
Immigration and Civil Rights in the United States

One of the more overquoted poems in U.S. history is Emma Lazarus's "The New Colossus":

Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.¹

These famous words inscribed on the Statue of Liberty unquestionably shaped the national consciousness about immigration to the United States throughout the twentieth century.² At times, the nation has acted with incredible generosity toward immigrants, in a manner entirely consistent with the laudable ideal expressed by Lazarus. However, the U.S. immigration laws have also occasioned a darker history, one that is painful to recall and thus frequently forgotten. This book, in its focus on this harsher side of the nation's immigration history, contends that the U.S. government's treatment of immigrants is inextricably linked to the efforts of domestic minorities to secure civil rights and full membership in U.S. society.

At least in broad strokes, the U.S. embrace of the "huddled masses" model of immigration has influenced the nation's immigration law and policy. The United States, for example, accepts many more immigrants than most nations, hundreds of thousands each year. Indeed, over nine hundred

thousand immigrants were admitted to this country in fiscal year 1996 alone.³ The nation accepts refugees from across the globe who have fled political, racial, religious, and other invidious persecution by governments, security forces, political insurgents, and other rogue elements. Since the U.S. Congress eliminated racial exclusions from the U.S. immigration laws in the heyday of the 1960s civil rights movement, the laws have included no race-based prerequisites for admission. Consequently, the vast majority of immigrants to the United States today are people of color. Compared with other nations, the United States requires a relatively short period of residence—five years—before most immigrants are eligible for citizenship. Moreover, in the United States, citizenship may be bestowed by birth, not only by blood and ancestry as in many countries. In fact, much of the history of the U.S. immigration and nationality laws should fill U.S. citizens with pride.

Another aspect of U.S. immigration history, however, is a source of shame to those who are committed to equality under the law. A cursory review of history reveals a lack of U.S. openness to and acceptance of the “huddled masses,” the “tired,” or the “poor.” This book examines how the U.S. immigration laws and their enforcement have barred racial minorities, political dissidents, the poor, actual and alleged criminals, and homosexuals from our shores and—often pursuant to procedures that are difficult, if not impossible, to square with the notion of due process of law—have caused them to be deported from the country. In addition, the following chapters look at how women—treated as the property of their husbands or, if unmarried, as potential welfare mothers (a cruelly ironic *Catch-22*)—have also been the subject of discriminatory practices under the immigration and nationality laws over the course of this nation’s history.

As intuition would suggest, the United States has sought to exclude those categories of immigrants who share common characteristics with groups that are disfavored in this country. Despite the nation’s egalitarian pronouncements, many notable episodes in U.S. history demonstrate harsh treatment of its minority citizens. The segregation of black and white children in schools, the genocide of Native American peoples, the internment of Japanese Americans during World War II, and the deportation of Mexican American citizens during the Great Depression are a

few well-known examples. Such actions have flown in the face of the legal rights afforded to all U.S. citizens by the U.S. Constitution and, especially, the Bill of Rights.

At times, although certainly not always, the law has intervened to protect subordinated groups of U.S. citizens. The U.S. Supreme Court's decision in *Brown v. Board of Education*,⁴ which held that segregation in the public schools failed to constitute "equal protection of the laws," is perhaps the most cherished example. The monumental decision in that case formally vindicated the legal rights of African American citizens and helped launch a major change in the U.S. civil rights landscape. Although we have yet to fully realize the integration of U.S. society, *Brown* transformed integration into a legally sanctioned and socially acceptable goal.

The U.S. government's treatment of citizens differs from its treatment of "aliens"—those who are not U.S. citizens. Claiming to exercise inherent rights as a sovereign nation, the United States has often refused to welcome people of color, political dissidents, the poor, criminals, women, and lesbians and gay men who seek to immigrate. Unlike the participation of the courts in the struggle for the rights of citizens, judicial review of the constitutionality of laws that provide for the exclusion and deportation of immigrants has been negligible. As long as noncitizens are afforded minimal procedural safeguards, the courts have afforded Congress free reign with respect to exclusion and deportation of noncitizens. Because of the unpopularity of—even hatred toward—foreigners among the general population in times of crisis and social unrest, a meaningful political check on the unfair treatment of immigrants does not exist. As a result, both Congress and the president have the ability to direct the most extreme action toward noncitizens with little fear of provoking a judicial response.

Immigration law is thus an especially illuminating resource for studying the place of domestic groups in the U.S. social hierarchy. Under traditional immigration law, the government is afforded free reign to treat noncitizens, denominated "aliens," as it sees fit. In contrast, U.S. citizens who are members of minority groups enjoy rights under the U.S. Constitution and other laws. Although these rights may be expanded or constrained depending on the political winds or the judicial philosophy

of a particular era, they generally cannot lawfully be revoked for any U.S. citizen.

Consider the treatment of “undesirable” immigrants in U.S. immigration history. Consistently unwilling to intervene on behalf of noncitizens, the courts have emphasized the “plenary power” of Congress, based on notions of national sovereignty over the substantive admission and deportation provisions of the immigration laws. As philosophers have put it, government may conduct affairs as if it were in the “state of nature,” able to strike out at the unpopular “aliens” who are deemed to threaten the well-being of the nation.⁵ The dominant society’s treatment of noncitizens gives us a view of its potential treatment of U.S. citizens who share similar characteristics if all legal constraints were lifted. What does the nation’s deep commitment to the exclusion of poor immigrants, for example, tell us about society’s attitudes toward the nation’s poor? Similar questions are raised by virtually every ground under the U.S. immigration laws on which a noncitizen can be barred from entering the country or deported.

This book examines the U.S. immigration laws in terms of what they reveal about the dominant society’s views toward the civil rights of subordinated groups in the United States. The categories of people that the nation seeks to exclude reflect society’s attitude toward both citizens and legal immigrants residing in the United States who fall into these categories. To a certain extent, the law protects against such discrimination toward citizen minorities. No such moderating influence exists to protect noncitizens, however. The wholesale prohibition of the immigration of members of the Chinese working class to the United States in the late 1800s, for example, reflects the dominant white population’s view of Chinese Americans and the status of Chinese American civil rights. Anti-Chinese sentiment, widespread discrimination, and violence, particularly on the West Coast, were rampant. Efforts to repatriate Mexican citizens to reduce the welfare rolls during the 1930s and to deport undocumented Mexican immigrants in the 1990s reveals how society viewed Mexican Americans in its midst. Not long after the repatriation campaigns of the 1930s, U.S. servicemen attacked and beat Mexican American youths on the streets of Los Angeles as police watched, in the famous Zoot Suit riots during World War II.⁶ In short, the law has

permitted a history of exclusion of the least valued citizens in U.S. society, citizens who might well be banished themselves if the law permitted.

The laws that protect the rights of all citizens moderate efforts to discriminate against minority citizens. In addition, harsh policies directed at domestic minorities have been known to cause international repercussions.⁷ Indeed, some commentators go so far as to claim that *Brown v. Board of Education* and its call for desegregation was necessitated by the U.S. government's Cold War foreign policy concerns.⁸ Modern civil rights sensibilities make harsh treatment of domestic minorities politically unpalatable. Domestic minorities wield a certain amount of political influence. Politicians ignore at their peril African American, Asian American, and Latina/o voters, who have been the subject of increasing political competition among Democrats and Republicans in recent years. Consequently, to a certain extent, not only legal but political constraints moderate the majority's treatment of domestic minorities.

Such constraints, however, generally do not affect the treatment of persons outside U.S. borders. Brutal treatment of foreigners has often found support among the public at large. A relatively recent example was the absence of strong objection to Haitian interdiction and repatriation in the 1990s. The Supreme Court upheld the policy, demonstrating once again that the law offers limited protection to noncitizens, particularly those who seek to enter the country.⁹ After the tragedy of September 11, 2001, the public strongly supported harsh actions against Muslim and Arab noncitizens, and the federal government aggressively pursued such policies. Other nations, with domestic pressures and concerns similar to those of the United States, often accept the notion that the United States has sovereign prerogative over its borders. Thus, international law has offered few protections to noncitizens who seek entry into or resist deportation from the United States.

Occasionally, the international community pressures the United States to moderate its treatment of foreign migrants. For example, Mexico's President Vicente Fox has pressed for regularization of the immigration status of Mexican nationals in this country and for the establishment of freer migration between the United States and Mexico. Such pressures are limited, however, and if strong domestic political pressures push in

another direction, they are easy for the U.S. government to ignore. Because of the relative absence of constraints in curtailing the rights of noncitizens in the political community, the United States has experienced repeated episodes of highly volatile xenophobic attacks on politically unpopular “aliens” of a particular era.

Exacerbating the relative powerlessness of noncitizens is their lack of any direct input into the political process; they must rely on the votes of people who are less directly affected by immigration law and policy. Latina/o and Asian American citizens have at times been vigilant in advocating for the rights of immigrants. In part, this stems from a desire to protect immigrant members of their own communities who suffer the brunt of the enforcement of the immigration laws. In part, it is a response to the belief that anti-immigrant sentiment reveals negative views toward their community as a whole. California’s Proposition 187, which aimed to reduce public benefits to undocumented immigrants, and the strife over language regulation in the state exemplify the battles over the status of racial groups in U.S. society that laws can come to represent. Whereas Anglos supported Proposition 187 two to one, Latinas/os opposed it by an even larger margin.

As this discussion suggests, the differential treatment of citizens and noncitizens is rationalized in part by a legal fiction. The “alien” is a category of persons created entirely by the law. Much has been written about how notions of race are social constructions that serve to help justify racial subordination.¹⁰ Beliefs in racial inferiority rationalize racial hierarchy. Historically, the negative treatment of different U.S. “racial” groups, such as the Irish and southern and eastern Europeans, that are today considered to be white is a powerful demonstration of race as a social rather than a biological construction.¹¹ Immigrant status, even more clearly than race, is also a social construction. It is not immutable, and it is not fixed by biology. The law creates “aliens” as outsiders who are allocated few political and legal rights. Moreover, the legal construction of “aliens” not only affects the general public’s view of noncitizens but also contributes to their harsh treatment.

Given the modern sensibilities about civil rights, the unsympathetic treatment of noncitizens can be more easily rationalized than can attacks on minority citizens. As this justification goes, we support fair treat-

ment of citizens of Mexican ancestry but simply want to halt the immigration of “aliens,” especially “illegal aliens,” who cause social, economic, and political problems. We are not “racist,” even though the enforcement measures that we endorse fall disproportionately on people of color; we simply want to promote an immigration policy that serves all U.S. citizens.

This rationalization is unpersuasive. In the modern United States, race and immigrant status neatly, albeit loosely, coincide. The immigrants who are adversely affected by a restrictionist measure are, more likely than not, racial minorities. The vast majority of today’s immigrants to the United States—as many as 80 to 90 percent each year—are people of color. Consequently, an attack on immigrants disproportionately affects people of color. This impact is a predictable, if not an intentional, consequence of many restrictionist measures in modern times. In certain circumstances, restrictionist laws and policies may, in fact, amount to an attack on people of color, with immigration status used as a proxy for race. The use of proxies to discriminate obscures the true inequality of the law and allows for the plausible denial of a discriminatory intent while ensuring discriminatory results.

In their analysis of the history of immigration laws, the chapters that follow conclude that, taken as a whole, the laws reflect the dominant sentiment about subordinated groups in the United States. As John Higham’s classic study of nativism in the United States has documented,¹² this nation has historically exhibited a great intolerance for immigrants who deviate from the perceived Anglo-Saxon norm. The harsh treatment that has undeniably been meted out to disfavored groups of U.S. citizens, does not compare to the nation’s harsh treatment of “aliens”—by definition outsiders to the community—who share the same characteristics as the disfavored groups of citizens. This phenomenon is evident in recent immigration milestones: the reduction of public benefits to immigrants as part of welfare reform combined with punitive immigration reform legislation in 1996; the militarization of the U.S. border with Mexico in the 1990s that resulted in hundreds of deaths of Mexican citizens; the unconscionable treatment of Haitians (poor, black, and culturally different) fleeing political and economic turmoil; the crackdown on “criminal aliens,” which resulted in record levels of

deportations of Mexican citizens; and the targeting of Arabs and Muslims by means of special reporting requirements, arrests, interrogations, and detention after the September 11, 2001, attacks.

These lessons hold true for most subordinated peoples in the United States. The history of racial exclusions in the immigration laws is perhaps one of the most well-known examples. Beginning in the 1800s, the race and class of Chinese immigrants prompted their exclusion under the U.S. immigration laws. Racial fears toward southern and eastern Europeans culminated in the Immigration Act of 1924 and the national origins quota system. Although the Immigration Act of 1965 eliminated the most glaring grounds for racial exclusion, the immigration laws in operation today continue to have distinctly racial impacts.

The poor, considered likely to become “public charges,” have also been subjected to exclusion and deportation under the immigration laws. One of the oldest features of the federal immigration laws, the public charge provisions, adversely affects the largest numbers of potential immigrants. Today, the public charge exclusion bars thousands of immigrants from developing nations that are populated by people of color from coming to the United States each year. Political undesirables, such as anarchists, communists, and (in current parlance) “terrorists,” have been marked for adverse treatment as well. In the aftermath of the Red Scare following World War I and the years dominated by Senator Joseph McCarthy’s search for communists in our midst, the federal government’s vigorous application of the ideological provisions of the immigration laws resulted in extreme impacts on immigrants who had lived peacefully in this country for many years.

In addition to racial, political, and class litmus tests in the U.S. immigration laws, the chapters that follow consider the treatment of “criminal aliens” and women under immigration law. “Criminal aliens,” most of whom, as the laws are applied, turn out to be immigrants of color, have long been demonized. Popular “tough on crime” measures, which picked up steam in the United States in the 1990s, translated into draconian punishment of “criminal aliens,” including congressional efforts to eliminate judicial review (one of the fundamental protections against bureaucratic tyranny) of their deportation orders. Immigrant women have often been denied entry into the United States as presumptive public charges or prostitutes or as members of the same undesirable

groups (based, for example, on race or national origin) as their spouses. At the same time, women have been liberally admitted as immigrant spouses of male U.S. citizens. The conditions of such admission, however, have at times opened the doors to domestic violence and abuse, as exemplified most vividly in the Immigration Marriage Fraud Amendments of 1986. As the problems that face immigrant women are ignored, this group is increasingly exploited in the garment industry and other job sectors, in the burgeoning mail-order bride industry, and in the sex trade.

Lesbians and gay men were first officially marked for exclusion and deportation under the Immigration and Nationality Act of 1952 (INA), which was passed by Congress at the height of the Cold War. Premised on the view of homosexuals as deviants who were prone to communism and, because of their “secret” sexual orientation, vulnerable to blackmail, the law provided for their exclusion from the United States. The desire to exclude and deport lesbians and gay men from the United States began to wane with the nation’s changing social attitudes toward these groups. But the double penalization of gay men and lesbians—as immigrants and as sexual minorities—exemplifies the double-edged sword experienced by socially unpopular groups through the nation’s immigration laws.

The U.S. government’s response to the tragedy of September 11, demonstrates the impact of disadvantaging characteristics that overlap. Arab and Muslim men, already racially, culturally, and religiously different from the Anglo-Saxon norm, are now being profiled as potential terrorists and political enemies of the United States as well. Similarly, the historical exclusion of political dissidents often implicated issues of race and class. The nation viewed “new” southern and eastern European immigrants of the early twentieth century as racially inferior, poor, and inclined toward anarchism, communism, and other anti-American political ideologies. Congressional concern about the commitment to democracy and self-government of the southern and eastern European “races,” in part motivated the national origins quota system in the Immigration Act of 1924, which drastically reduced immigration from those nations.

Why does the United States treat its immigrants so harshly, even as it purports to embrace the world’s “huddled masses” and to dedicate its efforts to improving the status of the world’s disadvantaged? Why does

the United States as a nation treat “outsiders” in the country harshly and noncitizens outside the country even more so? It is clear that a relationship exists between the treatment of immigrants and minority citizens. African Americans, for example, suffer many more hardships in modern social life than do whites.¹³ Consider the example of U.S. policies toward black persons seeking refuge from violent political and economic upheaval in Haiti. In the 1970s, the U.S. government pursued a policy of detaining Haitians once they had landed in the United States. This was followed by the 1980s interdiction of boats from Haiti on the high seas and half-hearted attempts to identify bona fide refugees. In the 1990s, the government devised the most extreme of all measures: interdiction and immediate repatriation of all Haitians whether or not they had a credible fear of persecution, a policy that, by most accounts, violates international law. The U.S. Supreme Court refused to intervene. Moreover, this has occurred at a time when, although some might debate the degree of change, racial sensibilities toward African Americans have improved significantly over the previous one hundred years.

The cynic might argue that the case of the Haitians is exceptional. The nation feared a flood of thousands of people; we cannot, after all, accept all the poor people in the world who want to come to this “land of opportunity.” This line of argument, however, disregards the obvious: that popular opinion was undoubtedly shaped by the fact that the Haitians in question were poor, black, and culturally different from most of the citizens of the United States. A mass migration of poor, black people who practiced the religion Santería and might carry the HIV virus prompted much fear. When the U.S. government returned thousands of Haitians to the violence and desperation of their homeland, objections from U.S. citizens were negligible.

Historically, women too have been marginalized and systematically disadvantaged by the U.S. immigration laws. For example, early in the twentieth century, women who married immigrants lost their citizenship under the premise that women were mere extensions of their husbands. In 1986, congressional efforts to stem sham marriages for immigration benefits created strong incentives for immigrant women to remain in violent and abusive relationships and eventually prompted a series of legislative efforts at reform.

The exclusionary aspects of the U.S. immigration laws remain intact in the modern era. The nation has become somewhat more tolerant of political dissent since the 1950s grip of McCarthyism. But even before the September 11 attacks, the U.S. government deported immigrants for their political views (sometimes after hearings in which the alleged “terrorist” was denied the opportunity to review the government’s evidence) and for tenuous links to Arab and Muslim “terrorists.” Legal constraints soften the treatment of poor citizens in our cities. But few constraints limit governmental power to bar the poor—the archetypal “huddled masses”—from immigrating to the United States, severely limit the eligibility of poor immigrants to public benefits, and deport those immigrants who utilize such benefits and services, all features of the modern immigration laws. Although perhaps narrowed by the U.S. Supreme Court during Chief Justice William Rehnquist’s leadership, constitutional protections exist for citizen criminals; in contrast, the political process has subjected the deeply unpopular “criminal aliens” to increasingly harsh measures. Until 1990, homosexuals could be banned from entering the United States as “psychopathic personalities.” At the time of the removal of that bar from the immigration laws, there was a growing recognition in this country that lesbians and gay men had rights against discrimination.

The chapters that follow explore the differential treatment of non-citizens and of citizens who share characteristics in common with non-citizens. In an era marked by intense anti-immigrant sentiment in the United States, and perhaps the world, it is especially important to understand the dynamic relationship between immigration and the civil rights of minorities. This book’s examination of the relationship between the treatment of noncitizen minorities and domestic minorities offers insights into how dominant society views subordinated groups, including people of color, political dissidents, the poor, criminals, women, and homosexuals. The harsh treatment of “alien” minorities under the immigration laws is a reflection of U.S. society’s potential treatment of domestic minorities, even U.S. citizens, in the absence of legal and other constraints. The history of exclusion and deportation of noncitizens under the U.S. immigration laws give us a view of the very soul of America, and what we learn is disturbing.

Without boundaries demarcated by law, the nation could well act out its true desires with respect to disfavored minority groups. Could that time ever come? The possibility may not be as far-fetched as some might believe. As part of the war on terrorism that followed September 11, 2001, the federal government aggressively acted against Arab and Muslim noncitizens, arresting, interrogating, and detaining hundreds with no evidence of individual wrongdoing and later carried out some of the same actions against U.S. citizens. Consider the case of a U.S. citizen, born Jose Padilla, who converted to Islam and changed his name to Abdullah Al-Muhajir.¹⁴ Arrested and detained in the United States for alleged involvement in the early stages of an Al Qaeda terrorist plan to construct and detonate a “dirty bomb” in this country, he has been labeled an “enemy combatant” by the U.S. government and was denied access to an attorney. The federal government, moreover, has announced that it plans to hold al-Muhajir in a military jail indefinitely without charging him with a crime. In this precedent-setting case, the U.S. government has, by means of presidential fiat, denied a U.S. citizen protections guaranteed by the Bill of Rights. This example reveals what is at stake for citizens and noncitizens as the war on terrorism continues. It suggests that the U.S. government’s treatment of noncitizens is inextricably linked to its treatment of citizens. Denial of rights to noncitizens lays the groundwork for the denial of rights to citizens. Clearly, those who are truly committed to racial justice in the United States cannot ignore the treatment of immigrants.