



## How Legacies of Racism Persist in U.S. Immigration Policy

**David Cook-Martin**, University of Colorado Boulder

**David Scott FitzGerald**, University of California-San Diego

The United States has always been a nation of immigrants, but for most of its history U.S. law treated newcomers differently according to race. Between 1790 and 1952, legislators restricted naturalization – the process by which immigrants become citizens – to particular racial and ethnic groups, with a consistent preference for whites from northwestern Europe. Laws restricted black immigration beginning in 1803, and a series of subsequent measures banned most Asians and limited access by immigrants from southern and eastern Europe. The U.S. example proved contagious, as our research shows, because every country in the Western Hemisphere followed the U.S. practice of discriminating against certain immigrants by race and ethnicity.

By now, all countries in the New World have eliminated and repudiated legal provisions aimed against particular racial categories – but discrimination continues in more subtle forms. In the United States, reforms in 1965 ended the system of assigning different immigration quotas for each nationality in ways that favored northwestern Europeans. In addition, the U.S. Senate passed a resolution in 2011 symbolically repudiating anti-Asian measures such as the 1882 Chinese Exclusion Act (which had been legally rescinded in 1943) as “incompatible with the basic founding principles recognized in the Declaration of Independence that all persons are created equal” and “incompatible with the spirit of the United States Constitution.” Formally, therefore, U.S. immigration law is no longer based on ethno-racial criteria and real changes in immigration practices have greatly diversified the racial and ethnic make-up of the United States over the past half century.

Yet current U.S. immigration law retains subtle provisions reprising earlier efforts to privilege certain kinds of new arrivals and block others. Our research pinpoints these persistent legacies of discrimination and shows how they work to favor traditionally advantaged groups.

### The False Equality of Preference Visas

A third of new legal immigrants to the United States hold “preference visas” sponsored by employers and certain kinds of family members of current U.S. citizens and permanent residents. Preference visas are not equally available, however, because each sending country’s nationals have the same annual cap regardless of that country’s population or the size of its migration stream to the United States. Big countries with extensive migration histories like the Philippines and Mexico have the same cap – about 26,000 visas a year – as countries like Andorra or Lesotho with small populations and little history of migration to the United States.

In practice, this system means that Filipinos and Mexicans typically wait in line outside the United States more than twice as long as people from other countries. Filipino siblings of adult U.S. citizens are currently waiting 24 years and Mexicans are waiting 16 years, compared to 12 years for nationals of other countries. Mexican

married adult children of U.S. citizens are waiting 21 years and Filipinos are waiting 20 years, compared to 10 years for other nationals. The discrimination so evident here is deliberate. When Congress ended the national-origins quotas in the 1960s, lawmakers implemented a policy of seemingly “equal” country caps in order to limit legal immigration from Mexico and countries in Asia.

## New Back Doors for Europeans

Some lawmakers and ethnic lobbies continue to search for ways to favor Europeans without saying so. The most successful strategy has been to craft subtle mechanisms that make it easier in practice for Europeans to enter the United States, inserting those mechanisms into major immigration reform bills where they are little noticed because debate is dominated by broader questions.

- The 1986 Immigration Reform and Control Act is remembered mostly for ending longstanding national-origins quotas favoring northwest Europe. But, quietly, the 1986 law also included extra visas for nationals from 36 countries, mostly in Europe.
- The Diversity Visa program launched by the 1990 immigration reform bill also had biases. Congressional debates and hearings show that the intention was to increase the numbers of European immigrants without using discredited national-origins quotas. Some 50,000 Diversity Visas are distributed each year in a lottery for nationals of countries that are not otherwise major sources of immigration. Ineligible for these special visas are people from nineteen countries – all but three of them in Latin America, the Caribbean, and Asia.
- In the latest effort to bring Europeans in through the back door, Democratic Senator Charles Schumer of New York introduced a bill in 2011 that would provide 10,000 special annual visas for Irish citizens – not strictly immigrant visas but indefinitely renewable.

Ironically, intentions sometimes fail to pan out. For example, although the goal of the 1990 Diversity program was to boost the numbers of Europeans, in practice, the lottery has benefitted nationals from African countries. The only European country of origin to crack the top ten has been the Ukraine, surely not the intended beneficiary for politicians catering to Irish-American and Italian-American voters. Despite such misfires, Congress has repeatedly tried to craft new preferences for traditionally favored groups in an era when explicit discrimination is illegitimate.

## Will the Next Immigration Reform Institute True Equality?

The next round of U.S. immigration reforms could at last put all potential newcomers on the same footing. In June 2013, the Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act, which has the support of President Barack Obama but remains blocked in the Republican-controlled House of Representatives. Significantly, this legislation, or future legislation like it, would repeal the Diversity Visa program, eliminate country limits for employment-based visas, and increase country limits for new arrivals with ties to family members already in the United States. By admitting all new Americans not by country of birth but based on skills, occupations, and ties to relatives, such reforms would go a long ways toward making the United States, at last, truly an equal nation of immigrants.

**Read more in David Scott FitzGerald and David Cook-Martin, *Culling the Masses: The Democratic Origins of Racist Immigration Policy in the Americas* (Harvard University Press, 2014).**

June 20, 2014

<https://scholars.org>