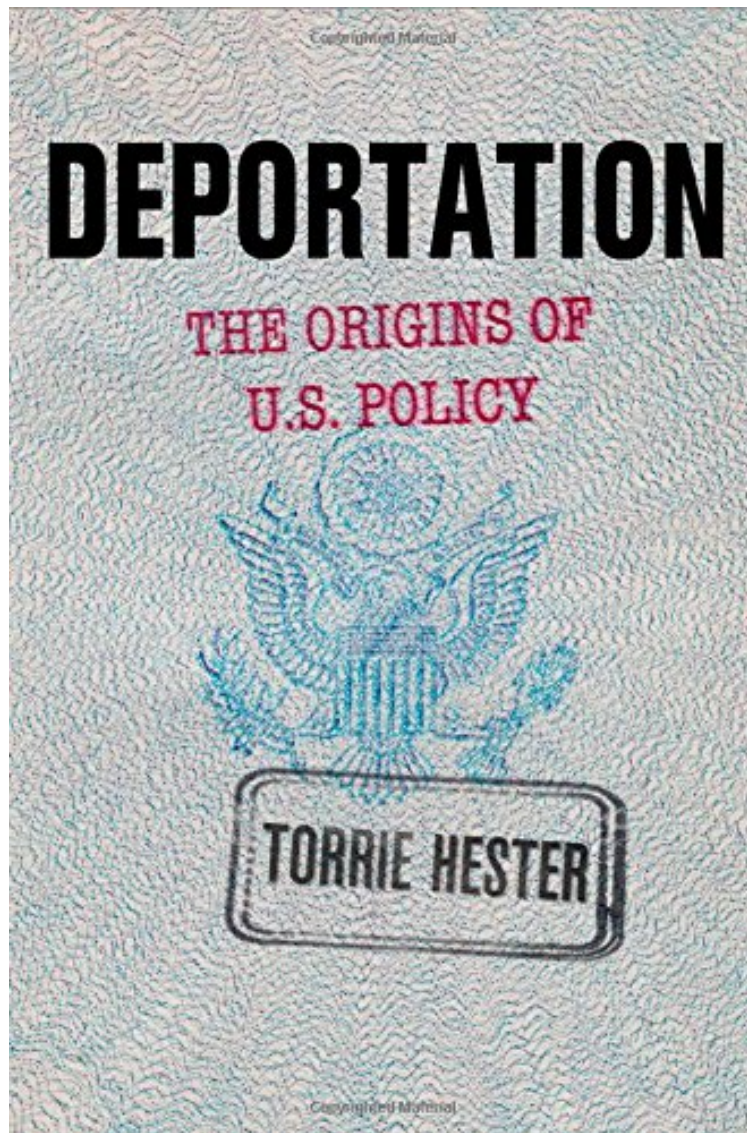


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Deportation: The Origins of U.S. Policy

Torrie Hester

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Torrie Hester : Deportation: The Origins of U.S. Policy before purchasing it in order to gage whether or not it would be worth my time, and all praised Deportation: The Origins of U.S. Policy:

Before 1882, the U.S. federal government had never formally deported anyone, but that year an act of Congress made Chinese workers the first group of immigrants eligible for deportation. Over the next forty years, lawmakers and

judges expanded deportable categories to include prostitutes, anarchists, the sick, and various kinds of criminals. The history of that lengthening list shaped the policy options U.S. citizens continue to live with into the present. Deportation covers the uncertain beginnings of American deportation policy and recounts the halting and uncoordinated steps that were taken as it emerged from piecemeal actions in Congress and courtrooms across the country to become an established national policy by the 1920s. Usually viewed from within the nation, deportation policy also plays a part in geopolitics; deportees, after all, have to be sent somewhere. Studying deportations out of the United States as well as the deportation of U.S. citizens back to the United States from abroad, Torrie Hester illustrates that U.S. policy makers were part of a global trend that saw officials from nations around the world either revise older immigrant removal policies or create new ones. A history of immigration policy in the United States and the world, *Deportation* chronicles the unsystematic emergence of what has become an internationally recognized legal doctrine, the far-reaching impact of which has forever altered what it means to be an immigrant and a citizen.

"Through impressive research and detailed analysis, Torrie Hester shows how the early history of deportation law and policy contributed to the world in which we now live. The author successfully shows how the incremental creation of acceptable grounds for deportation reflected an agenda of racialized nation building an issue that is often raised in critique of the mass deportations of our own times." Donna Gabaccia, University of Toronto
"Deportation: The Origins of U.S. Policy is a tour-de-force of U.S. policy history, detailing how deportation was born as a lawful practice in the late nineteenth century and tracking its steady expansion into the twentieth century. Moreover, it follows the story beyond U.S. borders to examine the world in which U.S. immigration was made. It is a timely and urgent work." Kelly Lytle Hernandez, University of California, Los Angeles
About the Author Torrie Hester teaches history at Saint Louis University. Excerpt. Reprinted by permission. All rights reserved.
Introduction In the late nineteenth and early twentieth centuries, U.S. officials created a national deportation policy. They were not alone in this endeavor. In the same period, Canada, Mexico, Venezuela, Australia, New Zealand, Brazil, Britain, and Germany, among others, also either revised existing immigrant removal policies or developed new ones. Their efforts made deportation into an internationally recognized form of removal, which was unique in law, scope, motivation, and significance. The act of deporting individuals thereafter became one of the most far-reaching powers exercised by the United States government. Between 1892, when the U.S. government first started to establish its federal deportation policy, and 2015, the United States deported more than fifty million immigrants, almost 95 percent of them since 1970. This book examines the power of deportation, the national and international policies created to administer this power, and the changing meaning of deportability the status of being deportable during the first, formative decades of the deportation regime. Before 1882, the U.S. government had never formally deported anyone. That year, in the first of a series of laws, Congress created the power to deport Chinese workers. By 1888, policy makers had enhanced their power to deport all immigrants, and, over the next thirty years, the government expanded restrictions so that, by 1917, deportation provisions variously targeted Chinese workers, anarchists, suspected prostitutes, public charges, and contract laborers, to mention only a few of the categories. Immigration agents carrying out new federal policy deported several hundred or, at the most, a few thousand people each year. They deported fewer people in the first forty years of carrying out deportations than immigration authorities would in any single year after 1970. In some ways, then, this book covers a time when immigration authorities administered deportation policy quite differently than they would a century later. Nevertheless, the grounds for deportation, the enforcement strategies, the negotiations behind deportations, and the defenses immigrants employed in deportation proceedings all reveal a great deal about the history of the period. Moreover, these years are critical to understanding the explosion of deportations since the 1970s because, between 1882 and 1924, Congress, the Supreme Court, and the Bureau of Immigration pieced together the policy and legal regime in which all deportations from the United States have occurred ever since. In the years before the rise of the U.S. deportation regime, governments had long removed people from their communities. In North America, various authorities expelled individuals and entire groups of people. After Mexican independence in 1823, for instance, the new Mexican government expelled Spanish-born residents. Seventy years earlier, British colonial authorities expelled a group of French settlers the Acadians from Nova Scotia and sent them to Louisiana. The earliest colonists in Virginia and Massachusetts Bay expelled religious outsiders and criminals. Indeed, expulsion from the colonies that would become the United States is as old as European settlement. During the colonial period, removals often occurred on a case-by-case basis, driven mostly by locally defined economic and religious motivations. European and Euro-American communities "warned out" or expelled individuals they thought were unable to support themselves with little to no regard for the nationalities of the poor. Colonists could also be forced out of settlements for practicing the wrong religion. In the seventeenth and early eighteenth centuries, membership in the local community was what mattered for receiving assistance from the community or for simply being allowed to stay once poor or deemed disruptive to mores. Some colonies tried sending expelled criminals or poor immigrants back to England, but that was generally too expensive and inefficient. Consequently, expulsion was not a widespread practice in the colonial period, but when it occurred, people were ousted from the community with little concern for where they went. Though it was very different from the federal deportation power developed in the late nineteenth and early

twentieth centuries, there is a long history of sporadically expelling men and women deemed undesirable or foreign. Through much of the nineteenth century, the federal government possessed but did not use a limited formal power to remove immigrants; instead some states operated immigrant removal policies. In the Alien Friends and Alien Enemies Acts of 1798, Congress had given the president a restricted power, based on executive order with judicial enforcement, to expel foreigners from the United States. Some Republicans, including Thomas Jefferson, maintained that this expulsion policy was patently unconstitutional; they thought it represented an attempt by the opposing political party, the Federalists, to remove its political enemies from the country. The constitutionality of the 1798 acts was never tested, and most of the Alien Friends Act expired two years after its passage. For the first half of the nineteenth century, there was neither the popular will nor, after the election of the Republicans and the dissolution of the Federalists, the political will to legitimize the federal removal of immigrants. While the federal government did not formally remove people, some states had removal policies. And, from time to time, states carried out immigrant removals with the collaboration of federal authorities. Nevertheless, the U.S. government did forcibly remove people through exceptional power and violence in this period. With Indian removal, it exercised a violent, state-sanctioned power to remove whole nations of Native Americans. Though brutally effective, this type of power to remove people was an exception to the rule of law. In addition to the "warning outs," the occasional state-centered expulsions of the early nineteenth century, and the extralegal Indian removal policies of the 1830s, there were still other ways governments removed people prior to the U.S. deportation regime. At the request of foreign governments who wanted a person's return for judicial proceedings, governments extradited immigrants, while officials also removed people through banishment. In the second half of the nineteenth century, millions of immigrants moved around the world in unprecedented numbers. The United States became the largest immigrant-receiving nation, and between 1880 and 1924, over twenty-four million moved to the United States. People on U.S. soil, from immigrants to citizens, lawmakers to bureaucrats, confronted enormous changes wrought by the numbers of immigrants, the new streams of immigration, and massive industrialization and urbanization. Early in this large wave of migration, officials from states like New York and California began to pass restrictive immigration laws, and it was at this point that two key developments occurred. First, in the 1870s, the U.S. Supreme Court ruled these state laws unconstitutional. Second, in the wake of the Court's rulings, the federal government stepped in and began a new phase in regulating immigration, what would become one of its major functions: gatekeeping. It is at this crucial juncture that this book opens. In addition to chronicling the rise of the U.S. deportation regime at the turn of the twentieth century, a second aim of this book is to understand U.S. officials' interactions with an international legal framework in building this policy. Some scholars studying deportation have long understood that national deportation policies function as a part of a larger international system, what anthropologists Nicholas De Genova and Nathalie Peutz have labeled the "deportation regime." In this complex international framework, a nation-state cannot carry out a formal, legal deportation outside of the international community of states. Much of the work on this larger international regime, however, concentrates on the post-World War II era, when populations of the deported around the world grew to the millions. *Deportation: The Origins of U.S. Policy* takes the international perspective back to the formative period of deportation policy in the United States. To examine the international regime that facilitated U.S. deportations, this book examines the deportations of immigrants from the United States and the receiving of deported U.S. citizens from abroad. Finding evidence of the latter proved more difficult than the former, in part because the United States deported more people than other countries deported U.S. citizens. Yet the small numbers of cases of U.S. citizens returning to the United States are important for understanding the international legal regime that facilitated deportations. When countries like Canada, Germany, or Mexico wanted to deport a U.S. citizen, they approached U.S. State Department officials. Some but certainly not all of these correspondences have thus been preserved in State Department records or in the archives of the country removing the U.S. citizen. Some of the same files contain diplomatic correspondence initiated by U.S. officials as they tried to arrange the deportations of people from the United States. Diplomatic records help render the shape of the international legal regime facilitating immigrant removals in the late nineteenth and early twentieth centuries, but they provide little insight into the reasons why there were no deportations of U.S. citizens from some countries, such as China. In this case, international law treatises help explain the ways the international legal regime prevented nations or polities in the Middle East and Asia, including China, from deporting people from Western nations and empires. Together, diplomatic sources and international law treatises reveal parameters and even restrictions the international legal regime set on a nation's ability to deport immigrants. Another principal aim of the book is to document the ways that people facing deportations defended themselves, which profoundly affected law within the United States. Immigrants in deportation proceedings in the late nineteenth century and early twentieth became quick students of law. They did so while also navigating challenges common in immigration: learning new customs and languages, recovering from trauma of civil unrest or economic hardship, and building communities, homes, and careers. Immigrants defending against a deportation understood that the deportation policy they faced was shaped as much by the nature of enforcement as by the text of the law. Policy enforcement was fluid: immigration officials responded to constituents lobbying for deportations and the ever-changing strategies of immigrants defending against deportations. Federal immigration agents also collaborated with and were influenced by state and local law

enforcement officials, federal judges, and agents of the Bureau of Investigation (predecessor of today's FBI). As immigrants navigated deportation policy, they often forced immigration agents to reconcile immigration law with other kinds of law including marriage, criminal, and naturalization as well as the reach of the U.S. Constitution. To explain this pivotal era in history, the first half of the book examines the national and international logic that shaped early U.S. deportation policy, while the second half studies specific provisions of U.S. deportation policy that enhanced the power of deportation and extended deportability on U.S. soil. In 1893, the U.S. Supreme Court decided *Fong Yue Ting*, a case that has remained the legal precedent for every deportation from the United States since. For the Chinese immigrants who ended up before the Court in *Fong Yue Ting*, one of their central questions to the Court asked if the federal government could deport immigrants at all. The Supreme Court ruled that it could. The power to deport belonged to the federal government, under what has become known as its plenary power, as a trait of sovereignty. As immigration officials began to enforce deportation provisions, they filled out the logic of just what the Supreme Court ruled in *Fong Yue Ting*, that deportation was a power protective of national security. Their efforts made deportation proceedings operate differently than criminal proceedings, which had important implications for the reach of the U.S. Constitution over immigrants, especially over the meaning of the Fourth, Fifth, and Sixth Amendments. When immigrants challenged their deportations, some of their efforts drove important legal distinctions between three categories of residents in the United States: immigrants without legal residence, immigrants with legal residence, and U.S. citizens. The legal distinctions between these three categories of residents on U.S. soil reshaped civil rights and civil liberties, as well as social and economic rights, and conceptions of race and racial power. Sometimes, though, it was not clear where one legal status ended and another began. By the 1920s, the lines between the immigrants with lawful status, those "outside the law," and U.S. citizens, which were previously somewhat fluid, had hardened significantly, with profound national and international consequences that are unfolding still.