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De-Romanticizing Our Immigrant Past: Why Claiming “My Family Came Legally” Is Often a Myth

Many people assume that their family immigrated to the U.S. legally, or did it “the right way.” In most cases, this statement does not reflect the fact that the U.S. immigration system was very different when their families arrived, and that their families might not have been allowed to enter had today’s laws been in effect. In some cases, claiming that a family came “legally” is simply inaccurate—undocumented immigration has been a reality for generations.

Whether one immigrated “legally” or “illegally” depends on the laws in effect at the time. When many families arrived in the U.S., there were no numerical limitations on immigration, no requirements to have an existing family or employment relationship with someone in the U.S., and no requirement to obtain a visa prior to arriving. As numerical limitations were instituted and certain immigrants were restricted from entering the U.S., illegal immigration increased. The definition of who was “legal” and who was “illegal” changed with the evolution of immigration laws.

Many of our ancestors would not have qualified under today’s immigration laws. [Today’s requirements](#) that potential immigrants have close family ties to qualified U.S. citizens or permanent residents, or have employment offers in particular fields, would have effectively restricted many of our families from coming legally to the U.S.

Until the late 19th century, there was very little federal regulation of immigration—there were virtually no laws to break. The new nation needed workers, and immigration was “encouraged and virtually unfettered.”¹ There was no border surveillance to allow only those with proper documents to enter the U.S. Potential immigrants did not have to obtain visas at U.S. consulates before entering the country. Rather, immigrants would simply arrive at ports of entry (such as Ellis Island and other seaports), be inspected, and be allowed in if they didn’t fall into any of the excluded categories.

Before the 20th century, there was virtually no bureaucracy responsible for enforcing immigration laws. The U.S.’s land borders were largely unguarded. While inspectors at ports of arrival (usually port collectors) could deny admission to persons excludable under the law, immigrants could easily evade inspection. People in the U.S. illegally were unlikely to be caught or deported since very little money was appropriated for immigration enforcement and deportation. In 1882 Congress passed the first general immigration law, which created the first immigration bureaucracy, supervised by the Secretary of the Treasury. In 1891, as immigration increased, Congress established a Bureau of Immigration in the Treasury Department. A 1924 law finally set up the first “consular control system,” which required visas obtained abroad from a U.S. consulate before admission. The northern and southern borders were ambiguous, subject to change, and

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unguarded. The Border Patrol was not established until 1924, when restrictive laws led to large numbers of unauthorized immigrants entering the U.S.

Prior to the 1920s, there were no numerical limitations on immigration to the U.S., but certain persons were banned from entering. The first “illegal” immigrants were people, like the Chinese, who were banned from entering the U.S. The Chinese Exclusion Act passed in 1882. Over the years, immigration laws were passed that restricted certain categories of persons from immigrating, but no numerical limitations or quotas existed. Those persons barred from immigrating included Asians (except Japanese and Filipinos), prostitutes, paupers, polygamists, persons with “dangerous and loathsome contagious disease,” persons likely to become a public charge, anarchists and radicals, the “feeble-minded” and “insane,” and the illiterate. The vast majority of people who arrived at a port of entry were allowed to enter. Of course, some people lied about their health and political beliefs and entered “illegally.” The Immigration Service excluded only 1 percent of the 25 million immigrants from Europe who arrived at Ellis Island between 1880 and World War I.²

The first numerical caps on immigration and limitations on Europeans were not established until the 1920s – after the great wave of immigration to the U.S. The first permanent numerical limitations on immigration were not established until the 1920s. The Quota Law of 1921 and the Immigration Act of 1924 created a quota system that was based on race and nationality and heavily favored Western European immigrants, while closing the door to “undesirables.” Natives of Western Hemisphere countries were not subject to the quotas (but head taxes and literacy tests kept many from obtaining visas). The law also established the first preference system for spouses and children of U.S. citizens. For the first time, the 1924 law required immigrants to present medical certificates to the U.S. consul abroad and obtain a visa prior to arriving in the U.S.

Every restriction generated illegal immigration. The Asian exclusion laws resulted in an “illegal” Asian population. As laws were passed to keep out less desirable Eastern and Southern Europeans, immigrants from those countries—as well as others who could not pass literacy tests, pay the head tax, or enter through the quota system—began to enter illegally. In 1925, the Immigration Service reported 1.4 million immigrants living in the U.S. illegally.³ A June 17, 1923, *New York Times* article reported that W. H. Husband, commissioner general of immigration, had been trying for two years “to stem the flow of immigrants from central and southern Europe, Africa and Asia that has been leaking across the borders of Mexico and Canada and through the ports of the east and west coasts.” A September 16, 1927, *New York Times* article describes government plans for stepped-up Coast Guard patrols because thousands of Chinese, Japanese, Greeks, Russians, and Italians were landing in Cuba and then hiring smugglers to take them to the U.S. illegally.⁴ Many immigrants were also violating the laws of their home countries which required them to get permission to migrate, complete military service, or pay off debts prior to leaving.

Many European immigrants benefited from amnesties. Acknowledging the large numbers of illegal Europeans in the U.S., the government devised ways for them to remain in the U.S. legally. “Deserving” illegal European immigrants could benefit from various programs and legalize their status. The 1929 Registry Act allowed “honest law-abiding alien[s] who may be in the country under some merely technical irregularity” to register as permanent residents for a fee of \$20 if they could prove they had lived in the U.S. since 1921 and were of “good moral character.” Roughly 115,000 immigrants registered between 1930 and 1940—80% were European or Canadian. Between 1925 and 1965, 200,000 illegal Europeans legalized their status through the Registry Act, through “pre-examination”—a process that allowed them to leave the U.S. voluntarily and re-enter

legally with a visa (a “touch-back” program)—or through discretionary rules that allowed immigration officials to suspend deportations in “meritorious” cases. Approximately 73% of those benefitting from suspension of deportation were Europeans (mostly Germans and Italians).

Conclusion

The number of undocumented immigrants in the U.S. is at a historically high level, and reforming our nation’s broken immigration laws should be a priority. However, failing to acknowledge that undocumented immigrants have existed throughout U.S. history, and failing to deal with the causes underlying undocumented immigration is a mistake that perpetuates ineffective immigration policies.

¹ Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), p. 17.

² *Ibid.*, p. 18.

³ *Ibid.*, p. 61.

⁴ Brian Donohue, “Many Immigrants Were Legal Only Because There Were No Rules,” *The Star-Ledger*, July 22, 2007.