It is a pressing challenge because millions of migrant care workers have their caring practices viewed through the lens of deficit. They are not seen as competent enough or to know enough to discharge their caring labours responsibly. Valuing and validating their care as knowledgeable and as located is a political challenge. And that is the politics that care ethicists must face up to. After all, as I said at the beginning of this chapter, migration inhabits a highly political world. That is the world into which care ethics must intervene.

NOTES

1. The nature of the questions one asks of care also varies among feminists of different political persuasions. Thus Sander-Staudt (2006, 34) argues that 'Liberal feminists might emphasize care as a gender-neutral virtue of an individual that should be chosen autonomously, while radical feminists might emphasize care as a social and individual virtue that partakes in dichotomous understandings of sex and gender and that require revision. Radical and liberal feminisms also tend to stress different forms of political and moral agency. Liberal feminists highlight formal agency and individual autonomy against a background of social relations (which may or may not include care), while radical feminists highlight informal agency and misogynist social relations against a background of socially embedded individuals.' These struggles over care highlight some of the problems of care as a category of thinking affective relations that move towards justice.
2. Some feminist theorists (see for instance Sander-Staudt 2006) also argue that care is sometimes problematically counterposed to the mythical autonomous subject with care-givers and care-receivers on one side and those who neither need nor offer care on the other.
3. I am grateful to the Open University's International Development and Inclusive Innovation group for sponsoring my visit to the second workshop on 'Delivering Higher Education to Syrian Refugees', organized by Al-Fanar Media, the British Council, and SPARK.

Chapter Twelve

Illegal

White Supremacy and Immigration Status

José Jorge Mendoza

In recent debates over immigration, one term in particular has evoked very strong feelings: 'illegal'. Nowhere are these feelings more apparent than in the slogans used by anti-immigration activists—'What part of *illegal* don't you understand?'—and in the responses given by immigrant rights supporters—'No human being is *illegal*'. Despite the fact that both sides of the debate have something at stake in this term, there is no firm agreement on what the term means or what role it should (or should not) play in the immigration debate. On the one hand, supporters of immigrant rights feel that the term is (or functions like) a racial slur and on those grounds ought to be condemned as racist (Chomsky 2014; Silva 2015). On the other side of the debate, anti-immigration activists believe that the term is simply a shorthand way of referring to foreigners who are in the country without proper authorization and they go to great lengths to show how their use of the term makes no reference to race.

In this chapter I would like to suggest an alternative view. I would like to explore the possibility that even if anti-immigration activists are correct in their belief that the term *illegal* can be divorced from racist (or even ethnocentric) connotations, it is still wrong to use the term because it nonetheless functions to shelter or obscure another form of white supremacy: xenophobia. The term *illegal* is therefore, as immigrant rights supporters have suspected all along, not a neutral term and should be condemned for engendering a kind of white supremacy. This condemnation, however, depends on a notion of 'whiteness' that is not strictly based on race or ethnicity, but that also includes nationality. This chapter aims to make a case for understanding *whiteness* in this particular way.

The argument in this chapter proceeds as follows. The first section attempts to clarify some of the key terms of this debate and to make the

case that *whiteness* is not a fixed or natural concept, but instead is a social construction whose composition changes throughout time and place. Understanding *whiteness* in this way allows one to see how white supremacy is not limited to instances of racism or ethnocentrism, but can also include instances of xenophobia. On this account, *whiteness* is thought to be analogous to a braid of three interwoven strands: the racial strand (e.g., science, biology, or phenotypes), the ethnic strand (e.g., culture, customs, or heritage), and the national strand (e.g., territory, sovereignty, and citizenship). In emphasizing one or a combination of these strands, *whiteness* can be granted to social groups that previously were denied full white status, while at the same time can be rescinded from groups that at different times and different places might have been considered (if only provisionally) white. Understanding *whiteness* in this way is important for dealing with issues of immigration and citizenship because it lets us see how nationality and xenophobia play a role in the construction of *whiteness* and thereby how terms like *illegal* help to reify the status of certain persons, including natural born citizens, as perpetual foreigners (i.e., non-whites).

The second section of this chapter looks at the history of US citizenship and immigration law. This section provides a case study of how denying admission or citizenship to certain groups of people is closely correlated to a denial of *whiteness*. In short, this section shows how the braid of *whiteness* has operated in the context of US immigration and citizenship law and how currently, even when immigration and citizenship laws are supposed to be neutral with respect to race and ethnicity, white supremacy nonetheless continues to thrive in part because of current immigration restrictions in US immigration policy.

If the arguments presented in this chapter turn out to be correct, they will entail at least two conclusions. The first is that terms like *illegal* are not neutral. Instead they help to hide, perpetuate, and excuse a kind of white supremacy and for that reason ought to be treated (and condemned) in the same manner as racial slurs. Second, even if shown to be analytically distinct from both racism and ethnocentrism, xenophobia nonetheless functions to promote white supremacy. This suggests that for political philosophers who worry about the role, nature, and power of the state—especially with regard to a state's right to exclude—a much deeper and more nuanced understanding of white supremacy will be necessary in their accounts.

THREE FACES OF WHITE SUPREMACY: RACISM, ETHNOCENTRISM, AND XENOPHOBIA

In order to determine whether or not a term like *illegal* helps to shelter or support white supremacy it is important to start by getting clear on

certain key concepts and ideas. For starters, it is important to be clear about the difference between 'racism' and 'racialism'. *Racialism*, properly speaking, is the belief that human races exist. In other words, a *racialist* is committed to the view that the human species is divided into certain biologically distinct subgroups and that the differences between these subgroups can often be expressed in phenotypic, intellectual, or physical differences. A racialist, however, is not necessarily committed to any *racist* ideas or ideologies. To be a *racist* requires a further step. *Racism* requires a belief, attitude, or practice that harms or denigrates the status of persons simply on account of the fact that they happen (or are thought) to belong (or not) to a certain race. In *Thinking About Race*, Naomi Zack points out just how complicated the issue of *racism* can be and how it has historically morphed from its classical configuration (e.g., the view that all inferior races ought to be eliminated) to the more institutional variety (e.g., the systematic and disproportionate allocation of social goods, services, or opportunities combined with an increased susceptibility to exploitation and social alienation based on racial group membership) that is more common today in places like the United States (Zack 2006, 44–53).

In order to adequately judge whether someone or something is properly racialist, racist, or both, it is important to be clear about yet another distinction: the difference between 'race' and 'ethnicity'. For example, scholars such as Mario Barrera have often argued that some social groups like Latino/as are not really racial groups. Part of the reason he offers for this view is that social groups like Latino/as are often multi-racial instead of being racially homogenous. He argues that it is best to think of multi-racial social groups, like Latino/as, as ethnic groups. As he points out:

> Latinos are for the most part not a 'racialized' minority … because prevailing discourses about Latinos in American society are not about 'race'… This is not to say that there is not a widespread use of 'race words' in the media and public discourse in general and 'color words' that sound like race words … Still, race words usually do not mean 'race' in the classic racist sense, and the bulk of public discourse about Latinos can be more appropriately recast as ethnic dialogue. (Barrera 2009, 321)

The following definitions of *race* and *ethnicity* derived from the work of Naomi Zack and Linda Martin Alcoff might help provide some clarity on the distinction Barrera tried to draw out in the preceding passage. According to Zack, *race* refers to a 'biological taxonomy or set of physical categories that can be used consistently and informatively to describe, explain, and make predictions about groups of human beings and individual members of those groups' (Zack 2002, 1). *Ethnicity*, on the other hand: 'concerns all the aspects of daily, family, and cultural life that

people with common histories share and find obligatory and fulfilling to teach their children' (Zack 2006, 29). Similarly, Alcoff argues that *race* '...is marked on the body through learned perceptual practices of visual categorization, with significant sociological and political effects as well as a psychological impact on self formation' (Alcoff 2007, 172). *Ethnicity* meanwhile refers to: '...groups that are demarcated by historical events, cultural practices, and structural formations, rather than by the phenomenological identities that are marked on the body' (Alcoff 2007, 172).

If we were to synthesize these two definitions of *race* and *ethnicity*, we would end up with something like the following common definitions. The concept of *race* evokes or has to do with physical traits that literally refer back to or are marked on the human body, making it difficult if not impossible (at least from a racialist point of view) to change or leave behind one's *racial* identity. The concept of *ethnicity*, however, has to do with the culture or shared history of a particular group, making it something that is potentially subject to change and requires some effort or commitment on the part of the individual or community to constantly renew or maintain.

Yet, despite the fact that *race* and *ethnicity* are here presented as two clearly delimited concepts, they often overlap and mimic each other's characteristics. Alcoff herself provides two such examples. She notes that in one case Black Jamaican immigrants in the United States were able to assuage some of the negative effects of anti-black racism by making it clear that they are not *ethnically* African-American. Similarly, she also provides cases where fixed essences are attributed to *ethnic* groups in a manner that more closely resembles *racism*. For example, Latino/as in the United States (regardless of their race) are often attributed such general and immutable characteristics as being lazy or having a propensity for criminality, which is usually more closely associated with a kind of racism than ethnocentrism.

Further complicating this distinction between *race* and *ethnicity* is David Roediger's thesis in *Working Toward Whiteness*. In that book, David Roediger argues that there is a problem with reading *ethnicity* back into earlier accounts of *race*, especially in places like the United States. According to Roediger, during the period 1860–1924 the term *ethnicity* was not often used and the racialized language of that time was very messy. According to Roediger, the use of the term *race* during that period would not comport to the neat definition I provided earlier. As Roediger writes:

> This loose, state-endorsed linkage of biology to culture, history, and class can mislead modern historians of race who characteristically attempt to disentangle the biological from other rationales for oppression, regarding the former as underpinning racism and the later as underpinning other kinds of prejudice. But what was so striking about restrictionist and racist thought at the beginning (and indeed, at the end) of the twentieth century was its very entanglement of the biological and the cultural. (Roediger 2006, 66)

Roediger argues that we should not try to clarify the messiness of *race* during this time, but instead embrace it. To do so, we need to make room for an 'in-between' category within the strict white/non-white racial binary. This *in-between* category would provide a better account of how the 'new immigrants' (i.e., Irish, Italians, Jews, Poles, and other immigrants from southern and eastern Europe) were able to go from being regarded as non-white to being fully 'white' in a matter of only a few decades. Finally, by getting this story right, Roediger believes we will better understand our current notion of 'whiteness' (Roediger 2006, 3–130).

Regardless of whether Roediger's account is correct or not, this brings us to yet another concept that requires clarification: *whiteness*. The term *whiteness* is often reserved for the default racial or ethnic position upon which other racialized and ethicized groups are measured. In this regard, *whiteness* is often associated with a kind privilege, which Peggy McIntosh famously compared to '...an invisible weightless knapsack of special provisions, maps, passports, codebooks, visas, clothes, tools, and blank checks' (McIntosh 1990, 31). In other words, *whiteness* provides its bearers with the freedom of having their race, ethnicity, and—as I will suggest later—nationality constantly in the background. *Whiteness* is therefore the dominant form of identity, which attempts to pass itself off as neutral. In describing *whiteness* George Yancy writes:

> To say that whiteness is deemed the transcendental norm is to say that whiteness takes itself to be that which remains the same across a field of difference. Indeed it determines what is deemed different without itself being defined by that system of difference. Whiteness is that according to which what is nonwhite is rendered other, marginal, ersatz, strange, native, inferior, uncivilized, and ugly. (Yancy 2008, 3)

The privilege that *whiteness* enjoys, however, is neither fixed nor natural, but is socially constructed, normalized over many years, and is often merely the negation of negative traits. Zack describes the construction of American *whiteness* as follows:

> American whiteness was constructed in several ways: through cultural ideals about whiteness, the development and enforcement of ideas of nonwhites as humanly inferior to whites, the exclusion of nonwhites from positions of

> public authority and the imposition of the cultural norms of white people on all racial groups. (Zack 2006, 66)

If *whiteness* is socially constructed, does it then follow that race and ethnicity are also socially constructed? The current consensus among race theorists today is that they are. The scientific community now largely rejects the idea that races have a kind of physical reality (Zack 2002). This conclusion, however, does not necessarily entail that race does not have material consequences (Alcoff 2015) nor that there are not ways of dividing up the human species into groups that appear to resemble our folk notions of race (Andreasen 2007; Hardimon 2012; Spencer 2014), but the idea that physical features, such as skin, hair, or eye colour, can somehow correspond to moral or intellectual characteristics is now largely discredited and thought to be morally reprehensible.

If race (at least in the racialist sense of the term) turns out to be a social construction, what implications might this have for the immigration debate? This question is especially pressing considering that immigration status is also a kind of social construction, as Kevin Johnson notes:

> Immigrant status, even more clearly than race, is also a social construction. It is not immutable, and it is not fixed by biology. The law creates 'aliens' as outsiders who are allocated few political and legal rights. Moreover, the legal construction of 'aliens' not only affects the general public's view of noncitizens but also contributes to their harsh treatment. (Johnson 2004, 6)

What Johnson seems to be suggesting is that, similar to a racial designation in a racist society, immigration status in a world of nation-states is the kind of social construction that protects insiders while at the same time socially ostracizing and rendering outsiders vulnerable to exploitation. In other words, discrimination based on 'nationality', which I define as a sense of belonging to or being associated with a particular nation-state, can function in a similar manner as *racism* or *ethnocentrism*.

In a series of articles, Ron Sundstrom and David Kim have suggested something along these lines. They have argued that thinking about *nationality* in this way not only helps us to better understand the perniciousness of 'xenophobia', but can also help uncover one of the places that white supremacy has found shelter (Sundstrom 2013; Sundstrom and Kim 2014). On their view, even if the animus, discrimination, or exploitation that certain immigrants and immigrant communities face cannot properly be defined as racist or ethnocentric (or at least not in the ways defined previously), these might still constitute instances of *xenophobia*, which they describe in the following way:

> ...a subjective belief or affect ... that some other person or group cannot be a part of that nation. These strangers cannot be authentic participants of the ... traditions of the nation they inhabit; they do not derive from soil of the nation's land or the blood of its people. (Sundstrom 2013, 71)

Xenophobia is also not just analytically distinct from racism or ethnocentrism, but as Sundstrom and Kim further suggest it can also be used in insidious ways to make common cause among antagonistic racial groups within a nation-state. For example, the shared worry over Middle-Eastern refugees (e.g., the 'threat of terror') or Latin American migrants (e.g., the 'loss of American jobs') can sometimes be appealed to as a way to make common *national* cause among black and *white* Americans. So even though racism, ethnocentrism, and xenophobia have historically tended to come together, Sundstrom and Kim suggest that there are important differences between them. As they write:

> Civic outsiders are not necessarily racial outsiders. Although most racial outsiders were deemed ipso facto to be civic outsiders, this convergence does not hold up. In the United States, for example, Native Americans and African Americans were explicitly not included in the nation. Over time, however, those groups, among others, were granted, under paternalistic and dominating conditions, a degree of civic insider status. This insider status was, of course, limited, exploitative, and degrading ... We do not mean to make too much of this civic insider status, but to be inside is not to be outside. (Sundstrom and Kim 2014, 34)

From what has been said so far, we can see that there are multiple and overlapping ways that residents of a nation-state can become 'perpetual foreigners'. *Perpetual foreigners* are those who reside within a nation-state—sometimes for multiple generations, so this can come to include natural born citizens—but because of their race, ethnicity, or nationality are constantly treated or misrecognized as not full or real members of the state. This suspicion or sense of not belonging arises from the fact that certain races, ethnicities, and nationalities are (or have been) either ineligible for admission or the process of admission has been made more difficult for them.

If a sense of *perpetual foreignness* could only be cashed out in terms of racism or ethnocentrism, then it would be true that there is nothing inherently wrong with the use of terms like *illegal*. But if we think of *whiteness* not merely as composed of race and ethnicity but as also including nationality, then it is easier to see how terms like *illegal* help to hide or excuse white supremacy and therefore should be condemned in the same manner (and for similar reasons) that racial and ethnic slurs are condemned.

In the section that follows, I provide a brief outline of the history of US immigration and citizenship law. This outline is meant to show just how interwoven race, ethnicity, and nationality are in the making of American *whiteness*. It shows that in emphasizing one or a combination of these strands, *whiteness* can be granted to certain social groups that previously were denied *whiteness*, while at the same time it can also take away *whiteness* that other groups in other places or at other times enjoyed. Understanding *whiteness* in this way is particularly important for understanding issues of immigration and citizenship, because it lets us see how, even when the strands of ethnicity and race are weakened (or even missing), the national strand of whiteness can continue to uphold white supremacy.

A NATION OF IMMIGRANTS

It is a widely accepted and often repeated saying that the United States is a 'nation of immigrants', and while this saying is not incorrect, the experience of becoming an American has not been the same for everyone. For example, the same year that the US Constitution was finally ratified by every state in the union, the United States passed its first Naturalization Act. This Act outlined the requirements for naturalization and among them was a stipulation that only 'white persons' would be eligible for naturalization (1790 Naturalization Act). This Act therefore created an entire subclass of people (i.e., non-white persons) who—despite their personal merits, relationships formed, or time spent residing within the United States—were permanently ineligible for US citizenship, but not necessarily denied residency.

According to activist-scholar David Bacon, this is how African-Americans became the first group of perpetual foreigners in the United States. This was true even as slavery started to be abolished in northern states. Because African-Americans were permanently ineligible for US citizenship, laws like the Black Codes could be passed without infringing on the political equality of citizens. These laws that required all 'free' African-Americans carry proof of their status or risk being thrown into slavery (Bacon 2008, 204–05). For obvious reasons, *whites* were not subject to these laws and did not need to carry (or worry about having) proof of their status. Blackness alone arose suspicion of one's unlawful presence.

The view of African-Americans as political inferiors to *whites* was then constitutionally enshrined in the *Dred Scott v. Sandford* Supreme Court

case. In that case, Scott had sued for his freedom based on the fact that his master had taken him to a free state. By a 7-2 margin the Court ruled that, regardless of the merits of Scott's case, Scott had no standing in court because:

> A free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a 'citizen' within the meaning of the Constitution of the United States ... Since the adoption of the Constitution of the United States, no State can by any subsequent law make a foreigner or any other description of persons citizens of the United States, nor entitle them to the rights and privileges secured to citizens by that instrument ... [African-Americans] had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. (*Dred Scott v. Sandford* 1857)

In short, as a source of cheap and vulnerable labour, African-Americans were an indispensable part of the nation-state, but as full, equal, and rights-bearing members they were to remain outside the nation-state.

This depressing moment in US history was supposed to have come to an end with the victory of the North over the South in the US Civil War. The end of the Civil War not only brought an end to chattel slavery, but also brought the ratification of what are now called the Civil War Amendments (i.e., the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution). These amendments officially overturned the *Dred Scott* decision and extended (and protected) citizenship to African-Americans. Yet, as Kevin Johnson notes, as African-Americans began to gain legal citizenship, other groups began to take their place as perpetual foreigners:

> Congress passed the first wave of discriminatory immigration laws not long after the Fourteenth Amendment to the Constitution ... and other Reconstruction amendments went into effect. With the harshest treatment generally reserved for African Americans formally declared unlawful, the nation transferred its animosity to another discrete and insular racial minority—one whose immigration status, race, and perceived impact on the fortunes of white workers made the treatment more socially acceptable. (Johnson 2004, 19)

The Civil War Amendments made an exception in the Naturalization Act for people of African descent, but these amendments did not do away with the Act's *whiteness* clause altogether. The protection that these amendments provided extended to African-Americans (even though

individual states did their best to circumvent these protections), but they did not extend to other non-whites (Ngai 2004, 38). Overt forms of discrimination were allowed to continue in immigration cases largely because the US federal government has been thought to enjoy 'plenary power' over immigration. In other words, as a legitimate, self-determined, and sovereign state, the US federal government is believed to have a presumptive right to regulate many aspects of immigration admissions free of judicial review (i.e., immigrants generally have no legal claim to be admitted).

On this account, the second group that came to be considered perpetual foreigners in the United States was Asian-Americans. The process of Asian-Americans becoming perpetual foreigners began with the Page Act of 1875. This Act aimed to prevent 'undesirable' Chinese immigrants from coming into the United States, which included forced labourers (i.e., coolies), convicts, and most especially women who were constantly suspected of being prostitutes (Page Act 1875). On the heels of the Page Act came the infamous Chinese Exclusion Act of 1882. This Act went further by closing off all immigration from China and making Chinese immigrants (including those already in the United States) permanently ineligible for US citizenship.

Challenges to these Acts made their way up the Supreme Court, but there the Court consistently found in favour of the US federal government. So like with *Dred Scott*, Chinese immigrants were found to have no standing in immigration cases regardless of the merits of their case for inclusion. For example, in the most infamous of these cases, *Chae Chan Ping v. United States*, the Court concluded that even though the law barring Ping's admission was ex post facto:

> ...the United States, through the action of the legislative department, can exclude aliens from its territory is a proposition which we do not think open to controversy. Jurisdiction over its own territory to that extent is an incident of every independent nation. It is a part of its independence. If it could not exclude aliens it would be to that extent subject to the control of another power. (*Chae Chan Ping v. United States* 1889)

Four years later, in *Fong Yue Ting v. United States*, the Supreme Court ruled that besides having the presumptive right to admit and exclude non-citizens, the US federal government also has the presumptive power to deport non-citizens without the benefit of judicial review. According to the Court: 'The power of Congress ... to expel, like the power to exclude aliens, or any specified class of aliens, from the country, may be exercised entirely through executive officers ...' (*Fong Yue Ting v. United States*

1893). Furthermore, because deportation is not considered a punishment, the due process protections of the Constitution did not apply. As the Court noted:

> The order of deportation is not a punishment for crime. It is not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment. It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the government of the nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside here shall depend. He has not, therefore, been deprived of life, liberty or property, without due process of law; and the provisions of the Constitution, securing the right of trial by jury, and prohibiting unreasonable searches and seizures, and cruel and unusual punishments, have no application. (*Fong Yue Ting v. United States* 1893)

The Chinese Exclusion Acts, supplemented by these Supreme Court cases, set the tone for the first two attempts at comprehensive immigration legislation in the United States. The first attempt took place in 1917. The 1917 Immigration Act vastly expanded the scope of those ineligible for US citizenship to include all immigrants from a geographical area that came to be known as the 'Asiatic Barred Zone'. This zone included not just China, but also Japan and most of India (1917 Immigration Act). Seven years later, the Johnson-Reed Act of 1924 introduced a system of 'national origin' quotas, which also barred from entry any and all persons ineligible for citizenship (1924 Immigration Act). The final numbers used to determine the quotas were derived from the 1890 census. The reasoning behind using this census as opposed to a more recent one was the belief that it captured the true composition of the United States before it was deformed by a large wave of Southern and Eastern European immigrants (Ngai 2004, 23). Not surprisingly these numbers disproportionately favoured northern Europeans and further helped define the notion of American *whiteness* in a particular way.

The ramifications of these Acts and court decisions negatively impacted the entire Asian-American community, but were also forcefully contested—especially by the Japanese community. Unlike other Asian countries at the time (e.g., China and India), Japan was not a European colony and in fact prided itself on being an imperial nation that only a decade earlier had decisively beaten Russia (i.e., a *white* nation) in war. Also many of the Japanese immigrants who immigrated to the mainland United States had been long-term residents of Hawaii, which was only annexed by the United States in 1898. In making their way to the US mainland, Japanese immigrants consciously attempted to assimilate to

US culture and customs and even tried hard to distinguish themselves from the Chinese, whom they were replacing in beet and orchard fields (Akers Chacón, Davis, and Cardona 2006, 33). Yet, the nativist and anti-Asian sentiment at the time did not really allow for any differentiation between the two groups and by 1907 a 'Gentleman's Agreement' was put in place between the United States and Japan. According to the terms of this agreement, Japan would voluntarily curtail immigration into the United States (Johnson 2004, 18; Ngai 2004, 38–39).

It is in this context that the case of Takao Ozawa became a landmark case in US immigration policy. Takao Ozawa emigrated from Japan to Hawaii as a child in 1894 (four years before the island's annexation by the United States) and by all accounts he epitomized US customs and culture. Ozawa applied for US citizenship in 1914 on grounds that he was ethnically American and also on the fact that his skin—a central phenotypic feature in racial discourse—was as white as anyone else's, therefore making him a *white* person for purposes of the Naturalization Act. The US Supreme Court eventually heard Ozawa's case in 1922 (Lopez 1996, 80–86). In that case, the Court rejected Ozawa's application on grounds that: 'The appellant, in the case now under consideration … is clearly of a race which is not Caucasian and therefore belongs entirely outside the zone [of whiteness] on the negative side …' (*Takao Ozawa v. US* 1922).

The Ozawa case gave the impression that *whiteness* (at least American *whiteness*) referred to a scientific, and in particular anthropological, category that could be identified by experts, even when the phenotypes, customs, or culture of a person did not correlate with or went against common beliefs about race. Therefore, with respect to determining *whiteness* and in turn eligibility for US citizenship, race (e.g., a bio-anthropological category) appeared to trump ethnicity (e.g., culture and customs).

In the immediate aftermath of the Ozawa case, a man by the name of Bhagat Singh Thind reapplied for US citizenship. Thind had enlisted in the US army during World War I and after the war had applied for US citizenship. He initially received US citizenship, but his citizenship was later revoked on grounds that he was not *white*. Immediately after the ruling in the Ozawa case, Thind reapplied for citizenship on the basis that this case conclusively showed that he was in fact *white*. Thind's argument was simple. If American *whiteness* has to do with biological race (i.e., being of the Caucasian race), then Thind should be considered *white* because he came from a high Hindu caste that the best anthropologists of the day considered to be part of the Caucasian race.

The Supreme Court heard Thind's case only six months after their decision on the Ozawa case. Thind's case in many ways represented the inverse of Ozawa. Thind did not claim to epitomize US customs or culture and

his case rested entirely on the fact that contemporary anthropology would place him squarely within the Caucasian race. The court itself conceded the point that Thind was in fact a member of the Caucasian race, but rejected his claim to *whiteness*, and thereby his request for citizenship, on the following grounds:

> In the endeavor to ascertain the meaning of [the Naturalization Act] we must not fail to keep in mind that it does not employ the word 'Caucasian', but the words 'white persons', and these are words of common speech and not of scientific origin … It is a matter of familiar observation and knowledge that the … characteristics of the Hindus render them readily distinguishable from the various groups of persons in this country commonly recognized as white. (*U.S. v. Bhagat Singh Thind* 1923)

If *whiteness* were only about racial classification, then this decision—which was rendered by the same court and whose majority decision was written by the same justice, George Sutherland—would be in direct contradiction with its finding in the Ozawa case. Instead of race trumping ethnicity, the Thind case seems to show that ethnicity (e.g., culture and customs) can trump race (e.g., bio-anthropology) in determining *whiteness* and thereby eligibility for US citizenship. Assuming that the court did not blatantly contradict itself in these two cases, the only way to make sense of this is to conclude that during a very formative moment in US history (i.e., as the nation was establishing its first comprehensive immigration policies), neither race nor ethnicity alone was sufficient for American *whiteness*. Obtaining American *whiteness* seemed to require both, but there is also more to this story.

An interesting fact about both the 1917 Immigration Act and the Immigration Act of 1924 is that neither placed quotas or restrictions on immigrants from countries in the Western hemisphere. There are many reasons why this might have been the case—possibly a sense of Pan-American-ness or the long history of circular labour migration that existed among countries in the Western hemisphere—but for most of its existence the United States actually had an open-border with countries in the Western hemisphere.

In this regard, Mexican immigrants have always been different from other immigrants to the United States. They are also different in another regard as well. In 1848 the United States took half of Mexico's territory in a war. At the end of the war, Mexico and the United States signed the Treaty of Guadalupe Hidalgo. This treaty gave the United States half of Mexico's territory, but this annexation came with certain provisions. Articles 8 and 9 of this treaty essentially stated that despite the fact that most Mexican nationals could be racially classified as mixed-race (i.e.,

ıestizo) and had different cultures and customs than the people of ıe United States (i.e., they were ethnically different from Americans), 1exican nationals nonetheless would have the right to become natural-:ed US citizens (Minot 1862, 929–30). If these articles are understood ı conjunction with the Naturalization Act, and with the rulings in the)zawa and Thind cases, it can be deduced that a Mexican *nationality* ould provide immigrants, even those who were neither racially nor ethni-ally *white*, with a kind of *whiteness*.

Various court rulings in fact followed this sort of reasoning in the late ineteenth and early twentieth century. In these cases, Mexican nation-ls, unlike Ozawa and Thind, were considered at least not non-*white* for ıurposes of immigration and therefore were eligible for US citizenship.)ne case in particular that stands out is *In Re Rodriquez*. In this case ₹icardo Rodriguez, who by his own admission was neither Caucasian nor thnically American, nonetheless applied for US citizenship. He further dmitted in court that his only reason for applying was so that he could ote against certain San Antonio politicians in the upcoming elections. In hort, Rodriguez's case for US citizenship could not have been any more lifferent than either Ozawa or Thind's.

San Antonio politicians T. J. McMinn and Jack Evans opposed ₹odriguez's application for citizenship on grounds that he was not *white* nd therefore ineligible under the Naturalization Act. The judge in the ase, Thomas Maxey, ruled that, regardless of Rodriquez's race and thnicity, as a Mexican national Rodriguez was indeed eligible for natu-alized US citizenship. Maxey made his decision based on treaties and greements that the US government had entered into, specifically citing he Treaty of Guadalupe Hidalgo (De Leon 1979). Historian Mai Ngai ıotes the significance of Rodriguez's case by pointing out that it:

> … recognized rights established by treaty over the narrow racial requirements in the law. By privileging Mexicans' nationality over their race, even as a conquered nationality … Mexicans were thus deemed to be white for purposes of naturalization, an unintended consequence of conquest. (Ngai 2004, 54)

n short, even as US immigration laws and policies reached their racist ınd ethnocentric zenith, cases such as *In Re Rodriquez* seem to show that ı Mexican nationality could protect immigrants, at least to some degree, 'rom the worst forms of legalized white supremacy that prevailed in US mmigration policy.

Ironically, as things began to improve for other racial and ethnic groups, things started to worsen for Mexican-Americans (and Latino/as

in general). During the period between 1940 and 1965, The US underwent various immigration and civil rights reforms that aimed to combat legalized white supremacy. As Ngai astutely points out, these reforms 'were cut from the same cloth of democratic reform in the same historical moment … Yet the strong similarities have perhaps obscured important differences' (Ngai 2004, 228). By important difference, Ngai is referring to the way that each of these movements responded to legalized white supremacy. She continues: 'whereas the civil rights movement targeted the legacies of racial slavery, immigration reform in the 1940's to 1960's addressed, for the most part, discriminations faced by ethnic Euro-Americans who were racialized as white' (Ngai 2004, 229).

The immigration reforms that Ngai is referring to are the 1952 Immigration and Nationality Act and the 1965 Immigration and Nationality Act. Both of these Acts fundamentally changed US immigration policy by getting rid of overt forms of racism and ethnocentrism. The 1952 Immigration and Nationality Act put an end to the *whiteness* clause in the Naturalization Act and did away with the 'Asiatic Barred Zone'. The 1965 Immigration and Nationality Act went further and abolished the national origins quota, replacing it with a system of preferences for family reunification, immigrants with technical skills, and a yearly numerical cap (1965 Immigration and Nationality Act). Part of the reason for this change was that the policy of the early twentieth century was becoming a source of embarrassment for the United States, especially as it tried to take the moral high ground against fascism and later communism. It was also insulting to US citizens of Jewish, Greek, Polish, Portuguese, and Italian heritage.

One of the unintended consequences of this change in immigration policy was that it led to a large influx of undocumented immigrants from Latin America and in particular Mexico. The cause of this sudden increase could be attributed to various factors, but unquestionably a primary reason was the policy of numerical caps. These caps signalled the first time in US history where immigration from the Western hemisphere would be restricted. Every country in the world—including countries in the Western hemisphere—would have their immigration capped at no more than 20,000 persons-per-year. This cap treated all countries formally the same and was therefore seen as integral in removing the last vestiges of an overtly discriminatory immigration policy. But as Ngai explains, this policy also had some unintended and unfortunate consequences:

> The imposition of a 20,000 annual quota on Mexico recast Mexican migration as 'illegal'. When one considers that in the early 1960s annual 'legal'

> Mexican migration comprised some 200,000 braceros and 35,000 regular admissions for permanent residency, the transfer of migration to 'illegal' form should have surprised no one. The number of deportations of undocumented Mexicans increased by 40 percent in 1968 to 151,000 … [by 1976] the INS expelled 781,000 Mexicans from the United States. Meanwhile, the total number of apprehensions for all others in the world, *combined*, remained below 100,000 a year. (Ngai 2004, 261)

In short, because of these numerical caps, Mexican nationals who before enjoyed an open-border with the United States now suddenly comprised the largest segment of undocumented immigrants in the United States.

It is therefore not surprising that after 1965 the Mexican-American community (and the Latin American community in general) began to experience a process similar to racial profiling, which I will refer to as 'un-American' profiling. Similar to the way that racial profiling assumes that members of a certain race are more prone to criminal activity and therefore are placed under more intense scrutiny until they prove their innocence, *un-American* profiling assumes that certain nationalities (e.g., Mexicans) are more prone to be unlawfully present, so are regarded as such until their lawful status can be confirmed (Sánchez 2011).

This practice against the Mexican-American community was so endemic that just ten years after the 1965 immigration reform went into effect the first case of *un-American* profiling went before the Supreme Court. The case involved roving border patrol agents who had stopped a car being driven by Felix Humberto Brignoni-Ponce. The reason for the stop was that Brignoni-Ponce and his two passengers appeared Mexican. The Court in this case looked into whether 'Mexican appearance'—which according to court documents was not used to denote a particular race or ethnicity, but a nationality—was sufficient to warrant this kind of stop. The court ruled that roving border patrol agents could not stop people *solely* for 'appearing Mexican', but that because of the recent increase in undocumented immigration from Mexico, 'Mexican appearance' could be used as a relevant factor for such a stop (Johnson 2004, 30–31; *United States v. Brignoni-Ponce* 1975).

A year later another similar case went before the Supreme Court. In this case, Amado Martinez-Fuerte and two female passengers attempted to cross a border checkpoint. Based on their 'Mexican appearance', their car was directed to the secondary inspection area. Once referred to that area it was discovered that the two female passengers were unlawfully present. In that case, the question before the Court was not about the outcome, but about the process of referring a car to secondary inspection based solely on a 'Mexican appearance'. In this case the Court again

cited the sudden influx of undocumented immigrants from Mexico and the need to protect the sovereignty of the United States through more stringent enforcement of immigration laws. The Court ruled that these concerns were weighty enough that it was:

> constitutional to refer motorists selectively to the secondary inspection area … on the basis of criteria that would not sustain a roving patrol stop. Thus, even if it be assumed that such referrals are made largely on the basis of apparent Mexican ancestry, we perceive no constitutional violation. (*United States v. Martinez-Fuerte* 1976)

By the 1980s it was clear that the 1965 Immigration Act needed to be reformed. The first attempt at substantive immigration reform came in 1986 in the form of the Immigration Reform and Control Act of 1986 (IRCA). This Act had three essential components. First, it marked the first time in US history where employers would be required to check the immigration status of their employees and were legally prohibited from knowingly hiring undocumented immigrants. Second, it expanded the guest-worker programme. Lastly, it provided amnesty for undocumented immigrants who entered the United States before 1 January 1982 (1986 Immigration Reform and Control Act).

The aim of IRCA was to address both the demand for and supply of undocumented workers in the United States. By the early 1990s it was clear that this reform had not accomplished its task. Undocumented immigration from Latin America, and in particular Mexico, had continued to increase and these immigrants had no trouble finding jobs. Most critics of IRCA believed it was the lack of serious enforcement in the 1986 reform that was to blame for its failure. So throughout the 1990s there was an increased focus on devoting more money and resources to border enforcement. Yet despite this increased focus on border enforcement, the actual number of undocumented immigrants continued to increase. For example, the estimated number of undocumented immigrants living in the United States before the emphasis on border enforcement was believed to be about 3.5 million. In 2007, the number of undocumented immigrants living in the United States was estimated to be about 12 million (*Pew Research Center* 2014).

The reason that increased border enforcement was not successful at reducing the number of undocumented immigrants is simple. In the past, most immigrants who came to the United States came for work and followed a pattern of circular migration, where they would work in the United States for a limited time and then return home. Few migrant workers came with the idea of remaining permanently in the United States. The increased focus on border enforcement disrupted this pattern

of circular migration. As it became more dangerous and expensive to enter the United States through clandestine channels, undocumented immigrants simply began to stay in the United States permanently and eventually sent for their spouses and children to join them. In other words, the increased focus on border enforcement trapped undocumented immigrants in the United States.

This point has not been completely lost on anti-immigration advocates and for that reason they have begun to support a new strategy of internal enforcement dubbed 'attrition through enforcement' (Vaughan 2006). According to one of its principal architects, Mark Krikorian, this strategy is '...designed to reduce the number of new illegal arrivals and persuade a large share of illegals already here to give up and deport themselves' (Krikorian 2006). According to folks like Krikorian, self-deportation can be accomplished by extending immigration enforcement into many everyday practices such as commandeering local police for immigration enforcement purposes, requiring employers to verify the immigration status of their employees, and setting up similar verification mechanisms with landlords, doctors, and school officials. The idea is that if undocumented immigrants are too afraid to look for work, housing, schooling, or even to see a doctor or call the police, they eventually will grow tired and leave the United States voluntarily. In recent years, this strategy has been employed at both the federal (1996 Illegal Immigration Reform & Immigrant Responsibility Act) and local level (State of Arizona Senate 2010).

One major problem with a strategy like *attrition through enforcement* is that it has externalities that impact only those who happen to be affiliated with groups that make up a disproportionate percentage of the undocumented immigrant population. In these cases, some citizens will get subjected to extra scrutiny over their immigration/citizenship status, even when they are not at points of entry (e.g., as they look for work, homes, schools, medical care, or encounter police), while others will not. On this strategy, many citizens have the freedom of having their nationality constantly in the background of their minds, while others will have it in the foreground—even if they happen to be natural born citizens—which will degrade their civic standing.

This presents a very curious turn of events. At the beginning of the twentieth century, when white supremacy was an explicit feature of US immigration and citizenship law, Mexican nationality could provide a non-citizen with some small reprieve from these pernicious policies. Now, when US immigration policies are supposed to be race and ethnicity neutral, even the slightest hint of Mexican nationality can be sufficient to arouse suspicion of one's civic standing. These changes in immigration

law (i.e., restrictions on immigrants from the western hemisphere) have therefore transformed Mexican-Americans from provisionally white to *perpetually foreign* and therefore non-white.

The account just provided has tried to show that, even if not motivated by racial or ethnic prejudice, immigration restrictions can still deny or take away a group's claim to *whiteness*. This is evident from the post-1940s US immigration reforms, which instead of granting Mexican-Americans full *white* status (as they did for other ethnic groups) it cost them whatever *white* status they did provisionally have before. This loss came not necessarily as a result of racist or ethnocentric legislation, but by the enactment and enforcement of non-racist and non-ethnocentric immigration restrictions. This might seem very counterintuitive at first, but it makes more sense when we see that in actuality these restrictions—and especially their enforcement—disproportionately targeted a particular group and thereby made those affiliated or associated with that group into national outsiders par excellence. In short, we see that while white supremacist attitudes can and have motivated restrictions on immigration and citizenship, restrictions themselves (even when not intending to) can also be a source of white supremacy.

CONCLUSION

When anti-immigration activists ask: 'What part of *illegal* don't you understand?' their use of the term *illegal*—even if we allow that its use is not meant in a racist or ethnocentric way—still functions as a kind of shorthand that obscures or conceals the contestable and socially constructed nature of immigration status and citizenship. As I pointed out earlier, even when immigration and citizenship restrictions are part of a well-intentioned policy (e.g., seeking to rectify the injustices of past racist and ethnocentric policies), they can still be responsible for creating the kinds of conditions that lead to xenophobia. Xenophobia does not need race or ethnicity to generate a sense of perpetual foreignness, as long as it has something like nationality (e.g., a sense of belonging to or being associated with a particular nation-state) to appeal to.

In places like the United States, where perpetual foreignness has historically been linked to a non-white status, it is not difficult to see how a group that at one point might have been provisionally white (e.g., Mexican-Americans) can come to lose that status with a change in immigration and naturalization law. The case of Mexican-Americans is both curious and instructive in that it shows how immigration restrictions are not only driven by a particular understanding of *whiteness*, but also how

our notion of *whiteness* can be derived from or shaped by immigration restrictions—even when those restrictions are supposed to be neutral with respect to race and ethnicity.

Supporters of immigrant rights are therefore right to worry about the stigma that terms like *illegal* attach to certain social groups and for that reason their slogan 'No human being is *illegal!*' should be embraced. This does not, however, show that the term *illegal* is itself strictly racist or ethnocentric. The use of the term *illegal* does indeed perpetuate white supremacy, but this only makes sense if we understand *whiteness* as something more analogous to a braid where race, ethnicity, and nationality each function as strands. In this braid, no strand by itself is sufficient, as *whiteness* requires more than just the right race (e.g., being Caucasian) or right ethnicity (e.g., American culture or customs below), but also a sense of belonging to or being associated with the nation-state (i.e., the right nationality).

Chapter Thirteen

Methodological Nationalism and the 'Brain Drain'

Alex Sager

Brain drain—the fear that the emigration of skilled workers, usually from the developing world, has harmful effects for those who remain—has attracted widespread attention and condemnation from scholars, policy makers, and activists. What is rarely recognized is that this attention is not merited by the evidence for such allegedly harmful effects. To explain the discrepancy between the attention and passion devoted to the issue of 'brain drain' and its limited intellectual merits, I analyse it in terms of the cognitive bias of methodological nationalism. 'Brain drain' provides a particularly fertile subject for exploring how methodological nationalism has structured migration debates in social and political philosophy, as well as an opportunity to develop alternative categories.

First, I argue that the focus and intensity of scholarly discussion about regulating 'brain drain' is unmerited. Second, I provide an account of methodological nationalism. Third, I show how the 'brain drain' debate has been distorted by the methodological nationalist paradigm. Fourth, I provide some suggestions for how we should think about migration in ways that do not fall into the trap of methodological nationalism.

FIVE PUZZLES: CONUNDRUMS ABOUT THE 'BRAIN DRAIN' DISCOURSE

Despite many academics' and politicians' confident insistence that 'brain drain' is a problem of dire concern, the tone and the focus of debate are deeply puzzling. The ease with which affluent academics and public intellectuals are willing to advocate emigration restrictions, bonding, and taxation on less affluent people in the developing world raises a question: why