



THE UNITED STATES IMMIGRATION LAWS: HISTORY OF A NATION  
SET UP BY MIGRANTS

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*Abstract:* The purpose of my paper is to consider a set of policies concerning flows adjustment and naturalization of immigrants. The starting point of my analysis is the Naturalization Act of 1790, the first immigration law of the US government, which inspired the subsequent ones. I have conducted a more detailed investigation into federal measures since 1882, the year of Chinese Exclusion Act, passing through the legislation of the period between 1920 and 1930, influenced by a marked protectionism, to arrive to the acts of 1965, which dismantled the system of national quotas. The goal of my work is to highlight the relationship between the laws and the debate that has been created around them, which involves congress, public opinion, trade unions and associations.

*Keywords:* Immigration; Naturalization; Nativism; Interests; Legislation.

*Riassunto:* Lo scopo del mio lavoro è di prendere in considerazione le politiche riguardanti il controllo dei flussi e la naturalizzazione degli immigrati. Il punto di partenza della mia analisi è il Naturalization Act del 1790, la prima legge sull'immigrazione del governo degli Stati Uniti, che ha aperto la strada a quelle successive. Ho condotto un'indagine più dettagliata sulle misure federali dal 1882, l'anno del Chinese Exclusion Act, passando attraverso la legislazione tra gli anni 1920 e 1930, influenzati da un marcato protezionismo, per arrivare alle leggi del 1965, che smantellarono il sistema delle quote nazionali. L'obiettivo del mio lavoro è quello di evidenziare il rapporto tra le leggi e il dibattito che è stato creato intorno a esse, che coinvolge i membri del Congresso, l'opinione pubblica, i sindacati e le associazioni.

*Parole chiave:* Immigrazione; Naturalizzazione; Nativismo; Interessi; Legislazione.

## INTRODUCTION

In this article, I will take into consideration the major U.S. policies concerning immigration. My aim is not only to make an overview of legislation, but



also to identify the principles that were at the basis of the individual measures, showing their variation over the years and the debate they have generated inside the American society. As a matter of fact, immigration legislation was determined not only by matters of foreign policy or by job-related themes, but also by ideological and cultural questions. In my paper, I will proceed with a diachronic analysis of the policies, analysing from time to time the relevant debates and events at both domestic and international level. In my opinion, this is the most effective approach to understand the perception of immigrants and refugees in the law, according to the purpose of this conference. The history of American immigration laws has been inquired by notorious academics and specialists in a well consolidated literature, ranging from broad-range volumes<sup>1</sup> and encyclopaedias<sup>2</sup> to journal articles. For this article, I will build on a traditional periodisation and bring the most recent contributions to the subject.

## 1. THE ORIGINS: 1790-1882

Since the foundation of the United States, the issue of migration has played a fundamental role for populating the American continent, and consequently for the government of the country itself. Taking as a starting point the periodisation identified by Richmond Mayo-Smith<sup>3</sup>, we can find a first phase of migration policies between the constitution of the Federal State and the 1882, the year of introduction of the Chinese Exclusion Act. Within this period, we can consider as a turning point the years 1830s, which mark the passage from a phase of relatively free immigration

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<sup>1</sup> GARIS, R.L., *Immigration restriction: a study of the opposition to and regulation of immigration into the United States*, New York 1927; DANIELS, R., *Guarding the golden door: American immigration policy and immigrants since 1882*, New York 2004.

<sup>2</sup> CIMENT, J., RADZIŁOWSKI, J., *American immigration: An encyclopaedia of political, social, and cultural change*, London 2015.

<sup>3</sup> MAYO-SMITH, R., *Emigration and immigration: a study in social science*, New York 1890.



to a greater and greater gripping position of some sectors of the American society toward the problem of migration.

In the American society before the revolution, the feeling of hostility toward immigration has always focused on the religious aspect, touching especially anti-Catholic themes, and putting in close correlation faith and political values, so as to perceive immigrants who didn't embrace the common protestant belief as a threat to the established order of institutions and values<sup>4</sup>. During the construction of the country, the founding fathers introduced some of the topics that would have been recurring for the entire subsequent history<sup>5</sup>. The main example is Benjamin Franklin, who can be considered as the father of nativism. In his *Observations concerning the increase of Mankind*<sup>6</sup>, first published in 1755, he complained about the bad habits of the immigrants with German origin and alleged that they wanted to impose their language and traditions in the New World. In the early nineties, in occasion of the debate on the introduction of a federal law concerning Immigration and Naturalization, the Congress held a discussion about the role of the federal institutions and the moral requirements that allowed an immigrant to be naturalized as American citizen. On the one hand, the main proponent of liberal and inclusive naturalization policies was the federalist James Madison. On the other hand, James Bayard of Delaware stated that immigrants which were already present on the ground received favourable treatment and should have had no say in the formulation of United States policies<sup>7</sup>.

Apart from a first statute of 1790, which ensured the naturalization only to free citizens and whites, the first law of migratory restriction was the Alien and

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<sup>4</sup> BILLINGTON, R.A., *The Protestant Crusade, 1800-1860: A Study of the Origins of American Nativism*. New York 1938.

<sup>5</sup> GARIS, R.L., *Immigration restriction*, cit.

<sup>6</sup> FRANKLIN, B., *Observations concerning the increase of mankind, peopling of countries, &c.*, New York 1918.

<sup>7</sup> DANIELS, R., *Guarding the golden door*, cit.



Sedition Act of 1798, adopted under the Adams administration. The aim of John Adams was to prevent the acquisition of citizenship and voting rights to immigrants who supposedly would have voted for Jefferson in the presidential elections, in order to allow the group of federalists to maintain power. Thomas Jefferson, on the other hand, was an opponent of immigration<sup>8</sup>.

Between the twenties and thirties, another theme that would have survived until the contemporary age was introduced: the admission of poor immigrants. In the new century, American companies increased in number and strength, and so did the demand for qualified workers. Despite the fact that most of the indigenous population was unavailable to be used as workers, different States passed restrictive laws to exclude certain categories of immigrants, even if they would have helped to meet the demand of enterprises. As a matter of fact, in those years it arises the contrast against the immigration of poor people, which were seen as a burden to be sustained by American citizens. In effect, the presence of large numbers of poor started to cause severe social problems in big cities like New York, Boston, and Baltimore<sup>9</sup>.

In the 1840s a new key theme flourished, i.e. the tendency of immigrant workers to work more and at a lower price compared to the American citizens, thus triggering the fear of unfair competition in the labour market. In addition, there were the usual recurring prejudices about religion, insofar as the country was facing an exponential growth of Irish immigrants, especially after the great potato famine of 1845. In those years the Irish “*papists*” were accused of plotting to overthrow the State, and were victims of clashes and lynchings, such as those that occurred in Boston in 1837<sup>10</sup>. As Miller pointed out, the opposition to Irish immigration was also due to the general anti-Irish and anti-Catholic attitude that was widespread in the

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<sup>8</sup> HIGHAM, J., *Strangers in the land: patterns of American nativism, 1860-1925*, New York 1963.

<sup>9</sup> DANIELS, R., *Guarding the golden door*, cit.

<sup>10</sup> Ibid.



American culture of that period. The xenophobic stances were represented by the most conservative groups like the American Protestant Society, while the Irish gathered under the Fenian Brotherhood and promoted an Irish way to American nationalism, that was supported and controlled by the Democratic Party<sup>11</sup>.

All these seeds led to the development of the nativist ideology, a way of thinking that spread rapidly throughout the country. Since 1835, in New York and other cities several anti-foreign parties have been founded. One example of them is the Nativist Party supported by the famous inventor Samuel Morse, who wrote a pamphlet against an alleged Catholic conspiracy to convert the United States<sup>12</sup>. Nativists came from different social statuses and geographic locations, but they had similar nationalist features, i.e. to identify common enemies, such as the above-mentioned poor and Catholics, and to fear that the vitality of the State could have been jeopardized from inside by those groups.

In those years, the main expression of nativism were the members of the protestant secret sect of the Order of the Star Spangled Banner. This sect took the name of “*Know Nothings*” because its members were bound by oath not to give anyone the knowledge of their own organizational activities. The Order was organised in lodges and membership was granted only to selected people: every member should have had to be a native-born citizen, a Protestant son of Protestants, and not married with a Catholic woman. The core values were to fight against papist interference, to oppose foreign attacks against the country, and to vote only for native Protestants<sup>13</sup>. The Know Nothings found political expression in the American Party, encountering a fertile ground in the elections of 1854-55, when the traditional parties began to lose consensus and definitely dissolved, and the national differences

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<sup>11</sup> MILLER SOLOMON, B., *Ancestors and Immigrants: A Changing New England Tradition*, Cambridge 1956.

<sup>12</sup> MORSE, S., *Foreign Conspiracy Against the Liberties of the United States*, New York 1835.

<sup>13</sup> ANBINDER, T., *Nativism and Slavery: The Northern Know Nothings and the Politics of the 1850's*, New York 1992.



between north and south were exploding, allowing them to introduce themselves as champions of the national unity<sup>14</sup>. With this program, the American Party managed to elect more than one hundred representatives and six governors. However, this electoral success would have been their maximum result, because shortly afterwards the party divided itself, between south, assuming the shape of southern nationalism, and north, converging toward the figure of Abraham Lincoln. Anyway, in the period shortly before the Civil War, their statements against immigration were not so strong to implement policies at the federal level, leaving the competence of migration policies to the member states. Moreover, during the war, immigrants took part in the fighting on both sides, allowing to temporarily placate the anti-immigrant rage<sup>15</sup>.

The years between the end of the civil war and the law of 1882 are of little importance in view of our analysis, because in that period did not substantially occur events concerning the issue of migration. The only matter was the problem of the increasing of Chinese population, that I will analyse in the next section.

## 2. FEDERAL CONTROL AND INDIVIDUAL SELECTION: 1882-1917

Many historians consider the so-called Chinese Exclusion Act as a watershed. That law didn't appear in the U.S. policies as a bolt of lightning out of the sky. The Chinese question finds its roots in the social, legal, and international relations issues of the preceding decades. The act introduced the principle of selection of immigrants by national quotas and remained unchanged until 1965, when Lyndon Johnson decided to dismantle the whole system of quotas. In this section, I will analyse the legal, the cultural, and the international reasons that led to the approval of the Chinese Exclusion Act and the following provisions.

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<sup>14</sup> KAZIN, M., *The Populist Persuasion, an American History*, New York 1998.

<sup>15</sup> HIGHAM, J., *Strangers in the land*, cit.



In 1868, it was adopted the Fourteenth Amendment to the Constitution. The amendment says:

*“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”*<sup>16</sup>.

The adoption of the Fourteenth Amendment had massive consequences for the rights of naturalised immigrants and, as shown by J. Cohen, it influenced all the succeeding legislation<sup>17</sup>. The amendment did not present any limits about ethnic origins or personal conditions, so its full implementation could not withstand from the abolition of the Statute of 1790, that allowed naturalization to only white and free immigrants. However, some subsequent events related with the Chinese prevented the Congress to replace the old statute by etching only on the words “*free*” and “*white*”<sup>18</sup>.

The presence of Chinese in the United States was particularly evident because they headed to the new continent in order to find richness and maintain their families in China. For example, many Chinese were interested in taking part in the gold rush, that was seen as an incredible opportunity to increase the economic conditions of their families. Once arrived in the United States, however, they had to deal with a hostile environment from political leaders and society, as depicted in this rich anthology by Yung, Chang, and Lai<sup>19</sup>.

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<sup>16</sup> CORNELL LAW SCHOOL, <https://www.law.cornell.edu/constitution/amendmentxiv>

<sup>17</sup> COHEN, J., REIMERS, D.D., *A legal history of the rights of immigrant aliens in the United States under the Fourteenth Amendment to the Constitution, 1870 to the present*, ProQuest Dissertations and Theses 1991.

<sup>18</sup> DANIELS, R., *Guarding the golden door*, cit.

<sup>19</sup> YUNG, J., CHANG, G. H., LAI, H. M., *Chinese American Voices: From the Gold Rush to the Present*, Berkeley 2006.



In 1868 the United States ratified with China the treaty of Burlingame-Seward, the first genuinely equal treaty signed by the Asian country with a western power since the Opium War. The Treaty, which guaranteed preferential lanes in the USA trade for China and sanctioned the mutual advantage of migration in their respective countries, did not state anything about the naturalization. Burlingame was a keen supporter of the idea that China should be considered as a normal State, so that he never used exotic words to depict it, and strongly fought against anti-Chinese legislation. Notwithstanding Burlingame's efforts, the agreement was revised in the eighties due to the growing anti-Chinese attitudes within the American people, which Americans politicians and industrialists could no longer ignore<sup>20</sup>.

In 1869, the construction of the Union-Central Pacific Railroad was completed, and consequently more than 10.000 Chinese railway manufacturers were put in the labour market. This fact unified unemployment issues with the ongoing debate about immigration and contributed to strengthen the arguments of the opponents. In this period the rhetoric of the yellow peril found its starting point. It is worth citing Henry George, who launched the alarm of a Chinese invasion on the first page of the New York Tribune, fearing that America could “*meet the doom of Babylon, Nineveh and Rome*”<sup>21</sup>.

In those years it also emerged also the problem of immigrants that had an employment contract. The trade unions, to defend the jobs of their workers, started fighting against workforce immigration arguing economic issues, but nonetheless they did not renounce to the racist catchwords. Even the president Ulysses Grant in the annual message of 1874 asserted that the majority of Chinese were involuntary contract labourers, and thus illegal immigrants. The following year the Congress

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<sup>20</sup> SCHRECKER, J., «“For the Equality of Men – For the Equality of Nations”: Anson Burlingame and China's First Embassy to the United States, 1868», in *Journal of American-East Asian Relations* 17.1 (2010), pp. 9-34.

<sup>21</sup> DANIELS, R., *Guarding the golden door*, cit.



passed the Page Act, ruling that the importation of Chinese, Japanese, and any other oriental worker without their consent would have been judged as a felony<sup>22</sup>.

The debate that spread out led to the ratification of a new agreement, the Sino-American Angell Treaty, whose preamble demonstrated the true intentions of the United States: “*The United States, because of the constantly increasing immigration of Chinese laborers to the territory of the United States and the embarrassments consequent upon such immigration now desires to negotiate a modification of the existing Treaties which shall not be in direct contravention to their spirit*”<sup>23</sup>. The United States, although continuing to protect the Chinese already present on the territory, forbade the entry of new workers, including the specialized ones. The Chinese Exclusion Act, namely the act approved on 6 May 1882 “*to execute certain treaty stipulations relating to Chinese*” was simply the transposition into law of the principles already set out by the Angell Treaty<sup>24</sup>.

After the approval of the Chinese Exclusion Act, the American media bolstered a strong Sinophobic campaign against Chinese immigrant. A recent study by Sang Hea Kil shows how the San Francisco Chronicle depicted the Chinese: “*coolie slave*”, “*cruel murderer*”, “*evil heathen*”, “*celestial invaders*”, “*uncivilized unassimilator*”, “*overwhelming deluge*”, and “*diseased filth*” were the most frequent attributes through which immigrants were described, at the opposite of the spirit of Burlingame<sup>25</sup>.

In the August of the same year, the Congress also launched the “Act to regulate immigration”, the main points of which were the imposition of a federal head tax, the extension of the excluded categories to lunatics and idiots, the

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<sup>22</sup> Ibid.

<sup>23</sup> ANGELL TREATY, <http://ywproject.x10.mx/Angell%20Treaty.pdf>

<sup>24</sup> CHINESE EXCLUSION ACT, <http://ywproject.x10.mx/Chinese%20Exclusion%20Act.pdf>

<sup>25</sup> KIL, S.H., «Fearing yellow, imagining white: media analysis of the Chinese Exclusion Act of 1882», in *Journal for the Study of Race, Nation and Culture* 18.6 (2012), pp. 663-677.



repatriations set in charge of the owners of the vessels, and the assignment of the responsibility for the execution of migration policies to the secretary of Treasury. An important aspect was also the introduction of LPC Clause, namely the exclusion, in addition to the above-mentioned categories, of individuals who would not be able to fend for themselves. The interpretation of this clause would become more and more extensive over time, including from the sick and not self-sufficient disabled, to poor people who would have weighed on public spending<sup>26</sup>. Therefore, 1882 was a decisive year for the legislation in this field and paved the way for the laws of subsequent years, like the Geary Act of May 1892 that delayed exclusion for another 10 years.

The next step was to regulate the entry of contract workers. In this context, one of the most active players in lobbying activities was the *Noble and Holy Order of Knights of Labor*. This trade union, founded in 1869, reached the peak of its activities between the seventies and the eighties, under the leadership of Grand Master Terence V. Powderley. The syndicate drew several rituals from Masons and brotherhoods and sent officials through the world in the attempt to decrease immigration and Americanise the world by exporting living standards and republican institutions<sup>27</sup>. In 1883, the syndicate organised a strike against low wages for glass workers and fought the importation of foreign workers from Belgium<sup>28</sup>. After this successful initiative, he did pressures to approve the Foran Act of 1885, which forbade the import of labour by companies and individuals, made possible the remittances to country of origin, and established a 1000\$ fine for each irregular worker. Exceptions were made for skilled workers not present within the natives, unskilled domestic servants, ministers of religions and academics to colleges and

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<sup>26</sup> DANIELS, R., *Guarding the golden door*, cit.

<sup>27</sup> PARFITT, S., «Brotherhood from a Distance: Americanization and the Internationalism of the Knights of Labor», in *Internationaal Instituut voor Sociale Geschiedenis* (2013), pp. 463-491.

<sup>28</sup> PHELAN, C., *Grand Master Workman: Terence Powderly and the Knights of Labor*, Westport 2000.



seminars. Finally, in 1891, the Congress adopted several administrative innovations: migration policy was put as an exclusive competence of the federal state, it was instituted the Bureau of immigration, it was built the reception station at Ellis Island, and it was created the Office of Superintendent of immigration<sup>29</sup>.

The Nineties experienced no major distinctions between the two parties: in the elections of 1892 both platforms called for repatriations for paupers, contract laborers, and criminals. In 1896, on the one hand the Republican Party declared: *“For the protection of the quality of our American citizenship and of the wages of our working-men against the fatal competition of low-priced labor we demand that the immigration laws be thoroughly enforced and so extended as to exclude from entrance to the United States those who can neither read nor write”*. On the other, the democrats accepted the protectionist stances: *“We hold that the most efficient way of protecting American labor is to prevent the importation of foreign pauper labor to compete with it in the home market”*<sup>30</sup>.

In May 1900 there was a large meeting of anti-Japanese forces at San Francisco and that event that made the Populist party put these issues in their program the following year. In May 1905, after a journalistic campaign during the Russian-Japanese war, the delegates of 67 organizations, mainly trade unions, formed the Asiatic Exclusion League. Finally, after the Spanish-American War, politicians and commentators started the famous debate whether the Constitution followed the flag or not. This is important for our analysis because it also refers to the citizens of the territories annexed during the war, i.e. Hawaii, Puerto Rico, and the Philippines. The Organic Act of 1900 admitted to American citizenship those which previously were citizens of Hawaii. However, since the population of those territories was mostly composed by Japanese and Chinese, the institution of the

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<sup>29</sup> DANIELS, R., *Guarding the golden door*, cit.

<sup>30</sup> HIGHAM, J., *Strangers in the land*, cit.



Federate State of Hawaii was performed only in 1959. After the Spanish-American War, the issues of immigration were mingled with the comparison between imperialism and anti-imperialism, assuming the racist tones that we observed in the previous diatribes<sup>31</sup>. At the beginning of the new century new administrative arrangements were implemented. In 1903, the Bureau of Immigration was transferred from the Treasury to the new Department of Commerce and Labor, and in 1906 it was enlarged to the bureau of the Immigration and Naturalization. This adoptive transfer was necessary because the issues of migration were more pertinent to work than to the Treasury, whose main task was to collect the various taxes and fines<sup>32</sup>.

### 3. FEDERAL CONTROL AND SELECION AND RESTRICTION OF GROUPS: 1917- 1924

The Immigration Act of 1917 finds its roots in previous episodes likewise the Chinese Exclusion Act of 1882. Toward the end of the Nineteenth Century, it spread out the debate about the so-called new immigrants against Jews, Polish, and Italians. Even if these nationalities were not new in the United States, they considered as opponents to most of the original immigrants like English, Germans, and Dutch. In *the American Commonwealth*, the well-known British liberal academic Lord Bryce condemned the alleged corruptibility and political incompetence of new migrants in the intellectual debate, and this bolstered again the debate on immigration. In 1894, some Harvard graduates founded the Immigration Restriction League. This group of lobbying supported the old immigrants by proposing a law that one the one hand decupled the quotas available to the northern European immigrants and on the other restricted the input of Polish and Italians<sup>33</sup>. Even if the original projects of the

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<sup>31</sup> Ibid.

<sup>32</sup> DANIELS, R., *Guarding the golden door*, cit.

<sup>33</sup> HIGHAM, J., *Strangers in the land*, cit.



Immigration Restriction League did not have a direct effect on the legislation of XIX century, their claims deeply influenced the quota system that lasted until 1965<sup>34</sup>.

Parallel to these discussions, in those years it was invented the concept of Literacy test, to prevent the entry into the country of ignorant people. The first promoter was Henry Cabot Lodge in 1891, and the battle for the test lasted for years to come, with three attempts vetoed in 1913, 1915 and 1917, with the approval of the latter in the last year, by overriding the veto of President Wilson. The character of Henry Cabot Lodge is extremely interesting because he belonged to the group of wealthy, Harvard schooled, and influent families known as the Boston Brahmins, which included among all the Adams and the Coolidge. The Boston Brahmins were fierce advocates of restrictionism and nativism, and their ideas influenced the national debate from the second half of XIX Century to the twenties<sup>35</sup>.

The Literacy test was supported by the 1911 report of the United States Immigration Commission – body established by the Law of 1907 – which recommended to reject people who were unable to read and write in some language, and unskilled workers not accompanied by their wives and children. Another important point of the report was a critic about the fact that the discretionality of choosing which could legally enter in the territory was often left to individual conjectures of personnel at the border and not regulated by federal criteria established by a Law<sup>36</sup>. To quote some opposing arguments, in 1913 Taft spoke “*denouncing the literacy test as a radical provision, [...] based upon a fallacy in undertaking to apply a test which is not calculated to reach the true and to find relief from a danger – which really does not exist*”<sup>37</sup>. Organized labour warmly supported

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<sup>34</sup> JONES, K., *American Nativism and Exclusion: the Rise and Fall of the Immigration Restriction League, 1894–1921*, Washington, D.C 2013.

<sup>35</sup> MILLER SOLOMON, B., *Ancestors and Immigrants*, cit.

<sup>36</sup> DANIELS, R., *Guarding the golden door*, cit.

<sup>37</sup> TAFT, W.H., <https://cdnc.ucr.edu/cgi-bin/cdnc?a=d&d=SU19130215.2.11&e=-----en--20--1--txt-txIN-----1>



the bill, while several organizations, particularly Jewish societies, recommended its veto. The motivation of the presidential veto of Wilson of 1915 was the following:

*“It is with unaffected regret that I find myself constrained by clear conviction to return this bill. [...] In this bill it is proposed to turn away from tests of character and of quality and impose tests which exclude and restrict; for the new tests here embodied are not tests of quality or of character or of personal fitness, but tests of opportunity. Those who come seeking opportunity are not to be admitted unless they have already had one of the chiefs of the opportunities they seek, the opportunity of education. The object of such provisions is restriction, not selection”<sup>38</sup>.*

The provisions of the Immigration Act 1917 covered many areas and instituted the first general restriction of American legislation on the matter. The law enlarged the excluded classes in order to include

*“persons of constitutional psychopathic inferiority; persons with chronic alcoholism; vagrants; persons who have come in consequence of advertisements for laborers printed, published, or distributed in foreign country; contract laborers, [...] whether such offers or promises are true or false [...]; (and) stowaways, except that any such stowaway, if otherwise admissible, may be admitted in the discretion of the Secretary of Labor”<sup>39</sup>.*

Even anarchists were excluded, and were defined as

*“persons who believe in or advocate the overthrow by force or violence of the Government of the United States, or of all forms of law, or who disbelieve in or are opposed to organized government, or who advocate the assassination of public officials, or who advocate or teach the unlawful destruction of property; persons who are members of or affiliated with any organization entertaining and teaching disbelief in or opposition to organized government, or who advocate or teach the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or who advocate or teach the unlawful destruction of property”<sup>40</sup>.*

<sup>38</sup> WILSON, W., <https://www.presidency.ucsb.edu/node/206546>

<sup>39</sup> GARIS, R.L., *Immigration restriction*, cit.

<sup>40</sup> Ibid.



It was also inserted the LPC Clause, reaffirming the consolidated interpretation, which blocked the access to

*“Persons [not only women and girls as in 1907 Act] coming into the United States for the purpose of prostitution or for any other immoral purpose, [...] persons afflicted with tuberculosis in any form, [...] and polygamists or persons who practice polygamy or believe in or advocate the practice of polygamy”<sup>41</sup>.*

Finally, the so-called Latitude and Longitude Clause, which excluded people coming from India, Siam, Indochina, Afghanistan, parts of Russian Turkestan and Arabia on the continent of Asia, and New Guinea, Borneo, Sumatra and Java, as well as many lesser islands. Chinese were already excluded by the Chinese Exclusion Law, while the Japanese were exempted, until 1924, under the 1907 Gentlemen's Agreement<sup>42</sup>. But the most important provision was the one concerning the literacy test, which excluded people who weren't able to read when examined. This measure was a slight instrument, if compared to the 1891 proposal of Henry Cabot Lodge, which posed as requirements both reading and writing; however, it was important because it put into law the principle of personal skills. The law stated that

*“for the purpose of ascertaining whether aliens can read, the immigrant inspectors shall be furnished with slips of uniform size, prepared under the direction of the Secretary of Labor, each containing not less than thirty nor more than forty words in ordinary use, printed in plainly legible type in some one of the various languages or dialects of immigrants. Each alien may designate the particular language or dialect in which he desires the examination to be made and shall be required to read the words printed on the slip in such language or dialect”<sup>43</sup>.*

For many commentators the test seemed too simple since, for example, in 1922 only 0.53% of immigrants was rejected and in 1923 also less than 0.5%. The

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<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.



important matter is that this provision didn't consider the knowledge of English as a requisite to enter<sup>44</sup>.

The years of the First World War saw the Congress aligned to nationalistic positions, in particular after the outbreak of the Bolshevik Revolution in Russia and the entrance in war of the United States. After the return of the troops in the country, the United States found themselves faced with a high rate of unemployment, the 12% of the workforce, who paved the way to the Act of 1921, that posed a numerical cap for the national shares maximum value. As a matter of fact, post-war immigration – which in 1920 brought in the United States more than 800,000 immigrants in search of a better life – was an emergency that would have lasted until the stabilization assured by the legislation of 1924. The law of 1921, being a law of emergency, didn't replace any previous measures. The first part stated that “*the number of aliens of any nationality who may be admitted under the immigration laws to the United States in any fiscal year shall be limited to 3 per centum of the number of foreign-born persons of such nationality resident in the United States as determined by the United States census of 1910*”<sup>45</sup>. It was chosen to use the census of 1910 in order not to take into account the war immigrants who entered in an emergency situation. As we can see also in previous laws, some professional categories, such as university professors and ministers of religions, were excluded by these quotas. The national quotas also included the institutions administered at international level after the war, i.e. the free city of Danzig and the free state of Fiume. In 1921 in fact, on 356,995 places available, only 243,953 immigrants entered, i.e. 68.3% of the shares<sup>46</sup>.

#### 4. THE LAW OF 1924 AND THE TRIBAL TWENTIES

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<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.



In 1923, during the first annual message to the Congress, President Coolidge, who succeeded to Harding after his death, told:

*“American institutions rest solely on good citizenship. They were created by people who had a background of self-government. New arrivals should be limited to our capacity to absorb them into the ranks of good citizenship. America must be kept American. For this purpose, it is necessary to continue a policy of restricted immigration. It would be well to make such immigration of a selective nature with some inspection at the source and based either on a prior census or upon the record of naturalization. Either method would insure the admission of those with the largest capacity and best intention of becoming citizens. I am convinced that our present economic and social conditions warrant a limitation of those to be admitted. We should find additional safety in a law requiring the immediate registration of all aliens. Those who do not want to be partakers of the ill American spirit ought not to settle in America”<sup>47</sup>.*

The new law introduced a new definition: instead of referring to aliens, the used term was immigrants. While aliens were a well-defined category, immigrants were a residual category, namely all those who came in the USA except the ones with roles established by law. Then immigrants were distinguished whether they were part or not of a share. For example, the above-mentioned academics and ministers of religions were not included in the quotas. Along with the introduction of quotas, the law introduced the concept of preference: for example 50% of a quota was intended to

*“the unmarried child under 21 years of age, the father, the mother, the husband, or the wife, of a citizen of the United States who is 21 years of age or over, and to a quota immigrant who is skilled in agriculture, and his wife, and his dependent children under the age of 16 years, if accompanying or following to join him”<sup>48</sup>.*

The theme of the preferences of quotas will have considerable repercussions in the future, because many subsequent acts will aim to change them to give greater or lesser priority to certain groups on the basis of both the needs of the country and

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<sup>47</sup> COLIDGE, C., <https://www.presidency.ucsb.edu/node/206712>

<sup>48</sup> GARIS, R. L., *Immigration restriction*, cit.



the conquest of the electorate. The author of this law was the Republican congressman Albert Johnson, the head of the Eugenics Research Association. Even if the character of Johnson may result, at a first glance, similar to nativists like Cabot Lodge, a recent study by Allerfeldt shows that he was an expert negotiator well aware of both the interests of pro-immigration lobbies and the contradictions and cleavages within the anti-immigration pressure groups. Johnson was an “*obsessive advocate of restriction*” whose strategy was to unveil pro-immigrants’ interests to have cheaper workforce, as it happened with Elbert Gary of US Steel, and to make compromises to pass restrictionist legislation<sup>49</sup>.

The law of 1924 was imposed in the years to come and the attitude of the USA toward immigrants remained unchanged up to the second world war. The twenties were defined as Tribal by John Higham, because in that period nativism played a prominent role in American politics<sup>50</sup>. On the one hand, the economic crisis strengthened anti-immigration sentiment, on the other it made less attractive the country, especially for immigrants of European origin, and from 1932 to 1935 the migration balance to the United States was even negative. Under Hoover presidency there occurred a new interpretation of LPC clause. The new meaning was that “*many consuls were able to require immigrants to have either substantial assets in their possession or a sponsor in the United States who would file an affidavit attesting the willingness to support the immigrant if necessary and an ability to do so*”<sup>51</sup>. This new interpretation was born in order to hinder unpopular categories such as Mexicans but, on pressure of restrictionists as Johnson, it was soon extended to all geographical origins. Moreover, the cuts to the production of the agricultural sector due to the political choices of Roosevelt in the Agricultural Adjustment Act,

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<sup>49</sup> ALLERFELDT, K., «And We Got Here First: Albert Johnson, National Origins and Self-Interest in the Immigration Debate of the 1920s», in *Journal of Contemporary History* 45.1 (2010), pp. 7-26.

<sup>50</sup> HIGHAM, J., *Strangers in the land*, cit.

<sup>51</sup> DANIELS, R., *Guarding the golden door*, cit.



discouraged Mexicans to remain in the country, and therefore it occurred an important phenomenon of emigration from the United States to the country of origin. Roosevelt thus continued the restrictionist policies of Republican administrations, and Daniels rightly affirmed that there had not been a New Deal for immigration, despite the sympathies of Roosevelt's Secretary of Labor Perkins<sup>52</sup>. There was ambivalence also in case of Nazi crimes of the Shoah, insofar as the American presidency gave much discretionality to the consuls despite being well aware of the activities pursued by the Germans to the detriment of the Jews. One of the American consuls in Germany, Raymond Geist, became famous because he visited directly concentration camps to grant visas to the Jews, but his action was not the result of a political strategy from the American government, but just his own sympathetic decision. Moreover, this commitment was conducted without touching the quota system, which remained intact until the second world war<sup>53</sup>.

## 5. FROM THE SECOND WORLD WAR TO 1965: THE TRIUMPH OF FOREIGN POLICY

Since the outbreak of second world war, the United States began to assume the role of defenders of the free world. The first major step was the repeal of the Neutrality Acts of 1936 with the Cash and Carry Law of 1939, followed by the more famous Lend-Lease Act of 1941. The USA became thus the arsenal of democracies, and thanks to the war effort they managed to absorb unemployment and trigger an impressive economic growth. However, in the years of the conflict, immigration remained low<sup>54</sup>.

In 1940 the Immigration and Naturalization Service passed from the Department of Labor to the Department of Justice, which meant a greater importance

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<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> TESTI, A., *Il secolo degli Stati Uniti*, Bologna 2014.



given to prosecution rather than to security. In the same year, consuls were allowed to grant visas to refugees who had reached places such as Portugal and China, and their number was counted beneath the share of Germany, which has not been used a lot since the outbreak of the war. This administrative measure was the first signal that put into question the system of quotas, which had been dominating uncontested for the preceding twenty years<sup>55</sup>. In December 1941, after the surprise attack against the base of Pearl Harbor, some proclamations of the presidency declared enemies the non-citizen Italian, German and Japanese resident aliens, and consequently all these people had to obtain new identification certificates to carry with them. In addition, more than 120,000 Japanese were imprisoned under the control of the War Relocation Authority. The causes of this decisions and the reasons why Italians and Germans were not imprisoned in concentration camps are accounted by Daniels in another work<sup>56</sup>. Three years after the issue of visas, in 1943 the Citizens Committee to Repeal Chinese Exclusion and Place Immigration on a Quota Basis began an intense operation of lobbying, which in December led to the repeal of the Chinese Exclusion Act of 1882<sup>57</sup>. One of the reasons was that a change of attitude toward the Chinese ally would have contributed to the good progress of the war, and this fact was also advocated by Chinese to obtain social recognition<sup>58</sup>. The requests were not excessive because it consisted only in eliminating discriminatory laws and placing the Chinese immigrants into a quota system similar to that of other countries. The numbers granted would therefore have been very few, because the calculation was still based on the existing population, which in the case of China was very low. Whereas this law specifically did not seem to be in contradiction with the system of quotas, it was the denial of the measure that in 1882 distinguished immigrants on the

<sup>55</sup> DANIELS, R., *Guarding the golden door*, cit.

<sup>56</sup> ID., *Concentration Camps U.S.A.: Japanese Americans and World War II*, New York 1971.

<sup>57</sup> MA, X., «The Sino-American Alliance During World War II and the Lifting of the Chinese Exclusion Acts», in *American Studies International* 38.2 (2000), pp. 39-61.

<sup>58</sup> SONG, J., «Fighting for Chinese American Identity», in *New York History* 83.4 (2002), pp. 385-403.



basis of the country of origin, i.e. the basic principle on which the subsequent legislation was built. It also paved the way for future norms which caused a significant rise of Chinese immigration<sup>59</sup>. Anyway, the United States continued to deny access to the other inhabitants of South-eastern Asia.

After the end of World War II and the beginning of the Cold War, the United States became the hegemonic power of the Western bloc and thus the issue of migration policy was subordinated to foreign affairs. However, the traditional players inside the country, such as the trade unions, never ceased to act to change policies. For example, in 1946 hearings, the representatives of the CIO asked for more liberalization in order to avoid national isolationism, while those of the AFL asked for an increase of the working age, because the entire American labour force was totally employed by the military production, and then by the post-war economic boom (which meant also an increase in the social protection of workers)<sup>60</sup>. In 1950 it was published a study about immigration, conducted by scholars linked with the restrictionist leader Patrick McCarran. This report, despite asking the adherence to the traditional system of quotas, was radically different from the restrictionist reports commissioned at the beginning of the century, because it rejected the openly racist theories which were typical of nativism, as they were unrepresentable after the defeat of Nazism and the revelation of its crimes to the international public. The debate on quotas was also extended to the American Legion of war veterans and the nativist American Coalition, who were opposed to the weakening of this system and to the Jewish associations who criticized its nature. The liberals demanded the abandonment of national quotas, and the U.S. Displaced Persons Commission asked for the admission of 300,000 refugees from communism out of the shares and to

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<sup>59</sup> DANIELS, R., «United States policy towards Asian immigrants: contemporary developments in historical perspective», in *International Journal* 48.2 (1993), pp. 310-34.

<sup>60</sup> DANIELS, R., *Guarding the golden door*, cit.



“*continue to be the arsenal of hope for the free world*”<sup>61</sup>. Despite the premises, the act of 1952 was characterized by the victory of nativist instances, as the Immigration and Nationality Act preserved the quota system. As regards the European countries, most of the places were entrusted to Great Britain, Germany and Ireland, and the system of preferences was changed, favouring those who had skills specifically required by the labour market, to relatives of citizens and to resident aliens. As regards Asians, it was inserted the category of Asia-Pacific Triangle, having 2,000 shares available, and the obstacle to their naturalization was eliminated. The only immigrants who could enter without quotas were those coming from the western hemisphere, and wives and children of American citizens. The law however inserted the citizens of all European colonies, including those of the new world, beneath the share of the home country. It also incorporated the Wetback Bill of the previous year, making it easier to deport irregular immigrants, which were mainly coming from the Mexican border. Finally, although it was granted to citizens of the former totalitarian states the access into the country if they proved to having been opponents, intellectuals considered subversive were forbidden to enter the country<sup>62</sup>. The President Truman posed his veto, arguing that

*“The basis of the quota system was false and unworthy in 1924. It is even worse now. At the present time, this quota system keeps out the very people we want to bring in. It is incredible to me that, in this year of 1952, we should again be enacting into law such a slur on the patriotism, the capacity, and the decency of a large part of our citizenry. Our immigration policy is important [...] to the conduct of our foreign relations and to our responsibilities of moral leadership in the struggle for world peace”*<sup>63</sup>.

The veto however was overridden.

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<sup>61</sup> Ibid.

<sup>62</sup> BENNET, M. T., «The Immigration and Nationality (McCarran-Walter) Act of 1952, as Amended to 1965», in *The ANNALS of the American Academy of Political and Social Science* 367.1 (1966), pp. 127-136.

<sup>63</sup> TRUMAN, H., <https://www.presidency.ucsb.edu/node/231060>



The Sixties, that are the final years of my brief overview, saw the end of the system of national quotas. During the general elections of 1960 both parties stood off that paradigm which had been dominating the migration policies for more than half a century. The republicans resumed the idea of immigration as an opportunity of economic growth, while the democrats attacked its founding values, which were seen as contradictory to the founding principles of the United States. The legislative system also appeared increasingly obsolete because it was referred to the dated census of 1920 for the calculation of quotas, which became inappropriate because of the changes in population that occurred especially after the Second World War<sup>64</sup>. The year 1965 was crucial for the US legislation, because it saw the approval of both the Voting Rights Act and the act of Medicare/Medicaid in addition to the Immigration Act<sup>65</sup>. The immigration law of 1965 abolished the system of national quotas, but not the system of quotas in general. In effect, it posed the annual numerical cap of 170,000 people from the eastern hemisphere and 120,000 from the western. A matter of continuity with the previous acts was the right of entrance granted for close relatives of American citizens outside of quotas, while, as a novelty, it was guaranteed access to a larger number of refugees. The ideological and moral test, the requirements of physical and mental health, and the LPC clause remained. In that period the immigrants from Western Europe decreased, because the old continent experienced the so-called economic boom and started the process of integration of the national states into the European Economic Community, and therefore native Europeans found more opportunities in the old continent. The Japanese also preferred to remain in their country, because the reconstruction under the American presence and the absence of military expenses brought wellness despite the destruction of the Second World War<sup>66</sup>. The law of 1965 was the last

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<sup>64</sup> DANIELS, R., *Guarding the golden door*, cit.

<sup>65</sup> TESTI, A., *Il secolo degli Stati Uniti*, cit.

<sup>66</sup> Ibid.



great measure launched during the period of the Cold War, thus the United States maintained constant their attitude during the bilateral conflict against the Soviet Union.

## CONCLUSIONS

The debate and opposition to immigration and naturalization is due to three groups of variables: internal socio-cultural issues, internal economic issues, and international-strategic issues. In turn, internal socio-cultural issues consist of both several elements that shape progressively the various laws and different actors who take part in their definition from time to time. The first element is the religious one, which was the most relevant for the first period of my analysis. American citizens perceived Catholics and Jews as an external threat because they feared that their customs violated both the American values and the principle of sovereignty of the state. After the religious question, the first to appear was that of poverty, because poor immigrants led to degradation in American urban centres. As we have seen, in order to limit the entrance of the poor, legislators introduced various gimmicks, from the LPC clauses to the literacy test. In particular, the literacy test is interesting because it was thought for both the migration issue (1891-1917) and the electoral one (in the Twenties), with similar targets to exclude. Then, nativism made nationalist stances rise, which encompassed all the previous aspects: in the nationalist Nineties, as labelled by John Higham, the Republican Party became the paladin of restrictionism, Cabot Lodge started his struggles, and the Immigration Restriction League was founded. The Tribal Twenties, which were characterised by a triumphant nationalism, saw the approval of the most important restrictionist laws, an increase in racism and the activities of Ku Klux Klan, and the establishment of the Johnson's Eugenics Research Association. Turning to economic issues, the main players in the business controversy were the trade unions, which were concerned by



problems related to employment and level of wages for existing native workers. As for nativist associations, their main strategy to influence the political process was an intense activity of lobbying. The third component explaining migratory legislation is international politics. As the history of US foreign policy shows, apart from the years of the Hispano-American War and the WWI, the US chose to stop its isolation from global affairs only from the Second World War, when they claimed to be the defenders of the free world. In those years it was established the important principle of dependence of immigration issues on foreign policy, which reduced the relevance of internal issues in the definition of legislation.

This work also shows that immigration and naturalisation do not constitute a fixed cleavage to define the positioning of the two parties. As a matter of fact, immigration did not cause the polarization of opposing positions between Republicans and Democrats: as previously seen, on several occasions political platforms, albeit starting from different values, built electoral programs on immigration that could be translated into similar policies, and their positions were determined both by the action of the associations and by economic and international contingencies. And yet, often, the personality of charismatic presidents opposed the process of defining the policies by resorting to the presidential veto instrument in the name of the founding principles of the United States against policies which reflected the will of some major sectors of associative civil society and the Congress.

The paper shows that the history of US immigration laws is complex and depends on several variables. I tried to sum up the main contributions to the topic to allow readers to have a complete overview on such a wide issue.