

# Introduction

On a different September 11—the one in 1998—the body of a man was found floating in the All-American Canal in the Imperial Valley of southern California. The next day, Saturday, September 12, another man, who had been in a coma since August, when he was found in the valley’s desert with a core body temperature of 108 degrees, died. On Sunday, the Border Patrol discovered the body of Asuncion Hernandez Uriel in the same desert. Some of her group stayed with her, but she died of heat stress. The same day, the decomposed body of Oscar Cardoso Varon was pulled out of the canal. In all, the bodies of four migrants attempting to cross to the United States from Mexico were found that weekend. That Monday, a headline in the *San Diego Union-Tribune* read, “Woman 113th border crosser to die.”<sup>1</sup>

Unlike the reaction of the American public to the horrors of September 11, 2001, no outrage or sympathy was expressed after the weekend border deaths beginning September 11, 1998. One could point to a difference in scale—some 3,000 deaths on September 11, 2001—but try 2,000 in the border situation; 2,000 deaths that were avoidable.

Six months earlier, at the end of March 1998, four migrants died after a foot of snow had fallen and the temperature dropped to 22 degrees in the mountains they tried to cross.<sup>2</sup> Two years later the *San Francisco Examiner* reported that the bodies of three men had been pulled from the mountains of the Cleveland National Forest, a corridor for illegal immigration from Mexico. Asked to identify one body, a young man held in a Border Patrol truck nodded “yes” to acknowledge that the victim had been part of his group of border-crossers. Sick and cold illegal immigrants continued to stumble out of the Laguna Mountains all day after a weekend storm dumped 6 to 8 inches of snow. Temperatures plummeted to lows of between 20 and 34 degrees. “Eight people who were rescued by fire workers near Mount Laguna on Monday could barely move, said assistant chief Dave Strohte. They had been caught in the wet snow wearing only tennis shoes, cotton pants and light jackets, he said. ‘They were completely unprepared for this.’ Strohte said.”<sup>3</sup>

No mainstream public outcry has been heard on behalf of these border victims. No massive protests have been held. Why? The American public has come to devalue the lives of undocumented Mexican border-crossers, having been conditioned to view these people as something other than potential Americans. And sadly, because of that conditioning, Americans are willing to put up with the deaths of these migrants without wanting to learn even a little about what brought them to the point of death.

A year after President Bill Clinton took office in January 1993, the Border Patrol embarked upon a strategy of “control through deterrence” that resulted in more than 2,000 Mexican migrant deaths over a ten-year period. The deaths resulted from heat stroke, hypothermia, and drowning, as the victims were pushed to cross the desert or hazardous mountains because the Border Patrol had cut off the safest points of entry. In other words, spending over a billion dollars on more officers, fencing, and high-tech equipment did not deter migrants from entering; rather, they simply moved on to different corridors to attempt entry even though the danger of death from searing heat or freezing cold increased.

When deaths resulting from these strategies—with names like Operation Gatekeeper, Operation Safeguard, Operation Blockade—started being reported, the Border Patrol was not surprised. Its 1994 strategic plan recognized that pushing migrants to cross through remote, uninhabited expanses would place them in “mortal danger.” When the strategy to move the undocumented foot traffic to the east of San Diego as part of Operation Gatekeeper got underway, a Border Patrol supervisor said, “Eventually we’d like to see them all out in the desert.”<sup>4</sup>

What is it about our nation that condones this strategy and resulting deaths? Why is it that reports of this nature are not part of the public consciousness? Because the majority of policy makers and most Americans do not view the Mexican migrant as “one of us,” or even *potentially* one of us. America, and therefore who a *real* American is, has been defined in a manner that excludes the Mexican migrant. And this is not simply a function of the fact that these victims are undocumented or attempting surreptitious entries; if their faces and language were accepted in the conventional image of *an American*, the reaction would be far different.

The racialization of who is a *true* or *real* American has affected U.S. enforcement policies directed at only certain undocumented aliens. While strict enforcement policies are in force against undocumented Mexicans, the large numbers of undocumented Irish nationals in the United States in the 1980s were rewarded with special visa allocations. Chinese from China’s Fujian Province smuggled in by boat in the early 1990s were rounded up and eventually deported, whereas the largest number of undocumented in Chicago in the 1980s—Polish nationals—were not arrested, as Lech Walensa’s struggle for human rights was waged.

Immigration policies are not simply reflections of whom we regard as potential Americans, they are vehicles for keeping out those who do not fit the image and welcoming those who do. Consider the battle over immigration reform in 1952. By an overwhelming margin on June 25, Congress passed legislation overhauling the nation’s

immigration laws that included broad provisions relating to the exclusion and deportation of subversives and Communists. President Harry S. Truman was a strong supporter of those provisions. After all, he had established the Loyalty Review Board in 1947 to scrutinize government employees in order to dispel charges that he was soft on communism, and his “Truman Doctrine” symbolized the country’s support for “free peoples” of other lands who were resisting communist domination. Yet the immigration reform was incomplete in Truman’s view; he was deeply disappointed in Congress’s refusal to repeal the nation’s immigration selection system: the national origins quota system enacted in the 1920s to favor western Europeans. So he vetoed the legislation, explaining,

The idea behind this discriminatory policy was, to put it baldly, that Americans with English or Irish names were better people and better citizens than Americans with Italian or Greek or Polish names. It was thought that people of West European origin made better citizens than Rumanians or Yugoslavs or Ukrainians or Hungarians or Balts or Austrians. Such a concept is utterly unworthy of our traditions and our ideals. It violates the great political doctrine of the Declaration of Independence that “all men are created equal.” It denies the humanitarian creed inscribed beneath the Statue of Liberty proclaiming to all nations, “Give me your tired, your poor, your huddled masses yearning to breathe free.”

We are a nation of immigrants. However, the simplicity of that statement conceals the nation’s consistent history of tension over whom we collectively regard as “real Americans” and, therefore, whom we would allow into our community. As Truman’s debate with Congress over the perpetuation of the national origins quota system demonstrates, we are not, and never have been, of one mind on that issue. Thus, while we are a nation of immigrants, we are a nation that debates immigration policy, and that debate reflects the battle over how we define who is an American.

Although immigration laws did not become a permanent fixture in federal statutes until the mid-1800s, debate over newcomers was a part of the political and social discourse even before the Declaration of Independence. As early as 1751, no less an icon of the New World than Benjamin Franklin opposed the influx of German immigrants, warning that “Pennsylvania will in a few years become a German colony; instead of their learning our language, we must learn theirs, or live as in a foreign country.” He later expanded his thoughts:

Those who came hither are generally the most stupid of their own nation, and as ignorance is often attended with great credulity, when knavery would mislead it, and with suspicion when honesty would set it right; and few of the English understand the German language, and so cannot address them either from the press or pulpit, it is almost impossible to remove any prejudices they may entertain. . . . Not being used to liberty, they know not how to make modest use of it.<sup>5</sup>

These critical statements by one of the framers of our Constitution should be contrasted with the sentiments of George Washington, who in 1783 proclaimed, “The bosom of American is open to receive not only the opulent and respectable stranger,

but the oppressed and persecuted of all nations and religions.”<sup>6</sup> His words are strikingly reminiscent of the famous lines of the Jewish American poet Emma Lazarus engraved at the base of the Statue of Liberty in 1886:

*Give me your tired, your poor,  
Your huddled masses yearning to breathe free,  
The wretched refuse of your teeming shore,  
Send these, the homeless, tempest-tost to me.  
I lift my lamp beside the golden door!*

Immigration prior to restrictions set the stage for debate. Those “original” people who populated the country in its initial years formed the basis for what many would regard as “real Americans.” This wave was primarily an eighteenth-century undertaking that lasted until 1803 and brought with it white, predominantly English-speaking, mainly Protestant Europeans. By contrast, the next wave, which began in the 1820s and lasted until the immigration restriction laws of the 1920s, was a more diverse and controversial phenomenon. That current brought more Catholics and Jews, more southern Europeans and non-English speakers. The restrictions of the 1920s succeeded in drastically reducing that diversity through 1965. The latest wave after 1965 has fueled a new diversity from Asia and Latin America that makes one wonder if the Statue of Liberty might be facing the wrong direction.

Thus, immigration data from 1820 to 2000 tell much of the story about how immigration policies have affected the makeup of the country. (See Appendix.) From 1820 to 1850, about 2.5 million immigrants came to the United States. Almost 90 percent were European (87 percent alone from France, Germany, Ireland, and Great Britain). Only 132 Asians entered at the time, and 14,688 (less than one percent) were Mexican during that thirty-one-year period (of course, much of what we know as the southwestern part of the United States was actually Mexico during that time). The discovery of gold in California in 1848 contributed to an influx of Chinese immigrants until 1882, when the Chinese Exclusion Act was passed. From 1851 to 1880, 228,899 Chinese entered, but this still represented less than 3 percent of the total (7.7 million) number of immigrants during that period, which remained dominated by Europeans (88 percent). Obviously, after Chinese laborers were excluded in 1882, the number of Chinese entering declined; from 1891 to 1900, less than 15,000 entered out of a total of 3.7 million immigrants for the decade.

During the first two decades of the twentieth century, southern and eastern Europeans entered in large numbers. (See Figure I-1.) Of the 14.5 million immigrants who entered, 60 percent were from Italy, Austria, Hungary, and the area that became the Soviet Union. A literacy law was enacted in 1917 specifically targeting southern and eastern Europeans, and from 1921 to 1930, immigrants from those areas declined to about 14 percent of all immigrants. The national origins quota system of 1924 that restricted the same groups had even greater impact. For example, from 1951 to 1960, those groups made up only 6 percent of all immigrants. (See Figure I-2.)

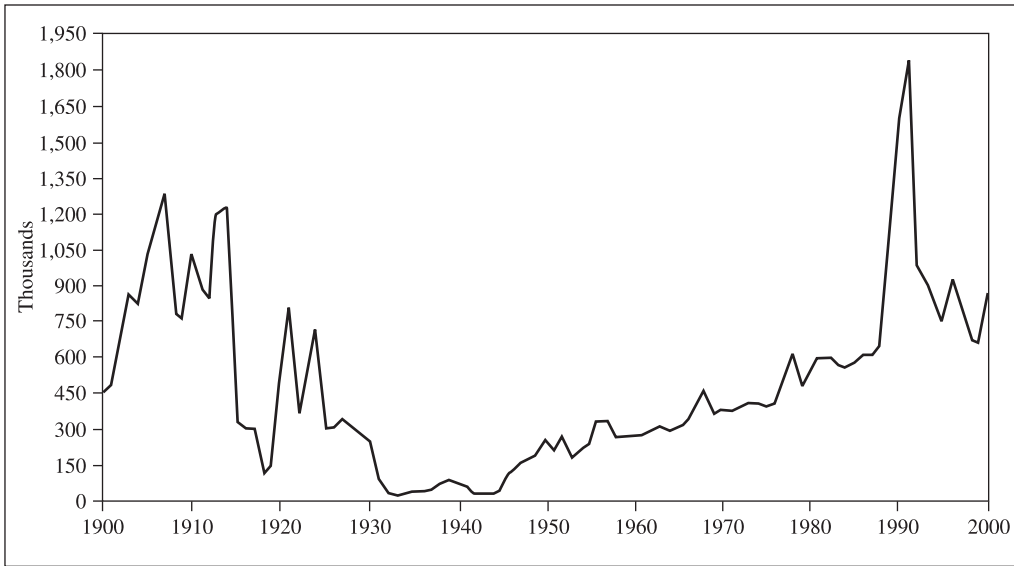


FIGURE I-1 Immigrants Admitted, Fiscal Years 1900–2000

Source: 2000 INS Statistical Yearbook, 3.

Since 1965, when the national origins quota was finally repealed, the face of immigration has become even more diverse. For example, of all immigrants in fiscal year 2000, 65 percent were from Asia and Latin America. The 2000 census found that one-third of the foreign-born population in the United States was from Mexico or another Central American country, and a quarter was from Asia. Fifteen percent were from Europe. As a result of the immigration policies since 1965, including new refugee laws in 1980 and a legalization (or amnesty) program for undocumented immigrants in 1986, the ethnic makeup of the country is changing. While 75 percent of the nation claimed European heritage in the year 2000, the proportion had dropped from 80 percent in 1990. In contrast, the Latino proportion increased from 9 percent to 12.5 percent during the decade, and that of Asian Americans increased from 2.8 percent to 3.6 percent.

There have always been two Americas. Both begin with the understanding that America is a land of immigrants. One America has embraced the notion of welcoming newcomers from different parts of the world, although depending on the era, even this more welcoming perspective may not have been open to people from certain parts of the world or of different persuasions. This America has understood that Americans are not necessarily of the same background or tongue. The other America has remained largely mired in a Eurocentric (originally *western* Eurocentric) vision of America that idealized the *true* American as white, Anglo-Saxon, English-speaking, and Christian. For the most part, this America has opposed more immigration, especially immigration from regions of the world that are not white or supportive of our brand of democracy.

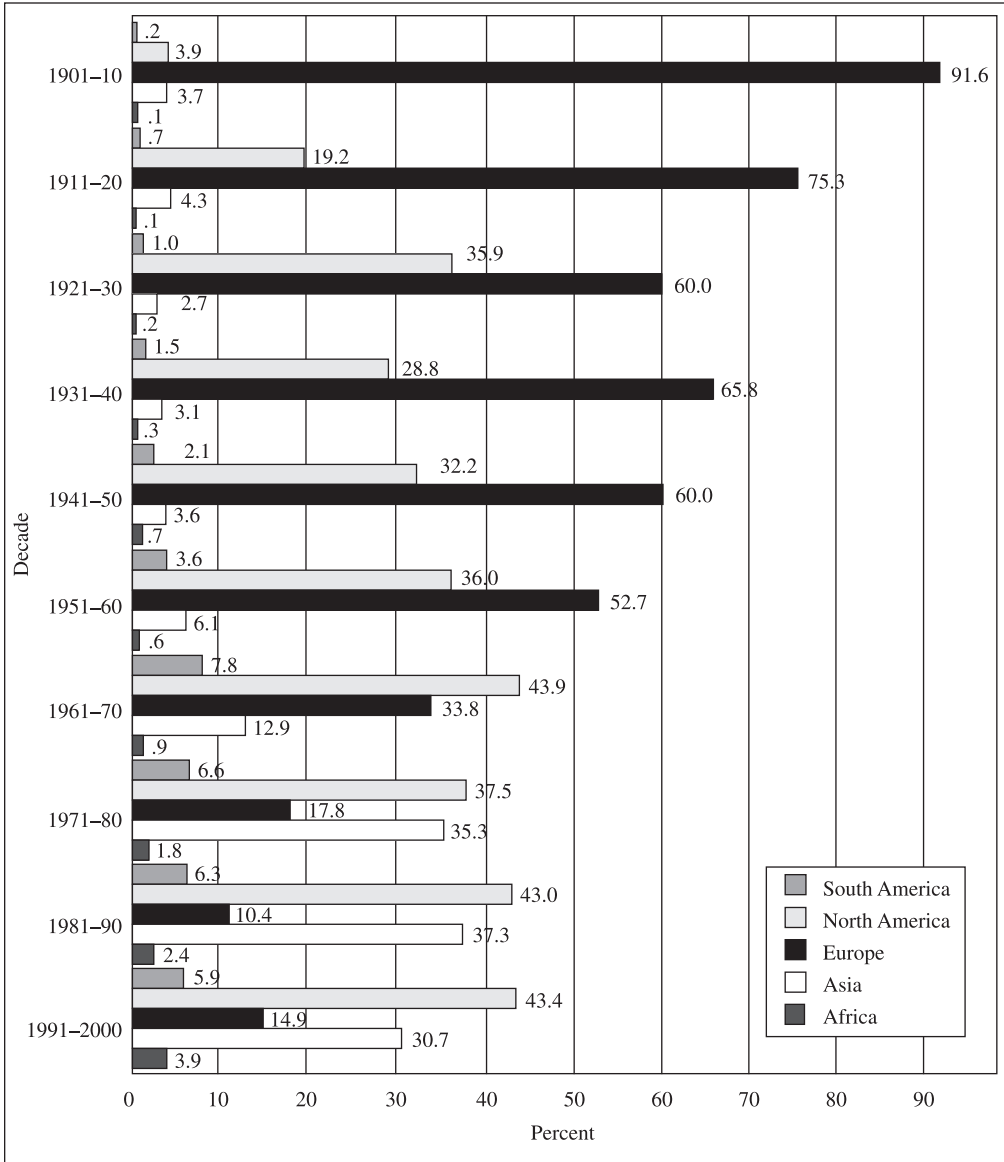


FIGURE 1-2 Region of Last Residence of Legal Immigrants, Percent Distribution by Decade

Source: 2000 INS Statistical Yearbook, 4.

Note: Oceania and unspecified region represent no more than one percent of legal immigration each decade.

The history of U.S. immigration policy reflects the tension of the two Americas that has been a part of the national debate since the founding of the country. As some colonists frowned upon German speakers, others attacked Catholics and Quakers. By the time the nation's second president, John Adams, took office, the debate was on between the two visions of America—one nativistic and xenophobic, the other embracing of immigrants. The tug-of-war between the two visions has been constant ever since. As such the country has generally moved forward with policies that fall somewhere in the middle. The battle is constant because the country knows, just as Truman's veto message implied, that our immigration policy defines our character. As such, major changes to our immigration and refugee laws and decisions on enforcement policies represent defining moments in our history.

Thus, "who is an American" has been defined and redefined throughout our history. When restrictionists—the standard-bearers of the Eurocentric *real American* concept—have had their way, exclusionist rationales have been codified reflecting negative views toward particular races or nationalities, political views (e.g., Communists or anarchists), religions (e.g., Catholics, Jews, Muslims), or social groups (e.g., illiterates, homosexuals). Those grounds for exclusion are every bit about membership in a Eurocentric American standard that requires that undesirables are kept out. Other times, broader visions of America have prevailed, as restrictions are beaten back and more egalitarian language is made part of the law, as in the case of the 1965 amendments and the Refugee Act of 1980. So in spite of its billing as a "nation of immigrants," the United States has constantly struggled with the "impact" of immigrants socially and economically. Influxes of immigrants at different times have provided fodder for anti-immigrant sentiment within national and local communities and for the anti-immigrant cottage industry. The last third of the twentieth century was a particularly heated time. As diversity among immigrants increased, the sheer number of immigrants and refugees admitted suggested a generous system. In truth, exclusionary enforcement mechanisms were often extreme.

This book discusses major immigration policy reforms and enforcement strategies in U.S. history that exemplify the constant battle to define America.<sup>7</sup> The discussion will take us from the earlier years of the nation, when ideas from a rebellious France were feared, to discussions of interning Muslims and Arab Americans after the attacks of September 11, 2001; from the era of Asian exclusion laws to the distaste for Jews and Italians; from the Red Scare and McCarthy era to the final push for a more egalitarian regime in the 1960s; from the debates over how to control the southern border to the institutional scheming to deprive Haitians and Central Americans of their right to asylum. In all of these instances, the struggle over immigration policy is clear even though different groups may be involved. The conflict is over whether another group will be welcomed into our society of Americans.

This volume does not attempt to cover every aspect of the history of U.S. immigration policies. The classics on European immigration by such writers as John Higham and Oscar Handlin certainly lend credence to my argument that even early on certain southern and eastern Europeans were defined as outside the convention of who an

American could be. Similarly, specialized works on Mexicans such as by Gerald López and various Asian immigration restrictions, including my own, are consistent and need not be duplicated here. And while I have to discuss the basic provisions of the Asian exclusion laws, the 1917 literacy act, the 1924 national origins quota system, the 1952 overhaul, the 1965 amendments, and restrictions of the 1990s for a foundational understanding of immigration policies, I have refrained from adding too much detail when it would be unnecessary to my argument. On the other hand, I have included descriptions (at times lengthy) of many aspects of immigration policy that have received little if any review in the extant works: the exclusion of homosexuals, border and workplace enforcement against Mexicans, how the anticommunism provisions were implemented, the attack on dissidents like the Beatle John Lennon, asylum discrimination against Haitians and Salvadorans, Nazi war criminals, the troubled implementation of amnesty in 1986, the hypocrisy of diversity visas, and the dark side of border deaths. While the first six chapters are in chronological order, the rest are not. I have grouped several chapters together that address Mexican migration issues that have dominated much of the debate on immigration and diversity for the past several decades. Separate chapters on the development of deportation provisions and asylum also seemed appropriate.

So which sentiment would guide America: Franklin's disgust for the "most stupid of their own nation," or the open arms of Washington and Lazarus to the poor and oppressed? The contrast is emblematic of the debate on immigration and immigrants that has been a constant part of the American psyche since the nascent stages of the country. Refugees, immigrants, and their advocates have come to rely on the rhetorical examples of Washington and Lazarus. But this sentimental language is not part of the Constitution. Its force may be moral, but its sentiment remains absent from the language of our laws.



## CHAPTER 1

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# The Western European New World and the New Americans

Prior to Columbus's arrival at the islands off our southeastern shores, perhaps 18 million Native Americans resided in what is now the United States and Canada. Although the first people to colonize the New World were the Spanish and French, the European explorers who followed Christopher Columbus to North America in the sixteenth century had no notion of founding a new nation. Neither did the first European settlers who peopled the thirteen colonies on the eastern shores of the continent in the seventeenth and eighteenth centuries. They regarded America as but the western rim of a transatlantic European world. By 1640, the population of the colonies had reached about 25,000. These original colonists may have fled poverty or religious persecution in the Old World, but they continued to view themselves as Europeans and as subjects of the English king.

Yet life in the New World made the colonists different from their European cousins, and eventually, during the American Revolution, these new Americans came to embrace a vision of their country as an independent nation. They had much in common to begin with. The colonies had been *British* colonies. Most people came determined to create an agricultural society modeled on English customs. Conditions in the New World deepened their common bonds. Most learned to live lives unfettered by the tyrannies of royal authority, official religion, and social hierarchies that they had left behind. They grew to cherish ideals that became synonymous with American life—reverence for individual liberty, self-government, religious tolerance, and economic opportunity. The original colonists and their progeny became the “founders” of a new nation, and as such they are regarded as the original Americans. By accepting this notion, we have come to view an “American” as someone attached to the United States of America. Almost immediately, the original Americans displayed a willingness to

exclude certain others from the concept of a true American, to subjugate outsiders—first Indians, who were nearly annihilated through war and disease, and then Africans, who were brought in chains to serve as slave labor, especially on the tobacco, rice, and indigo plantations of the southern colonies.

But if the settlement experience gave people a common stock of values, both good and bad, it also divided them. The thirteen colonies were quite different from one another. Puritans carved right, pious, and relatively democratic communities of small family farms out of rocky-soiled New England. Theirs was a homogeneous world in comparison to most of the southern colonies, where large landholders, mostly Anglicans, built plantations along the coast from which they lorded over a labor force of black slaves and looked down upon the poor white farmers who settled the backcountry. Different still were the middle colonies stretching from New York to Delaware. There, diversity reigned. Well-to-do merchants put their stamp on New York City, as Quakers did on Pennsylvania, while out in the countryside sprawling estates were interspersed with modest homesteads. Within individual colonies, conflicts festered over economic interests, ethnic rivalries, and religious practices. All these clashes made it difficult for colonists to imagine that they were a single people with a common identity, much less that they ought to break free from Britain.<sup>1</sup> British tyranny unified the colonies, and a new nation was born, peopled by those who were openly welcomed, those who withstood discouraging sentiment, and slaves.

During the early colonial period, some individual colonies attempted to regulate immigration, but essentially there was no integrated immigration policy. The first settlers were French and Spanish. Prior to 1680, most newcomers were English Protestants. A combination of religious, political, and economic motives brought these settlers to the New World. However, when English emigration began to decline in the 1680s, colonies—particularly Pennsylvania and North Carolina—began to promote the immigration of certain other nationalities and ethnic groups while attempting to exclude undesirables. This produced an influx of French Huguenots, Irish Quakers, and German Pietists. Newcomers from Scotland, Portugal, Spain, Switzerland, the Netherlands, and the Rhineland followed. About 450,000 immigrants, representing a dozen nationalities, arrived during the eighteenth century.

These new immigrants came for myriad reasons. German Pietist sects, including the Mennonites and Moravians, fled persecution in search of religious freedom, many in response to the sympathetic Quaker teachings of William Penn. A later German group, the Hessians, came to fight as mercenaries with the British in the American Revolution, and 5,000 stayed to become immigrants. Dutch and Swedes came for political freedom and economic opportunity, and the Scotch-Irish came throughout the eighteenth century for economic, religious, and political reasons. European migration was not limited to the original thirteen colonies. Spain wanted to expand the Spanish Empire and sent immigrants to California, Florida, and Mexico to search for gold, to trade with Native Americans, and to convert them to Christianity. French settlers came to Louisiana and Canada to seek land and business opportunities, convert the Native Americans, and protect French trading interests. The French Huguenots immigrated to flee religious persecution after the revocation of the Edict of Nantes in 1685.

Even during this “open” era of immigration, the original colonies attempted to define their new America by promoting immigration only to select groups. When the first census was taken in 1790, the total population was recorded at 3,227,000. English, Scots, and Scotch-Irish accounted for 75 percent; Germans made up 8 percent; and other nationalities with substantial numbers included the Dutch, French, Swedes, and Spanish. In addition, the 1790 census recorded a population of 750,000 blacks, a result of the involuntary migration of 350,000 African slaves into the colonies. But the census of 1810, the white population had increased to approximately 6 million, and the black population to approximately 1,378,000.<sup>2</sup>

### State Immigration Control

As the new nation emerged, “immigration policies” continued to be handled by individual states with little federal intervention. As in the colonial period, these policies were aimed at the exclusion of certain undesirables, as individual states begin to delineate who should become part of their community. Yet beyond those who were not wanted, the doors were open to unlimited numbers of able-bodied souls who made the trek to the new nation. In fact, one of the complaints the authors of the Declaration of Independence made against King George III was that his policies sharply restricted immigration. King George saw a burgeoning population as a threat to his hold on the colonies and tried to strangle further influx.<sup>3</sup> Thus, in the Declaration of Independence, King George was castigated as having “endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners, refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.”<sup>4</sup>

Prior to 1875, state immigration provisions, which often applied to interstate as well as foreign migrants, regulated at least four groups: criminals, paupers, slaves or free blacks, and adherents of certain religions. A fifth category involved those espousing unorthodox or unpopular views, although state colonial screening on the basis of political belief was implemented on only a limited basis. This early sentiment—seeking only those who would become patriotic loyalists—represents an early version of a viewpoint (manifested in anticommunist, antianarchist, and antiterrorist screening) that has remained an important part of the immigration policy debate throughout the nation’s history. While the migration of a sixth group of individuals—those suspected of carrying contagious diseases—raised concerns among the colonists, regulation through quarantine was not immigrant-specific.<sup>5</sup>

#### *Criminals*

The early colonies opposed the immigration of persons convicted of crimes. Under modern immigration laws, individuals with certain criminal backgrounds are barred from entering the country. Thus, for example, an individual who might fall into an immigration category reserved for relatives of U.S. citizens or for those with special job skills can still be excluded if Immigration and Naturalization Service (INS) officials discover that

the applicant has been convicted of a narcotics offense or a crime involving moral turpitude. In the seventeenth and eighteenth centuries, however, British attempts to transport criminals to the United States concerned the colonists. English judges could sentence felons to the colonies as punishment, and felons could also be shipped to the colonies as indentured servants. Several colonies enacted restrictions on the entry of such individuals, only to be overruled by the British government.<sup>6</sup> The British lost this veto authority after the War of Independence, but even after 1783, they continued to send convicts as indentured servants. In 1788, the Congress of the Confederation adopted a resolution recommending that states “pass proper laws for preventing the transportation of convicted malefactors from foreign countries into the U.S.”<sup>7</sup> Within a year, several states responded. Massachusetts, Pennsylvania, South Carolina, and Virginia prohibited the importation of persons who had been previously convicted of a crime. In later years, after the federal Constitution had taken effect, other states enacted similar legislation: Maine, Maryland, New Jersey, New York, and Rhode Island.<sup>8</sup>

### *Paupers*

The Statue of Liberty’s “give us your tired, your poor” refrain written by political disenter Emma Lazarus in 1883 was definitely not the philosophy of the colonies, nor is it today’s philosophy, as modern laws exclude those immigrants who are “likely to become a public charge.”<sup>9</sup> The colonists were comfortable with the notion of members of the lower class fleeing the overcrowded, rigid social structure of Europe, as long as they were hardworking and honest. But the colonists feared that Europe was using the New World as a dumping ground for the lazy and disabled. After all, English judges could banish vagrants along with felons to the colonies. Thus, after independence, a number of states instituted legislation aimed at the poor from abroad as well as those from other states. In Massachusetts, the 1794 poor laws imposed a penalty on any person who knowingly brought a pauper or indigent person into any town in the Commonwealth and left him there. This applied to intrastate, interstate, and international transporting of the poor. Beginning in 1820, Massachusetts returned to the colonial system of demanding security from masters of vessels when their passengers seemed likely to become paupers. In New York, a 1788 statute authorized the justice of the peace to order a newcomer removed if it was determined that the person would likely become a public charge within the first year of residence. Until 1813, paupers who returned after removal were subject to severe corporal punishment as well as retransportation. The 1788 poor law required masters of vessels arriving in the New York City harbor to report within twenty-four hours the names and occupations of all passengers; if any passenger appeared likely to become a charge, the vessel was required to either return the passenger or post a bond.<sup>10</sup>

### *Blacks*

Prior to the Civil War, Southern slave states adopted legislation prohibiting the migration of free blacks and urged free Northern states to do the same. Since many white

inhabitants of the North were prejudiced against blacks, several free states obliged. They did so by either blocking the movement of blacks into the state or requiring good behavior and assurances that blacks would not become public charges. Slave states also subjected their free black residents to more stringent regulations and criminal laws than whites. The sentiment behind some of these laws was related to immigration from abroad. Many states did not welcome fleeing French slaveowners who brought slaves that may have been influenced by the ideals of freedom. These fears were not entirely unfounded. A successful slave revolt in Saint Dominique ultimately produced the nation of Haiti. In 1803, Southern states succeeded in pushing for federal legislation prohibiting the importation of foreign blacks into states whose laws prohibited their entry. Relatedly, in the early 1800s, Southern states regulated free black sailors aboard vessels arriving in Southern ports. States such as South Carolina did not want black sailors wandering its streets, even temporarily. Because of this, South Carolina and other states required black seamen to be held in jail or quarantined on the ship, barring communication with local blacks.<sup>11</sup>

In addition to legislation adopted by the states, blacks were also attacked through early federal immigration policy. In the First Congress, on March 26, 1790, a provision was made, pursuant to constitutional power (Art. I, § 8, clause 4), to establish a uniform rule of naturalization for aliens who were “free white males” and who had two years’ residence.<sup>12</sup> This provision excluded indentured servants, slaves, and most women, all of whom were considered dependents and thus incapable of casting an independent vote. The person had to be of good moral character, a requirement that remains today.<sup>13</sup>

### *Religious Views*

Religious belief often limited one’s choice of domicile in the New World. In the spirit of the time, colonial charters frequently denied admission to Catholics. Virginia is an example of one such state that denied admission on the basis of religious belief. The first settlers in Virginia were emigrants from England who belonged to the English church, at a point in time when the church was flush with complete victory over the religious of all other persuasions. Yet the settlers were intolerant of their Presbyterian brethren, who had emigrated to the northern colonies. Furthermore, Virginia passed several laws aimed at Quakers, who had fled from persecution in England and cast their eyes on the New World as an asylum of civil and religious freedom. Sadly, the Quakers found the New World free only from the reigning sect. Several acts of the Virginia assembly of 1659, 1662, and 1693 aimed at Quakers espoused Virginia’s strong religious beliefs. These laws made it a crime for parents to refuse to have their children baptized, prohibited the unlawful assembling of Quakers, and penalized any master of a vessel who brought a Quaker into the state. The laws further ordered Quakers already present in Virginia and Quakers who attempted to enter the state to be imprisoned until they left the country, providing a mild punishment for their first and second returns, and death for the third. In addition, the laws prohibited all persons from holding Quaker meetings

in or near their homes, entertaining Quakers individually, or circulating books that supported Quaker tenets.<sup>14</sup> Statutory oppressions of religion were wiped away in 1776.

In contrast to Virginia's stringent anti-Quaker laws, Pennsylvania espoused a broader religious philosophy. King Charles II granted the charter for Pennsylvania to William Penn in 1681. Penn, a Quaker, was driven by two principal motives in founding the colony: "the desire to found a free commonwealth on liberal and humane principles, and the desire to provide a safe home for persecuted Friends." English Quakers were the dominant element, although many English settlers were Anglican.

Penn was far in advance of his time in his views of mankind's capacity for democratic government, and equally so in his broad-minded tolerance of different religious beliefs. He crafted the Charter of Privileges in 1701 that began the first Constitution of Pennsylvania, assuring that no citizen would be "molested or prejudiced" because of their faith, nor "compelled to frequent or [maintain] any Religious Worship or place . . . contrary to [their] mind." The character gave religious liberty to Protestants, Catholics, Unitarians, Christians, Jews, Muslims, and Quakers, and is regarded by some to be the American *Magna Charta* of religious liberty.

Penn's toleration of other forms of religious belief was in no way halfhearted and imbued the Society of Friends with feelings of kindness toward Catholics, or at least accentuated those feelings in them. In the 1720s, a Catholic chapel was erected in Pennsylvania, which was thought to be contrary to the laws of Parliament. The chapel was not suppressed pending a decision of the British government on the question of whether immunity granted by the Pennsylvania law did not protect Catholics. When, after Braddock's defeat during the French War, hostility to France led to an attack upon the Pennsylvania Catholics by a mob, the Quakers protected them. No other American colony had "such a mixture of languages, nationalities and religions. Dutch, Swedes, English, Germans, Scotch-Irish and Welsh; Quakers, Presbyterians, Episcopalians, Lutherans, Reformed, Mennonites, Tunkers and Moravians all had a share in creating it." Although the constitution of Pennsylvania protected religious freedom, it held that Christianity was part of the common law of Pennsylvania—not Christianity founded on any particular tenets, but Christianity with liberty of conscience to all men.<sup>15</sup>

Another example of religious tolerance was New York, a colony that accommodated Quakers in its constitutional convention. In its provision related to requirements of voters, the convention provided "that every elector, before he is admitted to vote, shall, if required by the returning-officer or either of the inspectors, take an oath, or, if of the people called Quakers, an affirmation, of allegiance to the State."<sup>16</sup> In fact, although the convention affirmed that the "common law of England" would continue to be the law of the state, any "such parts of the said common law. . . as may be construed to establish or maintain any particular denomination of Christians or their ministers. . . are abrogated and rejected."<sup>17</sup>

Anti-Catholicism persisted in some quarters after the American Revolution. Several states enacted legislation against the Catholic religion. The Carolinas had a law preventing a Catholic from holding office, and New Hampshire had a similar provision in

its constitution. Anti-Catholic violence occurred in 1834, when the Ursuline Convent in Charleston was burned. In Philadelphia in 1844, anti-Catholicism led to riots that lasted three days.<sup>18</sup>

### *Unorthodox Views*

Some colonies attempted to exclude or screen would-be immigrants on the basis of political belief or affiliation. For example, a 1727 Pennsylvania act required immigrants “to take an oath of allegiance to the king and fidelity to the proprietors and the provincial constitution.” Banishment—the probable antecedent of deportation as an instrument of immigration policy—was sometimes used during the colonial era to punish persons espousing unorthodox or unpopular views.

Several of the nation’s most prominent people spoke out about foreign influence during this time period. Benjamin Franklin’s 1755 expression against further German migration to Pennsylvania is not simply about language:

Why should the Palatine [German] boors be suffered to swarm in our settlements and, by herding together, establish their language and *manners* to the exclusion of ours? Why should Pennsylvania, founded by the English, become a colony of *aliens*, who will shortly be so numerous as to **germanize** us instead of our anglicizing them?<sup>19</sup> (Emphasis added)

Franklin continued these expressions during the Continental Congress, warning of the increasing German influence in American society. Similarly, in 1788 John Jay (a year later appointed to be the first chief justice of the Supreme Court by George Washington) noted in *The Federalist* No.2:

Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, *attached to the same principles of government, very similar in their manners and customs*, and who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established general liberty and independence.<sup>20</sup> (Emphasis added)

In the same vein, Thomas Jefferson stated:

It is impossible not to look forward to distant times, when our rapid multiplication will expand itself . . . [and] cover the whole northern, if not the southern continent, with a people speaking the same language, governed in similar forms, [and] by similar laws; nor can we contemplate with satisfaction either *blot or mixture on that surface*.<sup>21</sup> (Emphasis added)

In addition to Franklin and Jefferson, John Adams, a Federalist and the nation’s second president, was also wary of foreign influence. In his inaugural address, March 4, 1797, he warned that the nation should never “lose sight of the danger to our liberties if anything partial or extraneous should infect the purity of our free, fair, virtuous, and independent elections. . . . If that solitary suffrage can be obtained by foreign nations by flattery or menaces, by fraud or violence, by terror, intrigue, or venality, the Government may not be the choice of the American people, but of foreign nations. . . .

[It is] the pestilence of foreign influence, which is the angel of destruction to elective governments.”<sup>22</sup>

### Federal Immigration Control

Fears of foreign influence led to an early attempt at federal immigration control. The 1798 Alien and Sedition Laws, a series of four laws passed by the Federalist-controlled U.S. Congress and signed by President Adams, purportedly were enacted not only to respond to hostile actions of the French Revolutionary government on the seas, but also to quell political opposition from the Democratic-Republican Party, led by Jefferson and James Madison. The first of the laws was the Naturalization Act, passed by Congress on June 18. This act required that aliens be residents for fourteen years instead of five before they became eligible for U.S. citizenship. This adversely affected Jefferson’s party, which depended on recent arrivals from Europe for much of its voting strength. Congress then passed the Alien Friends Act on June 25, authorizing the president to deport aliens “dangerous to the peace and safety of the United States” during peacetime. The naturalization and alien acts were aimed largely at Irish immigrants and French refugees who had participated in political activities critical of the Adams administration. The third law, the Alien Enemies Act, was enacted by Congress on July 6. This act allowed the wartime arrest, imprisonment, and deportation of any alien subject to an enemy power. President Adams made no use of the alien acts. The last of the laws, the Sedition Act, passed on July 14, declared that any treasonable activity, including the publication of “any false, scandalous and malicious writing,” was a high misdemeanor, punishable by fine and imprisonment. Under this legislation, twenty-five men, most of them editors of Democratic-Republican newspapers, were arrested and the newspapers were forced to shut down. One of the men arrested was Benjamin Franklin’s grandson, Benjamin Franklin Bache, editor of the Philadelphia Democrat-Republican *Aurora*, charged with libeling President Adams. Bache’s arrest evoked a public outcry against the Alien and Sedition Acts. Resolutions against them became part of the Democratic-Republican platform in the 1800 presidential election, and were partly responsible for the election of Jefferson to the presidency. Once in office, Jefferson pardoned all those convicted under the Sedition Act, and Congress restored all fines paid with interest. The Alien Friends Act and the Sedition Act expired by 1801; Congress repealed the Naturalization Act in 1802 (restoring the residency requirement to five years), and the Alien Enemies Act was amended.

The impetus behind the Alien and Sedition Acts was fear of foreign influence. For example, in the Sedition Act, the U.S. government was in effect declaring war on the ideas of the French Revolution. To protect the American way—as interpreted by the Federalists—the people were to be safeguarded against the dangerous opinions spreading over the world. According to this theory, the only way to preserve the health of the body politic was to impose a “quarantine upon ideas.”<sup>23</sup> Federalists believed that many Republicans, being more French than American at heart, would join a French



army of invasion should it land on American shores. The Federalists craved security from the threat of Bonaparte's army, revolutions, and subversive ideas. As upholders of the implied and inherent powers of the national government, the Federalists found support for the Alien Act in the right of Congress to defend the country against foreign aggression. To them, self-preservation was the higher law—a power with which every government was endowed. Every morning Secretary of State Timothy Pickering methodically pored over the Republican newspapers in search of seditious material. He demanded all U.S. district attorneys to closely scrutinize Republican newspapers published in their districts, insisting on prosecution of both author and publisher.<sup>24</sup>

*Tale of the Tubs.* One celebrated incident initially appeared to vindicate the Federalists, only to end in their embarrassment. Early in 1799, Pickering received word that a former deputy to the French National Convention, a mulatto named Matthew Salmon, was aboard the *Minerva*, a Danish ship bound for Charleston, South Carolina. The allegation was that Salmon was carrying, concealed in tubs with false bottoms, dispatches establishing a French-engineered plot to overthrow the United States. Pickering also imagined that as a mulatto, Salmon was probably also intent on stirring up an insurrection among black slaves in the South. When the *Minerva* dropped anchor in Charleston, armed officials boarded and found Salmon with four other French citizens, and several others, including a woman, all traveling with Swiss passports. Indeed, documents in French were found in tubs with false bottoms. The individuals were arrested and the papers sent to a General Pinckney, who, along with the governor of South Carolina, were for the moment acclaimed saviors of the Republic. One Federalist newspaper exhorted, “look on Frenchmen with the eye of suspicion, and prepare to meet them as enemies, with the sword: and BEWARE OF FRENCH EMI-GRANTS.”<sup>25</sup> After investigation, however, the facts revealed that the travelers were actually hostile to the ruling party of France. Indeed, they planned to proceed from Charleston to Saint Dominique to help with the struggle against the French.

In spite of these early colonial, state, and federal expressions of exclusion, until Chinese were excluded in 1882, no limits on the numbers of immigrants or refugees to what has become the United States existed. Immigration was limited or discouraged principally by the cost of travel, diseases, conflict with indigenous inhabitants, or racial, religious, or political discrimination by prior immigrant groups.

An 1853 map shows the boundaries of what would become the contiguous forty-eight states. This included the 1846 Oregon Territory, 1848 Mexican Territory, 1845 Republic of Texas, 1803 Louisiana Purchase, and Florida cession in 1819.

Of course, the presence of Native American tribes did not stand in the way of the country's expansion. In 1892, Supreme Court Chief Justice John Marshall explained the power of conquest:

America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own, and governing themselves by their own laws. It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they

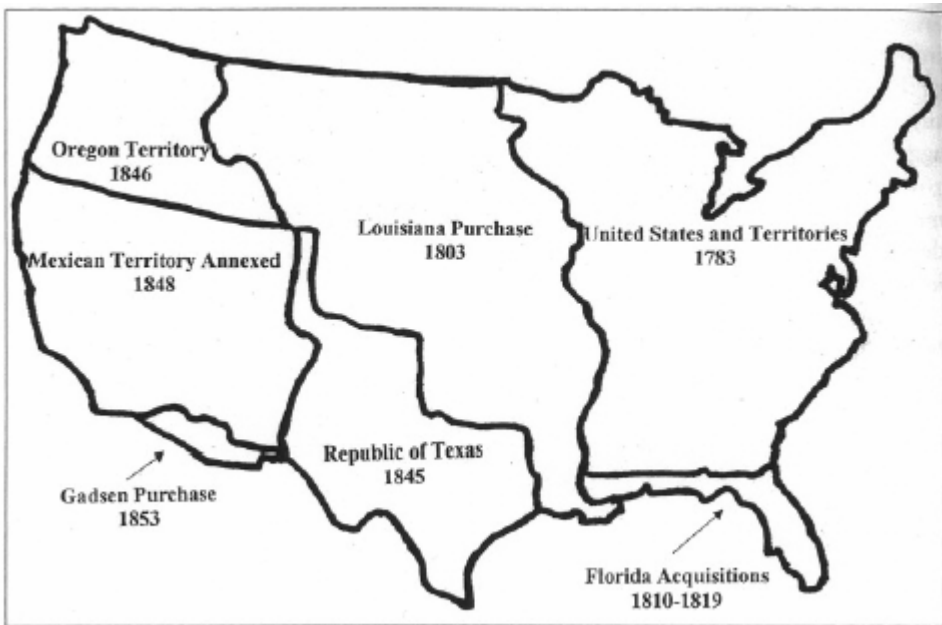


FIGURE I-I U.S. Expansion to 1853

occupied; or that the discovery of either by the other should give the discoverer rights in the country discovered, which annulled the pre-existing rights of its ancient possessors.

After lying concealed for a series of ages, the enterprise of Europe, guided by nautical science, conducted some of her adventurous sons into this western world. They found it in possession of a people who had made small progress in agriculture or manufactures, and whose general employment was war, hunting, and fishing.

Did these adventurers, by sailing along the coast, and occasionally landing on it, acquire for the several governments to whom they belonged, or by whom they were commissioned, a rightful property in the soil, from the Atlantic to the Pacific; or rightful dominion over the numerous people who occupied it? Or has nature, or the great Creator of all things, conferred these rights over hunters and fishermen, on agriculturalists and manufacturers? But power, war, conquest, give rights, which after possession, are conceded by the world; and which can never be controverted by those on whom they descend.<sup>26</sup>

As long as they were the *right kind* of immigrants, the new nation wanted them. In 1791, Alexander Hamilton warned Congress that if the United States were to develop into an industrial power, immigration would have to be encouraged so as to offset the “scarcity of hands” and the “dearness of labor.”<sup>27</sup> The nineteenth century witnessed recruitment efforts by the U.S. government and the states, as well as private employers, who saturated Europe with promotional campaigns to stir up emigration to the United

States. Substantial European immigration, especially from Germany, occurred in the two decades prior to the Civil War. As Andrew Carnegie explained it, “the value to the country of the annual foreign influx is very great indeed. . . . These adults are surely worth \$1500 each—for in former days an efficient slave sold for that sum.” To Carnegie, immigration was a “golden stream which flows into the country each year.”<sup>28</sup> Policy makers throughout the nineteenth century extolled the economic benefits of abundant immigration and fashioned U.S. immigration policies to maximize the flow. The Republican Party platform of 1864, which Abraham Lincoln helped to draft, fostered the same philosophy: “Foreign immigration which in the past has added so much to the wealth, resources, and increase of power to this nation—the asylum of the oppressed of all nations—should be fostered and encouraged by a liberal and just policy.”<sup>29</sup>

Months earlier, on December 8, 1863, President Lincoln strongly recommended legislation to the Thirty-seventh Congress that would encourage immigration:

I again submit to your consideration the expediency of establishing a system for the encouragement of immigration. Although this source of national wealth and strength is again flowing with greater freedom than for several years before the insurrection occurred, there is still a great deficiency of laborers in every field of industry, especially in agriculture and in our mines, as well of iron and coal as of the precious metals. While the demand for labor is thus increased here, tens of thousands of persons destitute of remunerative occupation are thronging our foreign consulates and offering to emigrate to the United States if essential but very cheap assistance can be afforded them. It is very easy to see that under the sharp discipline of civil war the Nation is beginning a new life. This noble effort demands the aid and ought to receive the attention and support of the Government.<sup>30</sup>

Not surprisingly, the first comprehensive federal immigration law, passed in 1864, was an Act to Encourage Immigration. This law established the first U.S. Immigration Bureau, whose primary function was to increase immigration so that American industries would have an adequate supply of workers to meet production needs during the Civil War. In addition, in an effort to reduce the number of immigrants who left industry for homesteading or army enlistment, the law made pre-emigration contracts binding. Although the law was repealed in 1868, it spawned the host of private labor recruitment agencies that for many years continued to be a significant force behind European emigration.<sup>31</sup>

Of course, immigration was not without its critics. During the decades preceding the Civil War, when the massive wave of immigrants, mostly from Ireland and Germany, came to America, prejudice or nativism reached new heights. The Irish were Catholic, a fact that fed Protestant fears that the papacy intended to take over the U.S. government. Even though the immigrants were vital to the industrial and economic expansion of the nation, many natives attacked them as foes of the Republic. Some joined nativist groups to combat the “alien menace.” Others pressured the Whigs and Democrats to pass anti-immigrant legislation, such as laws lengthening the time it took to become a citizen. Several such groups combined to form the Order of the Star-Spangled Banner, which adopted a pledge of secrecy; if people asked them about their program, they

responded “I know nothing.” The organization became the most powerful nativist organization of the era. The basic tenets that defined the order’s ideology included a belief that Protestantism sustained and preserved the Republic because it emphasized individualism, democracy, and equality, while Roman Catholicism threatened the Republic because it stressed authoritarianism, opposed freedom of thought, dictated how Catholics should vote, and insisted that priests act as intercessors between God and the faithful. This culminated in the birth of the American or Know-Nothing Party in the 1850s. In 1856, the American Party nominated ex-President Millard Fillmore as their presidential candidate, and he garnered almost 900,000 votes. The American Party platform included the following planks:

III. *Americans must rule America*; and to this end, *native-born* citizens should be selected for all state, federal, or municipal offices of government employment, in preference to naturalized citizens. . . .

IX. A change in the laws of naturalization, making continued residence of twenty-one years, of all not heretofore provided for, an indispensable requisite for citizenship hereafter.

Yet, mostly pro-immigration sentiment prevailed through the 1800s. That sentiment is reflected in “True Americanism,” an 1859 patriotic sermon by Carl Schurz, a German-born immigrant and a leader of the newly formed Republican Party. He was part of the wave of German immigrants prior to the Civil War and campaigned for Lincoln. He was a U.S. senator from Missouri from 1869 to 1875, and in 1877 became secretary of the interior. The immediate purpose of his words was in opposing a proposal before the Massachusetts state legislature restricting the rights of the foreign-born, in particular. Ironically, Schurz shared some of the native-born’s prejudices toward Irish Catholics, although, as becomes clear in his sermon, ultimately he felt that democracy rested on the principle of inclusion and tolerance, not exclusion and self-righteousness.

The dignity of the Roman citizen consisted in his exclusive privileges; the dignity of the American citizen consists in his holding the natural rights of his neighbor just as sacred as his own. . . . The Roman Republic perished by the sword; the American Republic will stand as long as the equality of human rights remains inviolate. Which of the two republics is the greater—the republic of the Roman or the republic of man?

Sir, I wish the words of the Declaration of Independence, “that all men are created free and equal, and are endowed with certain inalienable rights,” were inscribed upon every gatepost within the limits of this republic. . . .

True, there are difficulties connected with an organization of society founded upon the basis of equal rights. Nobody denies it. A large number of those who come to you from foreign lands are not as capable of taking part in the administration of government as the man who was fortunate enough to drink the milk of liberty in his cradle. And certain religious denominations do, perhaps, nourish principles which are hardly in accordance with the doctrines of true democracy. There is a conglomeration on this continent of heterogeneous elements; there is a warfare of clashing interest and unruly aspirations; and, with all this, our democratic system gives rights to the ignorant and power to the inexperienced. And the