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DEMOGRAPHY AND THE SOCIAL CONTRACT*

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As the most demographically complex nation in the world, the United States faces ever more formidable challenges to fulfill its commitment to the democratic values of equity and inclusion as the foreign-born share of the population increases. Immigration, the major source of the contemporary diversification of the population, provides several lessons about how to prepare for that future within a framework of social justice and how to realign recent demographic trends with cherished democratic principles. A review of historical and contemporary controversies about the representation of the foreign-born and alien suffrage both illustrates the reemergence of ascriptive civic hierarchies and highlights some potentially deleterious social and civic consequences of recent demographic trends.

> The bosom of America is open to receive not only the opulent and respectable stranger, but the oppressed and persecuted of all nations and religions; whom we shall welcome to a participation of all our rights and privileges.
>
> —George Washington (1783, quoted in Fitzpatrick 1938:257)

Since the founding of the United States as a sovereign nation, the diversity of the population has challenged the values of *inclusiveness* and *equality*. Historically, these tensions manifested themselves in debates over taxation and representation, apportionment, and suffrage. In modern times, these values have been disputed in controversies over the differential undercount of racial minorities and adjustments of the censuses; immigrants' rights to representation, access to higher education, and the entitlements of citizenship; and many other social issues. Essentially, the controversy is about the rights of membership in a liberal democracy and whether citizenship is a special membership status.

The antecedents of the debate over membership date back to classical political theorists, particularly Thomas Hobbes, John Locke, and Jean-Jacques Rousseau, whose notion of membership was derived from the consent to be governed: individuals willingly concede some of their personal freedoms in exchange for security and other social benefits (Walzer 1995). Members maintain autonomy and avoid being subjected to the will of others by obeying laws that they give themselves (Arneson 2001:4724–29). Ideally, the "general will" creates unity by subordinating individualism in the interest of the collective well-being. However, recognizing the challenge of forging unity from diversity, Rousseau ([1762] 2002) warned of special interests—"partial societies"—within the state that could undermine the ability of the general will to serve the common good. To prevent the emergence of social cleavages, Rousseau argued for democratic equality.[1] Should factions arise,

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1. "The citizens being all equal according to the social contract, all can prescribe what all ought to do, while no one has a right to demand that another do what he is unwilling to do himself" (Rousseau [1762] 2002:223).

maintaining *equality* among them was essential to prevent the general will from dissolving into particular interests and undermining shared interests.[2]

Of course, the real world is far more complicated than eighteenth-century political theorists envisioned. Yet these simple premises bear profound lessons for understanding the civic implications of recent demographic trends. The ideals of American democracy, which have influenced liberal democracies around the world, rely crucially on the notion of consent as the basis of citizenship, even though few have specified precisely what consent constitutes (Bosniak 2000). Modern political theorists and legal scholars have elaborated the primitive Rousseauian vision of social contract theory, making distinctions between nominal citizenship, which is based on participation in social life, and formal citizenship, which guarantees the right to vote and to exercise political power (Marshall 1964; Raskin 1993; Schuck 1997; R. M. Smith 1997). And although the U.S. political system has been heralded as the gold standard of liberal democracy, according to R. M. Smith (1997:15), "for over 80% of U.S. history, American laws declared most people in the world legally ineligible to become full U.S. citizens solely because of their race, . . . nationality or gender." In short, American democracy has violated the sacred values of inclusiveness and equity.

Against a backdrop of rising income inequality since 1973 (Levy 1987), the historically unparalleled diversification of the U.S. population compels a reexamination of the social contract to ask whether the terms of membership are qualified as heterogeneity increases and, if so, for whom and why. I argue that as the principle motor of contemporary and past population diversity, immigration strains the commitment to the democratic principles of inclusion and equity by redrawing the boundaries of membership on the basis of ascription and an ever more narrow definition of citizenship. As long as membership confers different rights to different groups, future progress toward reducing social and economic inequality will be stymied. I conclude that the diversification of the population warrants a realignment of democratic ideals with demographic realities.

To illustrate the powerful role of demography for understanding the evolution of social justice in the United States, I first sketch trends in twentieth-century immigration and highlight nativity differences in poverty and educational inequality. Historical debates about membership, as played out in controversies about representation of and suffrage for immigrants, illustrate some potentially deleterious civic consequences of recent demographic trends. I also identify several contemporary issues that show how immigration has sharpened group boundaries and strengthened civic hierarchies. This tendency to exclude need not be so if the rules of membership are made more inclusive and the commitment to equity is renewed.

My conception of citizenship as a social contract that concedes the right to be governed in exchange for privileges, rights, and social obligations emphasizes the liberal ideas of Marshall (1964), who considered equity and social welfare core features of mature citizenship; Raskin (1993), who differentiated among citizenship as presence, integration, and standing; and R. M. Smith (1997), who viewed citizenship as an institution for distributing life opportunities. In what follows, I argue that the relative openness of U.S. borders makes immigration central to the project of democracy for the twenty-first century.

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2. "By whatever path we return to our founding principle we always arrive at the same conclusion, that is, that the social compact establishes among the citizens such an equality that they all pledge themselves under the same conditions and ought all to enjoy the same rights. Thus, by the nature of the compact, every act of sovereignty, that is, every authentic act of the general will, binds or favors *equally* [emphasis added] all the citizens; so that the sovereign recognizes only the body of the nation, and singles out none of those who compose it" (Rousseau [1762] 2002:175).

Table 1. The Changing Composition of the Population, 1900–2000

	Race and Hispanic Origin					
Year	Whites	Blacks	Hispanics	Asians	American Indians	Total FB %
1900	87.9	11.6	—	0.2	0.3	13.6
1950	89.5	10.0	—	0.2	0.2	6.9
1960	88.6	10.5	—	0.5	0.3	5.4
(% FB)	5.9	0.7	—	31.9	0.0	
1970	83.5	11.1	4.5	0.8	0.4	4.7
(% FB)	4.2	1.1	19.9	35.7	1.9	
1980	79.7	11.7	6.4	1.6	0.7	6.2
(% FB)	3.9	3.1	28.6	58.6	2.5	
1990	75.6	12.0	8.8	2.9	0.8	7.9
(% FB)	5.0	4.9	35.8	63.1	2.3	
2000	70.6	12.3	12.5	4.0	0.7	10.4
(% FB)	3.6	6.2	39.0	61.4	—	

Sources: Gibson and Lennon (1999: table 8); U.S. Census Bureau (2000: table 1; 2001: table 9-1).

Notes: (% FB) = percentage foreign-born. All percentages may not sum to 100 because of rounding and estimation. For 1970–2000, white, non-Hispanic data were used in the column for whites.

DEMOGRAPHY OF DIVERSIFICATION

The ebb and flow of immigration during the twentieth century is evident in the changing racial, ethnic, and nativity composition of the U.S. population (see Table 1). In 2001, over 10% of U.S. residents were foreign-born, a share that more than doubled from that of 1970 (U.S. Census Bureau 2001:2). The absolute number of immigrants is much larger now than it was at the turn of the century because the population base was much smaller then (U.S. Census Bureau 2001:9). At the turn of both the twentieth and twenty-first centuries, immigration was highly politicized social issue, and it still is.

Four decades of high-volume immigration from virtually every country, rising intermarriage, and persisting differences in fertility have transformed the United States into the most demographically complex country in the world (Prewitt 2001). Since 1960, the changed source countries of immigrants have visibly altered the U.S. ethnoracial landscape, just as the shift in source countries from Western to Eastern European countries did during the latter half of the nineteenth and early twentieth centuries. At the turn of the nineteenth century, 12% of the U.S. population was black and an additional 1% combined were Hispanic, Asian, or American Indian. Half a century later, these same groups combined accounted for 13% of the U.S. population, except that the black share had fallen from 12% to 10%. Yet, over the next 50 years, the combined share of blacks, Hispanics, Asians, and Native Americans swelled to just under 30% of the total population (Gibson and Lennon 1999; U.S. Census Bureau 2000c).

The force of immigration is evident in the changing nativity composition of these panethnic groups. Whereas only one-third of Asians were foreign-born in 1960, this share rose to 63% during the 1990s. In like fashion, the foreign-born share of the Hispanic population nearly doubled from 1970 to 2000 (Gibson and Lennon 1999; U.S. Census Bureau 2001). By contrast, the foreign-born share of the non-Hispanic white population

declined slightly, from six to three percentage points, while the black share rose from 1% to 6%. Although differential fertility has also altered the ethnoracial composition of the U.S. population, I focus on immigration because it is the most powerful force driving the demography of diversification and because nativity differences, at best, maintain or, at worst, increase aggregate socioeconomic inequality. A brief overview of poverty and educational differences suffices to make this point.

The decline in poverty, from 22% to 17% from 1960 to 1965 and to 12.3% a decade later, was one of the stellar achievements of the War on Poverty (Dalaker 2001:18). However, sizable nativity differences persist. In 1999, when 11.8% of the U.S. population was poor, immigrants' poverty exceeded that of natives by 5.6 percentage points—16.8% versus 11.2%. Moreover, recent immigrants are more likely to be poor than earlier arrivals, and the poverty of noncitizens is over twice that of naturalized citizens. Specifically, just over 1 in 5 noncitizens were poor in 1999, compared with less than 1 in 10 naturalized citizens (U.S. Census Bureau 2001:47).

Immigrants from Latin America are much more likely to be poor than are those from Europe, Asia, or Africa (U.S. Census Bureau 2001:46). In 1999, less than 10% of European immigrants lived in poverty, compared with 13% of those from Asia and Africa and over 1 in 5 immigrants from Latin America. Mexicans and Central Americans are the poorest among the foreign-born, with 1 in 4 living below the poverty threshold in 1999. Because Mexicans now account for over one-quarter of the foreign-born population, up from 8.2% in 1970, their high poverty rate weighs heavily on the aggregate immigrant poverty rate, especially the poverty rate for Latin Americans (U.S. Census Bureau 2001:12).

To a considerable extent, differences in economic well-being are rooted in large and persisting educational disparities among demographic groups, which are exacerbated by the influx of immigrants with very low and very high educational levels. Among college graduates, there are small differences between native- and foreign-born adults because the majority of immigrants who gain admission under occupational preferences are highly selected toward advanced degrees. However, the nativity difference in high school graduation is appreciable: 87% of native-born persons aged 25 and over are high school graduates, compared with 67% of foreign-born persons (U.S. Census Bureau 2001:36). Aggregate differences in high school completion reflect the comparatively low educational levels of recent immigrants from Central and South America, especially from Mexico.

The diversification narrative would be of little socioeconomic or civic consequence if the promises of the Great Society had been kept. Some promises were kept, others were rescinded, and still others have been threatened by restrictive legislation that deprives immigrants of their full rights of civic membership. In comparison with researchers of socioeconomic inequality, demographers have paid considerably less attention to what Gordon (1964) characterized as *civic assimilation*—that is, membership, statutory citizenship, and political participation. These primary rights are pillars of a liberal democracy that is committed to the values of inclusion and equality and are essential for preventing the reemergence of what R. M. Smith (1997) dubbed "ascriptive democracy"—that is, civic hierarchies that are defined by race, birthplace, sex, and age, with their attendant social and economic consequences.

The history of U.S. immigration dramatically illustrates ascriptive democracy in play.[3] This story has been thoroughly scripted and warrants no elaboration except to underscore three points. First, the Immigration Restriction Act of 1924, frequently called the National Origins Act, set the first numerical limits on immigration, set country quotas based on 2% of resident nationalities according to the 1890 census, and established a commission to

3. One of the most striking illustrations of ascriptive democracy, the Immigration Act of 1924, is noteworthy both for its racist criteria governing admissions and the pseudo-scientific eugenic arguments that were used to justify the decisions. King (2000) presented a richly textured discussion of the congressional debates.

determine the country quotas (Briggs 1993). However, heated debate ensued about whether to apportion the quotas using the 1890 census, as the law stipulated, or the 1920 census. This controversy centered fundamentally on protecting a Tocquevillian image of American national identity as white and Anglo Saxon (King 2000; R. M. Smith 1997). The 1890 census did protect this image, but the 1920 census did not because almost 90% of all immigrants who were enumerated in 1890 were from Northern and Western Europe or Canada, but by 1920, only 45% were (Gibson and Lennon 1999). The political struggle over the apportionment of quotas delayed implementation of the 1924 Immigration Act, originally scheduled to go into effect in 1927, until 1929. In the end, the quotas were based on the 1920 census.

Second, the Immigration and Nationality Act of 1952 (P.L. 82-144), which was passed over President Harry Truman's veto, repealed the Asiatic exclusion clause that had damaged American prestige overseas, but retained the 1920 census as the basis for apportioning quotas. This legislation reinforced the pro-European bias of U.S. visas by explicitly restricting Eastern European immigration through numerical ceilings. As a concession to the social value of inclusiveness, it ended the ban on nonwhite immigration imposed in 1790 (King 2000). If the architects of the Immigration Restriction Act of 1924 were in denial about *demography* in the United States, they were even more naïve about how the politics of exclusion extol their price as unintended consequences. References to the restrictions imposed by the 1924 legislation emphasize the quotas imposed to *exclude* groups by limiting new admissions to tiny shares of the resident national origins. Yet the law's long-term impact was derived more from the groups who were *exempt* from the quotas. Explicitly excluded from the numerical quotas were immigrants from Canada, Newfoundland, Mexico, Cuba, Haiti, the Dominican Republic, the Canal Zone, and the independent countries of Central and South America, along with their immediate dependent family members. Since 1980, Mexico has been the leading source country of U.S. immigrants and, along with Haiti and the Dominican Republic, is a major contemporary source of undocumented immigration.

Third, the heightened volume and changed composition of U.S.-bound migration since 1970 was seeded in the 1924 act and bolstered by the 1965 amendments to the Immigration and Nationality Act of 1952 (P.L. 89-236). Designed to atone for the discriminatory foundations of the 1924 national-origins quota system, the 1965 amendments accomplished several things. First, by abolishing the quota system, the amendments opened doors to immigration from countries that were previously excluded, notably Asian and African nations, albeit with strict country limits. Second, an annual ceiling of 120,000 was extended to immigrants from the Western Hemisphere, and individual countries were subjected to the 20,000 annual country maximum to which the Eastern Hemisphere countries had been subjected. Finally, the 1965 amendments shifted the emphasis of the visa-allocation preference system from labor market priorities to family reunification. Initially, 74% of the total visas available each year were reserved for relatives of U.S. citizens and permanent resident aliens, but this share of the numerically regulated visas was raised to 80% in 1980 (Briggs 1993:15).

Cosponsor of the 1965 immigration legislation, Emanual Celler (D-NY) argued during the floor debate that few Asians or Africans would enter the country because they had no family ties to the United States (Briggs 1993:18). In signing the bill into law, President Lyndon Johnson reassured his critics of benign consequences: "This bill that we will sign today is not a revolutionary bill. It does not affect the lives of millions. It will not reshape the structure of our daily lives" (Public Papers of the Presidents of the U.S. 1966: 1037–40). Then Attorney General Robert Kennedy predicted that there would be approximately 5,000 immigrants from the Asia-Pacific triangle and few thereafter (U.S. House 1964:418); Secretary of State Dean Rusk anticipated that there would be 8,000 immigrants from India over five years (U.S. Senate 1965b:65); Senator Edward Kennedy argued that

the ethnic mix of the country would not be upset (U.S. Senate 1965a:2). History scripted otherwise. As European immigration plummeted following post–World War II reconstruction, rising inequality and political strife in Latin America and Asia swelled the ranks of workers who aspired to better opportunities for earning a living.

Not only did the 1965 amendments usher in a new period of mass migration, but the law *did* affect the lives of millions of people who were already in the United States and those yet to come. Immigrants from the Americas comprised about one-third of those admitted during the 1930s and 1940s and nearly 40% of new arrivals during the 1950s (Immigration and Naturalization Service, INS 2002:9). Since 1960, roughly half the immigrants who have been admitted to the United States have hailed from the Americas, and about one-third have hailed from Asia. Owing to the legalization program authorized by the 1986 Immigration Reform and Control Act, during the 1990s, the number of legal immigrants exceeded 9 million, 42% of whom were from Latin America (INS 2002:9).

If the diversification narrative broadened the cultural space to forge a core American identity from many racial and ethnic strands, participation in the reformulated "we" required rewriting the social contract to realign democracy with demography (Prewitt 2001). This is the project of U.S. democracy for the twenty-first century: forging and governing a "world nation" within a framework of social justice. As such, historical and contemporary debates over apportionment and suffrage provide key lessons about how the changing composition of the population evolved into civic hierarchies that undermine the commitment to values of inclusiveness and egalitarianism, and they highlight future challenges to civic integration of the foreign-born. I discuss each in turn.

APPORTIONMENT, SUFFRAGE, AND THE POLITICS OF EXCLUSION

> [A]s nearly as is practicable, one man's vote in a congressional election is to be worth as much as another's.
>
> —Justice Hugo L. Black (*Wesberry v Sanders* 1964)

Constitutional guarantees of representation and suffrage were integral to forging the social contract, yet both rights have been contested terrain since the nation's founding. The 14th Amendment to the U.S. Constitution (§ 2) clearly states: "Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed." That all *persons* residing in the United States are counted for the purposes of apportionment, but only *citizens* are permitted to vote in national elections, presumes that the right to representation is more fundamental than the right to exercise the franchise. However, the value of representation is eroded to the extent that a growing number of "new Americans" have no voice in selecting who represents them. This need not be so, and for a large part of our history, including most of the last period of mass migration, noncitizens were allowed to vote (Harper-Ho 2000; Keyssar 2000; Neuman 1993; Raskin 1993; Rosberg 1977). Although the landmark "one-person, one-vote" decision[4] responded directly to inequities in representation and exercise of the franchise, the presence of immigrants continues to defy the value of inclusiveness.

The *method* used to apportion the seats in the U.S. House of Representatives conveys a commitment to equality as a social value; the question of *who* should be included in the apportionment population conveys the value of inclusiveness (Davis 1981). Since 1790, five methods have been used to allocate the seats among states (Balinski and

4. *Reynolds v Sims* (1964) held that "an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State."

Young 2001; Davis 1981).[5] All methods emphasize *equity relative to population size*; the current method of equal proportions, which has been in use since 1940, has the advantage of minimizing the proportional difference in the average size of districts between two states, with a bias favoring small states (Davis 1981). Because the Constitution neither requires apportionment after every census nor specifies *how* to apportion, these decisions are entirely within the purview of Congress.

The matter of *who* should be included in the apportionment base has been controversial since the Constitution was ratified, so it is remarkable that the Constitution's provisions for representation have withstood the test of time and numerous legal challenges (see *United States Department of Commerce v Montana* (1992) and *Franklin v Massachusetts* (1992)). The Civil War raised the value of slaves from three-fifths to full persons for the purposes of representation; the 14th Amendment defined statutory citizenship, provided equal protection for all *persons,* and reaffirmed the principles of representation on the basis of *persons*, including noncitizens. Since that time, the collision of political interests with the moral principles of justice and fairness has precipitated several legal challenges to the practice of including immigrants—both legal and undocumented—in the apportionment base (*Congressional Record* 1940:4366; *Federation for American Immigration Reform (FAIR) v Klutznick* (1980); Poston et al. 1998; Wood 1999; Woodrow-Lafield 2001). For example, to support claims that the framers of the Constitution were unable to envision the emergence of undocumented immigration, advocates of a citizen-only apportionment base argue that the absence of immigration policy before 1875 made this category inconceivable in 1787 and that the words *inhabitants, persons,* and *citizens* are deliberately used interchangeably in the Constitution. However, Neuman (1993) dismissed these claims because before 1875, legislation regulating foreign admissions was largely a state concern, and once slavery ceased to be a divisive issue, systematic federal regulation was possible.

The first major twentieth-century controversy over apportionment involved the 1920 census, which singled out immigrants as a source of "distortion" in the rural-urban population distribution. Representatives from rural states who were slated to lose congressional seats to urbanized states with large populations of immigrants proposed a panoply of reapportionment bills that were designed to correct the alleged distortion in immigration. Even though immigrants paid taxes and had been legally admitted to the United States, the anti-immigrant representatives considered them to be unworthy of representation in Congress. The ensuing vitriol found ample pseudo-scientific support in the 42-volume *Dillingham Commission Report* of 1911, which claimed that immigrants from eastern and southern Europe were intellectually inferior and unworthy of naturalization (King 2000:76). Kansas Representative Homer Hoch argued that the exclusion of noncitizens from apportionment would not only alter the allocation of seats in 16 states, but would allow representatives of farming states to retain their seats (Bacon, Davidson, and Keller 1995). The bitter and protracted political struggle culminated in several unsuccessful constitutional amendments to exclude all aliens for the purposes of apportionment. In the end, the rural states won the debate because there was no reapportionment based on the 1920 census. Although, the balance of power was preserved, the passage of restrictive immigration legislation in 1924 testified that the admission of foreigners had assumed center stage in Congress. In anticipation of the 1930 census and to avoid a similar spectacle, Congress passed legislation in 1929 requiring reapportionment after each census.[6]

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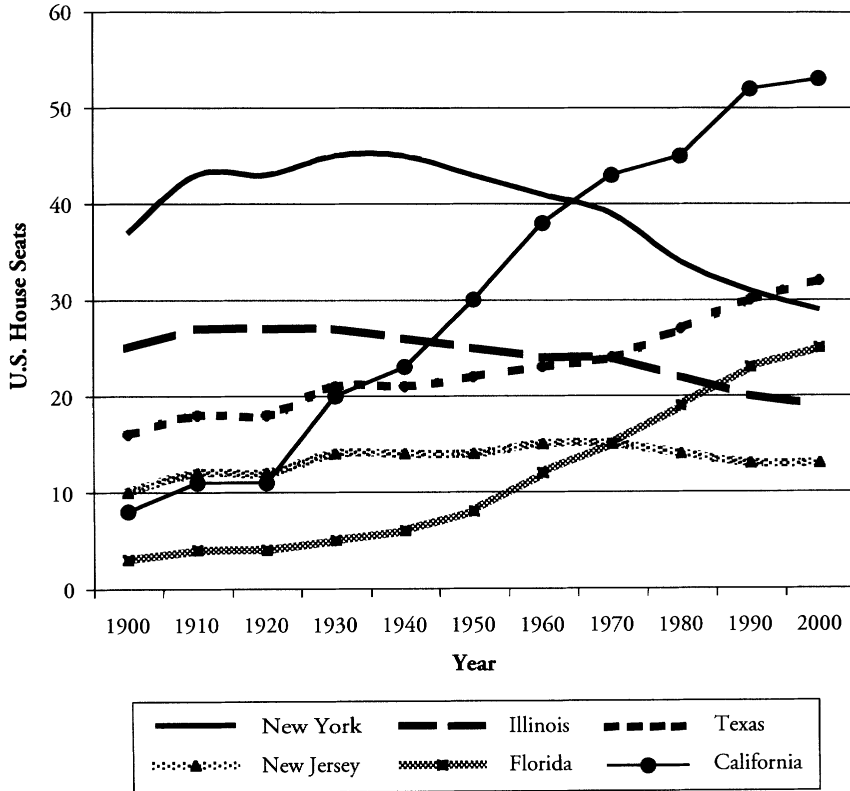
5. The five methods are the "Jefferson" method of greatest divisors (used from 1790 to 1830); the "Webster" method of major fractions (used in 1840); the "Vinton" or "Hamilton" method, which established a predetermined number of representatives for each apportionment (used from 1850 to 1900); the "Wilcox" revised method of major fractions (used in 1910 and 1930); and the "Huntington" or "Hill" method of equal proportions (used from 1940 to the present) (Balinski and Young 2001; Schmeckebier 1941; U.S. Census Bureau 2000a).

6. The Apportionment Act of 1929, which was amended by the Apportionment Act of 1941, calls for "automatic reapportionment" every decade using census data.

Figure 1. Seats in the U.S. House of Representatives Held by Six Leading Immigrant-Receiving States, 1900–2000



Source: U.S. Census Bureau (2002).

Apparently the lessons from the 1920 apportionment dispute faded quickly, because the 76th Congress again debated the immigration-apportionment question. New York Representative Hamilton Fish (R) conceded that "it is one of the most difficult problems for the House to solve on a fair and nonpartisan basis" (Congressional Record 1940:4368). It is not surprising that representatives from New York and Illinois, two states in which immigration had figured prominently in the growth of the population, strongly supported including aliens in the apportionment base. By contrast, Representative John Elliot Rankin (D-MS), claimed that "the reapportionment must be based upon persons, and that means *American* persons; it does not mean alien persons who owe no allegiance to the United States" (Congressional Record 1940:4369, emphasis added).

On matters of immigration, political interests did not follow partisan lines. The fight was *not* about the disappearance of a Jeffersonian agrarian society; at stake was the balance of power between states that were growing rapidly through immigration and the sparsely populated rural states. As is shown in Figure 1, the six immigrant-receiving states (California, Florida, Illinois, New Jersey, New York, and Texas) combined gained 16 seats

in the House between 1900 and 1910, signaling a shift in political power that threatened the interests of rural states should immigration continue.[7] And continue it did, until Congress passed legislation to restrict who and how many immigrants were to be admitted. Between 1960 and 2000, the same six states, which currently house 75% of the foreign-born population (Frey and Devol 2000), increased their share of House seats from 153 to 171, so that they now hold nearly 2 of every 5 seats. There are 435 seats in the House of Representatives—a number that has been fixed since 1911 but was variable before then.[8]

Given how much ink and energy have been expended on the politics of excluding immigrants from matters of representation and in light of the growing political dominance in the U.S. House of Representatives of the six immigrant-receiving states, it is instructive to imagine how representation and apportionment *would have* changed if a constitutional amendment to exclude all immigrants from apportionment had succeeded, if the restrictionists in Congress had succeeded in averting the two great waves of twentieth-century immigration, or if rural states had succeeded in eliminating noncitizens from apportionment.

To develop these counterfactuals, I simulated three scenarios each for the period 1900 through 1930, which covered the first wave of twentieth-century mass migration, and from 1960 to the present, which represents the second wave. These three scenarios simulate the world that the politics of exclusion sought to create under the banner of ascriptive democracy, namely, apportionment restricted to the native-born, designated "natives only"; apportionment assuming no immigration between 1900 and 1930 and none again after 1960, denoted as "halt immigration"; and apportionment that would exclude noncitizens, dubbed "citizens only." Stopping immigration in 1900 or 1960 would not only be less stringent than excluding all the foreign-born from apportionment, but would be more in keeping with the liberal ideology of embracing those who are already in this country while lifting the gangplank to future arrivals. The citizens-only scenario would be the least restrictive, implicitly stipulating a "qualified membership" for those who do not pledge allegiance.

Table 2 summarizes the results of this simulation exercise, and Appendix Tables A1 and A2, respectively, report the state-specific details for the first and second periods of twentieth-century mass migration.[9] That the total number of reshuffled seats for a given scenario is usually less than the number of states affected reflects the high residential concentration of immigrants, the highly unequal populations of the 50 states, and the small state bias of the formula used to apportion seats in Congress (Balinski and Young 2001; Davis 1981). To simplify the exposition, I summarize the results for each period by counterfactual, beginning with the most restrictive scenario (natives only) and concluding with the least restrictive (citizens only). This strategy illustrates how layers of qualified membership undermine the spirit of equal representation.

First Period of Twentieth-Century Mass Migration

If apportionment had excluded all immigrants in 1910, when 15% of the population was foreign-born, 24 seats would have been reshuffled among 29 states, with 17 states gaining

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7. Partly this increase reflects the greater number of seats in the House, which rose from 391 in 1900 to 435 in 1911; still, over one-third of these seats were allocated to the six states immigrant states (*Guide to Congress* 1991).

8. The size of the House of Representatives was fixed at 435 by the Apportionment Act of 1911.

9. For the census data of 1900 through 1930, the number of Indians who were not taxed constitutes the difference between the total residential population and the apportionment population (Schmeckebier 1941:11). From 1940 to the present, Indians have been included in the apportionment population. In 1970, 1990, and 2000, the apportionment population included U.S. Armed Forces personnel and federal civilian employees who were stationed outside the United States (and their dependents living with them) that could be allocated back to a home state in addition to the residential population (U.S. Census Bureau 2000a). I included declarant aliens, who had filed their first papers among the noncitizens because few states allowed noncitizens to vote during the twentieth century (Harper-Ho 2000; Keyssar 2000).

Table 2. Reapportionment Summary for Three Scenarios About Representation of the Foreign-Born

	Natives Only			Stop Immigration[a]			Citizens Only		
	Seats	States Affected		Seats	States Affected		Seats	States Affected	
Period	Reshuffled	Gainers	Losers	Reshuffled	Gainers	Losers	Reshuffled	Gainers	Losers
Period 1									
1910	24	17	12	8	8	6	7	7	6
1920	22	15	13	12	8	9	12	9	8
1930	15	12	8	12	12	8	7	7	5
Period 2									
1970	6	6	3	3	3	3	3	3	3
1980	8	8	3	6	6	3	6	6	3
1990	12	12	4	11	11	4	8	8	4
2000	16	16	5	14	14	5	9	9	4

Note: Seats refer to seats in the U.S. House of Representatives.

[a]In Period 1, recent immigrants are defined as those who arrived after 1900; in Period 2, recent immigrants refer to those who arrived after 1960.

and 12 losing seats. As the primary hub of European immigrants during the nineteenth century, New York would have sustained the greatest losses, with 8 fewer seats than were actually assigned, and Mississippi would have claimed 2 of the reshuffled seats. For 1920, the natives-only scenario would have reallocated 22 seats—2 fewer than in 1910—among 28 states, with 15 gaining and 13 losing seats. Following a decade of numerical restrictions on immigration, by 1930 only 15 seats would have been reshuffled among 20 states if apportionment had been restricted to native-born persons. The loss of seats would have affected 8 states, with New York sustaining over one-third of the losses, while 12 different states would have increased their congressional power.

A less-stringent scenario, halting immigration in 1900, would have excluded recent immigrants from the apportionment. Because two-thirds of the resident foreign-born in 1910 arrived before 1900, stopping immigration in 1900 would have reshuffled only 8 seats among 14 states in 1910, with 8 gaining and 6 losing seats in the U.S. House of Representatives. Under this scenario, New York would have lost 3 seats instead of 8, and Mississippi would have reclaimed 1 seat. If there had been no immigration after 1900 and Congress actually had been reapportioned in 1920, 12 seats would have been reallocated among 17 states, with 7 gaining and 9 losing votes in Congress. Because restrictions on immigration were actually implemented during the 1920s, a 1930 reapportionment that assumed no immigration after 1900 would have reshuffled the same number of seats as in 1920, except that 20, rather than 17, states would have been affected, with 12 gaining and 8 losing seats. New York alone would have lost 5 seats if 2.3 million immigrants who arrived after 1900 had been excluded from the 1930 reapportionment, while California, Connecticut, Illinois, Massachusetts, Michigan, New Jersey, and Washington each would have lost 1 seat.

The third scenario, which responds to Representative Rankin's views about representation and citizenship, would restrict the apportionment only to citizens. This counterfactual would produce the smallest effects on reapportionment because naturalization rates were relatively high at the beginning of the twentieth century, particularly following the

Americanization movement to naturalize the foreign-born (King 2000). Only 7 seats would have been reshuffled in 1910 by restricting congressional apportionment to citizens, with 7 states gaining and 6 losing seats. Under this scenario, New York would have lost only 2 seats. By 1920, however, the citizens-only counterfactual would have reallocated 12 congressional seats among 17 states, with 9 gaining and 8 losing votes in Congress. Iowa, Maine, Missouri, Pennsylvania, Rhode Island, and Vermont each would have lost 1 seat, while Massachusetts and New York would have lost 2 and 4 seats, respectively, if congressional representation had been restricted to statutory citizens. Because the Americanization movement to increase naturalization rates was relatively effective in reducing the number of resident aliens (King 2000), excluding noncitizens from the 1930 reapportionment would have reshuffled only 7 seats, costing New York 3 and assigning 1 of these seats to Mississippi.[10]

Second Period of Twentieth-Century Mass Migration

The hiatus in immigration following the Great Depression reduced the foreign-born share of the national population to around 5% by 1960, when it stabilized until after 1970 (U.S. Census Bureau 2001:9). Therefore, the reapportionment simulations are less dramatic—at least until the second wave of mass migration unfolded. Thus, rather than decrease over time, the impact of immigration on the distribution of congressional power rose during the second period of mass migration. Another difference between the first and second periods of mass migration is that the states gaining and losing political power owing to immigration would have changed, signaling a shift in congressional influence from the East and Midwest to the South and West.

Using the most restrictive natives-only scenario for assigning congressional seats in 1970 would have reshuffled six seats among nine states, with six gaining and three losing seats. New York alone would have shouldered half the lost seats, with California and Florida rounding out the losses at two and one, respectively. Beneficiaries of a 1970 reapportionment that excluded immigrants would have been Alabama, Maryland, Oregon, Pennsylvania, Tennessee, and Wisconsin—each with one additional seat. The increased volume of immigration over the next decade, however, would have had more sizable consequences for the 1980 distribution of power in Congress because eight seats would have been reshuffled if apportionment had been restricted to natives. California, Florida, and New York would have lost four, one, and three seats, respectively. Of the eight states that would gain seats under this scenario, five are in the South and three are in the Midwest.

The rising momentum of immigration during the 1980s and 1990s, which included the legalization of 2.7 million undocumented immigrants, would have had a more sizable impact on the distribution of congressional power than the previous two decades. In 1990, the natives-only counterfactual implies a reshuffling of 12 seats, of which 11 would have been due to post-1960 immigrants. In the most recent apportionment, 16 congressional seats would have been reshuffled among 21 states if the apportionment were based on the natives-only scenario. Five states would have sustained seat losses (9 in California, 2 in Florida, 1 each in New Jersey and Texas, and 3 in New York), while 16 states would have gained 1 seat each.

Because the 1965 amendments to the Immigration and Nationality Act of 1952 did not go into effect until 1968, the volume of immigration during the decade was relatively low. Therefore, the scenario of halting immigration in 1960 would have had a modest effect on the 1970 distribution of congressional power—reshuffling only three seats

10. Mississippi would have actually lost seats in 1920 if a reapportionment had been implemented using the constitutionally mandated criterion to represent all inhabitants; the lack of any gain from this counterfactual in 1920 reflects this fact.

among six states. Moreover, reapportionment based on the citizens-only scenario would have had identical effects because in 1970, nearly 66% of the foreign-born residents were naturalized citizens (U.S. Census Bureau 2001:20). But as the volume of immigration increased, so, too, would its consequences for the distribution of congressional votes among states. Owing to low naturalization rates among recent immigrants, for 1980 both the halt-immigration and the citizens-only scenarios would have reshuffled six seats among nine states, with six gaining and three losing seats. Under both counterfactuals, California would have borne the lion's share of the losses by forfeiting three seats, New York would have lost two seats, and Florida would have lost one seat.

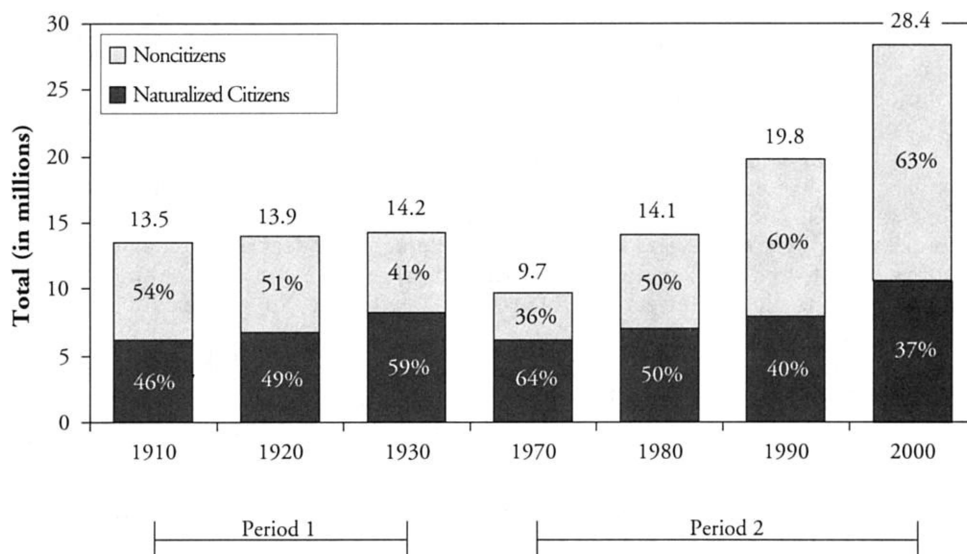
In the 1990 reapportionment, the halt-immigration scenario would have reshuffled 11 seats among 15 states, with California losing 7 seats, New York losing 2 seats, and Texas and Florida losing 1 seat each. By 2000, the impact of recent immigration on the distribution of congressional power approached the magnitude witnessed in 1930. Apportioning seats assuming no immigration after 1960 would have reshuffled 14 congressional seats among 19 states in 2000, with California alone forfeiting 8 seats, Florida and New York losing 2 seats each, and Texas and New Jersey losing 1 seat each. The 14 beneficiaries of the reshuffled seats, each receiving one additional vote in Congress, were dispersed throughout the country and would have included Montana, Utah, and Oklahoma (see Appendix Table A2).

Because the naturalized share of the foreign-born population had fallen to 40% by 1990 (U.S. Census Bureau 2001:20), reapportioning using the citizens-only scenario would have reshuffled 8 seats among 12 states, with California alone forfeiting 5 and Florida, New York, and Texas each giving up 1 seat for the benefit of 3 southern states (Georgia, Kentucky, and Louisiana), along with 4 states in the north central region (Kansas, Montana, Michigan, and Ohio) and Pennsylvania in the East. Confining the 2000 apportionment to birthright and naturalized citizens would have reshuffled 1 more seat than in 1990—with California forfeiting the additional seat. However, the profile of beneficiary states in each year would differ. Owing to shifts in the distribution of the population and the bias toward small states in the apportionment formula, Oklahoma, Indiana, Utah, Mississippi, and Wisconsin each would have gained a seat in 2000 if apportionment had been restricted to statutory citizens, but Georgia, Kansas, Louisiana, and Ohio would not.

Of course, these counterfactuals produce conservative estimates of the impact of immigration on the distribution of congressional power because they ignore the compounding demographic effects from immigrants' fertility and internal migration in response to immigration. Moreover, because the Supreme Court (*Federation for American Immigration Reform (FAIR) v Klutznick*) unequivocally ruled that *all persons* are to be included in the population base for purposes of apportionment, these scenarios will not materialize. Nevertheless, they provide several important lessons. First, the effects of immigration on congressional apportionment of immigration declined from 1900 to 1930 as political anxiety about the impact of the foreign-born on representation rose, but the impact has risen appreciably since 1960, particularly after 1980. This impact is also evident when one compares the difference between the native-only and halt-immigration scenarios in Table 2. Furthermore, the states that would have lost seats would have been more concentrated during the latter period, reflecting the higher concentration of immigrants in six states.

Second, on the basis of the number of seats and states involved, the impact of immigration on the distribution of congressional power was the most similar in 2000 and 1930 across all scenarios, except that there was a shift in the balance of power among the six immigrant-receiving states to California, Texas, and Florida from New York, New Jersey, and Illinois, at the expense of other states (see Figure 1). In 1930, New York, New Jersey, and Illinois collectively held 1 in 5 House seats, whereas in 2000, California, Texas, and Florida combined held 1 in 4 House seats. These conditions are ripe for another round of

Figure 2. Citizenship Status of the Foreign-Born Population for Two Periods of Mass Migration



Sources: Gibson and Lennon (1999); U.S. Census Bureau (2001).

restrictions on immigration to stem the flow, as well as new variants of ascriptive democracy, as I discuss later.

Third, the consequences of the citizens-only scenario would have risen before declining during the early period, but would have risen continually during the latter period because, as Figure 2 shows, the proportion of naturalized immigrants was relatively high at the turn of the century, ranging from a low of 46% to a high of 60% during the first period of mass migration (Ueda 1980:747). Although the Americanization movement during this period was partly responsible for the high naturalization rates (King 2000), naturalization rates declined during the most recent period, falling about 50% from almost 2 out of every 3 immigrants in 1970 to just over 1 in 3 by 2000 (U.S. Census Bureau 2001:14).

Fourth and more important, the citizens-only scenario raises a real (rather than a simulated) moral dilemma because noncitizens, who are a growing share of the immigrant population, do not have a voice in selecting their representatives and because the residential concentration of immigrants creates serious problems of malapportionment (Davis 1981; Edmonston and Schultze 1995; Goldfarb 1995). For example, Illinois did not redraw congressional districts between 1900 and 1940, and although the number of its congressional seats held relatively stable, the disparity between the smallest and largest Illinois congressional district rose from 105,000 to 752,000 persons (Congressional Record 1940:4371). Nationally, the problem of malapportionment increased such that by 1960, the 20 most populous districts represented a combined population of 14 million, compared with 4.6 million residents for the smallest 20 districts (Edmonston and Schultze 1995:244). Although disparities in the sizes of congressional or legislative districts are not entirely due to immigration, problems of *malapportionment* are particularly harsh for districts with a large number of immigrants who cannot vote because they are not citizens.

The problem of unequal voice has two solutions: (1) to *equalize the voting* power across districts (*Baker v Carr* 1962) and (2) to strive for truly equal representation by *allowing noncitizens to vote*. Both solutions are problematic from an operational or a legal standpoint. Equalizing voting power would appear to be straightforward, but immigration complicates the solution because the residential concentration of the foreign-born poses moral and practical dilemmas for achieving equal representation. Essentially, the solution involves a choice between an exclusive apportionment that protects *citizens'* right to voting equality and an *inclusive* apportionment that ensures equal representation for *all persons*, including noncitizens. The dilemma is moral because decisions about the inclusion or exclusion of noncitizens from congressional and state legislative districts invoke issues of fairness, the spirit of equal representation, and the fundamental rights of membership implicit in the social contract; it is practical because a population-based allocation of state and local funds could perpetuate inequities between the included and excluded residents, thereby effectively blocking the emergence of a Marshallian conception of social citizenship.

Figure 3, for Los Angeles County, illustrates the dilemma of balancing the democratic values of *electoral equality* and *representational equity* in districts with a high concentration of noncitizens. Electoral equality emphasizes the proportionality of registered voters across districts, while representational equality dictates redistricting using population proportions as the base (Goldfarb 1995). Applying electoral equality on the basis of *citizenship* produced districts in Los Angeles County with highly unequal populations: in 1971, District 4 had a population that was 70% larger than District 9, despite similar proportions of registered voters. But an alternative plan proposed for 1990, which would have balanced total residents without taking direct account of differences in citizenship, would have violated the spirit of "one-person, one-vote" by weighting more heavily the votes of citizens residing in districts with larger shares of unnaturalized immigrants than those with few immigrants. In effect, representational equality would have been traded for electoral inequality; that is, demographic equity implies unequal membership in a democratic society.

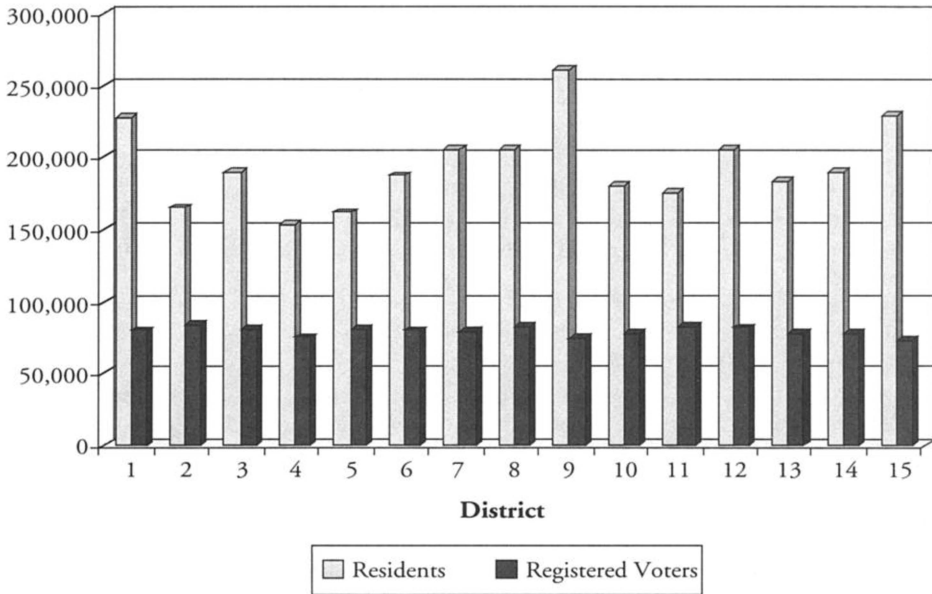
An alternative solution to the problem of malapportionment in places with large populations of immigrants is to equalize voting privileges. The difficulty here is that the Constitution explicitly restricts voting to citizens in *national* elections, but not necessarily in state and local elections (Neuman 1993, 1996; Rosberg 1977). Legislation passed in 1996 made voting by aliens in federal elections a felony and voting in violation of any federal, state, or local law grounds for deportation (Schuck 1997). However, states retain great latitude in their local apportionment and voting criteria, provided that they do not engineer discriminatory impacts in violation of the Voting Rights Act of 1965. Voting equality is possible at the state and local levels if noncitizens are allowed to vote legally. This extension of the franchise requires going beyond citizenship as *presence*, which recognizes that the resident foreign-born shape the lives of their communities (Bosniak 2000; Keyssar 2000), and embracing Raskin's (1993) concept of citizenship as *integration*, which involves socializing newcomers in the activities that lead to formal citizenship, including participating in the governance of their communities. A review of alien suffrage makes this point more forcefully.

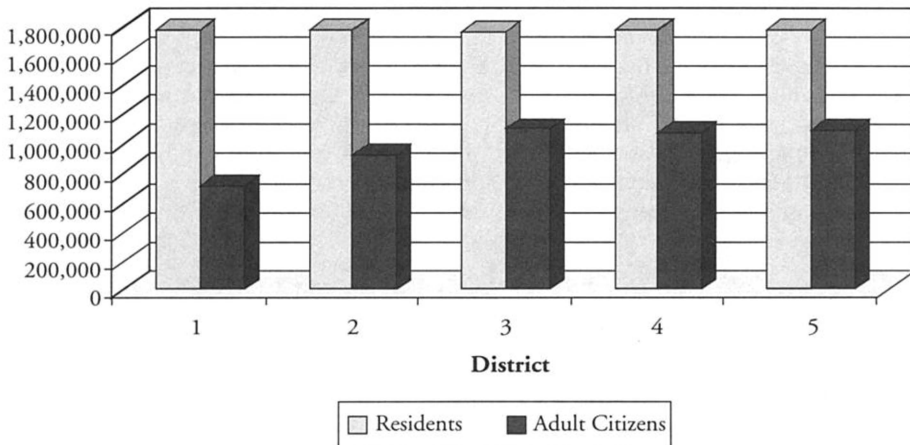
CITIZENSHIP AS PRESENCE AND AS STANDING

> Citizenship is man's basic right for it is nothing less than the right to have rights.
> —Chief Justice Earl Warren (*Perez v Brownell* 1958)

As a master status, citizenship defines membership, confers rights and privileges, and distributes life opportunities (Marshall 1964; R. M. Smith 1997). The right to hold

Figure 3. Los Angeles Redistricting Plans





Source: Goldfarb (1995).

public office and the franchise are two of the most sacred privileges of citizenship, which distinguish this status from aliens, including those admitted as legal residents. The 14th Amendment (§ 1), ratified in 1868, defines *citizens* as "All persons born or naturalized in the United States," and the 15th Amendment guarantees all *citizens* the right to vote.[11] Congress legislated itself power to enforce voting rights, but enforcement was irresponsibly lax until the Voting Rights Act of 1965 and its various reauthorizations put teeth into monitoring activities.

The chapter of African Americans' quasi-citizenship has been well-documented in legal and academic scholarship (Mills 1997; R. M. Smith 1997). Less well known is the story of immigrant suffrage and its role in nation building, particularly how states used the state franchise instrumentally to increase population and gain seats in Congress (Harper-Ho 2000; Neuman 1996; Raskin 1993; Rosberg 1977; Williams 1912). In fact, voting by noncitizens was common through the early twentieth century because federalism permits considerable discretion in civil matters, including specifying the privileges of state citizenship and deciding matters of legislative apportionment (Goldfarb 1995; Neuman 1996).

Although the federal Constitution restricts the national franchise to citizens, "categorical denial of noncitizens' voting is neither constitutionally required nor historically normal" (Raskin 1993:1391; see also Rosberg 1977). But the story of alien suffrage was neither linear nor smooth, involving periods of expansion and retrenchment along the way (Keyssar 2000). During the colonial period, noncitizens not only voted but also held public office (Harper-Ho 2000). Neuman (1996) claimed that the early instances of alien suffrage occurred because of the confused relationship between state and federal citizenship, which was only partly clarified by the 14th Amendment. According to Rousseau ([1762] 2002), such ambiguity in the boundaries of political communities is natural to emerging states, whose values and principals are being forged in their social contract.[12]

Historically, access to the franchise excluded not only blacks, women, and the young but also certain non-Protestant groups. Rhode Island precluded Jews from voting until 1842; Catholics and Jews were denied the franchise in most colonies, and Quakers and Baptists could not vote in others (*Guide to Congress* 1991). On the eve of the Civil War in 1860, aliens were allowed to vote in as many states (six) as were blacks (Porter 1918:148).[13] As barriers of property, race, sex, literacy, age, and other impediments to universal suffrage were eliminated through constitutional amendments and legislative acts, the suffrage rights of noncitizens were eroded and ultimately terminated, except in a few localities (Keyssar 2000; Neuman 1996; Raskin 1993).

Secondary sources on the subject of alien suffrage have disagreed about how many, which, and when states allowed noncitizens to vote. A tally based on certain end dates indicates that at least 22 states and territories allowed noncitizens to vote in the nineteenth century and that several permitted aliens to vote and hold public office during the early postcolonial period (Aylsworth 1931; Harper-Ho 2000). Thus, a count of all states recognized for ever permitting noncitizens to vote produces an upper limit of 35, as shown

11. Rosberg (1977) contended that inclusion of the word *citizens* in the 15th Amendment does not prevent noncitizens' suffrage, but the courts have ruled otherwise. However, this restriction refers to federal elections, not state and local elections, which are entirely up to the discretion of the states, as stipulated by Article 10 (Neuman 1996:63; Raskin 1993).

12. "There is for nations as for men a period of maturity, which they must await before they are subjected to laws; but it is not always easy to discern when a people is mature, and if time is rushed, the labor is abortive. One nation is governable from its origin, another is not so at the end of ten centuries" (Rousseau [1762] 2002:184).

13. Six states that allowed blacks to vote were Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. Aliens were allowed to vote in Indiana, Kansas, Louisiana, Minnesota, Oregon, and Wisconsin (Porter 1918:148).

in Figure 4 (Harper-Ho 2000; Keyssar 2000; Neuman 1996; Porter 1918; Raskin 1993; Rosberg 1977).[14]

When the right to vote was linked mainly to property, age, sex, and race, rather than to citizenship, and before the 14th Amendment was ratified, a legal interpretation of "inhabitants" easily included immigrants. As the United States consolidated its state and national identities during the late eighteenth and most of the nineteenth century, state citizenship was a salient identity from which immigrants benefited and to which they contributed. The militant nationalism and xenophobia following the War of 1812 precipitated the first retrenchment of alien suffrage, largely involving the relatively well-populated eastern states, including Massachusetts, New York, Pennsylvania, Tennessee, and Vermont (Harper-Ho 2000; Keyssar 2000; Raskin 1993).

According to Porter (1918:22), between 1820 and 1845, debates on state suffrage lost sight of the foreigner, especially those debates that were occupied with the "free Negro" and reaming property tests. Even as the franchise was being rescinded in some states, other states capitalized on the paradigm of strong electoral federalism for instrumental purposes by declaring unnaturalized aliens as *state* citizens—assuming, of course, that they were white men aged 21 and older (Porter 1918; R. M. Smith 1997). At that time, women and persons under age 21 were ineligible to vote. Neither, of course, were slaves, and naturalization was closed to most Asian nationals until 1952 (Keyssar 2000; R. M. Smith 1993). Despite the ratification of the 14th and 15th Amendments, in many southern states, African Americans were voiceless until the enactment and enforcement of the Voting Rights Act of 1965.

Even after the federal government's exclusive power to naturalize aliens was clarified,[15] distinctions between state and national citizenship permitted states to grant aliens the franchise, by declaring them state citizens. Beginning with Wisconsin in 1848, states that allowed immigrants to vote required declarations of *intention* to become U.S. citizens as a condition for voting, and several imposed a minimum residence requirement (Keyssar 2000: table A-12; Raskin 1993).[16] Thus, at least during the mid- to late nineteenth century, noncitizen voting was precitizen voting. Williams (1912) suggested that "naturalization was practically a state affair" until 1882 because of lax federal supervision of the records and procedures. Moreover, vigilance over the process by which first papers were filed was also weak to nonexistent.[17] In Nebraska, for example, immigrants who filed their first papers for national citizenship were allowed to vote in national elections even before the six-month waiting period (Williams 1912).[18]

The issue of noncitizen voting was embroiled in the national division over slavery: the North wanted to expand the privilege, while the South wanted to restrict suffrage to

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14. Both Raskin (1993) and Harper-Ho (2000) included Oklahoma and Washington among the states that permitted noncitizens to vote, but I was unable to verify this claim using corroborating sources.

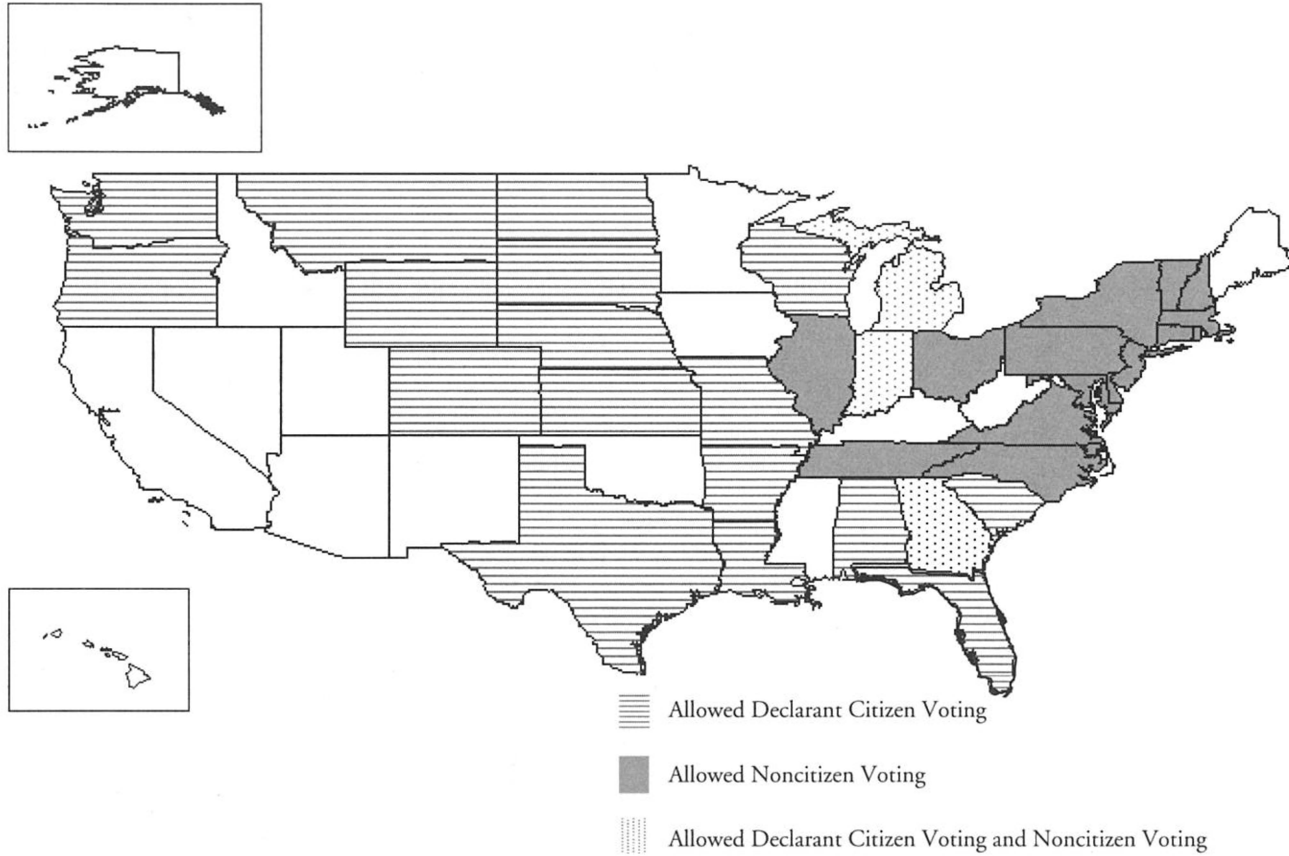
15. The process of naturalization became the exclusive domain of the federal government in the late 1870s as a result of the companion 1876 Supreme Court cases *Henderson v Mayor of New York* and *Chy Lung v Freeman*, after the divisive issue of slavery was settled and the uniform regulation of admissions was politically feasible (Kurian 1998; Neuman 1993). However, a standard citizenship-application form was made available only in 1906, wresting discretion from states and municipalities, which were adhering to a wide range of naturalization policies that suited their political objectives.

16. Censuses from these periods differentiate the foreign-born as "aliens" or "declarant aliens" (who filed their first papers or declarations of intent to become citizens) and naturalized citizens (who had obtained the certificates of naturalization). Filing a declaration of intention, however, imposed no obligation to naturalize after the five-year waiting period (Porter 1918).

17. Williams (1912) presented a detailed case study of the process of naturalization in Lancaster County, Nebraska, which illustrates the casualness of the process and the opportunities for widespread political corruption that led to the Corrupt Practices Act of 1899. Nebraska allowed declarant immigrants suffrage from 1867 to 1918.

18. On the books, there was a 5-year residence requirement for naturalization from 1795, which was increased to 14 years in 1798 and then restored to 5 years with the Act of 1802 (Jasso and Rosenzweig 1990).

Figure 4. States That Ever Allowed Alien Suffrage



Sources: Harper-Ho (2000); Keyssar (2000); Neuman (1996); Raskin (1993); Rosberg (1977).

limit the political influence of the North. Alien suffrage actually *expanded* during the tense prewar period, but during the Civil War, it carried an enormous price—namely, conscription, which was *apportioned* among states on the basis of the apportionment population (Keyssar 2000). Immigrants who attempted to rescind their declarations to become citizens to avoid conscription faced deportation (Raskin 1993).

After the Civil War, 13 new states, including former Confederate states, adopted declarant alien suffrage as a way of repopulating their states, settling the public debt, and regaining political power in Congress (Keyssar 2000; Raskin 1993; Rosberg 1977). The contraction of alien suffrage gained momentum in the wake of the 1890s recession, when several states repealed provisions that granted noncitizens voting rights. Yet as late as 1900, 11 states still permitted noncitizens to vote (Harper-Ho 2000; Keyssar 2000). The resurgence of nativism, coupled with legal changes in voting rights of other citizen groups during and after World War I, led to a further contraction of alien suffrage, which terminated completely in the late 1920s (Harper-Ho 2000; Keyssar 2000; Neuman 1996).[19] Thus, the chapter on alien suffrage in the history of immigration illustrates how the boundaries of membership were expanded and then contracted as matters of economic and political expediency within the guise of democratic values.

If in the past the *instrumental goals* of attracting immigrant settlers to populate newly admitted states and settle debt motivated political leaders to offer the franchise to noncitizens (Keyssar 2000; Neuman 1996), *democratic principle* may compel similar state and local policies in the twenty-first century (Bosniak 2000). For blacks, the 13th and 14th Amendments formalized a social contract of rights and responsibilities by declaring them full-fledged citizens; the process of naturalization does the same for immigrants by formalizing their statutory status. For noncitizens, voluntary immigration provides a more explicit consent to be governed than does birthright citizenship. Therefore, and in contrast to ancient democracies, in which the distinctions between citizens and foreigners were sharply defined and rigid, in a liberal democracy, noncitizens *should be* virtually indistinguishable from citizens because legal admission ostensibly guarantees equal access to the privileges, rights, and civil guarantees accorded to citizens, save the franchise (Bosniak 2000).[20] In practice, however, the citizen-alien distinction appears to be deepening (Gosewinkel 2001; Schuck 1997).

This need not be so. The citizen-alien distinction *can* be blurred because both citizens and aliens are entitled to representation in Congress, both are required to pay taxes, both serve in the armed forces, and both are bound by the same laws and obligations. Hence, both are putatively eligible for the rights and privileges enjoyed by citizens through birthright or naturalization, except voting in federal elections and, where stipulated by law, state elections. That states retain the authority to grant noncitizens the right to vote in state and local affairs is a socially meaningful way to fade the distinction between aliens and citizens (Neuman 1996; Raskin 1993; Rosberg 1977).[21] Some have argued that the citizen-alien distinction *should* be blurred because it is morally consistent with the values of *equity* and *inclusiveness* professed by a liberal democracy and because political participation in local affairs ostensibly can prepare aliens for statutory U.S. citizenship (Bosniak

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19. Keyssar (2000: table A12) dated the end of alien suffrage to 1926, when Arkansas abolished noncitizen voting, but Harper-Ho and others used 1928 as the end of alien suffrage.

20. Hume ([1748]1948:153) noted that even in Athens, the most extensive democracy in history, only one-tenth of the residents were signatories to the laws that governed the republic.

21. The 10th Amendment specifically stipulates that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The paradigm of strong federalism allows states great discretion in the conduct of state governance, which was liberally exercised during the period of nation building (Raskin 1993). The Dred Scott (*Scott v Sandford* 1856) decision recognized the rights of citizenship that states may confer within their own limits, except for naturalization.

2000; Raskin 1993).[22] But as the history of black suffrage testifies, morality is never sufficient to compel compliance with the letter, let alone the spirit, of the law.

Not only are concerns about conflicts of allegiance less relevant in local than in national politics, but the expansion of dual citizenship among immigrant-sending countries (including Mexico) renders moot the question of loyalty to either the source or the host country. More generally, as the era of mass migration unfolds throughout the world (Massey et al. 1998), the meaning of national citizenship comes into sharp relief and questions the relationship between rights and membership. According to Bosniak (2000:963), noncitizen residents as a social class render "citizenship-as-rights" and "citizenship-as-status" problematic. Her perspective parallels Raskin's (1993) notion of citizenship as integration and as standing, which the 1992 Maastricht Treaty on the European Union (EU) brings into sharp relief (Neuman 1996).

As economic imperatives and the adoption of a common currency compel making national boundaries porous to harness the benefits of scale in matters of trade and labor market specialization, questions of nationality and strict allegiance to a nation-state assume backstage, even in the face of the persisting diversity in cultures and languages.[23] The underplaying of national boundaries against the backdrop of pan-European citizenship is evident in the movement to increase the portability of political rights that citizens of the EU can use in any member country. The Maastricht Treaty commits member states to grant nationals of other member states the right to vote and run for office in municipal elections (Neuman 1993). Currently, 5.5 million EU citizens hold limited political rights throughout Europe, but the extension of suffrage and other privileges of citizenship does not apply to resident aliens and third-country nationals (Day 2000).

This unique social experiment and its historical antecedents bear important lessons for the political incorporation of U.S. immigrants. In the 1980s, Sweden seriously considered an initiative that would grant foreigners the right to vote, but these efforts were stymied by ardent nationalists. Eventually Sweden, along with Norway, Finland, Denmark, the Netherlands, and Ireland, granted active and passive local and regional voting rights to foreigners (Bauböck 1994a, 1994b; Johnson 1993). In France and Germany, the debate over extending the local franchise to noncitizens did not favor immigrants. Moreover, in the fall of 1990, Germany's Federal Constitutional Court reversed the statutes of two states that allowed resident aliens to vote in municipal matters and reconfirmed the exclusivity of a political voice only for citizens. Despite the efforts of the German government to revise its inefficient naturalization process, the privileged position of German-ancestry immigrants remains intact, reifying a membership hierarchy within the subset of foreigners (Neuman 1992).

The EU is not alone in limiting the national franchise to statutory citizens. Blais, Massicotte, and Yoshinaka (2001) found that 76%, or 48 of 63, of the democratic countries in their sample restricted the right to vote to citizens. Moreover, among the countries that did permit noncitizens to vote, many imposed extended residence requirements. For example, while New Zealand grants permanent residents the franchise, in Uruguay noncitizens must reside in the country for 15 years before they can vote. At least 11 countries relax the citizenship requirement for suffrage for nationals from specific countries. This practice is particularly common among many former British colonies and Portugal (Blais et al. 2001). Notwithstanding its symbolic value of full membership, only when the franchise is exercised is it socially and politically meaningful. When granted

22. Anti-immigrant groups, such as FAIR, disagree, arguing that no one should receive the franchise without a Pledge of Allegiance because divorcing the two strips citizenship of its meaning. Rosberg (1977) and others (Bosniak 2000; Raskin 1993) have rebuked the idea that citizenship and voting are synonymous.

23. Switzerland, Sweden, Denmark, and Great Britain have not adopted the euro as their sole currency, and the question about whether Great Britain is part of Europe is still a matter of debate in some quarters.

the right to vote, noncitizens are less likely than citizens to exercise the franchise (Harper-Ho 2000), and naturalized citizens are less likely to vote than are native-born citizens (Bass and Casper 2001).

In raising the issue of qualified membership, I am not advocating voting for noncitizens. Rather, my purpose is to illustrate how, in the shadows of a history of ascriptive democracy, national but especially local interests are not well served by muffling the voices of a growing share of the U.S. population. "Because aliens are a significant part of many contemporary political communities, their presence inevitably shapes the nature and practice of citizenship within" (Bosniak 2000:975). Hence, if recent laws that explicitly prohibit immigrants from voting disadvantage legal immigrants as a class, the political salience of citizenship through naturalization is bound to increase, and it has (Singer 2000). More significant, however, is that concerns about fairness in governance will become more discordant with the principles of *equity* and *inclusion* as long as entire communities remain voiceless in decisions that govern their life options and those of their children. But for immigrant rights to become the civil rights of the twenty-first century, as Raskin (1993) claimed, a realignment of democracy with demography is required.

ALIGNING DEMOCRACY WITH DEMOGRAPHY

Admittedly, the United States would be a different country if immigration had been stopped at the turn of the twentieth century or the second era of mass migration had not materialized after 1970. History scripted otherwise, and the future promises to do so even more. The U.S. Census Bureau (2000d) predicted that 36% of the U.S. population will consist of minority groups by 2020, and 47% will consist of minority groups by 2050. Immigration will play a major role in this future diversification. Even if immigration levels are cut, the offspring of immigrants will maintain the force of diversification for at least 30 to 40 years—the time required for significant changes in the childbearing behavior of the foreign-born (J. P. Smith and Edmonston 1997:111). Although the children of immigrants are citizens by birth, their place in the status hierarchy will be shaped by the reception and rights accorded their parents.

According to Bosniak (2000:983), "the category of alienage poses a special challenge to the liberal vision of citizenship, because the concerns with status and rights which lie at the heart of this vision necessarily engage the questions of how far—and, especially, to whom—the liberal-democratic project of universality should be understood to extend." Fortunately, history provides lessons about how to prepare for that future within a framework of social justice. The main lessons are about how immigration challenges the commitment to values of inclusion and equality, given voice in the Declaration of Independence and the U.S. Constitution, by requiring a broadened conception of membership that embraces both Marshall's (1964) notion of *social citizenship and* Raskin's (1993) notion of *citizenship as integration*. Maximal civic incorporation of immigrants is crucial for reinvigorating the shared commitment to the values of liberty, democracy, and equal opportunity (Bosniak 2000; Prewitt 2001). At a minimum, social justice dictates that noncitizens should be treated as functional citizens.

However, several legislative measures targeting the foreign-born have threatened the social contract and exposed the vulnerability of immigrants' rights to political manipulation. For example, in 1980 the Supreme Court denied a lawsuit initiated by FAIR against the U.S. Department of Commerce (*Federation for American Immigration Reform [FAIR] v Klutznick* 1980: note 11) that aimed to exclude undocumented immigrants from the apportionment base. Wood (1999), the former counsel to the Senate Judiciary Committee on immigration, alleged that both the constitutional provisions to include undocumented immigrants in the apportionment population and the provisions that grant birthright citizenship to children of undocumented immigrants are cracks in the social contract that will "undermine the civic foundation of national unity." He proposed sealing these cracks by

excluding undocumented immigrants from the apportionment population and denying birthright citizenship to their offspring. Both objectives require constitutional amendments, which have not succeeded to date. Once again, history teaches that inclusive approaches to sealing cracks in the contract are not only more enduring, but consistent with the values of a liberal democracy.

Legislative measures that target the foreign-born expose the vulnerability of immigrants' membership to political manipulation. Some have been revised or rescinded after public scrutiny and legal review, whereas others have been allowed to stand. If anti-immigrant initiatives in California, Florida, and Texas are the bellwether of the future, prospects for equality between natives and immigrants and between citizens and noncitizens are worrisome. For example, passed in November 1994 by a 59% majority of California voters, Proposition 187 targeted both legal and undocumented immigrants by mandating that children of non-U.S. citizens should be denied access to public schools, as well as health and social welfare benefits, except in cases of emergency.[24] That it was declared unconstitutional does not erase its strong symbolic message about membership and inclusion—rather, alienage and exclusion—and the strong popular support adds an aura of legitimacy to the intent.

Temptations to muffle immigrants' voices and to limit social participation show no signs of abating. Even the extra protections afforded by statutory citizenship were threatened when the INS interpreted a provision in the 1990 Immigration Act as granting the agency the ability to revoke citizenship as an administrative, rather than a judicial, matter (Kim 2001). Although the practice of "administrative denaturalization" proposed by the Attorney General's Office was declared unconstitutional (*Gorbach v Reno* 2000), accusations of election fraud or partisan politics could lead to similar initiatives in a climate in which nativism has resharpened boundaries between citizens and unnaturalized immigrants ("Note" 1997). According to Gopal (2001), the current system of administrative denaturalization renders the revocation of citizenship easier than ever and with fewer safeguards for naturalized citizens.

In 1996 President Bill Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193) into law, which restricted the eligibility of some groups of legal immigrants from federal, state, and local benefits and services. This flagrant anti-immigrant legislation was further buttressed by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), which restricted access to social benefits for undocumented immigrants, including in-state tuition for postsecondary education ("Recent Legislation" 2002; see also Arenson 2001; Davila 2002; FAIR 2001; Purnick 2002). As Schuck (1997:12) aptly noted, "Until the statutory changes adopted by Congress in 1996, the differences between the legal rights enjoyed by citizens and those enjoyed by LPRs [legal permanent residents] were more political than legal or economic, and those differences had narrowed considerably over time." Both acts have deepened the divide between statutory and functional citizenship and have sharpened the inequality between immigrants and natives. In view of the volume of immigration in the recent past, sealing cracks in the social contract is essential to prevent the demography of difference and foreignness from shaping the contours of inequality.

On a more positive note, there are several signs that democratic values are being realigned with the demographic realities of immigration. Local initiatives to promote inclusion by permitting noncitizens to vote in school board and municipal elections are an important step toward building a sense of community by giving voice to immigrants and reducing the salience of foreignness. Several localities currently permit noncitizens to

24. See the full text of Proposition 187 at the University of California Hastings College of the Law (*Proposition 187*. California Ballot Propositions Database. Available on-line at http://holmes.uchastings.edu/cgi-bin/starfinder/27148/calprop.txt).

vote. In Chicago and New York City, noncitizens have voted in school board elections for a long time. More recently, Takoma Park, Maryland, granted noncitizens, including undocumented immigrants, the right to vote in local elections (Harper-Ho 2000; Keyssar 2000).[25] Yet these cases are the exception, not the norm. Similar initiatives have been proposed in several other localities with mixed success, and some opposition has come from members of the African American community, whose opportunities to gain seats on school boards and hold municipal office may be diminished if the local franchise is granted to Latino, Asian, and Arab parents (Tamayo 1995). How diversity will play out in local politics will shape the contours of the national agenda on inclusion and equity.

Another powerful gesture toward the twin goals of equity and inclusiveness is recent legislation that has granted in-state tuition privileges to undocumented immigrants who graduate from U.S. high schools (*Federation for American Immigration Reform (FAIR) v Klutznick* 1980). That Texas and California, along with Utah, have assumed leadership in authorizing this benefit is all the more impressive because these states contain over half the undocumented population and achieved notoriety during the mid-1990s for their anti-immigrant and anti-affirmative action legislation and because their decisions defy the federal ban on in-state tuition benefits for undocumented aliens included in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act. Other states have proposed similar initiatives, which have been defeated. In a world in which the value of a college education signals large differences in lifetime earnings and general well-being, denying youths the opportunity to maximize their educational investment will surely compromise a future in which immigrants and their offspring will be major contributors to economic productivity. Philosophically, denying children of undocumented immigrants equal access to public education not only falls short of a liberal conception of social citizenship that includes social welfare rights, along with full civic membership, but breaches the social contract by raising the threshold of the tolerable limits of inequality.

CONCLUSION

As we look toward the future with the benefit of hindsight, the looming question is whether immigration, broadly construed, will strain fractures in the social contract to the breaking point. The answer, I think, depends on whether the symbolic commitment to inclusiveness and equity can adhere in practice to the Marshallian conception of mature citizenship, giving full and equal access to education, employment, and all forms of services provided by the welfare state. The answer depends on whether the distinction between functional and statutory citizenship is minimized to the extent that the Constitution permits and particularly how states with large populations of immigrants will resolve the dilemma of electoral and representational equity at all levels of government. The answer depends on whether adequate safeguards are put in place to prevent the reemergence of ascriptive democracy and to reinvigorate the cherished values of equity and inclusiveness. Ultimately, the answer depends on whether legislators shift their policy focus from *immigration* to *immigrants*.

With so many unknowns, it is difficult to visualize the final answer beyond its vaguest contours, but history shows that our nation has been particularly adept in adapting to changing social conditions. If we can find strength, rather than weakness, in our increased diversity, then the social contract will emerge not just unbroken, but stalwart in its renewed promise to fulfill the dream of rights and privileges that George Washington offered to Irish immigrants in 1783.

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25. In November 1991, citizens residing in Takoma Park, Maryland, voted 1,199 to 1,107 (51% to 49%) to allow alien residents to vote (Kaiman and Varner 1991). See also Howard (1991) and Sontag (1992).

Appendix Table A1. Differences in Theoretical and Actual Apportionment of U.S. House Seats Under Three Counterfactuals

	Natives Only			Immigration Stopped in 1900			Citizens Only		
State	1910	1920	1930	1910	1920	1930	1910	1920	1930
Alabama	2	1	2	1	0	1	0	0	1
Alaska[a]	—	—	—	—	—	—	—	—	—
Arizona	0	0	0	0	0	0	0	0	0
Arkansas	2	1	0	1	1	0	1	1	0
California	–1	2	–1	0	2	–1	0	2	–1
Colorado	0	0	0	0	0	0	0	0	0
Connecticut	–1	0	–1	0	0	–1	0	0	–1
Delaware	0	0	0	0	0	0	0	0	0
Florida	0	0	1	0	0	1	0	0	0
Georgia	2	2	2	1	1	1	1	1	1
Hawaii[b]	—	—	—	—	—	—	—	—	—
Idaho	0	0	0	0	0	0	0	0	0
Illinois	–2	–2	–1	–1	–1	–1	–1	0	0
Indiana	1	0	0	0	0	0	0	0	0
Iowa	0	–1	0	0	–1	0	0	–1	0
Kansas	1	0	0	0	0	0	0	0	0
Kentucky	1	0	1	0	0	1	0	0	1
Louisiana	1	0	0	0	0	0	0	0	0
Maine	0	–1	0	0	–1	0	–1	–1	0
Maryland	1	0	0	0	0	0	0	0	0
Massachusetts	–3	–3	–2	–1	–1	–1	–1	–2	–1
Michigan	–1	1	–1	0	2	–1	0	2	0
Minnesota	–2	–1	0	0	0	0	0	0	0
Mississippi	2	1	1	1	0	1	1	0	1
Missouri	1	–1	1	0	–1	1	0	–1	0
Montana	0	0	0	0	0	0	0	0	0
Nebraska	0	–1	0	0	0	0	0	0	0
Nevada	0	0	0	0	0	0	0	0	0
New Hampshire	0	0	0	0	0	0	0	0	0
New Jersey	–2	0	–1	–1	0	–1	0	0	0
New Mexico	0	1	0	0	0	0	0	0	0
New York	–8	–7	–7	–3	–4	–5	–2	–4	–3
North Carolina	2	2	2	1	1	1	1	1	1
North Dakota	–1	–1	0	0	0	0	0	0	0
Ohio	1	2	0	1	2	0	1	2	0
Oklahoma	1	2	0	0	1	0	0	1	0
Oregon	0	0	0	0	0	0	0	0	0
Pennsylvania	–1	–1	0	–1	–1	0	–1	–1	0
Rhode Island	–1	–1	0	–1	–1	0	–1	–1	0

(continued)

(Appendix Table A1, continued)

State	Natives Only			Immigration Stopped in 1900			Citizens Only		
	1910	1920	1930	1910	1920	1930	1910	1920	1930
South Carolina	1	1	1	0	0	1	0	0	0
South Dakota	0	0	0	0	0	1	0	0	0
Tennessee	2	1	1	1	0	1	1	0	1
Texas	2	3	1	1	2	0	1	1	0
Utah	0	0	0	0	0	0	0	0	0
Vermont	0	−1	0	0	−1	0	0	−1	0
Virginia	1	1	1	0	0	0	0	0	0
Washington	0	0	−1	0	0	−1	0	1	−1
West Virginia	0	1	1	0	0	1	0	0	0
Wisconsin	−1	−1	0	0	0	1	0	0	1
Wyoming	0	0	0	0	0	0	0	0	0

[a]Alaska became the 49th state in 1959; thus data are not available for this analysis.

[b]Hawaii became the 50th state in 1959; thus data are not available for this analysis.

Appendix Table A2. Differences in Theoretical and Actual Apportionment of U.S. House Seats Under Three Counterfactuals

State	Natives Only				Immigration Stopped in 1900				Citizens Only			
	1970	1980	1990	2000	1970	1980	1990	2000	1970	1980	1990	2000
Alabama	1	1	1	1	0	1	1	0	0	1	0	0
Alaska	0	0	0	0	0	0	0	0	0	0	0	0
Arizona	0	0	0	0	0	0	0	0	0	0	0	0
Arkansas	0	1	0	1	0	1	0	1	0	1	0	0
California	−2	−4	−8	−9	−1	−3	−7	−8	−1	−3	−5	−6
Colorado	0	0	0	0	0	0	0	0	0	0	0	0
Connecticut	0	0	0	0	0	0	0	0	0	0	0	0
Delaware	0	0	0	0	0	0	0	0	0	0	0	0
Florida	−1	−1	−1	−2	−1	−1	−1	−2	−1	−1	−1	−1
Georgia	0	1	1	0	0	1	1	0	0	1	1	0
Hawaii	0	0	0	0	0	0	0	0	0	0	0	0
Idaho	0	0	0	0	0	0	0	0	0	0	0	0
Illinois	0	0	0	0	0	0	0	0	0	0	0	0
Indiana	0	1	0	1	0	1	0	1	0	1	0	1
Iowa	0	0	0	0	0	0	0	0	0	0	0	0
Kansas	0	0	1	1	0	0	1	1	0	0	1	0
Kentucky	0	0	1	1	0	0	1	1	0	0	1	1
Louisiana	0	0	1	1	0	0	1	1	0	0	1	0
Maine	0	0	0	0	0	0	0	0	0	0	0	0

(continued)

(Appendix Table A2, continued)

	Natives Only				Immigration Stopped in 1900				Citizens Only			
State	1970	1980	1990	2000	1970	1980	1990	2000	1970	1980	1990	2000
Maryland	1	0	1	0	0	0	0	0	0	0	0	0
Massachusetts	0	0	0	0	0	0	0	0	0	0	0	0
Michigan	0	0	1	1	0	0	1	1	0	0	1	1
Minnesota	0	0	0	0	0	0	0	0	0	0	0	0
Mississippi	0	0	0	1	0	0	0	1	0	0	0	1
Missouri	0	1	1	0	0	1	1	0	0	1	0	0
Montana	0	0	1	1	0	0	1	1	0	0	1	1
Nebraska	0	0	0	0	0	0	0	0	0	0	0	0
Nevada	0	0	0	0	0	0	0	0	0	0	0	0
New Hampshire	0	0	0	0	0	0	0	0	0	0	0	0
New Jersey	0	0	0	–1	0	0	0	–1	0	0	0	0
New Mexico	0	0	0	0	0	0	0	0	0	0	0	0
New York	–3	–3	–2	–3	–1	–2	–2	–2	–1	–2	–1	–1
North Carolina	0	1	0	0	0	1	0	0	0	1	0	0
North Dakota	0	0	0	0	0	0	0	0	0	0	0	0
Ohio	0	1	1	1	0	0	1	1	0	0	1	0
Oklahoma	0	0	0	1	0	0	0	1	0	0	0	1
Oregon	1	0	0	1	1	0	0	0	1	0	0	0
Pennsylvania	1	0	1	1	0	0	1	1	0	0	1	1
Rhode Island	0	0	0	0	0	0	0	0	0	0	0	0
South Carolina	0	0	1	1	0	0	1	1	0	0	0	0
South Dakota	0	0	0	0	0	0	0	0	0	0	0	0
Tennessee	1	0	0	0	1	0	0	0	1	0	0	0
Texas	0	0	–1	–1	0	0	–1	–1	0	0	–1	–1
Utah	0	0	0	1	0	0	0	1	0	0	0	1
Vermont	0	0	0	0	0	0	0	0	0	0	0	0
Virginia	0	1	0	0	0	0	0	0	0	0	0	0
Washington	0	0	0	0	0	0	0	0	0	0	0	0
West Virginia	0	0	0	0	0	0	0	0	0	0	0	0
Wisconsin	1	0	0	1	1	0	0	1	1	0	0	1
Wyoming	0	0	0	0	0	0	0	0	0	0	0	0

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