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

Kunal M. Parker

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Making Foreigners

This book reconceptualizes the history of U.S. immigration and citizenship law from the colonial period to the beginning of the twenty-first century by joining the histories of immigrants to those of Native Americans, blacks, women, Asian Americans, Latino Americans, and the poor. Kunal Parker argues that during the earliest stages of American history, being legally constructed as a foreigner, along with being subjected to restrictions on presence and movement, was not confined to those who sought to enter the country from the outside, but was also used against those on the inside. Insiders thus shared important legal disabilities with outsiders. It is only over the course of four centuries, with the spread of formal and substantive citizenship among the domestic population, a hardening distinction between citizen and alien, and the rise of a powerful centralized state, that the uniquely disabled legal subject we recognize today as the immigrant has emerged. This book advances new ways of understanding the relationship between foreignness and subordination over the long span of American history.

Kunal M. Parker is a Professor of Law and Dean's Distinguished Scholar at the University of Miami School of Law. His first book, *Common Law, History, and Democracy in America, 1790–1900: Legal Thought before Modernism*, was published by Cambridge University Press in 2011.

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Professor of Law

University of Miami School of Law



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Preface and Acknowledgments

The special powerlessness of the immigrant has its source, we are wont to think, in the fact that the foreigner comes from elsewhere. The foreigner's origins outside the community supposedly make it possible and permissible for the community to deny his or her claims upon it. An entrenched constitutional tradition in the United States undergirds this view. Political theorists have offered elaborate arguments defending it.

My own particular experience of the powerlessness of the immigrant seeking admission led me to wonder exactly what it is about an individual's coming from elsewhere that makes it possible to deny his or her claims on the community. I turned to the archives, if not for definitive answers, then at least for ways to transcend my own experience by learning about the experiences of others. What I discovered was that the experience of foreignness – and of the powerlessness associated with it – has never been unique to those coming from outside the United States. Over the centuries, Americans have named and treated like foreigners not only immigrants from outside the country, but also Native Americans, blacks, Latino Americans, Asian Americans, women, the poor, and political minorities. Designation as foreign is not a function of coming from the territorial outside. It is a political strategy that has been used inside *and* outside the country and to multiple ends.

The *Making Foreigners* of the title of this book focuses attention on the multiple processes of rendering foreign that have been at work

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vis-à-vis outsiders *and* insiders over the long span of American history. On the one hand, it is an exhortation to immigrants to recognize the parallels between their experiences and the experiences of those “on the inside.” On the other hand, it is an exhortation to those “on the inside” to recognize the foreigners they have once been (and might still be) so as to rethink their relationship to those “on the outside.” In this vein, as I see it, the cover image – a stark photograph of a room at San Francisco’s Angel Island immigration station – deconstructs notions of “inside” and “outside” insofar as the room likely served not only for the exclusion of outsiders, but also for the ejection of insiders. As I will argue in this book, if the former was the experience of Asian immigrants, the latter could be the experience of Asian Americans.

Making Foreigners is intended to be a *concise* work covering four centuries of U.S. immigration and citizenship law. Accordingly, even as it builds upon the work of multiple scholars, it is deliberately very lightly footnoted. The reader is urged to consult the bibliographic essay at the end of the book for a guide to the sources and literatures I have relied upon.

If the history recounted in *Making Foreigners* can be dark, my opportunity to thank those who have helped me in the writing of this book fills me with elation. First and foremost, I wish to thank an extraordinary (and extraordinarily generous) group of friends and scholars who took the time to read an earlier version of the manuscript in its entirety and to offer me extensive, engaged, and pointed comments. David Abraham, Linda Bosniak, Charlton Copeland, David Fitzgerald, Jon Goldberg-Hiller, Tracy Devine Guzmán, David Johnson, Anil Kalhan, Linda Kerber, Erika Lee, Renisa Mawani, Mae Ngai, Aziz Rana, Rebecca Sharpless, Stephen Siegel, and Barbara Welke all gave me written or oral comments that have made this a far stronger book than it was before they looked at it. Renisa Mawani, Charlton Copeland, Tracy Devine Guzmán, and Barbara Welke went even further: they had endless conversations about the manuscript with me, read earlier and later versions, helped with title and cover image choices, and talked me through the glitches. Tracy in particular devoted valuable time she could not possibly have had to helping me with a Spanish translation of a talk based on the book and ended up doing an entire translation of the talk herself. To Renisa, Charlton, Tracy, and Barbara: my most profound thanks. I recognize what you

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I have presented versions of this book at multiple venues: the University of Minnesota Law School, Duke Law School, the National Humanities Center, Wake Forest University, Cleveland-Marshall College of Law, Oberlin College, the American Legal History Annual Meeting, the University of Iowa College of Law, the Law and Society Annual Meeting, the Universidad de los Andes, the Chicago Legal History Roundtable, and Cornell Law School. I would like to thank audiences at each of these venues for their questions and comments.

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