The Architecture of Race in American Immigration Law: A Reexamination of the Immigration Act of 1924

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On February 4, 1929, Dr. Joseph A. Hill presented a plan for immigration quotas based on national origin to the United States Senate immigration committee. Hill was the chief statistician of the Census Bureau and chairman of the Quota Board, a committee under the departments of State, Commerce, and Labor. Congress had mandated the board to allocate the quotas under the Immigration Act of 1924. That law restricted immigration into the United States to 150,000 a year based on quotas, which were to be allotted to countries in the same proportion that the American people traced their origins to those countries, through immigration or the immigration of their forebears.[1]

This was the third time in as many years that Hill had submitted a plan to Congress, and again members of Congress interrogated him as to the accuracy of the quotas. Hill's professional authority as one of the nation's leading demographers rested on a thirty-year tenure at the Census Bureau and was manifest in his patrician appearance. But determining the national origins quotas was arguably the most difficult challenge of his career.

Indeed, in early 1929 it was still not at all certain that the system mandated in 1924 would come into being. Congress had already postponed implementation of the quotas twice. The first two reports submitted by the Quota Board were criticized

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[1] U.S. Congress, Senate, Committee on Immigration, *National Origins Provision of the Immigration Law,* 71 Cong., 2 sess., Feb. 4, 1929, p. 16. The Immigration Act of 1924 stipulated that permanent immigration quotas were to go into effect on July 1, 1927. In the meantime, immigration was governed by temporary quotas, which were allocated to each European country at 2% of the number of foreign-born of each nationality in the 1890 census. The temporary formula gave 85% of the quotas to northern and western European nations. Act of May 26, 1924, chap. 190, 43 Stat. 153.

by organizations representing Irish, German, and Scandinavian Americans for failing to take their populations fully into account. In 1928 protests over the hardships wrought by restriction mounted; Young Men's Christian Associations (YMCAS), church congregations, and the League of Women Voters petitioned Congress to admit families who were unable to join men who had immigrated before 1924 because those family members lived in countries whose quotas were oversubscribed. The issue hung in political suspension throughout the presidential election campaign of 1928. Herbert Hoover had, as secretary of commerce, signed the Quota Board's first two reports. But he kicked off his presidential campaign in August with a speech that described national origins quotas as impossible to determine "accurately and without hardship," an apparent appeal to German and Scandinavian voters in the Midwest. Observers noted that Hoover's Democratic rival, Al Smith, opposed the quotas in the North while favoring them before southern audiences.[2]

During the winter, the nativist lobby stepped up its own efforts, mobilizing mass petitions to Congress from the American Legion, the Grange, and the Daughters of the American Revolution. The patriotic societies took out a series of advertisements in the *Washington Post,* defending the "national origins basis . . . [as] the only one which does not discriminate for or against any" nation and exhorting members of Congress to stand firm against the efforts of "hyphenates" who would "play politics with the nation's blood stream."[3]

The political opponents of national origins quotas sought another postponement in order to work for the law's repeal. Congress had accepted the principle of national origins as fair and nondiscriminatory, but the claim to fairness would evaporate if the quotas could not be accurately determined.[4] S. W. Boggs, the State Department's geographer and secretary of the Quota Board, admitted to the Senate committee that the quotas were affected by an "element of error" but claimed that the "results are practically as good as they can be made." The strongest defense Hill could make of the Quota Board's third report was, "The present computations are as near as we can get on this matter to determining the national origins, practically."[5]

[2] U.S. Congress, Senate, *National Origin Provision of the Immigration Act of 1924,* 69 Cong., 2 sess., Dec. 16, 1926; U.S. Congress, Senate, *Immigration Quotas on the Basis of National Origins,* 70 Cong., 1 sess., Feb. 25, 1928; Petitions in support of S.J. Res. 122 and H.J. Res. 233–234, from YMCA, YWCA, League of Women Voters, Kiwanis Club of Milwaukee, file Sen. 70A-J17, box 179, Records of the United States Senate, RG 46 (National Archives, Washington, D.C.); Robert Divine, *American Immigration Policy, 1924–1952* (New Haven, 1957), 40.

[3] Petitions in support of national origins quotas, from Daughters of the American Revolution, American Legion, Grange, file Sen. 70A-J17, box 179, Senate Records; *Washington Post,* [Feb. 18, 1929]; *ibid.*, Feb. 25, 1929, p. 4; *ibid.*, March 2, 1929, p. 4.

[4] Edward Hutchinson, *Legislative History of American Immigration Policy, 1790–1965* (Philadelphia, 1981), 205. The legislative genealogy of immigration quotas turns on the endeavors of lawmakers to make race-based laws appear to be not racist. The first numerical restrictions on immigration, passed in 1921 as an emergency measure, legislated quotas based on 3% of the foreign-born population in 1910, giving 55% of the quotas to northern and western Europeans and 45% to southern and eastern Europeans. Nativists lobbied for quotas based on 2% of the foreign-born population in 1890, which reduced southern and eastern Europe's quotas to 15% of the total. The idea of quotas based on the national origins of the entire population in 1920 was conceived by Sen. David Reed of Pennsylvania, chair of the Senate immigration committee, and John Trevor, a colleague of Madison Grant. Reed and Trevor turned things on their head by claiming that using only the foreign-born population to determine quotas discriminated against native-born Americans. See John Higham, *Strangers in the Land: Patterns of American Nativism, 1865–1924* (1955; New Brunswick, 1985), 319–21; and Divine, *American Immigration Policy,* 1–51.

[5] Committee on Immigration, *National Origins Provision of the Immigration Law,* 8, 16, 18.

Two weeks later the secretaries of State, Commerce, and Labor submitted the Quota Board's report to the president. The secretaries, however, issued a caveat that they "neither individually nor collectively are expressing any opinion on the merits or demerits of this system of arriving at the quotas." Nevertheless, as one of his first acts as president, Herbert Hoover proclaimed the quotas on March 22, 1929.[6]

Both academic and popular discourse have long criticized differential immigration quotas based on national origin as discriminatory. Yet the concept of "national origin" as a constitutive element of the American nation remains inadequately problematized. In part that is because most scholarship on the Immigration Act of 1924 has focused on the legislative process leading to the passage of the law. The central theme of that process was a race-based nativism, which favored the "Nordics" of northern and western Europe over the "undesirable races" of eastern and southern Europe. That is an important story, the richest account of which remains John Higham's classic, *Strangers in the Land,* published in 1955. The narrative of the politics of eugenics and restriction, however, emphasizes the passage of the Reed-Johnson Act as the end of the story, the triumph of Progressive Era nativism and the historical terminus of open immigration from Europe. That focus does not adequately explain and may, in fact, obscure from view other ideas about race, citizenship, and the nation that the new law both encoded and generated.[7]

More generally, the lack of critical analysis of "national origin" may also result from a presumption that nations and nationality are normative categories in the ordering of the world. As Eric Hobsbawm has pointed out, that presumption only underscores how powerfully the modern nation-state has dominated the experience of the last century and a half. Recent scholarship has emphasized the need to historicize the nation-state and the cultures, identities, and relationships that it generates. Like race, nation and nationality are socially constructed; their legal definitions and cultural meanings can only be understood in the context of history.[8]

This article argues that the Immigration Act of 1924 comprised a constellation of reconstructed racial categories, in which race and nationality—concepts that had been loosely conflated since the nineteenth century—disaggregated and realigned in new and uneven ways. At one level, the new immigration law differentiated Europe-

[6] Frank Kellogg, William Whiting, and James Davis, to the President, Feb. 26, 1929, 70 Cong., 2 sess., S. Doc. 259; *Proclamation by the President of the United States of America,* no. 1872, March 22, 1929, 46 Stat. 2984.

[7] Higham, *Strangers in the Land;* Divine, *American Immigration Policy;* Philip Gleason, "American Identity and Americanization," in *Harvard Encyclopedia of American Ethnic Groups,* ed. Stephen Thernstrom (Cambridge, Mass., 1980); John Higham, *Send These to Me* (Baltimore, 1981). On scientific racism and eugenics, see Carl Degler, *In Search of Human Nature: The Decline and Revival of Darwinism in American Social Thought* (New York, 1991); Stephen Jay Gould, *The Mismeasure of Man* (New York, 1981); Nancy Stepan, *The Idea of Race in Science* (London, 1982); and Elazar Barkan, *The Retreat of Scientific Racism: Changing Concepts of Race in Britain and the United States between the World Wars* (Cambridge, Eng., 1992).

[8] Eric Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge, Eng., 1992), 192. See also Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (London, 1991); Gopal Balakrishnan, ed., *Mapping the Nation* (London, 1996); and Paul Gilroy, *The Black Atlantic: Modernity and Double Consciousness* (Cambridge, Mass., 1992).

ans according to nationality and ranked them in a hierarchy of desirability. At another level, the law constructed a white American race, in which persons of European descent shared a common whiteness that made them distinct from those deemed to be not white. Euro-Americans acquired both ethnicities—that is, nationality-based identities that were presumed to be transformable—*and* a racial identity based on whiteness that was presumed to be unchangeable. This distinction gave all Euro-Americans a stake in what Matthew Jacobson has called a "consanguine white race" and facilitated their Americanization. But, while Euro-Americans' ethnic and racial identities became uncoupled, non-European immigrants—among them Japanese, Chinese, Mexicans, and Filipinos—acquired ethnic and racial identities that were one and the same. The racialization of the latter groups' national origins rendered them unalterably foreign and unassimilable to the nation. The Immigration Act of 1924 thus established legal foundations for social processes that would unfold over the next several decades, processes that historians have called, for European immigrants, "becoming American" (or, more precisely, white Americans), while casting Mexicans as illegal aliens and foredooming Asians to permanent foreignness.[9]

Drawing upon Michael Omi and Howard Winant's concept of racial formation, which they define "as the sociohistorical process by which racial categories are created, inhabited, transformed, and destroyed," this article seeks to understand the role of immigration law and policy in the production of official knowledges of race and nationality.[10] The article examines three major aspects of the Immigration Act of 1924. First, it analyzes the invention of "national origins," which applied mostly to Europeans while distinguishing Europeans from non-Europeans, and the attendant process by which immigration quotas were determined as practical policy. The article then examines the evolution of the concept of "ineligibility to citizenship," a condition that applied to all Asians, justifying and perfecting their exclusion from

[9] Matthew Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge, Mass., 1998). On ethnicity and whiteness, see also James Barrett and David Roediger, "Inbetween Peoples: Race, Nationality, and the 'New Immigrant' Working Class," *Journal of American Ethnic History,* 16 (Spring 1997), 3–44. For different perspectives on the assimilation of European immigrants in the first half of the twentieth century, see Thomas Archdeacon, *Becoming American* (New York, 1988); Gleason, "American Identity and Americanization"; David Roediger, *Towards the Abolition of Whiteness* (London, 1994), 181–98; Kathleen Neils Conzen et al., "The Invention of Ethnicity: A Perspective from the USA," *Journal of American Ethnic History,* 12 (Fall 1992), 3–41; and Russell Kazal, "Revisiting Assimilation: The Rise, Fall, and Reappraisal of a Concept in American Ethnic History," *American Historical Review,* 100 (April 1995), 437–71. The assimilation of European ethnic groups has also been studied in the context of twentieth-century class formation. For example, see Lizabeth Cohen, *Making a New Deal: Industrial Workers in Chicago, 1919–1939* (Cambridge, Eng., 1990); Gary Gerstle, *Working Class Americanism: The Politics of Labor in a Textile City* (Cambridge, Eng., 1989); and James Barrett, "Americanization from the Bottom Up: Immigration and the Remaking of the Working Class in the United States, 1880–1930," *Journal of American History,* 79 (Dec. 1992), 997–1020. On Mexican and Asian immigration and racial formation, see George Sánchez, *Becoming Mexican American: Ethnicity, Culture, and Identity in Chicano Los Angeles, 1900–1945* (New York, 1993), 209–26; David Gutiérrez, *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity* (Berkeley, 1995), 69–116; Neil Foley, *The White Scourge: Mexicans, Blacks, and Poor Whites in Texas Cotton Culture* (Berkeley, 1997), 40–63; David Montejano, *Anglos and Mexicans in the Making of Texas* (Austin, 1987), 181–96; Lisa Lowe, *Immigrant Acts: On Asian American Cultural Politics* (Durham, 1996), 1–36; Ian Haney López, *White by Law: The Legal Construction of Race* (New York, 1995); and Bill Ong Hing, *Making and Remaking Asian America through Immigration Policy* (Stanford, 1990).

[10] Michael Omi and Howard Winant, *Racial Formation in the United States from the 1960s to the 1990s* (New York, 1994), 55.

immigration, and that completed "Asiatic" as a peculiarly American racial category. Finally, the article turns to the role that immigration law played in the racial formation of Mexican immigrants and Mexican Americans. While not subject to numerical quotas or restrictions on naturalization, Mexicans were profoundly affected by restrictive measures enacted in the 1920s, among them deportation policy, the creation of the Border Patrol, and the criminalization of unlawful entry.

This analysis of the Immigration Act of 1924 suggests that immigration law and policy were deeply implicated in a broader racial and ethnic remapping of the nation during the 1920s, a remapping that took place in mutually constituting realms of demography, economics, and law. It involved, in addition to changes in immigration patterns and policy, the migration of African Americans from the South to northern cities and the legal justification for de facto segregation in the North, and the completion of the legal process of forced assimilation of American Indians.[11]

The Invention of National Origins

If the quota system went into effect without the unqualified confidence of its authors, the project had been marked by doubt from the beginning. Census and immigration records, upon which the Quota Board relied in making its calculations, were woefully incomplete. The census of 1790, the nation's first, did not include information about national origin or ancestry. The census did not differentiate the foreign-born until 1850 and did not identify the places of birth of parents of the native-born until 1890. Immigration was unrecorded before 1820 and not classified according to origin until 1899, when it was arranged, not by politically defined nation-states, but according to a taxonomy called "races and peoples." Emigration was not recorded until 1907. To complicate things further, many boundaries in Europe changed after World War I, requiring a translation of political geography to reattribute origins and allocate quotas according to the world in 1920.[12]

To calculate the quotas, the Quota Board first had to conceptualize the categories that constituted the system. "National origin," "native stock," "nationality," and other

[11] The United States Supreme Court would not sanction de jure segregation in the North, but it did legitimate de facto segregation based on free market principles in *Corrigan v. Buckley,* which upheld the use of racial covenants in real property. *Buchanan v. Warley,* 245 U.S. 60 (1917); *Corrigan v. Buckley,* 271 U.S. 323 (1926). See Gilbert Osofsky, *Harlem, the Making of a Ghetto: Negro New York, 1890–1930* (New York, 1968); Donald Massey and Nancy Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge, Mass., 1993). The Indian Citizenship Act of 1924, which declared all Native American Indians American citizens, completed the "assimilation" that stripped Native American Indians of their sovereignty. Such citizenship was circumscribed by Indians' continued legal status as wards, a codification of their presumed racial backwardness. Act of June 2, 1924, 43 Stat. 253. See Frederick Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880–1920* (Cambridge, Eng., 1995), 236–37.

[12] LaVerne Beales, "Distribution of White Population as Enumerated in 1920 According to Country of Origin," typescript, Oct. 16, 1924, file 16, box 2, Reports, Correspondence, and other Records relating to Immigration Quota Laws and National Origins Statistics, ca. 1920–1936, NN-374-63, Population Division, Records of the Census Bureau, RG 29 (National Archives); Minutes of Quota Board meeting, May 25, 1926, file 19, *ibid.* The concept of "races and peoples" used by the Immigration Bureau included sovereign countries, protonational or ethnic groups, religions, and races. The schedule differentiated "Polish" from "Polish (Hebrew)," and "Italy (north)" from "Italy (south)" and listed Indians as "Hindu."

categories in the system were not natural units of classification; they were constructed according to certain social values and political judgments. Race, never explicitly mentioned in the statute, nevertheless entered the calculus and subverted the conceptual foundations of the system in myriad ways. For example, the board defined "native stock," not as persons born in the United States, but as persons who descended from the white population of the United States in 1790. It defined "foreign stock" as the descendants of all whites who immigrated to the United States after 1790.[13]

The law defined "nationality" according to country of birth. But that definition did not apply to the American nationality. The statute excluded non-European peoples residing in the United States from the population universe governing the quotas. The law stipulated that "'inhabitants in continental United States in 1920' does not include (1) immigrants from the [Western Hemisphere] or their descendants, (2) aliens ineligible to citizenship or their descendants, (3) the descendants of slave immigrants, or (4) the descendants of the American aborigines."[14]

The Quota Board used census race categories to make its calculations. It subtracted from the total United States population all blacks and mulattoes, eliding the difference between the "descendants of slave immigrants" and the descendants of free Negroes and voluntary immigrants from Africa. It also discounted all Chinese, Japanese, and South Asians as persons "ineligible to citizenship," including descendants of such people with American citizenship by native birth. Finally, it left out the populations of Hawaii, Puerto Rico, and Alaska, which American immigration law governed and whose native-born inhabitants were United States citizens.[15]

In other words, to the extent that the "inhabitants in continental United States in 1920" constituted a legal representation of the American nation, the law excised all nonwhite, non-European peoples from that vision, erasing them from the American nationality. The practical consequence of those erasures is clear enough. In 1920 African Americans accounted for approximately 9 percent of the total United States population.[16] Had they been included in the base population governing the quotas, the African nations from which they originated would have received 9 percent of the total immigration quota, resulting in 13,000 fewer slots for the European nations.

Race altered the meaning of nationality in other ways as well. Formally, the quota system encompassed all countries in the world outside the Western Hemisphere. China, Japan, India, and Siam each received the minimum quota of 100, but the law excluded the native citizens of those countries from immigration because they

[13] Joseph A. Hill, "The Problem of Determining the National Origin of the American People," paper delivered at the annual meeting of the Social Science Research Council, Hanover, N.H., Aug. 1926, p. 7, file 17, *ibid.*

[14] Act of May 26, 1924, sec. 12 (a), 43 Stat. 153; *ibid.*, sec. 11 (d).

[15] S. W. Boggs to W. W. Husband, Nov. 11, 1926, p. 3, file 30, box 3, Reports relating to Immigration Quota Laws, Census Records. Aleuts and other indigenous peoples of Alaska were classified, not as United States citizens, but as Native American Indians or, in the language of the Immigration Act of 1924, as "American aborigines." Act of May 26, 1924, sec. 11(d). Eliminating the territories from the quotas caused other problems. The 1920 census recorded 7,000 natives of Spain in Puerto Rico. If they had been counted, Spain's quota would have significantly increased. Husband to Joseph Hill, May 6, 1922, file 30, box 3, Reports relating to Immigration Quota Laws, Census Records.

[16] U.S. Department of Commerce, Bureau of Census, *Historical Statistics of the United States from Colonial Times to 1970* (2. vols., Washington, 1975), I, 9, 12.

were deemed to be racially ineligible to citizenship. Thus Congress created the oddity of immigration quotas for non-Chinese persons from China, non-Japanese persons from Japan, non-Indian persons from India, and so on. The independent African nations of Ethiopia, Liberia, and South Africa received quotas of 100 each. Because the latter was a white settler country, this amounted to a concession of 200 immigration slots for black Africans. European mandates and protectorates in Africa, the Near East, and the Far East—for example, Tanganyika, Cameroon, Palestine, New Guinea—had their own quotas, which in practice served to increase the quotas of Great Britain, France, and Belgium, the nations with the largest colonial empires. (See table 1.)

Thus while the national origins quota system was intended principally to restrict immigration from the nations of southern and eastern Europe and used the notion of national origins to justify discrimination against immigration from those nations, it did more than divide Europe. It also divided Europe from the non-European world. It defined the world formally by country and nationality but also by race, distinguishing between white persons from white countries and so-called colored races, whose members were imagined as having no countries of origin. This cross-cutting taxonomy was starkly presented in a table prepared by John Trevor, an advocate of immigration restriction and the chief lobbyist for a coalition of patriotic societies, on the national origins of the American people in 1924, which listed under the column "Country of Origin" fifty-three countries (from Australia to Yugoslavia) and five "colored races" (black, mulatto, Chinese, Japanese, and Indian).[17]

Like most of their contemporaries, members of Congress and the Quota Board treated race as evidence in itself of differences that they presumed were natural. Few, if any, doubted that the Census Bureau's categories of race were objective divisions of objective reality. Such confidence evinced the strength of race thinking generally as well as the progressivist faith in science, in this case, the sciences of demography and statistics. Indeed, few people doubted the census at all. The census carried the weight of official statistics; its power lay in the seeming objectivity of numbers and in its formalization of racial categories. Census data gave the quotas an imprimatur that was nearly unimpeachable. The census was invoked with remarkable authority, as when, during the floor debate in the House in 1924, Rep. William Vaile retorted to an opponent of the national origins principle, "Then the gentleman does not agree with the Census!"[18]

Demography, and the census itself, far from being the simple quantification of material reality, grew in the late nineteenth and early twentieth centuries as a language for interpreting the social world. As the historian Margo Anderson observes, census classifications that defined urban and rural populations, social and economic

[17] John Trevor, "An Analysis of the American Immigration Act of 1924," *International Conciliation,* 202 (Sept. 1924), 58–59.

[18] Theodore Porter, "Objectivity as Standardization: The Rhetoric of Impersonality in Measurement, Statistics, and Cost-Benefit Analysis," in *Rethinking Objectivity,* ed. Allan Megill (Durham, 1994), 209; David Theo Goldberg, *Racial Subjects: Writing on Race in America* (New York, 1997), 34. For Vaile's statement, see Margo Anderson, *The American Census: A Social History* (New Haven, 1988), 147.

Table 1
Immigration Quotas Based on National Origin
(Annual Quota for Each Fiscal Year, Beginning July 1, 1929)

Country or Area	*Quota*	*Country or Area*	*Quota*
Afghanistan[a]	100	Muscat (Oman)[a]	100
Albania	100	Nauru (British mandate)	100
Andorra	100	Nepal[a]	100
Arabian peninsula	100	Netherlands	3,153
Armenia	100	New Guinea, Territory of (including appertaining islands) (Australian mandate)[a]	100
Australia (including Tasmania, Papua, islands pertaining to Australia)	100	New Zealand	100
Austria	1,413	Norway	2,377
Belgium	1,304	Palestine (with Trans-Jordan) (British mandate)	100
Bhutan[a]	100	Persia	100
Bulgaria	100	Poland	6,524
Cameroon (British mandate)	100	Portugal	440
Cameroon (French mandate)	100	Ruanda and Urundi (Belgian mandate)	100
China[a]	100	Rumania	295
Czechoslovakia	2,874	Russia, European and Asiatic	2,784
Danzig, Free City of	100	Samoa, Western (mandate of New Zealand)	100
Denmark	1,181	San Marino	100
Egypt	100	Siam[a]	100
Estonia	116	South Africa, Union of	100
Ethiopia (Abyssinia)	100	South West Africa (mandate of Union of South Africa)	100
Finland	569	Spain	252
France	3,086	Sweden	3,314
Germany	25,957	Switzerland	1,707
Great Britain and Northern Ireland	65,721	Syria and the Lebanon (French mandate)	123
Greece	307	Tanganyika (British mandate)	100
Hungary	869	Togoland (British mandate)	100
Iceland	100	Turkey	226
India[a]	100	Yap and other Pacific Islands under Japanese mandate[a]	100
Iraq (Mesopotamia)	100	Yugoslavia	845
Irish Free State	17,853		
Italy	5,802		
Japan[a]	100		
Latvia	236		
Liberia	100		
Liechtenstein	100		
Monaco	100		
Morocco (French & Spanish Zones and Tangier)	100		

SOURCE: *Proclamation by the President of the United States,* no. 1872, March 22, 1929, 46 Stat. 2984.
[a] Quotas for these countries available only for persons born within the respective countries who are eligible to citizenship in the United States and admissible under the immigration laws of the United States.

classes, and racial groups created a vocabulary for public discourse on the great social changes taking place in the United States—industrialization, urban growth, and, of course, immigration. In fact, the census was the favored form of scientific evidence

cited by restrictionists and nativists during this period. That practice began with census officials. Francis A. Walker, the superintendent of the 1870 and 1880 censuses, was president of the Massachusetts Institute of Technology (MIT) and a brilliant scholar in the new field of statistics. He was also an ardent nativist and social Darwinist who believed immigrants from Italy, Hungary, Austria, and Russia were "vast masses of peasantry, degraded below our utmost conceptions . . . beaten men from beaten races, representing the worst failures in the struggle for existence."[19]

Analyzing census data, Walker developed the theory that by the 1880s immigration was retarding the natural birthrate of Americans, which he lauded as the highest in the world since the founding of the Republic and as evidence of the nation's greatness. Because immigrants crowded native-born Americans from unskilled jobs, Walker theorized, the latter adjusted to their limited job opportunities by having fewer children. He considered immigration a "shock" to the principle of natural population increase.[20]

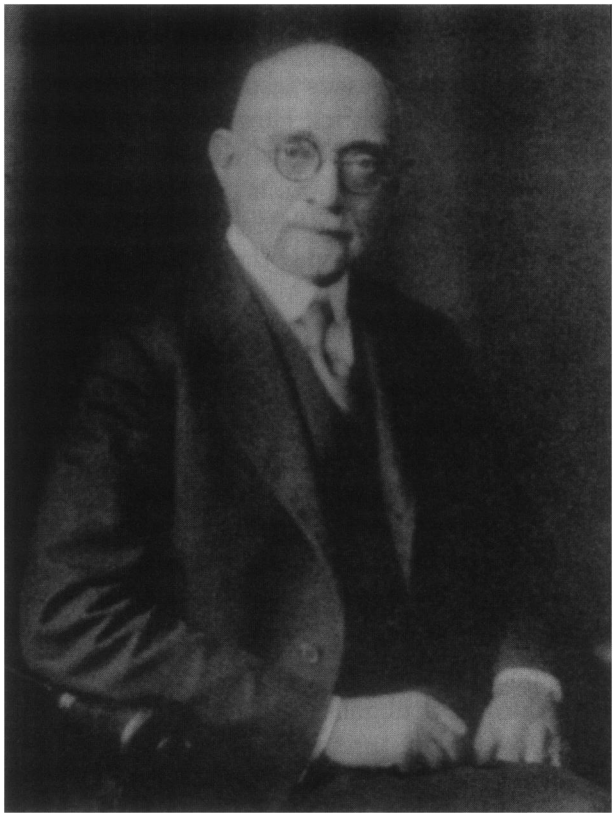
His theory rested on the assumption that the nation possessed a natural character and teleology, to which immigration was external and unnatural. That assumption resonated with conventional views about America's providential mission and the general march of progress. Yet, it was rooted in a profoundly conservative viewpoint that the composition of the American nation should never change. Few people during the 1920s understood, much less accepted, the view of the philosopher Horace Kallen, an advocate of cultural pluralism, that the English had settled the North American Atlantic seaboard, not as a result of prompting from Providence, but as an accident of history.[21]

Francis Walker's theory of the declining native birthrate and the census data upon which it was based became the foundation for the restrictionists' claim that immigration threatened to overwhelm the American nation. It anchored Madison Grant's thesis that the great Nordic race was in danger of extinction. Paraphrasing Walker, Grant warned that upward mobility on the part of native workers was a form of race suicide. "A race that refuses to do manual work and seeks 'white collar' jobs," he said, "is doomed through its falling birth rate to replacement by the lower races or classes. In other words, the introduction of immigrants as lowly laborers means a replacement of race." Similarly, a 1922 publication by the Commonwealth Club of Cali-

[19] Anderson, *American Census,* 133–34; Francis A. Walker, "Restriction of Immigration," *Atlantic Monthly,* 77 (June 1896), 828.

[20] Higham, *Strangers in the Land,* 143; Francis A. Walker, "The Great Count of 1890," *Forum,* 15 (June 1891), 406–18. See also Francis A. Walker, "Immigration and Degradation," *ibid.* (Aug. 1891), 634–44. There is more than one way to interpret such census data. Urban families tend to have fewer children than do farm families, and families of the middle classes are usually smaller than those of the laboring population.

[21] Horace Kallen, *Culture and Democracy in the United States: Studies in the Group Psychology of the American Peoples* (New York, 1924), 98. Walker's assumptions regarding "natural" population increase also involved sophistry. In 1873 Walker criticized that theory as Elkanah Watson had postulated it. Noting that the population of the United States had increased by about one-third during each of the two decades following the 1790 census, Watson projected population increases up to 1900 based on that rate of growth. Walker disagreed, stating that "geometric progression is rarely attained, in human affairs." Yet in the 1890s Walker resuscitated Watson's theory to support the restrictionist agenda, ignoring the criticisms he had made twenty years before. Francis Walker, "Our Population in 1900," *Atlantic Monthly,* 32 (Oct. 1873), 487–95; William Peterson, *The Politics of Population* (New York, 1964), 198–200.



Joseph A. Hill, the chief statistician of the Census Bureau, was chairman of the committee that devised immigration quotas according to the national origins of the American people, as mandated by the Immigration Act of 1924.
Photo courtesy of the Census History Staff, U. S. Bureau of the Census.

fornia, a civic forum devoted to discussion of policy issues, on "Immigration and Population" carried the subtitle, "The Census Returns Prove That Immigration in the Past Century Did Not Increase the Population, but Merely Replaced One Race Stock by Another."[22]

Like Francis Walker, Joseph Hill also came from an elite, old-line New England family. The son of a minister and a cousin of Henry Adams, he graduated from Phillips Exeter Academy and Harvard College (as had his father and grandfather) and received his Ph.D. at the University of Halle, Germany. Although Hill began his tenure at the Census Bureau in 1899, two years after Walker's death, he held many

[22] Madison Grant, *The Passing of the Great Race* (New York, 1916), 104; Edward Lewis, *Nation or Confusion? A Study of Our Immigration Problems* (New York, 1928), 79; Madison Grant and Charles Stewart Davison, eds., *The Alien in Our Midst; or, "Selling our Birthright for a Mess of Pottage"* (New York, 1930), 15; "Immigration and Population," *Transactions of the Commonwealth Club of California,* 17 (Oct. 1922), 1, copy in "Immigration, California" file, box 2, Paul Scharrenberg Papers (Bancroft Library, University of California, Berkeley).

of the same views. In 1910, using previously unpublished and untabulated census data, Hill contributed to the Dillingham Commission's study of immigration two monographs that were of great importance to the restrictionist movement. The first study analyzed occupational distribution by nativity; the second determined differentials in fecundity between the foreign-born, the the native-born of foreign-born parents, and the native-born of native parents. Not coincidentally, these studies provided additional empirical evidence for Francis Walker's theory of the retarded native birthrate.[23]

Since the mid-nineteenth century, scientific race theory had revolved around efforts to develop systems of racial classification and typology. In this vein, Hill strove for ever more precise categories of classification and comparisons of type. He added new questions to the census in 1910 and 1920 in the hope of elucidating differences in race and nationality in increasing detail. Hill restored the "mulatto" race category (which had been eliminated in the 1900 census) as well as questions to ascertain literacy, ability to speak English, mother tongue, number of children born and living, and length of time in the United States. He was particularly interested in creating indices to gauge assimilation, and he presented data in tables that made racial comparisons convenient.[24]

In a sense, demographic data were to twentieth-century racists what craniometric data had been to race scientists during the nineteenth. Like the phrenologists who preceded them, the eugenicists worked backward from classifications they defined *a priori* and declared a causal relationship between the data and race. Instead of measuring skulls, they counted inmates in state institutions. If statistics showed that immigrants were less healthy, less educated, and poorer than native-born Americans, that was deemed evidence of the immigrants' inferior physical constitution, intelligence, and ambition.

Unlike Francis Walker, Joseph Hill did not aggressively campaign for restriction. He endorsed the national origins principle in a restrained way and otherwise scrupulously avoided taking political positions. Yet, like all scientists, he brought his own political views and values to his work—to the questions he asked, to the ways in which he classified data, and to the interpretations he drew from the data. In Hill's case, those politics had guided a proliferation of census data on the foreign-born that served the nativist movement.[25]

[23] *New York Herald Tribune,* Dec. 13, 1939, clipping, "Career and Funeral" file, box 3, Correspondence of Joseph Hill, Records of the Assistant Director of Statistical Standards, Records of the Chief Statistician, Administrative Records of the Census Bureau, RG 29 (National Archives); U.S. Congress, Senate, *Reports of the Immigration Commission,* "Occupations of the First and Second Generations of Immigrants in the US and Fecundity of Immigrant Women," 61 Cong., 2 sess., Jan. 12, 1910.

[24] Joseph Hill, "Some Results of the 1920 Population Census," *Journal of the American Statistical Association,* 18 (Sept. 1922), 350–58; Joseph Hill, "Composition and Characteristics of Population," typescript, [1920], file C-22, box 146, Memoranda and Notes [of Joseph Hill], Records of the Assistant Director of Statistical Standards, Records of the Chief Statistician, Administrative Census Records. Hill acknowledged that the number of questions on the population schedule pertaining to the foreign-born seemed out of proportion to the relative size of the foreign-born population. But he argued they were of great value, especially in 1920, since "the composition of our population as regards race and nativity or nationality is, if possible, of greater interest and importance at this time than ever before." See Joseph Hill, "Scope of the Fourteenth Census," typescript, [1917–1919], "Papers written by Dr. Hill" file, box 4, Miscellaneous Records [of Joseph Hill], *ibid.*

[25] Hill, "Problem of Determining the National Origin of the American People," 2–3.

That is not to say that Hill's work was unscientific or unprofessional. To the contrary, he was a serious professional who worked according to the established methods and disciplinary requirements of his field. As Nancy Stepan has pointed out, scientific racism's power lay, in large part, in its adherence to scientific methodology and disciplinary standards. If race science were merely pseudoscience, it would have had far less currency.[26]

In fact, Hill agonized over the methodological problems in determining national origins. One of the most serious problems he confronted was the lack of reliable information about the national origins of the white native-stock population. Hill deduced that roughly half the white population in 1920 consisted of descendants from the original colonial population, but the census of 1790 did not record data on place of birth. A study conducted by the Census Bureau in 1909, *A Century of Population Growth,* classified the population of 1790 according to country of origin by analyzing the surnames of the heads of households recorded in the census. The study found 87 percent of the population to be English. Independent scholars believed the report was inaccurate, however, because it failed to recognize that some names were common to more than one country and that many Irish and German names had been anglicized. It omitted Scandinavians from the national composition altogether. Hill too believed the report was "of questionable value."[27]

Nevertheless, Hill decided to use *A Century of Population Growth* because no other data existed. But after protests mounted from groups of Irish, German, and Scandinavian Americans, he realized that the flawed report endangered the credibility of the entire exercise. With the help of a $10,000 grant from the American Council of Learned Societies, Hill enlisted Howard Barker, a genealogist, and Marcus Hansen, an immigration historian, to determine the national origins of the white population in 1790. Their conclusions, based on a more sophisticated method of analyzing surnames and reported to the Quota Board in 1928, adjusted the allocations of origins of the colonial stock considerably. Great Britain and Northern Ireland's share fell from 82 percent to 67 percent of the total, reducing its quota by 10,000.[28]

Assuming that Barker and Hansen discerned the national origins of the population in 1790 with fair accuracy, determining the national origins of the American population from that base, following their descendants forward in time from 1790 to 1920, was an entirely different matter. The methodology employed by the Quota Board analyzed the population in terms of numerical equivalents, not actual persons. Hill explained that the Quota Board could not "classify people into so many

[26] Stepan, *Idea of Race in Science,* xvi.

[27] Minutes of Quota Board meeting, June 23, 1926, file 19, box 1, Reports relating to Immigration Quota Laws, Census Records; Joseph Hill, "Memorandum for the Secretary," June 21, 1926, p. 3, file 15, box 1, Memoranda and Notes [of Joseph Hill], Administrative Census Records; William S. Rossiter, *A Century of Population Growth* (Washington, 1909); Joseph Hill, "Notes on Prof. Jameson's Paper on 'American Blood in 1775,'" typescript, [1924–1925], file 20, box 2, Reports relating to Immigration Quota Laws, Census Records.

[28] Hill, "Memorandum for the Secretary," 3; American Council of Learned Societies, "Report of Committee on Linguistic and National Stocks in the Population of the United States," *Annual Report of the American Historical Association* (3 vols., Washington, 1931), I, 124. See also Anderson, *American Census,* 148–49.

distinct groups of individual persons, each group representing the number of individual persons descending from a particular country." He continued,

> Even if we had complete genealogical records that would not be possible because there has been a great mixture of nationalities through inter-marriage since this country was first settled. So when the law speaks of the number of inhabitants having a particular national origin, the inhabitant must be looked upon as a unit of measure rather than a distinct person. That is to say, if we have, for example, four people each of whom had three English grandparents and one German grandparent, . . . we have the equivalent of three English inhabitants and one German inhabitant.[29]

Using numerical equivalents may have been the only available statistical method, but it revealed the fundamental problem of the whole project. The method treated national identities as immutable and transhistorical, passed down through generations without change. The Quota Board assumed that even if nationalities combined through intermarriage, they did not mix but remained in descendants as discrete, unalloyed parts that could be tallied as fractional equivalents. The board's view of national origin drew from the concept of race defined by bloodline and blood quantum, which was available in the established definition of Negro. Rather than apply the "one drop of blood" rule, however, the board conceived of intermarriage between European nationalities in Mendelian terms. But is a person with three English grandparents and one German grandparent really the numerical equivalent of her ancestors? Or does that person perhaps develop a different identity that is neither English nor German but syncretic, produced from cultural interchanges among families and communities and shaped by the contingencies of her own time and place? By reifying national origin, Congress and the Quota Board anticipated the term "ethnicity," inventing it, as Werner Sollors said, with the pretense of its being "eternal and essential" when, in fact, it is "pliable and unstable." Sollors's view of ethnicity as a "pseudo-historical" concept triggered by "the specificity of power relations at a given historical moment" fits well the notion of immigration quotas based on national origin.[30]

The Quota Board also ignored intermarriage between Euro-Americans and both African Americans and Native American Indians, never problematizing the effect of miscegenation on the "origins" of the white population. That was because no conceptual space for such consideration existed in the absolutism of American racial construction. Thus, even as the board proceeded from an assumption that all bloodlines were inviolate, it conceptualized national origin and race in fundamentally different ways.[31]

[29] Hill, "Problem of Determining the National Origin of the American People," 5–6.

[30] Werner Sollors, "Introduction: The Invention of Ethnicity," in *The Invention of Ethnicity,* ed. Werner Sollors (New York, 1989), xiv–xvi.

[31] On the persistent denial of the existence and scale of interracial marriage in the United States, see Gary Nash, "The Hidden History of Mestizo America," *Journal of American History,* 82 (Dec. 1995), 941–64. See also Peggy Pascoe, "Miscegenation Law, Court Cases, and the Ideology of Race in Twentieth-Century America," *ibid.*, 83 (June 1996), 44–69; and Joel Williamson, *New People: Miscegenation and Mulattos in the United States* (New York, 1984).

Even when considered on its own terms, the task of calculating national origins was beset by methodological problems. The Quota Board had to make assumptions to fill the gaps in the data. Hill acknowledged that his computations involved "rather arbitrary assumptions," some of which did "violence to the facts." The most serious—and surprising, in light of Hill's long-standing interest in immigrant fecundity—was his decision to apply the same rate of natural increase to all national groups. Hill also weighted the population figures for each decade, giving each earlier decade greater numerical importance than the succeeding one, to allow for a larger proportion of descendants from earlier immigrants. The net result of these assumptions tilted the numbers toward the northern European nationalities.[32]

Hill himself expressed concern that the entire exercise rested on so many assumptions that the conclusions might not be viable. Ultimately, Hill rationalized, arguing that errors in the process would not significantly affect the outcome. Because the law assigned one quota slot for each 600 people in the 1920 population, Hill said, a deviation of 60,000 in the population of any nationality would alter its quota by only 100. A more honest inquiry might have concluded that determining the national origins of the American people was theoretically suspect and methodologically impossible. But, once President Hoover promulgated the quotas in 1929, the "national origins" of the American people, and the racial hierarchies embedded in them, assumed the prestige of law and the mantle of fact.[33]

Eligibility to Citizenship and the Rule of Racial Unassimilability

The system of quotas based on national origin was the first major pillar of the Immigration Act of 1924. The second was the exclusion of persons ineligible to citizenship. By one account, the provision barred half the world's population from entering the United States.[34]

Ineligibility to citizenship and exclusion applied to the peoples of all the nations of the Far East. Nearly all Asians had already been excluded, either by the Chinese exclusion laws or by the "barred Asiatic zone" that Congress created in 1917. The latter comprised the area from Afghanistan to the Pacific, save for Japan, which the State Department wished not to offend, and the Philippines, a United States territory. In 1907 the Japanese government had agreed to prevent laborers from emigrating to the United States, but nativists complained that the diplomatic agreement was ineffective. The exclusion of persons ineligible to citizenship by the Immigration Act

[32] See Hill, "Memorandum for the Secretary," 2; Minutes of Quota Board meeting, May 25, 1926, p. 3, file 19, box 2, Reports relating to Immigration Quota Laws, Census Records; Hill to Secretary of State, Secretary of Commerce, Secretary of Labor, Feb. 15, 1928, in *Immigration Quotas on the Basis of National Origin,* 70 Cong., 1 sess., Feb. 28, 1929, S. Doc. 65, p. 9; LaVerne Beales, "Committee on Distribution of Population by National Origin," typescript, Dec. 1, 1924, file 16, box 2, Reports relating to Immigration Quota Laws, Census Records.

[33] Hill, "Memorandum for the Secretary," 2; Minutes of Quota Board meeting, May 25, 1926, p. 3, file 19, box 2, Reports relating to Immigration Quota Laws, Census Records; Hill, "Problem of Determining the National Origin of the American People," 21; Hill to Secretary of State, Secretary of Commerce, Secretary of Labor, Feb. 15, 1928, in *Immigration Quotas on the Basis of National Origin,* 7.

[34] Act of May 26, 1924, sec. 13 (c), 43 Stat. 152; Paul Scharrenberg, "America's Immigration Problem," Dec. 1926, p. 4, "Immigration Quotas" file, box 2, Paul Scharrenberg Papers.

of 1924 achieved statutory Japanese exclusion and completed Asiatic exclusion. Moreover, it codified the principle of racial exclusion, incorporating it into general immigration law, albeit through the euphemistic reference to "persons ineligible to citizenship," which remained in effect until 1952.[35]

Two major elements of twentieth-century American racial ideology evolved along with the racial requirement for citizenship: the legal definition of "white" and the rule of racial unassimilability. The origin of these concepts may be found in the Nationality Act of 1790, which granted the right to naturalized citizenship to "free white persons." After the Civil War and the passage of the Fourteenth Amendment, Congress amended the Nationality Act to extend the right to naturalize to "persons of African nativity or descent." The latter was a gratuitous gesture to the former slaves. No one seriously believed that "the [N]egroes of Africa [would] emigrate," a federal judge explained in 1880, "while the Indian and the Chinaman were in our midst, and at our doors and only too willing to assume the mantle of American sovereignty."[36]

The Nationality Act of 1870 thus encoded racial prerequisites to citizenship according to the familiar classifications of black and white. European immigrants fit into that legal construct as white persons: between 1907 and 1924, nearly 1.5 million immigrants, nearly all from European countries, became American citizens. Although nativists commonly referred to southern and eastern Europeans as "undesirable races," their eligibility to citizenship as "white persons" was never challenged and the legality of naturalizing European immigrants was never an issue in public and political discourse. The Chinese Exclusion Act of 1882 declared Chinese ineligible to citizenship, but it remained unclear where Japanese, Asian Indians, Armenians, Syrians, Mexicans, and other peoples that immigrated into the United States in the late nineteenth and early twentieth century fit in the black-white construct of citizenship law. Although in 1906 the United States attorney general held Japanese and Asian Indians to be ineligible to citizenship, several hundred Japanese and Asian Indians obtained naturalized citizenship during the first two decades of the century. Between 1887 and 1923 the federal courts heard twenty-five cases challenging the racial prerequisite to citizenship, culminating in two landmark rulings by the United States Supreme Court, *Ozawa v. United States*

[35] In 1882 the first Chinese exclusion law barred Chinese laborers from entering the United States for a period of ten years. The law was renewed twice and made permanent in 1904. Act of May 6, 1882, 22 Stat. 58; Act of May 5, 1892, 27 Stat. 25; Act of April 29, 1902, 32 Stat. 176; Act of April 27, 1904, 33 Stat. 428. The Immigration Act of 1917 provided for a "barred zone," which included parts of Arabia, Afghanistan, India, Burma, Thailand, Indochina, the Malay States, the East Indian Islands, Asiatic Russia, and the Polynesian Islands. Act of Feb. 5, 1917, 39 Stat. 874. The McCarran-Walter Act abolished all racial requirements to citizenship. Act of June 27, 1952, 66 Stat. 163. On Chinese exclusion, see Mary Coolidge, *Chinese Immigration* (New York, 1909); Alexander Saxton, *The Indispensable Enemy* (Berkeley, 1971); Sucheng Chan, ed., *Entry Denied: Exclusion and the Chinese Community in America, 1882–1943* (Philadelphia, 1990); and Lucy Salyer, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill, 1993). On Japanese exclusion, see Yuji Ichioka, *The Issei: The World of First Generation Japanese Immigrants, 1880–1924* (New York, 1988); and Roger Daniels, *The Politics of Prejudice: The Anti-Japanese Movement in California and the Struggle for Japanese Exclusion* (Berkeley, 1977). On Asian Indian exclusion, see Joan Jensen, *Passage from India* (New Haven, 1988).

[36] Act of March 6, 1790, 1 Stat. 103; Act of July 14, 1870, 16 Stat. 25; Stanford Lyman, "The Race Question and Liberalism: Casuistries in American Constitutional Law," *International Journal of Politics, Culture, and Society,* 5 (Winter 1991), 231.

Henry Yoshitaka Kiyama's *Four Immigrants Manga,* published in 1931, tells the story of Japanese immigrants in San Francisco during the early twentieth century in comic strip format. In this episode, Kiyama depicts the character Charlie as both idealistic and foolish: he wants to buy land, marry a white woman, and become a citizen—all rights that state or national laws denied to Japanese in the United States.

Reprinted by permission from The Four Immigrants Manga: A Japanese Experience in San Francisco, 1904–1924, *by Henry (Yoshitaka) Kiyama, trans. by Frederik L. Schodt (Berkeley: Stone Bridge Press, 1999).*

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(1922) and *United States v. Thind* (1923). In each case, the court's decision turned on whether the petitioner could be considered a "white person" within the meaning of the statute.[37]

The judicial genealogy of the rules of racial eligibility to citizenship followed a racial logic different from that of the legislative discourse surrounding the quota laws. While the latter emphasized eugenics and the superiority of Nordics, scientific race theory proved inadequate to the classificatory challenge that eligibility to citizenship, and Asiatic exclusion generally, required of the law. As Ian Haney López has pointed out, the federal courts' rulings in naturalization cases increasingly rejected scientific explanations in favor of common understandings of race. No doubt this was because science was revealed to be an unreliable guide to racial exclusion. The few petitioners who successfully litigated their status as white persons did so with the aid of scientific race theories. In 1909 a federal court in Georgia ruled that George Najour, a Syrian, was eligible to citizenship. District Judge William Newman stated that "fair or dark complexion should not be allowed to control" determinations of race. He cited A. H. Keane's *The World's People* (1908), which divided the human race into four categories, noting that Keane "unhesitatingly place[d] the Syrians in the Caucasian or white division." Using similar logic, federal courts admitted Syrians, Armenians, and Asian Indians to citizenship as white persons in seven cases between 1909 and 1923.[38]

In *Ozawa* the Supreme Court struggled with the problem of racial classification. The Court acknowledged that color as an indicator of race was insufficient, given the "overlapping of races and a gradual merging of one into the other, without any practical line of separation." Yet, the Court resisted the logical conclusion that no scientific grounds for race existed. It sidestepped the problem of classification by simply asserting that white and Caucasian were one and the same, concluding, with circular reasoning, that Japanese cannot be Caucasian because they are not white.[39]

The Court resolved this problem in the *Thind* case, which it heard just a few months after *Ozawa*. Bhagat Singh Thind, a "high class Hindu," had argued his eligibility to citizenship as a white person based on his Aryan and Caucasian roots. Citing anthropological experts, Thind noted that the Aryans of India are a "tall, long-headed race with distinct European features, and their color on the average is not as dark as the Portuguese or Spanish." Because marrying outside of caste is strictly forbidden in India, Thind argued that he was a "pure Aryan."[40]

The government rejected Thind's claim to whiteness as ridiculous. "In the popular conception," it stated, "he is an alien to the white race and part of the 'white man's burden'. . . . Whatever may be the white man's burden, the Hindu does not

[37] Census Bureau, *Historical Statistics of the United States,* I, 114–15; Jensen, *Passage from India,* 247–48; Ichioka, *Issei,* 211; *Ozawa v. United States,* 260 U.S. 178 (1922); *United States v. Thind,* 261 U.S. 204 (1923). The possibility that the petitioners might be legally defined as black was never considered, notwithstanding legal and social precedent that treated Asians as akin to black people. It would do the government no good to argue that Chinese or Indians were black because that would have made them eligible to citizenship. See *People v. Hall,* 4 Cal. 399 (1854); Jensen, *Passage from India,* 12–14; Haney López, *White by Law,* 51–52.

[38] Haney López, *White by Law,* 65–77; *In re Najour,* 174 F. 735–36 (N.D. Ga. 1909).

[39] *Ozawa v. United States,* 197.

[40] Brief of Respondent at 10, 36, *United States v. Thind.*

share it, rather he imposes it." The Court agreed, stating, "The word [Caucasian] by common usage has acquired a popular meaning, not clearly defined to be sure, but sufficiently so to enable us to say that its popular as distinguished from its scientific application is of appreciably narrower scope." In *Thind* the Court dismissed science altogether. The term "Caucasian," it said, "under scientific manipulation, has come to include far more than the unscientific mind suspects." Noting that Keane included Indians, Polynesians, and the Hamites of Africa in the Caucasian race, the Court commented dryly, "We venture to think that the average well-informed white American would learn with some degree of astonishment that the race to which he belongs is made up of such heterogeneous elements." The Court believed that the original framers of the law intended "to include only the type of man whom they knew as white . . . [those] from the British Isles and northwestern Europe . . . bone of their bone and flesh of their flesh." Furthermore, the meaning of white readily expanded to accommodate immigrants from "Eastern, Southern, and Mid Europe, among them Slavs and the dark-eyed, swarthy people of Alpine and Mediterranean stock." Those immigrants were "received [as] unquestionably akin to those already here and readily amalgamated with them."[41]

The Court's edict in *Thind*—"What we now hold is that the words 'free white persons' are words of common speech, to be interpreted with the understanding of the common man"—amounted to a concession to the socially constructed nature of race. Moreover, its acknowledgement of the assimilability of eastern and southern Europeans and its insistence on the unassimilability of Asians rendered a double meaning to assimilation. For Europeans, assimilation was a matter of socialization and citizenship its ultimate reward. Asians, no matter how committed to American ideals or practiced in American customs, remained racially unassimilable and unalterably foreign.[42]

Although *Ozawa* and *Thind* applied to Japanese and South Asians, respectively, the Court made a leap in racial logic to apply the rule of ineligibility to citizenship to Koreans, Thais, Vietnamese, Indonesians, and other peoples of Asian countries who represented discrete ethnic groups and, in contemporary anthropological terms, different racial groups. This involved a measure of casuistry, which used retroactive and circular reasoning. In the last paragraph of *Thind* the Court applied the rule of ineligibility to citizenship to the natives of all Asian countries, saying:

> It is not without significance in this connection that Congress, by the [Immigration] Act of 1917 . . . excluded from admission into this country all natives of Asia within designated limits of latitude and longitude, including the whole of India. This not only constitutes conclusive evidence of the congressional attitude of opposition to Asiatic immigration generally, but is persuasive of a similar attitude towards Asiatic naturalization as well, since it is not likely that Congress would be willing to accept as citizens a class of persons whom it rejects as immigrants.[43]

[41] Brief for the United States, 16, 19, *ibid.*; *ibid.*, 209, 211.

[42] *US v. Thind* at 213; Jeff Lesser, "Always 'Outsiders': Asians, Naturalization, and the Supreme Court," *Amerasia Journal,* 12 (no. 1, 1985), 83–100.

[43] *United States v. Thind,* 215.

Takao Ozawa (c. 1916). Ozawa emigrated from Japan as a child, attended the University of California at Berkeley, and claimed his right to naturalized citizenship on grounds that he had assimilated, saying "at heart I am a true American." In *Ozawa v. United States* (1922) and *United States v. Thind* (1923), the Supreme Court ruled that Japanese, South Asians, and all Asiatics were ineligible to citizenship under federal laws, restricting naturalization to "white persons" and "persons of African nativity and descent." *Photo courtesy of Yuji Ichioka.*

In 1923, on the heels of *Ozawa* and *Thind,* the Court issued four rulings upholding California and Washington state laws proscribing agricultural land ownership by aliens ineligible to citizenship. Those laws had been passed in the 1910s to drive Japanese and other Asians out of farming. In *Terrace v. Thompson,* the Court held that the alien land laws fell within the states' police powers to protect the public interest. Ironically, Japanese had taken up agriculture during the first decade of the century in the belief that farming would facilitate permanent settlement, civic responsibility, and assimilation. But if Japanese embraced the Jeffersonian ideal, the nativists who dominated Progressive politics on the Pacific Coast concluded that Japan was conspiring to take California away from white people. In a typical statement, United

States senator James Phelan, formerly the mayor of San Francisco and for thirty years a leading California exclusionist, claimed in 1920 that Japanese land colonies in Merced County "would have destroyed that section for white settlement . . . and the desirable element."[44]

In the alien land law cases, the Court did not address whether Japanese or other Asians were eligible to citizenship. That had already been decided—indeed, naturalized—by *Ozawa* and *Thind*. The Court contended that the alien land laws did not discriminate against Japanese because the laws applied to *all* aliens ineligible to citizenship, eliding the racial foundation of the concept. The Court held that it was logical and necessary to distinguish between citizens and aliens when considering land ownership, claiming, "Perfect uniformity of treatment of all persons is neither practical nor desirable. . . . classification of persons is constantly necessary [and] must therefore obtain in and determine legislation." The Court asserted, "One who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of the state, and so lacking, the state may rightfully deny him the right to own or lease land estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot of land within the state may pass to the ownership of non-citizens." In this way the Court both refined and obscured the racial logic embedded in the concept of ineligibility to citizenship, rendering invisible its premise of racial unassimilability.[45]

Together, the naturalization and land cases solidified the concept "ineligible to citizenship," providing the basis for Asiatic exclusion in the Immigration Act of 1924. There is no direct evidence that the Supreme Court intended to influence the character of immigration legislation. But the timing of the decisions, coincident with the congressional debates over immigration restriction, is striking, especially since *Ozawa* and *Thind* had languished on the docket since World War I.[46]

The Supreme Court rulings on Asians in 1922–1923 and the Immigration Act of 1924 thus completed the legal construction of "Asiatic" as a racial category. The "national origins" of Asians had become thoroughly racialized. This construct of race, based both on nationality and "common" or subjective understandings of race, differed from the language of eugenics that dominated the legislative discourse of immigration restriction, which was based on scientific race theory. Yet, the racialization of Asian nationalities was consistent with the overarching logic of the language in the Immigration Act of 1924, which, at the formal level, was based on categories of nationality and not of race. The act thus fit the modern tenor of classifying the

[44] *Terrace v. Thompson,* 263 U.S. 197 (1923) at 221. Eight states restricted or prohibited aliens ineligible to citizenship from taking or holding real estate: Arizona, California, Idaho, Kansas, Louisiana, Montana, New Mexico, and Oregon. The Supreme Court also upheld alien land laws in *Porterfield v. Webb,* 263 U.S. 225 (1923); *Frick v. Webb,* 263 U.S. 225 (1923); and *Webb v. O'Brien,* 263 U.S. 313 (1923). James Phelan is quoted in U.S. Congress, House, Committee on Immigration and Naturalization, *Japanese Immigration,* 66 Cong., 2 sess., July 12–14, 1920, p. 20. On alien land laws, see Milton Konvitz, *The Alien and the Asiatic in American Law* (Ithaca, 1946), 161, 187–89; Ichioka, *Issei,* 146–56.

[45] *Truax v. Corrigan,* 257 U.S. 312, cited in *Terrace v. Thompson,* 263 U.S. at 218; *Terrace v. Thompson,* 263 U.S. at 221.

[46] Ichioka, *Issei,* 223.

world into nation-states and avoiding explicit racial language in the law. However, the underlying assumptions in the construction of those categories diverged in relationship to Europeans and Asiatics. The racial and national identities of the former became uncoupled while those of the latter became merged. The divergence pointed to a racial logic that determined which people could assimilate into the nation and which people could not. Thus, the shift in formal language from race to national origin did not mean that race ceased to operate, but rather that it became obfuscated.

From Conquered Natives to Illegal Aliens

If Congress and the Court defined Asiatics as definitely not white, they found the problem of racially classifying Mexicans much more vexing. In the late 1920s the California Joint Immigration Committee and other nativist organizations sought to restrict immigration of Mexicans on grounds of their alleged racial ineligibility to citizenship. But not only did agricultural interests in the Southwest and diplomatic and business interests in Latin America impede restrictions on immigration from Mexico, Mexicans resisted easy racial classification because they fit no clear type.

The history of the Southwest as former Mexican territory, annexed by the United States as a result of the Mexican-American War, further complicated the meanings of race and citizenship. To be sure, Anglo-Americans never considered Mexicans their racial equals and, moreover, regarded them with the suspicion they had historically accorded genotypically mixed peoples. Yet, paradoxically, conquest mitigated the racialization of Mexicans in the United States. The Treaty of Guadalupe Hidalgo, which specified the terms of Mexico's defeat in 1848, gave Mexico's northern half to the United States and stipulated that all inhabitants in the ceded territory who did not either announce their intention to remain Mexican citizens or leave the territory in one year would automatically become citizens of the United States. American citizenship in this instance was not consistent with the liberal tradition of citizenship by consent. Rather, it indicated Mexicans' new status as a conquered population.[47]

In 1929 Secretary of Labor James Davis advised Albert Johnson of the House immigration committee (coauthor of the Immigration Act of 1924) that the precedent of mass naturalization made it impossible to apply the rule of racial ineligibility to Mexicans. The right to naturalize under the terms of the treaty had been upheld by a federal court in 1897, when Ricardo Rodriguez, a thirty-seven-year-old native

[47] Gutiérrez, *Walls and Mirrors,* 13–20; Reginald Horsman, *Race and Manifest Destiny: The Origins of American Anglo-Saxonism* (Cambridge, Mass., 1981), 210. For an estimate that fewer than 2,000 of the 75,000 Mexican nationals in the ceded territory remained Mexican citizens, see Carey McWilliams, *North from Mexico: The Spanish-Speaking People of the United States* (New York, 1968), 51–52. On citizenship based on territoriality, see Peter Schuck and Rogers Smith, *Citizenship without Consent: Illegal Aliens in the American Polity* (New Haven, 1985), 40. The practice of extending citizenship automatically was established before the Mexican-American War, in Anglo-American settlement of the Southwest. When Texas declared independence from Mexico in 1836, the Texas Constitution recognized Mexicans as citizens of the republic. In 1845, when Texas joined the Union, Congress recognized all the citizens of the former republic as citizens of the United States. The California constitutional convention of 1849 granted Mexicans the same citizenship rights as white persons. See Tomás Amalguer, *Racial Fault Lines: The Historical Origins of White Supremacy in California* (Berkeley, 1993), 55–56.

of Mexico who had lived in San Antonio for ten years, petitioned to become a citizen in Bexar County. The attorneys of the court contested his eligibility on grounds that "he is not a white person, nor an African, nor of African descent." In district court, Judge Thomas Maxey noted that "as to color, he may be classed with the copper-colored or red men. He has dark eyes, straight black hair, and high cheek bones." But, the judge concluded, because Rodriguez "knows nothing of the Aztecs or Toltecs, [h]e is not an Indian."[48]

The court also tried to ascertain Rodriguez's understanding of and support for the Constitution. Rodriguez could not explain the principles of the Constitution, but the judge attributed his seeming ignorance to his illiteracy and accepted testimony by a white acquaintance of Rodriguez, who said, "I know the man. I know that he is a good man, and know, . . . whatever the principles of the Constitution might be, that he would uphold them if he knew what they were." The witness said Rodriguez was peaceable, honest, and hardworking, of good moral character, and law-abiding "to a remarkable degree."[49]

Judge Maxey conceded, "If the strict scientific classification of the anthropologist should be adopted, [Rodriguez] would probably not be classed as white." However, the constitution of the Texas Republic, the Treaty of Guadalupe Hidalgo, the Gadsden treaty, and other agreements between the United States and Mexico either "affirmatively confer[red] the rights of citizenship upon Mexicans, or tacitly recognize[d] in them the right of individual naturalization." Noting that such agreements covered "all Mexicans, without discrimination as to color," Judge Maxey concluded that Rodriguez was "embraced within the spirit and intent of our laws upon naturalization."[50]

In re Rodriguez foreshadowed *Thind* by acknowledging the subjectivity of racial identification. Despite the judge's perception that Rodriguez was probably Indian (or, at least, not white), the court bowed to Rodriguez's own claim that he was not Indian, Spanish, or African but, rather, "pure blooded Mexican." Secretary of Labor Davis also recognized that self-identification impeded race-based immigration policy. He said, "the Mexican people are of such a mixed stock and individuals have such a limited knowledge of their racial composition that it would be impossible for the most learned and experienced ethnologist or anthropologist to classify or determine their racial origin. Thus, making an effort to exclude them from admission or citizenship because of their racial status is practically impossible."[51]

Mexicans' legal status as white persons was unstable, however. By the late 1920s, a Mexican "race problem" had emerged in the Southwest, impelled by contradictions wrought by the burgeoning of commercial agriculture, an all-time high in Mexican immigration, and the formation of a migratory, landless agricultural proletariat and of segregated communities. Immigration policy was deeply implicated in the reorganization of the region's political economy. Although Congress was unwilling to

[48] James Davis to Albert Johnson, Feb. 14, 1929, HR71A-F16.1, Records of the House of Representatives, RG 233 (National Archives); *In re Rodriguez,* 81 Fed. 337–338 (W.D. Texas, 1897).

[49] *In re Rodriguez,* 338.

[50] *Ibid.*, 349, 354, 352, 354–55.

[51] *Ibid.* at 337; Davis to Johnson, Feb. 14, 1929, p. 5, file HR71A-F16.1, House Records.

impose quotas on Mexican immigration or to exclude Mexicans on racial grounds, it did seek to restrict Mexican immigration by administrative means. In 1929 the United States consuls in Mexico began more strictly to enforce existing provisions of the immigration law—the ban on contract labor, the literacy test, and the provision excluding any person "likely to become a public charge"—in order to refuse visas to all Mexican laborers save those with prior residence in the United States. The policy had an immediate effect. Immigration from Mexico, which had averaged 58,747 a year during the late 1920s, dropped to 12,703 in 1930 and 3,333 in 1931.[52]

That decrease, however, was only in legal immigration. Contemporaries estimated that illegal immigration ran as high as 100,000 a year throughout the 1920s. Unofficial entry was not new, as migration across the border had had an informal, unregulated character since the nineteenth century. But during the 1920s Congress made provisions for the enforcement of immigration laws that hardened the difference between legal and illegal immigration. It lifted the statute of limitations on deportation in 1924 and formed the Border Patrol in 1925. In 1929 Congress made unlawful entry a felony, a move that was intended to solve the problem of illegal immigration from Mexico. The number of Mexicans deported formally under warrant rose from 846 in 1920 to 8,438 in 1930. In addition, some 13,000 Mexicans a year were expelled as "voluntary departures" in the late 1920s and early 1930s.[53]

By the late 1920s the problem of illegal immigration became increasingly associated with Mexicans, as they came to constitute half of those deported formally under warrant and over 80 percent of all voluntary departures. Illegal European immigrants who were apprehended by the Immigration Service were also more likely to avoid deportation. Euro-American communities had achieved a measure of political representation and could count on religious and settlement organizations to advocate their interests. Euro-American communities also had greater access to legal assistance than did their Mexican counterparts. A contemporary study found that 20

[52] Divine, *American Immigration Policy,* 62–68; U.S. Department of State, "Latest Statistics on Immigration from Mexico," May 12, 1930, HR71-F16.4, House Records; Census Bureau, *Historical Statistics of the United States,* I, 107. On the economic and social transformation of the Southwest, 1900–1930, see Carey McWilliams, *Factories in the Field: The Story of Migratory Farm Labor in California* (Santa Barbara, 1971); Sánchez, *Becoming Mexican American;* Gutiérrez, *Walls and Mirrors;* Montejano, *Anglos and Mexicans in the Making of Texas;* Lawrence Cardoso, *Mexican Emigration to the US* (Tucson, 1980); Mario García, *Desert Immigrants* (New Haven, 1981); and Carlos Vélez-Ibáñez, *Border Visions: Mexican Cultures of the Southwest United States* (Tucson, 1996).

[53] Manuel García y Griego estimated the annual seasonal migration in the 1920s at 60,000 to 100,000. Manuel García y Griego, "The Importation of Mexican Contract Laborers to the United States, 1942–1964: Antecedents, Operation, and Legacy," *Working Papers in US-Mexican Studies* (no. 11, 1981), 5; Robert McLean, "Tightening the Mexican Border," *Survey,* 64 (April 1930), 29, 54; U.S. Department of Labor, Bureau of Immigration, *Annual Report of the Commissioner General of Immigration to the Secretary of Labor,* 1920–1931 (Washington); Census Bureau, *Historical Statistics of the United States,* I, 115. The Immigration Act of 1924 lifted the statute of limitations, providing for the deportation at any time of any person entering after July 1, 1924, without a valid visa or proper inspection. Act of May 26, 1924, sec. 14, 43 Stat. 153. The 1925 statute appropriated $1 million to establish a land Border Patrol, whose officers it empowered to arrest without warrant any alien unlawfully attempting to enter the country "in his presence or view." The Bureau of Immigration construed the "act of entering" to be continuous until the alien reached his "interior destination" in order to apprehend without warrant suspected illegal immigrants anywhere within the nation's borders. Act of Feb. 27, 1925, 43 Stat. 1949. The 1929 statute made unlawful entry a misdemeanor and a second unlawful entry a felony. Act of March 4, 1929, 45 Stat. 1551.

percent of aliens in deportation hearings in New York City had legal counsel as compared to fewer than 2 percent in the Mexican border districts.[54]

"Illegal" became constitutive of "Mexican," referring, not to citizens of Mexico, but to a wholly negative racial category, which comprised both Mexican immigrants and Mexican Americans in the United States. The construction of Mexicans as an illegal and illegitimate foreign presence in their former homeland played a central role in the reorganization of the agricultural labor market in the 1920s. The development of commercial agriculture required the creation of a migratory work force and the destruction of all vestiges of the old *patrón-peón* relationships of mutual obligation that had characterized the late-nineteenth-century ranch economy. Casting Mexicans as foreign *distanced* them both from Anglo-Americans culturally and from the Southwest as a region: it stripped Mexicans of the claim of belonging they had had as natives, even as conquered natives. (The formation of segregated communities similarly served to detach Mexicans from their claims of belonging.) The distancing was a way by which the "other" was constructed, out of what Tzvetan Todorov called the failure (or refusal) to identify the self in the other. It differed from the colonial stance toward conquered native subjects, in which the other is a ward to be converted, civilized, and otherwise remolded in the colonialist's image; no such sense of responsibility inhered in commercial growers' relationship to migratory wage labor. Economic relations between absentee owners and migrant laborers were impersonal. As one grower told the economist Paul Taylor in 1929, "The relations between Mexican laborers and American employers . . . are regulated under economic, not personal pressure."[55]

In 1930 the Census Bureau enumerated Mexicans as a separate race, albeit with the imprecise definition of the Mexican race as persons born in Mexico or with parents born in Mexico and who "are not definitely white, Negro, Indian, Chinese, or Japanese." Distinguishing a separate race of illegitimate foreigners, official policy hardened the idea of Mexicans as a disposable labor force and facilitated the deportation and repatriation of over 400,000 Mexicans (half of them children with United States citizenship) during the Great Depression.[56]

[54] Max Kohler, *Immigration and Aliens in the United States: Studies of American Immigration Laws and the Legal Status of Aliens in the US* (New York, 1936), 413.

[55] Tzvetan Todorov, *The Conquest of America: The Question of the Other,* trans. Richard Howard (New York, 1984), 185; Paul Taylor, "Mexican Labor in the US: Dimmit County, Winter Garden District, South Texas," *University of California Publications in Economics,* 6 (no. 5, 1930), 448.

[56] Joseph Hill, "Composition of the American Population by Race and Country of Origin," *Annals of the American Academy of Political and Social Science,* 188 (Nov. 1936), 177–84. Hill's classification of Mexicans was a half measure between race and country of origin. The census counted only first- and second-generation Mexicans as a separate race and continued to count Mexican Americans of later generations as "white." Paul Taylor estimated 200,000 Americans of Mexican descent in Colorado were counted as white and not Mexican in the 1930 census. Paul Taylor, "Mexican Labor in the US: Migration Statistics IV," *University of California Publications in Economics,* 12 (no. 3, 1933). On repatriation, see Sánchez, *Becoming Mexican American;* Francisco Rodriguez Balderrama and Raymond Rodriguez Balderrama, *Decade of Betrayal: Mexican Repatriation in the 1930s* (Albuquerque, 1995); García y Griego, "Importation of Mexican Contract Laborers to the United States"; Camille Guerin-Gonzales, *Mexican Workers, American Dreams: Immigration, Repatriation, and California Farm Labor, 1900–1939* (New Brunswick, 1994); and Abraham Hoffman, *Unwanted: Mexican Americans in the Great Depression: Repatriation Pressures, 1929–1939* (Tucson, 1974).

The unassimilability of Mexicans to the American nation had long been argued by eugenicists and nativists, but the historical circumstances of conquest, the labor market, and foreign policy made it impossible to exclude Mexicans formally in the same manner as were Asians. Nevertheless, the fundamental nature of restrictive policy created the problem of illegal immigration and placed it at the center of the modern Mexican race problem.

Lawmakers had invoked anthropology and scientific racism to create immigration restriction based on national origin, but it fell to civil servants in the executive branch to devise actual categories of identity for purposes of regulating immigration and immigrants. Indeed, the enumeration and classification of the American people *enabled* such regulation. As Vicente Rafael has suggested, the value of such population schedules to the modern state lay in their "render[ing] visible the entire field of [state] intervention." Thus the invention of national origins and unassimilable races was as much a project of state building as it was one of ideology. Indeed, if World War I marked the end of the "long nineteenth century," the United States emerged during the 1920s in full modern dress. Key to its modern persona was a comprehensive race policy that was unprecedented in scope and embedded in the law and in official practices at the federal level. Immigration policy and its specific constructions of race enabled the state to demarcate and police both the external boundaries and the internal spaces of the nation.[57]

Congress, the Quota Board, the Supreme Court, and the Immigration Service produced and reproduced categories of difference that turned on both nationality and race, reclassifying Americans as racialized subjects simultaneously along both axes. The Immigration Act of 1924 contributed to the racialization of immigrant groups around notions of whiteness, permanent foreignness, and illegality—categories of difference that have outlived the racial categories created by eugenics and post–World War I nativism. Those legacies remain with us to this day, as Lisa Lowe has described, in "racial formations that are the material trace of history."[58]

[57] Vicente Rafael, "White Love: Surveillance and Nationalist Resistance in the United States Colonization of the Philippines," in *Cultures of United States Imperialism,* ed. Amy Kaplan and Donald Pease (Durham, 1993), 188.

[58] Lowe, *Immigrant Acts,* 26.