Lessons for American Immigration Policy from the Past

Cody Nager

INTRODUCTION

Voters and taxpayers do not need declarations by high-profile pundits, such as media personality Fareed Zakaria, to know the American immigration system is fundamentally broken.[1] Present-day debates over immigration policy are heavily polarized, with politicians and the public divided along party lines. In response to the immigration positions of Donald Trump, Kamala Harris ran an ad early in her 2024 presidential campaign describing her as "fighting to fix our broken immigration system" while portraying her opponent as "trying to stop her."[2] Advocates for more restrictive policies argue that stricter immigration policy is essential for national security and economic stability, emphasizing concerns about job competition, public resources, and cultural integration. In contrast, proponents of more open immigration argue that an inclusive approach fuels economic growth, enriches culture, and serves humanitarian objectives for refugees and asylum seekers. As these debates rage on, individual Americans, local and state governments, and migrants themselves must navigate the ever-changing political landscape of American immigration. *Bloomberg Cities* reports on how the mayors of major cities across the United States, such as New York City and Denver, amid present day "migration challenges" are creating numerous agencies and programs.[3]

Across the political landscape, the debate over immigration policy lacks abiding and empirically rich historical context. Present circumstances with immigration, often cast as unique, resemble America's past experiences to an uncanny degree. In the aftermath of the American Revolution, the early republic saw the creation of the origins of American immigration policy during a similarly turbulent time, albeit on a far smaller scale.

The current reach of government far exceeds that imagined in the eighteenth century. Today, governments possess extraordinary capacity to collect information on their populace. This growth in state power and global interconnectivity has transformed immigration policy. However, the debates over immigration in the early republic offer three key insights. First is the importance of simplicity in laws governing immigration; a labyrinth of immigration

A Hoover Institution Policy Brief

No. 2404 • October 2024

systems is difficult for policymakers and immigrants alike to navigate. The second is the importance of selectivity, or choosing the "right" immigrants to foster national as well as personal success. The third insight is the importance of locality, which is the centrality of state and local influence on the immigration process. Although border crossing and naturalization/citizenship procedures fall under the purview of the federal government, the policies of the states and localities in which immigrants reside also shape their experience. By bringing the three principles of simplicity, selectivity, and locality to bear on contemporary debates, the United States can ensure that immigration policy is more responsive, flexible and, above all, effective over the long term.

SIMPLICITY

On March 26, 1790, Congress passed the first-ever naturalization act for the nascent nation. Article One, Section Eight of the recently ratified Constitution granted the power to establish a "uniform Rule of Naturalization" with just three clauses, and described a migrant who was suitable for naturalization: a "free white person," who "resided within the limits and under the jurisdiction of the United States for the term of two years," and was "a person of good character." Debate in Congress centered on the length of the residency requirement and the meaning of good character. Residency was intended to help foster new connections and sympathies within the United States and undermine any potential prior foreign influence. James Madison, the Virginia plantation owner whose acumen in political theory greatly shaped the US Constitution, rose in the House of Representatives on the behalf of Virginia counties of Albemarle and Amherst to explain. Madison noted that the residency was intended to limit aliens' ability to "acquire the right of citizenship, and return to the country from whence they came," thus evading "the laws intended to encourage the commerce and industry of the real citizens and inhabitants of America." Similarly, good character was read as support for the ideals of the recently concluded American Revolution. Theodore Sedgwick, a lawyer from western Massachusetts who had famously and successfully argued the freedom suit of *Brom and Bett vs. Ashley* that led to state-wide abolition, defined good character before the House. Sedgwick suggested that good character entailed a migrant being "reputable and worthy" and expressing a "zest for pure republicanism" rather than being "impregnated with the prejudices of education, acquired under monarchical and aristocratical governments." If a migrant fulfilled these simple clauses, they were permitted to apply for naturalization.[4]

Following the three terms describing a suitable migrant, the act established the naturalization process. A migrant who satisfied the three clauses, a free white person of good character who resided in the United States for two years, could make an application to "any common law Court of record" where they had resided for at least one year. They would present to the satisfaction of that court that they had met the aforementioned requirements and swear an oath to "support the Constitution of the United States." The oath would be recorded by the court and the migrant would be considered a citizen. Control over the implementation of Congress's naturalization policy fell under the purview of state and local courts across the nascent nation.[5]

Large portions of this first immigration policy are no longer or only tenuously relevant to today. Most obviously, with the significant expansion in who is included as American over the past two centuries, “free white persons” are no longer considered the only suitable candidates for naturalization in the United States. Similarly, while the importance of a residency requirement and good character have been widely accepted across the course of American immigration debates, the exact details behind the concepts have shifted.[6] Likewise, the definition of good character as a “zest for pure republicanism” by Theodore Sedgwick has also changed. The Immigration and Nationality Act of 1952 included newly added advocacy for “economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship,” terms little used prior to the 1840s.[7] Additionally, the growth of the federal government since the founding has resulted in a different complexion. The aftermath of the American Civil War, particularly the adoption of the Fourteenth Amendment, resulted in a significant expansion of federal power over immigration and many other walks of American life.[8]

The Naturalization Act of 1790, however, reveals the virtue of simplicity in immigration policy. Consider the extent of the visas currently offered by the United States federal government. Divided into nonimmigrant and immigrant visa categories, they include a diverse set of forms. Among the nonimmigrant visas are the J visa (for exchange visitors; certain types of au pairs, professors, scholars, and teachers), the U visas (for victims of criminal activity), the T visas (for victims of human trafficking) and numerous other visas established through trade agreements with other nations (H-1B1 for Chile and Singapore, TN/TD for the US/Mexico/Canada trade agreement, etc.). The immigration visas include family sponsored visas such as the IR1 and CR1, but also more recent creations such as the SI visa for Iraqi and Afghan translators/interpreters and the SQ visa for Iraqis/Afghans who worked for/on behalf of the US government. Adding to this constellation of visa programs is the further requirement that many of the nonimmigrant visa categories require preapproval from the Department of Labor, the US Citizenship and Immigration Services, or the Student and Exchange Visitor Information System. After selecting the correct visa application, migrants are then treated to a slow and expensive process involving tests, interviews, and mostly waiting.[9]

The Naturalization Act of 1790 was merely two pages long. Conversely, the Immigration and Nationality Act of 1952, when passed, ran one hundred and twenty pages. The “Immigration and Nationality” subsection of the *United States Code* administering “Aliens and Nationality” runs for over eight hundred pages. While the world is more complex two centuries on, keeping the immigration system streamlined would improve outcomes for immigrants, Americans, and the health of the nation.[10]

SELECTIVITY

The sheer extent of the visa application forms offered by the federal government reveals another lesson that can be learned from the immigration policy of the early American republic—the importance of selectivity in immigration policy. In the absence of truly

open borders, any immigration policy is inherently exclusive to some extent. Some group, often the central government, must decide who fits within the nation, who will help it fulfill its goals, and who will not. In the immediate aftermath of the American Revolution, the question of who should rightfully become an American proved very pressing, as it would not only dictate the economic direction of the United States, but perhaps the future of the nascent republic itself.

Among the many participants who engaged in the debate over immigrant selection in early America were Philadelphia printers and booksellers Matthew Cary and James Stewart. Soon after Congress approved the Naturalization Act of 1790, they published a sixteen-page pamphlet entitled "Information to Europeans who are disposed to migrate to the United States." Presented as an unsigned letter sent by a resident of Philadelphia to an unnamed British recipient, the pamphlet offered descriptions of two types of people, "people, who ought not to come to America" and people who should make the journey. In making the distinctions between desirable and nondesirable immigrants, the Philadelphia resident reflected a vision for the nation's future. Among the undesirables were "men of independent fortunes who can exist only in company," "literary men who have no professional pursuits," and "professors of most of the fine arts." In the eyes of the writer, these aristocrats and intellectuals had no practical skills and would be of little use for the United States. Rather, the Philadelphia resident asked for "cultivators of the land," "mechanics and manufacturers," "labourers" and "schoolmasters," individuals who were seen as having a background more amenable to Sedgwick's "zest for pure republicanism" and offered practical skills for national economic development. Cary and Stewart were not the only Americans who engaged in this debate. Tench Coxe, the first assistant secretary of the Treasury, wrote in the middle of an article on "The Quality of American Distilled Spirits," published in New York's *Daily Advertiser*, of the "facility of naturalization under our present laws" and the numerous opportunities this offered to the development of "people and of arts, manufactures and capital from foreign countries." Selecting the right migrants would create boundless wealth for the United States, and Coxe's boss, Alexander Hamilton, had just the vision for the nation's economic future.[11]

In his "Report on the Subject of Manufactures," Alexander Hamilton established his plan for the nation's economic future, arguing that manufacturing formed not only "a positive augmentation of the Produce and Revenue of the Society, but that [it contributes] essentially to rendering them greater than they could possibly be, without such establishments." Among Hamilton's seven "principal circumstances" fundamental for the development of manufacturing, was "the promotion of emigration from foreign Countries."[12]

The numerous visas on offer by the federal government today demonstrate that selectivity in immigration policy has not been forgotten. From the often-maligned H1B visa (used frequently for tech workers) to the O visa for those with extraordinary ability, the importance of capturing the world's best and brightest talent and fueling the development of American industry remains apparent. Policymakers of the present can learn from the priorities of Cary, Stewart, Coxe, and Hamilton. Fundamentally, the individuals of the early republic viewed selectivity in immigration policy as part of a national-level strategy aimed not only at growing economic

power but also shaping a certain vision of the nation's future, be it agricultural cultivators expanding across the continent, schoolteachers educating the next generation with republican zest, or manufacturers augmenting societal produce and revenue. Present-day immigration policy, by contrast, often appears separated from visions of the nation's future. The United States does not need another "Report on the Subject of Manufactures," but as the immigration system is streamlined, it should be trimmed and refocused in favor of fundamental national goals.

LOCALITY

The second part of the Naturalization Act of 1790 left the implementation of the three clauses describing the ideal immigrant to the purview of local courts of record, allowing them to decide if the migrant met the requirements created by Congress, and to administer the oath and keep the naturalization record. While some of this local control may have been due to the weakness of the central government prior to the Civil War, or even the absence of a competent federal judiciary, the result was that from its very outset, immigration policy in the United States has been entangled in the ongoing debate over state or federal management. While migrants entering the United States, both as residents and citizens, fall under the purview of the federal government, they live and work in a state and locality that maintains jurisdiction over much of their daily existence. This makes the lived experience of immigration as much a problem of state and local governments as it is for the federal government, despite the letter of the law.

In January 1794, leading citizens from Baltimore, Maryland, submitted a petition to Congress requesting federal assistance with the "great burthen" placed on that city by the many refugees who had arrived fleeing the Haitian Revolution. While the citizens of Baltimore had long engaged in "extraordinary acts of benevolence and compassion" on behalf of the "destitute and distressed," they were no longer capable of supporting them on their own. Baltimore asked Congress to fund migrant relief, kicking off a debate which pitted humanitarian sentiment against the legalistic understanding. James Madison, representing Albemarle County, Virginia, suggested that despite the suffering of the Haitian migrants, the federal government was "confined to specified objects." Charity was not written into the Constitution. Meanwhile, Congressman William Vans Murray, an English-trained lawyer and political disciple of John Adams from Maryland, argued that the Taxing and Spending clause of the Constitution allowed Congress to offer relief to Baltimore. The clause allowed Congress to "pay the Debts and provide for the common Defence and general Welfare of the United States." Murray suggested that the nation's general welfare "is most undoubtedly promoted by dividing the burthen." Maryland did not choose to have the refugees arrive there, as the power to "prevent persons from landing on their shores" was solely vested within the federal government. Thus, it was the federal government's responsibility to help. It took nearly a month of debate, but Madison and Murray worked out a compromise and on February 12, Congress granted $15,000 (debited from the French government) to President George Washington to be distributed as he saw fit. By charging the French government, Congress could avoid the debate over charity, immigration, and state and local governance.[13]

In March 2024, the office of New York Senator Charles Schumer announced that with his help, New York City had "unlocked" an additional $107 million in federal funding to provide services to roughly 64,000 migrants. A week later, New York City Mayor Eric Adams suggested the federal government enact a "decompression strategy" aimed at alleviating the stress on major urban areas by distributing a "national crisis of this magnitude." Perhaps the officials of New York City felt they had long been shouldering a "great burthen," which, if divided among the many states of the Union, would better promote the general welfare. After all, New York City had not chosen to have the refugees arrive there and does not have the power to "prevent persons from landing on their shores." That lies solely with the federal government.[14]

The parallels in situation and rhetoric, even across the space of two hundred and thirty years, are uncanny. The Baltimore and New York City events reveal that, despite the growth of federal authority, the development of technologies of statecraft, and the significant increase in scale, the fundamental debate between Madison and Murray remains unresolved. There exists an unclear division of authority between federal and state governments in the regulation of immigration. While the federal government maintains significant authority over access to the territory of the United States itself, as well as access to American citizenship, many of these rights are administered on the state and local level, beyond the purview of the federal government to influence except through financial purse strings. In addition to the ongoing migrant crisis, the existence of sanctuary cities where state and local level officials refuse to cooperate with federal Immigrations and Customs Enforcement marks another unclear area of immigration authority. While the Constitutional Convention granted Congress the power to establish a uniform act of naturalization with the goal of eliminating the interstate competition for migrants that had plagued the 1780s, the clause and its interpretation over the course of American history has provoked more questions than answers. As policymakers consider streamlining immigration policy and sharpening its connection to a national vision, the influence of federal level policy on state and local jurisdictions should be kept in mind.[15]

CONCLUSION

Immigration reform might seem hopeless amid the acrimony. Various failed attempts in the past several decades might seem to justify pessimism. However, a strong consensus is building that something must be done, even without agreement on a plan. In this light, American history offers a way out of the impasse. Looking back at the origins of American immigration policy during the formative years of the early republic reveals principles that should underpin any reform efforts of the American immigration system: simplicity, selectivity, and locality.

A series of small but consequential steps rooted in history could set the nation on a better course, despite the wide and potentially enduring disagreements surrounding the issue. The first step would be to streamline immigration policy, akin to the Naturalization Act of 1790, to create clear and manageable regulations in the face of an increasingly convoluted modern immigration system. This simplification could be done by combining visa categories into broader groups. Consolidation would create a clearer and more accessible framework for immigrants and bureaucrats alike, allowing for easier navigation and faster processing times.

While the current US Citizenship and Immigration Services (USCIS) website offers a reasonable unified application system, it still presents users with a dropdown menu asking them to choose among twelve forms, which may be overwhelming.[16]

The consolidation of the numerous visa categories offers the chance to reevaluate immigrants' alignment with national priorities: selectivity akin to that of Cary, Stewart, Coxe, and Hamilton. Choosing which categories to keep, which to discard, and which to add, will create a strategic framework for immigrant selection that aligns with long-term national goals, such as economic growth, innovation, and demographic balance. This realignment could be done with industry leaders or priorities such as national defense. For example, if Congress were to decide that the United States should pursue a certain technological area, it could create, for a limited duration, a "tech talent visa" for highly skilled workers in that area. This would allow for flexibility and expedited processing in alignment with national goals while the limited duration would ensure that the immigration system remained streamlined.

A second step in improving the immigration system would be to mitigate the enduring issue of locality. The most basic relief would be to increase federal funding for state and local programs that support immigrant integration, including housing, education, and legal assistance while allowing the individual states and localities flexibility to tailor support programs to their unique needs and circumstances. Potential off-setting savings could be realized by bringing more immigrants into skilled jobs as taxpayers and by lowering enforcement costs of the current broken system.

While responsiveness is important, establishing performance metrics and accountability mechanisms would allow for the evaluation of the effectiveness of these programs. These metrics and mechanisms could be delegated to either USCIS (in addition to its current immigration-focused responsibilities) or the Department of Health and Human Services to administer through various subagencies such as the Administration for Children and Families (if the programs are deemed related to social services benefits). Combining funding for these programs with collaborative initiatives designed to facilitate communication across federal, state, and local governments would allow for joint problem-solving. For example, connecting Baltimore and New York could lead to coordinated responses to immigration-related issues.

By addressing the complexities of the modern immigration debate with the historical insights of streamlining, selectivity, and locality, there is an opportunity to develop immigration policies that are more effective and serve the nation, its people, and its future.

NOTES

1. Fareed Zakaria, "Fareed's Take: The US Immigration System Is Broken," CNN Politics, 2023, https://www.cnn.com/videos/politics/2023/08/13/fareed-take-us-immigration-border-crisis-biden-gps-vpx.cnn.

2. Myah Ward, "Harris Tries to Get Out Early on Immigration," *Politico*, July 31, 2024, https://www.politico.com/news/2024/07/31/harris-border-immigration-gop-00172202.

3. "Mayors Deploy New Strategies to Tackle Migration Challenges," *Bloomberg Cities*, August 1, 2024, https://bloombergcities.jhu.edu/news/mayors-deploy-new-strategies-tackle-migration-challenges.

4. "An Act to Establish a Uniform Rule of Naturalization" in *Acts Passed at the Second Session of the Congress of the United States of America* (Philadelphia: Francis Childs and John Swaine, 1791); "Speech of Madison," *Annals of Congress, House of Representatives, 1st Congress, 2nd Session* (1790): 1150; "Speech of Sedgwick," *Annals of Congress, House of Representatives, 1st Congress, 2nd Session* (1790): 1147.

5. "An Act to Establish a Uniform Rule of Naturalization," 1791.

6. Indeed, the duration of residency shifted multiple times throughout the early Republic itself, moving from two years, to five, to fourteen, and back to five in just over a decade.

7. The use of the word "persons" rather than "men" in the Naturalization Act of 1790 appears to allow women to naturalization under that legislation. However, an examination of extant naturalization records reveal that women naturalized sparsely. If a woman was married, they were often considered naturalized along with her husband, a fact codified in 1804. Single or widowed women would often find the benefits of naturalization less enticing, as many, notably voting, were restricted. For a more detailed explanation see Marian L. Smith, "'Any woman who is now or may hereafter be married . . .': Women and Naturalization, ca. 1802–1940," *Prologue*: *Quarterly of the National Archives and Record Administration* 30, no. 2 (Summer 1998); Naturalization Act of 1795, ch. 20, 1 Stat. 414; Naturalization Act of 1798, 1 Stat. 566; "In Senate of the United States," *American Citizen* [Boston, MA] March 18, 1802; Section 212(d)(2) and (3), Immigration and National Act of 1952, 66 Stat. 163, 187.

8. The Fourteenth Amendment to the United States Constitution increased the power of the federal government through the Equal Protection clause, which prohibits the denial of equal protection of the laws and the Due Process clause, which prohibits the deprivation of life, liberty, or property without due process. As these clauses were litigated throughout the late nineteenth and twentieth centuries, they became incorporated to pertain not only to the federal government, but also to individual states, expanding federal power and empowering oversight.

9. "Directory of Visa Categories," US State Department Bureau of Consular Affairs, accessed October 4, 2024, https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html. Amusingly, the "about this chart" at the bottom of the webpage reads: "This chart is a list of many immigrant visa categories, but not every immigrant visa category. Refer to the Foreign Affairs Manual, https://fam.state.gov/FAM/09FAM/09FAM050201.html, for a listing of all immigrant visa categories."

10. The House of Representatives hosts complete links to the US Code on their website: https://uscode.house.gov/view.xhtml?path=/prelim@title8&edition=prelim. The "Aliens and Nationality" section spans 8 U.S.C. 1 to 8 U.S.C. 1778 (totaling 910 pages) and the relevant "Immigration and Nationality" subsection spans 8 U.S.C. 1101 to 8 U.S.C. 1537. The "Immigration and Nationality" subsection also appears on the USCIS website at https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act.

11. "Information to Europeans Who Are Disposed to Migrate" (Philadelphia: Cary, Stewart & Co., 1790); "A Brief Examination . . . ," *Daily Advertiser* (New York, NY), July 27, 1791.

12. "Tench Coxe's Draft of the Report on the Subject of Manufactures" (Fall 1790), Harold C. Syrett, ed., *Papers of Alexander Hamilton*, vol. 10 (New York: Columbia University Press, 1966), 15–23; Jacob E. Cooke, "Tench Coxe, Alexander Hamilton, and the Encouragement of American Manufactures," *The William and Mary Quarterly* 32, no. 3 (July 1975): 369–92; Doron Ben-Atar, *Trade Secrets: Intellectual Piracy and the Origins of American Industrial Power* (New Haven: Yale University Press, 2004), 145–64.

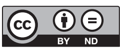
13. "Santo Domingan Refugees, [10 January] 1794," Thomas A. Mason, Robert A. Rutland, and Jeanne K. Sisson, eds., *The Papers of James Madison*, vol. 15, 24 March 1793–20 April 1795 (Charlottesville: University Press of Virginia, 1985), 177–79; *Philadelphia Gazette*, January 14, 1794; *Weekly Register* [Norwich, CT], February 14, 1794; Michael J. Wishnie, "Immigrants and the Right To Petition," *NYU Law Review* 78, no. 2 (May 2003), 704–6.

14. Kelly Mena, "Schumer Helps City Unlock More Than $100M in Federal Migrant Funding," Spectrum News, March 14, 2024, https://ny1.com/nyc/all-boroughs/politics/2024/03/14/schumer-helps-city-unlock-more-than--100m-in-federal-migrant-funding; Kiara Alfonseca, "NYC Mayor Pushes for National Migrant Strategy Amid Asylum-Seeker Influx," ABC News, March 19, 2024, https://abcnews.go.com/US/nyc-mayor-eric-adams-advocates-national-migrant-strategy/story?id=108077325.

15. On sanctuary cities see Harald Bauder, "Sanctuary Cities: Policies and Practices in International Perspective," *International Migration* 55, no. 2 (2017): 174–87. For the case of New York City, in light of the previous discussion, the key act came in 2014, when then mayor Bill DeBlasio signed a law limiting

cooperation with federal enforcement; see "Mayor Bill de Blasio Signs into Law Bills to Dramatically Reduce New York City's Cooperation with US Immigration and Customs Enforcement Deportations," NYC, November 14, 2014, https://www.nyc.gov/office-of-the-mayor/news/520-14/mayor-bill-de-blasio-signs-law-bills-dramatically-reduce-new-york-city-s-cooperation-with#/0. For immigration to the United States in the 1780s, see Cody Nager, "How Atlantic Mobility Shaped American Naturalization in the Confederation Period," *The Journal of American Ethnic History* 41, no. 2 (Winter 2022): 5–25.

16. Amusingly, Form I-912, Request for Fee Waiver, is not included and must be mailed in hard copy along with the primary form, which requires a fee. Additionally, the document describing the fees associated with filing each form, G-1055 Fee Schedule, runs for thirty-nine pages. For example, filing a standard N-400 Application for Naturalization costs $760 for paper filing and $710 using online filing. See the US Citizenship and Immigration Services website, https://www.uscis.gov/file-online.



The publisher has made this work available under a Creative Commons Attribution-NoDerivs license 4.0. To view a copy of this license, visit https://creativecommons.org/licenses/by-nd/4.0.

Copyright © 2024 by the Board of Trustees of the Leland Stanford Junior University

The views expressed in this essay are entirely those of the author and do not necessarily reflect the views of the staff, officers, or Board of Overseers of the Hoover Institution.

30 29 28 27 26 25 24 7 6 5 4 3 2 1

ABOUT THE AUTHOR

CODY NAGER

Cody Nager is a research fellow at the Hoover History Lab who investigates how US migration has shaped debates over legal structures, racial inequality, and national identity from colonial times to the present. He has taught at Stanford University, City College of New York, and the City University of New York (CUNY) School of Law. He received his PhD in history from the Graduate Center, CUNY.

The Hoover History Lab

The Hoover History Lab (HHL) uses the study of the past to analyze contemporary policy issues. The lab's members research and write about how our modern world came into being, how it works, where it might be headed, and what are the key drivers of change, to enable policy interventions. HHL integrates diplomatic-military, political-institutional, economic-financial, and scientific-technological history and prioritizes engagement along three impact vectors: government officials, private-sector investors, and scholars and students.

For more information about this Hoover Institution research initiative, visit us online at hoover.org/history-lab.

Hoover Institution, Stanford University
434 Galvez Mall
Stanford, CA 94305-6003
650-723-1754

Hoover Institution in Washington
1399 New York Avenue NW, Suite 500
Washington, DC 20005
202-760-3200