Illusions: The Cult of Multiculturalism in Canada* (Penguin, Toronto, 1996); Ricardo Duchesne, *Canada in Decay: Mass Immigration, Diversity, and the Ethnocide of Euro-Canadians* (London: Black House Publishing, 2017).

character are those that reflect ethnic, historical, religious, cultural, or ideological commonalities – a view that many liberals would challenge on the grounds that common commitments to liberal civic institutions and mutual tolerance of intermediate sub-communities of interest can sustain communities of character. This tension is likely to manifest itself differently in older societies whose national narratives espouse a “blood and soil” sense of national identity that emphasizes commonalities of ancestry, history, language and religion, and newer “settler” societies that espouse different and more inclusive national narratives.¹²

With respect to the interests most directly engaged by immigration policy, these include many constituencies. Business groups, in general, are likely to favour a permissive immigration policy, in part as a way of relieving shortages or bottlenecks in the supply of skilled and unskilled labour, and in part because an increase in the supply of either kind of labour is likely to have the tendency of disciplining local wage levels. However, to the extent that some immigrants, particularly of the entrepreneurial or professional classes, may become a potential source of competition to local businesses or professionals, some business or professional quarters may be less enthusiastic about permissive immigration policies. Many businesses may also view immigrants as an important source of increased demand for their goods or services. Labour groups are likely to be opposed to the admission of permanent skilled and unskilled labour and temporary workers in sectors where admitted workers are likely to be competing for jobs and wages with domestic workers. Thus, the admission of workers would tend to be favoured only in instances where they are willing to perform jobs that the domestic workforce is unable or unwilling to perform. Cultural nationalists (nativists) are likely to oppose immigration policies that significantly change the historical demographic character of a nation’s population. Ethnic groups comprising previous cohorts of immigrants are likely to support an expansive immigration policy, especially one that stresses family reunification and that favours preferential access for individuals of similar ethnic, cultural, religious, or political backgrounds. While they are an amorphous class, taxpayers in general are likely to favour an immigration policy that imposes the fewest demands on the public purse, which is likely to entail a preference for immigrants who will be productive members of the community and contribute more in the way of taxes than the cost they impose on the community in terms of various social programs and policies. This preference

12 See Keith Banting and Wil Kymlicka. ‘Introduction: The Political Sciences of Solidarity in Diverse Societies’ in Banting and Kymlicka (eds.), *The Strains of Commitment: The Political Sources of Solidarity in Diverse Societies*. (Oxford University Press, 2017).

would suggest a bias towards admitting skilled workers whose services are likely to be in high demand and entrepreneurs with capital, and less enthusiasm for admitting unskilled workers, relatives of other citizens (particularly very young, old, or infirm relatives), or large numbers of refugees. Refugees are likely to attract the support of limited domestic political constituencies – some civil society, human rights and religious organizations.

Ideas and interests, in order to be translated into public policies, of course, have to be mediated through political, bureaucratic and legal institutions, which themselves do not appear fully formed but are the product themselves of ideas and interests, but once formed tend to exert an independent influence on what interests and ideas in particular policy domains are given effect to or marginalized in subsequent public policy decisions. This configuration of institutions obviously differs significantly from one country to another with respect to immigration policy.

3. The Regulation of the Cross-Border Movement of People

The General Agreement on Tariffs and Trade (GATT) was completely silent on issues pertaining to the cross-border movement of people. However, the General Agreement on Trade in Services (GATS), negotiated as part of the Uruguay Round Agreements that came into force in 1995, contemplates that member countries may choose to make commitments under Mode 4 with respect to a service supplier of one member, through the presence of natural persons of that member in the territory of any other member (presence of natural persons). With respect to Mode 4, an Annex of the GATS states that the agreement does not apply to measures affecting natural persons seeking access to the employment market of a member, nor does it apply to measures regarding citizenship, residence, or employment on a permanent basis. Beyond commitments made under Mode 4 of the GATS (modest to date), and a somewhat similar set of commitments under chapter 16 of the North American Free Trade Agreement (NAFTA) and some other Preferential Trade Agreements (PTA's), the cross-border movement of people is subject to a very weak and uncoordinated international legal architecture, compared to the other three economic freedoms,¹³ with the important exception of the European Union, which pursuant to the Treaty of Maastricht of 1993 provides for the free movement and right to work of all citi-

13 See Joel Trachtman, *The International Law of Economic Migration: Toward the Fourth Freedom* (Upjohn Institute, 2009).

zens and permanent residents within the European Union. Multilaterally, the 1951 UN Convention on Refugees (the Geneva Convention) commits signatories (which include most western countries) to evaluate inland refugee claims against the criteria it sets out (persecution in countries of origin on account of religion, ethnicity or political beliefs), but refugee claimants constitute only a small percentage of the cross-border movement of people. In fact, most western countries have adopted relatively restrictive immigration policies, often entailing strict annual quotas on economic and family class immigrants (the two major classes of immigrants), at least compared to those that pertain to the first three freedoms and in particular the first freedom (cross-border movement of goods).

Despite increasing political resistance to permissive immigration policies, in the mid-1980s, in a widely-cited study, Hamilton and Whalley¹⁴ estimated that the elimination of all global restrictions on labour mobility could result in a net doubling of world-wide annual GNP, and would also engender a dramatically fairer distribution of world income. More recent and less sanguine assumptions result in estimated gains that are still highly significant from the perspective of global economic welfare and far exceed the gains from further trade liberalization.¹⁵ The core intuition underlying such estimates is that individuals with a given stock of human capital, skills, and work experience are much more productive in some environments than others, due to major differences in institutional endowments, complementary human capital, infrastructure, access to capital, etc., so that merely crossing the border from a country with poor endowments to a country with much stronger endowments often leads to very large increases in the productivity and hence compensation of individuals disposed to make such a move.¹⁶ Moreover, adopting a more dynamic perspective, individuals moving to more productive environments are likely to face stronger incentives to make investments in enhancing their human capital (and especially that of their children), thus increasing their productivity over time. By way of concretiz-

14 See Bob Hamilton and John Whalley, "Efficiency and Distributional Implications of Global Restrictions on Labour Mobility: Calculations and Policy Implications," (1984) 14 *Journal of Development Economics* 61.

15 See Jonathan Moses and Bjorn Letnes, "The Economic Cost of International Labour Restrictions: Revisiting the Empirical Discussion," (2004) 32 *World Development* 609; for an ethical rather than economic justification for open borders, see Joseph Carens, *The Ethics of Immigration* (Oxford University Press, 2013).

16 See Mancur Olson, "Big Bills Left on the Sidewalk: Why Some Nations are Rich, and Others Poor," (1996) 10 *Journal of Economic Perspectives* 3; see also Robert Guest, *Borderless Economics*, op. cit.

ing these claims, scholars point to large differences in productivity and income levels between countries that share the same history and culture but have been divided through the vicissitudes of military conflict, e.g., East and West Germany before unification, North and South Korea, China and Hong Kong and Taiwan (before China embarked on a process of economic liberalization three decades ago).

More recent scholarship finds that in addition to these human capital productivity gains from immigration, immigrant diaspora often enhance trade, financial, knowledge, and technology flows between home and host countries through networks that reduce information costs and enhance trust, thus complementing the other economic freedoms. While concerns are often raised that emigration of highly skilled workers from developing to developed countries are an undesirable form of “brain drain”, these concerns are at least partially offset by the fact that the option of emigrating is an additional inducement to acquiring these skills in the first place and by the fact that remittances from emigrants to family and friends in their home countries now exceed \$500 billion (U.S.) per year – about three times the amount of official development assistance (foreign aid).¹⁷

The initial puzzle presented by these economic benefits of immigration is why citizens in many host developed countries, particularly in the contemporary political environment, so strenuously resist permissive immigration policies and do so with much greater intensity than reflected in general public and political sentiments with respect to the first three freedoms. However, as with the first three freedoms, the *ceteris paribus* conditions with respect to the cross-border movement of people (immigration) must be taken seriously.

As George Borjas has pointed out in various scholarly analyses and in a recent non-technical reprise of his work, *We Wanted Workers*,¹⁸ it is far from clear who, in a world without geographic restrictions on labour mobility, would actually move countries. How much immigration would be fiscally induced by virtue of access to more generous social safety nets? What might be the potential impacts on local labour markets? Would social programs such as public education and healthcare be able to accommodate much larger numbers of people (at least in the short run)?

It is instructive at this point to compare the fourth freedom with the first three freedoms. The first three freedoms overwhelmingly entail cross-border contractual

17 See Hillel Rapoport, “Diaspora Externalities: A View from the South,” WIDER Working Paper Series 2018-025.

18 George J. Borjas, *We Wanted Workers: Unraveling the Immigration Narrative* (W.W. Norton, 2016).

relationships – between sellers and buyers of goods, sellers and buyers of services, providers and recipients of capital – raising at least a rebuttable presumption in most cases that both parties to the cross-border contractual relationship are rendered better off as a result of the relationship (setting aside potential negative externalities). In contrast, with some qualifications, most decisions to emigrate from one country to another are unilateral and do not involve conventional contractual relationships involving buying and selling goods, services, capital, or in this case labour, so that, at least from a domestic as opposed to a global welfare perspective, the welfare implications are less clear.

Important qualifications to this proposition need to be acknowledged. In some cases, employers are prepared to offer individuals located in other countries permanent or temporary employment in the receiving country. Offers of permanent or semi-permanent employment, especially for higher skilled workers, ought to attract a similarly positive presumption as in the case of cross-border contracts relating to goods, services, and capital. With respect to cross-border offers of temporary employment, the presumption is weaker. There are several reasons for this: it may be difficult to police or enforce exit following the completion of a temporary term of employment; the distributional impacts on less well-endowed domestic workers in receiving countries may be unacceptable; the risks of exploitation of temporary workers (especially if legally tied to one employer), is significant; and incentives to integrate economically and socially into the broader society of the receiving country are much weaker. However, temporary workers who have been continuously or nearly continuously employed in host countries for an extended period (e.g. three to five years) might make out a compelling case for permanent residence status for themselves and their families (as Canada now recognizes in certain classes of cases). Another qualification pertains to the status of foreign students who have been invited to post-secondary institutions in receiving countries through contractual relationships with the educational institutions to which they have been admitted. In the case of at least a sub-set of these students – especially post-graduate students pursuing more advanced programs of study in receiving countries – they have presumably developed advanced skills and a facility in the dominant language of the receiving country and become familiar with prevailing social, cultural, economic, and political norms and expectations. Thus, a strong presumption seems warranted that they should be permitted to remain on a permanent basis if they choose to do so. A further qualification is more contentious: it might be argued that sponsorship by citizens or permanent residents in receiving countries of close relatives in foreign countries

should be viewed as at least a consensual relationship between parties in both sending and receiving countries, if not a formal contractual relationship. However, many such relationships are unlikely to be driven primarily by considerations of mutual economic benefit, and thus from a purely economic perspective warrant a weaker presumption that such forms of migration will result in productivity enhancements of family members choosing to migrate and hence be a valuable additional economic resource for the receiving country (although the social capital of established family members may facilitate economic integration, and non-economic justifications might persuasively be advanced for family sponsorship).

However, with these qualifications duly acknowledged, a large percentage of people seeking to migrate from one country to another are likely to fall outside of these qualifications and seek unilaterally to apply for admission to their chosen receiving country or countries. The crucially important challenge that this class of would-be immigrants poses for receiving countries is determining the substantive criteria and administrative processes that should be put in place to select from the potential pool of immigrants with the highest probability of economic success in the receiving country. Canada was the first country in the world to implement a detailed point system in 1967 for screening so-called economic immigrants through assigning weights to formal education, work experience, linguistic skills, age, etc.¹⁹ This points system, which has been integral to the evolution of expansionary and non-discriminatory immigration policies in Canada over subsequent decades, is designed to target highly skilled immigrants with the potential to meet either short-term or longer-term labour market needs and to provide an additional impetus for innovation and productivity enhancement in the receiving country's economy.²⁰ While the system has not worked perfectly and refinements and revisions to it are vigorously debated, it is now a much more substantial category of immigrants than family sponsorship and appears to have been central to the growing and striking acceptance, by a majority of Canadians and all national political parties, of an expansive and non-discriminatory immigration policy over the past few decades.²¹

19 Subsequently refined a number of times and replicated with variations in Australia and New Zealand.

20 See Ayelet Shachar, "The Race for Talent: Highly Skilled Immigrants and Competitive Immigration Regimes," (2006) 81 *New York University L. Rev.* 148.

21 See Michael Trebilcock, "The Puzzle of Canadian Exceptionalism in Contemporary Immigration Policy," (University of Toronto Faculty of Law, 2018).

A point system such as that adopted by Canada, of course, leaves open the issue of the admission of unskilled immigrants who may be deficient not only in valuable skills but also in economically important attributes such as proficiency in receiving countries' official language or languages. In this respect, Canada has been blessed by its geography and its ability to control its borders: the Arctic Circle to the north, two large oceans on either coast, and a large land mass to the south act as a buffer against large, typically undocumented inflows of unskilled immigrants from Mexico and elsewhere in Latin America. For the most part, these are not refugee claimants but economic migrants, although from a global as opposed to a domestic welfare perspective, it is not clear that refugees fleeing ethnic, religious or political persecution in their home countries warrant radically different treatment from economic migrants fleeing destitution in their home countries (whatever the cause). However, Borjas²² argues that from a domestic welfare perspective, substantial influxes of such workers may, in many contexts, constitute a significant supply shock to receiving countries' labour markets that were hitherto dominated by unskilled domestic workers (at least where they are substitutes and not complements), raising serious concerns about the distributional impacts of large influxes of unskilled workers. These concerns are especially salient in a contemporary economic context where unskilled or low-skilled jobs in many sectors of developed countries' economies are increasingly being displaced by either lower-priced imports from low labour cost foreign countries or, much more commonly, by the substitution of technology for labour,²³ although immigrants spend the bulk of their earnings in their host countries whereas low-wage foreign workers spend the bulk of their earnings in their home countries.

Beyond the distributional impact of unskilled migration on least advantaged domestic workers, concerns over the net fiscal effects of large influxes of unskilled migrants are likely to exacerbate these distributional concerns. In this respect, both the US and many countries in Europe and elsewhere are in an unenviable position, geographically, in their limited ability to control substantial influxes of unskilled workers, typically also lacking facility in the prevailing language in receiving countries. This challenge invites costly and ineffectual responses such as building walls (between the US and Mexico), or harsh measures such as interdictions at sea and sequestration in off-shore islands (Australia), or disproportionate burdens on front-line states (Greece, Italy and Spain) and poorly co-ordinated and contested burden-

22 George J. Borjas, *We Wanted Workers*, op. cit.

23 See Michael Trebilcock and Sally Wong, "Trade Technology and Transitions: Trampolines or Safety Nets for Displaced Workers?" (2018) *J. of International Economic Law*.

sharing thereafter (the EU). Designing administrative processes for quickly and accurately distinguishing genuine refugee claimants from economic migrants seeking to circumvent normal admission procedures represents a further challenge. Betts and Collier argue in a recent book²⁴ that new strategies should be pursued in the case of refugees (and destitute economic migrants), such as proactive policies by both haven and developed countries, aid and trade agencies, and the private sector to assist refugees to achieve serious levels of economic integration and personal autonomy in proximate haven countries, with a view to many returning home after conflicts in their home countries have ended. In this respect, it is worth recalling that one of President George H. Bush's major rationales for negotiating NAFTA in the early 1990s, was to provide a major stimulus to the Mexican economy, which would be a disincentive for many Mexicans to emigrate to the US (trade as a substitute for emigration). The current Trump Administration is opposed to both trade with and emigration from Mexico, risking an economically impoverished and politically unstable country on its southern border.

I should finally note that with respect to all classes of immigrants discussed above, I assume from both a domestic and in some cases a global welfare perspective that some basic checks are, in principle, justifiable from an economic and broader social perspective. These may concern health, criminality, and national security issues, which are a standard feature of immigration policies in most developed countries. Defining a precise and normatively defensible content for each of these conditions, does however, pose significant challenges.

4. The Brexit Imbroglio: a Case Study in the Perils of open-ended Renegotiation of the four Freedoms

To an external and perhaps untutored observer, the imbroglio surrounding Britain's efforts to negotiate an exit from the EU presents some major puzzles. As I have argued in my recent book, *Dealing with Losers*,²⁵ incrementalism in policy transitions is often an important strategy for mitigating the transition costs associated with policy changes, even if they are generally socially beneficial. In the case of the

24 Alexander Betts and Paul Collier, *Refuge: Rethinking Refugee Policy in a Changing World* (Oxford University Press, 2017).

25 Michael Trebilcock, *Dealing with Losers*, *op. cit.*

June 2016 referendum vote in Britain on leaving the EU, concerns over uncontrolled immigration seem to have been central to the support of many voters for the Brexit option, perhaps exemplified most dramatically and notoriously in the Brexit campaign ad, “Breaking Point.” Yet in the Brexit negotiations, all four economic freedoms: cross-border movement of goods, services, capital, and people, appear to be in play in negotiating a new relationship between Britain and the EU. This has created a massive and unmanageable negotiating agenda, involving thousands of moving parts, given that three of the four economic freedoms amongst current EU members, i.e., cross-border movement of goods, services, and capital appear to be much less contentious than the fourth freedom. A much narrower negotiating agenda, focusing on immigration policies, while still presenting formidable challenges, would still be much more tractable than various much more comprehensive options.

Focusing on immigration policy and concerns that it has raised in Britain with respect to its continuing membership in the EU, a few basic facts might usefully frame the negotiating agenda. First, Britain currently admits about 300,000 immigrants a year – about the same number as Canada, with half the population base (excluding foreign students in both cases). Second, of the immigrants that Britain admits each year, about half come from other EU countries, and half from non-EU countries where Britain is free to adopt whatever admission policies it chooses. Third, the surge of refugees and economic migrants from Syria and other countries in North Africa poses a problem for all EU countries in terms of the adoption of agreed screening processes and burden-sharing arrangements with respect to inland refugee claimants thereafter.

To take each of these issues in turn, it would not seem unreasonable with respect to internal EU migration, for Britain (and indeed other EU countries), to insist on some form of surge control mechanism, akin to the safeguard regime that has existed in the GATT with respect to cross-border movement of goods since its inception in 1947, so that internal migration flows can be contained within reasonable and predictable bounds.

Second, with respect to immigrants that Britain chooses to admit from non-EU countries, a serious policy option which Britain should consider, is the adoption of some form of point system such as that pioneered by Canada to ensure that migrants are of an age, have the linguistic skills, and relevant job credentials and experience to integrate with a high probability of success into the British economy and society, while at the same time curtailing the role of family sponsorship to, e.g., spouses and minor children in order to limit the scope for chain migration.

Third, with respect to inland refugee claimants that have arrived in front-line states in Europe, negotiating agreement amongst EU members on appropriate screening processes and burden-sharing arrangements thereafter has obviously proven contentious and divisive, but it is not clear that by leaving the EU, Britain entirely escapes these issues.

Beyond immigration issues, one virtue that some Brexiteers claim for Britain's exit from the EU, is its ability thereafter to negotiate free trade agreements with whomsoever it may choose. This claim seems largely a chimera. The EU currently lists about 50 various kinds of free trade agreements it has with non-member countries and several more in the process of negotiation. If Britain were to exit the EU but preserve existing trading relationships with these countries, it would have to negotiate similar agreements with all these counterparty countries – a Herculean task. Moreover, it is not clear that many of these non-EU counterparties will have strong incentives to negotiate such agreements. For example, Canada has recently negotiated a free trade agreement with the EU (the Comprehensive Economic and Trade Agreement – CETA); the current US administration has rejected the proposed Trans-Atlantic Trade and Investment Partnership (TTIP) Agreement with the EU, so that it is unlikely that Britain could expect an especially favourable free trade agreement with the US. Even if such an agreement were to be negotiated, the fraught ongoing NAFTA renegotiation process among the US, Canada and Mexico argues for caution in assuming the stability of these agreements in the current US political environment. The EU has also recently negotiated a major free trade agreement with Japan and is negotiating free trade agreements with Australia and New Zealand. Thus, who is left for Britain to negotiate with? The obvious answer is China and other fast-growing economies in Asia. But their high economic growth rates in recent years have heavily depended on low-wage labour in manufacturing sectors, so that free trade agreements with these countries would pose much more serious economic risks for many of the supporters of Brexit in the old industrial centres of Britain than its current membership of the EU. Moreover, the argument that Brexit would free Britain of stifling EU regulations in many sectors ignores the fact that non-tariff barriers to trade (rather than tariffs), are now the principal impediment to cross-border movement of goods, services and capital and require some degree of regulatory harmonization in any free trade agreement in order to enhance these three freedoms. Thus, it is fanciful to suppose that there are quick and easy alternative markets for the 40 percent of Britain's exports of goods and services that currently flow to other EU countries. Moreover, because

Britain has chosen to remain outside the Eurozone, it is already subject to far less stringent monetary and fiscal constraints than apply to Eurozone members.

All of this is to argue that in ongoing Brexit negotiations, there would seem to be much to be gained by focusing overwhelmingly on the fourth economic freedom, where more flexibility, realism, and imagination on both sides of the negotiation would seem to hold out serious prospects of progress, in contrast to variants on all-or-nothing scenarios, with respect to all four freedoms.

