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The Politics and Ethics of Immigration in a Commercial Republic

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Chapter One:

Introduction

The quote on the Statue of Liberty reads: “Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore, Send these, the homeless, tempest-tost to me. I lift my lamp beside the golden door!” These words are central to the mythology of America as a nation of immigrants and, to the extent that this myth is accurate, one would expect that after experiencing multiple waves of immigration the United States (US) would have developed a set of principles guiding how legislators think about and frame immigration policy. This would not be the case, however. As Elizabeth Cohen (2007) shows, the United States has failed to adopt a collective philosophy that informs immigration policy largely because political actors have yet to determine whether we are a sovereign nation which concerns itself only with matters within our borders or whether we are a nation that recognizes immigration as a central part of American identity.

While Cohen correctly points to the indecision of policy makers, closer inspection of US immigration policy reveals a set of principles that have guided and arguably continue to guide immigration law in this country. Rogers Smith (1997, 549), more than any other scholar, has demonstrated that US thinking on immigration and citizenship is guided by a set of “fixed, ascriptive systems of unequal status” like race, ethnicity, and gender that have been used as justification for inequality (see also Scalia 1998). Rather than a gradual unfolding or development to American citizenship and immigration law, Smith and other scholars reveal that immigration in America has and continues to be characterized by the persistent restriction and denial of fundamental rights, privileges, and immunities (see also Jacobson 1998, Takaki 1979, Haney-Lopez 1996, Shklar 1991, Smith 1988). More recent scholarship builds on this body of

literature and finds a second source for America's exclusionary immigration policies. Focusing on policies of the American states, Hidetaka Hirota's (2017) *Expelling the Poor* finds that states built on colonial poor laws in order to develop immigration policies that would prevent destitute foreigners from landing in their state and for the expulsion of poor foreigners already present (see also Law 2014).

In response to these studies, philosophers and political theorists have devoted considerable attention to the development of ethical accounts of immigration that would serve as alternatives to a political practice grounded on nativism, racism, and sexism. In his *Ethics of Immigration*, Joseph Carens (2015), challenges the "conventional view" in which states have the legitimacy to control and restrict immigration. Though Carens recognizes the state's prerogative to do this, he argues that restricting immigration is inconsistent with fundamental democratic principles. Ultimately, Carens (2015, 288) argues that the state's right to exercise this power is morally constrained as our moral principles demand open borders. By the same token, Alex Sager (2020) builds off the liberal tradition and advocates for open borders in his book *Against Borders: Why the World Needs Free Movement of People*. Sager defends his argument for open borders by emphasizing that all individuals have equal moral worth and that moral worth grants people the inherent, human right of freedom of movement to pursue career, education, or personal interests without being oppressed by the state. Philip Cole (2000) draws a similar conclusion in his *Philosophies of Exclusion: Liberal Political Theory and Immigration* as he cannot find in liberal political thought any legitimate justifications for immigration control. Whereas Carens, Sager, and Cole advocate for open borders, Sara Song (2018) takes the middle ground in her book *Immigration and Democracy*. According to Song (2018, 77), we should not obliterate borders completely, instead "what is required is neither closed nor open borders but

controlled borders and open doors.” While Song rejects discriminatory practices of exclusion, she defends the state’s right to national sovereignty on the grounds of self-determination in which states have a moral claim to govern themselves.

Despite the growing body of work on the ethics of immigration, the fact that most, if not all of this literature, is not directly tied to the political, moral, and social principles of a particular regime precludes this body of literature from influencing current immigration policy.

Consequently, this body of scholarship cannot remedy what Rogers Smith (1997, 35) identifies as the norm for immigration policy in the United States: “It would thus be astonishing if citizenship laws of even a stable, well- established society were an ideologically unified, internally coherent, and intrinsically plausible whole. They are instead likely to be full of anomalies and to satisfy no one completely, even though they have enough support to prevail.” In order to bridge the divide between ethical theorizing on immigration and immigration policy, what is needed is a theoretical account of immigration derived from a regime’s own political tradition. This project provides such an understanding for immigration policy in the United States.

Writing in “Federalist 14,” Alexander Hamilton describes America as a “commercial republic.” It is my contention that commercial republicanism has the potential to provide immigration policy in the US with a set of general, ethical principles that should shape both the content of immigration policy as well as its framing. I develop this argument in four chapters. The remainder is Chapter One provides an overview of the history of immigration policy in the US. As already indicated, this is not a history where one finds a set of fixed moral, political, and social informing immigration in America. Rather, one finds that immigration policy is characterized by exclusionary policies informed by discrimination. Given the state of

immigration policies, this chapter also takes up scholarship from philosophers and political theorists who provide alternatives to the discriminatory principles that have characterized American immigration policy.

In Chapter Two, I establish the nature of the public interest in a commercial republic through an analysis of political and commercial writings provided in Henry Clark's (2003) *Commerce, Culture, and Liberty: Readings on Capitalism Before Adam Smith*. Many of the texts in this collection are from Holland and England and both of these countries had the type of commercial republic the Founders saw themselves creating. My argument shows how immigration contributes to the public interest in a commercial republic. In contrast to arguments suggesting that immigration is inconsistent with the public interest (see, in particular, Huntington 2005), I demonstrate that immigration is a vital contributor to the commercial, political, and social interests of the community. My argument situates immigration firmly within the commercial republican tradition that informs the American political tradition. Here, I draw on arguments made in favor of ratifying the U.S. Constitution to show that the argument offered in support of the U.S. Constitution holds that immigration contributes to America's national interest and, consequently, that the desired level of immigration is quite liberal. Finally, this chapter concludes by developing a set of commercial republican principles that inform immigration policy in the United States.

In Chapter Three, I develop a set of policy alternatives that are informed by the principles of commercial republicanism identified in Chapter Two. More specifically, this chapter examines the manner and extent to which legalization programs and amendments to the employment-based system further the commercial republican understanding of the public

interest. Here, I employ statistical data on the positive contributions of immigrants in order to establish my policy proposals.

US Immigration Policy: A Brief Historical Overview

The United States, from a foreign perspective, is regarded as the land of the free, the land of endless opportunities, the place where anyone is free to achieve the American Dream. These headlines encouraged early waves of immigration in the nineteenth century. In his book *Expelling the Poor*, Hidetaka Hirota (2017), dispels these misnomers only to reveal that the United States was never actually receptive of newcomers. Instead, he unveils that in the nineteenth century the perception of immigrants was grounded on xenophobia through his analysis of the Irish immigrant experience. Hirota states:

One of the major tenets of anti-Irish nativism in nineteenth-century America was that Irish immigrants' belief in hierarchical and seemingly despotic Catholicism would corrupt American republican democracy and predominant cultural values rooted in Protestantism. Irish immigrants' drinking habits and supposed predisposition to criminality and violence reinforced Protestant Americans' conviction that Irish were unsuited for American society (Hirota 2017, 6).

His analyses confirm that anti-immigrant animosity is vastly a product of cultural differences.

Yet, it has become common today to dismiss that for decades immigration policy has been—and continues to be—predicated on prejudices.

Before immigration policy fell under the jurisdiction of the federal government it was regulated by the states (Hirota 2017, see also Law 2014). The policies implemented by the states of New York and Massachusetts specifically had lasting effects on the lineage of federal immigration policy. By establishing a string of passenger laws New York and Massachusetts made it close too impossible for poor immigrants to settle there. As Hirota references, “In 1820, the Massachusetts legislature prohibited the landing of any passenger, American or foreign, who ‘may be liable to become chargeable for their support to the commonwealth,’ without a bond not

exceeding \$500” (Hirota 2017, 46). New York legislators also developed similar passenger laws which antagonized poor immigrants. In addition to limiting the entry of immigrants, Massachusetts also engaged in illegal deportation practices. Hirota explains that “Massachusetts state law required officials to put immigrant paupers on a trial and obtain court warrants for removal....But officials often bypassed this process, seizing foreign inmates from charitable institutions and placing them on board deportation ships for the sake of expediency and convenience” (Hirota 2017, 4). Massachusetts and New York’s response to the large influx of immigrants in the 1800’s set the framework for federal immigration policy. In fact, it was these two states that inspired the Immigration Act of 1882, the first national immigration law which “prohibited the landing of paupers and criminals and provided for the deportation of criminals who escaped exclusion at the time of arrival” (Hirota 2017, 181). By focusing on the experience of early Irish immigrants in the 1800’s, Hirota sheds light on the fact that immigration policy has been blindly guided by nativist values.

Hirota’s findings are corroborated by Roger Smith’s *Civic Ideas*. He explains that in the early 1800’s the Whig Party grew anxious about immigration because they envisioned the United States as “a prosperous Anglo-Saxon Protestant society, relatively free of Hispanics, French, and Irish Catholics, Native Americans, and Africans” (Smith 1997, 206). To animate their vision of an all-white Protestant nation, Smith explains, that the Whig Party linked specific ethnic and religious characteristics to Americanism (Smith 1997, 207). Essentially, being an American meant being White and Protestant. By defining Americanism in this manner, individuals are allowed to be perceived as American or non-American, as a consequence, this makes it easy to exclude people who are not viewed as desirable in American terms.

The desire to keep America's racial composition homogenous dictated the United States' politics and allowed legislators to pass multiple restrictive immigration laws. This includes the notorious Chinese Exclusion Act of 1882, enforced by President Chester A. Arthur. This law banned Chinese laborers for ten years, but even more radically, it banned Chinese naturalizations. The logic behind the implementation of this law was purely based on racial differences. As Smith discloses, in signing this bill "Arthur averred that the 'experiment of blending' the 'habits and mutual race idiosyncrasies' of Chinese laborers with Americans had proven 'unwise, impolitic, and injurious to both nations'" (Smith 1997, 359). The analyses provided by Hirota and Smith are important when examining cotemporary immigration laws and practices. Hirota and Smith eloquently describe the flaws in our immigration system from its very inception. In comparing today's laws to earlier immigration laws, one sees that the trajectory of these policies has failed to shift towards a progressive direction, instead it continues to be influenced by variables like class and race.

Like many other immigration scholars, Carens rejects the practice of denying admission to immigrants on the grounds of race, ethnicity, religion, and sexual orientation (Carens 2013, 175). In his *Ethics of Immigration*, Joseph Carens outlines the parameters in which immigrants should and should not be excluded. As it has become universally frowned upon to blatantly discriminate against individuals on the basis of these characteristics, new inconspicuous methods have emerged to achieve the same results. One of the most employed rationales used to exclude immigrants has been the pretext of national security. Let us consider the shift following 9/11, after the terrorist attacks, politicians ramped up national security measures. Scholars, like Ariane Chebel d'Appollonia (2012), argue that politicians used this disastrous event to push the

narrative of a country in dire need of stricter immigration laws, this is what scholars have defined as the securitization of immigration.

In *Frontiers of Fears*, Ariane Chebel d'Appollonia details the extensive measures the United States took following the attacks. Chebel d'Appollonia discloses how the United States adopted exclusionary immigration policies in the name of national security. Following September 11, the government established a “zero tolerance approach to immigration offenses, tougher controls on borders, and even extraterritorial controls beyond borders” (Chebel d'Appollonia 2012, 77). The government's response to September 11, directly linked immigration and terrorism, this allowed politicians to justify and legitimize radical immigration laws and practices. Furthermore, in linking immigration and terrorism, this notion that society must be skeptical of newcomers was mainstreamed to the public. Consequently, this has warped the image of immigrants casting them as outsiders whom are “threats” to the security of the United States.

Although, on the surface, national security may seem like a good reason to tighten immigration laws, the problem is that it is subject to abuse. This is why Carens struggles to accept national security as a valid reason to exclude immigrants. He follows “The concept of national security can be used to justify excluding anyone whom state authorities choose to keep out for any reason whatsoever” (Carens 2013, 175). The problem is that this argument gives the government too much discretion to decide which group of immigrants can be tagged as threats to public safety. In doing this, politicians further propel nativist values. Ultimately, Carens' sides that national security can only be used to exclude when it is grounded on solid evidence and driven by the right principles.

While Carens equips us with a detailed account of impermissible exclusionary tactics, he switches his focus to when it becomes a state's duty to admit immigrants. Carens explains that family unification places a moral obligation on states to openly receive immigrants waiting to be joined by their immediate family members (Carens 2013, 188). Along with fulfilling moral obligations, research has proved that family unification also yields positive economic, social, and community implications by empowering business developments. In fact, in "Ethnic Neighborhoods and Urban Revitalization: Can Europe Use the American Model?," Larry Ford, Florinde Klevissa, and Francesca Carli (2008), report the significant role immigration plays in revitalizing dilapidated neighborhoods in major cities. They specifically turn to the success of Little Italy in San Diego, California as a prime example. Prior to being the Little Italy known today, what existed was a dull neighborhood which was limited to a few shops. Ford, Klevissa, and Carli point out that it was the strong Italian presence which transformed this neighborhood into the vibrant place it is today. The community began to host traditional Italian celebrations and local business re-ornamented their shops to exude a strong Italian atmosphere through the adoption of color, art, and furniture (Ford, Klevissa, & Carli 2008, 87). Soon India Street—Little Italy's main strip—was booming with Italian restaurants, cafes, shops, and other business developments. These businesses are now vital to the economy, as Ford, Klevissa, and Carli point out they help aid costs like the improvement of city infrastructure (Ford, Klevissa, & Carli 2008, 87). Today, there are a multitude of ethnic enclaves like Little Italy across the United States, there's Chinatown, Little Havana, India Square, and countless others. Ultimately, immigrants help struggling neighborhoods gain financial stability and fills them with rich cultural depth which accommodates arriving immigrants and serves as a tourist attraction for visitors.

Findings like these challenge the advances of those who try to mischaracterize immigration as a burden to the economy and a danger to communities. Other scholars have also spoken to the wide economic benefits that immigration yields. Not only has immigration made a difference in major cities but it has brought life to lackluster rural communities. Firstly, immigration has averted massive depopulation in rural towns. As the United States Department of Agriculture (2019) reports, rural areas have seen dramatic population loss over the years. The following quote speaks to the gravity of the problem: “The total population in nonmetro (rural) counties stood at 46.1 million in July 2017—14 percent of U.S. residents spread across 72 percent of the Nation's land area. Annual population losses averaged 48,000 per year between 2010-11 and 2014-15” (Department of Agriculture 2019). However, immigration has helped alleviate some of the negative implications of population decline. In the report *Revival and Opportunity: Immigrants in Rural America*, researchers showed that across the rural towns studied, 867 experienced population growth, namely due to immigration (Mathema et al. 2018, 3).

Aside from staving off massive population loss, immigrants, have significantly contributed to the economy of these communities. Immigrants in rural America help fill labor shortages in key industries such as meat processing plants. According to the aforementioned report “Large-scale meat processing plants have become anchor institutions in numerous rural communities, providing employment and bringing in new residents that result in population increases” (Mathema et al. 2018, 19). The problem these establishments face, is that many of their positions fail to appeal to the United States’ native-born population. To demonstrate, in 2011 there were nearly 6,500 agricultural positions in North Carolina needing to be filled, however, only 268 native born workers applied for the position” (Mathema et al. 2018, 21).

For this reason, many immigrants have filled these unwanted positions, keeping these industries from dying. It is worth noting that, that the manufactures are not the only beneficiaries of foreign labor. Rural communities as a whole also benefit from the presence of immigrants. The falling rural population makes it difficult for schools to stay open and ensure quality education. However, the influx of immigrants has jumped school enrolments and kept rural public schools afloat (Mathema et l. 2018, 20). These findings, in addition to the bulk of work surrounding this subject area, all support the notion that immigration is good for the nation, this can easily be overlooked in today's political climate.

Today, some politicians and media outlets persistently paint immigrants as dangerous criminals who are poisoning our communities. Even our President Donald Trump has engaged in such discourse by disparaging Mexican immigrants. During his presidential announcement in 2016, Donald Trump, expressed that Mexicans were criminals, rapists, and engulfing our communities with drugs. However, these assertions, like the one put forth by President Trump, have been consistently dismantled by research. In fact, research shows that immigrants are actually less prone to crime than their U.S. native counterparts. Alex Nowrasteh (2017), from the Cato Institute, found that undocumented immigrants are forty-four percent less likely than native-born Americans to be incarcerated for a crime and even more notably documented immigrants are sixty-nine percent less likely to be incarcerated for a crime compared to the native-born population. In another study, Ousey and Kubrin (2018) utilized a sample of 159 cities to study the relationship between immigration and crime. They found that immigration actually leads to a decrease in violent crime due to the traditional family structure of immigrant families; immigrant families tend to have lower rates of divorce and single-parent households. The bulk of research that studies the link between immigration and crime finds little to no

support for this immigrant crime phenomenal that politicians constantly disseminate to the public.

Despite the weak correlation between immigration and crime, the federal government continues to expend resources on law enforcement agencies that are supposed to contain immigration. However, the ironic part is that the number of undocumented immigrants has actually declined since 2007 (Cohen 2019, 10). Yet, the amount of money spent on these agencies, and the anti-immigrant hysteria they induce, reflects a much different narrative. In 2019, the budget for Immigration and Customs Enforcement (ICE) was \$8.3 billion, the budget for Customs and Border Patrol (CBP) was even for astonishing, amounting to \$14.2 billion (The White House, 2019). In the previous year, ICE and CBP spent more thirty-four percent more than the five main federal criminal law enforcement agencies combined (Meissner & Gelatt 2019).

The magnitude of ICE and CBP's annual budget is only one of the fundamental problems with these agencies. The more pressing issue is that both ICE and CBP have a record of violating human rights. Just recently, an ICE detention center in Georgia made headlines after a whistleblower told the public that women were undergoing unnecessary hysterectomies (Bryant, 2020). In addition to this atrocity, over the years several individuals in ICE custody have been sexually assaulted while detained. Sexual assault makes up the majority of ICE complaints, between 2010 and 2016, ICE received thirty-three thousand sexual assault claims (Cohen 2019, 29). Most immigrants endure psychological and physical abuse in these facilities because of the expansive impunity ICE and CBP agents enjoy. CBP is the largest federal law-enforcement agency and some would argue the most destructive. The integrity of CBP officers is constantly

questioned because of their engagement in criminal activity. In fact, CBP officers are five times more likely to be arrested compared to officers in other federal law-enforcement agencies. (Cohen 2019, 20). Additionally, the agency also has a history of collaborating with citizen militias. In one instance, United Constitutional Patriots, a citizen militia group, held two hundred adults and children at gun point.

As the above-mentioned evidence has demonstrated, immigrants have always been casted in a negative light. Much of the negative conations attached to immigrants, stem from the fact that immigrants come from contrasting cultural backgrounds. Since its inception immigration policy has been driven by this ‘us/them’ dichotomy. Despite the bulk of research which suggests that immigrants are beneficial assets to the community and economy, legislators are still reluctant to implement more progressive policies.

Philosophical Alternatives to Immigration Policy in Practice

Various political theorists and philosophers have proposed their thoughts on how to best repair the problems ingrained in our immigration system. There has been a range of recommendations circulating the academic world of immigration, among the most popular is the case for open borders. Within the sphere of scholars who support this idea, Joseph Carens, is by far the leading proponent.

In his most recent book, *The Ethics of Immigration*, Carens rejects the conventional view in which states reserve the right to limit and control immigration. Instead, he advocates that states should relinquish their discretionary powers over entry because they have a moral obligation to do so (Carens 2013, 236). Carens justifies this claim by making the case that borders undermine an individual’s human rights which is inconsistent with democratic

principles. To prove his point, Carens draws from two internationally recognized documents, endorsed by the majority of democratic nations: the 1948 Universal Declaration of Independence and the 1966 International Covenant on Civil and Political Rights. Each document recognizes an individual's right to domestically move within nation-states. Carens makes the argument that if freedom of movement is regarded as a human right on the domestic level then the same logic should apply when thinking about international movement.

In *Philosophies of Exclusion*, Philip Cole (2000) takes a similar stance on freedom of movement. Cole explains that if the 1948 Universal Declaration of Independence considers the act of leaving a country a human right, then presumably, the right to enter another country may also be declared a human right. Cole further elucidates this in the following quote: "one cannot consistently assert that there is a fundamental human right to emigration but no such right to immigration," because such an argument would be "not merely ethically, but also conceptually incoherent" (Cole 2000, 52–53). Ultimately, Cole concludes that there must be a lucid relationship between exit and entrance policies.

In large part, many immigration scholars have vehemently defended the freedom of movement because many see it as an integral part in sustaining a person's well-being. Carens, for example, claims:

Every reason why one might want to move within a state may also be a reason for moving between states. One might want a job; one might fall in love with someone from another country; one might belong to a religion that has few adherents in one's native state and many in another; one might wish to pursue cultural opportunities that are only available in another land. (Carens 2013, 239).

Building off of Carens' point, one is inclined to argue that unanticipated circumstances such as natural disasters, political instability, violence, etc. also necessitate freedom of movement.

In conjunction with Carens, Kieran Oberman (2016) takes an identical approach with his justification of open borders. In his article, “Immigration as a Human Right,” Oberman argues that humans have the right to pursue what is in their best interest and tied into this right is the freedom to immigrate. As Oberman puts it, immigration is fundamental to a person’s well-being because “The personal interest is the interest people have in being free to access the full range of existing life options when they make important personal decisions” (Oberman 2016, 35). These range of options Oberman speaks of, may encompass a job, a love-interest, family, or education, whatever it may be, it is not possible to explore these life options if states restrict immigration.

Other scholars have examined the prospects of open borders from a humanitarian standpoint. Alex Sager (2020), in particular, fashions this argument in his book, *Against Borders: Why the World Needs Free Movement of People*. Sager makes the case for open borders by appealing to the idea of distributive justice. Distributive justice concerns the equal allocation of resources. He begins by drawing an important distinction between two conflated concepts: *open borders* and *no borders*. According to Sager, the notion of no borders aims to nullify the sovereignty of the state. Conversely, Sager defends the position of open borders, which seeks to dismantle the restrictive nature of borders without doing the states sovereignty. In Sager’s words, “To support open borders is to deny that the use of state coercion to restrict immigration into state territories is ethical” (Sager 2020, 12). Sager’s account of open borders does not call for the relinquishing of state sovereignty, rather what Sager demands is that states eliminate barriers that make it difficult for foreigners to secure the necessary resources they need to improve their quality of life. Sager concludes that it is important to distributive justice that states allow for the freedom of movement in order to combat global poverty and ensure the equal dispersion of resources.

While the discussed academics all embrace the general consensus of open borders, there is a degree of divergence among some scholars. Sara Song (2018), in particular, challenges the idea of open border and affirms that “what is required is neither closed nor open borders but controlled borders and open doors” (Song 2018, 77). Song specifically challenges Caren’s perspective which argues that immigration reduces poverty and thus states have a moral duty to eradicate borders. If the true concern, Song argues, is for the world’s most disadvantaged individuals than open borders might not be the most conducive measure to improve the quality of life of this group.

She uses empirical data to discredit this line of reasoning. First, she starts by explaining that open borders are not a remedy for global poverty because empirical studies suggest that the poor do not tend to be the ones who migrate to wealthier nations, rather, it is those who have the financial capacity (Song 2018, 89). Ultimately, because the poor do not have the resources or knowledge to migrate, they tend to be immobile. Song also adds that emigration can negatively impact those who stay behind because those who tend to emigrate are those from a high socioeconomic class. When these individuals send money back to family members—remittances— they are sending money to those are already in good economic standing. Song explains that this further exacerbates economic disparity by widening the gap between the rich and poor.

In the final chapters of her book, Song gives her account of what a comprehensive immigration system would like. Instead of open borders, Song proposes that there be two categorical distinctions for immigrant admissions: *obligatory admissions* and *discretionary admissions*. Song defines obligatory admissions as “cases where the decision to admit a prospective migrant is morally required” (Song 2018, 111). Conversely, discretionary admissions

are the opposite, cases in which immigrants do not have a moral claim for admission. Refugees, displaced people, and asylum seekers all fall under the category of obligatory admissions according to Song's criteria. A major reason Song feels that states are morally obligated to admit these groups is because the only way in which these individuals will get their basic needs met is by allowing them to enter a safe country (Song 2018, 119). On the other hand, discretionary admissions encompass voluntary migrants. Song argues that voluntary migrants can be excluded because their circumstances are not as dire as asylum seekers, refugees, and displaced persons.

Similar to Song, I too seek to facilitate an intermediate approach through the adoption of commercial republicanism. Commercial republicanism seeks to mend the gap between political theory and political practice by offering a regime specific approach. Although much of what immigration scholars suggest is supported by compelling evidence and data, most of it is disregarded when it is time to draft legislation, arguably because many have failed to connect it to a specific regime.

Chapter Two:
The Public Interest and Immigration
In a Commercial Republic

In the previous chapter I contend that the idea of commercial republicanism provides one with a regime-specific set of principles that have the potential to provide the US with a set of ethical guides for immigration policy. While the purpose of this chapter is to identify and conceptualize this set of principles and that of the next chapter is to apply these principles, it is first necessary to address the scholarly debate over the nature of commercial republicanism in American political thought.

There are two competing interpretations of commercial republicanism. On the one hand, Drew McCoy's (1980) *The Elusive Republic* consciously builds on scholarship arguing for a republican interpretation of American political and commercial thought, where the primary objective of America's commercial republic is to cultivate and sustain the virtuous character of republican citizenry (see Wood 1998). In contrast, Elkin (2006, 11-14) emphasizes the private-enterprise, market-based economy traditionally associated with classical liberal political thought (see Zuckert 1996, Pangle 1988). The analysis and argument show that commercial republicanism is actually a combination of these two competing interpretations. Like McCoy, I show that commercial republicanism is concerned with the cultivation of certain character traits that define good citizenship. Where McCoy goes wrong, I contend, is in understanding the public good in political terms rather than commercial terms. This means that Elkin is correct to emphasize the commercial objectives of the American political system. My analysis and argument, thus, build on that of Elkin by making connections between commercial republicanism's public interest and immigration.

The argument in this chapter is developed as follows. First, analysis of commercial republican writings published before Adam Smith's publication of *The Wealth of Nations* in 1776 allows the public interest in a commercial republic to be defined. The analysis presented here indicates that commercial republicanism's commitment to liberty has the effect of producing citizens that have a positive effect on the commercial well-being of the nation. Moreover, the commercial ties that characterize society in a commercial republic are strengthened by commercial activity which, in turn, fosters peace, stability, and wealth. The second part of this chapter explores the relationship between the public interest and immigration. The analysis and argument in this section indicate that immigration plays an important role in furthering the public interest. The third section locates the understanding of the public interest and the important role of immigration in a commercial republic within the political theory informing the argument in support of the US Constitution. Finally, this chapter ends by identifying and conceptualizing key principles of commercial republicanism that should animate immigration policy in the US.

The Public Interest in a Commercial Republic

The commercial republic, like all forms of government can be defined in terms of the public interest.¹ The public interest, if one were to define it at the most general level, constitutes the "permanent and aggregate interests of the community" (Federalist 10). As for the content of

¹ Public choice scholars question the assertion that the public interest actually exists. Addressing this argument lies beyond the scope of this paper. Briefly, this argument holds that institutional design is solely a matter of preference aggregation. In other words, the test of good politics consists of the ability of political institutions to satisfy the preferences of the citizenry. For this argument, "political institutions are essentially calculating machines: the best institution is the one that most accurately sums up the preferences of those affected by the decision being made" (Elkin 2006, 87). Such an outlook rejects the idea that there exist any free standing political/social values independent of preference aggregation. In other words, the only public interest is the one arrived at via preference aggregation. Scholarly examples that question the existence of the public good include Becker (1958) and Stokey and Zeckhauser (1979). For an alternative view, see List and Goodin (2001).

these “permanent and aggregate interests,” it is possible to look to the Preamble of the U.S. Constitution where justice, domestic tranquility, the common defense, promotion of the general welfare, and securing the blessing of liberty are identified as the objectives to be pursued by the government created by the Constitution. The problem with the objectives identified in the Preamble is that their meaning is anything but certain. In order to distill this meaning, one must not only attempt to reconstruct the understanding of the framers of the Constitution, but also give special consideration to the nature of the type of regime (a commercial republic) envisioned by the Founders (see Federalist 14).

While several scholars have explored the commercial aspect of the American republic (see McCoy 1980 in particular), Stephen Elkin’s (2006) *Reconstructing the Commercial Republic*, uniquely gives meaning to commercial republicanism by defining the integral parts of the public interest. Elkin identifies six aspects of the public interest. However, this paper focuses on the three elements most relevant to the sphere of immigration.² One of the elements Elkin highlights is the regime’s need for liberty. He makes the argument that it is the duty of government to enforce laws that facilitate and preserves liberty. He establishes this argument in the following statement: “Liberty is a product of government. Even the most strict libertarian must concede that liberty in a complex society requires a legal framework within which citizens can pursue their interests” (Elkin 2006, 246). This definition of liberty that Elkin proposes is not new, in fact, it resonates deeply with the collection of work issued by many early commercial republican theorists.

² Along with the elements already mentioned, Elkin (2006, 21) also identifies three additional features: the prevention of faction, deliberative political institutions, and laws that are equally binding on both the citizenry and those who make the laws.

Early commercial republican Pieter De La Court, for example, stressed the importance of liberty in a commercial republic, in his essay *The True Interest, and Political Maxims of the Republick of Holland and West-Friesland*. De La Court notes that the “reason why commonly we see that all republicks thrive and flourish far more in arts, manufacture, traffick, populousness and strength, than the dominions of and cities of monarchs: for where there is liberty, there will be riches and people” (Clark 2003, 14). Pierre Samuel Du Pont De Nemours also discusses the importance of liberty, and its role in facilitating human rights, in his piece *On the Origin and Progress of a New Science*. He states, “the rights of each man, anterior to all convention, are the liberty to provide for his subsistence and well- being, and the property of his person and in the things acquired by labor of his person” (Clark 2003, 572). For a commercial republic, arguably nothing is of greater importance than liberty, for it is conducive to its very nature. Liberty is the foundation of commercial republicanism as it propels the spread of knowledge, ideas, and innovation, all of which are responsible for the wealth of the nation.

In addition to liberty, Elkin also identifies a capable citizenry as one of the essential elements in a commercial republic. To build his argument on the citizenry, Elkin channels James Madison’s view on this topic. Elkin explains that James Madison wanted the members of the community to possess certain qualities because ultimately, they are responsible for deciding what is best for their community (Elkin 2006, 36). In fact, in a *Republican Distribution of Citizens* (1792) James Madison states that “The best distribution is that which would favor health, virtue, intelligence, and competency in the greatest number of citizens.” When the majority possesses

these qualities, it puts the community in a good position to succeed because they will act on what is best for the community.³

James Madison is not the only one who spoke on the importance of character, many early commercial republicans did as well. Most notably, French philosopher, Montesquieu offers his understanding on the topic in his *Spirit of the Laws*. He notes that “Commerce cures destructive prejudices, and it is an almost general rule that everywhere there are gentle mores, there is commerce and that everywhere there is commerce, there are gentle mores” (Clark 2003, 290). Here, Montesquieu draws a positive relationship between commerce and character. Montesquieu believed that commerce had the ability to instill the right qualities in the members of the citizenry. According to most commercial republicans, the foremost quality of good citizenship is the willingness to work, or industriousness. In fact, David Hume defines commerce as a storehouse of labor and that without it “men sink into indolence, lose all enjoyment of all life, and are useless to the public, which cannot maintain or support its fleets and armies, from the industry of such slothful members” (Clark 2003, 363). In order to sustain a commercial republic, it needs productive workers who are willing to engage in commercial activity. In turn this creates individuals who are not only able to provide for themselves, but more importantly they are great assets to the community.⁴

³ The reading of Madison provided by Elkin should be contrasted with the reading provided by Sheehan (2009 and 2015). Whereas Elkin reads Madison as a liberal, the Madisonian citizen in Sheehan’s reading closely aligns with the citizen of classical republicanism and closely associated with Aristotle’s thoughts on good citizenship. The best overview of Aristotle on citizenship is Susan Collins’ (2009) *Aristotle and the Rediscovery of Citizenship*.

⁴ The emphasis on productivity differentiates the citizen found in the earliest commercial republican writings from the vision of citizenship provided by McCoy (1980) in his analysis of Jefferson era political economy. McCoy identifies a vision of American citizenship characterized by the willingness of citizens to forego their private interest in favor of the public interest. Such a vision is not found here. Instead, citizens further the public interest by satisfying their private interest. Such an understanding speaks to the similarities between liberalism and commercial

Lastly, the social basis, as acknowledged by Elkins, is one of the further elements that are important in regard to the public interest. Elkin, again channels Madison's point of view to construct his understanding of the social basis. He states Madison believed "that a regime is a set of institutions harnessed to a conception of justice consistent with the one held by the powerful strata of the regime" (Elkin 2006, 38). In a commercial republic, the social basis is the idea that people are interconnected through commercial activity, and this connection alone is enough to instill trust and respect within the community. In one sense, commerce inspires a sense of community through the recognition of mutual needs and the ability of commerce to meet these needs. John Brown emphasizes this in *An Estimate of the Manners and Principles of the Times*. Brown states "If we view Commerce in its first stages, we shall see, that it supplies mutual necessities, prevents mutual wants, extends mutual knowledge, eradicates prejudice, and spreads mutual humanity" (Clark 2003, 426). In a commercial republic, individuals rely on one another in order to receive essential commodities. This mutual relationship facilitates respect and trust between members of the community. Montesquieu touches upon this in *Spirit of the Laws*, he states that "The spirit of commerce produces in men a certain feeling for exact justice, opposed on the one hand to banditry and on the other moral virtues that make it so that one does not always discuss one's interests alone" (Clark 2003, 291). This dependency on one another is favorable to the public interest because it prompts people to think about what is best for the community as a whole.

Elkin's book offers the necessary elements to define the public interest in a commercial republic. The strength of the citizenry and the social foundation is a direct product of the degree

republicanism. Given these similarities, it is possible to speak of the virtues of commercial republicanism in terms of what McCloskey (2006) has identified as bourgeois virtues.

of liberty the nation institutes. When the government implements laws that facilitate liberty, it supports its citizens to pursue their interests. A nation characterized by liberty produces a citizenry that regularly engages in commercial activity, this has a positive impact on the economy. Moreover, the social foundation is strengthened because commercial republicanism creates a commonwealth where people are bond to each other in commercial terms. This fosters peace, stability, and wealth for the community. However, what remains to be determined is the manner and extent to which immigration is consistent with the public interest in a commercial republic.

Immigration and the Public Interest

Proponents of commercial republicanism focus their attention on the generation of wealth that commercial activity produces, specifically, through trade. Nicholas Barbon, for example, states in a *Discourse of Trade* that “The use of trade is to make and provide things necessary: or useful for the support, defense, ease, pleasure, and pomp of life” (Clark 2003, 80). The key to producing wealth in a commercial republic, as Barbon highlights, is not only to manufacture commodities that are necessary, but furthermore, goods which are conducive to human happiness. It is only from the production of luxury that great wealth arises. If the focus was solely placed on the production of essential items, our markets would halt and reach a stagnant state, which would in turn decrease the country’s revenue

Instead, what is more favorable is appealing to the fancies of individuals, which prompts the production of superfluous items—or luxury. In return, this creates a constant stream of wealth because the industries beneficial to mankind are infinite. English writer, Daniel Defoe, speaks to this in his essay *The Complete English Tradesman*. Here, he states, “Is not trade the inexhausted fund of all funds, and upon which all the rest depend” (Clark 2003, 243)? Here,

Defoe details the perpetual nature of commerce that is responsible for maintaining a steady stream of revenue. In contrast, David Hume describes the repercussions of dull markets in the following quote: “In a nation where there is no demand for such superfluities, men sink into indolence” (Clark 2003, 363). Ultimately, the point both commercial republicans are attempting to convey is that luxury breeds a variety of industries that sustains the economy.

With this intention of securing wealth, many commercial republicans favor—and even encourage—a large population. This is the case in Pieter de La Court’s piece *The True Interests, and Political Maxims of the Republick of Holland and West-Friesland*. Here, he takes the position that it is the government’s task to procure a large population because it is vital to a nation’s strength and affluence (Clark 2003, 13). Like De La Court, Marquis de Saint Lambert, also attests to the premise that wealth and population are closely linked. In his essay *Luxury*, he employs England as an example, and declares that “For a century, luxury and population in England have increased in similar proportions” (Clark 2003, 480). The reason it is in a nation’s interest to encourage a vast population is because it facilitates successful trade and markets. This concept is reinforced in De Gournay’s piece *Mémoire*. He states “If we consider how many more people and how much more trade Germany has acquired in the last 20 years, and if we consider during that time we have gained no more people and no new branch of trade, it follows we are becoming poorer in men and commerce” (Clark 2003, 377). Through this anecdotal reference, De Gournay highlights the importance of a well populated country, without enough people the country becomes weak because trade is not being stimulated.

Thus, this raises the question: how should country’s increase their population? Many commercial republicans argue that a population shortage, can be best remedied through the promotion of liberty which will serve to attract foreigners. Specifically, those living under

conditions where liberty is absent. John Trenchard speaks to this point in *Cato's Letters*, where he states that “True merchants are citizens of the world, and that is their country where they can live best and most secure; and whatever they can pick up and gather together in tyrannical governments, they remove to free ones” (Clark 2003, 197). By establishing principles of freedom, countries are in good standing to attract immigrants who are in search for a better life—and thus achieve ultimate goal of population growth.

An important principle of freedom that commercial republicans focus on is the freedom to pursue and practice an occupation in order for citizens to achieve financial stability. De la Court makes this point when he explains that “strangers”—or foreigners—will gravitate towards nations which permits them to earn an honest living (Clark 2003, 30). In addition to occupational freedom, many immigrants will find religious freedom equally appealing. De la Court also speaks to this point in the following quote: “It is evident that to allow all men the exercise of their religion with more freedom than in other nations, would be a very effectual means for Holland to allure people out of other countries” (Clark 2003, 29). When a government does not facilitate freedom, it drives people out of the country. In the following quote, de Gournay provides an analysis of the effect of depopulation caused by emigration:

Farming and Commerce are, as we have shown, the only two sources of wealth for any state; thus, if these occupations are exercised by fewer people in France than in England, it necessarily follows that capital in France increases far less in proportion, and far more slowly than in England; and since more activity, more trade and more money attract people, then England must surely attract our people, whereas we do not attract hers (Clark 2003, 376).

Ultimately, because individuals leave France and resettle in England “the sum monetary wealth surely increases much more in England than in France” (Clark 2003, 377).

Being that immigration is a prime contributor to wealth, many commercial republicans refute the traditional sense of citizenship which makes one a citizen through blood or soil (see

Amir and Kpodar 2019). The virtues consistent with commercial activity presume a different understanding of citizenship. In his piece *Political Essay upon Commerce*, Jean-François Melon, describes commerce as the “Destroyer of sloth and idleness” and proceeds to state that “The sumptuous man would soon see the end of his riches, if he did not endeavor to preserve them, or acquire more” (Clark 2003, 256). Gournay also takes a similar stance in the following statement: “It is work one must encourage by making it accessible to all—and as easy and gentle as possible” (Clark 2003, 383). In the traditional account of citizenship, good citizens are characterized by their civic virtue. However, different from the traditional account, commercial republicanism judge’s good citizens on the criteria of commercial engagement.

With the declared statements made by early commercial republican theorists in mind, the willingness to work, or industriousness is the chief virtue that good citizens in a commercial republic require. For this reason, immigrants would make stellar citizens in a commercial republic because this virtue is inherently embedded in them. Pieter De La Court comments on this in the following statement “yet all inhabitants who have a certain place of abode, or desire to have it as they are then no strangers, but inhabitants, so ought they be permitted, as well as the burghers, to earn their necessary food, seeing as they are in greater want than their opposers” (Clark 2003, 32). Here, De la Court rejects the idea of excluding immigrants, instead, he seems to infer that immigrants are natural workers due to their desire to advance. This not only helps improve their own socioeconomic status, moreover, it has the same effect on the receiving country’s economy. Immigration introduces new, physical and human capital, which improves existing markets and paves the way for new ones. This concept is corroborated by Joseph Schumpeter’s theory of creative destruction. According to Schumpeter (1975, 82-85), creative destruction accounts for the changing quality of capitalism. He reasons that creative destruction

is a kind of industrial mutation that revolutionizes the economic structure from within by destroying old structures and replacing them with new ones. When connected to immigration, Schumpeter's reasoning suggests that the commercial consequences of immigration help to explain both the dynamic aspects of commercial republicanism and the ability of commercial republics to continually adjust its understanding of the public interest in response to a changing world.

Moreover, wealth is consistent with the well-being of the community. The following statement by Saint Lambert suggests this "The means people use to enrich themselves must contribute to the state's wealth, and the ways people enjoy their riches must be useful to the state" (Clark 2003, 486). Seeing that in a commercial republic, the public interest and health of the community is contingent on the wealth of the country, one could argue that Saint Lambert—along with other commercial republicans—would agree that immigration is in the best interest of the community because revenue increases overall with immigration.

Commercial republicanism recognizes that individuals must depend on one another. This concept is discussed by De la Court, he states that "the ships that lie for freight, can lade nothing but what the merchants or traders put on board them of fish, manufactory, or merchandize" (Clark 2003, 20). In this quote De la Court informs us of the interdependent relationships' commercial activity forms. Through these relationships members of society are able to possess what they want. These commercial engagements invigorate the community and prompts individuals to become more social. This is further recognized by Turgot in *Reflections on the Formation and Distribution of Wealth*. He states that "reciprocal need led to the introduction of the exchange of what one possesses for what one did not possess" (Clark 2003, 520). David Hume further speaks to the sociability of individuals in a commercial republic in his piece *Of*

Refinement in the Arts. He states “The more these refined arts advance, the more sociable men become” and this is a positive consequence of commerce because members of the community “must feel an increase of humanity, from the very habit of conversing together, and contributing to each other’s pleasures and entertainment” (Clark 2003, 361). Commerce facilitates strong community bonds because of the desire to acquire what we want, furthermore, it fosters community trust and respect.

Considering that commercial republicanism contextualizes the health of the country in terms of wealth, immigration should be seen as an essential ingredient of a successful commercial republic. As discussed, immigration raises the wealth of a country by supplying extra labor and fresh perspectives and ideas, all of which helps expand our commercial sectors. For this reason, it is important that immigration policy be characterized of liberty to attract individuals from other countries. Furthermore, it is important to the vitality of the commercial republic that the citizenry be composed of industrious persons. The majority of immigrants satisfy this criteria, as many chose to emigrate to find employment. In addition, because immigration stimulates commerce it strengthens the social foundation. These three elements of the public interest, provided by Elkin, has the ability to shape how immigration is perceived in the United States.

Contextualizing the Public Interest in the American Context

Prior to the ratification of the U.S. Constitution, the states were taxed with a sum of problems which rendered them feeble and insecure.⁵ In response, the founders crafted the U.S.

⁵ Arguably the clearest expression of this position is from James Madison in “Federalist 10.” There, Madison contends that the state governments under the Articles of Confederation suffer from the mortal diseases of “instability, injustice, and confusion” that have plagued popular governments throughout human history. That Madison opens “Federalist 10” with the states in mind is confirmed when highlights the fact that “Complaints are everywhere heard from our

Constitution as a way to combat the tribulations the States were facing at the time. Advocates of the proposed constitution favored it, for its heavy orientation around commerce and liberty.

According to the collection of essays and speeches, found in the *Friends of the Constitution*, the framers anticipated that commerce would remedy most of the problems that plagued the states.

After the Revolutionary War, the economy was left in shambles and commerce was unable to thrive in such pestiferous conditions. In the essay “Philodemos,” published in the *American Herald* in 1788, the writer—and fellow proponent of the constitution—describes an America plagued by economic turmoil. The writer states “the influx of foreign luxury, unknown in former times—the derangement of all business—these, and many other unfavorable circumstances, were found to exist at the conclusion of the war or have taken place since that period” (Sheehan & McDowell 1998, 33). While America saw a vast number of imports, having severed ties with Britain, exports were drastically disrupted as America no longer had access to Britain’s markets, this strained America’s finances. Similarly, John Jay provides a supplemental analysis of America’s poor economic conditions in his essay “A Citizen of New York.” He states, “Our debts remain undiminished, and the interest on them accumulating—our credit abroad is nearly extinguished, and at home unrestored.” (Sheehan & McDowell 1998, 141). This economic crisis could be felt by all Americans.

most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true.”

Additionally, Hugh Williamson, a delegate of the Federal Convention, gives a more detailed account of the colonies' economic orientation following the war in his speech "Remarks on the New Plan of Government." He explains that America "indulged in such foreign commerce as must be hurtful to us: We are prohibited from that which might be profitable, and we are accordingly told, that on the last two years, the Thirteen states have hardly paid into the Treasury...added to the general loss of trade have produced a general bankruptcy, and loss of honor" (Sheehan & McDowell 1998, 277). Williamson provides a detailed account of the sources that led to America's failing economy. First, the decentralized system of the Articles of Confederation, makes it possible for other foreign governments to take advantage of states who are competing with one another. As a result of their disjunction, states are forced to accept unprofitable trade agreements from other nations. This means that the states, second, are not able to pay into the national treasury which undermines the ability of the Continental Congress to execute its powers. Finally, the general loss of trade is not only associated with "general bankruptcy," but with a general inability to acquire the necessary credit needed to support commercial activity due to a "loss of honor." In other words, under the Articles, the foundations of American commerce are so weak that they render America a bad investment. Without a proper political foundation, America is unable to develop into the flourishing commercial empire it envisioned for itself.

The problematic economic situation exacerbated an already tense relationship between the states as their pursuit to economic self-interest damaged the social foundation on which commercial republicanism rests. Many advocates of the U.S. Constitution believed that unifying the states was the best decision the country could make to foster patriotism and a high esteem for the public welfare. Under the Articles of Confederation, the states were driven by their own self-

interest and in consequence, the well-being of the commonwealth was greatly threatened.⁶ Noah Webster expresses his concerns about the states' self-interested behavior in his essay "America." He leads with the following: "I am afraid, after all our attempts to unite the States, that contending interests, and the pride of State-Sovereignties, will either prevent our union, or render our Federal Government weak, slow, and inefficient" (Sheehan & McDowell 1998, 176). The Framers of the U.S. Constitution believed that it promised a more vigorous and secure form of government.

Under the proposed constitution, the union would rally power to the central government, which in turn, would make it possible for the federal government to deliberate on what is in the best interest of the commonwealth. In contrast, the Articles of Confederation hindered the nation from performing at its full potential because states were only concerned with their own affairs. Williamson reviews this destructive behavior and explains how this breakdown of society further exacerbates the state's financial condition: "Does one of the States attempt to raise a little money by imposts or other commercial regulations—A neighboring State immediately alters her laws and defeats the revenue, by throwing trade into a different channel. Instead of supporting or assisting, we are uniformly taking advantage of one another" (Sheehan & McDowell 1998, 383). According to proponents of the Constitution, the ultimate objective of the unification of the states was to produce the necessary wealth to propel commercial activity; the states as

⁶ While Article I of the Articles of Confederation announces that the form of government created will be a "confederacy," it is Article III that speaks clearly to the nature of the relationship between the states. Article III provides that the states have entered into "a firm league of friendship" where the objectives of the relationship are identified as providing "for their common defence, the security of their Liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any pretence whatever." This suggests that the political relationship between the states is purely defensive in nature. There is nothing akin to the Commerce Clause of the U.S. Constitution that grants the Continental Congress the authority to regulate commercial relations between states. Article VI clearly locates the power of regulating and facilitating commerce with the states while merely requiring the approval of the Continental Congress. As the American experience under the Articles during the Revolutionary War makes clear, the states regularly ignored anything contrary to their self-interest.

separate entities failed to achieve this end and as Williamson points out “Without money, no Government can be supported” (Sheehan & McDowell 1998, 277). Instead, what is needed to stimulate wealth, is a united front comprised of members who “act for the aggregate interest of the whole” (Sheehan & McDowell 1998, 383).⁷

The problems discussed above, allowed the framers to draft the Constitution in a manner that combats these issues. Ultimately, the objective of the Constitution according to Roger Sherman in “A Citizen of New Haven,” was to “protect the several states in the enjoyment of those rights, against foreign invasion, preserve peace, and beneficial intercourse among themselves; and to regulate and protect commerce with foreign nations” (Sheehan & McDowell 1998, 267). One of the ways the proposed constitution sought to rectify these problems was by uniting the states which would repair the American social foundation. To a great degree, the framers believed that commerce had the ability to facilitate and restore healthy relationships between the states, specifically through trade. In his essay, “A Foreign Spectator,” Nicolas Collins explains how the lack of trade can be detrimental to the social foundation. He states, “The badness of the public roads, and the broken situation of the country divided by great rivers, bays, and many large creeks, are also great impediments of communication...this very local situation necessarily lessens the reciprocal sympathy of different states” (Sheehan & McDowell 1998, 46). Repairing channels of communication between states, like infrastructure as Collin suggests, opens a dialogue between states which allow them to satisfy each other’s commercial needs. These eases tensions between states because they are now dependent on one another, and in return trade is enabled. This concept coincides with Brown’s and Montesquieu’s philosophy, where both commercial republicans essentially agree that mutual need eradicates self-interested behavior.

⁷ In this sense, the state governments acted like factions. A faction, according to James Madison in “Federalist 10,” consists of “a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.”

Furthermore, the proposed constitution sought to protect and secure liberty. As James Wilson—a supporter of the constitution—points out in his 1787 speech:

civil government is necessary to the perfection of civil government. Civil liberty is a natural liberty itself, divested only of that part, which, placed in the government, produces more good and happiness to the community than if it had remained in the individual. Hence it follows, that civil liberty, while it resigns a part of natural liberty, retains the free and generous exercise of all the human faculties, so far as its compatible with the public welfare (Sheehan & McDowell 1998, 82).

Framers opted to ratify the Constitution because they believed that the federal government, with the appropriate power vested in it, would protect rights of the commonwealth and prevent the infringement of any civil liberties. This is of vital importance because a nation characterized by liberty gives citizens the opportunity to pursue their passions and be independent. The author of the essay “Socius” discusses this matter in the following quote: “Another grand security, and indeed the principal one, which the people have against the abuse of power, is the freedom of choice. This is the very essence of political liberty” (Sheehan & McDowell 1998, 166). This deeply resonates with the ideas of early commercial republicans in Europe, specifically with De La Court’s argument which encouraged republics to promote the freedom of occupation and the freedom to pursue a livelihood. Many framers studied the successful aspects of commercial republics overseas because they hoped America would aspire to the same level of industriousness and prosperity, as demonstrated in other commercial republics.

One of the Founding Fathers, James Wilson, explores a tension at the heart of commercial republicanism, the push and pull effect between natural rights and the need for a strong sense of community. As James Zinc (2009) highlights, Wilson’s views on natural rights were informed by the Thomism natural law tradition. In other terms, Wilson acknowledged that humans have inalienable rights that are not at the mercy of any government institution. However,

Wilson realized that humans naturally tended to act self-interested, and therefore a government is essential in preserving the rights of the community. This being said, Wilson further expressed that the government was to act as a safeguard to protect people's rights. However, the problem with this is that securing rights "requires at least minimal agreement among members of the political association on the nature and extent of those rights, a degree of consensus that natural rights liberalism seems unable to achieve. Without the shared understandings, radically divergent views on the validity of rights claims will conflict with one another in ways that ultimately undermine political community" (Zinc 2009, 442-443). Ultimately, Zinc (2009) explains, Wilson believed the U.S. Constitution embodied the adequate principles to harmoniously marry these two opposing concepts. Firstly, Wilson believed that the constitution should be fixed, and malleable to the times. Lastly, he highlights that the constitution is a product of the people and their collective beliefs. These two components restrain the government from infringing on these natural rights. Furthermore, Wilson believed the U.S. Constitution was able to mold the types of citizenry that would be conducive to America. Wilson imagined that the U.S. Constitution would instill a love for liberty and law in the citizenry, and in turn the "written constitution helped to imprint these balanced attachments on the American mind" (Zinc 2009, 448).

Like Wilson, Collin also stressed the importance of the citizenry and believed the proposed form of government would produce a robust citizenry. Collin states "Virtue or good habits are a result of good laws –and from the excellent American Constitution those habits will be induced" (Sheehan & McDowell 1998, 256). These good habits can be regarded as "Humility and benevolence" which in turn "must take the place of pride and overweening selfishness" (Sheehan & McDowell 1998, 66). Another worthy characteristic, as discussed by the framers, the citizenry must exhibit is industriousness. Wilson discusses this in the "Oration of the Fourth of

July,” where he expresses “In a well constituted commonwealth, the industry of every citizen extends beyond himself. A common interest pervades the society. Each gains from all, and all gain from each” (Sheehan & McDowell 1998, 507). When our society is composed with industrious individuals, not only do they benefit but they also add to social foundation and economy; the markets grow, there is a strong sense of community fostered through commerce, and overall the nation becomes a more prosperous nation.

As with the earlier commercial republicans, the American founders believed that a key to prosperity was a populous nation. Similarly, Wilson discusses the strength attached to a large population in the following quote: “The increase of numbers increases the dignity, the security, and the respectability of all governments” (Sheehan & McDowell 1998, 240). He goes on to say “We should fill, as fast as possible, this extensive country, with men who shall live happy, free and secure. To accomplish great end ought to be accomplished, but by establishing peace and harmony... by these means we may draw numbers from the other side of the Atlantic” (Sheehan & McDowell 1998, 241). Collin also makes a similar point in the following quote: “The multiplicity of interests and connexions, that increases in every progressive society, and is in America quickened by a rapid population, will improve the general manners” (Sheehan & McDowell 1998, 411). Wilson and Collin both highlight the benefits of a large population. When the migration of foreigners is permitted the host, country benefits from their labor and ideas.

Conclusion

This chapter challenges the commonly held misconception that immigration hurts the public interest, as many opponents of immigration argue today (see, especially, Huntington 2004). Much of the rhetoric centered around immigration today argues that immigration diminishes the economy and American customs. Instead, this chapter has offered an analysis

judging how immigration is actually consistent with the public interest of a commercial republic—the type of government the American founders hoped the United States would aspire to be. The American Founders, and early commercial republicans alike, reached the same understanding on the commercial republican principles that should govern a nation.

As discussed, the heart of commercial republicanism is liberty, without it neither the social foundation nor the citizenry would flourish. Thus, liberty is the foundation that all the rest depends on. This being said, liberty should be regularly consulted when discussing public policy as policies inconsistent with the requirements of liberty have the consequence of working against or undermine the public interest. As suggested by the above analysis and argument and further developed in the next chapter, consulting liberty in the field of immigration is especially important to the success of the commercial republic. According to the discussed scholarship, one could argue that the American Founders would condemn contemporary efforts to slash immigration because it decreases the prospects of wealth. The American Founders saw America through the lens of commercial republicanism, and a trait that distinguishes this type of regime, according to early commercial republican theorists, is the large population that all great commercial republics display. Loosening immigration restriction immigration restrictions will help us grow our population which in turn will further animate trade, industry, consumerism, and other parts of commerce.

Presumably, enforcing laws that facilitate and secure liberty will attract immigrants from countries that fail to provide this for their citizens. Therefore, it can be assumed those who venture to a new country will be industrious workers because they will have the desire and drive to improve their quality of life—an opportunity not afforded to them by their native countries. According to the mass of commercial republican theory, industriousness or the willingness to

work, is arguably the most important trait the citizenry should possess to propel commerce. Commercial republicanism is a type of regime centered around the economy, therefore, a citizenry composed of industrious people will only help grow markets and consumer base. Being that industriousness is the ruling quality which defines a good citizen, then arguably anyone who travels to the United States with the intent of securing employment can be a U.S. Citizen. Policies which take restrictive citizenship measures are a disservice to the commonwealth because it dismisses labor that aids commercial leads to the flourishing of industry, trade, and other commercial activity. A non-restrictive citizenship policy allows more people to participate in an extensive number of industries which correspondingly raises the wealth of the nation.

Finally, because immigration contributes to the economy it is consistent with the social basis, given that commercial republican theory orientates the health of the commonwealth around wealth. Contemporary efforts to restrict immigration exploit immigration by alleging it disrupts our social fabric, however, our Founding Fathers—alongside commercial republicans, who they drew their inspiration from—would quickly dismiss this opinion. In practice, immigration actually enhances the quantity and quality of industries, as it supplies the labor and ideas that innovate and enrich our communities. In turn, the expansion of industry builds a commercial network where ultimately people are reliant on one another for goods and services. This reciprocal need fosters a level of mutual respect and trust between citizens which strengthens our social foundation. Mutual respect and trust are not a consequence of looking like one another and adhering to a strict set of English inspired political principles as contended for by Huntington (2004).

Chapter Three:

The Principles of Commercial Republicanism

And the Policy Debates over Legalization and Employment Based Immigration

Immigration is an area of policy that neither Democrats, nor Republicans have known how to wholly approach. While Republicans are often criticized for their restrictive nature, Democrats are often berated because of their progressive outlooks. The parties' irreconcilable differences have certainly put a strain on the U.S. already inefficient immigration system. However, the lack of comprehensive immigration policy goes beyond the parties' ideological rift. As discussed in Chapter One, much of the friction seen in this area of policy can be attributed to the lack of principles governing immigration policy. It is my contention, that the previously identified principles of commercial republicanism have the ability to frame ethical, just, and fruitful immigration policy.

In its current state, this broken system has brought about a host of issues. This chapter deals with two of the most detrimental issues. Firstly, there are about 11 million undocumented immigrants currently residing in the US (Budiman 2020), many of whom have lived here over a long period of time, who have not been able to access a pathway to citizenship. Secondly, the structure of the employment-based immigration system is flawed with several nuisances which disrupts the flow of people wanting to come to the United States and work. This chapter investigates how legalization programs and alterations to the employment-based immigration system has the power to alleviate these identified problems.

History of Legalization in the United States

In the face of natural disasters, political uproar, and other catastrophes that cause people to up and leave their native countries, the United States has implemented a number of

legalization programs that have helped individuals escape unfavorable circumstances.

Legalization programs have been employed with some frequency, not only in the United States, but in Europe as well. For the most part, legalization has been a central piece of the forum for comprehensive immigration policy. It must be noted that, though I view legalization as an important part of immigration reform, it is only a fraction of what is needed to develop a well-rounded solution for the problems exhibited by the current immigration design. This section will look at the history of legalization programs and how it has benefitted the United States, as well as millions of immigrants.

Immigration and Reform Act of 1986

Arguably, the most monumental law providing for legalization in U.S. history, was Ronald Regan's *Immigration Reform and Control Act of 1986* (IRCA). During this time, the undocumented population in the U.S. was estimated to be anywhere from 3 to 6 million people (Siegel, Passel, & Robinson 1981). In large part, most of the undocumented population was of Mexican origin (Heer 1979; Siegel, Passel, & Robinson 1981; Warren & Passel 1987; Bean & Tienda 1988). To understand the large influx of immigrants from Mexico, it is necessary to look at what was going on in Mexico at the time. In Mexico, wages were falling as the country struggled to pull itself out of a financial crisis. In the span of twelve years, Mexico's debt went from \$29 billion to \$327 billion (FDIC 1997). In response, those who could afford to make the journey, fled to the United States in the search of greener pastures. To make matters worse, by the 1980's Mexico was overrun by drug related violence.

In order to counter the growing population of unauthorized immigrants, the United States passed IRCA which placed those who were undocumented on a pathway to citizenship. This law afforded approximately 2.7 million unauthorized immigrants the opportunity to adjust their status

through two separate programs (Baker 2010). The IRCA bill had to be modified several times before it could be passed in 1986. The first version of the bill was introduced in March 1982 by Senator Alan Simpson (R-WY) and Representative Romano Mazzoli (D-KY), however, it died in the House of Representatives. Later, in 1984, the bill was reintroduced but died once again because the House and Senate failed to come to an agreement on some of its provisions.

After battling years of negotiations, members of the House and the Senate finally found common ground and passed the *Immigration Reform and Control Act* of 1986. IRCA had three pivotal components: first, it provided a route to naturalization for undocumented immigrants; second, it aimed to intensify border security; and finally, it placed sanctions on employers who hired unauthorized immigrants. While the essence of the bill comprised of these three elements, IRCA also included other provisions like:

- The first visa waiver pilot program, which allowed nationals from certain countries to enter the United States visa-free for up to 90 days for either business or tourism purposes.
- The H-2A guest worker program, through which agricultural employers may sponsor foreign-born temporary guest workers for up to three years.
- A first-time federal reimbursement to states for the costs of incarcerating certain unauthorized immigrants who had committed crimes.

There were two legalization programs under IRCA's amnesty provision, it included the Legally Authorized Workers (LAW) program and the Special Agricultural Workers (SAW) program. Only immigrants who proved their continuous residency in the U.S. since January 1, 1982 could apply for the LAW program. In addition, applicants had to establish they were of good moral character and had no criminal record. Under this program, applicants were granted temporary status, but were soon eligible for permanent residency after eighteen months. That is, under the condition that they demonstrate a minimum level of competence of the English language and U.S. history. The second part of the amnesty was known as the Special

Agricultural Workers (SAW) program. To be eligible for the SAW program, applicants had to prove that they have worked in the agricultural sector for 90 days in the past three years. SAW program recipients were granted temporary status but were soon eligible for legal permanent residency after one to two years.

The amnesty segment of this bill is consistent with the public interest of Commercial Republicanism. The LAW and SAW program both maximized the American workforce by documenting individuals with the ambition and keenness to work. This thought process was pushed forward by early commercial republicans like Pieter De La Court, who attested “All inhabitants who have a certain place of abode, or desire to have it as they are then no strangers, but inhabitants, so ought they be permitted” (Clark 2003, 32). Industrious people help maintain the economic vitality of a country which is why the United States should take a closer look at legalization programs.

Cuban Adjustment Act of 1966

In November of 1966, the United States passed the largest population specific legalization program for Cubans fleeing Fidel Castro’s communist regime. The *Cuban Adjustment Act* of 1966 (CAA) granted Cubans, non-Cuban spouses, and children permanent residency. Between the years 1986 and 2009, the CAA granted legal permanent residency to about half a million individuals (DHS 2009). In comparison to most immigration policies, the CAA is arguably the most lenient immigration policies the United States has implemented for asylum seekers. Ordinarily, asylees are required to show documented proof that they are a subject of persecution. According to the *Immigration and Nationality Act*, asylees must prove that there is a “well-rounded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” However, under the CAA, Cubans

were not obligated to present any proof of persecution. Upon arrival, the CAA promised Cubans work authorization, and after a year of continuous presence, they are granted legal permanent residence. This is a treatment enjoyed only by Cuban nationals, for citizens of all other countries do not get to bypass custom immigration practices.

Nicaraguan Adjustment and Central American Relief Act of 1997

Almost a decade after IRCA was passed, President Clinton signed the *Nicaraguan Adjustment and Central American Relief Act of 1997* (NACARA) into law. NACARA granted legal permanent residency to certain Nicaraguans, Cubans, Salvadorians, and Guatemalans. This policy was born after a sequence of events threatened the legal standing of many of these groups. One of these events included the passage of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (IIRIRA), a law that still controls how immigration policy is practiced today. This law was passed with the sole purpose of increasing penalties on all immigrants, documented and undocumented immigrants. The IIRIRA provisions were damaging to the immigrant community because it made radical changes to immigration procedures by:

- Expanding the criteria of crimes that constituted “aggravated felonies” in order to be able to deport more immigrants. Pre-IIRIRA an immigrant had to receive a sentence of five or more years for their offense to be considered an “aggravated felony” (Morawetz 2000). Now, immigrants convicted and imprisoned for at least one year are at risk of being deported. It is important to note that most one-year sentences fall under misdemeanor offenses.
- Making it easier to deport immigrants. Prior to this law, immigrants could fight their deportation proceedings with a standard level of confidence. However, IIRIRA set a new legal standard that immigrants had to meet in court, known as the “exceptional and extremely unusual” hardship rule. This standard was—and continuous to be—extremely hard to meet, putting most immigrants at risk of deportation (Snyder, 2016).

Along with these regulations, the law also included other harsh provisions that cracked down on immigration. This poses a threat to the liberty of all immigrants which stands in direct opposition of commercial republicanism. Divesting immigrants of certain freedoms will halt economic

growth for two reasons. Firstly, it will discourage future immigrants from wanting to migrate to the United States due to the restrictive nature of the laws. This will the economy seeing as the United States is deeply reliant foreign labor. To the same effect, restricting immigrants already in the country from pursuing a profession will also hurt the economy.

This restrictive law impacted many people, one group heavily impacted by the passage of IIRIRA, were the immigrants involved in the American Baptist Church class action lawsuit (Eig 1998). This lawsuit, known as *American Baptist Churches v. Thornburgh*, challenged the Immigration and Naturalization Service (INS) decision to deny asylum to hundreds of Guatemalans and Salvadorians fleeing warzones back home. Ultimately, the case was settled in 1991, in which the INS decision to deny these groups asylum was overturned, and they were allowed to reapply.

However, the INS's slow response to process asylum claims led to further complications. While the INS was processing asylum claims, the wars in in Guatemala and El Salvador came to a close, and just like that, hundreds of immigrants were now ineligible for asylum and unsure of their future in the United States. Due to the passage of IIRIRA, these individuals could not look to the law to fix this discrepancy due to the strict provisions that had just gone into effect. Prior to IIRIRA, members of the ABC class suit would have had a better likelihood of being granted asylum.

In response to these complications, Congressmen Lamar Smith and Lincoln Diaz-Balant (R-FL) developed NACARA. Under NACARA, Guatemalans and Salvadorians could apply for cancellation of removal under pre-IIRIRA standards. NACARA also made it possible for Nicaraguans, who were left undocumented following the expiration of Nicaraguan Review

Program, to adjust their status. Ultimately, almost 70,000 individuals were able secure legal permanent resident status under the *Nicaraguan Adjustment and Central American Relief Act*.

Other Legalization Programs

There have been other small-scale legalization programs such as the *Immigration Nursing Relief Act of 1989*. This act was passed to address growing labor demands in the nursing sector. The need for nurses emanated from a convergence of issues including the expansion of facilities, declining nursing school enrolments, and high patient acuity (Jones & Masselink 2014). To source the nursing field with the needed labor force, the U.S. government turned to foreign labor for support. This act permitted foreign nurses in the United States with an H-1 visa to adjust their status to become legal permanent residents. To qualify nurses had to have had three years of nursing experience in the United States. Furthermore, this legalization program ensured that children and spouses were not counted towards numerical green card limits. This policy is consistent with Commercial Republicanism's understanding of liberty. Policies like this one, collimate the interest of the United States and of foreigners because it helps preserve the economy, while simultaneously allowing individuals to freely pursue an occupation and secure financial success.

Europe's Experience with Legalization Programs

The United States is hardly alone as far as legalization is concerned, Europe is also well acquainted with the practice of legalization or 'regularization', as it is commonly referred to in Europe. Regularization has been a popular policy instrument in the European Union since 1996, since then over five million people have been able to become legal permanent residents (Edwards & Kraler 2009). In Spain, for example, the number of unauthorized immigrants has been climbing. This may explain why Spain has implemented four major regularization

programs—all aimed at authorizing the undocumented population—in the span of solely nine years (Brick 2011). In like manner, Greece also enforced a chain of consecutive regularization programs. In the years of 2001 to 2007, Greece implemented four regularization programs which authorized more than half a million immigrants (Brick 2011). The rationale behind these programs are heavily influenced by economic factors. Brick speaks to this in his academic article, he follows “The criterion most frequently emphasized in cases of economically focused regularization is proof of employment, either through employer sponsorship, documentation of continuous employment over a designated period, or a contract for future employment” (Brick 2011, 5). Europe’s intention to legalize their undocumented population in order to expand their workforce is highly consistent with commercial republicanism.

Legalization Policy Proposal

The United States has a large undocumented population, and many have no form of adjusting their status. The United States needs to develop a solution which will provide this segment of the population with legal status. The aforementioned legalization programs are consistent with the public interest of commercial republicanism. These legalization programs endorse liberty by authorizing those who were once legally restrained, to freely pursue their interests and establish a life divested of fear. Additionally, as demonstrated in some of the legalization programs above, a popular motivation for enacting such programs are for economic purposes, as seen with the SAW program and the *Immigration Nursing Relief Act*. This is consistent with the public interest because it strengthens the citizenry and the social basis. By focusing on these fixed set of principles the United States can achieve ethical, just, and fruitful immigration policies.

A favorable legalization program would bear a resemblance to the *Cuban Adjustment Act* (CAA). The *Cuban Adjustment Act* streamlined the process for attaining a green card (legal permanent residence). When Cuban nationals settled in the US, they were granted work authorization right away and approved for permanent residency after a year. Creating a legalization program which efficiently grants legal status to undocumented immigrants, similar to the CAA, could be beneficial to the US and immigrants alike. Extending this courtesy to the general population of undocumented immigrants would mobilize about 11 million individuals to legally enter the workforce and give back to our communities.

Commercial Republicanism and the Case for Legalization Programs

Currently, at least 11 million undocumented immigrants live in the United States (Budiman 2020). The current design of immigration laws makes it nearly impossible for unauthorized immigrants to adjust their status. The reality is that it would be more beneficial for our society to legalize this fraction of the population, opposed to trying to deport them, because they are already deeply ingrained into the United States social fabric, but more notably, they are prime contributors to the U.S. economy. Many advocates have made humanitarian claims to push legalization forward, however, this has barely been enough to convince legislators that this portion of the population deserve a place in the United States.

However, when putting these moral and humanitarian arguments aside, there is still a robust case that legalization programs are a valuable component for the United States. Perhaps the most telling evidence capturing the importance of this population can be found in a study published by the U.S. Department of Agriculture. Through simulation analysis, the study examined the consequences of removing a significant part of the undocumented labor force. The study indicated that the overall gross national product (GNP) would fall. Furthermore, the

negative effect of removing the undocumented labor force would outweigh the positive effects on the wages of U.S. born low-skilled workers (Zahniser et al. 2012).

This finding is further supported by a report put out by The Center of American Progress which analyzes the economic effects a mass deportation could have on the state of Texas. Their study found that a mass deportation, in Texas alone, could reduce the gross state product by \$77.7 billion (Ojeda 2012). It is difficult to refute the fact that the immigrant force is a pivotal ingredient in sustaining the U.S. economy.

A 2013 study, from the Center of American Progress, analyzed the economic effects of legalizing the estimated 11 million undocumented immigrants residing in the United States. Their study indicated that if all 11 million undocumented immigrants were to be granted citizenship the GDP would grow by \$1.4 trillion over the span of ten years (Lynch and Oakford 2013). Furthermore, Americans would pocket an additional \$791 billion in personal income and 203,000 jobs would be created per year (Lynch and Oakford 2013). As these studies have demonstrated, immigrants are one of the pillars of a healthy economy. Legalization programs are needed to correct the inefficiencies of our system, not only for immigrants, but for economic vitality.

A common message from opponents of progressive immigration policy argues that the interests of U.S. citizens must first be prioritized before trying to better the station of immigrants (Arthur 2020; Beck 1996; Borjas 2016; Krikorian 2008). However, the truth of the matter is, that this thought process is deeply flawed because one cannot think about the interest of U.S. citizens without also thinking about comprehensive immigration policy. Nationwide, more than 8 million U.S. citizens have at least one authorized family living with them, about 5 million are children (Mathema 2017). This being noted, if the role of the government is to pay attention to

the interest of its citizens, then it is the government's role to breed policies that work to keep families together; if not for the immigrants themselves, then for their U.S. born children. There is great value in protecting the family unit. When the government fails to do this, we see a train of detrimental consequences take place such as the decline of a child's mental health and kids being placed into the broken foster care system (Capps 2015; Drebbby 2012).

Furthermore, legalization programs would work in the United States' best interest because immigrants enhance and enrich American culture. In commercial republicanism, this is understood as the social basis, one of the principles that maintain the public interest. As aforementioned, the social basis is the idea that people in society form trusting relationships through commercial activity. Immigration contributes to the social basis because so many immigrants bring fresh ideas which induces entrepreneurship. This is why it may not come as surprise that immigrants start business at higher rates than the native-born population (Lofstrom 2017). In 2016, 30 percent of all new entrepreneurs were immigrants (Kosten 2018). Immigrants contribute economically and socially by starting business that Americans benefit from.

Employment Based Immigration

As previously mentioned, legalization programs are only one part of an optimal solution for our immigration system. Early commercial republicans encouraged nations to receive industrious persons for the sake of bolstering the economy. Quite frankly, the United States has never been more aligned to follow this advice than now. Due to employment insecurity in other countries a high volume of foreigners have migrated to the United States to find financial security. Parallely, here in the US, numerous states and economic sectors are experiencing worker shortages and the American workforce is unable to supply them. The constant ebbs and flows of labor demand in the United States validates the rationale for enhancing our

employment-based immigration policies. Expansive and flexible policies will allow the United States to efficiently anticipate economic needs, while simultaneously allowing immigrants to attain financial ability.

H-Visa Overview

There are various types of work visas and each has their own annual quota. Work visas allow employers to hire foreigners when labor demands outweigh the number of available workers. The most common type of work visas are as follows: H-1B, H-2A, and H-2B. The H-1B visa has an annual quota of 85,000, H-2A has no annual cap but consists of a lengthy application process, and the H-2B has an annual quota of 66,000 (USCIS 2021). The duration for a H-2A and H-2B visa is one year and three years for a H-1B. H-2A and H-2B visas may be renewed each year up to a maximum of three years. H-1B visas may be renewed for an extension of three more years, resulting in a max of six years.

H-1B Visas

H-1B visas are designed for temporary skilled workers, e.g. workers who have skills to work in jobs that require at least a bachelor's degree. In 2020, the cap of 85,000 H-1B visas was filled within five days of the application window opening, which left a surplus of 116,011 qualified applicants (Kumar 2021). Once applicants are considered eligible for the H-1B visas, the applicants earn their visa based off a lottery system and work in fields ranging from software engineers to professors at universities. According to the *New American Economy* (2017), the United States is projected to face a shortage of one million STEM workers by 2022. The STEM industry is heavily dependent on foreign labor because the US workforce is simply not able to supply that much manpower. This is why the United States must find an innovative solution to increase the volume of H-1B visas.

H-2A visas

H-2A visas are designed for temporary agriculture workers. The H-2A visa does not have an annual quota but requires extensive fees and paperwork (*American Immigration Council* 2016). The paperwork and government oversight create a long wait period once employers petition for H-2A workers to come to their farm (Rosenthal 2016). The extensive wait periods have cost farmers millions of dollars in lost crops (Bier 2020) which is one of the major issues embedded in the US employment visa system.

Additionally, H-2A visas make it more expensive for farmers to run their operations. These visas can range from \$5,000 to \$75,000 for labor certificates and processing fees depending on the number of requested workers (US Department of Agriculture 2021). This fee, coupled with the uncertainty brought about by the bureaucracy of processing visas, encourages employers to opt for an undocumented workforce. This is evident by statistics showing that about 49 percent of farmworkers are undocumented (Farmworker Justice 2019).

H-2B visas

H-2b are used by temporary non-agriculture workers. Most workers that utilize this visa are employed by landscaping, forestry, and recreation industries. H-2B visas are the pillar of many businesses, however the 66,000-quota cap makes it difficult for them to operate at a desired momentum because of the shortness of labor. Typically, the jobs that fall under the category for H-2b visas are not filled by American workers. In 2020, statistics showed that 93 percent of H-2b jobs failed to be occupied by Americans (Bier 2021). It is clear that the h-visa quotas are subpar and make it difficult for employers to consult foreign labor when necessary. However, when closer examining these quotas one sees a wide disparity between the number of visas for high-skilled workers (H-1B) and low-skilled workers (H-2B). While high-skilled

workers are granted 85,000 visas, low-skilled workers only receive 66,000. Policies like this reinforce Roger Smith's (1997) belief which assumes immigration policy is guided by nativist principles like race, ethnicity, and gender as the majority of low-skilled immigrants come from Latin America. This difference may also be attributed to the belief that high-skilled immigrants are better assets to the United States. However, this stance is profoundly misinformed as low-skilled labor is just as in demand as high-skilled labor.

Work Visa Legislation

Past legislation regarding work visas commenced in 1986. The *Immigration Reform and Control Act of 1986* developed the H-2a and H-2b visas, respectively. This act created the cap of 66,000 new yearly workers for the H-2b visa and outlined the petition process for both. The *Immigration Act of 1990* is responsible for the H-1b quota of 85,000 skilled workers. None of these laws have had much, if any, adjustments since their inception.

The last piece of legislation that modified any of these visas was the *Consolidated Appropriations Act* of 2021. This act permits the Department of Homeland Security to approve up to 135,320 H-2b visas for the year of 2021. This is 69,320 more than the standard cap (66,000). Similarly, Bill Clinton's *American Competitiveness in the Twenty-First Century Act* (AC21) also raised visa cap. This act improved the H-1b visa by raising the quota to 115,000 for the year 2000 and to 195,000 for the years of 2001-2003. Legislation that matches the demands of the American economy, like AC21, is necessary during a time when unfilled jobs are outpacing visas. However, the problem with these types of bills is that they raise the cap on an arbitrary basis when in fact there should be a permanent increase in visa quotas.

Modern legislation regarding work visas has been scarce. Today, however, we are seeing a revival of interest in work visa and immigrant related policies from both Republicans and

Democrats. The *Legal Workforce Act*, sponsored by former Congressman Lamar Smith (TX-21), sought to force employers to swear under oath that they are not employing undocumented workers. Such a bill is ludicrous considering that, in the agricultural sector alone, almost 50 percent of the workforce is undocumented. Policies like these are destructive to the U.S. economy because the employers are highly reliant on foreign labor. The *Protect and Grow American Jobs Act*, sponsored by former Congressman Darell Issa (CA-49), attempts to close the loophole in H-1B that allows companies to employ foreign workers more cheaply and in place of native-born workers. The legislation seeks to raise the minimum wage of foreign skilled workers from \$60,000 to \$100,000. This is aimed to prevent companies from using H-1B as a means to employ cheap and skilled foreign labors by making US workers appear more appealing. This act is sensible; however, it discourages STEM companies from employing as many qualified skilled workers as possible. If companies are unable to efficiently hire the qualified workers they need, many of these companies may not perform at their full potential, this has wider implications for the United States. This is corroborated by a report from The National Science Board, which illustrates that the United States has lagged behind competitors in the sectors of science and engineering. (2020). The report shows that South Korea and Japan have evolved into global leaders in science and engineering with the highest ratios of research and development expenditures to GDP (The National Science Board 2020). One way for the United States to begin outperforming their competitors is to employ as many of the needed H-1B applicants as possible. This will welcome some of the brightest and most talented minds from around the globe which will support scientific innovation; the United States can only reap the economic benefits of this.

Most recent legislation efforts have worked to make the h-visa process more efficient and easier for employers to navigate. Senate Bill 495- *Prioritizing Help to Businesses Act* — is a bill

sponsored by John Thune (R-South Dakota) that takes vital steps towards fixing America's failed H-2B visa policy. This piece of legislation seeks to allot extra H-2b visas to the states with the lowest rates of unemployment—places where there is no assessable labor force—like South Dakota.

Another notable bill, *Farm Workforce Modernization Act*, takes strides towards providing legal permanent residence for H-2A guest workers. This bill would be monumental because at the moment there is no current path to citizenship for H-2A workers—or H-2b workers for that matter. Providing these workers with legal permanent residence will ensure that employers have a reliable work source all year-round. This will benefit farmers by reducing long wait times which cause farmers to lose millions of dollars in crops. It is also more financially feasible for farmers as they will not have to invest in constant visa processing fees. The last two mentioned bills are consistent with the public interest of commercial republicanism. By employing hardworking individuals, the US has the potential of optimizing the economy.

Though policies like this would prove themselves profitable and in the best interest of the United States, one continues to see a breakdown in the manner immigration policy is developed. As one sees by the mentioned h-visa proposals, there is an overarching ambivalence clouding immigration reform. While one side seeks to restrict immigrants from contributing to our society, the other side seeks to make the immigration system friendlier by making it more efficient for individuals to migrate. Elizabeth Cohen (2007) speaks to this inability to find common ground and attributes it to the United States' failure to identify a philosophy to inform immigration policy.

EB-Visa Overview

Unlike H-visas, EB-visas are for workers who plan on becoming permanent residents of the United States. Each year the United States distributes approximately 140,000 employment-based visas. There are five categories for EB-visas: Employment First Preference (EB-1); Employment Second Preference (EB-2); Employment Third Preference (EB-3); Employment Fourth Preference (EB-4); and Employment Fifth Preference (EB-5).

EB-1 Visa

EB-1 visas are designated to immigrants who have extraordinary abilities in the sciences, arts, business, education, or highly acclaimed athletes (USCIS 2021). This category is allotted 40,040 of the total employment visas. Unlike the other visa categories, this visa rarely hits a backlog because it is underutilized.

EB-2 Visas

EB-2 visas are for immigrants who have an advanced degree and an extraordinary level of expertise and knowledge in their field. This can be anyone with an advanced degree in the sciences, arts, or business. 40,040 secure spots are granted to EB-2 workers, as well as any unused EB-1 green cards. Intriguingly, EB-2 applicants are allowed to self-petition through a special waiver where the applicant must demonstrate that it is in the best interest of the nation to accept their petition.

EB-3 Visas

There are 35,040 green cards allotted to this category which requires applicants to have a bachelor's degree or at least two years of experience in the said field. This category also receives any unused EB-2 green cards. Under this category, there is subcategory for jobs not requiring a bachelor's degree. This subcategory is only allotted 5,000 green cards.

EB-4 and EB-5 Visas

EB-4 visas are for what special immigrants. This includes religious workers, broadcaster, U.S. government and military employees. This category is allotted 9,940 green cards annually. The EB-visa category is also allotted 9,940 green cards yearly. This category is for investors who have made a contribution of \$500,000 to \$1.8 million in commercial enterprises that will create at least ten permanent full-time positions for U.S. workers. Unlike the h-visas, the bulk of eb-visas tend to favor high-skilled immigrant workers. This whole green card system is geared towards paving a path towards citizenship for those with formal education; while placing low-skilled immigrants at a blatant disadvantage.

Problems with Employment-Based Immigration

There are numerous intricacies that disrupt the flow of people who are willing to come to the United States and work. The reality is that the employment-based immigration system is extremely restrictive. This works against the very nature of commercial republicanism by hindering opportunities for economic growth.

Arguably, one of the most pressing problems at the moment is the green card backlog. According to the U.S. Citizenship and Immigration Services (USCIS), in 2020, the backlog for the EB-1, EB-2, and EB-3 visas reached 1.2 million. As a result of archaic green card limits many skilled—and necessary workers—are facing decade long wait periods to receive their green card. At this rate immediate governmental intervention is mandatory to phase out these impractical wait times.

The majority of the backlog, about 60 percent, is comprised of EB-2 applicants. The applicants in this category are include doctors, engineers, professors, and other highly skilled professionals. The oldest EB-2 petitions still waiting to receive their green cards are from 2010,

meaning workers under this category have already waited more than a decade to receive a green card after already being approved (U.S. Department of State 2021).

A major propeller of green card back logs is the fact that spouses and children of workers are counted towards the same 140,000 cap. This is making matters worse by not only making the backlog greater than necessary, but more notably, by using green cards that could go to other workers. In 2019, the backlog 51 percent of the backlog consisted of dependent children and spouses, while 48 percent comprised of the principal applicants (USCIS 2019). The most practical solution is to stop counting derivative spouses and minor children towards the visa cap meant for workers.

Some like David Bier (2018) from the Cato Institute, have challenged the legality of counting spouses and children towards employment visa numerical limits. Bier turns to the *Immigration Act of 1990* which has set the standard for issuing green cards to spouses and children of legal immigrants. According to this act, additional green cards are supposed to be granted to spouses and children of employment-based immigrants.

By exempting spouses and children from the cap, the United States will be able to maximize the number of eligible workers which is in the best interest of the U.S. economy. This is consistent with the ideas of commercial republicanism which emphasizes the strong relationship between wealth and a large population (Clark 2003). According to statistics from the Cato Institute, by not counting spouses and children employment-based immigration would potentially increase by 27 percent (Bier 2018). It is important that the employment-based immigration system be revised for the U.S. economy because evidence suggests, immigrants of all skill levels are necessary during a time where we see low rates of unemployment (U.S. Department of Labor 2020).

Another major issue making our employment-based system less efficient is the fact that employment-based green cards are limited by birthplace, these are known as per-country caps. Under the *Immigration Act of 1990* no country may receive more than 7 percent of the total number of employment-based green cards. As a result, the backlog grows greater every year for immigrants from countries with the highest volume of pending green cards.

The countries most affected by this backlog is China and India. Indians make up most of the backlog with 780,579 petitions (USCIS 2019). To a lesser extent, China has also been affected with 181,546 petitions sitting in the backlog (USCIS 2019). Although these per country caps are to ensure that all countries are equal in regard to green cards, the truth is that most countries do not actually fill their caps compared to countries like India and China. For example, the EB-2 visas are capped at 78,456 green cards for the European Union, but in 2017, they only exhausted seven percent of their assigned visas (Bier 2018). Compared to a country like India which always meets the full visa capacity.

The idea behind per-country caps are that they attempt to promote equal diversity across all nations. However, this method is flawed because what the county needs to prioritize is what work skills are in demand and which foreign workers are most equipped to supply that labor, despite of nationality. Allotting employment-based green cards according to nationality, instead of skill set, restricts the U.S. economy from being productive.

We see similar problems plaguing H-visas, making it difficult to consult foreign labor when necessary. The restrictive nature of these visas undermines economic vitality. The quotas for the H-1B and H-2B are subpar and do not allow employers to be equipped with the adequate workforce. When inspecting the visas themselves, one sees a wide disparity between the number of visas for high-skilled workers (H-1B) and low-skilled workers (H-2B). While high-skilled

workers are granted 85,000 visas, low-skilled workers only receive 66,000. Policies like this reinforce Roger Smith's belief which assumes immigration policy is guided by nativist principles like race, ethnicity, and gender (Smith 1997). While some made the argument that high-skilled immigrants are more desirable than low-skilled immigrants but as previously mentioned there's a great need for both.

Proposal

The United States needs to restore its h-visa and eb-visa system, so it allows employers to efficiently employ immigrants to help our economy grow. Increasing work visa caps to a level that complies with the demand or doing away with them completely would alleviate nationwide labor shortages. America cannot reach its economic potential without the help of immigrants, commercial republicanism realized this too which is why they stressed principles like liberty and the citizenry. The quotas for most of the discussed visas are insufficient considering the high demand for them. If we were to greatly increase or abolish the visa quota altogether, many economic sectors would be able to expand and hire more workers. Quota caps, whether it be for temporary work visas or green cards, undermine economic growth. These workers may be foreign born but they buy products in America, pay American income tax, and fuel our economy.

Moreover, the United States Customs and Immigration Services must become more efficient. Bureaucracy has lost farmers millions of dollars as they wait for their H-2A visas to be processed while their crops die. One option to work towards a solution would be to not count returning H-2B recipients in the yearly quota, similar to Senate Bill 792 proposed by Senator Thom Tillis. This would relieve some of the bureaucratic hassle from both the USCIS and those that petition for H-2B's alike.

Lastly, the United States needs to create more avenues for lesser-skilled immigrants to become permanent residents if it is consistent with their wishes. As of right now, there is a total of 5,000 green cards for low-skilled workers which is not realistic as the agricultural, hospitality, restaurant, forestry, etc. sectors are all reliant on foreign labor. Allotting extra green cards to guest workers, like the *Farm Workforce Modernization Act* proposes, could be beneficial to employers and immigrants alike.

The reality of the problem is that our visa system has not been remodeled to comply with the demand of our American economy and has stayed static since 1990. In order to reach our full potential economically, legislators must make proactive efforts to remodel our visa system.

Conclusion

In this section, I have endeavored to establish a set of policy suggestions that could possibly benefit the US and immigrants alike by focusing on the three main principles of commercial republicanism. The vast majority of academic research has revealed that restrictive laws do not work in the United States' best economic or social interests. Without a doubt, restrictive policies stem from a nativist belief system. However, the truth of the matter is that such bigoted policies undermine economic vitality. This works against what the Founding Fathers envisioned for the United States. The Founding Fathers believed that commerce was the key to optimizing our economy. Immigration is clearly a part of this as immigrants have a positive impact on the economy.

When predicated on the principles of commercial republicanism, policies are centered around whether individuals are handworkers and good assets to the community; not on race, ethnicity, or class as the bulk of previous immigration laws. My contention is that a legalization program, coupled with adjustments to our employment-based immigration system, could

alleviate some of the major problems seen in the scope of immigration. laws. Both policy suggestions are responses to dire issues in need of a solution. Legalizing those who are undocumented will allow them to formally contribute to our economy and communities. Repairing our employment-based immigration system would achieve the same goal.

Chapter Four:

Conclusion

With this thesis, I aimed to develop a set of principles that could conceivably guide immigration policy towards a more positive direction. There is a widespread disconnect between the realms of theory and actual policy. In response to this gap between policy and theory, I thought it was best to situate immigration in a political theory that is central to our self-understanding as a country: commercial republicanism. What I discovered was that immigration is consistent with the public interest of commercial republicanism.

The first element of the public interest I discussed was liberty. Most scholars who engaged in the discourse of commercial republicanism have stressed the importance of nations facilitating and preserving liberty. Liberty is perceived as the foundation of commercial republicanism because when liberties are intact, it furthers commercial engagement and advancement. The relevance this holds to immigration is that many early commercial republican scholars discussed liberty as a means to attract foreigners. They saw value in attracting foreigners because immigrants—coming from a different worldview—bring with them fresh perspectives and ideas. Consequently, the United States reaps the positive economic benefits of this as it promotes entrepreneurship and innovation. When deliberating on immigration policy, legislators should regularly consult liberty as it is in the best interests of our nation.

The second element I shed importance on was the citizenry. As mentioned early, many commercial republican theorists contextualized good citizenship in terms of commercial engagement. In simpler terms, they saw great value in those who were diligent and hard-working. Industriousness is an immensely crucial quality for the citizenry to embody because they uphold and create commercial institutions which our economy depends on. This being the

case, I argue that most immigrants play a large role in strengthening the citizenry. As mentioned in previous chapters, immigrants are intrinsically hard workers, many times this is because their native countries lack employment security. This is what motivates many to migrate to the US with that ardent desire to work. Implementing legislation to allow individuals to freely enter the United States to secure employment, would not only benefit these individuals, moreover, it would also help boost our economy. Immigration introduces new, physical and human capital, which improves existing markets and paves the way for new ones.

The last element of the public interest I discussed was the social basis. As previously noted, the social basis is the concept of people in society being brought together through commercial activity. Countless commercial republican theorists have argued that commerce unites men and fosters a sense of community. Immigrants strengthen the social basis because they avidly stimulate commercial activity.

All things considered; the three elements of the public interest all work together to reinforce commerce. Legislators have the potential to transform immigration policy if they take this understanding of commercial republicanism into account. Immigration policies have been blindly guided by nativist principles. By focusing on the principles that commercial republicanism provides, we could anticipate policy that cultivates economic prosperity.

A plethora of academic scholars have endeavored to provide alternative solutions for current immigration policy. Here, I have strived to contribute to that body of literature by framing immigration through new lenses. Commercial republicanism is a political theory that is central to the United States identity. I used this understanding of Commercial Republicanism to identify what principles should be guiding immigration policies in the United States. Although many academic scholars have developed sound arguments in response to the current state of

immigration affairs much of it fails to inform immigration policy in practice. I contemplate that my approach has the potential to overcome this gap and yield productive measures in the policy world.

Given the assortment of controversies that has warped the perception of immigrants, this academic paper has also endeavored to dismantle much of those misconceptions. Thus far, popular nativist beliefs have claimed that immigrants erode American customs and are parasitical to the US economy. However, as demonstrate here and other academic scholarship the assertion that immigrants hurt the US economy and social fabric is hardly true. On the contrary, immigration compliments society and the economy alike.

This paper has focused on how commercial republicanism has the ability to inform immigration. This being said, a number of different ways exist for this subject to be discussed further. I touched upon two areas of policy: legalization programs and employment-based immigration. As a paper can only adequately discuss so much, an interesting area of future research could investigate more thoroughly how commercial republicanism could inform family-based immigration. Family-based immigration is another area of law that needs major reform & the argument could be made that it is consistent with the principles of commercial republicanism. Examining these additional avenues further would supplement commercial republicanism and immigration scholarship, but more importantly, it could potentially pave the way for more progressive immigration policy.

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