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OPPORTUNITY AND EXCLUSION:
A Brief History of U.S. Immigration Policy

by Walter A. Ewing, Ph.D.[*]

The United States and the colonial society that preceded it were created by successive waves of immigration from all corners of the globe. But public and political attitudes towards immigrants have always been ambivalent and contradictory, and sometimes hostile. The early immigrants to colonial America—from England, France, Germany, and other countries in northwestern Europe—came in search of economic opportunity and political freedom, yet they often relied upon the labor of African slaves working land taken from Native Americans. The descendants of these first European immigrants sometimes viewed as "racially" and religiously suspect the European immigrants who came to the United States in the late 1800s from Italy, Poland, Russia, and elsewhere in southeastern Europe. The descendants of these immigrants, in turn, have often taken a dim view of the growing numbers of Latin American, Asian, and African immigrants who began to arrive in the second half of the 20th century.

Not surprisingly, this collective ambivalence about immigrants is reflected in U.S. immigration policies as well. On the one hand, immigration to the United States was not numerically restricted or centrally regulated until a hundred years after the founding of the nation. On the other hand, when restrictions on immigration were eventually introduced, they were explicitly biased against particular nationalities. Among the first groups of immigrants to be excluded, in 1875, were criminals, prostitutes, and Chinese contract laborers. The immigration of workers from China was banned entirely in 1882, and immigration from other Asian Pacific countries in 1917. The first numerical immigration quotas were created in 1921 and heavily favored immigrants from northwestern Europe. However, these numerical quotas were not even applied to immigrants from Latin America until 1965—which is also the year that discriminatory quotas based on race or national origin were eliminated. Numerical quotas on immigration from individual countries in Latin America were not imposed until 1976.

As the debate over unauthorized immigration continues to rage, it is important to keep in mind not only that everyone in the United States is ultimately descended from an "immigrant," even Native Americans whose ancestors arrived here thousands of years ago, but that the rules governing immigration change constantly—and often arbitrarily. More importantly, U.S. immigration laws have frequently ignored the larger historical forces that drive immigration, and have often fought against the economic interests of the United States itself. For instance, for more than a century, the U.S. economy has grown increasingly intertwined with the Mexican economy, and increasingly reliant upon workers from Mexico. Yet U.S. immigration laws of the

past quarter-century have tended to impose more legal limits on immigration from Mexico. As this contradiction between immigration law and economic reality illustrates, the contours of the U.S. immigration system are often shaped more by public fears and anxieties than by sound public policy.

Unrestricted Immigration: 1492-1874

Technically, the first immigrants to what is now the United States (and Canada) arrived from Asia sometime between 12,000 and 30,000 years ago by crossing the Bering Strait from present-day Siberia into what would eventually become Alaska, or by landing along Alaska's northern pacific coast. From there they made their way east and south, eventually settling throughout North, Central, and South America. Several other migratory waves from Asia followed over the ensuing millennia, contributing to the growth of a Native American population that numbered anywhere from two million to 10 million by the time Christopher Columbus landed in the Bahamas in 1492—the event which set in motion the European colonization of the western hemisphere.

The first permanent European settlement in the future United States was established by Spain in 1565 in what is now Florida, followed in 1598 by Spanish settlements in territory that eventually became parts of Texas and New Mexico. Colonists from England established their first permanent settlement in 1607 in Jamestown (Virginia), which also was the destination of the first African slaves brought to the United States in 1619. The Puritan-founded colony of Plymouth (Massachusetts) was created in 1620. The Dutch created New Amsterdam in present-day Manhattan in 1624, while the French founded a permanent settlement in Louisiana in 1699. The English colonies in particular were destinations for settlers from other European countries, especially Germany, leading Benjamin Franklin to fret publicly in 1751 that Pennsylvania was in danger of becoming a German-speaking colony. As the ranks of European colonists and African slaves grew by the millions, with the latter concentrated in the plantations of the south, the Native American population was decimated by newly introduced European diseases such as smallpox, influenza, and measles, as well as by warfare and enslavement.

Throughout the colonial era, there was no centralized regulation of immigration to North America. Even after the end of the American Revolution in 1783, the federal government of the new United States left immigration matters up to individual states. Not until passage of the Naturalization Act of 1790 did the U.S. government attempt to create uniformity among the states in the rules governing who could become a U.S. citizen. Under the Naturalization Act, "free white persons" of "good moral character" could become citizens after two years of residence in the country (Africans and persons of African descent did not acquire access to citizenship until 1870). However, this law had no bearing on who could actually come to the United States. The first federal laws directly related to immigration were the Alien and Sedition Acts of 1798, which included provisions authorizing the President to deport any foreigner deemed dangerous to the United States. The first federal law devoted explicitly and exclusively to immigration was the Steerage Act of 1819, which established continual reporting of immigration to the United States by requiring that the passenger manifests of all arriving ships be turned over to the local Collector of Customs, copies be sent to the Secretary of State, and this information be reported to Congress.

At the same time the U.S. population was being fed by the arrival of European immigrants and African slaves (the "importation" of slaves was not made illegal until 1807), the nation's territory was expanding as well. The United States acquired Florida from Spain in 1819. The annexation of Texas in 1845 precipitated a war with Mexico that ended in 1848 when Mexico ceded roughly two-fifths of its territory to the United States, including not only Texas, but also present-day California, Nevada, and Utah, and parts of Arizona, New Mexico, Colorado, and Wyoming (augmented further by the Gadsden Purchase of 1853). As a result, families and communities that had for generations been part of Mexico suddenly found themselves in the United States, or divided by a newly defined U.S.-Mexico border.

This westward expansion, together with the discovery of gold in California in 1848, generated enormous demands for new workers and settlers, be they immigrants or native-born. Meanwhile, high levels of immigration from Europe to the United States were spurred by crop failures in Germany during the 1840s, the Great Potato Famine in Ireland (1845-1849), and the economic, social, and political turmoil engendered throughout Europe by industrialization. The U.S. government, eager to populate the newly acquired American West, actively encouraged immigration. The Homestead Act of 1862, for instance, offered free plots of land in the West to settlers, both immigrants and native-born, who agreed to live on and develop the land for at least five years. After the end of the Civil War in 1865, immigrants from southeastern Europe—Italy, Greece, Russia, Poland, Austria-Hungary, and the Balkans—and immigrants from China began arriving in the United States in large numbers to take advantage of these new opportunities and to work in the railroad, steel, oil, and other industries. During the 1840s, 50s, and 60s, approximately 6.6 million immigrants arrived in the United States.

The First "Exclusion" Laws and Centralized Control of Immigration: 1875-1920

The first federal act to exclude particular classes of immigrants as "undesirable," including immigrants from a particular country, was passed in 1875 and targeted criminals, prostitutes, and Chinese contract laborers, or "coolies" (who worked under near slave-like conditions of indentured servitude). The Chinese Exclusion Act of 1882 went even further and suspended the immigration of all Chinese workers to the United States for 10 years, barred Chinese immigrants from becoming U.S. citizens, and provided for the deportation of Chinese immigrants unlawfully present in the country. The law was renewed for another 10 years in 1892, and again in 1902 with no ending date. A separate act in 1882 broadened the range of "inadmissible aliens" to include "lunatics" as well as those likely to become a "public charge" (that is, unable to support themselves economically).

The first federal attempt to centralize control of immigration came in 1864 with passage of an Act that called for a Commissioner of Immigration, serving under the Secretary of State, to be appointed by the President. However, the law was repealed four years later. The Immigration Act of 1891 met with greater success and was the first comprehensive national immigration law. The law created a Bureau of Immigration within the Treasury Department, allowed for the deportation of immigrants who enter the country unlawfully, and added polygamists and individuals suffering from certain contagious diseases to the ranks of inadmissible aliens. The Naturalization Act of 1906 combined immigration and naturalization functions within a Bureau

of Immigration and Naturalization in the Commerce Department, made knowledge of English a requirement for naturalization, and standardized procedures, forms, and fees for naturalization.

Over the decades that followed, U.S. immigration laws were marked by further centralization of federal control over immigration, a growing list of grounds for exclusion from the United States, and a hardening of overtly racist (and religious) bias against Asians and southeastern Europeans. Congress passed the Anarchist Exclusion Act in 1903, which barred anarchists or other political extremists from entering the United States. This was the first immigration law to exclude intending immigrants on the basis of political beliefs. The Immigration Act of 1907 mandated the exclusion of "imbeciles," "feeble-minded" persons, individuals afflicted by a physical or mental disability that might impede their ability to earn a living, those with tuberculosis, children not accompanied by their parents, and individuals who admit to having committed a crime of "moral turpitude." The same year, the "Gentleman's Agreement" with Japan effectively ended the immigration of Japanese laborers to the United States. The Immigration Act of 1917 defined a "barred zone" of nations in the Asia-Pacific triangle from which immigration was prohibited.

This proliferation of exclusionary immigration laws coincided with unprecedented levels of immigration to the United States. Between 1870 and 1930, more than 30 million immigrants arrived, including nearly 9 million who came during the first decade of the 20th century alone. According to the decennial census, the foreign-born share of the U.S. population reached historic highs of 14.8 percent in 1890 and 14.7 percent in 1910. By way of contrast, foreign-born persons comprised 12.5 percent of the population in 2009.

The National Origins Quota System and End of Anti-Asian Exclusion: 1921-1964

The Quota Law of 1921 was the first immigration law to impose numerical limits on immigration, capping overall immigration to about 350,000 per year and restricting immigration from any particular country to 3 percent of the number of people of that ancestry who were living in the United States in 1910. This favored immigrants from northwestern Europe. However, immigrants from countries in the western hemisphere (Canada, Latin America, and the Caribbean) were exempt from numerical limits. The National Origins Act of 1924 reduced the overall cap on immigration to about 165,000 per year and the country cap to two percent of the number of people of that ancestry living in the United States as of 1890. A more complex "national origins quota system" went into effect in 1929 and governed immigration to the United States until 1952. Again, immigrants from western hemisphere nations were exempt, as were the wives and unmarried minor children of (male) U.S. citizens. In addition, the law created the "consular control system" whereby intending immigrants must obtain visas from an American consular office in their home country. The law also established specific classes of admission for "non-immigrants" (temporary visitors). A separate act in 1924 created the U.S. Border Patrol.

Immigration laws during World War II and the first years of the Cold War were marked by contradictory tendencies: expanded political grounds for exclusion and surging anti-Japanese sentiments on the one hand, but the loosening of restrictions against other Asian immigrants and the rise of humanitarian refugee policies on the other hand. The Alien Registration Act of 1940 required the registration and fingerprinting of all foreigners over 14 years of age, and made past membership in proscribed political organizations grounds for exclusion and deportation.

However, it also authorized "suspension of deportation," and "voluntary departure" in lieu of deportation, in "meritorious cases." In 1942, the federal government responded to the Japanese bombing of Pearl Harbor by rounding up about 120,000 persons of Japanese descent living on the West Coast, about two-thirds of them U.S. citizens, and imprisoning them in "relocation" camps until 1945. Yet an act passed in 1943 allowed the immigration of Chinese workers to resume (at a quota of 105 per year) and made persons of Chinese descent eligible for naturalization, thereby effectively repealing the Chinese Exclusion Act of 1882. This was extended to Indians and Filipinos in 1946, effectively repealing the Barred Zone Act. The Displaced Persons Act of 1948 provided for the admission of up to 205,000 "displaced persons" (refugees), primarily from those parts of Europe annexed by the Soviet Union, such as the Baltics and Ukraine. Two years later, the Internal Security Act made past or present membership in the Communist party or any other totalitarian political party grounds for inadmissibility and deportation.

World War II precipitated severe farm labor shortages, as native-born men joined or were drafted into the armed forces, or streamed into cities to work in factories mobilized for the war effort. In response to pressure from growers, the U.S. government in 1942 instituted the large-scale importation of temporary agricultural workers from Mexico, which became known as the *bracero* program. This program eventually brought a total of five million Mexican field workers into the country, frequently under horrendous working conditions, by the time the program ended in 1964. Although immigration from Mexico was not subject to numerical restrictions at this time, the legal immigration process was cumbersome and costly (especially for poor, less-educated migrants), and unauthorized immigration from Mexico rose at the same time the *bracero* program was in operation. As a result, the federal government in 1954 launched "Operation Wetback," rounding up and deporting about one million Mexican immigrants, as well as some legal immigrants and U.S. citizens of Mexican descent.

The Immigration and Nationality Act of 1952, also known as the McCarran-Walter Act, consolidated the multiple immigration laws of previous years into one comprehensive statute. Although the law formally eliminated race as a basis of exclusion from the United States, it retained the racist bias of the national-origins quota system. The annual quota for each country outside the western hemisphere was set at one-sixth of one percent of the number of persons of that ancestry living in the United States as of 1920; meaning that most immigration slots were reserved for immigrants from the United Kingdom, Ireland, and Germany. However, most of these slots went unused. The law created a quota preference for skilled immigrants as well.

The End of National Origins Quotas and Creation of Refugee Resettlement: 1965-1985

The Immigration Act of 1965, passed one year after the Civil Rights Act, abolished the discriminatory national-origins quota system by eliminating race, ancestry, or national origin as a basis for denying immigration to the United States. Numerical restrictions on immigration were maintained, however, and set at 170,000 per year for the Eastern Hemisphere—with a 20,000-per-country limit—and, for the first time, 120,000 for the Western Hemisphere—without a per-country limit. The Act created the "preference system" which is still in place today, although immigrants from Western Hemisphere countries were exempt from the preference system, as were immediate relatives of U.S. citizens. The 20,000-per-country limit and the preference

system were not applied to Western Hemisphere countries until 1976. The separate numerical ceilings for the Eastern and Western Hemispheres were combined into a single world-wide cap of 290,000 in 1978.

Responding to the flood of refugees created by the Vietnam War, the Indochina Migration and Refugee Assistance Act of 1975 created a domestic resettlement program for Vietnamese and Cambodian refugees. Laotians were made eligible for the program in 1976. The Refugee Act of 1980 created a domestic resettlement program for all refugees, formally defined "refugee" in accordance with the 1967 United Nations Protocol on Refugees, and removed refugees from the immigration preference system. It also reduced the worldwide cap on immigration, not counting refugees, to 270,000.

The Rise of Immigration Control and Limiting of Immigrants' Rights: 1986-2000

The Immigration Reform and Control Act of 1986 (IRCA) attempted to address rising levels of unauthorized immigration with both carrot and stick. On the one hand, IRCA allowed most unauthorized immigrants currently living in the United States to apply for legal status. On the other hand, the law created sanctions against employers who "knowingly" hired unauthorized immigrants, and increased funding for border enforcement. However, other than creating the H-2A visa category for temporary, seasonal agricultural workers, IRCA did not raise limits on legal immigration to match the growing demand for immigrant labor in the United States.

In contrast, the Immigration Act of 1990 did raise the annual cap on immigration to 700,000 per year from Fiscal Year (FY) 1992 through 1994, and 675,000 per year thereafter, with 480,000 allocated for family-sponsored immigrants, 140,000 for employment-based immigrants, and 55,000 for "diversity immigrants." The law also revised the political and ideological grounds for exclusion and deportation and authorized the Attorney General to grant "temporary protected status" to unauthorized immigrants from countries afflicted by natural disasters or armed conflicts. In addition, the law created the H-1B visa category for highly skilled temporary workers (capped at 65,000 per year) and the H-2B visa category for seasonal non-agricultural workers (capped at 66,000 per year).

Three laws passed in 1996 had a devastating impact on immigrants in general. The Illegal Immigration Reform and Immigrant Responsibility Act created new grounds for inadmissibility to, and removal from, the United States, by expanding the definition of what constitutes an "aggravated felony" for immigration purposes. The law applied this new definition retroactively to include even non-violent offenses committed long before passage of the law; required the mandatory detention of non-U.S. citizens who were newly defined as "aggravated felons"; created an "expedited removal" process to speed the deportation of immigrants without a formal hearing; established three- and ten-year bars to re-entry for immigrants unlawfully present in the United States; and ramped up border enforcement. The Personal Responsibility and Work Opportunity Reconciliation Act made most LPRs ineligible for means-tested public-benefit programs for five years after receiving their green cards, and ineligible for Medicare and Social Security for ten years after getting their green cards. Under the law, unauthorized immigrants are barred from any kind of public-benefit programs. The Antiterrorism and Effective Death Penalty Act expedited procedures for the removal of suspected foreign terrorists from the United States,

allowed the detention and deportation of non-U.S. citizens on the basis of "secret evidence" that neither they nor their attorneys are allowed to see, and instituted more stringent procedures for the granting of asylum.

The Linking of Immigration Control to National Security: 2001-Present

After the terrorist attacks of 9/11, the federal government instituted a number of law-enforcement measures that targeted people of particular nationalities in the name of national security. Most infamously, a "special registration" system called NSEERS and a "voluntary interview" program were instituted in 2002 that singled out foreign-born Muslims, Arabs, and South Asians. In addition to these sorts of administrative actions, several new laws have been passed as well that combine (some might say conflate) anti-terrorism concerns with renewed attempts to control unauthorized immigration. The Enhanced Border Security and Visa Entry Reform Act of 2002 implemented new procedures for the review of visa applicants and required that travel and entry documents be machine-readable, tamper-resistant, and include biometric identifiers. The REAL ID Act of 2005 required states to demand proof of citizenship or legal immigration status before issuing a driver's license, and to make driver's licenses resistant to fraud or tampering. The Secure Fence Act of 2006 called for the building of an additional 850 miles of fencing along the U.S.-Mexico border.

As we enter the second decade of the 21st century, the United States remains as collectively conflicted as ever when it comes to the issue of immigration. The U.S. government has spent tens of billions of dollars since the mid-1980s trying to stamp out unauthorized immigration through law-enforcement measures. Yet there were 11.2 million unauthorized men, women, and children as of 2010, accounting for 28 percent of the 40.2 million foreign-born individuals living in the country. Legislative attempts to comprehensively reform the U.S. immigration system by bringing it in line with the economic and social realities that spur immigration failed in 2006 and 2007. As a result, many state and local governments are implementing or considering proposals to turn police officers into de facto immigration agents, and to "crack down" on unauthorized immigrants and those who provide them with jobs or housing. In short, the United States is as conflicted as ever about its historical identity as a nation of immigrants.

Sources: Krista M. Perreira, Ph.D. (University of North Carolina – Chapel Hill), "Immigration Timeline"; Harvard University Library, Open Collections Program, "Immigration to the United States 1789-1930: Timeline"; *Encyclopedia of American Foreign Policy* (2002), "Immigration"; U.S. Citizenship and Immigration Services, "Public Laws Amending the INA;" Jeffrey S. Passel and D'Vera Cohn, *Unauthorized Immigrant Population: National and State Trends, 2010* (Washington, DC: Pew Hispanic Center, February 1, 2011).

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[*] Walter Ewing is Senior Researcher at the Immigration Policy Center of the American Immigration Council in Washington, DC.