

A RETURN TO MORE BLATANT CLASS AND “RACE” BIAS IN U.S. IMMIGRATION POLICY?

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Abstract

This essay explores the contradictions posed by states' efforts to exclude immigrants from south of the U.S. border on the grounds that they “burden” the economy, despite the same states' windfall revenue from the taxation of undocumented immigrants. Lawmakers' ongoing anti-immigrant sentiment yields a racialized contradiction in which mostly Mexican and Central American immigrants are derogated as economic burdens. In fact, they are unfairly taxed in addition to being indispensable to the U.S. economy. Based on these and other phenomena, such as racially coded preferences for higher-class immigrants and “antidiversity visas,” I contend that contemporary U.S. immigration policy has regressed toward more blatant class and “race” (albeit racially *coded*) discrimination.

Keywords: Immigration Policy, Differentiated Immigration, Institutionalized Class and Race Biases, Race History, Latinos

INTRODUCTION

Although the Immigration Act of 1965 has long been hailed as a progressive turn in U.S. immigration politics, retrospectives on the 1965 law have laid bare class and race biases against Mexican and other immigrants south of the border. This darker side of the 1965 law conjoined with the Immigration Act of 1990, provisions thereafter, and the recent approval by the U.S. Senate of 700 miles of fence to be erected between Mexico and the United States signal a return to more blatant class and race discrimination within contemporary U.S. immigration policy. Expanding on this claim first proposed by Edward J. W. Park and John S. W. Park in their incisive book *Probationary Americans* (2005), I focus on the contradiction and myopia of, on the one hand, the exclusion of immigrants whom Congress deems “economic burdens,” and, on the other hand, the government's windfall revenue from taxing these immigrants, including the undocumented millions among them.

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Anti-immigrant sentiment among lawmakers and the public has intensified despite the fact that undocumented immigrants contribute more to public coffers than they cost in social services. And while political leaders dismiss institutionalized racism in “America”¹ as largely a relic of yore, their recent immigration policies for the most part exclude poor immigrants of color; run a lottery for “diversity visas,” which, in effect, excludes immigrants from diverse non-White countries; and are racially coded such that the fate of racialized *Others* is legislated without mention of race (Park and Park, 2005).

THE IMMIGRATION ACTS OF 1965, 1986, AND 1990: A CHECKERED BACKGROUND

Amid a civil rights movement in full swing and John F. Kennedy’s platform to make the United States a New Frontier, the racially discriminatory national origin quotas of 1924 were finally abolished in 1965. This policy shift indelibly changed the “face” of the United States, as most new immigrants hailed not from Europe, as predicted, but from Asia and Latin America. In addition to being the first race-neutral immigration law (Park and Park, 2005, p. 12), the 1965 act began to admit immigrants based on the country’s employment needs and on the commitment to reuniting U.S. immigrants with their families (Pedraza 1996). Despite the affirming changes along racial and familial lines, scholars have argued that the 1965 amendments have been seen through rose-colored glasses. For instance, Park and Park write, “Several aspects of the law were overtly restrictionist, particularly toward poorer laborers and settlers from Mexico, Central America, and South America” (Park and Park, 2005, p. 15; see also Reimers 1992). For one, the 1965 act responded to earlier calls under the *Bracero* program to ban Latino immigrants, providing a mere 120,000 visas per year for Western Hemisphere countries. Lawmakers thus tightened up security along a once porous southern border. Although Congress was aware that such restrictions would create immigrant backlogs in the southern countries of the Western Hemisphere, it acted upon the evidence that the migrants who came were generally poor, unskilled, and non-White. [Congress later amended the rule in 1976, given the backlogs and associated problems (Park and Park, 2005, p. 16).]

Despite the liberalized provisions of 1976, Congress began its regressive move away from a commitment to race neutrality with the Immigration Reform and Control Act (IRCA) of 1986. This act yielded two somewhat contradictory outcomes. On the one hand, the IRCA increased worldwide immigration limits and legalized immigrants who for years had been undocumented (Rumbaut 1996, p. 27). On the other hand, the IRCA continued to tighten up the southern border by restricting the entry of similarly situated labor migrants (Park and Park, 2005, p. 16). U.S. employers were now required to verify the legal status of their workers, lest the companies suffer the reprisals newly instituted under the IRCA (Park and Park, 2005, p. 17; see Bean et al., 1990). Four years later, Congress passed the Immigration Act of 1990 to forcefully bar undocumented immigrants from entering the country. Under this new law, with a more sharpened focus than that of the IRCA, Congress increased almost every punitive measure against employers for hiring or enabling illegal immigrants, proposed fines against citizens for aiding and abetting aliens, and fortified the southern border with patrol agents, while at the same time providing funds and resources for construction and surveillance (Park and Park, 2005, p. 17). On such a regressive path Park and Park aptly state:

If the Act of 1965 provided for numerical formulas as a way to regulate the migration of poorer persons across the southern border, the Act of 1990 provided for fences, moats, and other physical barriers that could literally stretch across miles of land and into the sea. The Act of 1990 continued in this way the trend of limiting access to the United States for persons who were likely to be poor (Park and Park, 2005, pp. 17–18).

Despite these “fences” and “moats” to keep poor, racialized southern migrants at bay, the latter continued to arrive through family reunification clauses retained by the 1990 act. The spike in immigration in the early 1990s in turn prompted the egregious Proposition 187 (Park and Park, 2005, p. 21). In a volatile context in which politicians characterized immigrants—and principally undocumented aliens (read: *Latinos*)—as a drain on social services underwritten by “real Americans,” California voters supported the proposition. Leo R. Chávez (1996, p. 253) found that Anglo Americans, in particular, perceived undocumented immigrants as burdensome and threatening: two out of three (about 67%) voted in favor of the proposition, a much higher proportion than among Asian and Black Americans (about half of each of those groups voted in favor). Not only were predominantly Anglo voters guided by the deep economic recession—a frequent catalyst of intense anti-immigrant sentiment [cf. Cornelius (1980) and R. Simon (1985)]—they further voted to ban access to health care and education for fear of Latino women’s and children’s reproduction, as Chávez (1996, p. 254) has astutely argued.

BLATANT CLASS AND RACE DISCRIMINATION WRITTEN INTO THE IMMIGRATION ACT OF 1990

The notable barriers against poor immigrants, especially those from south of the border, have been both legal and physical. And the sanctions have been levied against not just immigrants, but also the families and employers who sponsor them. The ideological message is: “Our southern neighbors are excludable because they offer us nothing of value, and they cost us too much.” As I will show below, such a message could not be further from the truth. But contemporary immigration laws such as the Immigration Act of 1990 promulgated such ideology by blatantly discriminating against poor migrants, the vast majority of whom are non-White.

The 1990 act did so by devising categories that admitted only higher-class immigrants (Park and Park, 2005). Although the language of *race* is excised from these clauses, such a class preference, conjoined with tightened border security, purposefully disadvantages Latino labor migrants. In addition, Latino and Asian ethnics have been most disadvantaged by the 1990 act’s exclusion of poor immigrants who thereby cannot reunite with their families (Park and Park, 2005, p. 111). In general, the 1990 act moved away from family reunification clauses in favor of discriminatory employment clauses which admitted only those with high education and professional credentials (Park and Park, 2005). The five major categories of employment begin with the first preference of “priority workers” defined as “aliens of extraordinary ability,” “outstanding professors and researchers,” or “multinational executives and managers.”² The second category admits professionals “holding advanced degrees”; persons with equivalent degrees; persons with “exceptional ability in the sciences, arts, or business”; or those who would “substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States.”

Along the same lines, the third preference stipulates three types of “skilled workers,” all of whom have to show labor certification without exception. The first type of skilled workers are

qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years of training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Here the stipulation that the visa seeker should not do “temporary” or “seasonal” work is a racial code for impoverished Mexicans and Central American labor immigrants. Next are “professionals” (i.e., those “who hold baccalaureate degrees and who are members of the professions”), and then “other workers,” who are “[capable] of performing unskilled labor, not of a temporary or seasonal nature for which qualified workers are not available in the United States” (read: “still no poor Mexicans/Central Americans wanted”). The fourth preference is for “special immigrants,” a catch-all category that includes “religious workers” and “former long-term employees of the United States government.” Only 10,000 visas have been allotted for this category. The fifth and final preference is for “employment creation.” More commonly known as the “1-million-dollar visa,” these unique visas go to any investor who can create ten full-time jobs in the United States. The premise is that immigrants can realize permanent residency if their investments directly help American workers.

Taken together, these class-discriminatory preferences, coupled with the heightened border patrol culminating in the recent HR 4437 fence, evince the racially coded ways in which U.S. lawmakers hold up the *Keep Out* sign to the impoverished who hail from south of the border. Moreover, in the wake of Proposition 187, federal rules in 1996 drastically cut legal immigrants’ access to social services, further discouraging family reunification among the poor, even to the point of disqualifying them from it. These federal rules also mandate quick and easy deportations of any unauthorized immigrant convicted of a crime.

The Immigration Act of 1990 has been more racially explicit in its allocation of “diversity visas.” These visas are one of the two avenues through which a migrant may self-petition for permanent resident status in the United States (the other being as a refugee or asylum-seeker). Congress devised the visa in response to discontent about the large streams of Asians and Latinos entering the country under the 1965 amendments. Since then, the lion’s share of the visas have gone to European countries “adversely affected” by the 1965 act, namely, natives of Ireland. Indeed, tens of thousands of Irish had overstayed their temporary visas and were living in the United States illegally (Rumbaut 1996, p. 27). Hence, the visa served as an ideal escape hatch. This preference for Europeans led Stephen Legomsky (1993) to dub these “anti-diversity visas,” though, to be sure, migrants from Africa seem to have benefited from them (cited in Park and Park, 2005, p. 24). Legomsky’s moniker seems apt in the current period. For instance, Park and Park (2005, p. 25) reveal that the U.S. State Department maintains a website for prospective lottery participants which lists at the outset the countries ineligible for the visa, including Canada, India, Haiti, the Dominican Republic, Jamaica, Mexico, Pakistan, the Philippines, South Korea, the United Kingdom, and Vietnam. As the majority of these countries are in the Caribbean, Latin America, or Asia, Park and Park keenly remark, “One imagines a person from Haiti or the Philippines looking at this website and getting the impression that the United States is saying in a not-so-subtle way that there are already too many of you” (Park and Park, 2005, p. 25).

In addition to militating against racial diversity, these visas also prevent class diversity. Applicants to the recent lottery have to meet threshold requirements to ensure that they do not become a public charge. They must have completed high school or have "two years experience within the past five years in an occupation that requires at least two years of training or experience" (Park and Park, 2005, p. 25).

(UNDOCUMENTED) IMMIGRANTS: ECONOMIC BURDENS?

In sharp contrast to lawmakers' depictions of immigrants from south of the border as economic burdens, scholarly evidence overwhelmingly points to the equal or greater tax contributions of immigrants. Evidence also reveals the fiscal windfall that the federal government enjoys from taxing *undocumented* immigrants without accountability. The continued exclusion and derision of Mexican and Central American immigrants as economic burdens, when in fact they pay billions in taxes, cast into sharp relief the return to more pernicious racialized class discrimination in U.S. immigration law. No matter what immigrants do, no matter how indispensable they are to the U.S. economy, they are racialized as economic burdens and society's parasites. Without a doubt, undocumented immigration has certain economic costs. But, as Reich (1991) notes, "Every empirical study of illegals' economic impact demonstrates [that] . . . undocumented actually contribute more to public coffers in taxes than they cost in social services" (cited in Lipman 2006, p. 2; see also Chang 1997; Cornelius et al., 1982; McCarthy and Valdez, 1986; Muller and Espenshade, 1985; Olivas 1995; J. Simon 1989; Sykes 1995).³ Despite this windfall revenue for the federal government, a Pew Hispanic Center survey found that 56% of the nation believes that immigrants did not pay their fair share of taxes, while only one-third believe the contrary (Kohut and Suro, 2006). As the general public is usually quiz-zical or incredulous whenever undocumented immigrants are described as paying taxes, it is worth briefly discussing the process.

HOW UNDOCUMENTED IMMIGRANTS PAY U.S. TAXES

Starting in 1913, the federal government began to subject non-U.S. citizens residing in the United States to income tax in the same manner to which U.S. citizens were subject under the Revenue Act (Lipman 2006, p. 18). This requirement still holds for undocumented immigrants today. Under the category *resident aliens* and through an IRS practice instituted for logistical purposes only (Lipman 2006, p. 18), immigrants pay income and employment tax just as do U.S. citizens. Although many low-income undocumented immigrants do not pay federal income tax because of the standard deduction and personal and dependency exemption deductions, they are nonetheless required to pay Social Security payroll taxes on every dollar of reported wages, yielding an effective tax rate of 7.65% (Lipman 2006, pp. 28–29).

For an undocumented immigrant to remain (working) in the United States, then, the first step usually requires procuring a counterfeit Social Security number. Although Congress had been concerned with this illicit practice for some time, it issued Social Security cards to unauthorized workers until the early 1980s, noting the group's unauthorized status only within internal documents (Lipman 2006, p. 21). But, in part to stop the hiring of unauthorized workers, Congress passed the above-mentioned IRCA in 1986. As the IRCA required employers to prove workers' authorization with specific documents such as the Social Security card, the use of counterfeit

Social Security cards subsequently became widespread. Undocumented workers, in turn, were able to enter and function within the U.S. labor market like never before (Lipman 2006, p. 21). They also began paying into the Social Security fund like never before. As an illustration, the U.S. government received in 2003 an estimated \$7 billion in Social Security taxes from 7.5 million workers with mismatched Social Security numbers, all through their employers (Lipman 2006, p. 24). This dollar amount has more than tripled over the last decade (Lipman 2006, p. 24). In all, as young working immigrants continue to enter the U.S. labor force, they will flush the Social Security fund with a projected \$500 billion by 2022.

With regard to immigrants in general (both documented and undocumented) Capps et al. find that the 1 million immigrants who live in the Washington, D.C., metropolitan area “contribute strongly to the region’s economy, purchasing power, and tax base” (Capps et al., 2006, p. 5). This is true regardless of whether the immigrants, most of whom hail from Latin America and Asia, are high or low skilled. Although immigrant households in the metropolitan D.C. area have lower incomes than do native-born households, for instance, they pay nearly the same proportion of taxes (in fact, higher-class immigrants pay a higher share, while those without higher education or permanent status pay a lower share) (Capps et al., 2006, p. 5). To illustrate, between 1999 and 2000 D.C. immigrants paid approximately 19% of the region’s total household income (\$29.5 billion) and 18% of all taxes (\$9.8 billion), both of which are now underestimates, given the growth in the immigrant population since (Capps et al., 2006, p. 5).

In addition to making unrequited contributions to Social Security, Medicare, and unemployment insurance programs, undocumented immigrants contribute to the U.S. economy both by investing and by consuming goods and services (Lipman 2006). Capps et al. (2006) find that immigrants in the metropolitan D.C. area are a major source of revenue at the state and local level. This trend is also true at the national level (Chávez 1996). For instance, many D.C. immigrants own homes and pay state and local property taxes or pay such taxes indirectly through renting. Many also own cars and pay automobile taxes on them as well (Capps et al., 2006).

As one can see, undocumented immigrants are at an extreme disadvantage. They pay high federal, state, local excise, payroll, income, property, and sales taxes, yet they receive virtually no government assistance (Reardon-Anderson et al., 2002) and cannot vote. As such, undocumented immigrants are treated less favorably than are similarly situated resident aliens, despite the fact that both are classified, for tax purposes, as resident aliens (Lipman 2006, p. 20). Indeed, some of the poorest undocumented immigrants pay more in taxes than do their richer low-income neighbors because they do not qualify for either the refundable EITC or the refundable CTC (Lipman 2006, p. 48). Most egregious of all, undocumented workers will not receive any retirement benefits so long as they remain unauthorized to work, a plight that legal scholar Francine J. Lipman deems “clearly separate and unequal” (Lipman 2006, p. 26). And lawmakers’ noted proscription of immigrant entry into the United States—whether through class clauses or “anti-diversity visas”—just adds insult to injury, as do the increased deportations since 1996.

WHY THE BACKLASH?

Undocumented immigrants’ overall benefit to the U.S. economy, including the unrequited billions they stuff into public coffers, raises the question of how Congress can continue to bar these immigrants and deride them as “economic burdens.” One

explanation points to a long tradition of politicians being elected and reelected by fomenting and exploiting voters' anti-immigrant sentiments. A recent illustration is conservative political hopefuls' expressed backlash against Bush's middle-of-the-road guest-worker program. Sadly, there is no evidence that politicians will abandon this practice anytime soon. Their jobs depend on it. In addition, the Bush administration's gradual phasing out of the Social Security program may mean that the undocumented immigrants' contributions will diminish in importance. Moreover, the government's windfall revenue from undocumented immigrants does not mitigate the extremely high costs to the IRS of processing mismatched W-2 forms and Social Security tax identification numbers, about 4.5% of which come from unauthorized workers (Lipman 2006, p. 24). A bigger motive behind U.S. lawmakers' push to exclude poor immigrants (from south of the border) is the emergent view of immigrants as not community members with families, but as "costs." The Immigration Act of 1990 and various provisions beginning in 1996 have sought, above all else, to reduce such "costs" (Park and Park, 2005, p. 111). Congress therefore mandates that lower-income immigrants not be reunited with their families in the United States; it is simply "too expensive" for the U.S. government. Furthermore, the new rules require all potential sponsors to financially account for those they bring in and to prevent the immigrants themselves from receiving public assistance (Park and Park, 2005, p. 111). Congress is interested in allowing only the reunion of well-off families and, in the wake of the 1990 act, in devising provisions that clearly assist, rather than "burden," the nation's economy (Park and Park, 2005, p. 111).

To be sure, the Bush administration in 2004 was partly willing to take a risk with its guest-worker program because it knew the economic benefits of unauthorized immigrants in the United States, especially to corporations. Indeed, the data I have presented suggest that a loss of undocumented Mexican and Central American immigrants would deal a major blow to the economy. Julian L. Simon (1995) finds that 85% of eminent economists hold that undocumented immigrants have a positive (74%) or neutral (11%) impact on the U.S. economy. Furthermore, Auerhahn and Brownstein (2004, p. 22) claim that, as the U.S.-born work force ages and becomes more educated, the demand for young essential workers will continue to increase at levels that cannot or will not be filled by the domestic labor force. Needless to say, immigrants, many of whom were forced or coerced into the nation by structural inequalities in the first place [see Espiritu (2003)], historically built the United States and will continue to keep it afloat.

Although the 1965 Immigration Act has been lauded for knocking down racial barriers, scholars have revealed that the class and race restrictions against Mexican and Central American immigrants began with this law (Park and Park, 2005; Reimers 1992). And, as Park and Park (2005) have deftly shown, immigration policymakers have never looked back, only intensifying legal discrimination on the basis of class and "race" (in "racially coded" fashion) against immigrants over time. The IRCA of 1986, the Immigration Act of 1990 and its "anti-diversity" visas, federal provisions since 1996, and the new 700-mile fence all point to the regression, not progression, of U.S. society. I have argued that millions of undocumented immigrants suffer because they are maligned as racialized economic burdens, when in fact they are not; indeed, they contribute more to the public tax base than they receive from it. In addition, many authorized immigrants pay more in taxes than do the native-born. But the U.S. government's increasingly draconian laws cast into relief the ways in which policymakers have aided and abetted the public's ignorance about immigrants and the spikes in anti-immigrant backlash. In light of the government's construction of immigrants as costs rather than as human beings, along with its entrenchment of

racialized class inequality, it will take more radical measures and ideologies to emerge from our current exclusionary moment. Until our society acknowledges that no human being is “against the law,” that borders are the sociopolitical constructions of elites, and that immigrant entry should not be based on costs or color, we as a nation will continue to backslide.

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NOTES

1. *America* is in quotes because there is more than one America.
2. All of the information on class preferences comes from Park and Park (2005, p. 22).
3. Although I agree completely with the finding, I do not subscribe to terminology that renders the legal status of undocumented immigrants as nouns (“illegals,” “undocumented-eds”). Although I know that pro-immigration scholars in no way intend to affirm the dehumanization of immigrants, such terminology can feed the dominant ideology that does.

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While points-based systems are designed to reduce racial bias, they reproduce this bias in more subtle ways. Following the abolition of admission policies that evaluated applicants on the basis of their race and origin until the 1960s and 1970s, Australia, Canada and some countries in western Europe shifted to points-based systems that prioritized immigrants with desirable skills and regional free movement agreements with their neighbors. However, while these innovations were designed to reduce racial bias in the ways governments select newcomers, they reproduce this bias in more subtle ways. More green cards will go to immigrants with a good education and a measure of self-sufficiency; fewer will be granted simply because someone has a family member in the United States. Immigrants from Europe and Canada are least likely to face problems under the new regulations, according to one study, which found that, by contrast, nearly three-quarters of recent arrivals from Mexico and the Caribbean have relatively modest incomes that would jeopardize their chances at a green card. Admitting productive, self-reliant people has long been the objective of United States immigration policy. Current debates around US immigration policy are playing out against a backdrop that has changed significantly in the past 20 years: immigrants have increasingly gravitated towards "new destinations"; a large and growing portion of immigrants are undocumented; and the federal vacuum in responding to the promise and problems of these new immigration trends has devolved policy to the states. As a result, we have seen innovation on the state level as policymakers seek to accommodate, welcome or resist immigration, with varying degrees of success. A return to more blatant class and "race" bias in U.S. immigration policy? Article. Sep 2007.