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Asian Americans and American Immigration and Naturalization Policy

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Since its beginnings, the United States has been heralded as a nation of immigrants, a safe heaven for those who have to leave their homes, be the reasons hunger, political or religious persecution, the desire for land or the possibility of finding work. This self-perception as a country of immigration has been carved in stone at the foot of the symbol of the immigrant nation, the Statue of liberty.

The question is no longer,
"How do people become Americans?"
but rather "How has America
become its people?"[1]

Since its beginnings, the United States has been heralded as a nation of immigrants, a safe heaven for those who have to leave their homes, be the reasons hunger, political or religious persecution, the desire for land or the possibility of finding work. This self-perception as a country of immigration has been carved in stone at the foot of the symbol of the immigrant nation, the Statue of liberty.

…Give me your tired, your poor,
your huddled masses yearning to breath free,
The wretched refuse of your teeming shore…

The poet Emma Lazarus' assuring words are testimony for the entry of millions of immigrants who soon became Americans and helped to shape this nation.

The welcoming of new immigrants, however, has been a selective process and it is no coincidence that the Statue of Liberty, erected in New York, has been welcoming European immigrants to the American shores. In the West, the detention center at Angel Island, in view of the former maximum security prison at Alcatrez, was used for decades to interrogate Chinese immigrants before they were allowed to enter the United States, and in the Southwest, a barbed wire fence was built to control Mexican and South American immigration in the last decades of the twentieth century. Two hundred years earlier, Africans were involuntarily brought to Southern shores to endure a life of hardship and forced labor for themselves and their descendents under slavery.

The immigration history of Asians in the United States is the result of race-conscious immigration and naturalization policies practiced by the government of the U.S.. Although the concept of race was never officially ascribed to policies and laws regarding the immigration of Asians, the repeated patterns of exclusion, denial of citizenship and unequal laws applied successively to immigrants from different Asian countries have made it obvious that their racial difference from the white American mainstream was the reason for this legislation.[2] Immigration, in the case of Asians, has been racialized.

For my analysis of race-biased legislation against Asian Americans and their consequences I will concentrate on two areas of legislation of the American legal system regarding Asian immigrants: natur-alization laws and immigration policy. Naturalization is the process that leads to the acquisition of citizenship. This process starts upon the petition of the immigrant after a certain waiting period. The requirements and tests that lead to a successful completion of the naturalization process are also mandated by law but are not the object of analysis here. The process of immigration is regulated by the U.S. legislature with the help of the Immigration and Naturalization Service (INS) which is the executive agency.

I will base my argument on Chinese immigrants, who were the first Asians to come to the United States in larger numbers, as an example for Asian immigration. Starting in 1850, Chinese immigration lasted unregulated for only

30 years and never made up more than 5% of the entire immigration for any given year during this period.[3] In this regard, it is interesting to note that the numbers of immigrants were proportionally small compared to the negative public attention these immigrants received, particularly at the West Coast, nor to the harsh response of lawmakers. No other immigrant group had to endure a similar number of exclusion laws and consistent denial of citizenship. The reasons for this discriminatory treatment of immigrants from the Pacific rim are grounded in racist beliefs of white European supremacy and the stereotypes of Asians as homogeneous masses of people who look different and would create a danger to American social and labor life, the so called “yellow peril” image.

The first immigration of Asians dates back to the 18th century[4] but images and stereotypes of people from this continent are even older and were well established in the United States when the first wave of Asian immigrants reached American shores. These images were deeply ingrained in the European and, later, American imagination through military or other unequal encounters with Asians ranging from the conquests of the Greeks in India, the mythic and sensual tales of Marco Polo’s China, and the “yellow invasion” of Europe by the Mongolians in the fourteenth century to the colonizing attempts of Great Britain and France in East and Southeast Asia and the forced opening of Japanese harbors by the American Commodore Perry in 1853. As Said argues in *Orientalism*, in all these encounters Asians were perceived as weaker, darker, more sensual, homo-geneous, in a word, racially different from Europeans.[5] The construction of Asians as the racially Other, inferior to the majority of Americans who were and are white has had an impact on the policies regarding Asian immigration. Therefore, *orientalism*, the construction of Asians as culturally and racially different, from the white, Anglo-Saxon norm has ar additional component in the United States: Asians and Asian Americans are perceived as foreigners, forever aliens who are unable to completely assimilate into the American mainstream.

The first laws concerning immigration in the United States that were passed reflect the racist thinking of those days. During the colonial period, immigration was not regulated. On the contrary, certain incentives were used to attract new settlers to people a virgin land (in the white European perspective). Land, work, and immediate citizenship were offered to interested Western Europeans and at the same time, black slaves were brought to the Eastern shores. In 1790, America had become exceedingly diverse in its ethnic and racial background. Congress took over control of immi-gration and naturalization proceedings by passing “An uniform standard for Naturalization” which allowed only white men to become American citizens.[6] Although this law was changed several times, the racist exclusion of non-white persons remained in place until African Americans acquired citizenship after the Civil War and the naturalization laws were changed to include persons of African nativity and descent in 1870. Chinese Americans, however, and subsequently all immigrants from the Asian continent were still considered aliens, *ineligible for citizenship*.

At the same time, though, the 15th amendment to the Constitution marked a tremendous achievement in the struggle for racial equality in the United States since it granted citizenship to anyone born within the borders of the U.S., regardless of race or geographical origin of the parents. The American born descendants of Asian immigrants were able to profit from that amendment, though much later, when a second generation had grown in the different ethnic communities of the Asian diaspora. The children had thus acquired by birth what their parents were denied throughout their lifetime.

Asian immigrants did not readily accept their denial of citizenship papers and in fact, particularly at the beginning of Chinese immigration to the United States, several petitioners were allowed to naturalize despite existing laws. Once the number of naturalization-seeking Asians increased, however, the courts rejected all attempts of Asian immigrants to become Americans and, in line with the immigration laws, the Supreme Court finally ruled twice that Asians were ineligible for citizenship. In the famous Ozawa v. U.S. (1922) the petitioner argued that he had lived most of his life in the United States, spoke fluent English and was not familiar with Japanese customs and language at all. The Supreme Court nevertheless decided that Ozawa was not eligible because

[T]he intention [of the naturalization acts from 1790 on] was to confer the privilege of citizenship upon that class of persons whom the fathers knew as white, and to deny it to all who could not be so classified.[7]

The Court furthermore argued that “white” was to mean “Caucasian,” and that Ozawa as a Japanese “is clearly of a race which is not Caucasian…”[8]

In 1923, the Asian Indian Bhagat Sigh Thind went to court on the grounds that he as an Indian was of Caucasian origin. The Court ruled that “Caucasian” and “white” were not necessarily synonymous and that “Caucasian” was commonly understood as European.[9] Furthermore, the Court argued that because of the racial differences of Asians, assimilation into the American society was not likely.

…[I]t cannot be doubted that the children born in this country of Hindu parents would retain indefinitely the clear evidence of their ancestry. …What we suggest is […] racial difference, and it is of such character and extent that the great body of our people instinctively recognize it and reject the thought of assimilation.[10]

The ban on naturalization was finally lifted during World War II. Clearly as a gesture towards China as an ally in the Pacific theater, Chinese immigrants were given the right to naturalize in 1943, Filipinos followed in 1946 and the McCarran-Walter Act of 1952 finally abolished race-oriented regulations of naturalization.[11] After an immigration history of more than 100 years, Asian immigrants could now become naturalized Asian Americans.

While naturalization was virtually impossible for Asian immigrants during the 19th century, immi-gration itself was not restricted early on. The first Asians to come to the United States in larger numbers were Chinese from the Southern provinces and for the first thirty years of Chinese immigration, from about 1849 to 1880, there was a constant flow of immigrants to California, Oregon, Washington and Alaska. Chinese laborers engaged in fishing, gold mining, laundry and railroad work, usually for less pay than white workers and under unfavorable working conditions. Nevertheless, the wages these men earned and sent home were sufficient enough to support their families in China, something they would not have been able to do without migrating. America became such a desirable place of immigration that long after the California gold rush was over, the Chinese still called the country *Gold Mountain*.

Most laborers intended to remain sojourners, working for a time in the United States and then returning home with their acquired wealth. However, low wages in the U.S. and gloomy reports about the economic situation in China prolonged their stay and later turned the sojourners into immigrants determined to stay in the United States to settle permanently. The increasing numbers of immigrants, their willingness to remain and heightened concerns about the Chinese as competitors for jobs aroused the fear and suspicion of the American population in this area. Though Chinese were just one immigrant group among various other groups that mainly arrived from the East cost, and even more so during the California gold rush after 1849, they were visibly identifiable as not being American, meaning white.

Soon the California and other legislatures responded to protests from the white population and issued a number of ordinances and laws to make a living in these states more complicated for the Chinese, with the intentions of forcing them out of these areas. The foreign miners tax from 1850 was to be collected from all non-citizens but was actually only taken from the Chinese, often even more than once. Other legislation, like the laundry ordinances of San Francisco, had the same objective of limiting Chinese immigration. Most of these measures, though a burden for the Chinese population, failed in keeping Asian immigrants away from the West Coast areas.

Finally in 1882, Congress passed the Chinese Exclusion Act, the first law in the United States that denied immigration to a specific ethnic group.[12] The law excluded Chinese laborers from entering the United States. Merchants, tourists, and students, however, were allowed to stay for a limited period of time. The Chinese already residing in the country were not affected by this law and could travel back to China for visits without being held back at the borders. However, six years later the Scott Act denied people who had left the United States for family visits a re-entry.[13] Chinese who had been in the U.S. for years were suddenly stranded without the possibility of getting back home. The Geary Act (1892) forced Chinese immigrants to register, something that they feared would eventually make it easier for immigration officials to deport them. Therefore, many Chinese did not comply with the law. The Chinese Exclusion Law was extended for ten years in 1892 and finally made permanent in 1904.

Thereafter, prospective immigrants (usually biological children of citizens or of those Chinese who claimed to be children of citizens after the earthquake of 1906, when most public records in San Francisco were destroyed) had to undergo harsh interrogations about the correctness of their documents and their intentions. In 1910, Angel Island Detention Center was set up in San Francisco Bay to control the entire Chinese oversea travel. Before they could enter the United States, Chinese immigrants were detained in the facilities of this tiny island for an agonizing

period ranging from two weeks to two years. Until 1940,an estimated 50,000 Chinese passed through this island before they could settle in the United States.[14]

Until 1965, Chinese immigration was almost non-existant and the results this exclusion policy had on the Chinese communities in the United States were apparent for a long time. Since the large majority of Chinese immigrants were male laborers, families could not be formed in the United States.[15] Many of the laborers had wives in China who had to attend the family estate in the absence of their husbands which could last for decades, and in many cases, throughout the lifetime of the couples. This *split-family formation* or *mutilated families* not only had negative psychological effects on the families but prolonged the Asian patriarchal structures in families in the United States after 1965. The numerical and social dominance of Chinese males, along with a residential segregation and cultural differentiation, prolonged the acculturation process for Chinese immigrants and is another factor for the prevailing perception of Asians as foreigners.

The lack of Chinese women in the United States created a high demand for Chinese prostitution. Women were lured or sold into prostitution and brought to the United States, often disguised as merchant wives. Soon Chinese prostitution – not the prostitution of white women – was seen as a nuisance along the West coast and lawmakers reacted with the Page Law (1875) which allowed customs officers at harbors to deny entry to Asian women, who they thought would engage in prostitution in the United States.[16] Thus, many of the few Chinese women who actually came to the U.S. were returned upon the custom officers' will. Again, a group was singled out because of racial differences and while white women from the East coast could quite freely satisfy the demand for sexual pleasures along the male-dominated frontier line, Chinese women were kept out of the country under the pretense that the government worried about their moral and physical well-being.

Exclusion laws were subsequently passed for immigrants from other Asian countries. Since Japan was a powerful nation in the Pacific region at the beginning of the 20th century, the United States government did not dare to exclude Japanese laborers, who had been brought into the country after the Chinese exclusion Act. Rather, a Gentlemen's Agreement was signed by both governments in 1907, halting the immigration of Japanese laborers but allowing for the immigration of brides and wives.[17] Thus, a second generation of Japanese Americans could grow up long before Chinese Americans were able to form families. South Asian Indians were excluded in 1917 with the passage of an immigration act which established the *Asian barred zone*, a geographical region, mainly comprising East, South, Southeast Asia, the Asian part of Russia and parts of Persia, from which immigration was no longer allowed.[18]

American nativism finally culminated in the immigration act of 1924 with the establishment of immigration quotas.[19] Originally passed to limit immigration from Eastern and Southern Europe, it also denied entry to all aliens ineligible for citizenship, thus completely stopping Asian immigration. A small quota of visas for Asian countries could only be used by whites who happened to be born there.[20]

After 1924, only Filipinos were still allowed to enter the United States as immigrants. The Philippines had been an American colony since 1898 and Filipinos subsequently were American nationals. Ineligible to acquire citizenship as non- white, they nevertheless were not aliens and thus not subject to immigration laws. The Tydings-McDuffy Act of 1934, however, excluded Filipinos from entering the United States in exchange for the promise of independence within the next ten years.[21]

The exclusion of one ethnic Asian group after another, when at the same time European mass immigration could flow more or less uninterrupted, discloses the racist character of U.S. immigration laws in the past, even though the category of exclusion was ethnicity. In their excellent work *Racial Formation in the United States*, Michael Omi and Howard Winant argue that the dominant paradigm for race has been ethnicity. By insisting, that the Chinese, Japanese, or Asian Indian immigrants are just as ethnically defined as, for example, immigrants from Germany, Italy or Ireland, the ethnic paradigm assumes a similar immigration experience for all ethnicities, which is finally to end in complete assimilation into the American mainstream society (as has been the case with European ethnicities). The ethnic paradigm, however, denies the existence of racial inequalities and different (racialized) immigration experiences for racial minorities, since the category *race* does not exist within the theoretical framework of this paradigm. By excluding an entire racial category (all Asian immigrants) according to ethnic

features, the immigration laws nevertheless reveal their racist intentions.[22]

World War II was not only a watershed for the beginning of the removal of race-biased naturalization laws but also of the introduction of more egalitarian immigration laws. In 1943, China was accorded a symbolic quota of 105 immigration visas, and, even more important, an act passed in 1943 made it possible for American service men to bring home their Chinese wives, who were not counted within this quota.[23] Similar laws were subsequently passed for immigrants from other Asian countries.

The McCarran-Walter Act (1952)completely discarded race as a restrictive factor for immigration by establishing a quota of 170,000 visas for the Eastern Hemisphere, or 20,000 immigration visas alloted to every single Asian country.[24] The law was not entirely color-blind, however, since people of Asian descend who lived in non-Asian countries (and even those who were citizens of these countries) were counted within the Asian quota while prospective European immigrants were not. The frustration surrounding this supposedly progressive act was summarized in Congress by the Chinese American Senator Fong from Hawaii:

…It is offensive to the peoples of Asia and the Pacific that they should be accountable to quotas by race when other immigrants are accountable to quotas by their place of birth. We cannot justify this provision of our law by pointing to the more discriminatory laws which existed prior to 1952.[25]

The most important change of immigration policy, however, came with the Amendment to the Immigration and Nationality Act of 1965 with profound implications that the framers had neither expected nor intended. This amendment entirely discarded of the quota system and established a preference system under which the unification of families and the immigration of professionals were especially supported. Besides the partly negative effects this new immigration policy had on third-world countries (brain-drain), it radically changed the make-up of the Asian American communities in the United States, since Asians could profit most from that law. The split families could be united after decades of separation and many highly-skilled workers were allowed to immigrate and bring their families. The Asian emphasize on extended family structures caused a so-called *chain immigration* where first a nuclear family, and later uncles, cousins and other relatives would apply for visas. Within three decades, the percentage of Asian immigrants of the entire immigration to the United States jumped from virtually nothing to about 30%.[26]

Despite the color-blindness and racial equality this law has been celebrated for, the implications for the Asian American communities are not without difficulties and ambiguities. Currently, the Asian American population in the United States is more than 60% foreign-born and of those first generation immigrants many do not speak English sufficiently to secure high-skilled jobs or to move within American society without problems.[27] The large number of highly successful Asian Americans, usually descending from generations of Asians who have been in the country for a long time, cannot hide the fact that another large number of Asian Americans, often first generation immigrants or recent immigrant groups, live below the poverty line, that, in fact, some Asian American groups are the poorest segment of the American society.[28] Furthermore, the success of the former account for the perceptior of Asian Americans as a model minority and voices are getting louder to exclude this group from affirmative action programs and other supportive measures for historically disadvantaged racial minorities. The University of California system has already deleted Asian Americans from the list of preferred category in the college admissions process. Especially in California and along the West Coast, were most of the Asian Americans on the U.S. mainland still reside, anti-Asian sentiments are growing and racist violence is not rare (and neither limited to the West coast).[29]

Racial discrimination in immigration and naturalization legislation is only one instance of discriminatory practices against Asian Americans throughout their history in the United States. Although the race-bias in laws regarding the permanent settlement of aliens in the U.S. and their legal status has been abolished, the implications of these legal practices are far-reaching and the scars are still visible within the Asian American communities and will continue so for some time.

Even though I analyzed naturalization and immigration policies separately, both areas belong together and are mutually dependent. A just and equal immigration process allows prospective immigrants to smoothly integrate

into the host society. Immigrants usually want to participate in the social and cultural processes of their receiving country, even though they may maintain cultural practices of their own national origin. A naturalization process that supports these intentions should be the basis for political equality among a nation's citizens. In the case of Asian immigrants in the United States these preconditions were not given for a long time, thus excluding Asians from participating in American society and fostering the feeling of marginalization. The reversal of these discriminatory policies has been one step on the way for an equal citizenship.

Notes

1 Rene Tajima, "Site-Seeing Through Asian America," in *Mapping Multiculturalism*, ed. Avery F. Gordon and Christopher Newfield (Minneapolis, London: University of Minnesota Press, 1996), 292.

2 Lisa Lowe, *Immigrant Acts: On Asian American Cultural Politics* (Durham, London: Duke University Press, 1996 19.

3 In fact, the entire immigration from China never comprised of more than 5% of the entire immigration to the United States until the 1950s. For a detailed account of Asian immigration data see: Herbert Barringer, et al., *Asians and Pacific Islanders in the United States* (New York: Russel Sage Foundation, 1993), Table 2.1., 24-26.

4 The first recorded Asian immigrants – apart from American Indians who are now considered natives to the Americas – were ship-jumping Filipino sailors of the Manila galleon trade. See e.g. Sucheng Chan, *Asian Americans: An Interpretive History* (Boston: Twayne Publishers, 1991), 25.

5 Edward Said, *Orientalism* (New York: Vintage Books, 1979); see also Gary Y. Okihiro, *Margins and Mainstreams: Asians in American History and Culture* (Seattle, London: University of Washington Press, 1994), ch. 1, 5.

6 An Act to Establish an Uniform Rule of Naturalization, March 28, 1790, 1st Congress, Sess. II, Ch. 3, 1790.

7 Takao Ozawa v. US, 260 U.S. 178 (1922).

8 Ibid.

9 U.S. v. Bhagat Singh Thind, 261 U.S. 204 (1923).

10 Ibid.

11 Immigration and Nationality Act of June 27, 1952, Public Law 414, Statutes at Large 66: 163.

12 22 Stat. 58 (May 6, 1882).

13 25 Stat. 504 (October 1, 1888).

14 On Angel Island see e.g. Ronald Takaki, *Strangers from a Different Shore: A History of Asian Americans* (New York: Penguin Books, 1990), 231-239.

15 American women, no matter of what ethnicity, who married aliens ineligible for citizenship, acquired the legal status of their husband and therefore lost their citizenship. White women, since they were allowed to naturalize, could retain their citizen status upon divorce. The Cable Act, 42 Stat. 1021 (September 22, 1922), was amended in 1931. Nevertheless, these legal constraints kept many American women from marrying Asian immigrants.

16 18 Stat. 477 (March 3, 1875).

17 The agreement also included Korean immigrants, since Korea had been under Japanese rule since 1895.

18 Immigration Act, 39 Stat. 874 (February 5, 1917).

19 Immigration Act, 43 Stat. 153 (May 26, 1924).

20 Harry H. L. Kitano and Roger Daniels, *Asian Americans: Emerging Minorities*, 2nd ed. (Englewood Cliffs, N.J.: Prentice Hall, 1995), 14.

21 A promise, that the U.S. government actually fulfilled in 1946 after the end of World War II.

22 Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s,* 2nd ed. (New York and London: Routledge, 1994), 9-24.

23 Kitano and Daniels, *Asian Americans,* 42; also: Magnuson Act of December 17, 1943, Public Law 199, Statutes at Large 57: 600; and Act of July 2, 1946, Public Law 471, Statutes at Large 60: 1353.

24 See note 10.

25 Letter of Senator Hiram L. Fong to Rep. Francis L. Walter, Chairman, Immigration and Nationality Subcommittee, House of Representatives, Congressional Records 922, Vol. 106, 86/2, Extension of Remarks, September 1, 1960, 19201.

26 See note 2.

27 In 1990, 63.1% of the 7, 226,986 Asian Americans were foreign born <www.census.gov80/population/www/documentation/twps0029/tab08.html>.

28 For example in 1990, Laotians (67.2%), Hmong (65.5%), Cambodians (46.9%), and Vietnamese (33.5%) had a much higher poverty rate than the average American poverty rate of 9.6 %. In fact, only Filipinos and Japanese fared better than the U.S. average with a poverty rate of 6.2 % and 4.2 % respectively. United States Commission on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s: A Report of the United States Commission on Civil Rights* (February 1992) 17.

29 Ibid., 22-49.

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