

Race, Legal Status and Social Mobility

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How much will their non-white status limit the full integration of the current wave of immigrants and their descendants? This is a question that, ironically, seems to unite the left and the right in American politics today. The Trump presidency made racial exclusion and denigration of immigrants a cornerstone of its ideology and policy. At the same time many progressive academics and legal theorists have critiqued the very idea of assimilation or integration of immigrants and their children—arguing that “people of color” would never experience the eventual mobility and acceptance as European immigrants of the past. Meanwhile immigrants from all over the globe--most of them “people of color” ---continue to be drawn to what they still perceive as a land of opportunity and a place to make a better life for their children.

The question of the role of race in the acceptance and absorption of non-white immigrants is of course not an “either or”. No honest observer could argue that race does not matter enormously in American society. The question is how it matters and for whom.

In recent decades this question has been complicated by another factor: legal status. Starting in the late 1980's the militarization of the southern border created a large and, more or less, permanent unauthorized population.¹ Today there are an estimated 10.5 million undocumented immigrants in the U.S. (down from a peak of 12.2 million in 2007).² Unlike many unauthorized immigrants during most of the 20th century, these are not transient or circular

migrants. By 2017 two thirds have lived in the U.S. more than ten years. Only 14% have been here less than five.³ They and their relatives (who include approximately 5.9 million U.S. citizen children) are clearly part of American society economically and socially. Yet they remain politically excluded and vulnerable.

The label "illegal" brands otherwise law-abiding migrants with the stigma of criminality, especially Latinx and Caribbean people who account for more than three quarters of the undocumented. This is clear in the rhetoric of the Trump administration: "They're bringing drugs. They're bringing crime. They're rapists...." This mischaracterization is attached to old and ugly racial stereotypes. Once applied to unauthorized immigrants, it then stigmatizes their co-ethnics, including those whose ancestors have been in the U.S. for generations.

The current wave of anti-immigrant rhetoric co-exists with considerable evidence of relatively successful social and economic integration into U.S. society by many, although not all, immigrants of color and their descendants. In light of the striking contrast in life outcomes between those with and without legal status,⁴ we argue that although legal status and the stereotypes deriving from it are clearly related to race, legal status is now playing a relatively autonomous role in limiting the life chances of many immigrants.

In this essay we survey what is known about the role of race and legal status in the incorporation of immigrants in 21st Century America. The story is both cautiously optimistic and alarming. While we recognize the continued work that needs to be done to eradicate systemic and interpersonal racism, we summarize decades of research that finds considerable

progress in the incorporation of new, non-white immigrants and their descendants. Yet we raise the alarm about not only the direct effects of legal status, but its increasing role in racializing and excluding Latinx Americans.

There is no magic pill to address America's deeply rooted racial inequities. By contrast, however, the existence of a large population of permanently settled American residents who lack legal status was not an inevitable outcome of America's racial DNA. It is relatively new and is the result of bad public policy. As such, it can be fixed by better policy, such as by a legalization program similar to that enacted in 1986, or merely by applying the statute of limitations to the misdemeanor of illegal entry. With these legal actions, the fortunes of millions of Americans could be improved, and the conflation of Latinx identity with illegality could begin to be severed.

American sociology has had immigration and the process of assimilation as one of its core concerns since the 1920s. But this research concentrated on European immigrants and their children and had a blind spot when it came to race. A largely separate stream of research reaching back to the pioneering work of W.E.B. Du Bois dealt with the experience of African Americans. The experiences of Asians and Latinx were either ignored or shoehorned into these separate theories and literatures. Even into the 1970s and 80s research on race and on immigration continued on parallel tracks. Scholars of race such as William Julius Wilson described the hollowing out of American cities, the lack of jobs for those with low skills, failing inner city schools, and rising racial segregation.⁵ Scholars of immigration described the growth of low skilled jobs in central cities, the invigoration of central city neighborhoods, and the use of

public schools in America's cities for social mobility. It was almost as if they were describing two different nations.

During these decades the racial demography of the U.S. was transformed from a society primarily composed of whites and Blacks-- as late as 1970 Asians and American Indians each constituted less than 1% of the US population while Hispanics were only 4%—into the racially diverse nation we see today. There was no precedent to evaluate whether the increasingly diverse post-1965 immigrants would assimilate in the same ways as earlier European immigrants, or whether they would be racially excluded.

In the early 1990s sociologists such as Herbert Gans, Alejandro Portes, and Min Zhou asked whether it was possible that the children of current immigrants would find their social mobility and acceptance blocked by racial discrimination. Gans described his worries in an article entitled "Second Generation Decline?"⁶ and Portes and Zhou developed the theory of segmented assimilation.⁷ These theories raised the question of whether race would be a barrier to the fortunes of the second generation and gave rise to many empirical studies (including one of our own) designed to address this question. Overall, these studies found little evidence of second generation decline or downward assimilation.⁸

Soon, however, the very idea of assimilation or integration came under fire in the academy. Critical race theorists generally reject the idea of assimilation altogether, or even associate it with white supremacy, colonialism, and imperialism. Critical race theory originated in legal scholarship and stresses the permanence of racism as a feature of American society and the ubiquity of white supremacy.⁹ In this tradition, sociologist Mary Romero criticizes scholars studying immigrant assimilation for perpetuating the myth of meritocracy for immigrants and

natives alike. She criticizes the focus on assimilation for accepting white middle class standards as the norm. Instead of comparing immigrants with US born people of color, she advocates approaches that emphasize the "connections in the treatment of all racialized groups and recognize citizenship status as a social construct".¹⁰ Other scholars adopting critical race theory criticize the study of assimilation for not critiquing white supremacy.¹¹ Golash Boza, Duenas, and Xiong describe (somewhat unfairly in our view) a central assumption of this approach as being that assimilation is a zero sum game, arguing that "people of color who are socialized into Anglo-American culture lose valuable skills, networks, and knowledge."¹²

Moon-Kie Jung criticizes scholars who "engage in suspect comparisons to past migration from Europe; [and] read out or misread the qualitatively different historical trajectories of European and non-European migrants."¹³ Instead, he advocates a study of immigration that shifts the focus of study from "difference" to "domination". He concludes that scholars operating in a paradigm that measures assimilation "reinforce hope about the possibilities of inclusion by continuing to laud Anglo-/white-centric models of incorporation that are largely mythological."

14

Today, with the Obama era hopes for a "post racial" society dashed with the return of blatant racism and nativism promoted by Donald Trump, it is easy to understand the appeal of Critical Race approaches. However, this theory seems to us to run the risk of being overly determined. There is, as historian Barbara Fields notes, a danger in according race "a trans historical, almost metaphysical status that removes it from all possibility of analysis and understanding."¹⁵ Or as Eric Foner argues, there is a danger of employing race and racism "as a *deus ex machina*—something that exists outside of history but can be invoked as the ultimate explanation for

historical events". Of course, Foner is not denying the centrality of race in American life.

Neither are we. Foner argues that "it is better to see racism as a part of history...like anything else (it) rises and falls over time."¹⁶

One can recognize the centrality of race in American society and history while also recognizing that it is contingent. Racial hierarchies shift. Racial boundaries blur. Thus, it is most useful to see race and racism as variables. In order to understand race and racism we need to understand how they interact with other variables, including legal status.

In this vein, neo-assimilation theory, developed by Richard Alba and Victor Nee, takes note of substantial progressive change in U.S. institutions since the Civil Rights Movement, opening up what they call the "mainstream" to individuals and groups that had previously been excluded.¹⁷

Expanding on this theory, Alba has pointed to the importance of the changing boundaries around ethno-racial groups allowing for changes not only in the hierarchy of groups but in how permeable groups are, and even how they are defined.¹⁸ Thus, Alba describes how, in the mid-20th century, an Anglo-Saxon Protestant mainstream evolved to absorb white ethnics, as boundaries that had once seemed impermeable were eroded by intermarriage and mixed ancestry. In his recent book he notes that this is happening today for the descendants of non-white immigrants through high intermarriage and an expanding definition of "whiteness".

One point on which neo-assimilation, segmented assimilation and critical race theory are actually in agreement is the recognition (largely missing in the pre-1960's accounts of assimilation) that incorporation into mainstream society is a two-way process. It is not enough for a group to come to share the beliefs or behaviors of the dominant society. That society must

also be willing to accept the former outsiders. Attention to race casts this point in sharp relief. Many groups of European immigrants were initially seen as racially inferior. Their status, like that of other racialized groups, was associated with selected physical attributes, as a look at the caricatures of Irish, Jewish, or Italian immigrants in 19th century political cartoons attests. Their "whiteness" was an achievement, the end of a political project, not the starting point. As such, the assertion that assimilation into the mainstream was for whites only may actually be telling the story backwards. It is not that being white allowed admission to the mainstream. It is that the groups who joined the mainstream came to be considered "white."

However, it is also true that even the most despised and racialized Europeans were always "potentially" white. The difference lies to a considerable degree in legal status. The Europeans were free. They had the right (albeit often ignored in practice) to seek redress of grievances in the courts. They were able to naturalize (far faster than immigrants can do so today) and having done so, to vote. None of this, as Alba shows, was sufficient to guarantee admission to mainstream institutions. That had to await changes in demography and economics as well as culture, and it took longer than is often remembered.¹⁹ But it did make such acceptance possible. By contrast, African Americans were excluded from all of the basic rights of societal membership, both under the "social death" of slavery and the social exclusion of segregation.²⁰ Adopting "mainstream" behaviors or outlooks made no difference—the mainstream had no intention of accepting them. Similarly, after 1882 Asians were barred in most cases from immigration and, perhaps more importantly, perennially barred from naturalization. They could never be full members of society, their behavior notwithstanding. Indigenous Americans similarly were restricted to a special non-citizen status. The story of Latinx people is more

mixed and varied. But it is fair to say that a considerable number of these people were also in semi-permanently excluded statuses.

The question is not whether legal and structural barriers have historically prevented the full incorporation of nonwhites into American society. Clearly, they have. The question is whether this remains true for contemporary immigrants and their children who arrived in the U.S. in a post-civil rights context. Here the data tell a more mixed and less over-determined story.

Richard Alba and Victor Nee's new assimilation theory directs our attention to the laws and norms that determine how open and accepting the institutions of society—the workplaces, universities, political parties, and government bureaucracies—are to people of different ethnoracial origins.²¹ The legal and social changes of the Civil Rights Movement, including programs such as affirmative action, opened up some institutions to a diversity that had never been achieved before. In many institutions the value of diversity has become powerful as an ideal, even if actual practice often falls short.

Yet a focus on changes in law and norms returns our attention to an important, but, in the present climate, virtually impermeable, barrier: legal status. Since 1986, the last time an amnesty was granted to undocumented American residents, the number of undocumented people in the U.S. has grown dramatically. Since then Congress has passed laws making immigration enforcement progressively more punitive and targeted at both legal permanent residents and the undocumented.

Laws passed in 1996 and 2001 seeded the current "crimmigration" regime. The 1996 Illegal Immigration Reform and Responsibility Act (IIRIRA), and the 1996 Anti-Terrorism and Effective

Death Penalty Act, laid the legal groundwork for mass deportations of undocumented immigrants, as well as requiring that legal non-citizen immigrants be deported if convicted of an aggravated felony. The Patriot Act of 2001 further increased the power of the federal government to apprehend, detain, and deport legal immigrants who are deemed a threat to national security.

The 1996 IIRRA provided local and state police the authority to stop and detain people for immigration violations, with subsequent turnovers to federal authorities resulting in deportations. While the 1996 authorization has been replaced, the principle of integration of local and state police records with Immigration and Customs Enforcement (ICE) immigration records is now entrenched.

The net effect of these changes has been a growth in the intersection of the criminal justice system with the immigration enforcement system, a massive rise in the numbers of documented and undocumented immigrants deported each year, and a rapid growth of the numbers of undocumented immigrants in mandatory detention throughout the country.

In fact, since 1985, detention capacity has increased nearly 1,500%.²² There are an average of 34,000 detentions a day and more than 400,000 a year.²³ Immigration enforcement now constitutes more than half of the federal criminal workload. Immigration laws allow prosecutions without criminal constitutional protections, detention without bond, interrogation without Miranda rights, arrest without probable cause of crime, and no right to an attorney in deportation proceedings.²⁴

Since the 1980s we have created a class of long-term residents without the rights of Americans and put legal immigrants at risk of losing their rights at any time. Immigrant enforcement has expanded to areas far from the border with new effects on legal immigrants as well as on US citizens who live in mixed-status families, including U.S. citizen children.²⁵ Kanstroom describes these developments as placing all immigrants, including those who entered legally, on an "eternal probation" model. All noncitizens are thus subject to a "flexible, ever shifting, even retroactive—regime of deportation."²⁶

A growing body of literature describes the ways in which lack of legal status decreases wages²⁷, depresses educational attainment of the second generation, and even affects the cognitive development of young children.²⁸ Undocumented immigrants comprise the largest group of disenfranchised Americans since the end of Jim Crow. But Civil Rights era tactics to fight these injustices often prove inadequate because the undocumented, by definition, do not have civil rights in the U.S. This blocked mobility and social exclusion is all the more regrettable and frustrating, given the trends outlined below that show the real progress economic mobility and social acceptance made by legal immigrants and their children, despite their non-white status.

As Herbert Gans pointed out, many people think of assimilation and social, or socioeconomic, mobility as the same thing.²⁹ This has its roots, he argued, in the assimilation of European immigrants in the last century, when almost all immigrants were low skilled and poor, and they entered a society that was experiencing widespread social mobility for natives and immigrants alike. Thus, becoming American by assimilating also meant access to higher wages for the

immigrant and better education, income, and occupations for their children. But Gans reminds us that assimilation and social mobility are not the same thing—assimilation is the decline of ethnic distinctiveness and the convergence between immigrants and the US born. Whether this was always linked to upward mobility among early 20th century immigrants is debatable. However, in contemporary American society the erasure of ethnic distinctiveness is not a precondition for upward mobility. Further, mobility, whether within one lifetime or intergenerationally, can be upward or downward. Indeed, as Raj Chetty and colleagues have demonstrated, social mobility has been declining in the US, particularly for those at the bottom of the income distribution.³⁰

The National Academy of Sciences (NAS) issued a report on immigrant integration in 2015. (We follow their definitions in using the terms assimilation and integration interchangeably).³¹ The NAS report defined integration as a two-way process by which “members of immigrant groups and host societies come to resemble one another”. Their conclusion was that, across all measurable outcomes, including educational attainment, income, occupational distribution, poverty status, residential integration, language ability, health, crime, and family status, immigrants and their descendants were becoming more like the U.S. born. In most cases this convergence made immigrants better off in terms of their well-being. Yet, in three important areas immigrants and their children were less well off as they became more like other Americans: their health declined, their crime rates rose, and the proportions of single parent families increased.

Some immigrants welcome assimilation. Others actively resist it. Many do both, seeking to prevent the assimilation of their children in some arenas while taking actions that make it more likely in others. However, almost all immigrants desire social mobility—making a better life for themselves, and especially for their children. Does the move pay off? The empirical research shows that social mobility happens at a different pace for different ethnoracial groups, and, looking at outcomes, there is a racialized pattern of convergence between immigrants and natives of the same ethnoracial group, although the second generation generally does better than natives of the same ethnoracial background. Nevertheless, there is a great deal of mobility, and none of the immigrant groups experience complete racial exclusion and blocked mobility. It is possible to argue whether the glass is half empty or half full, but there is no empirical support for envisioning an empty glass.

Progress is evident over time for the immigrant generation. Villarreal and Tamborini examined first generation wage trajectories over 20 years in a long running longitudinal survey matched to their income records from their individual tax returns. They compared the wage trajectories of immigrants to natives of the same ethnoracial group, and to U.S.-born whites. All four major ethnoracial groups start out behind U.S.- born whites, but Asian and white immigrants substantially reduce the gap over time, while Latinos and blacks do not, although black immigrants have the second highest wage growth after Asians. Hispanics start out with low incomes and have the slowest rate of growth. Yet, compared to U.S. born members of the same ethnoracial group, all four groups come within 10% of native wages after 20 years and black immigrants exceed the wages of U.S. born blacks. Black immigrants with a college degree have completely closed the gap with their US-born white counterparts.³²

Park and Myers find evidence of generational assimilation when they compare immigrant parents in 1980 and second generation adults in 2005. They find that all ethnoracial groups show a great deal of social mobility across generations. All of the groups except Latinos match the level of US-born white high school completion. Black and white immigrant parents and the second generation exceed US-born white social mobility with respect to college completion and upper white-collar occupational attainment. The Black second generation also closes the gap with US-born whites in terms of high school completion. Not surprisingly, given what is known about racial discrimination in housing and mortgage lending, the one area that Black immigrants and their children lag behind whites in is homeownership. Second generation blacks have the lowest homeownership of any second generation group.³³

While Latinxs make progress by generation, with the children doing much better than the parents, they do not close the gap with US born whites on college attainment or upper white collar occupational attainment. However, they do close the gap in terms of home ownership and percentage in poverty. First generation Asians are a highly selected group and have a college completion level that is almost double that of US born whites. Second generation Asians cannot improve much on their parents' level of educational attainment but do have better occupational mobility. These children of Asian immigrants, controlling for education, have eliminated the gap in occupations with U.S. born whites. While it can be argued that Asian Americans still face discrimination at the highest levels of American corporate and professional life,³⁴ this "bamboo ceiling" is so high that it is not visible in Park and Myers' statistical analysis.

Van Tran also finds a great deal of social mobility across generations when he examines specific national origin groups, instead of the broad ethnoracial categories. Tran finds all of the second-generation groups show a great deal of mobility compared to their parents in terms of educational and occupational attainment. For example, while 67% of Mexican and 59% of Salvadoran immigrants lack a high school degree, these figures drop to 17% and 12% among their second generation children. In multivariate models, Tran finds that second generation Haitians and Jamaicans catch up to US-born whites in college completion. Colombians and Cubans surpass them. Mexican and Dominican second generation adults do not catch up with whites in terms of educational attainment, but do outperform their parents by a wide margin. All of the other Latinx national origin groups achieve parity with US born whites in educational outcomes.³⁵

Finally, economists Ran Abramitzky and colleagues examine income mobility in first and second generation father-son pairs.³⁶ Using census data, they compare income mobility for first and second generation father-son combinations for fathers in 1880 and adult sons in 1910, fathers in 1910 and adult sons in 1940, and fathers in 1980 with federal income tax records for their adult sons in 2010. These three immigrant cohorts represent different sending regions in the history of US immigration; the 1880 cohort came primarily from Northern and Western Europe, the 1910 cohort from Southern and Eastern Europe and the 1980 cohort from Asia, Latin America and the Caribbean.

Contrary to the assumption that today's non-white immigrants have a completely different experience than the white immigrants of the past, they find remarkably similar social mobility for the second generation in each immigration era. Among immigrants from countries where

immigrants earned much less than US born natives, "second generation immigrants catch up or even overtake the earnings of the US-born".³⁷ Abramitzky et al. find highly similar advantages for second generation immigrants compared to the US born in all three cohorts, where the children of immigrants whose parents are at the 25th percentile in income distribution in the U.S., rank 5 to 8 percentile points higher than the children of US-born individuals whose parents were also at the 25th percentile.³⁸

All of these empirical studies find that while race and ethnicity matter in the social mobility of immigrants, racialization is not the impassable stumbling block critical race theory predicts. A remarkably consistent story of intergenerational socioeconomic progress is painted, one that is very similar to what happened with immigrants from Europe a century ago. This mobility is accelerated for Asians and Blacks, but slower among Latinxs. Dominicans and Mexicans do not eliminate the gap with US-born whites, although they show progress vis-a-vis their parents.

The slower mobility of Latinxs, and particularly Mexicans, has been a subject of much debate. Edward Telles and Vilma Ortiz point to exclusion based on systemic and interpersonal racism directed towards Mexicans in particular, but extending to all Latinxs.³⁹ President Trump has rallied supporters using animus towards Mexicans and calls for exclusion, and the history of Mexican Americans includes legal segregation, substandard education, and forced deportations. This form of racialization has, no doubt, helped to produce the "generations of exclusion" that Telles and Ortiz document.⁴⁰

There are, however, other factors that may be playing a role in the slower measured rate of Mexican American upward mobility. Assimilation of Mexican Americans may, paradoxically, be

responsible for the mismeasurement of their situation. Unlike African Americans, the quintessential racialized minority, Mexican Americans have long had a high intermarriage rate.⁴¹ There is evidence that a significant proportion of the children of couples where one spouse is Mexican and the other is a non-Hispanic white do not identify as Mexican American. Economists Brian Duncan and Stephen Trejo find that 30% of these mixed ancestry people do not identify as Mexican. This attrition is highly selective because the people who no longer identify as Mexican have greater educational attainment and overall higher social mobility.⁴² Therefore, estimates of Mexican American social mobility that rely on this subjective identification underestimate group mobility.

The other possible explanation for slower mobility is the deleterious effect of lack of legal status.⁴³ The paradox here is that being undocumented in the U.S. does not stop assimilation in the cultural sense or integration in the social sense. The undocumented have been putting down roots: working, forming families, buying houses, attending church, and sending their children to school. They, and particularly their children, have been learning English, absorbing American culture and values, and converging with the US born on many measurable attributes. However, despite their assimilation, their legal status blocks their economic mobility.

A showcase of the positive effect of adding social mobility to an assimilated population previously without socioeconomic mobility was provided by the passage of Deferred Action for Childhood Arrival (DACA) in 2012. Undocumented immigrant children, as Roberto Gonzalez and Leo Chavez put it, "awakened to a nightmare" when they discovered, often in their teens, that they were barred from many colleges, financial aid, almost all jobs, and even a drivers' license.⁴⁴ DACA unblocked their path and, in just eight years, the mobility of many of these

young people blossomed as they made higher wages, moved into better jobs, and reported better life satisfaction. Wong and colleagues surveyed DACA recipients every year for the last five years and find that, since receiving DACA, respondents' average annual earnings increased by 86%. Some 58% reported moving to a job with better pay and, among those over age 25, 9% started a business and 20% received a professional license.⁴⁵ If ever there was a natural experiment to prove the societal benefits of legal status, DACA was surely it. Which makes President Trump's cruel determination to end it particularly disturbing.

Race matters. It matters in a host of ways in which it structures everyday life in America. It can be seen in racial differences in the economy, social life, and in the culture. It can be seen in large statistical differences and in micro-level encounters between Americans. It matters, with too often deadly consequences, in encounters between people of color and the police.

However, when considering blocked mobility among immigrants and their descendants, race, while heavily correlated to legal status in the largest current immigrant groups, does not appear to be the most important factor. Indeed, on almost every measure, documented immigrants of color, including black immigrants, are doing better than African Americans. This is even more true for their second-generation children. If anything, the inclusion of black immigrants and their children, now close to 20% of the black population, in the African American category in most statistical analyses may be obscuring how badly off some segments of the African American community actually are.

The ever present well of racism directed at newcomers is spilling hatred again. Yet the upward mobility of most immigrants of color with legal status and their children is clear. It does not do

immigrants or their supporters any good to deny the empirical evidence of successful integration and social mobility of nonwhite immigrants and their children. At the same time, we need to focus attention on the counter-productive social policy that has created a new category of people who are Americans in every meaningful sense but who cannot enjoy the benefits of their investment in our society due to their lack of legal status.

What, then, is to be done? The clearest and most obvious answer would be an amnesty and a path to citizenship. Extending the full rights of societal membership and citizenship to people who have long proved themselves an important part of our economy and society is consistent with the best of American values. With non-refugee migration across the southern border at historic lows, the present moment would seem an ideal time to do it.

If a full-scale amnesty is politically impossible, a more modest proposal would be to simply apply a statute of limitations to illegal entry. The statute of limitations for federal crimes is 5 years,⁴⁶ except for those in four categories: murder, terrorism, some sex offenses, and illegally crossing the border or overstaying a visa.⁴⁷ Most Americans would weigh the crimes in the first three categories very differently from those in the fourth.

These are modest reforms. They would not eliminate racial bias or cleanse the original sin of racism from American society. They would, however, greatly improve the lives of millions of people and help create a more diverse, fairer, and more democratic society for all of us. And this, we believe, makes them well worth pursuing.

Notes

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