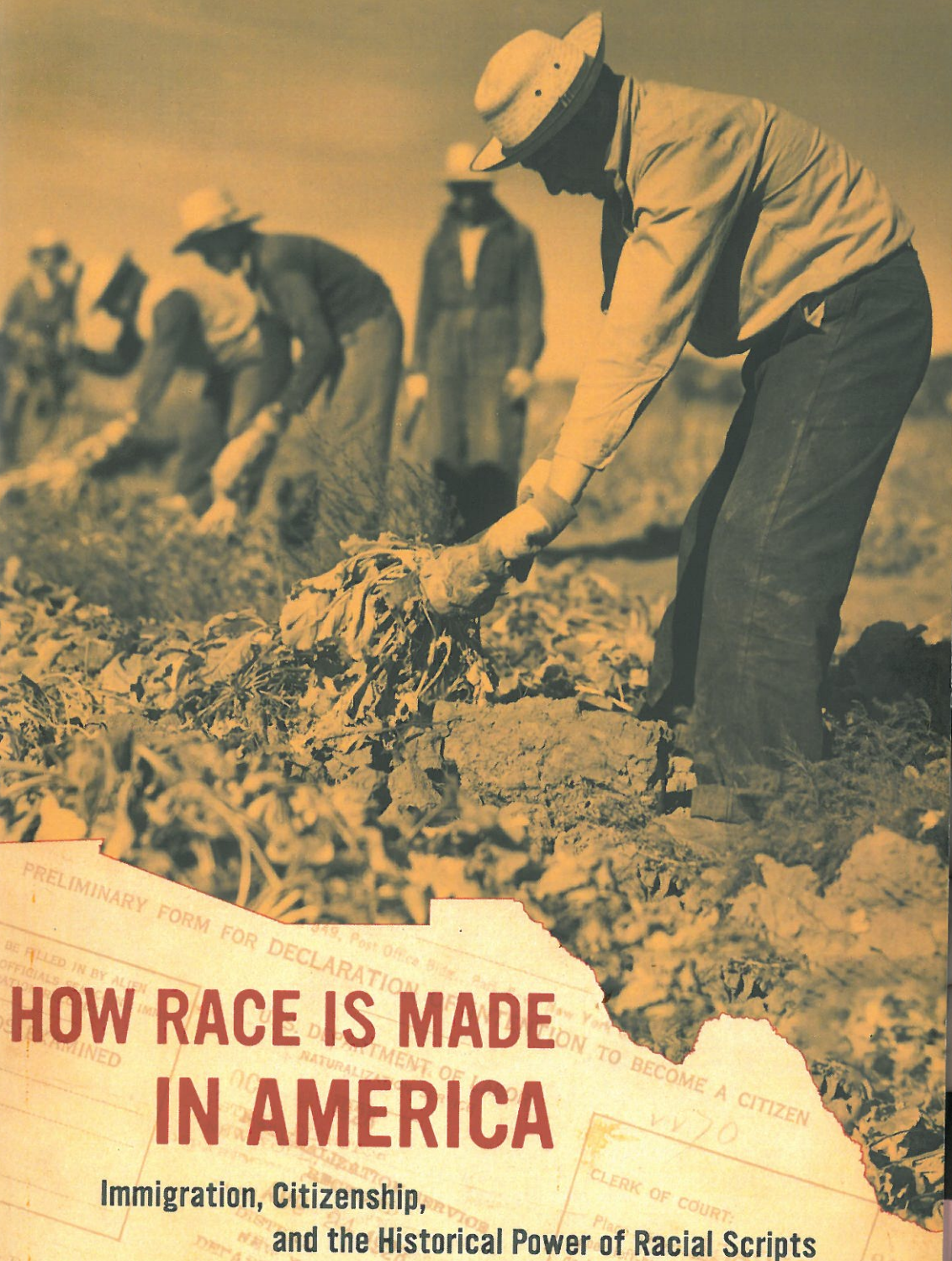


NATALIA MOLINA



# HOW RACE IS MADE IN AMERICA

Immigration, Citizenship,  
and the Historical Power of Racial Scripts

## CHAPTER 3

## Birthright Citizenship beyond Black and White

In 2011 the Arizona State Senate defeated a bill that challenged the Fourteenth Amendment's provision of automatic citizenship to children born in the United States whose parents are undocumented residents. The legislation was proposed a year after the passage of S.B. 1070, an Arizona law directed at Mexicans that made it a state crime to be undocumented.<sup>1</sup> Around the same time that the Arizona legislature was deciding the fate of its Mexican immigrant population, a separate issue around birthright emerged. A group of opponents of President Barack Obama, popularly known as "birthers," questioned his right to be president based on their erroneous belief that he is not a citizen of the United States. This theory had circulated before Obama was elected president, but it increased in its intensity after his election and became a key platform issue for Donald Trump as he tested his strength as a potential presidential candidate.<sup>2</sup>

These seemingly unrelated stories are very much connected, for the same question underlies both: Who is entitled to U.S. citizenship? In the case of immigrants, the effort to rescind their right to birthright citizenship clearly signals that they are not welcome members of U.S. society. In the case of President Obama, questioning his birthplace bypasses any need to discuss his policies or political record and instead challenges the legitimacy of his very capacity to lead the nation. Looking at these two movements together, we are also reminded that matters of birthright citizenship are not limited to one racialized group. In fact historically claims to birthright citizenship have encompassed and ideologically connected multiple racialized communities.

In this chapter I examine the long history of birthright citizenship in the nineteenth century leading up to *United States v. Wong Kim Ark* (1896), which clearly stated who is eligible for birthright citizenship in the United States. I begin by reviewing some key federal legislation (e.g., the 1790 Naturalization Act and the Fourteenth Amendment) and Supreme Court cases (e.g., *Dred Scott v. Sandford* [1857]) that culminated in *Wong Kim Ark* in order to establish the long and contested history of the definition of and criteria for birthright citizenship.

I then move forward in time and narrow the focus to look closely at two congressional bills designed to broaden the parameters of birthright citizenship. My discussion of this legislation, proposed in 1933, illustrates several points. In the wake of the passage of the 1924 Immigration Act, women, more than men, came to symbolize what was wrong with immigration policy. Chapters 1 and 2 demonstrated the ways lawmakers tried to limit Mexicans' access to U.S. citizenship primarily through changes in immigration and naturalization laws and practices. In this chapter we see yet another set of strategies for tightening the bounds of citizenship that directly targeted Mexicans alongside Asians: limiting American-born women's ability to transfer their citizenship to their children born abroad. A focus on women and their reproductive capabilities demonstrates that in addition to regulating and policing immigrants at the nation's borders and ports, both immigrants and their children would continue to be scrutinized even after they settled in the United States. This signaled a concern not just with immigrants but with their children, the second generation and beyond.

Thus hearings on birthright citizenship in 1933, a key moment after the passage of the 1924 Immigration Act, demonstrate that issues of birthright citizenship remained far from settled. Despite the 1868 ratification of the seemingly unambiguously worded Fourteenth Amendment; the curtailment of Asian immigration achieved through the passage of exclusion acts in 1882, 1892, and 1902; the increasingly draconian measures of the 1921, 1924, and 1929 immigration legislation; and the establishment of the U.S. Border Patrol in 1924, issues of who was fit to be a citizen continued to be hotly debated and contested.

My analysis relies on the concept of racial scripts. As we shall see, judges, legislators, and other invested parties consistently made policies around birthright citizenship in relation to other racialized groups, particularly African Americans, in the early debates on the subject, and they rehashed the

arguments every time a new immigrant group that was not accepted as white or black made claims to birthright citizenship. Legislators relied on racial scripts to help people understand where these groups fit in the country's racial hierarchy and thus whether or not they were deserving of citizenship. Thus the legislation and rulings regarding birthright citizenship connected immigrants and blacks and, taken in the aggregate, established the long history of racial exclusion. Finally, the concept of racial scripts allows us to see as intimately linked the Fourteenth Amendment, the *Wong Kim Ark* decision, and the Cable Act of 1922 (passed to protect women's citizenship if they married a foreigner), which are usually discussed separately as African American, Asian American, and women's history, respectively. Collectively these moments reinforced and sometimes recalibrated the U.S. racial hierarchy.

#### THE LONG HISTORY OF ACCESS TO U.S. CITIZENSHIP

U.S. citizenship can be attained by birth or by naturalization. Birthright citizenship is further subdivided into various categories, the broadest of which covers those who are born in the country (the legal term is *jus soli*, meaning "right of soil") and those who are born elsewhere but who have at least one parent who is a U.S. citizen (*jus sanguinis*, "right of blood"). The first federal law to address citizenship was the 1790 Naturalization Act ("an act to establish a uniform Rule of Naturalization"), which specified basic criteria—including that applicants must be free and white—and set forth a procedure for acquiring citizenship through naturalization:

Be it enacted . . . that any Alien being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof on application to any common law Court of record in any one of the States wherein he shall have resided for the term of one year at least, and making proof to the satisfaction of such Court that he is a person of good character, and taking the oath or affirmation prescribed by law to support the Constitution of the United States.<sup>3</sup>

Because subsequent laws governing citizenship developed separately and over time, eligibility criteria were sometimes unclear. This opened the door to legal challenges and judicial interpretations, making courts an important site for testing the parameters of citizenship. In the landmark case of *Dred*

*Scott v. Sandford* (1857), Dred Scott, a slave, sued the widow of his owner for his freedom. The owner had moved Scott across states, first to Illinois and then to the Wisconsin Territory, both of which prohibited slavery. Various precedents held that slaves who lived in free jurisdictions became free. The case made its way to the U.S. Supreme Court, where, in an infamous decision, Chief Justice Roger Taney, writing for the majority, concluded that blacks were not citizens and thus could not sue in federal court:

The words "people of the United States" and "citizens" are synonymous terms. . . . The question before us is, whether the class of persons described in the plea in abatement [people of African ancestry] compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.<sup>4</sup>

In short, the *Dred Scott* decision denied citizenship to all blacks, whether free or slave and whether born in the United States or elsewhere.

#### *Applying Relational Reasoning to the Legal Interpretation of Citizenship*

The *Dred Scott* case is accorded landmark status because it established blacks as unfit for citizenship. It is also, however, a striking example of the relational way race is understood in the United States. When we look closely at the decision, we see that the Court established blacks' unsuitability by comparing them to another racialized group, Native Americans. Justice Taney reminds the nation that the 1790 Naturalization Act "confines the right of becoming citizens 'to aliens being free white persons.'" He emphasizes that historically Native Americans were seen as "free and independent people" and "regarded and treated as foreign Governments," but they also were seen as "uncivilized" and "under subjection to the white race." This made it necessary "to regard them as in a state of pupilage, and to legislate to a certain extent over them and the territory they occup[ied]."<sup>5</sup> Because Taney categorizes Native Americans as foreigners, he argues that theoretically they could be naturalized—and then quickly adds that in their "untutored and savage

state, no one would have thought of admitting them as citizens in a civilized community": "No one supposed then that any Indian would ask for, or was capable of enjoying, the privileges of an American citizen, and the word white was not used with any particular reference to them."<sup>6</sup>

Thus it was not only blacks this case established as unfit for citizenship but Native Americans as well. Further, the decision equated citizenship, and in the process American identity, with whiteness. It also grouped Native Americans and blacks together in the category "nonwhite" and in opposition to whiteness and citizenship. The arguments in the *Dred Scott* ruling provide a striking example of how the connection between whiteness and citizenship, first stated formally in the 1790 Naturalization Act, was renewed and reinforced at other points in time and by institutions other than Congress in ways that expanded the category of nonwhite and in the process linked together groups racialized through disparate processes, such as imperialism, immigration, and slavery.

### *Legislating Citizenship*

Although over time Congress revised provisions of the 1790 Naturalization Act, the next major congressional effort to define citizenship did not occur until after the Civil War. The abolition of slavery in 1865 freed blacks but left their citizenship status ambiguous. Congress aimed to resolve this problem by passing the Civil Rights Act of 1866, which imparted citizenship to all people born in the country, except Native Americans, who were explicitly excluded. With the Supreme Court's *Dred Scott* ruling in mind, many legislators feared that if this new legislation were legally challenged, it eventually would be declared unconstitutional. To avoid that possibility, Congress proposed the Fourteenth Amendment, which declared any person born or naturalized in the United States to be a U.S. citizen, but once again excluding Native Americans.<sup>7</sup> Both the Senate and the House of Representatives passed the amendment in June 1866, and it was declared officially ratified by the states in July 1868.

The Fourteenth Amendment did not address naturalized citizenship. Existing naturalization provisions were aligned with the new amendment through the 1870 Naturalization Act. This law broadened eligibility specifically to include persons of "African descent" along with free whites, but excluded all other persons. (Legally Mexicans qualified as white and were thus

eligible for citizenship.) Therefore, while the new law granted blacks the right to naturalize, it did not establish equal access to citizenship for all.

### *Interpreting Congressional Intent*

The Fourteenth Amendment extended citizenship to anyone born in the United States. However, because the amendment had been proposed in order to formalize blacks' position in the nation, some interpreted birthright citizenship as extending to blacks only, meaning that no groups other than whites and blacks were eligible for citizenship. The Supreme Court justices themselves held this view, which they voiced in 1872, ruling in a set of disputes referred to collectively as the *Slaughterhouse* cases. These cases, involving New Orleans butchers, concerned alleged government interference in business owners' freedom to conduct their normal operations.<sup>8</sup> Though race was not an issue in the cases, in their discussion of rights generally the Supreme Court justices linked the Thirteenth, Fourteenth, and Fifteenth Amendments, arguing, "The main purpose of all the three last amendments was the freedom of the African race."<sup>9</sup> Thus almost immediately after the Fourteenth Amendment established birthright citizenship, the Supreme Court narrowed its application.

Twenty-five years later, in *United States v. Wong Kim Ark* (1898), the Supreme Court again addressed the question of birthright citizenship. Wong Kim Ark was born in San Francisco to Chinese parents. As an adult, he visited China, and upon his return to the United States, immigration officials denied him reentry, citing federal immigration laws that restricted Chinese immigration. Ark's presumed foreignness led officials to define his citizenship on the basis of his parents' nationality (*jus sanguinis*) rather than on the place of his own birth (*jus soli*).<sup>10</sup> When the case came before the Supreme Court, the majority concurred with Justice Horace Gray that Ark's citizenship derived from his place of birth. The Court based its decision on a literal interpretation of the Fourteenth Amendment's provision, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." Approaching the ruling in the *Wong Kim Ark* case from a comparative and relational perspective, however, provides important additional insight: it shows us that birthright citizenship for Asians was made possible through the widening of an opening—the Fourteenth Amendment—that had been created as a means of providing citizenship to a different nonwhite group (African Americans).

### LIMITING BIRTHRIGHT CITIZENSHIP THROUGH LEGISLATION

In the aftermath of the Immigration Act of 1924, and with the Depression raging, the issue of birthright citizenship was revisited yet again. In 1933 Congress debated two bills, H.R. 3673 and H.R. 77 (hereafter referred to as "the bills"). Both were drafted with the intention of allowing women with U.S. citizenship to transfer their citizenship to their children born abroad, thus potentially broadening the parameters of birthright citizenship.<sup>11</sup> At the time the bills were introduced, only men could transfer their citizenship to their children born abroad. Because the bills presumably would give men and women the same rights, they were heralded as a step forward in terms of gender equality.<sup>12</sup>

The bills built on the Cable Act of 1922. That law, heralded as a major victory for women's rights, ended the automatic loss of U.S. citizenship for women who married foreign nationals since 1907. Prior to passage of the Cable Act, women lost their U.S. citizenship if they married an immigrant because, under existing immigration law, they assumed the citizenship of their husband.<sup>13</sup> Yet while the Cable Act was characterized as a significant advance on behalf of gender equality, it reentrenched racial barriers for nonwhites, both immigrant and U.S.-born. Women who were U.S.-born citizens but of a nationality not eligible for naturalization still could not regain citizenship lost when they married non-U.S. citizens. For example, a Japanese American woman who lost her citizenship by marrying a foreign national (usually a Japanese man) surrendered her citizenship forever.<sup>14</sup>

The bills were designed "to remove the *last* trace of inequality in the nationality act,"<sup>15</sup> but dissenters questioned whether, in the process of recalibrating gender imbalances, racial gains would also (inadvertently) be made. They argued that to the extent the bills opened the door to renewed immigration, they would undermine the Immigration Act of 1924. That law not only drastically reduced immigration from southern and eastern Europe but also prohibited groups ineligible for naturalization from immigrating, specifically Chinese, Japanese, and other Asian groups. Just as restrictionists worked hard to reinforce the definitional walls of whiteness in the post-1924 period by looking for a test case to make Mexicans ineligible for citizenship, they also actively fought against *losing* any ground in this area. They approached the hearings on H.R. 3673 and H.R. 77 determined to protect the

victories they had accomplished. These bills, usually thought of as being about gender rights, therefore also must be viewed as inseparable from discussions of race, citizenship, and immigration.<sup>16</sup>

The bills' opponents were men who had come of age during a period that saw the passage of some of the first race-based immigration laws, including the 1882 Chinese Exclusion Act, the 1907–08 Gentleman's Agreement (which drastically reduced immigration from Japan), and the 1924 Immigration Act. They were aware of the Supreme Court's decisions in *Ozawa v. United States* (1922) and *United States v. Bhagat Singh Thind* (1923), which combined to declare Japanese and Asian Indians nonwhite and thus ineligible for citizenship. Yet when they read their morning newspaper or looked around as they rode street cars and dined out at restaurants, it seemed to them that neither legislation nor court cases had brought any significant change in the racial landscape. They still seemed to be surrounded by nonwhite immigrants. Worse, in their opinion, increasing numbers of nonwhites were second- (or more) generation residents who not only could claim citizenship but, more threateningly, were now poised to exercise the rights of citizenship.<sup>17</sup>

The 1930s saw the rise of the second generation. Chinese and Mexican populations that were once dominated by immigrants were increasingly composed of the second generation and beyond. Before 1900 the census did not even distinguish between Chinese and Japanese foreign- or native-born because most were foreign-born. By 1900, however, the Chinese American population reached 10 percent of the Chinese population in the United States. Arriving in later immigration waves, the Japanese American population barely reached 1.1 percent of the Japanese population in the United States in 1900. These U.S.-born Chinese and Japanese populations grew quickly. The U.S.-born Chinese population doubled by 1910 (20.9 percent) and doubled again by 1930 (41.2 percent). This trend would continue throughout the decade, and the Chinese American population would eclipse foreign-born Chinese by 1940, 51.9 to 48.1 percent. The Japanese American population followed a parallel trajectory. In 1910 they were 6.2 percent of the U.S. Japanese population, but by 1920, when the Alien Land Laws that were directed at them were revised, they had risen to 30.1 percent and in 1930 barely missed eclipsing their foreign-born compatriots at 49.2 percent. By 1940 the U.S.-born Japanese population would eclipse the U.S.-born Chinese population, at 62.7 percent.<sup>18</sup> Similarly the U.S.-born Mexican population increased from 34.79 percent in 1920 to 56.6 percent in 1930.<sup>19</sup>

While in some ways the second generation too may have been perceived as foreigners and asked where they were from ("No, where are you *really* from?"), there were also significant differences between being foreign-born and native-born. The second generation had rights; they joined unions, voted, owned property, and gave birth to citizens.<sup>20</sup> The 1940 census even began to keep track of the "potential voting population" by citizenship and race, underscoring that it was not just being a citizen but exerting the rights of citizenship that mattered.<sup>21</sup> Stricter immigration policies could not prevent any of this from happening. These were birthright citizens who did not slip into the country through a metaphorical hole in a wall, as nativist rhetoric espoused, and opponents of the bills wished to ensure that no more gained access to citizenship through a loophole in the law. For example, in response to deportation programs during the 1930s, coupled with tighter border-control practices, as historian George Sánchez (1993) has shown, Mexicans and Mexican Americans who remained in the United States turned to the U.S. government with their concerns about civil rights and basic services, such as in housing, education, and health care.

Though not to the same degree as Mexicans, Asians were also seen as taking the jobs of whites during the Depression. The *Glendale Times*, a local paper in Los Angeles County, ran a front-page article with pictures of white men pulling plows, with the headline "Unfair Competition Makes Slaves of Unemployed Men." The article argued that "in the land of the free and home of the brave," white men were reduced to this type of labor because Japanese farmers were allowed to farm the land and thus had forced white men to lower their standard of living. Residents of California wrote to President Roosevelt and the Immigration and Naturalization Service echoing these same sentiments. One woman from southern California argued that it was unfair to blame whites for not taking a job if it meant working alongside Asians, for "who would?" Another urged that Japanese should be deported because of the Depression and that, despite restrictive immigration laws, the Japanese population continued to "[increase] by birth [in] the Pacific States."<sup>22</sup>

The rise of second-generation immigrants was the backdrop against which the House of Representatives conducted its public hearings on the two new bills. Little wonder, then, that Mr. T. E. Skinner, speaking on behalf of the Junior Order United American Mechanics, a nativist organization vehemently opposed to immigration, testified, "We are strictly opposed to any measure whatsoever that lets down the bars of immigration."<sup>23</sup> Lt. Col. U. S. Grant

(no stated relation to President Ulysses S. Grant) argued that a child born abroad with U.S. citizenship rights could return to the United States and start a "line of immigration," producing a "collateral line of relatives" of "extra quota people."<sup>24</sup> Grant represented the American Coalition of Patriotic Societies; founded in 1924 by John Trevor, a key architect of the 1924 Immigration Act, the organization supported tight immigration laws. Grant asserted that the scenario he sketched was a likely one, given that "in the case of some races, the number of children seems to multiply very rapidly."<sup>25</sup> These comments herald the return of the same kind of scientific racialism that helped bring about passage of the 1924 Immigration Act.<sup>26</sup> Indeed the American Coalition of Patriotic Societies could boast of having the most prominent eugenicists of the day as officers, including V. S. McClatchy (honorary president), publisher of the *Sacramento Bee* and a high-ranking member of the Japanese Exclusion League of California; C. M. Goethe, a California eugenicist (honorary vice president); and, in New York City, Madison Grant (honorary vice president), who helped craft the 1924 Immigration Act and worked to pass antimiscegenation laws. These were men who consistently scanned the horizon for the next "new racial problem" and did not confine their discrimination to one racialized group.<sup>27</sup>

The dystopian scenarios Grant predicted were unlikely to occur if the proposed legislation passed. Both bills specified that parents had to have lived in the United States *prior* to the birth of the child born abroad in order for that child to be considered a U.S. citizen. One of the witnesses, Mrs. Burnita Matthews, an attorney representing the National Woman's Party, which fought for women's rights, took an empirical approach to the question of whether giving a woman the ability to transfer her U.S. citizenship to her children born abroad would lead to a significant increase in immigration. Using Department of Labor statistics on past immigration patterns, Matthews concluded that it would not.<sup>28</sup>

Judging from the scenarios presented during hearings, it was not just increased numbers of immigrants that raised concerns, but the *suitability* of the newcomers. Opponents were most fearful of particular types of immigrants, namely Asian (primarily Chinese or Japanese) and Mexican. One House representative argued that the proposed legislation increased "the probability of bringing in more of the Chinese and Japanese, and 'what have you,' from those nations over there."<sup>29</sup> Representative Martin Dies (D-Texas) made clear that it was not white American women transferring their citizenship to

their children that interested him. "Suppose a Hawaiian-Chinese American woman marries a Japanese," he began. "They move to Japan. A child is born. That child would be an American citizen."<sup>30</sup>

Ruth Taunton of the Business Women's Legislative Council, which sought to establish equal rights for women in the workplace, argued in favor of the bill in order to rectify gender and racial inequities. To illustrate the kind of injustice the bills would eradicate, she offered two contrasting hypothetical cases: a Chinese boy born in the United States but raised in China and a white American woman who taught in China and married a British subject while there. The former would have more rights to return to the country with his children than would the latter. "This white woman . . . who has returned to make her permanent home here, cannot bring her little white child," Taunton asserted. "This law discriminates against white American citizens in favor of yellow United States citizens," she continued, building to her chilling climax: "You are turning away a white child and letting in a yellow child."<sup>31</sup> Taunton's hypothetical example made clear that the women who supported this bill did so because they expected it would benefit white women who married not just any foreign nationals but white foreign nationals, and by extension, it would help their white children as well.

No immigrant groups were invited to give testimony at the hearings, but preserved in the historical record is evidence of at least one letter from the members of the Chinese YMCA in San Francisco protesting the proposed changes. They argued that the change proposed would do "away with present rights of men citizens of Chinese decent [sic] and discriminates against women citizens of Chinese decent [sic]."<sup>32</sup> It is worth noting that they defended the rights of both men and women, suggesting a certain level of gender equity in their agenda. Also, it stands to reason that such an organization would write to defend their rights as citizens. As historian Nayan Shah argues, the Chinese YMCA in San Francisco was a new type of organization, catering to second-generation Chinese Americans who sought to present themselves as modern, in part by cultivating a healthy lifestyle, so that they would more readily be recognized as citizens.<sup>33</sup>

One reason for the lack of common ground between proponents and opponents of the bills was the difference in their worldview. Opponents were mainly from the Pacific Coast and Texas, areas that received significant numbers of Mexican and Asian immigrants. The 1924 Immigration Act had not benefited these regions; it did not place quotas on immigration from

Mexico, and Asians were already a visible presence before the Act imposed a permanent ban on their entry. Representative Charles Kramer (D-California) was explicit about his interests in the debates over the bills: the protection of "the Pacific Border States." "I am particularly a watchdog to see that the foreign element, such as Mexicans, Japanese, and Chinese are not brought into the situation."<sup>34</sup> Texas Representative Dies also emphasized the role of regional racial contexts, arguing, "To a great extent this is a local situation. The States that are on the border, California and Texas, are faced with that danger of having to let in every child that is born of aliens . . . and is entitled to vote, and his children may go back and marry Mexicans."<sup>35</sup> Thus long after the Supreme Court's *Wong Kim Ark* decision and the enactment of various immigration restrictions, Asians continued to be viewed as a problem that needed to be contained. Restricting birthright citizenship also would offer another way to regulate the Mexican population within the country, along with introducing immigration quotas for Mexico and making Mexicans ineligible for naturalization.<sup>36</sup>

White Americans also expressed regional dissonance based on their own experiences.<sup>37</sup> In a letter to President Roosevelt, Mrs. Lillian Schroyer explained that she knew the East Coast mentality because she was an "Eastern woman," though she now resided in Glendale, a city in Los Angeles County. In her view, East Coast people did not "understand the menace the Japs are in California." She claimed that the Japanese did not pay taxes but sent their children to public schools, who then sat beside white children whose parents did pay taxes. It is unclear why Schroyer said that Japanese did not pay taxes. What is evident is that she viewed Japanese as undeserving of any government services, especially in the midst of what she referred to as "this awful depression," and that she viewed them as a threat in a host of ways, including because of their natural population growth and as a miscegenation threat.<sup>38</sup>

In contrast, some involved in the hearings who were from the East Coast apparently were unaware of the stakes of the debate. For instance, one of the members of the House Committee on Immigration and Naturalization, Representative Benjamin Focht (R-Pennsylvania) asked under what circumstances Chinese could become citizens in the first place, let alone possibly transfer citizenship to offspring. At minimum, Focht's question indicates that he was not familiar with the *Wong Kim Ark* ruling.<sup>39</sup> The fact that a man in his position was unaware that Chinese had a constitutional guarantee to birthright citizenship demonstrates how closely linked to whiteness (and blackness,

though to a lesser degree) citizenship was. His question also demonstrates how Chinese, and Asians generally, continued to be reinscribed as foreigners.

#### PRYING OPEN THE DOORS OF IMMIGRATION: BIRTHING CITIZENS

Previous to the 1924 Immigration Act, lawmakers worked to control immigration streams through measures such as immigration legislation, quotas, visas, and the establishment of the Border Patrol in 1924. By the 1930s it was not just immigrants that needed to be governed, but their children, who were U.S. citizens by birth though still perceived as not American enough.

##### *The Chinese*

In the hearings the Chinese were portrayed as a population ready to explode, undermining every immigration restriction act directed at them since the 1875 Page Act. Andrew Furuseth, president of the International Seamen's Union of America and a man who had the ear of prominent politicians, testified that he had seen cases on his ships in which children born in the United States to immigrant parents were used to pry open the doors of immigration for others: "This is the situation as we find it. A Chinese businessman comes here. He has his wife with him. He raises children here. Those children are sent back to China for education. . . . They marry in China. They are necessarily people of their environment and their associations. They are brought up in China and to every intent and purpose that can be conceived, they are Chinese. But one of those comes here. He is an American citizen, but cannot speak a word of English. He does not know more about America and its institutions than the man in the moon."<sup>40</sup>

Furuseth's scenario did not seem to have any independent reality. No one presented evidence, statistics, or even yellow journalism suggesting that such a situation was common or that anyone else was even concerned about a problem of this nature. Nor did the diegesis need to be factual; it resonated so clearly with past racial scripts of southern and eastern European immigrants flooding the country and outnumbering white Americans with their inferior "racial stock" that no one questioned its veracity.<sup>41</sup> Others' testimonies registered what birthright citizenship for Asians would mean more broadly. For example, in a brief presented at the hearings, the American Federation

of Labor described scenarios of prolific Asian families passing down U.S. citizenship "ad infinitum."<sup>42</sup>

Furuseth's fears seem motivated purely by racism, not economics or job competition. He and others saw the racial threat as so dire that they proposed making it more difficult for parents to transfer U.S. citizenship to their children. The bills stated that a child born outside of the United States was a U.S. citizen if his or her father or mother was a U.S. citizen. Furuseth proposed that the bills instead require U.S. citizenship of both father and mother: "The proposition that a man who was born here may transmit his citizenship through a woman that is not born here leaves the door open so that you can largely destroy your Chinese exclusion act."<sup>43</sup> His comments reflected a long-standing, overriding concern that the Chinese were an aberrant population that needed to be controlled.

Fears of a Chinese population explosion were a new aspect of a long-standing depiction of Chinese as sexually deviant. In the nineteenth century Chinese men were characterized as effeminate because of the kinds of work they engaged in, such as running laundries and being domestics. The fact that these men were the objects of widespread discrimination that left them with very few employment options was not taken into account. Chinese men were also singled out for living with other Chinese men ("bachelors"), a non-normative domestic arrangement. Chinese women were routinely depicted as amoral and as prostitutes and therefore a threat to morality.<sup>44</sup>

The 1933 bills tapped an existing racial script but did so in a distinctly new way to address a new and deeply threatening condition, namely the existence of a rising second generation of Asian citizens. Previously Asian "hordes" had been seen as an external threat, justifying the need to raise the immigration bar. In the 1930s, as Asians increasingly gained citizenship through birthright, they became viewed as an internal threat. Thus, these discussions contributed a new dimension to the "Asian as perpetual foreigner" concept and fears of yellow peril.<sup>45</sup>

Immigration opponents feared the potential political power of this new class of American citizens. Existing legislation limited immigration, but these laws had no impact on the U.S.-born children of immigrants who had become citizens. Citing the example of Los Angeles, Representative William Traeger (R-California) raised the specter of an electoral Asian sleeping giant. He warned that there were "over 1200 registered Chinese who [had] gained their citizenship since the immigration law of 1894 excluded them."

In addition, "there was something over 600 Japanese who registered to vote in the last election at Los Angeles County."<sup>46</sup> It is not clear whether by "gaining citizenship" Traeger was referring to Chinese born in Los Angeles, according them citizenship by birth, or whether he was referring to people who had gained their citizenship through other means, such as military service.<sup>47</sup> But the message was clear: even with highly restrictive immigration laws in place, undesirable immigrants, in this case Chinese and Japanese, remained a threat because they could impart the rights of citizenship to their U.S.-born children.

### *Mexican Women*

As the conversation shifted to racialized citizens (versus immigrants), a new target of nativism emerged: the women who bore those citizens.<sup>48</sup> Mexican women also became symbolic of what stood to be lost should women be allowed to transfer their citizenship. Throughout the late 1920s Mexican women became more central to depicting what was wrong with an open immigration policy with Mexico. Immigration restrictionists intensified their campaigns, identifying Mexican women's reproductive capacity as another reason to end immigration. They argued not only that Mexican women had too many children but also that both mothers and their offspring were likely to end up needing charity. Mexican women were seen as dependent on free birthing and medical services and reliant on charity to support their newly expanded families. The belief that Mexican women were unusually "fecund" and anxieties over the potential for "race suicide," the eclipsing of the white population, especially the middle and upper classes, by racialized groups, helped focus attention on birth rates during the 1930s.

Until the mid-1920s the growth of the Mexican population in the United States had been attributed mainly to immigration. But with the increase in the number of Mexican women arriving in the country, the Mexican family (as opposed to the single, sojourning Mexican male) became the favorite target of those who advocated immigration reform.<sup>49</sup> The representation of Mexican women at this time as excessive breeders signaled that not even deportation would be the solution most hoped it would be. Opponents of the bills would not be satisfied until racialized women were expelled from the nation, left without even the ability to transfer their citizenship to their children. "They bring their women, their children," warned C. M. Goethe, a California philanthropist, conservationist, and eugenics advocate, adding that

Mexicans were "a group that is most fecund."<sup>50</sup> Samuel Holmes, a Berkeley zoologist and eugenicist, echoed Goethe's contentions in an article in which he cited a survey from San Bernardino, California, that found "three out of every eight babies born were Mexican."<sup>51</sup> "The menial laborers of today produce the citizens of tomorrow," he warned in another article.<sup>52</sup> The shift in focus from immigration flows to birthrate confirms the role fears about "race suicide" played in fueling immigration reform efforts.

Representative Traeger, who was in his first month of office after serving for twenty-five years as deputy sheriff and then sheriff in Los Angeles, questioned "whether the ladies who [were] sponsoring this bill [had] studied the situation in California . . . since the depression." After noting that in the wake of the Depression, large numbers of Mexican nationals were repatriating or were being deported to Mexico, "as many as 12,000 . . . in one month," some accompanied by their U.S.-born children, Traeger explained the potential consequences of this reverse flow: "Suppose the female of the family remains in Mexico long enough to raise her own family. Then she is entitled to bring all of those back to the United States when they return."<sup>53</sup> His statement clearly dismissed the fact that U.S. citizens (the children) were being deported alongside the Mexican nationals (discussed further in chapter 5).

Traeger's decision to spotlight a woman in his scenario that conjured up images of a big family clearly signaled excess procreation as a particular transgression of nonwhite, Mexican women. He was not the first nor the last nativist to depict immigrant women in such a manner. This transgressive image of Mexican women was in keeping with past images of immigrant women as nonnormative. The first federal immigration act, the Page Law of 1875, which prohibited the entry of Chinese contract workers and Chinese prostitutes, relied on the assumption that all Chinese women wishing to immigrate to the United States were prostitutes.<sup>54</sup> In the 1910s, during the Progressive era, reformers, often women themselves, targeted immigrant women as in need of rehabilitation and pressured them to take language and cooking classes to assimilate into American culture, based on the belief that their own cultures were backward. Though altruism often undergirded these programs, programs that focused on training immigrant women how to be proper mothers pointed to their deviance from accepted gender roles.<sup>55</sup> Other programs and policies were far more nefarious. Laura Briggs demonstrates how birth control and sterilization were used to address issues of perceived overpopulation in the 1920s and 1930s in Puerto Rico.<sup>56</sup> In *Fit to Be*

*Citizens?* I discuss how, during the Depression, Mexican women and men found themselves caught in the crosshairs of state-sponsored sterilization programs, which, like the arguments set forth in the debates over the bills, deemed them unfit to produce citizens.<sup>57</sup> These racial scripts that circulated in the hearings and beyond were persuasive because they were not the first time they had been heard. It was precisely their derivative quality that made them familiar and readily acceptable to a nativist public.

Finally, the debate over the bills is a prime example of how dynamic racial scripts can be when viewed in a broader historical context. Racial scripts arising out of nativist fears contributed to the view that only some groups were fit to reproduce, effectively grouping Asians and Mexicans together as equivalent, unfit immigrant groups. In the twenty-first century Asians are stereotyped as "model minorities," while Mexican immigrants continue to be linked to images of deviant fertility and the culture of poverty.<sup>58</sup> Nevertheless despite Asians' more recent elevated status compared to Mexicans, they remain "perpetual foreigners." The fears over their access to citizenship that were aired during the 1933 congressional hearings are a historical antecedent to contemporary versions that continue to construct them as not quite American.

While a significant portion of the hearings was devoted to who should *not* gain birthright citizenship, Representative James Mead (D-New York) used the debate as an opportunity to argue for the inclusion of certain immigrants. Mead raised the point that under federal law, children whose parents were naturalized also became U.S. citizens when they came into adulthood, provided they were still living in the United States. He presented the case of a "well to do" German couple who were longtime residents of his district. They had adopted a German girl who was now fourteen and had attended American schools throughout her life. The couple had never told the girl that she was adopted, but they would have to do so soon because she would need to apply for naturalization. Could not adopted children gain the citizenship of their naturalized parents, Mead asked, just as the biological children of those parents could? Mead could see no objection to his request, "particularly if such a child was not of oriental birth."<sup>59</sup> The issue did not merit further consideration because the committee deemed cases of this type rare. Nonetheless Mead's framing of the issue exemplifies the gradual acceptance of European immigrants as white, while Asians and Mexicans continued to be viewed as dangerously foreign and how legislators attempted to codify such attitudes into law.<sup>60</sup>

#### ALIEN CITIZEN CHILDREN: THE PLIGHT OF BIRTHRIGHT CITIZENSHIP

Though the hearings fell under the purview of the House Committee on Immigration and Naturalization, many opponents of the bills viewed the matter as a problem of citizens, not foreigners. As noted earlier, a major concern of nativists at the time was how to contain the country's growing population of second-generation immigrants. Nativists recognized that a more compelling argument supporting their anti-immigrant agenda could be made by focusing on those that would give birth to yet another generation of unwanted, inassimilable immigrants. Infants and children might readily evoke the sympathy of some, but young adults who could vie for jobs were the future parents of generations to come, and thus convenient targets.

With the second generation an increasing presence, nativists needed to clearly establish that this group's place in the racial hierarchy was unchanged, despite their status as citizens. To accomplish this, they discussed segregation, among other strategies, as a means to reinforce the U.S. racial hierarchy. Such discussions complicated prevailing notions of segregation shaped by black-white understandings of race.

During this period Jim Crow practices separated blacks and whites in most public spaces, including schools, churches, dance halls, restaurants, restrooms, swimming pools, and water fountains.<sup>61</sup> These were not just the politics of a region holding on tightly to the remnants of slave society. The Supreme Court had endorsed what Justice Henry Billings Brown, writing for the majority, termed a "separate but equal" policy in deciding the 1896 *Plessy v. Ferguson* case. Emphasizing the impact of Jim Crow laws and segregation, W. E. B. Du Bois, the famous public intellectual, sociologist, and activist on behalf of the black community, declared "the problem of the twentieth century is the problem of the color-line."<sup>62</sup>

Jim Crow segregation was not limited only to blacks, nor was it restricted solely to the South; it drastically affected all people of color in the United States. California in particular was seen as a bastion of diversity and equality, especially compared to the Jim Crow South, yet it too developed as a racially segregated state through both *de facto* and *de jure* segregation. For example, racially restricted covenants were written into the deeds of new housing developments, preventing white homeowners from selling their property to blacks, Mexicans, and Asians.<sup>63</sup> Indeed, describing a visit to Los Angeles in

1913, Du Bois commented, "To be sure Los Angeles is not Paradise, much as the site of its lilies and roses might lead one at first to believe. The color line is there and sharply drawn."<sup>64</sup>

Opponents of the bills couched their concerns about an increase in racialized child citizens in terms of how they would handle segregation among children. Representative Kramer, using Los Angeles, his own congressional district, as a case study, stated, "We have Japs and Hawaiian boys and girls attending the public schools, sitting in the same school, at the same benches with American children. . . . We are obliged to educate those Japs because they are born here and they become American citizens."<sup>65</sup> Japanese children escaped some segregation owing to a school desegregation case dating back to 1906 in San Francisco.<sup>66</sup> Even so, many California public schools were segregated through both *de facto* and *de jure* practices. Following up on this point, Representative Kramer asked attorney and bill advocate Burnita Matthews, "How would you feel if you had a daughter, and she was sitting alongside Chinese and Japanese boys in school every day during her entire career from the time she entered kindergarten, and went through school with several Japanese and Chinese boys? How would you feel toward that situation if you were a resident . . . a property owner and a taxpayer of California? . . . Don't you feel that we are increasing the probability of bringing in more of the Chinese and Japanese, by reason of this bill?"<sup>67</sup> As Kramer's rhetoric indicates, opponents of the bills saw much at stake. In addition to fueling fears over miscegenation, passing the proposed legislation would mean an increase not in immigrants but in citizens.

The chairman of the committee, Samuel Dickstein of New York, argued that it was not granting citizenship that was the problem but the absence of Jim Crow outside of the South. "You in California have not provided for [segregation]; that is the trouble," he asserted.<sup>68</sup> Dickstein's comment points to how racial scripts could be employed by taking racial solutions that had already been established, in this case, Jim Crow segregation, and using them to manage and police new groups, in this case, Asians. Even with immigration acts and policies like the 1907–08 Gentleman's Agreement already in place, we find lawmakers discussing ways to restrict the rights of Asian immigrants and Asian Americans through segregation practices such as separate schools, and through legislation that structured inequality, such as the Alien Land Laws.

Citizens also wrote to their legislators and the INS to express their objection to the growing second generation of certain immigrants. In a letter to

Frances Perkins, the secretary of labor, who oversaw the INS, Herbert Klingensmith, a resident of Sutter County, located north of Sacramento, urged her against loosening any of the quotas against Japan and strengthening restrictions against Mexico. To support his claim, he presented a list of reasons that rested on stereotypes of Mexicans as criminals and charity seekers and Japanese as unfair competition against white farmers because wives worked alongside their husbands in the fields. As evidence of the negative effects of immigration, he enclosed a class photo from his local public school. In it sat three rows of children, likely in about the third grade, smiling at the camera, standing up straight or leaning against each other, as friends tend to do. About half of the children are light-skinned blonds and the other half are Asian and brown-skinned children. Klingensmith described the picture as "an example of the growing mongolian type that you can expect with any increase of this type of non-assimilating class of people." The fact that the Asian children stood alongside their white classmates suggests that it was not just the presence of Asians but their proximity to their blond counterparts that made Klingensmith consider not just immigration a threat, but settlement. In fact he suggested that the United States "consolidate and assimilate those we can and deport the rest." His fears and suggestions seemed to be in step with those of his representatives.<sup>69</sup>

It is no surprise people were so concerned with who had access to citizenship. Citizenship was not just an abstract concept but afforded people access to material resources. For example, concerns about the success of Japanese farmers and their increasing rates of landownership culminated in California's Alien Land Laws in 1913. The law prevented those not eligible for naturalization (code for Japanese) from owning or leasing land for more than three years, effectively cutting Japanese farmers off at the knees because they were seen as economic competition for white farmers. These laws not only impinged on Japanese farmers' economic opportunities but also had the effect of segregating where they could live and work. Japanese were able to circumvent these laws through various means, including putting the land in trust for their U.S.-born children. Opponents of the Japanese worked to close these loopholes, and in 1920 Californians passed an initiative to strengthen the Alien Land Law. The new law was much more detailed, making it far more difficult for Japanese immigrants to circumvent the law by placing their land in the name of their U.S.-born children, though Japanese Americans were still able to own land.<sup>70</sup> Thus at issue was not only the psychological

effects of racial integration should more Japanese citizens gain citizenship but what materials resources they might gain.

## CONCLUSION

After delaying the bills for a year, the Senate eventually passed them in 1934. The event is now remembered as a breakthrough in the fight for equality for women; the memory of racial exclusion central to the debates has all but disappeared. Yet the debates help to demonstrate not only how central issues of race were to discussions of citizenship even when they were presumably "only" about women. They also show how race is not made in one key moment or even in a single, pivotal era but is continually reinforced and recalibrated.

Fifty years after the passage of the Chinese Exclusion Act, the racial ideology that undergirded that law was still alive and well. Legislation that addressed immigration or birthright citizenship opened the door for renewing and reinforcing a racial logic that had defined Chinese immigrants as inassimilable in the previous century. These laws and the resulting social and cultural environment helped shape racial scripts that continue to portray Chinese and Chinese Americans as perpetual foreigners, demonstrating the longevity of racial ideologies. The arguments mounted in opposition to extending birthright citizenship highlight a key tenet of racial scripts: *racialized groups are linked across time and space*. Cultural representations of Mexicans and Asians as unworthy of citizenship were central to these debates, demonstrating the transferability of racial scripts from one group to another. By understanding the power and longevity of racial scripts, we can uncover connections more than a century old, seeing how long-forgotten arguments in the *Wong Kim Ark* (1898) birthright citizenship case laid the foundation for the debates over "anchor babies" today (a pejorative term used to refer to children born on U.S. soil to immigrant parents in hopes of securing the parents' U.S. citizenship). The vitality of racial scripts begs the question: Who will be the anchor babies of tomorrow?