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Making Modern American Citizenship: Citizens, Aliens, and Rights, 1865-1965

By

Brendan A. Shanahan

A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

History

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor Robin Einhorn, Chair

Professor Mark Brilliant

Professor Irene Bloemraad

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Abstract

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American citizenship and the rights of U.S. citizenship became modern from the time of the Civil War until the Civil Rights era. Voting became the quintessential right of American citizenship as marginalized citizens won suffrage rights and noncitizen men lost the franchise in nearly two dozen states and territories. Conversely, nativist-inspired policies that counted only citizens as part of the population for redistricting purposes were gradually rescinded in states where they had long operated. At the same time, many forms of publicly funded blue-collar work and access to professional licenses were increasingly restricted to U.S. citizens. And the liminal legal status of hundreds of thousands of marital expatriates (U.S.-born women who had lost citizenship upon marrying noncitizen men) forced judges and immigration officers to interpret and administer the boundaries and meaning of increasingly exclusive citizenship rights.

This dissertation explores how U.S. citizenship and restrictive “rights of citizenship” were claimed, debated, learned, and experienced by citizens and noncitizens alike from 1865 to 1965. Part I, “Consolidating the Political Rights of Citizenship,” examines state constitutional and legislative debates over alien suffrage and the inclusion of noncitizens in apportionment policies. It demonstrates the growing power of “citizen only” arguments and documents how these debates transformed the rules governing membership and participation in the polity. Part II, “Claiming, Administering, and Experiencing Employment as a Right of Citizenship,” examines state legislative and licensing records to identify patterns in laws restricting noncitizens’ access to work. These policies, which disproportionately harmed and targeted women and nonwhite immigrants, led to heightened identification requirements and made exclusive economic “rights of citizenship” more powerful, recognizable, and tangible in American life.

Part III, “The Ascendance of the Rights of Citizenship,” analyzes how marital expatriates experienced and contested their alienage from the 1920s to the 1950s. It also explores how they were declared to be “citizens without the rights of citizenship” by federal immigration authorities in 1940. The courts increasingly struck this interpretation down, reasoning that citizenship status could not be separated from citizenship rights. While these rulings did not ensure that citizens possessed equal *de facto* or even *de jure* rights, they did represent a crucial transformation integral to the modern era of American citizenship: a belief that “rights of citizenship” exist, matter, and are – or at the very least ought to be – definable.

For Sarah

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Introduction

In the summer of 1940, Rhéa Lapalme (née Galipeau) became a problem for U.S. Attorney General Robert Jackson and Immigration and Naturalization Service (INS) Commissioner James Houghteling. A native of Holyoke, Massachusetts, Lapalme was born an American citizen on September 28, 1892. Eighteen years later, however, she lost her birthright citizenship the moment she said her vows of marriage. Due to the provisions of the Expatriation Act of 1907, Lapalme automatically lost her U.S. citizenship when she married her noncitizen husband, Adélar, an immigrant from Canada.¹

Lapalme was not an anomaly. She was one of hundreds of thousands of women who lost U.S. citizenship through marriage between 1907 and 1922 (or 1931, for women marrying East and South Asian men ineligible to citizenship).² Beginning in 1922, Lapalme could naturalize as if she were an immigrant and regain her citizenship. Tens of thousands of marital expatriates would do just that. But then again, Lapalme would have needed to know that she had lost her citizenship in the first place. And she would have been required to pass a citizenship test, pay all associated fees, and demonstrate that she was of good “moral character.” These hurdles could be a major challenge for women who were not native-English speakers, had little money to spare, or who had a criminal record of any sort.³ But for federal authorities, this was not *the* problem.

Instead, Lapalme – and the tens of thousands of other marital expatriates who had yet to regain U.S. citizenship – became a problem for immigration authorities when the Alien Registration Act came into effect at the end of June 1940. The new law stipulated that nearly all noncitizens residing in the United States had to register at their local post offices by Christmas as part of a national security identification program.⁴ If Lapalme did not register, she would be in violation of federal law. But authorities had not informed her that she had lost her citizenship when she had married decades earlier. And if Lapalme had never tried to vote, she may not have learned that she had ever lost her citizenship from local authorities tasked with enforcing suffrage laws. Were native-born, often white, middle-age women like Lapalme to be punished if they failed to register with federal authorities? The Immigration and Naturalization Service – under the supervision of the Justice Department – had to decide.

¹ Repatriation Petition 172-A Lapalme, Women’s Applications for Re-patriation, 1944-71 (sic); US District Court of Rhode Island; RG 21; NARA-Northeast (Waltham).

² See, especially: Leti Volpp, “Divesting Citizenship: On Asian American History and the Loss of Citizenship through Marriage,” *UCLA Law Review* 53, no. 2 (December 2005): 405–83.

³ This subject will be the focus of Chapter 5. Major works on marital expatriation include: Candice Lewis Bredbenner, *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (Berkeley: University of California Press, 1998); Linda K. Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* (New York: Hill and Wang, 1999); Ann Marie Nicolosi, “Sexuality, Citizenship and Law: The Strange Case of Louise Comacho,” *Journal of Contemporary Criminal Justice* 18, no. 3 (Fall 2001): 329–38; Ann Marie Nicolosi, “‘We Do Not Want Our Girls to Marry Foreigners’: Gender, Race, and American Citizenship,” *NWSA Journal* 13, no. 3 (October 2001): 1–21; Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2002); Martha Gardner, *The Qualities of a Citizen: Women, Immigration, and Citizenship, 1870-1965* (Princeton, NJ: Princeton University Press, 2005).

⁴ See, especially: Dorothee Schneider, *Crossing Borders: Migration and Citizenship in the Twentieth-Century United States* (Cambridge, MA: Harvard University Press, 2011), 232–33; Nancy Morawetz and Natasha Fernandez-Silber, “Immigration Law and the Myth of Comprehensive Registration,” *University of California, Davis Law Review* 48, no. 1 (November 2014): 141–206; Jonathan Weinberg, “Demanding Identity Papers,” *Washburn Law Journal* 55, no. 1 (Fall 2015): 197–222; Magdalena Krajewska, *Documenting Americans: A Political History of National ID Card Proposals in the United States* (New York: Cambridge University Press, 2017).

Federal officials arrived at a clever legal interpretation to avoid penalizing women like Lapalme. Since a separate law confusingly stated that resident marital expatriates were to be “deemed” American citizens but would not possess the “rights of citizenship” until they took an oath of allegiance to the United States in federal court, the INS decided that this meant that *all* marital expatriates who had permanently resided in the United States had recently regained their citizenship. However, they would remain “citizens without citizenship rights” until they took the required oath. This cumbersome language provided the INS with a legal loophole to solve one pressing problem. But it would soon create an even bigger one for immigration authorities.⁵

In many federal courts, judges rejected the INS’s argument that citizenship status could be separated from citizenship rights. Blasting the notion of citizens without citizenship rights, one judge declared that, “We have, and have always had, in our country but one class of citizens...full fledged citizens.”⁶ Thus, in much of the country marital expatriates who had not yet taken the oath were considered aliens by judges responsible for adjudicating federal citizenship law. In other jurisdictions, they were viewed as citizens by judges. As the decade wore on, the INS claim grew ever more tenuous. But that was not all.

In these proceedings, INS officials sought to define and identify citizenship rights. That was no easy task. If citizenship rights were those privileges available to *all* citizens but to which *no* noncitizens were entitled, then they would be few and far between. Even suffrage – often recognized as the foremost right of American citizenship – was still denied to millions of nonwhite Americans in practice during the 1940s.⁷ Suffrage was not the only “right of citizenship” under the microscope. Though many claimed access to social services as a citizenship right in the early twentieth century, (usually white) noncitizens often benefitted from those programs even as they were denied to (mostly nonwhite) Americans.⁸ Could access to these provisions really count as a citizenship right if many citizens were excluded from them even as some aliens were included?

Though few “citizenship rights” were universally available to all Americans, INS officials and federal judges knew well that political and economic rights long available to noncitizens were increasingly becoming refashioned as “citizen only” rights. Between 1877 and 1926, states and territories across the Midwest, South, and West repealed longstanding alien suffrage policies. Thereafter, voting would be the exclusive domain of U.S. citizens.⁹ Additionally, many fields of employment were privileging or requiring the hiring of citizens. More and more, state governments barred aliens from many public and publicly contracted blue-

⁵ Works which note these bizarre effects of the Repatriation Act of 1940 include: Bredbenner, *A Nationality of Her Own*, 188 (n. 83); Volpp, “Divesting Citizenship,” 447 (n. 192); Lawrence DiStasi, “Derived Aliens,” *Italian Americana* 29, no. 1 (Winter 2011): 23–33.

⁶ *In re Shee Mui Chong Yuen’s Repatriation*, No. 73 F. Supp. 12 (U.S. District Court for the District of Hawaii 1944).

⁷ For works which explore the rise of Jim Crow suffrage restrictions on a state-by-state basis, see: J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven, CT: Yale University Press, 1974); Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888-1908* (Chapel Hill: University of North Carolina Press, 2001).

⁸ See, especially: Cybelle Fox, *Three Worlds of Relief Race, Immigration, and the American Welfare State from the Progressive Era to the New Deal* (Princeton, N.J.: Princeton University Press, 2012).

⁹ Chapter 1 explores the decline of alien suffrage. See also, (among others): Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), 136–38; Ron Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the U.S.* (New York: Routledge, 2006), 25–30.

collar jobs and restricted professional licenses to citizens or to immigrants who had begun (or were eligible to begin) the naturalization process.¹⁰

In this context, exclusionary “citizenship rights” claims carried significant weight. The courts usually found “citizen only” laws to be constitutionally permissible and nativists increasingly relied on such arguments as appeals to overt racism and xenophobia became less accepted in public discourse.¹¹ But the power of citizenship claims lay not only in their ability to confine rights to citizens. For many marital expatriates, their loss of citizenship represented a loss of public standing and belonging.¹² Conversely, for many marginalized citizens, the ideals of expansionary citizenship rights represented an unfulfilled promise and a goal to fight for.¹³

American citizenship, therefore, represented many things to different people in the 1940s. It could be primarily a legal status, a container of rights, a means to exclude outsiders, and a marker of public belonging (among others). For INS officials and federal judges trying to adjudicate these boundaries, there were plenty of areas for disagreement. And ultimately, they could not agree on whether citizenship could be separated from citizenship rights or even what those rights were.¹⁴ But one unspoken accord lay at the heart of their dispute: that American citizenship and its accompanying rights carried growing material and rhetorical weight and that the relationship between U.S. citizenship and the rights of citizenship *should* be definable.

¹⁰ These topics will be explored in Part II. Other works on blue-collar restrictions include: John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (New York: Atheneum, 1963); Gwendolyn Mink, *Old Labor and New Immigrants in American Political Development: Union, Party, and State, 1875-1920* (Ithaca, NY: Cornell University Press, 1986); Mary Anne Thatcher, *Immigrants and the 1930's: Ethnicity and Alienage in Depression and On-Coming War* (New York: Garland, 1990); Fox, *Three Worlds of Relief*; For works on professional employment restrictions, see: Irene Bloemraad, “Citizenship Lessons from the Past: The Contours of Immigrant Naturalization in the Early 20th Century,” *Social Science Quarterly* 87, no. 5 (2006): 927–953; and Chapter 4, “The State and Immigrant Professionals: Restrictions on High-End Alien Workers,” in Alexandra Filindra, “E Pluribus Unum?: Federalism, Immigration and the Role of the American States” (Rutgers University, 2009), 128–52.

¹¹ Two Supreme Court cases: *Truax v. Raich* (239 U.S. 33 [1915]) and *Heim v. McCall* (239 U.S. 175 [1915]) set much precedent for blue-collar noncitizen exclusions. The former stipulated that states could not totally bar private employers from hiring noncitizens; the latter found bans on noncitizens from public and publicly contracted jobs to be constitutional. Courts usually upheld professional restrictions so long as noncitizens were receiving public pay and licenses fell under states’ (broad) police powers. See: Luis FB Plascencia, Gary P. Freeman, and Mark Setzler, “The Decline of Barriers to Immigrant Economic and Political Rights in the American States: 1977–2001,” *International Migration Review* 37, no. 1 (2003): 5–23; Hiroshi Motomura, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States* (New York: Oxford University Press, 2006); Michael Cornelius Kelly, “A Wavering Course: United States Supreme Court Treatment of State Laws Regarding Aliens in the Twentieth Century,” *Georgetown Immigration Law Journal* 25, no. 3 (Spring 2011): 701–42.

¹² This topic will be discussed at greater length in Chapter 5. Isin especially links the performative “struggle over the subjects of rights” to the process of “making rights claims” in: Engin Isin, “Performative Citizenship,” in *The Oxford Handbook of Citizenship*, ed. Ayelet Shachar et al. (New York: Oxford University Press, 2017), 502, 505; See, also: Irene Bloemraad and Alicia Sheares, “Understanding Membership in a World of Global Migration: (How) Does Citizenship Matter?,” *International Migration Review* 51, no. 4 (Winter 2017): 823–67.

¹³ W.E.B. Dubois made these arguments in both his scholarship and activism. Gunnar Myrdal emphasized the differences between the promise of the “American creed” and the inequality African Americans experienced in his World War II-era scholarship. See, especially: W. E. B. Dubois, *The Souls of Black Folk: Essays and Sketches* (Chicago: A.C. McClurg & Co., 1903); W. E. B. Dubois, *Black Reconstruction in America; an Essay toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860-1880* (New York: Harcourt Brace, 1935); Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy* (New York: Harper & Bros., 1944).

¹⁴ This topic will be explored at significant length in Chapter 5. The most famous marital repatriation case was *Shelley v. United States* (U.S. Court of Appeals for the District of Columbia, 1941). Works which explore and contextualize Shelley’s legal efforts include: Bredbenner, *A Nationality of Her Own*, 183–94; Susan Goodier, “The Price of Pacifism: Rebecca Shelley and Her Struggle for Citizenship,” *Michigan Historical Review* 36, no. 1 (2010): 71–101.

While hardly a novel concept, this had by no means always been the predominant view or lived reality of American citizenship and citizenship rights. After all, the more than century-long mass disfranchisement of American women had been deemed to be permissible by the U.S. Supreme Court owing to the prevailing legal (and popular) notion that voting was *not* a constitutional right of citizenship.¹⁵ The transformation of voting into a “right of citizenship” was but one of many battles fought over the scale and scope of citizenship rights from the end of the Civil War until the Civil Rights era a century later. These debates so revolutionized both the relative lived weight of U.S. citizenship and citizenship-based claims *and* legal and popular understandings of American citizenship that a new era of citizenship emerged. This dissertation aims to identify, explore, and give coherence to this process by which modern American citizenship was born.¹⁶

“Making Modern American Citizenship” identifies major transformations in (mostly state) laws governing access to political and economic rights (such as the franchise and several forms of blue-collar and professional employment) which hardened both legal and popular understandings of what citizenship rights were and how much weight they could carry. As access to many rights were increasingly claimed by policymakers as the exclusive domain of U.S. citizens from the late-nineteenth to the mid-twentieth centuries and were legally recast as such at growing rates, American citizenship and the “rights of citizenship” were made real and tangible to a growing number of citizens and noncitizens alike living in the United States. This process was not uniform in all cases. In fact, several states which previously excluded noncitizens from the population for the purposes of drawing legislative districts only began counting them in the mid-twentieth century. Nevertheless, the growing scope and number of exclusive “citizen only” policies transformed the weight and meaning of American citizenship by interweaving it with the “rights of citizenship.” This dissertation argues that increasingly pervasive popular attitudes and legal rulings that the “rights of American citizenship” were – or at least should be – inseparable from U.S. citizenship status represents a fundamental transformation which marks the rise of modern American citizenship.

I. Historiography

Debates over the evolution of American citizenship law and how rights and obligations became tied to or disentangled from U.S. citizenship are among the most studied topics in American history. Historians, sociologists, political theorists, philosophers, and legal scholars tend to approach the study of American citizenship in three distinct ways reflective of the questions they seek to answer: (1) *citizenship-as-status*; (2) *citizenship-as-rights*; and (3) *citizenship-as-concept*.¹⁷ In the following paragraphs I will explore the strengths and

¹⁵ This doctrine was upheld by the U.S. Supreme Court in the 1874 case: *Minor v. Happersett*. Among many works which study the reasoning and implications of this case on U.S. citizenship are: Motomura, *Americans in Waiting*, 117; Zornitsa Keremidchieva, “The Gendering of Legislative Rationality: Women, Immigrants, and the Nationalization of Citizenship, 1918-1922” (University of Minnesota, 2007), 39–40.

¹⁶ As Shachar et al. note, studies of “citizenship” have significantly grown in number since the 1980s while studies of “nationality” have remained (relatively) constant. Contemporary scholars often use the terms interchangeably. However, traditionally the former entailed access to proactive rights while the latter referred to membership in the nation-state (and federal laws governing naturalization). See: Ayelet Shachar et al., “Introduction: Citizenship - Quo Vadis?,” in *The Oxford Handbook of Citizenship*, ed. Ayelet Shachar et al. (New York: Oxford University Press, 2017), 3–11.

¹⁷ Legal historian Helen Irving’s monograph offers a different assessment and categorization of the current state citizenship studies than I describe below. Irving argues that above all “Citizenship laws...govern the acquisition, retention and transmission of the legal status of citizens.” Though often associated with rights, Irving argues that citizenship studies have too often made

weaknesses of these approaches. I do so because combining their best methodologies can greatly expand our horizons of when, how, and why American citizenship became modern.¹⁸

Historians who explore *citizenship-as-status* – how and why American citizenship and naturalization laws have expanded or remain closed to certain people (especially owing to institutionalized racism and sexism) – tend to focus on debates concerning the passage, enforcement, and adjudication of federal citizenship law. These scholars have emphasized how “the Founders” conceived of citizenship as a legal status that affirmed white inhabitants’ membership in the new republic while explicitly excluding Native Americans and African-American slaves from the polity.¹⁹ They reveal how U.S. citizenship was transformed by both the Reconstruction Amendments (which repealed slavery, recognized African Americans as citizens, and instituted the policy of birthright citizenship) and the breadth of settler-colonialism (which in practice limited Mexican immigrants’ ostensible naturalization rights, recognized Native American individuals as citizens only if they were judged to have sufficiently rejected communal property ownership, and excluded late nineteenth-century conquered lands from statehood and often declared inhabitants of these territories to be U.S. nationals as opposed to citizens).²⁰ These scholars demonstrate how an increasingly federal naturalization system emerged in the early twentieth century to exclude “undesirable” immigrants from membership in the polity, especially East and South Asians, the poor (particularly young, single women), religious minorities (such as Mormons), and “radical” political activists.²¹ And historians of the

this the focus of their studies. Irving argues instead that citizenship laws “do not typically make reference to ‘rights,’ political or otherwise” which are “typically determined in other legal instruments; where citizenship is involved, it is a precondition or qualification for their enjoyment” (239-240). See, broadly Chapter 7, “What is a Citizen” in: Helen Irving, *Citizenship, Alienage, and the Modern Constitutional State: A Gendered History* (New York: Cambridge University Press, 2016), 237–74.

¹⁸ Claiming the emergence of forms of modernity comes with many challenges. Critics point to its association with western-centric modernization theories, its innumerable definitions, tendencies of modernity scholars to overgeneralize, and the ways in which studies of modernity can reflexively dismiss periods prior to their study as static and “pre-modern.” For works that grapple with these challenges, see: Frederick Cooper, “Modernity,” in *Colonialism in Question: Theory, Knowledge, History* (Berkeley: University of California Press, 2005), 113–49; Shmuel Noah Eisenstadt, “Multiple Modernities,” *Daedalus* 129, no. 1 (Winter 2000): 1–29; And yet, as historian James Vernon writes, “however much historians might want to rid ourselves of this troublesome category, we cannot live without it” (6). I rely on his framing of modernity as a means of “mark[ing] a moment of historical transition from an earlier period that may have seeded the origins of many aspects of modern life but was nonetheless decidedly different” (6). This view of modernity allows scholars to explore “shared historical processes” without “reduc[ing] them to a universal telos” and focuses on “how” things became modern rather than “why” (6; 7). James Vernon, *Distant Strangers: How Britain Became Modern* (Berkeley, CA: University of California Press, 2014), 6-7.

¹⁹ See, for instance: James Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill: University of North Carolina Press, 1978).

²⁰ As historian Sam Erman emphasizes, nationals had the right to travel to and within the United States but did not possess “rights of citizenship” (such as the right to vote) and had to naturalize (if eligible) to obtain such rights. See: Sam Erman, “Meanings of Citizenship in the U.S. Empire: Puerto Rico, Isabel Gonzalez, and the Supreme Court, 1898 to 1905,” *Journal of American Ethnic History* 27, no. 4 (2008): 5–33; For other topics, see: Eric Foner, *A Short History of Reconstruction, 1863-1877* (New York: Perennial Library, 1990); Ian Haney-López, *White by Law: The Legal Construction of Race* (New York University Press, 1996); Earl M. Maltz, “The Fourteenth Amendment and Native American Citizenship,” *Immigration and Nationality Law Review* 22 (2001): 625–46; Bartholomew H. Sparrow, *The Insular Cases and the Emergence of American Empire* (Lawrence, KS: University Press of Kansas, 2006); Linda C. Noel, *Debating American Identity: Southwestern Statehood and Mexican Immigration* (Tucson: University of Arizona Press, 2014).

²¹ See, among many other works: Bill Ong Hing, *Making and Remaking Asian America Through Immigration Policy, 1850-1990* (Stanford, CA: Stanford University Press, 1993); Erika Lee, *At America’s Gates: Chinese Immigration during the Exclusion Era, 1882-1943* (Chapel Hill, NC: University of North Carolina Press, 2003); Christine Talbot, “Mormons, Polygamy, and the American Body Politic: Contesting Citizenship, 1852-1890” (University of Michigan, 2006); Schneider, *Crossing Borders*; Deirdre M Moloney, *National Insecurities: Immigrants and U.S. Deportation Policy Since 1882* (Chapel Hill: University of North Carolina Press, 2012); Patrick Weil, *The Sovereign Citizen: Denaturalization and the Origins of the American Republic* (Philadelphia: University of Pennsylvania Press, 2013).

mid-to-late twentieth century often debate how and why racist and sexist naturalization bans were repealed and the degree to which contemporary citizenship barriers draw on previous regimes of exclusion.²²

While these *citizenship-as-status* works focus particularly on legal classifications of citizenship and formal boundaries of membership and exclusion, scholars who explore *citizenship-as-rights* have explored how marginalized citizens became citizens with rights. Historians of U.S. women's history have studied how the repeal of coverture laws, the success of the women's suffrage movement, and the barrier-breaking efforts of women fighting for fair employment won American women greater citizenship rights in law and in practice.²³ Similarly, histories of civil rights campaigns for racial justice are often depicted as efforts to obtain citizenship rights – such as voting rights, fair employment practices, and access to equal services – for persons long excluded from them in law and in practice. These narratives often describe how marginalized citizens and their allies employed the promise of equal citizenship rights for Americans in court and in the court of popular opinion to bolster their efforts.²⁴ While these *citizenship-as-rights* works do emphasize the importance of federal legislation and the enforcement of federal court nondiscrimination rulings, they often place a greater emphasis on state legislation, social movements, and civil society. After all, though national authorities increasingly assumed full authority over naturalization law, the federal government was not the sole adjudicator of what would become the *rights* of citizenship.

The themes and chronologies of these two approaches – one emphasizing formal citizenship status and the other focused on the rights of citizenship – often intersect. Immigration historians have demonstrated how both formal *and* informal racial barriers to naturalization were used to prevent nonwhite immigrants from possessing political and economic rights.²⁵ Conversely, the repeal of explicit racial naturalization barriers have often been studied

²² See especially: Reed Ueda, "The Changing Path to Citizenship: Ethnicity and Naturalization during World War II," in *The War in American Culture: Society and Consciousness during World War II*, ed. Lewis A. Erenberg and Susan E. Hirsch (University of Chicago Press, 1996), 202–216; Bredbenner, *A Nationality of Her Own*; Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton, NJ: Princeton University Press, 2004); Gardner, *The Qualities of a Citizen*; Carl Bon Tempo, *Americans at the Gate: The United States and Refugees During the Cold War* (Princeton, NJ: Princeton University Press, 2008); Rebecca Hamlin and Philip E. Wolgin, "Symbolic Politics and Policy Feedback: The United Nations Protocol Relating to the Status of Refugees and American Refugee Policy in the Cold War," *International Migration Review* 46, no. 3 (2012): 586–624; Cindy I-Fen Cheng, *Citizens of Asian America: Democracy and Race during the Cold War* (New York University Press, 2013); Hiroshi Motomura, *Immigration Outside the Law* (New York: Oxford University Press, 2014); David FitzGerald and David Cook-Martín, *Culling the Masses: The Democratic Origins of Racist Immigration Policy in the Americas* (Cambridge, MA: Harvard University Press, 2014).

²³ See, especially: Nancy F. Cott, *The Grounding of Modern Feminism* (New Haven: Yale University Press, 1987); Sara Hunter Graham, *Woman Suffrage and the New Democracy* (New Haven: Yale University Press, 1996); Kerber, *No Constitutional Right to Be Ladies*; Alice Kessler-Harris, *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th-Century America* (New York: Oxford University Press, 2001); Cott, *Public Vows*.

²⁴ Classics include: Dubois, *Black Reconstruction in America*; Myrdal, *An American Dilemma*; More recent scholarship includes: George Sánchez, *Becoming Mexican American: Ethnicity, Culture, and Identity in Chicano Los Angeles, 1900-1945* (New York: Oxford University Press, 1993); Terry H. Anderson, *The Pursuit of Fairness: A History of Affirmative Action* (New York: Oxford University Press, 2004); David R. Roediger, *Working Toward Whiteness: How America's Immigrants Became White: The Strange Journey from Ellis Island to the Suburbs* (New York: Basic Books, 2005); Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (New York: WW Norton & Company, 2005); Nancy MacLean, *Freedom Is Not Enough: The Opening of the American Work Place* (Cambridge, MA: Harvard University Press, 2006); Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (New York: Oxford University Press, 2010).

²⁵ Ngai, *Impossible Subjects*; Motomura, *Americans in Waiting*; Martha Menchaca, *Naturalizing Mexican Immigrants: A Texas History* (Austin, TX: University of Texas Press, 2011); Cybelle Fox and Irene Bloemraad, "Beyond 'White by Law': Explaining the

by historians of civil rights struggles as part of broader campaigns against institutionalized racism in the mid-twentieth century.²⁶ Moreover, gender historians have explored at great lengths the interlinked relationship between campaigns for married women's independent citizenship and the women's suffrage movement in the early twentieth century as both served to bolster one another and revolutionized the meaning of American citizenship.²⁷

But these approaches have limitations. Most notably for *citizenship-as-status* works, focusing on formal naturalization law and citizenship status can overlook how many citizens possessed rights in name only. As Kunal Parker has powerfully argued in *Making Foreigners: Immigration and Citizenship Law in America*, too often U.S. immigration historians avoid grappling with the legacy of slavery and the ways in which marginalized Americans have been effectively "rendered foreign" in their exclusion from equal political and economic participation in American life. Indeed, white, male noncitizens often possessed more *de facto* and even *de jure* rights than nonwhite and female citizens as early as the founding of the republic.²⁸

On the other hand, *citizenship-as-rights* scholarship often demonstrates insufficient attention to whether what they describe as "rights of citizenship" were, in fact, limited to citizens. Alice Kessler-Harris's momentous monograph *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th-Century America* explores how "gender shaped the rules" of twentieth-century American life and how working-class and professional women fought against gender discrimination in the workplace as they articulated a more expansive view of "economic citizenship." While Kessler-Harris's text has deservedly become the go-to work for this topic, it does not explore the degree to which women were often denied professional licenses and employment in the early-to-mid twentieth century on the basis of alienage.²⁹ Teachers and nurses, two occupations dominated by women, offer an example. Many state governments specifically adopted policies in this period to restrict the hiring of noncitizen women by limiting or banning the issuance of licenses to and/or the hiring of teachers and (to a lesser extent) nurses who were not citizens.³⁰

One way that other scholars (more often political scientists and legal theorists than historians) have tried to grapple with this dilemma is to reverse the equation by exploring the concept of citizenship itself as their central unit of analysis. Instead of focusing on how certain groups became citizens (and/or eligible to citizenship) or became citizens with *de jure* and *de*

Gulf in Citizenship Acquisition between Mexican and European Immigrants, 1930," *Social Forces* 94, no. 1 (September 2015): 181–207.

²⁶ See, among many others: Motomura, *Americans in Waiting*; Brilliant, *The Color of America Has Changed*.

²⁷ Bredbenner, *A Nationality of Her Own*; Kerber, *No Constitutional Right to Be Ladies*; Cott, *Public Vows*; Gardner, *The Qualities of a Citizen*; Menchaca, *Naturalizing Mexican Immigrants*.

²⁸ Legal historian Kunal Parker ties these two approaches together in one overarching narrative in: Kunal M. Parker, *Making Foreigners: Immigration and Citizenship Law in America, 1600–2000* (New York: Cambridge University Press, 2015), 14.

²⁹ Kessler-Harris, *In Pursuit of Equity*, 18.

³⁰ Contemporaneous and more recent scholarship on this topic includes: Harold Fields, "Unemployment and the Alien," *South Atlantic Quarterly* 30, no. 1 (1931): 60–78; Harold Fields, "Where Shall the Alien Work," *Social Forces* 12, no. 2 (December 1933): 213–21; Milton Ridvas Konvitz, *The Alien and the Asiatic in American Law* (Ithaca, NY: Cornell University Press, 1946); David Carliner, *The Rights of Aliens: The Basic ACLU Guide to an Alien's Rights* (New York: Avon Books, 1977); Bloemraad, "Citizenship Lessons from the Past"; Filindra, "E Pluribus Unum?"; Most recently, historian Linda Noel implores scholars to recognize that "What Harold Fields observed over eighty years ago" is just as important to explore in the early twenty-first century. She calls on scholars to examine "the importance of understanding state-level laws and policies concerning immigrants" in: Linda C. Noel, "New Paths in Immigration History," *Journal of American Ethnic History* 37, no. 3 (Spring 2018): 55.

facto rights, *citizenship-as-concept* scholarship proposes definitions for and typologies of citizenship regimes. Following the mass expatriation of Jews by Nazi Germany in the 1930s which served as a legal precursor to the horrors of the Holocaust, Hannah Arendt famously identified citizenship first and foremost as a status connoting legal membership in a nation-state that affords individuals the “right to have rights.”³¹ More recently, Linda Bosniak, in her widely-read 2006 treatise *The Citizen and the Alien: Dilemmas of Contemporary Membership*, argues that citizenship is a legal status that entails rights which are constantly negotiated in relationship with (and often in contrast to) aliens and the rights of alienage. Bosniak highlights that scholars must grapple with the paradox that citizenship in liberal democracies is both inclusionary when “inward-looking” as it is “understood to stand for a universalist ethic” and the “incorporation of ‘everyone,’” but exclusionary when “outward looking” as it serves as a gatekeeper which “ration[s]” membership in a nation-state.³² Beyond definitions, much of this scholarship seeks to identify which qualities best describe and distinguish a country’s citizenship regime – such as liberal, illiberal, republican, multicultural, assimilationist, or ethnonational – from another.³³

Historians (and historically-minded scholars) who primarily examine the concept of American citizenship in this manner generally seek to explain how the legal status of citizenship and its accompanying rights have evolved over time. Perhaps the most well-known *citizenship-as-concept* work in the U.S. context is Judith Shklar’s 1991 treatise *American Citizenship: The Quest for Inclusion*. While she recognizes that citizenship is first and foremost a legal status of membership in the nation-state, Shklar argues that constitutional reform during the Reconstruction era represents the greatest development in the history of American citizenship. The Thirteenth, Fourteenth, and Fifteenth Amendments established that, “voting and earning, as they have emerged out of the stress of inherited inequalities, especially the remnants of black chattel slavery” would be the primary markers of American citizenship rights.³⁴ Shklar’s framework is especially valuable as it can be harnessed to explore how a range of political and economic rights can be reframed and lived as “rights of citizenship.”

This *citizenship-as-concept* approach has greatly enhanced scholars’ interpretations of the meaning of American citizenship and helped to clarify how its weight has changed over time. This scholarship brings together the strengths of *citizenship-as-status* and *citizenship-as-rights* works and demonstrates that the two cannot be decoupled from each other. But *citizenship-as-concept* works can also display limitations. Many of the most widely-read works in this field have been criticized either for being prone to overgeneralization or being too closely tied to either *citizenship-as-status* or *citizenship-as-rights* scholarship. T.H. Marshall’s famous depiction of the history of British citizenship as an inexorable march towards ever expanding

³¹ Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, 1973); Recent works which grapple with Arendt’s articulation of citizenship include: Alison Kesby, *The Right to Have Rights: Citizenship, Humanity, and International Law* (New York: Oxford University Press, 2012); Ayelet Shachar, “Introduction: Citizenship and the ‘Right to Have Rights,’” *Citizenship Studies* 18, no. 2 (2014): 114–24; Irving, *Citizenship, Alienage, and the Modern Constitutional State*.

³² Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton, N.J.: Princeton University Press, 2006), 2.

³³ See, for instance: Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge, MA: Harvard University Press, 1992); Yasemin Nuhoğlu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (University of Chicago Press, 1994); Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (New York: Oxford University Press, 1995); Irene Bloemraad, *Becoming a Citizen: Incorporating Immigrants and Refugees in the United States and Canada* (Berkeley: University of California Press, 2006).

³⁴ Judith Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge, MA: Harvard University Press, 1991), 101.

civil, political, and social rights has been criticized for insufficiently failing to integrate the experiences of women and nonwhite British subjects.³⁵ Similarly, Rogers Smith's thorough *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*, which categorizes U.S. citizenship ideologies into liberal, republican, and ascriptive traditions, has been criticized by other scholars both for forcing historical examples into one of these three visions and for not sufficiently recognizing the importance of change over time.³⁶ And even Shklar admits that her treatise relies more on a *citizenship-as-rights* approach than a *citizenship-as-status* one. Despite "the importance of nationality" and "ungenerous and bigoted immigration and naturalization policies," Shklar maintains that "their effects and defects pale before the history of slavery and its impact upon our public attitudes."³⁷

Scholars of comparative citizenship regimes point to two additional challenges inherent in any work which makes the concept of citizenship its primary focus. First, as legal scholar Helen Irving emphasizes in *Citizenship, Alienage, and the Modern Constitutional State: A Gendered History*, after decades of voluminous academic analyses on the meaning of citizenship, scholars share "no single understanding or definition of citizenship" in their respective works.³⁸ If anything, this burgeoning literature has made common definitions and terminologies of citizenship even harder to identify. The editors of the 2017 *Oxford Handbook of Citizenship*, for instance, argue that they avoid articulating a "single definition of citizenship" for they maintain that any attempt would be "a hopeless task or a sectarian project given the proliferation of meanings and uses of the term."³⁹

Moreover, many social scientists question the very utility of making citizenship a central unit of scholarly analysis. Asserting the primacy of race/ethnicity, gender, class, and the possession of legal permanent residency documents in the lives of individuals across the globe, many legal theorists and social scientists have questioned the relative significance of citizenship in the late-twentieth and early-twenty-first centuries. As sociologist Irene Bloemraad pointedly emphasizes, scholars whose work centers on national membership need to consider under what contexts "citizenship matters."⁴⁰

While these two predicaments – one of definitions and the other of significance – do pose a significant challenge to contemporary citizenship scholarship, they also represent a rare opportunity to rethink how we formulate studies of the topic. After all, analysts need not try to squeeze citizenship and its rights into one overarching definition, framework, and/or typology. And it should not be controversial to embrace the fact that citizenship often "matters" to different people to varying degrees owing to a multitude of factors such as race, gender, class, time, and

³⁵ T. H. Marshall, *Class, Citizenship, and Social Development; Essays*. (Garden City, NY: Doubleday, 1964); For a historical assessment of Marshall's theories and disparate forms of criticism his claims have generated, see: Ben Revi, "T.H. Marshall and His Critics: Reappraising 'Social Citizenship' in the Twenty-First Century," *Citizenship Studies* 18, no. 3–4 (2014): 452–64.

³⁶ Rogers Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, CT: Yale University Press, 1997); For a criticism of (the then in-progress) claims developed by Smith (and his reply), see: Jacqueline Stevens and Rogers Smith, "Beyond Tocqueville, Please!," *American Political Science Review* 89, no. 4 (December 1995): 987–95; Other critiques include: Bonnie Honig, *Democracy and the Foreigner* (Princeton, NJ: Princeton University Press, 2001); Mary Fainsod Katzenstein, Leila Mohsen Ibrahim, and Katherine D. Rubin, "The Dark Side of American Liberalism and Felony Disfranchisement," *Perspectives on Politics* 8, no. 4 (December 2010): 1035–54.

³⁷ Shklar, *American Citizenship*, 14.

³⁸ Irving, *Citizenship, Alienage, and the Modern Constitutional State*, 238.

³⁹ Shachar et al., "Introduction: Citizenship - Quo Vadis?"

⁴⁰ Irene Bloemraad, "Does Citizenship Matter?," in *The Oxford Handbook of Citizenship*, ed. Ayelet Shachar et al. (New York: Oxford University Press, 2017), 524–53.

location. In fact, it is possible – and indeed advisable – to incorporate these lessons into the heart of any analysis about the transformation of citizenship and citizenship rights. Fortunately, recently several scholars have begun formulating novel approaches to the study of citizenship to respond precisely to such opportunities.

In her study of the comparative history of married women’s citizenship laws across the western world, Irving argues that citizenship must be understood and articulated both as a legal status and a lived “*experience*, as a quality of being that is, at the same time, grounded in the cold formalities of law.” Irving concludes that the study of the relationship between the “consequences” of citizenship (or lack thereof) and “the quality of citizenship in and of itself,” creates a “larger canvas” for scholars of citizenship to explore.⁴¹ In contrast, Bloemraad and her co-author Alicia Sheares argue that scholars should interrogate how citizenship operates as a vehicle through which claims are articulated, contested, and adjudicated.⁴² This approach, “keeps front and center the saliency of citizenship as a legal and political status” while emphasizing the “relational” nature of rights-based claims and “the instrumental, performative, symbolic and discursive facets of citizenship.”⁴³

These insights help to rescue citizenship from a surfeit of typologies and competing paradigms and they provide common terminologies that other scholars can build upon. And scholars need not try to show how American citizenship – in-and-of-itself – either does or does not matter more than other factors in U.S. political and economic history. Instead, they can study how historical actors fought to either exclude or expand access to political and economic rights on the basis of citizenship as a means to entrench or overcome longstanding hierarchies and the different ways that citizenship rights were experienced by those living in the United States. Similarly, scholars no longer need to focus on whether individuals who articulated citizenship rights claims “really” cared about the meaning of U.S. citizenship. That political actors chose citizenship claims as their means of transforming policy demonstrates that those arguments increasingly carried weight and that the boundaries of U.S. citizenship rights became major sites of contestation over the breadth of political and economic rights available to individuals residing in the United States. This dissertation builds on these approaches by focusing on key federal, private-sphere, but especially state-level debates over whether certain rights would be confined to U.S. citizens from the time of the Civil War until the Civil Rights era.

II. Making Modern American Citizenship

In this dissertation, I explore how and when American citizenship – and what were increasingly understood as citizenship rights – became modern. I begin in the Reconstruction era and conclude (roughly) a century later. I employ Judith Shklar’s framework that the primary rights of American citizenship have become widely perceived to be and codified into law as the right to vote and the right to be paid for one’s labor. These political and economic rights both (seek to) empower citizens as members of the polity and prevent enslavement and coerced work. After all, in a liberal democracy and free-market system such as the United States, these rights

⁴¹ Irving, *Citizenship, Alienage, and the Modern Constitutional State*, 238.

⁴² Irene Bloemraad, “Theorising the Power of Citizenship as Claims-Making,” *Journal of Ethnic and Migration Studies* 44, no. 1 (November 2017): 4–26; Bloemraad and Sheares, “Understanding Membership in a World of Global Migration.”

⁴³ Bloemraad and Sheares, “Understanding Membership in a World of Global Migration,” 826.

are fundamental for participatory membership and remuneration in the American polity and economy.

Unlike Shklar, however, I focus on how the restriction and/or outright exclusion of persons from these rights owing to noncitizenship transformed how citizenship was legally and popularly understood in twentieth-century America. I do not seek to provide one definition or typology of American citizenship.⁴⁴ Instead, I describe a broad transformation in popular and legal understandings of U.S. citizenship owing to both “citizenship rights” debates and their subsequent substantial policy developments which reshaped both how individuals experienced and conceived of the weight and meaning of American citizenship.

Part I, “Consolidating the Political Rights of Citizenship” (Chapters 1 and 2) examines voting and apportionment. Chapter 1 investigates how the right to vote became confined to American citizens as states repealed longstanding alien suffrage laws in the late-nineteenth and early-twentieth centuries. Chapter 2 then juxtaposes the story of how several states only began counting noncitizens as part of their population for the purposes of *state* legislative representation in the mid-twentieth century. Together, these chapters illustrate the increasing weight of citizenship rights claims and how debates over their boundaries led to profound policy changes that structure participation in and the rules governing American politics. This process led to a significant calibration of what became popularly and legally understood as citizenship rights across all fifty states even while those rights were far from universally accessible to all citizens.

Most dramatically, the right to vote was expanded to citizen women just as – and during interlinked campaigns in which – noncitizen men lost suffrage rights. Chapter 1, “Making Voters Citizens,” describes how alien suffrage laws – previously widespread in dozens of states and territories – met their demise in the late-nineteenth and early-twentieth centuries. While the rules governing would-be changes to state suffrage laws help to explain *when* certain states and territories repealed their noncitizen voting laws, the overriding impetus for the nationwide repeal of noncitizen voting rights was another contemporary suffrage movement. By the turn of the twentieth century, women’s suffragists and their supporters increasingly argued that suffrage should be the exclusive right of – and only of – U.S. citizens. This would succeed most spectacularly during and after World War I as the enfranchisement of American women and the disfranchisement of noncitizen men was reframed as a national security measure. Their victory dramatically recast suffrage as the premier right of citizenship even as marginalized citizens – most notably southern African Americans – were denied that right in practice.⁴⁵

⁴⁴ While “Making Modern American Citizenship” borrows from many excellent works which offer definitions for and typologies of American citizenship, it avoids articulating one specific theory of U.S. citizenship history owing to the multiplicity of competing, overlapping, and (at times) contradictory examples of “citizenship rights” battles in post-Civil War American history.

⁴⁵ The conclusion to Chapter 1 will briefly discuss late twentieth-/early twenty-first-century efforts to reintroduce alien suffrage. Though some municipalities now afford noncitizens the right to vote in all or some local elections, no state permits alien suffrage for state offices and Congress now bars noncitizen voting for all federal elections. Works which discuss efforts to enact new alien suffrage policies include: Gerald M. Rosberg, “Aliens and Equal Protection: Why Not the Right to Vote?,” *Michigan Law Review* 75, no. 5–6 (May 1977): 1092–1136; Jamin B. Raskin, “Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage,” *University of Pennsylvania Law Review* 141, no. 4 (April 1993): 1391–1470; Virginia Harper-Ho, “Noncitizen Voting Rights: The History, the Law and Current Prospects for Change,” *Immigration and Nationality Law Review* 21 (2000): 477–528; Monica W. Varsanyi, “The Rise and Fall (and Rise?) Of Non-Citizen Voting: Immigration and the Shifting Scales of Citizenship and Suffrage in the United States,” *Space and Polity* 9, no. 2 (2005): 113–134.

Chapter 2, “Who Counts,” recounts an even lesser-known political right interlinked with U.S. citizenship history. It explains how every state in the nation (in addition to the federal House of Representatives) would ultimately recognize all residents – citizen and noncitizen alike – as part of the population for the purposes of drawing legislative districts. This was no foregone conclusion. As late as the mid-twentieth century, nine states barred all or some noncitizens from being counted for state legislative redistricting. And nativist members of Congress repeatedly sought to bar noncitizens from federal districting schemes. This chapter explores a *longue durée* history of state and federal battles over proposed and enacted bans on noncitizens from the time of the Civil War until the Civil Rights era. While these debates were inextricably linked to many other (inter- and intra-) party and rural-urban politics, supporters of these restrictions claimed them as an exclusive citizenship right. “Who Counts” illustrates the enduring power of that argument. While advocates of immigrant rights who promoted “equal rights” claims for all residents sometimes succeeded in preventing the adoption of additional “citizen only” policies in the early twentieth century, those egalitarian arguments rarely succeeded in repealing entrenched laws. Instead, advocates of including noncitizens instead usually succeeded in overturning them by focusing on common failures encountered in their enforcement and by pointing to (relatively) low numbers of noncitizens residing in the United States during the mid-twentieth century.⁴⁶

Part II, “Claiming, Administering, and Experiencing Employment as a Right of Citizenship,” (Chapters 3 and 4) examines economic restrictions in both blue- and white-collar work as nativist laborers, unions, employers, professional associations, and allied politicians fought to recast hiring privileges for (mostly white, male) Americans as citizenship rights. Unlike Part I, Part II does not describe a process of uniform calibration. Citizenship never became a guarantee of private or public employment. Nor did alienage ever become a universal disqualification for all jobs. And both employers and authorities often struggled to enforce enacted “citizen only” and “citizen preference” policies. Nevertheless, as both employers and state licensing agencies learned about “citizen only” and “citizen preference” policies and strengthened enforcement mechanisms to implement them, exclusive economic “rights of citizenship” became far more powerful and tangible in the lives of both citizens and noncitizens alike.

Chapter 3, “Making Citizenship Concrete,” traces how access to working-class jobs was claimed by nativists as – and sometimes legally remade into – a “right of citizenship” from the late-nineteenth to the mid-twentieth centuries. These restrictive policies were often – though not always – adopted by legislatures in major immigrant-destination states (such as California and Massachusetts) at the behest of turn-of-the-century anti-immigrant laborers. However, those laws often went unenforced as employers and authorities struggled to distinguish citizens from noncitizens (and documented from undocumented immigrants). Despite the efforts of many native-born laborers and (some) employers to claim access to work as a “right of citizenship,” nativists rarely succeeded in restricting private employment to citizens during booming economic times. But during times of economic recession – especially the long years of the Great Depression – nativist pressure to adopt “citizen only” and “citizen preference” hiring policies and to enforce those already on the books acquired much greater weight. States, private employers, and federal authorities increasingly enacted citizenship requirements for blue-collar

⁴⁶ Recent efforts to resurrect “citizen only” apportionment provisions indicate that “representation as a right of citizenship” claims are likely to grow in number in the near future. This subject will be briefly explored in the introduction and conclusion to Chapter 2. See, especially: *Evenwel v. Abbott* No. 14–940 (Supreme Court of the United States of America April 4, 2016).

work, while adopting identification requirements to (ostensibly) distinguish citizens from noncitizens (though outright racism against Mexican immigrants and Mexican Americans alike often trumped documented proof of citizenship). Increasingly, nativists demanded a nationwide alien registration program to enhance the enforcement of “citizen only” and “citizen preference” employment policies. They finally succeeded during a time of national security panic in 1940 when Congress mandated identification requirements for noncitizens in the country, significantly heightening distinctions between citizens and noncitizens and documented and undocumented immigrants living in the United States.

Chapter 4, “Learning Citizenship Matters,” examines increasingly successful nativist efforts launched by professional associations to restrict or ban the issuance of professional certification to noncitizens from the late-nineteenth to the mid-twentieth centuries in states across the country. As these policies rapidly spread, immigrant professionals *and* state officials alike were (often suddenly) confronted by the weight and meaning of U.S. citizenship as they struggled to grapple with the implementation of “citizen only” licensing laws. Sometimes favored white immigrants were offered a reprieve by administrators and legislators, while marginalized noncitizens (especially nonwhite men, all women, and refugees fleeing war and political persecution) were disproportionately harmed by these licensing restrictions. Canadian immigrants, especially numerous in the professions, often had their educational credentials readily verified by state authorities only to learn that a lack of U.S. citizenship could prevent them from working in a profession they had trained years to master. While the repeal of overt racial and sexist barriers to naturalization reduced some inequities in the enforcement of these policies by the mid-twentieth century, “citizen only” licensing laws forced citizens and noncitizens alike to learn how much citizenship could matter in the United States when seeking and administering access to professional employment.

Part III, “The Ascendance of the Rights of Citizenship” (Chapter 5) tracks the repatriation efforts of marital expatriates like Rhéa Lapalme – the largest group of American citizens remade into aliens – to illustrate the process by which American citizenship became modern. In and of itself, the repeal of forced marital expatriation represents a major development as it definitively recognized the right of married women to possess an independent citizenship. Chapter 5, “(Re)-Becoming Citizens,” demonstrates how marital expatriates fought against their expatriation and articulated what American citizenship meant to them both in patriotic and material terms. The dramatic and ultimately unsuccessful effort of federal officials to declare marital expatriates to be “citizens without the rights of citizenship” in 1940 illustrates the ascendance of a modern regime of American citizenship. While federal officials had long ignored or patronized marital expatriates in the 1920s and 1930s, they labored mightily in 1940 to find a remedy to place such women into a liminal legal status to avoid the repercussions of their alienage. That courts often (though not unanimously) rejected their argument represents a fundamental transformation in the weight of citizenship-based claims and the meaning of citizenship rights in the United States. Legal and popular conceptions that U.S. citizenship rights were powerful and inseparable (at least formally) from American citizenship had gained too much strength for the INS to legally remake marital expatriates into “citizens without the rights of citizenship” by executive fiat.

Though “Making Modern American Citizenship” engages most prominently with U.S. citizenship scholarship, it draws on many different approaches to American history. Each chapter contextualizes distinct historiographies and adopts differing methodologies in order to best explain major transformations in the history of U.S. citizenship. Part I primarily

investigates comparative studies of U.S. political history and American political development. As such, it relies primarily on state legislative and constitutional debates, press accounts and commentary on those debates, and the publications of those engaged in these campaigns to illuminate how what counted as a political right of American citizenship evolved and became “standardized” from the late-nineteenth to the mid-twentieth centuries. It builds on and engages with the works of historians of the women’s suffrage movement, legal scholars who trace the rise and fall of alien suffrage and apportionment laws, and social scientists who aim to give coherence to the development of the modern American state and polity.

Part II, by contrast, explores how states debated and then tried to enforce economic restrictions owing to alienage in blue- and white-collar employment. To understand the rise of “citizen only” laws, it engages the work of historians of labor and the rise of the American welfare state, legal analysts on the constitutionality of alienage-based policies, and scholars who examine the rise of the administrative state. To examine the breadth and weight of “citizen only” employment claims, it compares debates over proposed policies and studies efforts to enforce those that were adopted by both private employers and state agencies. It also explores the claims of nativist individuals and groups (which could include unions, employers, and professional organizations) and immigrant-friendly voices (both immigrant rights organizations and allied unions, civic actors, and/or employers) who fiercely contested exclusionary meanings of “citizenship rights.”

In exploring the efforts of marital expatriates to reclaim their birthright, Part III departs from the preceding sections by focusing primarily on federal debates, naturalization cases, and INS administrative records. As such, it relies on legal and political histories of the early-twentieth century “first-wave” feminist movement and social histories of women’s intersecting and sometimes competing experiences in an era of Jim Crow, immigration quotas, and overt racist barriers to immigration and naturalization. It compares marital expatriates’ repatriation rates in three different regions of the country to identify how women of different ethno-racial, class, and regional backgrounds experienced alienage. It also tracks the efforts of senior immigration authorities in Washington, DC and their deputies throughout the countries to enforce highly chaotic and often contradictory federal citizenship laws.

Overall, these chapters demonstrate both the weight and breadth of “citizenship rights” debates in seemingly diverging parts of American history. They also show that there are many ways to examine the history of citizenship rights and that a one-size-fits-all approach is likely to miss critical developments in the transformation of American citizenship. Of course, this dissertation neither recounts all changes to federal and state citizenship legislation in the century following the Civil War nor does it assert that every major development which led to the birth of modern American citizenship took place within that time frame.

While it emphasizes debates over the restriction of political and economic rights owing to alienage to contextualize developments in modern American citizenship, by no means does this dissertation seek to minimize the history of struggles to overturn racist or sexist naturalization barriers or the civil rights campaigns of marginalized Americans to ensure their citizenship rights in practice. Nor does it contend that the meaning, weight, and rights associated with American citizenship have remained stagnant in the past half century since the 1960s. On the contrary, U.S. citizenship and the rights of citizenship remain and will remain contested so long as they exist.

Instead, “Making Modern American Citizenship” argues that in the century following the Civil War, battles over the exclusion of noncitizens from parts of the American political economy dramatically reshaped the lived experience of citizenship and alienage and revolutionized popular and legal understandings of U.S. citizenship and citizenship rights. Those debates and battles over the “rights of citizenship” so transformed the language and meaning of American citizenship that denizens of the early twenty-first-century United States still live within the citizenship paradigm created by them.

Part I: Consolidating the Political Rights of Citizenship

Chapter 1: Making Voters Citizens: Repealing Alien Suffrage, 1877-1926

When the United States declared war on Germany and the other Central Powers in the spring of 1917, Carrie Chapman Catt, president of the National American Woman Suffrage Association (NAWSA), sensed an opportunity. At that time, seven U.S. states granted immigrant men – who had yet to become citizens – suffrage rights. German immigrants comprised either the largest or second largest foreign-born populations in each of those seven states. In Nebraska, for instance, immigrants born in Germany numbered slightly more than forty thousand and represented over a quarter of the state’s total foreign-born population.¹ Those men, now enemy aliens, could vote in local, state, and federal elections. In only one of those seven states (Kansas) were women already enfranchised. Catt knew well that alien suffrage – especially the voting rights of enemy alien men – was about to come under scrutiny both in those states and across the nation. In wartime, perhaps the NAWSA could mobilize anti-alien suffrage sentiment to bolster the *women’s* suffrage cause. Catt and her allies would certainly try.

In the runup to the 1918 midterm elections, the NAWSA journal *The Woman Citizen* repeatedly warned that “slackers” and “aliens” would have extra voice as citizen men were away at war.² Catt called on states to repeal alien suffrage laws and instead enfranchise citizen women as a national security measure. But Catt did not limit her appeal to the rhetoric of wartime readiness. She also denounced state suffrage laws which “permit[ed] men to vote who [we]re not citizens and denie[d] that privilege to women who [we]re citizens” as “undeniably inconsistent, unjust and tyrannical.”³ To rectify this injustice, the NAWSA endorsed the “standardization” of suffrage laws across the country by making “full citizenship” the “basis for suffrage...for men and women without discrimination.”⁴

Catt’s anti-immigrant voting rights campaign was neither uncontroversial nor was it an unqualified success. Though pro-women’s suffrage congressmen and senators contemplated incorporating the disfranchisement of noncitizens into the text of the Nineteenth Amendment, this approach was ultimately rejected.⁵ And in Texas, Catt’s efforts would backfire when a joint women’s suffrage/alien disfranchisement referendum was shot down by voters. African-American suffragists in Texas were doubly critical of Catt, for she had supported both the formal segregation of women’s suffrage clubs in the Lone Star State *and* encouraged suffragists not to push the “color issue” too far. Though Catt wanted to turn voting into a “right of citizenship,” ensuring that the franchise would be available to all citizens in practice was not her priority.⁶

¹ United States, *Fourteenth Census of the United States, 1920* (Washington, DC: Government Printing Office, 1921), 697–99.

² “Hearings Before House Committee,” *The Woman Citizen*, January 12, 1918, 130–31, 136–37; “Southern Suffragists Roused over Slacker Vote,” *The Woman Citizen*, January 12, 1918, 132, 137.

³ Carrie Chapman Catt, “The Citizen and the Vote,” *The Woman Citizen*, April 6, 1918, 366.

⁴ “Amending the Amendment,” *The Woman Citizen*, July 13, 1918, 125.

⁵ See, most especially: Keremidchieva, “The Gendering of Legislative Rationality”; Zornitsa Keremidchieva, “The Congressional Debates on the 19th Amendment: Jurisdictional Rhetoric and the Assemblage of the US Body Politic,” *Quarterly Journal of Speech* 99, no. 1 (January 2013): 51–73.

⁶ The link between women’s suffrage activism and anti-alien suffrage campaigns has been most studied in Texas history. Key works which have explored these joint efforts include: A. Elizabeth Taylor, “The Woman Suffrage Movement in Texas,” *The Journal of Southern History* 17, no. 2 (May 1951): 194–215; Judith N. McArthur and Harold L. Smith, *Minnie Fisher Cunningham: A Suffragist’s Life in Politics* (New York: Oxford University Press, 2005); Menchaca, *Naturalizing Mexican Immigrants*.

But Catt had correctly read the pulse of much of the country. Both during and shortly after World War I, legislators and voters debated the repeal of noncitizen voting laws in all seven states that still permitted it. The NAWSA and its post-Nineteenth Amendment successor – the League of Women Voters (LWV) – were at the forefront of those increasingly successful *disfranchisement* efforts. By 1926, no state in the nation would afford immigrants the right to vote before they became citizens.⁷

While Catt was far from the first to argue that voting was (or that it should become) a “right of citizenship,” her efforts – and those of her compatriots – dramatically reshaped the power of both citizenship-based claims *and* the weight of American citizenship. After all, the success of the women’s suffrage movement expanded (formal) voting rights to half of the citizen population and restricted suffrage rights to U.S. citizens. In this process, voting became both popularly understood and legally recast as the premier right of American citizenship.

This chapter will explore that dramatic transformation. It traces how “citizen only” voting rights arguments emerged and evolved in the late-nineteenth century, how they were contested at the dawn of the century, and how and why roughly two-fifths (twenty) of all U.S. states and territories ultimately repealed alien suffrage laws between 1877 and 1926. Without a federal constitutional amendment or Supreme Court order, state legislators and voters across the country turned suffrage into the right most early twenty-first-century Americans take for granted as the foremost right of – and limited to – U.S. citizens.

This chapter is by no means the first to explore the “passing of alien suffrage.”⁸ Since the publication of Gerald Rosberg’s 1977 article, “Aliens and Equal Protection: Why Not the Right to Vote,” legal experts have uncovered numerous causes to explain the end of alien suffrage in the United States during the late-nineteenth and early-twentieth centuries. Key reasons identified include: the end of frontier settlement policies, the rise of other voter restrictions (such as southern Jim Crow laws and northern voter registration requirements), and growing anti-immigrant sentiment, particularly in time of recession, war, and anti-radicalism.⁹

Social scientists and historians have added further rationale for its demise. Political scientist Ron Hayduk and historian Gregg Cantrell link anti-alien suffrage efforts to real and perceived fears of third party competition and the threat of a growing influence of noncitizen voters in elections owing to rising levels of immigration. Historian Alexander Keyssar ties the demise of alien suffrage to changing migration patterns, as more foreigners moved to cities than rural areas in the late-nineteenth century. Both Keyssar and Hayduk contend that the repeal of alien suffrage provisions was part of a broader Progressive-era “reform” campaign to restrict would-be (working-class, poor, nonwhite, and/or immigrant) voters’ access to the franchise to

⁷ I rely most especially on the work of Alexander Kessar and Ron Hayduk as references for the dates regarding the enactment and repeal of alien suffrage legislation: Keyssar, *The Right to Vote*, 371–73; Hayduk, *Democracy for All*, 19–22.

⁸ Indeed, Aylsworth was one of the first to study this very phenomenon in 1931: Leon E Aylsworth, “The Passing of Alien Suffrage,” *American Political Science Review* 25, no. 1 (1931): 114–16.

⁹ Rosberg, “Aliens and Equal Protection”; Gerald L. Neuman, “We Are the People: Alien Suffrage in German and American Perspective,” *Michigan Journal of International Law* 13, no. 2 (Winter 1992): 259–335; Raskin, “Legal Aliens, Local Citizens”; Harper-Ho, “Noncitizen Voting Rights”; Varsanyi, “The Rise and Fall (and Rise?) Of Non-Citizen Voting”; Sarah Song, “Democracy and Noncitizen Voting Rights,” *Citizenship Studies* 13, no. 6 (December 2009): 607–620; Monica W. Varsanyi, “Fighting for the Vote: The Struggle against Felon and Immigrant Disfranchisement,” in *Beyond Walls and Cages: Prisons, Borders, and Global Crisis*, ed. Andrew Burridge, Jenna M. Loyd, and Matthew Mitchelson (Athens, GA: University of Georgia Press, 2013), 266–76.

reduce real and imagined instances of fraud and to bolster the political power of middle- and upper-class, native-born voters. And political scientist Stanley Renshon contends that alien suffrage came to an end owing to a “consolidation” of citizenship obligations in the late-nineteenth and early-twentieth centuries, which led many Americans to view noncitizen voting as a relic of a bygone era and an outrage during World War I.¹⁰ Renshon does not explore who made that argument. But others have.

Women’s historians have been at the forefront of alien suffrage scholarship, identifying a crucial link between women’s suffrage campaigns and efforts to ban noncitizen voting. This is particularly the case for historians who have studied the suffrage cause in Texas. Since the publication of A. Elizabeth Taylor’s 1951 article, “The Woman Suffrage Movement in Texas,” many historians have explored the campaign against alien suffrage by leading Texan suffragists. Martha Menchaca demonstrates how white, middle-class Texas suffragists came to view banning noncitizen voting as a crucial step toward achieving independent citizenship for American women. And Zornitsa Keremidchieva has further uncovered how women’s suffrage leaders used both anti-German hysteria and anti-alien suffrage activism during World War I to influence debates over and mobilize congressional support for the Nineteenth Amendment.¹¹ Keremidchieva, in particular, emphasizes how an “intersection of anti-immigrant and pro-woman suffrage discourses” was “symptomatic of a transformation in political doctrine” which “establish[ed] citizenship as a primary qualification for voting.”¹²

This scholarship has greatly expanded our understanding of the extent of noncitizen voting in nineteenth and early-twentieth century America and identified a plethora of reasons for its demise. But such works have a tendency to render the repeal of alien suffrage policies as either an inevitable process and/or the byproduct of other, more important, political battles in the late-nineteenth and early-twentieth centuries. As this chapter will illuminate, however, the uniform repeal of alien suffrage policies was neither a foregone conclusion nor did opponents of noncitizen voting always ride the coattails of other campaigns to immediate victories. While in some states opponents of alien suffrage won swift triumphs, in others they had to struggle for years, sometimes decades, against determined opponents, entrenched political machines, and significant state constitutional impediments to altering suffrage laws. The weight of those obstacles greatly shaped both when and why alien suffrage laws were repealed in states across the country over the long span of a half century.

Secondarily, while scholarship on alien suffrage has contextualized the often nativist, xenophobic, racist, and protectionist rhetoric of opponents of noncitizen voting, such works have often paradoxically downplayed just how transformative the repeal of such policies were to the

¹⁰ Keyssar, *The Right to Vote*, 136–38; Hayduk, *Democracy for All*, 25–30; Stanley Renshon, *Noncitizen Voting and American Democracy* (New York: Rowman & Littlefield, 2009), 71–73; Gregg Cantrell, “‘Our Very Pronounced Theory of Equal Rights to All’: Race, Citizenship, and Populism in the South Texas Borderlands,” *Journal of American History* 100, no. 3 (December 2013): 663–90.

¹¹ Taylor, “The Woman Suffrage Movement in Texas”; Charles E. Neu, “Olympia Brown and the Woman’s Suffrage Movement,” *Wisconsin Magazine of History* 43, no. 4 (Summer 1960): 277–87; Burton W. Folsom, “Tinkerers, Tipplers, and Traitors: Ethnicity and Democratic Reform in Nebraska during the Progressive Era,” *Pacific Historical Review* 50, no. 1 (February 1981): 53–75; Graham, *Woman Suffrage and the New Democracy*; McArthur and Smith, *Minnie Fisher Cunningham*; Keremidchieva, “The Gendering of Legislative Rationality”; Menchaca, *Naturalizing Mexican Immigrants*; Keremidchieva, “Congressional Debates”; Sandra F. VanBurkleo, *Gender Remade: Citizenship, Suffrage, and Public Power in the New Northwest, 1879–1912* (New York: Cambridge University Press, 2015).

¹² Keremidchieva, “The Gendering of Legislative Rationality,” 76.

meaning and limits of American citizenship rights. This is not to say that nativist claims of “citizen only” rights were not bigoted or discriminatory. On the contrary, anti-immigrant political actors often employed deeply ugly arguments as a vehicle for and means of promoting exclusionary “citizenship rights” claims. As this chapter underscores, however, those citizenship-based arguments: (1) acquired popular support, (2) passed legal muster, (3) reconfigured state suffrage policies, and (4) reshaped the lived weight of citizenship by equating suffrage with citizenship. In arguing for the “standardization” of state suffrage laws, opponents of noncitizen voting were articulating a vision of modern American citizenship in which citizenship rights were integrally linked to citizenship status. While opponents of noncitizen voting – such as NAWSA leaders – knew full well that those rights would be denied in practice to many marginalized, especially nonwhite Americans, their ultimately successful argument that “citizenship” could not be formally decoupled from “citizenship rights” both dramatically expanded and restricted suffrage rights and turned voting into a right of citizenship.

This chapter explores political battles over the repeal of alien suffrage and tracks how those debates were contested and reframed as “citizenship rights” arguments. As it is untenable to devote equal attention to twenty states and territories, it focuses on representative case studies and explores links and patterns in anti-alien suffrage campaigns. To illuminate patterns into how, why, and when states and territories overturned noncitizen voting policies, special attention is paid to the variables of time, region (particularly regional demographics), and (state) constitutional requirements to alter voting rights.

Section 1, “Narrowing Suffrage via Constitutional Convention,” demonstrates that opponents of noncitizen voting frequently mobilized at state and territorial constitutional conventions as they provided a unique opportunity to ban alien suffrage. After all, delegates could simply ban the practice when writing (or rewriting) their state’s constitution. Between 1877 and 1907, four southern states and five western territories acquiring statehood would rescind noncitizen voting rights. All, save Florida, would do so at constitutional conventions. A comparison of constitutional debates in Louisiana and Montana shows that while opponents of alien suffrage mobilized for diverging reasons in the South and the West and the topic became more hotly debated in western territories (where immigrants made up a larger percentage of the population), “citizenship rights” claims were successfully employed to disfranchise noncitizen voters (though in both regions those arguments were rarely separated from overt racist and/or nativist sentiment). However, while opponents and supporters of alien suffrage sometimes confronted questions of federal citizenship and national suffrage rights, debates were heavily localized. Likewise, while national “reform” journals and women’s suffragists sometimes commented on the injustice of alien suffrage, their admonitions were not decisive in these convention debates. An organized, national campaign against alien suffrage had yet to emerge.

Section 2, “Noncitizen Voting in Retreat during the Progressive Era,” unpacks how growing opposition to alien suffrage – increasingly mobilized by women’s suffragists – led voters to repeal noncitizen voting laws via constitutional referenda in six midwestern and western states between 1894 and 1914. In all of them, immigrants – increasingly from southern and eastern Europe – comprised a significant portion of each state’s population. Frequently, opponents advocated for the repeal of alien suffrage during a time of recession. Comparing repeal measures in three upper midwestern states (Michigan, Minnesota, and Colorado) and two

western states (Colorado and Oregon) demonstrates that while antagonism to noncitizen voting was widespread and diffuse in the Upper Midwest, in western states opposition to alien suffrage became hotly-debated during state women's suffrage campaigns. There, suffragists viewed male noncitizen voters as some of their fiercest opponents and increasingly argued that citizenship should be linked to voting rights. Upon obtaining the vote, newly enfranchised women often provided critical support for efforts to repeal alien suffrage. As at constitutional conventions, the language of "citizenship rights" was at the forefront of anti-alien suffrage referenda disputes. But referenda campaigns saw opponents of alien suffrage increasingly link their arguments to the importance of making voting a nationwide right of – and limited to – citizens.

Section 3, "Standardizing' Citizenship," tracks the campaign of Catt and her NAWSA/LWV colleagues to consolidate suffrage as a right of citizenship during World War I and the years immediately following the war. Seven Plains, Upper South, and Lower Midwest states finally repealed their alien suffrage policies during this intense period of xenophobia and nativism. Each was a rural state; many had disproportionately large German and German-American populations. I compare these referenda campaigns – particularly those of Nebraska and Indiana – to show how high (state) constitutional burdens to alter suffrage laws were only overcome when alien suffrage was thrust into the national spotlight during and immediately after wartime. Campaigns against noncitizen voting acquired a truly national character during this time period, as the leadership of the NAWSA/LWV actively campaigned against alien suffrage at the state and federal level. Meanwhile, a wide array of forces – from "patriotic" organizations to national media commentators – increasingly highlighted and criticized noncitizen voting rights, arguing the practice was a blemish on the nation. When put to a vote, alien suffrage laws were (ultimately) rescinded in each state, often with wide majorities.

By 1926, suffrage had become a right limited to citizens, a major transformation in American citizenship rights. In practice, suffrage was not available to all citizens and remained highly constrained based on race and (to a lesser extent) class. The development of anti-alien suffrage laws was inextricably linked to contemporaneous campaigns to dramatically reduce African-American political rights and expand them to (mostly white, middle-class) women. But alien suffrage repeal measures were not simply the result of those broader forces. They were shaped by distinct and linked patterns in dozens of state and territorial campaigns to repeal alien suffrage, which together helped to make suffrage legally recognized and popularly understood as the predominant political right in the United States of – and limited to – citizens.

a. *Background*

Alien suffrage was not an aberration of the late-nineteenth century. Noncitizens could vote in many colonies prior to American independence and continued to possess suffrage rights into the early republican period. Prior to the 1830s, suffrage rights were afforded in most states based on white, male, property-owning status, not nationality. But alien suffrage was not national policy in the antebellum period either. During times of war, recession, and heightened xenophobia, noncitizens often lost the right to vote. By 1856, all states along the East Coast had barred noncitizens from voting.¹³

Just as alien suffrage rights were narrowing in the Northeast and South, many of the territories and soon-to-be states of the Old Northwest granted aliens the franchise to entice

¹³ Keyssar, *The Right to Vote*, 371–73; Hayduk, *Democracy for All*, 19–22.

would-be settlers. Wisconsin offered immigrants the right to vote if they declared their intention to become citizens. That “alien declarant” policy would soon be enacted in several other midwestern states and later in other states and territories which permitted noncitizen voting. Thus, as the Civil War approached, noncitizens were barred from voting in densely populated states with large, urban immigrant populations such as Massachusetts, New York, Ohio, Rhode Island¹⁴, and Pennsylvania. But in the new, upper midwestern states of Michigan, Minnesota, and Wisconsin, alien suffrage was used as an inducement to settlement.¹⁵

The suppression of the Slaveholders’ Rebellion put alien suffrage on the agenda of state constitutional conventions and legislative debates in the newly liberated South. Noncitizen voting would prove quite popular with Reconstruction-era southern politicians. Four states of the former Confederacy (Arkansas, Florida, Georgia, and Texas) and the border state of Missouri would enact alien suffrage into law prior to 1877. Louisiana followed suit shortly thereafter in 1879. Southern states enacted alien suffrage provisions in large part to attract foreign labor, which – apart from Missouri and Texas – had much lower rates of immigration than the rest of the nation. But such desires were not unique to southern leaders.¹⁶

Territories in the West were also in search of settlers and frequently chose to afford aliens the right to vote as a means of encouraging migration. By 1877, four states (Colorado, Kansas, Nebraska, and Oregon) and six territories (Dakota, Idaho, Montana, Oklahoma, Washington, and Wyoming) of the Plains, Mountain and Pacific West granted noncitizens the right to vote.¹⁷ At the end of Reconstruction, noncitizens could vote in roughly two of five states and territories in the nation.¹⁸ With its popularity ascendant, the presence of noncitizen voters at the polls seemed to be an enduring feature of American politics and U.S. suffrage rights. But such policies were not universally adopted either.

In his groundbreaking work on the history of suffrage in the United States, *The Right to Vote*, historian Alexander Keyssar delves into one major case study to explore the demise of alien suffrage across the country in the late nineteenth and early twentieth centuries: the Ohio Constitutional Convention of 1873-74.¹⁹ Advocates of noncitizen voting appealed to both the better angels and deepest prejudices of their colleagues as they sought to make Ohio an alien suffrage state. As Keyssar notes, they frequently argued that noncitizens who had served their adoptive country in war had earned the right to vote.²⁰ Since alien men had been allowed to vote

¹⁴ Rhode Island even had higher property requirements for naturalized citizens: Keyssar, *The Right to Vote*, 74–75.

¹⁵ Key works on this broad history include: J. W. Garner and Alpheus Snow, “Participation of the Alien in the Political Life of the Community,” *Proceedings of the American Society of International Law* 5 (1911): 172–92; Hattie Plum Williams, “The Road to Citizenship,” *Political Science Quarterly* 27, no. 3 (September 1912): 399–427; Kirk Harold Porter, *A History of Suffrage in the United States* (University of Chicago Press, 1918); Harold Foote Gosnell, *Democracy, the Threshold of Freedom* (New York: Ronald Press Company, 1948); Charles O. Lerche, “The Guarantee of a Republican Form of Government and the Admission of New States,” *Journal of Politics* 11, no. 3 (August 1949): 578–604; Rosberg, “Aliens and Equal Protection”; Neuman, “We Are the People”; Raskin, “Legal Aliens, Local Citizens”; Harper-Ho, “Noncitizen Voting Rights”; Keyssar, *The Right to Vote*; Marta Tienda, “Demography and the Social Contract,” *Demography* 39, no. 4 (November 2002): 587–616; Varsanyi, “The Rise and Fall (and Rise?) Of Non-Citizen Voting”; Hayduk, *Democracy for All*; Renshon, *Noncitizen Voting and American Democracy*.

¹⁶ See, in particular: Neuman, “We Are the People”; Keyssar, *The Right to Vote*, 371–73; Hayduk, *Democracy for All*, 19–22; Varsanyi, “The Rise and Fall (and Rise?) Of Non-Citizen Voting.”

¹⁷ Keyssar, *The Right to Vote*, 371–73; Hayduk, *Democracy for All*, 19–22.

¹⁸ See, among others: Rosberg, “Aliens and Equal Protection”; Raskin, “Legal Aliens, Local Citizens”; Keyssar, *The Right to Vote*; Hayduk, *Democracy for All*; Renshon, *Noncitizen Voting and American Democracy*.

¹⁹ Keyssar, *The Right to Vote*, 136–38.

²⁰ Keyssar, *The Right to Vote*, 137.

only a few decades earlier in the state, they also claimed that Ohioans had little to worry from the reintroduction of the policy.²¹ Supporters of alien suffrage were not above to appealing to the prejudices of fellow delegates. Delegate Llewelyn Barber argued that, “a little more infusion of the honest German and foreign element” would help the state “confront and control the carpet-baggers and scalawags now enthroned in place and office by means of this degraded colored element, who are being used as the mere serfs of centralized power.”²²

As Keyssar summarizes, opponents of noncitizen voting fought back vociferously with “Parkmanesque images of ignorant, foreign-born paupers ill-equipped to participate in democratic politics.”²³ And opponents had a ready reply to Barber’s appeal to white male-solidarity, arguing that it would be unfair to enfranchise noncitizen men while continuing to deny the suffrage to half of the citizenry: American women.²⁴ As Delegate Lewis Campbell declared, if he had “ten thousand votes, I would give nine thousand nine hundred and ninety-nine to woman before I would give one to aliens.”²⁵ Delegates also debated whether alien suffrage served to encourage or discourage immigrants from becoming citizens. But the central topic of debate in Ohio was the fitness of noncitizen men to vote. Ultimately, immigrants did not meet delegates’ standards; suffrage rights were confined to (male) citizens.²⁶

Keyssar uses the Ohio Constitutional Convention as his primary example to explore alien suffrage battles, finding it to be “prolonged and colorful” but concluding that “there was nothing unusual about either its content or the outcome of the vote.”²⁷ He finds that economic downturns, rising immigration rates, accompanying xenophobia, and nationalism during World War I were leading causes of statewide repeals of noncitizen voting across the nation.²⁸ Keyssar is not unique in using Ohio as a major case study to understand alien suffrage debates. In *Democracy for All*, political scientist Ron Hayduk finds that those debates provide representative “insights about ethnic prejudices of the day” in battles over noncitizen voting.²⁹

Though Keyssar’s findings are illuminating, a greater temporal and regional comparison is needed to illuminate how citizenship claims evolved and why the process of *repealing* alien suffrage policies lasted half a century. Alien suffrage debates at Ohio’s Constitutional Convention might be particularly gripping, but it was in the Deep South and in the West – not the Lower Midwest – where campaigns spread most widely in the post-Reconstruction period. And the legal mechanisms by which these polities could repeal noncitizen voting laws and their demographics very much help to explain the success or failure of anti-alien suffrage campaigns in this era.

²¹ Keyssar also identifies this as a major element of debate at the Ohio Convention: *Official Report of the Proceedings and Debates of the Third Constitutional Convention of Ohio: Assembled in the City of Columbus, on Tuesday, December 2, 1873 Volume II - Part 2* (Cleveland, OH: W.S. Robison & Co. Printers to the Convention, 1873), 1846–48; Keyssar, *The Right to Vote*, 137.

²² *Official Report of the Proceedings and Debates of the Third Constitutional Convention of Ohio*, 1928.

²³ Keyssar, *The Right to Vote*, 137.

²⁴ Keyssar, *The Right to Vote*, 137.

²⁵ Though Keyssar does not quote this exchange, he also finds Campbell to have been a key opponent to alien suffrage at the Ohio Convention: *Official Report of the Proceedings and Debates of the Third Constitutional Convention of Ohio*, 1802; Keyssar, *The Right to Vote*, 137.

²⁶ *Official Report of the Proceedings and Debates of the Third Constitutional Convention of Ohio*; Keyssar, *The Right to Vote*.

²⁷ Keyssar, *The Right to Vote*, 138.

²⁸ Keyssar, *The Right to Vote*, 136–38.

²⁹ Hayduk, *Democracy for All*, 32.

I. Narrowing Suffrage via Constitutional Convention:
Southern States and Western Territories Debate Alien Suffrage, 1877-1907

Repeal efforts in states of the Deep South and territories of the West were far from identical. Most notably, anti-alien suffrage campaigns were often a (relatively) small part of broader suffrage restriction drives in southern states which aimed to reduce African-American (and poor white) voting rights in states with relatively few immigrants. Noncitizen voting often became a much larger topic of debate in western territories obtaining statehood where immigrants made up a more significant percentage of the population (though those overall populations remained quite small). There, women’s suffrage – or lack thereof – sometimes emerged as a reason to deny noncitizens the vote.

Table 1: Demographic Comparison of Representative States and Territories Repealing Alien Suffrage via Constitutional Convention, 1890

State	Foreign-Born Population	African-American Population	Alien Suffrage Repealed
Montana	30.2% (43,096 individuals)	1% (1,490 individuals)	1894
Wyoming	23.8% (14,913 individuals)	1.5% (922 individuals)	1895
Louisiana	4.4% (49,747 individuals)	50.0% (559,193 individuals)	1898
Alabama	1.0% (14,777 individuals)	44.8% (678,489 individuals)	1901

Eleventh Census of the United States; Keyssar, The Right to Vote, 371-73; Hayduk, Democracy for All, 19-22.

In both regions, however, alien suffrage became a subject of debate due to a common reason: the convening of constitutional assemblies. Politicians were unable to avoid the topic, as suffrage laws were rewritten as a matter of course in these settings. Together, the repeal of noncitizen voting rights in eight polities represented a dramatic shift in American suffrage law, as delegates increasingly limited the franchise to citizens though they failed to afford that privilege to all citizens in both policy and practice.

a. *Immigrants in the Crossfire:
Alien Suffrage at Redeemer and Jim Crow Constitutional Conventions, 1877-1901*

As southern states enacted new constitutions in the wake of Reconstruction, many former rebel states rescinded recently-enacted alien suffrage provisions. Georgia (1877), Louisiana (1898), and Alabama (1901) repealed noncitizen voting rights via constitutional convention, while Florida annulled such provisions through legislation in 1895.³⁰ The primary aim of these conventions was not to address the subject of alien suffrage. Rather, they were called by overtly racist white Democrats to drastically reduce African-American participation in elections and

³⁰ Keyssar, *The Right to Vote*, 371–73; Hayduk, *Democracy for All*, 19–22.

head off the threat of Republican and third-party competition. Therefore, much debate centered on how grandfather clauses, poll taxes, and literacy tests would – or should – reduce the participation of poor white voters.³¹

It is unsurprising that alien suffrage failed to become a major topic of debate at most southern constitutional conventions. In 1890, immigrants numbered only one out of every one hundred fifty residents in Georgia and one out of every hundred inhabitants in Alabama.³² Thus, while we know that the 1877 Georgia Constitutional Convention stipulated that only male citizens would henceforth be allowed to vote, we do not know if there were remaining supporters of noncitizen voting, as no debate on the subject was recorded.³³ In Alabama, when white delegates to the 1901 Constitutional Convention argued over the influence of “aliens” in the polity, they often referred to the supposedly nefarious influence of northern whites and African Americans.³⁴ Since the Fifteenth Amendment remained in effect, the convention could not simply bar African Americans from voting. But delegates could and did enact other restrictions which, in tandem with the threat and use of political violence, dramatically reduced African-American voting rates in the state. Shortly after the new constitution went into effect, less than two percent of black men – fewer than three thousand – were registered to vote.³⁵ As historian Michael Perman finds, this was particularly dramatic in Alabama’s “Black Belt” counties, where African-American voter registration figures fell from nearly eighty thousand to just over one thousand.³⁶ And as legal scholar Monica Varsanyi makes clear, white supremacist delegates did not even link suffrage with the nominal rights of citizenship either, for they approved new, draconian disfranchisement laws for felons and former felons at the same convention.³⁷

In Louisiana however, where immigrants numbered roughly fifty thousand and represented 4.4% of the state’s population, alien suffrage emerged as a much greater topic of debate.³⁸ In 1879, delegates in Louisiana adopted the state’s first post-Reconstruction constitution. Unlike their peers in Georgia, Louisiana “Redeemer” delegates did not ban alien suffrage. Instead, they made all male *inhabitants* of the state potential voters, including noncitizens.³⁹ Nearly twenty years later, delegates assembled once more in 1898 to enact a new, Jim Crow constitution to reduce black voter participation and ensure one-party Democratic rule in the state.⁴⁰ As in Georgia and Alabama, white supremacists in Louisiana debated whether barriers to the ballot should be extended to poor and illiterate white voters. But politicians in Louisiana faced two unique challenges compared to their peers in other Deep South states.

³¹ There is a broad literature on the rise of Jim Crow-era suffrage restrictions. For the purposes of this chapter, I rely on: Kousser, *The Shaping of Southern Politics*; Perman, *Struggle for Mastery*.

³² United States, *Eleventh Census of the United States, 1890* (Washington, DC: Government Printing Office, 1896).

³³ *Journal of the Constitutional Convention of the People of Georgia, Held in the City of Atlanta in the Months of July and August, 1877* (Atlanta, GA: Jas. P. Harrison & Co., 1877).

³⁴ *Journal of the Proceedings of the Constitutional Convention of the State of Alabama, Held in the City of Montgomery, Commencing May 21st, 1901* (Montgomery, AL: Brown Printing Company, 1901), 369–70, 1755.

³⁵ Kousser, *The Shaping of Southern Politics*, 61, 165–71; Perman, *Struggle for Mastery*, 193.

³⁶ Perman, *Struggle for Mastery*, 193.

³⁷ Varsanyi, “Fighting for the Vote: The Struggle against Felon and Immigrant Disfranchisement”; For a comparative history of post-Civil War era (highly racialized) suffrage restrictions aimed at felons and former felons, see: Pippa Holloway, *Living in Infamy: Felon Disfranchisement and the History of American Citizenship* (New York: Oxford University Press, 2013).

³⁸ United States, *Eleventh Census of the United States*, 1896.

³⁹ *Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana, Held in New Orleans, Monday, April, 21 1879* (New Orleans, LA: Jas. H. Cosgrove, 1879).

⁴⁰ *Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana: Held in New Orleans, Tuesday, February 8, 1898. And Calendar* (New Orleans, LA: H. J. Hearsey, 1898).

Many white voters in southwest Louisiana were francophones who could not speak, let alone read or write, English. Second, New Orleans possessed a sizeable immigrant population, particularly a growing Italian community. Would these groups be incorporated as voters in the era of Jim Crow?⁴¹

Such questions were hotly debated. While delegates proposed grandfather clauses and poll tax measures as mechanisms to ensure, in the words of Delegate T. J. Kernan, “the Democratic doctrine of universal manhood suffrage for white men,”⁴² they could not agree on whether one needed to speak English to vote. Delegates from the predominantly French-speaking Southwest of the state and supporters of (white) immigrant voting rights such as former New Orleans Mayor John Fitzpatrick argued in favor of suffrage rights for non-English speakers. They backed provisions that would allow voters to register in a language other than English and promoted the use of interpreters to aid in registration efforts.⁴³ Opponents attacked such measures with racial epithets, calling this proposal a “Privileged Dago clause,” while (white supremacist) supporters like Kernan defended (white) immigrants, declaring, “Who are we, I may ask, but foreigners, one or two degrees removed?”⁴⁴

Ultimately, a “compromise” was worked out, which included a grandfather clause and a poll tax to reduce black voter turnout *and* a repeal of alien suffrage rights, but also provided registration assistance for non-English speakers, including naturalized immigrants. Delegates were required to vote on the entire agreement. Some supporters of *white* immigrant/francophone voting rights like Kernan embraced this approach, while others only tolerated it as a necessary concession for their favored grandfather clauses and poll taxes. One such delegate, James Burke, argued, “Believing that [this agreement] will take in many thousands of white citizens of Southwest Louisiana, it becomes incumbent on me to vote for” the compromise. Burke clarified, however, that he remained “opposed to the foreigner clause.”⁴⁵ Delegate C.A. Presley likewise concurred only because, “many worthy and good white men...could not register otherwise.”⁴⁶

Other delegates voted against the agreement altogether, claiming it unfairly favored francophones and immigrants over native-born, English-speaking whites. Delegate Paul Leche claimed that the proposal was “unfair in giving naturalized foreigners an advantage over native citizens” and warned that its registration provisions were “not sufficiently safe guarded against fraud.”⁴⁷ Delegate William Hart likewise voted against the proposed suffrage provisions because he (incorrectly) claimed that the compromise “made electors” of “persons not citizens of the United States.”⁴⁸ Kernan, the most outspoken supporter of this agreement countered such arguments, declaring “Don’t you know...that the illiterate Dago voter, who has come here in the last ten years, is excluded by the provision requiring him to have perfected his naturalization prior to the first of January, 1898”?⁴⁹ Ultimately, after much debate, this set of proposals was agreed to and became the basis for the new Jim Crow regime in Louisiana for decades to come. As in Alabama, black participation plummeted following the ratification of the new constitution.

⁴¹ Kousser, *The Shaping of Southern Politics*, 152–65; Perman, *Struggle for Mastery*, 124–47.

⁴² *Official Journal of the 1898 Constitutional Convention of the State of Louisiana*, 144.

⁴³ See, broadly: Perman, *Struggle for Mastery*, 140–47.

⁴⁴ *Official Journal of the 1898 Constitutional Convention of the State of Louisiana*, 122.

⁴⁵ *Official Journal of the 1898 Constitutional Convention of the State of Louisiana*, 143.

⁴⁶ *Official Journal of the 1898 Constitutional Convention of the State of Louisiana*, 144.

⁴⁷ *Official Journal of the 1898 Constitutional Convention of the State of Louisiana*, 144.

⁴⁸ *Official Journal of the 1898 Constitutional Convention of the State of Louisiana*, 144.

⁴⁹ *Official Journal of the 1898 Constitutional Convention of the State of Louisiana*, 122.

Whereas nearly all black men were registered voters in Louisiana in 1897, the new Jim Crow-era constitution reduced African-American registration by roughly ninety percent.⁵⁰ At the dawn of the twentieth century, only 5,320 African American men were registered to vote in Louisiana.⁵¹

Both white supremacists and advocates of African-American rights would come to decry Louisiana's alien suffrage policy in the press. In the *Banner-Democrat*, supporters of whites-only suffrage counted alien suffrage among several "mistake[n]" voting experiments of the post-Civil War era that included the ratification of the Fifteenth Amendment and the rise of women's suffrage in the West. Pointing to a recent, successful repeal effort of alien suffrage in Minnesota, the *Banner-Democrat* argued that surely politicians in Louisiana could ban noncitizen voting in the Bayou State where it had "worked as badly here as in Minnesota."⁵² In contrast, supporters of black voting rights in the (Virginia-based) *Tazwell Republican* accused delegates in 1898 of trying to write a harsh literacy test into the constitution to disfranchise African-American voters *en masse*. The newspaper did not endorse voting rights for all, however. What was needed, it argued, was the effective prevention of "illiterate Italians" from voting, not the wholesale disfranchisement of African-American citizens.⁵³ Opposition to the voting rights of noncitizens in Louisiana, therefore, took many forms and even crossed state borders in the late-nineteenth century. And proponents for "citizen only" suffrage would, in turn, point to the successful repeal effort to argue in favor of repeal measures in other states.

When the *Banner-Democrat* announced its opposition to alien suffrage in 1897 and encouraged Louisiana to join the ranks of states which had recently repealed noncitizen voting, it mentioned a neighboring state that also permitted immigrant men to vote before they had become citizens: Texas. If the repeal of alien suffrage was put to the voters of the Lone Star State, an "overwhelming" majority would support it, argued the *Banner-Democrat*.⁵⁴ But alien suffrage would not be repealed in Texas until 1921. Texas was not alone. In two other southern states – Arkansas, and Missouri – noncitizen voting would persevere into the 1920s. Alien suffrage was not without its detractors in those states. As historian Gregg Cantrell demonstrates, Populists mobilized against noncitizen voting in Texas in the mid-1890s, claiming that Democratic Party power brokers (including local and county authorities and farm owners) were bribing non-resident Mexican men to fraudulently declare their intention to naturalize in return for their votes (going so far as to sometimes pay or waive fees on behalf of Mexican laborers).⁵⁵ And in Arkansas, saloonkeepers strangely (and almost certainly incorrectly) claimed that women and noncitizens were conspiring together to enact prohibition.⁵⁶ Why then did noncitizen voting rights persevere in these three southern states, while alien suffrage was repealed – with relatively little opposition – in four other southern states between 1877 and 1901?

Several factors distinguished Missouri, Arkansas, and Texas from their southern peers. First, none of these three states were part of the "Deep South" states of the Black Belt. While African Americans made up between six and twenty-seven percent of the population of Missouri,

⁵⁰ Kousser, *The Shaping of Southern Politics*, 49.

⁵¹ Perman, *Struggle for Mastery*, 147.

⁵² "Limitation of the Suffrage," *The Banner-Democrat*, January 2, 1897, 2.

⁵³ "Tampering with the Suffrage," *The Tazwell Republican*, March 17, 1898, 2.

⁵⁴ "Limitation of the Suffrage," *The Banner-Democrat*, January 2, 1897, 2.

⁵⁵ Historian Gregg Cantrell shows how the federal naturalization case *In re Rodriguez* (1896) – which determined that Mexican immigrants were legally recognized as white (and therefore eligible to naturalize) – arose because Populist leaders in Texas sought to have the courts recognize Mexicans as nonwhite. See: Cantrell, "'Our Very Pronounced Theory of Equal Rights to All.'"

⁵⁶ "Ballots and Bayonets," *The Woman's Journal*, October 17, 1891, 334.

Arkansas, and Texas in 1890, in the other four they comprised more than forty percent of each state's population.⁵⁷ Though anti-black violence was terrifyingly common in Arkansas, Missouri, and Texas during the Jim Crow period, the Deep South was the epicenter of mob lynchings and state violence against African Americans. As J. Morgan Kousser and Michael Perman have found in their analyses of the comparative development of Jim Crow legal regimes across southern states, white elites believed that codifying voting restrictions into state constitutions was necessary to maintain power in states where African Americans made up roughly half of the population. In contrast, planter elites found it much more difficult to call constitutional conventions in states where white voters comprised a significantly larger share of the population, since disfranchisement provisions would inevitably restrict the suffrage rights of many poor whites. Of course, the absence of constitutional conventions did not prevent states from enacting literacy tests, poll taxes, and grandfather clauses through other means. Nor did it prevent widespread white supremacist violence.⁵⁸

Demographics also played a major role in deciding whether a southern state repealed or retained alien suffrage provisions. In 1890, nearly seven percent of residents of the Lone Star State were immigrants. In Missouri, roughly one out of every three residents were born abroad. Of all states that debated alien suffrage in the turn-of-the-century period, only North Dakota had a higher percentage of immigrants within their borders than Missouri.⁵⁹ Politicians in Missouri – and to a lesser extent Texas – had to determine if repealing alien suffrage was in their own electoral interests. Since both Texas and Missouri possessed large numbers of Germans – who were often fiercely opposed to prohibition – liquor interests and anti-prohibition politicians had little reason to support the repeal of alien suffrage. A major disruption to the political systems of those states would be needed to alter longstanding alien suffrage laws.⁶⁰

But demographics were not destiny. Arkansas, a state with one of the lowest rates of immigration in the country (barely over one percent of the state's population was born abroad), seemed like a prime candidate to repeal alien suffrage at the turn of the century. After all, politicians there had little to lose in banning noncitizens from voting. Even Florida, a state with significantly more immigrants than Arkansas (roughly six percent of Florida's population were foreign-born in 1890) had repealed alien suffrage via legislative statute in 1895.⁶¹ But there was one major impediment to barring noncitizens from voting in Arkansas: high barriers to changing the state's constitution. For an anti-alien suffrage measure to be added to the state's constitution, ayes would not simply have to outweigh nays, but also outnumber nay votes *and* abstentions. With low rates of voter participation on referenda in Arkansas (and elsewhere) during this era, this posed a significant burden for alien suffrage opponents.⁶² And so, while a powerful white supremacist movement succeeded in restricting African Americans' access to the ballot in Arkansas, no similar movement emerged to demand a repeal of alien suffrage.⁶³ Not forced to confront the subject at a constitutional convention, politicians in Arkansas continued to permit

⁵⁷ United States, *Eleventh Census of the United States*, 1896.

⁵⁸ See, broadly: Kousser, *The Shaping of Southern Politics*; Perman, *Struggle for Mastery*.

⁵⁹ United States, *Eleventh Census of the United States*, 1896.

⁶⁰ World War I would provide that major disruption. This topic will be addressed in much greater detail in Section 3 of this chapter. See, for instance: "150,000 Missouri German Voters Hit in New Bill," *Mexico Weekly Ledger*, March 14, 1918, 3; "Prohibition and Suffrage Will Carry If Given Full Support," *El Paso Herald*, April 18, 1919, 6.

⁶¹ United States, *Eleventh Census of the United States*, 1896.

⁶² See, especially: Aylsworth, "The Passing of Alien Suffrage."

⁶³ Kousser, *The Shaping of Southern Politics*, 123–30; Perman, *Struggle for Mastery*, 59–69.

the few noncitizen men in the state to vote decades longer than the (significantly more numerous) immigrants in neighboring Louisiana.

b. *Experimenting with Democracy in the West:
Women's Suffrage and the Repeal of Alien Suffrage, 1874-1907*

Just as the states of the Deep South repealed noncitizen voting rights via constitutional convention, alien suffrage also emerged as a matter of debate at western assemblies in the late-nineteenth and early-twentieth centuries. While noncitizen voting could be found in regions across the United States, nowhere was it more common than in the West. In 1875, three western states (Kansas, Nebraska, and Oregon) and eight future states (Colorado, Idaho, Montana, North Dakota, Oklahoma, South Dakota, Washington, and Wyoming) allowed aliens to vote.⁶⁴

The widespread practice of alien suffrage in many Pacific Northwestern, Rocky Mountain, and Plains states and territories might make the region appear uniquely open to pluralistic forms of democracy in the late-nineteenth century. Indeed, equal voting rights for women first became law in Wyoming Territory in 1869 and spread much more rapidly in neighboring states and territories than in states east of the Mississippi River. But the states and territories of the “West” were not inclusive of the political rights of all persons who resided within their borders.

From widespread organized violence directed against Chinese immigrants in mines and urban centers to legislation directed at East and South Asians’ political and economic rights, the American West was one of the most inhospitable regions in the country for nonwhite immigrants in the late-nineteenth and early-twentieth centuries.⁶⁵ Native Americans, who continued to experience state-directed violence and repression, were not considered part of the polity in the West. They were denied suffrage rights and citizenship unless they “assimilated” into so-called white American norms of private land ownership.⁶⁶ And it was no coincidence that it was in the territories of the Southwest where immigrants, predominantly of Mexican origin, were banned from voting, as Anglos feared and fought against their influence.⁶⁷ While the West might have been the region of the country most open to noncitizen voting – as an inducement to encourage (white) immigrants to settle in the region – such “inclusiveness” was predicated upon white supremacy. But appeals to white supremacy by supporters of alien suffrage would not be enough to ensure its continued practice in the late-nineteenth and early-twentieth century West.

Territories in the West (aside from Arizona and New Mexico⁶⁸), were admitted to statehood at a rapid pace in the late-nineteenth century, often in response to national political

⁶⁴ Keyssar, *The Right to Vote*, 371–73; Hayduk, *Democracy for All*, 19–22.

⁶⁵ See, especially: Higham, *Strangers in the Land*; Alexander Saxton, *The Indispensable Enemy: Labor and the Anti-Chinese Movement in California* (Berkeley: University of California Press, 1971); Mink, *Old Labor and New Immigrants in American Political Development*.

⁶⁶ Even citizenship did not guarantee access to suffrage rights, in practice, for many Native Americans into the mid-twentieth century. See, for instance: N. D. Houghton, “The Legal Status of Indian Suffrage in the United States,” *California Law Review* 19, no. 5 (1931): 507–20; Willard Hughes Rollings, “Citizenship and Suffrage: The Native American Struggle for Civil Rights in the American West, 1830-1965,” *Nevada Law Journal* 5, no. 1 (Fall 2004): 126–40.

⁶⁷ Raskin, “Legal Aliens, Local Citizens”; Varsanyi, “The Rise and Fall (and Rise?) Of Non-Citizen Voting.”

⁶⁸ As historian Linda Noel demonstrates, these two territories were long denied statehood owing to Anglo fears that Mexican nationals and Mexican Americans would acquire significant power if these territories became states. See, broadly: Noel, *Debating American Identity*; See, also: Robin Jacobson, Daniel Tichenor, and T. Elizabeth Durden, “The Southwest’s Uneven

circumstances. The traditional practice of waiting until a territory possessed sixty thousand (white) residents was waived for Nevada, which became a state during the Civil War to bolster President Abraham Lincoln's reelection in 1864. Colorado became a state just months before the contested Presidential Election of 1876, providing three critical Electoral College votes that enabled the victory of Republican candidate Rutherford B. Hayes. And in the late 1880s, Republicans successfully pushed for the admission of the sparsely populated territories of Idaho, Montana, Washington, Wyoming, and the division of Dakota Territory into two states, reasoning that these new states would bolster their numbers in the Senate and Electoral College.⁶⁹

Colorado, the first western territory to acquire statehood in the post-Civil War era, had long permitted aliens the right to vote. Delegates to the 1875 convention in Denver knew that there were many noncitizens within their borders. After all, roughly one out of every five people in the territory had been born abroad.⁷⁰ Barring aliens from voting would have certainly hurt the electoral prospects of many politicians in Colorado. Not surprisingly, alien suffrage retained significant support at the convention. No delegate dared to overtly oppose the practice.⁷¹

But supporters of women's suffrage in Colorado argued that citizenship should be the primary qualification for political rights in the country. In a blistering dissent to a majority report that rejected women's suffrage, Delegates H.P.H. Bromwell and Agipeta Vigil argued that it was unethical that women were denied the franchise in Colorado while voting rights were expanding to African-American men. Bromwell and Vigil argued that just as racial requirements for voting had rightly been "expunged from thirty-seven Constitutions to the same charnel house of ancient abuses," so too should the word "male" be stricken from the proposed constitution.⁷² They declared suffrage to be the "principal and real badge of citizenship" and likened its denial to American women to felon disfranchisement.⁷³ Bromwell and Vigil failed to mention that many voters in the state were not even citizens.⁷⁴ In subsequent decades, women's suffragists in Colorado (and elsewhere) would increasingly make the citizenship of voters (and would-be voters) a central element of their campaigns for the franchise.

Though western territories had much smaller overall populations than southern states, immigrants made up a much larger percentage of those populations in the West. In 1890, immigrants represented one out of every four residents of Wyoming. In Montana, they numbered three out of every ten. And in North Dakota, immigrants numbered a truly remarkable – and national high of – just over two out of every five residents in the state.⁷⁵ As in Colorado,

Welcome: Immigrant Inclusion and Exclusion in Arizona and New Mexico," *Journal of American Ethnic History* 37, no. 3 (Spring 2018): 5–36.

⁶⁹ There is a significant literature on western statehood constitutional conventions. For this chapter, I rely most on: Gordon Morris Bakken, *Rocky Mountain Constitution Making, 1850-1912* (New York: Greenwood Press, 1987); Amy Bridges, *Democratic Beginnings: Founding the Western States* (Lawrence, Kansas: University Press of Kansas, 2015).

⁷⁰ United States, *Tenth Census of the United States, 1880* (Washington, DC: Government Printing Office, 1880).

⁷¹ *Proceedings of the Constitutional Convention Held in Denver, December 20, 1875* (Denver, CO: Smith-Brooks Press, 1907).

⁷² *Proceedings of the 1875 Colorado Constitutional Convention*, 271.

⁷³ *Proceedings of the 1875 Colorado Constitutional Convention*, 267.

⁷⁴ Bromwell and Vigil were not without their own prejudices. They criticized delegates for treating women's suffrage proposals as no different than claims of Native Americans, arguing it was undignified for women's voting rights to be "fil[ing]...aside as though it came from the Cheyenne Indians" and for enforcing patriarchal relations in the state that differed little from that of "the Ute chief with his feathers and old brass and paint, while his squaw lugs the burden, trudging helplessly and hopelessly behind, the slave of a savage": *Proceedings of the 1875 Colorado Constitutional Convention*, 271.

⁷⁵ In 1890, their total populations were: Wyoming (62,555 persons), Montana (142,924), and North Dakota (190,983). See: United States, *Eleventh Census of the United States, 1896*.

delegates at statehood constitutional conventions knew that aliens made up a sizeable number of voters. Revoking those rights might drastically harm or significantly aid in their own electoral interests depending on their support from immigrant voters.

While alien suffrage was fiercely debated at many western constitutional conventions, it was in Montana where its repeal was contested most ferociously. There, advocates of noncitizen voting rights argued that all men who paid taxes and supported their adoptive country in a time of war should be allowed to vote. Others claimed that if Montana did not retain alien suffrage, immigrants might move to other nearby states and territories where they could vote. Delegate Martin Maginnis claimed that “in an old and settled state, I might take a different view, but I look upon it that we are all here in a new country” and encouraged fellow delegates to support alien suffrage rights.⁷⁶ Another, C.R. Middleton argued that:

The qualification of requiring a man to be a full citizen of the United States...does not seem to me to be conductive to that kind of immigration that we want to have...we should extend the hand of welcome and say to them “As soon as you are in this territory twelve months and have declared your intention to become a citizen you shall have a voice and vote in our elections.”⁷⁷

But foes of alien suffrage were numerous as well in Montana. Opponents claimed that noncitizen voters were easily bought, poorly educated, and racially inferior. Delegate Joseph Hogan argued that he had “seen men that had been in the country for several years...and they had never even taken out their first papers; but they happened to be working for some corporation that wanted their vote, and they went up like so many cattle to suit the favor of their employers.”⁷⁸ Delegate George Stapleton, bemoaned the fact that a foreigner who had been in the country for only one year and knew little of American democracy could “kill the vote of the best man in Montana territory – a man who has made a lifetime study of the spirit and intention of our institutions.”⁷⁹ Delegate Charles Warren specifically targeted Italian immigrants as unwanted voters and compared them unfavorably to previous immigrant groups. Warren charged that Italian migrants were willing to sell their votes in Montana *en masse* before moving to other states do the same. He slandered Italian immigrants by publicly reading from a “little article” that a “friend” had “called [his] attention to” which read:

It is somewhat uncomfortable to reflect that a citizen of intelligence, property, good moral character, and a keen sense of the responsibilities and dignities of his duties as an American citizen, may have his ballot offset by an Italian Lazzarone, exuding garlic at every pour (sic) of his otherwise unpleasant body, whose intelligence does not equal that of the monkey for whom he grinds the organ, and upon whose sense, industry and honesty he depends for his maintenance and macaroni.⁸⁰

⁷⁶ *Proceedings and Debates of the Constitutional Convention: Held in the City of Helena, Montana, 1889* (Helena, MT: State Publishing Company, 1921), 353.

⁷⁷ *Proceedings and Debates of the 1889 Constitutional Convention of Montana*, 352.

⁷⁸ *Proceedings and Debates of the 1889 Constitutional Convention of Montana*, 354.

⁷⁹ *Proceedings and Debates of the 1889 Constitutional Convention of Montana*, 356.

⁸⁰ *Proceedings and Debates of the 1889 Constitutional Convention of Montana*, 359.

Warren's outright bigotry was not unique. In the convention journal, it was noted that his speech was met with "laughter and applause."⁸¹ As historian Gordon Bakken finds, noncitizen voting was hotly debated in Montana because its repeal was proposed as a "compromise" between delegates who wanted to pass a strict literacy test for would-be voters (to prevent working-class immigrants from voting) and those who opposed those tests (as a threat to laboring voters of foreign and native birth). A ban on alien suffrage won out and the literacy test was rejected. Supporters of alien suffrage won a five-year grace period before the repeal went into effect, allowing (white) immigrants to naturalize before losing the franchise.⁸²

That noncitizen men – but not American women – possessed full suffrage rights did not go unnoticed in Montana. As Delegate Francis Sargent argued:

[H]alf of our own native born people are disfranchised...I fail to understand why members are so sensitive about the proposition that foreign-born residents shall remain in our country just long enough at least to acquire some liberal knowledge of our institutions before being permitted the right to vote."⁸³

But the campaign to enfranchise women was not the main factor which led to the repeal of alien suffrage. In Montana, women's suffrage was remarked upon and linked to – but did not become the central focus of – debates over whether suffrage should be tied to American citizenship.

Similar arguments in favor and in opposition to alien suffrage could be found at the Wyoming 1889 Constitutional Convention. There supporters contended that it would be unethical to take suffrage rights away from longstanding voters⁸⁴ and articulated a vision of male property-owning/taxpaying democracy.⁸⁵ Those who fought against noncitizen voting in Wyoming employed language and symbols common to the neighboring Montana convention, with one opponent arguing that noncitizen men in Wyoming were too often "unable to read the ballot," were "rounded up" by unscrupulous government officials, and "voted like so many cattle."⁸⁶

Though women had long been granted the right to vote in Wyoming, women's suffrage only became tangentially linked to debates over noncitizen voting. Delegate Louis Palmer, an

⁸¹ Warren was not the only one to overtly employ such derogatory language about Italian and other "new" immigrants. Delegate Francis Sargent claimed that "a great many foreigners never think about taking out their naturalization papers, but on the eve of election they are sought out in the devious saloons by committees of some one or other of the political parties; they are taken up to court and there they declare their intentions – God save the mark! – the Judge might as well read an extract from Sanscrit for all they know – but nominally their intentions are declared...the farce goes on...the committeeman pays for them, and the poor, ignorant dupe goes out of the courthouse a full-fledged voter": *Proceedings and Debates of the 1889 Constitutional Convention of Montana*, 358–59.

⁸² Bakken, *Rocky Mountain Constitution Making*, 88–90, 149–50.

⁸³ *Proceedings and Debates of the 1889 Constitutional Convention of Montana*, 357.

⁸⁴ For instance, Delegate H.E. Teschemacher argued in favor of alien suffrage, contending that it "is a well known fact that whenever the suffrage has been granted, whether as a privilege or a vested right" it "has never been taken away": *Journal and Debates of the Constitutional Convention of the State of Wyoming, Begun at the City of Cheyenne on September 2, 1889, and Concluded September 30, 1889* (Cheyenne, WY: The Daily Sun, 1893), 434.

⁸⁵ Delegate Anthony Campbell maintained that "if you tax a man and compel him to bear a portion of the burdens of citizenship, then that man should have the right to vote." See: *Journal and Debates of the 1889 Constitutional Convention of the State of Wyoming*, 377.

⁸⁶ *Journal and Debates of the 1889 Constitutional Convention of the State of Wyoming*, 375.

opponent of noncitizen voting rights, unfavorably contrasted alien suffrage to the territory's expansion of voting rights to American women. "It is a very sad thing" he declared:

to be present at an election and see intelligent men and women go up to the ballot box and cast their votes, and have a lot of ignorant fellows, who know nothing whatever of our institutions, go up and offset their votes...I say that it is an outrage that these men who know nothing and care nothing about our institutions, should be allowed to cast their ballots and render neutral the ballot of an intelligent man.⁸⁷

As in Montana, U.S. women's suffrage rights were placed on a rhetorical pedestal in contrast to the supposedly uneducated and unethical votes of noncitizen men in Wyoming debates. But this was not the main grounds on which opponents and supporters of alien suffrage did battle.

Delegates in Montana and Wyoming were not alone in rescinding alien suffrage rights at their statehood constitutional conventions. Idaho (1889), Washington (1889), and Oklahoma (1907) also rescinded the practice as their territories became states.⁸⁸ But alien suffrage did not die at all western constitutional conventions either. At the constitutional conventions of the soon-to-be states of North and South Dakota, alien suffrage survived.

Immigrants were quite numerous in Dakota Territory as delegates met in Bismarck and Sioux Falls to write constitutions for their soon-to-be states. In South Dakota, roughly one out of every four inhabitants of the new state in 1890 had been born abroad. In North Dakota, more than two out of every five residents hailed from a foreign land.⁸⁹ Unfortunately, the journals of these two constitutional assemblies did not produce substantial records of debate, so we do not know if alien suffrage was a contentious topic.⁹⁰ It is likely, however, that the relatively large number of immigrant voters in Dakota Territory helps to explain why alien suffrage continued into the statehood era.

When a women's suffrage referendum in South Dakota was defeated by a wide margin in 1890, local suffragists and the national leadership of the NAWSA felt they knew who to blame: noncitizen voters and their supporters. As Alan Grimes finds, although South Dakota suffragists were "defeated...by the overwhelming vote of 54,862 nays to 22,972 ayes" the contemporaneous NAWSA-sponsored *History of Woman Suffrage* maintained that "'30,000 Russians, Poles, Scandinavians and other foreigners'" were permitted to vote in the state, "'most of whom opposed woman suffrage.'"⁹¹ Similarly, Charles Neu has uncovered the degree to which leading suffragist Olympia Brown viewed foreigners to be responsible for the 1890 defeat and later used

⁸⁷ *Journal and Debates of the 1889 Constitutional Convention of the State of Wyoming*, 377.

⁸⁸ As Susan VanBurkleo describes, alien suffrage in Washington Territory was complicated by the enfranchisement and then subsequent disfranchisement of women in the territorial period as the citizenship status of women was often tied to - or subsumed by - the citizenship status of their husbands or fathers: VanBurkleo, *Gender Remade*, 47-48; See, also: Keyssar, *The Right to Vote*, 371-73; Hayduk, *Democracy for All*, 19-22.

⁸⁹ The main 1890 census report classified 91,055 foreign-born individuals and 237,753 native-born residents of South Dakota (a later report classified 19,072 Native Americans as residing in the state who had not been included in the original report). In North Dakota, 81,461 foreign-born residents were enumerated compared to 101,258 native-born residents in the main report (a separate report listed 7,980 Native Americans living in the state as having not been included in the initial report). See: United States, *Eleventh Census of the United States*, 1896.

⁹⁰ *Journal of the Constitutional Convention of South Dakota, July, 1889* (Sioux Falls, SD: Brown and Saenger, Printers and Binders, 1889); *Journal of the Constitutional Convention for North Dakota Held at Bismarck, Thursday, July 4 to Aug. 17, 1889* (Bismarck, ND: Tribune, State Printers and Binders, 1889).

⁹¹ Alan Pendleton Grimes, *The Puritan Ethic and Woman Suffrage* (New York: Oxford University Press, 1967), 86.

that campaign as a springboard to fight against what she viewed as an alliance between antisuffragist leaders and noncitizen voters.⁹² Both Grimes and Neu note that in the decades following the 1890 referendum campaign, the subject of alien suffrage would emerge more overtly as a foil for suffragists like Brown.⁹³ Suffragists would go on to publish articles about the topic to obtain support for women's suffrage among (often nativist) white, male readers.⁹⁴

Suffragists were not alone in trying to create a constituency opposed to alien suffrage at the national level. Late nineteenth-century election "reformer" Chester Lyman attacked alien suffrage in the *North American Review* and accused politicians of thrusting the votes of "ignorant" foreigners upon well-educated Americans. Lyman did not hide his disgust for recent immigrants drawn "very largely from the lower and poorer classes of Europe" who "[lower] the average of our moral and mental powers."⁹⁵ Lyman was not the only Yankee reformer to decry alien suffrage in this manner.⁹⁶ Hayduk finds that those who "pressed for and won the elimination of noncitizen voting in state after state from the 1880s to the 1920s" were often the "same reformers" who complained about other dangers of "universal manhood suffrage" and successfully advocated for restrictions such as voter registration laws, literacy tests, and the introduction of the Australian ballot throughout the North.⁹⁷ Anti-alien suffrage campaigns were increasingly becoming tied to – and part of – broader debates in the late nineteenth century.

But they were not subsumed by national debates either. By the turn of the twentieth century, at least twelve states in the South and West had debated alien suffrage. Nine of them repealed their longstanding policies of allowing noncitizens to vote and all but one did so via constitutional convention. At these conventions alien suffrage became intertwined with broader debates of national citizenship rights, but states and territories did not repeal alien suffrage owing to such debates. Instead, delegates *had* to confront the topic as they rewrote suffrage laws. Only in two small states – where immigrants comprised at least twenty-five percent of the population – did alien suffrage emerge unscathed. In states that did not call such assemblies however, alien suffrage would often remain the law of the land for decades.

But as the twentieth century dawned and fewer states continued alien suffrage, those remaining states were increasingly seen as outliers. Suffragists and Progressive "reformers" would become louder and more powerful in their denunciations of noncitizen voting. Where that was not enough, it would take the shock of World War I to deliver the *coup de grâce*.

II. Noncitizen Voting in Retreat during the Progressive Era: Alien Suffrage Referenda in the Upper Midwest and West, 1894-1914

Though alien suffrage rights were drastically reduced at constitutional conventions in the late-nineteenth century, that was not the only means by which noncitizens lost the right to vote. As states increasingly afforded voters the power to enact policies directly into law, opponents

⁹² See, broadly: Neu, "Olympia Brown and the Woman's Suffrage Movement."

⁹³ See especially: Neu, "Olympia Brown and the Woman's Suffrage Movement," 281; also, see: Grimes, *The Puritan Ethic and Woman Suffrage*, 86–91, 109–11.

⁹⁴ See, among many examples of press accounts just from the 1890s: "Suffrage Petitions Grow," *The Evening World*, May 31, 1894, 5; "Voters Who Are Not Citizens," *The Woman's Tribune*, January 25, 1896, 5.

⁹⁵ J. Chester Lyman, "Our Inequalities of Suffrage," *North American Review* 144, no. 364 (1887): 298–99.

⁹⁶ See, for instance: Henry A. Chaney, "Alien Suffrage," *Michigan Political Science Association* 1, no. 2 (1894): 130–39.

⁹⁷ Hayduk, *Democracy for All*, 38.

would turn to the referendum as a mechanism to rescind alien suffrage policies.⁹⁸ Of the thirteen remaining states that permitted noncitizen voting rights, all would repeal that right via referenda. But not all those campaigns were launched – or succeeded – for the same reasons.

Table 2: Demographic Comparison of States Repealing Alien Suffrage via Referendum Prior to World War I, 1900

State	Percent Foreign-Born	Foreign-Born Population	Alien Suffrage Repealed
Michigan	22.4%	541,653	1894
Minnesota	28.9%	505,318	1896
Colorado	16.9%	91,155	1902
Wisconsin	24.9%	515,971	1908
North Dakota	35.4%	113,091	1913
Oregon	15.9%	65,748	1914

*Twelfth Census of the United States; Keyssar, *The Right to Vote*, 371-73; Hayduk, *Democracy for All*, 19-22.*

Six states repealed alien suffrage between 1894 and 1914, while another seven followed between 1918 and 1926.⁹⁹ U.S. entry into the Great War – and its effects on national suffrage debates – proved to be the decisive factor in the latter referenda. But in the former, campaigns in the Upper Midwest (Michigan, Minnesota, and Wisconsin) and the West (Colorado, North Dakota, Oregon) succeeded owing to a multitude of reasons. Rising rates of immigration rejuvenated nativism in the United States, with economic downturn providing further fuel. While such factors influenced referenda across the country, in Colorado and Oregon women’s suffragists actively campaigned against alien suffrage, viewing immigrants to be their greatest opponents. Rhetorically, opponents of noncitizen voting were increasingly arguing that the franchise should be popularly recognized and legally recast as a “right of citizenship.” Nevertheless, while these state efforts were increasingly interlinked, they did not represent a truly national campaign. That would come with the onset of war.

a. *“Reform” and New Immigration:
Alien Suffrage Referenda in the Upper Midwest, 1894-1908*

Relatively little is known about campaigns to repeal alien suffrage in the upper midwestern states of Michigan (1894), Minnesota (1896) and Wisconsin (1908). While convention journals often spilled pages of ink over alien suffrage debates, referenda did not leave the same record trail. And alien suffrage did not attract the same degree of press attention as

⁹⁸ For an exploration of the history and practice of direct democracy in U.S. state governance, see: Shaun Bowler, Todd Donovan, and Caroline Tolbert, *Citizens as Legislators: Direct Democracy in the United States* (Columbus: Ohio State University Press, 1998).

⁹⁹ Keyssar, *The Right to Vote*, 371–73; Hayduk, *Democracy for All*, 19–22.

other topics – especially women’s suffrage or prohibition – in these states.¹⁰⁰ It is surprising that the repeal of noncitizen voting attracted relatively little attention at the time, given that immigrants comprised roughly a quarter of each state’s population at the turn of the century. And these states had large populations. Minnesota, the smallest of the three, had 1.75 million total residents in 1900, roughly half a million of whom were born abroad.¹⁰¹

Thus, while Minnesota voters adopted a ban on alien suffrage by a nearly two-to-one margin in 1896, more than *half* of voters participating in the election abstained on the question. This was the lowest rate of participation on eight referenda put before Minnesota voters that fall.¹⁰² But the repeal had a significant impact. Despite the efforts of Democrats in St. Paul to naturalize immigrants who had previously been able to vote on their first papers¹⁰³, forty thousand fewer Minnesotans voted in the midterm elections of 1898 than had in 1894, despite a growing population.¹⁰⁴ In Wisconsin high numbers of voters also abstained on the question of repealing alien suffrage in 1908. But fewer still voted to retain the practice, and alien suffrage was similarly repealed by wide margins.¹⁰⁵ Thus, it appears that there was no mass demand for anti-alien suffrage referenda in these three states, but once put before the public, voters (those who voted at least) overwhelmingly approved. What else links these three referenda and distinguishes them from other anti-alien suffrage campaigns?

First, each of these states had been at the center of the expansion of noncitizen voting in the mid-nineteenth century as the territories of the Old Northwest became states of the Upper Midwest. Wisconsin first required immigrant men to file a formal “declarations of intent” to become citizens to vote, a requirement which would soon follow suit in other states and territories permitting alien suffrage. Michigan, Minnesota, and Wisconsin were overwhelmingly rural when delegates wrote alien suffrage into their state constitutions; it was viewed as way to incorporate immigrants into the polity when many communities were populated almost exclusively by noncitizens. And delegates believed that alien suffrage would serve as an attractive offer for immigrants considering settlement.¹⁰⁶

¹⁰⁰ Unlike the unsuccessful 1912 women’s suffrage referendum in Michigan - which was viewed locally and nationally as a major blow to the NAWSA - press coverage of the 1894 referendum campaign to repeal alien suffrage in Michigan was muted by comparison. See, for an analysis of the 1912 campaign: Graham, *Woman Suffrage and the New Democracy*, 71.

¹⁰¹ Unlike medium-size states of the Deep South with (usually) tiny immigrant populations, or small territories-turned-states with high rates of - though numerically small numbers of - immigrants, the three states of the Upper Midwest had large overall and immigrant populations. See tables above and, generally: United States, *Twelfth Census of the United States, 1900* (Washington, DC: Government Printing Office, 1901).

¹⁰² William Anderson and Albert James Lobb, *A History of the Constitution of Minnesota: With the First Verified Text* (Minneapolis: University of Minnesota, 1921), 180.

¹⁰³ “Eegin at Once (Sic),” *The Saint Paul Globe*, September 26, 1897, 4.

¹⁰⁴ This number is roughly in line with the decline in voter participation one would have expected in Minnesota, according to the calculations of both J.W. Garner and Alpheus Snow (1911) and those of Paul Kleppner (1987). See: Anderson and Lobb, *A History of the Constitution of Minnesota*, 180; Garner and Snow, “Participation of the Alien in the Political Life of the Community”; Paul Kleppner, *Continuity and Change in Electoral Politics, 1893-1928* (New York: Greenwood Press, 1987), 165–66.

¹⁰⁵ Immigrants who had previously possessed the franchise in Michigan and Wisconsin were given a grace period before they lost their voting rights, however: Keyssar, *The Right to Vote*, 371–73; Hayduk, *Democracy for All*, 19–22; John D. Buenker, *The History of Wisconsin: The Progressive Era, 1893-1914*, vol. 4 (Madison: Wisconsin Historical Society, 2013), 512.

¹⁰⁶ For works that focus on alien suffrage in the upper midwestern states of Michigan, Minnesota, and Wisconsin, see, among others: Chaney, “Alien Suffrage”; Garner and Snow, “Participation of the Alien in the Political Life of the Community”; Louise P. Kellogg, “The Alien Suffrage Provision in the Constitution of Wisconsin,” *Wisconsin Magazine of History* 1, no. 4 (June 1918): 422–25; Porter, *A History of Suffrage in the United States*; Anderson and Lobb, *A History of the Constitution of Minnesota*;

While farmers from northwestern Europe may have been welcome as settlers in the middle of the nineteenth century, by the turn of the twentieth century “new” immigrant cohorts, particularly those from southern and eastern Europe, entered hostile environments in cities like Detroit, Milwaukee, and Minneapolis-St. Paul. Decrying the culture, religion, and ethno-racial origin of these “new” immigrants, nativists (along with other elites) especially bemoaned the fact that in some states noncitizens could vote soon after moving to the United States. As Hayduk finds, a *Washington Post* editorial from 1902 was indicative of this attitude, claiming that recent immigrants from Europe were “no more fit to be trusted with the ballot than babies are to be furnished with friction matches for playthings.”¹⁰⁷ And it was no coincidence that two campaigns (in Minnesota and Wisconsin) were launched at the onset of sharp recessions.¹⁰⁸ But that was not the whole story.

Henry Chaney’s 1894 treatise, “Alien Suffrage,” helps to encapsulate elite opposition to noncitizen voting in the Midwest during this era. Written during the campaign in Michigan to ban noncitizen voting, Chaney’s article claimed that while “some of the evils that were feared from alien suffrage have not, in this State at least, developed,” that was no reason to continue the practice.¹⁰⁹ Fearing that recent immigrants would be used as tools by party machines, Chaney asked rhetorically, why not “do...without an army of voters” who simply “vote as they are told, ignorantly and corruptly?”¹¹⁰ Chaney further warned that alien suffrage was leading to greater problems of integration than commonly understood, as noncitizens had no reason to naturalize if they already possessed the right to vote. Most hysterically, Chaney pointed to Canada to illustrate the dangers of alien suffrage. Comparing language policy battles in alien suffrage states to the challenges of governing bilingual and bicultural Canada, Chaney warned that “the strong race feeling of the French inhabitants has been so strengthened and kept in countenance by this concession that Canadian progress under British rule has always been half paralyzed in consequence.” If immigrants were not assimilated – or worse permitted the right to vote – the United States might become as divided and at risk of civil strife as Canada, Chaney warned.¹¹¹

Women’s suffrage activists were also among the most vocal opponents of alien suffrage in the Upper Midwest. Olympia Brown, who had blamed noncitizen voters for the defeat of a women’s suffrage referendum in North Dakota as early as 1890, likewise criticized the practice in the Upper Midwest, especially in her adopted state of Wisconsin. As rates of “new” immigration rose, Brown attacked immigrant voting rights ever more ferociously, and increasingly argued that women’s suffrage should be enacted as a counterweight to the votes of, “aliens, paupers, tramps [and] drunkards.”¹¹² She was not alone. Alice Stone Blackwell’s journal the *Woman’s Column* disparaged noncitizen voting in 1892, arguing that “Such laws are a menace to the welfare of the country, and render our federal naturalization laws a farce.” The *Column* made sure to mention that, “not one” alien suffrage state “allows an American woman, however intelligent, responsible and public-spirited, any political right.”¹¹³ Decades later, Carrie

Lerche, “The Guarantee of a Republican Form of Government and the Admission of New States”; Neu, “Olympia Brown and the Woman’s Suffrage Movement”; Hayduk, *Democracy for All*.

¹⁰⁷ Hayduk, *Democracy for All*, 28.

¹⁰⁸ Keyssar, *The Right to Vote*, 136–38; Tienda, “Demography and the Social Contract,” 605.

¹⁰⁹ Chaney, “Alien Suffrage,” 136.

¹¹⁰ Chaney, “Alien Suffrage,” 137.

¹¹¹ Chaney, “Alien Suffrage,” 136–37.

¹¹² Neu, “Olympia Brown and the Woman’s Suffrage Movement,” 281.

¹¹³ “Aliens and Women,” *The Woman’s Column* 5, no. 37 (1892): 4.

Chapman Catt singled out Michigan for condemnation. Linking alien suffrage directly to the women's suffrage movement, the NAWSA chief recalled in 1920, "When we first began work for suffrage, there were fifteen states in which men might vote without being citizens." In Catt's eyes, the "worst sinner" was Michigan. There, "Before an election men were colonized from Canada, and when they came over to Detroit and lived ten days they had a vote." She claimed that this "flagrant...political crime" was the main cause for the defeat of the 1894 women's suffrage referendum in Michigan.¹¹⁴

Thus, leading women's suffragists were increasingly vocal in their condemnation of alien suffrage. Often their arguments mirrored those of contemporaneous nativist male voices who warned that noncitizen voters were supposedly uneducated, prone to the whims of local political bosses, and/or would unfairly negate the vote of an upstanding middle-class voter. While male nativists like Chaney sometimes alluded to broader ideas of citizenship and citizenship rights in warning that the practice of alien suffrage would dissuade immigrant men from naturalization and socio-political integration, it was women's suffragists who were increasingly recasting voting as a right of – and limited to – (male and female) citizens.

Nevertheless, the repeal of noncitizen voting rights in the Upper Midwest did not pave the way for women's suffrage. American men in those states also rejected the expansion of equal voting rights to women during the Progressive Era.¹¹⁵ In Colorado and Oregon however, the script would be flipped as the disfranchisement of alien men became contingent on the enfranchisement of American women.

b. *Suffragists against (Alien) Suffrage:
Enfranchising Women and Disfranchising Aliens via Referendum, 1902-1914*

In no region of the country was alien suffrage more pervasive at the dawn of the twentieth century than the western United States. Indeed, noncitizen voting survived into the era of statehood for six western states. Three would come to bar alien suffrage prior to U.S. entry into World War I (Colorado, Oregon, and North Dakota), while the other three (Kansas, Nebraska, and South Dakota) would do so during the war. In each of these states, suffragists mobilized against noncitizen voting and provided crucial rhetorical and organizational support for politicians seeking to ban the practice. But one crucial factor separated states which repealed those rights prior to the Great War from those that did so in wartime and in the postwar period.

During the war, suffragists could call upon the patriotism of American men to empower U.S. women to be counterweights to the votes of "slackers" and "enemy aliens," while soldiers were at the front. Such attacks would prove extremely effective.¹¹⁶ Prior to 1917 however, suffragists could not make this wartime, patriotic citizenship appeal. Instead, they relied on a diverse array of arguments to make their case and tweaked them on a state-by-state basis. One

¹¹⁴ Carrie Chapman Catt, "The Carrie Chapman Catt Citizenship Course: How the Vote Came to Men," *The Woman Citizen*, October 30, 1920, 613.

¹¹⁵ An excellent text on the women's suffrage movement in this period is: Graham, *Woman Suffrage and the New Democracy*.

¹¹⁶ Scholars who have studied the link between the women's suffrage movement and opposition to immigrant political rights include: Keyssar, *The Right to Vote*; Hayduk, *Democracy for All*; Renshon, *Noncitizen Voting and American Democracy*; Graham, *Woman Suffrage and the New Democracy*; Keremidchieva, "The Gendering of Legislative Rationality"; Menchaca, *Naturalizing Mexican Immigrants*; Keremidchieva, "Congressional Debates."

idea that united those claims, however, was the belief that voting should be a right of – and confined to – citizens.

Colorado, which affirmed noncitizen voting rights at its 1875 convention, would be one of the first states to witness a coordinated two-pronged campaign to enfranchise American women and disfranchise noncitizen men. Susan B. Anthony, who had fought hard for women's suffrage in the state during an unsuccessful 1877 referendum campaign, spoke for many suffragists in blaming immigrants – and especially noncitizen men – for their defeat. Anthony appealed to the widespread racism of federal lawmakers at an 1880 congressional hearing where she reported that while “‘native-born white men, temperance men, cultivated, broad, generous, just men, men who think’” had supported women's voting rights, they were outnumbered by a less-desirable “‘class of voters’” in Colorado, largely comprised of immigrants, especially immigrants she termed “‘Mexican greasers’” in the southern part of the state. How could she “‘convert those men to let me have so much a right in this Government as they had, when, unfortunately, the great majority of them could not understand a word that I said?’” Though she viewed Mexican immigrants and Mexican Americans alike as opponents of alien suffrage, she identified alien suffrage as a factor which contributed to their defeat. In “‘a voting precinct having 200 voters,’” of which three-quarters were of Mexican origin, she figured “‘40 of them foreign-born citizens,’” while “‘just 10 were born in this country.’” Though she did not focus on the remaining number, the implication was that they were noncitizens.¹¹⁷

Colorado suffragists would not forget the (alleged) role played by immigrants, especially noncitizens, in the failed 1877 referendum. While women's suffrage was successfully ratified by voters via referendum in 1893, this provision had (oddly) not become part of the state's constitution at that time.¹¹⁸ In 1901, a new women's suffrage referendum was submitted to voters to entrench women's voting rights into the constitution. This time however, suffragists and their supporters in the state made sure to incorporate the repeal of alien suffrage into the referendum. The ballot read: “‘That every person over the age of twenty-one years’” who “‘shall be a citizen of the United States’” would henceforth have equal voting rights. If the referendum passed, no alien would be allowed to vote. For those who supported both women's suffrage and alien suffrage (or neither) there was no way to disentangle the two. Suffragists won the day by a large margin. The referendum passed with a substantial margin in favor: 35,372 ayes and only 20,087 nays.¹¹⁹

A linked story played out in Oregon. There (white) noncitizens had long been permitted to vote, though not without controversy. When Oregon was admitted as a state in 1859 it permitted alien declarants to vote, but it specifically barred African Americans and persons of

¹¹⁷ Grimes, *The Puritan Ethic and Woman Suffrage*, 87-88. Historian Alan Grimes finds this testimony to be particularly representative and devotes a page and a half of his text to block-quoting Anthony's testimony. The original record is from “‘Arguments of the Woman-Suffrage Delegates before the Committee on the Judiciary of the United States Senate,” January 23, 1880, Senate Miscellaneous Document No. 74, 47th Congress, 1st Session, pp. 25-26.

¹¹⁸ The NAWSA's own historians noted the peculiarity of Colorado suffrage laws. According to the organization, Colorado's original 1876 constitution provided only “‘School suffrage’” for women. However, the constitution did enable legislators to “‘at any time submit a measure to the voters for the complete franchise, which, if accepted by the majority, should become law.’” Such a vote occurred in 1893 and “‘by a majority of 6,347’” voters extended equal voting rights to women. However, this became a law and was not considered a “‘constitutional amendment.’” Thus, suffragists campaigned to ensure their voting rights were written into the state's constitution. See: Elizabeth Cady Stanton et al., *History of Woman Suffrage*, vol. 6 (New York: Fowler & Wells, 1922), 59.

¹¹⁹ Stanton et al., *History of Woman Suffrage*, vol. 6: 59–60.

East Asian origin from voting. Though the Fifteenth Amendment rendered void the anti-black clause in the state constitution, the requirement that aliens file a declaration of intent to vote disfranchised East Asian immigrants, as they were racially ineligible from doing so. As in other western states, Oregonian suffragists viewed noncitizen voters as opponents and fought against alien suffrage. Following women's enfranchisement in 1912, former suffragists would organize against it. But not without a challenging wrinkle.¹²⁰

According to Oregon's prevailing suffrage law, immigrants could vote so long as they possessed a valid declaration of intent to become citizens. This was not an issue for most white, noncitizen men (who could acquire one at numerous courthouses around the state), but it was an impossible challenge for married white women. In that era, married women were not allowed to file a declaration as they were only able to derive citizenship through their husbands' naturalization. In fact, married women's citizenship was so tied to their husband's citizenship that American women lost their citizenship when they married foreign men. Once women obtained the right to vote in 1912, it was unclear who among them would be eligible to vote. Would native-born women who had lost their citizenship upon marrying foreign men or foreign women whose husbands had filed a declaration be permitted to?¹²¹ Both perhaps; maybe neither? As women attempted to register to vote early in 1913, Oregon Attorney General Andrew Crawford had to decide.

At first, Crawford declared that neither group would be allowed to vote. Since married immigrant women could not file their own declarations of intent, Crawford announced that they were ineligible to vote until their husbands' naturalizations were complete. After this interpretation met resistance, Crawford reversed himself, reasoning that married women derived their declaration of intent through their husbands' "first papers."¹²² But this privileging of immigrant women's voting rights (over that of native-born women married to foreign men) was not popular with women's suffragists across the nation or with voters in Oregon.¹²³

Suffragists soon mobilized alongside nativists to demand a referendum to repeal noncitizen voting in Oregon. Nativists argued that the passage of the referendum would both preserve women's suffrage and supposedly protect the state from an expected growth in immigration owing to the opening of the Panama Canal. With fewer states recognizing noncitizen voting rights, opponents warned that if Oregon did not come into alignment with (much of) the rest of the country, it risked become a dumping ground for undesirable immigrants.¹²⁴ This was a popular, nativist sentiment in Oregon and in 1914 a referendum on alien suffrage banned the practice by a three-to-one margin.¹²⁵

¹²⁰ "The Vote and the Voter," *The Woman Citizen*, February 16, 1918, 235–37; Porter, *A History of Suffrage in the United States*, 131.

¹²¹ Both marriages between native-born women and noncitizen men and unions between immigrant women and noncitizen men were common in the Progressive Era. By way of context, in his study of the 1920 Census, Niles Carpenter estimated that: "88.7 out of 1,000 native-born mothers marry foreign-born men, whereas 138.9 out of 1,000 foreign-born mothers marry native American men": Niles Carpenter, *Immigrants and Their Children, 1920: A Study Based on Census Statistics Relative to the Foreign Born and the Native White of Foreign or Mixed Parentage* (Washington, DC: Government Printing Office, 1927), 247.

¹²² "Crawford Modifies His Former Opinion," *East Oregonian*, March 29, 1913, 10; "Wives Can Vote on First Papers," *The Evening Herald*, March 31, 1913, 2.

¹²³ "The Alien in Equal Suffrage States," *The Woman Citizen*, April 27, 1918, 438; Menchaca identifies similar challenges arising for women in Texas. See: Menchaca, *Naturalizing Mexican Immigrants*, 247–48.

¹²⁴ "Study of Amendments," *Ashland Tidings*, September 28, 1914, 8.

¹²⁵ "The Alien in Equal Suffrage States," *The Woman Citizen*, April 27, 1918, 438.

Within four years, the NAWSA would point to Oregon as a model for the rest of the nation. Arguing that the 1914 referendum was an example of how citizen women – as voters – could defend the nation from foreign danger, the *Woman Citizen* declared proudly in 1918 that, “Equal suffrage states have been the first to take up the problem of the alien voting on first papers.” This NAWSA publication was pleased that the “first Legislature which women had a part in electing” in Oregon “passed a bill disfranchising voters on first papers, which was passed on referendum.”¹²⁶ The NAWSA had good reason to point to Oregon as a success story in 1918. At that time, it was engaged in an intense *national* campaign to repeal noncitizen voting laws.

Women’s suffragists were not the only actors to mobilize against alien suffrage, nor were women voters always the key voting bloc that led to its repeal in the Progressive Era. After all, North Dakota enacted a ban on noncitizen voting in 1913 but did not fully enfranchise women until the passage of the Nineteenth Amendment.¹²⁷ And in Nebraska, where a referendum to ban alien suffrage received a majority vote in 1910 (but obtained an insufficient number of overall votes to become law), the efforts of suffragists and prohibitionists to rescind alien voting rights came up short in their battle with liquor interests and immigrant (predominantly German) communities.¹²⁸ Thus, suffragists were increasingly leading the charge in alien suffrage battles and were winning most of those fights. But in states where they had failed to gain traction – or constitutional requirements to change suffrage laws were unusually high – something significant would have to happen to change voters’ minds. That development would arise in 1917 when President Woodrow Wilson asked the United States to join “the war to end all wars.”

III. ‘Standardizing’ Citizenship: Voting Reform in Wartime and Reaction, 1917-1926

When World War I broke out in Europe, immigrants came under increased scrutiny in the United States. As recession struck in the winter of 1914-15, states increasingly turned to citizenship restrictions in employment to “protect” the job prospects of American workers.¹²⁹ But that was nothing compared to what immigrants faced when the United States entered the Great War. Noncitizens – particularly “enemy alien” Germans – had to abide by registration requirements and restrictions on where they could live and work.¹³⁰ The assets of German nationals were frozen.¹³¹ In this context, alien suffrage was not very popular. Many citizens could not believe that aliens – especially nationals of enemy nations – could vote in wartime.

As alien suffrage came under attack, women’s suffrage organizations organized campaigns against noncitizen voting rights and made common cause with “patriotic” organizations and politicians to end the practice. In the Plains states of Kansas, Nebraska, and

¹²⁶ “The Alien in Equal Suffrage States,” 438.

¹²⁷ Keyssar, *The Right to Vote*, 371–73; Hayduk, *Democracy for All*, 19–22.

¹²⁸ As historian Burton Folsom recounts, while an anti-alien suffrage measure “received a 100,450” vote total in favor and only “74,878” opposed, “this was only a plurality of the 243,390 votes cast on election day:” Folsom, “Tinkerers, Tiplers, and Traitors,” 69; See, also: Williams, “The Road to Citizenship.”

¹²⁹ This topic is explored in great depth in Chapter 3. Two key works which examine anti-immigrant sentiment in recessions prior to the Great Depression are: Leah Hannah Feder, *Unemployment Relief in Periods of Depression: A Study of Measures Adopted in Certain American Cities, 1857 through 1922* (New York: Russell Sage Foundation, 1936); Alexander Keyssar, *Out of Work: The First Century of Unemployment in Massachusetts* (New York: Cambridge University Press, 1986).

¹³⁰ See, broadly: Christopher Capozzola, *Uncle Sam Wants You: World War I and the Making of the Modern American Citizen: World War I and the Making of the Modern American Citizen* (New York: Oxford University Press, 2008).

¹³¹ Such laws even ensnared native-born women married to German husbands. See: Sarah Galloway Kruse, “Independent Citizenship: Marriage, Expatriation, and the Cable Act, 1907-1936” (Texas Women’s University, 1998); Bredbenner, *A Nationality of Her Own*, 68–73.

North Dakota, noncitizen voting was repealed via referendum in short succession during wartime by massive margins. Anti-German sentiment was particularly prominent in those states where German communities had long exerted significant political power. In Upper South and Lower Midwest states, the repeal of alien suffrage laws would take longer. In Texas, a joint woman's suffrage-alien disfranchisement referendum was rejected at the polls in 1919 and noncitizen voting would only be repealed in 1921 after women could vote. In Arkansas, Indiana, and Missouri, campaigns would also take place after the war, as former suffragists made common cause with anti-immigrant forces and veterans.¹³² The slow repeal of alien suffrage in these states was largely due to high burdens imposed on altering suffrage laws (in addition to demographics and political alliances present in those states).

Table 3: Demographic Comparison of States Repealing Alien Suffrage During and Shortly After World War I, 1920

State	Foreign-Born Population*	German-Born Population	Germans Largest Foreign-Born Group?	Alien Suffrage Repealed
Kansas	6.3% (110,967 individuals)	23,380	Yes	1917
Nebraska	11.6% (150,665 individuals)	40,969	Yes	1918
South Dakota	13.0% (82,534 individuals)	15,674	No	1918
Indiana	5.2% (151,328 individuals)	37,377	Yes	1921
Texas	7.8% (363,832 individuals)	31,062	No	1918 (Primary); 1921
Missouri	20.4% (486,795 individuals)	55,778	Yes	1924
Arkansas	0.8% (14,137 individuals)	3,978	Yes	1926
<i>Fourteenth Census of the United States; Keyssar, <i>The Right to Vote</i>, 371-73; Hayduk, <i>Democracy for All</i>, 19-22.</i>				
*As percentage of each state's total population and the number of each state's total foreign-born population.				

¹³² For repeal dates, see: Keyssar, *The Right to Vote*, 371-73; Hayduk, *Democracy for All*, 19-22.

All these referenda, promoted and often coordinated by NAWSA leadership, represented a transformation of anti-alien suffrage activity. It was in wartime that alien suffrage “reform” became nationally intertwined with the women’s suffrage movement. In this time of war and reaction, women’s suffragists and their successors campaigned for the “standardization” of U.S. citizenship to reframe and legally transform voting into the premier right of – and only of – American citizens.

a. *Repealing Alien Suffrage as a Wartime Measure:
Enfranchising Women and Disfranchising Germans, 1917-1918*

Women’s suffragists had long waged an unsuccessful battle in Nebraska where their opponents (often led and funded by liquor interests) tied the women’s suffrage cause to the prohibition movement. And immigrant men – who were predominantly of German origin – were the most solid bloc of voters who opposed both women’s suffrage and prohibition referenda in the state.¹³³ As historian Burton Folsom calculates, predominately German-origin precincts voted overwhelmingly against both a women’s suffrage referendum in 1914 (with roughly 90% of voters opposed) and against a prohibition referendum in 1916 (with roughly seventeen out of every twenty Germans and German-Americans voting against the measure).¹³⁴ War with Germany provided suffragists in Nebraska an opportunity to link their efforts with an especially dramatic rise in anti-German sentiment in the state, which culminated in the enactment of legislation barring foreign-language teaching in the state (which was later overturned in the famous Supreme Court case *Meyer v. Nebraska* in 1923).¹³⁵

Throughout 1917 and 1918, women’s suffragists tied noncitizen voting in Nebraska to both pre-war and wartime anti-German hysteria. In 1917, the NAWSA declared the powerful German-American Alliance to be a front for liquor interests (a longstanding allegation against the group)¹³⁶ and a disloyal organization in wartime (a novel argument).¹³⁷ While American men were dying at the front, the NAWSA announced that “draft questionnaires...showed that approximately 20,000 men were claiming exemption from service” owing to alienage in Nebraska, though they remained eligible to vote.¹³⁸

Antisuffragists – who generally supported noncitizen voting in Nebraska – did not go down without a fight and tried to delay a referendum on limited women’s suffrage rights in the state. Suffragists responded by accusing the antis of providing fraudulent signatures, especially those of real and supposed alien voters.¹³⁹ A campaign to ban alien suffrage in the state soon followed which received significant coverage and support from the NAWSA leadership through its national publication, *The Woman Citizen*. In February 1918 the journal approvingly reported that the State Council of Defense and other “patriotic men of the state” had begun “conducting a

¹³³ Two key works which study this phenomenon - one contemporaneous and another a work of history - are: Williams, “The Road to Citizenship”; Folsom, “Tinkerers, Tipplers, and Traitors.”

¹³⁴ Folsom, “Tinkerers, Tipplers, and Traitors,” 62.

¹³⁵ Other key analyses of Progressive- and World War I-era politics in Nebraska include: Louise Rickard, “The Politics of Reform in Omaha, 1918-1921,” *Nebraska History* 53 (1972): 419-45; Burton W. Folsom, *No More Free Markets Or Free Beer: The Progressive Era in Nebraska, 1900-1924* (Lanham, MD: Lexington Books, 1999).

¹³⁶ “The Teutonic Touch in Nebraska,” *The Woman Citizen*, August 25, 1917, 230.

¹³⁷ Marion Woolworth Fairfield, “Correspondence,” *The Woman Citizen*, August 25, 1917, 231.

¹³⁸ “Citizenship in Nebraska,” *The Woman Citizen*, February 2, 1918, 189.

¹³⁹ “Justice in Nebraska,” *The Woman Citizen*, February 23, 1918, 249; “To Get Back Beer,” *The Woman Citizen*, June 15, 1918, 45.

campaign to amend the constitution so that the rights of citizenship may be taken away from alien enemies.” It announced that “Patriotic Nebraskans are indignant because their soldiers in the army are denied the right to vote while the country’s enemies are entitled to participate in the government.”¹⁴⁰ Within a few months, suffragists and their allies had succeeded, and a repeal measure was approved by the Nebraska Legislature to be submitted to voters in the fall.¹⁴¹ Even Governor Keith Neville, who cautioned Nebraskans that the alien suffrage “menace...[was] not so great as has been pictured,” ultimately supported repealing noncitizen voting and called it “a step in harmony with the spirit of the times.”¹⁴²

And it was. In November 1918, a mere thirty percent of voters in Nebraska supported the continued practice of alien suffrage. In fact, Folsom estimates that election returns indicate that roughly one-third of German-origin voters even supported the repeal of alien suffrage, while more than half of Czech- and Swedish-origin voters did. Aye votes so outnumbered nays and abstentions that, unlike in 1910, the referendum met constitutional requirements to become law.¹⁴³ A similar story played out in Kansas where the NAWSA supported an anti-alien suffrage referendum in the fall of 1918 which voters overwhelmingly approved with over two hundred thirty-five thousand voting in favor, and only ninety thousand opposed.¹⁴⁴ While women’s equal franchise was not on the ballot in these states (indeed, Kansas was already a women’s suffrage state) suffragists in Nebraska and Kansas – and their supporters elsewhere – directly tied the women’s suffrage cause to the repeal of alien suffrage. In other states, that connection was even more concrete.

By early 1918, national suffrage leaders recognized that support for alien suffrage was especially precarious in states with large German and German-American populations and the NAWSA made sure to mobilize against it. As Zornitsa Keremidchieva uncovers in her transformative analyses of legislative debates over the Nineteenth Amendment (which she aptly describes as a process of “nationalizing citizenship”), supporters proposed incorporating an alien suffrage ban into its wording.¹⁴⁵ In a page one article from July 13, 1918, the *Woman Citizen* endorsed this type of an approach:

The urgent need of American democracy at this hour is standardization, and the keystone of that standardization in America, as President Wilson has pointed out, is the settlement of the woman suffrage question. With the settlement of that question a common ground

¹⁴⁰ While state governments increasingly recognized soldiers’ right to cast absentee ballots in World War I (following a precedent set by the Civil War), federal protections for military voters were not established until World War II. Additionally, some states barred soldiers and sailors stationed on bases from qualifying as voters owing to residency restrictions. See, especially: Keyssar, *The Right to Vote*, 150–51, 246–47, 429 (n. 20); “Citizenship in Nebraska,” *The Woman Citizen*, February 2, 1918, 189.

¹⁴¹ “Nebraska to Vote on Alien Suffrage,” *Evening Star*, April 7, 1918, 7; “Nebraska Has Plans to Curb Seditious: State Officials Believe New Law Will Put Stop to Disloyalty,” *Bismarck Tribune*, April 22, 1918, 2.

¹⁴² “The Governors Speak,” *Everybody’s Magazine* 39, no. 5 (November 1918): 6.

¹⁴³ Folsom, “Tinkerers, Tipplers, and Traitors,” 62, 70–73.

¹⁴⁴ “The Alien in Equal Suffrage States,” 438; “Finish the Count,” *The Topeka State Journal*, November 20, 1918, 1–2; “News Items from All over Kansas,” *The Hays Free Press*, December 5, 1918, 6; Menchaca notes the NAWSA’s support of the repeal of alien suffrage in several state campaigns in 1918, though she focuses her analysis on the Texas referendum: Menchaca, *Naturalizing Mexican Immigrants*, 229.

¹⁴⁵ See, broadly: Keremidchieva, “The Gendering of Legislative Rationality”; For the proposed anti-alien clause in the 19th Amendment, see especially: Keremidchieva, “Congressional Debates,” 60–67.

of full citizenship as a basis for suffrage should be found for men and women without discrimination.¹⁴⁶

Though rejected in congressional debate, state campaigns provided suffragists an opportunity to explicitly link anti-alien sentiment to women's suffrage.¹⁴⁷

South Dakota long been a major disappointment to women's suffragists in the state and nationwide. Six times suffragists had succeeded in putting a suffrage referendum before the male voters of the state. Six times it was rejected. Suffragists there pointed to German immigrants – especially noncitizens – as their chief opponents.¹⁴⁸ War with Germany provided them a unique opportunity to merge the causes of women's suffrage and the abolition of alien suffrage. With Catt's encouragement, South Dakota suffragists decided to link an upcoming women's suffrage referendum with a measure disfranchising alien men on the same ballot.¹⁴⁹

When the South Dakota Legislature voted to tie women's suffrage and noncitizen voting on the same referendum in April 1918, suffragists across the nation mobilized to support their sisters in South Dakota. While the *Woman Citizen* reported that "Some discussion arose as to the advisability of amending the woman suffrage amendment in this manner," suffragists decided it was right to "campaign for true American citizenship regardless of sex" in a time of war. They were confident that "only the alien will vote against the [proposal]."¹⁵⁰ In the summer and fall of 1918, the NAWSA distributed literature throughout the state and argued, in the words of one local leader, that voters could "safeguard their homes by giving the ballot to the women of the state who are whole-heartedly with their country in its aims and purposes, and by taking political privilege from men who still admit their loyalty to the Kaiser."¹⁵¹ And suffragists had a major ally in the state. As Governor Peter Norbeck argued in a November 1918 note printed in the national publication *Everybody's Magazine*, it was "high time to make citizenship a requirement for suffrage" in the few states, like South Dakota, that "at this time, unfortunately," permitted noncitizen voting.¹⁵²

Suffragists and their allies succeeded. In November 1918, on their seventh try, suffragists obtained equal voting rights for women. In the process, alien men were disfranchised. The referendum passed with a twenty thousand vote majority. Catt and other NAWSA officials were ecstatic. The *Woman Citizen* ran an article on the successful South Dakota campaign entitled, "How to Win a State" and praised the efforts of activists for successfully linking alien suffrage to their campaign.¹⁵³ In victory, NAWSA leaders believed they had identified a surefire way to win women's suffrage campaigns in the remaining states that allowed for noncitizen voting, but barred women from full voting rights. They would soon put that supposition to the test.

¹⁴⁶ "Amending the Amendment," *The Woman Citizen*, July 13, 1918, 125.

¹⁴⁷ Keremidchieva, "Congressional Debates," 60–67.

¹⁴⁸ McArthur and Smith, *Minnie Fisher Cunningham*, 79.

¹⁴⁹ "South Dakota's Citizenship Measure," *The Woman Citizen*, July 20, 1918, 148; Stanton et al., *History of Woman Suffrage*, vol. 6: 591–92.

¹⁵⁰ "South Dakota to the Fore," *The Woman Citizen*, April 6, 1918, 369.

¹⁵¹ Such were the words of Mrs. Frank Shuler as repeated in: "South Dakota's Citizenship Measure," *The Woman Citizen*, July 20, 1918, 148; For another account of the South Dakota campaign, see also: Stanton et al., *History of Woman Suffrage*, vol. 6: 592–93.

¹⁵² "The Governors Speak," *Everybody's Magazine* 39, no. 5 (November 1918): 6.

¹⁵³ "How to Win a State," *The Woman Citizen*, November 16, 1918, 507.

b. *The Final Blow:
Post-Nineteenth Amendment Alien Suffrage Campaigns, 1919-1926*

Texas seemed ripe for a South Dakota-style campaign at the end of the Great War. Then one of only four remaining alien suffrage states when the war ended in November 1918, enemy alien Germans and racially-marginalized Mexicans represented the two largest immigrant populations in Texas.¹⁵⁴ Texas's large German-origin population had come under attack during wartime and were with few defenders in the immediate aftermath of war. And Mexican immigrants – whose political, civil, and economic rights were increasingly restricted due to racist Jim Crow legislation and practices – had even fewer Anglo supporters in 1919. Many national women's suffrage activists came to view the Lone Star State as an ideal location to replay the South Dakota campaign. They even had a head start.¹⁵⁵

In February 1918, Attorney General B.F. Looney announced that enemy aliens in Texas would be barred from voting while the United States was at war with their nation, regardless of previous declarations of intent.¹⁵⁶ The Texas Legislature also responded to broad anti-German sentiment and pressure from suffragists by barring aliens from voting in *primary* elections while simultaneously granting that right to American women. As Texas had become a one-party (and increasingly whites-only suffrage) state, this effectively disfranchised noncitizens from voting for state officials like governor, while granting American women that power. Legislators could not fully enfranchise women while disfranchising noncitizen men however, since that would require an amendment to the state constitution. State suffragists and their allies in the legislature decided not to put such a measure before voters in the autumn of 1918. But in the aftermath of the South Dakota campaign, Texas suffragists would come under pressure to do so.¹⁵⁷

Though the NAWSA had yet to win an equal voting rights campaign in any southern state, Catt was convinced that the campaign in South Dakota had demonstrated that male, citizen voters – who had long resisted women's equal suffrage rights – could be convinced to support women's voting rights if the same ballot measure also allowed them to disfranchise alien men. While some voters might remain unconvinced about the wisdom of women's suffrage, Catt believed that if they were forced to choose between alien suffrage and women's suffrage (and not given the option to oppose or support both) most would support equal voting rights for women. As Catt saw it, this was a winning argument since “no one could vote against suffrage without at the same time voting to give the vote to unnaturalized Germans.”¹⁵⁸ Catt was convinced that “the same strategy would work in Texas” as it had in South Dakota.¹⁵⁹

¹⁵⁴ United States, *Fourteenth Census of the United States, 1920*.

¹⁵⁵ Though their power was on the wane in the aftermath of war and prohibition, suffragists recognized that Germans and German Americans could still muster significant electoral weight in Texas politics and possessed powerful legislative allies in the late-1910s/early-1920s. See, for instance: “Texas German Vote Is Held Responsible for Suffrage Defeat,” *Daily Ardmoreite*, May 30, 1919, 1; “Aliens Defeat Texas Suffrage: Charge Is Made That Women Lost Ballot for This Reason,” *El Paso Herald*, June 4, 1919, 5; Catt, “The Carrie Chapman Catt Citizenship Course: How the Vote Came to Men,” *The Woman Citizen*, October 30, 1920, 610–13; “What Happened to Texas?,” *The Woman Citizen*, August 27, 1921, 18.

¹⁵⁶ Texas Attorney General, “2/22/1918 1886: Aliens,” February 22, 1918, Box 1984/067-36, Attorneys General Opinions, Texas State Archives, Austin, Texas.

¹⁵⁷ Taylor, “The Woman Suffrage Movement in Texas”; Graham, *Woman Suffrage and the New Democracy*, 132–36; McArthur and Smith, *Minnie Fisher Cunningham*, 79–83; Menchaca, *Naturalizing Mexican Immigrants*, 206–59.

¹⁵⁸ McArthur and Smith, *Minnie Fisher Cunningham*, 79.

¹⁵⁹ McArthur and Smith, 79.

Minnie Fisher Cunningham, the leader of the Texas Equal Suffrage Association (the state branch of the NAWSA) was not convinced. Cunningham feared that pairing women's suffrage with alien suffrage would lead to unwanted opposition to the suffragist cause in the state *and* hinder a forthcoming campaign to ratify the soon-to-be Nineteenth Amendment.¹⁶⁰ But she had also long detested alien suffrage. With Texas voters becoming ever more nativist, she agreed to link noncitizen voting to the women's suffrage cause. She would not have long to prepare.¹⁶¹ With the support of Governor William Hobby, the Texas Legislature agreed to put the vote to the public in May 1919.¹⁶² The referendum also contained an anti-alien suffrage clause. As in South Dakota, voters had to choose between noncitizen voting rights and women's suffrage. And it was popular with most elected officials (at least publicly). Legislators unanimously passed a resolution endorsing the referendum.¹⁶³

In a rapid and intense campaign, (white) suffragists and their supporters in Texas attacked Germans and German Americans as agents of an enemy power and declared that the referendum would reduce the power of uneducated and inferior persons of Mexican origin. Arguing in favor of women's equal voting rights in 1918, the NAWSA's *Woman Citizen* declared that "Texas women urgently appealed for the vote" because the "state does not permit its soldiers to vote, even when in camp in Texas," while it did allow for alien suffrage.¹⁶⁴ As Carrie Chapman Catt described two years later, this situation was viewed as intolerable by suffragists since "men in sympathy with our enemy country in time of war...could actually decide" the state's fate.¹⁶⁵ But not just Germans came under attack. The *El Paso Herald* argued that:

It is the shame of a good many border counties that aliens who have never made a move toward citizenship have voted and will vote again. Politicians whose pockets bulge with poll tax receipts to be distributed among ignorant Mexican voters doubtless will lead the opposition to suffrage. The intelligent votes of American women they can't control.¹⁶⁶

Not to be outdone, opponents of women's suffrage responded with their own appeals to racism and xenophobia, with former Governor James Ferguson warning that the enactment of women's equal voting rights would lead to interracial marriage and other unwanted social changes.¹⁶⁷

Male voters in Texas would shock the Catt and other national suffrage leaders by rejecting the referendum by twenty-five thousand votes. The TESA cried fraud, pointing to ballot-stuffing and disappearing votes as evidence of corruption by antisuffragist forces. They were likely right, as widespread evidence emerged of this nefarious – though longstanding – practice in Texas elections in the late-nineteenth and early-twentieth centuries.¹⁶⁸ Publicly,

¹⁶⁰ Taylor, "The Woman Suffrage Movement in Texas," 211–12.

¹⁶¹ Taylor, "The Woman Suffrage Movement in Texas," 211–12; McArthur and Smith, *Minnie Fisher Cunningham*, 79; Menchaca, *Naturalizing Mexican Immigrants*, 229.

¹⁶² "Texas German Vote Is Held Responsible for Suffrage Defeat," *Daily Ardmoreite*, May 30, 1919, 1.

¹⁶³ Taylor, "The Woman Suffrage Movement in Texas," 211–12.

¹⁶⁴ "Texas's Women Voters," *The Woman Citizen*, July 20, 1918, 156.

¹⁶⁵ Catt, "The Carrie Chapman Catt Citizenship Course: How the Vote Came to Men," *The Woman Citizen*, October 30, 1920, 613.

¹⁶⁶ "Prohibition and Suffrage Will Carry If Given Full Support," *El Paso Herald*, April 18, 1919, 6.

¹⁶⁷ McArthur and Smith, *Minnie Fisher Cunningham*, 81.

¹⁶⁸ In fact, as historian Gregg Cantrell finds, just decades earlier Populists in the 1880s and 1890s had identified stuffing ballot boxes, discarding votes, and the practice of paying for the declaration of intention fees of immigrant voters as major impediments to their electoral success. Cantrell claims that an older system of "patronage democracy" in the 1870s was being replaced as Democrats responded to the Populist challenge by embracing "unsavory elements of bossism" in the 1880s which

suffragists alleged that German and Mexican immigrants had delivered a crucial blow to defeat women's suffrage in the state. Privately, Cunningham grumbled that the joint women's suffrage-alien disfranchisement referendum had been forced upon her by easterners like Catt who knew little of Texas politics. Hubris, Cunningham believed, had been an equal cause for defeat. Since Texas was one of the few southern states where suffragists thought they had a chance to ratify the Nineteenth Amendment, Cunningham feared that the campaign might have done irreparable harm to their cause, as supporters of noncitizen voting rights would now be even more opposed to women's equal voting rights.¹⁶⁹

Fortunately for the women's suffrage cause, voters in Texas did approve the Nineteenth Amendment. Just weeks after the joint women's suffrage-alien disfranchisement referendum failed, Texas approved the Nineteenth Amendment, becoming the first southern state to do so. In November 1920, noncitizen men went to the polls alongside (almost exclusively white) women as equal voters for the first time in a general election. It would also be the last. With women now able to vote, former suffragists appealed to their allies in the Texas Legislature in 1921 to put another referendum to voters to ban alien suffrage for good. Cunningham, most state politicians, and increasingly anti-immigrant Anglo newspapers united to oppose alien suffrage in a summer referendum campaign in 1921. This time, suffragists won out and alien suffrage was repealed.¹⁷⁰ Texas would not be the last state to ban alien suffrage following the passage of the Nineteenth Amendment. Arkansas, Indiana, and Missouri still permitted noncitizen voting in the summer of 1921. Within five years, those remaining states would all ban the practice.

These three states took so long to change course in large part because it was particularly difficult to alter suffrage laws in Arkansas, Indiana, and Missouri. When *Everybody's Magazine* wrote to state officials across the country in November 1918 to ask why they were not banning noncitizen voting rights in a time of war, Indiana Governor James P. Goodrich announced that he would if he could. But it was "a constitutional provision" which "the legislature ha[d] no jurisdiction over." In fact, he warned it would "require at least four years to change the constitution."¹⁷¹ Arkansas required not a majority vote, but at least fifty percent of those voting *and* abstaining for a referendum to be incorporated into the state's constitution.¹⁷² And in Missouri, an alliance of reformers – suffragists, professionals, and others – frustrated by the power of state political machines, clamored unsuccessfully for a constitutional convention.¹⁷³

But these states were not identical. In fact, their demographics were quite different. Missouri had a very large immigrant population in 1920 (slightly over one out of five residents in the state were foreign-born) of which Germans were most numerous.¹⁷⁴ Germans had come

"looked less like patronage democracy and more like simple corruption": Cantrell, "'Our Very Pronounced Theory of Equal Rights to All,'" 667.

¹⁶⁹ Taylor, "The Woman Suffrage Movement in Texas," 211–12; McArthur and Smith, *Minnie Fisher Cunningham*, 79; Menchaca, *Naturalizing Mexican Immigrants*, 229.

¹⁷⁰ "What Happened to Texas?," *The Woman Citizen*, August 27, 1921, 18; "Should Aliens Vote?," *The Woman Citizen*, September 10, 1921, 18; Taylor, "The Woman Suffrage Movement in Texas"; Graham, *Woman Suffrage and the New Democracy*; McArthur and Smith, *Minnie Fisher Cunningham*; Menchaca, *Naturalizing Mexican Immigrants*.

¹⁷¹ "The Governors Speak," *Everybody's Magazine* 39, no. 5 (November 1918): 6.

¹⁷² Aylsworth, "The Passing of Alien Suffrage," 114–16.

¹⁷³ "Gardner's Plans Given in Message," *Fair Play*, January 18, 1919, 4; "Constitutional Convention," *The Farmington Times*, February 14, 1919, 1; "Missouri State News," *Potosi Journal*, November 9, 1921, 2.

¹⁷⁴ United States, *Fourteenth Census of the United States*, 1920.

under attack in World War I and an alien suffrage referendum was proposed in 1918.¹⁷⁵ But politicians in Missouri were hesitant to support it. While governors across the country eagerly took the opportunity to respond to a public survey at the end of 1918 to announce their firm opposition to alien suffrage, Missouri Governor Frederick Gardner took a softer tone, indicating that an amendment to the state constitution to end alien suffrage was part of his long-term agenda. But he announced neither firm opposition to the practice nor a plan to ban it.¹⁷⁶ Suffragists were unimpressed. They believed Germans and German Americans pulled the strings of power.¹⁷⁷ And few things frustrated Missouri suffragists more than alien suffrage.¹⁷⁸ Facing formidable opponents, middle-class (former) suffragists and their allies would only succeed in having the practice repealed via referendum in 1924.¹⁷⁹

On the other hand, immigrants made up a much smaller percentage of the population of Indiana where they represented only one in twenty residents.¹⁸⁰ While noncitizens were not as powerful as they were in Missouri, opponents of alien suffrage in Indiana would still have a fight on their hands. There, it would be (former) suffragists who took the lead once more to launch a campaign to repeal noncitizen voting rights in the state.

Progressive reformers had long pointed to Indiana as an example of the supposed folly of alien suffrage. Progressive-era scholars like Hattie Plum Williams and Ross Franklin Lockridge and politicians like Vice President Thomas Marshall pointed to low naturalization rates in Indiana as evidence that alien suffrage slowed down – rather than facilitated – the political incorporation of immigrants into the state and national polity.¹⁸¹ While opponents of alien suffrage in Indiana had argued against those rights as early as 1917, it took the ratification of the Nineteenth Amendment for a widespread repeal campaign to emerge.¹⁸²

Asking residents, “Shall Citizens of Indiana or Aliens Make Our Laws,” the state branch of the newly-formed League of Women Voters mobilized in the summer of 1921 to campaign for a referendum to ban alien suffrage. It did not just voice support. It launched “a systematic campaign of education for the amendment” concluding with “‘Bill Board Saturday’...when flag-decorated automobiles filled with men and women dashed from place to place putting up posters” and canvassing voters. One LWV leader noted that it had:

¹⁷⁵ “150,000 Missouri German Voters Hit in New Bill,” *Mexico Weekly Ledger*, March 14, 1918, 3.

¹⁷⁶ “The Governors Speak,” *Everybody’s Magazine* 39, no. 5 (November 1918): 6.

¹⁷⁷ “William E. Borah,” *The Woman Citizen*, October 26, 1918, 429.

¹⁷⁸ In Missouri, suffragists found the enfranchisement of immigrant women solely due to marriage to be particularly galling. The NAWSA noted that: “One of these inconsistencies, in the laws governing the privilege and the practice of voting, is that an illiterate woman, too ignorant to pass the requirements of naturalization, can instantly obtain full citizenship by marrying a man who is a citizen. Another is that a foreign-born woman may become a naturalized citizen, but that a woman born and reared in America, but who is the wife of an un-naturalized alien, cannot obtain citizenship until he does. These situations were fully illustrated in the stage presentation”: “Visualizing Citizenship,” *The Woman Citizen*, March 20, 1920, 1020–21; Menchaca finds that similar sentiments arose among Texas suffragists: Menchaca, *Naturalizing Mexican Immigrants*, 247.

¹⁷⁹ Aylsworth, “The Passing of Alien Suffrage,” 114–16.

¹⁸⁰ United States, *Fourteenth Census of the United States, 1920*.

¹⁸¹ The Commissioner of Immigration had previously noted low rates of naturalization in Indiana, which appears to be why Indiana so often emerged as the case study of choice among opponents of alien suffrage: Williams, “The Road to Citizenship,” 417–18; Ross Franklin Lockridge, *How Government Functions in Indiana: An Indiana Supplement to Thomas Harrison Reed’s Form and Function of American Government* (Yonkers, NY: World Book Company, 1918), 20–21; Thomas Marshall, “Misunderstood America,” *The Forum*, January 1918, 6.

¹⁸² “New Constitution Theme of Pastors,” *The South Bend News-Times*, July 9, 1917, 10; “Suggests Change in Constitution,” *South Bend News-Times*, July 9, 1917, 2.

been left to two groups - the women and the soldiers - to push this amendment. To the soldier, citizenship and the right to be an American is something he has pledged his life for. It is a definite and tangible thing to be protected and developed. To the women who were so long disfranchised, the right to vote takes its true place as the most prized gift of citizenship - its crown and seal.¹⁸³

In September of 1921, voters in Indiana were asked to vote on thirteen referenda. Only one passed. By a majority of nearly sixty thousand ballots, Indianans voted to repeal alien suffrage.¹⁸⁴ Over the next few months and years, Indiana would become the epicenter of a reborn Ku Klux Klan. Nativism and anti-immigrant activism would become one of its central causes.¹⁸⁵

After all these intense battles and arguments over the meaning of citizenship and citizenship rights, alien suffrage died an anti-climactic death in the United States. Arkansans had first voted on a referendum that proposed banning the practice in 1920. While this measure received many more ayes than nays, so many Arkansans abstained on the question that affirmative votes did not outweigh both nays and abstentions. Thus, according to prevailing interpretations of the Arkansas Constitution, it was not adopted. In 1926 however, the Arkansas Supreme Court ruled that constitutional referenda adopted since 1910 were not bound by that requirement. And so, the referendum was retroactively declared law. Like that, in a state where less than one out of every hundred residents were from foreign lands, the longstanding practice of alien suffrage came to an end in the United States.¹⁸⁶

IV. Conclusion

The repeal of alien suffrage rights in twenty states and territories from the end of Reconstruction to the age of Immigration Quotas represents a dramatic transformation in the meaning and weight of citizenship in the United States as voting formally became a right – and limited to – American citizens. Though the revocation of noncitizen voting policies had little impact on elections in states like Arkansas where immigrants represented a tiny fraction of the population, their repeal *did* significantly affect the contours of the electorate in many western states and territories, states across the Upper Midwest, and even some southern/Border states.

At the end of Reconstruction – when nearly half of U.S. states and territories granted noncitizens the franchise – suffrage was not citizenship right in theory or in practice. The enactment of the Fifteenth Amendment, by expanding suffrage rights to African-American men in 1870, had dramatically expanded the number of citizen-voters and removed an enduring and deeply painful legacy of slavery. But with roughly half of the citizen population formally disfranchised owing to their sex and states and territories across the West, South, and Midwest recognizing noncitizen men as voters, suffrage was neither theoretically nor practically a right of citizenship.

By claiming voting as a “citizenship right” opponents of noncitizen voting (most especially women’s suffragists) remade voting both in language and law as the premier right of

¹⁸³ “Should Aliens Vote?,” *The Woman Citizen*, September 10, 1921, 18.

¹⁸⁴ “No Alien Vote in Indiana,” *The Woman Citizen*, September 24, 1921, 18.

¹⁸⁵ Leonard J. Moore, *Citizen Klansmen: The Ku Klux Klan in Indiana, 1921-1928* (Chapel Hill: University of North Carolina Press, 1997).

¹⁸⁶ Aylsworth, “The Passing of Alien Suffrage,” 114–16.

U.S. citizenship. While campaigns to link voting rights and citizenship often emerged haphazardly and were not only confined to women's suffragists, those battles increasingly became intertwined as arguments for the "standardization" of citizenship rights gained ground in the Progressive era and especially when the U.S. entered into World War I. With *all* states declaring the franchise the exclusive right of citizens by 1926 – and the Nineteenth Amendment expanding the right to American women – suffrage was dramatically and literally turned into the foremost right of U.S. citizenship. Of course, many who supported transforming the franchise into a "right of citizenship" either did not fight for or even actively opposed the extension of suffrage rights to marginalized citizens in practice. Indeed, voting became the quintessential right of modern American citizenship at the same times as many citizens lived under legal regimes of segregation and the ever-present threat of white supremacist violence.

As a work of political history, this chapter builds on the foundations of many other scholars who have uncovered numerous reasons why noncitizen voting laws were repealed across the United States. By focusing on differing regional demographics, political coalitions, and especially the *rules* which governed would-be changes to each state's suffrage laws, "Making Voters Citizens" gives greater clarity to why states and territories repealed noncitizen voting laws when they did.

Convening constitutional assemblies made the revocation of alien suffrage laws much more likely, for delegates had to set voting requirements at them. Though not a guarantor of repeal, these conventions facilitated and sped on the demise of alien suffrage in several states in the Deep South and in western territories. In southern states that held constitutional conventions during the era of Jim Crow, alien suffrage was rapidly repealed. In most other southern (and Border) states that did not call such conventions, noncitizen voting endured into the 1920s.

Referenda were required to repeal alien suffrage in the Upper Midwest, the Upper South, and several western states. Prior to World War I, these referenda were often successful during times of recession, growing rates of immigration, and when they were linked to other voting rights debates (increasingly women's suffrage referenda). However, while women's suffrage activists and Progressive era reformers grumbled at the continued practice of noncitizen voting and fought against such policies, prior to World War I there was no national campaign against alien suffrage. And while voters often repealed these policies by wide margins, high rates of abstention demonstrated that alien suffrage was not the most pressing matter on most voters' minds. This apathy could even doom referenda (as was the case in Nebraska in 1910).

It was in wartime when women's suffragists would mobilize on a national scale to "standardize" American citizenship and fight to repeal alien suffrage laws across the nation. Suffragist leaders like Catt both saw alien suffrage as a crucial means to mobilize support for their cause in states that had long proven stubborn to women's suffrage arguments (like North Dakota) and as a means to literally remake voting into a right of citizenship. With fewer and fewer states permitting noncitizen voting, opponents increasingly pointed to outliers as holdovers from a bygone, premodern era of American citizenship. That the NAWSA's successor institution, the League of Women Voters, fought so vociferously to repeal Indiana's alien suffrage laws *after* the ratification of the Nineteenth Amendment demonstrates how deeply many women suffragists opposed noncitizen voting and how important their activism was to overturning longstanding policies.

As a work of immigration and citizenship history, this chapter both illustrates how voting became the right most recognizable with U.S. citizenship and how citizenship rights have been articulated both to include and exclude. While the power of those claims has always been relative (especially to historical inequalities of race, gender, and class), the weight of “citizen only” arguments was increasing from the time of Reconstruction to the 1920s both as a symbolic device and a means of reshaping policy. During that half century, the claim that voting should be a right of citizenship defeated other, competing visions of voting rights (such as white manhood suffrage and taxpayer voting rights).

While voting is now widely legally and popularly understood as the primary right of U.S. citizenship (indeed its development as a “right of citizenship” in law and practice is rightly taught as a major symbol in the rise of modern America) this chapter indicates that the boundaries of the political rights of citizenship will always remain contested. Indeed, beginning in the late-twentieth century, several municipalities in immigrant-friendly states began enacting alien suffrage laws for local elections. That effort shows no sign of stopping; indeed, it promises to expand even further into the early twenty-first century as rates of immigration in the United States reach figures last seen at the turn of the twentieth century. As localities and state governments diverge in their approaches towards the “rights of citizenship” and rethink what citizenship rights mean, it is possible that voting will no longer be popularly or legally understood as the exclusive domain of U.S. citizens.¹⁸⁷

However, since Congress now bars noncitizens from voting in federal elections and no state allows for alien suffrage in state elections, advocates of noncitizen voting rights in the early twenty-first century are fighting an uphill battle in their attempt to overturn entrenched laws and the perception of suffrage as a right of citizenship.¹⁸⁸ Nor should we assume that efforts to overturn the idea of voting as a right of citizenship will be solely an expansionary process. Indeed, the incarcerated, former felons, college students, the elderly, and the poor find it increasingly hard to vote due to felon disfranchisement and voter identification laws. As this chapter makes clear, inclusionary and exclusionary claims of citizenship rights-as-suffrage rights have powerfully intersected and overlapped in the past. It is likely that they will continue to do so long into the future.

¹⁸⁷ See, among many others: Rosberg, “Aliens and Equal Protection”; Raskin, “Legal Aliens, Local Citizens”; Harper-Ho, “Noncitizen Voting Rights.”

¹⁸⁸ Varsanyi, “The Rise and Fall (and Rise?) Of Non-Citizen Voting,” 130.

Chapter 2: Who Counts? Aliens as Members of the Polity, 1865-1965

In December 2015, Sue Evenwel brought an unusual case before the U.S. Supreme Court. She argued that the State of Texas was in violation of her constitutionally-guaranteed right to equitable representation. The Texas State Senate – along with other state legislatures nationwide – uses the total number of *residents* in the state as its basis for creating roughly equally-populated constituencies. Evenwel’s lawyers argued that this policy artificially enhanced the power of voters in districts where nonvoters (such as children, noncitizens, persons formerly incarcerated, and felons) were particularly numerous. Instead, they sought to compel the state to use U.S. Census Bureau estimates of the state’s Citizen Voting-Age Population (CVAP) as its basis of apportionment. Since Evenwel’s district had about two hundred thousand more CVAP residents than the district with the lowest CVAP figures, her lawyers asked the court to correct this alleged equal protection violation.¹

The Texas state government, led by Governor and former state Attorney General Greg Abbott, challenged Evenwel’s claims. Its lawyers argued that the people of Texas had every right to determine the basis of apportionment for its legislature. They also questioned the wisdom of employing CVAP figures as a means of calculating district lines since the data relied so heavily on samples and estimates. Crucially however, the state’s lawyers maintained that Texas reserved the right to change its basis of redistricting if voters saw fit to amend the state constitution.²

The Obama Administration also pushed back against Evenwel’s claims. Federal lawyers argued that the CVAP data were only estimates used to measure the effects of unconstitutional, racial gerrymandering, and were not designed to calculate a state’s overall apportionment schemes. Contrary to lawyers representing the Lone Star State, federal Department of Justice lawyers maintained that Texas – and all states – *had* to use total population as its basis of apportionment owing to the Fourteenth Amendment’s guarantee of equal rights of all residents to representation.³

In April 2016, all eight Supreme Court justices (Justice Antonin Scalia had recently died) decided that Texas had the right to use its total resident population as the basis of its apportionment policy. Six justices noted that, in practice, all states had adopted a total population standard. However, the court did not concur with the Obama Administration’s claim that states *had* to use total population as the basis of state legislative apportionment. In her majority opinion, Justice Ruth Bader Ginsburg agreed that CVAP data was an insufficient basis of state apportionment policy. Moreover, she strongly implied that states would need to demonstrate that they were not using CVAP information (or similar measures) as a proxy to discriminate against protected classes. But she and her colleagues did not ban – outright – state redistricting schemes that excluded noncitizens from the population.⁴

¹ See, broadly: Brief for the Appellants in *Evenwel v. Abbott*, No. 14–940 (Supreme Court of the United States of America April 4, 2016).

² See, Brief for the Appellees: *Evenwel v. Abbott*.

³ See: Brief for the United States as Amicus Curiae Supporting Appellees: *Evenwel v. Abbott*.

⁴ See broadly: Majority Opinion in *Evenwel v. Abbott*.

Evenwel v. Abbott did not grab the national spotlight when the Supreme Court announced its ruling in April 2016. While Americans frequently hear about the problem of gerrymandering, few know about proposals to count certain residents out of the population for the purposes of redistricting. After all, the U.S. Constitution requires that apportionment schemes for the federal House of Representatives be based on a (roughly) equal division of each state's total (citizen and noncitizen) population. And today all states use total population figures when calculating state legislative districts.⁵

But *Evenwel*'s charge would not have seemed bizarre a century ago. Campaigns to count *noncitizens* out of the population for the purposes of congressional redistricting were widespread in the early twentieth century. Disputes became so heated that Congress failed to reapportion – at all – following the 1920 Census.⁶ And eight states counted all or some aliens out of the population for the purposes of redistricting in 1920. They included states with small immigrant populations (like North Carolina) and those with some of the largest (such as New York).⁷

Such policies could transform state politics for generations. New York's ban became a major tool for rural upstate politicians to maintain their firm grip over the state government. Though New York City would represent 52.3 percent of the state's population by 1910, hundreds of thousands of residents were noncitizens.⁸ As rural New York became dominated by Republicans and the city by Democrats, counting noncitizens out of the population helped shut Democrats and urbanites out of power in the State Legislature for decades.⁹ And most states – like New York – only repealed or ceased enforcing such laws as late as the 1960s and 1970s.¹⁰

This chapter explores campaigns to pass “citizen only” apportionment policies and battles to either prevent their adoption or repeal those in effect. Politicians fought for “citizen only” apportionment policies primarily because they thought such laws were in their own electoral interests (or those of their allies). This self-interest, however, did not negate the effects of these disputes on the meaning and weight of “citizenship rights” claims. On the contrary, the nativist

⁵ Douglas Keith and Eric Petry, “Apportionment of State Legislatures, 1776-1920,” Brennan Center for Justice (New York: New York University School of Law, September 25, 2015), 1; *Evenwel v. Abbott*.

⁶ Key works which examine disputes over the inclusion of noncitizens in reapportionment schemes following the 1920 Census include: Margo Anderson, *The American Census: A Social History* (New Haven: Yale University Press, 1988), 140–55; Charles Eagles, *Democracy Delayed: Congressional Reapportionment and Urban-Rural Conflict in the 1920s* (Athens: University of Georgia Press, 1990); M. L. Balinski and H. Peyton Young, *Fair Representation: Meeting the Ideal of One Man, One Vote* (Washington, D.C.: Brookings Institution Press, 2001), 51–58; Charles A. Kromkowski, *Recreating the American Republic: Rules of Apportionment, Constitutional Change, and American Political Development, 1700–1870* (New York: Cambridge University Press, 2002), 3–6.

⁷ See especially: Appendix to the States' Attorneys General Brief in: *Evenwel v. Abbott* at App. 1-10; See also, broadly: Keith and Petry, “Apportionment of State Legislatures, 1776-1920.”

⁸ In 1910, there were more than eight hundred thousand immigrant men in New York City. More than half were aliens: United States, *Thirteenth Census of the United States, 1910* (Washington, D. C.: Government Printing Office, 1911), 1092.

⁹ To be sure, alienage restrictions were not always the most powerful ways by which entrenched interests maintained their power. And in New York, the effects of the alienage exclusions were not always partisan. Indeed, competing elements of the New York Democratic Party (particularly Tammany and anti-Tammany factions) used the exclusion of noncitizens from apportionment schemes to try to gain an upper hand in city politics. See, among other works: Hugh A. Bone, “States Attempting to Comply with Reapportionment Requirements,” *Law and Contemporary Problems* 17, no. 2 (1952): 387–416.

¹⁰ See, among others: Elizabeth Durfee, “Apportionment of Representation in the Legislature: A Study of State Constitutions,” *Michigan Law Review* 43, no. 6 (1945): 1091–1112; Gordon E. Baker, *State Constitutions: Reapportionment* (New York: National Municipal League, 1960); Keith and Petry, “Apportionment of State Legislatures, 1776-1920”; *Evenwel v. Abbott*.

contention that “being counted” should be a “right of citizenship” proved to be a powerful rallying cry and helped to entrench policies into state law for decades.

Apportionment battles (i.e. debates over how legislative districts would be calculated), are generally not included among the most important – or exciting – clashes in American political history, let alone the history of immigration and citizenship in the United States. As Peter Argersinger, the foremost scholar of late-nineteenth and early-twentieth century gerrymandering and (mal)apportionment has argued, historians of American politics have focused mostly “on electoral and legislative behavior.” This focus “implicitly assume[s] the existence of a democratic system of representation in which the government reflects public opinion and changes in popular sentiment.” However, as Argersinger rightly emphasizes, “it is the system of representation that determines the relationship between public opinion and political influence.” And legislators certainly had numerous tools at their disposal to mitigate the effects of “public opinion and changes in popular sentiment” at the dawn of the twentieth century.¹¹

Most notably, many states primarily apportioned one or both legislative chambers on a geographic basis. In Rhode Island, each municipality was represented by one state senator until 1928.¹² California adopted a similar system – in which every *county* received a state senator – in 1926.¹³ As designed, these schemes produced gross inequalities. At the turn of the twentieth century, the 606 residents of West Greenwich held the same sway in the Rhode Island State Senate as did the 175,597 residents of Providence.¹⁴ In California, the inhabitants of Los Angeles County (population 6,038,771) held the same sway as the residents of Tehama County (population 25,305) in the state’s upper chamber into the 1960s.¹⁵

Alternatively, once in power, elected officials often decided not to reapportion their legislature on a regular basis, particularly in the early-to-mid twentieth century. New York did not reapportion its legislature between 1917 and 1941. Illinois chose not to redraw its electoral lines for nearly half a century.¹⁶ And Tennessee went more than sixty years without reapportioning.¹⁷ Writing in 1952, legal scholar Hugh Bone found that, “Despite the fact that all

¹¹ Argersinger’s pathbreaking article appeared in the *Journal of American History* in: Peter H. Argersinger, “The Value of the Vote: Political Representation in the Gilded Age,” *Journal of American History* 76, no. 1 (1989): 59–90; One of the few historical works which does examine alienage-based exclusions from apportionment is that of Laura-Eve Moss. In her excellent dissertation on New York state constitutional conventions, she also quotes from Argersinger here and cites his crucial role in the development of apportionment scholarship: Laura-Eve Moss, “Democracy, Citizenship and Constitution-Making in New York, 1777-1894” (University of Connecticut, 1999), 89.

¹² See, especially Chapter 11, “‘This Very Important Test of Citizenship’: Suffrage Reform and its Aftermath” in: Evelyn Savidge Sterne, *Ballots & Bibles: Ethnic Politics and the Catholic Church in Providence* (Ithaca, NY: Cornell University Press, 2004), 236–52.

¹³ Joseph Grodin, Calvin Massey, and Richard Cunningham, *The California State Constitution: A Reference Guide* (Westport, CN: Greenwood Press, 1993), 91.

¹⁴ *U.S. Census of Population and Housing, 1900: Vol. 1 – Population of States and Territories* (Washington: Government Printing Office, 1901), 69, 84, 350.

¹⁵ See: “Volume 1, Part 6 Number of Inhabitants of California,” in: United States, *Eighteenth Census of the United States, 1960* (Washington, DC: Government Printing Office, 1963), 23.

¹⁶ Advisory Commission on Intergovernmental Relations, “A Commission Report: Apportionment of State Legislatures” (Washington, DC, December 1962), 19–21.

¹⁷ Robert B. McKay, *Reapportionment: The Law and Politics of Equal Representation* (New York: Simon and Schuster, 1970), 51.

but a half dozen states call for reapportionment every 10 years or less, only 11 states...can be said to have partially or fully complied with this time requirement since 1930.”¹⁸

Political scientists, legal scholars, and historians broadly agree that basing apportionment primarily on geographic boundaries as opposed to population totals – or simply not reapportioning on a regular basis – enabled (predominantly white) rural interests to maintain disproportionate power relative to their population in state governments into the 1960s. These scholars highlight the role of trade unions, opposition parties, and middle-class civic actors in bringing attention to malapportionment and in fighting to create more equitable systems of representation.¹⁹ Such works often emphasize the role of the Supreme Court, for in a series of cases, most especially *Baker v. Carr* (1962) and *Reynolds v. Sims* (1964), the high court ordered all state legislatures to redistrict on the basis of equal population ratios *and* required regular reapportionments.²⁰

However, even among those works that *do* explore malapportionment, citizenship requirements have not usually played a prominent role. Scholars of American political development have generally only paid attention to the exclusion of aliens from apportionment policies when they became intertwined with national debates (such as constitutional reform in the 1860s and immigration restriction in the 1920s) and threatened to become federal policy.²¹ Meanwhile, though the demise of alien suffrage is occasionally understood as a major transformation in U.S. citizenship scholarship (see Chapter 1), the same has not been the case for debates over whether “being counted” would become a “right of citizenship.”²²

And yet, the exclusion of aliens from apportionment schemes extended well into the twentieth century. And while *Baker* and *Reynolds* are usually treated as the death knell to America’s “rotten boroughs,” bans on the basis of alienage actually endured beyond those court decisions. Massachusetts and New York did not revoke their alienage exclusions owing to a court order. Rather, they altered their states’ constitutions via referendum in the late-1960s and

¹⁸ Bone, “States Attempting to Comply with Reapportionment Requirements,” 389.

¹⁹ David O. Walter, “Reapportionment of State Legislative Districts,” *Illinois Law Review* 37, no. 1 (1942): 20–42; Durfee, “Apportionment of Representation in the Legislature”; Thomas S. Barclay, “The Reapportionment Struggle in California in 1948,” *Western Political Quarterly* 4, no. 2 (1951): 313–324; Bone, “States Attempting to Comply with Reapportionment Requirements”; Commission on Intergovernmental Relations, “A Report to the President for Transmittal to the Congress” (Washington, DC, June 1955); Gordon E. Baker, “Reapportionment by Initiative in Oregon,” *Western Political Quarterly* 13, no. 2 (1960): 508–519; Baker, *State Constitutions*; Advisory Commission on Intergovernmental Relations, “A Commission Report: Apportionment of State Legislatures”; Ruth C. Silva, “One Man, One Vote and the Population Base,” in *Representation and Misrepresentation: Legislative Reapportionment in Theory and Practice*, ed. C. Herman Pritchett and Robert A. Goldwin (Chicago, IL: Rand McNally, 1968), 53–70; McKay, *Reapportionment*; Anderson, *The American Census*.

²⁰ Silva, “One Man, One Vote and the Population Base”; McKay, *Reapportionment*; Indeed, so transformative were these apportionment cases that scholars who examine contemporary gerrymandering battles take for granted that states are required to routinely reapportion their legislatures into (roughly) equally populated districts and assume that states will use their “total population” as the basis of apportionment. See, among many others: Robert S. Erikson, “Malapportionment, Gerrymandering, and Party Fortunes in Congressional Elections,” *American Political Science Review* 66, no. 4 (December 1972): 1234–45; Richard G. Niemi et al., “Measuring Compactness and the Role of a Compactness Standard in a Test for Partisan and Racial Gerrymandering,” *Journal of Politics* 52, no. 4 (November 1990): 1155–81; David Lublin, *The Paradox of Representation: Racial Gerrymandering and Minority Interests in Congress* (Princeton, NJ: Princeton University Press, 1999).

²¹ See, among others: George David Zuckerman, “A Consideration of the History and Present Status of Section 2 of the Fourteenth Amendment,” *Fordham Law Review* 30, no. 1 (October 1961): 93–136; Anderson, *The American Census*; Eagles, *Democracy Delayed*; Balinski and Young, *Fair Representation*; Kromkowski, *Recreating the American Republic*.

²² Among the few historical analyses of changes in American citizenship rights that explore noncitizens’ inclusion or exclusion from apportionment policies are: Moss, “Democracy, Citizenship and Constitution-Making in New York, 1777-1894”; Tienda, “Demography and the Social Contract.”

early-1970s. Maine and Nebraska technically still include such provisions in their state constitutions (though administrations in those states have not enforced them for decades).²³ And if Sue Evenwel’s case is any indication, we likely have not heard the last word on this matter.

This chapter adopts a *longue durée* chronology that is significantly longer than the other components of this dissertation. It does so both because debates over “citizen only” apportionment policies arose and endured from the mid-nineteenth to the mid-to-late twentieth centuries and because all states ultimately adopted the same (at least *de facto*) approach by including resident noncitizens in their population. Though this chapter describes how “being counted” for apportionment policies became disentangled from U.S. citizenship status in all states, it illustrates how strong exclusive citizenship claims remained, even in defeat.

“Who Counts?” begins with an overview of apportionment debates in the antebellum and Civil War eras to contextualize the rise of state laws counting aliens out of the population and explores redistricting debates over the inclusion of noncitizens during the drafting of the Fourteenth Amendment. Section 1, “Debating Aliens as Members of the Polity” traces how state and federal politicians debated apportionment schemes before and during the Civil War period. It shows how nativists claimed that “representation” – however indirect – should be the *exclusive* right of citizens, leading to widespread (often successful) legislative and constitutional efforts to count noncitizens out of redistricting schemes.

Section 2, “The Best Defense is a Good Offense” tracks efforts to expand “citizen only” apportionment policies at the state and federal level and campaigns to repeal those already in force during the late-nineteenth and early-twentieth centuries. It focuses on World War I-era state constitutional conventions in New England and federal congressional debates during the 1920s. There, the inclusion or exclusion of noncitizens was fiercely debated as policymakers articulated competing visions of citizenship rights, membership in the polity, and the meaning of representation. Those who sought to ban noncitizens argued that “being counted” as part of the state’s population should be the exclusive right of citizens and frequently castigated “new” immigrant populations as unworthy of any form of political influence. Politicians opposed to alienage-based exclusions castigated their opponents for their nativism and defended all residents as members of each state’s population. While the argument that all residents deserved “to count” often prevailed in debates over proposed new legislation, those claims were not enough to repeal entrenched laws.

The third and final section, “The Victory of Efficiency?” examines (ultimately successful) campaigns to repeal longstanding state bans from the 1930s to the early 1970. It highlights debates in New York and Massachusetts (where battles were most prominently fought) and the efforts of a broad coalition of national “reformers” (from middle-class “good government” civic groups to activist-scholars) to standardize apportionment laws across the nation. Though occasionally reformers argued that “being counted” was a “right” of all residents, this was not their main contention. Instead, mid-century advocates focused on issues of efficacy and utility. They pointed to low rates of immigration and difficulties state authorities were encountering trying to distinguish citizens from aliens (as the U.S. Census Bureau had dropped a citizenship question from its national 1960 enumeration). Reformers instead argued

²³ See, Brief of the Brennan Center for Justice Opinion in: *Evenwel v. Abbott* at 23 (n. 8).

that removing alienage-based exclusions would improve the quality of apportionment schemes and take power away from corrupt and/or inept local and state officials. They were successful. Ultimately, all states would base their apportionment policies on the number of residents – not citizens – within their borders.

As of 2018, the federal House of Representatives and all states use a total population basis for legislative redistricting. That was no foregone conclusion just a half century earlier. The consolidation of state and federal apportionment policies by voters, politicians, administrators, and judges is a significant transformation in the history of American political development. It also illustrates how “what counts” as a “right of citizenship” can emerge, disappear, (and potentially reemerge) in both law and popular understanding. Today, few Americans would think of “being counted” for the purposes of legislative apportionment as the exclusive right of citizens. But these claims were frequently debated and often adopted, shaping state and federal battles over the boundaries of citizenship rights from the era of the Civil War until a century later. And those arguments would prove powerful even in defeat. After all, opponents were usually victorious in overturning entrenched “citizen only” policies not by challenging their virtue, but by (adeptly) focusing on their unpopular implementation.

I. Debating Aliens as Members of the Polity:

When Maine split from Massachusetts to enter the Union as the nation’s twenty-third state in 1820, it became the first to explicitly exclude aliens from apportionment.²⁴ But it would be in New York where battles over the subject would become most heated (and repeated) during the antebellum and Civil War eras. As historian Laura Eve-Moss emphasizes in her thorough dissertation on eighteenth- and nineteenth-century New York (state) constitutional development, questions of apportionment became inextricably linked to broader debates about the definition of the “political community” in New York as early as the 1820s. In that era opponents of counting noncitizens for apportionment sought to “signal that those who held the status of citizen deserved recognition in the political realm, distinguishing them from other classes of inhabitants.”²⁵ In the first decades of the republic, New York had based apportionment policy on the number of “electors” in the state. But the growth of the New York City population *and* debates about whether the state could demand loyalty from persons who were not represented in the legislature came to a head at a constitutional convention held in 1821. Though some delegates defended the principle of counting all persons and called for “no taxation without representation,” apportionment debates were not limited to questions of fairness. If the state were to switch to a total population basis, that new policy would increase New York City’s power in the state legislature and would incorporate long-marginalized groups such as recent immigrants and free blacks as members of the state’s population. A “compromise” was reached, whereby most white citizen men, women, and children would be counted, though noncitizens, paupers, and African Americans would not.²⁶

²⁴ McKay, *Reapportionment*, 336–38.

²⁵ Moss, “Democracy, Citizenship and Constitution-Making in New York, 1777-1894,” 89.

²⁶ See especially, Moss’s section, “Popular Sovereignty and Legislative Apportionment”: Moss, 88–97; Battles over alienage-based exclusions - at the state level - have been studied more in New York than in all other states combined. Many scholars who wrote about New York’s past apportionment battles did so to explain contemporaneous challenges and to advocate for certain changes. See, especially: Ruth C. Silva, “Legislative Representation: With Special Reference to New York,” *Law and Contemporary Problems* 27, no. 3 (Summer 1962): 408–433; Ruth C. Silva, “Apportionment of the New York Assembly,” *Fordham Law Review* 31, no. 1 (October 1962): 1–72; Ruth C. Silva, “The Population Base for Apportionment of the New York

New York was not alone in debating an alienage ban. At its constitutional convention before joining the Union, representatives of the Texas Republic addressed the same topic. While the total free population was adopted as the basis of apportionment for the lower chamber, several delegates thought it best to calculate districts for the upper chamber on a narrower basis and argued in favor of using the “qualified elector” population. As (current) U.S. Senator John Cornyn argues in his master’s thesis, debates over political rights “reflected the prejudices of the day” and arose owing to “Competition between sections for political power rather than egalitarian proclivities.” Though a few pro-slavery delegates voiced skepticism, fearful that it might invite a challenge to Texas’s slave regime, supporters pointed to other southern states that had adopted similar schemes and had not witnessed a rising abolitionist threat.²⁷ Though not designed exclusively as an anti-immigrant measure, this would be one of its long-lasting legacies.

In other antebellum states however, the rights of immigrants were at the heart of apportionment disputes. In 1857, Massachusetts voters approved a constitutional amendment which would henceforth base apportionment to the General Court (the state legislature) on the number of the “legal voters” residing in the commonwealth. This was a heightened period of anti-immigrant politics in Massachusetts. The commonwealth’s governor, Henry Gardner, was a national leader in the anti-immigrant Know-Nothing Party. And within two years Bay State voters ratified additional amendments which required that voters prove their English-language literacy and forced immigrants to wait two years after naturalizing before they could vote.²⁸ Oregon’s first constitution, on the other hand, only counted “white voters” as members of the state’s population in 1859, signaling the state’s open hostility to free blacks and Chinese immigrants.²⁹ But these disputes were not limited to state apportionment policies in the mid-nineteenth century.

In the aftermath of the Slaveholders’ Rebellion, northern politicians battled over how southern states would be readmitted to the Union. But they faced a seemingly intractable problem. Following the enactment of the Thirteenth Amendment in 1865 banning slavery, the apportionment policy of the federal constitution – which counted enslaved persons at a three-fifths ratio – was overturned. As free persons, African Americans in the former slave states were to be counted equally with white southerners on a one-to-one ratio. However, since many of those same states had not enfranchised former slaves, white southerners – a majority of whom had taken up arms against the federal government – were poised to *gain* power in Congress at the expense of disfranchised southern blacks. This was intolerable in the eyes of African Americans and their northern white Republican allies. But Republican politicians did not believe that there

Legislature,” *Fordham Law Review* 32, no. 1 (October 1963): 1–50; David Wells, “Legislative Representation in New York State: A Discussion of Inequitable Representation of the Citizens of New York in the State Legislature and Congress” (New York: International Ladies’ Garment Workers’ Union, 1963); Conrad P Rutkowski, “State Politics and Apportionment: The Case of New York” (Fordham University, 1971).

²⁷ John Cornyn, “The Roots of the Texas Constitution: Settlement to Statehood,” *Texas Tech Law Review* 26, no. 4 (1995): 1143, 1145–51; See, also Brennan Center Brief in: *Evenwel v. Abbott* at 30.

²⁸ However, the two-year waiting period before naturalized immigrants could vote was repealed by voters in 1863: Lawrence M. Friedman and Lynnea Thody, *The Massachusetts State Constitution* (New York: Oxford University Press, 2011), 174, 209.

²⁹ Baker, “Reapportionment by Initiative in Oregon”; Oregon, *The Constitution of Oregon* (Portland, Oregon: S. J. McCormick, printer and publisher, 1857).

was enough popular support in 1866 to ratify a constitutional amendment guaranteeing African-American voting rights across the nation. Solutions proved elusive.³⁰

Members of Congress intensely debated how to address this challenge when drafting the Fourteenth Amendment. Several Republicans wanted to establish a “legal voter” standard as the basis of federal apportionment. Under these proposed schemes, congressional districts would no longer be divided along (relatively) equal population lines. Instead, districts would be based on how many residents were registered to vote or how many votes were cast in recent elections. Republican leaders such as Pennsylvania Congressman Thaddeus Stevens strongly favored this tactic, viewing it as a tool to cajole southern states into extending the right to vote to former slaves. But many Republicans opposed Stevens, fearing that a “legal voter” standard would reduce their own numbers in Congress. New England politicians were particularly opposed to this approach, in large part owing to their larger-than-average disfranchised populations.³¹

A “legal voter” apportionment basis came under attack for additional reasons. Politicians who opposed the expansion of alien suffrage into new states were particularly concerned about the implications of an electorate-based standard. Senator James Grimes, a Republican from Iowa, argued that the implementation of a “legal voter” standard would create incentives for states to enfranchise noncitizen men to boost their numbers in Congress, which he argued would “degrade” the quality of the electorate across the nation.³² To mitigate these concerns, Congressman Robert Schenck, an Ohio Republican, proposed excluding all noncitizens from any “legal voter” count.³³

Ultimately, Republicans would chart a different path. The Fourteenth Amendment’s eventual apportionment measure allocated a penalty clause to states that disenfranchised male citizens owing to race. Though Democrats charged northeastern Republicans with hypocrisy (as many of their seats were based on disproportionate numbers of disfranchised women, aliens, and children), Republicans won the day.³⁴ States were to be reduced in seats at a rate commensurate with the degree to which they disfranchised male *citizens* for reasons other than crime or rebellion according to Section Two of the new amendment (though this penalty clause has never been implemented in practice).³⁵

Though an alienage ban was rejected as federal policy in the aftermath of the Civil War, *state*-level exclusions continued to grow in number. North Carolina, for instance, adopted a ban on noncitizens from state apportionment schemes in its Reconstruction-era constitution.³⁶ California barred “aliens ineligible to citizenship” from the count in the state’s 1879 constitution.

³⁰ The work that I have relied on to the greatest degree to understand debates over apportionment during the drafting of the Fourteenth Amendment is that of: Zuckerman, “A Consideration of the History and Present Status of Section 2 of the Fourteenth Amendment”; Others include: Laurence F Schmeckebier, *Congressional Apportionment* (Westport, CN: Greenwood Press, 1941); Howard A. Scarrow, “One Voter, One Vote: The Apportionment of Congressional Seats Reconsidered,” *Polity* 22, no. 2 (December 1, 1989): 253–68.

³¹ See, broadly: Zuckerman, “A Consideration of the History and Present Status of Section 2 of the Fourteenth Amendment,” 94–107 (and 95, 98, 101 in particular).

³² *Congressional Globe of the Thirty-Ninth Congress*, June 4, 1866, 2943.

³³ Zuckerman, “A Consideration of the History and Present Status of Section 2 of the Fourteenth Amendment,” 98.

³⁴ *Congressional Globe of the Thirty-Ninth Congress*, June 8, 1866, 3029.

³⁵ See, broadly: Zuckerman, “A Consideration of the History and Present Status of Section 2 of the Fourteenth Amendment.”

³⁶ *Constitution of the State of North-Carolina: Together with the Ordinances and Resolutions of the Constitutional Convention, Assembled in the City of Raleigh, Jan. 14th, 1868.* (Raleigh, NC: Joseph W. Holden, Convention Printer, 1868); See, also, Brennan Center Brief from: *Evenwel v. Abbott* at 23.

Only East and South Asian migrants were excluded in California since so many anti-Chinese activists – like Workingmen’s Party leader Denis Kearney – were European immigrants themselves.³⁷ And Nebraska became the final state to bar aliens from redistricting counts in a flurry of xenophobic “reforms” during and immediately after World War I.³⁸

Of course, counting noncitizens out of the population was not the only way politicians rigged systems of apportionment to their own electoral benefit (and those of their allies). By the early twentieth century, Massachusetts, Tennessee, and the Texas State Senate maintained an electorate-based apportionment policy (in which voters/voting-eligible populations were used to calculate apportionment schemes).³⁹ Some states simply stopped reapportioning their legislatures for decades.⁴⁰ And rural politicians increasingly looked to the U.S. Senate as a model for apportionment as a defense against rising rates of urbanization in the late-nineteenth and early-twentieth centuries. At the end of World War I, roughly twenty percent of states based apportionment – in at least one legislative branch – primarily on geographic lines.⁴¹

In sum, states across the country transformed how they apportioned their legislatures in the late-nineteenth and early-twentieth centuries. Alienage restrictions were often linked to broader schemes to malapportion legislatures, but not always. And eight decided to exclude some or all aliens from apportionment. Nativists and their allies were not finished. They sought to enact similar policies in other states and even change the apportionment rules for the federal House of Representatives. Immigrants and their allies fought back, but they first had to decide what their strongest defense would be.

II. The Best Defense is a Good Offense: Battling to Include Aliens in the Count, 1846-1930

Once more, it was in New York where this battle was first – and most repeatedly – fought. Every time delegates convened to rewrite the state’s constitution in the nineteenth century, apportionment became a central topic of debate. At conventions held in 1846, 1867, and 1894, at least one delegate argued that it was intolerable to exclude noncitizens and fought to rewrite the state’s apportionment policy. In such battles, delegates often tied their arguments overtly to sectional politics and partisan interests. Delegates to the 1846 convention from New York City wanted to know why, in the words of Laura Eve-Moss, they had “to care for” noncitizens “but received no political compensation for it.”⁴² Conversely, delegates from rural districts cautioned that including noncitizens would give far too much weight to New York City’s voting population.⁴³ Fifty years later, they were still at it. While future U.S. Senator Elihu Root pointed to the diversity of upstate interests as the rationale for his support of the

³⁷ Grodin, Massey, and Cunningham, *The California State Constitution*, 351–53; See, broadly: Saxton, *The Indispensable Enemy*; Mink, *Old Labor and New Immigrants in American Political Development*.

³⁸ Nebraska Legislative Reference Bureau and Nebraska Historical Society, *Nebraska Constitutions of 1866, 1871 & 1875 and Proposed Amendments Submitted to the People, September 21, 1920: Arranged in Parallel Columns with Critical Notes and Comparisons with Constitutions of Other States* (Lincoln, NE: American Printing Company, 1920); Charles Kettleborough, “Amendments to State Constitutions 1919-21,” *American Political Science Review* 16, no. 2 (1922): 245–76; For an excellent work on Progressive-era Nebraska, see: Folsom, *No More Free Markets Or Free Beer*.

³⁹ See, broadly (especially the appendices of): Keith and Petry, “Apportionment of State Legislatures, 1776-1920.”

⁴⁰ Works which engage the significance of state legislatures’ failures to reapportion on time include: Bone, “States Attempting to Comply with Reapportionment Requirements”; Baker, *State Constitutions*; McKay, *Reapportionment*.

⁴¹ See, broadly (especially the appendices of): Keith and Petry, “Apportionment of State Legislatures, 1776-1920.”

⁴² Moss, “Democracy, Citizenship and Constitution-Making in New York, 1777-1894,” 29.

⁴³ Silva, “The Population Base for Apportionment of the New York Legislature,” 8.

longstanding alienage exclusion, others were less nuanced. As political scientist Ruth Silva finds, many delegates argued that “the average citizen in the rural district is superior to the average citizen of a great city...in intelligence, morality, and the art of self-government.”⁴⁴

Though the boundaries of U.S. citizenship rights were not always the central focus of apportionment disputes, the two were inextricably linked. In 1894, Delegate John Schumaker argued that New York should take its cue from the federal government and count noncitizens in the state’s apportionment policy as they were members of the state’s population.⁴⁵ On the other hand, George Barker, a delegate to the 1867 convention, claimed that while aliens ““are inhabitants...residents in the body politic”” aside from their ““obedience of [the state’s] laws”” noncitizens were ““not entitled to any consideration.””⁴⁶ Barker and his allies won every time; efforts to repeal the noncitizen ban were voted down at each convention. Supporters of immigrant rights were not just stymied in New York, however.

In Massachusetts, advocates of counting immigrants as part of the population sought to repeal the commonwealth’s “qualified voter” apportionment basis at a wartime constitutional convention held in 1917 and 1918. These delegates, such as James Brennan of Boston, harkened to the history of Massachusetts and argued that the commonwealth’s “forefathers” had “fought against taxation without representation.”⁴⁷ Brennan pointed to specific examples of how the “qualified voter” standard diminished the power of urban communities and identified how and where people were, in his view, denied (albeit indirect forms of) equal representation. But this was not the centerpiece of his argument.⁴⁸

Instead, Brennan and his allies sought to incorporate noncitizens into the count as a means to defend immigrant rights. “What were the Puritans...but aliens” asked Democratic Party boss Martin Lomasney, another delegate to the convention representing Boston. Both he and Brennan pointed to the history of the Know Nothing Party and emphasized that the “qualified voter” basis was an odious relic of that nativist era.⁴⁹ Brennan argued that the policy was “unequal and indefensible” and “absolutely contrary to the intent of the federal Constitution.”⁵⁰ Lomasney went even further. Comparing supporters of an electorate-based standard to slaveowners of the antebellum era, he warned, “Do not deceive yourselves” into thinking that “your unfair opposition to the aliens will be successful forever.”⁵¹ Lomasney did not hide his support of immigrant rights. While he found it understandable that Massachusetts residents might have feared the impact of increased rates of immigration in the 1850s, he argued that “the history of the country” since that time should “convince you that you can trust the alien.”⁵² But Lomasney and his allies were fighting an uphill battle.

⁴⁴ Silva, “Legislative Representation,” 410-411 (quote from pg. 411).

⁴⁵ Silva, “The Population Base for Apportionment of the New York Legislature,” 10; Moss, “Democracy, Citizenship and Constitution-Making in New York, 1777-1894,” 96.

⁴⁶ Moss, “Democracy, Citizenship and Constitution-Making in New York, 1777-1894,” 94-95.

⁴⁷ *Debates in the Massachusetts Constitutional Convention, 1917-1918*, vol. 4 (Boston: Wright and Potter, State Printers, 1919), 161.

⁴⁸ *Massachusetts 1917-18 Constitutional Convention*, vol. 4: 160-61, 164-65.

⁴⁹ *Massachusetts 1917-18 Constitutional Convention*, vol. 4: 161, 176.

⁵⁰ *Massachusetts 1917-18 Constitutional Convention*, vol. 4: 161.

⁵¹ *Massachusetts 1917-18 Constitutional Convention*, vol. 4: 178.

⁵² *Massachusetts 1917-18 Constitutional Convention*, vol. 4: 176.

Opponents just as frequently argued that inclusion in apportionment schemes – which they viewed as a form of political representation – should be a right limited to citizens. In a time of war and heightened xenophobia, nativists in Massachusetts were in no mood to extend political power (however indirect) to noncitizens. Wartime conscription policy gave nativists further fodder to defend the state ban on noncitizens from apportionment. During World War I, immigrant men who had not filed or withdrew their declarations of intent to become citizens were not subject to conscription (though they would be henceforth barred from naturalization if they did so).⁵³ During state constitutional debates over apportionment policy, Delegate Charles Underhill of Somerville argued that this conscription exception had been used “altogether too frequently, to my mind and according to the reports of the drafting boards.”⁵⁴ Underhill was not alone. As Delegate William Kinney of Boston proclaimed, “If ever there was an hour...when an argument to take away [citizens’] influence and transfer it to an alien population not subject to such civic obligations, should not be entertained, I think it is this.”⁵⁵ And Delegate Albert Hart of Cambridge asked why noncitizens should be included in apportionment plans if so many immigrants “who [can] become citizens...in no way seek that opportunity”?⁵⁶

Opponents of counting noncitizens also resorted to blunt regional, partisan, and xenophobic language. Timothy Quinn of Sharon argued that, “The passage of this resolution would be very unfair to the districts which have a small and stable population and would be advantageous to those populous centers, manufacturing centers, which have a large floating population.”⁵⁷ And Samuel George of Haverhill asked, to laughter, “As I understand it, this is a proposition to change the Constitution in order to make the State more Democratic?”⁵⁸ Underhill even warned that while “Everyone knows the Irish race have made good citizens,” he was less sure of other immigrants. “Let us differentiate between aliens and aliens,” he cautioned.⁵⁹

Though urban Democrats in Massachusetts had succeeded in preventing geographic-based apportionment schemes like those found in neighboring Connecticut and Rhode Island (which grossly overrepresented rural areas), they were unable to convince their peers to do away with the “qualified voter” standard.⁶⁰ Their overt defense of immigrant rights was not enough. The repeal of the “qualified voter” provision was rejected at the convention by a nearly two-to-one margin.⁶¹ As in New York, politicians in Massachusetts were not sufficiently swayed by

⁵³ Historian Candice Bredbenner captures changes to noncitizens’ military obligations in: Candice Lewis Bredbenner, “A Duty to Defend?: The Evolution of Aliens’ Military Obligations to the United States, 1792 to 1946,” *Journal of Policy History* 24, no. 2 (April 2012): 224–62.

⁵⁴ *Massachusetts 1917-18 Constitutional Convention*, vol. 4: 182.

⁵⁵ *Massachusetts 1917-18 Constitutional Convention*, vol. 4: 176.

⁵⁶ *Massachusetts 1917-18 Constitutional Convention*, vol. 4: 169.

⁵⁷ *Massachusetts 1917-18 Constitutional Convention*, vol. 4: 167–68.

⁵⁸ *Massachusetts 1917-18 Constitutional Convention*, vol. 4: 163.

⁵⁹ *Massachusetts 1917-18 Constitutional Convention*, vol. 4: 182.

⁶⁰ In fact, by the mid-twentieth century, Massachusetts was frequently identified as having one of the most equitably apportioned state legislatures in the country. See, among others: Bone, “States Attempting to Comply with Reapportionment Requirements”; Argersinger, “The Value of the Vote.”

⁶¹ In some ways, this vote was moot as the convention’s work was rejected by Massachusetts voters. But as was the case of many failed constitutional conventions, Massachusetts afforded state legislators the opportunity to put elements from past (rejected) conventions to voters as individual constitutional amendments. Indeed, this was how the “qualified voter only” apportionment policy came to into force in the commonwealth in the first place. Had the convention supported repealing the alienage-based ban, legislators could have sent a reform measure to voters as a referendum: *Massachusetts 1917-18 Constitutional Convention*, vol. 4: 186.

arguments in favor of immigrant rights to surrender their own, longstanding advantages. But how would circumstances change when it was nativists seeking to change apportionment policy?

Neighboring New Hampshire offers a useful contrast. The Granite State – like much of New England – was deeply divided between its urban, largely immigrant populations and its rural, predominantly native-born populations in the late 1910s. The state’s biggest city, Manchester, housed the largest cotton mill in the world and employed thousands of immigrants – predominantly from Ireland, Italy, Greece, and French Canada – and their children.⁶² The state’s urban population was increasingly Catholic, while its rural population remained overwhelmingly Protestant. By the mid-1920s, New Hampshire would be the site of conflict between (mostly rural and small-town) Ku Klux Klan supporters and its opponents (largely based in small and large cities).⁶³

Such was the context when Delegate Curtis Childs of Henniker rose at a 1918 state constitutional convention to argue in favor of “chang[ing] the basis of our representation.” Childs sought to ban aliens from apportionment in New Hampshire and specifically maligned “new” southeastern European immigrants. “Why should citizens of Turkey or Russia or Germany, and the gypsies of Austria-Hungary, have 30 or 40 representatives in our House,” he thundered.⁶⁴ He was not alone. James Lyford of Concord advocated an apportionment scheme based on the number of votes cast in past elections. He admitted that “there will be a larger reduction from the manufacturing centers...owing to the[ir] alien population.” But Lyford did not view this to be a problem for he contended that, “the education and Americanization of” immigrants would “cure” large cities of underrepresentation.⁶⁵ Henry Metcalf, also of Concord, was more explicit. Rural citizens were better people in his eyes, for “Cities are made up...largely of alien population, who have no interests in common with the average intelligent New Hampshire voter...and they are not entitled to the same consideration as the people in these little country towns upon which we must depend.”⁶⁶

Though these delegates did not hide their belief in the superiority of rural, Yankee voters, this was not the only reason they gave in support of their cause. Childs argued that including noncitizens in the count afforded urban voters (in districts where noncitizens were numerous) an unfair degree of power, which worked to the detriment of small-town residents like those from his hometown of Henniker where noncitizens were rare. He argued that:

At present, in the little country town in which I live, and which perhaps may be taken as a fairly representative country town, with between 1300 and 1400 inhabitants, we have one voter to three of the population – just a small fraction over there. Manchester has one voter to eight of its population. Where are the rest of Manchester’s population? I take

⁶² See, for instance, the classic text on industrial Manchester (New Hampshire): Tamara K. Hareven and Randolph Langenbach, *Amoskeag: Life and Work in an American Factory-City* (New York: Pantheon Books, 1978).

⁶³ New Hampshire was not alone in witnessing such conflicts in 1920s New England. See, most especially: Mark Paul Richard, *Not a Catholic Nation: The Ku Klux Klan Confronts New England in the 1920s* (Amherst: University of Massachusetts Press, 2015).

⁶⁴ As Childs must have known, the immigrant populations he slandered were not actually the predominant groups moving to the state: *Manual of the Constitutional Convention of 1918: Convened at the State House at Concord, June 5, 1918* (Concord, NH: Evans Printing Company, 1918), 236.

⁶⁵ *New Hampshire 1918 Constitutional Convention*, 139.

⁶⁶ Though Metcalf hailed from Concord, the state capital, the city was not a major urban center in the 1910s: *New Hampshire 1918 Constitutional Convention*, 240.

Manchester because it is a city having large manufactures and a large foreign population, a large alien population. We find the same condition in a greater or less degree in every manufacturing town which employs an alien population in its mills or in its factories.⁶⁷

His colleagues similarly made on-the-fly estimates of the number of noncitizens in municipalities across New Hampshire to approximate how much they could reduce the number of urban seats in the state legislature if only citizens were included in apportionment schemes.⁶⁸

As in Massachusetts, supporters of counting noncitizens in New Hampshire were fighting against a rising tide of xenophobia that had grown during World War I. Nevertheless, New Hampshire delegates who advocated counting noncitizens were open in their staunch defense of the inclusion of all residents – especially immigrants – in apportionment schemes. Delegate Jeremiah Doyle of Nashua blasted claims from nativists that recent migrants were inferior to previous immigrants. “It was but a short time ago that [nativists] referred to foreigners as the Irish and the French...Now you find fault with the Greeks, and you criticize the cities because the Greeks come there, and other nationalities.” Doyle emphasized the military service, taxes paid, and number of jobs created by immigrants in New Hampshire. He also decried efforts to exclude immigrants from the population as cowardly. “[Y]ou ought to be ashamed of yourselves to come here and be afraid of any foreigner, whatever country he may come from,” Doyle argued.⁶⁹ Delegate John Cavanaugh of Manchester implored his colleagues to “not speak too harshly of the alien” and asked his foes to consider how their ancestors had come to live in the United States.⁷⁰ Doyle, Cavanaugh, and their allies succeeded. New Hampshire delegates seriously considered – and then rejected – both an alien ban and an electorate-based apportionment scheme.⁷¹ Soon however, immigrant rights advocates would have to do battle on an even larger stage, as nativists took their fight to Washington, DC.

Congress, tasked with assigning each state its appropriate number of representatives every ten years, had always found apportionment to be a challenge. In the nineteenth century, congressmen battled over various methods of calculating proper ratios of representation. When faced with a reduction in a state’s number of representatives, Congress usually found it expedient to add extra seats for other states in order to avoid controversy. In this manner, the House would grow from sixty-five members in 1789 to four hundred thirty-five in 1910.⁷²

By the turn of the twentieth century, congressional leaders knew that this approach was unsustainable. Constantly adding representatives would make it impossible to organize the House and would prevent members from participating in debate. They also faced a more practical challenge: the House chamber was only so large and would quickly run out of room if

⁶⁷ *New Hampshire 1918 Constitutional Convention*, 236.

⁶⁸ *New Hampshire 1918 Constitutional Convention*, 247–49.

⁶⁹ *New Hampshire 1918 Constitutional Convention*, 252.

⁷⁰ *New Hampshire 1918 Constitutional Convention*, 267.

⁷¹ As in Massachusetts, the work of this convention was ultimately rejected. Had there been broader support for banning noncitizens from apportionment schemes, however, it could have been adopted by voters via referendum: *New Hampshire 1918 Constitutional Convention*.

⁷² See, among several works on the history and practice of congressional apportionment: Hubert Searcy, “Problems of Congressional Reapportionment,” *The Southwestern Social Science Quarterly* 16, no. 1 (1935): 58–68; Louis Charles Bochever, “A Study of the Factors Involved in the Passage of the 1929 Bill for Reapportionment of the House of Representatives” (Cornell University, 1942); Orville J. Sweeting, “John Q. Tilson and the Reapportionment Act of 1929,” *Western Political Quarterly* 9, no. 2 (June 1956): 434–453; Anderson, *The American Census*; Eagles, *Democracy Delayed*; Balinski and Young, *Fair Representation*; Kromkowski, *Recreating the American Republic*.

they kept adding seats. Following the 1920 Census, it was proposed that several states would lose seats and that the House be permanently set at four hundred thirty-five members. On cue, politicians from states that would lose power protested. Pointing to the results of the recent census which showed, for the first time, that a majority of the population lived in urban centers, politicians seeking to save their own seats (or those of their allies) soon turned a standard apportionment battle into a major struggle between rural and urban interests. Rural politicians especially warned that national prohibition would be imperiled if reapportionment went ahead as planned. But politicians representing (or allied to) regions about to lose power needed to provide legal justification for why they should keep their seats despite the results of the 1920 Census. They soon identified counting noncitizens out of the national population for the purposes of federal apportionment as their best chance to retain power.⁷³

Most of the states that were going to lose seats – such as Alabama in the South, Indiana in the Midwest, and Nebraska in the Plains – had experienced lower-than-average rates of immigration during the preceding decades. Politicians from those states argued that it was not fair that their large native-born and citizen populations would lose power at the expense of growing noncitizen populations in states like New York and Michigan.⁷⁴ As early as January 1921, legislation was introduced in Congress to keep aliens out of the next reapportionment.⁷⁵ Though some Republican leaders (who controlled an enormous congressional majority in 1921 and 1922) were amenable to an alienage-based exclusion, this approach threatened to split their caucus (not to mention the Democratic Party) along sectional and urban-rural lines. A stalemate ensued. When the Sixty-Seventh Congress convened in March 1923, the House of Representatives was still apportioned on the basis of the 1910 Census.⁷⁶

By 1929, there still had been no reapportionment. Despite the efforts of Republican congressional leadership and of incoming President Herbert Hoover *and* the warnings of prominent legal theorist Zachariah Chafee that the legitimacy of federal legislation was becoming imperiled, the deadlock endured. Newly elected Republican Senator Arthur Vandenberg of Michigan suggested taking reapportionment away from Congress altogether. He authored a bill which would have instructed the U.S. Census Bureau to determine how many seats would be allocated to each state following the decennial census.⁷⁷

⁷³ Here I summarize key findings from: Searcy, “Problems of Congressional Reapportionment”; Boochever, “A Study of the Factors Involved in the Passage of the 1929 Bill for Reapportionment of the House of Representatives”; Sweeting, “John Q. Tilson and the Reapportionment Act of 1929”; Anderson, *The American Census*; Eagles, *Democracy Delayed*; Balinski and Young, *Fair Representation*; Kromkowski, *Recreating the American Republic*.

⁷⁴ One very thorough (and under-read) work on congressional apportionment debates in the 1920s is Louis Boochever’s 1942 master’s thesis. It both calculates would-be changes to congressional apportionment in the many different proposed schemes and explores how the battle was received across major state newspapers throughout the country: Boochever, “A Study of the Factors Involved in the Passage of the 1929 Bill for Reapportionment of the House of Representatives.”

⁷⁵ This legislation was sponsored by outgoing upstate New York Congressman William Hill. Though New York as a whole stood to gain from the inclusion of noncitizens in apportionment schemes, Hill allied with representatives from states that would lose representation: “Bill to Keep Aliens Out of Apportionment,” *San Francisco Chronicle*, January 23, 1921, 3; “House of Representatives Apportionment,” *Wall Street Journal*, January 24, 1921, 7.

⁷⁶ Eagles’s third chapter, “The Controversy in the 1920s,” is an incredibly detailed analysis of these debates, especially those of the early-1920s: Eagles, *Democracy Delayed*, 32–84.

⁷⁷ See, especially: Zechariah Chafee, “Congressional Reapportionment,” *Harvard Law Review* 42, no. 8 (1929): 1015–47; Searcy, “Problems of Congressional Reapportionment”; Boochever, “A Study of the Factors Involved in the Passage of the 1929 Bill for Reapportionment of the House of Representatives”; Sweeting, “John Q. Tilson and the Reapportionment Act of 1929”; Eagles, *Democracy Delayed*, 63–84; Balinski and Young, *Fair Representation*, 46–59.

Once more, rural lawmakers of both parties revolted. Republican Senator Frederic Sackett of Kentucky wanted to know why a “great body of aliens who make no effort to become citizens should have a voice in determining the representation of native-born citizens.”⁷⁸ Democratic Congressman John Rankin of Mississippi was similarly enraged to learn that states like California were poised to gain “nine additional seats” owing to the many “thousands of Mexicans and oriental aliens” living in the Golden State.⁷⁹ And Republican Representative Homer Hoch of Kansas was irate that his “state [would] lose one member and New York gain four members through inclusion of thousands of unnaturalized aliens.”⁸⁰

But it was not just rural legislators who protested. The New York State Women’s Republican Club endorsed the alien exclusion. As the *New York Times* reported, club treasurer E.M. Dickinson supported such legislation since she believed “crime could be traced in most instances to alien criminals and that hospitals for the insane are filled mostly with aliens and children of aliens.” In Dickinson’s words, congressmen should place “their political plums second to patriotism.” She was not alone.⁸¹ Many other conservative activists – often prohibition supporters – fought vociferously for an alien exclusion.⁸² Southern Methodist Bishop James Cannon Jr. argued that the would-be ban on noncitizens was “the most important legislative proposition before the country.” If Congress failed to exclude aliens from the count, he warned that federal prohibition would be gravely endangered.⁸³

Though opponents of including aliens were often quite explicit in their eugenicist views, ideological commitments, and partisan/sectional interests, they also tied their arguments to broader debates about the boundaries of U.S. citizenship. Senator Hugo Black of Alabama emphasized how unfair it would be to Americans to incorporate “aliens lawfully” and “unlawfully” resident in the country into the apportionment plan.⁸⁴ Hoch argued that he was not “attack[ing]” noncitizens or trying “to take away any rights from” them, but instead defending the rights of American citizens. If an immigrant chose not to naturalize, “in fairness,” Hoch asked, “should [he or she] be counted?”⁸⁵ And Hoch also highlighted the hypocrisy of New Yorkers who accused him of bigotry and challenged fellow Representative Fiorello LaGuardia to alter the apportionment policy of New York, which had long excluded aliens from counts for its state legislature.⁸⁶

⁷⁸ “Census Row on Alien Ban,” *Los Angeles Times*, May 26, 1929, 1.

⁷⁹ “Redistricting Foes Prepare: Aliens and Negroes Chosen as Issues for Battle Determined Fight Against Change in Prospect California’s Gains Target of Opposition Group,” *Los Angeles Times*, November 20, 1930, 3.

⁸⁰ “Klan Issue Raised on Apportionment,” *New York Times*, December 16, 1928, 19.

⁸¹ “Curb on Aliens Urged by Republican Women,” *New York Times*, January 9, 1929, 63.

⁸² “Klan Issue Raised on Apportionment,” *New York Times*, December 16, 1928, 19; “Exclusion of Alien in Census Urged to Boost Prohibition,” *The Washington Post*, February 4, 1929, 16; “Cannon Urges Plan for Census Change,” *Washington Post*, July 8, 1930, 1.

⁸³ “Cannon Urges Plan for Census Change,” *Washington Post*, July 8, 1930, 1.

⁸⁴ Balinski and Young, *Fair Representation*, 57; Black was not the only member of Congress, let alone politician from Alabama, to highlight his opposition to counting undocumented immigrants for purposes of representation. As Sweeting makes clear, Representative (and future Speaker of the House) William Bankhead claimed that there were two to three million undocumented immigrants in the country in 1929 (a vast over-estimation) and argued they should be counted out of the nation’s population. See: Sweeting, “John Q. Tilson and the Reapportionment Act of 1929,” 444.

⁸⁵ “Klan Issue Raised on Apportionment,” *New York Times*, December 16, 1928, 19.

⁸⁶ LaGuardia emphasized in this exchange that he favored removing that policy from New York’s constitution: “Klan Issue Raised on Apportionment,” *New York Times*, December 16, 1928, 19.

Supporters of Vandenberg's reapportionment plan fought back. Pointing to the growing inequalities in representation owing to the prolonged stalemate, Republican Representative James Beck of Pennsylvania accused his colleagues of "virtually" effecting "a coup d'etat."⁸⁷ The theme of injustice was a common argument in the campaign to reapportion the House. The *Chicago Tribune* argued on New Year's Eve 1928 that the continued failure to reapportion the House since the 1920 Census was the equivalent of disfranchising ten million Americans.⁸⁸

Supporters of the reapportionment plan also staunchly defended inclusion in the count as an indirect form representation which they claimed as a right of all residents of the country, including immigrants. As historian Charles Eagles finds, supporters of the bill attacked their opponents' nativism, defended inclusion in apportionment plans a right of all residents, and warned that if aliens were excluded, "others might try to bar additional groups."⁸⁹ These pro-immigrant rights arguments were often identical to those raised at the Massachusetts and New Hampshire constitutional conventions of the late-1910s. "It is taxation without representation," claimed Wisconsin Representative John Schafer of the proposed federal exclusion. Since noncitizens had widely answered to the call to arms "in time of war," Schafer believed the nation had no right to exclude them from (an indirect form of) representation.⁹⁰ And Beck argued explicitly that "An alien from my district is a constituent of mine," since he or she must "obey the laws which I help to make." As his constituents, Beck argued that they were owed (albeit indirect) representation in Congress.⁹¹

Defenders of immigrant rights also had an ace up their sleeve. Many northern politicians, led by Massachusetts Republican John Tinkham, demanded a vigorous enforcement of the Fourteenth Amendment's "penalty clause" whereby states would lose seats in Congress if they disfranchised their own citizens. Just as southern politicians insisted on counting noncitizens out of apportionment bills, Tinkham and his allies demanded that southern states lose representation owing to their mass disfranchisement of African Americans (and poor whites). It just so happened that many of the most vocal opponents of counting aliens came from Deep Southern states. Their seats might disappear if Congress enforced the Fourteenth Amendment's penalty clause.⁹²

Ultimately, congressional Republican leadership adopted a crafty parliamentary tactic to push Vandenberg's legislation across the finish line without penalizing southern states. They put two amendments – one barring aliens from the count and the other enforcing the Fourteenth Amendment's penalty clause – together on a joint vote, knowing that together this amendment would fail. Even though many members supported one of the two provisions, few supported both. With the defeat of this joint amendment, the original apportionment bill – which included

⁸⁷ "J. M. Beck Flays Methodist Plan to Reapportion: Proposed 'Alien' Clause Hits State Rights," *Chicago Daily Tribune*, November 28, 1930, 18.

⁸⁸ Arthur Sears Henning, "Reapportioning Bill Debate to Bare Inequities," *Chicago Daily Tribune*, December 31, 1928, 1–2.

⁸⁹ Eagles, *Democracy Delayed*, 77–78.

⁹⁰ "Klan Issue Raised on Apportionment," *New York Times*, December 16, 1928, 19.

⁹¹ "Alien Amendment before Committee," *Washington Post*, January 15, 1931, 3.

⁹² When covering the apportionment battle, newspaper writers made frequent reference to the effects of each policy on a state-by-state basis. See, for instance: Arthur Crawford, "Negro Vote Hits Plans of South to Reapportion," *Chicago Daily Tribune*, December 21, 1930, 4; See, also: Searcy, "Problems of Congressional Reapportionment"; Boochever, "A Study of the Factors Involved in the Passage of the 1929 Bill for Reapportionment of the House of Representatives"; Sweeting, "John Q. Tilson and the Reapportionment Act of 1929"; Anderson, *The American Census*, 152–53; Eagles, *Democracy Delayed*, 63–84; Balinski and Young, *Fair Representation*, 46–59.

noncitizens but did not penalize southern states for disfranchising African Americans – proceeded to a final vote and was enacted on June 19, 1929.⁹³

Opponents would continue to fight even after the adoption of the new apportionment law. They supported legislation barring noncitizens from inclusion in apportionment schemes and succeeded in getting such bills favorably reported out of committee as late as 1931.⁹⁴ But Vandenberg called their bluff. He announced that he would be amenable to an exclusion of aliens if federal apportionment were to become based on the number of actual votes cast in recent elections. Since most southern states had seen a dramatic drop in voter registration and participation since the enactment of Jim Crow constitutions, this would hit states like Mississippi and Alabama – and their vocal, anti-immigrant congressmen – the hardest. Both states would be reduced from eight to two House seats if this policy were adopted.⁹⁵ Though they continued to protest, southern Democrats and rural Republicans furtively folded their increasingly weak hand. When the House was reapportioned following the 1930 Census, noncitizens were included in the tally. They have been ever since.⁹⁶

Republican congressional leaders, particularly House Majority Leader John Tilson, were given credit for shepherding the apportionment bill through the “Alien and Negro” controversy, as it was described at the time.⁹⁷ Nearly three decades later, Orville Sweeting published a fawning article in the *Western Political Quarterly* which depicted Tilson as a hero who implored his colleagues to “lay aside petty differences on immaterial things” and instead “pass through the House a census bill and an apportionment bill, a duty...too long delayed.”⁹⁸ Many reporters’ coverage of the debate tacitly agreed with Sweeting.⁹⁹

Writing in the African-American daily *New Amsterdam News*, commentator Kelly Miller offered a rare rebuke. Though he found theoretical arguments against counting aliens “plausible” given that noncitizens were not required to perform military service, he bluntly noted that the entire dispute was a farce. Since the “Federal Constitution...places the basis of representation upon the number of persons in the several states,” opponents of counting noncitizens never had any foundation on which to ground their arguments. By treating alienage exclusion proposals as legitimate, advocates of the Vandenberg reapportionment bill were conceding to an approach whereby, “the South would let the North observe the Constitution,”

⁹³ See, generally: Searcy, “Problems of Congressional Reapportionment”; Boochever, “A Study of the Factors Involved in the Passage of the 1929 Bill for Reapportionment of the House of Representatives”; Sweeting, “John Q. Tilson and the Reapportionment Act of 1929”; Anderson, *The American Census*, 152–53; Eagles, *Democracy Delayed*, 63–84; Balinski and Young, *Fair Representation*, 46–59.

⁹⁴ “Redistricting Foes Prepare,” *Los Angeles Times*, November 20, 1930, 3; “J. M. Beck Flays Methodist Plan to Reapportion,” *Chicago Daily Tribune*, November 28, 1930, 18; Kelly Miller, “Reapportionment,” *New Amsterdam News*, December 3, 1930, 20; Crawford, “Negro Vote Hits Plans of South to Reapportion,” *Chicago Daily Tribune*, December 21, 1930, 4; “Capper Opposes Counting Aliens,” *Los Angeles Times*, December 30, 1930, 1; “Alien Amendment before Committee,” *Washington Post*, January 15, 1931, 3; “Alien Count Bill Reported: It Proposes Amendment to Exclude Foreigners in House Apportionment.,” *New York Times*, February 18, 1931, 5; “The Reapportionment Vote,” *Los Angeles Times*, April 8, 1931, A4.

⁹⁵ Crawford, “Negro Vote Hits Plans of South to Reapportion,” *Chicago Daily Tribune*, December 21, 1930, 4.

⁹⁶ See, broadly: Searcy, “Problems of Congressional Reapportionment”; Boochever, “A Study of the Factors Involved in the Passage of the 1929 Bill for Reapportionment of the House of Representatives”; Sweeting, “John Q. Tilson and the Reapportionment Act of 1929”; Anderson, *The American Census*, 152–53; Eagles, *Democracy Delayed*, 63–84; Balinski and Young, *Fair Representation*, 46–59.

⁹⁷ “Redistricting Foes Prepare,” *Los Angeles Times*, November 20, 1930, 3.

⁹⁸ Sweeting, “John Q. Tilson and the Reapportionment Act of 1929,” 450–51.

⁹⁹ Arthur Crawford, “House Votes to Reapportion Seats, 272-105,” *Chicago Daily Tribune*, June 7, 1929, 1; “Census Bill Passed; Amendments Killed,” *New York Times*, June 7, 1929, 1.

only if “the North, in turn, would let the South violate it” by disfranchising African Americans but benefiting from their numbers for redistricting purposes. “As always, the Negro is made the football, to be kicked back and forth between parties, interests, and sections.” While southern nativists claimed that inclusion in apportionment policies was a form of political representation and therefore should be restricted as a “right of citizenship,” Miller pointed to their hypocrisy. After all, those same men were the most vocal defenders and beneficiaries of Jim Crow suffrage restrictions. They certainly picked and chose which citizens deserved the “rights” of citizenship.¹⁰⁰

Ultimately, “immigrant rights” claims could be successful in rearguard battles – in New Hampshire and in Congress – where they prevented the enactment of legislation restricting noncitizens from inclusion in future redistricting schemes. Though anti-alien bills reappeared in later federal apportionment legislation (particularly in 1940),¹⁰¹ nativists never came as close as they had in 1929 to counting aliens out of the population. Nevertheless, pro-immigrant rights arguments were not enough to repeal similar provisions that were already in force in states like New York and Massachusetts. There, immigrant rights supporters would have to identify distinct arguments and await a different political and demographic context before they were successful. In the meantime, they chipped away as best they could. But old and new inter- and intra-party rivalries would complicate those efforts.

III. The Victory of Efficiency? Repealing Alienage Bans, 1930-1970

When Kansas Representative Homer Hoch rose in Congress to challenge his colleague Fiorello LaGuardia to campaign in favor of amending the New York constitution before criticizing Hoch’s federal, anti-alien plan, fellow members of Congress must have known that Hoch was taking a cheap shot at LaGuardia’s expense. Everyone knew that LaGuardia was a staunch advocate of immigrant rights and was one of the most consistent voices in support of noncitizens’ rights in Washington. LaGuardia admitted as much, stating bluntly in 1928 that he was “not in favor of that provision” in the New York State Constitution. “It was the up-State people trying to cut down the representation from New York City that brought about that provision in the Constitution and we are ashamed of it” he succinctly stated.¹⁰²

LaGuardia was not the only federal congressman from New York City to endorse a change to his own state’s constitution. Democratic Representative Emanuel Celler – who would go on to write the Hart-Celler Immigration Act of 1965 – also advocated for a change to New York’s constitution in the late-1920s. In a letter to state officials in Albany during the federal apportionment debate, he advocated for a repeal of the alien ban at the state level. Celler stressed how the state’s apportionment policy led to dramatic inequities in New York City’s power in the state legislature vis-à-vis predominantly rural, Upstate New York. Since aliens had

¹⁰⁰ Miller, “Reapportionment,” *New Amsterdam News*, December 3, 1930, 20.

¹⁰¹ See, for instance: “House Seats Bill Bars Alien Count,” *New York Times*, March 13, 1940, 14; “House for Revision of Apportionment: Passes Bill Reviving Law of 1929 Which Required Change After Census Alien Clause Is Scored Wadsworth Opposes Increase,” *New York Times*, April 12, 1940, 14; “House Seats Urged on Basis Of Votes Cast: Brookings Would Junk Apportionment By Population,” *The Washington Post*, January 20, 1941, 27; Several legal scholars and political scientists have noted the 1940 debate: Scarrow, “One Voter, One Vote”; Tienda, “Demography and the Social Contract,” 594–95; Sarah K. Cowan, “Periodic Discordance Between Vote Equality and Representational Equality in the United States,” *Sociological Science* 21, no. 2 (August 2015): 442–53.

¹⁰² “Klan Issue Raised on Apportionment,” *New York Times*, December 16, 1928, 19; Eagles also highlighted this “audacious” exchange in his text: Eagles, *Democracy Delayed*, 70.

to pay taxes (and, as he noted, more than two-thirds of the state's taxes came from New York City) Celler argued for a repeal of New York's policy of "taxation without representation."¹⁰³

Despite Celler's public appeal, he must have known that his advocacy would not be enough to change the state constitution. Even minor constitutional reforms promoted by Democratic Governor Al Smith following his landslide election in 1922 were stymied by upstate Republicans who were quite happy with a system of apportionment in which rural counties with populations ranging from ten to thirty thousand residents had the same representation as New York City neighborhoods of more than one hundred thousand inhabitants.¹⁰⁴ Democrats like Celler could complain all they want. They knew that for them to alter the state's apportionment system they would first have to gain control of both chambers of the legislature. And nothing short of an electoral tsunami would do the trick. But then the unthinkable happened.

Unexpected success during the early New Deal years would force Democrats to confront their own divisions over apportionment that had been long overlooked in opposition. In the November 1932 elections, for the first time in nearly a decade, Democrats achieved a majority in the New York State Senate and won all statewide elections, most with wide majorities. Two years later, state Democrats gained control of the lower chamber for the first time since the Republican Party split between Taft and (Theodore) Roosevelt factions in 1912. For a brief moment (total Democratic control lasted only a year), Democrats held power in both the Governor's Mansion and the legislature. With a recent former governor in the White House and growing clout in Albany, Democrats seemed poised to finally overturn the state's apportionment provisions privileging rural Republicans over urban Democrats. It was not to be.¹⁰⁵

Beginning in 1905, the New York Secretary of State was tasked with conducting a census of the state's citizen population for the purposes of apportioning the state legislature. As Ruth Silva finds, this office soon came under attack for spending too much money, for a lack of professionalism, and for containing "countless errors." Consequently, voters approved a referendum to the state's constitution in 1931 which allowed the state to use the results of the federal census for the purposes of apportionment so long as the Census Bureau acquired sufficient data on residents' citizenship status. That was easier said than done.¹⁰⁶

When Democrats came to power in the state senate in January 1933, one of their top priorities was rewriting the state's apportionment provisions. But some Democrats stood to gain more than others. In fact, Tammany Hall bosses soon realized that they were likely to lose much of their influence as their population base in Manhattan was growing at a slower rate than populations in the outer boroughs. They also knew that a larger-than-average noncitizen population resided in Manhattan. Tammany-backed Democrats were engaged in an intense rivalry with "independent" Democrats in both City Hall and in Albany at the time, which enabled a progressive Republican, the aforementioned Fiorello LaGuardia, to serve as mayor of New York City for more than a decade. And it just so happened that the leading anti-Tammany

¹⁰³ "Asks New Apportionment: Celler Says Alien Population Should Be Counted by State," *New York Times*, February 10, 1929, 24.

¹⁰⁴ "Legislative Apportionment," *New York Times*, April 10, 1923, 20.

¹⁰⁵ See, especially: Bone, "States Attempting to Comply with Reapportionment Requirements," 401-2; Advisory Commission on Intergovernmental Relations, "A Commission Report: Apportionment of State Legislatures," 21; Rutkowski, "State Politics and Apportionment," 27.

¹⁰⁶ Silva, "The Population Base for Apportionment of the New York Legislature," 11-12.

Democrat and “boss” of the Bronx Democrats was Secretary of State Edward Flynn, who served as the state’s chief electoral administrator at his day job in Albany.¹⁰⁷

Given their threatened loss of influence, Tammany Hall leaders did what they could to oppose any reapportionment plan that would reduce their power. Governor Herbert Lehman – another “independent” Democrat¹⁰⁸ – pushed back against Tammany bosses and argued that it was imperative that the state – which had not redistricted in more than fifteen years – fulfill its constitutional obligations and redraw its legislative boundaries. Since the state government did not possess sufficient information on the size and scope of the citizen population in the state, Lehman called upon his ally, President Franklin Roosevelt, for help.¹⁰⁹ Social scientists employed by the Civil Works Agency were assigned the task of identifying noncitizens on a block-by-block basis in New York City in order to count them out of the population. This was a major challenge, since federal enumerators took a very round-about approach to questions of citizenship. For instance, though they asked white, male immigrants if they had naturalized, they did not ask nonwhite populations about their citizenship status.¹¹⁰

The anti-New Deal *Chicago Tribune* was giddy at the sight of an intraparty Democratic dispute in Albany. The *Tribune* even had the opportunity to accuse Flynn and his allies of trying to “gerrymander” themselves into power, a criticism that New York Democrats had so frequently lobbed at Republicans. They noted that it certainly looked like Roosevelt – who himself had a contentious relationship with Tammany Hall – was intervening and providing resources to count noncitizens out of the plan in order to help Flynn and his allies gain control over the Democratic Party in New York once and for all.¹¹¹ And it was hard to miss the irony of leading New York Democrats – including the president of the United States – going to significant lengths to count noncitizens out of the population for apportionment purposes in the state government, while only a few years earlier New York City’s (mostly Democratic) congressmen had been crucial opponents of an identical *federal* alien ban. When Democrats gained control of both chambers of the legislature in the fall 1934 elections, Tammany and anti-Tammany Democrats could not set aside their differences to repeal the alien ban. In fact, they failed to arrive at *any* new apportionment policy.¹¹² In the meantime, the work of the C.W.A. came under attack for widespread errors. Its results were rejected by many politicians – regardless of party/factional background – as effectively “unusable.”¹¹³ When Democrats lost control of the Assembly in the

¹⁰⁷ For a broad history of New York City politics (and its relationship to state and national political debates) in this era, see: Mason B. Williams, *City of Ambition: FDR, LaGuardia, and the Making of Modern New York* (New York: W. W. Norton & Company, 2013); See also: Bone, “States Attempting to Comply with Reapportionment Requirements,” 401–2; Silva, “The Population Base for Apportionment of the New York Legislature,” 11–12.

¹⁰⁸ Williams, *City of Ambition*.

¹⁰⁹ Silva, “The Population Base for Apportionment of the New York Legislature,” 12.

¹¹⁰ For press coverage, see: “Roosevelt Helps Reapportionment: Census Tabulation of Five Counties Here Has Been Under Way Two Weeks. A Blow at Tammany Backed by Lehman, It Would Cut Strength at Albany -- CWA Funds Are Used,” *New York Times*, March 2, 1934, 1; “Roosevelt Aids Anti-Tammany Chief in Bronx,” *Chicago Daily Tribune*, March 3, 1934, 1; “State Democrats Seek Firmer Hold,” *New York Times*, November 13, 1934, 5; Scholars who explore these efforts include: Bone, “States Attempting to Comply with Reapportionment Requirements,” 401–2; Advisory Commission on Intergovernmental Relations, “A Commission Report: Apportionment of State Legislatures,” 21–22; Silva, “The Population Base for Apportionment of the New York Legislature,” 11–12.

¹¹¹ “Roosevelt Aids Anti-Tammany Chief in Bronx,” *Chicago Daily Tribune*, March 3, 1934, 22; “Roosevelt Helps Reapportionment,” *New York Times*, March 2, 1934, 1.

¹¹² “State Democrats Seek Firmer Hold,” *New York Times*, November 13, 1934, 5.

¹¹³ Silva, “The Population Base for Apportionment of the New York Legislature,” 15.

fall elections of 1935, they had missed a prime opportunity to give themselves even the slightest chance at winning future elections. It would not come again soon.

The state would not be reapportioned again until 1943 when Republicans – once more in the driver’s seat in Albany – again stacked the deck to their own advantage. With the outer boroughs and suburbs growing in population, Republicans redrew districts to take advantage of this increasingly GOP-leaning population. When wealthy Manhattan Republicans protested that the reapportionment plan threatened their own loss of power – much as Tammany Democrats had pressed their fellow Democrats a decade earlier – state Republican leaders plowed ahead. Sacrificing Manhattan Republicans’ traditional seat was a small price to pay for a greater number of outer borough and suburban seats. The state government once more contracted with the U.S. Census Bureau to provide the state with block-by-block data on the noncitizen population (and this time actually used that information to reapportion the state legislature). The Republican plan worked. Democrats would not control both chambers in Albany until the next great national wave election swept Democrats into power in 1964.¹¹⁴

While these disputes reaffirmed the persistence (and importance) of the exclusion of aliens from many state apportionment policies, they did little to strengthen public trust in such policies. Indeed, these controversies significantly undermined faith in such schemes. And New York was not the only state to witness a crisis of confidence. Massachusetts had long had difficulty enforcing its “legal voter” standard due to the deeply convoluted process whereby local, county, and state officials all became involved in reapportioning the General Court. Every ten years, a “census” of inhabitants in each town and city was supposed to be taken and all “legal voters” residing there were to be identified by local officials. Those officers were responsible for sending to the Secretary of the Commonwealth the results of their enumeration. The Secretary would then organize this information, calculate how many seats each *county* was supposed to receive in each legislative chamber, and then inform the commissioners of each county how many seats they were apportioned. It was then up to the county commissioners to determine how to draw the borders of those legislative districts. In practice, this process brought many differing interests into conflict. Local officials were frequently alleged to have *overcounted* the “legal voter” population within their borders. It was claimed that their own self-interest – coupled with a lack of impartial oversight of the enumeration process – made the “legal voter” figures unreliable.¹¹⁵

Criticism over the execution of state apportionment policies excluding aliens was therefore becoming increasingly common in the early-twentieth century. But that would not be enough to overturn them. Advocates who sought to repeal that policy lacked both allies and the right opportunity to mobilize. But their moment would come in the mid-twentieth century as a broader “good government” critique of other forms of malapportionment and gerrymandering gained steam across the country.

¹¹⁴ See, especially: Bone, “States Attempting to Comply with Reapportionment Requirements,” 401–2; Rutkowski, “State Politics and Apportionment,” 27.

¹¹⁵ The original statute provided a different method of apportionment for Boston, allowing the mayor and Board of Aldermen to determine apportionment in lieu of the Suffolk County Commissioners. See, among others: Walter, “Reapportionment of State Legislative Districts,” 27–28; Bone, “States Attempting to Comply with Reapportionment Requirements,” 404–5; See also, broadly: Friedman and Thody, *The Massachusetts State Constitution*; also see: Brief of the State Attorneys General: *Evenwel v. Abbott* at 3–4.

State legislative apportionment reform is not remembered as well as other battles for greater political rights in the mid-twentieth century, particularly the campaign to overturn Jim Crow suffrage laws. And there is good reason for this. Though middle-class, white, suburban Republicans were underrepresented in state legislatures throughout the South in the 1950s, their lack of equal representation was nowhere near as harmful, longstanding, or disempowering to them as voting restrictions leveled at southern African Americans under threat of violence.¹¹⁶

Nevertheless, by the 1950s a widespread, largely middle-class civil society movement had emerged to reshape state apportionment laws across the country. This movement included labor unions (one major study of the effects of malapportionment was conducted under the auspices of the International Ladies' Garment Workers' Union)¹¹⁷ and elements of both political parties stuck in opposition in their respective state legislatures.¹¹⁸ Even the Eisenhower administration viewed state legislative malapportionment to be such a threat to popular trust in politics that it issued a blistering report on how states across the country failed to represent the will of the people.¹¹⁹ But mostly it was made up of "good government" nonpartisan groups – such as the National Municipal League – that published reports explaining the various ways in which widespread malapportionment in legislatures across the country made a mockery of the basic democratic principle of an individual's right to fair representation.¹²⁰

Almost all such studies emphasized two particular issues as the central problems of legislative malapportionment. First, they called out state governments that – in blatant defiance of their constitutional obligations – simply failed to reapportion on a regular basis. That some states had gone more than a half century without redrawing their legislative districts was evidence of their blatant disregard for republican governance. Second, they pointed to states that used "geographic" units (usually counties) as their primary basis of apportionment to argue that people – regardless of where they lived – deserved equal representation. Since parties in power – unless they had recently won an unexpected victory – were unlikely to favor reform, by the early 1960s this movement took its battle to the courts, with several test cases reaching the federal Supreme Court.¹²¹ There, they would find an unexpected ally.

In the early 1960s, Hugo Black was no longer a member of the U.S. Senate from Alabama attacking his colleagues for insisting on including noncitizens in federal apportionment policies. Instead, he was an associate justice of the federal Supreme Court, having been appointed to the high court in 1937 by President Franklin D. Roosevelt. In a fateful twist, he would become a crucial vote in favor – and sometimes served as the author – of decisions which required state governments to apportion legislative districts on the principle of "one man, one

¹¹⁶ See, broadly: Bone, "States Attempting to Comply with Reapportionment Requirements"; Advisory Commission on Intergovernmental Relations, "A Commission Report: Apportionment of State Legislatures"; McKay, *Reapportionment*.

¹¹⁷ Wells, "Legislative Representation in New York State: A Discussion of Inequitable Representation of the Citizens of New York in the State Legislature and Congress."

¹¹⁸ See, broadly: Bone, "States Attempting to Comply with Reapportionment Requirements"; McKay, *Reapportionment*.

¹¹⁹ Commission on Intergovernmental Relations, "A Report to the President for Transmittal to the Congress."

¹²⁰ Indeed, many of these reports can be quite repetitive: Bone, "States Attempting to Comply with Reapportionment Requirements"; Commission on Intergovernmental Relations, "A Report to the President for Transmittal to the Congress"; Baker, *State Constitutions*; Advisory Commission on Intergovernmental Relations, "A Commission Report: Apportionment of State Legislatures"; Wells, "Legislative Representation in New York State: A Discussion of Inequitable Representation of the Citizens of New York in the State Legislature and Congress"; For works which engage these reports, see, among others: Baker, "Reapportionment by Initiative in Oregon"; Silva, "Legislative Representation"; McKay, *Reapportionment*.

¹²¹ This pattern is described on a state-by-state basis in the extremely comprehensive: McKay, *Reapportionment*.

vote.” In response to the state of Tennessee’s failure to reapportion for more than sixty years, the Supreme Court announced in the case *Baker v. Carr* (1962) that it would hear challenges to apportionment policies that claimants believed were in violation of the Fourteenth Amendment’s equal protection clause. Two years later, in *Reynolds v. Sims* (1964), the high court ordered that states apportion all legislative districts (regardless of their state constitutions) into (roughly) equal population size on a regular basis. These cases set a firm precedent. Recalcitrant states would find that the Supreme Court really did insist that they reapportion according to standards set in *Baker* and *Reynolds*. If they did not, the courts would redraw boundaries for them.¹²²

The requirement that states actually reapportion on a regular basis and that they be based on (relative) equal population ratios had an immense impact on state governance. In several northeastern states, many GOP-strongholds became Democratic majorities as rural Republicans lost power. The transformation was often slower in the South, as most whites remained members of the Democratic Party for at least another generation (although they increasingly voted for Republicans in federal elections). However, this reapportionment process enabled suburban, white Republicans to make inroads in legislatures across the “Sun Belt” from which they would grow their party into the dominant force of southern state politics.¹²³

Most stories of apportionment begin or end here. *Baker* and *Reynolds* are usually depicted as the moment when an old “rotten boroughs” regime was overturned. Other scholars take these cases as their starting point, since post-1965 efforts to gerrymander districts almost always try to do so within the framework of the limits set down by *Baker* and *Reynolds*. But this approach misses one crucial element of the *Baker* and *Reynolds* precedents: they did not actually require the inclusion of noncitizens for the purposes of redistricting.

Though the *Baker* and *Reynolds* precedents required that all legislative districts possess as similar a number of people in them as practicable, these cases did not define how “the population” was to be calculated. While the Supreme Court assumed most states would use the results of the most recent federal census to divide the number of legislative districts as equally as possible, it did not require that “total population” serve as the basis of state apportionment laws. In fact, the Supreme Court *upheld* a (very unique) provision which aimed to reduce the power of Honolulu in the Hawaii state legislature owing to the disproportionately large (mostly out-of-state) military population based near the state capital in 1966.¹²⁴ The Supreme Court’s lack of clarity on the topic posed a challenge for those who wished to repeal bans on aliens in redistricting schemes. But reform advocates would transform it into an advantage.

Those in favor of including noncitizens in apportionment schemes had long argued that “total population” figures calculated by the federal census provided the most accurate and effective means of redistricting state and federal constituencies. By the mid-twentieth century, they could add an additional element to their argument, pointing to low rates of immigration and

¹²² McKay, *Reapportionment*, 59–146.

¹²³ David Lublin and D. Stephen Voss, “Racial Redistricting and Realignment in Southern State Legislatures,” *American Journal of Political Science* 44, no. 4 (October 2000): 792–810; Gary Miller and Norman Schofield, “The Transformation of the Republican and Democratic Party Coalitions in the US,” *Perspectives on Politics* 6, no. 3 (September 2008): 433–450; Joseph A. Aistrup, *The Southern Strategy Revisited: Republican Top-Down Advancement in the South* (Lexington, KY: University Press of Kentucky, 2015).

¹²⁴ Robert Horwitz, “Reapportionment in the State of Hawaii - Considerations on the Reynolds Decision,” in *Representation and Misrepresentation; Legislative Reapportionment in Theory and Practice*, ed. C. Herman Pritchett and Robert A. Goldwin (Chicago: Rand McNally, 1968), 21–52.

the historically small percentage of noncitizens residing in the United States. As one intergovernmental advisory commission, chaired by former Social Security Board Executive Director Francis Bane argued in 1962, most scholars agreed that “the nation’s alien population ha[d]” so “diminished since the immigration acts of the 1920’s...that it [was] no longer of significance in the overall picture.”¹²⁵ Though it may have made sense to count noncitizens out of the population for purposes of apportionment in a previous era – when noncitizens were far more numerous – these advocates argued that continuing to exclude them from state populations in the 1960s was at best superfluous and at worst counterproductive. As Gordon Baker of the National Municipal League noted in his 1960 pamphlet:

The exclusion of aliens (or specification of citizen population or legal voters) does not yield a much different basis from total population except in a few key places. At the height of the immigration wave it did make a substantial difference, especially in New York City, and probably still does there to some extent. One original purpose of excluding aliens in earlier days was to keep down the representation of immigrant-laden urban areas. Today the exclusion has little practical effect except for a few localities.¹²⁶

Ruth Silva (an active participant in New York redistricting battles in the 1960s as a consultant to the state government)¹²⁷ was more direct in her support for an alien exclusion in *theory*, but not in practice. She believed that there was “good reason for excluding aliens in any state where the ratio of aliens to total population is not approximately the same in every county.” Since “apportioning on the basis of total (rather than citizen) population...magnifies the electoral power of voters who live in counties where a large number of aliens reside,” she thought citizens were justified in demanding that legislatures draw district boundaries so that each constituency possessed roughly the same number of citizens. However, she also maintained that in 1960s New York, “such an uneven distribution of aliens no longer exists so that it makes relatively little difference whether the popular base be total or citizen population.”¹²⁸ In a series of articles published in law reviews and political science journals in the 1960s, Silva argued that removing the alienage ban would have a negligible effect on legislative boundaries, but could save lots of time and money, in addition to eliminating a major headache.¹²⁹ Perhaps trying to nudge suburban Republicans, she noted that “The number of aliens has declined more rapidly in the City than” elsewhere and that “no county’s population included more than 6.7 per cent aliens.”¹³⁰

¹²⁵ Advisory Commission on Intergovernmental Relations, “A Commission Report: Apportionment of State Legislatures,” 30.

¹²⁶ Baker, *State Constitutions*, 6.

¹²⁷ Political scientist Conrad Rutkowski, who later became directly engaged in New York redistricting battles in the mid-to-late 1960s, emphasizes the importance of Silva’s work in launching and framing apportionment battles at the dawn of the 1960s. Rutkowski cites her 1960 report (which was largely later reproduced in a series of law review articles cited in this chapter) to state redistricting authorities as a “relatively complete, objective, and dispassionate account of the history and nature of apportionment practices within the state.” He also emphasizes that “it was simultaneously a highly explosive political document” (85). Rutkowski argued that “The thrust of the entire Report was one of challenging the status quo” which threatened many entrenched politicians in the state (88). Unlike Silva, however, Rutkowski does not emphasize the importance of “citizen only” requirements in New York’s apportionment scheme (in large part because his work focused almost exclusively on 1960s redistricting battles) though he does describe how it operated in practice (139-140). See: Rutkowski, “State Politics and Apportionment,” 82–89, 139–40.

¹²⁸ Silva, “Legislative Representation,” 413.

¹²⁹ See, especially: Silva, “Legislative Representation”; Silva, “Apportionment of the New York Assembly”; Silva, “The Population Base for Apportionment of the New York Legislature”; Silva, “One Man, One Vote and the Population Base.”

¹³⁰ Silva, “The Population Base for Apportionment of the New York Legislature,” 17.

There was one more, very practical reason that advocates pointed to in favor of states removing their alienage bans. The noncitizen population had been deemed to be so small in the 1950s that U.S. Census Bureau leaders dropped the citizenship question for the 1960 enumeration. It was therefore going to be very difficult, if not impossible, for states to distinguish citizens from aliens within their own borders when drawing legislative districts.¹³¹

Once more, it was in New York where these developments were most prominently felt. As in the past several decades, New York once more sought the aid of the federal Census Bureau when trying to reapportion in the 1960s.¹³² And Bureau officials were ready. The New York state government contracted with the Bureau and paid the federal agency several hundreds of thousands of dollars in order to include questions about citizenship *only* in New York in 1960. The Census Bureau leadership readily agreed.¹³³

New York Governor Nelson Rockefeller and his Republican allies in the state legislature did not want to surrender their longstanding advantages in state apportionment following the *Baker* and *Reynolds* rulings. Unfortunately for Rockefeller, repeated Republican redistricting efforts were rejected in court in the 1960s for failure to comply with those precedents.¹³⁴ As they grappled with this reapportionment challenge, legislators in Albany were, unsurprisingly, most interested in trying to draw districts in the most advantageous manner possible for themselves. The alien exclusion, in-and-of-itself, was not a pressing matter.

Silva and others involved in the actual execution of the reapportionment plans pushed for a repeal of the noncitizen exclusion on a cost, efficiency, and accuracy basis.¹³⁵ Finally, they would have their day. In 1969, voters in New York adopted an amendment to the state constitution that henceforth allowed state officials to use overall federal census totals instead of the “citizen population” for apportionment purposes. Ever since, Empire State officials have decided to use those figures and included noncitizens for the purposes of calculating legislative districts.¹³⁶

In Massachusetts, a similar story unfolded. The longstanding criticisms that local elected officials rigged the decennial “commonwealth” enumeration to overcount the number of “legal voters” in their municipalities added up. In 1970 voters chose to repeal the commonwealth’s longstanding “legal voter” standard and instead would henceforth count all inhabitants of Massachusetts as the basis for apportioning the General Court. Similarly, Tennessee and North

¹³¹ Silva, “Apportionment of the New York Assembly,” 29.

¹³² Rutkowski, “State Politics and Apportionment,” 139–43.

¹³³ Silva, “The Population Base for Apportionment of the New York Legislature,” 13–14.

¹³⁴ I recommend McKay’s appendix section on the seemingly interminable court cases over evolving New York reapportionment plans in the 1960s. See: McKay, *Reapportionment*, 380–90; As Rutkowski notes, McKay was also deeply intertwined with apportionment proposals debated in New York during the 1960s. See, especially: Rutkowski, “State Politics and Apportionment,” 408–11.

¹³⁵ Silva, “Legislative Representation”; Silva, “The Population Base for Apportionment of the New York Legislature”; See, also Rutkowski for his contextualization of Silva’s work: Rutkowski, “State Politics and Apportionment,” 82–89.

¹³⁶ Henrik N. Dullea, *Charter Revision in the Empire State: The Politics of New York’s 1967 Constitutional Convention* (New York: SUNY Press, 1997), 392; For a history of the many different proposals debated before this policy was finally adopted, see: Rutkowski, “State Politics and Apportionment.”

Carolina changed the basis of apportionment for their legislatures to reflect the “total population” of their states in 1966 and 1971 respectively.¹³⁷

Only in places like Oregon were arcane (and unenforceable) sections of their state constitutions repealed for ostensible reasons of equality. Even then, such efforts rang hollow. During a broader effort to reapportion the state legislature, middle-class Oregonian civic associations pushed for the “deletion of the archaic reference to ‘white’ population” in the state’s constitution in 1952. Voters in Oregon adopted this provision without fanfare almost four score and seven years after the Fourteenth Amendment to the federal constitution had promised all American citizens equal protection under the law.¹³⁸

Other states changed policies even later. In 1981, the Texas attorney general issued an opinion that the state’s qualified voter standard was unenforceable owing to its (presumed) conflicts with the federal constitution.¹³⁹ Two other states – Maine and Nebraska – have come short of changing their state constitutions. However, both have stopped enforcing those provisions. Their governments – reliant on federal census data – have come to view the total number of inhabitants residing within their respective borders as a sufficient effort to comply with their state’s constitutional apportionment requirements.¹⁴⁰

Though all state legislatures count noncitizens for the purposes of apportionment, this was not the end of overt exclusions of noncitizens from redistricting plans. Some municipal and county governments continued to apportion ward boundaries on the basis of registered voters or votes cast in past elections in recent years. Powerful incumbents relied on this approach to maintain their grip over the county government in Los Angeles as late as 1990. Only then did the Federal Ninth Circuit Court rule in *Garza v. County of Los Angeles* that both the aims and effects of this apportionment basis were to discriminate against persons of Hispanic origin, citizen and noncitizen alike. The court ruled that in this instance the county’s policy was unconstitutional. Even so, the Ninth Circuit made clear in its ruling that it was not setting a precedent requiring governments to use the “total population” as their basis of apportionment. However, governments were on notice that if they were using other metrics as proxies to discriminate against protected classes, courts would likely strike them down.¹⁴¹

IV. Conclusion: Enduring Citizenship Claims and the Limits of Efficiency

The rise and fall of policies excluding noncitizens from apportionment from the time of the Civil War until the Civil Rights era represent a dramatic development in the power and substance of U.S. citizenship. Proponents claimed that “being counted” for apportionment schemes should become an (exclusive) “right of citizenship.” In several states, they succeeded in adopting such measures. Admittedly, such policies had little effect on the drawing of legislative districts in states like Tennessee and North Carolina where immigrants represented a tiny fraction of the population prior to the 1970s. But they did significantly affect redistricting in places like Massachusetts and New York which were (and are) major immigrant-destination states. Indeed, such legislation produced gross inequalities that helped to inflate the power of

¹³⁷ Bizarrely, local officials remained in charge of the Massachusetts enumeration until 1990: Friedman and Thody, *The Massachusetts State Constitution*, 165, 209; For dates, see: the States’ Attorneys General Brief: *Evenwel v. Abbott* at 3.

¹³⁸ Baker, “Reapportionment by Initiative in Oregon,” 510.

¹³⁹ See, State of Texas brief in: *Evenwel v. Abbott* at 23-24 (n.7).

¹⁴⁰ See, Amicus Brief of the U.S. Solicitor General in: *Evenwel v. Abbott* at 12 (n. 3).

¹⁴¹ Los Angeles no longer promotes this policy. See, Brief of the City and County of Los Angeles: *Evenwel v. Abbott*.

rural, (mostly Republican) voters in several states over their urban, mostly (Democratic counterparts) for decades. As these laws grew in number and were debated in other states and in Congress, the “right to representation” was increasingly articulated by nativist politicians as an exclusive right of citizens.

This chapter illustrates how those “citizenship rights” claims emerged, could be defeated by opposing “immigrant rights” arguments when new proposals were debated, but proved stubbornly successful in states with longstanding “citizen only” apportionment laws. Debates over the inclusion or exclusion of noncitizens from redistricting laws was never separated from self-interest and sectional, partisan, and intra-party allegiances. Indeed, intra-party disputes over the effects of the inclusion or exclusion of noncitizens from apportionment schemes in New York during the mid-1930s managed to split the Democratic state party. And those who advocated counting aliens out of the population were often blunt in their overt racism and nativism towards nonwhite and “new” southeastern European immigrants from the late-nineteenth into the middle of the twentieth centuries.

Such sentiments, however, do not mean that these apportionment debates were not “truly” about citizenship. On the contrary, nativist politicians reframed apportionment policies on the basis of citizenship because such schemes were useful (and constitutionally permissible) vehicles for them and because they truly wanted to make “being counted” a restrictive “right of citizenship.” Though all states (and Congress) have adopted a “total population” basis for apportionment policies, this was by no means a foregone conclusion in the 1960s (let alone the 1920s). This consolidation of state apportionment policies has clarified that today “being counted” is not an exclusive right of modern American citizenship in any part of the country.

However, the power of citizenship claims proved so enduring that opponents of such policies in states like New York and Massachusetts only succeeded in repealing them by pointing to their inefficiencies and problems in implementation. *Evenwel v. Abbott* shows how the claim that “being counted” (as a form of indirect representation) should be the exclusive right of U.S. citizens has not disappeared. And the Trump Administration’s announcement that the federal Census Bureau will reintroduce a citizenship question on the 2020 enumeration indicates and that proponents of this view plan to provide states with data that could enable them to (re)introduce such policies.¹⁴²

As a work of political history, this chapter engages historian Peter Argersinger’s exhortation to examine the degree to which “system[s] of representation...determine[] the relationship between public opinion and political influence.”¹⁴³ By studying debates over the adoption and repeal of apportionment schemes counting noncitizens out of the population, it explores the importance of redistricting rules in-and-of themselves, how those rules influenced electoral results, and how electoral results, in turn, influenced apportionment policies. As in other disputes in U.S. political history, those in power often wrote rules that benefitted themselves and rarely conceded to repealing policies favorable to them without a fight.¹⁴⁴ But

¹⁴² Justin Elliott, “Trump Justice Department Pushes for Citizenship Question on Census, Alarming Experts,” *ProPublica*, December 29, 2017, <https://www.propublica.org/article/trump-justice-department-pushes-for-citizenship-question-on-census-alarming-experts>.

¹⁴³ Argersinger, “The Value of the Vote,” 60.

¹⁴⁴ For countless examples of such disputes during the Gilded Age, see: Mark W Summers, *Party Games: Getting, Keeping, and Using Power in Gilded Age Politics* (Chapel Hill: University of North Carolina Press, 2004).

arguments (and the choice of arguments employed) did matter to the development and ultimate demise of these policies. The weight of “citizen only” claims fluctuated depending on the context, becoming especially powerful during times of war and xenophobia. Though such claims could be defeated even in such eras, they proved especially enduring once enacted into law. The skillful shift in argument by opponents – from immigrant rights to efficacy and utility – proved persuasive. But they have not definitively defeated a return to such policies.

As a history of immigration and citizenship, “Who Counts?” uncovers often overlooked battles to narrow rights to citizens and redefine representation – however indirect – as an exclusive right of citizenship. Since no state currently enforces a “citizen only” apportionment scheme, it may seem tempting to view this chapter as the inverse of Chapter 1. After all, while the prior chapter demonstrates how voting became widely recognized as the first and foremost right of American citizenship, this chapter shows how a right became *disentangled* from citizenship. And both chapters illustrate how all states affirmatively chose – without a court order or (federal) constitutional amendment – to either narrow a right to citizens or to expand access to noncitizens. However, these chapters are not mirror images either.

In Chapter 1, we learned how battles over the meaning of citizenship rights were articulated to both expand suffrage rights to long marginalized citizens (in practice, mostly white women) while rescinding access to that right from many (mostly white, male) noncitizens. In Chapter 2, “citizenship claims” were only mobilized to articulate an exclusionary vision of rights by equating inclusion in apportionment policies with (indirect) forms of political rights. When nativists argued that noncitizens should not even count for the purposes of redistricting, they were claiming the “right” to exclude noncitizens from any semblance of representative belonging in the nation that they called home until they became citizens (that is, if they were eligible to). Recapturing the story of those state laws and their significance – not to mention the breadth of similar state and federal proposals that were debated but not adopted – is necessary to understand both how variegated “citizenship rights” were across the many states that comprise the nation and how powerful exclusionary claims of citizenship were both in legislative victory and defeat. Though today we may take for granted that “being counted” is not the exclusive domain of American citizens, that was not the case just a half century ago. And it is likely that we have only begun to see efforts to once more exclude noncitizens from apportionment policies in the name of (exclusive) “citizenship rights” in the early twenty-first century.

Part II: Claiming, Administering, and Experiencing Employment as a Right of Citizenship

Chapter 3: Making Citizenship Concrete: Blue-Collar Immigrants, Citizenship Requirements, and Identification Documents, 1882-1940

During the winter of 1914-15, construction on New York City Subway lines ground to a screeching halt.¹ The cause of the stoppage was unusual. There were thousands of laborers willing and able to work on the project. Funding was holding steady. Labor unions had not called a strike. Instead, construction was delayed owing to a peculiar labor law. Throughout the state of New York, all employees on public works projects had to be American citizens.² This posed a challenge, since most employees hired by contractors were not citizens. Many were recent immigrants from Italy.³ So when local Bricklayers' Union leader John Gill complained about widespread violations of this law, many contractors – after trying to hire only Americans or openly flouting the law – ultimately declared they had no choice but to halt work.⁴

Between November 1914 and March 1915 an intense battle ensued over whether state and private authorities could and should limit working-class employment to U.S. (mostly white, male) citizens.⁵ Though the New York Alien Employment Act had been on the books for twenty years, craft union officials, such as Gill, complained that its requirements were routinely flouted by building contractors who paid immigrant laborers below the rate of union wages.⁶ As the city and country entered into a short – but sharp – recession, labor leaders felt significant pressure to demand enforcement of the law from their own members and newly unemployed American laborers during the fall and winter of 1914-15.⁷ In contrast, the New York General Contractors' Association swore that employers could never find enough citizens to do dangerous,

¹ "Will Dig Subways, But Fight Alien Act," *New York Times*, November 19, 1914, 1.

² "The New York Alien Labor Law," *New York Times*, November 19, 1914, 10.

³ The *Times* reported that, "It is estimated that of the unskilled labor employed on subway contracts 90 per cent. of it is alien, and that even among the skilled laborers, who in the main belong to unions, 50 per cent. have never become citizens": "Will Dig Subways, But Fight Alien Act," *New York Times*, November 19, 1914, 10.

⁴ "Unions Want a Part in Labor Law Test," *New York Times*, November 20, 1914, 18; "Grout Seeking Test of Alien Labor Law," *New York Times*, November 21, 1914, 6; "Criminal Case Test of Alien Labor Law," *New York Times*, November 25, 1914, 7; "Alien Law Decision Halts New Subways," *New York Times*, February 27, 1915, 5.

⁵ The *New York Times* covered this labor dispute extensively between mid-November 1914 and early-April 1915. See, especially: "The New York Alien Labor Law," *New York Times*, November 19, 1914, 10; "Big Rush of Aliens to Become Citizens," *New York Times*, December 13, 1914, 11; "The Alien Labor Law," *New York Times*, January 2, 1915, 8; "Alien Law Decision Halts New Subways," *New York Times*, February 27, 1915, 5; "Contractors Are in Doubt," *New York Times*, March 5, 1915, 1; "May Keep Aliens on Subway Work," *New York Times*, April 5, 1915, 9.

⁶ Similar complaints arose in 1896 during another recession. See: "Favors Alien Laborers," *New York Times*, September 27, 1896, 2; For Gill's allegations at the outset of the 1914-15 dispute, see: "Unions Want a Part in Labor Law Test," *New York Times*, November 20, 1914, 18.

⁷ "Alien Law Decision Halts New Subways," *New York Times*, February 27, 1915, 5; "Fight on Alien Law up to Highest Court," *New York Times*, March 1, 1915, 10; Few historians mention the New York City Subway controversy of 1914-15 in their works. They include: Higham, *Strangers in the Land*, 183–84; Peter Catron, "The Citizenship Advantage: Immigrant Socioeconomic Attainment across Generations in the Age of Mass Migration" (UCLA Program on International Migration, September 14, 2017), <https://escholarship.org/uc/item/7xn7g0ww>; Other scholars have identified popular demands for work relief in the winter of 1914-15 as precursors to later, more extensive, public works efforts during the Great Depression. They include: Feder, *Unemployment Relief in Periods of Depression*; Udo Sautter, "Government and Unemployment: The Use of Public Works before the New Deal," *Journal of American History* 73, no. 1 (June 1986): 59–86; Daniel Amsterdam, "Before the Roar: US Unemployment Relief after World War I and the Long History of a Paternalist Welfare Policy," *Journal of American History* 101, no. 4 (2015): 1123–1143.

backbreaking construction work.⁸ Contractors also asked why unions had waited so long to complain about a lack of enforcement if violations had been widespread for years.⁹

In court, employers argued that the “citizen only” law was unconstitutional as it deprived individuals of their right to pursue gainful employment. If they assumed that *Lochner*-era courts would be favorable to them, they were sorely mistaken. Both the New York and U.S. Supreme Courts upheld the Alien Employment Act, determining that states could require citizenship for public – and publicly funded – employment.¹⁰

Though the federal court’s ruling set precedent for the whole nation, its effects were made moot in New York. Under intense pressure from contractors, the New York State Legislature rethought its policy in the winter and early spring of 1915.¹¹ In March, an amendment to the Alien Employment Act became law, stipulating that noncitizens could be employed on public works projects so long as citizens were given preference in hiring.¹² Soon after, contractors returned to hiring noncitizen laborers and resumed work at full pace.¹³

Though unusually dramatic, the New York City Subway controversy was not an isolated incident. This chapter explores the rise of similar policies across the country, efforts by state and private officials to enforce them, and their impact on the weight and meaning of citizenship and alienage in the United States from the time of the Gilded Age to the onset of World War II. “Citizen only” hiring practices neither guaranteed jobs to all citizens nor did they overturn entrenched racist and sexist hierarchies in employment. Indeed, citizenship requirements often drew from and built on those inequities. Efforts to expand and enforce blue-collar employment restrictions did, however, make American citizenship – and its exclusive “citizenship rights” – a concrete, lived reality for a growing number of citizens and noncitizens alike.

From the start of the Gilded Age to the end of the Great Depression, state governments increasingly adopted laws mandating or privileging the hiring of citizens in public and publicly funded employment. In enacting these laws, states primarily sought to make public construction work a “right of citizenship.” By 1938, eighteen states restricted or banned the employment of noncitizens on these projects.¹⁴ During the Great Depression, federal agencies often drew on these legacies and similarly adopted barriers to noncitizen employment. Most famously, the largest New Deal program – the Works Progress Administration – banned all noncitizens from employment in 1939.¹⁵ But blue-collar restrictions were not limited to public works jobs. Trade

⁸ “May Test Alien Law in Criminal Court,” *New York Times*, November 24, 1914, 20.

⁹ “The New York Alien Labor Law,” *New York Times*, November 19, 1914, 10; “Whitman to Urge Alien Act Repeal,” *New York Times*, February 28, 1915, 1, 8.

¹⁰ The key cases were *Heim v. McCall* and *Crane v. New York* (both decided in 1915). See, especially: Thomas Reed Powell, “The Right to Work for the State,” *Columbia Law Review* 16, no. 2 (February 1916): 99–114.

¹¹ “Whitman to Urge Alien Act Repeal,” February 28, 1915, 1, 8; “Whitman Plans Alien Law Relief,” *New York Times*, March 2, 1915, 1; “Give Hearing Today on Alien Repeal,” *New York Times*, March 3, 1915, 8.

¹² “Alien Law Repeal Passes the Senate,” *New York Times*, March 9, 1915, 1.

¹³ “May Keep Aliens on Subway Work,” *New York Times*, April 5, 1915, 9.

¹⁴ Chester Garfield Vernier, *American Family Laws: A Comparative Study of the Family Law of the Forty-Eight American States, Alaska, the District of Columbia, and Hawaii (to Jan. 1, 1938) 1938 Supplement* (Stanford, CA: Stanford University Press, 1938), 378–81.

¹⁵ Two excellent – though sometimes contrasting – works which engage with (mostly federal) employment restrictions owing to alienage are: Thatcher, *Immigrants and the 1930’s*; Fox, *Three Worlds of Relief*.

unions sometimes made citizenship a condition of membership, while private employers could – and occasionally did – adopt hiring policies barring noncitizen laborers from work.

Such policies could significantly impact immigrants' access to employment. Sociologist Peter Catron calculates that naturalized immigrants had a “strong citizenship advantage” over their noncitizen peers in the early-twentieth century. He finds that, “immigrants who naturalized were concentrated in occupations that paid \$500 to \$2,000 more than intending citizens” in 1920.¹⁶ Historian Mary Anne Thatcher contends that the possession of U.S. citizenship became even more important during the Great Depression. Though “[n]ot all immigrants felt the depression to the same degree,” noncitizens experienced “increasing economic pressure as the unemployment crisis dragged on” due to growing public and private employment restrictions aimed at them.¹⁷

And yet, battles over blue-collar noncitizens' *de jure* employment rights have rarely been viewed as central developments in American labor, civil rights, or immigration and citizenship history. Labor historians have seldom identified “citizen only” policies as key battlegrounds between unions and employers and within unions over workers' employment rights.¹⁸ Similarly, while civil rights historians often explore how nonwhite immigrants experienced and contested “different axes of discrimination” in the words of historian Mark Brilliant, formal citizenship requirements for employment are generally not the primary economic barriers they analyze.¹⁹ Even immigration and citizenship historians rarely study how formal blue-collar citizenship requirements impacted immigrants' socioeconomic and political incorporation during the late-nineteenth and early-twentieth centuries.²⁰ As immigration historian Kunal Parker contends, “when it comes to the way citizenship has functioned ‘negatively’ vis-à-vis resident aliens, it is fair to conclude that much more work is needed.”²¹

But there is one major rationale for this (relatively) limited scholarly attention to blue-collar citizenship requirements. Several who have studied the topic argue that these restrictions were often ineffectual, ignored, or of marginal importance compared to other – especially racist – forms of economic discrimination. The work of John Higham and Gwendolyn Mink, for instance, emphasizes how late-nineteenth and early-twentieth century “citizen only” working-class employment laws were often selectively enforced and sometimes struck down as unconstitutional.²² Similarly, Cybelle Fox argues that Progressive Era and especially New Deal

¹⁶ Catron, “The Citizenship Advantage: Immigrant Socioeconomic Attainment across Generations in the Age of Mass Migration,” 33.

¹⁷ Thatcher, *Immigrants and the 1930's*, 2.

¹⁸ Exceptions include: Saxton, *The Indispensable Enemy*; Mink, *Old Labor and New Immigrants in American Political Development*; Richard W. Steele, “‘No Racial’: Discrimination Against Ethnic in American Defense Industry, 1940-42,” *Labor History* 32, no. 1 (Winter 1991): 66–90.

¹⁹ Brilliant, *The Color of America Has Changed*, 9; Scholarship on discrimination against “aliens ineligible to citizenship” (i.e. East and South Asians) offers an exception. Works include: Motomura, *Americans in Waiting*; Deenesh Sohoni, “Unsuitable Suitors: Anti-Miscegenation Laws, Naturalization Laws, and the Construction of Asian Identities,” *Law & Society Review* 41, no. 3 (2007): 587–618; Cheng, *Citizens of Asian America*.

²⁰ Major exceptions include: Thatcher, *Immigrants and the 1930's*; Motomura, *Americans in Waiting*; Parker, *Making Foreigners*.

²¹ Parker, *Making Foreigners*, 233.

²² Higham describes the origins of many of these laws in the 1880s, documents their expansion in the 1890s and then again in the mid-1910s, and emphasizes how demands for them often emerged outside of the formal chain of union leadership. Of labor bans in the 1890s, he writes that they were “far from common, and fear of direct economic competition from immigrants must have affected only limited groups and regions” (73). He does, however, identify anti-immigrant measures (including alien

“citizen only” economic policies were often deeply tied to – and often subsumed by – overtly racist employment restrictions, irrespective of citizenship status. After all, the possession of U.S. citizenship neither protected black and Hispanic Americans from mass racial violence nor did it assure their access to social services and jobs in the Progressive and New Deal eras.²³

It is no wonder, therefore, that scholars rarely argue for the centrality of working-class citizenship requirements in shaping the trajectory of the American welfare state or the socioeconomic and political incorporation of immigrants from the 1880s to the 1930s. But blue-collar employment restrictions did not arise in isolation. Nor were they enforced in a vacuum. On the contrary, the emergence, spread, and implementation of “citizen only” hiring policies were informed by other (often better known) processes of inclusion and exclusion from economic rights. In turn, blue-collar citizenship requirements directly and indirectly shaped those developments. This chapter recaptures that history.

“Making Citizenship Concrete” examines the development of “citizen only” and “citizen preference” working-class employment restrictions to explore how they influenced the meaning and weight of citizenship and alienage during a time when roughly 27.5 million immigrants moved to the United States.²⁴ Foremost, it compares proposed and adopted citizenship restrictions by legislators in three heavily-populated, major immigrant destination states: California, Massachusetts, and Texas. Though enacted at different times and enforced to varying degrees, elected officials in each state ultimately barred or restricted the employment of noncitizens on public (or publicly funded) construction work. The chapter also explores trade union membership rules, the hiring practices of major private employers, and ultimately New Deal-era federal policies.

“Making Citizenship Concrete” covers a long chronological arc: from the time of the Chinese Exclusion Act until U.S. entry into World War II. It does so to capture key patterns in the development of blue-collar “citizen only” policies, track how they were (or were not) enforced, and uncover their broad significance. While the chapter explores how nativists and immigrant rights advocates contested the adoption of these exclusionary “citizenship rights” policies, it especially emphasizes their spread and (often halting) implementation. This focus on enforcement illuminates how efforts by nativists and both state and national authorities to

employment restrictions) as part of the “Summit of Prewar Nativism” in 1914 (183): Higham, *Strangers in the Land*, 46–47, 72–73, 183–84; Mink is more explicit than Higham and argues that these laws were generally not effective. She writes (of 1880s laws in particular), “these statutes were mostly symbolic: under laissez-faire capitalism they could limit immigration opportunities only with respect to public employment.” She emphasizes that many of them were struck down anyway in the court system: Mink, *Old Labor and New Immigrants in American Political Development*, 123.

²³ Fox highlights that citizenship requirements could restrict immigrants’ access to social services and employment. But she argues that institutional racism usually supplanted or outweighed citizenship or alienage status in the Progressive Era and New Deal. See, especially, Chapter 7: “Repatriating the Unassimilable Aliens” and Chapter 9, “The WPA and the (Short-Lived) Triumph of Nativism” in: Fox, *Three Worlds of Relief*, 156–87, 214–49; For a non-immigration specific account of de facto preferences for whites in New Deal and post-WWII era federal programs, see: Katznelson, *When Affirmative Action Was White*.

²⁴ Roger Daniels identifies roughly 25.8 million immigrants entering the United States between the years of 1881 and 1924 (124). Whereas roughly two-thirds of immigrants from the time of the Civil War until the start of the twentieth century had come from northwestern Europe (and only a quarter from southeastern Europe), between 1900 and 1920 immigration from southeastern Europe (44%) surpassed that of northwestern Europe (41%) (122). Another 1.76 million immigrants would enter the country between the enactment of the Johnson-Reed Act of 1924 and 1930 (289). See: Roger Daniels, *Coming to America: A History of Immigration and Ethnicity in American Life*, 2nd ed (New York: Perennial, 2002).

distinguish citizens from noncitizens led to growing – and ultimately successful – nativist demands for immigrant identification requirements. That emerging “alien registration” regime greatly concretized the categories of citizen and noncitizen and documented and undocumented immigrants in American society.

Section 1, “Demanding ‘Citizenship Rights’” explores how legislators in California, Massachusetts, and Texas did (or did not) debate the restriction of noncitizens in blue-collar work – especially public and publicly funded construction employment – during the Gilded Age and Progressive Era. It identifies the crucial role of anti-immigrant laborers in instigating these policies and in demanding their enforcement. Not all elected officials or union leaders agreed to “citizen only” demands. Moreover, many adopted citizenship requirements were rarely enforced (if at all). However, growing hiring restrictions directed at noncitizens and controversies which emerged when authorities tried to implement them increasingly reframed (many forms of) blue-collar work as an exclusive “right of citizenship” in the United States.

War, anti-radical hysteria, and federal immigration restriction legislation in the late-1910s and early-1920s changed the context in which working-class citizenship requirements were debated. Section 2, “Reframing Exclusive Citizenship Rights Claims,” unpacks nativist efforts to expand working-class citizenship requirements from the time of U.S. entry into World War I in 1917 to the onset of the Great Depression twelve years later. Despite their significant efforts – and refashioning of “citizenship requirements” as national security measures – nativists rarely succeeded in convincing employers and authorities to restrict or outright ban the employment of noncitizens in blue-collar (especially construction) work as the economy entered the Roaring Twenties. Moreover, anti-immigrant activists repeatedly complained that many formal “citizen only” or “citizen preference” policies existed only on paper. To strengthen them, nativists increasingly argued that greater identification measures were needed to distinguish citizens from noncitizens (and documented and undocumented immigrants) residing in the United States. While their efforts were stymied in the 1920s, they previewed later, successful nativist campaigns to require nationwide alien registration at the end of the Great Depression.

Section 3, “Demanding Exclusive ‘Citizenship Rights’ and Identifying Noncitizens” shows how nativists increasingly insisted that many forms of working-class employment become an exclusive “right of citizenship” as jobs became scarce during the 1930s. It further identifies how anti-immigrant activists campaigned to establish a nationwide system to register noncitizens to strengthen the enforcement of “citizen only” and “citizen preference” employment policies. Together, expanding citizenship requirements for work and the creation of a national noncitizen documentation requirement added both greater weight to American citizenship and concretized distinctions between citizens and noncitizens in the United States.

“Making Citizenship Concrete” argues that late-nineteenth and early-twentieth century barriers to noncitizen blue-collar employment remade U.S. citizenship and its accompanying rights. Their spread made American citizenship – especially exclusionary claims to “citizenship rights” – a tangible reality in the lives of an increasing number of citizens and noncitizens. While these policies could harm all noncitizens who were subjected to them, their burden fell disproportionately on nonwhite immigrants. As employers and authorities encountered growing difficulties in implementing “citizen only” provisions, nativists pleaded for better mechanisms to distinguish noncitizens from citizens. The subsequent adoption of significant immigrant identification requirements hardened distinctions between both citizens and noncitizens and

documented and undocumented immigrants in the United States. Together, the expansion of “citizen only” blue-collar employment policies and the creation of a mandatory “alien registration” regime gave greater weight to exclusive “rights of citizenship” and made citizenship far more concrete in the United States.

I. Demanding “Citizenship Rights”:
Blue-Collar Employment Restrictions in the Gilded Age and Progressive Era

Campaigns against immigrants’ employment rights in New York did not begin in the Gilded Age. Perhaps most famously, “Know Nothing” politicians demanded that employers hire “Native [born] Americans” instead of Irish immigrants in the late-1840s and 1850s. Subsequent immigrant groups were similarly pilloried by nativists when they sought employment in the Empire State.²⁵ When union leaders demanded the mass firing of Italian laborers from New York City Subway work in the winter of 1914-15, they drew on and transformed that anti-immigrant legacy. In demanding a purge of noncitizen workers, nativists sought to redefine the material weight of American citizenship by making public (and publicly contracted) construction work the exclusive domain of citizens.

This section compares how three other states – California, Massachusetts, and Texas – debated restrictions on noncitizens in public and publicly funded construction work during the Gilded Age and Progressive Era. It further explores the role of anti-immigrant labor activists in adopting or demanding the enforcement of those (and other) citizenship requirements. Legislators and unions did not always agree to “citizen only” demands. Even adopted policies often went unenforced. Nevertheless, emerging noncitizen hiring restrictions and controversies arising from efforts to implement them increasingly made (many forms of) blue-collar employment a formal “right of citizenship.”

As in New York, anti-immigrant employment laws arose in California long before the Gilded Age. During the 1850s, the California State Legislature routinely enacted legislation forcing immigrants to pay hefty monthly fees to work as miners. In practice, these policies especially targeted and harmed would-be Chinese miners.²⁶ Decades later, municipal politicians in California similarly enacted ostensibly race-neutral ordinances to deny licenses to Chinese immigrants. Though the U.S. Supreme Court famously struck down San Francisco’s *de facto* licensing ban on Chinese laundry owners in 1886 as a violation of the Fourteenth Amendment’s equal protection clause in *Yick Wo v. Hopkins*, East and South Asian immigrants’ employment rights remained under siege.²⁷ Not only were these groups targeted by white workers in violent vigilante campaigns, racist federal citizenship laws barred them from naturalization. California

²⁵ See, among others: David R Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (New York: Verso, 1991); Noel Ignatiev, *How the Irish Became White* (New York: Routledge, 1995); Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge, MA: Harvard University Press, 1998); Roediger, *Working Toward Whiteness*.

²⁶ Mark Kanazawa, “Immigration, Exclusion, and Taxation: Anti-Chinese Legislation in Gold Rush California,” *Journal of Economic History* 65, no. 3 (September 2005): 779–805.

²⁷ Konvitz, *The Alien and the Asiatic in American Law*, 172–74; Motomura, *Americans in Waiting*, 64–70.

nativists used this naturalization ban as a proxy for legislative racism by restricting the employment and property rights of “aliens ineligible to citizenship” in the state.²⁸

Though nativists in California disproportionately targeted “aliens ineligible to citizenship,” they did not limit their attacks to them. Beginning in the 1880s, anti-immigrant legislators introduced proposals aiming to privilege or mandate the hiring of citizens in state, county, and municipal employment.²⁹ These bills, often advanced by the California Labor Convention, grew more numerous in the 1890s.³⁰ Nativists finally succeeded in 1901 when the legislature barred noncitizens from all forms of public employment in the state.³¹ Though neither the California Assembly nor the Senate recorded official debates on the measure (if they even occurred), virtually no legislator dared to oppose it when put to a vote. In the Assembly, sixty-four representatives voted for the bill, while only one voted against it.³² In the Senate, all twenty-two members who voted supported it.³³ This near unanimous backing for the law reflected both the growing power of “citizen only” employment demands in turn-of-the-century California and the power of anti-immigrant labor activists.

But those making exclusionary “citizenship rights” claims were not invincible in these debates. As most forms of public employment in turn-of-the-century California were municipal or county positions, local officials were most responsible for enforcing the new law. As major state newspapers rarely mentioned passage of the “citizen only” law, however, many municipal and county officials likely never learned about it.³⁴ A decade and a half after its enactment, some would claim that they had forgotten or were unaware of the “citizen only” law when state authorities launched a public investigation into widespread failures to enforce it.³⁵ California

²⁸ Most famously, California nativists successfully campaigned to deny East and South Asian immigrants the right to own farm property in 1913 and 1920. This policy (and several other “ineligibility to citizenship” restrictions) were only ruled unconstitutional decades later following World War II. See, especially: Chapter 2: “Jap Crow” in: Brilliant, *The Color of America Has Changed*, 28–57; See, also: Motomura, *Americans in Waiting*, 69–70, 75–76.

²⁹ See, for instance, the proposed, but not enacted, AB 102: “An Act relating to the appointment of aliens to positions under State, county, city and county, city, or town officials”: California Legislature Senate, *Journal of the Senate, during the 23rd Session of the Legislature of the State of California* (Sacramento: State Printing Office, 1880), 535.

³⁰ For press coverage of introduced bills (and the often important role of the California Labor Convention) see: “Labor Convention Adjourns Sine Die,” *San Francisco Chronicle*, March 22, 1897, 11; “Over Two Hundred New Bills in the Assembly,” *San Francisco Chronicle*, January 12, 1901, 2; “Bills Signed by Governor,” *Los Angeles Times*, March 29, 1901, 3; See, among others, the proposed, but not enacted, AB 575: “An Act to secure to native-born and naturalized citizens of the United States the exclusive right to labor on public works in this State” California Legislature Assembly, *Journal of the Assembly, during the 32nd Session of the Legislature of the State of California* (Sacramento: State Printing Office, 1897), 225; and the proposed, but not enacted, AB 393: “An Act to secure to native sons and naturalized citizens of the United States the exclusive right to labor on public works in this State” California Legislature Senate, *Journal of the Senate, during the 33rd Session of the Legislature of the State of California* (Sacramento: State Printing Office, 1899), 1113.

³¹ See: Act 257 “An act to secure to native-born and naturalized citizens of the United States the exclusive right to be employed in any department of the state, county, city and county, or incorporated city or town government in this state” California, *General Laws of the State of California as Amended up to the End of the Session of 1931* (San Francisco: Bancroft-Whitney Company, 1932), 102.

³² California Legislature Assembly, *Journal of the Assembly, during the 34th Session of the Legislature of the State of California*, 1901, 597.

³³ California Legislature Senate, *Journal of the Senate, during the 34th Session of the Legislature of the State of California* (Sacramento: State Printing Office, 1901), 1050.

³⁴ Among the few newspaper accounts of the new provisions were: “Over Two Hundred New Bills in the Assembly,” *San Francisco Chronicle*, January 12, 1901, 2; “Bills Signed by Governor,” *Los Angeles Times*, March 29, 1901, 3.

³⁵ This controversy will be investigated further in Chapter 4. In the winter and spring of 1915, immigrant teachers were suddenly forced to prove citizenship as a condition of work. In press accounts a decade later, the “citizen only” policy was

nativists also sought to bar noncitizens from working on all publicly funded construction projects in 1911.³⁶ However, while this legislation received significant support on the State Assembly, it was blocked in the State Senate.³⁷ Public employment officially became a “right of citizenship” in turn-of-the-century California. But enforcing that policy and further restricting public works jobs to citizens was by no means a foregone conclusion.

Blue-collar employment restrictions emerged from a different context in Massachusetts. Like California, Massachusetts had a long history of immigration. While thirty percent of Massachusetts residents were foreign-born in 1900, turn-of-the-century immigrants to the New England state hailed overwhelmingly from Europe and Canada. Just one percent of residents in the state – citizen and noncitizen alike – were nonwhite.³⁸ Not surprisingly, policies banning “aliens ineligible to citizenship” did not become a major mechanism to restrict the employment rights of immigrants in *fin-de-siècle* Massachusetts. But legislators did make “citizenship rights” claims to restrict the hiring of noncitizen construction workers in Massachusetts.

During the long, nationwide recession that followed in the wake of the Panic of 1893, legislators in Massachusetts came under nativist pressure to restrict hiring on public construction projects to citizens. In 1895 and 1896, the Massachusetts General Court debated bills curbing or banning the employment of noncitizens on public works endeavors.³⁹ The legislature ultimately adopted a bill stipulating that U.S. citizens were to receive preference on all public and publicly funded construction projects in Massachusetts.⁴⁰

As in California, the passage of this legislation did not satiate the demands of anti-immigrant activists in Massachusetts. During construction on the massive Wachusett Reservoir and Dam in central Massachusetts – then the largest artificial reservoir in the world – employers were found to have recruited and hired large numbers of Southern and Eastern European workers. Local unions and residents argued that their hiring had made a mockery of the state’s “citizen preference” employment law.⁴¹ Thereafter, nativists repeatedly proposed turning the preference system into a “citizen only” requirement in the General Court. Despite occasionally

labelled a, ““dead letter”” and a “forgotten statute.” See, among others: “Would Relieve Alien Teachers,” *Los Angeles Times*, March 28, 1915, 17.

³⁶ “Alien Employment Forbidden,” *Los Angeles Times*, March 20, 1911, 12.

³⁷ Though the Assembly actually passed AB 395, amending the 1901 law to prevent aliens who had not (or could not) declare their intention to become citizens from working on publicly contracted projects, the Senate took no action on it: California Legislature Senate, *Journal of the Senate, during the 39th Session of the Legislature of the State of California (Volume 2)* (Sacramento: State Printing Office, 1911), 2600; See, also: “Alien Employment Forbidden.”

³⁸ At the turn of the twentieth century, 846,324 Massachusetts residents (out of a total population of 2,805,346) were foreign-born. See: United States, *Twelfth Census of the United States, 1900*.

³⁹ See: “Bill (H. on leave) to require the employment of United States citizens only as mechanics, workingmen and, on public works, 171; (H.) 625; referred to next General Court (yeas and nays), 646; motion to reconsider negatived (yeas and nays), 651”: Massachusetts General Court Senate, *Journal of the Senate for the Year 1895* (Commonwealth of Massachusetts, 1895); And see: “A Bill to require the employment of United States citizens only as mechanics, workingmen and, on public works, 85”: Massachusetts General Court Senate, *Journal of the Senate for the Year 1896* (Commonwealth of Massachusetts, 1896).

⁴⁰ See: Chapter 106, Section 14: “In the employment of mechanics and laborers in the construction of public works by the Commonwealth, or by a county, city or town, or by persons contracting with them, preference shall be given to citizens of the United States; and every contract for such works shall contain a provision to that effect. Any contractor who knowingly and willfully violates the provisions of this section shall be punished by a fine of not more than one hundred dollars for each offense”: Massachusetts, *The Revised Laws of the Commonwealth of Massachusetts: Enacted November 21, 1901, to Take Effect January 1, 1902* (Boston: Wright & Potter, State Printers, 1902), 918.

⁴¹ Sarah S. Elkind, *Bay Cities and Water Politics: The Battle for Resources in Boston and Oakland* (Lawrence, KS: University Press of Kansas, 1998), 109–13.

contentious votes, however, such bills were always stymied.⁴² Access to public construction jobs was increasingly becoming an exclusive “right of citizenship” in Massachusetts. But enforcing those provisions was another matter entirely.

Not all state governments were restricting the employment rights of noncitizens on construction jobs during the Gilded Age and the Progressive Era. Texas legislators did not even debate bills restricting the employment rights of noncitizens on public works projects prior to the outbreak of World War I.⁴³ Politicians in the Lone Star State had good reason to shun these proposals, as noncitizens comprised a significant component of their electorate. Alien suffrage rights in Texas were only repealed in 1918 (for primary elections) and 1921 (for general elections).⁴⁴

While state legislators often took the lead in debating and sometimes adopting “citizen only” and “citizen preference” policies in the late-nineteenth and early-twentieth centuries, they were not alone. After all, anti-immigrant union members were often the loudest voices clamoring for their passage and strict enforcement. And some of those laborers turned to membership requirements to restrict the employment rights of working-class noncitizens.

As immigration and labor historians have long recognized, trade unions were often the leading advocates for turn-of-the-century federal immigration restriction. Vociferous, racist campaigns against Chinese immigrants organized by west coast unions led directly to the passage of the Chinese Exclusion Act in 1882.⁴⁵ Other labor organizations, such as the American Federation of Labor, sought to reduce working-class European immigration throughout the Progressive Era.⁴⁶ But many unions not only aimed to prevent immigrants from entering the nation, some barred noncitizens – or those who had yet to begin the naturalization process – from membership.

In his 1912 study of the admission policies of major labor unions across the United States, French Eugene Wolfe found that ten required their members to be citizens or to have filed a formal declaration of intention to become a citizen. These (skilled craft) unions included the United Brotherhood of Carpenters and the United Brewery Workmen.⁴⁷ But few were harsher than the Bricklayers and Masons, whose national leadership usually “enforc[ed]” a citizenship requirement “to the point of excluding foreign-born workmen who may already have gained

⁴² For reasons of economy I will not cite each individual proposed bill. The indices give a good indication of the tenor of these bills (by looking at the terms “alien,” “citizen” and “public works”). Interestingly, in the first decade of the twentieth century, several of the proposals would have restricted employment only to aliens who had yet to declare their intention to become citizens of the United States, rather than all aliens. By the 1910s however, proposals returned to their original, harsher version - including one promoted by the state Building Trades' Union in 1914 - and would have limited employment to citizens. See: Massachusetts General Court Senate, *Journal of the Senate for the Year 1897, 1900, 1905, 1906, 1909, 1910, 1911, 1912, 1913, 1914* (Commonwealth of Massachusetts).

⁴³ I found no citizenship requirement debates for public works jobs prior to 1917 in late nineteenth- or early twentieth-century *Texas House* or *Senate* journals (State of Texas).

⁴⁴ This topic is discussed in significant detail in Chapter 1. Others who study alien suffrage in Texas include: Menchaca, *Naturalizing Mexican Immigrants*; Cantrell, “Our Very Pronounced Theory of Equal Rights to All.”

⁴⁵ See, especially: Saxton, *The Indispensable Enemy*; Mink, *Old Labor and New Immigrants in American Political Development*.

⁴⁶ See, among others: A. T. Lane, “American Trade Unions, Mass Immigration and the Literacy Test: 1900–1917,” *Labor History* 25, no. 1 (January 1984): 5–25; Catherine Collomp, “Labour Unions and the Nationalisation of Immigration Restriction in the United States, 1880–1924,” in *Migration Control in the North Atlantic World: The Evolution of State Practices in Europe and the United States from the French Revolution to the Inter-War Period*, ed. Andreas Fahrmeir, Olivier Faron, and Patrick Weil (New York: Berghahn Books, 2005), 237–52.

⁴⁷ French Eugene Wolfe, *Admission to American Trade Unions* (Baltimore, MD: Johns Hopkins University Press, 1912), 100–102.

admission into a local union without having taken steps to become naturalized.”⁴⁸ Nevertheless, Wolfe found that most unions did not adopt strict “citizen only” policies. In fifty-one other unions, Wolfe found that “immigrants [were] ordinarily admitted to membership without discrimination, or [were] affiliated in separate unions.”⁴⁹

Unions incorporated noncitizens into their ranks for both inclusive and utilitarian reasons. Several unions had long histories of (mostly European and Canadian) immigrant participation and were committed to the incorporation of (especially white) noncitizens into the labor movement.⁵⁰ These included major Progressive Era industrial unions like the United Mine Workers and the International Ladies’ Garment Workers’ Union.⁵¹ In other unions, however, leaders believed they had no choice but to open their ranks to noncitizens. As historian Robert Asher finds, “nativists had to choose between accepting the immigrants into their unions or risking a severe loss of bargaining power.” After all, if immigrants were barred from membership, they could “compete...with the existing ‘American’ unions.”⁵²

Union leaders also feared that noncitizens would become strikebreakers if they were denied membership. As the president of the National Brotherhood of Operative Potters argued:

Even though one honestly believes that it would be best for the future welfare of the country to keep out certain immigrants, that does not justify...doing an injustice to those already here. Our duty should be to imbue them with the principles of trade unionism...and thus prevent them from becoming a menace. It would not be fair to deny them the opportunity to become union men and then condemn them for becoming scabs and strike-breakers. There is neither wisdom nor justice in such a policy.⁵³

For these reasons, it was relatively rare for unions to overtly ban immigrants from membership owing to alienage in the Progressive Era. But membership policies were not the only means by which anti-immigrant labor leaders could limit the employment rights of resident noncitizens. As war erupted across Europe in 1914 and the United States was thrown into recession, unions demanded the expansion of public works projects to alleviate the effects of mass unemployment.⁵⁴ Some unions sought to confine those – and other – jobs to U.S. citizens.

Most famously, building on New York City Subway lines shut down as local unions demanded enforcement of the state’s ban on noncitizens from public construction jobs. Though leaders of the American Federation of Labor did not engage directly in the dispute, they did support the efforts of anti-immigrant New York unionists. The association’s national journal, *The Federationist*, condemned the decision of the New York State Legislature to amend its policy from a “citizen only” law to a “citizen preference” system at the height of the controversy. The AFL claimed that legislators were capitulating to contractors who “profit[ed] by paying low wages to aliens, thereby exploiting both American and immigrant workers.” Though *The*

⁴⁸ Wolfe, *Admission to American Trade Unions*, 101.

⁴⁹ Wolfe, *Admission to American Trade Unions*, 99–100.

⁵⁰ Indeed, while the early California labor movement was often inclusive of European laborers, unions were sometimes founded in direct opposition to Chinese immigrants. See, especially: Saxton, *The Indispensable Enemy*; Mink, *Old Labor and New Immigrants in American Political Development*.

⁵¹ Robert Asher, “Union Nativism and the Immigrant Response,” *Labor History* 23, no. 3 (1982): 341–46.

⁵² Asher, “Union Nativism and the Immigrant Response,” 331.

⁵³ Wolfe, *Admission to American Trade Unions*, 109 (n2).

⁵⁴ See, especially: Feder, *Unemployment Relief in Periods of Depression*; Sautter, “Government and Unemployment”; Amsterdam, “Before the Roar.”

Federationist refrained from advocating bans on noncitizens from all forms of public employment, it sharply criticized New York’s legislators for failing to offer “protection to American workers and American standards” of living.⁵⁵

Battles over blue-collar citizenship requirements were not limited to New York when the Great War broke out. In Arizona, fears among Anglo miners of growing competition from Southern and Eastern European immigrants and Mexican refugees rose precipitously in the early 1910s. In 1914, anti-immigrant miners successfully campaigned for a referendum requiring all private businesses in the state (which employed at least five people) to retain a workforce in which U.S. citizens comprised at least eighty percent of all workers.⁵⁶ Implementation of the Eighty Percent Law was delayed, however, as foreign governments vociferously protested it and opponents challenged its constitutionality in court.⁵⁷ In *Truax v. Raich* (1915), the U.S. Supreme Court struck down the law as a violation of the equal protection rights of noncitizens and a usurpation of federal powers to set national immigration policy.⁵⁸

Though the high court determined that state governments could not compel *all* private employers to hire U.S. citizens, it still gave wide latitude to employment discrimination against noncitizens. In that same year, the U.S. Supreme Court upheld state bans on noncitizens from public (and publicly contracted) work. Moreover, Progressive Era judges usually deferred to the broad police powers of state legislatures to restrict working-class occupational licenses (such as liquor or street vendor licenses) to citizens.⁵⁹

U.S. citizenship never became a requirement for most forms of blue-collar employment in the Gilded Age and the Progressive Era. Some “citizen only” restrictions were deemed unconstitutional, while others went unenforced. Nevertheless, for Italian construction workers who were out of work for months in New York City and Mexican miners in Arizona whose employment rights were thrown into legal jeopardy, American citizenship could mean the difference between work and penury. These requirements made (exclusive) “citizenship rights” a tangible reality in the lives of a growing number of workers in the United States. As war and anti-radical hysteria swept the nation, nativists sought to add even greater weight to those “citizenship rights.”

⁵⁵ “New York’s Alien Labor Law,” *The American Federationist* 22 (April 1915): 276.

⁵⁶ See, especially: Luis Plascencia, “Attrition through Enforcement and the Elimination of a ‘Dangerous Class,’” in *Latino Politics and Arizona’s Immigration Law SB 1070*, ed. Lisa Magana and Erik Lee (New York: Springer, 2013), 102; Jacobson, Tichenor, and Durden, “The Southwest’s Uneven Welcome: Immigrant Inclusion and Exclusion in Arizona and New Mexico,” 12.

⁵⁷ Among many press accounts, see: “Say Arizona Bill Violates Treaties,” *New York Times*, December 5, 1914, 16; “Anti-Alien Law Is Protested,” *Los Angeles Times*, December 6, 1914, 14.

⁵⁸ See, among others: Higham, *Strangers in the Land*, 183; Motomura, *Americans in Waiting*, 69.

⁵⁹ Early twentieth-century law reviews frequently explored alien employment policies. Some leading articles included: “Prohibition of Employment of Aliens in Construction of Public Works,” *Columbia Law Review* 15, no. 3 (March 1915): 263–65; Charles M. Kneier, “Discrimination Against Aliens by Municipal Ordinances,” *Georgetown Law Journal* 16, no. 2 (February 1928): 143–64; L.H., “Note Constitutionality of Legislative Discrimination Against the Alien in His Right to Work,” *University of Pennsylvania Law Review* 83, no. 1 (November 1934): 74–82; David Fellman, “The Alien’s Right to Work,” *Minnesota Law Review* 22, no. 2 (January 1938): 137–76; For a thorough assessment of changing court rulings toward alien employment restrictions from the late nineteenth century to the present, see: Kelly, “Wavering Course,” *Georgetown Immigration Law Journal* 25, no. 3 (Spring 2011).

II. Reframing Exclusive Citizenship Rights Claims: Employment Restrictions in a Time of War, Anti-Radicalism, and Quotas:

When nativists sought to restrict the employment rights of noncitizens during the Gilded Age and Progressive Era, they usually claimed that these barriers were needed to combat an alleged surfeit in the supply of labor. But when the United States entered into war, nativists expanded their arguments to allege that employers could only trust citizen workers to be loyal to the country and to its free-market economy.

While the anti-immigrant forces dramatically succeeded in reshaping federal immigration legislation in the 1920s, they were much less successful in making citizenship a requirement for blue-collar work. Nativists continued to bemoan that many “citizen only” or “citizen preference” laws existed only on paper. To strengthen the enforcement of such policies, they increasingly argued that greater identification mechanisms were needed to distinguish citizens from noncitizens in the country. While those documentation demands failed to materialize in the 1920s, they previewed more widespread – and ultimately successful – nativist efforts to obtain nationwide alien registration requirements by the end of the Great Depression.

U.S. entry into World War I transformed the lives of immigrants in the United States as noncitizens from Germany and Austria-Hungary were declared “enemy aliens.” German nationals and German Americans, especially, came under intense public scrutiny and were subjected to acts of vigilante violence.⁶⁰ But anti-immigrant hysteria was not directed solely at “enemy aliens.” Following the outbreak of the Bolshevik Revolution in Russia, recent immigrants (especially those from Southern and Eastern Europe) were increasingly viewed as potential radical political agents.⁶¹

As fears of enemy saboteurs and communist subversives swept the nation, some employers declared that they would henceforth only hire American citizens. Packard Motor Company’s president, Alvan Macauley, announced a “citizen only” hiring policy in 1919. Only harsh measures would ensure that Packard’s workers could “speak and write our language and be reasonably familiar with our national history, ideas and government” according to Macauley.⁶² Similarly, William Bandler, president of the Clothing Manufacturers’ Association of New York, declared in 1920 that he would only hire U.S. citizens as he claimed that too many noncitizens were trying to “sovietize the industry.”⁶³

Despite the efforts of Bandler and his ilk, a massive campaign for “citizen only” employment did not take hold in American industry after World War I. When Massachusetts hosted a conference on “Americanization in Industries” in 1919, social workers, employers, and politicians from across the country debated whether companies should compel their workers to

⁶⁰ See, especially: Capozzola, *Uncle Sam Wants You*; For an excellent case study of starkly changing attitudes in Nebraska during the Progressive and WWI eras, see: Folsom, “Tinkerers, Tipplers, and Traitors.”

⁶¹ See, broadly: “Chapter 8: War and Revolution” and “Chapter 9: Crusade for Americanization”: Higham, *Strangers in the Land*, 194–263; and “Chapter 10: The Triumph of Nativism”: Daniels, *Coming to America*, 265–84.

⁶² Alvan Macauley, “What Part Should Industry Take in Naturalization Work?” (read by Mr. W. J. Schultz): National Conference on Americanization in Industries, *Proceedings of the National Conference on Americanization in Industries, Held at the Atlantic House, Nantasket Beach, Massachusetts, June 22, 23 and 24, 1919* (New York, 1919), 91–95.

⁶³ “Clothing Factory Bars Alien Workers,” *New York Times*, December 31, 1920, 6.

become citizens to gain or even retain employment. While Packard Motor Company used the occasion to endorse its “citizen only” hiring policy, most attendees rejected compulsion.

Many attendees argued that making citizenship a requirement for employment cheapened its value. Charles Simeon of the Morgan Construction Company in Worcester, Massachusetts, warned that “You can’t become an American over night. It is not like changing a suit of clothes. You have got to feel it, and be it.”⁶⁴ A representative of the Ohio Board of Education similarly argued that it was “un-American...to *compel*” a worker to naturalize. Instead, he claimed that “the American thing” to do required “establish[ing] the bond between us that that man wants to become an American.”⁶⁵

Another attendee claimed that employers demanding U.S. citizenship of their workers were delusional. E. E. Bohner of the Associated Industries of Massachusetts argued that his:

practical and most important objection to...making citizenship a condition of employment, is that we cannot live up to it. In a year of plentiful labor, it is easy enough to say that only American citizens will be employed. Every worker present knows that industry could not live up to this rule in a time of labor shortage.⁶⁶

Most company representatives sharply rejected endorsing proposals to make citizenship a requirement for work. In fact, one of only four resolutions adopted by the conference was its “disapprov[al of] making naturalization a condition of employment.” Representatives did, however, “recommend that every community establish at least one school for citizenship.”⁶⁷ As industrial relations scholar William Leiserson noted in 1924, while employers may have feared noncitizens as enemy agents or subversives during a time of war and postwar hysteria, few were willing to limit their pool of potential workers to American citizens (especially as the economy improved).⁶⁸

Though nativists failed to convince most employers to ban noncitizen workers in the aftermath of World War I, they were succeeding on another key front in the early 1920s. AFL leadership once more clamored for federal legislation to restrict the number of foreigners eligible to move to the country. They were joined by eugenicists like Madison Grant, “patriotic” organizations like the newly-formed American Legion, and the overtly racist and xenophobic Ku Klux Klan. Their advocacy was successful as Congress enacted the “Emergency Quota Act” of 1921 and the even more restrictive Johnson-Reed Act of 1924. The latter drastically reduced immigration from Southern and Eastern European countries by setting quotas at a two percent ratio of the national population in 1890 and effectively cut off immigration from East and South Asia altogether. In a concession to agricultural interests in the Southwest that did not want to

⁶⁴ National Conference on Americanization in Industries, *Proceedings of the National Conference on Americanization in Industries*, 104.

⁶⁵ National Conference on Americanization in Industries, *Proceedings of the National Conference on Americanization in Industries*, 86.

⁶⁶ See: E. E. Bohner, Industrial Service Secretary, Associated Industries of Massachusetts, Springfield, MA, “Citizenship in Industry,” in National Conference on Americanization in Industries, *Proceedings of the National Conference on Americanization in Industries*, 97.

⁶⁷ National Conference on Americanization in Industries, *Proceedings of the National Conference on Americanization in Industries*, 106.

⁶⁸ William M. Leiserson, *Adjusting Immigrant and Industry* (New York: Harper, 1924), 42.

restrict would-be farm laborers from Mexico, countries in the Americas were not included in the quota system.⁶⁹

As before the war, nativists continued to advocate for restrictions in the employment rights of noncitizen construction workers in the 1920s. Occasionally, they were successful. As John Oscar Davis has found, both white and black citizens in Fort Worth, Texas campaigned in early 1921 for the firing of noncitizen (mostly Mexican immigrant) laborers who had been hired for local public works duties. This unusual interracial, anti-immigrant alliance was successful in its demands. For Mexican immigrants who lost their jobs, the “citizen only” employment policy was a nightmare. Several were arrested for vagrancy, convicted, and forced to endure chain-gang labor.⁷⁰

While anti-immigrant activists in Fort Worth succeeded in restricting noncitizen employment rights at the height of a major postwar recession, nativists had a harder time convincing legislators and contractors to restrict employment to citizens as the economy entered the boom years of the Roaring Twenties. Though California nativists vociferously protested lax enforcement of the state’s “citizen only” public employment policy and even sought to further restrict construction work to citizens, their efforts were stymied throughout the 1920s. In response to claims that “aliens [were] being given employment on city work,” the Los Angeles City Council unanimously adopted a resolution in January 1925 demanding that “all heads of city departments” henceforth “rigidly enforce” the requirement that only citizens be employed.⁷¹ But building trades unions in Los Angeles were not satisfied by these promises. Instead, they demanded that a “citizen only” policy be extended to publicly *contracted* construction projects. In 1926, anti-immigrant unionists succeeded in putting that proposal before voters on a city-wide referendum.⁷² The (conservative and anti-union) *Los Angeles Times* blasted the proposal just days before the election. *The Times* warned that it was an attempt by union officials to artificially inflate wages on city contracts. The paper asked why taxpayers should have to pay higher wages if noncitizens – especially recent immigrants from Mexico – were willing to work at lower rates.⁷³ *The Times* and their allies won the day as voters rejected the proposal.⁷⁴

Mexican immigrants were not just under attack by union officials, however. Nativist unionists made common cause with eugenicists in the mid-1920s and sought to expand the new quota regime to restrict immigration from Mexico. But southwestern agribusiness interests stymied those proposals throughout the decade. Growers rarely defended the employment rights of Mexican immigrant workers in the name of equity. Instead, agribusinesses argued that noncitizens from Mexico were willing do backbreaking farm labor that most white citizens avoided during booming economic times. As historian Natalia Molina emphasizes, growers

⁶⁹ See, broadly: Mae Ngai, “The Architecture of Race in American Immigration Law: A Reexamination of the Immigration Act of 1924,” *Journal of American History* 86, no. 1 (June 1999): 67–92; Natalia Molina, *How Race Is Made in America* (Berkeley: University of California Press, 2013); See also: Chapter 5, “Progressivism, War, and Scientific Policymaking: The Rise of the National Origins Quota System, 1900-1928” in: Daniel Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton, NJ: Princeton University Press, 2002), 114–49.

⁷⁰ John Oscar Davis, “Anti-Depression Public Works: Federal-Aid Roadbuilding, 1920-1922” (Iowa State University, 2002), 194–95.

⁷¹ “Must Hire Citizens,” *Los Angeles Times*, January 24, 1925, A6.

⁷² “Council Orders Alien Ban Vote,” *Los Angeles Times*, September 18, 1926, A1.

⁷³ “Times’ Review of Candidates and of City, County and State Measures on Ballot,” *Los Angeles Times*, October 31, 1926, 2.

⁷⁴ However, as we shall see in the next section, with the onset of mass unemployment once more in the early 1930s, this proposed ban would return with a vengeance: “Aliens Barred from City Jobs,” *Los Angeles Times*, April 17, 1931, A10.

deliberately promoted the image of Mexican workers as temporary migrants (as opposed to permanent immigrants) and claimed their alienage served as an asset to Anglo residents. Farm owners warned that if they were unable to employ Mexican laborers, they would be forced to recruit other nonwhite *citizen* workers (such as African Americans and Puerto Ricans) to the region. Agribusiness interests emphasized that the latter groups could not be forced to leave in the event of a recession when white workers might want jobs that they had long eschewed. But Mexican workers, as noncitizens, could be deported *en masse* in the event of widespread unemployment.⁷⁵ That gruesome calculation would become a living reality for Mexican immigrants and Mexican Americans in the Southwest when the Great Depression struck just a few years later.⁷⁶

In Massachusetts, by contrast, growing rates of industrial unemployment *prior* to the Crash of 1929 spurred nativist demands for “citizen only” blue-collar employment. In 1928, the Massachusetts Division of Immigration and Americanization (a state agency which aided in the socioeconomic incorporation of resident immigrants) began noticing that tire manufacturers in the city of New Bedford had begun insisting that their workers be U.S. citizens or immigrants who had begun the naturalization process.⁷⁷ The newspaper the *Boston Traveler* vociferously opposed the policy. It warned that making citizenship a condition of employment would mean for many immigrants, their “first step toward citizenship” would hold “no real significance” to them beyond “trying to beat the company rule.” For those who would or could not naturalize, the *Traveler* wondered if authorities in New Bedford would simply let them “starve for want of employment, when the only fault of the idle was their neglect of becoming citizens?”⁷⁸ But another major Massachusetts newspaper, the *Boston Herald*, endorsed the “citizen only” rule. It argued that such a hiring policy would “reduce the number of alien employees, persons who benefit by American institutions” but “accept no responsibility for the preservation and improvement of those institutions.”⁷⁹ Despite the objections of the *Traveler*, the *Herald*’s perspective won out in New Bedford. A year later, tire manufacturers in the city were still demanding citizenship papers from their employees.⁸⁰ But it was not always easy for many immigrants – and even native-born Americans – to procure those documents.

Some immigrants were unable to provide proof of citizenship or “first papers” as they were unable to naturalize. Most notably, East and South Asian immigrants were barred even from filing formal “declarations of intention” owing to a racist federal ban on their

⁷⁵ See, generally: Chapter 1: “Placing Mexican Immigration within the Larger Landscape of Race Relations in the United States”: Molina, *How Race Is Made in America*, 19–42.

⁷⁶ As Bloemraad and Fox find, Mexican immigrants had much lower rates of naturalization than most other immigrant populations in the early twentieth century. This was due to, among many factors, low rates of immigrant incorporation in the Southwest in general and racist treatment directed particularly at Mexican immigrants by political and economic powerbrokers: Fox and Bloemraad, “Beyond ‘White by Law.’”

⁷⁷ The Massachusetts Division of Immigration and Americanization (and similar state agencies which emerged in the Progressive Era) are explored in: Christina A. Ziegler-McPherson, *Americanization in the States: Immigrant Social Welfare Policy, Citizenship, & National Identity in the United States, 1908-1929* (Gainesville, FL: University Press of Florida, 2009); See, also: Massachusetts Department of Education, “Annual Report of the Division of Immigration and Americanization for the Year Ending November 30, 1928” (Boston: Commonwealth of Massachusetts, 1928), 12–13.

⁷⁸ *Boston Traveler*, January 11, 1928, in: Massachusetts Department of Education, “Annual Report of the Division of Immigration and Americanization, 1928,” 13.

⁷⁹ *Boston Herald*, January 10, 1928, in: Massachusetts Department of Education, “Annual Report of the Division of Immigration and Americanization, 1928,” 13.

⁸⁰ Massachusetts Department of Education, “Annual Report of the Division of Immigration and Americanization for the Year Ending November 30, 1929” (Boston: Commonwealth of Massachusetts, 1929), 15.

naturalization.⁸¹ Other immigrants were unable start the citizenship process because there was no record of their entry into the United States. While federal authorities had usually compiled detailed files of turn-of-the-century immigrants sailing to American shores, records of migrants who had crossed U.S. land borders were frequently less thorough (or even nonexistent). As proof of entry was required of most immigrants to file a declaration of intention and to naturalize, many Canadian and Mexican immigrants were unable to provide “first papers” or “citizenship papers” if employers made it a requirement for employment.⁸²

Moreover, many naturalized – and even native-born – citizens found providing evidence of their American nationality to be a challenge in the 1920s. Throughout the Progressive Era, millions of immigrants derived U.S. citizenship through the naturalization of their father (if a minor) or husband (prior to 1922). But evidence of their nationality was often limited to a single line noting their name on that other person’s naturalization file. Such “proof” of citizenship was not always readily available to those who derived their citizenship in this manner.⁸³ Conversely, while Massachusetts had long required local authorities to issue birth certificates, many other states had only begun mandating the issuance of birth certificates in the late-nineteenth and early-twentieth centuries.⁸⁴ It was not easy, therefore, for employers or even authorities to distinguish citizens from noncitizens in 1920s America.

Nativists warned that these documentation limitations were aiding “alien smugglers” who sought to circumvent the new quota system. To combat unauthorized immigration, nativists like James Davis fought to require the mass registration of all noncitizens in the country. Davis, a staunch immigration restrictionist who served as U.S. Secretary of Labor between 1921 and 1930, repeatedly campaigned for federal legislation that would require noncitizens to prove their means of entry into the country, register with federal authorities, and carry identification documents distinguishing them from both citizens and undocumented immigrants.⁸⁵ He claimed alien registration would do more to prevent undocumented immigration to the United States than the militarization of America’s borders and police. According to Davis, the weight of “the whole army and navy” combined with “the aid of every state and municipal police force,” would not be

⁸¹ An excellent contemporaneous work which examines the implications of the intersection of state and federal restrictions on the lives of East and South Asian immigrants in an age of racist naturalization bans is: Konvitz, *The Alien and the Asiatic in American Law*.

⁸² The 1906 Naturalization Act aimed to standardize the naturalization process across the country and set documentary requirements (including proof of entry into the country). Prior to 1906, however, many exit-entry records were not closely kept at the border. See, among many works: Marian L. Smith, “The Immigration and Naturalization Service (INS) at the U.S.-Canadian Border, 1893-1993: An Overview of Issues and Topics,” *Michigan Historical Review* 26, no. 2 (October 2000): 127–47; Marian L. Smith, “By Way of Canada: U.S. Records of Immigration Across the U.S.-Canadian Border, 1895-1954,” *Prologue* 32, no. 3 (Fall 2000): 192–99; Thomas A. Klug, “The Immigration and Naturalization Service (INS) and the Making of a Border-Crossing Culture on the US-Canada Border, 1891-1941,” *American Review of Canadian Studies* 40, no. 3 (July 2010): 395–415; See also, broadly: Ngai, *Impossible Subjects*.

⁸³ Women’s derivative citizenship - and its repeal - will be discussed in great detail in Chapter 5. Key works on these topics include: Bredbenner, *A Nationality of Her Own*; Gardner, *The Qualities of a Citizen*.

⁸⁴ See, especially: Shane Landrum, “Documenting Citizens: Birth Certificates and American Identities, 1890-Present” (Brandeis University, 2012); Susan J. Pearson, “‘Age Ought to Be a Fact’: The Campaign against Child Labor and the Rise of the Birth Certificate,” *Journal of American History* 101, no. 4 (March 2015): 1144–1165.

⁸⁵ Davis repeatedly urged this policy throughout the 1920s. See: “Alien Registration Law Urged by Davis,” *Washington Post*, October 23, 1921, 7; “Must Educate Aliens, Says James J. Davis,” *Los Angeles Times*, November 19, 1922, 13; James Davis, “Voice of the People: Secretary Davis on the Enrollment of Immigrants,” *Chicago Daily Tribune*, July 9, 1923, 8; “Alien Enrolment Advocated by Davis,” *New York Times*, August 20, 1923, 4; “Davis Raps Red Agitators,” *Los Angeles Times*, October 12, 1923, 11; “Alien Registration Opposed as Unjust,” *New York Times*, March 26, 1926, 20; “Offers to Aid Davis in Alien Check-Up,” *New York Times*, August 12, 1927, 5.

able to “completely end the smuggling of aliens.” But requiring all authorized noncitizens to register annually with federal authorities would “combine[] efficiency with economy” in distinguishing them from undocumented immigrants while “wag[ing] relentless warfare against violators of the law.”⁸⁶ Though Davis found broad support for alien registration from nativists across the country, his proposal was not unanimously celebrated.⁸⁷

Many opponents stridently challenged alien registration bills and decried them as un-American. Jewish organizations warned that these measures were eerily similar to identification requirements that had enabled institutionalized anti-Semitism in the former Russian Empire.⁸⁸ In 1925, Adolph Stern, leader of the Independent Order of B'rith Abraham (a Jewish fraternal and advocacy group then numbering 136,000 members) denounced Davis's efforts for ““attempt[ing] to revive the old system of Russia, the injustice of which is self-evident.””⁸⁹ The American Civil Liberties Union similarly declared identification requirements to be ““contrary to American traditional policy toward aliens residing here”” when a new alien registration proposal was introduced in Congress in 1926.⁹⁰ As the economy boomed and fears of war and radical immigrant political activists declined, the American Federation of Labor formally also opposed mandatory registration. (New) AFL President William Green decried proposals to “register and fingerprint” noncitizens as something that “No liberty loving, just-minded citizen of the United States should advocate for.” Green argued that, “Millions of immigrants ha[d] come to this country to free themselves from such espionage in their homelands” and should not be subjected to it in the United States.⁹¹ This broad coalition of opponents helped to ensure the defeat of each alien registration proposal debated in Congress throughout the 1920s.⁹²

Before the Crash of 1929, therefore, private employers and trade unions sometimes required proof of citizenship or a declaration of intention in order to access blue-collar work. Similarly, state governments often maintained “citizen only” or “citizen preference” policies for public works jobs. With limited means to distinguish citizens from noncitizens in the 1920s, many of those policies went unenforced. But when the economy faltered in the autumn of 1929, demands for exclusive “citizenship rights” were made even more concrete in the lives of immigrants across the country.

III. Demanding Exclusive “Citizenship Rights” and Identifying Noncitizens: Blue-Collar Work, Immigrants, and Alien Registration in the Great Depression

Following the onset of Great Depression, laborers across the country clamored for expanded public works projects to alleviate the plight of mass unemployment. Many blue-collar workers – often white, native-born men – also demanded that employers and authorities reduce or eliminate competition for increasingly scarce work. In this context of widespread joblessness

⁸⁶ Davis, “Voice of the People: Secretary Davis on the Enrollment of Immigrants,” *Chicago Daily Tribune*, July 9, 1923, 8.

⁸⁷ “Alien Registration,” *Washington Post*, June 13, 1924, 6; “Offers to Aid Davis in Alien Check-Up,” *New York Times*, August 12, 1927, 5.

⁸⁸ “Protest Alien Registry,” *New York Times*, December 20, 1922, 14; “Attacks Proposed Alien Registration System,” *New York Times*, June 8, 1925, 16; See Garland's article for an excellent analysis of how these groups debated these measures in the context of a short-lived state-level Alien Registration Act passed in Michigan in 1931: Libby Garland, “Fighting to Be Insiders,” *American Jewish History* 96, no. 2 (June 2010): 109–140.

⁸⁹ “Attacks Proposed Alien Registration System,” *New York Times*, June 8, 1925, 16.

⁹⁰ “Alien Registration Opposed as Unjust,” *New York Times*, March 26, 1926, 20.

⁹¹ “Alien Registration Scored as Czaristic,” *New York Times*, January 10, 1926, 7.

⁹² See, also: Thatcher, *Immigrants and the 1930's*, 227–29.

and labor protectionism, noncitizens – especially nonwhite immigrants – were increasingly targeted by nativists for employment restrictions.

This section explores how nativists increasingly claimed blue-collar work as an exclusive “right of citizenship” in the 1930s. It also examines how campaigns to establish a federal alien registration system expanded and evolved from nativist demands to strengthen the enforcement of “citizen only” and “citizen preference” policies. Together, growing blue-collar citizenship requirements and the establishment of a federal noncitizen identification regime added both greater weight to U.S. citizenship and hardened distinctions between citizens and noncitizens and documented and undocumented immigrants in American society.

As more and more workers lost their jobs in the early years of the Great Depression, elected officials turned to construction projects as a means of putting some of those laborers back to work. Mayor James Michael Curley of Boston announced that he would spend more money on public works projects than any other mayor in history of the state.⁹³ State governments similarly announced that they would expedite or expand construction projects in an effort to reduce unemployment.⁹⁴ And the Hoover Administration responded to the Depression by nearly doubling funding for federal public works programs.⁹⁵ But these efforts were not enough to stem the tide of unemployment. Curley did not raise enough funds to hire the legions of jobless laborers in Boston.⁹⁶ State and federal public works projects came nowhere close to alleviating the crisis. By 1933, the national unemployment rate stood at twenty-five percent.⁹⁷

As layoffs increased, the Hoover Administration came under intense pressure to further restrict immigration to the country. Members of “patriotic” organizations and labor groups besieged the administration and Congress to go beyond enforcing the quota system to reduce rates of immigration.⁹⁸ Hoover agreed to their demands by drastically reducing the number of visas issued to would-be immigrants. If an applicant was deemed likely to become a “public charge” by a consular or border patrol officer, he or she would be denied entry into the United States. This “public charge” provision also applied to prospective immigrants from the western

⁹³ Keyssar, *Out of Work*, 289.

⁹⁴ See, for instance Fein’s dissertation which especially examines public works road-building projects in New York: Michael Reuben Fein, “Public Works: New York Road Building and the American State, 1880-1956” (Brandeis University, 2003).

⁹⁵ David M Kennedy, *Freedom from Fear: The American People in Depression and War, 1929-1945* (New York: Oxford University Press, 1999), 57–58.

⁹⁶ Keyssar, *Out of Work*, 289.

⁹⁷ Richard Jensen, “The Causes and Cures of Unemployment in the Great Depression,” *Journal of Interdisciplinary History* 19, no. 4 (Spring 1989): 557.

⁹⁸ J.B. Trevor, “chairman of the Board of American Coalition of Patriotic Societies” urged immigration restriction, especially targeting undocumented immigrants. See: “Alien Registration Urged by J. B. Trevor,” *New York Times*, March 14, 1932, 34; In May 1931 the AFL leadership met with President Hoover and Secretary of Labor William Doak to support their efforts to further reduce immigration and to deport undocumented immigrants. See: A.F.L., “Minutes of the Meeting of the Executive Council American Federation of Labor A.F. of L. Building, Washington, D.C. May 5-13, 1931” (American Federation of Labor, May 5, 1931), RG4-008 Box 21: AFL-CIO Records, American Federation of Labor, Executive Council Minutes, 1893-1955, George Meany Memorial AFL-CIO Archive, University of Maryland, College Park; Many works make this point, for a brief survey of this time period, see: Aristide R Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (New York: Russell Sage Foundation, 2006), 267–72; See also, Chapter 4: “The Executive Response to Immigrants in Depression: Public Charge Policy and Repatriation” in Thatcher, *Immigrants and the 1930’s*, 99–152.

hemisphere, drastically reducing border crossings from Canada and Mexico.⁹⁹ Mexican immigrants, who had numbered over one hundred thousand in 1924, plunged to just over two thousand in 1932.¹⁰⁰ Nativists did not limit their campaigns to reducing national immigration rates. They also demanded that state governments restrict the employment rights of blue-collar noncitizens as jobs became scarce.

Just months before the Stock Market Crash in 1929, building trades unions in California sponsored legislation banning the employment of noncitizens from publicly funded construction work in the state. Once more, employers mobilized against the bill. In southern California, contractors recognized that many of their workers were citizens of Mexico. While employers claimed that they preferred to hire U.S. citizens, they swore that they could not find enough willing to do the necessary “heavy pick-and-shovel labor, particularly on road gangs or in desert construction work.” Opponents of the bill also recycled racist warnings long bandied by agribusiness interests. The *Los Angeles Times* argued that white (citizen) workers were deluding themselves if they thought they would benefit from this legislation. The *Times* claimed that if Mexican nationals were purged from employment, contractors would simply recruit nonwhite citizens from other parts of the country to work on state-funded construction projects.¹⁰¹ Contractors won the day and the bill – though hotly contested – was defeated.¹⁰²

Just two years later, however, mass unemployment had intensified nativist demands to restrict the employment rights of blue-collar noncitizens in California. Similar legislation barring private contractors from hiring noncitizen employees on publicly funded construction projects was introduced in the State Legislature and swiftly enacted into law.¹⁰³ The *Los Angeles Times* did not reverse course to endorse such a bill. However, it opted not to mount another campaign against it during this period of growing mass unemployment.¹⁰⁴

California was not the only state to turn against immigrants’ employment rights in the early years of the Great Depression. The Massachusetts Division of Immigration and Americanization noted in 1930 that the state’s “citizen preference” hiring policy for public construction work had gone largely unnoticed in previous years, “when there was no pressure for employment.” But the recent “scarcity of work...ha[d] stimulated citizens to seek” public works jobs in significant numbers. When state authorities reminded contractors of the citizen

⁹⁹ For an excellent analysis of the historical use of the “likely to become a public charge” clause, see Chapter 3: “Gender, Dependency, and the Likely to Become a Public Charge Provision” in Moloney, *National Insecurities*, 79–104; For a brief survey of this topic, see: Zolberg, *A Nation by Design*, 268–69.

¹⁰⁰ Jorge Durand, Douglas S. Massey, and Rene M. Zenteno, “Mexican Immigration to the United States: Continuities and Changes,” *Latin American Research Review* 36, no. 1 (2001): 109; Zolberg, *A Nation by Design*, 269.

¹⁰¹ “Public Work Menaced,” *Los Angeles Times*, April 20, 1929, 1–2.

¹⁰² The *Los Angeles Times* made overtly racist arguments to justify their position. The paper claimed Mexican laborers were preferable employees owing to their marginalized and precarious status as noncitizens. The *Times* also claimed that “The Filipinos cannot do the work as well; the Porto Rican negro, while capable of the work, is untractable and generally undesirable.” See: “An Act to Swat Taxpayers,” *Los Angeles Times*, April 20, 1929, A4.

¹⁰³ See: Stats. 1931, p. 910 in California, *Deering’s Code of Civil Procedure of the State of California: Adopted March 11, 1872, with Amendments up to and Including Those of the Fifty-Second Session of the Legislature, 1937* (San Francisco, CA: Bancroft-Whitney Company, 1937).

¹⁰⁴ The paper did, however, discuss the layoffs of noncitizen employees on the front page of the paper when the law became effective in August 1931. See: “Aliens Dropped from Jobs Here,” *Los Angeles Times*, August 24, 1931, A1; This particular policy was, however, repealed six years later. See: “Public Works”: “Act 6430 Employment of Aliens on Public Works,” “[Stats. 1931, p. 910; Amended by Stats. 1935, p. 1577; Repealed by Stats. 1937, p. 328].” California, *Deering’s Code of Civil Procedure of the State of California*, 3338.

preference hiring law, “many aliens lost their work.” Division officials warned that these firings were causing significant harm to “non-English speaking” and “illiterate” immigrants whose “attempts toward citizenship must, of course, be fruitless until they can qualify educationally for citizenship.” But there was little Division officials could do to help these immigrants obtain employment until they naturalized.¹⁰⁵

Similarly, many immigrant workers in Massachusetts found that unless they were citizens – or had begun the naturalization process – that they would be denied work in the *private* sector. Massachusetts Division of Immigration and Americanization officials reported in 1930 that a growing number of “manufacturers and business firms ha[d] introduced the policy of giving preference in employment to those who are citizens.” Certain Massachusetts businesses “canvassed their employees to ascertain their citizenship status” while others even “made the direct suggestion to their alien employees that steps toward citizenship must be taken.”¹⁰⁶

In Texas, the state’s policy of hiring laborers on public works jobs irrespective of citizenship also came under attack following the Crash of 1929. In 1931, the State Legislature enacted a “citizen preference” policy into law for all public construction work in the state.¹⁰⁷ Two years later, Governor Miriam Ferguson even endorsed a measure which sought to ban private employers from hiring aliens for publicly contracted work. Though the proposed ban was stymied in the legislature, the preference policy added greater weight to citizenship in the Lone Star State.¹⁰⁸ For immigrants who lived in California, Massachusetts, or Texas, the meaning of “citizenship rights” had acquired significant heft in a time of mass joblessness. But state legislatures were not alone in restricting the employment rights of noncitizens.

Union membership policies could also harden distinctions between citizens and noncitizens during the Great Depression. Harold Fields, a prominent advocate for immigrant rights in the 1930s as director of the National League for American Citizenship, frequently wrote about the harm union membership policies could cause immigrant workers. Fields claimed in 1930 that of forty-two leading labor unions in the country, “one-third closed their membership to aliens.” Moreover, he argued that those restrictive unions “had a membership of 1,300,000 out of a total of 1,500,000 memberships in the forty-two organizations.” Though Fields failed to identify *how* he calculated his findings, his claims were widely reproduced in the early-to-mid 1930s, appearing in multiple *New York Times* articles, the *South Atlantic Quarterly*, and (his own) scholarly publications. More than any other individual, Fields helped propagate the view that citizenship was fast becoming a requirement for unionized, blue-collar work during the Great Depression.¹⁰⁹

¹⁰⁵ Massachusetts Department of Education, “Annual Report of the Division of Immigration and Americanization for the Year Ending November 30, 1930,” (Boston: Commonwealth of Massachusetts, 1930), 5–6.

¹⁰⁶ Massachusetts Department of Education, “Annual Report of the Division of Immigration and Americanization, 1930,” 5.

¹⁰⁷ See: Acts 1931, 42nd Legislature, page 69, chpt. 46: Texas, *Vernon’s Texas Statutes, 1948: Containing All Laws of a General and Permanent Nature to the End of the 50th Legislature, Regular Session, 1947* (Vernon Law Book Co., 1948).

¹⁰⁸ See the proposed, but not enacted: “An Act providing that no person, firm, corporation, association, partnership, contractor, or subcontractor, performing any public work for the State, or for any county, municipality, or other political subdivision of this State, shall employ any person who is not a citizen of the United States,” Texas House of Representatives, *Journal of the House of Representatives of the First Called Session of the Forty-Third Legislature of the State of Texas*, 1933, 326.

¹⁰⁹ Fields made these claims in October 1930 in the *New York Times*: Harold Fields, “Unemployment Opens a New Alien Problem,” *New York Times*, October 19, 1930; Just months later, his research on the topic was again discussed in the *New York Times*: “Employment Curb on Aliens Scored,” *New York Times*, December 28, 1930, N3; Fields made similar claims (with slightly different figures) early in the first issue of 1931 of the *South Atlantic Quarterly*: Fields, “Unemployment and the Alien”; Some of

Several of Fields's contemporaries challenged his findings. Aside from restrictions in the "the building trades, the printing industry, the railroads and the amusement industry," economist David Saposs argued in 1931 that "labor unions did not place a great hardship" on most noncitizens.¹¹⁰ Even the Foreign Language Information Service – a major immigrant rights, resource, and advocacy nonprofit organization in the 1920s and 1930s¹¹¹ – believed Fields's findings were inflated. The FLIS investigated union membership bylaws in 1938 and identified several citizenship requirements. Of one hundred-seventy unions studied (most of which were American Federation of Labor or Congress of Industrial Organization affiliates), the FLIS found that nineteen required citizenship for membership and twenty-four required a declaration of intention to become a citizen. However, those that mandated citizenship were usually not large, industrial unions. The FLIS found that they were disproportionately comprised of government employees (such as post-office workers and civil servants).¹¹² "Citizen only" membership requirements for blue-collar unions, therefore, were probably not as broad as Fields claimed in his (often cited) accounts.¹¹³ However, they would still be perceived to be – and sometimes were – exclusive "rights of citizenship" in practice.

But many American citizens found those economic "rights of citizenship" closed to them in the 1930s. Married women were disproportionately fired or laid off during the Great Depression, as their employers and governments often deemed them to be expendable workers compared to their "breadwinner" husbands.¹¹⁴ African Americans, often the last hired and the first fired in industrial occupations, faced far higher rates of unemployment than white workers

Fields's other publications on employment restrictions aimed at noncitizens include: Harold Fields, "Closing Immigration throughout the World," *American Journal of International Law*, 1932, 671–699; Fields, "Where Shall the Alien Work"; Harold Fields, "The Unemployed Foreign-Born," *The Quarterly Journal of Economics* 49, no. 3 (May 1935): 533–541.

¹¹⁰ Indeed, Saposs argued that "immigrants were welcomed in some industries, particularly mining, and the garment, textile and shoe industries where aliens themselves had organized unions, and also where an effort was made to have employes become citizens because of the political influence they might have in bettering working conditions." He even found that several ostensibly restrictive unions – which required noncitizens to file a declaration of intention to become citizens – failed to "enforce th[ose] provisions in their by-laws": "Industries' Ban on Alien Decried," *New York Times*, January 25, 1931, 30.

¹¹¹ See, among others: Bénédicte Deschamps, "'Shall I Become a Citizen': The FLIS and the Foreign Language Press, 1919-1939," in *Federalism, Citizenship, and Collective Identities in U.S. History*, ed. Cornelis A. van Minnen, Sylvia L. Hilton, and Colin Bonwick (Amsterdam: Vrije Universiteit Press, 2000), 150–92; See also, Chapter 4, "Americanization" in Schneider, *Crossing Borders*, 150–92.

¹¹² This examination of union discrimination against immigrants was a portion of a five-part WPA-funded examination of immigrant incorporation into the American political economy. Though I have not found a published version of its findings, its list of union policies towards aliens can be found in the folder "Americanization Studies Project – Correspondence, 1937-1938." See generally: Foreign Language Information Service, "Americanization Studies" (Foreign Language Information Service, 1938), Box 63, IHRC 165 Immigration and Refugee Services of America Foreign Language Information Service, University of Minnesota, Immigration History Research Center.

¹¹³ Owing to the breadth of Fields's publications on noncitizen employment restrictions, his work has often been cited in historical scholarship on the topic. While his findings on professional employment restrictions are highly detailed and sourced, his union requirement analysis is less clearly sourced. Scholars who cite Fields in a historical context include: Donald Peterson Kent, *The Refugee Intellectual: The Americanization of the Immigrants of 1933-1941* (Columbia University Press, 1953); Thatcher, *Immigrants and the 1930's*; Steele, "No Racialists"; Noel, *Debating American Identity*; Matthew J. Baltz, "Protecting Citizens in Hard Times: Citizenship and Repatriation Pressures in the United States and France during the 1930s," *Theory and Society* 44, no. 2 (March 2015): 101–24; Catron, "The Citizenship Advantage: Immigrant Socioeconomic Attainment across Generations in the Age of Mass Migration."

¹¹⁴ Claudia Goldin, "Marriage Bars: Discrimination Against Married Women Workers, 1920's to 1950's," Working Paper (National Bureau of Economic Research, October 1988), <http://www.nber.org/papers/w2747>; Landon R. Y. Storrs, *The Second Red Scare and the Unmaking of the New Deal Left* (Princeton, NJ: Princeton University Press, 2013).

during the Great Depression.¹¹⁵ In practice, “citizen only” employment rights were often only available to white, male citizens during the Great Depression.

Similarly, white and nonwhite immigrants often had far different experiences of alienage during the 1930s. Most notoriously, thousands of Mexican nationals were deported or coerced to “repatriate” *en masse* in the early 1930s. Local and state officials (especially those in southern California) often cooperated with federal immigration authorities to identify Mexican nationals for deportation on “public charge” grounds.¹¹⁶ Though European and Canadian immigrants were sometimes expelled from the country, they did not experience nearly the same degree of coercion as Mexican immigrants. In fact, as Cybelle Fox has found, many European noncitizens obtained public assistance from local authorities during the Great Depression (particularly in the Northeast and Midwest) in spite of ostensible statutory citizenship requirements.¹¹⁷

Blue-collar employment – especially construction and unionized work – was often framed as a “right of citizenship” in the early years of the Great Depression. Such policies were unevenly enforced, disproportionately harming nonwhite aliens. Marginalized citizens also were often denied work in spite of their nationality. As Congress and the executive branch took on a greater role in leading economic recovery efforts following the Election of 1932, nativists turned to the federal government to claim blue-collar work as an exclusive “right of citizenship.”

Soon after Franklin D. Roosevelt became president, his administration was besieged by nativists demanding that it restrict the employment rights of immigrants. Those writing did not always limit their targets to noncitizens. Some argued that all immigrants – irrespective of citizenship status – should be denied work. Mildred Street wrote in May 1933 that the Roosevelt Administration should, “deport all the undesirable aliens back to their country – even the naturalized citizens who will not act loyally to the flag and to keep the laws of the country.”¹¹⁸ Other nativists were blatantly racist. Thomas Thompson, chairman of the Progressive Citizens League of Portland, Oregon argued in June 1933 that “Filipino, Mexican and hindoo [sic] labor” should “be restricted as much as possible, in order to give the white American men the full benefit.”¹¹⁹ Though New Deal programs would often discriminate against nonwhite populations in practice, the Fourteenth Amendment’s equal protection clause prevented the Roosevelt Administration from overtly “giv[ing] the white American men the full benefit” as Thompson

¹¹⁵ John Hinshaw, *Steel and Steelworkers: Race and Class Struggle in Twentieth-Century Pittsburgh* (New York: SUNY Press, 2012), 42–43.

¹¹⁶ See, especially: Abraham Hoffman, “Stimulus to Repatriation: The 1931 Federal Deportation Drive and the Los Angeles Mexican Community,” *Pacific Historical Review* 42, no. 2 (May 1973): 205–19; Francisco E Balderrama and Raymond Rodríguez, *Decade of Betrayal: Mexican Repatriation in the 1930s*, Rev. ed (Albuquerque: University of New Mexico Press, 2006); Fernando Enciso, “¿Cuántos fueron? La repatriación de Mexicanos en los Estados Unidos durante la Gran Depresión: Una interpretación cuantitativa 1930-1934,” *Aztlán: A Journal of Chicano Studies* 32, no. 2 (Fall 2007): 65–91; Chapter 6: “Deporting the Unwelcome Visitors” Fox, *Three Worlds of Relief*, 124–55.

¹¹⁷ For a framing of Fox’s analysis and findings, see: “Chapter 1: Race, Immigration, and the American Welfare State” in: Fox, *Three Worlds of Relief*, 1–18.

¹¹⁸ Mildred Street to President Franklin Roosevelt, May 3, 1933, INS Subject and Policy Files 1893-1957: 55739/422, Record Group 85; NARA-Washington, DC.

¹¹⁹ Thomas Thompson to President Franklin Roosevelt, June 9, 1933, INS Subject and Policy Files 1893-1957: 55739/422, RG 85; NARA-DC.

demanded.¹²⁰ Other nativists, however, targeted noncitizens for employment restrictions – or even deportation – in language that they hoped would pass constitutional muster.¹²¹

Nativists especially attacked the employment rights of longtime resident aliens who had yet to become citizens or were ineligible to naturalize. Glen Blake of Santa Barbara, California argued that “all aliens...who have been on (sic) the United States five years or more” should be given “a reasonable period of time, say, six months” to become citizens. If they failed to naturalize, Blake believed that they should be deported.¹²² Stephen F. Austin of Lincoln, Nebraska offered a similar proposal. Austin claimed that noncitizens too often “emigrated to America, lived here long enough to accumulate a small fortune,” and then “returned to their homelands to spend the remainder of their lives in comparative ease.” Austin believed that federal authorities had an obligation to find ways to privilege the hiring of citizens over noncitizens in this era of mass unemployment.¹²³

Blake and Austin were not alone. The “Americanization” committees of the Illinois Bar Association and Cook County American Legion campaigned in 1935 for the registration of noncitizens who had not begun – or failed to follow through on – the naturalization process. Bar representative John Clinnin, a leading force behind the bill, argued that their “enrollment” would facilitate their deportation.¹²⁴ Though the 1935 proposal was defeated, that was not the last word on the topic in Illinois. In 1937, other nativists like Edward Finan of the Cook County Veterans’ Relief Commission continued to argue that longtime aliens “here from 2 to 15 years” who had not applied to naturalize were “depriving American citizens of employment” and “infesting our relief rolls.”¹²⁵

The FLIS and other immigrant-friendly organizations fought back against the allegation that longtime resident noncitizens were “depriving American citizens of employment.” The FLIS especially argued that most immigrants would become citizens if they could only overcome onerous barriers to naturalization. Read Lewis, the organization’s executive director, reminded readers in 1933 that citizenship fees had been increased by four hundred percent during the Hoover Administration and that “many courts” were “refusing citizenship to anyone who c[ould not] read English” despite federal naturalization provisions only requiring immigrants to be able to speak English.¹²⁶ The Massachusetts Division of Immigration and Americanization agreed, finding that many immigrants recognized alienage as “a severe economic handicap” and viewed citizenship “as a guarantee to a job.” Try though they may, a “combination of increased fees, stricter requirements for arrival records,” and “higher educational standards for naturalization” had made it harder for many longtime resident aliens to become American citizens.¹²⁷

¹²⁰ See, broadly: Fox, *Three Worlds of Relief*; Katznelson, *When Affirmative Action Was White*.

¹²¹ Two key works that also explore anti-alien letters sent to federal authorities during the Great Depression include: Thatcher, *Immigrants and the 1930's*, 169–71; and see, broadly: Fox, *Three Worlds of Relief*.

¹²² Glen Blake to President Franklin Roosevelt, July 26, 1933, INS Subject and Policy Files 1893-1957: 55739/422, RG 85; NARA-DC.

¹²³ Stephen A. Austin to Frances Perkins, April 1933, INS Subject and Policy Files 1893-1957: 55739/422, RG 85; NARA-DC.

¹²⁴ Despite the endorsement of the *Chicago Tribune*, this bill did not become law. See, among others: “Propose to End Public Aid for Aliens in State,” *Chicago Daily Tribune*, January 29, 1935, 6; “Passage of Bill Curbing Aliens Urged by Clinnin,” *Chicago Daily Tribune*, May 17, 1935, 13; “The Alien Registration Bills,” *Chicago Daily Tribune*, May 15, 1935, 12.

¹²⁵ Edward J. Finan, “Voice of the People: A Few Questions about Aliens,” *Chicago Daily Tribune*, June 24, 1937, 12.

¹²⁶ Read Lewis, “Have We Still an Immigration Problem?,” *Interpreter Releases*, 1933, 155.

¹²⁷ Massachusetts Department of Education, “Annual Report of the Division of Immigration and Americanization for the Year Ending November 30, 1931” (Boston: Commonwealth of Massachusetts, 1931), 6.

Immigrant rights advocates also emphasized that the number of noncitizens residing in the country was steadily decreasing. With a fast-aging foreign population, low rate of immigration, and an alien population eager to naturalize, Lewis argued that nativist concerns were overblown.¹²⁸ In its *Interpreter Releases*, the FLIS reported on the decreasing population of noncitizens in the country and highlighted the barriers many immigrants had to overcome to naturalize.¹²⁹ But some immigrants could never naturalize. In addition to East and South Asian migrants who were barred from naturalization as “aliens ineligible to citizenship,” undocumented immigrants were unable to become citizens. And their employment rights would come under even greater assault than other longtime resident noncitizens during the Depression years.

Though the Chinese Exclusion Act of 1882 had turned laborers who circumvented its racist barriers into undocumented immigrants, the federal quota laws in the early 1920s produced the modern regime of undocumented immigration.¹³⁰ They established that all migrants who entered the United States without authorization were, in the words of historian Mae Ngai, “a social reality and legal impossibility.”¹³¹ Though nativists had decried the dangers of “alien smugglers” in the 1920s, undocumented immigrants came under attack like never before with the onset of the Great Depression. In statements and editorials carried by newspapers across the country, nativists demanded the mass expulsion of undocumented immigrants as a means of reducing unemployment.¹³² Even AFL President William Green – who had opposed strict deportation provisions against undocumented immigrants when they were introduced alongside alien registration proposals in the 1920s – changed course. In 1931, he (and fellow AFL leaders) personally pledged to President Hoover and Secretary of Labor William Doak that the Federation would support federal efforts that “would make it practical for those here illegally to be sent back home as quickly as possible.”¹³³

Some nativists advocated for distinctions in the employment rights of documented and undocumented immigrants during this economic crisis. In 1932, Captain John B. Trevor, leader of the American Coalition of Patriotic Societies publicly debated alien registration with (staunchly pro-immigrant rights) Congressman Samuel Dickstein of New York. Dickstein warned – as immigrant rights advocates had throughout the 1920s – that mandatory documentation requirements would lead to “discriminations...extortion, corruption, and bribery” against resident aliens. But Trevor retorted that “lawfully admitted alien[s]” would be “protect[ed]...by registration” as they would be distinguished from undocumented immigrants. Trevor also appealed to them in economic terms. “If an alien happens to have

¹²⁸ Lewis, “Have We Still an Immigration Problem?,” *Interpreter Releases*, 1933, 156.

¹²⁹ Mrs. Kenneth Rich, “Citizenship – A Pivot in Family Relationships,” *Interpreter Releases*, 1933; Marian Schibbsby, “Concerning Increased Demand for American Citizenship,” *Interpreter Releases*, 1936; Marian Schibbsby, “Decrease in the Alien Population of the United States,” *Interpreter Releases*, 1939.

¹³⁰ See, for instance: Lucy E Salyer, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill: University of North Carolina Press, 1995); Lee, *At America’s Gates*.

¹³¹ Ngai, *Impossible Subjects*, 57.

¹³² See, among many others: “Quinn Demands Alien Ousting,” *Los Angeles Times*, September 26, 1930, A1; “Unified Effort to Oust Aliens Being Evolved,” *Los Angeles Times*, January 26, 1931, A1; “U.S. May Deport Aliens on Poor Relief Rolls,” *Chicago Daily Tribune*, October 19, 1932, 11; “What Do You Say About It?,” *Chicago Defender*, October 22, 1932, 15; “Alien Registration Urged on Congress,” *New York Times*, January 9, 1931, 48; “War to Stop Alien Smuggling Now Being Waged Against Rings,” *New York Times*, September 27, 1931, XX12; “Alien Registration,” *Washington Post*, March 2, 1930, S1; “Alien Smuggling,” *Washington Post*, September 12, 1931, 6.

¹³³ The AFL national leadership did not endorse alien registration, however. See: A.F.L., “Minutes of the Meeting of the Executive Council American Federation of Labor A.F. of L. Building, Washington, D.C. May 5-13, 1931,” 109–10.

entered the United States illegally” Trevor warned that he could ““hold down a job while you, Mr. Citizen, or you, Mr. Lawfully Admitted Foreigner, walk the streets.””¹³⁴

But it was not just nativists like Trevor who argued for differentiating the employment rights of documented and undocumented immigrants. Prominent immigrant rights advocate Harold Fields argued for distinguishing access to work between documented and undocumented immigrants. He claimed in 1933 that employers and governments should focus on “caring for one’s own” in response to the economic crisis. Fields defined “one’s own” as “The citizen, and the foreigner who has been legally admitted in past years.”¹³⁵ Two years later he reiterated that:

Capital and labor alike should create no distinction which will discriminate between groups that are in this country legally – by birth or by official admission. The only logical distinction should be between those who are here by legal right on the one hand, and those who either came to this country illegally or who were admitted for temporary purposes on the other.¹³⁶

Not all advocates of immigrant rights groups followed Fields’s lead. The FLIS, for instance, did not take a similarly harsh turn against undocumented immigrants during the Great Depression.¹³⁷ But undocumented immigrants’ employment rights were more precarious than ever before.

In an attempt to appease widespread nativist sentiment against undocumented workers, employers and legislators sometimes adopted measures to differentiate documented immigrants from undocumented aliens in employment. The Massachusetts Division of Immigration and Americanization reported that after the Crash of 1929, “practically all large” employers in the state had begun “ma[king] an effort to find out whether their alien employees [were] legally resident in the United States.”¹³⁸ Similarly, when Congress debated restricting access to the Works Progress Administration (the largest of all New Deal programs), the first immigrants targeted by legislators for a denial of employment rights were undocumented aliens. In 1936, Congress banned them from WPA employment. To enforce these policies, however, employers and authorities had to figure out who were documented or undocumented immigrants. That was easier said than done.

Anti-immigrant politicians had long sought to mandate the registration of noncitizens who could prove their authorized entry in the country as a means of distinguishing them from undocumented immigrants. Few of their efforts, however, had been successful. Chinese merchants (and Chinese-Americans citizens) were assigned identification documents that allowed them to reenter the country during the Chinese Exclusion era.¹³⁹ In World War I, the federal government attempted to register “enemy alien” Germans in the country to track saboteurs.¹⁴⁰ Meanwhile, Minnesota went so far as to mandate the registration of all noncitizens

¹³⁴ “Alien Registration Urged by J. B. Trevor,” *New York Times*, March 14, 1932, 34.

¹³⁵ Fields, “Where Shall the Alien Work,” 221.

¹³⁶ Fields, “The Unemployed Foreign-Born,” 541.

¹³⁷ In the early 1940s (the FLIS did not record a date) Director Read Lewis fought to extend naturalization provisions to longtime resident undocumented immigrants. See: Read Lewis, “Must They Be Aliens Forever,” n.d., Box 178, Folder “Certificate of Registry – Correspondence, 1941-1942,” IHRC 165 Immigration and Refugee Services of America Foreign Language Information Service General, Immigration History Research Center, University of Minnesota.

¹³⁸ Massachusetts Department of Education, “Annual Report of the Division of Immigration and Americanization, 1930,” 5.

¹³⁹ See, broadly: Lee, *At America’s Gates*; and: Garland, “Fighting to Be Insiders,” 110.

¹⁴⁰ Capozzola, *Uncle Sam Wants You*, 188, 203–4.

within the state's borders during the Great War.¹⁴¹ However, both campaigns were quickly dropped when the war ended.¹⁴²

But as unemployment rose during the Great Depression and employers came under pressure to fire undocumented immigrant workers, they struggled to identify them. In Massachusetts, many private employers, searching for types of proof of "legal" status, demanded that their noncitizen employees file declarations of intent to become citizens as a proxy for "legal status."¹⁴³ When undocumented immigrants were barred from work on WPA projects in 1936, local federal administrators were tasked with identifying noncitizens who had not begun the naturalization process to investigate whether they could prove their authorized entry into the country. However, as Fox finds, the implementation of this policy was scattered. While authorities in southern California and Arizona interpreted the new law restrictively, in other jurisdictions few inquiries were made into immigrants' means of entry into the country.¹⁴⁴ Lacking a national system to distinguish documented immigrants from undocumented workers, some employers simply refused to hire persons they thought appeared to be undocumented. In a time of mass deportation and repatriation, such biases disproportionately harmed the employment rights of Mexican immigrants and Mexican-American citizens.¹⁴⁵

Some states tried to take matters into their own hands to distinguish documented and undocumented immigrants. After the Crash of 1929, state AFL leaders in Michigan joined with a coalition of right-wing anti-radical organizations to support legislation mandating alien registration in the state. Under this proposal, immigrants who could prove their authorized entry into the country would receive an identification card which would then serve as their work permit. Any noncitizen who did not have the card was to be denied employment. Not all Michiganders supported the proposal. Jewish organizations, the ACLU, and left-wing union activists argued that the proposal was intrusive, dangerous, and unconstitutional. Over their objections, the Michigan Alien Registration Act became law in May 1931. But the policy was never implemented as it was struck down in court for encroaching on the domain of the federal government.¹⁴⁶ Similar proposals were considered and even enacted into law in a few other states. But these too were struck down by the courts as an overreach of states' powers.¹⁴⁷

Nativists fared little better at the federal level for most of the New Deal years. Roosevelt and many of his key deputies – especially Labor Secretary Frances Perkins – opposed alien registration as both impractical and overly intrusive to the lives of immigrants.¹⁴⁸ But the midterm elections of 1938 emboldened anti-immigrant activists. When the new Congress

¹⁴¹ Garland, "Fighting to Be Insiders," 110 (n4).

¹⁴² Capozzola, *Uncle Sam Wants You*, 203–4; Garland, "Fighting to Be Insiders," 110 (n4).

¹⁴³ Massachusetts Department of Education, "Annual Report of the Division of Immigration and Americanization, 1930," 5.

¹⁴⁴ Fox, *Three Worlds of Relief*, 228.

¹⁴⁵ See, among others: Chapter 7, "Repatriating the Unassimilable Aliens," in: Fox, *Three Worlds of Relief*, 156–87; Thomas Romero, "A War to Keep Alien Labor out of Colorado: The 'Mexican Menace' and the Historical Origins of Local and State Anti-Immigration Initiatives," in *Strange Neighbors: The Role of States in Immigration Policy*, ed. Carissa Byrne Hessick and Gabriel J. Chin (New York: NYU Press, 2014), 63–96; See, especially: Chapter 7, "'To Keep America American': The Door Swings Outward": Noel, *Debating American Identity*, 141–64.

¹⁴⁶ Thomas A. Klug, "Labor Market Politics in Detroit: The Curious Case of the 'Spolansky Act' of 1931," *Michigan Historical Review* 14, no. 1 (April 1988): 1–32; Garland, "Fighting to Be Insiders."

¹⁴⁷ Alan Reeve Hunt, "Federal Supremacy and State Anti-Subversive Legislation," *Michigan Law Review* 53, no. 3 (January 1955): 407–438; Garland, "Fighting to Be Insiders," 138.

¹⁴⁸ See, especially: Chapter 6, "The Legislative Response to Immigrants in Depression: Restriction, Deportation, Registration" Thatcher, *Immigrants and the 1930's*, 202–49.

convened in January 1939, as a dramatically expanded bloc of conservative southern Democrats and northern and midwestern Republicans was seated (with Republicans alone expanding their congressional representation from eighty-nine to one hundred sixty-nine members).¹⁴⁹ So powerful were these growing number of conservative legislators that nativists succeeded – after many failed attempts in previous years – to bar all noncitizens from employment on WPA projects in 1939. As Fox finds, around forty-five thousand immigrants lost their jobs following the enactment of the new national “citizen only” policy.¹⁵⁰

In this new political environment, nativists once more sought to enact alien registration legislation. Texas Representative Martin Dies transformed the rationale for mandatory identification requirements. Dies, then chairman of the House Un-American Activities Committee, championed alien registration as a means to track supposedly widespread subversive and radical noncitizens.¹⁵¹ Critics of bill argued that alien registration would lead to major logistical complications for federal authorities, fan the flames of growing xenophobia, while doing nothing to stymie radical political activists who happened to be citizens (native-born or naturalized).¹⁵² Nevertheless, Dies and his allies successfully passed an alien registration bill in the House of Representatives in 1939.¹⁵³ It sat in the Senate for a year as the Roosevelt Administration quietly lobbied against it.¹⁵⁴

But as the Nazis overran France in June 1940, nativists used the specter of national security panic to demand senators debate the bill. The Senate promptly took up and passed the bill. Roosevelt, recognizing the inevitable, signed the federal Alien Registration Act into law on June 28, 1940.¹⁵⁵ It required resident noncitizens over fourteen years of age to appear in person before federal authorities (usually at their local post office), provide personal identifying information about themselves, and be fingerprinted. By Christmas 1940, over 4.7 million immigrants had become “registered” noncitizens.¹⁵⁶

The Alien Registration Act did not provide citizens any affirmative rights. And its effects were less coercive than many immigrants had feared as Roosevelt named Earl Harrison, a longtime immigrant rights advocate and attorney, director of the Alien Registration program.¹⁵⁷ Harrison made clear that the law’s fingerprinting requirements did not equate noncitizens with crime. In fact, he used his enhanced platform as director of the program to lobby against

¹⁴⁹ James Patterson, *Congressional Conservatism and the New Deal: The Growth of the Conservative Coalition in Congress, 1933-1939* (Lexington: University of Kentucky Press, 1967), 288–90; See also, broadly: Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York: Alfred A. Knopf, 1995).

¹⁵⁰ Fox, *Three Worlds of Relief*, 240.

¹⁵¹ Thatcher, *Immigrants and the 1930’s*, 223–34.

¹⁵² See, especially: “Alien Bills Held Civil Rights Peril,” *New York Times*, May 9, 1939, 2; “Alien Registration Protested by Women,” *New York Times*, November 22, 1939, 12; “Boaz Terms 70 Alien Bills Threat to U.S. Liberties,” *Washington Post*, May 8, 1939, 4; “Smith Alien Bill Stirs House Fight,” *Washington Post*, July 20, 1939, 7.

¹⁵³ Thatcher, *Immigrants and the 1930’s*, 223–34.

¹⁵⁴ INS Director James Houghteling wrote to Read Lewis (head of the Foreign Language Information Service) to advise that the passage of the Alien Registration bill in the Senate was unlikely. He had learned privately that “The Smith Bill [i.e. the Alien Registration Act] will not get a hearing before the Judiciary Committee.” See: James Houghteling to Read Lewis, August 3, 1939, Box 7, Folder “James Houghteling Correspondence, 1936-1939,” IHRC 165 Immigration and Services of America Foreign Language Information Service General, University of Minnesota, Immigration History Research Center.

¹⁵⁵ Thatcher, *Immigrants and the 1930’s*, 227–37; Garland, “Fighting to Be Insiders,” 138.

¹⁵⁶ Schneider, *Crossing Borders*, 232–33.

¹⁵⁷ Thatcher, *Immigrants and the 1930’s*, 234.

noncitizen employment restrictions.¹⁵⁸ But it was not without reason that scholars Francis Kalnay and Richard Collins called the Alien Registration Act the “probably the most important piece of legislation affecting aliens ever passed in the United States.”¹⁵⁹ For the first time in American history, all noncitizens were distinguished from citizens by federal documentation requirements (while aliens who did not possess such identification were increasingly marked by that lack of federal documentation).

IV. Conclusion

This chapter does not purport to recount a comprehensive history of the right of American citizens to remunerated work. Instead, it identifies how nativist efforts to transform many forms of blue-collar employment into an exclusive “right of citizens” arose and evolved in the United States from the Gilded Age until the World War II era. It shows how employment restrictions directed at noncitizens – particularly for public works jobs – grew in number (though they never became as widespread as nativists insisted). Such policies often went unenforced when jobs were relatively plentiful. But in times of recession, especially during the Great Depression, nativists demanded both their expansion and uncompromising enforcement. In both contexts, “citizen only” and “citizen preference” policies were a challenge for employers and authorities to implement. Both groups found it difficult to distinguish citizens from noncitizens (and documented from undocumented immigrants) residing in the United States.

This chapter demonstrates how nativists argued that mandatory immigrant identification requirements were necessary to strengthen those “citizen only” and “citizen preference” hiring policies. They were stymied in their efforts as immigrant rights activists, civil libertarians, and (starting in 1933) the Roosevelt Administration opposed these policies on utilitarian and civil liberties grounds. Anti-immigrant activists finally succeeded in obtaining passage of a federal alien registration law in 1940 – after decades of campaigning for mandatory identification requirements largely as a means to enforce “citizen only” and “citizen preference” employment policies – as a national security measure.

Unlike the two preceding chapters, “Making Citizenship Concrete” does not recount a process of standardization and uniformity in the development of American citizenship rights. On the contrary, the chapter makes clear that the right to blue-collar employment never became an exclusive “right of citizens” in law or in practice. Nor did all states (let alone unions and private employers) adopt the same policies toward the hiring of noncitizens on public employment and publicly contracted work. However, as nativists increasingly demanded that blue-collar jobs become exclusive “citizenship rights” and (public and private) employers sometimes acceded to their demands, immigrant rights advocates warned that noncitizens were increasingly unable to find many forms of blue-collar work from the Gilded Age to the New Deal era. In this context, U.S. citizenship and its exclusive rights acquired greater material weight. Moreover, (ultimately successful) nativist demands for nationwide immigrant identification requirements hardened

¹⁵⁸ “The Alien Registration Act of 1940, an Address by Earl Harrison, Director of Registration, Bureau of Immigration and Naturalization, Department of Justice” (NBC, August 7, 1940), AFL Papers, Files of the Economist of the AFL, General File, Mss. 177, Box 1, Wisconsin Historical Society Archives; Earl G. Harrison, “Our Alien Population” (Current Citizenship Problems: Eleventh Annual Conference of the National Council on Naturalization and Citizenship, New York, 1941); Lewis M. Stevens, “The Life and Character of Earl G. Harrison,” *University of Pennsylvania Law Review* 104, no. 5 (March 1956): 591–602.

¹⁵⁹ Francis Kalnay and R. Collins, *The New American* (New York: Greenberg, 1941), ix.

distinctions between citizens and noncitizens, while further differentiating documented and undocumented immigrants in the United States.

Both developments profoundly shaped the development of modern American citizenship. Blue-collar hiring restrictions made exclusive “citizenship rights” a tangible reality to a growing number of citizens and noncitizens alike – especially nonwhite immigrants who disproportionately bore their burden – from the late-nineteenth to the mid-twentieth centuries. The Alien Registration Act created the first nationwide identification requirements for all noncitizens in the country and marked those who did not have federal such papers as “undocumented” immigrants. Together, they made American citizenship – as a container of exclusive rights and a legal status – more concrete.

Chapter 4: Learning Citizenship Matters: Immigrants and Professional Licensing Barriers, 1900-1952

As a longtime Italian and Spanish instructor at San Francisco's Galileo High School in the 1920s and 1930s, Theresa Oglou was lauded as an excellent teacher by her students, colleagues, and superiors. Oglou would need their support when she learned to her dismay that her status as a noncitizen imperiled her access to a teaching license. At that time, immigrant public-school teachers in California were required to file a declaration of intention to become a U.S. citizen and then complete their naturalization as soon as they became eligible. And Oglou was in a particularly unique bind that complicated her efforts to meet those state requirements.¹

In her youth, Oglou had learned little from her Italian immigrant parents about her birth. Told by her mother that she had been born in the United States, Theresa had long believed that she was an American citizen by birth. However, she knew no more about it (and was even unsure of its year). After graduating from the University of California, Berkeley as a first-generation college student, Oglou began work as a public-school teacher under the assumption that she was an American citizen. She later learned from her sister in May 1936 that the two of them – unlike their other siblings – had actually been born in Italy thus were not native-born U.S. citizens. Theresa – who had been planning to depart the country to begin an extended study of dance in Germany – promptly applied to naturalize.²

Unfortunately for Oglou, shortly after she returned to the state and resumed teaching, the San Francisco Board of Education and the California Department of Education began receiving anonymous letters alleging that she had deliberately misled her superiors about her citizenship status.³ An investigation by state authorities found that Oglou had claimed four different birthdates on official documents. Though concerned by these inconsistencies, they allowed her to continue teaching on a temporary license while she continued her petition for citizenship.⁴

Oglou would make a crucial error in her naturalization application, however. She listed “dancer” as her occupation, not “teacher.” While Immigration and Naturalization Service (INS) officers agreed that she was an expert dancer, that Oglou had not included her prior teaching experience on her paperwork heightened their suspicion that she was trying to mislead them. San Francisco Naturalization Examiner Stanley B. Johnson recommended that her petition be denied owing to her supposed lack of “good moral character.”⁵

But Oglou would not be denied her application – and job – without a fight. On November 2, 1940, she appeared in court to challenge Johnson. She maintained that she had believed herself to be a U.S. citizen in good faith as she had no memories of her early childhood

¹ *In re Theresa Oglou*, Petition Number 42709, November 2, 1940; Hearing Before Designated Naturalization Examiner Stanley B. Johnson; Contested Naturalization and Repatriation Case Files, 1924-1992, U.S. District Court for the Southern (San Francisco) Division of the Northern District of California, Box 4; RG 21; NARA-Pacific (San Bruno).

² *In re Theresa Oglou*, P.N. 42709, November 2, 1940; Hearing Before Designated Naturalization Examiner Stanley B. Johnson; Contested Naturalization and Repatriation Case Files, 1924-1992, SF, Box 4; RG 21; NARA-Pacific (San Bruno).

³ *In re Theresa Oglou*, P.N. 42709; I.M. Peckham, Exceptions to Report and Recommendation of Naturalization Examiner; Contested Naturalization and Repatriation Case Files, 1924-1992, SF, Box 4; RG 21; NARA-Pacific (San Bruno): 5.

⁴ *In re Theresa Oglou*, P.N. 42709, November 2, 1940; Hearing Before Designated Naturalization Examiner Stanley B. Johnson; Contested Naturalization and Repatriation Case Files, 1924-1992, SF, Box 4; RG 21; NARA-Pacific (San Bruno): 6, 23.

⁵ *In re Theresa Oglou*, P.N. 42709; Stanley B. Johnson, Report and Recommendation of Designated Naturalization Examiner; Contested Naturalization and Repatriation Case Files, 1924-1992, SF, Box 4; RG 21; NARA-Pacific (San Bruno).

in Italy. She also came with a legion of supporters. Fellow teachers and her lawyer spoke to her integrity, teaching abilities, and devotion to her students. The superintendent of San Francisco's public schools, Major Joseph Nourse, (who had previously served as principal at Galileo High School) vouched for her ability to instill loyalty to the United States among her (largely first- and second-generation immigrant) students in San Francisco's North Beach neighborhood.⁶

Oglou's naturalization process was not without its indignities. She had to challenge Johnson's often hostile claims in person as he sought to catch her inadvertently admitting to intent to commit fraud.⁷ She also employed a patronizing personal attorney who relied on sexist tropes to beg the court for mercy.⁸ And her image and recent divorce proceedings were splashed across the San Francisco press. She had little time to spare, for her temporary teaching license was set to expire in the spring of 1941. But Oglou's persistence paid off. On Christmas Eve 1940, Judge Martin Walsh declared her inconsistencies to be immaterial to her petition for naturalization. He ordered her admitted to citizenship immediately.⁹

Though Theresa Oglou's ordeal was dramatic and well-publicized, she was far from the only immigrant to become caught in a web of professional licensing restrictions owing to alienage. Starting in the late-nineteenth century, state governments across the nation enacted policies that privileged the hiring of citizens, barred noncitizens from many professions, denied credentials to immigrants who had yet to begin the naturalization process, and banned the licensure of East and South Asian immigrants who were "ineligible to citizenship" under federal law. By 1933, sociologist Harold Fields warned that, "occupations that involve careful and long preparation, such as medicine, law, accounting, teaching, and kindred pursuits, [were] fast being limited to non-aliens only."¹⁰

This chapter tracks the rise of "citizen only" professional employment restrictions. It explores how "citizenship rights" arguments were articulated by nativists and professional organizations and how immigrants and their allies contested them. It further examines the efforts of state agencies to enforce such policies and their impact on noncitizens. These laws – widely adopted throughout the country – dramatically reshaped both the material and rhetorical power of "citizenship rights" in the first half of the twentieth century. Moreover, it was in the implementation of anti-alien licensing policies that immigrants like Theresa Oglou *and* state officials learned about the meaning and weight of (exclusive) American "citizenship rights."

⁶ See, broadly: *In re Theresa Oglou*, P.N. 42709, November 2, 1940; Hearing Before Designated Naturalization Examiner Stanley B. Johnson; Contested Naturalization and Repatriation Case Files, 1924-1992, SF, Box 4; RG 21; NARA-Pacific (San Bruno).

⁷ Oglou was careful to deny fearing the loss of her job when petitioning for citizenship, avoiding inadvertently confessing to fraudulent intent. She also withstood hostile questioning when Johnson began reading from a letter she had written about him in court. Oglou took pains to defuse the situation, emphasizing that she did not intend to "harm [him]." But she made clear that Johnson was "rather antagonistic against [her] and thought [he] would not give [her] a fair chance" (36). See: *In re Theresa Oglou*, P.N. 42709, November 2, 1940; Hearing Before Designated Naturalization Examiner Stanley B. Johnson; Contested Naturalization and Repatriation Case Files, 1924-1992, SF, Box 4; RG 21; NARA-Pacific (San Bruno): 36-41.

⁸ Her attorney, I.M. Peckham, patronized Oglou as a "forgetful little girl" and argued that she had "no memory." See: *In re Theresa Oglou*, P.N. 42709; I.M. Peckham, Exceptions to Report and Recommendation of Naturalization Examiner; Contested Naturalization and Repatriation Case Files, 1924-1992, SF, Box 4; RG 21; NARA-Pacific (San Bruno): 3.

⁹ *In re Theresa Oglou*, P.N. 42709, December 24, 1940; Judge Martin Walsh, Opinion Order; Contested Naturalization and Repatriation Case Files, 1924-1992, SF, Box 4; RG 21; NARA-Pacific (San Bruno).

¹⁰ Fields, "Where Shall the Alien Work," 213-14.

Anti-alien licensing laws arose alongside the emergence of the “professions” as a distinct category of work in the late nineteenth- and early twentieth-century United States.¹¹ As new fields of skilled employment emerged and older positions required greater training, they acquired, “a special legal status” that was “often, but not always, accompanied by considerable social and cultural status.”¹² This process expanded the ranks of the traditional “learned professions” (i.e. lawyers, doctors, and theologians) to include accountants, dentists, engineers, nurses, and teachers as they became governed by state (or state-authorized) licensing boards.¹³ These boards increasingly “establish[ed] and monitor[ed] entrance requirements for new practitioners; handle[d] complaints from consumers” and “decide[d] if and what type of disciplinary actions w[ould] be taken against professionals who violate[d] board regulations.”¹⁴ This licensing regime came to pervade the country; “more than 1,200 state occupational licensing statutes” were in operation in 1952 throughout the United States.¹⁵

Licensing laws were ostensibly enacted to protect consumers from “informational asymmetry” and to ensure practitioners met “minimum quality standards.”¹⁶ By establishing qualification requirements for licensure (such as educational credits, hours of training, and standardized tests) and means to punish offenders, states sought to prevent “quacks” from peddling false expertise and to protect consumers from harm.¹⁷ But with states granting professional organizations either direct control over licensure¹⁸ or appointing leading professionals to state boards¹⁹, mid-twentieth-century economists like Milton Friedman and Simon Kuznets argued that those possessing licenses had “captured” the regulatory process for their own benefit to the detriment of consumers and would-be entrants into those fields.²⁰

¹¹ Though the “learned professions” of “medicine, law, and theology” had predated the founding of the American Republic, Marc T. Law and Sukkoo Kim argue that it was in “the late nineteenth and the early twentieth centuries” that “modern-day professions” were born (723): Marc T. Law and Sukkoo Kim, “Specialization and Regulation: The Rise of Professionals and the Emergence of Occupational Licensing Regulation,” *Journal of Economic History* 65, no. 3 (September 2005): 723–56.

¹² Tracey L. Adams, “Profession: A Useful Concept for Sociological Analysis?,” *Canadian Review of Sociology/Revue canadienne de sociologie* 47, no. 1 (January 2010): 49–70 (quote from pg. 64).

¹³ Scholars continue to disagree over which fields of work are professions or when a field became a profession. Adams, by contrast, argues that scholars should instead focus on “how professions are defined and structured in specific social-historical contexts.” Law and Kim, “Specialization and Regulation,” 723; Adams, “Profession,” 66.

¹⁴ Sandra K. Schneider, “Influences on State Professional Licensure Policy,” *Public Administration Review* 47, no. 6 (December 1987): 479–484 (quote from pg. 479).

¹⁵ Law and Kim, “Specialization and Regulation,” 725–26.

¹⁶ Hayne E. Leland, “Quacks, Lemons, and Licensing: A Theory of Minimum Quality Standards,” *Journal of Political Economy* 87, no. 6 (December 1979): 1328–1346 (quote from pg. 1329).

¹⁷ See, broadly: Leland, “Quacks, Lemons, and Licensing”; Schneider, “Influences on State Professional Licensure Policy”; Law and Kim, “Specialization and Regulation.”

¹⁸ States often made lawyers’ bar associations *de facto* licensing agencies. Richard Abel documents the rise of these “unified” associations “which required practitioners to join” as a condition of practicing the law. Abel finds that, “Six jurisdictions were unified in the 1920s, 15 in the 1930s, 4 in the 1940s, 3 in the 1960s, and 3 in the 1970s” (46). See, more generally, Chapter 3: “Controlling the Production of Lawyers”: Richard Abel, *American Lawyers* (New York: Oxford University Press, 1989), 40–73.

¹⁹ For examples in the field of medicine see, among others: Paul Starr, *The Social Transformation of American Medicine: The Rise of a Sovereign Profession and the Making of a Vast Industry* (New York, NY: Basic Books, 1982); Brenton D. Peterson, Sonal S. Pandya, and David Leblang, “Doctors with Borders: Occupational Licensing as an Implicit Barrier to High Skill Migration,” *Public Choice* 160, no. 1–2 (July 2014): 45–63.

²⁰ As Law and Kim emphasize, Milton Friedman and Simon Kuznet largely inaugurated research on regulatory capture in their 1945 text, “Income from Independent Professional Practice”: Law and Kim, “Specialization and Regulation,” 724; Many have followed, adapted, and expanded their framework. For just a few works, see: Walter Gellhorn, “The Abuse of Occupational Licensing,” *University of Chicago Law Review* 44, no. 1 (Autumn 1976): 6–27; Leland, “Quacks, Lemons, and Licensing”; Daniel B. Klein, Benjamin Powell, and Evgeny S. Vorotnikov, “Was Occupational Licensing Good for Minorities? A Critique of Marc Law

Most scholars who explore this topic agree that these licensing barriers – and their effects – fell hardest on marginalized populations.²¹ For instance, while the American Medical Association (AMA) did not bar African Americans from receiving medical licenses, AMA-inspired efforts to standardize medical education in the 1910s disproportionately targeted African-American colleges, leading to the closure of all but two historically black medical schools during the age of Jim Crow.²² “Professionalization” also often went hand-in-hand with the silencing of women’s knowledge and experience. Though (overwhelmingly male) doctors used claims of “scientific expertise” to replace midwives in obstetrics and gynecology, those doctors were – in practice – often woefully undertrained in women’s healthcare. While licensing requirements were ostensibly erected to protect consumers from harm, female patients (and midwives who lost both work and social status) often experienced a far different reality.²³

Licensing barriers could also significantly restrict immigrants’ access to the professions. State licensing boards often denied recognition to degrees issued by foreign universities or failed to grant “reciprocal licenses” to immigrant professionals who moved to the United States with proof of past licensure.²⁴ But no barriers became as pervasive (or were so directly aimed at immigrants) as citizenship requirements. In 1946, legal and industrial relations scholar Milton Konvitz identified nearly *five hundred* professional and occupational licenses across the country that were denied to immigrants who were not citizens, had not begun the naturalization process, or were ineligible to citizenship.²⁵ And it was highly unusual for judges to strike down these policies as violations of international treaty obligations or Fourteenth Amendment equal protection rights prior to the (late) 1960s. Instead, far more often courts upheld anti-alien

and Mindy Marks,” *Econ Journal Watch* 9, no. 3 (September 2012): 210–33; Peterson, Pandya, and Leblang, “Doctors with Borders.”

²¹ Law and Marks take a contrary view. Employing Progressive-era data, they argue that, “licensing is likely to harm minority workers only in those occupations in which they are present in sufficiently large numbers to pose a competitive threat” to white (mostly male) workers”: Marc T. Law and Mindy S. Marks, “Effects of Occupational Licensing Laws on Minorities: Evidence from the Progressive Era,” *Journal of Law and Economics* 52, no. 2 (May 2009): 351–66; Their findings were directly challenged in: Klein, Powell, and Vorotnikov, “Was Occupational Licensing Good for Minorities? A Critique of Marc Law and Mindy Marks.”

²² Other marginalized populations were also targeted for restrictions in medical education. Jewish applicants were especially restricted by (mostly white, Protestant) officials at leading American medical colleges throughout the early-to-mid twentieth century. See, among others: Michael H. Rubin, “Immigration, Quotas, and Its Impact on Medical Education” (Wake Forest University, 2013), 14; Edward C. Halperin, “The Jewish Problem in U.S. Medical Education, 1920-1955,” *Journal of the History of Medicine and Allied Sciences* 56, no. 2 (April 2001): 140–67; For an important overview of this (often highly restrictive) history of the profession of medicine in the United States, see: Starr, *The Social Transformation of American Medicine: The Rise of a Sovereign Profession and the Making of a Vast Industry*.

²³ This critique of male control of women’s healthcare was most famously expressed in: Boston Women’s Health Book Collective, *Our Bodies, Ourselves* (New York: Simon & Schuster, 1973); For works on the rise of male dominance in women’s medicine, see: Frances E. Kobrin, “The American Midwife Controversy: A Crisis of Professionalization,” in *The Medicalization of Obstetrics: Personnel, Practice, and Instruments*, ed. Philip K. Wilson, vol. 2, Childbirth: Changing Ideas and Practices in Britain and America 1600 to the Present (New York: Garland, 1996), 96–109; Charles R. King, “The New York Maternal Mortality Study: A Conflict of Professionalization,” in *The Medicalization of Obstetrics: Personnel, Practice, and Instruments*, ed. Philip K. Wilson, vol. 2 (New York: Garland, 1996), 110–36; Anne Witz, “Patriarchy and the Professions: The Gendered Politics of Occupational Closure,” *Sociology* 24, no. 4 (November 1990): 675–90.

²⁴ Such restrictions were (and are) particularly common in the field of medicine. See, especially: Peterson, Pandya, and Leblang, “Doctors with Borders”; see, also: Irene Butter and Rebecca G. Sweet, “Licensure of Foreign Medical Graduates: An Historical Perspective,” *The Milbank Memorial Fund Quarterly. Health and Society* 55, no. 2 (Spring 1977): 315–340.

²⁵ Konvitz and his team found 495 state occupational and professional citizenship and “first papers” requirements in force in 1946. See: Konvitz, *The Alien and the Asiatic in American Law*, 208–9.

licensing barriers as the legitimate exercise of states' police powers to maintain the "health, safety, morals, and welfare of those within its jurisdiction."²⁶

Despite their breadth, few social scientists have explored the weight of restrictive licensing laws aimed at immigrant professionals in the early-to-mid twentieth century. Political scientist Alexandra Filindra's study of them in her dissertation, "E Pluribus Unum?: Federalism, Immigration and the Role of the American States," offers a rare exception. Filindra draws from contemporaneous law reviews to demonstrate how northeastern states (and to a lesser extent western states) developed widespread anti-alien professional licensing policies in the interwar era (though all states operated at least one citizenship requirement by the 1930s). She further illustrates how states in other regions were increasingly catching up to their northeastern and western peers as restrictions on noncitizens' licensure grew both during and after World War II.²⁷ Sociologist Irene Bloemraad, by contrast, cautions scholars from making assumptions about their weight. She emphasizes that bans on noncitizen licensure did not lead to immigrants to naturalize *en masse* in states where they were most prevalent between 1900 and 1920.²⁸

"Learning Citizenship Matters" builds on these works and adopts a case-study approach to examine several states' professional licensing policies and explores the records of state licensing officials tasked with enforcing them. It contextualizes these case studies by examining the publications of immigrant advocacy organizations, the records of professional associations, and newspaper accounts of major disputes arising from the enactment and administration of anti-alien licensing policies. Above all, it shows how these policies served as a major site wherein immigrants and state authorities both learned about citizenship matters and just how much citizenship could matter.

While citizenship requirements for professional employment were common in the Progressive Era, the Roaring Twenties witnessed their significant growth. As well-educated immigrants grew as a percentage of foreigners moving to the country in the quota era, professional associations increasingly (though quietly) lobbied legislators and state licensing boards for the adoption of hundreds of state policies restricting or banning their licensure. Immigrant rights advocates consistently warned about the spread of these licensing restrictions, highlighting their harm on immigrants and their families. In the court of popular opinion, they charged that these laws were both unethical and absurd. Immigrants too contested the constitutionality of these provisions in state and federal courts. But they received little-to-no relief from judges or widespread public sympathy even as they continued to spread in the Great Depression era. Though newspapers occasionally reported on scandals arising from the adoption

²⁶ Since the Progressive Era, legal scholarship has been the dominant method of analyzing professional licensing restrictions directed at noncitizens. See, among others: "Prohibition of Employment of Aliens in Construction of Public Works"; J. P. Chamberlain, "Aliens and the Right to Work," *American Bar Association Journal* 18, no. 6 (June 1932): 379–82; Fellman, "The Alien's Right to Work"; Vernier, *American Family Laws*; Shyameshwar Das, "Discrimination in Employment against Aliens - The Impact of the Constitution and Federal Civil Rights Laws," *University of Pittsburgh Law Review* 35, no. 3 (Spring 1974): 499–555; Denny Chin, "Aliens' Right to Work: State and Federal Discrimination," *Fordham Law Review* 45, no. Special Issue (February 1977): 835–59; Carliner, *The Rights of Aliens*; Jessye Leigh Scott, "Alien Teachers: Suspect Class or Subversive Influence," *Mercer Law Review* 31, no. 3 (Spring 1980): 815–24; Kelly, "Wavering Course," 701–742 (quote is from 715).

²⁷ See, especially: Chapter 4, "The State and Immigrant Professionals: Restrictions on High-End Alien Workers" in: Filindra, "E Pluribus Unum?," 128–52.

²⁸ Professor Bloemraad generously shared with this author her unpublished database of transformations in state citizenship requirements for licensure (which she draws from early-to-mid twentieth-century scholarship on the topic). Though I have not reproduced those findings here, they were very helpful in framing my research and in contextualizing my case studies. See, also: Bloemraad, "Citizenship Lessons from the Past."

or enforcement of anti-immigrant professional licensing policies, such coverage was relatively rare. Citizens and noncitizens alike were often unaware of these policies unless confronted by them.

Instead, with little fanfare, immigrant professionals and state board officials negotiated the boundaries and weight of American citizenship rights when they applied for and adjudicated the issuance of professional licenses. Favored immigrants (almost always white) were occasionally granted reprieves from the heavy weight of “citizen only” rights. Marginalized immigrants – women, South and East Asian immigrants, and refugees (especially Jewish migrants) – were disproportionately harmed by these policies. Canadian professional immigrants, by contrast, experienced a significant whiplash effect upon encountering “citizen only” licensing policies. Often considered by the public to be “honorary Americans” regardless of nationality, their assumed assimilation could cause significant harm when formal citizenship papers were required as a condition of employment.

The repeal of federal racist bans on the naturalization rights of East and South Asian immigrants in the 1940s and 1950s reduced the most inequitable aspects of anti-alien licensing policies. Nevertheless, as courts continued to uphold the constitutionality of (ever-more numerous) licensing restrictions on the basis of alienage in the 1950s, immigrants and state authorities alike continued to encounter them as a regular component of modern American life. Anti-alien licensing policies transformed both the weight and scope of exclusive American “citizenship rights” and forced a growing number of individuals to learn how much citizenship mattered in the early-to-mid twentieth-century United States.

I. Locating Citizenship Rights in Scandal and War: “Citizen Only” Professional Policies in the Progressive Era and World War I

As the twentieth century dawned, it was becoming increasingly common for noncitizens to find (relatively) desirable forms of employment closed to them. In Illinois, police officers could be challenged to prove their U.S. citizenship or face the loss of work.²⁹ Foreign-born politicians also occasionally faced allegations that they had not naturalized and were therefore ineligible to office.³⁰ Though the plight of immigrant police officers and politicians made for popular turn-of-the-century news, it was the professions that saw the most dramatic rise in citizenship requirements for employment in the first half of the twentieth century.

This section contextualizes how those restrictions emerged in the first two decades of the twentieth century. It particularly examines employment restrictions directed at noncitizen teachers in California and New York as case studies. Both examples represent rare moments when the employment rights of professional immigrants became major news stories in the Progressive and World War I eras. Abrupt efforts by California officials in 1915 to enforce a long-forgotten “citizen only” public employment law for public-school teachers prompted a

²⁹ A scandal arose over the employment of dozens of noncitizen Chicago police officers in 1897. See: “Alien Chicago Policemen,” *New York Times*, December 9, 1897, 10; “One of Chicago’s Alien Policemen,” *New York Times*, December 18, 1897, 7.

³⁰ Most famously, Irish-born James Boyd was elected governor of Nebraska in 1890 but was removed from office (and the defeated candidate sworn in as governor) as Boyd could not prove his American citizenship. Fortunately for Boyd and his voters, the U.S. Supreme Court reinstated him as governor in *Boyd v. Nebraska ex Rel. Thayer*, 143 U.S. 135 (1892). See: Neuman, “We Are the People,” 305–7; In the 1933, Canadian-born Los Angeles mayoral candidate (and future mayor) Frank Shaw was accused of failure to naturalize. See, for instance, this (sarcastic) public letter addressed to him in the Los Angeles Times: Hamilton Edge, “An Open Letter to Mr. Shaw,” *Los Angeles Times*, May 27, 1933, A4.

widespread backlash, leading legislators to amend the state's policy. Just three years later, however, New York legislators banned noncitizens from teaching in all public schools across the state in the context of a wartime, anti-immigrant hysteria.

New York and California largely instigated the adoption of citizenship requirements for licensure in the years after the Civil War. As early as 1871, New York made citizenship a requirement for those seeking to serve as attorneys in the state. But most licensing requirements in late-nineteenth and early-twentieth century New York were *not* aimed at professionals.³¹ Instead, prior to the outbreak of World War I, bans on noncitizens were mostly directed at an assortment of various occupations such as pawnbrokers (1883), plumbing inspectors (1892), liquor dealers (1896), and private investigators (1909).³²

Nativists in California, by contrast, made “eligibility to citizenship” a requirement to access certain economic rights. Most famously, organizations such as the Native Sons of the Golden West and the California Grange campaigned successfully to limit the property rights of Japanese (and all East and South Asian immigrant) farmers with the passage of the 1913 and 1920 California Alien Land Acts. The former barred aliens “ineligible to citizenship” from owning farms; the latter prevented them from renting or and even “holding stock in corporations owning or leasing farmland.”³³ Soon, other (mostly western) states adopted similar restrictions. The U.S. Supreme Court, in turn, deemed them to be constitutionally permissible.³⁴

While Japanese families faced relentless nativist assault against their property rights, other immigrants in California, such as Arthur West, could experience citizenship restrictions as a nuisance. Due to his failure to pay a twenty-five-dollar fee for a noncitizen hunting license, this British citizen and Orange County resident was arrested while hunting duck. But West was only assessed a fine equal to the cost of the license. And his arrest record had no bearing on his naturalization petition. Upon obtaining citizenship in 1909, West made sure not to risk arrest again. The *Los Angeles Times* reported that “two minutes” after becoming a U.S. citizen, West obtained “possession of a [citizen’s] hunter’s license” that cost him only one dollar.³⁵ But he still did not seem too perturbed by the experience. At his naturalization hearing, West was most anxious to learn if he would have to abandon his popular nickname: “count.”³⁶ A few years

³¹ Professions that were restricted owing to alienage in Progressive-era New York included: certified public accountants (1896) and architects (1915). See: Plascencia, Freeman, and Setzler, “The Decline of Barriers to Immigrant Economic and Political Rights in the American States,” 9.

³² In the 1977 U.S. Supreme Court case *Nyquist v. Mauclet* (in which noncitizens in New York challenged bars on financial assistance to attend public institutions of higher education) the plaintiffs provided a comprehensive list of citizenship employment requirements in New York from the Civil War to the (then) present. Their findings were reproduced in: Plascencia, Freeman, and Setzler, “The Decline of Barriers to Immigrant Economic and Political Rights in the American States,” 9.

³³ Masao Suzuki, “Important or Impotent? Taking Another Look at the 1920 California Alien Land Law,” *Journal of Economic History* 64, no. 1 (March 2004): 125-143 (quote from page 130).

³⁴ For an extremely thorough (and concise) introduction to the passage of these laws, their immediate effects, and the contours of court cases contesting them, see: Suzuki, “Important or Impotent?,” 125–43; Additional historical works on the context and/or effects of these policies include (among many others): Roger Daniels, *Asian America: Chinese and Japanese in the United States Since 1850* (Seattle: University of Washington Press, 1988); Karen Isaksen Leonard, *Making Ethnic Choices: California’s Punjabi Mexican Americans* (Philadelphia: Temple University Press, 1992); Motomura, *Americans in Waiting*, 69–70, 75–76.

³⁵ “‘Count’ Naturalized,” *Los Angeles Times*, October 5, 1909, 1111.

³⁶ “‘Count’ West had no reason to worry, for this was only a nickname, not a formal title of nobility: “‘Count’ Naturalized,” *Los Angeles Times*, October 5, 1909, 1111.

later, however, scores of immigrants in California found their livelihoods imperiled owing to their alienage. And they had far more to worry about than the loss of a nickname.

Though the California State Legislature had adopted a “citizen only” public employment law in 1901 (a development addressed in Chapter 3), municipalities and counties had long ignored this requirement for public-school teachers. But in February 1915, California Attorney General Ulysses S. Webb and Superintendent of Public Instruction Edward Hyatt suddenly declared that the state would begin requiring U.S. citizenship for public-school teachers. Neither Webb nor Hyatt announced how the requirement was to be administered, leaving local and county officials to flounder as they tried to implement it on the fly.³⁷

Unsurprisingly, municipalities and counties across the state adopted differing approaches to the edict. The *Los Angeles Times* announced on February 15, 1915 that W.E. Sutherst, director of the Kern County High School farm, had suddenly lost his job owing to the newly announced policy.³⁸ In Mendocino and Santa Barbara, by contrast, immigrant teachers alleged that they were deprived of their salaries for past work.³⁹ Denying remuneration was too extreme for Superintendent Hyatt who warned of “‘chaos ahead for the schools of California...if school trustees continue to refuse to pay aliens.’” If they were not paid he knew that, “‘hundreds of teachers w[ould] refuse to teach and the school term w[ould] be badly disrupted.’”⁴⁰ But Hyatt was unable to control what he had set in motion.

Immigrant public-school teachers were not alone in finding their livelihoods suddenly imperiled. Owing to the provisions of the federal Expatriation Act, any U.S.-born woman who had married a foreign man since 1907 automatically lost her U.S. citizenship.⁴¹ Many of these marital expatriate teachers wrote to the state attorney general to ask what could be done. Without exception, they were told simply “that they t[ook] the nationality of their husbands.”⁴² Noncitizen faculty members and instructors at the University of California similarly worried that they too would lose their jobs in March 1915.⁴³

The abrupt enforcement of the “citizen only” law was not popular. Neither the *San Francisco Chronicle* nor the *Los Angeles Times* favorably covered or editorialized in support of its strict application. And local officials were rarely eager to verify teachers’ citizenship. Alfred Roncovieri, superintendent of public schools in San Francisco, viewed the policy announcement as an overreaction by state officials. The *Chronicle* reported that he had “intimat[ed]” that demands to enforce the law “must have arisen from spite work against some individual teacher” for “no question regarding the citizenship of teachers ha[d] ever been raised in San Francisco.”⁴⁴

³⁷ “Alien Teacher Out,” *Los Angeles Times*, February 15, 1915, II6; “Much Ado about Nothing,” *Los Angeles Times*, March 16, 1915, 13; “Alien Teachers in Law Trouble,” *San Francisco Chronicle*, March 20, 1915, 7.

³⁸ “Alien Teacher Out,” *Los Angeles Times*, February 15, 1915, II6.

³⁹ Such allegations were reported in articles such as: “Alien Teachers’ Salaries Held Up by the Trustees,” *San Francisco Chronicle*, March 19, 1915, 1; “Alien Teacher Salaries Held in Santa Barbara,” *Los Angeles Times*, April 2, 1915, 17; These allegations were denied by the state government. See: “State Quizzed on Subject of Alien Teachers,” *San Francisco Chronicle*, April 1, 1915, 17.

⁴⁰ “Alien Teachers’ Salaries Held Up by the Trustees,” *San Francisco Chronicle*, March 19, 1915, 1.

⁴¹ Chapter 5 will focus on the history of marital repatriation. See, among others: Bredbenner, *A Nationality of Her Own*; Gardner, *The Qualities of a Citizen*.

⁴² “Alien Teachers in Law Trouble,” *San Francisco Chronicle*, March 20, 1915, 7.

⁴³ “Alien Teachers in State Are Denied Money Is Charge,” *San Francisco Chronicle*, March 16, 1915, 3; “Alien Teachers in Law Trouble,” *San Francisco Chronicle*, March 20, 1915, 7.

⁴⁴ “Alien Teachers in Law Trouble,” *San Francisco Chronicle*, March 20, 1915, 7.

The state government even came under international pressure during the controversy. Charles Gray, a Member of Canadian Parliament, claimed that the state's newly enforced policy had denied salaries to fifteen hundred Canadian public-school teachers across California and twenty-eight Canadian instructors at the University of California. Gray was either lying or grossly misinformed. The University of California continued to pay professors' salaries throughout March 1915 as its lawyers strenuously maintained that the policy "d[id] not apply" to noncitizen professors and lecturers. Nevertheless, Gray's allegations led Ottawa to investigate the matter.⁴⁵ Representing Canadian interests, British Ambassador Cecil Spring Rice brought the allegations before U.S. Secretary of State William Jennings Bryan and formally protested the state's policy. Bryan, in turn, pressured officials in California to change course.⁴⁶

Under pressure from teachers, local officials, the chief U.S. diplomat, and foreign governments, state legislators promptly rethought the Golden State's "citizen only" policy. State Senator Herbert Jones advocated for and directed legislative efforts to exempt public-school teachers and university instructors from strict "citizen only" requirements. His legislation, however, still required foreign-born teachers both to begin the naturalization process and then become citizens as soon as they became eligible. Even after state authorities had forgotten about the "citizen only" public-school teachers' policy and then aimlessly scrambled to enforce it, legislators did not dare to outright repeal the state's citizenship policy in 1915.⁴⁷

In stumping for his bill, Jones claimed that, "The great majority of these foreign-born teachers are Canadian girls who have come here when very young and are practically American in education, training and sentiment." In his view, it would be unfair to punish these mostly young, single women with a "forgotten" requirement that was widely understood to be "a dead letter."⁴⁸ Jones's argument was further strengthened when the legislature learned that "the present situation had arisen" because "opponents of a public school teacher" had "discovered and invoked the forgotten statute" as a pretext for firing him.⁴⁹ Jones's bill proceeded rapidly through the legislature, was passed by wide margins, and was promptly signed by Governor Johnson in April 1915. That East and South Asian immigrants would remain barred from public-school teaching owing to their ineligibility to citizenship (and that these requirements still posed a significant burden to married women) went unmentioned in the press.⁵⁰

But California was not alone in restricting the employment rights of noncitizen teachers in the 1910s. In New York, state legislators attacked immigrant teachers as a national security

⁴⁵ "Education Bill Causes a Row," *Los Angeles Times*, March 18, 1915, 15.

⁴⁶ "Bryan Comes to Rescue of Alien Teachers," *Los Angeles Times*, April 1, 1915, 13; "State Quizzed on Subject of Alien Teachers," *San Francisco Chronicle*, April 1, 1915, 17; The evolution of Canada's international diplomacy was deeply interwoven with its status as a member of the British Commonwealth. The Government of Canada only established a (formal) diplomatic office in Washington, DC in 1927, "which was elevated to embassy status in 1943." See: Roger Frank Swanson, "Canadian Diplomatic Representation in the United States," *Canadian Public Administration publique du Canada* 18, no. 3 (September 1975): 366-398 (quote from pg. 369).

⁴⁷ "State Quizzed on Subject of Alien Teachers," *San Francisco Chronicle*, April 1, 1915, 17; "Assembly Approves Exemption of Aliens," *San Francisco Chronicle*, April 20, 1915, 1; Public-school teachers who lost citizenship owing to marriage were ultimately exempted from the citizenship requirement as well. See: Act 258 "An act to secure to native-born and naturalized citizens of the United States the exclusive right to be employed in any department of the state, county, city and county and city government in this state, except in certain schools, to validate certain acts, and to repeal all acts in conflict herewith": California, *General Laws of the State of California as Amended up to the End of the Session of 1931*, 102-3.

⁴⁸ "Would Relieve Alien Teachers," *Los Angeles Times*, March 28, 1915, 17.

⁴⁹ "State Quizzed on Subject of Alien Teachers," *San Francisco Chronicle*, April 1, 1915, 17.

⁵⁰ "Assembly Approves Exemption of Aliens"; "Young's Bill Gets Through," *Los Angeles Times*, April 20, 1915, 15.

threat as the United States geared for and entered World War I. As xenophobia swept the nation in the spring of 1917, the New York State Legislature debated a total ban on noncitizens from serving as teachers in all public schools in the state. Though the bill was not adopted, immigrant teachers remained under the microscope in the Empire State.⁵¹

Foreign language teachers, in particular, came under popular suspicion as potentially subversive influences in wartime. In the winter of 1917, John Hulshof, head of foreign-language instruction in New York City public schools, felt compelled to ensure parents and the public that students were receiving a patriotic education in wartime. He announced that only citizens and immigrants who had begun the naturalization process were permitted to work under his supervision. Hulshof even defend his own employment. Though of “German nativity,” he emphasized that “he ha[d] been an American citizen for thirty-two years.” Hulshof assured parents that he personally vetted foreign-language textbooks used by city schools and made sure to purge views that did “not conform to American ideals.”⁵² But such assurances was not enough for increasingly nativist legislators in wartime.

As Alexandra Filindra finds, U.S. entry into the Great War “caused great anxiety” about educators in the United States and elicited widespread fears of “enemy aliens propagandizing American children.” Politicians who might have otherwise supported the right of noncitizens to work as teachers were hard to find in wartime. When a “citizen only” public-school teacher bill was debated in the New York State Legislature in early 1918, only the Socialist delegation objected to it. The bill swiftly was enacted into law in March 1918. Public-school instruction had thus become a “citizen only” profession in the Empire State.⁵³

Though California did not return to a “citizen only” teaching policy in wartime, anti-immigrant sentiment was also directed at foreign-born teachers in the Golden State during this time of heightened xenophobia. In May 1918, state education authorities announced that they would, if possible, “refus[e] to grant credentials to alien enemies.” They similarly announced plans to investigate the status of immigrant teachers’ citizenship petitions to “ascertain whether or not if the proper time had elapsed” to naturalize. If no “attempt had been made to complete” their petition for citizenship, education authorities planned to cancel their credentials. However, this plan seems to have been dropped as the war ended, as no such investigation appears in the records of the California Commission on Teacher Credentials.⁵⁴

But that did not stop the *Los Angeles Times* from warning that foreign teachers were “poison[ing]” the minds of American students. Editorializing in the autumn of 1919, the *Times* encouraged school boards across the state to investigate allegations that communist, socialist, and other “radical” teachers were spreading “the seeds of hate, rebellion, anarchy and murder” among students. Though an otherwise conservative and staunchly anti-union publication, the paper went so far as to argue that:

⁵¹ See, especially: Filindra, “E Pluribus Unum?,” 132.

⁵² “No Enemy Alien Teachers,” *New York Times*, December 17, 1917, 12.

⁵³ Minnesota went even further as the state declared that no aliens could teach in public or private schools so long as the United States was at war. See: Filindra, “E Pluribus Unum?,” 132; See, (similarly cited by Filindra): “Minnesota Bars Alien Teachers,” *New York Times*, May 1, 1918, 8.

⁵⁴ See, Minutes of May 20, 1918 Meeting: California Board of Education, “Commission on Credentials Minutes, 1918-1929,” Files 359.01 (1-2) C3609, California State Archives, Sacramento, CA.

If inadequate pay facilitates the employment of alien plotters in our schools and colleges by failing to attract the best type of American educator, then the pay should be raised to any level, however high.⁵⁵

War and fear of radical immigrants in its wake had led the paper to dramatically reimagine “alien teachers.” Whereas the *Los Angeles Times* had promoted the figure of young, “honorary American” Canadian women as the victims of the state’s “citizen only” licensure policy in 1915, just a few years later the paper depicted noncitizen teachers as politically radical “alien plotters.”

Teachers were not the only immigrant professionals to be restricted in their job prospects owing to alienage during the Progressive and World War I eras. However, due to the large number of teachers who would lose their jobs upon the adoption and enforcement of a “citizen only” policy, newspapers reported on these debates and controversies as major stories. But that was rarely the case for other immigrant professionals in the first two decades of the twentieth century. Though the *New York Times* closely tracked noncitizen teachers’ hiring rights between 1917 and 1919 in the Empire State, no such coverage ensued when the State Legislature debated and adopted a citizenship requirement for architects in 1915.⁵⁶

Scholars and immigrant rights advocates were similarly slow to explore the development of citizenship requirements for professional licensure. Though disputes over working-class noncitizen employment rights in Arizona and New York (explored in Chapter 3) elicited substantial legal commentary and newspaper coverage in the mid-1910s, scholars and journalists failed to document the spread and breadth of professional licensing restrictions directed at noncitizens.⁵⁷ And both immigrant rights advocates and state agencies that aided in immigrants’ socioeconomic integration were far more worried about the employment of blue-collar immigrants than they were with the licensure of foreign doctors and lawyers.⁵⁸ But professionals were becoming a growing percentage of immigrants moving to the country in the 1920s. In this new context, citizens and noncitizens alike would increasingly learn just how tangible (exclusive) “citizenship rights” could be in the United States.

II. Arguing Citizenship Matters in an Age of Quotas: The Rise of Anti-Alien Licensing Regimes in the Twenties

While the creation of the nativist federal quota system in the early 1920s drastically reduced overall immigration to the United States, the new regime of restriction actually increased the rate of highly-educated migrants entering the nation’s borders. Whereas professionals comprised less than one percent of foreigners moving to the United States in 1912, they represented more than three and a half percent of immigrants entering the country in 1926.⁵⁹ As rates of well-educated immigrants rose, advocates of noncitizens’ rights warned that state

⁵⁵ “Poison in the Spring,” *Los Angeles Times*, November 23, 1919, II4.

⁵⁶ See, for instance: “Would Bar Alien Teachers,” *New York Times*, March 29, 1917, 8; “Bars Alien Teachers,” *New York Times*, March 27, 1918; “Signs Bill to Bar Alien School Teachers,” *New York Times*, April 6, 1918, 13; “To Aid Alien School Teachers,” *New York Times*, February 27, 1919, 12; For reference to the enactment of the New York citizenship requirement for an architecture license in 1915, see: Plascencia, Freeman, and Setzler, “The Decline of Barriers to Immigrant Economic and Political Rights in the American States,” 9.

⁵⁷ In 1916, legal scholar Thomas Reed Powell explored public employment as an exclusive right of citizenship (though this work focused on the context of public works jobs) in: Powell, “The Right to Work for the State.”

⁵⁸ See, broadly: Ziegler-McPherson, *Americanization in the States*.

⁵⁹ Marian Schibsy, *Handbook for Immigrants to the United States* (New York: Foreign Language Information Service, 1927), 95–96.

legislators – at the behest of professional associations – were often constricting these immigrants’ employment rights through onerous obligations for licensure.

This section shows how noncitizens and pro-immigrant rights organizations learned about and tried to contest professional licensing restrictions in the 1920s. Not only did immigrants and their allies struggle to disseminate information about the breadth and weight of these anti-alien licensing policies to the broader public, their opponents rarely engaged them in open debate. Prominent nativist individuals and organizations did not make restricting access to professional employment to citizens a rallying cry during the Twenties. Instead, native-born professionals and professional associations usually quietly lobbied for licensing restrictions. Legislators, in turn, usually adopted these measures with little fanfare.

But state officials, tasked with implementing these restrictions, often found them difficult to interpret and administer. State licensing board members, after all, were rarely experts in immigration law. They, too, learned about citizenship matters through the enforcement of citizenship requirements for professional licensure. But not all immigrants experienced the weight of (exclusive) “citizenship rights” to the same degree. Anti-alien licensing restrictions disproportionately harmed already marginalized immigrants, especially East and South Asians and those fleeing war or postwar tumult.

During the 1920s, no organization recognized the scope and significance of anti-alien professional licensing restrictions across the country more than the Foreign Language Information Service (FLIS). Though born in a time of war as a branch of the federal government’s Committee on Public Information (the Wilson Administration’s World War I-propaganda machine), the FLIS was not disbanded following the conclusion of the Great War. It had become too popular among social workers and immigrant rights advocates as it acted as a useful clearinghouse of information for legislation related to immigrants and as a resource for immigrants and foreign-language newspapers seeking to facilitate the naturalization of noncitizens.⁶⁰ Temporarily taken over by the Red Cross after the war, the FLIS became an independent immigrant advocacy organization in the early 1920s and also functioned as an “early think tank” with access and influence at the highest levels of the federal government from the 1920s to the 1940s.⁶¹ And just a year after the passage of the Johnson-Reed Act in 1924, this organization began warning of how a growing number of immigrant professionals could not find work upon entering the United States.

In its monthly journal, *The Interpreter*, the FLIS implored its readers to recognize the growing “influx of the middle class[]” immigrants who were struggling in their employment “readjustment” in the United States. Too often, the FLIS argued in November 1925, Americans “assum[ed] that the immigrant’s economic condition is invariably improved by coming to

⁶⁰ National American Red Cross, *The Work of the Foreign Language Information Service of the American Red Cross* (Washington, DC: Bureau of Foreign Language Information Service, 1920).

⁶¹ The importance of the Foreign Language Information Service has not gone unnoticed by historians. Works which discuss and/or demonstrate its power as an advocacy organization include: Thatcher, *Immigrants and the 1930’s*; Bénédicte Deschamps, “L’épreuve/les preuves de la loyauté : la presse italo-américaine face à la citoyenneté (1910-1935),” *Revue française d’études américaines* 75, no. 1 (January 1998): 47–61; Deschamps, “‘Shall I Become a Citizen?’ The FLIS and the Foreign Language Press, 1919-1939”; Gardner, *The Qualities of a Citizen*; Schneider, *Crossing Borders* (quote from pg. 166); Fox, *Three Worlds of Relief*.

America.” That belief, *The Interpreter* maintained, blinded Americans to the plight of immigrants like an (anonymous) Austrian physician who moved to the United States to rebuild his life and practice after losing his savings in World War I. Upon relocating across the Atlantic, however:

he learned that his European degrees did not entitle him to practice medicine. He would have to study English and pass a series of examinations before our authorities would grant him a license. Too old to start all over again, he has taken a job as a bus boy in a lunch room.”⁶²

The FLIS similarly argued that it was necessary to confront widespread “anti-alien propaganda.” While nativists peddled the notion that well-educated “immigrants come here only to reap the fruits of American prosperity,” *The Interpreter* pointed instead to the skills that professional immigrants brought to the United States and their leadership within their ethnic communities.⁶³ The FLIS even pointed to none-other than “so staunch an advocate of immigration restriction as [Secretary of Labor] Mr. James J. Davis” who advocated for professional immigrants’ right to entry as part of a “flexible and more highly selective immigration policy.”⁶⁴ But the FLIS did more than just argue in defense of the employment rights of immigrant professionals in the 1920s.

As so few people knew about anti-alien licensing policies, the FLIS regularly “disseminat[ed] articles on the professions” throughout the “foreign language press” to advise immigrants on state laws governing “admission to the bar, citizenship of candidates for a physician’s license, requirements for registered nurses, [and] the practice of dentistry” among other professions.⁶⁵ The organization also warned immigrants to promptly “inquire about the license regulations of the[ir] community” when seeking employment, since contravention of state licensing laws “generally me[ant] arrest and fine” as “ignorance of the law d[id] not prevent punishment.”⁶⁶

These citizenship requirements were so widespread that the FLIS sought to catalogue information about them as much as possible. In the FLIS’s, *Handbook for Immigrants to the United States* (1927), the organization’s lead researcher, Marian Schibsby, identified law and medicine as the most common professions where noncitizens encountered licensing restrictions. She found that twenty-eight states required citizenship of lawyers and another nine mandated that immigrants file declarations of intention to become citizens. To practice medicine, she identified eleven states that required U.S. citizenship as a condition of licensure while another fifteen compelled immigrants to file “first papers.” Unfortunately for immigrants who used her *Handbook* (and historians who might use it as a primary source), Schibsby did not comprehensively list these policies in force on a state-by-state basis.⁶⁷ She did, however, emphasize legislation in “California, Illinois, Massachusetts, Michigan, New York, New Jersey

⁶² “Little Men Who Were Once Big,” *The Interpreter* 4, no. 9 (November 1925): 9–12.

⁶³ “Needs of the Educated Immigrant,” *The Interpreter* 4, no. 8 (October 1925): 8.

⁶⁴ “Selecting Our Immigrants,” *The Interpreter* 8, no. 10 (December 1929): 147.

⁶⁵ “Needs of the Educated Immigrant,” *The Interpreter* 4, no. 8 (October 1925): 8.

⁶⁶ Schibsby, *Handbook for Immigrants to the United States*, 94.

⁶⁷ See, generally Chapter 11: “Finding Work in the United States.” I believe her work to be the first attempt to encapsulate the breadth of anti-alien licensing restrictions across the country. Understandably (as this was designed as a handbook) Schibsby does not discuss sources or methods for her chapter. It is, however, clearly derived largely from the internal work (largely her own) of the FLIS. See: Schibsby, *Handbook*, 88–103.

and Pennsylvania,” when possible, as those states possessed “the largest foreign-born populations” in the country in the mid-1920s.⁶⁸

Though Schibsby found that states occasionally required citizenship or “first papers” as a condition of licensure in the fields of dentistry, nursing, and pharmacy, she identified other factors – especially proving requisite educational credentials and English-language skills – as more common barriers to immigrants in those lines of work. Schibsby could have added another (related) challenge for professional immigrants.⁶⁹ State licensing board members assigned to implement citizenship requirements were rarely specialists in immigration law. And they often struggled to interpret and administer anti-alien licensing restrictions. Few officials, however, struggled as much as members of the California Board of Pharmacy.

The refusal of the United States to establish diplomatic relations with the new Soviet Union during the 1920s, in particular, complicated the efforts of the State Board. When pharmacists who received degrees and credentials issued in the former Russian Empire came before the Board, members were unable to turn to Soviet consular authorities to verify those documents. In January 1924, the Board chose to be generous for one such pharmacist: Peter Goolin, a graduate of the Imperial Military Medical Academy of Petrograd. Though the Board was unable to verify all of Goolin’s documents, its members determined that his “[a]ffidavits on experience were satisfactory and” his “oral examination” was “sufficient” and granted him a full license. In 1927, however, another pharmacist from the former Russian Empire, A. Kamalian, came before the Board with “affidavits on experience and proof of registration in Russia.” Unlike Goolin just a few years earlier, the Board determined that they could not authenticate his documents as “their translations had not been made by a consul.” Though the Board afforded him a temporary permit to practice, they required Kamalian to “have the Polish or other qualified consul verify the translations” in order to receive a permanent license. That is, if Polish diplomatic officials were so kind as to aid him in spite of his lack of Polish citizenship.⁷⁰

As the Board of Pharmacy struggled to implement uniform standards for verifying the credentials of Russian pharmacists, its efforts were further complicated when the California State Legislature added a “first papers” requirements for pharmacists in the state. Owing to legislation adopted in April 1927, individuals petitioning for pharmacy licenses in California would henceforth be required provide proof of U.S. citizenship or of their formal declaration of intention to naturalize to the Board of Pharmacy. But those Board members were not experts on federal naturalization documents. And they found implementing the new policy to be overwhelming. In July 1927, the Board even instructed their assistant to meet with the office of the state attorney general to ascertain basic information on federal citizenship law, such as whether: “a Foreigner c[ould] file papers for citizenship immediately after arriving in the United States or must such persons wait until residing for one year in this State.”⁷¹

The Board also faced more practical challenges. Many immigrants were unwilling to surrender naturalization papers to the Board. In April 1928, Russian-born pharmacist David

⁶⁸ Schibsby, *Handbook*, 97–98.

⁶⁹ Schibsby, *Handbook*, 88–103.

⁷⁰ See: Minutes from January 7, 1924; July 5, 1927: California Board of Pharmacy, “Proceedings of the California State Board of Pharmacy,” File F3888, California State Archives, Sacramento, CA.

⁷¹ See: Minutes from July 25, 1927: California Board of Pharmacy, “Proceedings of the California State Board of Pharmacy,” File F3888, California State Archives, Sacramento, CA.

Kruger, “presented papers showing citizenship in the United States” at a Board meeting to fulfill the new requirements. But Kruger (understandably) refused to permanently surrender his naturalization papers “for the Board’s records.” So, the Board told him to “send in a photostatic copy” of them. Though Kruger met all other requirements, the Board denied him a license until they received a hard (photostatic) copy of his naturalization papers.⁷² Two years later, however, the Board was warned that it was a violation of federal law to “make any kind of copy of such papers.” Recognizing how “valuable...naturalization papers” were to immigrants, however, state authorities acknowledged that they could not demand that applicants surrender their citizenship papers. In response, the Board ultimately dropped its demand that individuals permanently turn over (original or copied) citizenship papers when applying for a license.⁷³

Despite the California Board of Pharmacy’s bungled implementation of the state’s “first papers” requirement, anti-alien professional licensing restrictions did not become a major public debate in California – or elsewhere in the nation – during the 1920s. In large measure, this was by design. As mid-twentieth-century legal scholar Milton Konvitz argued, “Bills [were] always being introduced in state legislatures to extend” anti-alien licensing laws. But “such acts [were] not sponsored by public-spirited persons or groups.” Nor were they debated broadly by politicians in the public sphere. Instead, such restrictions were usually:

offered and “pressured” by the organized business, profession, or calling. If the bill passes, it means that the pressure group was considered worthy of attention; if it fails, it means that the pressure group did not amount to much in terms of prestige, voting strength, or financial contributions to political campaigns. Such laws are directed at the elimination of competition from aliens qualified to engage in the callings.⁷⁴

At times, such “pressure” campaigns to support citizenship requirements for licensure might be unknown to members of those professional associations. Even though twenty-six states required either U.S. citizenship or a declaration of intention to practice medicine by 1927, the American Medical Association had not taken a policy of (publicly) supporting those restrictions. But that did not prevent prominent AMA leaders like Dr. N.P. Colwell from privately lobbying state boards of medicine for citizenship requirements. Colwell, head of the AMA’s national Council on Medical Education in the mid-1920s, wrote to the Texas Board of Medicine in the spring of 1924 to make the case for a “citizen only” licensure policy for doctors in the United States.⁷⁵ He asked Board members to consider if “it was about time for the state boards of the country to adopt citizenship as a qualification for license.” But the Board had already beaten him to it. Shortly before reading Colwell’s letter at a meeting in June 1924, it had voted to restrict doctors’ licenses to U.S. citizens and to immigrants in the possession of “first papers.”⁷⁶

⁷² See: Minutes from April 9, 1928: California Board of Pharmacy, “Proceedings of the California State Board of Pharmacy,” File F3888, California State Archives, Sacramento, CA.

⁷³ See: Minutes from July 7, 1930: California Board of Pharmacy, “Proceedings of the California State Board of Pharmacy,” File F3888, California State Archives, Sacramento, CA.

⁷⁴ Konvitz, *The Alien and the Asiatic in American Law*, 172.

⁷⁵ American Medical Association, “Seventy-Fourth Annual Session of the American Medical Association House of Delegates Proceedings” (San Francisco, CA, 1923); American Medical Association, “Seventy-Fifth Annual Session of the American Medical Association House of Delegates Proceedings” (Chicago, IL, 1924); American Medical Association, “Seventy-Seventh Annual Session of the American Medical Association House of Delegates Proceedings” (Dallas, TX, 1926).

⁷⁶ See: Minutes from June 17-19, 1924: Texas Board of Medicine, “Medical Examiners Minutes,” Box 1981/207-1, Texas State Archives, Austin, Texas.

Though the American Medical Association did not launch an overtly nativist campaign in the press to restrict all medical licenses to citizens in the Twenties, the organization did warn that certain foreign-born doctors – especially those coming from the former Russian Empire – required extra scrutiny. In 1926, the AMA’s Council on Medical Education (still led by Colwell) warned of a “rather serious situation” resulting from an “influx of physicians from abroad.” It reported that immigrant doctors petitioning for licenses “ha[d] increased from 138 in 1919 to 731 in 1924.” In this context, the Council warned that it was becoming increasingly difficult to confirm the “credentials” and “identity” of doctors hailing from “certain countries abroad, especially from Russia.” To mitigate the potential of fraud, the Council encouraged state licensing boards to “carefully investigat[e]...the credentials of all foreign candidates.”⁷⁷

And yet, while the Council noted that these growing numbers of immigrant doctors were “entering a field already seriously crowded,” it did not openly endorse a strict “citizen only” licensure policy. In fact, Colwell’s Council publicly insisted that “No undue obstacles...should be placed in the way of the foreign physician of known qualifications.” Though Colwell had privately lobbied Texas officials for a strict citizenship requirement just two years earlier, publicly his Council proclaimed that it was only concerned about the quality of foreign doctors’ education, experience, and training.⁷⁸ A similar process was underway at many leading American medical schools where Jewish applicants were increasingly denied admission. Though some administrators, like Harvard College President A. Lawrence Lowell, publicly declared that they were deliberately creating “Jewish quotas” for their medical programs, more often medical schools required “personal interview[s]” of applicants which were used as proxy to then justify denying “Jews on the basis of their having an unacceptable personality.”⁷⁹

As medical schools were increasingly closing their gates to Jewish immigrants (and native-born Jews), the American Medical Association was insistent that one group of immigrant doctors was to be publicly privileged. Though Canadians comprised 212 of 731 foreign doctors seeking licenses in 1924, the AMA’s Council on Medical Education neither included Canadians in their critique of a perceived “influx” of foreign doctors nor did it consider Canadians to even hail “from abroad.” The Council went so far as to claim that:

The uncertainty regarding [immigrant] candidates does not apply to those coming from Canada, since, through a most courteous and complete cooperation from the Canadian physicians, the character of Canadian medical schools is so well known and the verification of Canadian credentials so promptly and easily obtained.⁸⁰

Thus, the nation’s largest professional association of physicians publicly claimed that some noncitizens – Canadians – were less foreign than others. However, the increasingly successful private lobbying of AMA leaders like Colwell for states to adopt “citizen only” licensing policies meant that unless those Canadian-born doctors were U.S. citizens (or, in some cases, in the process of naturalizing), the number of states they could work in was decreasing. Canadian immigrants, who naturalized at lower rates than northwestern Europeans in the interwar years,

⁷⁷ American Medical Association, “Annual Session,” 1926, 30.

⁷⁸ American Medical Association, “Annual Session,” 1926, 30.

⁷⁹ Halperin, “The Jewish Problem in U.S. Medical Education, 1920-1955,” 141, 143 (quote from 143).

⁸⁰ American Medical Association, “Annual Session,” 1926, 30.

would find the welcoming public attitude of the AMA to be cold comfort upon learning of citizenship requirements as a condition of licensure in a growing number of states.⁸¹

Thus, anti-alien licensing restrictions were growing more numerous during the 1920s. Though noncitizens were increasingly entrapped by this web of licensing restrictions, advocates of immigrant rights struggled to spread word of their scope and weight. After all, professional associations were not writing blistering nativist editorials or taking out advertisements in newspapers demanding a mass purge of noncitizen doctors and pharmacists by state legislatures. Instead, anti-immigrant professionals operated behind-the-scenes. But the Crash of 1929 and the emerging Great Depression increased pressure on state authorities to restrict employment to U.S. citizens.

III. Contesting Citizenship Matters: Challenging, Adjudicating, and Implementing Anti-Alien Licensing Restrictions during the Great Depression

Mass unemployment in the 1930s only heightened the strain on legislators and licensing boards to restrict access to the professions to U.S. citizens. And as the Great Depression wore on, “citizen only” licensing laws grew both in number and scope. This section contextualizes the expansion of anti-immigrant professional licensing restrictions in the 1930s, increasingly robust state efforts to enforce them, and debates between supporters and opponents over their ethics and constitutionality.

As citizenship documents and “first papers” increasingly became required for professional licensure, scholars and immigrant rights activists tried to take stock of and disseminate information about them to the public. Immigrants and their allies both challenged the legality of these policies in court and implored the public to reject them as unjust, absurd, and impractical. But judges, licensing boards, and legislators continued to support and validate these policies as the legitimate exercise of the police powers of state governments. Though state licensing boards generally became more restrictive in both in their interpretation of licensing requirements and in their administration of them, the public was not roused to oppose them in a time of mass unemployment.

But the weight of anti-alien licensing restrictions policies was not evenly thrust upon all noncitizens. Women, East and South Asian immigrants, and Jewish refugees fleeing Nazi Germany disproportionately bore their burden. But as these policies became more pervasive, all noncitizens subject to them could be ensnared by their requirements.

Hundreds of immigrant nurses in New York City awoke to startling news on December 24, 1931. On Christmas Eve morning, the *New York Times* reported that Dr. J.G. William

⁸¹ However, as Fox and Bloemraad make clear, Canadians naturalized at a far greater rate than Mexican immigrants in the 1920s and 1930s, largely owing to institutionalized racism in naturalization courts directed at them and lower degrees of their (and other immigrants’) political incorporation in the Southwest. See: Fox and Bloemraad, “Beyond ‘White by Law’”; Thatcher similarly found in her analysis of 1940 Census figures that French Canadians were particularly slow to naturalize in the early-to-mid twentieth century. Among the “Foreign-Born White Population” (as calculated by the census), French Canadians were “eighth highest in their average residence,” but they were “twenty-third among the percentages naturalized” (56.1% had become U.S. citizens). Anglo-Canadians too showed lower-than-average rates of naturalization (becoming citizens at a rate of 60.8%). However, these rates were significantly higher than Mexican naturalization patterns (13.8% in 1940). See: Thatcher, *Immigrants and the 1930’s*, 90.

Greeff, Commissioner of New York City's twenty-six public hospitals, had declared that "only citizens and applicants for citizenship" would be allowed to work as "graduate nurses," hospital "attendants," or even be selected to serve as "student nurse[s]" (at no pay) under his supervision. The *Times* emphasized that while roughly one out of five graduate nurses (out of a total 1,882) employed by city hospitals were noncitizens, only eight-six were likely to be summarily fired. Of those eight-six nurses who had not filed "first papers," all but three were from Canada.⁸² Those Canadian nurses were set to lose their jobs and significant pay – between "1,080 to \$1,320 a year" – in a context of mass unemployment. As it was common for nurses to live in hospital housing, many noncitizens would also lose their room and board.⁸³

Greeff defended the firing of noncitizen nurses and citizenship requirements as a necessary protectionist measure. The *Times* reported that "Greeff...explained that [the policy's] chief purpose was to guarantee that nursing positions hereafter should be filled by citizens...particularly during the depression." He maintained that recent "Applications from nurses eager to serve...show that there are more than enough citizens to fill the entire nursing staff of the department."⁸⁴ Greeff's nativism in a time of mass unemployment did not abate. A year later, he adopted an even harsher hiring policy towards immigrant nurses.

Owing to impending budget cuts to the city's public hospitals amounting to \$1.5 million in December 1932, Greeff initiated an investigation into the employment of noncitizen nurses by city hospitals with the goal of firing hundreds of them. He defended this inquiry and purge "in the interests of economy" and as a means of "sav[ing] the jobs of citizen employes (sic)." While Greeff allowed hospital supervisors to hire some favored noncitizens, he hoped that his "citizen only" hiring policy would amount to mass layoffs of "at least 800 or 1,000" noncitizens from work.⁸⁵ He admitted – in a page-one article in the *New York Times* – that he had received several "protests" to this anti-alien hiring policy. "Of course...those who are affected probably will not like it," he conceded. "[B]ut what can they do," he retorted. Greeff even offered a rare overt protectionist defense of "citizen only" professional employment restrictions, asking, "Beside the necessity for economy, we have got to take care of our own first, haven't we?"⁸⁶

Though Greeff's policy was not universally endorsed, it nevertheless carried significant weight. On December 17, 1932, the *New York Times* issued an editorial denouncing Greeff for "Dismiss[ing] to the Breadline" four hundred noncitizen hospital workers and planning to "release 700 more before the end of the year." The *Times* argued that Greeff's position was based on "a distorted meaning of 'aliens.'" While a citizenship requirement might be justified in a time of mass unemployment if the country had a policy of "unrestricted immigration," the *Times* argued that it was unjust to purge immigrant nurses (and other hospital workers) who "ha[d] been living a number of years in this country" for they were, in effect, "citizen[s] in the making." The *Times* further argued that while it was right to insist on *suffrage* as an exclusive

⁸² "City Hospital Jobs Closed to Aliens," *New York Times*, December 24, 1931, 16.

⁸³ Conversely, nurses who had their own housing were paid "an additional \$30 a month": "City Hospital Jobs Closed to Aliens," *New York Times*, December 24, 1931, 16.

⁸⁴ "City Hospital Jobs Closed to Aliens," *New York Times*, December 24, 1931, 16.

⁸⁵ Greeff permitted (though did not guarantee) exceptions to: military veterans, (some) women married to U.S. citizens, nurses' whose naturalization was pending, nursing school instructors, "persons who have been members of the city pension system for ten years or more," and those Greeff personally exempted: "Acts to Oust Aliens from Hospital Jobs," *New York Times*, December 6, 1932, 23.

⁸⁶ "City Hospitals to Oust 800 Alien Employes; Citizens Will Replace Them at Lower Wages," *New York Times*, December 4, 1932, 1.

political right of citizenship, “It is absurd to argue that we are as justified...in withholding from [noncitizens] the right to earn” pay from hard, necessary hospital work.⁸⁷ The objections of the *New York Times* were not enough to force a reversal of Greeff’s policy. Months later, the FLIS reported in its *Interpreter Releases* that, “all alien nurses, a total of 1,415” were fired from New York City public hospitals in the winter of 1932-33.⁸⁸

Noncitizen nurses were not the only immigrant professionals targeted for hiring restrictions and firing during the years of the Great Depression. As Filindra finds, state and local authorities frequently sought to “offer protection” to citizens from “immigrant competition” in the 1930s during a “time of scarce employment” and “position[] themselves firmly in favor of the citizen-professional and against the foreigner competitor.”⁸⁹ But it *was* unusual for the denial of professional immigrants’ employment rights to erupt into a major news controversy in the early 1930s. As in the 1920s, anti-alien licensing restrictions were usually adopted with little fanfare during the Great Depression. But they were most certainly growing in number.

In a series of publications, immigrant rights advocate and scholar Harold Fields sought to quantify the breadth and scope of anti-alien licensing laws in the early-to-mid 1930s.⁹⁰ In his most detailed account, published by the sociology journal *Social Forces* in 1933, Fields sought to enumerate citizenship requirements on a state-by-state basis. In his aptly titled article, “Where Shall the Alien Work?” Fields identified four main patterns about their extent and weight:

(1) that every state in the Union has included laws on its statute books that withhold from the alien the right to engage in stated occupations; (2) that the number of such laws is proportional to the alien or foreign-born population of each state, e.g., that in the New England and Middle Atlantic States the greatest number of such laws is to be found, whereas in the Southern Mississippi states, the least number is registered; (3) that the admission and residence of Orientals and Mexicans to Western and Southern border states has resulted in discriminatory laws out of proportion to their alien population; (4) that the most common form of prohibition lies in the field of professions.”⁹¹

Mobilizing his findings to argue against anti-alien licensing restrictions, Fields implored policymakers to consider their effects on humanitarian and utilitarian grounds. He asked them to recognize that up to six million noncitizens lived in the United States and that “almost all of them [were] undeportable.” He warned that, “If we do not grant to these groups the right to work, we defer their Americanization process and impose upon ourselves the need for sustaining them through public charities.”⁹²

Fields’s research also demonstrated just how pervasive anti-alien licensing restrictions were becoming. Whereas Schibsby had found that twenty-eight states required citizenship for admission to the bar and another nine compelled “first papers” from lawyers in the mid-1920s, by 1933 Fields found that thirty-five states required citizenship of attorneys and another eight obliged aliens to file their declarations of intention. And while Schibsby had only mentioned

⁸⁷ “Dismissed to the Breadline,” *New York Times*, December 17, 1932, 16.

⁸⁸ Lewis, “Have We Still an Immigration Problem?,” *Interpreter Releases*, 1933, 153.

⁸⁹ Filindra, “E Pluribus Unum?,” 145.

⁹⁰ Fields, “Unemployment Opens a New Alien Problem”; Fields, “Unemployment and the Alien”; Fields, “Closing Immigration throughout the World”; Fields, “Where Shall the Alien Work”; Fields, “The Unemployed Foreign-Born.”

⁹¹ Fields, “Where Shall the Alien Work,” 214.

⁹² Fields, “Where Shall the Alien Work,” 221.

scattered citizenship requirements for pharmacists in her 1927 *Handbook*, Fields identified eight states that maintained a “citizen only” policy in 1933 and another three that required first papers for pharmacists. Fields further uncovered sixteen states that required citizenship for an accountant’s license and another twenty-six which stipulated that immigrant accountants had to begin the naturalization process.⁹³

While Schibsby and the FLIS had been largely alone in trying to rouse the public’s attention to the weight and scope of noncitizen professional licensing restrictions during the 1920s, Fields was far from the only scholar who aimed to make sense of citizenship requirements in professional employment during the Depression.⁹⁴ Just a year after Fields published his findings, the *Pennsylvania Law Review* published an anonymous article about the “Constitutionality of Legislative Discrimination against the Alien in his Right to Work.” It aimed to identify and contextualize the growing “body of new legislation” which was “making citizenship a requisite for employment in public projects and in many professions and trades” across the country.⁹⁵ Similarly, in his (massive) comparative study of *American Family Laws* published in 1938, legal scholar Chester Vernier devoted an entire section to identifying and comparing state legislation related to noncitizens’ “Rights of Employment and Labor.” In it, Vernier sought to demonstrate how state policies toward noncitizens “ha[d] not been as liberal as the common law” since all states and territories in the nation “ha[d] adopted statutory or constitutional provisions” limiting their access to licensure and employment.⁹⁶ All these scholars agreed that citizenship requirements were growing in number during the Great Depression (though their exact figures – and means of calculation – differed).⁹⁷

Lawyers and scholars also wrote about anti-alien licensing restrictions in efforts to identify means to overturn them both in court and in the court of popular opinion. When noncitizens filed court challenges against anti-alien licensing restrictions, most often their legal arguments rested on “a collection of treaty rights” variously available to immigrants from different nations and equal protection claims under the Fourteenth Amendment.⁹⁸ But as legal scholar Michael Kelly has found, state and federal courts (up to the federal Supreme Court) usually deferred to the police powers of states to set the “health, safety, morals, and welfare of those within its jurisdiction” in the early-to-mid twentieth century.⁹⁹

As those claims came up short in court, lawyers who fought against these restrictions increasingly sought to call judges’ (and the broader public’s) attention to the inherent

⁹³ Schibsby, *Handbook*, 88–103; Fields, “Where Shall the Alien Work,” 213–21.

⁹⁴ See, for a rare exception: Kneier, “Discrimination Against Aliens by Municipal Ordinances.”

⁹⁵ L.H., “Note Constitutionality of Legislative Discrimination Against the Alien in His Right to Work,” 74.

⁹⁶ Vernier, *American Family Laws*, 375.

⁹⁷ More recent (historical) scholarship on anti-alien licensing restrictions employs (slightly different) data to explore the breadth of citizenship requirements across the country. Filindra’s work on interwar era licensing restrictions relies on the (anonymous) *Pennsylvania Law Review* article, while Bloemraad’s builds on the work of Vernier. These publications - and those by Fields - exhibited some (understandable) inconsistencies. Legislation was constantly evolving, complicating the efforts of scholars and immigrant rights’ advocates to take stock of their scope at any one time. Moreover, some licensing boards adopted their own rules which were even more difficult for scholars (and immigrant rights activists) to identify. For instance, while Fields’s article identified nine state medical boards’ operating their own licensing policies in 1933, he did not know that the Texas Medical Board required “first papers” from immigrants to receive a license. For these reasons, Depression-era scholarly attempts to document all anti-alien licensing policies likely undercounted their breadth. See: Bloemraad, “Citizenship Lessons from the Past”; Filindra, “E Pluribus Unum?,” 128–53.

⁹⁸ Vernier, *American Family Laws*, 375–76.

⁹⁹ Kelly, “Wavering Course,” 705.

irrationality of citizenship requirements for licensure. At a March 1941 address before the annual dinner of the *New York University Law Quarterly Review*, Basil O'Connor asked his audience to ponder if it would be fair for courts to uphold a law denying "a red-headed man" the right to work as an elevator operator even though "It [was] common knowledge that there is no correlation between the color of a man's hair and the degree of care" required for such labors. O'Connor used this hypothetical anti-redhead law to illustrate the absurdities of anti-alien licensing policies.¹⁰⁰ "If an alien is excluded from employment," O'Connor maintained that "it is not because his distinguishing characteristics make him unsafe...but for some other reason." O'Connor argued that the most common rationales for these restrictions were "a dislike of aliens or a desire to prevent them from competing with citizens for jobs." While these opinions might be widely held, he reasoned simply that such prejudice "d[id] not meet the principle of...equal treatment for all persons." But O'Connor was compelled to admit that "the courts have frequently ignored this principle" when deciding anti-alien licensing cases.¹⁰¹

Political scientist David Fellman, by contrast, sought to distinguish justifiable licensing restrictions from those that he considered arbitrary. Fellman argued in his 1938 *Minnesota Law Review* article that employment restrictions aimed at noncitizen lawyers were understandable as attorneys were "officer[s] of the court, and ha[d] an unusually close connection with the laws of the land." However, Fellman claimed that such a rationale did not "justify exclusion from medicine, engineering, accountancy." Like O'Connor, Fellman wondered "what public interest" was served "by requiring citizenship of doctors and embalmers" and asked how it could be reasoned that a citizen was "likely to be a better pharmacist or engineer or accountant than an alien?"¹⁰² But Fellman also concluded that, "Under the stringencies of the depression, aliens...have been a convenient and rather hapless target of discriminatory legislation." Too often, Fellman argued, courts were failing to strike them down despite their authority – and constitutional obligation – to do so.¹⁰³

Immigrant rights activists also continued to fight against these professional employment restrictions during the Great Depression. The FLIS remained a major clearinghouse of information related to restrictive state policies aimed at noncitizens, updating immigrants, foreign-language newspapers, and social workers about developments in professional employment legislation.¹⁰⁴ Other advocates of immigrant rights, from Jewish civil rights lawyer Max Kohler (a leading opponent of compulsory alien registration legislation) to Catholic University of America Professor Msgr. John A. Ryan (a staunch pro-immigrant labor rights activist) also sought to call the public's attention to them.¹⁰⁵ Ryan, then a well-known New Deal

¹⁰⁰ Basil O'Connor, "Constitutional Protection of the Alien's Right to Work," *New York University Law Quarterly Review* 18, no. 4 (May 1941): 486–87.

¹⁰¹ O'Connor, "Constitutional Protection of the Alien's Right to Work," 487.

¹⁰² Fellman, "The Alien's Right to Work," 158.

¹⁰³ Fellman, "The Alien's Right to Work," 174.

¹⁰⁴ See, for 1933 publications alone (dealing with both working-class and professional employment restrictions): Lewis, "Have We Still an Immigration Problem?," *Interpreter Releases*, 1933, 151–56; David Wainhouse, "The Legal Status of the Alien Historically Considered," *Interpreter Releases*, 1933, 36–38; "Discrimination against the Alien in Employment," *Interpreter Releases*, 1933, 108–9; "Certain State Legislation Affecting Aliens," *Interpreter Releases*, 1933, 120–23; "Discrimination against Aliens in Employment," *Interpreter Releases*, 1933, 146–48.

¹⁰⁵ Max Kohler, "Legal Disabilities of Aliens in the United States," *American Bar Association Journal* 16, no. 2 (February 1, 1930): 113–17; Kohler's activism against compulsory alien registration legislation included the following works: Max Kohler, *Oppressive Proposed Registration of Aliens* (New York: Baron de Hirsch Trade School Press, 1923); Max Kohler, *The Registration of Aliens a Dangerous Project: Including the Proceedings of a Luncheon Conference in Opposition to the Registration of Aliens and*

advocate, used his platform of at an FLIS-sponsored “Conference on the Alien in America” in 1936 to implore his listeners to recognize that “discriminations against the alien in the matter of employment are at least ninety per cent unwarranted, foolish, and unjust.” He argued that such policies sprang not from patriotism and a sense of justice but from “prejudice and nationalistic antipathy.” Ryan recognized that anti-immigrant sentiment had been exacerbated by “the scarcity of jobs” which led legislators to adopt “more or less hypocritical...laws preventing aliens from occupying the higher positions and callings.” Instead of firing noncitizens or denying them licenses, Ryan argued for mandatory shorter workweeks so that jobless citizens and noncitizens alike might be employed.¹⁰⁶

Though the Massachusetts Division of Immigration and Americanization (a state agency staffed by immigrant rights advocates and social workers) did not go as far as Ryan, it similarly offered thinly veiled critiques of the commonwealth’s anti-alien licensing policies. In its 1930 *Annual Report*, the Division offered a short history of citizenship requirements for employment and licensure in the state. In it, the Division noted that anti-alien hiring policies had “usually been placed upon the statute books because of pressure in some occupational group, labor union and profession.” This behind-the-scenes lobbying had led to “sometimes rather anomalous situations” in licensing laws wherein “different standards have been set for somewhat similar occupations.” The Division confessed that it could not identify any logic inherent in making citizenship a necessity for “registration as pharmacist, druggist or embalmer,” while “no such requirement is made for registration as physician, surgeon or nurse.”¹⁰⁷

By the late 1930s, Division was even more explicit in condemning anti-alien licensing legislation in Massachusetts. In 1938 it warned that while “Citizenship should be, perhaps, a precious privilege to be earned,” it was too frequently becoming a “requirement for livelihood.” Growing anti-alien licensing restrictions had, in the Division’s eyes, “add[ed] to the growing list of material advantages reserved to the citizen” which functioned as “rewards for becoming a citizen” and “exert[ed] a real pressure upon the aliens’ thinking along these lines.”¹⁰⁸ A year later, it warned that Canadians were especially reporting this “pressure” when they sought the assistance of Division employees. While the average “Canadian is often assimilated in the sense that he feels at home in his adopted country long before he takes on the actual legal status of a naturalized citizen,” the Division warned that, “recent laws discriminatory to the alien have probably awakened these people to the need of naturalization to complete their assimilation.”¹⁰⁹ Once more, Canadians were learning how their status as “honorary” Americans offered no guarantees of work when the possession of *de jure* citizenship was needed to obtain employment.

Deportation Bills, Held at the Hotel Astor, New York City, January 9th, 1926 (New York, 1926); Max Kohler, *The Registration of Aliens, Voluntary or Compulsory: A Dangerous Project* (New York: League for American Citizenship, 1930); For Ryan’s opposition to noncitizen employment restrictions, see: Rt. Rev. Msgr. John A. Ryan, “Is the Alien Entitled to an Equal Chance in Getting a Job?” (Conference on the Alien in America, New York, May 2, 1936); His speech was reported on in the *Washington Post*: “Blaming Alien for Ills of U.S. Held Old Trick,” *Washington Post*, May 3, 1936, M14; For further reading on Ryan’s immigrant rights and labor activism, see: Maggie Elmore, “Fighting for Hemispheric Solidarity: The National Catholic Welfare Conference and the Quest to Secure Mexican American Employment Rights During World War II,” *U.S. Catholic Historian* 35, no. 2 (Spring 2017): 125–49.

¹⁰⁶ Ryan, “Is the Alien Entitled to an Equal Chance in Getting a Job?,” 24–25.

¹⁰⁷ Massachusetts Department of Education, “Annual Report of the Division of Immigration and Americanization, 1930,” 6.

¹⁰⁸ Massachusetts Department of Education, “Annual Report of the Division of Immigration and Americanization for the Year Ending November 30, 1938” (Boston: Commonwealth of Massachusetts, 1938), 8.

¹⁰⁹ Massachusetts Department of Education, “Annual Report of the Division of Immigration and Americanization for the Year Ending November 30, 1939” (Boston: Commonwealth of Massachusetts, 1939), 12.

But Canadians were not the immigrants who were most harmed by anti-alien restrictions for professional licensure. As in previous decades, these policies fell hardest on East and South Asian immigrants during the 1930s owing to federal racist bans on their naturalization rights. Immigrants “ineligible to citizenship” frequently contested restrictions on their employment rights by seeking bureaucratic loopholes or challenging their constitutionality in court. Once more, the California Board of Pharmacy would be at the center of these disputes.

In July 1931, Makhan Singh Sandhu, an immigrant from India, applied to take his qualifying exam to become a registered pharmacist in California. But the state’s requirement that immigrants had to file their “first papers” to obtain a license to practice pharmacy posed a seemingly impenetrable barrier for East and South Asian immigrants like Sandhu. However, Sandhu had managed to find a court that allowed him to make a formal declaration of intention to become a citizen. Pharmacy Board members were stumped. On one hand, they recognized that he had provided them with legitimate “papers of declaration of intention.” On the other, they did not know if it was in their power to grant a license to a “party...not eligible for citizenship.” Though the Board learned from local naturalization officials that Sandhu had not violated federal law, it ultimately decided that he was “unable to qualify” for a license to practice pharmacy and denied his application.¹¹⁰

Sandhu was not alone in attempting to mitigate the effects of the state’s “first papers” requirement. In 1931 and 1932, multiple Japanese citizens, who had received entry-level “assistant” pharmacy licenses before the state required “first papers,” petitioned to upgrade to a full license (which would allow them to practice independently). Once more, the Board opted to interpret the state’s licensing law narrowly, denying their applications. In October 1932, the Board went so far as to formally recommend that the State Legislature change the language of state’s pharmacy licensure policy to read that only those “eligible to citizenship” could receive licenses.¹¹¹ Legislators in Sacramento ignored their request. But that was not the last challenge the Board would face to related to the state’s “first papers” requirement.

In the autumn of 1933, three Japanese pharmacists – then working under “assistant”-level licenses – were similarly denied in their attempts to receive full licenses. Together, Thomas T. Sashihara, Fusuichi Fukushima, and Kesanosuke Sakuda hired Maurice Norcop as their lawyer and filed suit against the Board.¹¹² In *Sashihara et al. v. California State Board of Pharmacy*, Norcop argued that citizenship requirements were both an infringement of a federal treaty with Japan *and* an equal protection violation of the Fourteenth Amendment. But the California Court of Appeal for the Second District rejected his arguments in June 1935. While the court conceded that federal Treaty of Commerce and Navigation guaranteed Japanese nationals equal access to “trades” in the United States, it rejected Norcop’s contention that a pharmacy license fell under its umbrella. The court cited definitions from *Webster’s New International Dictionary* to conclude that the “trades” were sufficiently distinct from the “professions.” And the court

¹¹⁰ Sandhu continued to challenge his exclusion and appeared before the Board in October 1931 and was told to return, *again*, with his first papers later in January of 1932. Sandhu did not appear in records from the January meeting, however. See: Minutes from July 6, 1931; July 25, 1931; July 27, 1931; July 28, 1931; July 29, 1931; October 5, 1931: California Board of Pharmacy, “Proceedings of the California State Board of Pharmacy,” File F3888, California State Archives, Sacramento, CA.

¹¹¹ See: Minutes from October 9, 1931; October 26, 1931; October 26, 1932: California Board of Pharmacy, “Proceedings of the California State Board of Pharmacy,” File F3888, California State Archives, Sacramento, CA.

¹¹² See: Minutes from November 1, 1933: California Board of Pharmacy, “Proceedings of the California State Board of Pharmacy,” File F3888, California State Archives, Sacramento, CA.

dismissed Norcop's equal protection argument. It reasoned that since pharmacists handled "chemicals and poisons" and could cause great "harm" in their work, their profession fell under the state's police powers to ensure "public health, safety and general welfare." If the state determined that noncitizens – even immigrants ineligible to naturalize – should be denied access to these professions, the court reasoned that "it is obvious from these facts and others that there may be a reasonable basis for the existence of the discrimination against" them.¹¹³ While the possession of "first papers" might even allow white immigrant pharmacists in California to work as if they were, in legal scholar Hiroshi Motomura's words, "Americans in waiting," the denial of East and South Asian immigrants' federal naturalization rights conversely cast them as permanent outsiders.¹¹⁴

East and South Asian immigrants continued to become ensnared by anti-alien licensing laws in both California and elsewhere as the Depression wore on. In Wisconsin, most European- and Canadian-born accountants could meet the state's "first papers" requirement (provided they had the means). But M.A. Rauf, who hailed from India, could not. Without any debate about the ethics, practicality, or constitutionality of barring aliens ineligible to citizenship, the Wisconsin Board of Accountancy rejected his application for licensure in August 1934.¹¹⁵ The California Board of Pharmacy, in turn, only grew more exasperated with enforcing the Golden State's "first papers" requirement. In October 1939, after denying a Chinese immigrant's application for licensure, Board members voted to contact "the Deans of the colleges of pharmacy" across the state to reiterate the importance of "the citizenship requirement in the Pharmacy Law so that alien students in the future may be advised of the fact that they are not eligible for examination unless they can become citizens." Pharmacy Board members may have been sympathetic to the plight of East and South Asian immigrant pharmacy students who abruptly learned that they could not work in their adoptive home state. But they were more annoyed that it was their job to enforce the exclusive boundaries of American "citizenship rights."¹¹⁶

One other marginalized immigrant population was also disproportionately harmed by anti-alien licensing restrictions. Jewish immigrants, especially those fleeing Nazi Germany, were also targeted for licensing restrictions in the mid-to-late 1930s. In December 1938, Ethel Prince, president of the New York State Nurses Association warned Jewish refugee nurses fleeing Germany that their licensure and employment was far from guaranteed if they were considering permanent relocation to New York. Not only would a refugee have to "declare[] her intention of becoming a citizen" (owing to a recent state licensing law) and complete that petition in seven years (or the license would be revoked), but an applicant would need to ensure

¹¹³ *Sashihara v. California State Board of Pharmacy*, No. 46 P.2d 804 (California Court of Appeals, Second District June 13, 1935); See, also: Pharmacists §4089 "Moral Character Requirement" California, *Deering's California Codes Annotated of the State of California: Adopted June 15, 1937, with Amendments through the End of the 1975 Sessions of the 1975-76 Legislature*, Business and Professions (San Francisco, CA: Bancroft-Whitney Company, 1975), 400; Other scholars who explore the Sashihara case include: Alan Reeve Hunt, "International Law: Reservations to Commercial Treaties Dealing with Aliens' Rights to Engage in the Professions," *Michigan Law Review* 52, no. 8 (June 1954): 1184–98; Susan Bass Levin, "The Constitutionality of Employment Restrictions on Resident Aliens in the United States," *Buffalo Law Review* 24, no. 1 (Fall 1974): 211–38.

¹¹⁴ See, broadly: Motomura, *Americans in Waiting*.

¹¹⁵ The Board did not even consider offering an exception to Rauf, even though he was the first accountant to run into this barrier in a state with very few East and South Asian immigrants in the 1930s. See: Minutes from Meeting August 14, 1934: Wisconsin Board of Accountancy, "Wisconsin Accounting Examining Board Minutes," Series 2641, Box 1, Vol. 1, Wisconsin Historical Society Archives, Madison, Wisconsin.

¹¹⁶ See: Minutes from October 9, 1939: California Board of Pharmacy, "Proceedings of the California State Board of Pharmacy," File F3888, California State Archives, Sacramento, CA.

that all credentials could be verified when submitted to state licensing authorities. As Nazi consular officials refused to help locate or verify the credentials of Jewish nurses, this was a hard – if not impossible – hurdle to surmount. Prince did not, however, advocate to exempt Jewish refugees fleeing an anti-Semitic regime. Instead, she sought to publicize these new requirements aimed at noncitizen women under the guise of warning Jewish women that their employment prospectus would be highly precarious if they sought to work in New York.¹¹⁷

The American Medical Association similarly vilified doctors fleeing the establishment of the Nazi regime in Germany. At its annual convention in 1935, the AMA Board of Trustees complained that an “influx of foreign physicians” to the country was continuing unabated despite the drastic drop in overall immigration during the Great Depression. While total immigration to the United States had “diminished from 279,678 in 1929 to 29,470 in 1934,” the AMA lamented that foreign doctors continued to move to the United States at rates similar to those seen prior to the Stock Market Crash (398 immigrant physicians entered the country in 1929; 353 arrived in 1934). The AMA pointed to one group of immigrants as particularly responsible for this situation: doctors fleeing Germany. While rates of Canadian doctors moving to the United States had fallen by half between 1929 and 1934 (dropping from 228 to 108), the number of doctors moving to the United States from Germany grown from 22 in 1929 to 160 in 1934. The AMA grumbled that under the quota system, “there seems at present no practicable way of limiting” the entry of refugee doctors moving to the United States. However, the Association noted ominously that “Whether such physicians may or may not” work in their new homes “depends primarily on their ability to meet [state] requirements.”¹¹⁸

By the end of the 1930s, the AMA was openly trying to restrict physicians’ licenses to citizens altogether. California physician William R. Molony introduced a resolution at the 1938 AMA Annual Convention which embraced naked nativism and protectionism to argue in favor of a “citizen only” licensing policy doctors throughout the country. Molony pointed vaguely to citizenship requirements for medical licenses which he alleged were pervasive in other countries and bemoaned the “increasing numbers...of foreign graduates” who were “seeking admittance to the practice of medicine” in the United States as justification. He also dressed his nativism in the language of loyalty, arguing that “a period of residence” was needed for immigrant doctors to gain “a full and satisfactory knowledge of the American conception of patriotism and of ethical ideas of medicine.” The AMA Reference Committee on Medical Education agreed with Molony and reported that his resolution “me[t] [its] full approval.”¹¹⁹ The AMA House of Delegates then adopted the resolution, making it the formal policy of the organization.¹²⁰ Shortly after the

¹¹⁷ “Alien Nurses Advised,” *New York Times*, December 12, 1938, 15.

¹¹⁸ The AMA had two “annual meetings” in 1935 (the first being an “emergency” session). The Board of Trustees reported on widespread concerns about the “influx” of foreign doctors at its regular annual session: American Medical Association, “Eighty-Sixth Annual Session of the American Medical Association House of Delegates Proceedings” (Atlantic City, NJ, 1935), 18, 39.

¹¹⁹ American Medical Association, “Eighty-Ninth Annual Session of the American Medical Association House of Delegates Proceedings” (San Francisco, CA, 1938), 57, 61; Fields’s study of citizenship requirements in other parts of the globe suggest that Molony’s claim - that medicine was being limited to citizens nearly everywhere - was a significant exaggeration (though Fields’s 1932 study was conducted several years prior to Molony’s proposal): Fields, “Closing Immigration throughout the World,” 671–99.

¹²⁰ In the 1970s, two groups of public health scholars conducted extensive research into the breadth of licensing restrictions aimed at foreign medical graduates in the United States. Both include short histories of earlier periods and explore the rise of citizenship requirements. Both groups emphasize the 1938 announcement as a definitive shift in AMA policy toward immigrants. I agree that the announcement was certainly a major intensification of the AMA’s anti-immigrant attitudes, but I argue that the preceding two decades demonstrate longstanding efforts to restrict the employment of noncitizen doctors (both

outbreak of war in Europe, the *Journal of the American Medical Association* admitted that “difficult situations have been created” due to the pervasiveness of anti-alien licensing laws. It even recognized that “physicians from Germany and the nations it has taken over” were likely to be harmed by them. But the Association did not rethink the ethics or wisdom of these “citizen only” laws in a time of war.¹²¹

On the contrary, this nativist turn among medical associations was only spreading. In 1939, the Texas State Legislature adopted a strict “citizen only” licensing policy for physicians. When Mexican national Manuel Garcia-Godoy challenged it, the law was – like its counterparts in other states – held to be within the police powers of the Texas State Legislature.¹²² Unfortunately for Garcia-Godoy, while several other doctors were permitted to seek licensure if they had applied prior to the enactment of the new policy, he was not. The Board refused to recognize the credentials of his medical school: the National University of Mexico (UNAM). As an apt symbol of the overlapping protectionist interests espoused by both the State Board of Medicine and the Texas Medical Association (the state branch of the AMA), the Board even forwarded its legal bills arising from Garcia-Godoy’s lawsuit (amounting to \$43.55) to the state AMA branch so the Association could pay the costs.¹²³

While the mass firing of immigrant nurses in the early years of the Great Depression had been unusual in both its publicity and the open protectionism of its proponents, by the end of the 1930s, professional organizations like the AMA were becoming more overt in their support for anti-alien licensing laws. When the United States entered into war, the context and contours of those (exclusive) “citizenship rights” would change once more.

IV. Whose Citizenship Rights? Anti-Alien Licensing Laws in World War II and the Early Post-War Era

As had been the case at the outset of the Great War, immigrant professionals once more became targets for heightened licensing restrictions as the nation geared for and entered World War II. This section emphasizes how anti-alien licensing laws were transformed by mass labor mobilization, fears among native-born professionals of a postwar influx of refugees, and the repeal of federal racist bans on East and South Asian immigrants’ naturalization rights.

State governments struggled to enforce – increasingly numerous – citizenship requirements during World War II. As millions of men and women joined the armed forces and other entered into defense-related employment, labor shortages complicated state governments’ efforts to enforce citizenship requirements for professionals. Not all noncitizens could benefit

at AMA public meetings and in private correspondence). See: Rosemary Stevens and Joan Vermeulen, “Foreign Trained Physicians and American Medicine,” (Bethesda, MD: National Institutes of Health; Bureau of Health Manpower Education, June 1972), xiv; Butter and Sweet, “Licensure of Foreign Medical Graduates,” 315.

¹²¹ “Citizenship as a Condition Precedent to Medical Licensure in the United States,” *Journal of the American Medical Association* 113, no. 16 (October 14, 1939): 1496–97.

¹²² American Medical Association, “Ninety-First Annual Session of the American Medical Association House of Delegates Proceedings” (New York, 1940), 24.

¹²³ See: Minutes from May 7, 1939; May 21, 1939; June 19-21, 1939; September 7, 1939; November 20-22, 1939; December 3, 1939: Texas Board of Medicine, “Medical Examiners Minutes,” Box 1981/207-2, Texas State Archives, Austin, Texas; Filindra similarly finds that the New York Medical Society (another state branch of the AMA) also campaigned for greater licensing restrictions on foreign doctors in 1939. See: Filindra, “E Pluribus Unum?,” 131.

from lax enforcement, however, as Japanese citizens (and Japanese Americans) were incarcerated in concentration camps by federal authorities.¹²⁴

Nor did the conclusion of the war did signal a “Double Victory” for noncitizens as a legal category. Professional associations once more stigmatized well-educated refugees displaced by war and demanded even greater restrictions on their (and other noncitizens’) employment rights. Many state governments were happy to oblige. Postwar state legislatures enacted an even greater number of anti-alien licensing statutes, while licensing boards adopted ever stricter mechanisms to enforce them. As federal bans on East and South Asian immigrants’ naturalization rights were repealed, the most egregious inequities in the aims and implementation of anti-alien professional licensing restrictions were finally overturned. But by the mid-twentieth century, citizenship requirements for professional employment had become so pervasive that they had fundamentally redefined the meaning and weight of (exclusive) U.S. citizenship rights.

Few individuals in the United States knew more about the effects of anti-alien employment and licensing restrictions than Earl Harrison on the eve of American entry into World War II. This longtime immigrant rights advocate and lawyer had been appointed Alien Registration Director of the Immigration and Naturalization Service in 1940 by President Franklin Roosevelt. Though selected to serve this position to ensure that the civil rights of millions of noncitizens would not be violated during this program of mass identification, Harrison transformed his position into a platform to actively advocate for immigrants’ political and economic rights. Chief among the problems facing noncitizens and the nation, Harrison contended, were employment barriers aimed at them as the country mobilized for war.¹²⁵

In a June 1941 address before the National Conference of Social Work, Harrison implored his fellow Americans to recognize that both restrictive national immigration policy and growing naturalization rates were drastically reducing the percentage of residents in the country who were noncitizens. “[C]onsequently,” he argued it was “patently absurd to place the blame for...unemployment on the aliens.” While Harrison hoped that Americans would recognize the injustice of “crackpot legislation or other efforts aimed indiscriminately at all aliens,” he also called on his fellow citizens to recognize that anti-alien employment policies, “Directly or indirectly...tend[ed] to impede our National Defense program.”¹²⁶ In a series of other presentations and public announcements, Harrison and his allies argued that employment discrimination against noncitizens was both contrary to American values and counterproductive to the war effort.¹²⁷ But Harrison knew that he and his colleagues were fighting an uphill battle against significant anti-immigrant sentiment in a time of national security hysteria.

¹²⁴ See, among others: Roger Daniels, “Immigration Policy in a Time of War: The United States, 1939-1945,” *Journal of American Ethnic History*, 2006, 107–116; Greg Robinson, *By Order of the President: FDR and the Internment of Japanese Americans* (Harvard University Press, 2009).

¹²⁵ “The Alien Registration Act of 1940, an Address by Earl Harrison, Director of Registration, Bureau of Immigration and Naturalization, Department of Justice” (NBC, August 7, 1940), AFL Papers, Files of the Economist of the AFL, General File, Mss. 177, Box 1, Wisconsin Historical Society Archives; Earl G. Harrison, “Our Alien Population” (Current Citizenship Problems: Eleventh Annual Conference of the National Council on Naturalization and Citizenship, New York, 1941); Lewis M. Stevens, “The Life and Character of Earl G. Harrison,” *University of Pennsylvania Law Review* 104, no. 5 (March 1956): 591–602.

¹²⁶ Earl G. Harrison, “Present Day Attitudes Toward Alienage – A Constructive Program,” 1941.

¹²⁷ “The Alien Registration Act of 1940, an Address by Earl Harrison, Director of Registration, Bureau of Immigration and Naturalization, Department of Justice”; “Die Registrierung Der Auslaender Und Die Deutschen von Herrn Frank W. Kuehl,” 1940,

Following U.S. entry into war, Harrison – promoted to INS Commissioner – pointed to the loyalty of American soldiers of German and Italian origin to mobilize public sentiment against the employment discrimination of noncitizens. In 1943, he argued that “everyone knows that our armed forces are filled with boys of Italian and German extraction who are just as loyal and just as eager for our victory as the rest.” Though Harrison applauded the American public for broadly passing an “acid test” and opposing mass “witch-hunt[s]” against individuals solely because of their nationality or ethnic extraction, he believed there were still several areas where public activism was needed to aid immigrants and their families (so that they could better contribute to the war effort).¹²⁸ Harrison contended that Americans needed to better recognize and call into question why:

There are so many states which have laws and regulations excluding aliens from services usually granted to citizens. There are too many states which preclude aliens from operating certain types of business enterprises or practicing in certain professions.¹²⁹

Harrison proudly noted that the INS was trying to mitigate the effects of these anti-alien licensing restrictions by “provid[ing] for more expeditious consideration of naturalization petitions filed by doctors and surgeons.” But too often opponents alleged “that ‘the alien doctors’ will steal the practices of those who have gone into the Army and the Navy” upon the conclusion of the war. To offset this demagoguery, the INS commissioner asked the public to recognize “that there is plenty of work for all and there will continue to be” for both citizens and noncitizens alike.¹³⁰ Despite his defense of many noncitizens’ rights in wartime, Harrison did not name the oppression of Japanese and Japanese Americans then incarcerated by federal authorities among the pressing problems that he thought needed to be rectified.¹³¹

But Harrison’s findings did reflect the contradictory – and often conflicting – impulses state governments displayed toward professional noncitizens’ employment rights in wartime. These dual (and dueling) interests were typified by California state officials’ approaches toward the licensing of noncitizen teachers. At the outset of war, state authorities committed themselves to strictly enforcing the state’s “first papers” and citizenship requirements. Following the attack on Pearl Harbor, in February 1942 members of the California Teacher Preparation and Licensing Commission debated how they could better enforce the state’s requirement that public-school teachers be citizens or in the process of becoming citizens (and then complete that process as soon as they became eligible). The Commission decided that henceforth all teachers – both immigrant and native-born – would have to provide documentation demonstrating their possession of U.S. citizenship or their acquisition of “first papers” when applying for credentials.

Frank W Kuehl Papers, Mss 617, Box 73, Wisconsin Historical Society Archives; “Registration of Aliens, An Address by Francis Biddle, Solicitor General of the United States” (Washington, D.C.: CBS, August 25, 1940), AFL Papers, Files of the Economist of the AFL, General File, Mss. 177, Box 1, Wisconsin Historical Society Archives; Earl G. Harrison, “Suggestions to Employers Regarding Alien Registration Act of 1940,” n.d.; Francis Biddle, *Identification of Alien Enemies*, CBS Radio Announcement, 1942, Folder: “Alien Registration, 1941-1942,” Wisconsin Historical Society Archives.

¹²⁸ Earl G. Harrison, “The Problems of the Alien in Wartime,” *Interpreter Releases*, 1943, 53.

¹²⁹ Harrison, “The Problems of the Alien in Wartime,” *Interpreter Releases*, 1943, 57.

¹³⁰ Harrison, “The Problems of the Alien in Wartime,” *Interpreter Releases*, 1943, 57.

¹³¹ Harrison, “The Problems of the Alien in Wartime,” *Interpreter Releases*, 1943, 53–57.

But Commission members were not experts in U.S. citizenship law, so they turned to the office of State Attorney General Earl Warren for advice.¹³²

Warren's deputy, T.A. Westphal Jr., urged state education authorities to back off their efforts to demand citizenship papers from all teachers. In a memo sent to the Licensing Commission (signed by Warren), Westphal emphasized that neither California labor or education statutes provided explicit authorization for citizenship "tests" of employees. Westphal concluded that it would be best to continue the policy of "accepting the applicant's statement of citizenship, unless circumstances appear to warrant a further examination of the claim."¹³³

In any event, the Commission's aborted efforts to verify all public-school teachers' citizenship status were soon made (temporarily) moot anyway. Owing to a shortage in labor supply, in 1943 the California State Legislature authorized the issuance of "emergency credentials" to noncitizen teachers (so long as they were not "enemy aliens"). Elected officials wanted voters to know, however, that they were not making public-school instruction permanently available to noncitizens. Legislators ensured that "emergency credentials" would automatically expire upon the conclusion of the war.¹³⁴

California legislators and state education licensing officials, therefore, sought to signal their support for anti-alien employment measures during a time of war. But labor shortage and the counsel of the state attorney general's office (which merely hinted at the logistical hurdles inherent in demanding citizenship papers from all teachers in the state) stymied the more protectionist impulses of state legislators and licensing officials. This "emergency" licensure policy was far from an egalitarian measure, however. And California licensing authorities were not unique in charting this self-contradictory approach in wartime.

The Texas Board of Medicine was similarly moving in conflicting directions. In 1939, the Texas State Legislature enacted a "citizen only" law for all new physicians seeking licensure in the state. Two years later, however, the Board of Medicine, recognizing the growing need for doctors in the state, voted to waive several (examination and experience) requirements for the "graduates of the English Speaking Schools of our Allied Countries." The Board actually adopted this policy before the country was at war, endorsing it in November 1941. But it nevertheless refused to exempt foreign physicians from the state's new "citizen only" requirement. Even when the Board held an emergency meeting in January 1944 to address the state's "shortage of doctors" that had arisen owing to the "large number" of physicians who had entered "military service," its members did not consider waiving the citizenship requirement (nor did they lobby the legislature to amend it). And it continued to deny credentials to graduates of UNAM despite the state's scarcity of physicians. Only the intervention of Governor Beauford H. Jester in 1947 prompted the Board to consider recognizing degrees from the preeminent

¹³² See: Minutes of February 17, 1942 Meeting: California Board of Education, "Teacher Preparation and Licensing Commission – Credentials Commission, 1/19/1932 – 9/7/1960," Files R359.01 Box 1, California State Archives, Sacramento, CA.

¹³³ See: Earl Warren, Attorney General to Department of Education, Attention Mr. Alfred E. Lentz, Administrative Adviser, April 28, 1942, "Teacher Preparation and Licensing Commission – Credentials Commission, 1/19/1932 – 9/7/1960," Files R359.01 Box 1, California State Archives, Sacramento, CA.

¹³⁴ See: California State Department of Education, Division of Credentials, October 23, 1943, "Regulations Governing the Issuance of Emergency Credentials Authorizing Public School Service in California, Plan II," Commission for Teacher Preparation & Licensing Commission of Credentials, Subject Files, California Department of Education, Folder 1 of 2 1942-1943, Files R359.04, California State Archives, Sacramento, CA.

university in Mexico (which it finally acceded to after its own “investigation” into UNAM’s medical school’s credentials two years later).¹³⁵

This hesitancy to grant licenses to foreign doctors – and other immigrant professionals – was only heightened in the aftermath of war. In the postwar years, native-born professionals continued to demand that legislators and state licensing boards grant citizens preferential treatment over noncitizens. By and large, they got their wish. But the repeal of racist federal naturalization laws would finally end the legal category of “aliens ineligible” to citizenship and the permanency of anti-alien licensing policies directed at East and South Asian immigrants.

Despite the development of wartime fair employment legislation, anti-alien licensing policies were not repealed – or struck down as unconstitutional – in the aftermath of World War II.¹³⁶ On the contrary, state governments were actually expanding the number and scope of these restrictions. As Filindra finds, “Between 1940 and 1957, states enacted at least 69 laws restricting immigrant access to professions ranging from medicine to lobster fishing.”¹³⁷ While Filindra concedes that “there is no specific pattern to the type of professions that states sought to protect,” she finds that many states which had adopted (relatively) few licensing restrictions on noncitizens in the interwar era were now adopting citizenship requirements at heightened rates. These restrictions, she concludes, disproportionately targeted and harmed refugees fleeing to the United States.¹³⁸ But professional associations’ fingerprints on these restrictions were hard to locate. As sociologist Donald Peterson Kent remarked in 1953, “opposition” to the licensure of refugee doctors “has taken various forms, but is usually covert rather than openly expressed.”¹³⁹

More than any other contemporaneous work of social science, Kent’s *The Refugee Intellectual* demonstrated the weight of anti-alien licensing restrictions on the lives and livelihoods of immigrant professionals. Kent conducted a massive study of more than seven hundred German and Austrian refugee professionals who fled Hitler’s regime prior to U.S. entry into World War II. He found that, not surprisingly, displaced “physicians have tended to concentrate in the few states that are most liberal in their licensing policies.”¹⁴⁰ Moreover, nearly two-thirds of refugee doctors became citizens almost immediately after residing (the

¹³⁵ See: Minutes from November 17-19, 1941; January 9, 1944; March 22-24, 1944; June 4-6, 1945; June 5-7, 1947; June 16-18, 1949; December 8-10, 1949; December 3-5, 1951: Texas Board of Medicine, “Medical Examiners Minutes,” Box 1981/207-3, Texas State Archives, Austin, Texas.

¹³⁶ Konvitz recognized this contradiction in 1946. He particularly noted that New York’s “Fair Employment Practice Law” in 1945 made it illegal to “discriminat[e] against individuals because of their race, color, creed, or national origin” but it “d[id] not protect persons discriminated against because they are aliens.” Konvitz hoped that state legislators would amend the law “to repeal the many statutes which discriminate against aliens by excluding them from professions and various callings.” But no such repeal - or extension of the state’s Fair Employment Practice Act - was forthcoming in the postwar era: Konvitz, *The Alien and the Asiatic in American Law*, 189.

¹³⁷ Filindra, “E Pluribus Unum?,” 146.

¹³⁸ Filindra relies on a 1957 article from the *Columbia Law Review* to construct her calculations of the development of anti-alien licensing laws in the postwar era. I similarly believe that the 1957 article likely undercounts the number of anti-alien licensing policies in force at the time, as state licensing boards often maintained their own restrictions on noncitizens without statutory requirements. I do, however, agree with Filindra’s conclusions that these restrictions continued to grow in number and scope and the patterns she describes. Filindra, 146–50; See, also: “Constitutionality of Restrictions on Aliens’ Right to Work,” *Columbia Law Review* 57, no. 7 (November 1957): 1012–28.

¹³⁹ See the introduction and appendices for Kent’s discussion on methods. Kent, *The Refugee Intellectual*, 3–10, (quote from page 127), 245–302.

¹⁴⁰ Kent, *The Refugee Intellectual*, 127.

federally required minimum of) five years in the United States.¹⁴¹ Kent underscored, however, that naturalization was no guarantee that refugees could practice medicine. After all, it was “impossible for most” to “produce credentials from the university where the degree was taken.”¹⁴²

But refugees were not the only immigrants who found these statutes to be increasingly harmful. Several state licensing boards adopted even more stringent mechanisms to enforce citizenship requirements following the conclusion of the war. For instance, in 1947 the Texas Board of Public Accountancy adopted new rules to implement the state’s “Proof of Citizenship” requirement. The Board would henceforth require foreign-born accountants to submit their own naturalization papers to state officials in Austin. Though the Board recognized that this was a significant demand, it insisted in correspondence with foreign-born accountants that “there is no way of establishing proof of citizenship without submitting your actual citizenship papers.” The Board assured immigrant accountants, however, that their papers would be promptly “returned” to them after the verification process was completed.¹⁴³

Immigrant dentists in Massachusetts would similarly encounter a more restrictive licensing regime in the wake of World War II. In June 1946, the Massachusetts Board of Dentistry wrote to already-licensed immigrant dentists to demand that they promptly submit proof of citizenship or “first papers” before the Board’s next meeting (just a month later). All who failed to submit such paperwork, the Board warned, would have their licenses immediately suspended. At its July meeting, Board members voted to suspend the licenses of twelve dentists. But one dentist could not meet the state’s (newly enforced) requirements.

Yohei Noji, a Japanese citizen, could not file his “first papers” owing to his status as an alien ineligible to citizenship. Noji protested the revocation of his license and the Board referred his grievance to the state attorney general’s office. Surprisingly, the office of Attorney General Clarence A. Barnes announced that Noji should be allowed to retain his license in spite of the state’s first papers requirement.¹⁴⁴ Most Japanese professionals elsewhere were not so fortunate.

In his pathbreaking 1946 legal monograph, *The Alien and the Asiatic in American Law*, Milton Konvitz criticized policymakers and members of the public who made excuses for – or dismissed the importance of – the unequal rights afforded to East and South Asian immigrants in state and federal jurisprudence. Just a year after the end of both the Holocaust and Japanese internment, he began his tome by asking readers to remember that “Jews constituted only 1 percent of” Germany’s population in the early 1930s, but their small numbers “did not save them from the wrath of the Nazis.”¹⁴⁵ Thus, while fourteen “citizen only” licensing policies in New York harmed all noncitizens, Konvitz emphasized how first paper requirements in thirteen other

¹⁴¹ Kent found that “members of the medical profession” obtained U.S. citizenship at rates higher than that of any other profession he studied: 97.3%. See: Kent, *The Refugee Intellectual*, 33.

¹⁴² Kent, *The Refugee Intellectual*, 127.

¹⁴³ See: E.P. Prass, “General Correspondence” October 17, 1947, Texas Board of Public Accountancy, Folder: “Obsolete Rulings,” Box 1993/206-9, Texas State Archives, Austin, Texas.

¹⁴⁴ See: Minutes of July 17, 1946; October 16, 1946; December 4, 1946: Massachusetts Board of Dentistry, “Board of Dentistry Minutes,” Massachusetts Commonwealth Archives, Boston, Massachusetts.

¹⁴⁵ Konvitz, *The Alien and the Asiatic in American Law*, viii.

professions and occupations “mean[t]...that persons ineligible for citizenship” were completely banned from them (among other examples).¹⁴⁶

East and South Asian immigrants and civil rights organizations also continued to challenge the constitutionality of restrictions on the basis of “ineligibility to citizenship” in court in the aftermath of World War II. And as historian Mark Brilliant explains, the U.S. Supreme Court increasingly (but haltingly) overturned these policies in the late-1940s. In January 1948, the high court ruled in *Oyama v. California* that (key elements of) the California Alien Property Acts were unconstitutional. Later that same year, in *Takahashi v. Fish & Game Commission*, the U.S. Supreme Court struck down a similar ban on Japanese immigrants from possessing fishing licenses.¹⁴⁷ However, as Brilliant finds, the court continued to recognize, “the constitutionality of the aliens-ineligible-for-citizenship classification, which derived from federal immigration and naturalization law.”¹⁴⁸ To completely rid California – and the nation – of their effects, federal restrictions on immigrants’ naturalization rights owing to race would have to be repealed.

Chinese immigrants, first targeted for anti-alien legislation in California as early as the Gold Rush Era, had recently undergone this transformation as they became aliens *eligible* for citizenship just a few years before *Oyama* and *Takahashi*. As a wartime measure to promote cooperation with Chinese allies, Congress passed and FDR signed legislation repealing the Chinese Exclusion Act in 1943. Though the most populous nation on the planet was afforded only a token annual immigration quota, the repeal had significant impact on the lives of Chinese citizens residing in the United States. Resident Chinese immigrants were finally eligible to naturalize, provided they met with all other citizenship requirements. Demonstrating proof of legal entry into the United States was not always possible for Chinese immigrants, as many had entered as undocumented immigrant “Paper Sons” in the early twentieth century.¹⁴⁹ Nevertheless, the repeal of the Chinese Exclusion Act signaled that outright racist naturalization restrictions on immigrants from East and South Asia were not written permanently into stone.

Following the *Oyama* and *Takahashi* cases, Japanese-American civil rights activists concentrated their efforts on repealing racist federal restrictions directed at immigrants from Japan.¹⁵⁰ They finally succeeded when Congress overrode President Harry S. Truman’s veto of the McCarran-Walter Nationality Act of 1952. Upon its passage, all formal federal naturalization restrictions on the basis of race were overturned. Though would-be immigrants from Japan were often denied entry into the United State owing to the paltry quota afforded to them by Congress, the McCarran-Walter Act finally rid the nation of the legal category of “aliens racially ineligible to citizenship.” The law also repealed the requirement that noncitizens had to file a declaration of intention in court years before completing their naturalization paperwork. Japanese citizens, long denied access to the professions due to both “ineligibility to citizenship” restrictions and “first papers” requirements, finally had the same legal rights to pursue employment as other immigrants residing in the United States.¹⁵¹

¹⁴⁶ Konvitz, *The Alien and the Asiatic in American Law*, 171.

¹⁴⁷ See, broadly: Chapter 2, “Jap Crow” in Brilliant, *The Color of America Has Changed*, 28–57.

¹⁴⁸ Brilliant, *The Color of America Has Changed*, 52.

¹⁴⁹ See, broadly: Salyer, *Laws Harsh as Tigers*; Lee, *At America’s Gates*; See also: Chapter 6, “The Cold War Chinese Immigration Crisis and the Confession Cases” in Ngai, *Impossible Subjects*, 202–24.

¹⁵⁰ Brilliant, *The Color of America Has Changed*, 55.

¹⁵¹ Hiroshi Motomura explores the repeal of the “first papers” era in his legal tome: Motomura, *Americans in Waiting*; See, also the work of Roger Daniels: Chapter 13, “Changing Rules: Immigration Law 1948-1980” in Daniels, *Coming to America*, 328–49;

V. Conclusion

The McCarran-Walter Act did not bring about an end to citizenship and “first paper” requirements for licensure, however. States continued to enact and enforce these policies. The courts, moreover, continued to uphold anti-alien licensing restrictions into the late-1960s. Even the Warren-era U.S. Supreme Court was loath to overturn state citizenship requirements for licensure on Fourteenth Amendment equal protection grounds. The Burger-era high court reversed course in the 1970s, however, forcing state governments to justify why they chose to restrict the equal protection rights of noncitizens (now recognized as a suspect class).¹⁵² In *Sugarman v. Dougall* (1973), *In re Griffiths* (1973), and *Examining Board v. Flores de Otero* (1976) the Supreme Court struck down citizenship requirements for: (many but not all) civil service jobs, attorneys, and “common occupations” (such as engineers and architects) respectively. But the high court did not overturn all anti-alien licensing laws.¹⁵³ Notably, in *Ambach v. Norwick* (1979), the Burger court upheld New York’s requirement that public-school teachers become citizens as soon as they became eligible. In his majority opinion, Justice Lewis Powell, held that employment in “state functions” that were “bound up with the operation of the State” could be justifiably denied “to all persons who have not become part of the process of self-government.” This precedent remains applicable into the early twenty-first century.¹⁵⁴

But the legacy of citizenship requirements for professional licensure are not limited to extant state statutes. As the U.S. Supreme Court was striking down many anti-alien licensing policies in the 1970s, state legislatures and licensing boards were increasingly turning to other mechanisms to restrict the employment rights of immigrant professionals. State governments have especially expanded restrictions aimed at graduates of foreign medical schools. As political scientists Brenton D. Peterson et al. demonstrate, requirements for “lengthier US medical residency training prior to licensure” were directed at foreign medical graduates just as state citizenship requirements were struck down in the early 1970s.¹⁵⁵ The American Medical Association no longer supports a “citizen only” licensing policy for all physicians working in the United States. But it continues to endorse credentialization requirements which disproportionately limit the ability of foreign doctors to practice medicine (much as it had in the 1920s and 1930s before it formally endorsed a nationwide anti-alien licensure policy).¹⁵⁶

and see: Chapter 6, “The Cold War and Immigration” in Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants since 1882* (New York: Macmillan, 2005), 113–28.

¹⁵² For excellent (and concise) overviews of this transformation, see: Kelly, “Wavering Course,” 720–40; Plascencia, Freeman, and Setzler, “The Decline of Barriers to Immigrant Economic and Political Rights in the American States,” 11–15.

¹⁵³ See, for a helpful (one-page) snapshot of these key cases, see: Plascencia, Freeman, and Setzler, “The Decline of Barriers to Immigrant Economic and Political Rights in the American States,” 13.

¹⁵⁴ Kelly’s legal history is extremely thorough, clear, and well-argued. As he does not limit his focus to anti-alien licensing policies, Kelly identifies a series of U.S. Supreme Court decisions, beginning in the World War II era, which began applying “strict scrutiny” standards to noncitizens as a class (including, but not limited to, limiting the federal government’s ability to use expatriation as a mechanism of punishment). However, the high court was slow to recognize employment and licensing restrictions under this umbrella of “strict scrutiny” until the late-1960s and especially the early-to-mid 1970s. Kelly then identifies cases like *Ambach* as representative of efforts by the (increasingly conservative) court to limit the range of employment and licensing restrictions that fell under the “strict scrutiny” requirements. See: Kelly, “Wavering Course,” 701-742 (quote from pg. 731).

¹⁵⁵ Peterson, Pandya, and Leblang, “Doctors with Borders,” 45-63 (quote from page 46); Other scholars noted this phenomenon - as new licensing requirements replaced alienage bans - in real-time. See: Stevens and Vermeulen, “Foreign Trained Physicians and American Medicine”; Butter and Sweet, “Licensure of Foreign Medical Graduates.”

¹⁵⁶ However, as Nwadiuko et al. argue, one important reason why the AMA (and other international medical professional associations) encourage foreign medical graduates to practice elsewhere is to ensure that there are an adequate number of

As a work of policy history, this chapter identifies, explores, and (attempts to) give coherence to hundreds of linked and overlapping state licensing restrictions aimed at noncitizen professionals from the time of the Progressive Era until the early postwar era. It uncovers the (usually successfully behind-the-scenes) lobbying of professional associations to make U.S. citizenship a requirement for licensure and the (more often unsuccessful but public) efforts of immigrants and their allies to contest the constitutionality and virtue of these policies. It demonstrates how widespread these restrictions became and how those tasked with administering them (most notably state licensing boards) often struggled to learn about matters of citizenship on the job. State authorities' approaches often reflected dominant (racist, sexist, and nativist) prejudices of their times, as marginalized immigrants were often disproportionately targeted for employment restrictions by both formal statutory language and in the implementation of these policies. And the courts, deferring to (an extremely broad interpretation of) states' police powers, almost always upheld these restrictions until the late 1960s.

As a history of American immigration and citizenship, "Learning Citizenship Matters" explores how these anti-alien licensing restrictions impacted professional immigrants and their families and transformed the meaning and weight of (exclusive) "citizenship rights." By analyzing immigrant professionals' court cases, the publications of immigrant advocacy organizations, and contemporaneous scholarship, this chapter identifies the broad weight of anti-alien licensing restrictions. It also shows how immigrant populations often experienced them very differently. Favored immigrants were occasionally exempted from their harshest contours, while marginalized immigrants – women, (often Jewish) refugees, and especially East and South Asian "aliens ineligible to citizenship" – were particularly harmed by them. Canadian professionals, often viewed as "honorary Americans," operated in a unique liminal space. Though (especially Anglo-)Canadians experienced far lower rates of overt discrimination than most other immigrant communities in the United States, they could be suddenly confronted with the *de jure* boundaries of citizenship and alienage as employment and licensure were increasingly restricted to citizens. The repeal of federal racist bans on East and South Asian immigrants' naturalization rights ended the most egregious effects of anti-alien licensing restrictions. But their spread had greatly concretized idea that U.S. citizenship and the (exclusive) "rights of citizenship" were tightly linked and made citizenship tangibly matter to a growing number of citizens and noncitizens alike in the early-to-mid twentieth century.

Citizenship rights were not equally available to all citizens in the United States from the Progressive Era to the early Cold War period. After all, these years also witnessed the institutionalization of Jim Crow legal regimes in the American South, widespread employment and educational prejudice against women, and many other forms of *de jure* and *de facto* discrimination directed at marginalized U.S. citizens. In this context, access to professional licensure was not a right of citizenship available to all American citizens in practice. Nevertheless, the development of hundreds of anti-alien licensing restrictions aimed at immigrant professionals gave heft and substance to the increasingly common notion that "rights of citizenship" both existed and were confined to U.S. citizens.

physicians in countries where patients are underserved (often in the Global South). See: Joseph Nwadiuko, Varshini Varadaraj, and Anju Ranjit, "International Medical Graduates—A Critical Component of the Global Health Workforce," *Journal of the American Medical Association* 319, no. 8 (February 2018): 765–66.

So powerful had this legal regime of (exclusive) “citizenship rights” become by the mid-twentieth century that federal authorities would, at times, feel compelled to dramatically bend the law of U.S. citizenship for national security purposes. In the final days of the European theater of World War II, American forces captured German engineer Wernher von Braun and brought him to the United States to aid in American military missile research and development. Von Braun later became a leading architect in NASA’s space rocketry program and was awarded the National Medal of Science in 1975 by President Gerald Ford. That von Braun had been the designer and director of the Nazi V2 missile program (which had relied on and led directly to the deaths of thousands of slave laborers) and had served as an officer in the S.S. was concealed by American authorities. Von Braun had even become a U.S. citizen when the country’s space program was in its infancy. Had his S.S. past been known to the naturalization judge, his petition – and access to top-secret work – would have been denied.¹⁵⁷

Cold War-era federal authorities’ decision to conceal von Braun’s past was one way to try to evade the growing link between (exclusive) “citizenship rights” and citizenship status in the United States. But as Chapter 5 will demonstrate, federal naturalization officials would take a very different approach towards a much larger – and far more sympathetic and claims-worthy – group of persons caught in this tightening web of citizenship status and its accompanying rights in the World War II years.

¹⁵⁷ Since 2009, von Braun (and other Nazi rocketry experts brought to the U.S.) have been the subject of numerous historical studies. See, among others: Wayne Biddle, *The Dark Side of the Moon: Wernher von Braun, the Third Reich, and the Space Race* (New York: W.W. Norton, 2009); Michael B. Petersen, *Missiles for the Fatherland: Peenemuende, National Socialism and the V-2 Missile* (New York: Cambridge University Press, 2009); Monique Laney, *German Rocketeers in the Heart of Dixie: Making Sense of the Nazi Past during the Civil Rights Era* (New Haven, CT: Yale University Press, 2015); Mary Kathryn Barbier, *Spies, Lies, and Citizenship: The Hunt for Nazi Criminals* (Lincoln, NE: University of Nebraska Press, 2017); Brian E Crim, *Our Germans: Project Paperclip and the National Security State* (Baltimore, MD: Johns Hopkins University Press, 2018).

Part III: The Ascendance of the Rights of Citizenship

Chapter 5: (Re)-Becoming Citizens: Marital Repatriation in the United States, 1922-1952

Ethel Mackenzie (née Coope) was outraged. After campaigning for the successful California women's suffrage referendum in 1911, she learned that the franchise would still be denied to her. Though Mackenzie was born a U.S. citizen owing to her birth in California, she had been stripped of her citizenship when she married Scottish singer Gordon Mackenzie in 1909. But she would not be denied her hard-won voting rights without a fight.¹

Believing the Expatriation Act of 1907 – which took her nationality away from her upon marriage to an alien – to be in blatant violation of the Fourteenth Amendment's birthright citizenship guarantee, Mackenzie sued San Francisco election authorities for the right to vote. The federal Supreme Court, however, ruled in 1915 that her marriage “with a foreigner [was] tantamount to voluntary expatriation.” Though a severe disappointment to Mackenzie, the decision came as no surprise. The nation's highest court also upheld state laws denying voting rights to citizen women, forcing suffragists to fight to amend the federal constitution to enfranchise U.S. women nationwide.²

Marital expatriation would not survive the women's suffrage revolution. Following the ratification of the Nineteenth Amendment, federal nationality legislation increasingly separated the citizenship of married women from that of their spouses. These laws also allowed marital expatriates to regain their U.S. citizenship as if they were immigrants. However, such women would need to meet other eligibility requirements, pay all associated fees, and pass a citizenship test. Some, like Rebecca Shelley, found those requirements to be insurmountable.³

Shelley had repeatedly tried to become a U.S. citizen once more, but her pacifism posed a major obstacle. Since she refused to swear an oath to defend the nation, she was opposed by the Immigration and Naturalization Service (INS) and stymied in federal court during the 1930s. But one relatively obscure federal law would give her hope.⁴ In the autumn of 1940, the INS construed a recent amendment to the little-known federal Repatriation Act (which had been enacted to accelerate marital expatriates' petitions) very broadly to automatically “deem” all permanently resident marital expatriates to be U.S. citizens by decree.⁵ However, they would not possess the “rights of citizenship” until they took an oath of allegiance in court.⁶

For Shelley, the INS interpretation of the Repatriation Act was a stroke of luck. Overnight, she had seemingly become a citizen again without violating her pacifist values. But her citizenship status was still tenuous. In 1940, she sought to take the oath of allegiance to the

¹ Key historical works on this case include: Bredbenner, *A Nationality of Her Own*, 65–70; Cott, *Public Vows*, 143–44; Kerber, *No Constitutional Right to Be Ladies*, 40–42.

² *Mackenzie v. Hare*, No. 239 U.S. 299 (U.S. Supreme Court December 6, 1915); See, also: Bredbenner, *A Nationality of Her Own*, 65–70; Cott, *Public Vows*, 143–44; Kerber, *No Constitutional Right to Be Ladies*, 40–42.

³ Major works on this topic include: Bredbenner, *A Nationality of Her Own*; Kerber, *No Constitutional Right to Be Ladies*; Nicolosi, “Sexuality, Citizenship and Law: The Strange Case of Louise Comacho”; Nicolosi, “We Do Not Want Our Girls to Marry Foreigners”; Cott, *Public Vows*; Gardner, *The Qualities of a Citizen*.

⁴ Bredbenner, *A Nationality of Her Own*, 183–94; Goodier, “The Price of Pacifism.”

⁵ “An Act To Repatriate Native-Born Women Who Have Heretofore Lost Their Citizenship by Marriage to an Alien,” 54 Stat. 715 (1940).

⁶ I am by no means the first to note this phenomenon. Others include: Bredbenner, *A Nationality of Her Own*; Volpp, “Divesting Citizenship”; DiStasi, “Derived Aliens.”

United States and regain her citizenship *rights*. The courts, however, had other ideas.⁷ Denied the oath because she would not promise to defend the United States, she appealed to the U.S. Court of Appeals in Washington, DC. That court ruled that Shelley could not take the oath and regain her citizenship rights because she was not even a citizen. It rejected the view “that Congress [had] created a class of co-called ‘citizens’ from whom, although they had committed no offense, it withheld the rights of citizens” and effectively declared the INS interpretation of the Repatriation Act null and void within its jurisdiction.⁸ Shelley only regained her citizenship a few years later when she came to an accommodation with federal authorities that her oath to “defend the country” would not entail a “promise to bear arms.”⁹ Though just decades earlier federal courts had rejected the notion that suffrage was a “right of citizenship,” by the early 1940s, the second highest court in the nation declared that there could be no “citizens without the rights of citizenship” in the United States. This chapter tracks and interrogates this convoluted – yet significant – development.

“(Re-)Becoming Citizens” mines thousands of naturalization and repatriation petitions filed by marital expatriates and explores their interactions with federal authorities to illuminate major transformations in the weight and meaning of American citizenship. Marital expatriates often had to overcome significant obstacles in their efforts to regain their stolen birthright, while immigration authorities and naturalization judges struggled to interpret and implement conflicting nationality statutes when adjudicating marital expatriates’ applications. This chapter argues that the (ultimately unsuccessful) efforts of federal immigration authorities to declare marital expatriates to be “citizens without the rights of citizenship” represents a profound transformation in American citizenship history. Namely, it demonstrates how the *idea* that citizenship could no longer be formally separated from citizenship rights became an integral component of modern American citizenship in law and popular perception from the late-nineteenth to the mid-twentieth centuries (even though the promise of equal citizenship rights remained unfulfilled for many marginalized Americans).

Marital expatriation has a long and convoluted history in the United States. Though nineteenth-century coverture laws usually constrained the rights of American wives by “treating married women as ‘covered’ by their husbands’ civic identity”¹⁰, married women’s nationality laws were less precise.¹¹ Between 1855 and 1907, there was no clear approach to marital expatriation in federal legislation, court precedent, or administrative policy.¹² In 1907, however, Congress expanded the “cloak of coverture” with the Expatriation Act.¹³ Subsequently, if a

⁷ *Shelley v. United States*, No. 120 F. 2d 734 (U.S. Court of Appeals for the District of Columbia 1941); See, also: Bredbenner, *A Nationality of Her Own*, 183–94; Goodier, “The Price of Pacifism.”

⁸ *Shelley v. United States* (U.S. Court of Appeals, Washington, D.C. 1941).

⁹ Bredbenner, *A Nationality of Her Own*, 192.

¹⁰ Kerber, *No Constitutional Right to Be Ladies*, xxiii.

¹¹ In *Shanks v. Dupont* (1830) the U.S. Supreme Court explicitly rejected the notion that an American-born woman’s citizenship automatically transferred to her husband’s status upon marriage. And when Congress passed the Nationality Act of 1855, which conferred American citizenship upon the wives of alien men who became naturalized citizens, the law said nothing about American-born women who married foreigners: Kerber, 34–35; Bredbenner, *A Nationality of Her Own*, 40–41; Nicolosi, “We Do Not Want Our Girls to Marry Foreigners,” 8; Cott, *Public Vows*, 143.

¹² See especially: Irving, *Citizenship, Alienage, and the Modern Constitutional State*, 66–69.

¹³ Nicolosi, “We Do Not Want Our Girls to Marry Foreigners,” 6; “An Act In Reference to the Expatriation of Citizens and Their Protection Abroad,” 34 Stat. 1228 (1907).

U.S.-born woman married an alien, she lost her citizenship. If husband naturalized, she became an American. Otherwise, she had to obtain a divorce or wait until he died to regain her birthright.¹⁴

The passage of the Cable Act in 1922 would disentangle the nationality of most U.S. women who subsequently married noncitizen men.¹⁵ Women who married men ineligible for citizenship (i.e. East and South Asian men), however, continued to lose their citizenship until an amendment in 1931 ended this discriminatory practice.¹⁶ While it is impossible to know exactly how many women lost their citizenship between 1907 and 1931¹⁷, marital expatriates numbered in the hundreds of thousands (at least) during this time of mass immigration.

Marital expatriation has not gone unnoticed by scholars. Migration historians have incorporated marital expatriates into their analyses of particular immigrant/ethnic groups,¹⁸ federal citizenship policy,¹⁹ and broader syntheses.²⁰ Historians have especially emphasized how marital expatriation particularly harmed the lives of Asian-American women who became “aliens ineligible to citizenship” in their own country.²¹ Gender historians have also explored how marital expatriates experienced alienage in their native land, individual women and

¹⁴ Many women were perplexed by both their loss of citizenship and wanted to know what they could do (if anything) to regain their citizenship. See, for instance, a letter to the *Chicago Tribune* asking about the citizenship status of a U.S.-born woman who was separated, but not divorced, from her noncitizen husband and the response from federal naturalization examiner Merton Sturges: Merton Sturges, “The Friend of the People,” *Chicago Daily Tribune*, December 24, 1914, 6.

¹⁵ “An Act Relative to the Naturalization and Citizenship of Married Women,” 42 Stat. 1021 (1922); Bredbenner, *A Nationality of Her Own*, 81–111; Kristi Andersen, *After Suffrage: Women in Partisan and Electoral Politics Before the New Deal* (Chicago: University of Chicago, 1996), 7, 28; Galloway Kruse, “Independent Citizenship.”

¹⁶ Gardner, *The Qualities of a Citizen*, 123–56.

¹⁷ Bredbenner is one of the few scholars to try to make estimates for how many women lost their citizenship through marriage. She cites Carpenter’s findings from the 1920 Census that native-born women and foreign-born fathers were responsible for nearly nine percent of Caucasian births in the United States as a means to contextualize how widespread marriages were between native-born women and noncitizen men in the 1910s and 1920s: Carpenter, *Immigrants and Their Children, 1920: A Study Based on Census Statistics Relative to the Foreign Born and the Native White of Foreign or Mixed Parentage*; Bredbenner, *A Nationality of Her Own*, 4. I thank Marian Smith of the United States Citizenship and Immigration Services History Office who advised me numerous times on ways to find sources and calculate annual numbers of repatriations both at the local and national level. My estimates will be further explained and developed below.

¹⁸ Mark Paul Richard, *Loyal but French: The Negotiation of Identity by French-Canadian Descendants in the United States* (East Lansing: Michigan State University Press, 2008), 167; Lawrence DiStasi, “Derived Aliens: Derivative Citizenship and Italian American-Women During World War II,” *Italian Americana* 29, no. 1 (Winter 2011): 23–33.

¹⁹ Marian L. Smith, “‘Any Woman Who Is Now or May Hereafter Be Married . . .’: Women and Naturalization, ca. 1802-1940,” *Prologue* 30, no. 2 (Summer 1998): 146–53; Nancy L. Green, “Expatriation, Expatriates, and Expats: The American Transformation of a Concept,” *American Historical Review* 114, no. 2 (April 2009): 307–28; Nancy L. Green and François Weil, *Citizenship and Those Who Leave: The Politics of Emigration and Expatriation*, 1st ed. (Champaign, IL: University of Illinois Press, 2007); Schneider, *Crossing Borders*, 208, 215.

²⁰ Allison Varzally, “Romantic Crossings: Making Love, Family, and Non-Whiteness in California, 1925-1950,” *Journal of American Ethnic History* 23, no. 1 (Fall 2003): 19; Daniels, *Coming to America*, 281.

²¹ Megumi Dick Osumi, “Asians and California’s Anti-Miscegenation Laws,” in *Asian and Pacific American Experiences: Women’s Perspectives*, ed. Nobuya Tsuchida, Linda M. Mealey, and Gail Thoen (Minneapolis: Asian/Pacific American Learning Resource Center and General College, University of Minnesota, 1982), 15; Leonard, *Making Ethnic Choices*, 56–57, 135, 154, 269; Judy Yung, *Unbound Feet: A Social History of Chinese Women in San Francisco* (Berkeley: University of California Press, 1995), 168–72; Salyer, *Laws Harsh as Tigers*, 212; Lee, *At America’s Gates*, 238; Volpp, “Divesting Citizenship”; Erika Lee and Judy Yung, *Angel Island: Immigrant Gateway to America* (New York: Oxford University Press, 2010), 288; Nayan Shah, *Stranger Intimacy: Contesting Race, Sexuality, and the Law in the North American West* (Berkeley: University of California Press, 2011), 251–54.

women's rights groups fought against mandatory marital expatriation, and the enactment of independent nationality laws represented major civil rights victories for American women.²²

Though this scholarship has comprehensively explored debates over the enactment and repeal of the Expatriation Act, marital repatriation has been less studied. When scholars do discuss the topic of reacquisition of citizenship, they often rely heavily upon legislative and legal debates to track how and when certain groups of marital expatriates became eligible to regain citizenship. Though important, this approach does not lend to a close examination of the enforcement of repatriation law. As this chapter will demonstrate, battles over the interpretation of nationality statutes were at least as important as – if not more so than – legislative debates.

Since it is not possible to explore all marital expatriates' efforts to regain citizenship²³, this chapter adopts a case-study approach. It explores marital expatriates' petitions for citizenship filed in federal courts in three regions: northern California (San Francisco); southern Texas (San Antonio), and New England (Providence). It identifies all marital expatriates' naturalization petitions filed in federal court in those cities between FY 1923-1940, examines appeals of women who were initially rejected, and explores (separate) repatriation petitions filed between FY 1936 and 1975 in both San Francisco and San Antonio.²⁴ It also traces the INS leadership's efforts to interpret and then implement policies relating to marital expatriates.²⁵

Section 1, “Food for Thought” tracks how marital expatriates sought regain U.S. citizenship as immigrants in their own country during the 1920s and 1930s. Federal naturalization officers retained significant sway in determining whether to recommend a woman's citizenship petition as judges often (though not always) deferred to their advice. Though judges usually granted marital expatriates' petitions, women could be denied if they were under twenty-one years of age, failed to meet (often conflicting) residency/documentation²⁶

²² See especially: Bredbenner, *A Nationality of Her Own*; Nancy F. Cott, “Marriage and Women's Citizenship in the United States, 1830-1934,” *American Historical Review* 103, no. 5 (December 1998): 1440–74; Kerber, *No Constitutional Right to Be Ladies*; Nicolosi, “We Do Not Want Our Girls to Marry Foreigners”; Nicolosi, “Sexuality, Citizenship and Law: The Strange Case of Louise Comacho”; Cott, *Public Vows*; Gardner, *The Qualities of a Citizen*; Irving, *Citizenship, Alienage, and the Modern Constitutional State*.

²³ Indeed, federal authorities did not track marital expatriate petitions as a distinct category until the mid-1940s, see: *Annual Reports of the Bureau of Naturalization/Immigration and Naturalization Service, FY 1923-1952* (Washington, DC: Government Printing Office).

²⁴ Unfortunately, the Rhode Island repatriation data was not comprehensively organized at the time. Records are available at NARA-Waltham.

²⁵ Marital expatriates interacted with representatives of two branches of the federal government when trying to regain citizenship: officers of the Bureau of Naturalization (prior to 1933)/the Immigration and Naturalization Service (after 1933) and naturalization judges. Naturalization officers examined citizenship petitions, advised judges, and argued on behalf of the federal government in court. Naturalization judges approved or denied petitions. *The Annual Reports of the Commissioner of Naturalization* (1914-1932) and later the *Annual Reports of the Immigration and Naturalization Service* are very useful in outlining the responsibilities of their officers, those of the court, and how those roles evolved in the first half of the twentieth century. Many thanks to USCIS historian Zach Wilske for calling my attention to the Hazard and Smith sources which explain in even greater detail the inner-workings of the naturalization agency and its interactions with the courts: Henry B. Hazard, “The Trend Toward Administrative Naturalization,” *American Political Science Review* 21, no. 2 (May 1927): 342–49; Darrell Smith, *The Bureau of Naturalization: Its History, Activities, and Organization* (Baltimore, MD: Johns Hopkins University Press, 1926); See also, for a brief guide: United States Citizenship and Immigration Services, “Our History,” May 25, 2011, <https://www.uscis.gov/about-us/our-history>.

²⁶ The Johnson-Reed Act of 1924 often conflicted with repatriation statutes. Prior to 1930, if a marital expatriate who had been out of the country wanted to repatriate, her eligibility hinged on whether her time out of the country counted as an official

requirements, or if a judge found them to be of poor “moral character.” Such rulings disproportionately harmed young expatriates, mothers raising children, and nonwhite women. Despite these significant obstacles, I estimate that between eighty thousand and one hundred thirty thousand women regained their citizenship nationwide through naturalization between FY 1923 and 1940. All parties understood that marital expatriates were not citizens until they took an oath of allegiance to the United States as a final step in the naturalization process.

In 1936, the passage of the federal Repatriation Act allowed divorced and widowed marital expatriates to regain their citizenship by way of an expedited process. Women who were still married to their foreign-born husbands were ineligible. Section 2, “Creating a Shortcut” explores how INS administrators battled over the meaning of the law. Interpreting the policy narrowly, the INS determined that would-be repatriates were not citizens until they had completed the repatriation process and took the oath of allegiance to the United States, while rejecting the petitions of women whose husbands had since naturalized. While this law helped some women regain their birthright, this strict reading ensured that most marital expatriates seeking to regain citizenship between FY 1937 and 1940 continued to do so via naturalization.

In 1940 however, the INS broke with precedent. On July 2, 1940, an amendment to the Repatriation Act expanded fast-track provisions to all marital expatriates who had continuously resided in the United States. A few months later, however, the INS leadership interpreted that amendment to mean that all eligible marital expatriates (like Rebecca Shelley) had been “deemed” to be citizens once more, though they would be “citizens without the rights of citizenship.” Section 3, “Shifting Course,” explores how the INS interpretation of the law was articulated, implemented, and contested. Above all, it seeks to explain why this branch of the federal government – responsible for citizenship and naturalization policy – would dramatically change course on a law so vital to the very meaning of U.S. citizenship and citizenship rights.

It demonstrates how the enactment of two other bills into law – the Alien Registration Act of June 28, 1940²⁷ and the omnibus Nationality Act of October 14, 1940²⁸ – greatly sharpened the line dividing citizens and aliens in the United States, forcing marital expatriates *and* the INS to confront the alienage of native-born women to a greater degree than ever before. Though many marital expatriates would have found certain rights closed to them prior to 1940, the Alien Registration Act forced all of them to confront their alienage as (nearly all) resident noncitizens in the country were required to register with federal authorities by Christmas.²⁹ The passage of the Nationality Act (set to go into effect on January 13, 1941) complicated matters even further. This omnibus bill repealed all prior U.S. naturalization legislation that was not incorporated into it. Owing to an oversight, the July 1940 amendment to the Repatriation Act was not included. Instead, it employed the provisions of the original 1936 amendment. In short: the INS was tasked with ensuring that hundreds of thousands of U.S.-born women knew that

residence abroad. Owing to a lack of clarity in the language of the law (and what the Bureau found as excessively generous judicial interpretations) the Bureau argued in its 1924 *Annual Report* that, “The question of what is continuous residence in the United States and what constitutes a break of the continuity of residence by absence from the United States should be settled by legislation”: United States Bureau of Naturalization, *Annual Report of the Commissioner of Naturalization, 1924* (Washington, DC: Government Printing Office, 1924), 13.

²⁷ “An Act To Prohibit Certain Subversive Activities and Deportation of Aliens; to Require the Fingerprinting and Registration of All Aliens; and for Other Purposes,” 49 Stat. 1917 (1940).

²⁸ “An Act To Revise and Codify the Nationality Laws of the United States into a Comprehensive Nationality Code,” 54 Stat. 1137 (1940).

²⁹ Bredbenner, *A Nationality of Her Own*, 68–69, 83; Gardner, *The Qualities of a Citizen*, 197.

they were no longer American citizens (and enforcing punitive measures for those who failed to register) at the very moment when provisions to facilitate their repatriation were set to expire.

Marital expatriates were not passive viewers to these developments. Thousands rushed to take the repatriation oath prior to Christmas 1940 while others demanded that the INS clarify whether they were citizens or noncitizens in their own country. It was in this context that the INS reversed course and declared all eligible women to be U.S. citizens. However, between 1940 and 1952 federal courts increasingly rejected INS claims. Since the Supreme Court never ruled on the subject, INS leaders continued to affirm the validity of their interpretation. By the early 1950s however, marital expatriates who had not taken an oath of allegiance were generally assigned Alien Identification numbers, indicating that, in practice, they were treated as aliens and were provided documentation to that effect. Despite these conflicting developments and obstacles, thousands of marital expatriates fought to successfully regain their citizenship (rights). I estimate that between thirty-two thousand and sixty-three thousand additional marital expatriates took a repatriation oath of allegiance nationwide between FY 1936 and 1975.

Ultimately, this chapter uncovers a bizarre and little-known effort by the federal agency tasked with enforcing citizenship law to create a formal, administrative category of citizenship – “citizen without citizenship rights” – to maneuver around ever brightening lines dividing citizens from noncitizens in 1940. While such an approach might have been acceptable to courts in the late-nineteenth and early-twentieth centuries (when American women were denied suffrage rights and could be deprived of their citizenship for marrying noncitizen men) this was no longer the case in the 1940s. The widespread rejection of this interpretation represents a crucial shift in American citizenship as federal courts increasingly ruled that citizenship could not be (formally) separated from the rights of citizens. Though judges, naturalization officers, and marital expatriates all struggled to articulate what those rights of citizenship were, the idea that citizenship rights *should* be tied to U.S. citizenship had become too powerful to support the formal category of “citizen without the rights of citizenship.”

I. “Food for Thought”: Repatriation as Naturalization (1922-1936/1940)

How would a typical marital expatriate have gone about regaining her U.S. citizenship as an immigrant in her own country? Amalia Bertha Stratton was one such woman. Born in 1882 in Fountain City, Wisconsin, Stratton lost her citizenship when she married her husband, Harry D’Arcy Stratton, a Canadian. On December 28, 1922, she appeared before the clerk of the San Francisco District Court with two witnesses verifying her past residency in California and filed her petition to reacquire her citizenship. On April 2, 1923 a San Francisco federal district judge signed off on her petition. That same day she took an oath of allegiance to the United States, abjured all loyalty to Great Britain and Canada, and became a U.S. citizen once more.³⁰

Although not all records of Stratton’s interactions with the Bureau of Naturalization and the San Francisco District Court have been preserved, Stratton probably had to follow the same process that most marital expatriates went through to regain citizenship. Either immediately before she filed her petition with the clerk of court or shortly thereafter, Stratton would have had to submit to a background check by Bureau of Naturalization officials stationed in San

³⁰ Petition Number 5142, Amalia Bertha Stratton, December 28, 1922; Petition and Record of Naturalization, 1903-1991, U.S. District Court for the Southern (San Francisco) Division of the Northern District of California, Vol. 48, Box 26; RG 21; NARA-Pacific (San Bruno).

Francisco.³¹ In addition to confirming her identity, naturalization examiners would have (prior to 1930) ensured her residency credentials, racial qualifications, and probably would have quizzed her on her English language skills and on questions that could appear in her upcoming citizenship test administered by a naturalization judge at her final hearing.³² If she met their standards, she would have had to reappear in court with her witnesses (or, after 1926, present evidence of their sworn testimony delivered in front of naturalization examiners).³³ In court, the judge would have questioned her about her “knowledge of the history, geography, government, and law of the country,” her literacy and competency in English, and her intention to reside permanently in the United States.³⁴ Although the judge had the right to overrule a naturalization examiner’s supportive recommendation, it would have been very unusual for him to do so.³⁵ In fact, most judges admitted marital expatriates to citizenship on the same day as their hearings.³⁶ Upon learning of the judge’s approval, Stratton would have sworn an oath of allegiance to the United States and become an American citizen once more.³⁷

What makes Amalia Stratton representative of a typical marital expatriate? Thousands of women just like her regained their citizenship across the country under the provisions of the Cable Act in the 1920s and 1930s. A smaller number tried to regain their citizenship and were rejected. This section explores naturalization petitions filed by marital expatriates in federal court in three different regions: the San Francisco Bay Area, New England, and southern Texas.

a. *A Tale of Three Regions: Repatriation as Naturalization, FY 1923-1940*

Immediately following the passage of the Cable Act, large numbers of U.S.-born women went to federal court in San Francisco to regain their lost citizenship. Between fiscal years 1923 and 1926, 149 U.S.-born women petitioned to regain citizenship in the Federal District Court of San Francisco. Of them, 140 were successful and were readmitted to citizenship (while one woman was told she was already a U.S. citizen).³⁸ Marital expatriates did not just form a sizeable contingent of noncitizen women who sought to obtain citizenship under the new Cable Act provisions, they made up a significant percentage of *all* applicants applying for citizenship in San Francisco. Those 149 petitions represented 7.8%, 4.5%, 5.0%, and 4.1% of naturalization petitions – male and female – filed in those four years, respectively.³⁹

³¹ Smith, *The Bureau of Naturalization*, 24–29.

³² United States Bureau of Naturalization, *Annual Report of the Commissioner of Naturalization, 1923* (Washington, DC: Government Printing Office, 1923), 2–3; Hazard, “The Trend Toward Administrative Naturalization,” 345–49.

³³ United States Bureau of Naturalization, *Annual Report, 1923*, 2–3; Hazard, “The Trend Toward Administrative Naturalization,” 345–49.

³⁴ Sophonisba Preston Breckinridge, *Marriage and the Civic Rights of Women; Separate Domicil and Independent Citizenship* (Chicago, IL: University of Chicago Press, 1931), 22, 34.

³⁵ As historian Dorothee Schneider importantly demonstrates, judges were the last lifeline for many naturalization applicants (both immigrants and marital expatriates) who were given unfavorable recommendations by Bureau of Naturalization/INS officers, but convinced naturalization judges to grant them citizenship Schneider, *Crossing Borders*, 208.

³⁶ See: Petition and Record of Naturalization, 1903-1991, US District Court for the Southern (San Francisco) Division of the Northern District of California, Vols. 46-73, Boxes 26-38; Folders 1-3 Box 39; RG 21; NARA-Pacific (San Bruno).

³⁷ P.N. 5142, Amalia Bertha Stratton; P. R. Naturalization, 1903-1991, SF, Vol. 48, Box 26; RG 21; NARA-Pacific (San Bruno).

³⁸ Petition and Record of Naturalization, 1903-1991, SF, Vols. 46-73, Boxes 26-38; Folders 1-3 Box 39; RG 21; NARA-Pacific (San Bruno).

³⁹ United States Bureau of Naturalization, *Annual Report, 1923*, 8, 13; United States Bureau of Naturalization, *Annual Report, 1924*, 30–32; United States Bureau of Naturalization, *Annual Report of the Commissioner of Naturalization, 1925* (Washington, DC: Government Printing Office, 1925), 28; United States Bureau of Naturalization, *Annual Report of the Commissioner of Naturalization, 1926* (Washington, DC: Government Printing Office, 1926), 26.

All told, between FY 1923 and 1940, 1,367 marital expatriates would apply to regain their citizenship under the provisions of the Cable Act in federal court in San Francisco. While the late 1920s would see a rise in the total number marital expatriate naturalizations in San Francisco (reaching over 100 per year), as a percentage of total naturalizations this represented a small decrease. Only in FY 1936, did marital expatriate petitions again approach five percent of total naturalization petitions filed in a given year in San Francisco (see Figure 1). One group of women did, however, take advantage of the naturalization provisions in great numbers in the early 1930s: Asian-American women, for whom that right had been denied in the 1920s. In FY 1932, twenty-three women whose husbands were Japanese, Chinese, or Indian immigrants, regained their native-born American citizenship. This represented a huge percentage – nearly one-third – of the seventy-three women who reacquired their American citizenship in San Francisco District Court in that year.⁴⁰

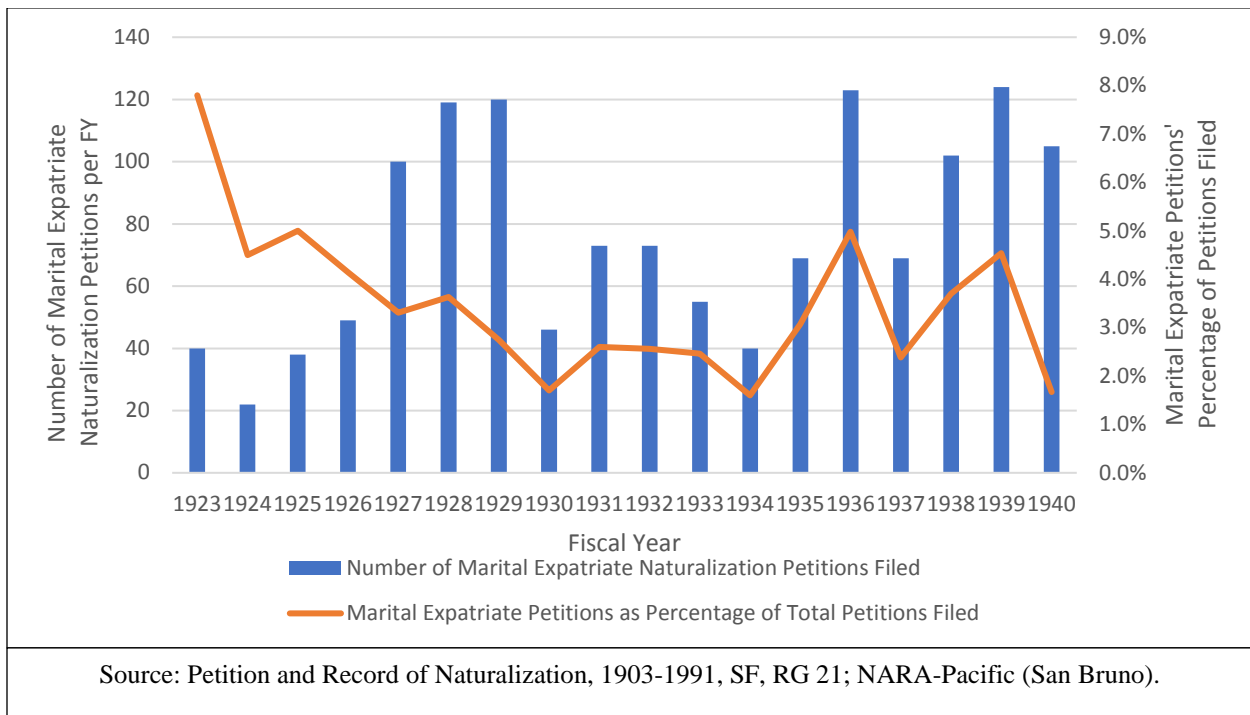


Figure 1: Federal District Court, San Francisco Marital Expatriate Naturalization Petitions Filed, FY 1923-1940

Repatriation was different in Rhode Island. This small, industrial New England state had attracted tens of thousands of immigrants to work in its factories in the late nineteenth and early twentieth centuries and had become the country’s most densely populated state. By 1920, immigrants and their children – particularly those of Irish, Italian, and Canadian heritage – made up a majority of the state’s population.⁴¹ But when ninety-three marital repatriates petitioned to

⁴⁰ All data is drawn from: Petition and Record of Naturalization, 1903-1991, SF, RG 21; NARA-Pacific (San Bruno).

⁴¹ United States, *Fourteenth Census of the United States. Population: 1920: Color or Race, Nativity and Parentage* (Washington, D.C.: Government Printing Office, 1922), 25; For an excellent history of the politics of immigration in Rhode Island, see: Sterne, *Ballots & Bibles*.

regain citizenship in the Federal District Court of Rhode Island between FY 1923 and 1926, they represented a smaller proportion of all petitioners than in San Francisco in those four years.⁴²

Marital expatriates would rush to regain citizenship in Rhode Island in FY 1928, likely as part of a broader naturalization and voter registration drive among northeastern Catholics when Governor Al Smith (D-NY) ran for and became the first Catholic nominee for president. While just 22 expatriates applied to regain citizenship in FY 1927, in FY 1928 that number more than quadrupled to 91.⁴³ While naturalization rates among Rhode Island marital expatriates would drop again in the early 1930s, they increased once more in the late 1930s. By 1940, 613 marital expatriates had petitioned to regain their citizenship in Providence. Ultimately, one out of every thirty-seven applications for citizenship in Providence (2.7%) was filed by a marital expatriate between FY 1923 and 1940 (see Figure 2).⁴⁴

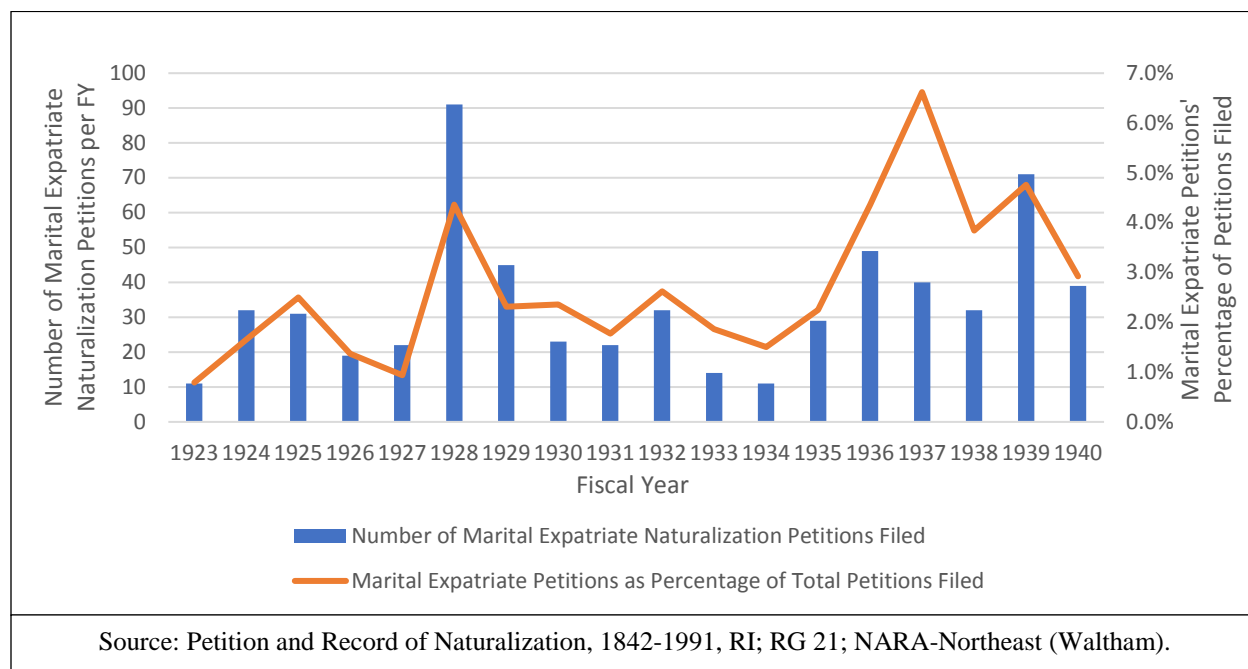


Figure 2: Federal District Court, Rhode Island Marital Expatriate Naturalization Petitions Filed, FY 1923-1940

Meanwhile, in southern Texas, marital expatriates represented an even larger percentage of petitions filed between FY 1923 and 1940. In Houston, marital expatriates represented 4.1% (120 of 2,963) of all naturalization petitions.⁴⁵ In the border city of Laredo, they represented one out of every twelve aliens – male and female – applying for citizenship (45 of 535).⁴⁶ Though

⁴² Petition and Record of Naturalization, 1842-1991, U.S. District Court for the District of Rhode Island, Vols. 63-100; RG 21; NARA-Northeast (Waltham); Bureau of Naturalization, *Annual Report, 1923*, 8, 13; *Annual Report, 1924*, 30-32; *Annual Report, 1925*, 28; *Annual Report, 1926*, 26.

⁴³ Petition and Record of Naturalization, 1842-1991, RI; RG 21; NARA-Northeast (Waltham). Most of those petitions (57) occurred between March and June before the 1928 election.

⁴⁴ All data is drawn from: Petition and Record of Naturalization, 1842-1991, RI; RG 21; NARA-Northeast (Waltham).

⁴⁵ All data is drawn from: Petition and Record of Naturalization, U.S. District Court for the Southern District of Texas at Houston; Vol. 14-24, Boxes 1-7; RG 21; NARA-Southwest (Ft. Worth).

⁴⁶ All data is drawn from: Petition and Record of Naturalization, U.S. District Court for the Southern District of Texas at Laredo; Vol. 2-3, Boxes 1-2; RG 21; NARA-Southwest (Ft. Worth).

Houston and Laredo contained vastly different populations, San Antonio – one of the state’s largest cities and home to sizeable Anglo-American, Mexican-American and Mexican immigrant populations in the 1920s and 1930s – offers a unique cross-section of the state’s demographics.⁴⁷

In San Antonio, out of a total 3,391 petitions for naturalization between FY 1923 and 1940, 139 (4.1%) were filed by marital expatriates (Figure 3).⁴⁸ While expatriates in San Antonio filed petitions at a more consistent frequency than their peers in San Francisco and Providence, rates of rejection were also higher. 5.8% (8 out of 139) were denied outright in San Antonio (another three were told that they were already U.S. citizens).⁴⁹ All rejections occurred between FY 1935 and 1940; each of the eight rejected petitioners was of Mexican origin.⁵⁰

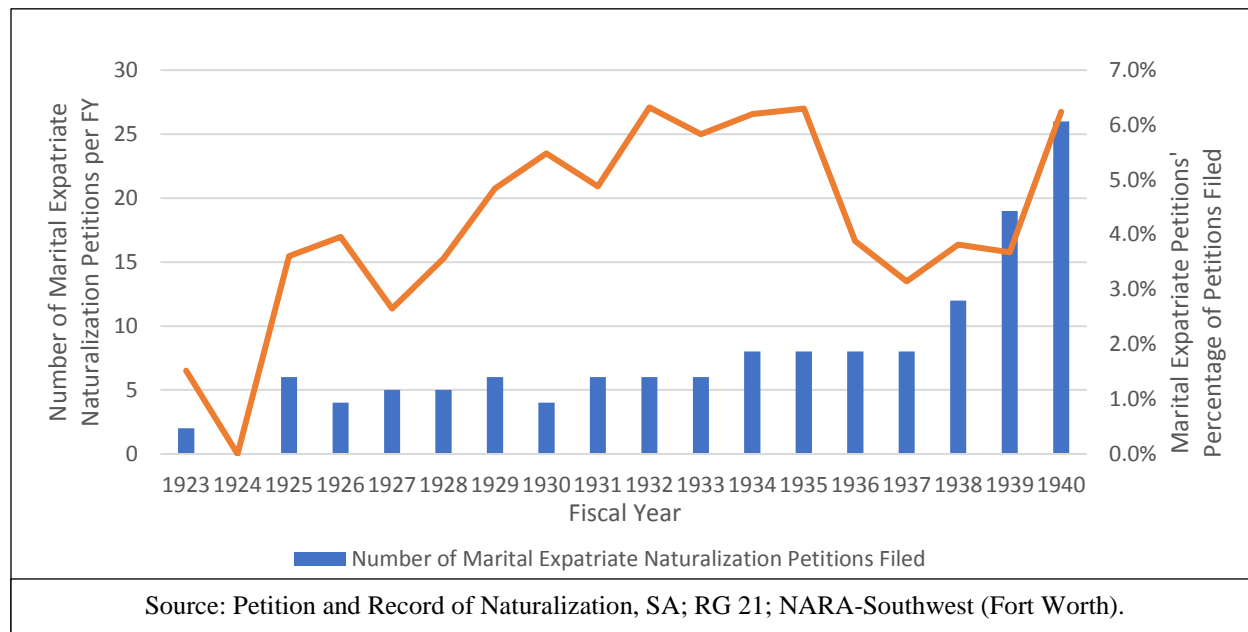


Figure 3: Federal District Court, San Antonio Marital Expatriate Naturalization Petitions Filed, FY 1923-1940

Since the Bureau of Naturalization (and later the INS) did not distinguish marital expatriates in their *Annual Reports*, it is impossible to determine exactly how many former American women reacquired their citizenship through naturalization. We can, however, make

⁴⁷ See, for instance, Population Reports of Texas: United States, *Fourteenth Census of the United States, 1920*, 986–89.

⁴⁸ All data is drawn from: Petition and Record of Naturalization, U.S. District Court for the Western District of Texas at San Antonio; Vol. 17-23, Boxes 1-10; RG 21; NARA-Southwest (Fort Worth).

⁴⁹ Those who were told they were already citizens were: P.N. 6910 Sofia de la Vega Flores, February 20, 1940; P. R. Naturalization, SA, Box 10, RG 21; NARA-Southwest (Fort Worth); P.N. 6914 Rosa Diaz Garcia, February 23, 1940; P.R. Naturalization, SA Box 10; *Ibid*; P.N. 6924 Nettie Sigrid Brynston, March 4, 1940; P.R. Naturalization, SA Box 10; *Ibid*.

⁵⁰ While some of these rejections were technically “continued” (with most then later outright denied for failure to prosecute) none of these petitions would ultimately succeed. Moreover, only one of these eight rejections cited failure to prosecute/absence as the sole cause for refusal to admit a woman citizenship: P.N. 6643 Viviana Posos Ortiz, July 5, 1939; P.R. Naturalization, SA, Box 9; *Ibid*. Other rejected women were: P.N. 5278, Josefa Gutierrez Andrade de Ayala, January 24, 1935; P. R. Naturalization, SA, Box 3, *Ibid*.; P.N. 5410 Ermina Garcia Lopez, December 18, 1935; P.R. Naturalization, SA, Box 4; *Ibid*.; P.N. 5660 Margarita Garza Mendoza, October 27, 1936; P.R. Naturalization, SA, Box 5; *Ibid*.; P.N. 6327 Apolonia Granado Duarte, January 3, 1939; P.R. Naturalization, SA, Box 8; *Ibid*.; P.N. 6433 Cecilia Chavez Gonzalez, March 8, 1939; P.R. Naturalization, SA, Box 8; *Ibid*.; P.N. 6532 Cruz Mireles Moran, April 26, 1939; P.R. Naturalization, SA, Box 9; *Ibid*.; P.N. 6724 Otila Castanon, September 7, 1939; P.R. Naturalization, SA, Box 9; *Ibid*.

reasonable estimates based on patterns found in these case studies. During these eighteen fiscal years, 3,163,227 aliens across the United States filed petitions to acquire American citizenship. If the rate of marital expatriates in Providence petitioning for citizenship (2.72% of the total) is indicative of national patterns, then roughly 85,959 of those noncitizens were marital expatriates. If San Francisco naturalizations are representative of national patterns (2.98% of the total), the estimated number of marital expatriates petitioning to regain citizenship rises to 94,115. If San Antonio is representative of national petition rates (4.10%), roughly 129,663 petitioners for citizenship between FY 1923 and 1940 were marital expatriates. It is therefore highly likely that marital expatriates filing to regain citizenship numbered in the high tens of thousands (or even over one hundred thousand). And if patterns in San Francisco, Providence, and San Antonio are indicative, a relatively small – though not insignificant – number were rejected.⁵¹

b. Interpreting the Law: Marital Expatriates before Naturalization Courts

This data provides clues not only into the propensity of marital expatriates to regain citizenship in different regions of the country, it also offers a window into how naturalization examiners and naturalization judges interpreted repatriation law when marital expatriates petitioned to regain citizenship. If so many women were successfully repatriated, why then were a smaller number denied? And what happened when denied women challenged that ruling?

In both San Francisco and Providence, “failure to prosecute” – to appear before a naturalization judge and take the citizenship exam – was a particularly common reason for denial.⁵² Judges and naturalization examiners in San Francisco were much hastier to throw out a woman’s petition than officials in New England. Helen Mercedes Gilliland, for instance, petitioned to regain her citizenship in San Francisco on December 14, 1922. Just eleven months later, at the request of local naturalization examiner, Judge John S. Partridge denied her petition citing failure to prosecute. Gilliland’s case was far from unusual in San Francisco.⁵³ Anna Patricia McKeen of Pawtucket, RI, had a far different experience. On May 7, 1924, she filed her petition for naturalization in Providence District Court. McKeen waited over three years before reappearing before the court – and regained her citizenship – without ever having to ask for an

⁵¹ In its *Annual Reports*, the Bureau of Naturalization (1923-1932) and the Immigration and Naturalization Service (1933-1940) frequently adjusted how much information they provided in a given year. Some years they calculated how many immigrants became citizens on the basis of prior nationality. In others, they broke their data down on the basis of regional patterns. And during the early years of the INS, they provided little more than national tallies. Between FY 1924 and 1932, the Bureau of Naturalization did report on how many “Repatriated Americans” petitioned to become citizens (29,142 out of 1,637,473 naturalization petitions [or 1.78% of the total]). While this likely includes many of the tens of thousands of women who became citizens once more in these years, this is not a sufficient basis to estimate marital expatriate naturalization figures for two reasons. First, in this era only American men who had joined Allied Armies in World War I could be “repatriated” by fast-track procedure. It is impossible to know how many of those men are included in this tally. Second, as there was no box to mark a woman as a “marital expatriate” on her naturalization petition (and she was listed as possessing the nationality of her husband) even if this number includes marital expatriates, it highly likely undercounts their number. See, *Annual Reports of the Bureau of Naturalization/INS, FY 1923-1940* and District Court Records cited above.

⁵² P.N. 5033, Maria de Varas Amaral, October 20, 1922; P. R. Naturalization, 1903-1991, SF, Vol. 47, Box 25; RG 21; NARA-Pacific (San Bruno); P.N. 5129 Helen Mercedes Gilliland, December 14, 1922; Vol. 48, Box 26; Ibid.; P.N. 5514 Emma Schwab Mosseri, August 8, 1923; Vol. 52, Box 28; Ibid.; P.N. 5640 Anestine Irene Walden, October 3, 1923; Vol. 53, Box 28; Ibid.; P.N. 6484 Gertrude Sarah Ord; Vol. 61, Box 38; Ibid.; P.N. 6630 Anna Carolina Guthrie, June 4, 1925; Vol. 63, Box 32; Ibid.; P.N. 19409 Diana Ledoux, October 30, 1924; P.R. Naturalization, 1842-1991, RI, Vol. 79; RG 21; NARA-Northeast (Waltham); P.N. 21401 Vincenzina Scotti, June 22, 1926; Vol. 99; RG 21; Ibid.

⁵³ See for instance: P.N. 5033, Maria de Varas Amaral, October 20, 1922; P.R. Naturalization, 1903-1991, SF, Vol. 47, Box 25; RG 21; NARA-Pacific (San Bruno); P.N. 6630 Anna Carolina Guthrie, June 4, 1925; Vol. 63, Box 32; Ibid. Maria de Varas Amaral’s petition was thrown out after thirteen months. Guthrie’s petition was discarded after only eleven.

extension.⁵⁴ In these four years, only two marital expatriates had their cases denied in Providence owing to the failure to prosecute provision. One woman's petition was more than two years old when it was denied; the other almost four.⁵⁵

Use of this failure to prosecute provision by San Francisco naturalization examiners and judges could greatly hinder the repatriation efforts of one particular group of marital expatriates: mothers raising minor children. Alfild Johanna Blumer, a resident of San Francisco, was one such mother. Blumer managed to file her petition for naturalization on June 27, 1923 and was subsequently notified that she had until January 5, 1925 to pass her citizenship exam and take the oath of allegiance. Raising an infant and giving birth to a second child had precluded her from reappearing before the court. Worried that she might not make it back in time, she wrote to the clerk's office in December 1924 and informed the court that, "It is just as difficult as ever to get away with a 1 and 2 year old, but I want my citizenship." On January 4, 1925, she again wrote to the clerk asking for an extension because one of her witnesses had been admitted to the hospital. The next day however, her petition was denied owing to the recommendation of the San Francisco Naturalization Office. Fortunately for her, just two days later District Court Judge Frank Kerrigan overruled this decision, granting Blumer a much-needed extension. On October 5, 1925, Blumer swore the oath of allegiance and became an American citizen for once more.⁵⁶ Other mothers were not so fortunate. Of the six marital expatriates in San Francisco who were denied on the grounds of lack of prosecution between FY 1923 and 1926, four were mothers of children under eighteen years of age, three had children under ten, and two were raising infants. Only Blumer's denial was overturned.⁵⁷

Though mothers were not overtly banned owing to the Bureau of Naturalization's interpretation of the Cable Act, another group of marital expatriates were: wives under twenty-one years of age. On December 27, 1923, U.S.-born Dorothy Chamorro filed a petition for naturalization in San Francisco.⁵⁸ When Chamorro appeared before Judge Kerrigan on May 5, 1924 for her final hearing, her case was opposed by the M. R. Bevington, Chief Examiner of the San Francisco Naturalization Office.⁵⁹ Bevington pointed out that petitioners had to be adults. Eighteen-year-old Chamorro's case, he argued, should "be dismissed" until she turned twenty-

⁵⁴ P. N. 18478 Anna Patricia McKeen, May 7, 1924; P.R. Naturalization, 1842-1991, RI, Vol. 74; RG 21; NARA-Northeast (Waltham).

⁵⁵ P.N. 19409 Diana Ledoux, October 30, 1924; P.R. Naturalization, 1842-1991, RI, Vol. 79; RG 21; NARA-Northeast (Waltham); P.N. 21401 Vincenzina Scotti, June 22, 1926; Vol. 99; RG 21; Ibid. Interestingly however, both women had their petitions denied on the same day: September 24, 1928. It is probable, therefore, that marital expatriates in Rhode Island were not given more leeway due to the inherent kindness of examiners and judges in Providence, but due to an overworked caseload in which such officials could not keep up with dismissing old, unprosecuted cases.

⁵⁶ P. N. 5435 Alfild Johanna Blumer, June 27, 1923; P. R. Naturalization, 1903-1991, SF, Vol. 51, Box 27; RG 21; NARA-Pacific (San Bruno). Before July 6, 1925 Blumer likely received at least one more extension, for the clerk's office stapled a postcard written by Blumer to her application that was stamped on 3 June 1925 which read, "I shall do my best to get in one Monday before July 6th. Or if I do not succeed I must again ask for an extension as my baby is still too young to leave alone."

⁵⁷ P.N. 5033, Maria de Varas Amaral, October 20, 1922; P. R. Naturalization, 1903-1991, SF, Vol. 47, Box 25; RG 21; NARA-Pacific (San Bruno); P.N. 5129 Helen Mercedes Gilliland, December 14, 1922; Vol. 48, Box 26; Ibid.; P.N. 5514 Emma Schwab Mosseri, August 8, 1923; Vol. 52, Box 28; Ibid.; P.N. 5640 Anestine Irene Walden, October 3, 1923; Vol. 53, Box 28; Ibid.; P.N. 6484 Gertrude Sarah Ord; Vol. 61, Box 38; P.N. 6630 Anna Carolina Guthrie, June 4, 1925; Vol. 63, Box 32; Ibid.

⁵⁸ P.N. 5720, Dorothy Chamorra (sic), December 27, 1922; P. R. Naturalization, 1903-1991, SF, Vol. 54, Box 29; RG 21; NARA-Pacific (San Bruno).

⁵⁹ *In re Chamorra*, No. 5720, (undated) May 1924; M. R. Bevington, State and Brief Submitted on Behalf of the United States; Contested Naturalization and Repatriation Case Files, 1924-1992, U.S. District Court for the Southern (San Francisco) Division of the Northern District of California, Box 1; RG 21; NARA-Pacific (San Bruno).

one (the age of adulthood according to federal naturalization law).⁶⁰ Although Chamorro's lawyer implored the judge to consider that a denial would render his client stateless, Kerrigan rejected Chamorro's petition.⁶¹ Arguing for a strict interpretation of the Cable Act, Kerrigan concluded, "It may seem harsh to classify a native born applicant, with one of foreign birth," but the Cable Act was clear that a marital repatriate, "shall be naturalized upon full and complete compliance with all the requirements of naturalization." One such requirement, "is that the petitioner shall have reached the age of twenty-one years."⁶² Dorothy Chamorro was not alone. On June 29, 1926, the petition of Molly Di Rita of Cranston, R.I. was denied in Providence at the behest of the local naturalization examiner. She was five months shy of turning twenty-one.⁶³

Residency requirements also complicated the efforts of many marital expatriates. Scholar and activist Sophonisba Breckinridge noted in 1931 that one of the greatest "hardship[s]" that many marital expatriates faced in their efforts to regain citizenship was proving compliance with all federal residency requirements.⁶⁴ Prior to 1930, one such requirement was proof of continuous residency for at least a year.⁶⁵ Congress had never defined the terms residency or resident, so judges and naturalization officials had to.⁶⁶ That was easier said than done.

In San Francisco, naturalization officers were anything but consistent in their interpretation of residency requirements. On one hand, women like Helen Bromfield would have hardly felt the complications of residency law. Bromfield was a U.S.-born marital expatriate who, upon returning to the United States from the Philippines on January 24, 1924, was admitted by the Bureau of Immigration as a "non-quota" immigrant "by reason of birth in U.S."⁶⁷ This (incorrect) interpretation of immigration law would come in handy for her. When she filed her petition of naturalization a year later, it was processed without objection by the Bureau of Naturalization and on July 6, 1925 she became an American citizen once more.⁶⁸

On the other hand, Jeanette Anderson Haas experienced the full frustrations of unclear residency requirements. A native of San Francisco, Haas had married her Swiss husband in 1912 and had lived in Mexico with him until 1923. Haas and her husband returned to the United States in 1923 and crossed the border at El Paso. However, their certificates of arrival were marked "for temporary purposes."⁶⁹ When Haas petitioned to regain her U.S. citizenship in

⁶⁰ Ibid.

⁶¹ *In re Chamorra*, No. 5720, (undated) May 1924; Milton Schmitt, Petitioner's Closing Brief; Contested Naturalization and Repatriation Case Files, 1924-1992, SF, Box 1; RG 21; NARA-Pacific (San Bruno); *In re Chamorra*, No. 5720, May 17, 1924, Judge Frank Kerrigan, Petition Denied, without prejudice; Contested Naturalization and Repatriation Case Files, 1924-1992, SF, Box 1; RG 21; NARA-Pacific (San Bruno).

⁶² *In re Chamorra*, No. 5720, May 17, 1924, Judge Frank Kerrigan, Petition Denied, without prejudice; Contested Naturalization and Repatriation Case Files, 1924-1992, SF, Box 1; RG 21; NARA-Pacific (San Bruno). (Underline in the original).

⁶³ P.N. 20952 Molly Di Rita, March 29, 1926; P. R. Naturalization, 1842-1991, RI, Vol. 95; RG 21; NARA-Northeast (Waltham); Breckinridge emphasizes, however, that the Federal District Court of Delaware came to the opposite conclusion in the case: *Petition of Fortunato*, 8 Fed. (2d) 508 (1925). See: Breckinridge, *Marriage and the Civic Rights of Women*, 29-30.

⁶⁴ Breckinridge, *Marriage and the Civic Rights of Women*, 39.

⁶⁵ An Act Relative to the naturalization and citizenship of married women (Cable Act of 1922).

⁶⁶ United States Bureau of Naturalization, *Annual Report, 1924*, 13.

⁶⁷ P.N. 6479 Helen Bromfield, Certificate of Arrival, January 24, 1924; P. R. Naturalization, 1903-1991, SF, Vol. 61, Box 32; RG 21; NARA-Pacific (San Bruno).

⁶⁸ P.N. 6479 Helen Bromfield, March 23, 1925; P. R. Naturalization, 1903-1991, SF, Vol. 61, Box 32; RG 21; NARA-Pacific (San Bruno).

⁶⁹ *In re Jeanette Anderson Haas*, No. 17228, July 18, 1929; Paul Armstrong, District Director of Naturalization, Brief for the United States; Contested Naturalization and Repatriation Case Files, 1924-1992, U.S. District Court for the Southern (San Francisco) Division of the Northern District of California, Box 2; RG 21; NARA-Pacific (San Bruno).

March 1929, those words would cause her a great deal of trouble.⁷⁰ Paul Armstrong, then the district director of the San Francisco Naturalization Office, opposed Haas's petition on the grounds that she was not a legal permanent resident and "had not come within the quota provisions (sic) of the Act of 1921."⁷¹ Haas contested this ruling in court and was represented by three lawyers. Fortunately for Haas, her attorneys proceeded to dismantle Armstrong's assertions, demonstrating that the residency requirements of the Cable Act said nothing about how women entered the country. Her lawyers swayed the court and on July 24, 1929 Haas swore an oath of allegiance to the United States and became a citizen once more.⁷²

In San Antonio on the other hand, denials of naturalization petitions targeted one population: Mexican-American women. While "failure to prosecute" or "absence" would sometimes be used as a rationale to deny Mexican-American women, it was usually paired with other, more condemnatory rationales. Three were denied owing to their (supposed) inability to speak English and three others were denied for "lack of knowledge." Cecilia Chavez Gonzalez was even denied due to her purported "lack of good moral character." Though a San Antonio assistant district attorney served as one of her witnesses, this thirty-nine-year-old mother of six was denied her petition and not provided an opportunity to return at a later point to reapply.⁷³ Though Chavez Gonzalez possessed the formal right to appeal this decision, she had good reason not to. In San Antonio, not a single Anglo expatriate was denied, but eight Mexican-American women were. Living in a Jim Crow state during a period of deep economic recession – in which segregation, disfranchisement, and unequal access to the law was the norm for African Americans and Hispanics – she would have likely found little recourse in a costly appeal.

As the experiences of Blumer, Chamorro, and Chavez Gonzales demonstrate, how examiners and judges interpreted repatriation law could be just as important as the language of the law itself. These examples also illustrate that the perseverance of marital expatriates played an equally important role in shaping the outcome of petitions. Determined women who faced administrative obstacles frequently fought back with the means at their disposal to ensure that they had their best possible chance to regain citizenship. Women with sufficient funds often hired lawyers to challenge unfavorable recommendations and highlighted their American identity and patriotism.⁷⁴ Others were persistent in ensuring that their cases would not be thrown aside. Though not all women who appealed their denials were successful, several marital expatriates regained their citizenship only because they refused to accept an adverse ruling. For Mexican-

⁷⁰ P.N. 17228 Jeanette Anderson Haas, March 23, 1929; P.R. Naturalization, 1903-1991, SF; RG 21; NARA-Pacific (San Bruno).

⁷¹ *In re Jeanette Anderson Haas*, No. 17228, July 18, 1929; Paul Armstrong, Brief for the United States; Contested Naturalization and Repatriation Case Files, 1924-1992, SF, Box 2; RG 21; NARA-Pacific (San Bruno).

⁷² P.N. 17228 Jeanette Anderson Haas, March 23, 1929; P.R. Naturalization, 1903-1991, SF; RG 21; NARA-Pacific (San Bruno); *In re Jeanette Anderson Haas*, No. 17228, July 9, 1929; Everett J. Brown, Thomas J. Sedwick, and Stephen M. White, Brief for the Petitioner; Contested Naturalization and Repatriation Case Files, 1924-1992, SF, Box 2; RG 21; NARA-Pacific (San Bruno).

⁷³ P.N. 6433 Cecilia Chavez Gonzalez, March 8, 1939; P.R. Naturalization, SA, Box 8; RG 21; NARA-Southwest (Fort Worth). Chavez Gonzalez's judge did not state why he came to this determination. Please see: Footnote 50 for all other references.

⁷⁴ Blumer demanded to know how "any law" could "take away my constitutional right for no wrong cause what so ever?" Jeannette Anderson Haas's lawyers reminded the court that Haas "is a member of a pioneer California family" and "by birth, by family tradition, by education, by environment and by position, she is truly an American." See: P. N. 5435 Alfild Johanna Blumer, June 27, 1923; P. R. Naturalization, 1903-1991, SF, Vol. 51, Box 27; RG 21; NARA-Pacific (San Bruno). (Underline in original); *In re Jeanette Anderson Haas*, No. 17228, July 9, 1929; Everett J. Brown, Thomas J. Sedwick, and Stephen M. White, Brief for the Petitioner; Contested Naturalization and Repatriation Case Files, 1924-1992, SF, Box 2; RG 21; NARA-Pacific (San Bruno); Candice Bredbenner's work similarly finds that appeals to American identity and constitutional rights were commonplace for American-born marital expatriates. See: Bredbenner, *A Nationality of Her Own*, 65-70, 183-194.

American women in Texas during the 1930s, applying to regain citizenship – and proving one’s supposed linguistic, civic, and moral “fitness” for citizenship – was a battle in-and-of itself.

These case studies build on what other scholars have found: marital expatriation harmed marginalized women the most. Asian-American women had the most to lose since they could lose access to property and be denied reentry into the United States due to their status as aliens ineligible for citizenship.⁷⁵ Similarly, Ann Marie Nicolosi and Candice Bredbenner have described how marginalized white women including sex workers and poor mothers receiving social assistance also faced the threat of deportation owing to felony and public charge statutes.⁷⁶

While these populations were disproportionately harmed by marital expatriation, the leadership of the Bureau of Naturalization/INS universally endorsed a restrictive interpretation of citizenship law vis-à-vis marital expatriates during these years. As Martha Gardner highlights, despite naturalization officers and judges referring to marital expatriates reacquiring citizenship as an act of repatriation, such women were not “repatriated” under the Cable Act “but renaturalized.” An act of repatriation refers to the reacquisition of citizenship through special provisions not outlined in naturalization law.⁷⁷ During this same time period, Congress had extended expedited repatriation provisions to American men who had joined allied armies prior to U.S. entry into World War I. All they had to do was go before a naturalization court, explain why they lost their citizenship, and take the oath of allegiance. Marital expatriates were not provided the same opportunity.

Although Naturalization Commissioner Raymond Crist recognized that marital expatriates across the country wanted to know “why should [they] not be afforded the same privilege,” he declined to advocate for extending repatriation provisions to these women in 1923. Such considerations were, quite literally in his opinion, “food for thought” for the nation’s legislators.⁷⁸ And his office was absolutely clear that native-born marital expatriates were *not* to be considered American citizens until they had taken the oath of allegiance.⁷⁹ That restrictive interpretation of citizenship law would continue even as repatriation provisions were extended to (some) marital expatriates in 1936.

II. Creating a Shortcut: Repatriation via Oath (1936-1940)

On June 25, 1936, a new Repatriation Act was signed into law by President Franklin Roosevelt. Its enactment was not seen as major news by the media outlets. The *New York Times* buried the story in a short paragraph while the *Los Angeles Times* gave it one sentence on page

⁷⁵ Leonard, *Making Ethnic Choices*, 56–57; Gardner, *The Qualities of a Citizen*, 121–56; Shah, *Stranger Intimacy*, 251–54.

⁷⁶ Louise Comacho, a sex worker, barely escaped deportation and convinced her judge that she no longer was of immoral character. Lillian Larch, a poor, illiterate widow was deported to Ontario in 1931. See, respectively: Nicolosi, “Sexuality, Citizenship and Law: The Strange Case of Louise Comacho,” 329–38; Bredbenner, *A Nationality of Her Own*, 172–75.

⁷⁷ Gardner, *The Qualities of a Citizen*, 155.

⁷⁸ Though Crist recognized that many marital expatriates found naturalizing alongside immigrant men to be insulting, he did not recommend creating a separate repatriation process for marital expatriates in his legislative recommendations. See: United States Bureau of Naturalization, *Annual Report, 1923*, 14.

⁷⁹ See for instance: Leigh H. Nettleton, “Lecture No. 27: Loss of Citizenship (Expatriation) and Presumptive Loss of Citizenship,” *Lectures: Immigration and Naturalization Service*, (Washington, DC: December 17, 1934), 3-4.

twelve.⁸⁰ This underwhelming coverage concealed the importance of the legislation, which promised to facilitate the repatriation of thousands of marital expatriates (if they heard about it).

The new law stipulated that an expatriate whose marriage with her husband had *ended*, “shall be deemed to be a citizen of the United States” upon taking an oath to the United States before a court of law.⁸¹ No longer would she have to petition for naturalization. She could appear before a judge and (after the INS ensured that she was eligible) regain her citizenship.⁸² Even eligible woman residing outside the country could repatriate at an embassy or consulate.⁸³ But the INS soon learned that implementing this policy would be harder than expected.

The legislation simply stated that a woman, “whose marital status with such alien has or shall have terminated” could take the oath of allegiance and regain her citizenship.⁸⁴ Clearly, widows and divorcées were covered under this law. The eligibility of other women was less clear cut. Just two weeks after the passage of the Repatriation Act, Fred Schlotfeldt, District Director of the Chicago INS office, wrote to his superiors in Washington to inquire whether a woman whose husband had naturalized in the years following the enactment of the Cable Act could repatriate. Since she was no longer married to an alien, could she regain her citizenship under the Repatriation Act’s fast-track provisions?⁸⁵ INS Commissioner D. W. MacCormack asked his legal advisors to render a decision. They favored granting such women repatriation privileges.⁸⁶ Solicitor Charles Gregory, the top legal advisor in the Labor Department (of which the INS was one agency), disagreed and won the argument.⁸⁷ Such women would not be eligible to regain citizenship under the new Repatriation Act.⁸⁸ They were not the only expatriates excluded. Since Puerto Rican women born before 1917 were not considered native-born citizens, the INS also denied them the right to repatriate.⁸⁹

While the INS Central Office in Washington, DC was interpreting this new law restrictively for tens of thousands of potential repatriates, it made sure to expand its benefits to a smaller group of people: the husbands of *remarried* marital expatriates. Following the enactment

⁸⁰ “Congress Ready to Enact The Compromise Tax Bill and Adjourn Tomorrow,” *New York Times*, June 19, 1936, 1; “Strike Aid Bill Signed: Planes for Army Assured: Roosevelt Approves Law for Alameda Naval Aviation Base,” *Los Angeles Times*, June 26, 1936, 12.

⁸¹ “An Act To Repatriate Native-Born Women Who Have Heretofore Lost Their Citizenship by Marriage to an Alien, and for Other Purposes,” 49 Stat. 1917 (1936).

⁸² Deputy Commissioner Edward J. Shaughnessy to All Districts, Circular No. 39, November 2, 1936; Bureau of Naturalization, Records of the Central Office: Administrative Files Relating to Naturalization, 1906-1940; Folder 1, Box No. 408; 20/154, Entry No. 26, RG 85; NARA-DC.

⁸³ An Act to repatriate native-born women who have heretofore lost their citizenship by marriage to an alien, and for other purposes (Repatriation Act of 1936).

⁸⁴ An Act to repatriate native-born women who have heretofore lost their citizenship by marriage to an alien, and for other purposes (Repatriation Act of 1936).

⁸⁵ Fred Schlotfeldt to Commissioner of Immigration and Naturalization Service, July 8, 1936; Bureau of Naturalization, Records of the Central Office: Administrative Files Relating to Naturalization, 1906-1940; Folder 1, Box No. 408; 20/154, Entry No. 26, RG 85; NARA-DC.

⁸⁶ Commissioner D. W. MacCormack to Solicitor of Labor Charles Gregory, July 29, 1936; Bureau of Naturalization, Records of the Central Office: Administrative Files Relating to Naturalization, 1906-1940; Folder 1, Box No. 408; 20/154, Entry No. 26, RG 85; NARA-DC.

⁸⁷ Solicitor of Labor Charles Gregory to Commissioner D. W. MacCormack, Memorandum for the Commissioner of Immigration and Naturalization, August 10, 1936; Bureau of Naturalization, Records of the Central Office: Administrative Files Relating to Naturalization, 1906-1940; Folder 2, Box No. 408; 20/154, Entry No. 26, RG 85; NARA-DC.

⁸⁸ Henry Hazard to District Director, Chicago, August 5, 1938; Bureau of Naturalization, Records of the Central Office: Administrative Files Relating to Naturalization, 1906-1940; Folder 3, Box No. 408; 20/154, Entry No. 26, RG 85; NARA-DC.

⁸⁹ Gardner, *The Qualities of a Citizen*, 155.

of the 1934 federal Equal Nationality Act, an immigrant man marrying an American women could naturalize without filing a declaration of intent to become a citizen and his residency requirement was reduced from five to three years.⁹⁰ As early as August 1936, INS administrators had to decide whether a woman who repatriated under the provisions of the Repatriation Act could aid her (second) husband's naturalization petition. In this circumstance, semantics mattered. For an immigrant man to naturalize under this fast-track procedure, his wife had to be a native-born or naturalized citizen. But were marital expatriates either?⁹¹

Naturalization administrators debated whether a marital expatriate had forfeited her status as a native-born citizen and, if so, whether her repatriation was an act of naturalization. The INS Board of Legal Review ruled that marital expatriates had indeed abandoned their native-born status. However, while the Repatriation Act did not specify a woman's repatriation as an act of naturalization⁹², the Central Office determined that "the resumption of citizenship by the wife...constitute[d] a 'naturalization.'" Hence, this woman's second husband could use the expedited naturalization provisions of the Equal Nationality Act of 1934.⁹³ Although thousands of marital expatriates could not repatriate under the provisions of the 1936 Repatriation Act because of a restrictive INS construction of the law, the Service made sure that a small number of foreign men would be able to take full advantage of it.

This strict interpretation of the Repatriation Act undoubtedly contributed to the limited number of women who made use of its provisions between FY 1937 and 1940. During those four years, 140 women regained their citizenship under the provisions of the Repatriation Act in San Francisco.⁹⁴ Far more women made use of the Cable Act, as four hundred women applied for naturalization in those same years.⁹⁵

Writing in 1936, Solicitor Gregory theorized that the "publicity that will possibly ensue" owing to confusion related to language of the Repatriation Act "may result in the enactment of

⁹⁰ "An Act To Amend the Law Relative to Citizenship and Naturalization, and for Other Purposes," 48 Stat. 797 (1934); For histories of battles over this act (and related legislation), see: Bredbenner, *A Nationality of Her Own*; Gardner, *The Qualities of a Citizen*.

⁹¹ Deputy Commissioner T. B. Shoemaker and L. Paul Winnings, Chairman of the Board of Review, Interpretation of the Act of June 25, 1936, August 22, 1936; Bureau of Naturalization, Records of the Central Office: Administrative Files Relating to Naturalization, 1906-1940; Folder 2, Box No. 408; 20/154, Entry No. 26, RG 85; NARA-DC.

⁹² Deputy Commissioner Edward J. Shaughnessy to All Districts, Circular No. 39, November 2, 1936; Bureau of Naturalization, Records of the Central Office: Administrative Files Relating to Naturalization, 1906-1940; Folder 1, Box No. 408; 20/154, Entry No. 26, RG 85; NARA-DC; The Assistant Secretary of Labor C. V. McLaughlin, Interpretation of the Act of June 25, 1936, November 9, 1936; Bureau of Naturalization, Records of the Central Office: Administrative Files Relating to Naturalization, 1906-1940; Folder 1, Box No. 408; 20/154, Entry No. 26, RG 85; NARA-DC. Since the INS only had jurisdiction in matters of immigration and naturalization, the Service was put in a strange position upon the passage of the 1936 legislation. The language of the act did not specify the act of repatriation as a part of naturalization law. However, INS administrators claimed the Service was the only arm of the executive branch that possessed the institutional capacity to verify a woman's eligibility to use the Repatriation Act. Service officials proceeded to write to naturalization judges across the country and asked them to send all repatriation applicants to INS officers to verify their eligibility before proceeding to court. Deferring once more to naturalization administrators, the vast majority of judges responded affirmatively. Such records can be found at the National Archives: Bureau of Naturalization, Records of the Central Office: Administrative Files Relating to Naturalization, 1906-1940; Folder 1, Box No. 408; 20/154, Entry No. 26, RG 85; NARA-DC. See, also: Gardner, *The Qualities of a Citizen*, 201-202.

⁹³ Assistant Secretary of Labor C. V. McLaughlin, Interpretation of the Act of June 25, 1936, November 9, 1939; Bureau of Naturalization, Records of the Central Office: Administrative Files Relating to Naturalization, 1906-1940; Folder 3, Box No. 408; 20/154, Entry No. 26, RG 85; NARA-DC.

⁹⁴ See: Applications for Repatriation, 1936-1969; U.S. District Court for the Southern (San Francisco) Division of the Northern District of California; RG 21; NARA-Pacific (San Bruno).

⁹⁵ All data is drawn from: Petition and Record of Naturalization, 1903-1991, SF, RG 21; NARA-Pacific (San Bruno).

amendatory legislation that will clarify the meaning of the law.”⁹⁶ But he did not press the issue. As Commissioner Crist had let the matter drop in 1923, so too did Gregory. The plight of marital expatriates was simply not that important to INS leaders. That would change dramatically in 1940.

III. Shifting Course: Repatriation by Decree (1940-1952)

On July 2, 1940, a short amendment to the Repatriation Act was enacted into law. In addition to marital expatriates whose marriages to aliens had terminated, the amendment added women: “who ha[ve] resided continuously in the United States since the date of such marriage” as persons now eligible to regain citizenship under the Repatriation Act.⁹⁷ This amendment should have been easier to construe than the 1936 legislation. It stood to reason that marital expatriates whose marriages to aliens had ended and/or had always lived in the United States could take the oath of allegiance and be repatriated. But INS administrators soon learned that this law would be much harder to implement than previous marital repatriation policies.

Almost immediately after the enactment of the 1940 amendment, marital expatriates and their supporters across their country demanded that the INS Central Office and local branches speed up the repatriation process.⁹⁸ Just six weeks after the passage of the amendment, the New York City INS Office reported that *two thousand* women had applied to regain citizenship via the repatriation provisions.⁹⁹ When the Central Office distributed forms, several local branches ran out. This delay did not sit well with marital expatriates and their supporters. On November 25, 1940, sixty-nine residents of Highland Park, Michigan sent a petition to Solicitor General Francis Biddle, urging him to “use his influence with the government printing office to give priority to the work of printing the necessary forms for the repatriation of petitioning expatriates,” so that their files might not “be further delayed.”¹⁰⁰ On December 20, 1940, Justice Henry Kimball of the New York Supreme Court wrote to Attorney General Robert Jackson (the INS had been transferred to the Justice Department earlier in the year) to inform him that “a representative of the Naturalization Service” had told Kimball “that his district had 5000 applications for repatriation which could not be taken care of by reason of the lack of forms.” “Surely,” argued Kimball, “the rights of these married women entitled to be repatriated under the

⁹⁶ Solicitor of Labor Charles Gregory to Commissioner D. W. MacCormack, Memorandum for the Commissioner of Immigration and Naturalization, August 10, 1936; Bureau of Naturalization, Records of the Central Office: Administrative Files Relating to Naturalization, 1906-1940; Folder 2, Box No. 408; 20/154, Entry No. 26, RG 85; NARA-DC, 8.

⁹⁷ An Act To repatriate native-born women who have heretofore lost their citizenship by marriage to an alien (Repatriation Act Amendment of 1940).

⁹⁸ Chemical Bank and Trust Company to the Naturalization Bureau, July 26, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC; Barney Sokolowski to Congressman A. F. Maciejewski, July 23, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC. On July 26 a representative of the Chemical Bank and Trust Company of New York wrote to the INS on behalf of “One of our large stockholders” who “has written to our Chairman and asked him to assist her in reacquiring citizenship which was lost by virtue of a marriage which occurred in 1909.” Barney Sokolowski wrote to his congressman because “My wife must vote for our Great President Roosvelt (sic).”

⁹⁹ Charles P. Muller, Assistant District Director INS-New York to Mr. T. B. Shoemaker, September 12, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC.

¹⁰⁰ As first cited in Gardner, *The Qualities of a Citizen*, 201-202 (also, n.6): Mrs. Flora Robison to Solicitor General Francis Biddle, November 25, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC.

law now in effect should not be rendered valueless by mere lack of simple printed forms.”¹⁰¹
Why such urgency?

a. *1940: Transforming Citizenship and Alienage*

In addition to the amendment to the Repatriation Act, two other major citizenship bills were enacted into law in 1940 which forced all noncitizens to confront the meaning of their alienage. The first, the Alien Registration Act, was passed just days before the enactment of the Repatriation amendment.¹⁰² That new law tasked the INS with a massive job: identifying and registering nearly all aliens residing in the country.¹⁰³ It required (the vast majority of) resident noncitizens above the age of fourteen to submit to fingerprinting and provide information about themselves (including physical description, manner of entry into the country, and civic associations) to federal authorities by December 26, 1940. The Alien Registration Act served as an unmistakable reminder to the roughly five million aliens in the United States that they were not full members of the American body politic.¹⁰⁴ Not coincidentally, the number of immigrants petitioning for citizenship shot up right “after passage of the [Alien Registration] bill.”¹⁰⁵

This legislation also made many marital expatriates deeply aware of the tangible consequences of their loss of citizenship. One marital expatriate, Naomi Gresser, wrote to the INS in the summer of 1940 and asked if she had to register as an alien. Citing the Service’s play-it-safe policy, Donald R. Perry, the assistant director of the INS registration program, responded affirmatively.¹⁰⁶ Gresser was not the only U.S.-born woman who was wondering if she had to register as an alien in her native-born country. On October 14, 1940, Charles Muller, assistant district director of the Ellis Island INS branch, informed his superiors that his office had received “Many inquiries” about this same question. He did not know what to tell them.¹⁰⁷

At the same time, the enactment of a new Nationality Act made it even harder for marital expatriates to regain U.S. citizenship. Aiming to tie together diverse statutes related to American citizenship “into a comprehensive nationality code,” years of negotiations in Congress finally led to the enactment of an omnibus bill into law on October 14, 1940. There was one big problem for marital expatriates. Owing to an oversight, the new Nationality Act carried forward the provisions of the original Repatriation Act of 1936 without the recent amendment affording repatriation rights to still-married women. In contrast, it identified all other marital expatriates as eligible for naturalization under the provisions of the Cable Act and its amendments. Since the

¹⁰¹ Justice Henry Kimball to Attorney General Robert Jackson, December 20, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC. Kimball’s numbers – which certainly seem high – could have been exaggerated or passed on to him by someone else.

¹⁰² An Act To Prohibit certain subversive activities and deportation of aliens; to require the fingerprinting and registration of all aliens; and for other purposes (Alien Registration Act of 1940).

¹⁰³ See, among others: Ngai, *Impossible Subjects*, 87–88; see also, broadly: Krajewska, *Documenting Americans: A Political History of National ID Card Proposals in the United States*.

¹⁰⁴ United States, *Regulations and Instructions for Alien Registration* (Washington, DC: Government Printing Office, 1940); To view contemporaneous media coverage of the Alien Registration Act see: “Aliens Will Start Registering Today,” *New York Times*, August 27, 1940, 6; “Citizenship Loss in War Clarified: Women Who Remain Aliens Because of Marriage Are Warned to Register,” *New York Times*, October 5, 1940, 6; “Naturalizations Up: Rush of Aliens for Citizenship Sets a Record: Spurred by New Law on Registration,” *Chicago Daily Tribune*, December 28, 1940, 4; United States Department of Justice, *Annual Report of the Attorney General of the United States, 1941* (Washington, DC: Government Printing Office, 1941).

¹⁰⁵ “Naturalizations Up,” *Chicago Daily Tribune*, December 28, 1940, 4.

¹⁰⁶ Donald R. Perry, Assistant Director of Registration, to Naomi M. Gresser, September 11, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC.

¹⁰⁷ Charles Muller, Assistant District Director New York to Mr. T. B. Shoemaker, October 14, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC.

1940 Nationality Act repealed all prior naturalization legislation not explicitly included in the new nationality code, it seemed to have, quite clearly, repealed the amendment to the Repatriation Act enacted just ten weeks earlier. There was a brief grace period however, for the Nationality Act would not take effect until January 13, 1941.¹⁰⁸

The passage of the Nationality Act in October 1940 and its presumed repeal of the July amendment to the Repatriation Act caused great concern among marital expatriates, INS officials, and judges. Residents of Highland Park and Justice Kimball wrote to INS leaders and implored them to rapidly distribute repatriation forms precisely because they feared that thousands of women would be unable to repatriate if the INS was unprepared to handle their requests before January 13, 1941.¹⁰⁹ INS district officers felt the strain of this situation first hand. On December 6, 1940, Henry Nicolls of the Boston INS branch informed his superiors that his office had received a “large number of applications for repatriation” but “apparently” the law under which they could repatriate was about to expire. “In this event,” wrote Nicolls, “it will be necessary to attend to all applications on hand...and have them appear in court prior to January 11, 1941.”¹¹⁰ INS officers stationed in New York and St. Paul, Minnesota also reported difficulties keeping up with repatriation requests at the end of 1940.¹¹¹

As residents of the United States came face-to-face with citizenship and alienage in a nation gearing for war, INS administrators were tasked with interpreting rapidly changing laws related to repatriation *and* they faced two imminent deadlines. The first, December 26, 1940, was the final date for all aliens in the country to register. Since INS leaders had to both organize that effort and determine who had to register, their decisions would decide the fate of marital expatriates. The second, January 13, 1941, was of equal importance. INS administrators, judges, and expatriates would have to work as quickly as possible to process repatriation applications before that date if, as assumed, it was determined that marital expatriates still-married to aliens would not be allowed to repatriate under the new Nationality Act. No longer could an INS commissioner describe the subject of marital repatriation provisions as “food for thought”¹¹²

¹⁰⁸ The legislation read: “A person who was a citizen of the United States and who prior to September 22, 1922, lost United States citizenship by marriage to an alien or by the spouse’s loss of United States citizenship, and any person who lost United States citizenship on or after September 22, 1922, by marriage to an alien ineligible to citizenship, may, if no other nationality was acquired by affirmative act other than such marriage, be naturalized upon compliance with all requirements of the naturalization laws.” It is most likely that representatives simply made an error in compiling the 1940 Nationality Code – which took years of negotiation – and forgot to include the more up-to-date version of the Repatriation Act passed just a few months before. See: An Act To revise and codify the nationality laws of the United States into a comprehensive nationality code (Nationality Act of 1940).

¹⁰⁹ See: Mrs. Flora Robison to Solicitor General Francis Biddle, November 25, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC; Justice Henry Kimball to Attorney General Robert Jackson, December 20, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC. Michigan petitioners wrote that marital expatriates were “advised and believe that under the provisions of the new naturalization law they will not have the benefits of the simple method provided for their repatriation after January 15, 1941, when said law goes into effect.” Kimball wrote, “it appears that repatriation of women, as provided in the amendment of July 2, 1940 by reason of continuous residence in the United States, will no longer be possible after January 12, 1941.”

¹¹⁰ Henry Nicolls to Commissioner of Immigration and Naturalization, December 6, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC.

¹¹¹ Charles Muller, Assistant Director, New York to Mr. T.B. Shoemaker, November 30, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC; O. S. Holton, District Director, Saint Paul to Commissioner of Immigration and Naturalization, December 10, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC.

¹¹² United States Bureau of Naturalization, *Annual Report, 1923*, 14.

b. *Reversing Course: Reading Repatriation Law Broadly*

INS administrators in Washington fiercely debated how to reply to marital expatriates, their supporters, and local officials. Their response amounted to a total reversal of the Service's prior interpretation of repatriation law. INS leaders announced that U.S.-born marital expatriates who had resided continuously in the country would not have to register because they had all been, automatically, repatriated by the July 2, 1940 amendment to the Repatriation Act.

The INS came to this novel interpretation by stretching the language of the original Repatriation Act of 1936. The act stated that a marital expatriate no longer married to her alien husband: "shall be deemed to be a citizen of the United States to the same extent as though her marriage to said alien had taken place on or after September 22, 1922." However, "no such woman shall have or claim any rights as a citizen of the United States until she have duly taken the oath of allegiance."¹¹³ In the four years following the enactment of this law, the INS had construed it to mean that a woman did not regain her citizenship until she took the oath of allegiance.¹¹⁴ This older reading brought repatriation law into alignment with most (legal and popular) understandings of American citizenship which maintained that once aliens became citizens they would possess the same rights as native-born citizens (with the notable exception of serving as president). But on October 3, 1940, INS Deputy Commissioner Shoemaker announced one important proviso to the Service's *new* interpretation of repatriation law: "Such women, however, shall not have or claim any of the rights as such citizen until they shall have taken the oath of allegiance."¹¹⁵

INS administrators in Washington never explicitly stated why they reversed course in their interpretation of the Repatriation Act. There is no doubt however, that the Alien Registration and Nationality Acts of 1940 weighed heavily on their minds. INS officials were under significant public pressure to alleviate the plight of marital expatriates, as they were inundated with letters imploring them to speed up the repatriation process.¹¹⁶ In his memo announcing the new INS policy, Shoemaker made sure to add that "this construction of the statute by the Service will be uniform in its applicability to all branches, including Registration."¹¹⁷ Just two days later, this new INS interpretation of the law could be found in the *New York Times* assuring eligible marital expatriates that they need not register.¹¹⁸

¹¹³ An Act To repatriate native-born women who have heretofore lost their citizenship by marriage to an alien, and for other purposes (Repatriation Act of 1936).

¹¹⁴ George T. Washington, Assistant Solicitor General to John P. Boyd, Acting Commissioner of Immigration and Naturalization, Interpretation of the Act of June 25, 1936, September 2, 1948, 6; INS File 56173-496, Box 19375; RG 85; NARA-DC.

¹¹⁵ Deputy Commissioner T. B. Shoemaker, The status of women within the purview of the Act prior to taking the oath of allegiance, October 3, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC.

¹¹⁶ Flora Robison to Francis Biddle, November 25, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC; Henry Kimball to Robert Jackson, December 20, 1940; *Ibid.*; Henry Nicolls to Commissioner of Immigration and Naturalization, December 6, 1940; *Ibid.*; Charles Muller to T.B. Shoemaker, November 30, 1940; *Ibid.*; O. S. Holton to Commissioner of Immigration and Naturalization, December 10, 1940; *Ibid.*

¹¹⁷ Deputy Commissioner T. B. Shoemaker, October 3, 1940; INS File 56173-496, Box 19375; RG 85; NARA-DC.

¹¹⁸ The *New York Times* did not help clarification matters much however, when its reporter buried this news below the confusing headline: "Women Who Remain Aliens Because of Marriage Are Warned to Register." Though this referred only to women who did not regain citizenship under the INS construction of the Repatriation Act (women who were still-married to their husbands and had resided out of the country), its prominent location in the article likely led to renewed confusion. The Times didn't get around to letting the vast majority of marital expatriates know that "they are nevertheless citizens and as such are not required to register" until the end of the article. See: "Citizenship Loss in War Clarified: Women Who Remain Aliens Because of Marriage Are Warned to Register," *New York Times*, October 5, 1940, 6.

This evidence suggests that INS administrators reversed their interpretation of repatriation law to avoid requiring marital expatriates to register as aliens with the federal government. As Lawrence DiStasi emphasizes, many marital expatriates would have never known that they had long been able to regain their citizenship or even that they had lost it in the first place. And it would have required enormous efforts to inform all marital expatriates of their citizenship status before the Registration Act deadline.¹¹⁹ In addition, many INS administrators would have likely balked at the thought of enforcing penalties – including a fine of up to one thousand dollars or a prison sentence of up to six months – on American-born women who refused to register had they been required to.¹²⁰ Nevertheless, mass confusion concerning registration and fear of punishment drove many marital expatriates (now considered “citizens without citizenship rights”) to register as aliens anyway.¹²¹

Thus, the upper echelon of the INS decided to reverse administrative policy and interpret repatriation law broadly at the very moment when the Service would have been responsible for forcing *all* marital expatriates to reckon with the consequences of their alienage. To do so, it created a distinct formal category of citizenship: a citizen who legally did not possess rights (such as suffrage rights) unique to citizens. Though many American citizens did not possess *de facto* citizenship rights in 1940, the INS interpretation of repatriation law ran counter to *de jure* post-woman’s suffrage U.S. citizenship norms, which recognized all American citizens as possessing equal citizenship rights under the Constitution. The INS did not even bother to specify which rights would be denied to marital expatriates owing to their new status.¹²² To many marital expatriates, this was intolerable. And they would make their voices heard.

c. “A Flood of Applications”: Repatriation Nationwide

When the repatriation amendment of July 2, 1940 became law, its enactment was not treated as major news by national newspapers of the era. Two paragraphs about the bill on page three of the *Los Angeles Times* and three sentences on page eight of the *Chicago Tribune* were typical of coverage afforded to this new law.¹²³ But by the summer of 1942, entire articles about marital repatriation could be found across the pages of the *New York Times*.¹²⁴ What had changed? In the intervening years, marital expatriates across the country wanted to ensure that they regained their birthright. Tens of thousands of women would take the oath of allegiance to regain their citizenship (rights), while others would fight for those rights in court.

On January 14, 1941, the *New York Times* reported that a “flood of applications” for repatriation had been filed in New York City where “Three thousand American-born women...ha[d] just filed applications for repatriation.”¹²⁵ Applications for repatriation were not

¹¹⁹ DiStasi, “Derived Aliens,” 30.

¹²⁰ An Act To Prohibit certain subversive activities and deportation of aliens; to require the fingerprinting and registration of all aliens; and for other purposes (Alien Registration Act of 1940).

¹²¹ See, broadly: Applications for Repatriation, 1936-1969; SF; RG 21; NARA-Pacific (San Bruno).

¹²² See DiStasi for an excellent account of the complicated ways immigration authorities sought to communicate this “citizen without the rights of citizenship” status to marital expatriates and how local officials struggled to interpret what that meant in a time of war: DiStasi, “Derived Aliens.”

¹²³ “President Signs Repatriation Bill,” *Los Angeles Times*, July 3, 1940, 3; “Aliens’ Wives May Regain Citizenship under New Law,” *Chicago Daily Tribune*, July 4, 1940, 8.

¹²⁴ “3,000 U.S.-Born Women Seek Repatriation: New Rule Brings a Flood of Requests from Aliens’ Wives,” *New York Times*, January 14, 1941, 23; “Becomes an American Again,” *New York Times*, April 7, 1942, 6; “Loses Repatriation Plea: Plainfield Woman Says She Could Not Pledge to Bear Arms,” *New York Times*, August 27, 1942, 21.

¹²⁵ “3,000 U.S.-Born Women Seek Repatriation,” *New York Times*, January 14, 1941, 23.

unique to New York. In Chicago, the local INS office reported that between December 1, 1939 and November 30, 1940 2,158 marital expatriates had taken the oath of allegiance.¹²⁶ Meanwhile, the *Washington Post* kept track of the names of marital expatriates who took the oath of allegiance in its regular articles on naturalizations. Three such examples, published between October 2, 1940 and January 8, 1941, suggest that marital expatriates made up a sizeable number of all petitioners (immigrant and expatriate) taking the oath of allegiance in the nation's capital during the Alien Registration period. On October 2, 1940, the *Post* reported that marital expatriates numbered fifteen out of seventy-two (20.8%) of the total oaths administered in the district court the day before.¹²⁷ A month later, marital expatriates numbered eighteen out of a total sixty-eight (26.5%) who took the oath.¹²⁸ Likewise, on January 7, 1941 nineteen marital expatriates took the oath out of a total of ninety-eight persons doing so (19.4%).¹²⁹ Reporters, however, usually failed to recognize that these oaths were being administered to persons already considered by the INS to be citizens (albeit without citizenship rights).¹³⁰

Such "floods" of women rushing to take the oath of repatriation were not unusual for the time. Case studies of repatriation oaths taken in two different regions of the country – the San Francisco Bay Area and southern Texas – demonstrate that despite regional variations, marital expatriates were especially driven to regain citizenship rights during the years immediately preceding, during, and following World War II. As can be seen in Figures 4 and 5, repatriation oaths generally peaked in fiscal years 1941, 1942, and 1943. The Federal District Court in San Francisco saw a relatively low number of women take the oath of allegiance between FY 1941 and 1943. These 204 women made up of the 21.2% of the total number (962) of marital expatriates who took the oath of allegiance between FY 1937 and 1975 in San Francisco.¹³¹

¹²⁶ "Naturalizations Up," *Chicago Daily Tribune*, December 28, 1940, 4.

¹²⁷ "Steve Vasilakos," *Washington Post*, October 2, 1940, 3.

¹²⁸ "49 Become U.S. Citizens, 19 Repatriated: Citizenship Restored to Man Who Fought For Canada in 1915," *Washington Post*, November 6, 1940, 24.

¹²⁹ "79 Granted U. S. Itizenship; 5 Nuns in Group (Sic)," *Washington Post*, January 8, 1941, 21.

¹³⁰ See, for instance: "Naturalizations Up," *Chicago Daily Tribune*, December 28, 1940, 4; "Steve Vasilakos," 3; "49 Become U.S. Citizens, 19 Repatriated: Citizenship Restored to Man Who Fought For Canada in 1915," *Washington Post*, November 6, 1940, 24; "79 Granted U. S. Itizenship; 5 Nuns in Group (Sic)," 21; "Becomes an American Again," *Washington Post*, January 8, 1941, 6.

¹³¹ All data drawn from: Applications for Repatriation, 1936-1969; U.S. District Court for the Southern (San Francisco) Division of the Northern District of California; RG 21; NARA-Pacific (San Bruno).

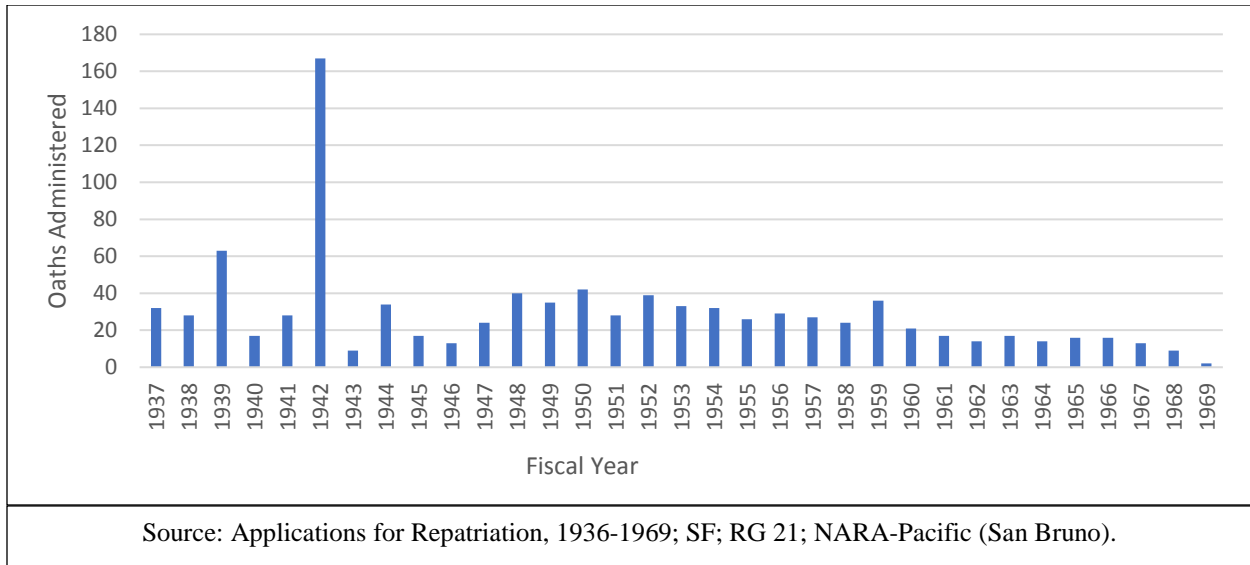


Figure 4: Marital Repatriation Oaths Administered Federal District Court, San Francisco: FY 1937-1969

In southern Texas, far more marital expatriates took the oath in those three years. In San Antonio, 288 marital expatriates did so between FY 1941 and 1943. This represented 58.1% of the total 496 women who regained their birthright citizenship rights between FY 1937 and 1975.¹³² In El Paso, this pattern was even starker: 87 out of a total 228 oaths were administered on just two days: December 19 and 20, 1940, right before the Registration Act was about to go into effect.¹³³

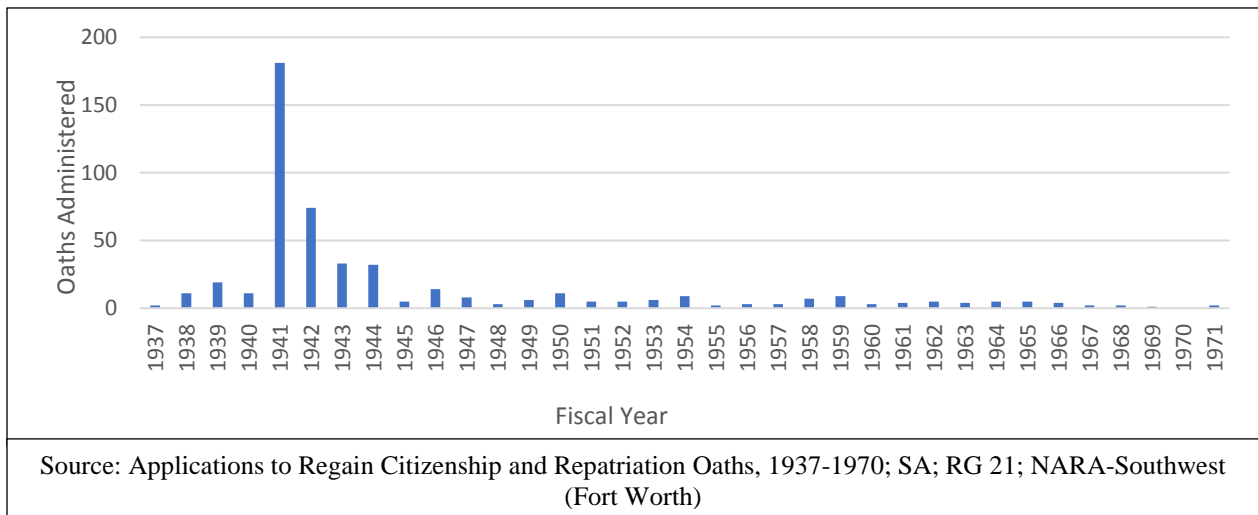


Figure 5: Marital Repatriation Oaths Administered Federal District Court, San Antonio: FY 1937-1971

¹³² Applications to Regain Citizenship and Repatriation Oaths, 1937-1970; U.S. District Court for the Western (San Antonio) District of Texas; RG 21; NARA-Southwest (Fort Worth).

¹³³ Applications to Regain Citizenship, 1937-1969; U.S. District Court for the Western (El Paso) Division of Texas; RG 21; NARA-Southwest (Fort Worth).

Unfortunately, INS administrators did not tally national repatriation figures until FY 1944. Inclusive of FY 1944-1975, the INS counted 21,047 repatriation oaths administered to marital expatriates nationwide.¹³⁴ As these figures do not account for oaths taken during the Alien Registration drive or the early years of World War II, it is impossible to determine how many women regained their citizenship (rights) prior to 1944. However, we can compare national annual rates of repatriation oaths administered between FY 1944 and 1975 with regional case studies of prior years to make reasonable estimates (Table 4).

Let us consider the 344 repatriation oaths administered in San Francisco between FY 1937 and 1943 to be representative of a low rate of oaths administered (35.8%) when compared to the entire FY 1937-1975 period (962 total). If San Francisco's rate of repatriation oaths for the FY 1937-1943 period is representative of the entire country, then roughly 11,740 repatriation oaths were taken nationally between FY 1937 through 1943, bringing the total number of oaths taken between FY 1937 and 1975 to 32,793. If the San Antonio rate is indicative of patterns across the country between FY 1937 and 1943 (66.7% of the total), about 42,169 oaths were taken across the nation between FY 1937 and 1943, bringing the total number of oaths taken between FY 1937 and 1975 to around 63,222.

Table 4: Estimated Number of Repatriation Oaths Administered Nationally: FY 1937-1975

	District Court, San Francisco	District Court, San Antonio
Total Oaths Taken in District Court 1937-1943 (a)	344	331
Total Oaths Taken in District Court 1937-1975 (b)	962	496
Oaths Taken 1937-1943/Total Oaths Taken (a/b) = (c)	35.8%	66.7%
1944-1975 Percentage of Total (1-c) = (d)	64.2%	33.3%
National Total Number of Oaths Taken 1944-1975 = (e)	21,053	21,053
High and Low Estimations of National Repatriation Oaths Taken 1937-1975 = (e)/(d) = (f)	32,793	63,222
High and Low Estimations of National Repatriation Oaths Taken 1937-1943 = (f) – (e) = (g)	11,740	42,169
Source: <i>INS Annual Reports</i> , FY 1944-1975; Applications for Repatriation, 1936-1969; U.S. District Court for the Southern (San Francisco) Division of the Northern District of California; RG 21; NARA-Pacific (San Bruno); Applications to Regain Citizenship and Repatriation Oaths, 1937-1970; U.S. District Court for the Western (San Antonio) District of Texas; RG 21; NARA-Southwest (Fort Worth).		

Clearly, these low and high estimates suggest that more work must be done to examine how many women applied for and took the repatriation oath in the United States between FY 1937 and 1943. This does not account for marital expatriates who regained citizenship via the

¹³⁴ United States Immigration and Naturalization Service, *Annual Report of the Immigration and Naturalization Service, FY 1944-1975* (Washington, DC: Government Printing Office).

Cable Act's provisions after the Repatriation amendment went into force in 1940.¹³⁵ However, these estimates do demonstrate conclusively that tens of thousands of marital expatriates across the country took an oath of repatriation – and the citizenship rights that came with it – as citizenship acquired a heightened value during the Alien Registration and World War II years.

Marital expatriates were not unique. In fact, they shared much in common with the “vast majority of the over 1.5 million immigrants who became U.S. citizens between 1941 and 1945.” These immigrants were mostly “female immigrants in their forties and fifties, who had come to the United States a long time ago” who naturalized in high rates following the enactment of the Alien Registration Act and the outbreak of war.¹³⁶ So many immigrants wanted citizenship that an “all-time high of over 450,000” naturalizations was reached in FY 1944, a figure that would not be surpassed until 1996.¹³⁷ As Dorothee Schneider has found, many of these immigrant women sought to naturalize when the Alien Registration Act of 1940 and then World War II forced them to confront their alienage.¹³⁸ Though these patterns show that many marital expatriates and female immigrants viewed American citizenship to possess heightened importance in the early 1940s, marital expatriate oaths generally peaked a few years earlier than naturalization petitions filed by female immigrants, suggesting that the Alien Registration Act may have played an even greater role in encouraging U.S.-born women to take the oath of allegiance than their immigrant peers.

Deputy INS Commissioner Shoemaker should have been happy. His interpretation of repatriation law had clearly opened the door for tens of thousands of American-born women to regain their rights as citizens. But he and his colleagues in the INS administration were facing a major problem. Not all courts agreed with their interpretation of repatriation law.

d. *“There is but One Kind of Citizen in Our Country”:
The Courts Debate Repatriation Law*

Although marital expatriates rarely had to file a court case to obtain a repatriation oath, several judges began taking exception the INS's claims as early as 1941. Rebecca Shelley's case is best-remembered since it arose soon after the INS interpretation of the Repatriation Act was announced and it was argued before the U.S. Court of Appeals in Washington, DC.¹³⁹ Moreover, the court's strongly-worded condemnation of what it saw as a deliberate misinterpretation of the law threatened to upend thousands of U.S.-born women's citizenship status as the nation geared for war.¹⁴⁰ Indeed, following the *Shelley* defeat, INS district directors in Chicago and Kansas City wrote to the Central Office and wanted to know if a new interpretation of the law was forthcoming. Shoemaker responded to both inquiries with an unequivocal no. INS administrators pressed on with their expansive view of the Repatriation Act

¹³⁵ In San Francisco, some marital expatriates continued to apply for citizenship via naturalization (as opposed to repatriation) provisions in FY 1941 even after the passage of the Repatriation Act of 1940. In FY 1941, 72 women regained their citizenship in this manner. Petition and Record of Naturalization, 1903-1991, Boxes 196-210, SF, RG 21; NARA-Pacific (San Bruno).

¹³⁶ Schneider, *Crossing Borders*, 233.

¹³⁷ Dorothee Schneider, “Naturalization and United States Citizenship in Two Periods of Mass Migration: 1894-1930, 1965-2000,” *Journal of American Ethnic History* 21, no. 1 (October 2001): 64, 68.

¹³⁸ Schneider, *Crossing Borders*, 233.

¹³⁹ Bredbenner, *A Nationality of Her Own*, 183-94; Goodier, “The Price of Pacifism.”

¹⁴⁰ *Shelley v. United States* (U.S. Court of Appeals, Washington, D.C. 1941).

of 1940.¹⁴¹ But *Shelley* would not be the last threat to the concept of “citizens without the rights of citizenship.”

The citizenship status of marital expatriates often became the subject of heated debate in court when their husbands sought to benefit from expedited naturalization privileges only available to the spouses of American citizens. Ever since Shoemaker’s interpretation had come into effect, the INS had maintained that these men could make use of such provisions – even if their wives had not taken the oath of allegiance – because such women were already American citizens. Ironically, the Service had no problem denying a marital expatriate the *rights* of a citizen if she did not swear an oath of allegiance but saw no contradiction in accelerating the process by which her husband might become an American due to her citizen status. In many courts, this issue never arose, while in others judges accepted the INS interpretation.¹⁴² In two venues where this issue did come to trial, district court judges in Chicago and central Pennsylvania ruled in favor of the husband’s request.¹⁴³ One Chicago judge went as far as to conclude that, “the applicant [marital expatriate] is a citizen of the United States” and “it is unnecessary for her to take an oath of repatriation but that as tangible evidence of the existence of her rights of citizenship, she should be permitted to take the oath and to receive certification of that fact.”¹⁴⁴ In other courts however, the INS interpretation came under withering criticism.

In courts which ruled against the INS, judges came to two conclusions: (1) that the INS was willfully misconstruing the meaning of federal law and (2) that it was inventing a new category of citizenship. Between 1944 and 1946, three men married to marital expatriates appeared before district courts in Pennsylvania and Oregon only to have their petitions for expedited naturalization denied. The courts in Pennsylvania, citing *Shelley*, ruled that there was no such thing as a citizen without citizenship rights.¹⁴⁵ In Oregon, Judge James A. Fee found the same. He also took the opportunity to condemn the INS, blasting it for “persist[ing] in recommending such persons for citizenship” after the *Shelley* decision. In Fee’s view, naturalization officers were abusing the good faith that he and other judges placed in their opinions by asking judges like him to “overrul[e] what is the plain intention of Congress.”¹⁴⁶ Though in these three cases judges found that the marital expatriates in question were *not* citizens, they did not conclude that these women were ineligible to take the repatriation oath. On the contrary, their husbands were denied an expedited naturalization procedure because their

¹⁴¹ T. B. Shoemaker to District Director, Chicago, October 23, 1941; INS File 56173-496, Box 19375; RG 85; NARA-DC; T. B. Shoemaker to District Director, Kansas City, November 28, 1941; INS File 56173-496, Box 19375; RG 85; NARA-DC.

¹⁴² Joseph Savoretti, Assistant Commissioner, Adjudications Division to District Director, San Francisco, Subject: Elma Aretta Rombach, November 16, 1948; INS File 56173-496, Box 19375; RG 85; NARA-DC; George T. Washington, Assistant Solicitor General to John. P. Boyd, Acting Commissioner of Immigration and Naturalization, Interpretation of the Act of June 25, 1936, September 2, 1948; INS File 56173-496, Box 19375; RG 85; NARA-DC.

¹⁴³ *In re Watson’s Repatriation* (U.S. District Court for the Eastern District of Illinois 1941); *In re Davies Repatriation* (U. S. District Court for the Middle District of Pennsylvania 1944).

¹⁴⁴ *In re Watson’s Repatriation*.

¹⁴⁵ *In re Portner* (U.S. District Court for the Eastern District of Pennsylvania 1944); *Petition of Dattilio* (U.S. District Court for the Eastern District of Pennsylvania 1946).

¹⁴⁶ *Petition of Norbeck*, No. 65 F. Supp. 748 (U.S. District Court for the District Court of Oregon 1946). Fee also attacked the marital expatriate involved in the case. In his view, she “has been in a position to have citizenship restored to her since 1922” but “has not seen fit to qualify herself.” Fee argued that he saw “no reason to weaken the belief that citizenship in the United States is a great gift by allowing the naturalization department to foster the idea that persons who have shown no desire to assume the duties of citizenship should be given the benefits thereof.”

wives had not yet taken the oath and these judges refused to separate citizenship from citizenship rights.¹⁴⁷

In Hawaii however, marital expatriates were not only denied their repatriation requests, they were told that they had missed their window to repatriate. Once more, Asian-American women were hardest hit by restrictive interpretations of repatriation law. When Shee Mui Chong Yuen petitioned to regain her citizenship in Honolulu on February 8, 1944, District Court Judge Frank McLaughlin denied her request, arguing that “We have, and have always had, in our country but one class of citizens...full fledged citizens.” But McLaughlin went even further in his interpretation of repatriation law than other district court judges. Citing the repeal of the repatriation provisions by the 1940 Nationality Act, McLaughlin concluded that the petitioner had “by inaction...lost the opportunity of acquiring citizenship” under repatriation law because “this method is now extinct.”¹⁴⁸ When the INS tried to get around McLaughlin’s restrictions, it ran into another wall – Hawaii’s Territorial Governor Ingram Steinback. In deference to Judge McLaughlin’s rulings, Steinback refused to allow these women to obtain American passports.¹⁴⁹ Fortunately for this applicant, not all avenues to citizenship were closed to her. McLaughlin suggested that she naturalize under the provisions of the Nationality Act of 1940. He even went as far as to state that, “If the Naturalization Service refuses, as it has in the past, to permit applicant and others to file petitions under the Nationality Act because that Service says she and they are already citizens, under proper application this Court will order the Service to allow the filing of such petitions.”¹⁵⁰ Persistent in his findings, just three years later McLaughlin ordered marital expatriate Yuen Loo Wong to be naturalized, not repatriated.¹⁵¹

McLaughlin’s strident opposition to the INS interpretation of repatriation law was only a harbinger of things to come. On July 23, 1948 Ernest A. Gross, legal advisor to Secretary of State George Marshall, wrote to Attorney General Thomas Clark and informed him that the State “Department is impressed by the reasoning” of judges who opposed the INS interpretation of repatriation law, “particularly that of the Circuit Court of Appeals in the *Shelley* case.” Since the State Department had jurisdiction over international repatriation applications (filed at U.S. embassies), Gross informed Clark that the State Department intended to interpret repatriation law restrictively. Since other departments generally deferred to the Justice Department on overlapping jurisdictional matters dealing with the interpretation of federal law, Gross requested that his department be allowed to break with the INS interpretation.¹⁵² Also in 1948, a naturalization judge in northern California informed San Francisco naturalization examiners that – in deference to McLaughlin’s conclusions in Hawaii – all repatriation applications of marital expatriates still-married to their husbands would be rejected in his court. Such women need not

¹⁴⁷ *In re Portner; Petition of Dattilio; Petition of Norbeck.*

¹⁴⁸ *In re Shee Mui Chong Yuen’s Repatriation.*

¹⁴⁹ I. F. Wixon, District Director, San Francisco, California to Commissioner, Central Office, Attention: Assistant Commissioner for Adjudications; August 21, 1946, INS File 56173-496, Box 19375; RG 85; NARA-DC.

¹⁵⁰ *In re Shee Mui Chong Yuen’s Repatriation.*

¹⁵¹ *In the Matter of the Application for Naturalization of Yuen Loo Wong*, No. 7953 (U.S. District Court for the District of Hawaii 1947).

¹⁵² Ernest A. Gross, Legal Advisor, State Department to Hon. Thomas C. Clark, Attorney General, July 23, 1948; INS File 56173-496, Box 19375; RG 85; NARA-DC.

bother apply.¹⁵³ How the INS chose to respond to these challenges would determine whether thousands of women would be considered citizens or aliens in their native country.

Rather than rethink its own interpretation of the law, the INS Central Office doubled down. Almost two weeks after receiving the State Department request, the Justice Department responded with a sixteen-page memorandum which defended the INS interpretation of repatriation policy.¹⁵⁴ INS administrators in Washington also wrote a seven-page sample brief defending Shoemaker's interpretation of repatriation law, sent it to San Francisco naturalization officers, and told them to defend their reading of the law in court.¹⁵⁵ This brief, highlighting the two cases that had ruled in the INS's favor, was used *successfully* on at least four occasions.¹⁵⁶

Unfortunately for INS officials, their interpretation of repatriation law, under attack for years, was effectively upended in the early 1950s. On June 27, 1952, the Immigration and Nationality Act came into law.¹⁵⁷ Marital expatriates were not left out of this legislation. Unlike earlier legislation however, the new act did away with the confusing language of "deeming" persons to be citizens and instead used more explicit language. Section 324 of the 1952 law stipulated that a marital expatriate, still-married to her husband, had the right to repatriate but that "from and after her naturalization" she would be considered an American citizen. This language of the law seemed clarify that no oath meant no citizenship.¹⁵⁸

Again, the INS would publicly insist that this did not undo the repatriation-by-decree provisions of the 1940 Repatriation Act and that such persons were repatriated and remained citizens without the rights of citizenship.¹⁵⁹ But over the next decade the Service made seemingly minor adjustments that indicated a *de facto* change in policy in which it recognized the failure of its legal interpretation to hold sway. Though the INS had long maintained that marital expatriates need not register as noncitizens under the provisions of the Alien Registration Act, many marital expatriates had done so and included that number in the margins of their

¹⁵³ Joseph Savoretti, Assistant Commissioner, Adjudications Division to Edward Rudnick, Supervisor, Citizenship Certificate Unit, Subject: Elma Aretta Rombach, November 15, 1948; INS File 56173-496, Box 19375; RG 85; NARA-DC.

¹⁵⁴ George T. Washington, Assistant Solicitor General to John. P. Boyd, Acting Commissioner of Immigration and Naturalization, Interpretation of the Act of June 25, 1936, September 2, 1948; INS File 56173-496, Box 19375; RG 85; NARA-DC. In his defense of the INS's construction of repatriation law, Assistant Solicitor General George T. Washington admitted that, "were the question for original determination, a different view might find support."

¹⁵⁵ Joseph Savoretti, Assistant Commissioner, Adjudications Division to District Director, San Francisco, Subject: Elma Aretta Rombach, November 16, 1948; INS File 56173-496, Box 19375; RG 85; NARA-DC.

¹⁵⁶ Joseph Savoretti, Assistant Commissioner, Adjudications Division to District Director, San Francisco, Subject: Elma Aretta Rombach, November 16, 1948; INS File 56173-496, Box 19375; RG 85; NARA-DC; 547-R Emma Line Jarrett, August 1, 1949; Contested Naturalization Final Hearing Reports, 1949-1982, U.S. District Court for the Southern (San Francisco) Division of the Northern District of California; RG 21; NARA-Pacific (San Bruno); 566-R Maria del R. Fierro, October 14, 1949; Contested Naturalization Final Hearing Reports, 1949-1982, SF; RG 21; NARA-Pacific (San Bruno); 580-R Josephine Mary Rinaldi, June 14, 1950; Contested Naturalization Final Hearing Reports, 1949-1982, SF; RG 21; NARA-Pacific (San Bruno).

¹⁵⁷ "An Act To Revise the Laws Relating to Immigration, Naturalization, and Nationality; and for Other Purposes," 66 Stat. 163 (1952).

¹⁵⁸ An Act To revise the laws relating to immigration, naturalization, and nationality; and for other purposes (Immigration and Nationality Act of 1952).

¹⁵⁹ Indeed, to this day, the US Citizenship and Immigration Service (the successor to the INS) maintains that a marital expatriate (if she is still alive) has the right to take the oath of repatriation under the provisions of the 1940 law to regain her citizenship rights. See: United States Citizenship and Immigration Service, "TITLE 8 OF CODE OF FEDERAL REGULATIONS (8 CFR) \ 8 CFR PART 324 -- SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: WOMEN WHO HAVE LOST UNITED STATES CITIZENSHIP BY MARRIAGE AND FORMER CITIZENS WHOSE NATURALIZATION IS AUTHORIZED BY PRIVATE LAW. \ § Sec. 324.4 Women restored to United States citizenship by the act of June 25, 1936, as amended by the act of July 2, 1940,"

<https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/0-0-0-31866/0-0-0-31931.html#0-0-0-19975>.

repatriation files in the early 1940s. By the early 1950s, it was unusual *not* to find an Alien Registration (Green Card) number on the margins of a repatriation file. By the late-1950s the Service added a line for a marital expatriate's Alien Registration number on the repatriation file.¹⁶⁰ The INS, recognizing the *de facto* failure of their legal interpretation to retain sway, acknowledged that women they considered to be “citizens without the rights of citizenship” viewed themselves, and were widely recognized by others, as noncitizens.

IV. Conclusion

This chapter explores a deeply complicated and convoluted aspect of American citizenship history. It adopts a socio-legal approach to understand how marital expatriates did or did not regain their stolen birthright and the efforts of naturalization officers and judges to interpret, administer, and adjudicate conflicting citizenship laws as they pertained to marital expatriates. Whereas the preceding chapters focus on debates over whether political and economic rights would become confined to citizens, this chapter asks how citizenship status came to be popularly and legally understood as inextricably tied to the “rights of citizenship.”

Between September 1922 and July 1940, legislative developments steadily expanded the number of expatriates eligible to regain citizenship and made it easier for those already able to. Naturalization officials generally viewed the alienage of native-born women to be a nuisance, rather than a grave injustice. But many marital expatriates thought otherwise. After all, somewhere between eighty and one hundred twenty thousand women regained their citizenship during this eighteen-year span. Whether they wanted to vote, work as public-school teachers, leave and reenter the country, or simply regain their birthright, thousands of U.S.-born women fought to regain their citizenship. Marginalized women – Asian Americans, Mexican Americans, nonresidents, poor women, and young mothers – faced high barriers to regain their citizenship or were outright denied. Many women never knew that they had lost their citizenship in the first place.

In 1940 however, the meaning of citizenship and alienage in the United States changed. An amendment to an otherwise little-known Repatriation Act promised to accelerate the reacquisition of citizenship for marital expatriates. But two other laws – the Alien Registration Act of June 1940 and the Nationality Act of October 1940 – threatened to undermine (and undo) the provisions of the Repatriation Act. For the first time, (nearly) *all* aliens in the country were forced to confront their noncitizen status by registering the federal government, just as legislation facilitating the repatriation of marital expatriates was set to expire. In this context, the full weight of alienage was brought to bear on tens of thousands of marital expatriates and INS officers tasked with enforcing new citizenship law.

But marital expatriates seeking to take an oath of allegiance would not be regaining their lost citizenship. Instead, they were regaining their lost citizenship *rights*. At the very moment the INS was required to enforce increasingly harsh obligations of alienage on noncitizens, it decided to administratively invent a new category of citizenship: “citizen without citizenship rights.” Though this interpretation suffered several setbacks, the Service stood behind its view of repatriation law (and its successor agency, the Department of Homeland Security, technically

¹⁶⁰ See generally, Oaths of Repatriation cited above.

continues to). In practice however, the INS recognized the limits of its interpretation by granting such women Alien Registration numbers.

American citizenship changed dramatically between the passage of the Expatriation Act in 1907 and the INS invention of the formal category: “citizens without the rights of citizenship” in 1940. In 1907 American women possessed full voting rights in only four states. Immigrant men – who had yet to acquire citizenship – could vote in ten.¹⁶¹ The right to vote, though in practice long denied to African-American men, was not even a *de jure* right of citizenship for (nearly) half of the nation’s citizen population.

Over the next several decades, state legislatures would be the site of intense battles over citizenship rights. Many nativists successfully argued that noncitizens should be limited in their political and economic rights so as to advance the “citizenship rights” of Americans. While the loss of alien voting rights is the best-known example of this transformation, it was not the only one. Many states had adopted or threatened to enact policies barring noncitizens from representation in state legislatures at all. And with a growing number of bans on public employment and barriers to obtaining professional licenses, immigrants who were not citizens were increasingly restricted in the jobs they could pursue.

As the boundaries of citizenship and alienage hardened during these years, the efforts of the INS to count marital expatriates as “citizens without citizenship rights” may seem out of place. In many ways however, it was the exception that proved the rule. The expansive interpretation of repatriation law promoted by the INS proved unsustainable precisely because citizenship status and citizenship rights had become intertwined in popular understanding and in jurisprudence by the 1940s. While in 1875 the U.S. Supreme Court accepted the distinction between citizenship status and citizenship rights by unanimously ruling that American women’s citizenship had no bearing on their disfranchisement¹⁶², in 1944 the American citizenship regime had evolved so greatly that a federal judge could write, in earnest, that “We have, and have always had, in our country but one class of citizens...full fledged citizens.” Though the exercise of citizenship rights would remain illusory for many Americans in 1944 (especially Japanese-American citizens interned by their own government), the failure of INS leaders to administratively create the category of “citizen without the rights of citizenship” demonstrates how pervasive the idea that citizenship *should* be tied to identifiable citizenship rights had become. Indeed, the promise of citizenship rights for all American citizens would become the rallying cry of many civil rights campaigns in the 1950s and 1960s. Though the “rights of American citizenship” continue to evolve to the present day, the idea of citizenship as a container of definable rights for citizens endures in both popular and legal understandings of modern American citizenship.

¹⁶¹ Keyssar, *The Right to Vote*, 371-73; Hayduk, *Democracy for All*, 19-22.

¹⁶² *Minor v. Happersett*, 88 U.S. 21 Wall. 162 (1874).

Conclusion

In September 2017, the Trump Administration announced that it would soon cancel the federal Deferred Action for Childhood Arrivals (DACA) program. Since 2012, DACA had offered limited – yet life-changing – legal protections to approximately seven hundred thousand undocumented immigrants who had entered the United States as minors.¹ In announcing DACA’s impending cancellation, U.S. Attorney General Jeff Sessions argued that the previous Obama Administration had exceeded its powers by creating the program by executive order. President Donald Trump further alleged that halting DACA would discourage future undocumented immigrants from seeking to enter the country. But Trump added one additional rationale for ending the program. Trump argued that cancelling DACA signaled that he was “put[ing] the interest[s] of AMERICAN CITIZENS FIRST.”²

Trump’s use of “citizens first” language in disputes about (both documented and undocumented) immigration contrasted sharply with the terminology employed by Republican Governor Mitt Romney when the latter campaigned for president in 2012. While Romney similarly opposed protections for undocumented immigrants, he emphasized on the campaign trail that he “like[d] legal immigration” and “want[ed] more legal immigration.” Romney did not make exclusive citizenship-based arguments when framing his proposed immigration policies.³ The Trump Administration, by contrast, has not limited the use of restrictive U.S. citizenship claims to DACA-related policies.

Trump, his aides, and his allies have increasingly framed economic debates about immigration policy in language that often echoes “citizen only” arguments of the early-to-mid twentieth century. White House advisor Stephen Miller has (among other nativist efforts) stumped for a dramatic reduction in the number of visas issued to would-be immigrants, alleging that such changes would improve American citizens’ access to employment.⁴ Trump ally Senator Tom Cotton (who has cosponsored legislation to drastically reduce national rates of immigration) has similarly demanded that federal immigration policies be “crafted to benefit American citizens, not foreigners.”⁵

The Trump Administration has also heightened exclusionary claims and policies about the political rights of U.S. citizenship and who counts as part of the population. Shortly after his inauguration, Trump falsely claimed that millions of noncitizens had voted in the 2016

¹ At present, the cancellation of DACA has been halted as court challenges continue. See: Jonathan Blitzer, “What a Judge’s DACA Ruling Means for Trump, and for Dreamers,” *The New Yorker*, January 10, 2018, <https://www.newyorker.com/news/news-desk/what-a-judges-daca-ruling-means-for-trump-and-for-dreamers>.

² “Trump Administration to Wind down Program Protecting Young Immigrants,” *Bismarck Tribune*, September 5, 2017, https://bismarcktribune.com/news/national/govt-and-politics/trump-administration-to-wind-down-program-protecting-young-immigrants/article_48af4c58-ee86-5152-b1a2-c5eb096156a6.html.

³ Kevin Liptak, “Romney Defends DREAM Act Stance,” January 4, 2012, <http://politicalticker.blogs.cnn.com/2012/01/04/romney-defends-dream-act-stance/>.

⁴ As this article’s title indicates, Miller’s claim (and lack of evidence to support his contentions) has not gone unchallenged: Michelle Mark, “Stephen Miller Tells Reporter He’ll Add ‘Carve-out’ to Immigration Bill so New York Times Can Hire Low-Skilled Workers and ‘See How You Feel Then,’” *Business Insider*, August 2, 2017, <http://www.businessinsider.com/stephen-miller-new-york-times-glenn-thrush-immigration-bill-2017-8>.

⁵ “Editorial: Nothing Bad about Wanting a Border,” *The Augusta Chronicle*, January 26, 2018, <http://www.augustachronicle.com/opinion/editorials/2018-01-26/editorial-nothing-bad-about-wanting-border>.

Presidential Election (which he asserted explained his popular vote defeat to former Secretary of State Hillary Clinton). The Trump Administration even ordered the creation of the Presidential Advisory Commission on Election Integrity, which was designed to ostensibly investigate instances voter fraud nationwide. Though Trump's outlandish claims did not withstand scrutiny (and his commission was quietly dismantled), such unsubstantiated allegations reinforced the widespread view that suffrage in the United States is inherently a right of – and limited to – American citizens.⁶

The Trump Administration has also announced that the 2020 Census will include a citizenship question for the first time in over half a century. Federal officials claim that collecting this information will aid in the implementation of civil rights statutes. Many immigrant rights advocates, however, have warned that this policy change may lead many fearful noncitizens to avoid interacting with census enumerators at all, which would reduce the political influence of – and resources dedicated to – communities with larger-than-average noncitizen populations.⁷ Other commentators have cautioned that the Trump Administration may be trying to obtain this data to enable state legislators to identify and count noncitizens out of the population for legislative apportionment.⁸

These increasingly exclusive citizenship-based claims and policy proposals, however, have not gone unchallenged. Suffrage rights activists have opposed inquiries into “voter fraud” arguing that such investigations serve as a proxy to heighten restrictions on marginalized citizens' access to the polls.⁹ Others have contested the very concept that voting should be limited to citizens. As alien suffrage scholar Ron Hayduk has documented, municipalities in several states are increasingly debating the extension of local suffrage rights for noncitizens owing to the activism of immigrant rights advocates. Beginning in 2018, for instance, noncitizen parents will be allowed to vote in school board elections in San Francisco.¹⁰ Moreover, immigrant rights activists and their allies have fought back against the Trump Administration's proposed and adopted immigration policies in court, via widespread protests, and by building legislative coalitions. Their efforts have challenged the framing of Trump Administration's “citizen first” immigration agenda by emphasizing the deep roots and belonging of millions of noncitizens who have lived in and worked in the United States for years.

While early twenty-first-century battles over the meaning and boundaries of U.S. citizenship often echo earlier debates explored in this dissertation, they are not mirror images of each other. While more recent debates engage with many of the same topics encountered from the late-nineteenth to the mid-twentieth centuries, early twentieth-first century battles are based

⁶ Dave Lawler, “Trump Shuts down Voter Fraud Commission,” January 3, 2018, <https://www.axios.com/trump-shuts-down-voter-fraud-commission-1515111033-6c892b98-cbc3-4691-8984-877a069d43d4.html>.

⁷ Elliott, “Trump Justice Department Pushes for Citizenship Question on Census, Alarming Experts.”

⁸ Mark Joseph Stern, “Who Counts in America? The Census' New Citizenship Question Could Entrench Republicans in Power for a Decade,” March 27, 2018, <https://slate.com/news-and-politics/2018/03/the-census-new-citizenship-question-could-entrench-republicans-in-power-for-a-decade.html>.

⁹ John Wagner, “Trump's Voter Fraud Commission Proves a Magnet for Controversy,” *Washington Post*, September 16, 2017, https://www.washingtonpost.com/politics/trumps-voter-fraud-commission-proves-a-magnet-for-controversy/2017/09/15/1e013fa2-9a30-11e7-82e4-f1076f6d6152_story.html?noredirect=on&utm_term=.45537207056e.

¹⁰ Ron Hayduk, “Overview: Immigrant Voting Rights,” 2018, <http://ronhayduk.com/immigrant-voting/around-the-us/overview/>; Moreover, a legal scholar of noncitizen voting rights, Jamie Raskin, was elected to the U.S. House of Representatives in 2016. See: “Amid Immigration Battles, College Park Considers Giving Noncitizens Voting Rights,” *The Baltimore Sun*, August 6, 2017, <http://www.baltimoresun.com/news/maryland/politics/blog/bs-md-immigrant-voting-20170805-story.html>; Raskin, “Legal Aliens, Local Citizens.”

on the popular and legal premise that U.S. citizenship rights are real and (at very least should be) definable. As the chapters above argue, that presumption was by no means an inevitable development. On the contrary, it became pervasive owing to a series of sometimes overlapping and contrasting political and legal debates over the scope, weight, and meaning of citizenship. In turn, those battles and the policies that often emerged from them reshaped how people encountered, learned about, and experienced American citizenship. And the premise that U.S. citizenship entails identifiable and exclusive “rights of citizenship” has remained a fundamental and enduring characteristic of modern American citizenship into the twenty-first century.

For proponents of expanding municipal suffrage rights to noncitizens campaigning in the 2010s, the widespread premise that voting is simply a “right of citizenship” is a major challenge to surmount. Like supporters of alien suffrage rights of the early-twentieth century, more recent advocates are challenged by opponents who argue against them. Unlike their predecessors, however, contemporary advocates must also confront years of experiences making, claims arguing, and widespread policies governing the franchise which have legally and popularly turned suffrage into an exclusive “right of citizenship.”

Judge Frank McLaughlin’s claim that the United States has had “but one class of citizens...full fledged citizens” remains as aspirational in practice in the early twentieth-first century as it was when he employed that argument to strike down the legal category of “citizens without the rights of citizenship” in 1944.¹¹ Nevertheless, from the franchise to access to employment, the growing bond between citizenship status and rights in both law and popular perception have bolstered marginalized citizens’ access to – what are frequently understood as – “rights of citizenship.”

More often than not, U.S. citizenship acquired greater weight as it became increasingly tied to citizenship rights both in policy and in popular attitudes from the 1860s until the 1960s. In and of itself, that is an important legacy of how American citizenship became modern. That process did not, however, set the meaning and boundaries of U.S. citizenship and exclusive citizenship rights into stone. Those contours will remain contested so long as they exist. But from the time of the Civil War until the Civil Rights era, most Americans came to believe that U.S. citizenship rights existed, mattered, and were – or at the very least ought to be – definable. And that will likely be an enduring legacy of modern American citizenship.

¹¹ *In re Shee Mui Chong Yuen's Repatriation*.

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