

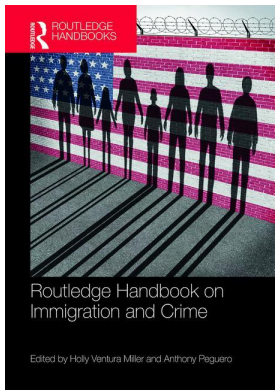
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ON THE HISTORY OF IMMIGRATION AND CRIME

Holly Ventura Miller

Introduction

Despite its designation as a “nation of immigrants” or a “melting pot,” rarely has the U.S. been a welcoming place to newcomers. A considerable misconception in today’s immigration debate is the belief that anti-immigrant sentiment is new, a product of the times, due to a particular political candidate or set of circumstances, or associated with only certain types of immigrants. Rather, hostility toward immigrants and governmental responses to control immigration are longstanding traditions in American sociopolitical life. From the Alien and Sedition Acts of the late 18th century to today’s calls for restrictions on immigrants and refugees, there are numerous instances of legislation conceived to control immigration or immigrants. This chapter attempts to provide a broad overview of several interrelated topics by way of a general introduction to the socio-cultural-legal history of immigration and crime. Specifically, this chapter is designed to provide: 1) a brief history of immigration to the U.S.; 2) an introduction to American nativism vis-à-vis immigration and crime; 3) an overview of early studies on immigration and crime; and 4) a review of American immigration policy throughout history with a particular focus on how perceptions of the criminal immigrant shaped these laws.

The perceived criminality of the newly arrived foreign-born was the impetus for early state and local action in controlling immigration and was critical in getting the federal government involved in immigration in the 19th century (Bernard, 1980). Each of the major waves of immigration to the U.S. sparked nativist movements and policies as the native-born sought to distance themselves from newcomers and firmly establish the dominance of the preceding immigrant groups. Generally speaking, nativism was sparked by several major concerns including: 1) the foreign-born undercut the wages of native-born American workers; 2) these new immigrants would not be able to effectively assimilate into American society; and 3) immigrants would increase various social ills, including crime (Feagin, 1997). Notably, these concerns remain at the forefront of the contemporary immigration debate.

Historically, immigration to the U.S. was driven by many of the same reasons that remain relevant today. Immigrants often were motivated by religious persecution or economic oppression; some came as indentured servants and others were transported as part of a criminal sentence (Davie, 1936). The vast majority of settlers in early Colonial America were English or of English parentage such that 90% of those in the colonies in 1699 shared this Anglican background. The remaining white settlers at this time included Swedes in Delaware, Germans in Pennsylvania, Dutch in New York, and Huguenots in New Rochelle (Zelinsky, 1973). The first U.S. Census taken in 1790 showed a population of 2.8 million, 1.3 million of whom were of English descent. The 1790 Census also recorded 560,000 Africans, 180,000 Scots, 156,000 Germans, 54,000 Dutch, 44,000 Irish, and 13,000 French.

The first half of the 18th century brought with it mass immigration to the U.S. when nearly 750,000 immigrants arrived in the two decades spanning 1821 and 1840 alone (Hansen & Schlesinger, 1940). Another 1.7 million entered in the next decade, spurred by famine, industrialization, and political unrest on the European Continent. The Treaty of Guadalup-Hidalgo ended the Mexican-American War in 1848, extending citizenship to 80,000 Mexicans living in the newly acquired territories in the Southwest (e.g., Texas, California, Arizona). The California Gold Rush led to a significant increase in Chinese immigration as well during this decade.

The second half of the 19th century saw a steady increase in immigration with 2.6 million arriving between 1851 and 1860, followed by another 2.3 million the succeeding decade (Thompson & Whelpton, 1933/1969). Between 1881 and 1890, 5.2 million immigrants arrived, 1 million of whom were German. This second wave of mass immigration saw a corresponding rise in immigration policy and law, as well as nativist backlash that included the emergence of anti-immigrant political parties (e.g., Know Nothings party) and anti-Catholic riots in Philadelphia that burned churches and schools. And while nativists' hostility was high toward immigration from mainly Catholic nations such as Germany and Ireland, their ire was provoked even more so by the third wave of mass immigration (1880–1930) (Billington, 1964; Higham, 1963).

Between 1881 and 1920, 2 million Eastern European Jews immigrated to the U.S. and in the five decades preceding World War II, 25 million immigrants arrived in the U.S., mainly from Southern and Eastern Europe (Taeuber & Taeuber, 1958). These new arrivals substantially altered the complexion and cultural context of many large American cities and gave rise to the first empirical assessments of the immigration-crime relationship. Immigration legislation increased dramatically during this period, as Congress restricted the immigration of various groups including the Chinese, Japanese, convicts, prostitutes, the mentally ill, indigents, polygamists, and persons with contagious diseases (Garis & Schibsby, 1928). This period also saw the rise of nativist and related movements, the most significant of which was the prohibition of alcohol and drugs (see Chapter 2 in this volume).

The Hart-Cuellar Act of 1965 altered immigration significantly as the quota system¹ was abolished and source nations shifted from Europe to Latin America and Asia. European immigration constituted the majority of arrivals between 1920 and 1960 (i.e., 60%), by 1975 these numbers shifted, with Europe sending only 19%, South and Central America 43%, and Asia 34% (Waldinger, 1989). Referred to as the post-1965 cohort, this group is demarcated from older, mainly European immigrant groups. This trend continued throughout the end of the 20th century altering demographics

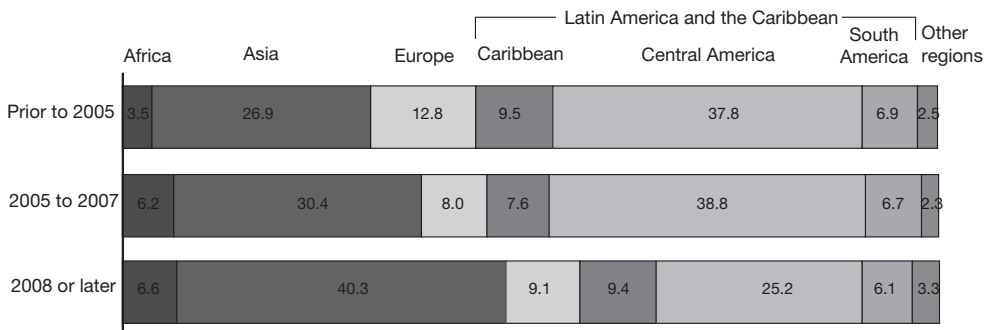


Figure 1.1 Foreign-Born Population by Period of Entry and World Region of Birth: 2010 (percent distribution. Data based on sample. For information on confidentiality protection, sampling error, nonsampling error, and definitions, see www.census.gov/acs/www/)

Note: "Other regions" includes Northern America and Oceania.

Source: U.S. Census Bureau, 2010 American Community Survey.

and substantially increasing the non-white population in the U.S. Today's immigrant population includes 40 million foreign-born, less than half of whom are naturalized American citizens (U.S. Census, 2012). This number consists of 21.2 million immigrants from Latin America, 11.3 million from Asia, and 4.8 million from Europe. While the foreign-born resided in every state in 2010, the population is disproportionately concentrated in California, New York, Texas, and Florida (i.e., more than half live in these four states). Immigrants today are, on average, younger than native-born citizens, more likely to be married, less likely to be divorced, and more likely to have children. They are also more likely to live in poverty.

Figure 1.1 is from the U.S. Census' American Community Survey in 2010 and shows immigration trends before and after 2005. Data indicated that the nine largest countries of birth constituted nearly 60% of the total foreign-born population in 2010 (U.S. Census, 2011). The largest number by far hailed from Mexico (29.3%), followed by China (5.4%), India (4.5%), and the Philippines (4.4%). The remaining countries in the top nine included Vietnam (3.1%), El Salvador (3.0%), Korea (2.8%), Cuba (2.8%), and the Dominican Republic (2.2%).

American Nativism and the Criminal Immigrant

The history of immigration and crime is situated within the larger context of immigration and related policy in the U.S. Perceptions regarding immigration and crime fall under the broader umbrella of perceptions regarding newcomers more generally such that perceptions of the criminal immigrant are merely one manifestation of a larger sociohistorical reality of nativism in the U.S. Nativism is both general and specific; it can be defined as "intense opposition to an internal minority on the ground of its foreign (i.e., 'un-American') connections" (Higham, 1988, p. 5). Nativism in the U.S. has typically resulted in discriminatory legislation and immigration restrictions aimed at controlling the movement and liberties of a foreign "other" (Bennett, 1988; Jaret, 1999). Various immigrant groups during different time periods have been viewed as deviant, criminal, immoral, atavistic, and otherwise unappealing. Generally, nativism can be viewed through the lens of four major themes: 1) certain races are intellectually and culturally inferior; 2) those from racially and culturally inferior groups face difficulties in assimilating to the larger Anglo-dominated culture; 3) immigrants represent an economical threat to native-born Americans; and 4) immigration triggers governmental crises (Feagin, 1997, pp. 13–14). The immigrant as criminal threat is situated within each of these larger themes.

The first groups to draw the ire of nativist philosophies and policies were the Germans in the mid-18th century and the French in the late 18th/early 19th centuries (Higham, 1988). Though the latter was largely a function of internal political strife between John Adams' Federalists and Thomas Jefferson's Democrats, these immigrants were painted as socially problematic, prompting a series of legislative acts known collectively as the Alien and Sedition Acts (discussed further in the following section). Nativism took on more significant proportions in response to Irish and Catholic immigration in the mid-19th century and led to the development of the first specifically anti-immigrant political party, the Know Nothings. At the heart of this party was rabid anti-Catholicism that in turn disproportionately affected immigrants from places like Ireland and Germany. Famine and political strife led to the immigration of millions between 1820 and 1850, mainly Irish and German Catholics. These Catholic immigrants were disliked for being foreign-born, non-Anglos and because of Protestant disdain for "popery" (Jaret, 1999).

Nativism in the mid-19th century, while firmly rooted in anti-Catholic bias, also adopted philosophies of racial superiority (Handlin, 1959). Race in this context was largely used to distinguish between the white race comprised of those with Northern European backgrounds (i.e., Nordic races) and those from undesirable groups such as Southern and Eastern Europeans (i.e., Mediterranean and Alpine races). Those outside of the Nordic race were viewed as racially inferior, prone to socially

problematic behavior, more likely to engage in crime, and unlikely to successfully assimilate into American society. Though much of the racism was devoted to typologizing various European ethnicities, this new form of nativism was also directed toward people of color, most notably Mexicans in California and Texas whose land had been recently subsumed as new American territories. Consistent with larger beliefs regarding American Manifest Destiny, nativism saw these groups as socially and culturally inferior to Anglo-dominated culture that characterized the U.S.

Among immigrant groups, Italian Catholics were particularly vilified vis-à-vis criminality (see, for example, Bingham, 1908). Nativists viewed Italians as “inferior and degraded,” unable to effectively assimilate, and responsible for the destruction of the nation’s moral fiber. Media accounts described Southern Europeans as inferiors that lived immoral lives centered on alcohol consumption while similar derogatory depictions were leveled at Jews in the early 20th century, describing them as immoral and unscrupulous in business (Jaret, 1999). Even agents of the criminal justice system weighed in on the criminality of Italians and Jews in public forums. Tiedore A. Bingham, the then-Chief of the NYPD, wrote in 1908: “The crimes committed by the Russian Hebrews are generally those against property. They are burglars, firebugs, pickpockets, and highway robbers . . . but . . . pickpocketing is the one to which they seem to take most naturally” (p. 384). Bingham described the manner in which Jews work in concert with Italians to commit crimes in tandem and noted “the Italian malefactor is by far the greater menace to law and order,” while also alleging that both groups were “engaged in the slave trade in New York” (p. 390). Bingham’s treatise, published in the *North American Review*, also described concerns with Chinese, Eastern European, and Armenian immigrants.

Ultimately, nativism carried with it significant implications for American political, social, and economic life (Higham, 1988; Jaret, 1999; Perea, 1997). Political elites turned their attention to the immigration “problem” and established organizations such as the Immigration Restriction League, working doggedly to curtail immigration. Both the American Protective Association and the Ku Klux Klan worked aggressively against immigration from Southern and Eastern Europe as well as from Asia. Anti-immigrant hysteria reached a peak in the 1920s when many aliens were prohibited from certain jobs or professions such as medicine, law, and engineering (Jaret, 1999). Decades of anti-immigrant sentiment resulted in a number of restrictive pieces of legislation between 1870 and 1920, culminating in the Immigration Act of 1924, which established quota systems specifically designed to reduce and restrict the number of immigrants hailing from “inferior” races. Most notably, Asians and Southern and Eastern Europeans were targeted to ensure fewer immigrants arrived from these nations by setting quota numbers consistent with numbers in the U.S. Census from three decades prior (Bernard, 1980).

Early Studies of Immigration and Crime

Early empirical assessments of the immigration–crime link tended to differ based upon data availability, quality, and analysis. In an early 20th-century analysis using state-level data from New York, Hourwich (1912) reported that the state’s recent crime rate increase “coincided with the lowest ebb of immigration, while the high tide of immigration was contemporaneous with a decrease in crime” (p. 479). The study concluded that an increase in the foreign-born population was accompanied by a corresponding decrease in the crime rate. Sutherland (1927) was an early critic of data reliability with respect to the immigration and crime question but found that immigrants had a considerably higher commitment (i.e., incarceration) rate compared to native-born whites. However, he also reported lower commitment rates for New York City and New York State after allowing for the adult male population, an early reminder of the importance of confounding variables in the immigration–crime relationship. The Wickersham Commission (1936) examined the immigration and crime question and concluded that the foreign-born were significantly less likely to commit

crime overall compared to the native-born, but that the rates were closer for crimes of violence and personal gain. The Commission also reported that arrest, conviction, and incarceration rates were similarly lower for the foreign-born. Glueck and Glueck (1930) found that the native-born were significantly over-represented in their study of 500 parolees such that 79% of ex-prisoners were native-born compared to just 54.1% in the general population.

Sutherland (1927) also considered immigration and crime relative to nativity and described different crime patterns across ethnic groups. He reported that Italians were committed to prison for major offenses at a rate three times that of the Irish, although they were only two-thirds as likely to be sent to jails or workhouses. Wickersham Commission (1936) similarly found differences between nationalities in terms of types of offenses committed. Sutherland's analysis produced three general conclusions: 1) the native-born had significantly higher rates of incarceration for crimes of personal gain (i.e., robbery, larceny, burglary); 2) rates for crimes of personal violence were about the same for the native and foreign-born; and 3) a larger portion of foreign-born crimes were crimes of violence. Ross (1937) considered the immigration and crime link as a function of social class and urban environment, concluding:

Thus the crime of the native-born sons of foreign-born parentage may be a result not of cultural maladjustment as is usually held, but of their position in a poverty class, a class which breeds criminals with equal facility from all its constituents be they of native or foreign parentage.

(p. 207)

Moehling and Piehl (2009) revisited the prison Census data used by the Dillingham and Wickersham Commissions but incorporated other Census data (e.g., mortality, demographics) to examine the prevalence of incarceration between the native and foreign-born. Their analysis, unlike earlier empirical work, provided specific, nuanced findings that controlled for critical germane variables such as race and age. Using data from 1904, 1923, and 1930, findings indicated that in 1904, both native and foreign-born exhibited a distinct age-crime curve with the peak for foreign-born males higher and earlier than that of the native-born. Results also indicated that these rates converged by age 30. Data from 1923 revealed that the foreign-born were incarcerated at a higher rate at younger ages, but at a lower rate at older ages. By 1930, Congress passed legislation restricting immigration, which led to an aging of the foreign-born population reflected in their lower rates of incarceration during the third observed timeframe.

The 1930 data, however, were somewhat confounded in that "foreign-born" was generally meant to denote foreign-born white (i.e., from Europe) and not those hailing from Mexico or Asian nations such as China and Japan. Moehling and Piehl (2009), however, remedy this by operationalizing foreign-born as foreign-born white plus all other races, and in doing so, the foreign-born incarceration rate is increased by 30%. Although this narrowed the gap between the native and foreign-born, it altered the sign of the difference only for the 18-year-old cohort. Their analysis of nation of origin (i.e., Germany, Ireland, Italy) indicated that at least some of the link between this variable and incarceration rate was partially attributable to differences in age distribution. Russians were committed for major offenses at a rate higher than English, German, or Irish, but close to the predicted rate given their age distribution. Immigrants from Scandinavia (i.e., Norway and Sweden) were incarcerated at a rate half of that expected given the age distribution. The Irish had rates that exceeded those of predicted rates, especially for minor offenses. Italians had a commitment rate twice that of the Irish and three times as much as the Germans. While part of this can be explained by age, these immigrants were disproportionately incarcerated for more serious offenses. Finally, this analysis also showed that commitment rates were significantly correlated with average wages, literacy rates, and English proficiency, also convoluting the link between nationality and crime.

American Immigration Policy: A Historical Overview

The perception and fear that immigrants may disrupt the social order dates back to the Colonial era, as first illustrated by the cases of Virginia and Maryland in the 1660s and 1670s (Hansen & Schlesinger, 1940). After the English Parliament approved the transportation of convicted felons to the Chesapeake Bay area, both colonies passed exclusionary laws in an effort to prevent such practices. Despite their efforts, Parliament overruled the restrictions and the policy of transportation continued well into the 18th century. Between 1717 and 1783, Britain sent 50,000 convicts to the American colonies, representing nearly 10% of total immigration during that period. This early tangle between national and local interests would foreshadow the often-tenuous relationship between the federal government and the states when dealing with immigration policy.

Early Efforts

Immigration policy was one of the many grievances American colonists levied at the British Crown in 1775 and was subsequently debated at the Constitutional Convention in 1787 (Bernard, 1980). Between 1790 and 1798, Congress passed five pieces of legislation referred to as the Alien and Sedition Acts, which, among other objectives, sought to create uniform policies for immigration, including establishing a rule of naturalization and a two-year residency requirement for aliens who were “free white persons” of “good moral character.” The following acts were blatantly more political, but affected immigration policy nonetheless. The Naturalization Act extended residency requirements for citizenship from 2 to 14 years and the Alien Friends Act (1798) allowed the President to imprison or deport aliens considered “dangerous to the peace and safety of the United States.” The Alien Enemies Act (1798) authorized the President to detain or deport male citizens of a hostile nation during times of war and was invoked a century and half later against Japanese Americans during World War II.

In 1819, Congress passed legislation requiring shipmasters to deliver manifests enumerating all immigrants on board; the Secretary of State was required to then report these numbers to Congress annually (Bennett, 1963). However, as first established during the Colonial Period, immigration largely remained the purview of the States. Between 1820 and 1860, for example, states with large ports including Massachusetts, Maryland, New York, and Pennsylvania, all passed laws to reduce the costs associated with immigration (Bernard, 1980). New York passed inspection and welfare laws requiring shipmasters to report the name, occupation, birthplace, age, and physical condition of each passenger. Those with potential for becoming wards of the state could then be deported on the basis of these reports. Other cities used the fees collected from ships to maintain marine hospitals or deliver social services to immigrants. New York’s laws were challenged in *City of New York v. Miln* (1837) and affirmed by the Supreme Court who held that the state was within its legitimate rights to exercise police powers within its borders:

We think it as competent for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts, as it is to guard against the physical pestilence which may arise from unsound or infectious articles imported, or from a ship, the crew of which may be laboring under an infectious disease.

The ethnic make-up of the U.S. began to shift in the mid-19th century from mainly Caucasians from Western and Northern Europe to include Latinos and Asians in the Southwest and West (Dinnerstein & Reimers, 1975). The Treaty of Guadalupe Hidalgo ended the Mexican-American War and extended citizenship to approximately 80,000 Mexicans living in Texas, California, and what was now the new American Southwest. The California Gold Rush in the 1840s spawned

Chinese immigration, while Catholic immigration also rose from Ireland and Germany during the first half of the 19th century, prompting the emergence of nativist movements and other social disruptions. In July 1844, for example, nativists in Philadelphia burned Catholic churches and schools resulting in 20 deaths. The following decade saw the rise of the Know Nothings Party, which was mainly concerned with Catholic immigration from Ireland and Germany. Organization membership was restricted to Protestant men concerned with purifying American society and politics (Billington, 1964; Higham, 1988). Inherent to their view was the belief that Catholic immigrants had a certain degenerative nature about them such that their very presence would result in greater social ills, chief among them crime.

The 1860s marked a shift in immigration policy with new legislation designed to target classes of immigrants from specific locations, most notably China (Handlin, 1959; Konvitz, 1946/1965). The push for anti-Chinese immigration policies originated in California in the 1850s, when both the governor and the state assembly advocated for restrictive measures designed to inhibit the flow of immigrants from China. State courts declared the Chinese ineligible for naturalization on the grounds that they were not the “free whites” stipulated by federal law. In 1870, California passed a state law prohibiting the landing of any Mongolian, Japanese, or Chinese female who could not provide evidence of voluntary emigration and decent moral character. In an effort to curb contract labor, this law was then extended to males as well.

The Anti-Coolie Act of 1862 discouraged Chinese immigration and instituted special taxes for those who hired Chinese workers. Immigration continued to increase, however, and in 1864 Congress passed a bill establishing a federal Bureau of Immigration to address its regulation. Also in 1864, the Republican Party embraced a stronger role for the federal government in establishing immigration policy. These efforts were largely successful with Congress passing the Naturalization Act of 1870, which provided citizenship rights to whites and blacks, although Asians were still banned from becoming citizens. In 1875, Congress authorized the First Exclusionary Act (1875), which banned prostitutes, convicts, and Chinese workers (coolies) from entering the U.S.

A Supreme Court case in 1875 would significantly change the direction of immigration policy henceforth. In *Henderson v. Mayor of New York City*, the Court found that all existing state laws regarding immigration were unconstitutional on the grounds that they usurped the federal government’s power to regulate foreign commerce. This reversed the earlier *Miln* decision and placed responsibility for immigration policy in the hands of the federal government. In the decade following the decision, Congress enacted a series of statutes bringing immigration under direct federal control and allowing the government to prevent the immigration of any class of alien deemed undesirable.

Responses to Mass Immigration in the 19th Century

Mass immigration in the 19th century brought about what is referred to as the Era of Regulation (1882–1916), encompassing a series of restrictive immigration laws and policies (Abbott, 1969; Bernard, 1980). With the Supreme Court’s *Henderson* decision and petitions from the states to create stricter immigration policies, the federal government began to develop the bureaucratic mechanisms necessary to administer national immigration policy. In 1882, Congress passed the first federal effort at comprehensive immigration reform with the Immigration Act or the Chinese Exclusion Act (1882). In an effort to circumvent an existing trade treaty with China, Congress curtailed Chinese immigration for a period of ten years. Ex-convicts, lunatics, idiots, and those unable to care for themselves were also excluded under this legislation. Congress followed this legislation with bills in 1885 (The Foran Act, 1885) that prohibited the recruitment of unskilled labor and in 1888 that ordered the deportation of alien contract laborers within one year of entry. In 1891, the U.S. Office of Immigration was established while Congress restricted the entry of paupers, polygamists, the insane, and persons with contagious diseases.

The Era of Regulation coincided with the third wave of immigration to the U.S. (1880–1930). During this time, 25 million immigrants arrived, mostly from Southern and Eastern Europe. Approximately 2% were sent back for a variety of reasons including health problems, being an unskilled laborer, criminal history, or insanity. Those arriving in the third wave of immigration were often referred to as the “new immigrants” and were viewed with varying levels of suspicion and trepidation by both the native-born and those from earlier immigrant groups (e.g., Irish, German). Between 1891 and 1929, Congress passed a number of laws aimed at limiting the number of immigrants who qualified for admission. In 1903, epileptics, professional beggars, and anarchists were excluded, followed by imbeciles, the feeble-minded, tuberculars, persons with physical or mental defects, and persons under the age of 16 without parents in 1907 (Bennett, 1963; Gastil, 1975; Zelinsky, 1973).

Asian groups continued to be targeted during this timeframe. As Western congressmen succeeded in having the Chinese Exclusion Act renewed indefinitely, immigrants from Japan began arriving in numbers equal to those of the Chinese. In response, businessmen and civic leaders organized the Japanese and Korean Exclusion League of San Francisco, a movement that spread quickly throughout the region. The movement was quashed, however, after the Gentlemen’s Agreement between the U.S. and Japan wherein the latter voluntarily agreed to restrict immigration while the former agreed to stop segregating Japanese students in San Francisco schools (Handlin, 1959; Konvitz, 1946/1965).

The Dillingham Commission

Concerns about the new immigrants were not, however, limited only to those Asian groups. Immigrants from Southern and Eastern Europe were still suspected of having inferior constitutions and potential sources of various social ills. In 1910, Congress appointed a commission led by Senator William P. Dillingham (i.e., the Dillingham Commission) to investigate the extent and impact of immigration, which resulted in the publication of a 42-volume report. While the first edition (Jenks & Lauck, 1911) concluded that the proportion of foreign-born committing recorded offenses was smaller than that of the native-born overall, immigrants were more likely to be represented in offenses of “personal violence” and against “public policy” (i.e., described as mainly violations of city ordinances, for example peddling without a license).

Data collected from New York State for the report documented the types of crimes for which various ethnic groups were convicted. Among Italians, 39.3% of convictions were for violence, while 18.6% of convictions for those hailing from Austria-Hungary were for violent crimes. Convictions among the Irish included 16.5% for violence compared to 11.7% of convictions of the native-born. The report also identified those groups most involved in “gainful offenses”: Italians and extortion, Canadians and forgery and fraud, Russians with larceny and receiving stolen property, Poles and robbery (Jenks & Lauck, 1917, pp. 55–56). The report notes: “the Italians seem to show a peculiarly bad eminence, leading in homicide . . . in abduction . . . in assault . . . and in crimes against public health and safety” (p. 56). In the end, however, the report concludes “that on the whole, in spite of the inclination apparently shown by certain nationalities to commit certain classes of crimes, it is impossible to show whether or not the totality of crime has been increased by immigration” (p. 59). The report concludes with suggestions for reducing the number of criminal immigrants including requesting police and penal records from foreign nations and a “confidential force” abroad to watch for criminal and immoral persons intending to enter the country.

Immigration Legislation in the 20th Century: The Era of Restriction

Massive successive waves of immigration eventually resulted in the tightening of restrictions on who could enter and also ushered in the era of immigration quotas (Bennett, 1963; Bernard, 1950, 1965, 1980). The Immigration Act of 1917 was the first in a series of statutes that sought to establish a federal

immigration policy wholly based on a rank order of eligibility that favored national groups thought most likely to assimilate. The 1917 legislation also introduced a literacy test the result of which banned virtually all Asian immigrants from entry to the U.S. Proponents of the literacy test had long argued that the illiteracy of many immigrants made them unlikely to assimilate and thus more costly to the U.S.

Despite these restrictions, the number of immigrants arriving from Southern and Eastern Europe remained high, as literacy levels had increased significantly in these nations over the prior decade. So in 1921, the Quota Act (1921) set an annual immigration ceiling of 350,000 with a new nationality quota. Under this statute, each nationality groups' admissions were set to 3% of each group's representation in the 1910 Census. As a result, immigration from Southern and Eastern Europe fell sharply thereby achieving the legislation's primary goals. The National Origins Act of 1924 further reduced the annual immigration ceiling to 150,000 and the quota was again revised to 2% of each nationality's representation in the 1890 Census. This reduced the number of immigrants from Southern and Eastern Europe further as their numbers were significantly fewer in 1890 than they were in 1910. These nationality-based quota immigration policies remained in effect until 1965.

Large-scale geopolitical events leading up to and encompassing World War II and its aftermath largely characterized immigration policy in the second quarter of the 20th century (Bernard, 1980). Immigration to the U.S. decreased during the Great Depression and during the events preceding World War II and large portions of most quotas went unfilled. High unemployment then led President Hoover to strictly apply the clause excluding immigrants likely to become public charges, which prevented all but the wealthy from obtaining visas. This also impacted the number of refugees fleeing fascism in Europe that could be admitted.

The Smith Act (1941) gave immigration officials the ability to refuse visas to applicants who might endanger public safety and allowed the President to deport any alien if in the best interests of the U.S. Alliances during World War II prompted the repeal of the Chinese Exclusion Act, though all other Asian groups remained banned. World War II created millions of European refugees seeking asylum and led to a series of legislative and executive orders. In 1945, President Truman issued an executive order calling for the admission of 40,000 displaced persons, and the following year Congress passed the War Brides Act, which admitted 120,000 alien wives and children of American service members. The Displaced Persons Act of 1948 admitted more than 220,000 over a two-year period with priority given to applicants from the Baltics. Due to the qualification dates included in the bill, Jews and Catholics were largely excluded. The revised Displaced Persons Act of 1950 liberalized admission, removed the technicalities that discriminated against Jews and Catholics, and set a quota ceiling of 415,000. The Refugee Relief Act of 1953 admitted 205,000 refugees as non-quota immigrants.

The Internal Security Act (1950) again intersected immigration policy with national security needs, and required the exclusion or deportation of all aliens who had been communists or belonged to front organizations. In 1952, Congress passed, Truman vetoed, and Congress overrode the veto for the McCarran-Walter Act (1952), which consolidated all previous efforts at immigration regulation. This legislation retained and revised the nationality quota system (Northern and Western Europe received 85% of total annual quota), though tighter restrictions were placed on the colonies of these European countries, mainly to restrict the flow of black immigrants from the British West Indies. The Act removed the restrictions on Asian immigration and retained and enlarged the non-quota class (e.g., immediate relative of citizens, permanent resident aliens).

Operation Wetback, an Eisenhower Administration policy, represents a particularly dark period in American immigration history. While the McCarran-Walter Act removed restrictions on naturalization so that being white was no longer a prerequisite for citizenship, other tactics were employed to restrict the number of non-white American citizens. In an appalling abuse of executive power, the Director of Immigration and Naturalization Services, Joseph Swing, instituted the Operation Wetback policy to reduce the number of Mexican laborers within the U.S., utilizing mass detention and deportations. The program was implemented in response to the concerns and lobbying from a wide

range of stakeholders including farmers, business leaders, and the Mexican government, who felt too many temporary workers had flooded into the U.S. thereby creating pressure on both native-born Americans and the Mexican economy. Enforcement of the policy resulted in the deportation of more than a million individuals, several hundred of whom were actually American citizens of Mexican descent (Mitchell, 2012).

The Era of Liberalization, 1965–1986

By the late 1950s, pressure developed on Congress to revise the national immigration policy, in particular the nationality quota system (Bernard, 1980). Consequently, Congress passed the Hart-Cuellar Act of 1965, reforming federal immigration policy by abolishing both the national quota system and the designation of the Asia-Pacific Triangle. The annual immigration ceiling was raised to 290,000, split between the Western (120,000) and Eastern (170,000) hemispheres of which no country could use more than 20,000. Applications were accepted on a first come, first serve basis, although non-quota admissions were retained. This legislation significantly impacted the kind of immigrants allowed visas, as countries whose quota allocations had previously placed them at a disadvantage (e.g., China, Portugal, India, Greece) were now able to immigrate in greater numbers. While Europe had comprised the bulk of immigration between 1920 and 1960 (i.e., 60%), by 1975 these proportions had shifted dramatically, with Europe sending only 19%, South and Central America 43%, and Asia 34% (Waldinger, 1989).

Refugees were again addressed in 1980 when Congress authorized the Refugee Act (1980), which entitled refugees as a distinct class separate from other immigrants. The new law defined refugees as those who flee a country because of persecution “on account of race, religion, nationality, or political opinion.” The President, in consultation with Congress, is authorized to establish an annual refugee ceiling and allowed to admit any group of refugees in an emergency.

The most significant piece of immigration legislation of the late 20th century was passed by Congress and signed into law by President Reagan in 1986 (Perea, 1997). The Immigration Reform and Control Act (1986) revised the annual immigration ceiling to 540,000 and offered amnesty to those illegal immigrants able to prove continuous residence in the U.S. since 1982, with no criminal record, and provide proof of registration with the Selective Service (i.e., the draft). Provided an applicant was granted legal status, they were disqualified from receiving all forms of public welfare assistance for five years (although this did not apply to Cuban or Haitian immigrants). The Immigration Act of 1990 raised the annual ceiling to 700,000, offered 10,000 permanent resident visas to immigrants willing to invest substantially in the U.S., and amended the McCarran-Walter Act so that admittance could not be denied based on beliefs, statements, or associations.

Concern about illegal immigration increased during the 1980s and 1990s, when estimates put the number of undocumented immigrants at about 8 million. In an effort to curb illegal immigration, mainly from Latin America, Congress voted to double the Border Patrol to 10,000 agents over five years and mandated the construction of fences along the most heavily trafficked areas of the U.S.–Mexico border. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 signed by President Bill Clinton also instituted a ten-year ban for those entering the country illegally and staying for more than a year.

Immigration Legislation in the 21st Century: 9/11, the DREAM ACT, and Beyond

The events of September 11, 2001 once again drew attention to the nation’s immigration policies. Five of the 19 hijackers on 9/11 had also committed violations of immigration policy, as did many of the terrorists involved in the earlier World Trade Center bombing in 1993 and the African

embassies' bombing in 1998. Consequently, immigration and national security concerns coalesced again as they had following World War II. The PATRIOT Act (2001) was passed immediately following 9/11 and broadened the terrorism grounds for excluding aliens from entering the U.S. and increased monitoring of foreign students. The following year (2002), Congress established the new Department of Homeland Security, to where nearly all of the functions of the Immigration and Naturalization Service (INS) were transferred from the U.S. Department of Justice. INS was then restructured to become three new agencies, Customs and Border Protection, Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services. The Enhanced Border Security and Visa Entry Reform Act of 2002 was also passed that same year and implemented new procedures for the review of visa applicants and required that travel and entry documents be machine-readable, tamper-resistant, and include biometric identifiers. The REAL ID Act of 2005 required states to obtain proof of citizenship or legal immigration status before issuing a driver's license, and to make licenses resistant to fraud or tampering. This legislation also expanded terrorism-related grounds for inadmissibility and deportation. Congress enacted the Secure Fence Act of 2006 after the Senate failed to adopt comprehensive immigration reform legislation that had passed the House of Representatives and was supported by the Bush Administration. This legislation called for the building of an additional 850 miles of fencing along the U.S.-Mexico border, authorized more lighting, vehicle barriers, and border checkpoints, and required advanced technology (e.g., sensors, cameras, drones) be employed to deter illegal border crossings (Ewing, 2012).

While comprehensive immigration reform has remained elusive for the better part of three decades, both Congress and various administrations have voiced support for addressing the plight of childhood arrivals, that is, those brought to the U.S. illegally by their parents. This group has received the most, if only, political sympathy of all undocumented immigrants, and numerous legislators from across the political spectrum have attempted to move bills through the House and Senate since 2001. Toward this end, Richard Durbin (D-IL) and Orrin Hatch (R-UT) first introduced the DREAM Act (Development, Relief, and Education for Alien Minors) in the Senate with bipartisan support in 2001, which was similar to a bill introduced in the House by Luis Gutierrez (D-IL) earlier that year. This legislation granted childhood arrivals a path to temporary and, ultimately, permanent residency status provided they could meet the requirements set forth in the bill (i.e., under 16 at arrival, not have entered the U.S. on a non-immigrant visa, provide proof of residence in the U.S. for at least five consecutive years, registered with Selective Service (males only), be between 12 and 35, have graduated from an American high school, obtained a GED, or been admitted to an institution of higher education, and be of good moral character). The Act has been reintroduced in various forms since then, including in 2008 as an amendment to a defense authorization bill. The bill was reintroduced in somewhat altered forms in 2009, 2010, and 2011. The DREAM Act passed the House in 2010 though it did not garner the 60 votes necessary for cloture in the Senate.

After more than ten years of Congressional gridlock, President Barack Obama sidestepped the legislative process and issued a policy memorandum through the Department of Homeland Security "Deferred Action for Childhood Arrivals" or DACA. DACA authorized undocumented immigrants brought to the U.S. as children (under age 16) to obtain a work permit and defer deportation for a renewable period of two years. Pew Research Center (Passel & Lopez, 2012) estimated that up to 1.7 million individuals would qualify for DACA and as of this writing, approximately 850,000 people have applied and been approved under this policy. As covered extensively in the media (Bennett & Memoli, 2017; Price, 2016; Reyes, 2017; Schmidt & Holley, 2017), the future of DACA recipients remained in limbo under the new administration, with contradictory statements made by the President and his Cabinet fueling anxiety among Dreamers. Several instances of detention and deportation of DACA recipients (Hawkins, 2017; Schmidt, 2017) only heightened the confusion and fear surrounding the policy, though, for now, it seemingly remains intact. In June 2017, the Department of Homeland Security announced officially that it would not make changes to DACA

while at the same time rescinding its parallel DAPA policy for the undocumented parents of native-born American children. The President, however, contradicted this June order with his own announcement in September 2017 that he would end DACA protections in six months and encouraged Congress to pass legislation to address the policy.

Discussion

Perceptions of the criminal alien have fueled immigration policy, nativist movements, and contemporary political debate. The criminal immigrant construct is situated within larger nativist themes such as the intellectual and cultural inferiority of certain groups, assimilation problems, and economic threats (Feagin, 1997). A wide range of ethnicities and nationalities have been targeted by restrictive immigration policies and nativist sentiments including French, Germans, Irish, Chinese, Japanese, Italians, and Jews, among others. Today, most of the ire of nativism is directed toward Latinos, Muslims, and, relatedly, refugees, all of whom are considered suspect in terms of criminality, albeit for different reasons.

It is important to recognize current political sentiment within this sociohistorical context. The concerns voiced today are presented within discussions of national security, drug control policy, and general law and order—virtually identical to the arguments voiced in previous eras. The current President did not introduce a new topic to the political discourse, rather he dredged up underlying concerns about the generalized other; Islamic fundamentalists are today's version of communists, just as Mexico's "bad hombres" can be interpreted as the new Black Hand. In that perceptions are processed as reality and consequently influence public policy, it is imperative for scholars to infuse empirical evidence into the debate ensuring that facts emerge through the din of nativist drumbeats.

The history of immigration policy, and particularly legislation, is shockingly discriminatory and often outright racist. Perhaps most concerning, however, is that these ideas still hold sway among a significant proportion of the American population. The new administration's executive order suspending immigration and travel from certain majority Muslim nations are wholly consistent with prior statutory laws and nativist sentiments against certain groups and classes of aliens. In this view, Muslims from certain nations are viewed as threats to national security, probable perpetrators of terrorist acts, and as such, justifiable targets for exclusion. In this case, those from six specific nations (Libya, Syria, Sudan, Somalia, Yemen, and Iran) are seen as having greater potential for committing crimes related to terrorism. There is little systematic evidence, however, beyond anecdotal case studies that support the notion of a statistically significant relationship between immigration from these six nations and increases in terrorism.

The yet to be articulated policy on the nation's estimated 11 million undocumented immigrants—who will be targeted, how will the process be executed, and what will happen to DAPA recipients—remains at the forefront of public policy concerns. The President seemingly has supported a range of oftentimes conflicting ideas from revoking DACA, to affirming DACA, to bringing back Operation Wetback, to devising a system to deport and then let the "good ones" back into the country. It is unclear, though unlikely, if Congress will be able to pass comprehensive immigration legislation and, if passed, whether or not the President would sign such a bill. Immigration reform has seemingly fallen on the list of both legislative and administrative priorities to make room for healthcare reform, tax cuts, and increases in military spending. Nevertheless, immigration policy remains an area in desperate need of thoughtful attention and careful address, ideally informed and shaped by sound empirical evidence.

Note

- 1 The immigration quota system established quotas for different ethnic groups based on representation in previous censuses. This system, established by Congress through legislation, is discussed in greater detail in a forthcoming section of the chapter.

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