



**INSTITUTIONS, IMMIGRATION, AND
IDENTITY**

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Introduction

The debate over immigration has been a central part of America's political, social, and economic history.¹ Concerns over

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¹ We should clarify what we mean by the term "immigrant." An alien is any individual who is not a citizen of the United States. A citizen is any individual who was born in the U.S. or naturalized. An immigrant is an alien who has been granted residency on a permanent basis. Immigrants can reside in the U.S., work without restriction, and are protected by U.S. law. Further, immigrants can become citizens by completing the naturalization process. See Nicholas Capaldi, *Introduction: Why Is There A Debate About Immigration?*, in *IMMIGRATION: DEBATING THE ISSUES* 9, 9-10 (Nicholas Capaldi ed., 1997).

the impact of immigration on American identity can be traced back to the Founding Fathers. Thomas Jefferson worried that immigrants from monarchies would fail to support a republican system of government. George Washington was concerned that immigrants would engage in activities that would challenge a federal government.² Benjamin Franklin, questioning the costs imposed by immigration from Germany, called the German immigrants “the most stupid of their own nation,” and raised concerns that “through their indiscretion, or ours, or both, great disorders may one day arise among us.”³ Franklin, however, also realized the benefits of immigration when he noted that German immigrants were, “excellent husbandmen, and contribute greatly to the improvement of a country.”⁴ At the heart of Franklin’s concern was the fear that open immigration would erode the unique identity that made America what it was.⁵

Over two hundred and fifty years later, Franklin’s concern remains a central issue in American society. When one considers the magnitude of immigration in the United States, it becomes clear why the issue is so controversial. There are more immigrants living in the U.S. today – 31 million – than ever before.⁶ Approximately 1.2 million immigrants arrive in the United States each year.⁷ One out of every nine U.S. citizens is an immigrant.⁸ About half of the workers entering the U.S. labor force in the 1990s were born in foreign countries.⁹

² *Id.* at 25–26.

³ GEORGE J. BORJAS, HEAVEN’S DOOR: IMMIGRATION POLICY AND THE AMERICAN ECONOMY 3 (1999).

⁴ *Id.*

⁵ See Capaldi, *supra* note 1, at 25–26.

⁶ Tamar Jacoby, *The New Immigrants: A Progress Report*, in REINVENTING THE MELTING POT: THE NEW IMMIGRANTS AND WHAT IT MEANS TO BE AMERICAN 17–18 (Tamar Jacoby ed., 2004).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

Approximately half of the immigrants arriving in the United States each year are Hispanic, while a quarter are Asian.¹⁰ The countries of origin of these immigrants are diverse. One out of three arriving immigrants is Mexican. Filipinos, Indians, Chinese, Vietnamese, Koreans, Cubans and Salvadorans make up the next largest groups of immigrants, although all of these groups are small relative to Mexicans.¹¹

Given the above, it is not hard to see why immigration remains a central concern of policymakers and academics alike.¹² To date, the topic has received attention from writers from a multitude of disciplines including economics,¹³ sociology,¹⁴ and political science.¹⁵ One of the most recent writings on the topic of immigration and its effect on American identity, which will be our focus here, is Samuel Huntington's *Who Are We?*¹⁶ Huntington's book has been extremely controversial and has been met with harsh attacks from critics.

Huntington's most recent work can be seen as a continuation of his previous writings on the general theme of the "clash of civilizations."¹⁷ While his earlier writings focused on the clash between cultures on a global scale, his most recent book focuses on the clash of culture within American borders with particular emphasis on understanding the impact of this clash on American identity.

¹⁰ *Id.*

¹¹ *Id.*

¹² In the post-9/11 world there are also potential national security concerns related to immigration policy. While realizing the importance of these issues we put them aside and focus our attention on the impact of immigration on American identity.

¹³ See, e.g., BORJAS, *supra* note 3.

¹⁴ See, e.g., THE ECONOMIC SOCIOLOGY OF IMMIGRATION (Alejandro Portes ed., 1995); ALEJANDRO PORTES & RUBEN G. RUMBAUT, IMMIGRANT AMERICA: A PORTRAIT (2nd ed. 1996); ALEJANDRO PORTES & RUBEN G. RUMBAUT, LEGACIES: THE STORY OF THE IMMIGRANT SECOND GENERATION (2001).

¹⁵ See, e.g., CHERYL L. SHANKS, IMMIGRATION AND THE POLITICS OF AMERICAN SOVEREIGNTY, 1890-1990 (2001).

¹⁶ SAMUEL P. HUNTINGTON, WHO ARE WE? THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY (2004).

¹⁷ SAMUEL P. HUNTINGTON, THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER (1996).

Huntington's analysis in *Who Are We?* can be broken down into three distinct, but related, themes that he develops throughout the book.

The first theme is the idea that the core of American national identity has always been grounded in an Anglo-Protestant culture. The central elements of that culture include the Christian religion, Protestant values and moralism, an ethic of work and responsibility, the English language, and British traditions of the rule of law and justice. This culture, in turn, has produced the "American Creed," defined by the "principles of liberty, equality before the law, individualism, self-reliance, representative government and private property."¹⁸ Together, the American culture and creed define the American national identity. Huntington contends that the American Creed alone is not enough to sustain the American national identity, and that the Anglo-Protestant culture, which is a critical underpinning of the national identity, is under attack.¹⁹

The second theme is his contention that the source of this attack on the Anglo-Protestant culture and American creed is the "third-wave of immigration." Beginning in the 1960s, the third wave consists mainly of immigrants from Latin America and Asia rather than Europe. The danger of this third wave, according to Huntington, is that the cultures of these countries differ from the core culture of America. This could potentially result in a binational country with widespread social and political divisions.²⁰

Finally, Huntington contends that the American elites are a driving force behind the erosion of the American national identity. Their multi-cultural and cosmopolitan views are opposed not only to the national identity but to most of the American public as well. In short, the American public continues to adhere to the traditional

¹⁸ HUNTINGTON, *supra* note 16, at 40-41.

¹⁹ *Id.* at 18-20.

²⁰ *Id.*

national identity while the elites engage in activities that undermine that identity.²¹

Although not its intended aim, Huntington's book can be seen as developing Benjamin Franklin's concern discussed at the outset of this paper. Specifically, it is Huntington's contention that the day will soon arrive, if it has not already, when as Franklin put it, "great disorders may ... arise among us."²²

In this paper, it is our goal to critically analyze the issues raised by Huntington regarding immigration and the erosion of America's national identity. We approach the topic utilizing the tools of economics. However, our approach differs from the approach taken by many other studies of this topic employing the economic method. While many previous studies focus on the costs, benefits, and net fiscal effects of immigration,²³ we employ economic analysis to focus on the role that institutions play in governing human behavior. The underlying logic behind this approach is that social development is largely a consequence of the formal and informal institutions governing human intercourse. These institutions determine the payoff, and hence the incentive, to pursue one course of action over another.

Our core thesis is that Huntington is correct in arguing that the American culture and creed are in fact eroding, but mistaken in asserting that immigration is the mechanism through which we lost the American Creed; rather, the erosion is due to a more fundamental issue, namely the attrition of constitutional rules that provide a relatively higher payoff for engaging in activities that support the American Creed.²⁴ The result has been an increase in activities that

²¹ *Id.* at 143.

²² BORJAS, *supra* note 3, at 3.

²³ See, e.g., BORJAS, *supra* note 3; STEPHEN MOORE, *A FISCAL PORTRAIT OF THE NEWEST AMERICANS* (1998).

²⁴ Cf., Peter J. Boettke, *Responses to Rothman: Constitutional Erosion Caused Capitalist Decay*, *THE WORLD & I*, Nov. 1991, at 540-42 (offering similar reasons for the decline of liberal capitalism in America).

run counter to the creed. Where self-responsibility, the rule of law, and productive entrepreneurship once largely characterized America, the country has become increasingly characterized by reliance on welfare and unproductive activities that focus on political transfers and taking from others.

Our main conclusion is that while historical traditions and cultural factors play a significant role in the political and economic development of any country, they should not be overestimated. While immigrants come from a diverse set of backgrounds, the American Creed can in fact be learned. The fundamental problem is not one of immigration or culture, but rather one of establishing institutions that create a relatively higher payoff for activities that recognize and respect the principles of liberty, equality, individualism, representative government and private property.

This paper proceeds in the following manner. Section I develops the underlying logic of our argument. We focus on the role that institutions play in setting the rules of the game and directing economic and social activity toward productive or unproductive ends. Section II considers the original purpose of the rules established in the U.S. Constitution and their erosion. We argue that the U.S. Constitution was initially designed such that there was a relatively high payoff for activities aligning with the American Creed. We then discuss how the relative payoffs shifted over time such that the payoff for engaging in unproductive activities increased. We contend that the initial erosion of constitutional rules, which promoted productive behavior, occurred well before the “third wave” of immigration in the 1960s. Section III continues with this line of reasoning and discusses how the unproductive turn in the United States has affected immigrants. We explore the origins of immigration laws in the U.S. and conclude that they were driven by unproductive activities which were in direct contradiction with the American Creed. These laws sought to protect established positions and prevent economic competition. We argue that immigrant participation in unproductive activities is not a cultural issue but rather

part of the assimilation process. Immigrants learn where the profit opportunities are and seek to exploit those opportunities. Section IV concludes with the policy implications of the analysis.

I. Institutions and the Direction of Economic and Social Activity

Institutions can be understood as the formal and informal rules governing human behavior, and the enforcement of those rules. This enforcement can occur through the internalization of certain norms of behavior, the social pressure exerted on the individual by the group, or the power of third party enforcers who can utilize force on violators of the rules. Institutions can be traditional values or codified law, but as binding constraints on human action they govern human affairs for good or bad, and as they change, so will the course of social development.

Formal and informal institutions influence the behavior of individuals of all cultures and traditions. Indeed, while cultural factors may explain some aspects of human behavior, they cannot explain all behaviors. The same individuals, with the same motivations, will tend to act very differently under different sets of institutions. To illustrate this point, consider Alvin Rabushka's analysis of the three Chinas.²⁵ His examination of the post-World War II development of mainland China, Taiwan, and Hong-Kong, three jurisdictions with a common cultural heritage, suggests that economic and social progress depends far more on economic institutions than on cultural traits of the populace or the availability of natural resources.

Within a given set of institutions, individual actors can increase their wealth and better their position through two main courses of action, what we will refer to as *productive activities* and

²⁵ ALVIN RABUSHKA, *THE NEW CHINA: COMPARATIVE ECONOMIC DEVELOPMENT IN MAINLAND CHINA, TAIWAN AND HONG KONG* (1987).

unproductive activities. Productive activities involve entrepreneurial innovation, arbitrage, and wealth creation. In the context of our analysis, productive activities align and reinforce the main tenets of the American Creed. These activities are positive-sum in nature. They not only benefit the individual involved in the activity but also other members of society. Consider, for example, the entrepreneur who delivers a new product to market that lowers the cost of transportation. Such an innovation benefits the entrepreneur directly but also benefits many other members of society.

In stark contrast, unproductive activities involve predation. Predation can take several forms including using political means for rent-seeking, or outright crime and thievery. As such, unproductive activities are at odds with the main tenets of the American Creed. These activities are negative-sum or zero-sum activities – what one person gains another loses – and involve transferring or destroying existing wealth and resources. Unproductive activities contribute to an ethos of wealth transfers and predation rather than positive-sum wealth creation and self-responsibility.

Understanding the role of institutions is critical in grasping the issues related to immigration and the erosion of American identity raised by Huntington. Institutional rules govern economic and social activity and direct it toward productive or unproductive activities. Huntington largely neglects this insight and focuses his analysis of the erosion of the American identity and creed on the cultural traits of immigrants. The problem with cultural explanations of immigrant behavior is that they overlook what all individuals have in common – namely, alertness to profit opportunities and the desire to better their lot in life. Individuals who are driven by these motivations can be found in all cultural settings.²⁶

²⁶ To reiterate, we are not contending that culture plays no role but rather that focusing exclusively on culture neglects the fact that all cultures have some characteristics in common.

Immigrants, like those native to a country, will allocate their efforts toward those activities that yield the highest relative payoffs. If individuals can profit and better their position by engaging in productive activities, we should expect them to do so. Likewise, if the profits attached to unproductive activities are greater than the profits attached to comparable productive activities, more individuals will undertake the former. Indeed, the plight of many underdeveloped nations is that the institutional environment creates incentives for citizens to engage in predation as opposed to productive wealth creation.²⁷

As such, understanding the impact of immigration on the American identity and creed requires an examination of the structural institutions—tacit and explicit—that govern American society. Focus on institutions, not culture or country of origin, will improve our understanding of the impact of immigration and the erosion of American identity. We should expect immigrants to engage in activities that run counter to the American Creed, not because their native culture is inherently unproductive, but rather because the institutional environment is such that those activities yield a higher payoff relative to activities that align with the main tenets of the creed.

II. The U.S. Constitution and the Direction of Entrepreneurial Activity

It was the aim of the Founding Fathers to replace the government set up by the Articles of Confederation with a loose association of the states connected by a central government. This central government was meant to have the power to establish uniformity of commercial and foreign policy as well as the basic protections of its citizens. In the eyes of the Founders, government was necessary, precisely because men were imperfect. However, this imperfection

²⁷ Christopher J. Coyne & Peter Leeson, *The Plight of Underdeveloped Nations*, 24 *CATO J.* 235 (2004).

applied not only to individuals in the private sphere but in the public sphere as well. This realization was the underlying cause of the general distrust of the Founders toward government.²⁸ Given this, the problem was establishing a set of rules that would on the one hand empower government to carry out the desired activities, while on the other hand constrain that power so that it could not be abused. Madison summed up the paradox:

But what is government itself but the greatest of all reflections of human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed and in the next place, oblige it to control itself.²⁹

In order to achieve the goal of simultaneously granting and restraining power, the founders created a set of constitutional rules which facilitated government activity and the political process. The aim was to limit government action to those instances that served the broad public interest while preventing abuse from narrow interests.

An implicit understanding of the “productive” and “unproductive” dichotomy discussed in Section I was the underlying motivation of the Founders actions. Indeed, the development of constitutional rules was aimed at raising the cost of engaging in unproductive behavior and utilizing the political apparatus for per-

²⁸ See generally BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* (1967) (analyzing in depth the ideological underpinnings of the American Revolution and Constitution).

²⁹ THE FEDERALIST NO. 51 (James Madison).

sonal gain. Madison clearly recognized the potential for factions (i.e., special interest groups) to engage in unproductive activities.³⁰

In *The Federalist*, Madison indicates that there are two ways to limit the negative consequences of factions: by removing its causes or by controlling their effects. He concluded that the first method was a direct violation of liberty. The best means of mitigating the potentially negative effects of factions was to control their effects so that “[t]he influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States”³¹ Indeed, the industrial organization of government, according to Madison, must be such that “[a]mbition must be made to counteract ambition.”³² To achieve this goal, the Founders sought to segment government power in such a way that it was extremely difficult for narrowly driven factions to manipulate the system for political gain.

Based on the historical economic performance of the United States, one must conclude that the Constitution was successful in creating an institutional environment that rewarded productive behavior. As Rosenberg and Birdzell indicate, “[t]he United States had a federal system in the nineteenth and early twentieth centuries in which political intervention by the national government was narrowly restricted by political tradition and constitutional interpretation, while political intervention by the state governments was re-

³⁰ It is important to note that associations and interest groups are not inherently “good” or “bad.” Indeed, Tocqueville clearly noted the importance of voluntary associations for a robust civic society and healthy democracy. See ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 95-100 (New American Library Ed. 1993). What is important, is that the direction of association and interest group behavior, just like the direction of individual behavior, is dictated by the incentives provided by the institutional environment. To provide an example of a productive association, see GREGORY RODRIGUEZ, KAREN SPEICHER, & JAMES R. WILBURN, *IMMIGRANTS, RELIGIOUS CONGREGATIONS, AND THE CIVIL SOCIETY* (2004) (discussing the role that churches play in immigrant assimilation in southern California).

³¹ THE FEDERALIST NO. 10 (James Madison).

³² THE FEDERALIST NO. 51 (James Madison).

stricted by the fear of economic competition from other states."³³ The institutional environment was one where individual members of the populace were able to freely engage in productive economic activity for the betterment of themselves and their country's economic well-being.

The Constitution protected private property by preventing the arbitrary taking of property by government bodies,³⁴ and prevented states from imposing tariffs on imports and exports³⁵ as well as preventing them from passing laws that impaired "the obligation of contracts"³⁶ As Lee and McKenzie note, the Constitution was also effective in raising the cost of engaging in unproductive activities. "[T]he opportunity for personal enrichment through political activity was limited. Most people found that the best way to increase their wealth was through wealth-producing activities."³⁷

The productive environment created by the Constitution allowed for the development of institutions such as the firm and corporation that allowed society to take advantage of innovation and specialization resulting in an increase in the magnitude of the division of labor. Instead of focusing on the distribution and transfer of existing wealth, government activities primarily focused on protecting property and enforcing contracts. Within such an institutional framework, most individuals could increase their level of wealth through an ethic of productive workmanship, entrepreneurship, and by satiating consumer demands. These positive-sum activities resulted in the relatively high level of per capita wealth that America continues to experience to this very day.

Unfortunately, the incentives created by the U.S. Constitution have not been sustained over time. James Buchanan refers to

³³ NATHAN ROSENBERG & L.E. BIRDZELL JR., *HOW THE WEST GREW RICH* 138-39 (1986).

³⁴ U.S. CONST. amend. V.

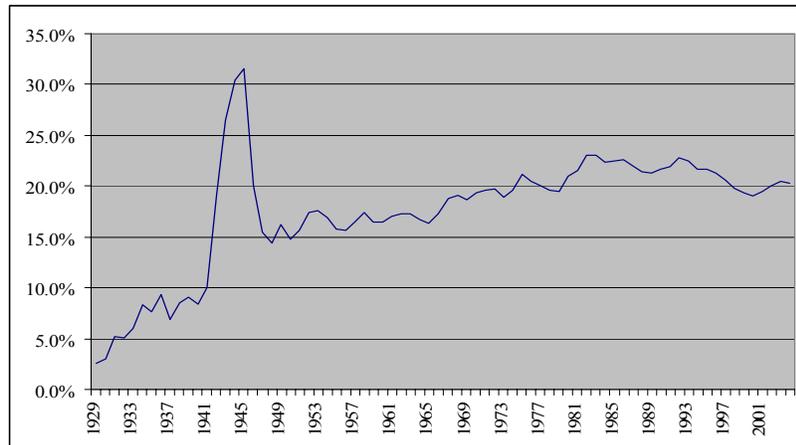
³⁵ U.S. CONST. art. I, § 10, cl. 2.

³⁶ U.S. CONST. art. I, § 10, cl. 1.

³⁷ DWIGHT R. LEE & RICHARD B. MCKENZIE, *REGULATING GOVERNMENT: A PREFACE TO CONSTITUTIONAL ECONOMICS* 49 (1986).

the system of legal rules as a stock of “public capital.” One of the most important aspects of public capital is its maintenance through time. In other words, binding rules must not only be established, but must be maintained. However, it will oftentimes be privately rational for an individual to engage in activities eroding the stock of public capital. Such erosive activities will reduce the stability of the system in current and future time periods. In order to overcome this potential problem, what is needed are firm constitutional rules that cannot be broken by an individual or group of individuals. A number of factors can drive this erosion including increases in wealth, which increase the payoff to seeking transfers, ideology, and various kinds of crises such as economic upheavals and wars.³⁸

We provide two general indicators to demonstrate the growth of government over the last several decades. First, we consider the size of government as measured by federal government spending as a percentage of GDP. This trend is illustrated in Figure 1:



³⁸ See ROBERT HIGGS, *CRISIS AND LEVIATHAN: CRITICAL EPISODES IN THE GROWTH OF AMERICAN GOVERNMENT* (1987) (arguing that much of the growth of government in the United States occurred as a result of crises such as economic upheavals and wars, and that the growth that results endures long after the crisis has ended).

Figure 1: Federal Government Expenditure as a Percentage of GDP (1929-2004)³⁹

As Figure 1 indicates, federal government expenditures increased from 1929-1945 before falling over the 1945-1948 period. However, since 1948, federal expenditures as a percentage of GDP have increased year on year. Government expenditures are necessary, in some cases, to provide certain goods and services that allow members of society to be productive. For instance, expenditures on enforcing property rights are beneficial to a large number of individuals across society. However, part of the increase in government expenditures can be attributed to increases in unproductive rent-seeking activities that seek to utilize government to transfer existing resources. Such activities utilize the government apparatus to benefit a small segment of society at the expense of the larger part of society. Note that the increase in federal government expenditures as a percentage of GDP took place prior to the third wave of immigration in the 1960s.

As another indicator of the movement toward an unproductive environment, consider the size of the *Federal Register* over time as illustrated in Figure 2.

³⁹ U.S. Dep't of Commerce, Bureau of Economic Analysis: National Economic Accounts, <http://www.bea.gov/bea/dn/nipaweb/SelectTable.asp?Selected=N#S3> (2005) (data used for this graph can be found in Table 1.1.5 and Table 3.1).

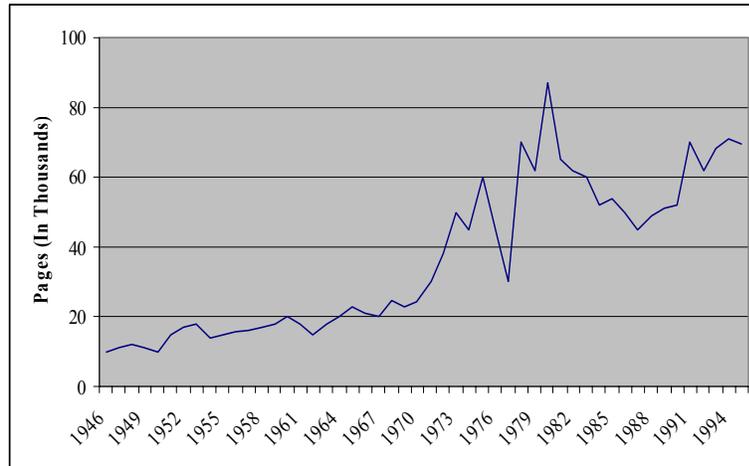


Figure 2: Size of the Federal Register (1946-1995)⁴⁰

The *Federal Register*, published by the Office of the Federal Register, National Archives and Records Administration (NARA), is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.⁴¹ The logic behind considering this metric is straightforward. Perhaps the largest contributor to the shift in institutional payoffs is the increase in government rules and laws. While there is no doubt that an environment conducive to productive activities requires stable rules, at some point, increases in the number of rules yields diminishing returns in terms of productive activities. Too many rules and too much administration necessary to oversee the application and enforcement of these rules produce a counterproductive result.

The size of the *Federal Register* has grown considerably since 1946. One observes a large spike in the size of the Register in the 1960s. The period from 1964 to 1974 covers President Johnson's

⁴⁰ Milton Friedman, *How Much Growth Can America Expect?*, HOOVER DIG., 1997 No. 1, at 12.

⁴¹ The official homepage of *The Federal Register* is at: <http://www.gpoaccess.gov/fr/>.

Great Society program which included the enactment of Medicare and Medicaid in 1965. It also includes the Nixon administration, under which the regulatory state increased dramatically in size. One sees a steady increase in the size of the *Federal Register* in this period as well. In fact, the number of pages doubled from roughly twenty thousand in 1969 to forty-five thousand in 1974 (when Nixon resigned) and sixty thousand in 1975.

The major programs enacted during this time had nothing to do with immigration or immigrants. For instance, the main drivers of the increase in regulation under Nixon was the creation of the Bureau of Alcohol, Tobacco and Firearms; the Consumer Product Safety Commission; the Drug Enforcement Administration; the Endangered Species Act; the Environmental Protection Agency; the Legal Services Corporation; the National Highway Traffic Safety Administration; the National Oceanic and Atmospheric Administration; and the Occupational Safety and Health Administration. The size of the register reached an all-time high of eighty-seven thousand pages in 1980. The number of pages declined under Reagan, but increased under Bush and Clinton.

Admittedly, the number of pages in the *Federal Register* is not a perfect indicator of rent-seeking and unproductive activities. Nonetheless, it is one indicator of the extent of government rules and regulations. An unproductive society will be characterized by relatively more rules and regulations and as such, the number of pages in the *Federal Register* serves as one indicator of the general nature of the environment in the United States.

Finally, consider the growth of the lobbying industry over the past several years. Between 2000 and 2005, the number of lobbyists has more than doubled, while the amount that lobbyists charge their clients has increased by as much as 100 percent.⁴² One would expect the number of lobbyists to increase only if there were gains

⁴² Jeffrey H. Birnbaum, *The Road to Riches is Called K Street*, WASH. POST, June 22, 2005, at A1.

to be had through lobbying behavior. This is yet another indicator of the unproductive turn in the United States. In an environment characterized by limited government, which enforced general rules to promote productive activities, there would not be a high return to entering the lobbying industry. As Patrick J. Griffen, President Bill Clinton's top lobbyist summarizes the situation: "People in industry are willing to invest money because they see opportunities here They see that they can win things, that there is something to be gained. Washington has become a profit center."⁴³

In sum, initially the Constitution was designed so that the payoff for engaging in political activities to transfer existing wealth was relatively low. The existing rules made it costly to undertake such activities. Over time these payoffs shifted and the payoff for unproductive activities, which run counter to the American Creed, increased. These changes were not caused by the third wave of immigration, as illustrated by the increase in government expenditures which began well before the 1960s. While the size of the *Federal Register* spiked in the 1960's, a brief look at the rules and regulations behind this increase indicates that immigrants or immigrant culture were not the driving forces.

III. Immigration and the Unproductive Turn

Above we focused on the unproductive turn that occurred in the United States broadly. In this section, we narrow our focus and consider the unproductive turn as it applies to the origins of immigration law and incentives faced by immigrants in the U.S. today. Our aim is to show that many of the immigration laws themselves are the result of unproductive activities.

⁴³ *Id.*

A. The Unproductive Origins of Immigration Laws

Over time, the payoff for engaging in unproductive activities in the United States has increased. This is especially true in the case of lobbying government to restrict immigration. Indeed, interest groups played a major role in influencing the creation of many of the immigration laws throughout the history of the United States. The motivations of these interest groups in lobbying government for these laws cut directly against the main tenets of the American Creed. In lobbying government to restrict immigration, many of these groups sought to protect their entrenched positions.

In the early part of the country's history, state legislatures controlled immigration. The main aim of immigration regulation was monitoring the movement of criminals, slaves, and individuals deemed as threats to the public health. Although the federal government was given some power to regulate immigration with the passing of the Alien Act in 1798—a response to perceived dangers from French revolutionaries—most of the power remained at the state level until 1875. In that year, Congress declared that the regulation of immigration was a Federal responsibility. As such, Congress passed statutes which were aimed at preventing immigrants who would contribute to crime, disease, and poverty. These statutes were amended in 1882, 1891, and 1903 to clarify the general categories set forth in the original statute.⁴⁴

A major motivation behind these amendments was the discovery of gold in California and the desire of native laborers in the mining industry to protect their jobs and wages. This discovery led to a large number of Chinese immigrants arriving to take advantage of the opportunity. The 1882 immigration law was specifically targeted at restricting Chinese immigration. The initial law was soon strengthened into the Chinese Exclusion Act which restricted entry and citizenship to Chinese laborers. The motivation behind these

⁴⁴ Nadia Nedzel, *Immigration Law: A Bird's Eye View*, in IMMIGRATION: DEBATING THE ISSUES 130–34 (Nicholas Capaldi ed., 1997).

laws was clearly unproductive and ran counter to the American Creed as native laborers, who wanted to protect their jobs and maintain their wage levels, did so by lobbying for restrictions on competition from immigrants. These restrictions were imposed despite the fact that the courts recognized the Chinese immigrants as productive individuals. As the Supreme Court described the Chinese immigrants, “[t]hey were generally industrious and frugal. Not accompanied by families, their expenses were small; and they were content with the simplest fare”⁴⁵ Along similar lines, the labor movement also played a role in the passing of the Alien Contract Labor laws of 1885 and 1887.

Another major outcome of this series of immigration laws in the late 1800s was the creation of the Office of the Superintendent of Immigration in 1891 and the Bureau of Immigration in 1895, which was the original manifestation of what would become in 1933 the Immigration and Naturalization Service (INS). The office of the superintendent was located within the Treasury Department and was charged with overseeing the U.S. Immigration Inspectors stationed at the main ports of entry. The creation of these new regulations and office provided even more opportunities for further lobbying and unproductive behaviors.

The Bureau of Immigration was seen by Congress, the labor movement, and the public as a tool to be used by labor. The first Commissioner General of the Bureau was Terrence Powderly, formerly the head of the Knights of Labor. Frank Sargent, who held the leadership position in the Brotherhood of Locomotive Fireman, succeeded Powderly. Congress too clearly saw the connection of the Bureau to labor. This is evidenced by the fact that Congress shifted the location of the Bureau to the Department of the Treasury and Labor in 1903 and then to the Department of Labor in 1913.⁴⁶ In addition to maintaining positions within the Bureau, labor leaders outside

⁴⁵ *Id.* at 131.

⁴⁶ DARRELL H. SMITH & GUY H. HERRING, *THE BUREAU OF IMMIGRATION: ITS HISTORY, ACTIVITIES AND ORGANIZATION* (1924).

the Bureau were also extremely influential. In his autobiography, Samuel Gompers wrote that, "the work of the Immigration Bureau involved knowledge of labor problems. This explains why so many labor men were appointed." Further, he acknowledged that, "it was my custom to keep in close touch with the affairs of the Immigration Bureau of New York City."⁴⁷

The motivations of the labor movement to protect their entrenched position would continue to influence immigration law in America. In her analysis of the political economy of immigration restrictions in the U.S. between 1890 and 1921, Claudia Goldin identifies several key interest groups that played a central role in the immigration debate, including organized labor—the American Federation of Labor (AFL) and the Knights of Labor—who were organized through the many boards of trade and chambers of commerce at the national and city level in addition to immigrants who had previously arrived in America.⁴⁸ It is important to put the passing of the legislation in the early 1900s in the context of the discussion in Section II. Indeed, these interest groups found it profitable to engage in lobbying activities due to the earlier erosion of constitutional rules in the 1800s which raised the payoff for unproductive activities. Lobbying for the regulation of immigration was just one example of an increasing trend of unproductive activities.

Goldin's analysis concludes that the key factors that resulted in the passing of the Emergency Quota Act in May of 1921, the subsequent Immigration Act of 1924, and the National Origins Act of 1929 were the declining political power of foreign-born citizens and the impact of immigrant workers on the real wages of both skilled and unskilled workers. Indeed, just as organized labor played a critical role in passing earlier immigration laws and influencing the creation and operation of the Immigration Bureau, so too

⁴⁷ SAMUEL GOMPERS, *SEVENTY YEARS OF LIFE AND LABOR: AN AUTOBIOGRAPHY* (1925).

⁴⁸ Claudia Golden, *The Political Economy of Immigration Restriction in the United States, 1890-1921*, in *THE REGULATED ECONOMY: A HISTORICAL APPROACH TO POLITICAL ECONOMY* 223 (Goldin & Libecap eds., 1994).

did it continue to lobby for immigration regulation in order to restrict competition in the labor market.

B. The Current Institutional Environment and the Direction of Immigrant Activities

The current institutional environment of the U.S., not the culture of immigrants, can explain much of the current immigrant participation in unproductive activities. While there are always exceptions, most immigrants do not engage in unproductive activities because their native culture is inherently unproductive. Rather, they do so because the relative payoff to unproductive activities is higher than the payoff for engaging in productive lines of activity. The current environment often rewards, and hence increases the number of, unproductive activities. Profitability from unproductive activities comes from two main sources: (1) taking advantage of existing public benefits, and (2) lobbying for further benefits and transfers.

One of the major concerns raised by critics of open immigration is that immigrants will be a drain on existing public services—welfare, education, health services, etc. For instance, Gary Becker has questioned a policy of open immigration because of the potential impact on America's welfare system.⁴⁹ Based on the available evidence, one may conclude that these concerns are valid. As Borjas points out, "the empirical link between immigration and welfare is indisputable."⁵⁰ The use of public services by immigrants increased steadily over the last several decades and by the 1990s immigrants received a disproportionately large share of welfare benefits.⁵¹

⁴⁹ Gary S. Becker, *The Migration of People*, Remark at the Annual Meeting of the Mont Pelerin Society (1992).

⁵⁰ BORJAS, *supra* note 3, at 105.

⁵¹ *Id.*

However, as noted above, it is not clear that the usage of these services is grounded in culture. Indeed, when one considers the incentives faced by immigrants, it is not hard to see why this is the case. The U.S. offers many public services to immigrants including cash subsidies, Food Stamps, public housing, medical aid, and unemployment insurance. Welfare programs in the United States compare extremely favorably to living standards in developing countries.

Consider for instance, that as of 1996, the typical two-child family in California that qualified for the Aid to Families with Dependent Children (AFDC) program received \$7,200 in cash benefits. This excludes food stamps which account for an additional \$3,000 annual benefit and Medicaid which provides another \$6,500 in benefits.⁵² When one compares the total of these benefits—\$16,700—to the per capita income of other countries for the same period—Brazil, \$6,300, Chile, \$8,400, China \$2,800, Colombia, \$5,400, Mexico, \$8,100, and the Philippines \$2,600—it is easy to see why participating in welfare programs in the U.S. would be an attractive course of action.⁵³

The incentive incompatibility between welfare programs and open immigration is not new. As Milton Friedman has pointed out, “It’s just obvious that you can’t have free immigration and a welfare state.”⁵⁴ Immigrants’ attraction to welfare in the U.S., or what Borjas refers to as the “magnetic effect,” can take on three forms.⁵⁵ The first are immigrants who come to the United States specifically because of the welfare benefits available. Absent these benefits, they would not have migrated to the U.S. The second form of the magnetic effect takes place after immigrants have arrived in the U.S. This form manifests itself through those immigrants who

⁵² *Id.* at 114.

⁵³ Per capita GDP is purchasing power parity. See generally CIA WORLD FACTBOOK (1997), available at <http://www.umsl.edu/services/govdocs/wofact97/country-frame.html>.

⁵⁴ Peter Brimelow, *Milton Friedman at 85*, FORBES, Dec. 29, 1997, at 52.

⁵⁵ BORJAS, *supra* note 3, at 114–18.

initially attempt to engage in productive activities but fail. Instead of returning to their home country or engaging in further productive activities, they choose to take advantage of the welfare benefits offered in the United States.

The final form of the magnetic effect deals with the geographic location of immigrants within the United States. Different states provide different levels of welfare benefits and hence provide different incentives to immigrants seeking benefits. These differences may influence the location of immigrants who seek to maximize the welfare benefits available to them. Moreover, ethnic networks develop that serve to disseminate information to potential migrants in the immigrant's home country about not only productive opportunities but also unproductive opportunities for obtaining wealth. Indeed, studies show that all else being equal, the more a national group is exposed to and involved in a public program, the more likely new immigrants from the origin country will also enroll in the program.⁵⁶

Our goal here is not to adjudicate between the intensity of these different forms of the magnetic effect. Instead it is to identify the various incentive structures that immigrants face both before entering the United States and once they have arrived in the United States. The main point is that just as immigrants assimilate into other facets of American life and culture, they also learn about the various means of obtaining wealth. Where few public benefits are available, we should expect immigrants to engage in more productive activities. Likewise, where unproductive activities provide greater wealth, we should expect immigrants to respond to the profit opportunity no matter what the culture of their native country.

Recent efforts by Congress have, in theory, been aimed at discouraging unproductive activities. The passing of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

⁵⁶ *Id.* at 118-19.

(PRWORA) was aimed at reducing the welfare benefits paid to immigrants.⁵⁷ The act had two main provisions:

Most non-citizens who arrived in the country *before* August 22, 1996, were to be removed from the Supplementary Security Income for non-citizens (SSI) and food stamp rolls within a year.

Immigrants who entered the United States *after* August 22, 1996, are prohibited from receiving most types of public assistance. This ban on public assistance is removed when the immigrant becomes an American citizen.

While the aim of the act was to discourage the use of public assistance by immigrants, a study by Borjas concludes that PRWORA has failed to be effective.⁵⁸ One reason for this ineffectiveness is that many state governments stepped in to fill the gap left by the federal government. State governments filled this gap by providing public benefits to immigrants. Another reason was that certain aspects of PRWORA were never enforced due to interest group pressures.

A third reason for the ineffectiveness of reform is that while the number of immigrants seeking naturalization increased due to PRWORA, they did so not because they supported the American Creed but rather because they viewed the process as a barrier to obtaining welfare benefits. These immigrants did not engage in the naturalization process to become productive members of society but rather so that they could obtain public benefits. So while PRWORA did raise the cost to immigrants of obtaining certain federal benefits, it has not been effective in protecting the American Creed or identity.

Huntington's argument that immigrants contribute to the erosion of the American identity and creed is at least partially cor-

⁵⁷ Pub. L. No. 104-193, 110 Stat. 2105 (1996).

⁵⁸ See BORJAS, *supra* note 3, at 119-21.

rect. It is true that many immigrants participate in unproductive activities that erode the American identity and creed. However, where we differ from Huntington is in our understanding of why immigrants choose to engage in these activities in the first place.

While Huntington attributes these behaviors to cultural factors, we contend that this behavior is symptomatic of a more fundamental problem in the United States. Specifically, the erosion of the American identity and creed is due to a shift in the institutional structure that has increased the relative payoffs for unproductive activities. Huntington himself recognizes the unproductive role of these interest groups when he lists, "special interests that elevated racial, ethnic, gender, and other subnational identities over national identity," as one of the of the four key manifestations of the erosion of national identity in the twentieth century.⁵⁹ These interest groups were only able to be successful in their endeavors because of the erosion of constitutional constraints that had taken place decades before.

Conclusion

The main implication of our analysis is that efforts to increase productivity and preserve the American Creed should not focus on restricting immigration but rather on shifting the payoffs that face immigrants and citizens alike. The question is not one of immigrants being culturally inclined away from workmanship and productive entrepreneurship. Instead, the main issue is ensuring the existence of an environment that provides the incentives for productive behavior. Liberty can indeed be learned. But assimilation into the American Creed requires binding rules that generate relatively higher payoffs for engaging in activities aligning with the creed. Without the right institutional payoffs, schemes such as auctions or point systems that aim to sort immigrants and allocate im-

⁵⁹ HUNTINGTON, *supra* note 16, at 137-38.

migration rights will not overcome the fundamental problem. Instead, we must focus on the rules of the games and the payoffs that those rules generate. As such, proposed reforms should not focus on restricting immigration, but rather on creating binding rules that prevent the erosion of the American identity and creed.