Stirring the Melting Pot: A Recipe for Immigrant Acceptance


Reviewed by Michael Scaperlanda*

In The Immigration Crucible, Philip Kretsedemas hopes to break the “habit of developing arguments that are simply reactions to the ‘other side’” and desires to “map a political, cultural, and economic terrain that . . . provides some new insights into why so many noncitizens are in a difficult situation” while drawing “attention to the limitations of the mainstream proimmigration position.” Toward this end, he seeks “an engagement across lines of difference that has the potential to transform the perspectives of all parties . . . involved in the encounter.” In this spirit, I offer my critique of this challenging book. I share Kretsedemas’s sentiment—if my Review “is successful in getting people to think about U.S. immigration policy in a new way, . . . I will be more than pleased. Either way, I have put forward my best effort.”

Kretsedemas ultimately fails in his task because as much as he tries to escape—to transcend—liberal anthropology with its peculiar notions of the state and the state’s relationship to immigrants and other denizens, he remains within liberalism’s orbit, pulled in by its unseen gravitational forces. Instead of providing “a paradigm shift” that leads to “an entirely new understanding,” he offers a particular view of the terrain from a worn and aging neoliberal spacecraft.

This Review will proceed in five stages. First, I will provide a brief summary of the book. Second, I will offer three critiques: (a) Kretsedemas’s

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3. Id.
4. Id.
5. Id. at 148. “Instead of retreating from the public debate—or simply tolerating the status quo—more effort should be made to open up and pluralize this field of debate.” Id. at 147.
6. Id. at XV.
7. Id. at 151.
creation of a stereotyped “Other,” which he marginalizes and stigmatizes, undermines his call to transformational dialogue; (b) while decrying both Executive discretion and state control over immigration, he fails to recognize and therefore leaves unresolved the question of how immigration policy ought to be adopted and implemented; and (c) although he desires a “stronger ethical foundation” for the pro-immigration discourse, he offers none.8 Finally, I will offer a brief response to the central theme of his book, which is a desire “to address the problem of immigrant marginality.”9

I. The Book: A Summary

Even though Jim Crow is now a closed chapter in U.S. legal history, there is still a romantic attachment within the popular culture to images of national community that stem from this era.10 Kretsedemas believes that images of national community formed in the Jim Crow era drive immigration policy, fostering structures and institutions that create immigrant alienation. He hopes his book project will serve as a vehicle for “transforming the political culture to make it more inclusive of new immigrant populations.”11 To succeed, his project “requires a critical race analysis . . . that is not just oriented toward fixing racial inequalities” but also displays “a willingness to examine and reconstruct popular ideas about whiteness and the cultural difference of immigrants.”12

Three key factors enter into Kretsedemas’s equation: the marginal immigrant, the state with its broad discretionary powers, and the acquiescence of a broad spectrum of intellectuals—“liberal, conservative, and Marxist”—in the status quo.13 The introductory chapter provides a broad overview of his case stating that both pro- and anti-immigrant forces have worked to expand the “extralegal (or marginally legal) discretionary powers” of the state, which sometimes favor “liberalization of migrant flows” and at other times serve “to control racial minority populations.”14

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8. Id. at 4.
9. Id.
10. Id. at 151. He uses Jim Crow as a rhetorical device recognizing that there are significant distinctions between Jim Crow and the current immigration landscape. E.g., id. at 87 (“[I]t does not appear that Latino migrants are being treated like a separate racial caste, as was the case for black populations during Jim Crow.”); id. at 83 (“The exclusion of the black person under Jim Crow was justified by their so-called racial difference. The exclusion of the undocumented migrant, on the other hand, is justified by the fact of their unauthorized entry.”).
11. Id. at 150. He also hopes that this project is “connected to a broader project of regenerating a political culture that does a better job of including and safeguarding the rights of the entire U.S. population.” Id.
12. Id. “Unfortunately, the postracial rhetoric of the Obama era has made this already difficult task even more daunting” because the “subtle message sent by Obama’s campaign speeches is that systemic racial inequalities can be addressed, in a way that avoids divisive racial politics.” Id. at 150–51.
13. Id. at 130.
14. Id. at 8.
Rejecting—or at least deemphasizing—formal “legal categories . . . defined by the state,” Kretsedemas uses Chapter Two to reimagine many noncitizens, many nonimmigrants, the undocumented, and even some immigrants as “de facto stateless.” With respect to nonimmigrants, he emphasizes the changing nature of arrivals to the United States: in the early twentieth century the immigration flow dwarfed the nonimmigrant flow but today the nonimmigrant flow is thirty times greater than the immigration flow. The increase in the number of nonimmigrants, Kretsedemas suggests, makes it possible to expand the pool of noncitizen workers without the political cost of increasing immigration with the corollary benefit that this population can be controlled through the government’s “security-enforcement apparatus.” De facto statelessness befalls a segment of nonimmigrant visa holders because many of these “persons enter with dependents and with an intent to settle,” with the nonimmigrant visa serving as “a probationary legal status.”

15. Id. at 13.
16. Id. at 44 (“[I]llegality—” a more dire kind of statelessness.”). “[I]llegality has become the organizing framework for recruiting and regulating the workforce.” Id. at 31.
17. Id. at 43 (discussing a case of denaturalization and then deportation).
18. E.g., id. at 19 (“The recent literature on statelessness has made a deliberate effort at complicating the relationship between statelessness as a formal, legal-juridical status and statelessness as a sociopolitical condition.”). Toward what end? In this view, “victims of hurricane Katrina” and those citizens “subjected to warrantless searches” are de facto stateless because they “are subject to the law but not protected by the law.” Id. at 20–21. This deliberate jettisoning of legal-juridical categories obfuscates the plight of and duties owed to two very different kinds of marginalized persons. In this era of the nation–state, the truly stateless person finds herself without the benefit of a nation–state that in some sense owes allegiance to her just as she, in a reciprocal manner, owes allegiance to her country. The claim of the Katrina victim or the citizen subjected to warrantless search is very different. It is that the nation–state that owes her its allegiance and protection has failed in its duty to administer justice.
19. Id. at 17.
20. Id. at 21.
21. Id. at 34–35. Kretsedemas focuses on the wrong ratios in the narrative because visitors—overwhelmingly tourists—make up the vast majority of nonimmigrant arrivals. His analysis would be tighter if he focused on the ratios between temporary workers and immigrants. In 2009, the last year he deals with, 1.13 million people were granted permanent residence. U.S. DEP’T OF HOMELAND SEC., 2010 YEARBOOK OF IMMIGRATION STATISTICS 5 (2011), available at http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2010/ois_yb_2010.pdf. In that year, 1.7 million temporary workers (and their families) entered the United States out of 36.2 million nonimmigrant I-94 admissions. Id. at 65. After refocusing, the ratio is reduced from 30:1 to 1.5:1. In drawing his conclusions, Kretsedemas also fails to address the changes in travel between 1909 and 2009 and how that alone may account for a shift in the ratio.
22. KRETSEDEMAS, supra note 2, at 17–18. Kretsedemas fails to address two obvious sets of questions. First, is a nonimmigrant who can return to his country of citizenship really “stateless?” If he is, as Kretsedemas seems to assume, why? Second, most nonimmigrant visa holders must by law have nonimmigrant intent and have a foreign residence that they have “no intention of abandoning.” E.g., 8 U.S.C. § 1101(a)(15)(H)(ii)(a) (2006). What responsibility does the nonimmigrant visa holder bear for her situation? Should fraud in the visa application have consequences, including deportation?
Chapter Three reviews “the expansion of executive authority within the U.S. presidency” to “explain how this expanded authority has been used to craft immigration policy.”\footnote{Kretsedemas, supra note 2, at 49.} Kretsedemas notes that Executive discretion grew out of necessity to manage crises but that beginning with President Theodore Roosevelt the Executive began to exercise discretion “in an active, creative way” and not merely in reaction to external conditions or events.\footnote{Id. at 54. (“In these situations, the executive officer is no longer reacting to unforeseen, calamitous events. It begins to craft the definition of ‘emergency conditions’ in ways that complement its ideology, strategic interests, and specific policy objectives.”).} Discretion unleashed can be used to expand or restrict rights.\footnote{Id. at 63.} Kretsedemas’s thesis plays out, sometimes in unexpected ways, in the arena of immigration enforcement. For example, “Despite the fact that Democratic administrations are often viewed as being more proimmigrant than Republican administrations, [they] have actually been tougher on border control and immigration enforcement.”\footnote{Id. at 66.} Far from being an accumulation of power in the Executive, expanded discretion—at least in American history—has a devolutionary component where private entities and local governments share in this discretion.\footnote{Id. at 61.}

In Chapter Four, Kretsedemas links the expansion of Executive discretionary authority with recent growth in local enforcement of immigration law, which “has produced a situation in which police officers, landlords, election booth workers, and health care workers have been given more freedom to participate in enforcement practices that used to be regarded as the exclusive preserve of the federal immigration system.”\footnote{Id. at 73 (“[L]ocal immigration laws have allowed the authority of the federal government to be parcelled out to a variety of state and nonstate actors.”).} Drawing a
parallel between local enforcement of immigration laws and Jim Crow laws, he argues that both provided a strategy for integrating the marginalized group into the economy while maintaining their status as inferior beings. And he sees masked racism behind much of the local immigration law enforcement movement.

For Kretsedemas, immigration laws, like Jim Crow laws, provide an example of the ways that local governance is “bound up with the symbolic politics of the majority group identity.” Chapter Five, therefore, leaves the practical world of laws and governance to explore the intellectual world where scholars from multiple ideological schools have converged to lay a foundation that fails to support adequately legal and cultural structures that welcome the immigrant. Through a convergence of “liberal, conservative, and Marxist intellectuals,” governing strategies that lead to immigrant alienation have “been quietly reinforced by both sides of the debate over immigration policy.”

The book’s conclusion reveals the marginalized immigrant as a symbolic representative of all who live on the margins of American life. As an important step toward eliminating immigrant (and others’) alienation, Kretsedemas desires an “informed public dialogue” on immigration, “the meaning of democracy, national identity, and the continuing legacy of race in
the United States.” To harness the potential “to transform the perspectives of all parties . . . involved in the encounter,” the dialogue must engage people “across lines of difference.” To advance this debate, he wants the public to “be exposed to arguments that demonstrate that conservative populists are not the only ones who are frustrated with the current immigration situation.” In the end, he advocates a paradigm shift that will encourage the public “to become actively involved in a discussion about ‘who we are’ as a national people.”

II. Critique One: Extinguishing the Possibility of Dialogue

Just as the Jim Crow laws were designed to exclude those of African descent from American society, the laws excluding Asian immigrants upheld in Chae Chan Ping and Fong Yue Ting betray a belief in racial separation.

Race has played a large and infamous role in United States immigration law and policy, gaining the imprimatur of the Supreme Court a generation after the end of the Civil War. In The Chinese Exclusion Case, the Court upheld the exclusion of Chae Chan Ping, a twelve-year resident of the United States, stating:

If . . . the government of the United States, through its legislative department, considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subjects.

Although immigration laws are now facially race neutral, there are undoubtedly lingering present effects of these past practices. And it would

36. Id. at 147–48.
37. Id. at 148.
38. Id. at 147. Some of these conservative populists engage in “incendiary rhetoric” emanating from an “outrage” that “rests on a foundation of white privilege,” which justifies “incitement to violence . . . as an expression of patriotism.” Id. at 145–46.
39. Id. at 147.
42. Id. at 606. California had asked Congress to take action barring Chinese immigration:

In December, 1878, the convention which framed the present constitution of California, being in session, took this subject up, and memorialized Congress upon it, setting forth, in substance, that the presence of Chinese laborers had a baneful effect upon the material interests of the State, and upon public morals; that their immigration was in numbers approaching the character of an Oriental invasion, and was a menace to our civilization; that the discontent from this cause was not confined to any political party, or to any class or nationality, but was well-nigh universal . . . .

Id. at 595.
43. See Chin, supra note 40, at 38–50 (noting that, as a result of past immigration laws, Asian Americans are underrepresented in the political process, have fewer connections through which to
deny human experience to suggest that covert or subconscious racial classifications have been eliminated from the minds and hearts of all denizens of the United States.44 But does this mean that all immigration restrictionists and all persons who favor stopping the flow of illegal migration are motivated by racial prejudice? Might they have some legitimate nonracial concerns?

Kretsedemas dreams of an America where structural and institutional barriers to immigrant inclusion are eliminated. To get there from here, he desires a robust and transformative dialogue involving individuals across the ideological and racial spectra.45 Given our history, he sees “critical race” analysis as necessary to this dialogue.46 Despite recognizing the difficulty of this task, Kretsedemas’s method of using race to frame his argument ultimately disserves his stated objective, undermining rather than advancing the dialogue on immigrant marginality.

In any transformative dialogue, rigorous truth telling and truth recognition is vital.47 But dialogue is difficult if not impossible when one of the dialogue partners—especially the one calling for the dialogue—assumes the worst of another partner with little or no evidence. Yet this is the path chosen by Kretsedemas. He, for example, argues that “[t]here is evidence that the contemporary anti-immigrant movement is still steeped in the racial ideologies of the Jim Crow era and that this has carried over into the movement to expand local enforcement laws.”48 His evidence? The KKK “tried to use local complaints about illegal immigration as a recruitment tool.”49 This would be like saying that the current labor movement is steeped in Marxist ideology because the Communist Party is using the “assault” on public unions as a recruiting tool. He further suggests that “outrage against the illegal alien appears to offer a legitimate—that is, nonracist—way of redefining the scope and limits of an increasingly complex society.”50 This conservative “populist outrage rests on a foundation of white privilege, which makes it possible for the incitement to violence to be viewed as an assimilate into new occupations and geographic regions, and still face the “stigma of discrimination”).

44. See generally Charles R. Lawrence III, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 STAN. L. REV. 317 (1987) (describing the effects of subconscious racism on the legislative process, particularly as it relates to the distinction between discriminatory purpose and disproportionate impact standards of discrimination).
45. KRETSEDEMAS, supra note 2, at 148.
46. Id. at 150.
47. See DANIEL PHILPOTT, JUST AND UNJUST PEACE: AN ETHIC OF POLITICAL RECONCILIATION 183 (2012) (“Acknowledgment of past injustice . . . aims to achieve intrinsically valuable primary restorations, redressing wounds that are wider and deeper than is often recognized.”).
48. KRETSEDEMAS, supra note 2, at 87.
49. Id.
50. Id. at 88.
expression of patriotism—and not as a threat to the public safety.”

Ironically, he creates a stereotyped “Other” who is to be stigmatized and marginalized. As a scholar with an admittedly pro-immigrant bent, I would find it impossible to have a transformative dialogue with those I have stereotyped and associated with the KKK, Jim Crow, white privilege, and violence unless they were superhumanly able to turn a blind eye and forgive me my prejudices.

III. Critique Two: Some Institution Must Govern

According to Kretsedemas, “structural-institutional conditions . . . produce immigrant marginality.” Eliminating these conditions will require dialogue among an inclusive populace “about ‘who we are’ as a national people” so that our “popular concept of the nation can be interrogated and transformed.” To be effective though, the fruits of this dialogue will need to be implemented by some governing authority. And, it is here, at the stage

51. Id. at 146. In stark contrast to Kretsedemas’s approach, Kevin Johnson provides a challenging but nonaccusatory call to dialogue on the racial implications of immigration law and policy. See, e.g., Kevin R. Johnson, Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique, 2000 U. ILL. L. REV. 525, 534 (“[O]ne cannot categorically state that the U.S. immigration laws are ‘racist.’ Nonetheless, a greater percentage of immigrants would be people of color without the many screening devices that disparately impact potential immigrants from developing nations.”).

52. See KRETSEDEMAS, supra note 2, at 145–46 (“[S]ome conservative populists [assert] the moral authority to take the life of the Other.”).


54. Throughout the book, Kretsedemas draws parallels between the sentiment that motivated Jim Crow and the sentiment that motivates today’s immigration restrictionist arguments. Jim Crow is mentioned on 24 of the book’s 151 pages (more than 15%). See KRETSEDEMAS, supra note 2, at 209 (listing pages where the term Jim Crow appears).

55. Id. at 134; see also id. at 101 (“[S]tructural inequalities and forms of institutional discrimination . . . may [a]ffect the life chances of [immigrant] children.”).

56. Id. at 147.
of governing, that an unstated ambivalence appears in the argument, leaving an unresolved tension as to who ought to govern with respect to immigration law and policy.

Kretsedemas devotes two of his six chapters to executive and local governance of immigration law. In Chapter Three (“The Secret Life of the State”), he decries the expansion of Executive discretion in the American political landscape. In Chapter Four (“Concerned Citizens, Local Exclusions: Local Immigration Laws and the Legacy of Jim Crow”), he criticizes the devolution of authority over immigration to state and local governments. Does he want more congressional or judicial involvement? He doesn’t say! Do Executive discretion and local immigration lawmaking contribute to the structural and institutional defects that “produce” immigrant marginality? If so, what is the solution? He doesn’t offer one!

By criticizing the “who” without offering a viable alternative, Kretsedemas misses out on the “what.” Our history makes clear that both good and bad policy can be made at all levels of government and in all branches of government. And it makes equally clear that both fair and arbitrary implementation of that policy can be made at all levels of government. No one level or branch of government has a monopoly on the virtues or the vices. Therefore, exposing the vices of two groups of policy makers/implementers without an argument as to why those groups are particularly ill suited to address the immigration issues confronting them is singularly unhelpful in advancing the dialogue.

In the end, Kretsedemas seems to favor a strong centralized governing authority that would bind itself and others to “predefined rules and regulations” that diminish the ability to exercise discretion in the face of “unfolding contingencies.” He decries “deregulation and federal devolution” because they “create spaces of decision-making authority—which free the individual from binding legalities—that can be granted to a variety of private and public actors.” But he does not tell us who this centralized authority is, why he has confidence that it will—at least in his opinion—get the rules and regulations right, or how various actors are to respond to unforeseen contingencies in the absence of discretion.

57. If he were to add chapters on congressional and judicial decision making, he would need to include their racially laced actions, including passage of and judicial acquiescence in the Chinese Exclusion laws. See supra notes 41–42 and accompanying text.


59. Id. With devolution and deregulation, “[p]rivate corporations are given more freedom to relocate their manufacturing centers and recruit (and terminate) workers as needed.” Id. Philosopher Bertrand de Jouvenel articulately sums up what I take to be Kretsedemas’s ideal governing authority: “[I]t aims at being the organizer-in-chief of society, and at making its monopoly of this role ever more complete.” BERTRAND DE JOUVENEL, ON POWER 236 (1949).

60. Kretsedemas views broad discretion as “a forbidden continuity that connects the power practices of modern governments to those of the feudal monarchy.” KRETSEDEMAS, supra note 2,
IV. Critique Three: In Search of an Ethical Foundation

To address the problem of “immigrant marginality,” Kretsedemas wants to move beyond an “emphasis on the utility of the immigrant worker” and put the pro-immigration case on “a stronger ethical foundation.”\(^ {61}\) But, he fails to offer one! A stronger ethical foundation requires an answer to this critical question: Why should we as individuals or as a nation care about the immigrant, marginal or not?\(^ {62}\) He does not ask, much less answer, the question.

Although liberalism’s framework has its own set of problems,\(^ {63}\) its framework is not available to Kretsedemas on his stated terms because he wants “to look beyond the neoliberal common sense that has dominated federal policy for the past several decades.”\(^ {64}\) In addition to liberalism, he discusses the approach of two other rival intellectual traditions—conservatism and Marxism—to the problem of immigrant marginality, finding all three traditions deficient.\(^ {65}\) But he never proposes an alternative. Although his critical race analysis shines a particular light on immigrant marginality, it does not provide a framework for answering the foundational question of why we should care about the immigrant.

Kretsedemas suggests that American “ideals could be revitalized by an agnostic engagement with [a] wider world of ideas”\(^ {66}\) as it searches for a

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at 53. De Jouvenel offers a different perspective: “The assents of people or assembly, so far from fettering for the rulers a freedom to act which they never had, made possible an extension of governmental authority.” \textit{De Jouvenel, supra} note 59, at 208–09 (“The power to legislate is not an attribute which was taken from Power by the establishment of an assembly or by popular consultation. It is an addition to Power, of so novel a kind that without an assembly or without popular consultation it would have been impossible.”).

61. \textit{Kretsedemas, supra} note 2, at 4.

62. Kretsedemas does ask important foundational questions: “[E]ven if we all agree that we are in favor of a more just and democratic society, who gets to define what those terms mean? . . . And at what point does this willingness to be perpetually open to new voices . . . run the risk of collapsing into an incoherent relativism?” \textit{Id.} at 148. Great questions—especially given his desire for a stronger ethical foundation—but he punts, saying that “thorough exploration of these questions is beyond the scope of this book.” \textit{Id.} Without this exploration, Kretsedemas leaves us without criteria for assessing the answers.


64. \textit{Kretsedemas, supra} note 2, at 4.

65. \textit{Id.} at 130. Kretsedemas does not explore whether religious traditions—Jewish, Christian, or Muslim, for instance—have resources that might aid in solving the problem of immigrant marginality. \textit{Cf.} Soskin v. Reinertson, 353 F.3d 1242, 1265 n.1 (10th Cir. 2004) (Henry, J., dissenting) (“If an alien will reside with you in your land, you shall not persecute him. The alien who resides with you shall be to you like a citizen of yours, and you shall love him as yourself, because you were aliens in the land of Egypt. I am the YWWH, your God.” (quoting \textit{Leviticus} 19:33–34)).

“forward-looking vision” for immigration policy.67 Unfortunately, lacking a foundation, an “agnostic engagement” cannot produce a “forward-looking vision.” When I get into my car, I would be negligent to approach the gears with agnostic engagement. Foundations—including ethical foundations—require a clear sense of where one stands, what is behind, and what is in front. In short, ethical foundations require a criterion for judgment.

Standing on a firm ethical foundation with a clear vision forward does not necessarily entail arrogance or close mindedness. With proper humility, anyone standing on what she thinks is the strongest ethical foundations will be open to taking direction and even correction from those with whom she is engaged. Instead of an agnostic engagement, I suggest a thickly pluralistic engagement, where each participant in the dialogue brings herself, including her intellectual tradition with its ethical core, to the conversation. In this difficult dialogue, there will be, as Kretsedemas understands, multiple and contested visions of forward.

In our pluralistic society, the difficulty lies in the fact that we have rival intellectual traditions with different ethical foundations and “there is no neutral way of characterizing . . . the standards by which their claims are to be evaluated.”68 Alasdair MacIntyre suggests a difficult two-stage process for engagement under these conditions. First, each participant “characterizes the contentions of its rival in its own terms.”69 Second, after recognizing the inability of one’s own tradition to solve intractable problems, the participant looks to another tradition to see if it has the resources to solve these problems in a more satisfactory fashion.70 In short, I advocate an openness without agnosticism.

V. Response: Immigration and the Human Experience

Kretsedemas argues that “neoliberal priorities guiding U.S. immigration policy have been actively creating the structural-institutional conditions that produce immigrant marginality.”71 Structural-institutional conditions can exacerbate or mitigate immigrant marginality, but they do not produce it.

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67. Id. at 136. Despite his calls for agnosticism, it is clear that Kretsedemas is not an immigration-policy agnostic, having rejected the ideas of “cultural conservatives” like Huntington. KRETSEDEMAS, supra note 2, at 129.


69. Id. In doing this, each tradition must “mak[e] explicit the grounds for rejecting what is incompatible with its own central theses” while recognizing what it might learn from its rival “on marginal and subordinate questions.” Id.

70. Id. at 166–67. As MacIntyre notes:

In controversy between rival traditions the difficulty in passing from the first stage to the second is that it requires a rare gift of empathy as well as of intellectual insight for the protagonists of such a tradition to be able to understand the theses, arguments, and concepts of their rival in such a way that they are able to view themselves from such an alien standpoint . . . .

Id. at 167.

71. KRETSEDEMAS, supra note 2, at 134 (emphasis added).
Immigrant marginality is a reality, inherent to the human condition. Believing that institutional or structural changes can eliminate it is simply fanciful utopian thinking.

Even if the term “alien” is in some sense pejorative in labeling an immigrant,72 in a very real sense “alien” is an appropriate term for describing the relationship between the immigrant and his new country.73 Language, culture, history, and tradition often create a wide gulf between the migrant and the native. They do not yet belong to each other. Each may view the other with suspicion. The migrant may wonder whether he can trust the police and other local authorities, whether he will be discriminated against in the workplace, and ultimately whether he will be accepted. The native may wonder whether the migrant can be trusted to obey the laws, whether he will deplete precious community resources—including jobs—and whether he will disrupt and perhaps destroy the embedded language, culture, and traditions. To borrow a popular phrase from Kretsedemas, each looks at the other as “Other.”

The difference between the migrant and the native is that the migrant is alone, or at least more alone, having left her community—her language, culture, history, and tradition—to begin life anew in another community. Almost by definition, the alien will reside on the margins of that new community. No change in institutional structure or condition can change this fact. In his autobiographical account, Next Year in Cuba: A Cubano’s Coming-of-Age in America, Gustavo Pérez Firmat describes refugees as:

amputees . . . Just as people who lose limbs sometimes continue to ache or tingle in the missing calf or hand, the exile suffers the absence of the self he left behind. I feel the loss of that Cuban boy inside me. He’s my phantom limb, at times dogging me like a guilty thought, at other times accompanying me like a guardian angel.74

Although Firmat draws a distinction between a person in “exile” and an “immigrant,”75 his metaphor applies to economic immigrants as well, especially those who leave their country of origin because of an inability to support themselves or their families.

72. See Stephen Legomsky & Cristina Rodríguez, Immigration and Refugee Law and Policy 1–2 (5th ed. 2009) (“[T]he word ‘alien,’ even when not adorned with the modifier ‘illegal,’ has always struck a disturbing chord. Many feel that the term connotes dehumanizing qualities of strangeness or inferiority (space aliens come readily to mind) and that its use builds walls, strips human beings of their essential dignity, and needlessly reinforces an ‘outsider’ status.”).


75. Id. at 121–22.
The migrant suffers great loss and often bears the burden alone. But it would be a mistake to ignore the loss—real, perceived, or potential—suffered by the native population. In advocating open borders, Joseph Carens acknowledges that “immigration . . . might destroy old ways of life, highly valued by some, but it would make possible new ways of life, highly valued by others.” As Wendell Berry’s character, Jayber Crow, recognizes, change can make “distant what had been close, and close what had been distant.”

Speaking of himself, Crow said:

If you have lived in Port William a little more than two years, you are still, by Port William standards, a stranger, liable, to have your name mispronounced. . . . Though I was only twenty-two when I came to the town, many . . . would call me “Mr. Cray” to acknowledge that they did not know me well. . . . Once my customers took me to themselves, they called me Jaybird, and then Jayber. Thus I became, and have remained, a possession of Port William.

Integration of migrants takes time. Although governmental institutions and structures do not cause migrant marginality and cannot eliminate it, they might serve to mitigate it. Congress could enact legislation that more effectively closes the backdoor of illegal migration by giving the Executive the discretionary authority to match the number of nonimmigrant laborers to the rise and fall in the demand for labor coupled with effective sanctions for employing unauthorized workers. Giving nonimmigrants job portability might reduce the incidences of employer exploitation. Any enforcement officer—whether federal or state—ought to be held accountable if they fail to treat noncitizens with dignity and respect. And states ought to remove barriers that raise the cost for individuals and communities to care for the immigrant as she adjusts to her new life in a new country.

The government will assign the nonimmigrant an identifying number but will not learn the nonimmigrant’s name, much less how to pronounce the name. The government will not take a personal interest in the nonimmigrant’s family, culture, or history. Immigrant marginality recedes and immigrant integration begins at the backyard barbecue, the pub, and the church as families celebrate births, graduations, marriages, deaths, and holidays together. The migrant will not be at home in her adopted country until she is known and loved in her new community. And that takes time.

77. See BERRY, supra note 1, at 281.
78. Id. at 11. Crow, the stranger, was born in the town of Goforth a couple of miles from Port William. Id. at 11–12.