IMPOSSIBLE SUBJECTS

POLITICS AND SOCIETY IN TWENTIETH-CENTURY AMERICA

Series Editors
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Mae M. Ngai

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ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA

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To the memory of _____

Shih-hsun Ngai

and to

Hsueh-hwa Wang Ngai *and*

Michael S. Hing

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It has always been easier, it always
will be easier, to think of someone as
a noncitizen than to
decide that he is a nonperson.

—Alexander Bickel, "Citizenship in the American Constitution"

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Chapter One

The Johnson-Reed Act of 1924 and the Reconstruction of Race in Immigration Law

> Each upthrust of nativism left a mark on American thought and society. . . . [T]he anti-foreign wave that flowed without pause for two decades in the early twentieth century . . . must stand alone in its persistence, in its complexity, and in the massiveness of its institutional deposit. . . . [T]he country would never be the same again, either in its social structure or in its habits of mind.
>
> —JOHN HIGHAM[1]

ALTHOUGH Congress legislated the first numerical restrictions in 1921, it would be nearly a decade before permanent immigration quotas were implemented. The intervening years were filled with contention and difficulty as Congress debated the design of a new system. All were keenly aware of the stakes: the new order would codify certain values and judgments about the sources of immigration, the desired makeup of the nation, and the requirements of citizenship.

The nativists who had led the drive for restriction believed there were serious flaws in the 3-percent quotas that were established in 1921. The law set the quotas according to the 1910 census because data from the 1920 census was not fully compiled at the time. Using 1910 as the base, the southern and eastern European countries received 45 percent of the quotas and the northern and western European countries received 55 percent. Although the quotas reduced southern and eastern European immigration by 20 percent from prewar levels, nativists believed it was still unacceptably high. They argued for a 2-percent quota based on the 1890 census. That was when, they argued, the sources of European immigration shifted, altering the racial homogeneity of the nation. The 1890 formula reduced the level of immigration to 155,000 per year and reduced the proportion of southern and eastern European immigration to a mere 15 percent of the total.[2]

But, the 1890 formula was crudely discriminatory and therefore vulnerable to criticism. Opponents of the bill pointed out that using the 1920 census figures, the most up-to-date, was conceptually more sound, but since

that gave even greater weight to the newer immigrants, it defeated the whole purpose of the quotas as far as the nativists were concerned. Proponents of restriction thus labored to devise a plan that would discriminate without appearing to do so. W. W. Husband, the commissioner general of immigration, advocated a plan to set quotas according to the rate at which each immigrant group became citizens. Naturalization was an indication of assimilation, Husband contended. Moreover, he believed that some nationalities "naturally" sought American citizenship, while others did not. Husband argued for disfavoring the immigration of those groups that resisted assimilation, rather than "advertising and going out into the highways and byways and dragging people into Americanization. . . . [W]hen you try to change [a man] by a hothouse process it does not work," he said. Not surprisingly, Husband found that the rate of naturalization was 67 percent among northern and western Europeans and 32 percent among southern and eastern Europeans.[3]

Another proposal was introduced by David Reed, the Republican from Pennsylvania and chair of the Senate immigration committee, and John Trevor, a leading restrictionist and head of an immigration-restriction coalition of patriotic orders and societies. Trevor, a New York lawyer, sat on the board of the American Museum of Natural History and was an associate of Madison Grant, author of the best-selling tract *The Passing of the Great Race.* In March 1924 Trevor submitted a proposal for quotas based on "national origin" to the Senate immigration committee. Like other restrictionists, Trevor warned that the new immigration threatened to lower the standard of living and dilute the "basic strain" of the American population. But Trevor turned the debate on its head by arguing that the quotas enacted in 1921 discriminated against native-born Americans and northwestern Europeans. Those quotas were based on the number of foreign born in the population, leaving "native stock" Americans out of the equation. As a result, the 1921 act admitted immigrants from southern and eastern Europe on a "basis of substantial equality with that admitted from the older sources of supply," discriminating against "those who have arrived at an earlier date and thereby contributed more to the advancement of the Nation." To be truly fair, Trevor argued, the national origins of the *entire* population should be used as the basis for calculating the quotas. He calculated an apportionment of national origins quotas based on the nation's population in 1920, which gave 16 percent of the total to southern and eastern Europe and 84 percent to northern and western Europe. The quotas were nearly identical to those calculated at 2 percent of the foreign-born population in 1890, yet could be declared nondiscriminatory because they gave fair representation to each of the nation's "racial strains."[4]

In May, Congress passed an immigration act based on Trevor's concept of

national origins quotas.[5] It restricted immigration to 155,000 a year, established temporary quotas based on 2 percent of the foreign-born population in 1890, and mandated the secretaries of labor, state, and commerce to determine quotas on the basis of national origins by 1927. The law also excluded from immigration all persons ineligible to citizenship, a euphemism for Japanese exclusion. Finally, Congress placed no numerical restrictions on immigration from countries of the Western Hemisphere, in deference to the need for labor in southwestern agriculture and American diplomatic and trade interests with Canada and Mexico.

Taken together, these three components of the Immigration Act of 1924 constructed a vision of the American nation that embodied certain hierarchies of race and nationality. At its core, the law served contemporary prejudices among white Protestant Americans from northern European backgrounds and their desire to maintain social and political dominance. Those prejudices had informed the restrictionist movement since the late nineteenth century. But the nativism that impelled the passage of the act of 1924 articulated a new kind of thinking, in which the cultural nationalism of the late nineteenth century had transformed into a nationalism based on race.

In the eighteenth and early nineteenth century, "race" and "nation" were loosely conflated in intellectual discourse and in the public imagination. Race indicated physical markers of difference (especially color) but also often simultaneously referred to culture—commonalties of language, customs, and experience. *Race*, *people*, and *nation* often referred to the same idea. In the mid- and late nineteenth century, physical anthropology gave rise to "scientific" classifications that treated race as a distinctly biological concept. Social Darwinists believed civilization evolved to higher levels as a result of race competition and the survival of the fittest. Many, including Herbert Spencer and John Fiske, also held neo-Lamarckian views that cultural characteristics and behaviors acquired from the environment were inheritable. Of course, neo-Lamarckianism was two-faced, as it could both claim the inheritability of socially degenerate behavior and provide opportunity for race improvement. Thus, some social evolutionists believed that immigrants from the "backward" peoples or races of Europe might eventually become Americanized.[6]

The nativism of the late nineteenth and early twentieth century comprised a cultural nationalism in which cultural homogeneity more than race superiority was the principal concern. Restrictionists did not entirely discount the possibility of assimilation but complained that the high volume of immigration congested the melting pot, creating "alien indigestion." But by World War I, restrictionists spoke increasingly of "racial indigestion" and rejected the idea of the melting pot altogether. The shift in thinking evidenced the

influence of eugenics, which had grown after the rediscovery of Mendelian genetics in the early twentieth century disproved Lamarckianism and severed environment from biology.[7]

The eugenicists were strict biological determinists who believed that intelligence, morality, and other social characteristics were permanently fixed in race. They believed racial boundaries were impermeable and that assimilation was impossible. In its most radical articulation, eugenics espoused social policy that advocated race breeding and opposed social reform because, as Charles Davenport, the founder of the Galton Society, said, the latter "tends to ultimately degrade the race by causing an increased survival of the unfit."[8] Witnesses who testified at congressional hearings frequently invoked race theories alleging the superiority of "Nordics" over the "Alpine" and "Mediterranean" races of southern and eastern Europe and warned that race-mixing created unstable "mongrel" races. During the 1920s the House committee retained a scientific expert, Harry H. Laughlin, the director of the Eugenics Institute at Cold Spring Harbor, New York, the research arm of the Galton Society. Laughlin supplied Albert Johnson with copious amounts of data on "degeneracy" and "social inadequacy" (crime, insanity, feeblemindedness) showing the alleged racial inferiority and unassimiability of southern and eastern Europeans. Laughlin also cited the psychologist Robert Yerkes's intelligence tests conducted among soldiers during World War I as evidence of racial hierarchy. The army tests shocked contemporaries because they purported to show that the average white American male had the mental age of 13 (a score of 12 ranked as "moron"). Eugenicists seized upon Yerkes's study because it appeared to vindicate their innatist theory of intelligence: the tests indicated low intelligence among African Americans (10.4), and ranked Poles, Italians, and Russians barely higher (10.7 to 11.3).[9]

To the extent that historians have focused their attention on the legislative process leading to the 1924 act, the race-nativism of men like Madison Grant, Harry Laughlin, and John Trevor has dominated the story of the law. No doubt, scientific racism clarified and justified fears about immigration that were broadly based, and also enabled the descendents of the old immigration to redeem themselves while attacking the new immigrants.[10] But if the language of eugenics dominated the political discourse on immigration, it alone did not define the national origins quota system. Placing the eugenics movement in the foreground of the story of the Johnson-Reed Act has obscured from view other racial constructions that took place in the formulation of immigration restriction, some of which have turned out to be more enduring in twentieth-century racial ideology.

In fact, the national origins quota system involved a complex and subtle process in which race and nationality disaggregated and realigned in new and uneven ways. At one level, the new immigration law differentiated Europeans according to nationality and ranked them in a hierarchy of desirability. At

another level, the law constructed a white American race, in which persons of European descent shared a common whiteness distinct from those deemed to be not white. In the construction of that whiteness, the legal boundaries of both white and nonwhite acquired sharper definition. Thus, paradoxically, as scientific racism weakened as an explanation for Euro-American social development, hereditarianism hardened as a rationale for the backwardness and unassimiability of the nonwhite races. Moreover, the idea of racial "difference" began to supplant that of racial superiority as the basis for exclusionary policies. Lothrop Stoddard, a leading race-nativist who explicitly advocated for white supremacy in *The Rising Tide of Color* in 1920, argued in 1927, "When we discuss immigration we had better stop theorizing about superiors and inferiors and get down to the bedrock of *difference.*"[11]

The Invention of National Origins

It was one thing for David Reed and John Trevor to convince Congress that a system of quotas based on "national origins" was a conceptually sound and nondiscriminatory way to align immigration with the composition of the American people. But it was quite another matter to actually design that system—to define the "national origins" of the American people and to calculate the proportion of each group to the total population.

The Johnson-Reed Act mandated the formation of a committee under the Departments of Commerce, Labor, and State to allocate quotas by 1927. Dr. Joseph A. Hill, an eminent statistician with a thirty-year tenure at the Bureau of Census, chaired the Quota Board, as the committee was known. Computing the national origins quotas was arguably the most difficult challenge of Hill's career: Congress would reject reports submitted by the Quota Board and postpone implementation of the quotas twice before finally approving a third report in 1929.

Indeed, the project was marked by doubt from the beginning. The law required quotas to be allocated to countries—sovereign nation-states recognized by the United States—in the same proportion that the American people traced their origins to those geographical areas, through immigration or the immigration of their forebears. Census and immigration records, upon which the Quota Board relied, however, were woefully incomplete. The census of 1790, the nation's first, did not include information about national origin or ancestry. The census did not differentiate the foreign-born until 1850 and did not differentiate the parental nativity of the native-born until 1890. Immigration was unrecorded before 1820, and not classified according to national origin until 1899, when the Immigration Service began designating immigrants by "race or people." Emigration was not recorded at all until 1907 and not recorded according to nationality until 1909. To complicate

things further, many boundaries in Europe changed after World War I, requiring a translation of political geography to reattribute origins and allocate quotas according to the world in 1920.[12]

Before the Quota Board could address the data (or lack of it), it had to conceptualize the categories that comprised the national origins quota system. "National origin," "native stock," "nationality," and other categories were not natural units of classification; they were constructed according to certain social values and political judgments. For example, "native stock" did not refer to persons born in the United States but to persons who descended from the white population of the United States at the time of the nation's founding. The board defined the "immigrant stock" population as all persons who entered the United States after 1790 and their progeny.[13]

The law defined "nationality," the central concept of the quota system, according to country of birth.[14] Although the statute made no explicit reference to race, race entered the calculus and subverted the concept of nationality in myriad ways. Ironically, nationality did not mean "country of birth" as far as defining the American nationality was concerned. The law excluded nonwhite people residing in the United States in 1920 from the population universe governing the quotas. The law stipulated that " 'inhabitants in continental United States in 1920' does not include (1) immigrants from the [Western Hemisphere] or their descendants, (2) aliens ineligible for citizenship or their descendants, (3) the descendants of slave immigrants, or (4) the descendants of the American aborigines."[15]

The Quota Board applied that provision according to race categories in the 1920 census: "white," "black," "mulatto," "Indian," "Chinese," "Japanese," and "Hindu."[16] It discounted from the population all blacks and mulattos, eliding the difference between the "descendants of slave immigrants" and the descendants of free Negroes and voluntary immigrants from Africa.[17] It discounted all Chinese, Japanese, and South Asians as persons "ineligible to citizenship," including those with American citizenship by native-birth. The provision also excluded the Territories of Hawai'i, Puerto Rico, and Alaska, which American immigration law governed and whose natives were United States citizens.[18] In other words, to the extent that the "inhabitants of the continental United States in 1920" constituted a legal representation of the American nation, the law excised all nonwhite, non-European peoples from that vision, erasing them from the American nationality.

On a practical level, eliminating nonwhite peoples from the formula resulted in larger quotas for European countries and smaller ones for other countries. For example, African Americans comprised 9 percent of the United States population in 1920; if they had been counted, and their "national origins" in Africa considered, 9 percent of the quota would have been allocated to west African nations, resulting in 13,500 fewer slots for Europe.

Race altered the meaning of nationality in other ways as well. Formally the

quota system encompassed all countries in the world, except for those of the Western Hemisphere. China, Japan, India, and Siam each received the minimum quota of one hundred; but the law excluded the native citizens of those countries from immigration because they were deemed to be racially ineligible to citizenship. Congress thus created the oddity of immigration quotas for non-Chinese persons of China, non-Japanese persons of Japan, non-Indian persons of India, and so on. With regard to the independent African nations, Ethiopia, Liberia, and South Africa received quotas of one hundred each, amounting to a concession of two hundred immigration slots for black Africans. European mandates and protectorates in Africa, the Near East and Far East—for example, Tanganyika, Cameroon, Palestine, New Guinea—each had their own quotas, which in practice served to increase the quotas of Great Britain, France, and Belgium, the nations with the largest colonial empires (table 1.1).

Thus, while the national origins quota system intended principally to restrict immigration from southern and eastern Europe and used the notion of national origins to justify discrimination against immigrations from those nations, it did more than divide Europe. It also divided Europe from the non-European world. It defined the world formally in terms of country and nationality but also in terms of race. The quota system distinguished persons of the "colored races" from "white" persons from "white" countries. The new taxonomy was starkly represented in a table of the population of the United States published in 1924, in which the column "country of birth" listed fifty-three countries (Australia to Yugoslavia) and five "colored races" (black, mulatto, Chinese, Japanese, Indians).[19] In this presentation, white Americans and immigrants from Europe have "national origins," that is, they may be identified by the country of their birth or their ancestors' birth. But, the "colored races" were imagined as having *no country of origin.* They lay outside the concept of nationality and, therefore, citizenship. They were not even bona fide immigrants.

Thus the national origins quota system proceeded from the conviction that the American nation was, and should remain, a white nation descended from Europe. If Congress did not go so far as to sponsor race breeding, it did seek to transform immigration law into an instrument of mass racial engineering. "The stream that feeds the reservoir should have the same composition as the contents of the reservoir itself," Hill said. "Acceptance of that idea doesn't necessarily imply a belief that the composition of the American people can not be improved, but it does probably imply a conviction . . . that it is not likely to be improved by unregulated immigration but rather the contrary."[20]

Like most of their contemporaries, members of Congress and the Quota Board treated race as self-evident of differences that were presumed to be natural. Few, if any, doubted the Census Bureau's categories of race as any-

TABLE 1.1
Immigration Quotas Based on National Origin (annual quota for each fiscal year beginning July 1, 1929)

Country or Area	*Quota*
Afghanistan*	100
Albania	100
Andorra	100
Arabian peninsula	100
Armenia	100
Australia (including Tasmania, Papua, islands pertaining to Australia)	100
Austria	1,413
Belgium	1,304
Bhutan*	100
Bulgaria	100
Cameroon (British mandate)	100
Cameroon (French mandate)	100
China*	100
Czechoslovakia	2,874
Danzig, Free City of	100
Denmark	1,181
Egypt	100
Estonia	116
Ethiopia (Abyssinia)	100
Finland	569
France	3,086
Germany	25,957
Great Britain and Northern Ireland	65,721
Greece	307
Hungary	869
Iceland	100
India*	100
Iraq (Mesopotamia)	100
Irish Free State	17,853
Italy	5,802
Japan*	100
Latvia	236
Liberia	100
Liechtenstein	100
Monaco	100
Morocco (French & Spanish Zones and Tangier)	100
Muscat (Oman)*	100
Nauru (British mandate)	100
Nepal*	100
Netherlands	3,153
New Zealand	100

TABLE 1.1 *Continued*

Country or Area	*Quota*
Norway	2,377
New Guinea, Territory of (including appertaining islands) (Australian mandate)*	100
Palestine (with Trans-Jordan) (British mandate)	100
Persia	100
Poland	6,524
Portugal	440
Ruanda and Urundi (Belgian mandate)	100
Rumania	295
Russia, European and Asiatic	2,784
Samoa, Western (mandate of New Zealand)	100
San Marino	100
Siam*	100
South Africa, Union of	100
South West Africa (mandate of Union of South Africa)	100
Spain	252
Sweden	3,314
Switzerland	1,707
Syria and the Lebanon (French mandate)	123
Tanganyika (British mandate)	100
Togoland (British mandate)	100
Turkey	226
Yap and other Pacific islands under Japanese mandate*	100
Yugoslavia	845

Source: *Proclamation by the President of the United States*, March 22, 1929 (Washington, D.C., 1929).

*Quotas for these countries available only for persons born within the respective countries who are eligible to citizenship in the United States and admissible under the immigration laws of the United States.

thing other than objective divisions of an objective reality, even though the census's racial categories were far from static. Such confidence evinced the strength of race-thinking generally as well as the Progressive faith in science, in this case, the sciences of demography and statistics. Indeed, few people doubted the census at all. Census data carried the weight of official statistics; its power lay in its formalization of racial categories. The census gave the quotas an imprimatur that was nearly unimpeachable and was invoked with remarkable authority, as when, during the floor debate in the House in 1924, Congressman William Vaile retorted to an opponent of the national origins principle, "Then the gentleman does not agree with the Census!"[21]

Demography, and the census itself, far from being the simple quantification of a material reality, grew in the late nineteenth and early twentieth

century as a language of interpreting the social world. Census officials like Francis Amasa Walker and Richmond Mayo Smith took the census beyond its Constitutional function as an instrument of apportionment. As historian Margo Anderson observed, the classifications created for defining urban and rural populations, social and economic classes, and racial groups created a vocabulary for public discourse on the great social changes taking place in America at the time—industrialization, urban growth, and, of course, immigration.[22] In fact, the census was the favored form of scientific evidence cited by restrictionists and nativists during this period.

That practice actually began with census officials. Francis Walker, the superintendent of the 1870 and 1880 censuses, was president of MIT and a brilliant scholar in the new field of statistics. He was also an ardent nativist and Social Darwinist who believed immigrants from Italy, Hungary, Austria, and Russia were "vast masses of peasantry, degraded below our utmost conceptions . . . beaten men from beaten races, representing the worst failures in the struggle for existence."[23] Walker was a leading member of the Immigration Restriction League during the 1890s. Analyzing census data, Walker developed the theory that immigration retarded the natural birthrate of Americans, which he lauded as the highest in the world and as evidence of the nation's greatness. Because immigrants crowded native-born Americans from unskilled jobs, Walker theorized, the latter adjusted to their limited job opportunities by having fewer children. He considered immigration a "shock" to the principle of natural population increase.[24]

The causal link in this theory rested on the assumption that the nation possessed a natural character and teleology, to which immigration was external and unnatural. Those assumptions resonated with conventional views about America's providential mission, Manifest Destiny, and the general march of progress. Yet, they were rooted in the profoundly conservative viewpoint that the composition of the American nation should never change. Few people during the 1920s understood, much less accepted, Horace Kallen's view that the English had settled the North American Atlantic seaboard not as a divine mission but as an accident of history.[25]

Walker's assumptions regarding "natural" population increase also involved a bit of sophistry. In 1873 Walker criticized that theory as Elkanan Watson had postulated it in the early nineteenth century. Noting that the population of the United States had increased by about one-third during each of the two decades following the 1790 census, Watson made projections for population increases up to 1900 based on the same, extraordinary rate of growth. Francis Walker disagreed, stating, "Geometric progression is rarely attained, in human affairs." Yet in the 1890s Walker resuscitated Watson's theory to support the restrictionist agenda. As Walker developed the theory that immigration negatively affected population growth, he credited Watson's

projections as evidence of America's high natural rate of growth and simply ignored the criticisms he had made twenty years before.[26]

Francis Walker's theory of the declining native birthrate and the census data upon which it was based became the foundation for the restrictionists' claim that immigration threatened to overwhelm the American nation. It anchored Madison Grant's famous thesis that the great Nordic race was in danger of extinction. Paraphrasing Walker, Grant warned that upward mobility on the part of native workers was a form of race suicide. "A race that refuses to do manual work and seeks 'white collar' jobs," he said, "is doomed through its falling birth rate to replacement by the lower races or classes. In other words, the introduction of immigrants as lowly laborers means a replacement of race." Similarly, a 1922 publication by the Commonwealth Club of California on "Immigration and Population" carried the subtitle, "The Census Returns Prove That Immigration in the Past Century Did Not Increase the Population, but Merely Replaced One Race Stock by Another."[27]

Like Francis Walker, Joseph Hill also came from an elite, old-line New England family. The son of a minister and a cousin of Henry Adams, he graduated from Exeter and Harvard (as did his father and grandfather) and received his Ph.D. at Halle, Germany. Although Hill began his tenure at the Census Bureau in 1899, two years after Walker's death, he held many of the same views. In 1910 Hill contributed two monographs to the Dillingham Commission's study of immigration, using previously unpublished and untabulated census data, which were of great importance to the restrictionist movement. The first study analyzed occupational distribution by nativity; the second determined differentials in fecundity between the foreign-born, the native-born of foreign-born parents, and native-born of native parents. Not coincidentally, these studies provided additional empirical evidence to Francis Walker's theory of the retarded native birthrate.[28]

Like other scientists and social scientists that believed in racial difference, Hill strove for ever more precise categories of classification and comparisons of type. He added new questions to the census in 1910 and 1920 that were aimed at elucidating differences in race and nationality in increasing detail. Hill restored the "mulatto" race category (which had been eliminated in the 1900 census) and added questions to ascertain literacy, ability to speak English, mother tongue, number of children born and living, and length of time in the United States. He was particularly interested in creating indices to gauge assimilation and presenting data in tables that made racial comparisons convenient.[29]

In a sense, demographic data was to twentieth-century racists what craniometric data had been to race scientists during the nineteenth. Like the phrenologists who preceded them, the eugenicists worked backward from classifications they defined a priori and declared a causal relationship between the

data and race. Instead of measuring skulls, they counted inmates in state institutions. If statistics showed that immigrants were less healthy, less educated, and poorer than native-born Americans, the data were deemed to be evidence of the immigrants' inferior physical constitution, intelligence, and ambition.

Unlike Francis Walker, Joseph Hill did not aggressively campaign for restriction. He endorsed the national origins principle in a restrained way and otherwise scrupulously avoided taking political positions. Yet, like all scientists, he brought his own political views and values to his work—to the questions he asked, to the ways in which he classified data, and to the interpretations he drew from the data. In Hill's case, those politics had guided a proliferation of census data on the foreign born that served the nativist movement.[30]

That is not to say that Hill's work was unscientific or unprofessional. To the contrary, he was a serious professional, who worked according to the established methods and disciplinary requirements of his field. As Nancy Stepan has pointed out, scientific racism's power lay, in large part, in its adherence to scientific methodology and disciplinary standards. If race science were merely "pseudo-science" it would have had far less currency.[31]

In fact, Hill agonized over the methodological problems in determining national origins. One of the most serious problems he confronted was the lack of reliable information about the national origins of the white, native-stock population. Hill deduced that roughly half of the white population in 1920 comprised descendants from the original colonial population, but the census of 1790 did not record data on place of birth. A study conducted by the Census Bureau in 1909, "A Century of Population Growth," classified the population of 1790 according to country of origin by analyzing the surnames of the heads of households recorded in the census. The study found 87 percent of the population to be English. Independent scholars believed the report was inaccurate, however, because it failed to take into account that some names were common to more than one country and that many Irish and German names had been Anglicized. It omitted Scandinavians from the national composition altogether. Hill also believed the report was "of questionable value."[32]

Nevertheless, Hill decided to use "A Century of Population Growth" because no other data existed. But Irish, German, and Scandinavian American groups criticized the report and lobbied Congress that the calculations in the Quota Board's first report slighted their populations.[33] Hill realized that the flawed report endangered the credibility of the entire exercise. With the help of a $10,000 grant from the American Council of Learned Societies, Hill enlisted Howard Barker, a genealogist, and Marcus Hansen, an immigration historian, to determine the national origins of the white population in 1790.

Their conclusions, based on a more sophisticated method of analyzing surnames and reported to the Quota Board in 1928, adjusted the allocations of origins of the colonial stock considerably. Great Britain and Northern Ireland's share fell from 82 percent to 67 percent of the total, reducing its quota by ten thousand.[34]

Assuming for the moment that Barker and Hansen discerned the national origins of the population at 1790 with a fair degree of accuracy, determining the national origins of the American population from that base by following their descendants forward in time from 1790 to 1920 was an entirely different matter. The basic methodology employed by the Quota Board assumed an analysis of the population in terms of numerical equivalents, not actual persons. Hill explained that the Quota Board could not "classify people into so many distinct groups of individual persons, each group representing the number of individual persons descending from a particular country." He continued,

> Even if we had complete genealogical records that would not be possible because there has been a great mixture of nationalities through inter-marriage since this country was first settled. So when the law speaks of the number of inhabitants having a particular national origin, the inhabitant must be looked upon as a unit of measure rather than a distinct person. That is to say, if we have, for example, four people each of whom had three English grandparents and one German grandparent, we have the equivalent of three English inhabitants and one German inhabitant.[35]

Herein lay the fundamental problem of the whole project: its methodology assumed that national identities were immutable and transhistorical, passed down through generations without change. The Quota Board assumed that even if nationalities combined through intermarriage, they did not mix but remained discrete, unalloyed parts in descendants that could be tallied as fractional equivalents. The board's view of national origin drew from the concept of race defined by bloodline and blood quantum, which was available in the established definition of Negro. Rather than apply the "one-drop of blood" rule, however, the board conceived of intermarriage between European nationalities in Mendelian terms. But is a person with three English grandparents and one German grandparent really the numerical equivalent of her ancestors? Or does that person perhaps develop a different identity that is neither English nor German but one that is syncretic, produced from cultural interchanges among families and communities and by the contingencies of her own time and place? By reifying national origin, Congress and the Quota Board anticipated the term "ethnicity," inventing it, so to speak, as Werner Sollors said, with the pretense of being "eternal and essential," when in fact it is "pliable and unstable." Sollors's view of ethnicity as a "pseudo-

historical explanation" triggered by "the specificity of power relations at a given historical moment" fits well the notion of immigration quotas based on national origin.[36]

At the same time, the Quota Board ignored intermarriage between Euro-Americans and African Americans and Native American Indians, never problematizing the effect of miscegenation on the "origins" of the white population. Thus, even as the board proceeded from an assumption that all bloodlines were inviolate, it conceptualized national origin and race in fundamentally different ways.[37]

Even when considered on its own terms, the task of calculating national origins was beset by methodological problems. The Quota Board had to make a number of assumptions in order to fill the gaps in the data. Hill acknowledged that his computations involved "rather arbitrary assumptions," some of which did "violence to the facts." Most serious—and surprising, in light of Hill's longstanding interest in immigrant fecundity—of these was his decision to apply the same rate of natural increase to all national groups. Hill also weighted the population figures for each decade, giving each earlier decade greater numerical importance than the succeeding one, to allow for a larger proportion of descendants from earlier immigrants. The net result of these assumptions tilted the numbers towards the northern European nationalities.[38]

Even Hill expressed concern that the entire exercise rested on so many assumptions that the conclusions might not be viable. Ultimately, he rationalized that errors in the process would not significantly effect the outcome. Because the quotas represented a ratio of one quota slot to 600 people, Hill said, a deviation of 60,000 in the population of any nationality would alter that nationality's quota by only 100.[39]

As Hill prepared the Quota Board's third report in 1928 and early 1929, the political atmosphere was contentious and the implementation of the quotas—already twice postponed by Congress—remained in doubt. In 1928 criticism over the hardships wrought by restriction mounted: YMCAs, church congregations, and the League of Women Voters petitioned Congress to admit families who were unable to join men who had immigrated before 1924 because their quotas were oversubscribed.[40]

Political controversy intensified in the fall of 1928 when Herbert Hoover campaigned for president on a platform opposing national origins as a basis for the quota system. As secretary of commerce, Hoover had signed off on the Quota Board's first two reports. But, as criticism of national origins grew, legislation repealing the quotas gained support in Congress. Worried about losing political support among German and Scandinavian American voters in traditionally Republican midwestern states, Hoover claimed that national origins quotas were impossible to determine "accurately and without hardship." Observers noted that Hoover's Democratic

rival, Al Smith, opposed the quotas in the North while favoring them before Southern audiences.[41]

In February 1929 the nativist lobby stepped up its own efforts, mobilizing mass petitions to Congress from the American Legion, the Grange, and the Daughters of the American Revolution. On behalf of the patriotic societies, John Trevor and Demerest Lloyd took out a series of advertisements in the *Washington Post* defending the "national origins basis . . . [as] the only one which does not discriminate for or against any [nation]" and exhorting members of Congress to stand firm against the efforts of "hyphenates" who would "play politics with the nation's blood stream."[42]

Critics continued to lobby Congress that the national origins quotas were "inspired by bigotry" and based on a method that "must be carried out by deductions, conjecture, assumptions, guesswork, and arbitrary means." Hill knew that the political opponents of national origins quotas would seek another postponement in order to work for the law's repeal. Congress had accepted the principle of national origins as fair and nondiscriminatory, but the claim to fairness would evaporate if the quotas could not be accurately determined.[43]

Hill presented the Quota Board's third report to the Senate immigration committee in February 1929. Although the first two postponements were valuable, Hill testified, "The present computations are as near as we can get on this matter of determining the national origins, practically." S. W. Boggs, the State Department's geographer and secretary of the Quota Board, similarly told the Senate committee that the "whole quota is affected by [an] element of error" but that the "results are practically as good as they can be made." Another postponement, he added, would not make any "material change" in the quotas.[44]

Hill and Boggs survived the hearings; two weeks later the secretaries of labor, state, and commerce submitted the Quota Board's report to the president. The secretaries, however, issued a caveat that they "neither individually nor collectively are expressing any opinion on the merits or demerits of this system of arriving at the quotas." A more honest inquiry into the matter by the Quota Board might have concluded that determining the national origins of the American people was theoretically suspect and methodologically impossible. But relentless lobbying by the restrictionists and the pedigree of the quotas' authors overcame all obstacles and doubts. In the end Congress and the president accepted the Quota Board's calculations. And, once promulgated by the president, the "national origins" of the American people, and the racial hierarchies embedded in them, assumed the mantle of fact and the prestige of law.[45]

Lawmakers had invoked anthropology and scientific racism to create an immigration system based on national origins, but that had only gone as far as

establishing a general ideological framework. It fell to civil servants in the executive branch to translate that ideology into actual categories of identity for purposes of regulating immigration and immigrants. Indeed, the enumeration and classification of the population *enabled* such regulation. As historian Vicente Rafael has pointed out, the value of such population schedules to the modern state lay in their "render[ing] visible the entire field of [state] intervention." Thus the invention of national origins was not only an ideological project; it was also one of state building.[46]

Sociologist John Torpey points out that nationality is a legal fact that, to be implemented in practice, must be codified and not merely imagined. While "citizen" is defined as an abstract, universal subject, the citizenry is not an abstraction but, in fact, a collection of identifiable corporeal bodies. As Partha Chaterjee has written, the modern nation-state is a "single, determinate, demographically enumerable form." This is part of the "logic of the modern regime of power," which pushes "the processes of government in the direction of administration and the normalization of its objects of rule."[47]

The national origins quota system created categories of difference that turned on both national origins and race, reclassifying Americans as racialized subjects simultaneously along both axes. That racial representation of the American nation, formalized in immigration quotas, reproduced itself through the further deployment of official data. The process of legitimation was evident in Joseph Hill's last monograph, "Composition of the American Population by Race and Country of Origin," written in 1936. Hill's analysis derived from the racial constructions embedded in immigration policy as it had evolved during the 1920s. It also reflected the distance Hill had traveled in his own thinking. After noting that "the population of the United States . . . is almost 90 percent white and almost 10 percent Negro," and that 68.9 percent of the "total white stock" in the United States derived from Great Britain and Northern Ireland, the Irish Free Republic, and Germany, Hill mused about the future of the "composite American." He speculated that if immigration were to be completely cut off, the foreign-born element of the population would disappear within seventy-five to one hundred years. Perhaps after another seventy-five years, the native population of foreign parentage would disappear. "[T]he white population would then be 100 percent native white of native parentage," he said. "Its composition by country of origin would not differ greatly from that of the present white population, but with the intermingling of national or racial stocks in the melting pot it would be a more homogeneous population. Few persons could then boast of unmixed descent from any single country or people."[48]

Joseph Hill readily assumed that the "composite American" would be white. The colored races had no place in his vision of the American nation, whether through intermarriage or by inclusion in a pluralist society. But if the elision of "American" and "white" was a predictable articulation of con-

temporary race thinking, Hill's assertion of a white American race represented an evolution in race ideology. Hill had rehabilitated the old trope of the melting pot, but with a new twist. Traditionally, the idea of the melting pot was based on cultural assimilation, the Americanization of immigrants from diverse European backgrounds through education, work, and social advancement. Nativists rejected that idea in the 1910s and the years immediately after World War I in favor of theories that emphasized race purity. Congress and the Quota Board invented national origins that paradoxically upheld both the inviolate nature of racial bloodlines and the amalgamation of the descendents of European nationalities into a single white American race. Hill presciently imagined that one consequence of restricting European immigration would be the evolution of white Americans.

Asians and the Rule of Racial Unassimilability

The system of quotas based on national origin was the first major pillar of the Immigration Act of 1924. The second provided for the exclusion of persons ineligible to citizenship. By one account, the provision barred half the world's population from entering the United States.[49]

Ineligibility to citizenship and exclusion applied to the peoples of all the nations of East and South Asia. Nearly all Asians had already been excluded from immigration, either by the Chinese exclusion laws[50] or by the "barred Asiatic zone" that Congress created in 1917. The barred zone encompassed the entire area from Afghanistan to the Pacific, save for Japan, which the State Department wished not to offend, and the Philippines, a United States territory.[51] In 1907 the Japanese government agreed to prevent laborers from emigrating to the United States, but nativists complained that the diplomatic agreement was ineffective. The exclusion of persons ineligible to citizenship in 1924 achieved statutory Japanese exclusion and completed Asiatic exclusion, thereby constituting "Asian" as a peculiarly American racial category. Moreover, it codified the principle of racial exclusion into the main body of American immigration and naturalization law.[52]

Two major elements of twentieth-century American racial ideology evolved from the genealogy of the racial requirement to citizenship: the legal definition of "white" and the rule of racial unassimilability. The origins of these concepts lay in the Nationality Act of 1790, which granted the right to naturalized citizenship to "free white persons" of good moral character. However, that idea—including the legal boundaries of "white"—was contested throughout the nineteenth century with regard to the citizenship status of Native American Indians and African Americans and later with regard to the eligibility of Asians to citizenship. The resolution of the latter in the early 1920s constituted the perfection of racial doctrine in citizenship law, which

remained in effect until 1952 when the McCarran-Walter Act abolished all racial requirements to citizenship.[53]

After the Civil War and the passage of the Fourteenth Amendment, Congress amended the Nationality Act to extend the right to naturalize to "persons of African nativity or descent." It defeated Charles Sumner's proposal that all references to race be stricken from the requisites of citizenship; in 1870 white Californians already viewed Chinese immigration with hostility. As it was, granting the right to naturalization to persons of African nativity was a gratuitous gesture to the former slaves. No one seriously believed that "the [N]egroes of Africa [would] emigrate," a federal judge explained in 1880, ". . . while the Indian and the Chinaman were in our midst, and at our doors and only too willing to assume the mantle of American sovereignty."[54]

Congress thus retained the language of race in the Nationality Act of 1870, encoding racial prerequisites to citizenship according to the familiar black-white categories of American race relations. European immigrants fit into that construction as white persons: between 1907 and 1924, nearly 1.5 million immigrants, nearly all from European countries, became American citizens.[55] The Chinese Exclusion Act of 1882 included a provision that made Chinese ineligible to citizenship, but that remained outside the main body of naturalization law. Japanese, Asian Indians, Armenians, Syrians, Mexicans, and other peoples that immigrated into the United States in the early twentieth century thus posed a challenge to the race categories in citizenship law. Where did they stand in relation to the black-white paradigm? To a great extent, black and white had been defined in terms of each other. As Takao Ozawa observed, "White persons, as construed by the Supreme Court of the United States and the state courts, means a person without Negro blood."[56] Through the struggles between Asian and other immigrants and the government over their rights to citizenship, the legal boundaries between white and not-white clarified and hardened.

Between 1887 and 1923 the federal courts heard twenty-five cases in which the racial status of immigrants seeking citizenship was contested, culminating in two Supreme Court decisions, *Takao Ozawa v. U.S.* (1922) and *U.S. v. Bhagat Singh Thind* (1923).[57] By ruling that Japanese and Asian Indians were racially ineligible to citizenship, the two decisions cast Japanese and Asian Indians with Chinese as unassimilable aliens and helped constitute the racial category "Asian." The joining of Japanese and Asian Indians with Chinese was not preordained, however, but was the culmination of three decades of social, political, and judicial struggle over their status in America.

Since the 1890s, both the Japanese government and Japanese immigrants had worked to distinguish Japanese in America from Chinese and the latter's fate as a despised and excluded race. Japanese immigrant associations advocated for adopting the Western style of dress and learning English, believing that Chinese immigrants set themselves apart by retaining traditional cus-

toms. Kyutaro Abiko, publisher of the *Nichibei Shimbun* and a wealthy labor contractor and landowner, led a movement for permanent settlement, family immigration, and assimilation. He urged Japanese to take up farming and, in the cities, small businesses, in order to establish economic roots and independence. In northern and central California Japanese bought land, formed partnerships to purchase acreage, and entered share- and cash-lease agreements with Anglo-American landowners, who, facing a shortage in farm labor, were eager to contract with them. In less than a decade Japanese agricultural land holdings in California grew nearly fivefold, from 61,858 acres in 1905 to 281,687 acres in 1913.[58]

By deciding to become yeoman farmers, Japanese immigrants embraced the quintessential requirement for American liberty and civic virtue, but nativists rejected their endeavors as a foreign conspiracy to take California from white people. United States senator James Phelan, formerly the mayor of San Francisco and for thirty years a leading California exclusionist, claimed Japanese land colonies in Merced County "destroyed the area for white settlement and the desirable element."[59]

Anti-Japanese sentiment on the Pacific Coast clashed with American geopolitical interests in the Far East, which desired friendly relations with Japan. By the beginning of the century Japan had established itself as an imperialist power with colonial possessions, a powerful navy, treaty alliances with Western nations, and economic privileges on the northeast Asian mainland. In 1905, when the San Francisco School Board segregated Japanese from white children, the incident quickly evolved into a diplomatic crisis between Japan and the United States. President Theodore Roosevelt, calling the segregation of Japanese "a wicked absurdity," sent Secretary of Labor and Commerce Victor Metcalf to San Francisco to intervene in the situation, and he authorized Secretary of State Elihu Root to "use the armed forces of the United States to protect the Japanese . . . if they are menaced by mobs." Roosevelt opposed statutory exclusion but pursued immigration restriction through administrative and diplomatic means.[60] In 1907 he issued an executive order that barred immigration from Hawai'i to the mainland, effectively eliminating one major source of Japanese immigration. Later that year Japan and the United States negotiated the "Gentleman's Agreement," in which Japan agreed to voluntarily restrict emigration by refusing passports to laborers. The agreement fell short of the wishes of both Japanese immigrants and California nativists, but it served both nations' official interests. It predicated the Root-Takahira Agreement of 1908, in which Japan and the United States pledged to respect their respective interests in Korea and the Philippines, and the U.S.-Japan Treaty of Navigation and Commerce of 1911.[61]

Unable to legislate Japanese exclusion, nativists on the Pacific Coast used the concept of ineligibility to citizenship, which they presumed applied to Japanese on the basis of a federal court ruling in 1894.[62] In 1913 California

passed the Alien Land Law, proscribing agricultural land ownership by persons ineligible to citizenship. The *Nichibei Shinbum* called the law the "height of discriminatory treatment," according Japanese "worse treatment than people of third-rate southern and eastern European nations living in the United States." In 1921 Washington state passed a similar land law; other laws in western states barred aliens ineligible to citizenship from obtaining licensure in law, pharmacy, teaching, realty, and other professions.[63]

Hostility toward Japanese echoed the racism of economic entitlement that had fueled the anti-Chinese movement in the late nineteenth century, but also evinced anxiety over Japan's standing as a world power. Contemporary literature compared Japanese to the Prussian Hollenzollerns, calling Japan "one of the most turbulent and disturbing" world powers, and expressed particular alarm at the buildup of Japan's navy.[64] Japan's teleologic rationale for expansion especially disconcerted Anglo-Americans. The latter believed civilization marched only in one direction—westward—but Japanese saw two cultural impulses emanating from the original seat of civilization in Persia and Armenia, one to the east and one to the west. Japan, a young nation, was free to take the best of Europe and the best of Asia: according to one Japanese writer, "At her touch the circuit is completed, and the healthy fluid shall overflow the earth."[65]

With Japan competing with Western nations on modern, imperialist terms, nativists could hardly say Japanese were the same as the backward Chinese. Sensitive to Japanese power and American diplomatic interests, nativists shunned allegations of racial inferiority. The unctuous James Phelan is perhaps most remembered for the crude utterance "a Jap [is] a Jap," but he also said, "Personally we have nothing against the Japanese, but as they will not assimilate with us and their social life is so different from ours, let them keep at a respectful distance."[66] Similarly, California governor William Stephens acknowledged the Pacific was quickly becoming "one of the most important highways of commerce on this earth. Amity and concord and that interchange of material goods as well as ideas, which such facilities offer, will inevitably take place to the benefit of both continents. But that our white race will readily intermix with the yellows strains of Asia, and that out of this interrelationship shall be born a new composite human being is manifestly impossible."[67]

Foreign policy also influenced American legal posture toward Asian Indian immigration. In that case, immigration policy turned in large part on American relations with Great Britain and the evolution of Asiatic exclusion within the British Empire. Asian Indians first entered the United States in significant numbers in 1906–1909, after a racist movement in British Columbia drove them out of work and wrested an agreement from the British to halt Indian immigration to Canada. In the western United States, Asian Indians met an atmosphere already hostile to Chinese and Japanese, but their

status as British subjects made it possible that they might be protected from racial attacks. The first race riot against Asian Indians, in Bellingham, Washington, in the summer of 1907—a three-day-long rampage of five hundred white sawmill workers that drove Indian workers out of town—prompted an inquiry from the British ambassador to the United States. But the British had their own reasons for discouraging Indian immigration into the United States. They worried that Indians would find sympathy for Indian self-government among anti-imperialists in the United States. They had already retreated from upholding the rights of their Indian subjects within the British Empire, acquiescing to demands by the "white Canada" movement as well as white settlers in Natal, the Transvaal, and Australia to exclude Indians from their corners of the dominion. Thus the British ambassador did little more than register a pro forma complaint after the Bellingham riot. The Roosevelt administration considered the status of Asian Indians important only as it affected American relations with Great Britain and Japan. As long as the British turned a blind eye, the administration hoped to use Indian exclusion to pressure Japan for Japanese exclusion.[68]

The right to naturalization became the principal grounds upon which Japanese and Indian immigrants fought for their rights in America. As early as the first decade of the century the Bureau of Naturalization informed clerks of court that they should warn petitioners who appeared to be not-white that the courts might deny their applications for citizenship. In 1906 Charles Bonaparte, the United States attorney general, specifically held Japanese to be ineligible and instructed clerks of court to refuse Japanese petitions. Asian Indians, as British subjects, may have been eligible to citizenship under an 1870 agreement of reciprocity between the United States and England, but in 1907 Bonaparte stated flatly, "Under no construction of the law can natives of British India be regarded as white persons." Despite these instructions, during the 1900s and 1910s several hundred Japanese and South Asian Indians became naturalized citizens.[69]

Immigrants who were denied citizenship on grounds of racial ineligibility repaired to the federal courts for redress. Sometimes the United States litigated against immigrants who they believed had been improperly naturalized by the local courts. In each case, the court's decision turned on whether the petitioner could be considered a "white person" within the meaning of the statute. The possibility that the petitioners might be legally defined as black was never considered, notwithstanding legal and social precedence that treated Asians akin to black people. In the early twentieth century, however, no one seeking naturalized citizenship appealed to the courts claiming legal status as a black person, owing to the geographic emphasis of the law's language ("persons of African nativity or descent") as well as the social stigma and unequal status associated with blackness.[70]

Immigrants who were denied citizenship on account of race took grave

offense. Racial ineligibility not only implied a status of innate inferiority but also contradicted the democratic premises of citizenship in the American nation. During the Progressive era, assimilative practices emphasized Americanizing immigrants through teaching the English language, the work ethic, the Constitution, and other democratic values. If Europeans could become Americans through education, why could not others? Moreover, in 1918 Congress had granted "any alien" who served during the First World War the right to naturalize without first making a declaration of intent and without proof of five years' residence, suggesting that loyalty—especially in its ultimate test—qualified one to citizenship. The lower courts naturalized some Japanese, Asian Indians, and Filipinos on that basis.[71]

Takao Ozawa argued his case for citizenship on grounds of his impeccable moral character, his assimilation to American society, and his wholehearted embrace of American political ideals. He had emigrated from Japan as a child in 1894, graduated from high school in Berkeley, California, and attended the University of California. He moved to Honolulu in 1906, married, and had two children, whom he sent to American church and school. He worked for an American company, spoke English fluently, and did not drink, smoke, or play cards. "In name, General Benedict Arnold was an American, but at heart he was a traitor. In name, I am not an American, but at heart I am a true American," said Ozawa in his brief to the court.[72]

Bhagat Singh Thind similarly argued that he was "willing and eager to undertake the responsibilities of citizenship, having shown my eagerness by buying Liberty bonds to help carry on America's part in the war and by enlisting in the fighting forces of the country." Thind wrote his brief from Camp Lewis, Washington, where he was stationed with the United States Army. He was a veteran of the world war who had come to the United States from the Punjab in 1913. He was a democrat who supported Indian self-rule. In federal court, District Judge Charles Wolverton upheld Thind's naturalization, citing witnesses who were "most favorably impressed with his deportment, and manifestly believe in his attachment to the principles of this government."[73]

Ozawa and Thind thus argued their claims on the principle of consensual citizenship, but that principle was always a double-edged sword, for the idea of a social compact required consent by both the individual *and* the community. It implied liberal, inclusive possibilities, but it also justified racism and exclusion. The exclusionary side of consent was articulated most forcefully in the Supreme Court's *Dred Scott* decision. The ideological foundation of Chief Justice Taney's infamous statement that Negroes had no rights that white people were bound to respect lay in the idea that the former were not party to the social contract embodied in the Constitution. Similarly, in the mid-nineteenth century, American nationalism revived the mythology of Anglo-Saxonism, ascribing a racial origin to (and thus exclusive ownership of) the democratic foundations of the nation.[74]

The racial tensions within the basic doctrine of citizenship complicated the matter of immigrants' rights to naturalize. Since the principle of consensual citizenship was not absolute, the courts felt no compulsion to rule on the propriety of race as a condition of citizenship. Indeed, despite the Fourteenth Amendment, whiteness was already a condition of *full* citizenship; by the turn of the century African Americans had been forced into second-class status by disfranchisement, lynching, and Jim Crow segregation. Kelly Miller, a professor at Howard University, wrote in the *Nation* in 1924 that the racial requirement to citizenship was "the most curious inconsistency to be found in American law. The race most deeply despised is a yoke-fellow in privilege when it comes to citizenship eligibility," notwithstanding, of course, that "in apportioning the privileges and advantages of citizenship the Negro is set apart in a separate class" by state laws. Miller advocated for eliminating all racial distinctions from the law. Nativists and exclusionists drew the opposite conclusion. They commonly held that the low social status of the Negro was proof that granting citizenship to the freed slaves had been a mistake; the same mistake should not be repeated by granting citizenship to Asiatics.[75] Thus, the racial prerequisite cases would decide on which side of America's *herrenvolk* democracy Asians and other non-Europeans would fall.

Ozawa, Thind, and other immigrants seeking naturalization did not challenge the constitutionality of the racial prerequisite. They made their claims on grounds of their adherence to American ideals, but they also argued that, within the terms of the law, they were white and therefore also racially eligible to citizenship. Their arguments were thus contradictory, reflecting both democratic sentiments and strategic decisions to argue according to the law and not against its discriminatory nature.

Ironically, the few petitioners who successfully litigated their status as white persons did so with the aid of scientific race theories. In 1909 a federal court in Georgia ruled that George Najour, a Syrian, was eligible to citizenship. District Judge Newman stated that "free white person" referred to race, not color. "Fair or dark complexion should not be able to control" race, he said. Judge Newman cited A. H. Keane's *The World's People*, which divided the world's people into four categories: the "Negro or black, in the Sudan, South Africa, and Oceania (Australasia); Mongol or yellow, in Central, North, and East Asia; Amerinds (red or brown) in the New World; and Caucasians (white and also dark), in North Africa, Europe, Irania, India, Western Asia, and Polynesia" and noted that Keane "unhesitatingly place[d] the Syrians in the Caucasian or white division."[76]

Using similar logic, federal courts admitted Syrians, Armenians, and Asian Indians to citizenship as white persons in seven cases between 1909 and 1923. In each case the court interpreted whiteness to mean something more than just color and bowed to anthropologic and ethnologic definitions of race. Not all the courts agreed; most ruled against the petitioners' claim to whiteness, usually relying on "common knowledge" definitions of race. Dur-

ing the 1910s "white" and "Caucasian" became increasingly antagonistic concepts in judicial argument.[77]

Takao Ozawa cited anthropology and ethnology that identified Japanese as Caucasian or white. Although the Japanese had mixed with the Mongolian and Malay races, their "dominant strains are 'white persons,' speaking an Aryan tongue and having Caucasian root stock." That was why, Ozawa said, "the uncovered part of the [Japanese] body [is] white," and, moreover, why Japanese possess a "mental alertness, a quality of mind in which they differ from other Asiatics and resemble the Europeans and the inhabitants of North America, above the Mexican line." Racially, Japanese are "a superior class, fit for citizenship."[78]

Moreover, Ozawa argued, Japanese were quite assimilable. The rest of Asia was hopelessly backward, but Japan had imbibed Western values and made the transition to modernity. The Japanese race was highly adaptable, having absorbed, centuries ago, elements of ancient Chinese culture (when it was great) and, more recently, the modern ways introduced after Commodore Matthew Perry opened Japan to the West. Ozawa understood the profound irony of his historical predicament. "It is preposterous to claim that a nation, which has shown itself to have the greatest capacity for adaptation, against whom the severest criticism is that they are imitators, is not capable of adjusting itself to our civilization," he said.[79]

Once establishing his racial pedigree, however, Ozawa betrayed a democratic impulse, saying that race should not determine citizenship. "The preservation of a conventional racial type is a matter of aesthetics," he said. "What really counts in humanity is home influence and education, and where the ideals are high, racial type is of little moment."[80]

The Supreme Court grappled with the inconsistencies in racial taxonomies. It acknowledged that color as an indicator of race was insufficient, given the "overlapping of races and a gradual merging of one into the other, without any practical line of separation." Despite the impossibility of determining clear racial types, the Court resisted the logical conclusion that no scientific grounds for race existed. The Court sidestepped the problem by simply asserting that white and Caucasian were one and the same. Since an "almost unbroken line of decisions in federal and state courts . . . held that 'white person' meant to indicate only a person of what is popularly known as the Caucasian race," the Court said, Japanese cannot be Caucasian because they are not white.[81]

In *Ozawa* one senses the Court struggling to reconcile race as a popular concept, as scientific classification, and as judicial and congressional precedent. The Court tried to invoke science to its advantage but foundered when confronted with scientific theories of race. *Ozawa* elided the differences between common understanding and scientific evidence, as in its phrase "popularly known as Caucasian." Thus, *Ozawa* settled the issue of Japanese inel-

igibility to citizenship, but it did not clearly resolve the problem of racial definition. In *Ozawa* the Court made the prescient comment that the racial prerequisite to citizenship was "part of our history."[82] Three months later, when the Supreme Court ruled on Bhagat Singh Thind's petition for citizenship, the Court found its grounding in history.

Thind argued his eligibility to citizenship as a white person based on his Aryan and Caucasian roots. "Speaking literally, color cannot be the only test of the white or Caucasian race; strictly speaking no one is white. . . . [T]he true test of race is blood or descent," he said. Citing anthropological experts at length, Thind noted that the Aryans of India have physical features "about the same" as the modern Englishman or German. They are a "tall, long-headed race with distinct European features, and their color on the average is not as dark as the Portuguese or Spanish and is lighter than the Moor." Because marrying outside of caste in India is strictly forbidden, Thind argued that he was a "pure Aryan."[83]

The government conceded that Thind might be a "border line case," ethnologically speaking, but averred that the meaning of the statute was clear that "Hindus" are excluded from "white persons." It rejected Thind's claim to whiteness as ridiculous: "In the popular conception he is an alien to the white race and part of the 'white man's burden'. . . . Whatever may be the white man's burden, the Hindu does not share it, rather he imposes it."[84]

The Court clarified the meaning of *Ozawa*, saying, "Caucasian is a conventional word of much flexibility. . . . The word [Caucasian] by common usage has acquired a popular meaning, not clearly defined to be sure, but sufficiently so to enable us to say that its popular as distinguished from its scientific application is of appreciably narrower scope. . . . The words of the statute are to be interpreted in accordance with the common man from whose vocabulary they were taken." What mattered, said the Court, was the racial designation of "living persons *now* possessing in common the requisite characteristics," not in the "dim reaches of antiquity."[85]

In *Thind* the Court dismissed science altogether. The term "Caucasian," it said, "under scientific manipulation, has come to include far more than the unscientific mind suspects." Noting Keane's classification of not only Indians but also Polynesians and the Hamites of Africa as Caucasians, the Court commented dryly, "We venture to think that the average well-informed white American would learn with some degree of astonishment that the race to which he belongs is made up of such heterogeneous elements." Moreover, scientific authorities disagreed irreconcilably over the proper racial division: Blumenbach has five races; Keane, four; Deniker, twenty-nine. In any case, the original framers of the law "used familiar words of speech [intending] to include only the type of man whom they knew as white . . . [those] from the British Isles and northwestern Europe . . . bone of their bone and flesh of their flesh, and their kind whom they must have had affirmatively in mind."

Furthermore, the Court maintained, the meaning of white readily expanded to accommodate immigrants from "Eastern, Southern, and Mid-Europe, among them Slavs and the dark-eyed, swarthy people of Alpine and Mediterranean stock." These immigrants were "received as unquestionably akin to those already here and readily amalgamated with them."[86]

Scientific racism had developed in the nineteenth century not as an innocent or neutral query of the natural world but as an effort to prove race and racial difference by men committed to racial prejudice. When science failed in its purpose, the Court disposed of science. The Court doubted the etymology of "Caucasian" and the efficacy of racial classification generally but, as Ian Haney López points out, "it did so not to challenge the construction of racial beliefs, but to entrench them even further. . . . The Court stanched the collapsing parameters of whiteness by shifting judicial determinations of race off of the crumbling parapet of physical difference and onto the relatively solid earthwork of social prejudice."[87] The Court's edict—"What we now hold is that the words 'free white persons' are words of common speech, to be interpreted with the understanding of the common man"—amounted to a concession to the socially constructed nature of race.[88] Moreover, its acknowledgment of the assimilability of eastern and southern Europeans and its insistence on the unassimilability of Asians rendered a double meaning to assimilation. For Europeans, assimilation was a matter of socialization and citizenship its ultimate reward. Asians, no matter how committed to American ideals or practiced in American customs, remained racially unassimilable and, therefore, forever ineligible to citizenship.[89]

The *Ozawa* and *Thind* rulings completed the legal construction of the "Asiatic" as a racial category. Although the decisions applied to Japanese and South Asians, respectively, the Court made a leap in racial logic to apply the rule of ineligibility to Koreans, Thai, Vietnamese, Indonesians, and other peoples of Asian countries who represented discrete ethnic groups and, anthropologically speaking, different racial groups. The Court used retroactive reasoning to conclude that the natives of all Asian countries were racially ineligible to citizenship. In the last paragraph of *Thind*, the Court wrote:

> It is not without significance in this connection that Congress, by the [Immigration] Act of 1917 . . . has now excluded from admission into this country all natives of Asia within designated limits of latitude and longitude, including the whole of India. This not only constitutes conclusive evidence of the congressional attitude of opposition to Asiatic immigration generally, but is persuasive of a similar attitude towards Asiatic naturalization as well, since it is not likely that Congress would be willing to accept as citizens a class of persons whom it rejects as immigrants.[90]

In 1923, on the heels of *Ozawa* and *Thind*, the Court issued four rulings upholding California and Washington state laws proscribing agricultural land

ownership by aliens ineligible to citizenship. Those laws had been passed in the 1910s to drive Japanese and other Asians from farming. In *Terrace v. Thompson*, the Court held that the alien land laws fell within the states' police powers to protect the public interest. The Court did not address whether Japanese or other Asians were eligible to citizenship. That had already been decided—indeed, naturalized—by *Ozawa* and *Thind*. The Court contended, moreover, that the alien land laws did not discriminate against Japanese because the laws applied to *all* aliens ineligible to citizenship, eliding the racial foundation of the concept. The Court held that it was logical and necessary to distinguish between citizens and aliens when considering land ownership, claiming, "[P]erfect uniformity of treatment of all persons is neither practical nor desirable. . . . [C]lassification of persons is constantly necessary [and] must therefore obtain in and determine legislation." The Court asserted, "One who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of the state, and so lacking, the state may rightfully deny him the right to own or lease land estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot of land within the state may pass to the ownership of non-citizens." In this way the Court both refined and obscured the racial logic embedded in the concept of ineligibility to citizenship, rendering invisible its premise of racial unassimilability.[91]

Together, the naturalization and land cases solidified the concept "ineligible to citizenship." Armed with the concept, California nativists reinvigorated their efforts for statutory Japanese exclusion. The timing was to their advantage: the U.S.-Japan Treaty of Commerce and Navigation expired that year and Congress was considering immigration legislation. While national attention focused on restricting immigration from Europe, the leading California exclusionists formed the California Joint Immigration Committee (CJIC) to press for Japanese exclusion. The CJIC, a successor organization to the Asiatic Exclusion League, was an alliance of the American Legion, the California State Federation of Labor, the Grange, and the Native Sons of the Golden West. It mounted an aggressive propaganda and lobbying campaign headed by V. S. McClatchy, the co-owner of the *Sacramento Bee* and one of California's most virulent racists, and worked in concert with former California officials now in the U.S. Senate, James Phelan and former governor Hiram Johnson. The CJIC made for a formidable pressure group.[92]

The exclusion rhetoric of the CJIC and others carefully promoted unassimilability based on racial difference, not inequality, although their racial animus was evident. The Japanese are the "most unassimilable and most dangerous because they have no idea, and no intention, of assimilation," McClatchy testified to the Senate. The American Legion asserted that because Japanese "can never become an integral part of the American national stock

through blood fusion," they will "remain among us a race apart."[93] The nativist argument treated ineligibility to citizenship as a natural condition, a racial characteristic of Japanese, instead of the legal construction that it was.

The exclusionists faced significant opposition from American business interests in Japan and the Pacific generally as well as from powerful religious organizations like the Federal Council of Churches and the Protestant missions. By the 1920s Japan counted many sympathizers among American elites, including progressivist attorney George Wickersham, who argued Ozawa's case before the Supreme Court, and religious leader Sidney Gulick, who founded the National Committee on American-Japanese Relations. On behalf of the committee, Wickersham proposed a new treaty to replace the Gentleman's Agreement that would place more rigid restrictions on immigration but confer the privilege of citizenship on all who personally qualified.[94]

The most important opposition to exclusion came from the State Department, because Japan strongly protested the exclusion clause in the immigration bill. Japanese Ambassador Masanao Hanihara told Secretary of State Charles Evan Hughes that Japan was willing to renegotiate the Gentleman's Agreement, but that it would not countenance discriminatory treatment:

> [I]t is not the intention of the Japanese Government to question the sovereign right of any country to regulate immigration into its own territories. Nor is it their desire to send their nationals to the countries where they are not wanted. . . . To Japan the question is not one of expediency, but of principle. To her the mere fact that a few hundreds or thousands of her nationals will or will not be admitted into the domains of other countries is immaterial. . . . The important question is whether Japan as a nation is or is not entitled to the proper respect and consideration of other nations.[95]

Hughes told the Senate committee that the administration wished to avoid "resentment and difficulties, which will arise from statutory exclusion." The secretary advocated for a small quota for Japan and continued observance of the Gentleman's Agreement.[96] The House immigration committee was dominated by restrictionists: its chair, Albert Johnson, was a staunch nativist who had cut his political teeth in the anti–Asian Indian agitation and riots in the state of Washington in the early 1900s.[97] But, under pressure from the administration, the House committee divided and the Senate committee supported a quota for Japan. The opposition to Japanese exclusion was significant but, like their counterparts advocating for quotas based on national origin, the Californians lobbied intensely and relentlessly. The political tide turned to their favor when Henry Cabot Lodge made an incendiary speech on the Senate floor, claiming that Hanihara's letter to Hughes, which expressed concern that passage of an exclusion law would have "grave conse-

quences" for U.S.-Japanese relations, was a "veiled threat" against the United States. David Reed, the senator from Pennsylvania and the leading supporter for a Japanese quota, threw his support to exclusion. The rest of the Senate followed.[98]

Japan considered the Immigration Act of 1924 cause for national humiliation. In retaliation, it imposed a 100 percent tariff on goods imported in any quantity from America, like preserved fruits and cotton and woolen goods. Within a year American traders in Japan reported that exclusion had virtually ruined their businesses. Japan also appealed to the League of Nations and continued to raise the issue of racial equality in international forums. The exclusionists celebrated the passage of the immigration law in 1924 but McClatchy noted, "Japan is no ordinary adversary." In fact, support for a Japanese quota continued throughout the late 1920s and early 1930s.[99]

Japanese immigrants felt thoroughly dejected by the 1924 immigration act, which foredoomed them to permanent disfranchisement and social subordination. Their only hope lay in the Nisei, the second generation. Some Japanese considered moving to Mexico or other states, but immigrant leaders discouraged relocation. They considered California "heaven" in terms of agricultural production. "The foundation of race development must rest on agriculture," said the *Shin Sekai.* "The Alien Land Law will be a *dead letter* as the second generation comes of age."[100]

Asian Indians had already been excluded from immigration by the barred zone created in 1917. But *Thind* sealed their fate as unassimilable Asians in the United States. A small minority group with no national government to speak on their behalf, Indians became targets of legal vengeance. In the wake of *Thind*, California attorney general U. S. Webb instituted proceedings to revoke Indian land purchases. The United States Justice Department went to court to denaturalize Asian Indians on the grounds that they had obtained citizenship by fraudulent means. Between 1923 and 1927 the federal courts cancelled the naturalization certificates of sixty-five Asian Indians.[101] An attempt to pass a resolution in Congress ratifying and confirming all naturalizations granted to Indians before 1923, initiated with the support of Supreme Court chief justice Taft and the Labor Department was quashed by Albert Johnson and the CJIC. Although W. W. Husband of the Labor Department told the Senate immigration committee that that "the admission of a few Hindus would not at all break down the rule of rigid exclusion," McClatchy understood that every breach in the wall of exclusion had the potential for widening. The CJIC worried that confirming the naturalization of Indians held implications for Japanese and Chinese who entered the armed forces and Japanese who had been naturalized in Hawai'i.[102]

Despite the tortured judicial genealogy of the racial-prerequisite cases, ineligibility to citizenship, like national origins, acquired an aura of fact once

declared by the Supreme Court and Congress. It became an indication of a natural condition, a badge of racial difference and the unassimilability of Asian peoples in America.

Race, Citizenship, and Conquest

The Immigration Act of 1924 exempted Mexico and other countries of the Western Hemisphere from numerical quotas. Mexicans were also not excluded from immigration on grounds of racial ineligibility to citizenship because, for purposes of naturalization, and therefore for immigration, the law deemed Mexicans to be white. Thus, under the act of 1924, Mexican immigration policy differed fundamentally from both European and Asiatic policies.

Both agricultural labor needs in the Southwest and American foreign policy interests in the Western Hemisphere impeded the restriction of Mexican immigration. The cutoff of Asian and European immigration created a special need for farm labor in California; growers there and in Texas lauded Mexican labor in part because they believed Mexicans would not settle permanently in the United States. Foreign policy considerations also weighed heavily against Mexican restriction. Senator David Reed, the cocreator of the national origins principle and sponsor of the Immigration Act of 1924, opposed quotas in the Americas on grounds of the tradition of Pan-Americanism. Some elected officials sympathized with the idea of restricting Mexican immigration but did not see how, in fairness, Congress could impose quotas on Mexico and not Canada. Thus the Senate defeated proposals to put the Western Hemisphere under the quota system in 1924 by a vote of sixty to twelve.[103]

The history of the Southwest as former Mexican territory, annexed by the United States as a result of the Mexican-American War, further complicated the meanings of nationality and citizenship. Euro-Americans never considered Mexicans their racial equals. Manifest Destiny touted the Anglo-Saxon, and during the Mexican-American War, expansionists wanted to take all of Mexico but abandoned the idea because they did not want to bring a populous colored race into the nation. Americans also looked upon the Mexicans as a mixed or impure race, comprising Indian and Spanish blood, and hence with even greater racial suspicion.[104]

Yet, paradoxically, conquest facilitated the racialization of Mexicans in the United States as "white." In order for the United States to exercise sovereignty over the annexed territory it had to have jurisdiction over all the inhabitants. That was accomplished in the Treaty of Guadalupe Hidalgo, which specified the terms of Mexico's defeat in 1848. In addition to giving Mexico's northern half to the United States, the treaty stipulated that all

inhabitants in the ceded territory who did not announce their intention to remain Mexican citizens or leave the territory in one year would automatically become citizens of the United States. Carey McWilliams estimated that fewer than two thousand of the seventy-five thousand Mexican nationals in the ceded territory remained Mexican citizens under that provision. American citizenship in this instance was not consensual, either in terms of traditional liberal ideology or by individual assent. Rather, it indicated Mexicans' new status as a conquered population.[105]

The practice of ascriptive citizenship was actually established before the Mexican-American War, in earlier stages of white American settlement in the Southwest. When Texas declared independence from Mexico in 1836, the Texas constitution recognized Mexicans as citizens of the republic. In 1845, when Texas joined the Union, Congress passed a joint resolution that recognized all the citizens of the former republic as citizens of the United States.[106]

When they conferred citizenship upon Mexicans en masse, Americans were aware that the right to naturalization applied only to free white persons. The California constitutional convention of 1849 formally granted Mexicans the same citizenship rights as white persons. Delegates commented that "a small amount of Indian blood" was acceptable, as was suffrage for Mexicans, as long as Negroes and Indians were not admitted to the polity. Anticipating Baghat Singh Thind's arguments before the Supreme Court, a *Californio ranchero* delegate from Santa Barbara, Don Pablo de la Guerra, told the convention that the "true significance of the word 'White'" lay in ancestry and social standing, not skin color. "Many citizens of California have received from nature a very dark skin," said de la Guerra. "Nevertheless, there are among them men who have heretofore been allowed to vote and . . . to fill the highest public offices. It would be very unjust to deprive them of the privilege of citizens merely because nature had not made them white."[107]

De la Guerra's perspective was not unusual. At the time of annexation Euro-Americans in the Southwest generally interacted with the native *Californios*, *Tejanos*, and *Nuevo Mexicanos* of the region more on the basis of class than race. Anglo settlers intermarried with the native upper-class elite, who owned most of the land and occupied the center of the seigniorial order. Many of them descended from the first Spanish settlements and missions in the northern borderlands during the seventeenth century. Yet, the white skin and Castillian blood of the native ranchero class may have been more apocryphal than real, a later invention by the Mexican American middle class striving to distance itself from the racial opprobrium associated with "Mexican" that emerged in the Southwest after World War I.[108] During the late eighteenth century Indians and *gente de razón* of the California missions both polarized and amalgamated, as the conscription of Indians for labor also included conversion and, to some extent, intermarriage.[109] As the

proceedings of the California constitutional convention suggest, Mexicans in the southwest at the time of conquest were already a *mestizo* population.

Intermarriage between white Americans and the native ranchero elite implied a degree of racial acceptance between the upper classes. But it also took place in context of Euro-American manifest destiny, which informed nearly all Anglo-Mexican relations. Most mixed marriages took place between Anglo men and the daughters of rancheros, giving the former access to land held by the latter's families and facilitating the process of dispossession. Indeed, white Americans consolidated annexation through armed violence, land thievery, and the imposition of American political institutions, as well as through intermarriage.[110] By 1910 the ranchero class had been virtually eliminated by the breakup of its land grants and the region's economic transformation to commercial agriculture that was wrought by the completion of the railroad, the invention of refrigerated freight cars, and the irrigation of south Texas and southern California.[111]

During the first two decades of the twentieth century not one, but two major streams of migration fed that transformation: laborers from the interior of Mexico, pushed from the land by the Mexican Revolution of 1910–1920,[112] and white farmers and businessmen from the southern and midwestern United States. The number of Mexicans enumerated in the census grew from 224,275 in 1910 to 651,596 in 1920.[113] The displaced native elite had been reduced to a feeble Mexican American middle class derisively called *los tuvos* (the has-beens); southwestern society now divided between growing populations of white property owners and skilled workers on the one hand and landless Mexican agricultural laborers on the other. Mexican immigration into the United States peaked in the mid-1920s and continued at high levels through the end of the decade, meeting labor demands not only in southwestern agriculture and mining but in the Midwest and North as well, owing to the cutoff of European immigration. The rapidly changing environment produced new class relations thickly overlaid with race.[114]

In the context of socioeconomic changes in the Southwest and the nativist climate in national politics, calls for restricting Mexican immigration grew. Throughout the late 1920s, in hearings on legislation proposed by John Box, the congressman from east Texas, immigration quotas for Mexico and other countries of the Western Hemisphere were debated. Although the large cotton and fruit growers who relied on Mexican labor opposed restriction, white small farmers squeezed by agribusiness and the urban middle class concerned about the emerging "Mexican problem" clamored against Mexican immigration.[115] An editorial in the *Saturday Evening Post* typified the temper of the time, combining traditional assumptions about race, immigrant fecundity, and job competition: "How much longer [are] we going to defer putting the Mexican Indian under the quota law we have established for Europe," the *Post* asked. "Mexican laborers often have nine children, or

even more. At the nine-child rate, any of these Mexicans who are coming in by the trainload might be expected to average 729 great grandchildren. . . . No temporary considerations of expediency should carry the smallest weight in preventing the proper economic protection of our own flesh and blood."[116]

Anti-Mexican rhetoric invariably focused on allegations of ignorance, filth, indolence, and criminality. Government agencies in California like the state Department of Public Health, the state Commission of Immigration and Housing, and the Los Angeles County Department of Outdoor Relief released official reports filled with statistics on the high rate of social degeneracy among Mexicans, often introduced with calls for immigration restriction. The president of the Commission of Immigration and Housing, Edward Hanna, cited statistics showing that "Mexicans as a general rule become a public charge under slight provocation." He alleged that Mexicans "are very low mentally and are generally unhealthy," attributing their difficulties to race, as they "are for the most part Indians."[117]

Edythe Tate Thompson, chief of the state Tuberculosis Bureau, wrote in the preface to the bureau's report on Mexicans in the Los Angeles County Hospital that the study aimed to refute the claim that Mexicans are "cheap" and noted the need for a quota on Mexican immigration. Thompson was an ardent restrictionist who corresponded frequently with Albert Johnson and distributed the tuberculosis report widely. Statistics from Thompson's report and similar studies became common citations in testimonies, publications, and editorials as evidence of the need for restriction.[118]

In addition to their demands for a quota on Mexican immigration the CJIC also called for excluding Mexicans on grounds of racial ineligibility to citizenship. But the Labor Department concluded there was no basis to pursue such a policy, citing a long list of treaties, conventions, acts of Congress, and court decisions.[119] The most notable ruling in the judicial record was *In re Rodriguez*, which in 1897 upheld the right of a Mexican immigrant to naturalize. Ricardo Rodriguez, a thirty-seven-year-old native of Mexico who lived in San Antonio for ten years, petitioned to become a citizen in Bexar County. At the hearing of Rodriguez's application, two attorneys of the court contested his eligibility on grounds that "he is not a white person, nor an African, nor of African descent." In District Court, Judge Maxey noted that "as to color, he may be classed with the copper-colored or red men. He has dark eyes, straight black hair, and high cheek bones," but concluded that because he "knows nothing of the Aztecs or Toltecs, [h]e is not an Indian."[120]

The court also tried to ascertain Rodriguez's understanding of and support for the Constitution. Rodriguez could not explain the principles of the Constitution, but the judge attributed his seeming ignorance to his illiteracy and accepted testimony by a white acquaintance of Rodriguez, who said, "I know the man. I know that he is a good man, and know, . . . whatever the principles of the Constitution might be, that he would uphold them if he

knew what they were." The witness said Rodriguez was peaceable, honest and hardworking, of good moral character, and law-abiding "to a remarkable degree."[121]

Judge Maxey conceded, "If the strict scientific classification of the anthropologist should be adopted, [Rodriguez] would probably not be classed as white." However, the constitution of the Texas Republic, the Treaty of Guadalupe Hidalgo, the Gadsden Treaty, and other agreements between the United States and Mexico either "affirmatively confer[red] the rights of citizenship upon Mexicans, or tacitly recognize[d] in them the right of individual naturalization." Noting that such agreements covered "all Mexicans, without discrimination as to color," Judge Maxey concluded that Rodriguez was "embraced within the spirit and intent of our laws upon naturalization."[122]

In re Rodriguez was significant because it recognized rights established by treaty over the narrow racial requirements in the law. By privileging Mexicans' nationality over their race, even as a conquered nationality, the court staved the Mexicans' formal racialization to an extent. The ruling also anticipated *Ozawa* and *Thind* by acknowledging the subjectivity of racial identification. Despite the judge's perception that Rodriguez was probably Indian (or, at least, not white) based on ocular examination, the court bowed to Rodriguez's own claim that he was not Indian, Spanish, or African. Indeed, upon questioning, Rodriguez said he did not know "where [his] race came from": his parents told him he was Mexican and he considered himself a "pure blooded Mexican." Rodriguez may have lacked schooling, but he understood his nationality.[123]

Secretary of Labor James Davis also recognized that the problem of self-identification impeded race-based immigration policy. Davis advised Johnson, "The Mexican people are of such a mixed stock and individuals have such a limited knowledge of their racial composition that it would be impossible for the most learned and experienced ethnologist or anthropologist to classify or determine their racial origin. Thus, making an effort to exclude them from admission or citizenship because of their racial status is practically impossible."[124]

Mexicans were thus deemed to be white for purposes of naturalization, an unintended consequence of conquest. Their legal whiteness was contingent and unstable, however. It did not preclude the Census Bureau from enumerating Mexicans as a separate race in 1930, albeit with an imprecise definition of the Mexican race as "persons who were born in Mexico and are not definitely white, Negro, Indian, Chinese, or Japanese."[125] But it did preclude Mexican exclusion by the rule of racial ineligibility. With legislative means of exclusion deemed inappropriate or inapplicable, the State Department moved in 1929 to restrict Mexican immigration through administrative means. The United States consuls in Mexico began to strictly enforce existing provisions of the immigration law to deny visas to prospective immigrants.

Consular officials used the ban on contract labor, the literacy test, and the provision excluding persons "likely to become a public charge" to refuse visas. The policy had an immediate effect. During the first ten months of fiscal year 1930, the United States issued only 11,023 visas to Mexicans. The department estimated that immigration for 1930–31 would be only 13,000, compared to an average annual rate of immigration of 58,747 over the previous five years—a decrease of 76.7 percent.[126]

The decrease, however, referred only to legal immigration. Mexicans continued to enter the United States by crossing the border at unofficial points and avoiding immigration inspection. That in itself was not new: migration across the border, both to and from the United States, had had an informal, unregulated character from the late nineteenth century to World War I. Increases in the head tax in 1917 and 1924 impelled increasing numbers of Mexicans to cross the border without official inspection. By the late 1920s the difference between legal and illegal immigration hardened, just as Mexican immigrants had emerged as a race problem in the Southwest. As we shall see in the next chapter, Mexicans would become racialized aliens in the United States in large part by their illegal presence in the region that was once Mexico.