## The Social Construction of Illegality

Early themes in U.S. immigration law focused on legal rather than unlawful entry while attempting to preserve the native stock of northern and western Europeans. From 1924-1952, the United States denied immigrants from Latin America and Asia. The 1924 Immigration Act broadened the restrictions of the 1917 Immigration Act. The quotas for 1924 were based on the percentages for each immigrant group living in the United States in 1890, and prior to the 1890 U.S. census, there were significantly fewer southern and eastern Europeans living in the United States in comparison to northern and western Europeans. Historian Steven Gillon explains the discriminatory effects of the 1924 Act. "Europe consumed 98% of the [1924] quota, leaving only 2% for the rest of the world. Three countries—Ireland, Great Britain, and Germany—accounted for nearly 70% of the total. In addition to dramatically cutting immigration rates of southern Europe—Italians and Greeks were especially hard hit—the law almost completely excluded Asians" (164). Nevertheless, some Europeans overcame their illegal status. Historian Mae Ngai described a formal agreement between U.S. Immigration Service and Canada whereby a European immigrant became a citizen of the United States:

Europeans could go to Canada and be admitted to the United States legally after they had resided in Canada for five years. The evidence suggests that this was a popular strategy: the proportion of lawful admissions from Canada from persons not born in Canada increased from 20 percent in 1925 to over 50 percent in early 1930s. And, as European immigrants in United States became naturalized citizens, they could bring relatives over legally as non-quota immigrants. In 1927, 60 percent of non-quota immigrants admitted to U.S. were from Italy, with next largest groups coming from Poland, Czechoslovakia, and Greece. (84)

Europeans, even those with criminal records, were able to overcome their unlawful status. Notably, this was an example how “the INS suspended state territoriality in order to unmake the illegal status of certain immigrants” (Ngai 101).[[1]](#footnote-1) On the one hand, it became possible for Italians, Polish, and other European “illegal” immigrants through the power of administrative discretion to overcome their unauthorized status. On the other hand, Mexican immigrants were unable to overcome their unauthorized status. Although not overtly racist, these state actions were discriminatory in their consequences.

It is fundamental to American identity that Europeans seemingly chose the path of legal immigration. The Mexican immigrant, however, seemingly preferred illegal routes. Volpp insists the selective forgiving of illegal status associated with European immigrants has been ignored by historians. Illegal entry became a phenomenon not after 1965, as some scholars have assumed, but in the 1920s. “Illegal immigration before that [1920s] was "minimal" and "easily controlled" not because fewer immigrants were seeking entry but because there were fewer laws that made immigrants illegal as well as less surveillance” (1615). Prior to the restrictive 1920s, government officials used discretion in dealing with illegality, for instance, allowing the private sphere and market forces to sort out the relationship between employers and workers outside of the law—acknowledging southwest U.S. territorial lands as a de facto Mexico. Mexicans were coming into the southwestern United States to work in railroad construction, mining, and agriculture. Ngai observes that the Immigration Bureau perceived the Southwest as the "natural habitat" of Mexicans and “regulated by labor market demands” (82). The law, then, was malleable. Motomura emphasizes state authority impacted the economic, political, and social construction of illegality:

The hallmark of enforcement against Mexican immigrants was *discretionary* [emphasis added] reflecting the needs of employers, who preferred to hire Mexican workers with temporary legal status or no legal status at all [i.e., those outside of the law]. They were a flexible, disposable workforce, ready to work when needed, but when compared to Europeans, more easily sent home when they were not. (2050)

Notably, there were no congressional numerical restrictions on migrants from Mexico during the 1920s. Nevertheless, Mexican immigrants were controlled in other ways. Ngai argues it was surprising Mexicans became associated with illegal immigration in the 1920s. “It was ironic that Mexicans became so associated with illegal immigration because, unlike Europeans, they were not subject to numerical quotas and, unlike Asiatics, they were not excluded as racially ineligible to citizenship”(89). The 1929 law criminalized unlawful entry by making it a misdemeanor. Deportations of unauthorized Mexicans increased dramatically—from 1751 expulsions in 1925 to 15,000 in 1929 (Ngai 84). The new laws disrupted the circular movement of migrants back and forth across the border, as migrants feared returning to Mexico and not being able to return to the United States. As border security was tightened making it harder for back and forth movement across the border, the more permanent presence of unauthorized populations within the United States was judged a “success” by U.S. policymakers. Volpp contends that “today the conflation of the racial identity ‘Mexican’ with ‘illegal alien’ is indisputable” (1597). Interviewee Angel Luevano, National Vice President of the Far West League of United Latin American Citizens (LULAC), explained the perceived lack of social distance between himself and a noncitizen:

There I am 17 years old working for Julius Goldman’s Egg City in Moorpark, CA; undoubtedly they hired a lot of undocumented, but there were other people like me who were documented working there for the summer. Everybody got stopped by Border Patrol, and I got thrown up against the car and asked for papers. . . . I was working on a roof taking out nails from chicken coops and seeing the Border Patrol vans rush in and see everybody run, and I would run too. They said, “Why are you running?” I saw everybody run, so I ran as well, crazy.

The threat of deportation was necessary to control a flexible labor force—turned on when U.S. firms needed cheap labor—turned off when unemployment was high or when there were public outcries for tighter border enforcement.

### Post-World War II Immigration Developments: The Gate Opens a Little

The McCarran-Walter Immigration Act of 1952 reinstituted the national origins quota with an exception—immigrants from Asian and Latin American countries were allowed to immigrate to the United States. The numerical inclusion of immigrants from Asia rewarded the immigrants of Asian countries, notably China, for supporting the Allied cause during the Second World War. Nonetheless, the quotas allotted to Asian immigrants were few—Chinese immigrants were allotted 105 visas (Gillon 165). Even with movement toward tolerance after the Second World War, restrictionist sentiment remained strong in the United States. The same arguments resulting in the passage of the 1924 Immigration Act were used to justify the enactment of the 1952 Immigration Act. Liberalization of McCarran-Walter, a clubwoman from the voluntary association General Federation insisted, would "flood the American labor market with cheap workers and introduce a large number of unassimilable people, while the bill as it was originally conceived served to protect the American way of life.” According to a General Federation member, "By guarding our liberties we will promote the peace of the world. . . . This is our country, not to be entered by the rest the world and turned into something else" (Olsen 191). Critics of liberalizing McCarran-Walter insisted that "subversive organizations" were the primary critics of the original restrictive legislation. Members of DAR held similar restrictionist sentiments and doubts about assimilating many million newcomers, which is further examined in Chapter Four.

#### The Latent Effects of the 1965 Immigration Act

The 1965 Immigration Act ended the discriminatory national origins quota system while creating significant unintended consequences. Immigrants from all over the world were eligible for entry into the United States, and for the first time, numerical limits were imposed on immigrants from Mexico and Canada. The consequences of the act included reduced immigration from northern and western Europe, with increased immigration from Southern and Eastern Europe (particularly Italy), with the greatest increases coming from Latin America and Asia. Earlier the Johnson administration had passed the 1964 Civil Rights Act and the 1965 Voting Right Act. Koed insists the 1965 Immigration Act was a rush job. The United States was experiencing riots and assassinations, escalation in Vietnam, and the window was closing in on the Johnson administration to act. “It is in this rush to get the policy enacted,” Koed emphasized, “that we find the roots of future unintended consequences" (289). Journalist Theodore White described the Immigration Act of 1965 as “the most thoughtless of the many acts of the Great Society” (Gillon 177). According to Koed, policymakers who supported the 1965 Immigration Act failed to foresee significant population increases regarding U.S. refugee policy and chain migration. “Although the congressional debate led policymakers to believe that this would result in about 50,000 immigrants annually, in practice they were soon reaching members many times that figure. By 1975, most of these non-quota immigrants came from Mexico, Asia or central and South America” (282-3).

Another unexpected outcome was growth in unauthorized populations. By 1990, it was estimated approximately three to five million unauthorized immigrants resided in the United States, primarily from Mexico and the Caribbean. Pushed north by poverty and unemployment, most entered the United States looking for seasonal or low-skilled jobs. Koed stressed the causal role the ending of the Bracero Program played in increasing unlawful immigration. “The end of the Bracero Program in 1964, coinciding with the new restrictions on the Western hemisphere, meant many had to seek alternative, or extra-legal, roots to jobs and families in the US” (284). Policymakers failed to predict increases in unauthorized immigration after the Bracero Program had terminated in 1964 in the context of new Western Hemisphere limits on legal immigration.

While scholarly interpretations of the 1965 Hart-Celler Immigration Act pointed to its expansive nature, scholars challenged this narrative. Although it demonstrated the United States did not discriminate based on the racial characteristics of those from sending states, it ignored the *unique* relationship between the United States and Mexico. “Lauded as overturning racial discrimination,” Volpp argued, “[It] did not repeal idea of quotas in immigration; immigration reform was narrowed to the question of formal equality, in terms of apportioning the same number of slots for each country” (1606). The 1965 Immigration Act overturned the racial preferences of national origins quota in favor of formal equality but created new problems. Formal equality associated with the immigration act lacked needed *discretion*, namely, the affiliation between Mexican cheap labor and U.S. labor needs, which caused an increase in unauthorized crossings. This resulted in large numbers of unauthorized crossings followed by increases in deportations. The total quota allotted for the Western Hemisphere was 120,000. In 1968, when these limits went into effect, there was a 40 percent increase in deportations. More important, in 1976 the 120,000 Western Hemisphere limit was discontinued, and a 20,000 per country quota limit was enacted; that year the INS expelled 781,000 Mexicans from the United States. These numbers were far below the total number of apprehensions for “all other nationals of the world, combined, remained below 100,000 a year” (Volpp 1607). Volpp holds formal equality also led to increasing racialization “because assigning a Mexico only 20,000 annual slots for lawful immigration has rendered illegal a large proportion of the Mexican population that sought entry . . .“ (1615). Mexicans were defined through illegality, or in Ngai’s terminology, "impossible subjects," constructed by formally equality because of the numerically restrictive 1965 Immigration Act against the background of the unique but unequal relationship between the United and Mexico. The conventional understanding concerning the ending of the national origins quota—praised as a civil rights victory—was premature. The end to national origin quotas was conceptualized as closure to an ugly history of race-based immigration exclusion, particularly Asian exclusion. Ngai challenges scholars to reconsider the relationship between formal equality and numerical restrictions in the context of U.S.-Mexico economic interdependence.

1. The number of Europeans legalized was not insignificant. Ngai observes that “not all illegal European immigrants were legalized, but a rough estimation suggests that between 1925 and 1965 some 200,000 illegal European immigrants, constructed as deserving, successfully legalized their status under the Registry Act, through pre-– examination, or by suspension of deportation” (107). [↑](#footnote-ref-1)