The Making of Mexican Illegality: Immigration Exclusions Based on Race, Class Status, and Gender

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ABSTRACT
This article examines the history of US citizenship and deportation policies that have always been based on race, class status, and gender, as well as the effects of such policies on the making of Mexican illegality. Mexicans have been constructed as unassimilable and a threat to the US national polity. They are also viewed as working class likely to become a public charge. Mexican women have been imagined as extremely fertile and while their production has been desired, their reproduction has been feared. These social, political, and legal constructions resulted in the creation of Mexican illegality despite time of residence in the United States, ties to US citizens, or birthright citizenship. While scholars have documented immigration laws that have expatriated US citizen women (mainly of European racial backgrounds), policies that allowed for the deportation of “public charge” cases, and the racialization of Mexicans, who were once considered legally white for naturalization processes; the three identity-based exclusions have not been examined together to understand Mexican experiences in the United States. This article utilizes a racial, class, and gendered analysis to understand the making of Mexican illegality that began with the 1790 citizenship statute in which the United States Congress limited US citizenship rights to “free ‘white people’ and women’s citizenship was determined by their fathers or husbands.” The making of Mexican illegality continues with today’s immigration restrictions that perceive Mexicans as a threat to: national security, the white racial makeup of the country, and the stability of the economy.

Introduction
United States (US) immigration and citizenship laws are designed to maintain the “undesired” races as well as working class people as ineligible for inclusion, and while men have been prioritized, women have historically been excluded from citizenship. In fact, the first citizenship clause imposed by the United States Congress in 1790, limited US citizenship rights to: “free ‘white people’ and women’s citizenship was determined by their fathers or husbands.” As, Ian Haney-López’s findings reveal, the courts spend decades deciding the meaning of whiteness as a pre-requisite for US citizenship rights. In doing so, they at one point included

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1Act of March 26, 1790, ch. 3, i Stat. 103.
Mexicans as racially white for citizenship purposes under the Treaty of Guadalupe Hidalgo (1848), only to later re-racialize Mexicans as non-white. Women have specifically been excluded from US citizenship as their political identity was determined by the legal status of their fathers (if single) and husbands (if married), not their own. During the early twentieth-century immigration law heavily emphasized the need to deport people likely to become a public charge reinforcing the ineligibility of working class people for US citizenship. Mexican presence in the United States was a result of war, domination, and annexation during a time of divisive distinctions along racial, class, and gendered lines. As historian Mae Ngai reminds us: “The United States-Mexico border has a long history of contestation.” The border and its policing have become a symbol of control and power that the US has imposed over Mexico and its citizens living in the United States. But, Mexicans have contested their humanity, inclusion, and legality since 1848.

Legal analysis is utilized here to examine the history of racial, classed, and gendered exclusions that have contributed to the making of Mexican illegality across multiple generations. Additionally, archival research is utilized to explore the transfer of public discourse and biases into the political arena and the legal realm through court holdings, immigration debates, legislations, and political speeches. This article examines the historical genealogy of laws and immigration policies that gave birth to Mexican illegality and makes sense of current anti-immigrant policies and public discourses at the national level. The analysis begins with the 1790 Naturalization Act, in which Congress introduced the first US citizenship classification to be reserved for “free white persons.” The article then examines immigration laws and policies that defined and re-defined the meaning of “free white people” for US citizenship purposes. An intersectional analysis is employed to examine how race, gender, and class status all served to disqualified Mexicans from US citizenship historically and today. Mexicans were once included as US citizens not because they were deemed worthy of citizenship or perceived as white, but rather due to conquest and territory acquisition during the Mexican-American War (1846–1848). At the turn of the twentieth century, however, new racial immigration politics rendered Mexicans as “illegal.” An intersectional understanding of US citizenship legal history is crucial to understand the unique experiences of Mexicans as well as the current anti-immigrant politics that continue to persist in the mass deportations of Mexicans specifically, and Latinas/Latinos generally.

This study builds upon the work of legal scholars and historians who have unearthed many aspects of racial and gendered exclusions for US citizenship. Ian Haney López’s book, White by Law, is the first monograph to fully examine the legal constructions of race and whiteness as a prerequisite for US citizenship. Haney López underlines the contradictory legal decisions that classified whiteness based on scientific definitions, social constructions, and “common sense” understanding of racial whiteness that included and excluded the same racial group during different historical moments. While Haney López expanded our understanding of legal whiteness, the work of legal scholar, Leti Volpp, explores the role of gender in US citizenship laws that gave way to the expatriation of US citizen white women

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5Ngai, Impossible Subjects.
6Haney-López, White by Law.
and denial of citizenship to women of color. By excluding women from US citizenship based on racial standards, the union was controlling birthright citizenship and maintaining a white national makeup. That is, Asian, Native, African, and Mexican women have all been denied US citizenship and their children’s citizenship and full rights were also denied across generations. In the case of white women, they were also denied US citizenship if they married a foreigner. This was an effort to retain a white national identity by expatriating white women who decided to marry outside of their race and procreate bi-racial children.

The work of historians Natalia Molina and Mae M. Ngai provide rich understanding of Mexican racialization that have constructed an entire ethnic group as always already foreign. Natalia Molina explored the US context, in her book *How Race is Made in America*, specifically examining immigration policies from 1924 to 1965, to understand the constructions of race and citizenship in the United States. Using a theoretical construct, which she terms racial scripts, she shows that racialized groups are linked across time and space and the racial and gendered experiences of one group can determine the experiences of another racial group in terms of exclusion and inclusion. As a result, policies used to exclude Chinese, Japanese, and Southern and Eastern Europeans, were later recycled to exclude Mexicans. Ngai’s book, *Impossible Subjects*, furthers our understanding of racialization, immigration restrictions, and border policing during the first half of the twentieth century. Her work demonstrates that immigration restriction through national-origin and numerical quotas reshaped the national makeup of the United States by creating new categories of racial difference and by emphasizing the need to patrol the border.

Scholars, however, have not given in-depth attention to the intersection of gender, race, and class status in the making of Mexican illegality. While each category has been examined separately, the use of an intersectional analysis allows us to map the laws and policies that first marked Mexicans as ineligible for US citizenship based on race, then based on class status, and lastly due to gender. These multiple categories of exclusion rendered Mexicans as always othered despite generation, time of residence, or legal status in the United States. Today, Mexicans continue to be targeted as a threat to the safety of the nation given their imagined illegality, which has come to be understood as criminality. The genealogy of Mexican illegality explains the current anti-immigrant policies and sentiments at the national level.

To understand the current racialization of Mexicans in the United States and their exclusions from US citizenship based on race, class, and gender, this article opens with the history of laws and policies that created the “white free people” racial pre-requisite for US citizenship. This prerequisite first included Mexicans, only to exclude them seventy years later, regardless of the citizenship rights guaranteed by the *Treaty of Guadalupe Hidalgo* (1848). Next, the exclusions from citizenship based on class status or “likelihood to become a public charge” that were specifically used to target Mexican men, women, and children for mass removal during the Great Depression are examined. This policy used for mass deportations, not only excluded Mexican nationals, but also banished US citizens of Mexican descent automatically imposing a racial illegality on subsequent generations. This article then moves to explore the gendered exclusions for US citizenship as related to Mexican and Mexican American women. The Act of 1907, inferred the nationality of husbands onto their wives, effectively expatriated women who married foreigners. While the Cable Act (1922) made it illegal for

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9Ngai, *Impossible Subjects*. 
women to lose their US citizenship if they married a foreigner, the racial exclusions for citizenship continued to deem Mexican women ineligible for integration. Other laws and policies continued to block Mexican women from citizenship based on gender until 1940 and based on race until 1965. Then, the topics of race, class status, and gender come together to explore the past-present influence of exclusion and xenophobia. The current anti-immigrant political moment and anti-immigrant laws are examined as a sequence of laws that began in 1907 and continue to influence current policies that upholds Mexican illegality as apparently innate. This article demonstrates that nothing about illegality is natural, instead it is a result of historical legal precedents and policies that have insisted on Mexican exclusion. Together, these themes outline the genealogy that maps current political and legal assumptions and exclusions of Mexicans specifically, and Latinas/Latinos generally, which continues to deny them US citizenship rights.

**Racial Exclusions**

The racial restriction was in effect for 175 years effectively admitting and denying people for citizenship solely based on race. The “white free person” prerequisite for US citizenship passed by Congress in 1790, was one of two main requirements; the second entailed a two-year residence period prior to naturalization which was extended to five years in 1802. The extended residence requirement was perceived as an effort to disqualified potential new citizens from gaining political power. The racial prerequisite, on the other hand, determined the dominant US racial makeup: “what we look like, the literal and ‘racial’ features we in this country exhibit, is to a large extent the product of legal rules and decisions.” Indeed, the vast majority of immigrants that came to the US were from Europe. More importantly, these exclusions created a racial hierarchy that directly dictated who was worthy of personhood under the law. Immigration restrictions, as Ngai reminds us, have after all, “produced the illegal alien as a new legal and political subject … a subject barred from citizenship and without rights.” People of color barred from citizenship became undocumented immigrants who have always been desired, and even recruited for labor, but denied political power and civil rights.

The attempt to deter immigrants from gaining electoral power through citizenship was more clearly outlined by the Alien and Sedition Acts (1798). These were four acts, including the Naturalization Act that intended to make it harder, even for qualified “free white people,” to become US citizens by increasing the five-year residence requirement to fourteen years prior to naturalization. Thomas Jefferson and his party were largely supported by immigrants, this act aimed to decrease the number of voters who supported the Democratic-Republicans, the political opponents of the Federalists. The Naturalization Law of 1802 replaced the Naturalization Act of 1798, which retained the requirement of being a “free white” person for naturalization, but the fourteen year residency requirement was reduced back to five year, which continues to be the rule today. It also granted derivative citizenship

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13“1798 Naturalization Act,” Sess. II, Chap. 54; 1 Stat. 566 5th Congress; ch. 54 25 June 1798.
for resident children of naturalized citizens and for children born abroad to US citizens. The
naturalization process became a legal action that affected families across generations. That
is, if a parent was a US citizen, their children were considered as such, but all these laws
maintained the white racial prerequisite.

Voter suppression tactics implemented by political parties through laws that denied or
complicated the ability to obtain US citizenship, is not a matter of the past. In fact, President
Donald Trump and the Republican Party’s current immigration plan proposes to legalize:
“young immigrants who were brought into the United States as children,” but similar to the
Naturalization Act of 1798, they “would be granted legal status, allowed to work legally, and
could become citizens over a 10-to-12 year period if they remain out of trouble with the
law.”\textsuperscript{15} Trump’s immigration plan, supported by the majority of the Republican party, would
delay full political rights to undocumented youth by denying them voting power for more
than a decade. The delayed citizenship process might be seen as a way to minimize the
threat of an empowered voting bloc, which would produce power instability for the majority
Republican controlled Senate, House of Representatives, and White House. In 1798, the
policies were anti-French, during high war tensions between France and the United States
(US). Now, the policies are anti-Mexican specifically, and anti-Latina/Latino generally, because
they would be the largest potential beneficiaries of a law intended to legalize undocumented
youth.

Mexicans, unlike other Latina/Latino groups, have not always been deemed as undocu-
mented. In fact, they were first largely integrated into the US as racially white for citizenship
purposes. That is not to say that the US understood Mexicans to be racially white, instead
they were seen as a “mix or impure race, comprising Indian and Spanish blood.”\textsuperscript{16} The Treaty
of Guadalupe Hidalgo (1848), however, granted “collective US citizenship” and inferred “legal
whiteness” to 115,000 Mexicans in the annexed territories, the current US southwest.\textsuperscript{17} US
citizenship and racial definitions for Mexicans in the annexed territories were dictated by
conquest and colonization: “In order for the United States to exercise sovereignty over the
annexed territory it had to have jurisdiction over all inhabitants,” which required granting
racial whiteness and citizenship.\textsuperscript{18} Mexicans’ new legal and racial status marked them as a
conquered population, one that was never accepted as socially white.

The Mexican population in the United States expanded rapidly in the early 1900s as anti-
Asian restrictions enacted in the mid- and late-1800s, that included the Chinese Exclusion
Act (1882) and the 1917 Immigration Act that created an “Asiatic barred zone,” left a void of
cheap labor. The increased demand for labor resulted in 400,000 Mexicans’ US arrivals
between 1910 and 1920.\textsuperscript{19} The economic recession of the 1920s, however, called for stricter
immigration policies. In 1921, the Emergency Quota Act was Congress’ attempt to regulate
increased non-white immigration by imposing a limit based on nationality, which really is
another word for race. In 1924, immigration laws required a visa to enter the United States,
effectively criminalizing those who lived here or entered without a visa. This act also labeled

\textsuperscript{15}Michael D. Shear and Sheryl Gay Stolberg, “Trump Immigration Plan Demands Though Concessions from Democrats,” The
\textsuperscript{16}David Gutiérrez, Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity (Berkeley, CA:
\textsuperscript{17}Laura E. Gómez, Manifest Destinies: The Making of the Mexican American Race (New York, NY: New York University Press,
\textsuperscript{18}Ngai, Impossible Subjects, p. 50.
\textsuperscript{19}Gómez, Manifest Destinies, p. 142.
Mexicans as “illegal aliens,” who until then had been racially classified as “white,” and had been given the freedom to cross in and out of the US without much inspection given the labor needs throughout the late nineteenth and early twentieth century. The re-racialization of Mexicans as “illegal aliens” in 1924, paired with the confusing new immigration laws, did not halt Mexican immigration; instead it marked all Mexicans as “outsiders,” regardless of legal status.

These new laws also had the effect of increasing undocumented immigration, which in turn fuelled efforts to deport Mexicans. Initially intended to remove all undocumented people across different racial backgrounds, the deportations eventually boiled down to mainly Mexican removals. The propaganda for the Mexican repatriation campaign began in 1920. In June of 1920, the *New York Herald* reported that: “Leo Russell, jefe de la oficina norteamericana de deportación, había dicho que enero se llevaría a cabo una expulsión masiva de japoneses, chinos, y mexicanos que estuvieran ilegalmente en los Estados Unidos”/(Leo Russell, head of the US deportation office, said that in January a massive expulsion of Japanese, Chinese and Mexicans, who were illegally in the United States, would take place). Given the geographical proximity between Mexico and the United States, it became more cost-effective to only remove peoples of Mexican-origin, rather than of Asian-origin, who had already been marginalized through other means.

Less than a decade later, during the Great Depression, US nationals of Mexican descent were racialized as “foreigners” and removed in mass. Removals reached their peak between 1929 and 1933 through the official Mexican repatriation program sponsored by President Herbert Hoover’s administration. From 1934 to 1937, local city governments continued carrying out the removals with the support of the Mexican government through the promotion of colonization programs by the newly elected Mexican President, Lazaro Cárdenas, intended to populate the northern border with Mexican repatriates and their families. The Mexican repatriation program included the banishment of US citizens of Mexican descent, far removed from the promoted intention of the program, which was to deport only non-citizens. Instead, US citizens of Mexican ancestry, as well as those with legal permanent residency, were targeted for removal because Mexicans, across legal statuses, were popularly blamed for the country’s economic crisis.

Some officials questioned the ethics and constitutionality of expelling US citizens, though with little success. On February 25, 1931, for example, Arthur G. Arnoll, general manager of the Los Angeles Chamber of Commerce, wrote in a communication to Dr. George P. Clements, manager of the Los Angeles Chamber of Commerce’s agricultural department, about the racial politics of the repatriation program. He wrote:

The Mexicans [have become] a target. The slogan has gone out over the city and is being adhered to – ‘Employ no Mexican while a white man is unemployed; get the Mexican back into Mexico regardless by what means.’ All these without taking into consideration the legality of the Mexican’s status of being here. It is not a question of pigment, not a question of citizenship or right.

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22Carreras de Velasco, *Los Mexicanos que devolvió la crisis*, p. 46.
Even Arnoll realized that, once Mexicans were socially constructed as a “threat” to the economic stability of the country, banishment of US citizens as well as repatriation of Mexican nationals became socially justified. Public and media discourses worked in tandem with immigration policies of the time as the former justified the latter. In many ways, the Mexican Repatriation Program strengthened the US racial and ethnic hierarchies and criminalized Mexicans during the Great Depression era, just as increased deportations do today.

Racial hierarchies as dictated through exclusions for US citizenship were in effect for 175 years, they began in the eighteenth century and continued throughout the nineteenth as well as first half of the twentieth century. The racial exclusions for citizenship that began with the 1790 Naturalization Act coincided with the first US census conducted the same year. The 1790 census did not include any questions about “national origin or ancestry, it did not differentiate the foreign-born until 1850, and did not differentiate the parental nativity of the native-born until 1890.” As a result, everyone who was included as a US citizen through the white racial requirement in 1790 was legally constructed as one new race in the United States context, even when “white” referred to people from different countries, cultures, people of diverse religions and language backgrounds. This new legal racial classification became common sense to the point that in the 1920s when the quota immigration system was being developed, classifications were created to differentiate between natives and foreigners, the term: “Native stock’ did not refer to persons born in the United States but to persons who descended from the white population of the United States at the time of the nation’s founding.” In opposition to “native stock,” the term, “immigrant stock’ population” referred to “all persons who entered the United States after 1790 and their progeny.” This terminology used to distinguish between those who belonged and did not belong in the United States ignores the immigrant backgrounds of people who arrived in the United States prior to 1790 by classifying them as “native.” Whiteness became a synonym of the so-called original people of the nation, completely erasing the existence of Native Americans and the immigration backgrounds of European peoples. Simultaneously, everyone who immigrated after 1790, including Mexicans, were labeled as immigrants, automatically classifying them as outsiders, regardless of their ties to native peoples of the region in which the US was founded.

While the racial exclusions for citizenship in immigration law were reinforced for 175 years, exclusions based on race were formalized even after these laws were reversed. As late as 1952, the Immigration and Nationality Act (INA), consolidated multiple immigration laws under one statute, but preserved the national origins quota system that continued to grant visas and US citizenship based on race. The INA, also known as the Hart-Celler Immigration Act of 1965 finally abolished the national origins quota system and replaced it with a family-based admission system. Staring in 1965, immigrants can naturalize through their relationship to a US citizen or US employer. While race is no longer a prerequisite for US citizenship, the racial hierarchy of the immigration system now had a strong foundation.

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26Ngai, Impossible Subjects, p. 25.
Mexicans and Latinas/Latinos are still less likely to adjust their legal status, as compared to white immigrants, because their ancestors had been legally excluded for US citizenship based on race for 175 years. Thus, immigration petitions for Mexicans and Latinas/Latinos are less attainable given the reduced number of qualified family members who can sponsor them.

Class Status Exclusions

The category of public charge, as a federal immigration law provision, was first introduced by the Immigration Act of 1882, which mandated that an immigrant who was “unable to take care of himself or herself” was inadmissible to the United States. This was the first law regulating immigration as related to class status at the federal level that until then had been regulated by individual states. Nine years later, Congress passed the Immigration Act of 1891 effectively linking claims of public charge to deportation in federal law, calling for the “deportation of any alien who becomes a public charge within one year after his arrival in the United States.” The Immigration Act of 1917 extended to three years the time of residence under which removal was authorized for an immigrant deemed as a public charge. This change extended the time period the state could regulate the social behavior of immigrants, legally prolonging the possibility of deportation. The Immigration Act of 1924 eliminated the statute of limitations for deportation for unlawful entries, legalizing the deportation of an undocumented immigrant at any time after initial entry. While the 1917 Act prolonged the possibility of deportation, the 1924 Act made deportation indefinite. These new laws marked working class immigrants as undesired, a risk to the economic stability of the country, and in urgent need of removal. Today, we see parallels to these historical exclusions as evident in Trump’s proposal that privileges high-skilled immigrants over immigrants from “shithole” countries, as further examined below.

During the 1920s and increasingly in the 1930s, at a time when unemployment rates were among the highest in US history with millions seeking relief, Mexicans were stereotyped as likely to become public charges. This was a claim popularized by social workers and social reformers. Indeed, in the early 1920s Mexicans became a central focus among social workers, in part, because the foreign-born Mexican population was rapidly increasing, a result of the high demand and recruitment of Mexican labor during World War I as well as the political and social upheaval of the Mexican Revolution of 1910 that lasted for nearly a decade. After Mexicans began immigrating in larger numbers to different regions throughout the

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34 Sanchez, *Becoming Mexican American*.
United States and Mexican Americans were re-racialized as non-white, they were not only seen as outsiders in terms of race, but now they were also seen as an economic threat.

The depiction of Mexicans as potential public charges gave way to enforcement of deportations during the 1920s and mass repatriations during the Great Depression. The Immigration Act of 1917 for the first-time appropriated funds for deportation enforcement. \(^{36}\) The threat of deportation went from being a symbolic political threat to a legal reality given the allocation of resources to enforce this law. The Immigration Bureau made deportation a priority. In 1928, for instance, only six months into the fiscal year, funds for deportation were nearly exhausted. Carl Robe White, the Assistant Secretary of Labor, contacted the House immigration committee requesting an annual budget of ten million for deportations, more than ten times the funds allocated for the previous year. \(^{37}\) Deportations quickly increased raising from 2,762 in 1920, to 9,495 in 1925, and 38,796 in 1929. \(^{38}\) Deportations based on class status did not exclude the most vulnerable; people were removed from asylums, hospitals, and jails. \(^{39}\) The number of removals skyrocketed during the Great Depression when Mexicans were scapegoated as responsible for the economic crisis, resulting in one million Mexican removals, including sixty percent who were US citizens of Mexican descent. \(^{40}\) Class status and race outweighed the legal rights of US citizens of Mexican ancestry.

The efforts of Mexican exclusions were not limited to deportations; instead, immigration laws in the late 1800s barred those “likely to become a public charge” (LPC) from entering the United States. The immigration exclusions based on class status continued throughout the first half of the twentieth century. In 1929, for instance, “The State Department moved … to restrict Mexican immigration through administrative means.” \(^{41}\) This time by denying visas to working class Mexicans entering the country: “The United States consuls in Mexico … used the ban on contract labor, the literacy test, and the provisions excluding persons ‘likely to become a public charge’ to refuse visas.” \(^{42}\) Contract labor was used to hire working class people to conduct cheap and disposable labor, including agriculture, railroad constructions and maintenance, and cannery work. \(^{43}\) Similarly, the strict implementation of the literacy test aimed to exclude working class Mexicans from legally entering the United States. Working class Mexicans did not enjoy the privilege of formal education because they had to start working at an early age to contribute to their family income, especially in rural areas, where most of the out-migration took place during the early twentieth century. \(^{44}\) Lack of formal education meant that working class immigrants were less likely to pass the literacy test and thus were denied visas. Combined, these exclusions, forced working class Mexicans in dire need of immigration for economic opportunities to enter the US as undocumented immigrants. This marked a new division on the immigration system, not solely on racial


\(^{38}\) Ngai, Impossible Subjects, p. 60.


\(^{40}\) Balderrama and Rodriguez, Decade of Betrayal; Ramírez, “Contested Illegality.”

\(^{41}\) Ngai, Impossible Subjects, p. 54.

\(^{42}\) Ibid., 54–55.

\(^{43}\) For more on this topic refer to: Balderrama and Rodriguez, Decade of Betrayal; Vicki Ruiz, Cannery Women, Cannery Lives: Mexican Women, Unionization, and the California Food Processing Industry, 1930–1950 (Albuquerque, NM: University of New Mexico Press, 1987); Sanchez, Becoming Mexican American.

\(^{44}\) For more on the lack of access to formal education in Mexico, see: Necesidades esenciales en México: Situación actual y perspectivas el año 2000 (Mexico, DF, Mexico, 1982).
exclusions, but on class status. Today, the public charge provision continues to be used to exclude working class immigrants from obtaining US citizenship. The 2018 revised immigration plan by the Trump administration aims to extend the exclusions based on public charge claims to immigrants who use Head Start or Health Insurance Program (CHIP) for their US citizen children. The list that will classify an immigrant as a potential public charge is extensive and includes programs intended to help working class families stay afloat, including food stamps, Women, Infants, and Children (WIC) assistance, housing benefits such as Section Eight, among other programs. Class status today continues to render immigrants as deportable and ineligible for US citizenship.

For Mexicans, who had been largely recruited for cheap labor, the new imposed exclusions based on class status meant that they were to become the largest undocumented immigrant population in the country and later criminalized for their unlawful entries. The 1929 administrative policy to exclude Mexican immigration based on class status had immediate effects. In 1930, the United States granted an estimated 13,000 visas to Mexicans as compared to the average annual rate of 58,747 over the past five years. Mexican immigration decreased by 76.7 percent in a matter of a year given the new exclusions based on class status. Mexicans excluded from legal entry into the United States were also criminalized, further justifying their deportations. In 1929, Congress made unlawful entries a misdemeanor punishable by one year in prison or a $1000 fine, or both. It also dictated that a second unlawful entry will become a felony, punishable with two years in prison or a $2000 fine, or both. Working class Mexicans who were already denied visas and forced to enter the United States as undocumented immigrants were most affected by the criminalization of unlawful entries.

Mexicans, especially the working-class, were legally and socially constructed as a threat to the security and safety of the country. As Ngai's work has documented, laws that criminalized immigrants: “constituted undocumented immigrants as criminals, both fulfilling and fueling nativist discourses.” Political discourses were highly influential on the perception that the general population has of undocumented immigrants. The California Joint Immigration Committee, for instance, described undocumented immigrants as “‘vicious and criminal,’ comprising ‘bootleggers, gangsters, and racketeers of large cities.” The nativist discourses and discriminatory immigration laws of the 1920s and 1930s seem to continue to influence current immigration policy and discourses under the Trump administration. “It’s our right as a sovereign nation to choose immigrants that we think are the likeliest to thrive and flourish and love us,” said Donald Trump in a 2016 speech. Trump additionally alleged during his now infamous 2015 Presidential announcement, that: “When Mexico sends its people … They’re sending people that have lots of problems, and they’re bringing those

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47Ngai, Impossible Subjects, p. 62.
48Act of February 27, 1925 (43 Stat. 1049); Act of March 4, 1929 (45 Stat. 1551).
49Ngai, Impossible Subjects, p. 61.
50Ibid., 62.
problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists.”52 The nativists discourses of the early twentieth century have been recycled today, reinforcing stereotypes that regard working class undocumented immigrants as always already criminal.

**Gendered Exclusions**

Women were not perceived as contributing to labor production and were instead feared for their ability to reproduce US citizen children of Mexican descent at a time when the country insisted on maintaining a white racial makeup. Gendered exclusion has a long history directly linked to racial politics of citizenship dating back to 1848 when Mexican women’s inclusion as US citizens was determined by the legal status of their fathers and husbands. For Mexican men in the United States, and men in general, US immigration law, not their relationship to other family members determined their legal status. The 1855 Act, for instance, granted US citizenship to any woman who married a US citizen husband, but not vice versa.53 Women could not confer their US citizenship to their immigrant husbands because their own citizenship and political existence was dictated by their husbands and fathers. The 1855 Act also affirmed the US citizenship of children born abroad to US citizen fathers, but not mothers.54 This law reinforced the dependent citizenship logic, in which: “the citizenship of a wife and child followed the male head of the household”55 In the case of Mexicans, the Treaty of Guadalupe Hidalgo, assigned legal racial whiteness for citizenship purposes to Mexican men in the annexed territories.56 The legal inclusion of Mexican women was delayed until 1940 when all laws that excluded women from citizenship were reversed. Mexican women became full citizens, independent of their fathers or husbands, ninety-two years after Mexican men were granted US citizenship through treaty agreement. This delayed gendered exclusion created a prolonged Mexican illegality across multiple generations that are still experienced today.57

Gendered exclusions were not only applied to Mexicans, instead women from other racial groups were also excluded, reinforcing gendered exclusions across racial and class statuses. The official historical record that has prioritized a male-centric narration of immigration law has largely obscured gendered exclusions. While the Chinese Exclusion Act has been widely documented; the exclusion of Asian women remains a footnote at best and ignored at worst. Asian women were excluded from immigration to the United States seven years prior to the Chinese Exclusion Act (1882). The Page Law of 1875, followed the gendered exclusions of the 1848 Treaty of Guadalupe Hidalgo, by seeking to exclude prostitutes from “China, Japan, or any Oriental Country,” almost completely blocking Chinese female immigration.58 Gendered exclusions for naturalization purposes did not always made distinctions based on race or class status.

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57 Ramirez, “Contested Illegality.”
The 1907 Expatriation Act, stripped women of their US citizenship – regardless of race or class – if they married noncitizen men.\(^5^9\) This act forced women to take the nationality of their husbands without having to consent, leading many women to statelessness, when they married a man from countries barred for US citizenship based on racial exclusions. In the case of women seeking immigration admission to the US, they were largely excluded based on health (contagious disease), gendered restrictions (prostitution), and class status (likely to become a public charge).\(^6^0\) Unlike men, who gained citizenship based on a white racial prerequisite, women were excluded regardless of race. For women, the loss of citizenship implied the loss of voting rights, inability to own property, and later inability to confer derivative citizenship to their children. Exclusion for US citizenship based on gender gave way to a “circular disenfranchisement: No citizenship (in the formal legal sense) meant no property, which meant no citizenship (in the civic republican sense).”\(^6^1\) For women, lack of US citizenship, meant that men decided their social and political rights by denying them the right to vote on laws determining their own fate even after the Nineteenth Amendment was ratified in 1920.

Until 1922, the US citizenship of single girls, including Mexicans, was determined by the legal status of their fathers and that of married women by the legal status of their husbands. The Cable Act of 1922, repealed some sections of the Expatriation Act of 1907. It finally made it illegal for women to automatically lose their US citizenship if they married a foreigner.\(^6^2\) As Natalia Molina has shown, the Cable Act is considered a major victory for gender equality, but it further embedded racial barriers for non-white women. For instance, Mexican American women benefited from the Cable Act – now their US citizenship was no longer dependent on their fathers or husbands – but nativist politics continued to classify them as unworthy of inclusion based on their racial and class status backgrounds resulting in their mass repatriation and banishment during the 1930s.

While the Cable Act made some gender equity advances, the racial politics of the 1920s and 1930s perceived the Mexican American family as unfit for citizenship and a direct threat to the preservation of a white national citizenry. The increase in the Mexican population in the United States was tied to the immigration demands to fill labor needs.\(^6^3\) Thus, immigration quotas to control the flow of immigrants were not applied to Mexico until 1965. The late application of quotas for Mexicans combined with the proximity of the two countries increased the frequency of immigration by Mexican women.\(^6^4\) As reported by the 1920 census, the number of Mexican national men and women residing in the United States were coming to a close tie with 276,562 and 209,892, respectively.\(^6^5\) These gendered immigration trends combined with Mexican American women already living in the country, reinforced the establishment of Mexican American families in the United States, complete with their US born citizen children. Not surprisingly by the 1930s, in line with the exclusionary


\(^{6^3}\)For immigration trends during this period, see Balderrama and Rodriguez, *Decade of Betrayal*; and, Ngai, *Impossible Subjects.*


\(^{6^5}\)Cited in Reisler, *By the Sweat of Their Brow,* 185n20.
immigration policies of the time, immigration restrictionists decided that “not just immigrants needed to be governed, but [also] their children, who were US citizens by birth though still perceived as not American enough.”66 The citizenship rights of Mexican American women and children were a frightening idea for nativists.

To limit the rights of US citizens of Mexican descent and justify their unconstitutional removal, some politicians pushed for restrictions on birthright citizenship that in the US is conferred by *jus soli* (the place of birth), not by *jus sanguineous* (the citizenship of the child’s parents) regulations. The Fourteenth Amendment, adopted into the Constitution in 1868, grants automatic US citizenship to any person born within the country’s jurisdiction. Women, however, have suffered the revocation of their constitutional right to citizenship. By excluding women from US citizenship based on racial standards, the union was controlling birthright citizenship and maintaining a white national makeup. That is, Asian, Native American, African, and Mexican women have all been denied US citizenship and thus their children are more likely to be non-US citizens. In the case of white women, they were also denied US citizenship if they married a foreigner, which can also be understood as an effort to retain a white national identity by expatriating white women who decided to marry outside of their race and procreate bi-racial children.

Existing racial exclusionary immigration policies continued to affect women’s citizenship rights well after the passage of the Cable Act (1922). Women who married foreigners – and resided in their husband’s country for two years or more or somewhere else outside the United States for over five years – faced “presumptive loss of American citizenship.”67 Women who lost their US citizenship due to marriage and residence outside of the US as a result of the 1907 Act could regain their citizenship by returning to the country. However, the 1924 Immigration Quota Law meant that former US citizen women had to return as quota immigrants, having to wait for prolonged periods to secure a visa.68 The immigration quota system gave preference to European countries, thus women married to non-Europeans faced longer delays in their attempts to regain US citizenship.

Women organized and lobbied politicians to pass legislation to amend the Cable Act and eradicate gendered-based exclusions for US citizenship. Thanks to the organizing of women’s groups, including the National Woman’s Party and Asian American organizations, laws were passed from 1930 to 1936 in attempt to reach greater gender equality.69 The 1930 Act addressed the situation of women who lost their citizenship due to marriage to an “alien ineligible for citizenship,” but who were themselves eligible based on race. It created a simpler naturalization process for women in these situations and eliminated the termination of citizenship for women who resided for two years or more in her husband’s country or five years or more in any other nation.70 The 1930 Act, however, was not a retrospective law. Thus, women who lost their citizenship prior to 1930 based on the racial ineligibility of their husbands or who resided abroad, remained expatriates of the United States. The 1931 Act addressed the exclusions that remained under the 1930 Act by clarifying that any woman with birthright citizenship who had subsequently lost her citizenship through marriage

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69Ibid., p. 438.
70Ibid., p. 443.
would no longer be denied naturalization.\footnote{Act of March 3, 1931, 4(a), 46 Stat. at 1511, section 3b.} A 1932 amendment also closed the gap on gendered and racial exclusions for women born in Hawaii prior to 1900 by granting them retroactive birthright US citizenship.\footnote{Volpp, “Divesting Citizenship,” p. 446.}

For many women, their citizenship remained tied to their husbands, even when the Cable Act was supposed to have made citizenship independent of marriage. The Cable Act repealed Section Four of the Expatriation Act, which had “allowed foreign women who acquired US citizenship by marriage to retain their citizenship after the termination of the marital relationship.” This meant that foreign-born women who gained citizenship through marriage were to lose their US citizenship after divorce or the death of their husbands. On the contrary, American women in similar situations were protected by the Act of 1936, which allowed women who lost their citizenship between 1907 and 1922, and whose marriage had terminated due to death of divorce, to regain US citizenship by taking an oath of allegiance.\footnote{Ibid., p. 447.} But this meant that only widowed and divorced women could repatriate and regain US citizenship, those who remained married had to undergo the full naturalization process.\footnote{Bredbenner, A Nationality of Her Own, pp. 27–29, 116.} Finally, the Act of July 2, 1940, ended exclusions for US citizenship based on gender by providing that all women who had lost citizenship by marriage could regain it, regardless or marital status or race, by taking an oath of allegiance.\footnote{Ibid., pp. 116, 172–74.} The National Archives at Fort Worth has records of the oaths of allegiance, dating the regained citizenship cases of women as late as 1981. Legal and economic delays have resulted in prolonged exclusions for women as well as their descendants who were robbed of derivative citizenship through their mother’s expatriation. Women’s loss of citizenship meant that their children were not recognized as US citizens. The delay in reclaiming US citizenship for expatriated women might still be marking their children as non-citizens today.

\section*{Past–Present Influences of Exclusion}

Current immigration laws are informed by laws and court holdings of the past. As such, exclusions based on race, class status, and gender continue to be part of immigration laws and policy today. It might appear that such identity-based exclusions are no longer acceptable under the law. It seems that “today, citizenship is inclusive of all and no longer features such identity-based exclusions”; but we continue to, “have neutral, nonidentity based restrictions based on conduct.”\footnote{Volpp, “Divesting Citizenship,” p. 470.} Illegality continues to be racialized by penalizing and criminalizing people of color, especially Blacks and Latinas/Latinos, and thus making them more susceptible to deportation and ineligible for US citizenship. It is the conduct of certain bodies that becomes criminalized, obscuring the racialization of the process. Immigration policy has shifted from past denials of US citizenship based on race, class status, and gender to the current exploitation of criminality to justify removals.

The criminalization of immigrants has been legislated mainly in recent years, but its origins date back to the nineteenth and twentieth centuries. Laws that excluded people of color, women, and working-class folks from US citizenship, pushed marginalized groups to enter the United States as undocumented immigrants. In 1929, after denying citizenship to
minority groups, Congress decided to criminalize undocumented immigrants for their alleged trespassing, as explained in more detail above. Congress passed laws that made the first unlawful entry a misdemeanor and the second a felony.\(^{77}\) Once undocumented immigration was criminalized, current policies have justified mass deportations for the presumed safety of the country by presenting immigrants as dangerous lawbreakers.\(^{78}\)

Recent immigration laws, notably since the 1980s, have shifted their focus from citizenship exclusions to barring undesired immigrants through mass deportations in the name of national security. Even the last immigration reform legislation designed to create a path to legalization was accompanied by sanctions and increased policing of the US–Mexico border. In 1986, the Immigration Reform and Control Act (IRCA) understood by the public as a legalization program or “amnesty,” provided a fifty percent increase in border patrol staffing and criminalizing immigrant labor for the first time in US history by imposing sanctions on employers who knowingly hired undocumented immigrants.\(^{79}\) The law, of course, also allowed undocumented immigrants who had lived in the country since 1982 as well as people who had worked for at least ninety days in specific agricultural jobs to adjust their immigration status. The criminalization and increased policing of the border resulting from IRCA have had a longstanding effect for multiple generations of immigrant communities that was not outweighed by the approximately 2.7 million people that legalized their immigration status through this law.\(^{80}\)

The criminalization of immigrants that began in the early twentieth century and was reinforced by IRCA in 1986 gave way to a series of recent deportation laws that expanded the grounds of criminality for undocumented people. Laws in the early twentieth century created the possibility of deportation, mainly through the Immigration Act of 1924, which eliminated the statute of limitations for deportation and created the Border Patrol to enforce such removals. In 1929, the act of unauthorized entry to the United States was criminalized for the first time and toughened during the late twentieth century by a series of immigration laws and policies. Two 1996 laws, the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), significantly expanded the grounds for deportation under criminal law.\(^{81}\) The 1996 acts created a system of strict penalties that included removals for relatively minor infractions or old crimes. These changes were retroactive and thus offenses that did not render a person deportable at the time the violation occurred, became grounds for removal. Congress has insisted in using deportation as an act of punishment through the passage of such punitive laws. But, the US Supreme Court has not overturned its nineteenth century holding in the 1896 *Wong Wing V. United States* case, which stated that deportation is an administrative means to achieve national security through border control and not criminal punishment.\(^{82}\)

\(^{77}\)Act of February 27, 1925 (43 Stat. 1049); Act of March 4, 1929 (45 Stat. 1551).


\(^{79}\)Immigration Reform and Control Act, Public Law 99-603, (100 Stat. 3359), November 6, 1986.


\(^{82}\)Ibid., pp. 149–153.
Recent laws have not only used removal as a form of punishment, but the punishment can be extended indefinitely in certain cases. The 1996 laws extended the definition of “aggravated felony” to include minor crimes that are now banning immigrants from ever re-entering the country. Under current law an aggravated felony is not only a crime involving murder, rape, or sexual abuse of a minor; but, instead it includes crimes of violence or theft offenses that are usually punishable by a year of imprisonment. As such, targeted groups, usually working-class immigrants of color, are not only forced to remain undocumented given the legal history of US citizenship exclusions, but recent criminalization of undocumented immigration has increased their possibility of deportation that can be extended indefinitely. Even traffic violations have been used to justify deportations, including cases involving deportations for driving under the influence of alcohol. The law continues to be challenged in court, however. In 2004, the US Supreme Court found that deportations for driving under the influence do not constitute an “aggravated felony” and thus deportation is unjustifiable. Immigrants in the past and today continue to fight back and have made strides to affirm their rights and belonging.

Current laws have increased the rate of deportations, but mass removals would rid the country of desired cheap labor. To avoid labor shortages, a limited legal inclusion has been granted through temporary working or protection programs. The one million repatriations and banishment of Mexicans and US citizens of Mexican descent, respectively, during the Great Depression combined with US soldiers that left for World War II resulted in labor shortages. The solution was a temporary foreign contract-labor measure known as the Bracero Program that was in effect from 1942 to 1964. This program controlled Mexican temporary labor that was disposable by termination of contracts at the end of needed agricultural seasons. The Bracero Program was terminated in 1964 as a result of labor and civil rights violations. The program, nonetheless, became a model for controlled flows of temporary cheap labor. Temporary Protection Status (TPS) programs were established for countries facing war or natural disasters resulting in the displacement of people. The United States created TPS programs in lieu of more permanent solutions such as political asylum that leads to US citizenship. Currently, the US offers TPS to ten countries. These programs grant a work permit and temporary relief from deportation, but without a permanent protection, people are forced to live in limbo always at risk of removal. TPS beneficiaries usually come from working class backgrounds and their temporary protection does not always translate to economic mobility or stability. In fact, the Trump administration, announced this year the termination of four TPS programs that include the following countries: El Salvador, Haiti, Nicaragua, and Sudan.

In the absence of immigration reform to legalize the status of the estimated eleven million undocumented immigrants in the United States, temporary protection programs have been used as superficial solutions. The last immigration reform that addressed the need to create paths to citizenship for undocumented immigrants was IRCA in 1986. Undocumented
immigrant youth have organized and fought for immigration reform since 2000. In 2012, the Obama administration finally listened to their pleas, but instead of pushing for the Development, Relief, and Education for Alien Minors (DREAM) Act, a temporary protection program was implemented. The Deferred Action for Childhood Arrivals (DACA) was praised as a stride in immigrant rights. The DREAM Act would have established a path to citizenship, but DACA only offers temporary protection from deportation and a work permit. DACA, similarly to TPS programs, is temporary and at risk of cancellation. Indeed, in September 5, 2017, DACA was rescinded by the Trump administration, placing beneficiaries at risk of deportation.89 However, the rescinding of DACA has been challenged in court in California and New York, in large part due to the organizing by affected undocumented immigrant youth and their allies. In both states, courts have ruled in favor of maintaining the renewal of applications under DACA. At the time this article was written, the legal battle over DACA was still ongoing since the US government appealed the decision of the lower courts. Undocumented immigrant youth, however, continue to organize and lobby their representatives to find permanent solutions for undocumented immigrants to legalize their statuses.

Conclusion

US citizenship then and now is not equal for all. Race, class, and gender have determined the full extent that US citizenship grants rights to different people. Citizenship has become symbolic for matters of immigration purposes, but not an identity tied to full rights under the constitution for women, working class folks, and people of color. U.S. citizenship proved to be symbolic for U.S. citizens of Japanese and Mexican descent, when 80,000 Japanese Americans were placed in internment camps during World War II and 600,000 Mexican Americans were unconstitutionally banished from their native country during the Great Depression. “Formal citizenship,” argues legal scholar, Leti Volpp, has been “no guarantee of citizenship as matter of rights.”90 Gendered, racial, and class status exclusions have intended to rid women, the working class, and people of color the right to exist under the law and have political power. Chief Justice Earl Warren, first in dissent in Perez v. Brownwell, described the importance of US citizenship by stating: “Citizenship is man’s basic right for it is nothing less than the right to have rights.”91 Thus, laws the limit or eliminate US citizenship based on class, race, or gender, are a direct attempt to disenfranchise minority groups.

Identity-based citizenship restrictions shifted to deportation policies based on conduct because the former was ruled as unconstitutional. During the last three decades of the twentieth century immigration laws insisted in the criminalization of undocumented immigrants to justify their deportability. The mass deportations ran the risk of eliminating a cheap labor supply usually filled by undocumented immigrants. Temporary protection programs, I argue, were used to create a constant flow of controlled cheap labor. Starting in early 2000s, undocumented immigrants have become visible for their local and national organizing efforts to create citizenship avenues, but progress has been slow. Instead of permanent solutions by Congress, the Obama administration passed a limited and temporary program, DACA, only to be rescinded by the Trump administration. Immigrants are now at greater risk

of deportation by the Trump administration that has created a war on undocumented immigration. Undocumented immigrants, however, are not fighting against a new phenomenon created by Trump. Instead, they are fighting a legacy of exclusion that dates back to 1790 and has continued since by taking different shapes and employing different language to continue excluding immigrants along racial, class status, and gendered lines.

In fact, immigration restrictions continue to be imposed against specific countries along racial, religious, and class status lines. For example, President Trump’s immigration ban singled out Muslim-majority countries from entering the United States. Trump has also terminated the Temporary Protected Status (TPS) program for Haitians and Salvadorians to be effective starting in 2019. TPS became the main legal avenue for Salvadorians to have limited legal protection in the United States when they have been largely denied political asylum protection. White and not working-class immigrants continue to be preferred for immigration purposes. In a January 2018 meeting to discuss an immigration agreement, Trump reportedly questioned: “Why do we want all these people from ‘shithole countries’ coming here?” He was referring to immigrants from Haiti, and continued by saying: “Why [do] we want people from Haiti and more Africans? … The US should get more people from countries like Norway.” A clear divide between white and black immigrants was highlighted in Trump’s remarks, favoring white and not working-class immigrants.

Immigration restrictions today and in the past, have always been linked to race even when presented as exclusions based on conduct. For instance, the “assumption that Chinese immigrants were incapable of comprehending republican values was used to justify retaining race-based restrictions to naturalization in 1870.” Currently, restrictions on citizenship on grounds of terrorism seemed to be linked to behavior and not race, but governmental policies are not purely based on national origin: “if so, these policies would target nationals of countries such as Germany, a country with significant Al Qaeda presence and activity.” Rather, these policies target countries with predominantly Muslim populations, so that the targeted status fuses national origin and religion. The racialization of immigration laws and policies is now obscured by new designations of criminality and behavior, but continue to disadvantage working class people of color along gender lines.

United States citizenship has historically been defined as a privilege reserved for white not working-class men. Women, people of color, and working-class folks have fought and contested their illegality through court cases and by pressuring their representatives to revise and reverse exclusionary laws. National exclusions have been constructed through citizenship rights, as Volpp concludes:

Citizenship, as perhaps most obvious when considered in relation to a nation-state, depends on ideas of exclusion. The idea of citizenship in a nation relies on the existence of borders that are patrolled and is predicated on the differential treatment of those with membership (the citizenry) compared to those without.

This relation of citizenship and borders is the reason why every immigration bill that creates a path to citizenship for a group of undocumented immigrants in the US has always been linked to increased border security, making sure no new significant number of

94Ibid., p. 471.
95Ibid., p. 480.
undocumented immigrants are allowed to enter the country, and those who do not fit in the language of the new legislation can be deported in mass.\textsuperscript{96}

Citizenship is a legal, political, and social construction. It is nothing more than a theory, an abstract, but one that has become powerful and exclusionary giving way to Mexican illegality. Citizenship and illegality have justified different treatment for women, the working-class, and people of color. Illegality has erased the humanity of those excluded from citizenship because, “It has always been easier, it always will be easier, to think of someone as noncitizen than to decide that he is a nonperson.”\textsuperscript{97}

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\textsuperscript{96}For an analysis of legalization and deportation laws passed throughout the twentieth century, see: Hernandez, *Migra*.
