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Demography and the Social Contract

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Abstract

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 contemporary population diversification, 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 representation of the foreign born and alien suffrage both illustrates the re-emergence of ascriptive civic hierarchies and highlights some potentially deleterious social and civic consequences of recent demographic trends.

Demography and the Social Contract

> *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…*[1]
>
> -George Washington, 1783

Since the founding of the United States as a sovereign nation, population diversity 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 are disputed in controversies about the differential undercount and census adjustment; immigrants' rights to representation; access to higher education; and the entitlements of citizenship, among many other social issues. Essentially the question 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-Jacque Rousseau. Their notion of membership derives from 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 they give themselves (Arneson 2001:4724-29). Ideally, the "general will" creates unity by subordinating

[1] Washington, George. "Letter To The Members Of The Volunteer Association And Other Inhabitants Of The Kingdom Of Ireland Who Have Lately Arrived In The City Of New York," 2 December 1783. As quoted in Fitzpatrick (1938).

individualism in the interest of the collective well-being. However, recognizing the challenge of forging unity from diversity, Rousseau warned of special interests—"partial societies"—within the state, which 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.[2] Should factions arise, maintaining *equality* among them was essential to prevent the general will from dissolving into particular interests and undermining shared interests (Rosseau 1762).[3]

Of course, the real world is far more complicated than 18th 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 what precisely constitutes consent (Bosniak 2000). Modern political theorists and legal scholars have elaborated the primitive Rousseauean vision of social contract theory, making distinctions between nominal citizenship, which is based on participation in social life, to formal citizenship, which guarantees the right to vote and to exercise political power (Raskin 1993; Smith 1997; Marshall 1964; Schuck 1997). And while the U.S. political system has been heralded as the gold standard of liberal democracy, according to Rogers 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

[2] "As the citizens, by the social contract, are all equal, all can prescribe what all should do, but no one has a right to demand that another shall do what he does not do himself." (Rousseau 1762: book III, 16)

[3] "From whatever side we approach our principle, we reach the same conclusion, that the social compact sets up among the citizens an equality of such a kind, that they all bind themselves to observe the same conditions and should therefore all enjoy the same rights. Thus, from the very nature of the compact, every act of Sovereignty, i.e., every authentic act of the general will, binds or favours all the citizens *equally* (emphasis added); so that the Sovereign recognizes only the body of the nation, and draws no distinctions between those of whom it is made up." (Rousseau, 1762: book II, 4).

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 commitment to the democratic principles of inclusion and equity by redrawing the boundaries of membership based on 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 population diversification warrants a realignment of democratic ideals with demographic realities.

In order to illustrate the powerful role of demography for understanding the evolution of social justice in the United States, I first sketch 20th century immigration trends and highlight nativity differentials in poverty and educational inequality. Historical debates about membership, as played out in controversies about representation and immigrant suffrage, 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 need not be so if the rules of membership are made more inclusive and the commitment to equity renewed.

My conception of citizenship as a social contract conceding the right to be governed in exchange for privileges, rights and social obligations emphasizes the liberal ideas of T.H. Marshall (1964), who considers equity and social welfare as core features of mature citizenship;

Jamin Raskin (1993), who differentiates among citizenship as presence, as integration, and as standing; and Rogers Smith (1997), who views 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 21st Century (Smith 1997).

Demography of Diversification

The ebb and flow of immigration during the 20th century is evident in the changing race, ethnic, and nativity composition of the U.S. population (see Table 1). In 2001, over 10% of U.S. residents were foreign born; this share has more than doubled since 1970 (U.S. Census Bureau 2001:2). The absolute number of immigrants is much larger now than at the turn of the century because the population base was much smaller (U.S. Census Bureau 2001:9). Both at the turn of the 20th and 21st centuries, immigration was and is a highly politicized social issue.

Four decades of high-volume immigration from virtually every country, rising intermarriage, and persisting fertility differentials have transformed the United States into the most demographically complex country in the world (Prewitt 2001). Since in 1960, the changed source countries of immigrants have visibly altered the U.S. ethno-racial landscape, just as the shift in source countries from Western to Eastern European countries did during the latter half of the 19th and early 20th century. At the turn of the 19th century, 12% of the U.S. population was black and an additional 1% combined either 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 2000a).

TABLE 1. CHANGING POPULATION COMPOSITION, 1900-2000

	Race and Hispanic Origin					
Year	Whites	Blacks	Hispanics	Asians	AIND	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	-	

Note: (%FB) = Percent Foreign-Born. All percentages may not sum to 100 due to rounding and estimation. For 1970-2000, White, Non-Hispanic data were used in the Whites column.
Source: Gibson and Lennon, 1999: Table 8; U.S. Census Bureau 2000: Table 1, 2001: Table 9-1.

The force of immigration is evident in the changing nativity composition of these pan-ethnic 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 has declined slightly, from six to three percentage points, while the black share has risen from 1%-6%. Although differential fertility also has altered the ethno-racial composition of the U.S. population, I focus on immigration because it is the single most powerful force driving the demography of diversification, and because nativity differentials at best maintain or at worst increase aggregate socioeconomic inequality. A brief overview of poverty and educational differentials suffices to make this point.

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

Immigrants from Latin America are much more likely to be poor than those hailing from Europe, Asia, or Africa (U.S. Census Bureau 2001:46). In 1999, less than 10% of European immigrants lived in poverty compared to 13% of those from Asia and Africa, and over one-in-five immigrants from Latin America. Mexicans and Central Americans are the poorest among the foreign born, with one in four 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 and especially the poverty rate for Latin Americans (U.S. Census Bureau 2001:12).

To a considerable extent, differentials 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 the occupational preferences are highly selected toward advanced degrees. However, the nativity differential in high school graduation is appreciable: 87% of native born persons ages 25 and over are high school graduates, compared to 67% of the

foreign-born (U.S. Census Bureau 2001:36). Aggregate differentials in high school completion reflect the comparatively low educational levels of recent immigrants from Central and South America, but especially Mexico.

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

U.S. immigration history dramatically illustrates ascriptive democracy in play.[4] This story has been thoroughly scripted and warrants no elaboration except to underscore three points. First, the 1924 Immigration Act, 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 determine the country quotas (Briggs 1993).[5] 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

[4] 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 used to justify the decisions. King (2000) provides a richly textured discussion of the congressional debates.
[5] Immigration Act of May 26, 1924 (43 Statutes-at-Large 153).

(Smith 1997; King 2000). The 1890 census did this, but the 1920 census did not because almost 90% of all immigrants enumerated in 1890 were from Northern and Western Europe or Canada, but by 1920 only 45% were (Gibson and Lennon 1999). Originally scheduled to go into effect in 1927, the political struggle over the apportionment of quotas delayed implementation of the 1924 Immigration Act until 1929. In the end, quotas were based on the 1920 census.

Second, the 1952 Immigration Act, which was passed over President 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, this legislation ended the ban of nonwhite immigration imposed in 1790 (King 2000). If the architects of the 1924 Immigration Act were in denial about *demography* in America, 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 its long term impact derives more from the groups *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 (68th U.S. Congress 1924). 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 1952

Immigration Act. Designed to atone for the discriminatory foundations of the 1924 national origins quota system, the 1965 Amendments accomplished several things. One, by abolishing the quota system, the Amendments opened doors to immigration from countries previously excluded, notably Asian and African nations, albeit with strict country limits. Two, an annual ceiling of 120,000 was extended to Western Hemisphere immigrants and individual countries were subjected to the 20,000 annual country maximum to which 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 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).

Co-sponsor of the 1965 immigration legislation, Emanual Celler (D-N.Y.) 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: 1037-1040). Then Attorney General Robert Kennedy predicted approximately 5,000 immigrants from the Asia-Pacific triangle and very few thereafter (U.S. House 1964:418); Secretary of State Dean Rusk anticipated 8,000 immigrants from India over 5 years (U.S. Senate 1965a:65); Senator Edward Kennedy argued that the ethnic mix of the country would not be upset (U.S. Senate 1965b:2). History scripted otherwise, as European immigration plummeted following post World War II

reconstruction, while rising inequality and political strife in Latin America and Asia swelled the ranks of workers aspiring 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 residents already here 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 (INS 2002:9). Since 1960, roughly half of all immigrants admitted hail from the Americas, and about one-third from Asia. Owing to the legalization program authorized by the 1986 Immigration Reform and Control Act (IRCA), during the 1990s, the number of legal immigrants exceeded nine million, of which 42% originated in Latin America (INS 2002:9).

If the diversification narrative broadened the cultural space to forge a core American identity from many race 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 21st 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 changing population composition 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

…as nearly as is practicable, one man's vote in a congressional election is to be worth as much as another's.[6]

-Justice Hugo L. Black, 1964

[6] *Wesberry v. Sanders,* 376 U.S. 1.

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 of the U.S. Constitution clearly states that, "*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*." [7] 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 growing numbers 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, non-citizens were allowed to vote (Keyssar 2000; Harper-Ho 2000; Neuman 1993; Raskin 1993; Rosberg 1977). Although the landmark "one-person, one-vote" decision[8] responded directly to inequities in representation and exercise of the franchise, the presence of immigrants continues to defy the value of inclusiveness.

Apportionment

The *method* used to apportion the seats in the U.S. House of Representatives conveys 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 different methods have been used to allocate the seats among states (Davis 1981; Balinski and

[7] U.S. Constitution. Amendment. XIV § 2.

Young 2001).[9] All methods emphasize *equity relative to population size*; the current method of equal proportions in use since 1940 has the advantage of minimizing the proportional difference in the average district size 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 its provisions for representation have withstood the test of time and numerous legal challenges.[10] The Civil War raised the value of slaves from 3/5^{ths} to full persons for 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 non-citizens. 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 (Wood 1999; Woodrow-Lafield 2001; Poston et al. 1998; Congressional Record 1940:4366; *Federation for American Immigration Reform (FAIR) v. Klutznick* (1980)[11]). 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 prior to 1875 made this category inconceivable in 1787,

[8] *Reynolds v. Sims*, 377 U.S. 533 (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."

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

[10] See *United States Department of Commerce v. Montana*, 503 U.S. 442 (1992) and *Franklin v. Massachusetts,* 505 U.S. 788 (1992).

and that the words inhabitants, persons, and citizens are deliberately used interchangeably in the Constitution. However, Gerald Neuman (1993) dismisses these claims because prior to 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 20th century apportionment controversy involved the 1920 census, which singled out immigrants as a source of "distortion" in the rural-urban population distribution. Representatives from rural states slated to lose Congressional seats to urbanized states with large immigrant populations proposed a panoply of reapportionment bills designed to correct the alleged immigration distortion. Even though they paid taxes and had been legally admitted to the United States, the anti-immigrant Representatives considered immigrants unworthy of representation in Congress. The ensuing vitriol found ample pseudo-scientific support in the 42-volume *Dillingham Commission Report* (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 exclusion of non-citizens from apportionment not only would alter the allocation of seats in 16 states, but would allow farming states to retain their seats (Bacon et al. 1995). The bitter and protracted political struggle culminated in several unsuccessful Constitutional Amendments to exclude all aliens for 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

[11] 486 F.Supp. 564 (D.D.C.), appeal dismissed, 447 U.S. 916.

Congress. In anticipation of the 1930 census and to avoid a similar spectacle, in 1929 Congress passed legislation requiring reapportionment after each census.[12]

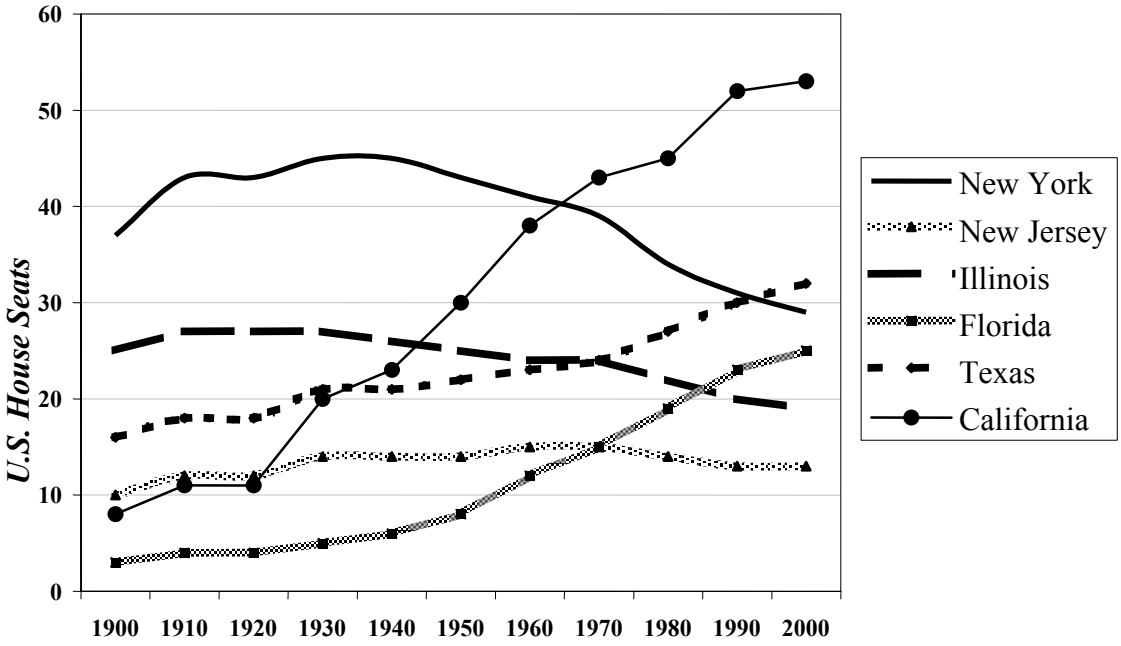
Apparently the lessons from the 1920 apportionment dispute faded quickly because the 76th Congress again debated the immigration-apportionment question. New York Representative Hamilton Fish (R), conceded that "it is one of the most difficult problems for the House to solve on a fair and nonpartisan basis" (Congressional Record 1940:4368). Not surprisingly, Representatives from New York and Illinois, two states where immigration had figured prominently in population growth, strongly supported including aliens in the apportionment base. By contrast, Representative John Elliot Rankin, a Mississippi Democrat, 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 those states growing rapidly through immigration, and the sparsely populated rural states. As shown in Figure 1, combined, the six immigrant-receiving states 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.[13] And continue it did, until Congress passed legislation to restrict who and how many were admitted. Between 1960 and 2000, these 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 currently they hold nearly two of every five

[12] The Apportionment Act of 1929 (46 Stat. 26), which was amended by the Apportionment Act of 1941 (54 Stat. 162), calls for an "automatic reapportionment" every decade using census data.
[13] Partly this reflects an increased number of seats in the House, which rose from 391 in 1900 to 435 in 1911; still, over one-third of these were allocated to the 6 states immigrant states (Congressional Quarterly, 1991).

seats. There are 435 seats in the House of Representatives—a number that has been fixed since 1911, but variable before that time.[14]

FIGURE 1. SEATS IN U.S. HOUSE OF REPRESENTATIVES HELD BY SIX LEADING IMMIGRANT RECEIVING STATES, 1900-2000



Source: U.S. Census Bureau 2002.

Given how much ink and energy have been expended on the politics of immigrant exclusion in 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

[14] The House of Representatives' size was fixed at 435 by the Apportionment Act of 1911 (37 Stat. 13).

succeeded in averting the two great waves of 20th century immigration; or if rural states had succeeded in eliminating non-citizens from apportionment.

To develop these counterfactuals, I simulated three scenarios each for the period 1900 through 1930, which covered the first wave of 20th century mass migration, and from 1960 to the present, which represents the second wave of 20th century mass migration. 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 "*halt immigration*;" and apportionment that excludes non-citizens—dubbed "*citizens only*." Stopping immigration in 1900 or 1960 is not only less stringent than excluding all of the foreign-born from apportionment, but also is more in keeping with liberal ideology to embrace those already here, while lifting the gangplank to future arrivals. "*Citizens only*" is the least restrictive of all, implicitly stipulating a "qualified membership" for those who do not pledge allegiance.

Table 2 summarizes the results from this simulation exercise, and Appendix Tables A-1 and A-2, respectively, report the state-specific detail for the first and second periods of 20th century mass migration.[15] 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

[15] For the census data of 1900 through 1930, the number of Indians 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 includes U.S. Armed Forces personnel and federal civilian employees stationed outside the United States (and their dependents living with them) that can be allocated back to a home state in addition to the residential population (U.S. Census Bureau, 2000c). I included declarant aliens, who had filed their first papers among the noncitizens because very few states allowed noncitizens to vote during the 20th century (Harper-Ho, 2000; Keyssar, 2000).

formula used to apportion seats in Congress (Davis 1981; Balinski and Young 2001). 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 helps illustrate how layers of qualified membership undermines the spirit of equal representation.

First Period of 20th Century Mass Migration

Had apportionment 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 and 12 losing seats. As the primary hub of European immigrants during the 19th century, New York would have sustained the greatest losses, with eight fewer seats than were actually assigned, and Mississippi would have claimed two of the reshuffled seats. For 1920, the "*natives only*" scenario would have reallocated 22 seats—two 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 had apportionment been restricted to native born persons. Seat losses affected eight 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*," excludes recent immigrants from the apportionment. Because two-thirds of the resident foreign born in 1910 arrived prior to 1900, stopping immigration in 1900 would have reshuffled only eight seats among 14 states in 1910, with eight gaining and six loosing seats in the U.S. House of Representatives. Under this scenario, New York would have lost three instead of eight seats, and Mississippi would have reclaimed one seat. Had there been no immigration after 1900 and had Congress actually been

TABLE 2. REAPPORTIONMENT SUMMARY FOR THREE SCENARIOS ABOUT REPRESENTATION OF THE FOREIGN-BORN

	Natives Only			**Stop Immigration***			**Citizens Only**		
	Seats	*States Affected*		Seats	*States Affected*		Seats	*States Affected*	
	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**

* In Period 1, Recent Immigrants are defined by those who arrived after 1900, while in Period 2 Recent Immigrants refer to those who arrived after 1960.

reapportioned in 1920, 12 seats would have been reallocated among 17 states, with eight gaining and nine losing votes in congress. Because immigration restrictions 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 eight losing seats. New York alone would have lost five 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 would have each lost one seat.

The third scenario, which responds to Representative Rankin's views about representation and citizenship, restricts the apportionment to "*citizens only*." This counterfactual produces the smallest effects on reapportionment because naturalization rates were relatively high at the beginning of the 20th century, particularly following the Americanization movement to naturalize the foreign born (King 2000). Only seven seats would have been reshuffled in 1910 by restricting congressional apportionment to citizens, with seven states gaining and six losing seats. Under this scenario New York would have only lost two seats. By 1920, however, the "*citizens only*" counterfactual would have reallocated 12 congressional seats among 17 states, with nine gaining and eight losing votes in Congress. Iowa, Maine, Missouri, Pennsylvania, Rhode Island, and Vermont would each have lost one seat, while Massachusetts and New York would have lost two and four seats, respectively, had congressional representation 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 non-citizens from the 1930

reapportionment would have reshuffled only seven seats, costing New York three and assigning one of these to Mississippi.[16]

Second Period of 20th 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, where 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. A second difference between the first and second periods of 20th century mass migration is that the states gaining and losing political power due to immigration 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 of the lost seats, with California and Florida rounding out the losses at two and one, respectively. Beneficiaries of a 1970 reapportionment that excluded immigrants include Alabama, Maryland, Oregon, Pennsylvania, Tennessee, and Wisconsin—each with one additional seat. However, the increased volume of immigration over the next decade had more sizeable consequences for the 1980 distribution of power in Congress, as eight seats would have been reshuffled if apportionment had been restricted to natives.

[16] Mississippi would have actually lost seats in 1920 had a reapportionment been implemented using the constitutionally mandated criteria to represent all inhabitants, hence the lack of any gain from this counterfactual in 1920 reflects this fact.

California, New York, and Florida would have lost four, three, and one seats, respectively. Of the eight states gaining seats under this scenario, five are in the South and three in the Midwest.

The rising momentum of immigration during the 1980s and 1990s, which included the legalization of 2.7 million undocumented immigrants, had a more sizeable impact on the distribution of congressional power compared to the prior two decades. In 1990, the "*natives only*" counterfactual implies a reshuffling of 12 seats, of which 11 were 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 sustain seat losses (nine in California, two in Florida, one in New Jersey and Texas each, and three in New York) while 16 states would gain one seat each.

Because the 1965 Amendments to the Immigration and Nationality Act did not go into effect until 1968, the volume of immigration during the decade was relatively low. Therefore, "*halting immigration in 1960*" would have had a very modest effect on the 1970 distribution of congressional power—reshuffling only three seats among six states. Moreover, reapportionment based on "*citizens only*" would have identical effects because in 1970 nearly 66% of foreign born residents were naturalized citizens (U.S. Census Bureau 2001:20). But as the volume of immigration increased, so too did 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, and New York would have lost two seats and Florida one seat.

In the 1990 reapportionment, the "*halt immigration*" scenario would have reshuffled 11 seats among 15 states, with California losing seven seats, New York two seats, and Texas and Florida one a piece. 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 eight seats, Florida and New York two each, and Texas and New Jersey one a piece. The 14 beneficiaries of the reshuffled seats, each receiving one additional vote in Congress, were dispersed throughout the country, and included Montana, Utah, and Oklahoma, among other states (Appendix Table A-2).

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 eight seats among 12 states, with California alone forfeiting five, and Florida, New York and Texas each giving up one seat for the benefit of three southern states (Georgia, Kentucky, and Louisiana), along with four 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 one more seat than in 1990—with California forfeiting the additional seat. However, the profile of beneficiary states in each year differed. Owing to shifts in population distribution and the small state bias of the apportionment formula, Oklahoma, Indiana, Utah, Mississippi, and Wisconsin would have gained a seat in 2000 had apportionment been restricted to statutory citizens, but Georgia, Kansas, Louisiana, and Ohio would not.

Of course, these counterfactuals produce very conservative estimates of the impact of immigration on the distribution of Congressional power because they ignore the compounding

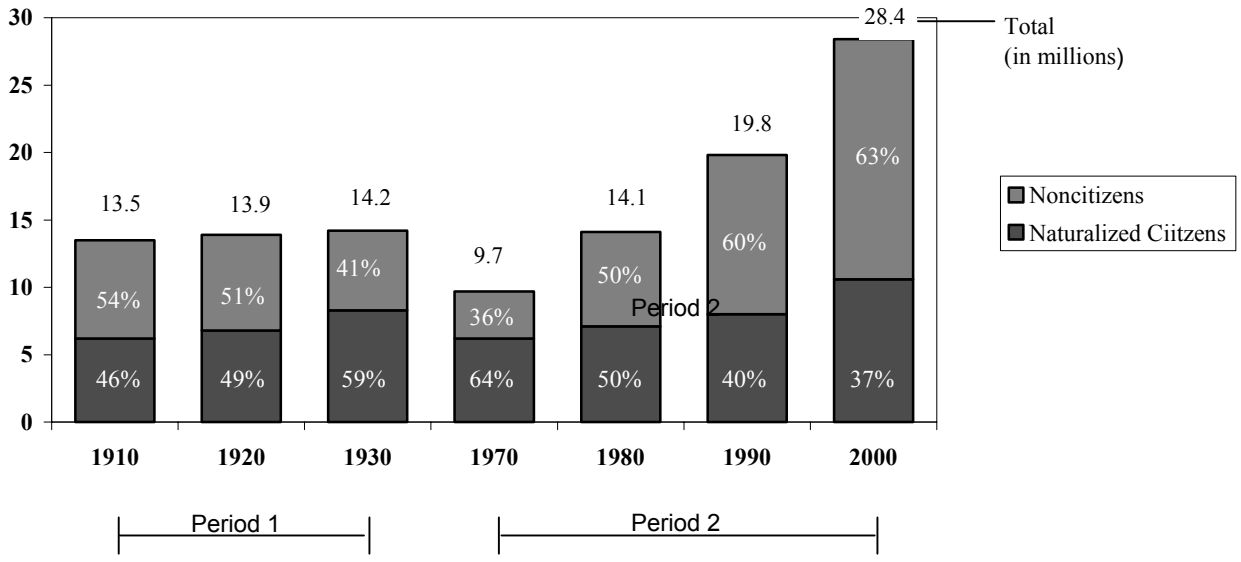
demographic effects from immigrant fertility and internal migration in response to immigration. Moreover, because the Supreme Court (447 U.S. 916) unequivocally ruled that *all persons* are to be included in the population base for purposes of apportionment, these scenarios will not materialize. Nevertheless, 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 and particularly after 1980. This is also evident by comparing the difference between the "*natives only*" and "*halt immigration*" scenarios in Table 2. Furthermore, the states losing seats are more concentrated during the latter period, reflecting the higher concentration of immigrants in six states.

Second, based on the number of seats and states involved, the impact of immigration on the distribution of congressional power is most similar in 2000 and 1930 across all scenarios, except that there has been 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 one in five House seats; currently, California, Texas, and Florida combined hold one in four House seats. These conditions are ripe for another round of restrictions on immigration to stem the flow, as well as new variants of ascriptive democracy, as I discuss below.

Third, the consequences of the *"citizens only"* scenario rise before declining during the early period, but rise continually during the latter period. As Figure 2 shows, this is because 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 (Thernstrom 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 two out of every three immigrants in 1970 to just over one in three by 2000 (U.S. Census Bureau 2001:14).

FIGURE 2.CITIZENSHIP STATUS OF FOREIGN-BORN POPULATION FOR TWO PERIODS OF MASS MIGRATION



Source: Gibson and Lennon 1999; U.S. Census Bureau 2001.

Fourth and more important, the "*citizens only*" scenario raises a real (rather than simulated) moral dilemma because non-citizens, who are a growing share of the immigrant population, do not have a voice in selecting their Representatives and because residential concentration of immigrants creates serious problems of malapportionment (Edmonston and Schultze 1995; Davis 1981; Goldfarb 1995). For example, Illinois did not redraw congressional districts between 1900 and 1940, and although its number of Congressional seats held relatively stable, the disparity between the smallest and largest Illinois Congressional district rose from 105 thousand to 752 thousand persons (Congressional Record 1940:4371).

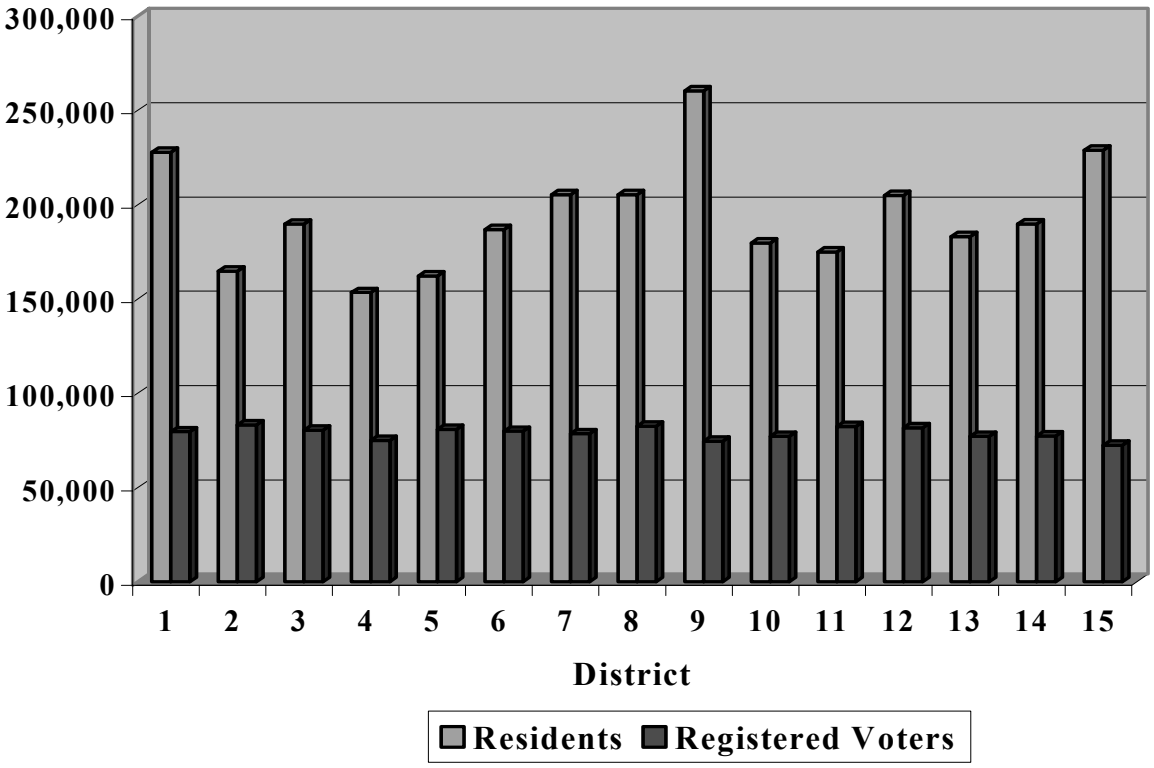
Nationally, the problem of malapportionment increased such that by 1960, the 20 most populous districts represented a combined population of 14 million compared to 4.6 million residents for the smallest 20 districts (Edmonston and Schultze 1995:244). Although disparities in the sizes of congressional or legislative districts size are not due entirely to immigration, problems of *malapportionment* are particularly harsh for districts containing large numbers of immigrants who can't vote because they are not citizens.

The problem of unequal voice has two solutions: one is to *equalize the voting* power across districts (*Baker v. Carr*, 369 US 186, 1962); the other solution is to strive for truly equal representation by *allowing non-citizens to vote*. However, 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 non-citizens. The dilemma is moral because decisions about inclusion or exclusion of non-citizens 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 population-based allocation of state and local monies could perpetuate inequities between the included and excluded residents, thereby effectively blocking the emergence of a Marshallian conception of social citizenship.

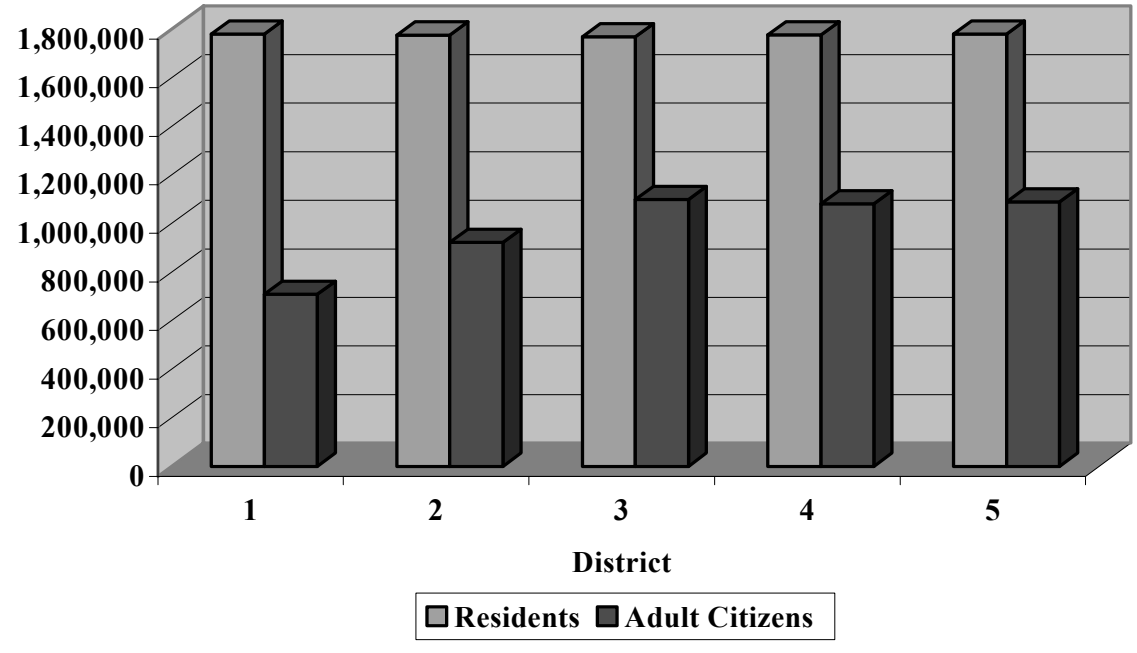
Figure 3 for Los Angeles County illustrates the dilemma of balancing the democratic values of *electoral equality* and *representational equity* in districts with a high concentration of noncitizens. Electoral equality emphasizes proportionality of registered voters across districts,

FIGURE 3. L.A. REDISTRICTING PLANS

A. Plan Based on Electoral Equality



B. Plan Based on Representational Equality



while equal representation 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 70 % larger than district 9, despite similar proportions of registered voters. But an alternative plan proposed for 1990, which balances total residents without taking direct account of differences in citizenship, violates the spirit of "one-person, one-vote" by weighting more heavily the votes of citizens residing in districts with larger shares of unnaturalized immigrants compared to those with few immigrants. In effect, representational equality is 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 immigrant populations is to equalize voting privileges. The difficulty here is that the Constitution explicitly restricts voting in *national* elections to citizens, but not necessarily in state and local elections (Rosberg 1977; Neuman 1993, 1996). Legislation passed in 1996 made alien voting in federal elections a felony, and voting in violation of any federal, state or local law grounds for removal (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 (Pub. L. No. 89-110, 79 Stat. 445). Voting equality is possible at the state and local level if non-citizens are allowed to vote legally. This requires going beyond citizenship as *presence*, which recognizes that the resident foreign-born shape the lives of their communities (Keyssar 2000; Bosniak 2000), and embracing Raskin's 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 Standing

Citizenship is man's basic right for it is nothing less than the right to have rights.[17]

-Chief Justice Earl Warren, 1958

As a master status, citizenship defines membership, confers rights and privileges, and distributes life opportunities (Marshall 1964; Smith 1997). The right to hold 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, ratified in 1868, defines *citizens* as "All persons born or naturalized in the United States…," [18] while the 15th Amendment guarantees all *citizens* the right to vote.[19] 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 American's quasi-citizenship has been well documented in legal and academic scholarship (Smith 1997; Mills 1997). Less well known is the story of immigrant

[17] *Perez v. Brownell,* 356 U.S. 44.

[18] U.S. Constitution. Amendment XIV § 1.

[19] Rosberg (1977) contends that inclusion of the word "citizens" in the 15th Amendment does not prevent noncitizen suffrage, but the courts have ruled otherwise. However, this restriction refers to federal elections, not voting in state and local matters, which is entirely up to discretion of states, as stipulated by Article Ten (Raskin, 1993; Neuman, 1996:63).

suffrage and its role in nation-building, particularly how states used the state franchise instrumentally to increase population and gain seats in Congress (Williams 1912; Rosberg 1977; Raskin 1993; Neuman 1996; Harper-Ho 2000). In fact, non-citizen voting was common through the early 20th century because federalism permits considerable discretion in civil matters, including specifying the privileges of state citizenship and deciding matters of legislative apportionment (Neuman 1996; Goldfarb 1995).

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; 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 Era, non-citizens not only voted, but also held public office (Harper-Ho 2000). Neuman (1996) claims 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 Fourteenth Amendment. According to Rousseau, such ambiguity in the boundaries of political communities are natural to emerging states, whose values and principals are being forged in their social contract.[20]

Historically, access to the franchise not only excluded blacks, women, and the young but also selected non-Protestant groups. Rhode Island precluded Jews from voting until 1842; Catholics and Jews were denied the franchise in most colonies, while Quakers and Baptists could not vote in others (Congressional Quarterly 1991). On the eve of the Civil War in 1860, aliens

[20] "There is for nations as for men a period of maturity, which they must wait 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: book II, Chapter IX).

were allowed to vote in as many states as blacks—six (Porter 1918: 148).[21] 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 for a few localities (Raskin 1993; Neuman 1996; Keyssar 2000).

Secondary sources on the subject of alien suffrage disagree about how many, which, and when states allowed non-citizens to vote. A tally based on certain end-dates indicates that at least 22 states and territories allowed non-citizens to vote in the nineteenth century and that several permitted aliens to vote and hold public office during the early post-Colonial 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 in Figure 4 (Porter 1918; Rosberg 1977; Raskin 1993; Neuman 1996; Harper-Ho 2000; Keyssar 2000).[22]

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 18th and through most of the 19th centuries, 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 New York, Vermont, Tennessee, Pennsylvania, and Massachusetts (Raskin 1993; Harper-Ho 2000; Keyssar 2000).

[21] Six states allowing 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).

[22] Both Raskin (1993) and Harper-Ho (2000) include Oklahoma and Washington among the states that permitted noncitizen voting, but we were unable to verify this claim using corroborating sources.

According to Porter (1918:22), between 1820-1845 state suffrage debates lost sight of the foreigner, especially those 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 21 years and older (Porter 1918; Smith 1997). At that time, women and persons under 21 were ineligible to vote. Neither, of course, were slaves, and naturalization was closed to most Asian nationals until 1952 (Smith 1993; Keyssar 2000). 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.

Even after the federal government's exclusive power to naturalize aliens was clarified,[23] 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 an *intention* to become U.S. citizens as a condition for voting, and several imposed a minimum residency requirement (Raskin 1993; Keyssar 2000: Table A-12).[24] Thus, at least during the mid to late 19th century, non-citizen voting was pre-citizen voting. Williams (1912) suggests that "naturalization was practically a state affair" until 1882 because of lax federal supervision over the records and procedures. Moreover, vigilance

[23] 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* (92 U.S. 259) and *Chy Lung v. Freeman* (92 U.S. 275), 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 only made available in 1906, wresting discretion from States and municipalities, which were adhering to a wide range of naturalization policies that suited their political objectives.

[24] Censuses from these periods differentiate the foreign born as "aliens" or "declarant aliens," (who filed their first paper or declaration of intent to become a citizen) and naturalized citizens (who had obtained the certificate of naturalization). However, filing a declaration of intention imposed no obligation to naturalize after the five year waiting period (Porter 1918).

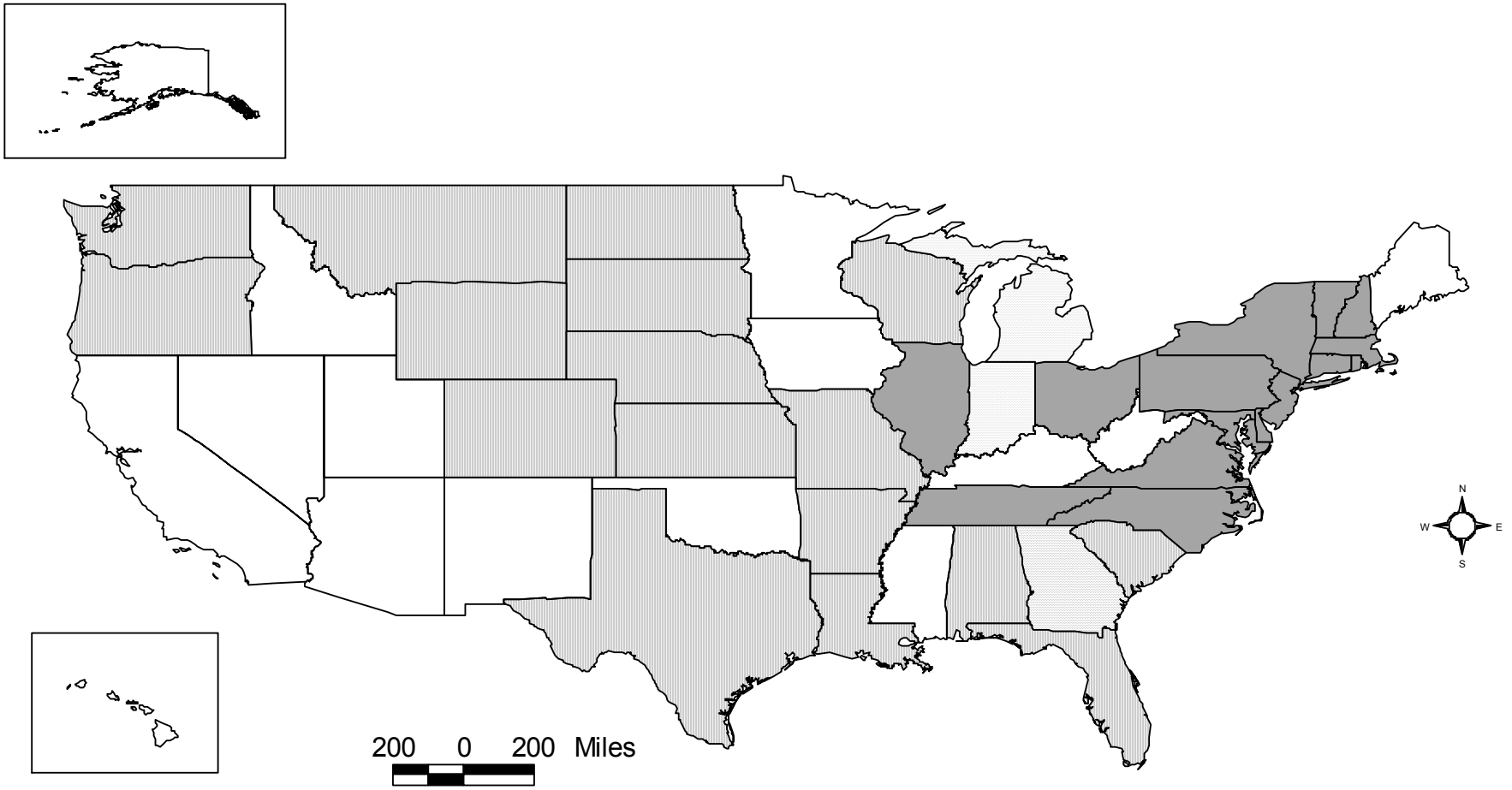
over the process by which first papers were filed was also weak to nonexistent.[25] In Nebraska, or example, immigrants who took out their first papers for national citizenship were allowed to vote in national elections even before the 6-month waiting period (Williams 1912).[26]

The issue of non-citizen voting was embroiled in the national division over slavery: the North wanted to expand the privilege, while Southerners wanted to restrict suffrage to limit the political influence of the North. Alien suffrage actually *expanded* during the tense pre-war period, but during the Civil War alien suffrage carried an enormous price—namely, conscription, which was *apportioned* among states based on the apportionment population (Keyssar 2000). Immigrants who attempted to rescind their declarations to become citizens in order 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 public debt, and regaining political power in Congress (Rosberg 1977; Raskin 1993; Keyssar 2000). The contraction of alien suffrage gained momentum in the wake of the 1890s recession, when several states repealed provisions that granted non-citizens voting rights, yet as late as 1900, 11 states still permitted noncitizen voting (Harper-Ho 2000; Keyssar 2000). The resurgence of nativism coupled with

[25] Hattie Plum Williams (1912) provides 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 led to the Corrupt Practices Act of 1899. Nebraska allowed declarant immigrant suffrage from 1867-1918.
[26] 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



Source: Rosberg 1977; Raskin 1993; Neuman 1996; Harper-Ho 2000; Keyssar 2000.

legal changes in voting rights of other citizen groups during and after World War I led to further contraction of alien suffrage, which terminated completely in the late 1920s (Keyssar 2000; Harper-Ho 2000; Neuman 1996).[27] Thus, the suffrage chapter of immigration history 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 non-citizens (Keyssar 2000; Neuman 1996), *democratic principle* might compel a similar state and local policy in the 21st 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 non-citizens, voluntary immigration provides more explicit consent to be governed than birthright citizenship. Therefore, and in contrast to ancient democracies where the distinctions between citizens and foreigners were sharply defined and rigid, in a liberal democracy non-citizens *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).[28] However, in practice 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 are entitled to representation in Congress; because both are required to pay taxes; because both serve in the armed forces; and because both are bound by the same laws and obligations. Hence both are

[27] Keyssar (2000:Table A12) dates the end of alien suffrage in 1926, when Arkansas abolished noncitizen voting, but Harper-Ho and others use 1928 as the end of alien suffrage.
[28] Hume (1748:153) notes 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.

putatively eligible for the rights and privileges enjoyed by citizens through birthright or naturalization, except voting in federal elections, and where stipulated by law, also state elections. That states retain authority to grant non-citizen voting in state and local affairs is a socially meaningful way to fade the distinction between aliens and citizens (Neuman 1996; Raskin 1993; Rosberg 1977).[29] 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 (Raskin 1993; Bosniak 2000).[30] 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 compared to national politics, but the expansion of dual citizenship among immigrant sending countries (including Mexico) renders moot the question of loyalty to either source or 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 Linda Bosniak (2000:963), non-citizen residents as a social class render problematic "citizenship-as-rights" and "citizenship-as-status." Her perspective parallels Raskin's notion of citizenship as integration and as standing, which the 1992 Maastricht Treaty on the European Union brings into sharp relief (Neuman 1996).

[29] 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*, 60 U.S. 393, 1856) decision recognized the rights of citizenship that states may confer within their own limits, except for naturalization.
[30] Anti-immigrant groups such as FAIR disagree, arguing that no one should receive the franchise without a Pledge of Allegiance because divorcing voting from citizenship strips its meaning. Rosberg (1977) and others (Raskin 1993; Bosniak 2000) rebuke the idea that citizenship and voting are synonymous.

As economic imperatives and adoption of a common currency compel making national boundaries porous in order 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 back stage, even in the face of persisting cultural and language diversity.[31] 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 EU citizens 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 do not extend to resident aliens and third-country nationals (Day 2000).

This unique social experiment, and its historical antecedents, bears 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 (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 political voice for citizens only. Despite the efforts of the German government to revise its inefficient naturalization process, the privileged position of German ancestry immigrants remains in tact, reifying a membership hierarchy within the subset of foreigners (Neuman 1992).

[31] Switzerland, Sweden**,** Denmark, and Great Britain have not adopted the Euro as their sole currency, and the question about whether the British Isles are part of Europe is still a matter of debate in some quarters.

The EU is not alone in limiting the national franchise to statutory citizens. A recent study by Blais and colleagues (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 non-citizen voting, many imposed extended residency requirements. For example, while New Zealand grants permanent residents the franchise, in Uruguay non-citizens 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 exercised is the franchise is socially and politically meaningful. When granted the right to vote, non-citizens are less likely than citizens to exercise the franchise (Harper-Ho 2000) and naturalized citizens are less likely to vote than native-born citizens (Bass and Casper 1999).

In raising the issue of qualified membership, I am not advocating non-citizen voting. 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 immigrant 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 21st century, as Raskin (1993) claims, requires a realignment of democracy with demography.

Aligning Democracy with Demography

Admittedly, the United States would be a very different country had immigration been stopped at the turn of the 20th century; or had the second era of mass migration not materialized after 1970. History scripted otherwise, and the future promises to do so even more. The U.S. Census Bureau predicts that 36% of the U.S. population will consist of minority groups by 2020, and 47% by mid-century (U.S. Census Bureau 2000d). 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 (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 Linda 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 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 T.H. 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 values of liberty, democracy and equal opportunity (Prewitt 2001; Bosniak 2000). At a minimum, social justice dictates that non-citizens be treated as functional citizens.

However, several legislative measures targeting the foreign-born threaten the social contract and expose the vulnerability of immigrants' rights to political manipulation. For example, in 1980 the Supreme Court denied a lawsuit initiated by FAIR against the Commerce Department that aimed to exclude undocumented immigrants from the apportionment base.[32] Former counsel to the Senate Judiciary Committee on immigration, Charles Wood, alleges 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" (Wood 1999). He proposes to seal these cracks by *excluding* undocumented immigrants from the apportionment population and denying birthright citizenship to their offspring. Both objectives requires constitutional amendments, which to date have not succeeded. Once again, history teaches that inclusive approaches to sealing cracks in the contract are not only more enduring, but also consistent with the values of a liberal democracy.

Legislative measures targeting the foreign-born expose the vulnerability of immigrants' membership to political manipulation. Some have been revised or rescinded after public scrutiny and legal review, while 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 non-citizens are worrisome. For example, passed in November 1994, by a 59% majority of California voters, Proposition 187 targeted both

[32] *Ibid*., note 11.

legal and undocumented immigrants by advocating that children of non-U.S. citizens be denied access to public schools as well as health and social welfare benefits except in cases of emergency.[33] That it was declared unconstitutional does not erase the 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' voice and limit social participation show no signs of abating. Even the extra protections afforded by statutory citizenship were threatened when 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" as proposed by the Attorney General's Office was declared unconstitutional (*Gorbach v Reno*, 219 F.3d 1087, 9th Cir), accusations of election fraud or partisan politics could lead to similar initiatives in a climate where nativism has re-sharpened boundaries between citizens and unnaturalized immigrants (Harvard Law Review 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 Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (Pub.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 (Pub.L. 104-208), which restricted access to social benefits for undocumented immigrants, including in-state tuition for postsecondary education (Harvard Law

[33] See full text of Proposition 187 at University of California Hastings College of the Law. Proposition 187. California Ballot Propositions Database. Online: <http://holmes.uchastings.edu/cgi-bin/starfinder/27148/calprop.txt>. (Date reviewed 12 April 2002).

Review 2002).[34] As Peter Schuck (1997:12) aptly notes, "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 deepen the divide between statutory and functional citizenship and underwrite inequality between immigrants and natives. In view of the volume of immigration in the recent past, sealing cracks in the social contract are essential to prevent the demography of difference and foreignness to shape 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 stride toward building a sense of community by giving voice to immigrants and reducing the salience of foreignness. Several localities currently permit non-citizen voting. In Chicago and New York City, non-citizens have voted in school board elections for a long time. More recently Takoma Park, Maryland granted non-citizens, including undocumented immigrants, the right to vote in local elections (Harper-Ho 2000; Keyssar 2000).[35] Yet these cases currently are the exception, not the norm. Similar initiatives have been proposed in several other localities with mixed success, and some opposition comes 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, Asia, and Arab parents (Tamayo 1995). How diversity will

[34] See: Davila (2002), Federation for American Immigration Reform (2001), Arenson (2001), and Purnick (2002).

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

play out in local politics will shape the contours of the national agenda about inclusion and equity.

Another powerful gesture toward the twin goals of equity and inclusiveness is recent legislation that grants in-state tuition privileges to undocumented immigrants who graduate from U.S. high schools.[36] 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 of the undocumented population; because these states 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 where the value of college education signals large differences in lifetime earnings and general well-being, denying youth the opportunity to maximize their educational investment will surely compromise a future where 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 by raising the threshold of the tolerable limits of inequality, also breaches the social contract.

[36] *Ibid*., note 33.

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 the Constitution permits, and particularly how states with high immigrant populations, 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 re-emergence 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 hard 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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Appendix Table A-1

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

	Natives Only			Immigration Stopped in 1900			Citizens Only		
States	1910	1920	1930	1910	1920	1930	1910	1920	1930
Alabama	2	1	2	1	0	1	0	0	1
Alaska*	-	-	-	-	-	-	-	-	-
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**	-	-	-	-	-	-	-	-	-
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
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

* Alaska became the 49th state in 1959, thus data are not available for this analysis.

** Hawaii became the 50th state in 1959, thus data are not available for this analysis.

Appendix Table A-2
Differences in Theoretical and Actual Apportionment of U.S. House Seats Under Three Counterfactuals

	Natives Only				Immigration Stopped in 1900				Citizens Only			
States	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
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