

I

Introduction

Introduction

Over the centuries, prominent American thinkers have joined America's self-image as a nation of immigrants to its self-image as a universal nation founded upon abstract values. In *Common Sense* (1776), just as Americans were beginning their struggle to break with Great Britain, Thomas Paine triumphantly declared America “an asylum for mankind,” a refuge for the entire human species.¹ In his novel *Redburn* (1849), published during the years of mass migration from Northwestern Europe, Herman Melville made the link in even more grandiose terms, declaring that, as a result of immigration, “American blood” was “the blood of the whole world,” even as Americans were “the heirs of all time.”² In the late nineteenth and early twentieth centuries, as the country experienced even greater migration from all over Europe, as well as from Asia and the Americas, thinkers again emphasized the link between immigration and universalism. Emma Lazarus's widely celebrated poem, “The New Colossus” (1883), written to celebrate the Statue of Liberty, announced a “world-wide welcome” for “huddled masses yearning to breathe free.”³ Israel Zangwill's play

¹ Thomas Paine, “Common Sense” (1776), in Philip S. Foner, ed., *The Life and Major Writings of Thomas Paine* (New York: Citadel Press, 1945), p. 31.

² Herman Melville, *Redburn, His First Voyage* (Evanston, IL: Northwestern University Press, 1969) (1849), p. 169.

³ Emma Lazarus, “The New Colossus” (1883), in *Emma Lazarus: Selections from Her Poetry and Prose* (New York: Book League, 1947), pp. 40–41.

The Melting Pot (1908) hailed America's ability to absorb immigrants effortlessly from many different nations, even as the play's title secured a permanent place in the everyday American lexicon.⁴ In the post-World War II period, with a keen eye on Cold War politics, presidential hopeful John F. Kennedy wrote *A Nation of Immigrants* (1958), a book that struck the same note, joining immigration and universal values as the logic of American history.⁵

This powerful strand of American thinking that has linked immigration, openness, and universalism as the very ontology of the country finds confirmation in brute numbers. From the early nineteenth century to the early twentieth, the United States received three-fifths of all the world's immigrants. The country remained the world's largest immigrant-receiving country throughout the twentieth century. In the early decades of the twenty-first, the United States continues to admit over a million immigrants annually to permanent residence, more than the number admitted by any other country. In fiscal year 2011, for example, the United States admitted 1,062,040 non-citizens to legal permanent resident (LPR) status and granted asylum to 24,988.

The United States' openness to immigrants has not been restricted to opening its territory to them. Throughout its history as an independent nation, the country has adopted citizenship laws that have been liberal relative to those of most other countries. Since the early nineteenth century, immigrants have been able to apply to become citizens after only five years of residence. This has greatly facilitated their quick incorporation into the polity. In the nineteenth century, land policies and voting laws granted immigrants valuable economic and political privileges even before they became citizens. If in the early twenty-first century the United States no longer grants immigrants suffrage rights or lands, it continues to facilitate their access to citizenship. In fiscal year 2011, the country granted citizenship to 694,193 immigrants.

All of this testifies to the United States' unquestionably impressive record of receiving and absorbing immigrants. However, Americans' rather determined chorus of insistence upon the country's openness

⁴ Israel Zangwill, *The Melting Pot* (1908), in Edna Nahshon, ed., *From the Ghetto to the Melting Pot: Israel Zangwill's Three Jewish Plays* (Detroit: Wayne State University Press, 2006).

⁵ John F. Kennedy, *A Nation of Immigrants* (New York: Harper & Row, 1964) (1958).

Cambridge University Press

978-1-107-03021-3 - Making Foreigners: Immigration and Citizenship Law
in America, 1600–2000

Kunal M. Parker

Excerpt

[More information](#)*Introduction*

3

to immigrants should itself suggest that realities have fallen short of rhetoric.

The United States has never welcomed all possible immigrants. Over the course of four centuries, Americans have written immigration laws to exclude individuals from their territory on grounds of religion, race, national origin, health, sexuality, poverty, political ideology, and criminal or terrorist background, to name only a few of the major legal grounds of exclusion. Over the same period, the image of the desirable immigrant has changed considerably: sturdy republican farmer, unskilled worker, agricultural laborer, refugee from Communism, highly skilled worker, high net worth investor. Each one of these images has had exclusionary effects. Americans have also made it difficult or impossible for resident immigrants to accede to citizenship. From the country's inception until the early 1950s – in short, for approximately three-fourths of its history as an independent nation – race was a barrier to naturalization. Resident immigrants who were not “white” were unable to become full participants in the affairs of the community regardless of how long they had lived in the country. In the twentieth century, political affiliation also prevented immigrants from naturalizing.

If the United States has never welcomed and absorbed all potential immigrants, it has also turned on those it has chosen to admit. Over the centuries, pursuant to a body of law that legal scholars call “alienage law,” resident immigrants have been barred from exercising political rights, holding property, entering various professions and trades, and availing of public benefits. If many immigrants were able to overcome such legal disabilities by naturalizing, those barred from naturalizing on grounds of race would face them their entire lives. Legal disabilities have been visited with especial severity on undocumented immigrants, whose numbers escalated in the twentieth century as a result of the closure of borders, the institution of numerical limits on immigration, and the complicity of public and private actors. Millions of undocumented immigrants have lived – and continue to live – in the shadows of society, fearful of turning to public authorities for assistance and unable to resist exploitation and abuse at work, in the home, and in the community.

Equally serious, long-term resident immigrants have been punished through an often callous use of deportation. Notwithstanding long

Cambridge University Press

978-1-107-03021-3 - Making Foreigners: Immigration and Citizenship Law
in America, 1600–2000

Kunal M. Parker

Excerpt

[More information](#)

periods of residence in the United States, immigrants who have sought public benefits, espoused frowned-upon political views, or engaged in criminal acts have been shipped out of the country, often to homelands they barely know, with few of the legal protections accorded criminals. During the first half of the twentieth century, the government also employed denaturalization as a weapon, punishing naturalized immigrants who expressed unpopular views by setting aside their citizenship, converting them into aliens, and then deporting them. Since the immigration reforms of 1996, the country has shipped millions of resident immigrants to their home countries even when such immigrants, many of whom arrived in the United States as children, are in every sense the product of American society and have few if any connections to their countries of origin. In fiscal year 2011, the United States apprehended 641,633 non-citizens within the country and officially deported 391,953. That year, an additional 323,542 non-citizens accepted “voluntary departure,” choosing to leave the country without having formal removal proceedings instituted against them.

The gap between rhetoric and reality when it comes to how Americans have received, treated, and expelled immigrants is, therefore, very real. However, it is only part of the story.

Over the course of American history, the impulse to regulate, reject, exclude, and remove undesirables on grounds of race, gender, poverty, and political opinion has ranged very widely indeed. Whether at the national, state, or local level, it has driven communities to target insiders as well as outsiders. In the process, Americans have named and treated as foreigners not only those from outside the country’s borders, but also those in their very midst. The history of immigration and citizenship law thus encompasses two intimately conjoined histories: that of the country’s absorption and rejection of those from *beyond* its limits and that of its simultaneous efforts to render foreign those *within* its limits.

Readers will readily understand the concept of the country’s absorption and rejection of outsiders. They might find rather more unfamiliar the concept of rendering insiders foreign. It is important, therefore, to set it forth.

In my mind, insiders have been rendered foreign through a host of politico-legal strategies that the national, state, and local governments have deployed over the long span of American history vis-à-vis

Cambridge University Press

978-1-107-03021-3 - Making Foreigners: Immigration and Citizenship Law
in America, 1600–2000

Kunal M. Parker

Excerpt

[More information](#)*Introduction*

5

portions of the domestic population. These include formally designating portions of the domestic population alien; formally converting citizens into aliens for having committed specified acts; subjecting portions of the domestic population to extensive regimes of borders and restrictions on movement and residence; seeking to expel portions of the domestic population from the community; subjecting portions of the domestic population to legal disabilities comparable to those visited upon aliens; indiscriminately mingling citizens with aliens for bureaucratic purposes or in times of war; and refusing to recognize that long-term resident immigrants might, after a certain point, have become insiders despite the fortuity of their not having naturalized. Each of these different strategies of rendering insiders foreign has been deployed along axes of race, gender, class, and political opinion (to name only the most significant) to suppress, exploit, reject, exclude, expel, and refuse responsibility for portions of the domestic population. Different domestic groups have had vastly different experiences of being rendered foreign.⁶

Although Great Britain, and later the United States, claimed sovereignty over Native American lands, Native Americans were formally designated aliens from the very first English settlement of North America until the end of the nineteenth century. Formal designation as alien served various purposes. As the occasion demanded, it allowed whites to question Native Americans' ability to confer good title to property and to deny them the vote; placed Native Americans beyond the advancing frontier of white settlement; and facilitated their expulsion from their ancestral lands during the Jacksonian era. If Native Americans might from time to time have welcomed formal designation as aliens in support of their claims to sovereignty, lasting respect for a robust Native American sovereignty was not forthcoming. Formal designation as alien was more a gesture of exclusion than a recognition of parity. This is proved by the fact that, in the twentieth century,

⁶ It is important to alert the reader to the fact that the terms "citizen" and "alien" – especially the former – have multiple usages. On the one hand, the terms designate *formal* legal membership or non-membership in a polity. On the other hand, in both scholarly and popular discourses, "citizenship" designates *substantive* membership within a polity, referring to the possession of civil, political, social, and other rights, as well as to subjective experiences of membership. Both usages are important for my purposes in this book. The context will make clear which usage is at work.

alienage followed Native Americans even *after* statutory extensions of formal citizenship to them in the late nineteenth century. Despite being formal citizens, Native Americans found themselves subjected to congressional “plenary power,” a power grounded in sovereignty, unfettered by the U.S. Constitution, and surprisingly similar to the constitutional regime then extended to immigrants.

Blacks had a distinct experience being rendered foreign. In the aftermath of the American Revolution, although slaves were not considered citizens, in some states free black males came to possess important markers of citizenship such as the vote. As the slavery crisis heated up, however, free black males lost the vote all over the country except for the New England states. At the same time, free blacks became subject to an extensive regime of territorial borders. With the blessing of the U.S. Supreme Court, states in the North and the South sought to exclude and expel free blacks from their territories. After the U.S. Supreme Court declared in *Scott v. Sandford* that blacks could not be citizens of the United States, certain Southern courts formally labeled free blacks from other states aliens and subjected them to traditional common law alien legal disabilities such as the inability to inherit property.⁷ The American Colonization Society sought to repatriate free blacks to Africa, where they allegedly “belonged” once they ceased to be slaves. After the ratification of the Fourteenth Amendment, which granted formal federal and state citizenship to individuals born in the United States, it became impossible to designate native-born blacks aliens or to push seriously for their repatriation to Africa. Other ways were found of regulating blacks’ participation, movement, and presence. A host of measures stripped blacks of the vote. Discrimination in virtually every realm of life became rampant. Formal laws barring blacks from entering states’ territories gave way to micro-borders of segregation that would endure into the post-World War II period. Segregation would touch not just blacks, of course, but every racial minority in the country. Although the Civil Rights movement brought an end to formal segregation, *de facto* segregation continues into the twenty-first century.

American women had yet another experience of being rendered foreign. The virtually complete occlusion of women’s legal personalities

⁷ *Scott v. Sandford*, 60 U.S. 393 (1857).

Cambridge University Press

978-1-107-03021-3 - Making Foreigners: Immigration and Citizenship Law
in America, 1600–2000

Kunal M. Parker

Excerpt

[More information](#)*Introduction*

7

under the common law doctrine of coverture meant that their formal and substantive citizenship could be deemed derivative of those of their husbands. In the mid-nineteenth century, American men won the right to confer their nationality on their alien wives. American women, however, did not win such a right. In the view of prominent politicians, they had no nationality to confer. In 1907, Congress confirmed its dim view of women's citizenship by passing a law that stripped American women of their formal citizenship if they married alien men. Thousands of native-born American women married to aliens found themselves literally converted into aliens overnight. As aliens, they were unable to obtain certain kinds of employment, forfeited property in wartime, and even found themselves subject to exclusion and removal from the country. The occlusion of women's legal personalities would erode bit by bit, even as women's formal and substantive citizenship slowly came into being, over the course of the twentieth century.

America's poor were made foreign by being subjected to a centuries-old, complex, and extensive regime of territorial borders, one whose significance for questions of immigration has not sufficiently been recognized, but which is central to my account. Until the Civil War, immigration restriction was enacted at the state level. Antebellum state legislation built upon colonial poor laws that did not adequately distinguish between the native-born poor and the foreign-born poor. Both were equally undesirable from the perspective of states, counties, and towns that bore responsibility for policing borders: both were excluded and removed from communities. When the federal government took over the regulation of foreign immigration after the Civil War, state and local poor laws remained in effect to manage the movement and residence of poor Americans within the country. Only the recognition of a constitutional "right to travel" during the post-World War II rights revolution would definitively end this regime of territorial borders for the poor. Barriers to voting by the poor would last into the 1970s.

Asian Americans and Latino Americans would have the experience of repeatedly being assimilated with, and treated like, immigrants from Asia and Latin America. Beginning in the late nineteenth century and extending into the twenty-first, immigration raids and border patrol activities indiscriminately mingled citizens with aliens, disregarding

Cambridge University Press

978-1-107-03021-3 - Making Foreigners: Immigration and Citizenship Law
in America, 1600–2000

Kunal M. Parker

Excerpt

[More information](#)

the rights of the former by treating them like the latter. Mexican Americans would experience repatriation – literal expulsion from the country – in the state’s mass removals of Mexican immigrants in the 1930s. Japanese Americans found themselves interned during World War II along with resident Japanese nationals. Those who espoused unpopular political views – from Loyalists at the time of the American Revolution to naturalized citizens with communist or anarchist leanings in the twentieth century – were vulnerable to legal proscription, involuntary expatriation or denaturalization, and expulsion from the country. For a significant stretch of the twentieth century, American citizens also found themselves converted into aliens against their will if they committed certain proscribed acts. Today, thousands of American citizens find themselves caught in the dragnet of the immigration enforcement regime. Some have even been deported against their will to other countries.

In considering these various forms of rendering insiders foreign, it is appropriate to anticipate and respond to an objection. It might legitimately be observed that there has always been a meaningful difference between being a second-class citizen, on the one hand, and a non-citizen or foreigner, on the other. For much of American history, white women were second-class citizens to the extent that they were denied political rights, barred access to various trades and professions, and subjected to legal coverture when they got married. They were not, it might be contended, considered non-citizens or foreigners. Indeed, white women were imagined – and often saw themselves – as being at the very heart of the nation as mothers, wives, and daughters. While I do not dismiss this objection, and indeed welcome it because it acts as an imprecise limit to the scope of my argument, I would invite the reader to attend to the following. Second-class citizenship can shade off, and all too frequently *has* shaded off, into formal non-citizenship, into genuine foreignness. One can observe this at various points in American history.

Thus, the legal subordination of free blacks in antebellum America, and the widespread acceptance of the practices of excluding them from states and repatriating them to Africa, easily slipped into formal assertions in certain slave states that free blacks were aliens vis-à-vis such states and subject to alien legal disabilities. The long tradition of regarding women’s citizenship as subordinate to and derivative of

Cambridge University Press

978-1-107-03021-3 - Making Foreigners: Immigration and Citizenship Law
in America, 1600–2000

Kunal M. Parker

Excerpt

[More information](#)*Introduction*

9

their husbands' led seamlessly to the view, expressed in the United States' 1907 expatriation law, that American women who married non-citizens ceased to be U.S. citizens. The second-class citizenship of free blacks and women thus literally became non-citizenship.

More frequently, strategies of rendering insiders foreign had the effect of impressing upon those affected that they were foreigners vis-à-vis their own country even if they did not lose formal citizenship thereby. Feminists in the nineteenth century expressed the view that, as second-class citizens, American women were akin to aliens. In the post-Civil War years, blacks were formal citizens of the United States. However, their second-class citizenship convinced some that leaving the country and returning to Africa was their only option. Japanese American internees during World War II understood perfectly well that their formal citizenship had not prevented them from being treated like aliens. Many repudiated their U.S. citizenship and repatriated themselves to Japan. In other instances, subordinated groups might not express their sense of foreignness vis-à-vis the nation. But a cursory glance at the substantive legal deprivations they suffered points to far greater substantive similarities to aliens than it does to citizens.

Recognizing the ubiquity of processes of rendering insiders foreign across the long span of American history is a stepping-stone to understanding the history of U.S. immigration and citizenship law recounted in this book. Studying the country's absorption and rejection of foreigners from the outside alongside its practices of rendering insiders foreign reveals how terms and concepts such as "citizen" and "alien," "insider" and "outsider," "native" and "foreign" – and hence the very objects that immigration and citizenship law regulate – have been fluid and changeable and ranged inside and outside the United States' territorial borders.

During the colonial period, in both Great Britain and the North American colonies, the distinction between British subject and alien consisted of a range of alien legal disabilities: the inability to hold real property, to vote, and to enjoy offices to which real property qualifications were attached. But the overwhelming majority of British subjects – women and propertyless males – were slotted into legal statuses that subjected them to comparable disabilities when it came to holding property and voting. If aliens might be barred from entering and remaining within the kingdom, British subjects lacked

Cambridge University Press

978-1-107-03021-3 - Making Foreigners: Immigration and Citizenship Law
in America, 1600–2000

Kunal M. Parker

Excerpt

[More information](#)

rights to leave, remain within, or travel throughout the kingdom. In other words, borders were ubiquitous for British subjects and aliens alike. “Immigration restriction,” such as it was, was a thoroughly local affair directed principally at regulating the movement and residence of the poor from neighboring towns, counties, provinces, and “beyond sea,” regardless of whether they were British subjects or aliens. At the same time, however, there were a range of developments in the North American colonies: efforts to facilitate the migration and incorporation of desirable white settlers, formal designations of Native Americans as aliens, and efforts to render free blacks excludable and removable at the moment of passing from slavery to freedom.

How did we get from that world – a world of multiple legal statuses in which the distinction between British subject and alien was relatively weak and in which aliens existed at home and abroad – to the world of the early twenty-first century? Today, every individual born within the United States is a formal citizen thereof under the U.S. Constitution. Many of the formal legal disabilities that once subordinated women, the poor, and racial minorities – ranging from a lack of voting rights to a lack of rights to move and reside throughout national territory – have eroded. It has become extremely difficult for the state to strip citizens of their citizenship. At the same time, the gulf between citizen and alien yawns wide. Aliens are subjected to a range of formal legal disabilities (bars to voting, the inability to hold certain jobs) that citizens largely no longer suffer. Aliens are also subject to the ubiquitous experience of borders: they might be formally excluded and removed in ways that citizens no longer experience.

How we got from there to here is the narrative traced in this book. Briefly put, the narrative traces a gradual, albeit by no means unequivocal, separation over time of insiders from outsiders. Efforts to render insiders foreign have varied depending upon the group involved, the resistance such efforts have encountered, and the resolution of the struggles that have ensued. But it is fair to say that many – but, it must be emphasized, not all – forms of rendering insiders foreign have ebbed over the course of four centuries of American history. Over the same period, an increasingly powerful immigration regime has emerged and centered its activities more and more on the immigrant: the alien from another country seeking to enter and remain within the polity.