Postmodern Identity and the Structure of Immigration Control

DANIEL I. MORALES

1   Introduction

Nationalism is on the march and immigrants are in the crosshairs. The reaction had been a long time coming. In 1964, the United States traded in its expressly white supremacist[1] immigration policies for a new vision: to build a global creedal people – of every race, religion, and nationality – between the two great, North American coasts.[2] By 2020, thanks to the persistence of Donald Trump's immigration guru, Stephen Miller, the old racist impulses recaptured the migration control structures they invented (border patrol, the immigration agency, and plenary immigration power) doing lasting damage to the globalized, creedal project.

In Germany, Angela Merkel tried to meet the moment of the Syrian refugee crisis by harnessing her country's postwar reckoning with fascism to the new end of welcoming strangers in need. "Wir schaffen das" (we can do this), she said: Germany is strong enough to meet its obligations to those who seek refuge, no matter how sizable. Merkel was proved right, in a sense, Germany has not fallen apart in the face of an unprecedented influx of largely Muslim refugees from Syria, but the project was not without cost. It imperiled her own chancellorship and resurrected the remnants of fascistic impulses she wrongly believed Germany's post-holocaust, "never again," cultural re-fashioning had vanquished.[3] The rest of the EU is, to varying degrees, in thrall to the same anti-immigrant forces that plague Germany. The Global South is riding the zeitgeist too. India, the world's

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[1] Winant, "Racial Democracy and Racial Identity," p. 98.
[2] Calavita, "Immigration Law, Race, and Identity," p. 6 (noting the passage of the Hart-Cellar Act, which abolished eurocentric immigration quotas in favor of immigration from every part of the globe).
[3] Katrin Bennhold, "As Neo-Nazis Seed Military Ranks, Germany Confronts 'an Enemy Within'."

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largest, most culturally and religiously diverse democracy is engaged in a radical and violent homogenizing project to make Hindu belief the sine qua non of Indian legal and social membership.[4] The stripping of citizenship from Muslim Indians has played an outsize role in executing this vision.

These nationalist shifts signal, among other things, the desire of a plurality of people across the globe to return to a *mythical*, unitary cultural past free of the messiness of difference, a never-realized time when unity was, nonetheless, emphasized and actively constructed,[5] rather than difference celebrated and centered. And while the homogeneity of nation-states has always been overstated, the *relative* social and political consensus that prevailed after the second world war – within living memory – is a touchstone for many who are dissatisfied with the pluralism, diversity, dissensus, and agonism of the present.[6]

Immigration law is one important and potent part of the way in which nations understand and produce their identities and manage cultural difference, and so immigration law has come in for reassessment in country after country during the nationalist resurgence. What isn't clear, however, is if the old – relative[7] – national unity that this global plurality seeks can be recovered after seven decades of postwar globalization; much less, whether stanching immigration or selecting different kinds of immigrants can do the job.

In this chapter, I use the United States as a case study to argue that even the *relative* consensus and *relative* cohesion of the postwar period in the United States cannot be recovered. National identity cannot be put back in the bottle. Deeper, postmodern[8] currents in human identity construction render the effort to resurrect the old, more unified national identities Sisyphean. And if those national identities cannot be resurrected, it is not at all clear that trying to bring such identities back to life – especially using immigration

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[4] Zachariah, *Nation Games*, pp. 199–225.

[5] Martha Nussbaum, *Political Emotions*, pp. 1–24.

[6] Stenner, *The Authoritarian Dynamic*, pp. 14–20.

[7] Goldman, *After Nationalism*, pp. 4–10 (Emphasizing that the relative cultural social consensus of the post-WWII period was exceptional in American history. The norm in the United States has been sociocultural conflict and dissensus). A similar, relative, consensus existed during the postwar period in many other nations. The consensus was especially powerful in providing a sense that nations were engaged in nation-building projects in pursuit of a common goal.

[8] I use "postmodern" throughout to signal a still-developing but distinct form of identity construction that is different from the relatively homogenized aspirational forms of identity that

law – is a good idea. Any homogenized national identity imposed from on high at this point in human development, especially in the United States, will fail to satisfy a large portion of many nation's populations, potentially furthering internal conflict, rather than ameliorating it. Because immigration law participates significantly in this identity construction work, it ought to become less centralized and homogenized to accommodate this pluralist reality. Migration governance structures should be decentralized to reflect and reinforce the pluralism of identity that thrives *within* nation-states and the global solidarities that are emerging between them.[9]

A new, more decentralized approach to immigration governance is a better fit than top-down management, for the new postmodern order. Decentralization, I further claim, might in some countries, if properly designed, dial down the heat over immigration issues that the dislocations of global neoliberalism have caused. That heat, produced by numerous interlocking forces, has been narrowly projected onto immigration policy, since it is the dislocating factor that appears most tractable to nation-states. Pushing the immigration power, or a portion of it, down to a level where people can feel more agency over these cultural shifts could dissipate some of the heat immigration generates, or at least channel it into less violent and dangerous directions.

Decentralization also has much to offer the plurality of people across the world who welcome the blurring and pluralizing of national identities and the frission and beauty of cultural mixing. While the rise of a nostalgic nationalism is easy to see, and rational to fear, the way nationalism rhymes with the twentieth-century past tends to obscure the rise of fecund and cooperative pluralism in sites across the globe. Those places, mostly global cities, but also some rural and suburban locations, and some sub-national regions are in the process of creating postnational identities[10]

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prevailed for much of the twentieth century and that Gellner describes as serving the functional needs of modernity. Gellner, *Nations and Nationalism*, pp. 38–48. By labeling the identity-making I describe here as "postmodern," I mean to describe an emergent form of identity construction that is defined by quotation and multiplicity, and that resists easy or fixed categorization and that is anti-syncretic, shifting, and unstable. This form of identity-making shares traits with postmodern philosophy, architecture and art. Bauman, *Postmodernity and its Discontents*, pp. 8–9 (describing a postmodern "sui generis vested interest in the continuing diversification, underdetermination, and 'messiness' of the world.")

9 Damien Cave, Livia Albeck-Ripka and Iliana Magra, "Huge Crowds Around the Globe March in Solidarity Against Police Brutality," *The New York Times*.

10 Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe*; Saskia Sassen, "Towards Post-National and Denationalized Citizenship."

with a more constructive relationship to cultural difference. These sites are fragile though. As Ran Hirshl has comprehensively articulated, the urban population centers that thrive on diversity and admixture lack sovereignty; they are oppressed and artificially constrained to their detriment by national and regional powers that draw financial sustenance from the productivity of the miscegenated cities they deny autonomy to[11] – this is especially true in the United States.

In these conditions, the key to managing immigration effectively, I argue, is to pluralize our governance approach. With more than one answer to the immigration question, nation-states can nurture new cosmopolitan spaces where they arise and respect the ability of more traditional geographies to manage the cultural change immigrants bring – or, in some cases, reject it altogether – on their – local – terms.

The United States is the focus of this chapter, and its circumstances are sui generis. But the identity pressures I articulate are a global phenomenon. Witness, for example, how American race consciousness has travelled to France and become a flashpoint[12] for catalyzing discussions of racial difference that were long suppressed by the unwavering French commitment to colorblindness. That now-contested willful denial of race was long thought constitutive of French identity in combination with lacité, official state secularism that served to suppress religious difference, by suppressing public religious expression. Together, both norms are integral to securing French cultural homogeneity. Like France, other nations are having or will have their own idiosyncratic reckonings with national identity and I trust that the American example may rhyme just enough with the experiences of other territories to be of use in other studies of distinct places.

My argument for decentralization of immigration law proceeds in three parts. Part I denaturalizes centralized control of immigration, exposing the way national control is tied to a normative preference for social and cultural homogeneity. I make the case by taking on Michael Walzer's influential characterization of decentralized immigration law as an anticommons of "a thousand petty fortresses," showing how Walzer's fear of a decentralized immigration control structure which he fears might lead to "deracination." Part II argues that immigration law does identity-making work and examines the relationship between

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[11] Hirschl, *City, State*, pp. 17–51.
[12] "Will American Ideas Tear France Apart? Some of Its Leaders Think So," *New York Times*.

that work and the rise of "post-modern" national identities. Doing identity-construction work via centralized and national immigration law pushes a one-size-fits-all national identity that conflicts with the hyper-pluralized and hyphenated identities on the rise today. In Part III, I explore how to structure workable delegations of immigration authority to three distinct American geographies, rural, urban, and suburban, all of which have distinct identity needs.

2   The Purported Moral Value of National Immigration Control

Today's conventional wisdom on the necessity of national immigration control was captured and distilled by Michael Walzer in 1983. In his much-cited volume, Spheres of Justice, Walzer derided a decentralized immigration control system as a premodern artifact and described a world of local immigration control as an anticommons of "a thousand petty fortresses." Yet with four decades of centralized – and increasingly punitive – national control of immigration behind us, we now know that the alternative to "a thousand petty fortresses" suffers from its own – grander, violent – pettiness. The consistent failure of modern nation-states to make enough room for migrants seeking entry across the globe – despite the economic and social benefits that migrants bring with them[13] – is its own special irrationality. And the effort to police the arbitrary limits that nation-states place on migration causes morally arbitrary, and potentially vindictive forms of state violence. No moral or legal principle can adequately rationalize these deaths from border crossing, or on whom, in particular, they befall.

Nonetheless, during a period when migration enforcement was far less harsh, and radically less common[14] than it is today, Michael Walzer theorized that the historical rise of nation-level immigration controls that "sometimes restrain the flow of immigrants" is a moral good. Such controls are valuable, per Walzer, because they facilitate human thriving in national communities. Walzer wrote dismissively of prenational state formations for their cultural pluralism. The world of empires and metropoles, like "the ancient city of Alexandria … [or] early twentieth century New York,"[15] which permitted unencumbered migration and unrestrained movement over vast territories were less than ideal because

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[13] Caplan, *Open Borders*.
[14] Stats on difference in deportations in the United States.
[15] Walzer, *Spheres of Justice*, p. 38.

their openness produced a lack of fellow-feeling and cultural continuity over the breadth of the territory. Under such conditions, cities and towns became "closed or parochial communities." For the New Yorker in 1910 or the Ancient Alexandrian, "the Country [or Empire was] an open but also an alien world – or, alternatively, a world full of aliens." The glory of the Westphalian order circa 1983, then, was not just the ability to zip from Bangor, Maine, through Chicago and down to Galveston, Texas; or from Hamburg to Essen to Stuttgart; or Nantes, to Paris and on to Toulouse – it was to make these trips *and* encounter cultural compatriots all along the way. The Alexandrian on a jaunt to the hinterlands, by contrast, would be mixing with "strangers."

What held this new and felicitous homogeneity together across large stretches of the globe? National control over immigration played a critical role, Walzer urged. Without such centralized control, Bangor, Hamburg, and Toulouse, as much as Berlin, Paris and Chicago would each stand alone and distinct among "a thousand petty fortresses." City Walls would be built because cities and towns could not rely on the nation-state to weed out those who would disrupt the social fabric of these locales. Self-policing remained the only option to protect distinctive ways of life. The absence of city walls and national borders would produce a still more distressing outcome: a "world of radically deracinated men and women."[16]

Walzer's formulation has come in for forceful critique,[17] but it, and related theories, remains extremely influential.[18] His theory also captures a still-reigning conventional wisdom that national, centralized immigration control is essential, necessary, and proper. Efforts to control immigration at other governmental levels are reflexively deviant by contrast; they are vehicles for xenophobia, spaces for symbolic dissent,[19] or, at best, sites of policy entrepreneurship that produce change at the national level. In all respects, local efforts are widely dismissed as "petty" by contrast to their national counterparts.

But Walzer was wrong and the dogma that naturalizes and legitimates centralized immigration authority is wrong. More generously, even if Walzer was not wrong at the time he wrote, he is wrong in this moment. The pathologies of national immigration control today reveal

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[16] Ibid., p. 39.
[17] Stevens, *States without Nations*, 1–23; Pogge, "Cosmopolitanism and Sovereignty," pp. 60–61.
[18] *Spheres of Justice* is one of the most cited books in immigration and citizenship studies.
[19] Gerken, "Dissenting by Deciding."

the historicity and contingent nature of Walzer's claim – which were long taken to be timeless and universal. Section 2.1 unpacks these claims to expose the way that assumptions about the value of cultural homogeneity are bound to a particular – national, centralized – way of structuring immigration control. I suggest, in turn, that cultural pluralism and decentralization of migration control run together in a similar way.

2.1   Seeing Immigration Like a Nation

Walzer's praise for a homogenized identity deployed at national scale; his fear of this manufactured culture's annihilation (in the absence of immigration rules); and his approval of the defense of these values with a particular technology of state control (centralized, and with ample bureaucratic capacity) reflects what James C. Scott has called "high-modernist ideology."[20] This way of "seeing like a state," like its architectural cousin, privileges a 10,000 foot view of things; it has a "muscle-bound self-confidence in … the rational design of social order."[21] High-modernist ideology, for example, destroyed "blighted," yet culturally rich, neighborhoods of poor racial minorities to build Corbusian housing projects, like Chicago's infamous Cabrini Green; it built the US interstate highway system, in the process, paving over thriving neighborhoods and cutting US cities into pieces; it imagined and made the relatively culturally homogenous nation-states that Walzer finds essential.

As you can tell, ambitious high-modern projects entail violence. The territorialized cultural continuity of nation-states that Walzer valued was particularly bloody. For example, one of the first national immigration policies deployed in the United States aimed to attract European immigrants to the western American frontier with low land prices to encourage settlement.[22] The Act[23] was a boon to crowded eastern cities bursting with newcomers, to the immigrants themselves, as well as to the goal of manifest destiny – to "civilize" North America (read: eradicate native civilizations) from the Atlantic to the Pacific. In the 1920s, the near halt to European immigration to the United Sates secured by the Quota Acts, and then sustained by the Great Depression, lead to a consolidation of

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[20] Scott, *Seeing Like the State*.
[21] Ibid., p. 4.
[22] Zolberg, *A Nation By Design*, pp. 117–118, 169.
[23] Homstead Act.

formerly distinct and disfavored European ethnic groups[24] – Italians, Irish, Greeks, Poles, and Ashkenazi Jews – into "the white race," making a "nation" with uniform and uniformly enforced white middle class norms.

The violence also produced new social capacities that Walzer found laudable. Relative homogeneity and shared norms during and after the second world war, broadened horizons for coordinated action, economic growth, and social provision (as well as new mechanisms of repressive social control). Yet, it also seems wrong to suggest nation-states in their 1983 form represented the perfect calibration of homogeneity to pluralism. All the more so because the process of homogenization itself may have increased societal tolerance of pluralism. For example, the violent imposition of monolinguism in nation-states creates a shared language for discussing forms of difference, including language difference itself.[25] That is, secure in the comfort of a self-reinforcing dominant language, society might then be able to tolerate more linguistic and cultural pluralism in the future.

Walzer's fear of national "deracination" in the face of unregulated migration rings particularly hollow in the context of an American culture that was itself produced by the forced flattening (white "ethnics"), marginalization (Black, and Latinx people), and erasure (Native Americans) of peoples and cultures. This is not to dismiss such concerns entirely, everywhere. It's fairly clear that nations vary markedly in their tolerance for cultural pluralism, and, therefore also in their immigrant carrying capacity. Japan, for example, has struggled, until quite recently, to modernize even its gender norms to match the sophistication of its economy or the needs of its citizens (such norms are blamed for a rapidly declining population).[26] The rigidity of Japanese cultural norms are poorly suited to an embrace of the cultural pluralism that large-scale immigration may require.[27]

3 National Immigration Control in a Pluralizing Nation

Walzer's package of national cultural goods (homogenized national identity) and regulatory means (centralized immigration control) have run their course. We are at an inflection point. Whatever the benefits of a

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[24] Painter, *The History of White People*.
[25] Taylor, *Multiculturalism and the Politics of Recognition*.
[26] Steel, *Beyond the Gender Gap in Japan*, pp. 67–83; 25–50.
[27] Haig, "*Japanese Immigration Policy*," pp. 223–236.

relatively homogenized, national identity, the thick, shared(ish) consensus of the postwar period is not recoverable or even desirable any longer, at least not in the rich West – and especially not in the United States.[28] The impossibility of a relative re-homogenization – which would entail significant state coercion[29] – should be obvious now and has been for some time. Only ten years after Walzer sang the value of sameness, Charles Taylor predicted its disintegration in the Politics of Recognition.[30] Taylor noticed the tendency of citizens of contemporary democracies that differed from the dominant culture along some criterion to want to be seen *in* the state; to be valorized by it, reflected back to them in officialdom, and to be treated with equal dignity by their government and their fellow citizens. Even a conservative US Supreme Court signed off on the importance of this form of politics and emphasized the way in which it built solidarity and legitimacy in a hyper-diverse nation. Justice O'Connor, writing for the majority, approved of affirmative action at the prestigious University of Michigan Law School, "because universities, and in particular, law schools, represent the training ground for a large number of the Nation's leaders," as a result, in a diverse Nation like ours, the Court held that "the path to leadership must be visibly open to talented and qualified individuals of every race and ethnicity."[31] Social order and solidarity were thus tied to the institutionalization of the politics of recognition.

Consider also the recent rise of Trump and the "coming out" of White Nationalism. The stunning success of Trump's caricature of white alpha-male masculinity in this context of pluralizing national identities signals how entrenched the politics of recognition have become in the United States. While the material substance of white dominance remains (white men still rule over nearly every public and private institution), its now-sectional purchase in the cultural realm,[32] and its demotion from the ideal,[33]

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[28] Samuel Goldman, *After Nationalism*, pp. 1–12.

[29] Ibid.

[30] Taylor, *Multiculturalism and the Politics of Recognition*.

[31] *Grutter* v. *Bollinger*, 539 U.S. 306 (2003).

[32] In the United States, examples abound that whiteness has been decentered in institutions of cultural production: Zachary Small and Robin Pogrebin, "Basquiat and Other Artists of Color Lead a Swell of Auction Sales," *New York Times*, May 13, 2021; Sarah Ellison, "How the 1619 Project took over 2020," *The Washington Post*, October 13, 2020.

[33] For example, American fashion magazines such as Vogue have long defined ideal femininity. The whiteness of that femininity has become increasingly untenable: Robin Givhan, "Fashion's Racial Reckoning," *The Washington Post Magazine*, August 31, 2020.

has put whiteness on the defensive.[34] Once normative, white identity now believes itself to be one among many identities competing for esteem – to be *seen*. That the norm to which all others bent, now itself feels a need to be recognized, underlines the degree to which the continued dominance of Whites over other groups can no longer be taken for granted. Not only is White cultural dominance over, a return to it is irretrievable – at least without the sort of violence that constructed it in the first instance. This is not to say that the new, self-consciously sectional and embattled whiteness is something to celebrate. It is causing violence and will continue to do so, especially against racialized Americans and noncitizens.

American Immigration regulation has always had a lot to do with maintaining white cultural dominance and establishing "whiteness" as the national identity. From the ban on Chinese immigration, to the attempt of the 1920s quota acts to purify a white race gone "weak" from the genetic inputs of the "lesser" races of Europe, to the refusal to admit Jewish refugees as they died in concentration camps by Hitler's hand identity-fashioning was at the core of immigration statecraft. It is hard to view any of these policies as *primarily* keyed to the *material* benefits of exclusion. The substance of these immigration laws, what they did in the material world (say, prevent "excess" labor competition) was always subordinate to their identity-making function. The principle work of all this violence directed at immigrants was to shore up the status anxieties of dominant whites and to secure cultural uniformity, in part through the assimilating pressures that came from placing whiteness at the top of the social hierarchy.

Trump understood all this well and revealed for a new generation the essential identity work that centralized immigration law had always done. The Muslim Ban, Trump's first official act as president, was an assertion of White Christian primacy; a recognition of the superiority of whiteness achieved by denigration of the Muslim world as unfit for entrance and inclusion in the United States.[35] (As everyone knew, especially Trump, the ban had nothing at all to do with protecting the United States from terrorism.) The spectacular cruelty of Trump's family separation policy at

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[34] Even classics departments at American universities have come under pressure to examine the white supremacy that some argue classics departments uphold through their construction of "western civilization." Rachel Poser, He Wants to Save Classics From Whiteness. Can the Field Survive?, *The New York Times Magazine*, Feb 2, 2021.

[35] For a more extended analysis, see Daniel I. Morales, "Our Sovereignty" (draft on file with author) describing how Trump's rhetoric and action of Muslim exclusion was intended to elevate white Christianity as the normative American identity.

the US–Mexico border, was the Muslim ban's Latino twin. Such obvious inhumanity communicated to Whites the depth of the status threats that brown people on the move posed to white dominance. In the reflection of such menace, whiteness saw itself recognized in both of these racist policies as worth preserving at any cost.

There is a – sectional – hunger for this spectacle: "today, for citizens who remain invested in whiteness as 'a badge of status,' there are fewer legally sanctioned outlets for publicly engaging in" practices that valorize whiteness. "Anti-migrant rhetoric … offers nativists democratic pleasures that are increasingly difficult to access."[36] A bread and circus leader, Trump always gave his followers the satisfactions they most desired using whatever tools were at his disposal. Yet, Trump could only provide this form of violent recognition to his following because of centralized national control and a multi-decade ramp-up in bureaucratic capacity. And these tools were put in place and upheld as constitutional over the last two centuries for precisely the purposes Trump put them to (and which Walzer valued) to secure a homogenous national identity.

Immigration law scholars have largely ignored this relationship between ideology and the structure of the immigration power, or believed it had been permanently sublimated into the service of a new multiracial immigration consensus with the Hart-Cellar Act of 1965. That act was a *centralized national* response to the pressures of anticommunism and the civil rights movement that ushered in a radical diversification of the United States. In 1970, 80 percent of American immigrants were of European origin – today less than 10 percent are. Even though national centralized control had been designed to serve white dominance, in that moment in 1965, it also ushered in the demographic eclipse of whiteness through the front door.[37] Still, Trump's use of immigration law to shore up white nationalism is not incongruous or exceptional, but it is a return to form. The dramatic demographic and cultural revolution that the Hart-Cellar Act yielded should not distract from the reality that centralized, national immigration control has an unavoidable antipluralist structural bias – if only because it gives a single answer to the question of "who belongs" in a dispersed nation of 325 million individuals.

[36] Cristina Beltrán, *Cruelty as Citizenship*, p. 27.
[37] Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*; Roger White, *Immigration Policy and the Shaping of U.S. Culture*, Ch. 5.

Still, we should recognize that the post-1965 transformation of the United States' demographic composition was *also* a product of high-modernist ideology. And, like all governance strategies that involve "muscle-bound self-confidence in … the rational design of social order," the civil-rights era transformation of American identity via immigration law could not account for all the downstream consequences of this ambitious, continent-wide, and diversity-promoting endeavor. While the project dramatically enriched the United States and successfully stretched the median American's tolerance for diversity, it has also produced dislocations that many native-born Americans feel constitute its own kind of violence. We are encountering the most dangerous effects of the fallout today and must grapple with it: in particular what to do with the violent white rage the post-1965 transformation has added fuel to.

We must face head on the fact the immigration regulates metaphysical life in nation-states as much or more than material reality. Part of that grappling, I suggest in the rest of this chapter, should come from creating a better fit between migration governance structures and the reality of postmonocultural, postmodern American identity. If who "we" are as a nation is radically more plural than was ever thought possible in the high-modern period, then governance strategies related to migration need to become supple and plural enough to account for this new diversity of identity needs.[38]

4   Postmodern Identity and Immigration Law Structure

High-modernist identity construction was a top-down process that produced cultural continuity across massive national geographies. Postmodern identity construction is bottom-up, chosen, curated; it produces strong continuities, but ones that are geographically *discontinuous* across the national terrain.[39] These newer identities and cultures do have a loose geography (and one that maps nationally), they form a recursive pattern across national territory that tracks housing density.[40] Today, the culture of rural Michigan has more in common with rural Texas than ever before, but both places have far *less* in common culturally than they used

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[38] Goldman, *After Nationalism*, pp. 6–9.
[39] Bill Bishop and Robert G. Cushing, *The Big Sort*; E. M. Uslaner, *Segregation and Mistrust*; Jonathan Haidt, *The Righteous Mind*.
[40] Jacob R. Brown and Ryan D. Enos, "The Measurement of Partisan Sorting for 180 Million Voters."

to have with central Houston or Detroit, or even with those cities' respective suburbs. Houston, Columbus, Ohio, or even Salt Lake City, Utah, have more in common with each other, than any of these cities has with its hinterlands.

This new discontinuous geography of cultural norms is distinct from what came before, but it is *not* a return to the unintelligibility of ancient Alexandrians to the barbarians outside their gates, as Walzer might fear. The significant *gains* in cultural continuity purchased in the period of high-modern nation-making remain in place: New identities and cultural mores have been graphed on top of them. So while the culture has pluralized, the change has not been as destabilizing as it might otherwise have been. With common and contiguous foundations of a national cultural already in place, pluralism could increase substantially without creating a Babel.

Even so, the rise of cultural pluralization, and the sorting of individuals with overlapping commonality along multiple demographic markers – economic, racial, educational attainment, and political affiliation – into specific, nationwide geographic patterns is a source of consistent concern in public and academic discourse. It is not overstatement to characterize these critiques as portending the death nell to national social cohesion.[41] And, surely there is much to worry about in this new order. After all, the culture that results from this geographic sorting gains its normative superiority to top-down arrangements to the extent that the "foot-voting" that creates these places and cultures actually reflects individual preferences and choices.[42] To the extent the most powerful groups use zoning and other governmental tools to hoard common resources for themselves and serve their own interests over others, the new order really is worse than what came before.[43] Still, the relentless pessimism about this sorting seems over the top. (Perhaps, all new human geographies will be feared as they come into being?)

Just as with high-modernist cultural production, postmodern national identities are constructive too. Metropolitan area productivity levels, which diverged markedly by region 100 years ago have now converged, creating more wealth nationally than existed before the "big sort."[44] And from a welfarist point of view, it seems hard to argue that the homogenized

[41] Robert Putnam, *Our Kids*.
[42] Illya Somin, *Free to Move*.
[43] Ibid.
[44] Bishop and Cushing, *The Big Sort*; Enos, "The Measurement of Partisan Sorting."

status quo ante served the mass of individuals better than what exists today. To the extent the prior, contiguous national culture that Walzer favored was good it was good because it created thick cultural bonds. Arguably, new arrangements are just as thick, even thicker. Surely, the thick cultural bonds created in communities where shared cultural norms run deep are also valuable – and all the more valuable for being more freely chosen. Moreover, the pluralization of cultural norms between geographies within the same nation means that more people actually have a meaningful choice of what kind of community to affiliate with.

Beyond sorting, there are other aspects to postmodern identify formation that bear mention. Postmodern identity is bespoke. Individuals contain multitudes and those multitudes seek out social affirmation. The shift began as identities repressed or subordinated by the high-modernist cultural mode began seeking recognition. The Black civil-rights movement first, next women's equality and reproductive freedom, and then queer identity. Work continues in all these areas, of course, but identities have multiplied on from there (nonbinary, asexual, genderqueer, and biracial), and the focus of recognition now encompasses repressed sub-groups *within* broader oppressed categories[45] (e.g., respectability politics and colorism in the Black community, white heteropatriarchy in Queer movements).

The proliferation of identities has made the search for recognition increasingly personalized. The concept of intersectionality inspires and sustains this mode. Following intersectional insights, ways of knowing and forms of knowledge are increasingly grounded in standpoint epistemology[46] (as a biracial, genderqueer, first-generation college student, etc.). These intersecting, plural, self-made selves increasingly demand recognition in every context – the workplace, educational institutions, religious institutions, bathrooms, and the law. What looks like it might descend into unmanageable social atomization is actually anarchy in the best sense, a spontaneous order – a commitment to bottom-up social organization and a resistance to norms imposed from above especially where they impinge on personal choices that do no material harm to others. Emergent norms to accommodate these needs for recognition, like declaring personal pronouns, stretch our capacities for pluralism further.

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[45] Cathy J. Cohen, *The Boundaries of Blackness*.
[46] Gaile Pohlhaus, "Knowing Communities: An Investigation of Harding's Standpoint Epistemology."

What might all this have to do with the structure of immigration control? Simply put, immigration law does and has always done identity work, and high-modernist immigration control looks increasingly at odds with the nature and geography of postmodern identity construction. In the metropolitan geographies where the postmodern mode reigns, social boundaries of every sort – including the borders Walzer took as fundamental – look increasingly artificial. As the locus of culture focuses increasingly on the individual and whatever voluntary groupings individuals wish to be a part of – from a reactionary Catholic intentional community that gives the Latin mass to a polyamorous nudist commune – the invasion of "foreign" cultures into the milieu seems ever less threatening to "national identity" itself, and the fear of cultural "deracination" still more absurd and unintelligible. How can you "deracinate" a culture increasingly defined by the personal freedom to shape a bespoke, individualized, and cross-cutting set of commitments?

Moreover, for all the mockery endured by the young social entrepreneurs that have relentlessly pushed the boundaries of identity and demands for recognition, this work has yielded an increasingly muscular capacity for these geographies to manage, coexist, and thrive in this hyper pluralist environment. In these geographies, old-school, high-modern identity differences – like national origin – just do not register as broadly threatening, much less *uniquely* threatening to the cultural continuity of these geographies. Indeed, we may be at the point where openness to immigration is *constitutive* of these geographies. Maintaining an openness to a radically plural and ever-expanding mix of personal identity commitments is difficult to square with a posture of exclusion toward noncitizens.

Rural areas, by contrast increasingly occupy a universe where the disintegration of high-modern identity is acutely threatening. Just as metropolitan identities have thickened in place, so too have rural ones. And economic decline in rural areas has only compounded the sense of threat felt by the inversion of the national identity hierarchy.[47] In such normative environments, immigration *does* register as an existential threat. Capacities for managing difference in these areas have *not* grown as substantially as they have in cities and metro areas. Indeed, most who might have challenged the rural cultural status quo have increasingly and relentlessly exited those geographies, leaving homogeneity partisans

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[47] Nina Glick Schiller and Ayse Çağlar, "Towards a Comparative Theory of Locality in Migration Studies"; Nina Glick Schiller and Ayse Çağlar, *Migrants and City-Making*.

behind. And, as Trump underlined, the culture of these rural geographies feels increasingly threatened and unrecognized – unseen – by the broader culture.

While the metaphysical aspects of immigration and identity may be felt symmetrically across differing geographies, the material effects are radically asymmetrical. The vast majority of immigrants land in major metropolitan areas. Where immigrants do land in rural areas, the impact is often disproportionate to numbers because of the differing cultural ecologies in rural areas. Votes for Trump in the 2016 election cycle were highly correlated to the percentage change in immigrant population in a particular local geography. But again, the difference in material impacts is another strike against high-modernist immigration control and another reason to adjust course for a postmodern order.

5   Seeing Immigration from Different Vantage Points

If immigration law has a lot to do with identity construction, and national identity has ruptured into distinct, national identities that track housing density, then to design an immigration – or identity law – system that fits this new geography of identity, we need to look at immigration from different geographic vantage points. Seeing through diverse perspectives is an increasingly mandatory skill in diverse societies because of their increasingly pluralism. High-modernist immigration control is crafted from a *single* dominate perspective, so it should not surprise that it yields unsatisfactory results. Different vantage points, of course, offer different kinds of information.

In light of the increasing divergence in perspectives and cultures that map to differences in geography, I offer accounts of three distinct geographic perspectives below. We will "see" immigration like a city, a suburb, and "the country," that is, from urban, suburban, and rural vantage points. For each of these vantage points, I offer suggestions for how certain forms of immigration power might be devolved down from the national level and what policy shape those powers might take. The claim is that immigration power devolution would nurture the identities these geographies sustain and help them to adapt and to thrive, along with the immigrants that become part of these communities. With the identity needs of these geographies accommodated, the nation as a whole will be better positioned to accommodate the difference that we already have and the new differences that we invite with immigration.

5.1 Seeing Immigration Like a City

Cities churn. Even in cities that do not grow, people come and some years later, many go. As a result, cities and their cultures have a high capacity to adopt newcomers of all sorts, including the foreign born. Of late, this culture of "welcome" has been embraced in urban laws that create equality of access and treatment for residents who lack national legal status. Chicago's "Welcoming City Ordinance," for instance, builds on multi-decade movements to make the city a "sanctuary" for undocumented people. The ordinance had for many years prohibited, with a few prominent exceptions, cooperation between local law enforcement and Immigration and Customs Enforcement (ICE), the American national government's deportation force. During the Trump years, the ordinance was amended to prohibit virtually any collaboration between the city's police and US ICE. (Previously, Chicago police were permitted to cooperate with ICE where noncitizens were listed in the city's gang database, had an outstanding criminal warrant, had been convicted of a felony, or had a felony charge pending.)[48]

This new, posture of total noncooperation is quite radical and reveals something important about the identity of an increasing number of cities. Think back to Walzer's claim about the need for city walls in the absence of national filtering. Here, we have the national government performing a function that, in Walzer's terms ought to be welcome: ridding the City of persons that the *city itself* has identified as agents of disorder. And yet, here Chicago is, claiming the disorder of noncitizens as its own and protecting these criminal citizens from expulsion. Walzer claimed that cities would *have* to be fortresses if the nation-state stopped keeping the "bad" immigrants out. Here, Chicago has identified disruptive immigrants and wants, nonetheless, to keep them in. Chicago's update to its Welcoming City Ordinance looks a lot like empirical evidence that Walzer's thesis is false.

What this means for immigration structure is that cities themselves see that they have more capacity to handle free movement into and out of their line of sight than the national government thinks that they do. And since the criminal realm is one where cities endogenize all the costs of disordered behavior, Chicago's standpoint on the issue appears grounded in

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[48] Frequently Asked Questions – Sanctuary Cities www.chicago.gov/content/dam/city/depts/mayor/Office%20of%20New%20Americans/PDFs/SanctuaryCitiesFAQs.pdf (describing the impact of Chicago's Welcoming City Ordinance).

a robust insight about the city's material reality and corresponding capacities. But of course, the city's welcoming posture also has a metaphysical dimension that produces a certain kind of identity claim. To be the kind of place that refrains from banishing those caught up in the criminal dragnet is to be a place that stakes a claim to a certain kind of morality; a geography that can tolerate the reality of human frailty and that has enough confidence in the city's capacity to absorb the consequences of these failings without breaking[49]; a city that says, in effect, both that no one is irredeemable and that no one is illegal (worthy of banishment even for violent crime). In short, any person who wishes to make a life here is welcome.

Not all cities have the combination of traits that can tolerate this sort of anarchic pluralism. And there is an unsavoriness to such capacities. Part of what makes cities like Chicago able to function without becoming fortresses is that neighborhoods have invisible walls. These barriers of wealth and race are routinely and appropriately criticized for facilitating and perpetuating inequality and structural racism. But bugs in urban life may be uncomfortable *features* when applied to noncitizens, since they allow cities to increase their immigrant carrying capacity. As Rick Su has argued, the receptivity of cities to immigrants has a lot to do with these invisible walls.[50] The isolation of immigrants' social and residential lives in immigrant enclaves, even as they are integrated into the economic life of the city through their jobs and via public transit links, allows cities to capture the economic benefits of a larger productive population than it would otherwise have, without disrupting the social and residential lives of wealthier, longer established residents. Immigrant "ghettos" also provided a kind of home away from home for new migrants, easing the transition into American society and permitting networking, solidarity, and mutual aid to conationals. Immigrants descendants, over the generations, then, may integrate into neighborhoods from which their ancestors were excluded – or not. The point is not to endorse the segregation of immigrants as ideal, but rather to build off the capacities it produces for increasing national immigrant carrying capacity.

This exclusionary spatial arrangement can – ironically – facilitate a broad-based civic solidarity of inclusion that can support policies like a welcoming city ordinance. Established residents may not want certain immigrants in "their" neighborhood, but they would be willing to resist

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[49] Daniel Morales, "Transforming Crime-Based Deportation."
[50] Rick Su, "Local Fragmentation as Immigration Regulation."

threats by the national government to the neighborhood of their fellow Chicagoans, whom they identify as "neighbors" even if they are kept at arm's length. In the best of all possible worlds, this kind of segregation would not be as productive for immigrant integration as it is in our world. Yet, here we are. Geographic structures that facilitate limited integration in the first immigrant generation are useful technologies for increasing immigrant carrying capacity. Urban areas have this technology in large measure and can accommodate more immigrants than other areas as a result. This technology is useful because in the absence of such spaces, fewer immigrants would be admitted at all.[51] This bargain is a subideal one. But, then, so is high-modernist immigration control. A postmodern migration governance structure that granted cities the ability to grant visas (subject to national background checks) or protect noncitizen residents from deportation would facilitate a better match between the identity of global city residents, the material needs of such cities, as well as then needs of migrants themselves.

There are many ways that this delegation of formal immigration powers down to cities could be structured. And the delegation need not be total to have salutary effects on immigration governance. For instance, cities of a certain size might be granted a tranche of supplementary or existing visas to allocate as they wish, to refugees, advanced-degree holders, family of existing noncitizen residents, or in any other form that cities find desirable. National allocation of national visas could remain the same, in such a supplementary system.

Cities also might be granted the power to protect or, perhaps, even select noncitizens for deportation. Obvious candidates for protection include long-term undocumented residents. In the United States, the median undocumented person has resided there for sixteen years.[52] Support for regularizing the status of these persons runs high nationally, and especially in the cities and other places in which they are concentrated. Many cities and some states have already done much to normalize life for populations that the national government wishes to remove.[53] What cities have not been able to do, however, is to prevent national immigration enforcement authorities from snatching their long-standing residents. Granting cities

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[51] Ibid.
[52] Jeffrey S. Passel and D'Vera Cohn, "U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade."
[53] Christopher N. Lasch, et al., "Understanding Sanctuary Cities."

the power to affirmatively block such enforcement would help make such cities actual – not just aspirational – sanctuaries.

To accommodate jurisdictions that have different perspectives on the value of undocumented people, or immigrants with criminal records, such status could end at the city limits, or cities or other subnational jurisdictions could enter into voluntary agreements to recognize the status granted by other jurisdictions. For example, Houston could chose to allow settlement of undocumented people granted status by Seattle. Enforcement of residency limits need not be complex. Violations, such as settlement in an area outside the scope of residence could – quite harshly – void the right of residence altogether, or result in deportation by the national enforcement agency. Free, temporary, travel nationally should be allowed, while permanent settlement outside jurisdictions that have not recognized the status should be barred. This balance would allow nations to retain a relative openness of movement throughout the national territory (freedom to travel paired with harsh sanctions for permanent residency outside the granting jurisdiction reduces the need for checkpoints or friction in travel within nation-states), while making room for subnational forms of permanent membership.

Assuming such a system increases the total number of foreign-born persons compared to an exclusively national immigration system, automatic deportation to the country of origin for settlement violations (consistent with nonrefoulement commitments in international law) would be normatively defensible and superior to the status quo. Remember that undocumented people and noncitizens who have committed certain crimes have no *legal* protection from national enforcement at present. Protection within city limits, or a larger metropolitan area is superior, all else equal. It is important to remember too that many cities, and especially many metropolitan areas, have economies that are as large as national economies. The Chicago metropolitan area of about ten million persons, for instance, has an economy larger than Switzerland.[54] If we don't decry as unconscionable the limits placed on people granted immigration status in Switzerland, we should not treat a Chicago regional visa any differently.

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[54] Gross Domestic Product in the Chicago Metro Area was 709 Billion Dollars in 2019. U.S. Bureau of Economic Advisors https://apps.bea.gov/itable/iTable.cfm?ReqID=70&step=1. Switzerland's GDP stood at 703 Billion Dollars in the same year https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=CH. All values are expressed in 2021 US Dollars.

Given that people are literally risking their lives – and dying – to reach the shores of the rich, developed nations, any policy that increases total migration to jurisdictions that human beings clearly wish to reside in is superior to the status quo that leaves people to drown or sends people back to live in places where they face serious harm or no longer desire to make their lives. Whatever qualms denizens of rich nations may have about a geographically truncated offer of belonging in rich nations, it seems hard to imagine that prospective immigrants themselves (largely excluded now by a lack of visas) would prefer less immigration, but more internal freedom of movement, to more immigration with less internal freedom of movement.

Moreover, the geography of welcome[55] is unlikely to be static. Sanctuary cities, like New York, Los Angeles, and Chicago have already scaled the politics of welcome up to the state level. New York State, California, and Illinois all grant driver's licenses and other public benefits to undocumented people after many years of advocacy, and following the debut of city-level politics of welcome. There is no reason to think that delegating more formal immigration power to such jurisdictions would weaken such normative movement. Though, as I discuss later, it may be desirable for rapidly diversifying democracies to refrain from state level or national level consolidation of welcoming postures over strong dissent from rural or even some suburban geographies. Accommodating the identity needs of such areas (especially rural areas in decline) can come at relatively low cost to immigration levels and potentially give nonurban geographies room to reckon with and manage the shifts in identity that come from migration and other social forces that these areas find threatening.

5.2   Seeing Immigration Like "The Country"

The postwar changes to immigration and the increasing recognition and centering of the diversity of American culture has alienated rural residents most. The cultural shift is not the only change that rural America has had to absorb. The forces that have centralized the economy in metro areas (free trade, the financialization of the economy, technological change) have left rural areas out of the loop.[56] Once the symbolic center of national conversation – the so-called heartland of America – rural whites have

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[55] Kirsi P. Kallio and James Riding, "Geographies of Welcome."
[56] Kenneth M. Johnson and Daniel T. Lichter, "Rural Depopulation."

literally been left behind for more prosperous geographies. Trump converted that alienation into votes. One of the highest correlated statistics to pulling the lever for Trump is not having moved more than ten miles from one's place of birth,[57] a much more common characteristic in rural areas than in the metropolises that are sites of extensive domestic in-migration.

Trump played the politics of recognition with these voters brilliantly. He saw these voters, fawned over them, and his ascension to the Presidency consistently put them back at the center of American life. The daily owning of "the libs," the dismissal of "experts," – his statement that "I love the uneducated" – all of this validated rural America's feeling that residents of dominant metropolitan centers look down on them, or worse, hold them in contempt. Trump "rescued" rural American from alienation and put them back at the center of the American story, tweet by tweet.

Tweeting about and acting on immigration also consolidated rural malaise onto a distinct, digestible outsider target. Trump's relentless focus on defaming immigrants, labeling them criminals and "takers," and taking action at the border and abroad made rural America feel taken care of, protected, and defended, all as they felt more threatened than ever by the outside menace that Trump manufactured by repeating ad nauseum unrepresentative stories of undocumented immigrants committing violent acts. Underlying racism, or "racial resentment," as political scientists call it, had a lot to do with this success of Trump's tactics,[58] but it would be a mistake to think that was all there was. When we consider Trump's success in rural America we have to remember that Obama also won many of these voters handily four years prior to Trump's election despite their prejudice.[59] This does not of course, absolve these voters of racism, but it does suggest that there is something else at work in addition to racial animus or a fondness for the old racial hierarchy. It also tells us that rural America is not forever or inevitably captive to the fascist style. There may be other ways to provide this part of America with the recognition and material sustenance it needs without spawning national demagoguery.

Unlike cities, for which immigration policy autonomy might be a supplement to national policy, rural areas likely need veto power over

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[57] Daniel Cox and Robert Jones, "Still Live Near Your Hometown? If You're White, You're More Likely to Support Trump."

[58] Tyler T. Reny, Loren Collingwood and Ali A. Valenzuela, "Vote Switching in the 2016 Election."

[59] Michael Woods, "Precarious Rural Cosmopolitanism."

admission of immigrants for permanent settlement *in their jurisdictions* in order adequately to manage their geographically bound identities. To see why, consider an example of how national immigration control works today in rural areas as distinct as Iowa and Ireland.[60] Meatpacking plants have become large employers in rural areas that have suffered from economic decline. The managers of these plants engage in international recruitment of labor with either the blessing of the national government with work-visas or through nationally condoned undocumented channels. Either way, the rural towns and spaces are left to adapt to the cultural influx, often without any economic support for the integration of immigrants into a close-knit, homogenous, and traditional rural life. Rural localities thus (relatively reasonably) feel that these immigrants are thrust on them against their will. Unlike, say, a wealthy suburban town that can use its governmental powers to refuse the factory, or regulate land use to drive home prices up to a level that low-wage immigrants cannot afford, most rural places cannot exclude the factory or the workers that the factory owners select for employment and residence in the area.

Were such rural places given the power to say no to the residence of the workers, it is true that some factories and the immigrant employees they hire might not exist. On the other hand, granting rural areas veto power over the immigrants the factory might employ is likely to yield, in many cases, to bargaining between the rural area and the factory that wishes to locate their. A rural town might extract some rents for permitting the importation of foreign labor to run the factory. Those rents might in turn be used to purchase public goods benefitting the town as a whole, or to offset the costs of educating immigrant children, or for other services to help integrate new immigrants into the prickly social fabric of these rural areas.[61] The grant of this veto power, then, is far more likely to result in less resentment of the immigrant population – or even a "rural cosmopolitanism" – than the national status quo. People tend to like things they chose more than things imposed on them.[62] Under current national immigration governance structures, immigrants in rural areas are the embodiment of an array of unseen forces – imposed from national capitols or distant shores – that have reshaped rural life to its detriment since the 1980s. This

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[60] Ibid.

[61] Zachary Whyte, Birgitte Romme Larsen and Karen Fog Olwig, "New Neighbors in a Time of Change."

[62] Peter John, Graham Smith and Gerry Stoker, "Nudge Nudge, Think Think."

arrangement does not set immigrants or their hosts up for success and helps to drive a national reactionary politics.

Should rural areas choose, they might also be granted the power to invite immigrants themselves. Indeed, it might be salutary to have such immigrants invited by local associations of individuals, much as private sponsorship works in Canada or Australia. Again, the key for rural integration of immigrant populations and for the prevention of national backlash is the ability of rural communities to control the amount of noncitizen diversity they encounter. Policy autonomy over immigration also forces rural areas to endogenize the costs and benefits of migration and think about them critically for themselves in concrete terms. Native-born rural citizens might imagine they would enjoy a return to the homogeneity of the past – as Trump promised – but with the power to execute that vision in hand, rural areas would have to grapple with the cost of such a move in concrete terms: A lack of laborers to till the fields and tend the livestock, perhaps? Thus, metaphysical wishes for homogeneity are subject to a kind of reality check. Where national governments were playing that role, the reality was far less visible and the nostalgia much more potent. With local rural residents in the driver's seat, they will have to face the tradeoffs head on. A more grounded politics of immigration might emerge from such a shift.

Of course, some rural areas will use their power to implement the nostalgic, homogenous, anti-outsider vision happily, even at great economic cost. This outcome does not trouble me. As identities pluralize, it is the risk of the reimposition of homogeneity over the entirety of the nation-state by a particular sect that is most troubling to the stability and felicity of a new postmodern order. This is one of the lessons of the global turn to fascistic populism. Put another way, cabining the ambitions of rural nostalgia into a smaller territory is far better than a national takeover by that nostalgia, as we've seen in the Trump years, and as displayed in numerous European countries.

5.3   Seeing Immigration Like a Suburb

Suburbs are a kind of borderland, a barrier region between urban and rural ways of living. They are parasitic on resources nurtured on either side of their boundaries. Suburban growth depends on consumption of rural land; city amenities and jobs help enrich the suburban tax base by attracting residents who want ready access to the City without bearing the costs of supporting attractive amenities and while living at a distance from urban conflicts and problems. Segregation and homogeneity are in

suburbs' DNA,[63] but they nonetheless have become increasingly more accessible and diverse in the last thirty years. They are the geography in which most Americans now live, including people of color and immigrants.[64] Indeed, a large number of immigrants now skip the inner city ghettos of prior generations and move from abroad directly into the suburbs.[65] Like native-born Americans of all races, noncitizens move directly to the suburbs for the schools. Some suburbs become ethnic enclaves, reaching a critical mass of nationals from different countries and regions, but they rarely achieve the kind of density and homogeneity of their urban ghetto predecessors.

This new diversity in the suburbs can lead to conflict and violence. Suburban expansion was driven in the postwar area in part by violent conflicts that attended the peaceful efforts of African Americans to integrate into all-white neighborhoods. Rather than integrate, most whites fled to all-white federally subsidized suburbs. For native-born Americans, then, the suburbs are a "white" geography which people live in, consciously or unconsciously, in part because they value that sort of cultural and racial homogeneity. The disruption of that homogeneity by foreign-born non-white noncitizens is threatening to the identity of many suburbanites, which is bound up in a pastoral white middle-class respectability.[66]

The increased presence of immigrants in the suburbs has coincided with increasing economic instability in such areas.[67] Thus, long-term white residents in diversifying suburbs face at least two identity-based threats when immigrants move in: a decline in homogeneity *and* economic status of the suburb they call home. Compounding the impact of these threats, rescuing suburbs from economic decline may entail *welcoming* productive non-white newcomers whose presence disturbs native-born white's racial and cultural identity. This conflict between material and metaphysical needs may amplify the dissonances these demographic changes spawn.

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[63] Douglas S. Massey and Jonathan Tannen, "Suburbanization and Segregation in the United States: 1970–2010."

[64] Lorie Frasier-Lockley, *Racial and Ethnic Politics in American Suburbs.*

[65] See Thomas J. Vicinio, *Suburban Crossroads: The Fight for Local Control of Immigration Policy (Rowan and Littlefield 2013)*, p. 10 (suburbs are increasingly diverse and one of the most notable changes is the rise of immigrant populations in the suburbs).

[66] Caroline B. Brettell and Faith G. Nibbs, "Immigrant Suburban Settlement and the 'Threat' to Middle Class Status and Identity."

[67] Thomas J. Cooke and Curtis Denton, "The Suburbanization of Poverty? An Alternative Perspective."

It's perhaps unsurprising, then, that some suburbs that have experienced the rapid influx of immigrants have become sites of anti-immigrant local legislation.[68] The response to such legislation by the Courts and commentators has largely been to dismiss these local anti-immigrant responses as violative of national rights, prerogatives, and the supremacy of national law. Nondiscrimination norms in particular are strongly entrenched in the United States and offer robust coverage for discrimination based on national origin. The precedents that suppress local efforts to limit the lives of immigrants and indirectly disincentivize immigration are well established. Even as the US Supreme Court aided and abetted *national* anti-Chinese legislation in the late nineteenth century,[69] it condemned as unconstitutional local legislation that aimed to run Chinese immigrants out of towns with ordinances that disparately impacted Chinese business. The Court did this even where localities disguised the animus behind these laws in rationales that were facially neutral.

Suburbs that contain housing stock or schools that appeals to noncitizens thus have few legal tools at their disposal for excluding or managing the influx of noncitizen newcomers. And unlike residents of cities for whom the diversity of the city has increasingly become at least a notional *benefit* of living in the city (even as cities remain highly segregated) keeping non-whites at a distance is, in a fairly deep way, what American suburbs were always designed to achieve.

All of this is not terribly different from what has happened in rural areas, but unlike rural areas, the existence of welcoming suburban places is far more important for the viability of immigration. Were suburbs to close the gates on immigrants en masse – not a likely, but not an impossible outcome in a fully decentralized system – it's less clear that decentralized immigration powers would be an improvement over the status quo, at least from the perspective of immigrants. So when we see immigration like a suburb, the threat level is high, and the tools for managing the "threat" are stronger than in rural areas, but still weaker than many residents would like. This is especially true in older suburbs where the decline in the quality of the housing stock and amenity level means high home prices cannot do the work of exclusion (rich suburbs, like wealthy city neighborhoods are more readily able to maintain cultural and racial homogeneity). What happens then? Suburbanites take their grievances up the chain

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[68] Justin Peter Steil and Ion Bogdan Vasi, "The New Immigration Contestation."
[69] *Chae Chan Ping* v. *United States*, 130 U.S. 581 (1889).

where power actually resides. At the national level, suburbanites fearful of growing ethnic diversity can seek a remedy to lower the national level of immigrants. Alternatively, they can sponsor state-level representatives to help push for national change or at least block welcoming city legislation from being consolidated across the state at the state level. Of course, the success of this sort of response creates another version of the problem of centralized national control, it imposes the culture of the suburbs on the city, reproducing the mismatch of national control, but at the state level.

The suburbs present the most challenging design issue for a decentralized immigration system. Suburbs already suffer from an anticommons problem where they have trouble coordinating mutually beneficial infrastructure projects and public policies, like public transportation, across economically interdependent – but politically *independent* – jurisdictions that make up metropolitan areas.[70] A suburban landscape completely walled off from immigration is undesirable, even if it is an unlikely outcome of granting migration policy autonomy to that geography. (Some suburbs will surely take in immigrants, just as some rural areas will.) And given the fact that immigrants are increasingly choosing to bypass cities to settle in the suburbs, disruptions to those pathways would be harmful to immigrants themselves.

Since suburbs, like rural areas, are threatened by the cultural changes that immigration brings, it seems wise to give suburbs some autonomy over immigration policy. On the other hand, the importance of this geography perhaps means that the ability of suburban localities to set policy should be partial. Suburbs might be granted the power to dial immigration for permanent settlement down by up to twenty or so percent based on current levels of in-migration, or they, might be permitted to dial immigration up from baseline to any degree. The precise degree of autonomy matters less for managing the identity concerns that underly suburban fears than that the local ability to impact migration levels exists at all.

Another issue with suburbs setting immigration policy is the variety of and numerosity of jurisdictions and their varying scale. In some places, like Northern Virginia, suburbs mimic cities in size and reach. Fairfax County, just outside Washington DC, has 1.15 million residents over 406 mi^2 and runs a school district to serve 188,000 students. For these larger jurisdictions, city-like autonomy in setting immigration policy may be appropriate. In Illinois, by contrast, there are hundreds of suburban

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[70] Richard Schragger, *City Power*; Ran Hirschl, *City, State*.

jurisdictions that serve a similar geographic scale and density – with the largest suburban school district outside Chicago serving only 26,000 students, or 13 percent of Fairfax County's student population. Land-use regulatory powers map on to these tiny school districts, which use those power engage in rampant exclusionary zoning, forbidding in many places any apartment construction, for example. As a result, schools receive wildly divergent funding per pupil based on the wealth of the jurisdiction – and are able to exclude student populations that require more effort to educate – like English-language learners. In this kind of atomized geography exclusion and resource-hoarding is the norm.[71] Granting such tiny scales immigration authority seems likely to reinforce the maldistribution of resources that is already recognized as exceedingly problematic in suburban jurisdictions. That said, the elite-serving anticommons of American suburbs has come in for broad critique and appears to be on the cusp of reform. The Biden Administration, for example, is seeking to address the exclusionary land-use problem by offering national funds to localities that loosen zoning restrictions to allow for more affordable housing.

In this context, it might be optimal for the national government to delegate immigration powers down to local regions based on their economic relationship to a central city, much as metropolitan statistical areas are constituted. After pulling the city out of the metropolitan statistical area, what's left is a suburban region that encircles the central city. Such a region will cut across numerous jurisdictions that will vary in scale across the nation. Nonetheless, such regions are reasonably differentiated from city centers and from rural areas and have a common organizational core around a city. Granting immigration powers to these "donut" jurisdictions reflects a common "suburban" identity that these citizens share that cuts across the jurisdictional lines – which were formed with exclusion of undesirable citizens in mind.

Having to coordinate policy across these jurisdictions will be challenging for suburbs, especially places with extremely pluralized suburbs, like Illinois. Nonetheless, the work should pay dividends across multiple coordination problems suburbs face and might even catalyze and deepen a cross-jurisdictional suburban identity in positive ways. Independent of immigration there is a need for s stronger suburban identity to help overcome problems and inequities that haunt the places where most Americans and American immigrants live.

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[71] Richard Child Hill, "Separate and Unequal: Governmental Inequality in the Metropolis."

6   Conclusion

Human identity construction has changed in ways that are discordant with one-size-fits-all, high-modern, national identity of the sort that Walzer validated, and that a plurality of citizens across the global north wish to return to. Because immigration law plays such an integral role in structuring national identity – reminding the body politic who it is and is not with every visa issuance and every deportation – the structure of immigration law must adapt to this new reality. In this chapter, I have suggested decentralization of immigration powers down to subnational levels of government as a prescription to better match American identity needs with the pluralism of those needs across a variety of different geographies: the city, the country, and the suburbs. The wisdom of this strategy will vary across nation-states, but the geography of the phenomena I have described track across nation-states, suggesting the American case holds insights for other places across the Globe.