

The Politics of U.S. Immigration and Citizenship
CUNY Graduate Center
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This course is designed to provide a multi-disciplinary overview of the key current theoretical and policy debates in the study of the politics of U.S. immigration. The goal is to explore historically the United States' legal and policies responses to migration at the national and subnational levels. The emphasis will be on exploring both the theoretical and policy debates of the field along with evaluation of the empirical data and research design of these studies on which the debates are based.

The United States often proudly refers to itself as “a nation of immigrants” and indeed many scholars have referred to the story of immigration as literally, the story of America. Yet, this country has also had, from its inception, an ambivalent relationship with immigrants (or “aliens”) and the nation has struggled in deciding whom to admit, how many of them, for how long, and what benefits get attached to citizenship. Often and unfortunately, these decisions get intertwined with considerations of race, class, and sex/gender to the detriment of the immigrants.

Given the multifaceted nature of the migration phenomenon, the study of it is unique in its interdisciplinary and methodologically pluralist nature. There is no best or even preferred methodology to examine migration. The field stretches from the demography, economics, and history of migration, to law and all subfields of political science, through geographical and mainstream sociological approaches, and to the ethnography and oral history of migrants. Migration is also a particularly fruitful for lens for exploring the multitude of political phenomenon ranging from the interaction of party and congressional politics, to the institutional evolution of the Supreme Court vis à vis the U.S. Courts of Appeals, and the limits and possibilities of using laws and access to public benefits to police the nation's physical and cultural borders. Yet each methodology and the academic discipline that favors it has its blind spots. We will read an array of books and articles by political scientists, sociologist, historians, and government policy makers. One goal of this course it to show you the methodological and disciplinary limitations of each field and approach.

As we will learn, immigration policy, which is codified by law, reflects many considerations. Among some are economic (how will immigrants help or hurt this country economically), political (How can we help our political allies and embarrass our political enemies abroad with our policies? How is immigration policy an accommodation and reflection of domestic and international interests?), cultural (Will new immigrants assimilate and acculturate and add to the vibrancy of our nation, or will they dilute the national polity?), and humanitarian (What is our duty as a civilized nation to people fleeing persecution). Each Administration and each generation of policy makers has had to take all these issues into account although they have chosen to prioritize each differently. As we will see in the readings and discussions in this class, to a large extent, immigration law and policy is shaped by domestic politics, or more precisely, the political alignments and battles among Congress, the Presidency, the courts, interest groups,

ethnic groups, and our federal system of government. As well, immigration policy is the result of the structure of our government that is laid out by the U.S. Constitution, namely the federal system. Still, even after the passage of a piece of legislation created by Congress or local governments, administrative agencies and federal courts are called upon to interpret and apply the law. Ultimately all immigration policy decisions (and accompanying legal decisions) have been contentious because at stake in immigration law and policy our decisions about the character who and what we are as a nation.

Course Requirements

- 100-200 pages of reading per week
- Class participation
- 5 page response paper
- Draft of final paper
- Final Paper (15 pages maximum)

Each student will be asked to write one response paper which surveys, synthesizes, and critically assessing the readings for any one session starting the second week of February; the papers should be roughly five pages in length and circulated via email to the class by the Sunday evening before the relevant class meeting. Please consider your preferences and send me an email, *by no later than January 31, 2016*, with three possible dates, listed in order of preference. I will try to give you your choice, but I will also need to ensure that the number of papers per session is evened out throughout the semester and therefore may have to assign you your second or third preference. I will decide this quickly and will email assignments back to you by the end of the following day.

Your final grade will be based on

Participation	15%
Response paper	20%
Draft of final paper	20%
Final Paper	45%

**Except in the most extreme and properly documented circumstances, there will be no incompletes. Any failure to complete all assignments will result in your receiving a failing grade for the course. All assignments must be handed in on time; each day's lateness will cost you a whole letter grade.

There are four paperback books that need to be purchased:

1. Kunal Parker's *Making Foreigners--Immigration and Citizenship Law in America, 1600-2000* (Cambridge, 2015)
2. Cybelle Fox's *Three Worlds of Relief: Race, Immigration, and the American Welfare State from the Progressive Era to the New Deal* (Princeton 2015)
3. Anna Law's *The Immigration Battle in American Courts* (Cambridge 2014)
4. Dan Tichenor's *Dividing Lines--The Politics of Immigration Control in America* (Princeton 2002)

The rest of the required reading assignments will be posted on Blackboard.

Administrative Policies

1) The faculty and administration of CUNY support an environment free from cheating and plagiarism. Each student is responsible for being aware of what constitutes cheating and plagiarism and for avoiding both. The complete text of the CUNY Academic Integrity Policy and the Brooklyn College procedure for implementing that policy can be found at this site:

<http://www.brooklyn.cuny.edu/bc/policies>.

If a faculty member suspects a violation of academic integrity and, upon investigation, confirms that violation, or if the student admits the violation, the faculty member **MUST** report the violation.

3) If you are having difficulty in the class, come see me at my office hours at the earliest sign of difficulty, not toward the end of the semester. If you are not pleased with your performance on an assignment or unclear about the readings, come see me as soon as possible so that we can talk about some study skills and test taking strategies. I can't do much to help you if you come see me only at the end of the term before the final paper.

4) In order to receive disability-related academic accommodations students must first be *registered* with the Center for Student Disability Services.

Schedule of Assignments

Week One: Why an immigration policy? Why not open borders?

How do Carens and the *WSJ*'s Jason Riley differ on their rationales for an open borders policy? Do you find either perspective persuasive? Carens notes that liberal theories all try to justify the state's use of force and on the subject of immigration, several liberal theories the catalogues therefore do not support a state's restriction of its borders. Even if you don't subscribe to Carens' advocacy of open borders, what then has been the justification offered by the American state (both national and subnational) in restricting the freedom of movement? By contrast, Walzer believes communities can pick and choose whom to admit. How does Walzer square the issue of freedom of association with equal treatment under the law?

Read: -Joseph Carens, "Open Borders", *Review of Politics*, Vol. 49. (no. 2) 1987, pp. 251-273.

-Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*, Chapter 2, pp. 31-63, New York: Basic Books, 1983.

-Read <http://newsbusters.org/blogs/mark-finkelstein/2008/05/18/let-them-wsj-editor-argues-open-borders>

Week Two: Who counts as an immigrant?

What criteria should we use to count someone as an “immigrant”? Why should or shouldn’t African slaves be considered immigrants? What is the meaning of “foreign” or “alien” if domestic blacks and Native Americans do not have the rights of birthright citizenship? Where exactly is the location of the border dividing those who “belong” and those who don’t?

-Read: Aaron Fogleman, “From Slaves, Convicts, and Servants to Free Passengers: The Transformation of Immigration in the Era of the American Revolution” *Journal of American History*, 85 (1) June 1998, pp. 45-73.

-Kunal Parker, *Making Foreigners: Immigration and Citizenship Law in America, 1600-2000* (New York, Cambridge, 2015), Chapters 1-4.

Week Three: The Effects of Immigration Federalism Historically

The founders believed that creating a federal system in the U.S. Constitution would best guaranteed individual freedom by guarding against government tyranny. Where in the 1787 Constitution does the national government derive power to regulate immigration? Does the U.S. federal system provide immigrants with more liberty? What factors influenced the disparate treatment of immigrants at the state level?

Read: -Hidetaka Hirota, “The Moment of Transition: State Officials, the Federal Government, and the Formation of American Immigration Policy” *Journal of American History*, Vol. 99 (no. 4) March 2013, pp. 1092-1108.

-Anna O. Law, “Lunatics, Idiots, Paupers, and Negro Seamen—Immigration Federalism and the Early American State” *Studies in American Political Development* Vol. 28 (no. 2) 2014 pp. 107-128

-Anna O. Law, “The Historical Amnesia of American Federalism Debates” *Polity* 47(3) pp. 302-319.

Week Four: Citizenship, *Jus solis*, *Jus sanguinis*, and Anchor Babies

The U.S. is one of the few countries around the world that uses *jus solis* to grant citizenship. If the U.S. does not use *jus solis* to grant citizenship, what other basis could it plausibly use?

Read: -Rogers Smith and Peter Schuck, “Citizenship Without Consent” *The Social Contract* Fall 1996.

-Rogers Smith, “Birthright Citizenship and the Fourteenth Amendment in 1868 and 2008”, *Journal of Constitutional History*, Vol. 11 (no. 5) 2008 pp. 1329-1335.

-Margaret Stock, “Is Birthright Citizenship Good for America?” *Cato Journal* Vol. 32 (no. 1) Winter 2012 pp. 139-157.

-Elizabeth Cohen, “Reconsidering Immigration Reform: The Temporal Principle of Citizenship” *Perspectives in Politics*, Vol. 9 (no. 3) 2011 pp. 575-583.

Week Five: The Role of Race, Ethnicity, and National Origins in admissions and naturalization

What were the limits of *jus solis* citizenship? How has law been wielded as an instrument of granting and withholding rights and from whom? If one had to explain that boundaries are being drawn by law to designate natives and aliens, where would one locate the “boundaries of inclusion”? Based on what criteria, according to Haney-Lopez, were federal courts deciding who was and was not “white”?

Read: --Kunal Parker, *Making Foreigners, Immigration and Citizenship Law in America, 1600-2000*, Chapters 5 to end.

-Ian Haney-Lopez, *White by Law: The Legal Construction of Race*, Chapters 1, 2, and 5.

Week Six: Bringing institutions back in, the role of Congress and the Presidency in Immigration Policy

Many believe that the content and shape of U.S. immigration policy is driven by public opinion, the economic health of the nation, electoral coalitions, or cultural conceptions of nation, among other variables. Why does Tichenor think these are all wrong and what is his theory? How are his preferred variables for explaining immigration policy temporally specific?

Read: Dan Tichenor, *Dividing Lines—The Politics of Immigration Control*, Chapters Intro through Five.

Week Seven: Continuing Congress and the Presidency in Immigration Policy

What is Tichenor's conception of immigration policy missing that Parker covers? Alternatively, what essential variables are missing from Parker's analysis of the driving forces behind immigration law and policy? What elements would be needed for a holistic theory to understanding immigration policy development across time look like?

Read: Dan Tichenor, *Dividing Lines—The Politics of Immigration Control*, Chapters 6 to 10.

Week Eight: Bringing institutions back in, the role of the Federal Judiciary in Immigration Policy

Congress and the President may pass laws, but federal courts interpret them, thereby making law. Which federal courts have the most influence over the lives of immigrants and why? Why is the Supreme Court seemingly far less sympathetic to immigrants than the Courts of Appeals? How does legal doctrine constrain the range of action available to federal judges?

Read: Anna Law, *The Immigration Battle in American Courts*, Intro through Chapter 3.

Week Nine: Continuing the Role of the Federal Judiciary in Immigration Policy and Law

How relevant is the Supreme Court in shaping U.S. immigration policy? Are there any checks on the Court's use of the plenary power doctrine? What are those checks? At the end of the day, what kinds of due process protections can an immigrant expect the federal courts to provide?

Read: Anna Law, *The Immigration Battle in American Courts*, Chapter 4 through 7.

Week Ten: The Politics of Political Asylum

Citizens and non-citizens alike expect equal and fair treatment not just before the courts, but from administrative agency personnel as well. Instead what are immigrants faced with in political asylum decisions and what is causing the great disparities in grant rates? Despite the heart wrenching news coverage, what political factors stand in the way of the U.S. accepting more Syrian refugees?

Read: -Jaya Ramji-Nogales, Phillip Schrag and Andy Schoenholtz "Refugee Roulette: Disparities in Asylum Adjudications" *Stanford Law Review*, Vol. 60. 2007 pp. 295-412.

-Michael Teitelbaum, "The Truth About the Migrant Crisis", *Foreign Affairs*, September 14, 2015. <https://www.foreignaffairs.com/articles/western-europe/2015-09-14/truth-about-migrant-crisis>

-David Francis, "Resettling Syrian Refugees in the U.S. is Easier Said than Done", *Foreign Policy*, September 14, 2015. <http://foreignpolicy.com/2015/09/14/resettling-syrian-refugees-in-the-united-states-is-easier-said-than-done/>

Week Eleven: Assimilation/Acculturation

We often think of integration/acculturation as an individual process, but in fact government institutions play a role in facilitating or impeding that process. What factors drove the disparate treatment of white ethnic immigrants, African Americans, Mexicans, and Mexican Americans under the welfare system? To what extent was the disparate treatment of these three groups driven by race or by regional specific concerns?

Read: Cybelle Fox, *Three Worlds of Relief: Race, Immigration, and the American Welfare State from the Progressive Era to the New Deal*, Chapters 1 through 6.

Week Twelve: Assimilation/Acculturation continued

We often think of prominent government officials as in charge of making key policy decisions when in fact faceless administrative bureaucrats can wield just as much power as a federal judge or an elected official. What role did social workers and other bureaucrats play in deporting immigrants and denying them coverage? What changed during the New Deal that allowed African Americans more access to public benefits relief? We can assess the integration and acculturation of immigrants in many different ways, via voting behavior, educational/language acquisition, income levels etc. What role do government programs play in this process?

Read: Cybelle Fox, *Three Worlds of Relief: Race, Immigration, and the American Welfare State from the Progressive Era to the New Deal*, Chapters 7 through 11.

Week Thirteen: Policy implementation, managing borders

How has the modern state gained a monopoly over the freedom of movement? In what ways is the U.S.'s southwestern border strategy effective and ineffective? What are some consequences of our policies on the southwestern border?

Read: - John Torpey, "Coming and Going: On the State Monopolization of the Legitimate" Means of Movement," *Sociological Theory*, 32(3), 1998: pp. 239–59

-Peter Andreas, *Border Games: Policing the U.S.-Mexico Divide* (Ithaca: Cornell Univ. Press, 2009) Chapters 1, 5, and 7.

-Wayne Cornelius, "Controlling Unwanted Immigration: Lessons from the United States, 1993-2004" Center for Comparative Immigration Studies, 2004. pp. 1-33.

Week Fourteen: Policy implementation, interior enforcement, revisiting immigration enforcement

What strategies have been used to carry out interior enforcement and how do they measure up against what we know about the magnets drawing undocumented immigration? In the nineteenth century, the federal system multiplied the permutations of restriction deployed

against immigrants, free blacks, and the poor. In the twenty-first century, what is your evaluation of whether the federal system has spread or constricted freedom for immigrants?

- Read: -Marc A. Rosenblum and William Kandel, "Interior Immigration Enforcement: Programs Targeting Criminal Aliens", *Congressional Research Service*, Dec. 20, 2012, pp. 1-48.
- Marc Rosenblum, "The Basics of E-Verify: The U.S. Employment Verification System" Migration Policy Institute, April 2009, pp. 1-12.
- Kris W. Kobach, "Attrition Through Enforcement: A Rational Approach to Illegal Immigration" *Tulsa Journal of International Law*, Vol. 15 (no. 2) 2008, pp. 155-163.
- Preethapan Gulasekaram and Rose Vilazor, "Sanctuary Policies and Immigration Federalism: A Dialectical Analysis", *Wayne State Law Review* Vol. 55. 2009 pp. 1683-1724.
- Preethapan Gulasekaram and Karthick Ramakrishnan, "Forget border walls and mass deportations. The real changes are happening in the states." *Washington Post*, The Monkey Cage Blog, September 24, 2015

Week Fifteen: Catching up.