

**THE ROLE OF IMMIGRATION IN THE FOUR ECONOMIC FREEDOMS:
TAKING THE *CETERIS PARIBUS* CONDITIONS SERIOUSLY**

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I. 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. In these comments, I explore the commonalities and differences that characterize these four freedoms, with a special focus on the role of immigration in more expansive conceptions of international economic integration. 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*. The *ceteris paribus* condition is a crucially important qualifier that takes different forms with respect to each of the four economic freedoms. I begin with the case of cross-border movement of goods.

II. CROSS-BORDER MOVEMENT OF GOODS

In the first several decades of the post-war period, the international economic order, as exemplified in the General Agreement on Tariffs and Trade (GATT), was predominantly preoccupied with facilitating international trade in goods, with supplementary roles played by the World Bank and bilateral aid agencies in providing foreign aid and the International Monetary Fund in stabilizing cross-border capital flows and exchange rates. The GATT itself, which was inaugurated in 1947 with an initial 23 members, has evolved over time into the World Trade

Organization (WTO) in 1995 and as of today comprises 162 member countries. The initial preoccupation with facilitating cross-border trade in goods was focused on reducing tariffs, principally on manufactured goods that at its inception averaged a little less than 50 percent but over successive negotiating rounds involving the exchange of tariff reduction commitments in return for commensurate commitments by major trading partners, tariffs today on manufactured products are less than five percent on average (with tariffs and other forms of protection in the case of trade in agricultural products a notable outstanding exception). Arguably, this has been the greatest achievement of the GATT/WTO multilateral system amplified in recent years by the proliferation of preferential trade agreements (PTAs) that typically have involved, *inter alia*, further tariff reductions amongst member states (as in the case of the EU), albeit at some cost to non-members who face the risk of trade being diverted (often inefficiently) from them to members of these PTAs.

As tariffs and other broader measures have been reduced, increasing focus in international trade negotiations has been on so-called non-tariff barriers to trade, including product standards and regulations and intellectual property rights. While some progress was made on these issues during the Uruguay Round in the form of the Sanitary and Phyto-sanitary Standards Agreement, the Technical Barriers to Trade Agreement, and the Trade-Related Intellectual Property Agreement, they have proven a more contentious and enduring challenge than reducing tariffs at the border. The Cechini Report in 1988 on the costs of non-Europe argued that various non-tariff barriers to trade were much more significant impediments to trade than tariffs and other border measures. However, while it is obviously the case that multiple compliance costs associated with divergent regulations from one market to another represent important frictions in the international trading system, their elimination or reduction has proven a

daunting challenge and has typically involved a high degree of international harmonization of these standards and regulations, but negotiations over harmonized standards are inherently contentious (whose standards should prevail?),¹ and transaction cost-intensive in that they necessarily have to proceed on a product-by-product basis, in contrast to the across-the-board tariff cuts that were often adopted in later rounds of GATT/WTO negotiations.

Beyond these non-tariff barriers to trade, continuing controversies surround various claims of unfair trade, for example, that large emerging economies, in particular China, do not effectively adhere to or enforce international standards of intellectual property rights protection, require transfers of technology from foreign firms seeking access to the Chinese market, and by virtue of the prominent role played by the state in many sectors of its economy, explicitly or implicitly subsidize many of their exports to other countries.² A further dimension of unfair trade concerns focuses on the lack of adherence to or enforcement of international norms with respect to basic labour standards and environmental protection. Yet further unfair trade concerns focus on the challenges facing small, less developed countries in competing in an open international trading system as a result of weakly developed industrial and financial sectors and the continuing predominance of traditional (often inefficient) forms of agricultural production, thus arguably justifying dispensations from normal trade disciplines in order to advance more dynamic conceptions of latent comparative advantage and mitigate transition costs for existing sectors.³ Thus, the *ceteris paribus* condition noted above continues to provoke considerable controversy, even with respect to the first freedom.

¹ See Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (W.W. Norton, 2011); Dani Rodrik, *Straight Talk on Trade: Ideas for a Sane World Economy* (Princeton University Press, 2017).

² See Mark Wu, "The China Inc. Challenge to Global Trade Governance" (2016) 57 *Harvard international L.J.* 261.

³ See Justin Lin, *The Quest for Prosperity: How Developing Economies Can Take Off* (Princeton University Press, 2012).

III. CROSS-BORDER MOVEMENT OF SERVICES

While the GATT in its initial form had almost nothing to say about cross-border movement in services, over the post-war period many developed countries have continued the process of structural evolution in their economies from agriculture and natural resources in the 19th and early 20th-centuries to manufacturing in the middle to late 20th-century to knowledge and service-intensive sectors in the contemporary context. This evolution was reflected in the fact that comparative advantage in manufacturing many goods has increasingly shifted to low wage emerging economies, like China and other Asian economies (with concomitant significant job loss in manufacturing sectors in many developed countries), while developed countries' increasing comparative advantage in many service sectors was not reflected in increasing international trade flows in these sectors. As a consequence, during the Uruguay Round that culminated in 1993, the General Agreement on Trade in Services (GATS) was negotiated that provided a framework for countries both then and on an ongoing basis to make commitments to each other to liberalize trade in various service sectors.

On the whole, progress in liberalizing international trade in services has been modest both then and over the intervening years, for some of the same reasons that explain the challenges of reducing non-tariff barriers to trade in goods: rarely is it the case that the principal barriers to international trade in services take the form of border restrictions such as tariffs or quotas. Rather, they reflect the often idiosyncratic regulatory requirements imposed by national, sub-national, and delegated regulatory bodies such as licensed professions that determine conditions of entry into these service sectors. Again, as in the case of non-tariff barriers to trade and goods, reducing the cost of regulatory diversity for international trade in services requires negotiations on a service sector by service sector basis, with questions of whose standards are to prevail

constituting an obvious source of continuing contention, exacerbated by the fact that in many countries (especially federal countries) the relevant regulatory bodies are sub-national, while international trade negotiations are typically located at the national level. Faltering efforts at the international level to negotiate liberalization of restrictive or discriminatory government procurement policies and practices with respect to both goods and services echo these challenges.

IV. CROSS-BORDER MOVEMENT OF CAPITAL

Just as with goods and services, the standard economic assumption is that with fewer restrictions on cross-border movement of capital it is likely to gravitate to its most productive uses, but the *ceteris paribus* condition also has substantial application here. First, cross-border capital flows take many different forms, and in particular it is important to distinguish short-term and portfolio capital flows from longer-term forms of foreign direct investment. As evident from the Asian financial crises in the late-1990s and other financial crises before and since, especially the Global Financial Crisis of 2008, short-term capital inflows and outflows can have highly destabilizing effects on host country currencies and economies more generally. With respect to foreign direct investment, these concerns are less salient, simply because foreign direct investments are less mobile. Foreign direct investment is in some cases a substitute for trade and in other cases a complement and in yet other cases some combination of the two. Horizontal foreign direct investment is a substitute for trade where instead of firms located in home countries exporting goods or services to host countries they locate operations in the latter to serve its market (especially in the case of countries with larger domestic markets). Vertical foreign direct investment may be a complement to trade where firms in home jurisdictions off-

shore production of components to subsidiaries in other countries for importation and incorporation into final products manufactured in the home countries and thus increase trade. In yet other cases, investors may locate operations in a large foreign market to service that market but also employ it as a platform to service customers in surrounding markets.

As with trade in services, the GATT, as originally conceived, had little or nothing to say about foreign direct investment and while efforts were made during the Uruguay Round and subsequently in the OECD to negotiate a comprehensive international investment treaty, little has come of these multilateral efforts (the TRIMS Agreement is quite modest in scope). However, since the early 1990s bilateral international investment agreements (BITs) have (like PTAs) proliferated pursuant to which foreign direct investors are provided with formal remedies in the form of compensation for measures taken by host countries that substantially impair the value of their investments, as determined by international arbitral panels. These agreements have proven highly controversial and have been criticized from a number of quarters for providing foreign direct investors with remedies superior to those enjoyed by domestic investors (and hence standing the National Treatment Principle on its head), for unduly constraining the domestic political sovereignty of host countries (for example, in regulating health, safety and environmental hazards), and for employing an adjudicative process that lacks transparency and legitimacy.

Despite concerns by many newly independent developing countries in the early post-war years that foreign direct investment was a new form of economic imperialism, more recently many of these countries have come to see FDI as having at least the potential to make significant contributions to their economies – as a source of investment in infrastructure, as a source of technology transfers and spillovers, as a source of investment in human capital and skills

upgrading, as a source of investment in major natural resource extraction projects, and as a major source of local employment in low-wage, low-skilled manufacturing activities. Indeed, in recent years FDI flows have increased at a faster rate than international trade flows, and have increasingly moved beyond north-north investment flows in the earlier post-war years to north-south and south-south FDI flows.

We come now to the fourth economic freedom: the cross-border movement of people, which can be compared and contrasted with the case for the first three economic freedoms, and the *ceteris paribus* conditions that attach to each.

V. CROSS-BORDER MOVEMENT OF PEOPLE

The 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), cross-border movement of people is subject to a very weak and uncoordinated international legal architecture,⁴ 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

⁴ See Joel Trachtman, *The International Law of Economic Migration: Toward the Fourth Freedom* (Upjohn Institute, 2009).

all citizens 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 set out in the Convention, but refugee claimants constitute a small percentage of 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, at least compared to those that pertain to the first three freedoms and in particular the first freedom (cross-border movement of goods). Indeed, political resistance to permissive immigration policies has sharply intensified in many countries in recent years. According to Yascha Mounk, in a recent book, *The People vs. Democracy*,⁵ in 2016, 71 percent of Danes, 67 percent of Hungarians, and 57 percent of Germans selected immigration as the most pressing political issue. 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.

Despite political resistance to permissive immigration policies, in the mid-1980s, in a widely-cited study, Hamilton and Whalley⁶ 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

⁵ Yascha Mounk, *The People vs. Democracy: Why Our Freedom is in Danger and How to Save It* (Harvard University Press, 2018), chap. 6.

⁶ 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.

liberalization.⁷ 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.⁸ 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 concretizing 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). The initial puzzle presented by estimates such as this is why citizens in many countries, particularly in the contemporary political environment, resist so strenuously 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.

⁷ See Jonathan Moses and Bjorn Letnes, "The Economic Cost of International Labour Restrictions: Revisiting the Empirical Discussion," (2004) 32 *World Development* 609.

⁸ 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* (NY: Palgrave Macmillan, 2011).

As George Borjas has pointed out in various scholarly analyses and in a recent non-technical reprise of his work, *We Wanted Workers*,⁹ it is far from clear who, in a world without geographic restrictions on labour mobility, would actually move countries, what considerations might motivate some to leave and others to stay, and what might be the potential impacts on receiving countries in a number of different dimensions: impact on local labour markets; the net fiscal costs of meeting the needs of a large influx of immigrants; the capacity of social programs such as public education and healthcare to accommodate much larger numbers of people (at least in the short run); and the ability and inclination of a large influx of immigrants from diverse sources to integrate into the mainstream of receiving societies as opposed to creating an ever-increasing number of self-enclosed, self-referential cultural enclaves whose members would rarely interact with members of other enclaves and may compromise the cohesiveness and commitment to broadly supported political, social, and economic values in the receiving society.

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 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.

⁹ George J. Borjas, *We Wanted Workers: Unraveling the Immigration Narrative* (W.W. Norton, 2016).

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, in part because it may be difficult to police or enforce exit following completion of a temporary term of employment, partly because the distributional impacts on less well-endowed domestic workers in receiving countries may be unacceptable, and because incentives to integrate economically and otherwise into the broader society of the receiving country are much weaker. 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, and 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 - 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 so choose. 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 economic considerations of mutual 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 a valuable additional economic resource for the receiving country, whatever non-economic justifications might be persuasively 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 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 pose for receiving countries is what kind of substantive criteria and administrative processes should be put in place to select from this pool 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. (subsequently refined a number of times and replicated with variations in Australia and New Zealand). 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.¹⁰ 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

¹⁰ See Ayelet Shachar, "The Race for Talent: Highly Skilled Immigrants and Competitive Immigration Regimes," (2006) 81 *New York University L. Rev.* 148.

have been central to the growing and striking acceptance of most Canadians and political parties of an expansive and non-discriminatory immigration policy over the past few decades.¹¹

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: 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 more generous treatment than economic migrants fleeing destitution in their home countries (whatever the cause). However, as Borjas persuasively argues,¹² from a domestic welfare perspective substantial influxes of such workers may, in many contexts, constitute a significant supply shock to receiving countries' labour markets 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, especially 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.

¹¹ See Michael Trebilcock, "The Puzzle of Canadian Exceptionalism in Contemporary Immigration Policy," (University of Toronto Faculty of Law, 2018).

¹² Borjas, *We Wanted Workers*, *op. cit.*

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), inviting 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 and *ad hoc* burden-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. Whether further 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 while contributing to economic development in haven countries proximate to their home countries (where most are located but typically sequestered indefinitely in camps), with a view to many returning home after conflicts there have ended, as proposed by Betts and Collier in a recent book,¹³ raise a further set of challenges. In this respect, it is worth recalling that amongst President George H. Bush's major rationales for negotiating NAFTA was to provide a stimulus to the Mexican economy, which would be a disincentive for many Mexicans to emigrate to the US (trade as a substitute for emigration). Now the current Trump Administration is opposed to both trade and emigration, risking an impoverished and unstable country on its southern border.

¹³ Alexander Betts and Paul Collier, *Refuge: Rethinking Refugee Policy in a Changing World* (Oxford University Press, 2017).

I should note that with respect to all classes of immigrants discussed above I assume that from both a domestic and in some cases a global welfare perspective, basic health, criminality, and national security checks, which are a standard feature of immigration policies in most developed countries, are justifiable from an economic and broader social perspective.

VI. CONCLUSION

I close with a seeming conundrum in comparing the fourth economic freedom with the most established of the four economic freedoms: cross-border movement of goods (the first economic freedom). I pose the following thought experiment: rather than importing large volumes of low-priced goods made with low-cost labour in countries such as China, why not import the six hundred million Chinese workers who have been lifted out of poverty over the past three decades by moving from rural areas to urban manufacturing areas (assuming, for the sake of argument, that they would want to emigrate), and manufacture the goods in developed countries, where at least the workers would be spending their earnings on other goods and services rather than in their home country economies? In other words, why not treat immigration as a substitute for trade in goods rather than trade as a substitute for migration? My preliminary response is that in these cases it is not clear that these workers would in fact realize large productivity gains by migrating to developed receiving countries (recalling that most of them are already internal migrants); that the distributional impact of such a large influx of low-skilled workers on low-skilled domestic workers may well exceed corresponding trade impacts and would be unacceptable; and that the fiscal impacts at some point are likely to be significantly negative, exacerbated at least in the short run by congestion effects on public services, such as education, health care, public transit and transportation networks, and housing and rental

accommodation markets, which again may bear disproportionately on less well-endowed domestic citizens. Moreover, with the increasing substitution of technology for labour in many low-skilled manufacturing industries, the long-run economic prospects for such workers, if they were to emigrate, may be quite bleak (and hence the long-run fiscal impacts equally bleak). Hence, people cannot readily be assimilated to commodities in resolving the appropriate relationship among the four economic freedoms. The different *ceteris paribus* conditions attaching to each freedom really matter.