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Martha Gardner: The Qualities of a Citizen

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In the Shadow of the Law

Hoping to exchange the instability of 1918 revolutionary Mexico for the economic possibilities in New Mexico, Concepción de la Cruz and her family traveled from Sierra Mojada to the United States in search of work and peace. At the border, while her mother and her younger siblings had their clothing removed and disinfected, their scalps probed for lice, their bodies bathed and then inspected for disease and defect, and their intentions scrutinized during the arduous and demoralizing process of legal immigration, de la Cruz and her father were spared. "We all came together to the bridge, and they let my father and me pass and stopped my mother and the children and made them immigrate." "My father and I were never immigrated," she explained to United States immigration authorities.[1] How was that possible, officials queried? How had de la Cruz and her father managed to pass over the bridge that marked the border between the United States and Mexico without passing through the rigors of legal inspection?

Neither de la Cruz, nor the New Mexico immigration authorities, nor the records left behind offer an explanation for why de la Cruz crossed easily over a legal and geographic border her mother found daunting and prohibitive. Both women were subject to early twentieth-century immigration laws controlling the arrival of immigrants from Mexico, but in important ways their cases differed. De la Cruz sought work as a housekeeper, while her mother was responsible for the care of two young children. De la Cruz's work fit within a privileged space in the law reserved for women willing to work as domestic servants, while her mother ap-

[1] Concepción de la Cruz, casefile 54281/36C (1918); RINS, SCF, MI, reel 9. For details of immigration inspection process along U.S.–Mexico border, Irving McNeil, Acting Assistant Surgeon, to J. W. Tappan, Medical Officer in Charge, U.S. Public Health Service, El Paso, Texas, 22 December 1923, casefile 52903/29 (1923); RINS, SCF, MI, reel 3; Inspector in Charge, International Bride Foot Santa Fe Street, El Paso to Supervisor, Immigration Service, El Paso, Texas, 13 December 1923, casefile 52903/29 (1923); RINS, SCF, MI, reel 3; Inspector in Charge, Naco, Arizona to Supervisor, Immigration Service, El Paso, Texas 8 December 1923, casefile 52903/29 (1923); RINS, SCF, MI, reel 3; Jesse W. Thamos, Inspector in Charge, Ajo, Arizona to Inspector in Charge, Immigration Service, Tucson, Arizona 21 December 1923, casefile 52903/29 (1923); RINS, SCF, MI, reel 3. Abbreviations used throughout can be found in the section "A Brief Guide to Archival Sources" near the end of the book.

peared an unlikely candidate to immigration officials wary of new, economically dependent arrivals. Under United States immigration law, it has mattered whether a woman was a maid or a mother. "In the main, in the eyes of the law," a critical observer noted in 1922, "a man is a man, while a woman is a maid, wife, widow, or mother."[2]

Women immigrants endeavored to enter and to become citizens of the United States in the shadow of the law.[3] Immigrants like Concepción de la Cruz experienced arrival as a legal process, and many immigrants arrived at the border cognizant of the law and their place within it.[4] Just as it is a process of geographic, social, and economic mobility and cultural change, the process of leaving one nation and arriving in another is an experience of the law.[5] Mobility requires an intimate encounter of immi-

[2] "The Cable Act and the Foreign-Born Woman," *Foreign Born* 3, no. 8 (December 1922): 232.

[3] Although few historians have investigated immigrant women's historical relationship to the laws that governed their arrival, several important studies have explored immigrant women's interwoven roles in the economy, in the family, and in broader immigrant communities. On immigrant women as wage earners see, for example, Alice Kessler Harris, *Out to Work: A History of Wage-Earning Women in the United States* (New York: Oxford University Press, 1982); Elizabeth Ewen, *Immigrant Women in the Land of Dollars: Life and Culture on the Lower East Side, 1890–1925* (New York: Monthly Review Press, 1985); Vicki Ruiz, *Cannery Women, Cannery Lives: Mexican Women, Unionization and the California Food Processing Industry, 1930–1950* (Albuquerque: University of New Mexico Press, 1987). Work on immigrant women's roles in their families includes Virginia Yans-McLaughlin, *Family and Community: Italian Immigrants in Buffalo, 1880–1930* (Ithaca, N.Y.: Cornell University Press, 1977); Ewa Morawska, *For Bread with Butter: Life-Worlds of East Central Europeans in Johnstown, Pennsylvania, 1890–1940* (New York: Cambridge University Press, 1985); Susan A. Glenn, *Daughters of the Shtetl* (Ithaca, N.Y.: Cornell University Press, 1990). For work on immigrant women's roles in the community see, for example, Sarah Deutsch, *No Separate Refuge: Culture, Class, and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880–1940* (New York: Oxford University Press, 1987); Valerie J. Matsumoto, *Farming the Homeplace: A Japanese American Community in California, 1919–1982* (Ithaca, N.Y.: Cornell University Press, 1993); Judy Yung, *Unbound Feet: A Social History of Chinese Women in San Francisco* (Berkeley: University of California Press, 1995).

[4] As recent work exploring women's historical relationship to the law has suggested, the shadow of the law fell differently on women than it did on men. Linda Kerber has argued that the legal obligations of citizenship—to serve on juries, to work, to be taxed, or to take up arms in defense of the nation—precluded women's full and equal membership in the polity. Nancy Cott has argued that marriage law structured women's identity in the nation. She also suggests that by legitimating women's roles as wives and mothers, immigration and naturalization law sought to construct the body politic around specific and exclusionary understandings of race, gender, and citizen. Linda K. Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* (New York: Hill and Wang, 1998); Nancy Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge: Harvard University Press, 2000).

[5] Historians have traditionally interpreted immigration as an experience of geographic, social, and economic mobility. Histories of arrival and exclusion, assimilation and cultural

grants and the state acted through legal procedures. In this encounter, some immigrants become residents, some aliens become citizens, some non-Americans become Americans, and some do not.

Helping to delineate the membership of a nation state, immigration and naturalization laws create a system of belonging and not belonging.[6] The place of immigrant women in this system has been judged by their work, their sexuality, their role in the family, and their race. By restricting how, why, when, and where women could enter, immigration law has protected a racially exclusive image of the American family, promoted a racially and sexually segmented labor force, and tied women's role in the nation to their domestic responsibilities in the American home. In defining the civic rights of aliens, immigrants, residents, and nationals, naturalization law tied race and gender to shifting understandings of the significance of moral character, family responsibility, and personal independence to citizenship. Historical debate over the law and its application make visible how Americans and would-be Americans, policy makers and immigrants, assessed the implications of women immigrants for the nation—their moral character, family status, race, poverty, marriage, citizenship, and alienage.

Over the twentieth century changing ideas of race difference were mapped onto those of gender to construct the walls and portals that governed immigrant women's arrival. In the late nineteenth and twentieth centuries, fluctuations in laws governing the arrival and citizenship of immigrant women were symptomatic of the major changes that punctuated this period—the growing concern about the nuclear family, the increased participation of women in wage labor, the shift from an industrial

resilience, or economic progress and stagnation are, for the most part, mobility stories. See, for example, John Bodnar, *The Transplanted: A History of Immigrants in Urban America* (Bloomington: Indiana University Press, 1985). Historians have debated the significance of cultural heritage, work skills, familial networks, wealth, race, and gender for the experience of mobility. Recent studies have suggested that mobility proved grudging for many immigrants facing tenacious racial discrimination and gender traditionalism. See, for example, Ronald Takaki, *Strangers from a Different Shore: A History of Asian Americans* (Boston: Little, Brown, 1989); George Sánchez, *Becoming Mexican American: Ethnicity, Culture, and Identity in Chicano Los Angeles, 1900–1945* (New York: Oxford University Press, 1993); Donna Gabaccia, *From the Other Side: Women, Gender, and Immigrant Life in the U.S., 1820–1990* (Bloomington: Indiana University Press, 1994). In addition to mobility, immigration history has become increasingly global in its frame of reference, increasingly interested in immigrant communities and social networks, and increasingly attentive to the ways in which notions of race and ethnicity structure immigrants' relationship to the polity and the economy. See essays collected by Virginia Yans-McLaughlin, *Immigration Reconsidered: History, Sociology, and Politics* (New York: Oxford University Press, 1990).

[6] For a discussion of women's relationship to law and to the nation see the essays collected by Gisela Bock and Susan James in *Beyond Equality and Difference: Citizenship, Feminist Politics and Female Subjectivity* (New York: Routledge, 1992).

to a service economy, the increase in migration to the United States of nonwhite, non-European peoples, and the growth of the United States as a global power. The perception of immigrant women and their citizen daughters either as assets or as threats to assimilation and nation building is linked to these important shifts in social, economic, and international power relationships.

This book is divided into three sections.[7] Part 1 explores the gendering of women immigrants and United States immigration policy from the first laws against Chinese prostitutes in the 1870s to the passage of the National Origins Act of 1924. In a period of derivative citizenship for women, the significance of race for the legal status of Americans and would-be Americans was gradually extended from naturalization law through immigration policy until it stood at its very center. In the context of massive movements of peoples to the United States, the combined racialization and sexualization of arriving immigrants allowed officials to carve out a definition of deviance that made marriage/morality and work/welfare the central tensions of immigration policy.

Part 2 begins with the formal recognition of women's independent citizenship in the 1920s and ends in 1965 with the formal renunciation of racial categories that structured the national origins system. Despite the erasure of sex and race differentials in the law, sex and race continued to be differences that mattered in the application of immigration and naturalization policy. Central to this effort to redefine the borders that separated insider and outsider was the symbol of "non-Americanism."[8] With fewer immigrants arriving at the nation's borders, an expanded definition and rhetoric of citizenship that included work and family challenged the status of nationals, long-term resident immigrants, and contract laborers living and working in the United States.

Part 3 suggests that post–World War II reforms laid the basis for a new gender system in immigration policy. With the advent of peace, women's traditional roles as wives and mothers reemerged as significant components of immigration law. Family reunification was embraced against a backdrop of exclusion for gay and lesbian immigrants and restriction for children born beyond the legal confines of marriage. The legal and moral

[7] I would like to thank Peggy Pascoe for her help in developing this three-part structure.

[8] For a discussion of current debates over the place of noncitizens in American law, see Peter H. Schuck, *Citizens, Strangers, and In-Betweens: Essays on Immigration and Citizenship* (Boulder, Colo.: Westview Press, 1998); Noah M. J. Pickus, ed., *Immigration and Citizenship in the Twenty-First Century* (New York: Rowman & Littlefield Publishers, 1998); Gerald L. Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law* (Princeton, N.J.: Princeton University Press, 1996); Bart van Steenbergen, ed., *The Condition of Citizenship* (London: Sage Publications, 1990); Peter H. Schuck and Rogers Smith, *Citizenship without Consent: Illegal Aliens in the American Polity* (New Haven, Conn.: Yale University Press, 1985).

legitimacy and illegitimacy of marriage and children became central concerns of immigration officials seeking to patrol of the borders of the postwar American family.

At the border, immigrants argued for the privilege of entry, while federal officials sought to interpret the law to protect national boundaries. The resulting conflict between immigrants and officials over how the law was understood and how it was applied, if it was flexible, and when it was broken is the central concern of this book. While the specifics of enforcement procedures have evolved over the twentieth century in response to increasing numbers of immigrants, along with the laws designed to regulate their arrival, the border has retained its significance as the site of assessment and judgment. Since the late nineteenth century, the power to regulate the nation's borders has rested entirely with Congress.[9] In practice, however, immigration law was interpreted, enforced, and adjudicated at the borders by federal officers of the Immigration Service. Law and bureaucracy met in the immigration experience as federal officials developed administrative policies with which to interpret immigrant racialized identities, and family and work histories within the letter of congressional law.[10] Detained in border facilities, immigrants and would-be citizens negotiated the administrative apparatus of the bureau.

Arriving at the nation's ports, immigrants were questioned by an immigration inspector and admitted only if they were clearly entitled to land. Doubtful cases were held for further review.[11] Appearance often became reality as inspectors evaluated which immigrants appeared morally re-

[9] Beginning in the late nineteenth century, the Supreme Court recognized the plenary power of Congress to define and exclude the unwelcome. The Constitution specifies that Congress shall establish a uniform rule of naturalization. The only reference to immigration lies in passages addressing the slave trade. The argument that Congress has almost unchecked power over immigration has been criticized by contemporary legal scholars. Louis Henkin, "The Constitution and United States Sovereignty: A Century of Chinese Exclusion and Its Progeny," 100 *Harvard Law Review* 853 (1987); Ibrahim J. Wani, "Truth, Strangers, and Fiction: The Illegitimate Uses of Legal Fiction in Immigration Law," 11A *Cardozo Law Review* 51 (1989).

[10] Immigration officials had the power to issue warrants, compel the appearance of witnesses, demand documentation, and conduct lengthy interrogations. Over the course of the twentieth century, elaborate and increasingly specific departmental procedures were developed to implement immigration laws. For example, in 1917, immigrants were granted the right to counsel but only during their appeal to the secretary of labor. For a discussion of departmental rules for Chinese immigrants, see Milton Konvitz, *The Alien and the Asiatic in American Law* (Ithaca, N.Y.: Cornell University Press, 1946), 37–45. For a discussion of bureau procedures up to the 1930s, see William C. Van Vleck, *The Administrative Control of Aliens: A Study in Administrative Law and Procedure* (New York: The Commonwealth Fund, 1932).

[11] The 1924 National Origins Act added an additional layer of administrative oversight by requiring immigrants to obtain a visa from a consular official. Van Vleck, *The Administrative Control of Aliens*.

spectable, racially eligible, or economically self-sufficient. Immigrants were also subject to medical examinations, which along the Mexican border included fumigation.[12] All immigrants who were not immediately admissible were held for a second hearing before a Board of Special Inquiry, a three-member panel that reviewed the case and voted to exclude or admit. Virtually all Chinese and Japanese immigrants had their cases heard before the Board of Special Inquiry, and an estimated twenty percent of Ellis Island arrivals were detained for further investigation.[13] Immigrants denied entry could appeal their cases to the commissioner-general of immigration, whose decisions were reviewed by the secretary of the department.[14] Immigrants who believed they were wrongly held by immigration authorities could petition the federal courts for relief and seek appeal through the judicial process.

During these appeals, immigrants faced detention, a grim and disheartening experience during which family members were separated and which could last weeks, months, and even years.[15] Husbands and wives had little and often no contact with one another, and family members were separated during questioning. Held at Ellis Island, New York for over two

[12] For a discussion of the arrival experience at Angel Island, see Him Mark Lai, Genny Lim, and Judy Yung, *Island: Poetry and History of Chinese Immigrants on Angle Island, 1910–1940* (Seattle: University of Washington Press, 1980). Jennifer Gee has richly documented the administrative procedures used at the Angel Island station; see Gee, "Sifting the Arrivals: Asian Immigrants and the Angel Island Immigration Station, San Francisco, 1910–1940" (Ph.D. diss., Stanford University, 1999). El Paso procedures are discussed in Jesse W. Thamos, Inspector in Charge El Paso, "Statement as to the Routine Examination of Arriving Aliens for the Immigration Service at This Port, 22 Dec. 1923," casefile 52903/29 (1923); RINS, SCF, MI, reel 3. A descriptive analysis of arrivals at Ellis Island is provided by Ann Novotny, in *Strangers at the Door: Ellis Island, Castle Garden, and the Great Migration to America* (Riverside, Conn.: The Chatham Press, 1971). In addition, see M. Mark Stolarik, ed., *Forgotten Doors: The Other Ports of Entry to the United States* (Philadelphia: The Balch Institute Press, 1988).

[13] Novotny, *Strangers at the Door*, 22. Unfortunately, the Immigration Bureau did not publish data on the number of immigrants held for questioning. Officially, Chinese cases were not heard before Boards of Special Inquiry until 1919; up until that time immigrants testified before one or more immigration inspectors with the Chinese Division. Enforcement of the Chinese exclusion laws was vested with customs officers at individual ports until 1903 when the Chinese Division was relocated within the Bureau of Immigration under the Department of Commerce and Labor.

[14] Sharon D. Masanz, *History of the Immigration and Naturalization Service: A Report Prepared at the Request of Senator Edward M. Kennedy, Chairman, Committee on the Judiciary of the United States Senate* (Washington: U.S. Government Printing Office, 1980).

[15] INS records contain evidence of suicides at Caste Garden, Angel Island, and Honolulu. Casefile 52706/4 (1889); RINS, SCF, EI, reel 5; INS file 4384/245 (1932); Chinese Wives of Native-Born American Citizens, box 4; INS, HDO, RG85; NA-PSR; INS files 1300–78976 and 1300–78977 (1948); Unprocessed; INS, SFD, RG85; NA-PSR; INS files 1300–78970, 1300–78976, and 1300–82828 (1952); Unprocessed; INS, SFD, RG85; NA-PSR.

months in 1921 while awaiting the board's decision in her case, Alexia Puskas wrote to the secretary of labor to request relief. "Two full months have passed since my case was appealed and I still wait,—wait until I am practically at my wits' ends," Puskas explained, "and it hardly seems to matter what will happen to me."[16]

The meticulous case files kept by the INS during these detention periods often include an extended interview with the woman seeking admission, as well as memos and reports from immigration investigators looking into immigrant women's behavior through interviews with family, friends, neighbors, and even employers.[17] In their interviews with INS officials, immigrant women strategized to achieve immigration or citizenship through calculated misrepresentations.[18] Often, when women immigrants altered their testimony under cross examination, they explained that their original answers had conformed to what they thought the law read, how they thought policy was applied, or what they had been advised to say by other immigrants. Indeed, in the case of Chinese applicants, INS officials maintained complete case files on immigrant families over multiple generations in order to check one family member's story against another's.[19]

[16] Alexia Puskas arrived from Czechoslovakia in 1921 with her daughter, intending to work as a domestic servant for her brother-in-law. Suspicious that her employment in a man's home lacked both moral propriety and fiscal certainty, immigration officials excluded Puskas as a likely public charge. Puskas [pseud.], INS file 54999–324 (1921); DJA-INS, acc. 60 A 600, box 1420; INS, DC, RG85; NA, DC.

[17] All interviews and supporting materials were transcribed and preserved in English. The bureau both employed official translators and made use of immigrant aid society service providers who were often fluent in the languages of those they sought to assist. Little is known about how translators were selected or evaluated, and no written record remains of a translation process. Arriving immigrants were asked if they understood the translator, and when they answered affirmatively the interrogation proceeded. Undoubtedly, translators could dramatically influence the outcome of women's appeals by helping them respond appropriately to examiners' questions or by frustrating women's efforts to articulate their claims to membership. INS officials were aware of this potential abuse of power, and investigations of fraud were periodically conducted in which evidence of extortion and bribery was uncovered. Because the hearings are available only in their English translation, it is difficult to evaluate the quality and honesty of specific translators and the effect this may have had on individual women's cases. Him Lai notes in the case of Chinese applicants that interpreters, along with immigration inspectors, could be easily bribed to reach a satisfactory decision. Lai, "The Chinese Experience at Angel Island," *East/West* 10 (1976): 7–9; Lucie Chen Hirata, "Free, Indentured, Enslaved: Chinese Prostitutes in Nineteenth-Century America," *Signs* 5 (1979): 11.

[18] For example, Faith Hopkins confessed to International Institute staffers that she had hidden her marriage from immigration officials for fear it would jeopardize her application for naturalization. Faith Hopkins [pseud.] casefile 12–13 (1952) box 190; International Institutes of Minnesota.

[19] Detailed maps of Chinese villages and diagrams of extended kin networks were continually referenced and revised as new immigrants told their stories.

At the border, women citizens returning from abroad could find themselves detained and deported as inadmissible "immigrants." Women who did not fit within the racial dyad of American citizenship, and thus did not appear to be citizens, were at particular risk. Faced with deportation, would-be citizens were asked to provide immigration and naturalization officials suspicious of their claims to membership with birth certificates, evidence of residence, proof of racial status, and documentation of their marriages and family histories.

Along with those women seeking naturalization and women citizens attempting to prove their citizenship, immigrant women who could find no relief before immigration authorities or social service providers sought legal redress before the federal courts. Court officers reviewed women's testimony and the opinions of immigration officials and decided the law's application.[20] The federal courts thus functioned as a second border wherein women, immigration officials, naturalization examiners, and their lawyers debated to whom the law should be applied. The judiciary has possessed only limited oversight over the process of exclusion and deportation.[21] Despite this, would-be immigrants and would-be citizens continued to challenge their exclusions at the border before the courts, and at times the federal courts could prove more lenient and offer women immigrants some relief. The power of judicial review, however, was limited.[22]

What follows is a history of the effort to belong; a belonging that was shaped by both legal definitions of membership produced by the state and personal meanings expressed by immigrants, residents, and citizens. State-defined membership in the nation was categorical in procedure but fluid in practice. Shifting constructions of race, marital legitimacy, moral conduct, work skills, varying interpretations of citizenship law, and inconsistent enforcement of statutes constantly changed the terms and requirements of state-defined membership. On this unstable ground, immigrants, residents, citizens, noncitizens, and their children created their own self-defined issues of belonging, conceptions of membership that often directly

[20] The federal courts could not, and did not, seek to judge the constitutionality of expulsion provisions but only whether the law as written was fairly applied.

[21] Arriving immigrants held in the United States during the late nineteenth century could and did appeal their detention to the courts through writs of habeas corpus. By 1894, Congress legislated that the decisions of immigration officials and the secretary of the treasury were to be "final." Eleven years later, the Supreme Court interpreted the 1894 legislation to apply to those arriving "immigrants" who claimed to be "citizens." *United States v. Ju Toy* 198 U.S. 253 (1905).

[22] Beginning in 1903 with the Japanese immigration case, judicial review was widened in deportation cases as courts demanded greater evidence of due process. William B. Ball, "Judicial Review in Deportation and Exclusion Cases," *Interpreter Releases* 34, no. 20 (10 June 1957), RACNS, reel 11.

challenged the law and its application. Americans, would-be Americans, and permanent immigrants flexed the law where they could, broke it when they felt they must, as they carefully constructed stories of work skills, family relationships, and moral behavior to prove their admissibility.

Immigration and naturalization law has endeavored to create race and gender categories; so too have women inhabited, challenged, transgressed, and violated these categories in their efforts to become members of the nation. As immigration officials endeavored to fit the law onto arriving immigrants, immigrants sought to mold their testimony to fit within the law. As a result, arrival interviews with immigration officials and naturalization petitions before officers of the court are structured by multiple, often unstated, historically contingent understandings of the law. What is left behind from the efforts of women immigrants to gain admission and the efforts of administrators and policy makers to adjudicate borders is a set of legal stories, stories which are as much about citizens as they are about immigrants, as much about those inside the nation as those who remained outside.