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Making Modern American Citizenship: Aliens, Citizens, and Rights in the United States, 1865-1965

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WHAT ARE CITIZENSHIP RIGHTS?

What do we mean when we say American “citizenship rights”? Do we mean rights accessible to all Americans under the U.S. Constitution? If so, the expansion of political, civil, and economic rights available in practice to nonwhite Americans and U.S. women represents the most profound development in the history of American citizenship.

But what if certain rights are also available to noncitizens? Are they rights of citizenship? While the right to pursue gainful employment is guaranteed to Americans, resident noncitizens are also ensured similar privileges. Are fair hiring and employment practices “citizenship rights” if they are available to all Americans and many noncitizens?

What of rights that are available only to some citizens? The right to vote can be taken away from adult citizens in many states due to incarceration or past conviction. But if the right to vote is not a “citizenship right,” what is? The campaign for women’s suffrage and battles to overcome southern disfranchisement laws were so long and hard-fought that the right to vote has become widely viewed as the quintessential right of American citizenship. Given these inherent contradictions, how should we understand the meaning and development of “citizenship rights”?

THESIS

This report will explore a central paradox at the heart of American citizenship. Many rights commonly understood as “citizenship rights” are neither confined nor extended to all citizens. But if we insist on a strict definition of “citizenship rights,” we will find that



few rights – if any – meet that classification. We can, however, identify patterns in how, why, and when rights were expanded and/or confined to citizens in state and federal law. In so doing, we can uncover how U.S. citizenship (or lack thereof) came to matter to all residing in the United States.

The following account will describe how citizenship worked in practice from the late-19th to the mid-20th century. Federal laws may have governed naturalization, but state governments could – and often did – adopt starkly contrasting approaches to political and economic rights on the basis of citizenship. At the turn of the 20th century, noncitizen men could vote in Texas, but California counted East and South Asian immigrants out of the population for purposes of political representation. This report will describe how this variation narrowed in a series of battles over the denial rights to noncitizens. In the process, many rights became both popularly understood and codified into law as modern “citizenship rights.”¹

POLITICAL RIGHTS AS RIGHTS OF CITIZENSHIP

Making Voters Citizens

While African-American men achieved the right to vote with the ratification of the 15th Amendment, suffrage did not become a right of citizenship during Reconstruction. After all, U.S. women could vote in only two sparsely populated western territories in 1870. On the other hand, noncitizen men could vote in roughly two dozen states and territories across the midwest, south, and west in the 1870s. What Americans today see as the primary right of citizenship was neither extended to all citizens nor confined to them in the late-19th century. And African-American men would lose that right in practice across the south in subsequent decades.

By the 1920s, suffrage rights had dramatically changed. American women gained the right to vote after a long struggle for the 19th Amendment in 1920. States that had previously allowed noncitizens the right to vote were repealing such policies. These transformations did not take place

in isolation; on the contrary, they were linked.

As western territories became states in the late-19th century and Jim Crow era southerners rewrote their constitutions, voting rights became a central subject of debate. At these conventions, alien suffrage came under attack. While supporters of immigrant voting rights argued that all male residents and/or taxpayers should be allowed to vote, they were usually outnumbered and on the defensive. Some opponents of alien suffrage framed their arguments in openly racist, anti-immigrant language. Others emphasized the injustice of affording noncitizen men the vote while American women were disfranchised.

While this appeal would be taken up by women’s suffragists in the Progressive era, it would become a veritable rallying cry during World War I. Carrie Chapman Catt, president of the National American Woman Suffrage Association, argued that noncitizen voters (especially in states with large German immigrant populations) were a threat to national security. To safeguard the homeland, Catt and her allies urged states to enfranchise loyal American women and disfranchise noncitizen men. Suffragists rejoiced that “The nation has awaked at last to the falsity of this theory of government and the grave danger involved in extending such liberty to men who are not citizens.”²

While this argument would occasionally fail to sway voters, it was successful in several state referenda campaigns and in mobilizing national support for women’s suffrage. By 1926, no state would permit noncitizens the right to vote. This linked campaign dramatically transformed suffrage as voting became widely perceived as the premier right of American citizenship. In practice, that right was denied to many marginalized citizens, especially African-American men and women in the south for another half century. Even as access to the suffrage expanded and constricted to become a “right of citizenship,” it was not available in practice to all U.S. citizens.

Who Counts?

While all states adopted a citizen-only policy toward voting rights in the early 1900s, suffrage was not the only political right tied to citizenship in many states. As late as the mid-20th century, nine states barred all or some noncitizens from being counted as “persons” for redistricting purposes for their state legislatures. Nativists in Congress nearly succeeded in barring noncitizens from federal representation in the 1920s and the early 1930s.

In northeastern states like Massachusetts and New York, the exclusion of noncitizens from the population greatly reduced the number of seats that would have been assigned to cities such as Boston and New York. In turn, these exclusions inflated the political power of rural voters for generations. In California, the aims of these exclusions were explicitly racist. Only East and South Asian immigrants were counted out of the population.

These bans often led to intense debates over the meaning of citizenship rights. Advocates of counting noncitizens argued that immigrants were residents and taxpayers who were due the respect of their citizen peers. As Representative James Beck of Pennsylvania argued in 1931, “An alien from my district is a constituent of mine” since he or she “has to obey the laws” and “must contribute to the Treasury.”³ Their opponents disagreed, arguing that counting noncitizens would unfairly inflate the power of urban citizens over their rural peers.

But these debates were never separated from political bias. When politicians in Massachusetts debated repealing the state’s ban on counting aliens, Republicans laughed off the effort as an attempt to make the state “more Democratic.”⁴ These disputes could also split political parties. Throughout the 1920s, congressmen from urban areas united across party lines to defeat proposed federal bans on the counting of noncitizens for the House of Representatives.

While many supporters of alien bans argued that representation should be a right of citizenship, others argued in far more bigoted and xenophobic

terms. Some claimed that immigrants were responsible for Prohibition-related crimes and therefore should be punished. Others argued that certain immigrants were so undesirable that states should protect their citizens from the indirect political influence of noncitizens.

Though proposed federal bans would be defeated in the 1920s and 1930s, similar policies would endure at the state level for decades to come. Most states only repealed them (or ceased enforcing them) in the 1960s. And their defeat was not framed as a great victory for “immigrant rights.” On the contrary, advocates of overturning these policies argued on the basis of efficiency and accuracy. With historically low numbers of noncitizens residing in country and state officials struggling to identify those populations, voters in Massachusetts, New York, and elsewhere approved changes to their state constitutions to incorporate noncitizens.

In this way, two key political rights – suffrage and representation – acquired significant uniformity in all fifty states by the mid-20th century as the former became a right of citizenship while the latter was extended to all residents. That was not the case with employment rights and citizenship requirements, which differed from state to state. But as states increasingly restricted public jobs and licensed professions to Americans, many enviable forms of employment became a “citizens-only” domain in both law and the public eye.

ECONOMIC RIGHTS AS PRIVILEGES OF CITIZENSHIP*Permit to Work*

In the winter of 1914-15, the U.S. economy was thrown into a sharp recession. As workers lost jobs, immigrants quickly became the target of nativist ire. Bosses came under pressure to “hire American” by firing noncitizen employees. City and state governments were especially hassled to discharge immigrant workers and were encouraged to prevent noncitizens from employment on any job that received public funding.

States like California and New York had previously

enacted legislation which privileged or even required the hiring of citizens in public employment and on jobs that received state funding. But these laws had been routinely ignored. The winter recession, however, led to a dramatic rise in demands to enforce them. In New York City, subway construction abruptly halted as local unions protested the hiring of noncitizens. In California, school boards fired immigrant teachers without warning. While these disputes would recede when the recession ended, on cue, they would rear their ugly head once more the next time the economy soured.⁵

But states encountered a major obstacle when they tried to enforce these policies: few individuals possessed documentation that would identify them as citizens or aliens. As a result, people who “looked” or “sounded” like noncitizens often bore the brunt of the effects of these citizen-only provisions. In southern California, Mexican nationals employed as agricultural laborers and construction workers were attacked by nativists for “taking Americans’” jobs in the 1920s. Their bosses often “defended” their right to work, but not in the language of equality. On the contrary, agribusiness owners and contractors often appealed to white Americans’ racism by arguing that they would replace noncitizen Mexican workers with nonwhite, citizen laborers.⁶

When the Great Depression struck, immigrant workers came under even increased attack. States expanded citizen employment preferences and federal agencies like the Works Progress Administration adopted citizen-only and citizen-preference laws as the Depression wore on. Immigrants, social workers, and sympathetic public officials warned that noncitizens were being squeezed out of jobs.

Once more, state and federal officials struggled to distinguish citizens from noncitizens in the 1930s and nonwhite immigrants bore the brunt of these attacks. Most infamously, Mexican nationals were deported and coerced to leave the nation en masse in the early 1930s. Nativists in and out of Congress

clamored for a registration system to identify noncitizens and bar them from many avenues of employment. They were defeated by the Roosevelt Administration and their allies in Congress who worried that federal registration would lead to even more widespread xenophobia. With the outbreak of World War II however, nativists would find their winning argument: national security. In 1940, the Alien Registration Act was passed and required (nearly all) noncitizens in the country to register with federal authorities at their local post office.⁷

Ironically, this identification system would privilege a newer hierarchy among working-class immigrants as the distinction between documented and undocumented laborers took precedence over the older citizen-noncitizen hierarchy. But that would not be the case in professional employment.

Citizen Professionals

In the late-19th century, state governments and professional associations adopted rules to govern their respective fields of employment. Medical professionals increasingly came under the control of state boards that issued, administered, and sometimes revoked licenses. Meanwhile, attorneys’ bar associations acquired similar control over the legal profession.

This process improved professional standards but also largely restricted information and high-paid professions to white, upper-middle-class men. While the harmful effects of this transformation on women’s health and employment is increasingly well-known, this process also restricted immigrants’ access to many jobs. Across the nation, licensing boards and professional associations adopted policies excluding or limiting the employment rights of noncitizens. And in 1915, the Supreme Court largely upheld the constitutionality of these provisions.

While these policies could emerge from out of nowhere, they often arose during times of recession and war. Professional organizations were not neutral parties to these disputes. Arguing that only citizens could be trusted to ensure high standards

and public health, they were often the force behind their enactment. But their arguments often rang hollow. It was hard to justify a ban on noncitizen actors in Broadway plays in anything other than nativist terms.⁸

Traditional hierarchies of race and gender dramatically influenced how these policies harmed immigrant professionals. Barred from naturalization owing to overtly racist federal citizenship laws, anti-alien policies drastically restricted the employment prospects of East and South Asian immigrants. Women too were especially harmed by anti-alien hiring policies. Teaching was one of the few professional avenues of employment widely available to women in the early 20th century. Since states often barred noncitizen teachers from employment within their borders, immigrant women had even fewer employment prospects than their citizen peers.

Married women faced another significant obstacle. Many – both native-born and those born abroad – did not know whether they were U.S. citizens, foreign subjects, or even stateless.

RE-BECOMING CITIZENS

Marital Repatriation and the Impact of Alienage Laws

In 1907 President Theodore Roosevelt signed the federal Expatriation Act into law. It stipulated that American women would lose their citizenship upon marriage to noncitizen men. Passed during a peak period of immigration, it punished American women (now marital expatriates) for supposedly betraying their country by marrying “the wrong man.”

Upon ratification of the 19th Amendment, women’s rights activists successfully fought to overturn this policy. But Congress did not grant citizenship back to native-born women. They had to petition to regain citizenship alongside immigrants. Since marital expatriates had never received official notice of their loss of citizenship, this would be a challenge.

Many women only learned that they could regain

their native-born citizenship in middle-class journals or national newspapers like the *New York Times*. Those who did not have access to such information often did not even know that they had lost their American citizenship. Not surprisingly, middle-class Anglo-American women regained citizenship at faster rates than their working-class peers in cities like San Francisco during the 1920s.⁹

By the 1930s, women across the country of all backgrounds were seeking to regain their stolen citizenship. While they cited the desire to vote, family reunification, and patriotism as reasons for regaining their citizenship, the Great Depression added even greater urgency. After all, access to social services and employment was increasingly restricted to citizens. And regain citizenship they did. By 1940, roughly one hundred thousand U.S.-born “immigrant” women had petitioned for naturalization in the preceding eighteen years.¹⁰

The passage of the Alien Registration Act in 1940 forced all American women who had lost their citizenship upon marriage to confront their citizenship status. In an effort to aid marital expatriates, the Justice Department announced that women who had continuously lived in the United States were automatically “repatriated” by decree. But those marital expatriates would not have the “rights” of citizenship until they had completed their citizenship papers. This proved harder than Justice Department officials had hoped, for they struggled to define what was – and was not – a “citizenship right.”

In a series of court cases in the early-to-mid 1940s, Justice Department representatives sought to clarify what counted as a “citizenship right” when marital expatriates appeared in court. Not only were they unable to set a uniform standard of “citizenship rights,” but judges frequently rejected the premise that citizenship status could be separated from citizenship rights. In court, the Justice Department’s plan collapsed under its own weight.

CONCLUSION

In rejecting the idea of “citizens without citizenship

rights,” Judge Frank McLaughlin of Hawaii argued that “We have, and have always had, in our country but one class of citizens...full fledged citizens.”¹¹

But this was a legal fiction. African Americans were then serving in a segregated military.

American women had only recently gained the right to vote. And when forced to confront the meaning of citizenship, not even Justice Department lawyers could agree upon a definition of citizenship rights. Nevertheless, much had changed since 1865.

The value of U.S. citizenship had certainly increased as many political and economic rights became confined to citizens. And the weight of U.S. citizenship and the rights associated with it had become more concrete in the eyes of the American public. Legal discrimination against marginalized Americans became less tenable in court in such a context. But the range of rights available to and restrictions directed at noncitizens had grown in this evolving world of modern American citizenship.

ENDNOTES

- 1 Brendan Shanahan is a PhD candidate in History at the University of California, Berkeley. This report will summarize the main elements of my dissertation, especially those made possible by the California Immigration Research Initiative (CIRI) Fellowship.
- 2 Carrie Chapman Catt, "The Citizen and the Vote," *The Woman Citizen*, April 6, 1918.
- 3 "Alien Amendment before Committee," *Washington Post*, January 15, 1931.
- 4 *Debates in the Massachusetts Constitutional Convention, 1917-1918.*, vol. 4 (Boston, 1919), 163.
- 5 "Alien Law Decision Halts New Subways," *New York Times*, February 27, 1915; "Alien Teachers' Salaries Held Up by the Trustees," *San Francisco Chronicle*, March 19, 1915.
- 6 See, for instance: "An Act to Swat Taxpayers," *Los Angeles Times*, April 20, 1929.
- 7 "The Alien Registration Act of 1940, an Address by Earl Harrison, Director of Registration, Bureau of Immigration and Naturalization, Department of Justice" (NBC, August 7, 1940), AFL Papers, Files of the Economist of the AFL, General File, Mss. 177, Box 1, Wisconsin Historical Society Archives.
- 8 This topic has received scant scholarly attention. I am particularly indebted to: Alexandra Filindra, "E Pluribus Unum?: Federalism, Immigration and the Role of the American States" (Rutgers, 2009); Irene Bloemraad, "Citizenship Lessons from the Past: The Contours of Immigrant Naturalization in the Early 20th Century," *Social Science Quarterly* 87, no. 5 (2006): 927–953.
- 9 Petition and Record of Naturalization, 1903-1991, SF, Vols. 46-73, Boxes 26-38; Folders 1-3 Box 39; RG 21; NARA-Pacific (San Bruno).
- 10 This is the author's estimate based on the ratio of marital expatriates filing petitions of citizenship in federal district court in San Francisco (CA), San Antonio (TX), and Providence (RI) compared to nationwide naturalization petitions between 1922 and 1940. See: *Annual Reports of the Bureau of Naturalization/INS, FY 1923-1940*; Petition and Record of Naturalization, U.S. District Court for the Western District of Texas at San Antonio; RG 21; NARA-Southwest (Fort Worth); Petition and Record of Naturalization, 1903-1991, SF, RG 21; NARA-Pacific (San Bruno); and Petition and Record of Naturalization, 1842-1991, RI; RG 21; NARA-Northeast (Waltham).
- 11 *In re Shee Mui Chong Yuen's Repatriation*, No. 73 F. Supp. 12 (U.S. District Court for the District of Hawaii 1944).

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