

SAVING THE NATION THROUGH EXCLUSION: ALIEN LAWS IN THE EARLY REPUBLIC IN THE UNITED STATES AND MEXICO

In 1798, the U.S. Congress enacted a series of laws that affected resident aliens by restricting their access to citizenship and making those deemed to be “dangerous to the peace and safety of the United States” subject to deportation at the will of the Executive.¹ In 1827, the Mexican government enacted the first of three laws for the expulsion of Spaniards, which ordered the removal of those born on the Spanish peninsula. In both cases, these laws went against the premises for membership that the young nations had set after independence. In both cases, it was argued that such violent measures were necessary to save the nation. As such, they suggest that even though the modern nation is often described as a subjective community, linked by horizontal bonds of solidarity,² few mechanisms are as effective in forging an “us” than the construction of a hostile “them.”

This article explores this darker side of nation building; that which, as in these two cases, creates a domestic—and consequently more dangerous—“other” against which we define ourselves. It will only marginally address the ways in which political community was envisioned. It will not tell rich, colorful tales of how a historically inaccurate shared past—of the nation having “suffered, enjoyed and hoped together”—came to be held in common. It will not speak of a community “invented” through patriotic song and celebration, through newspapers, images, novels, maps, museums, and censuses.³ It will

¹ James M. Smith, *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties* (Ithaca: Cornell University Press, 1966), in Appendix.

² In the 1940s, Italian historian Federico Chabod distinguished modern nationalism from its predecessors in that it was not only directed towards or against the “outside,” that it could not be reduced to “hostile attitudes” toward another nation. It was, conversely, based on the nation’s “full conscience of itself, of its *individuality*, constituted by the past and the present, by historical traditions as much as by the present will to be a nation.” Federico Chabod, *La idea de nación* (Mexico: Fondo de cultura económica, 1987), p. 22.

³ The central reference is Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1991), which, as John Breuilly notes, is “the single most cited

focus instead on how, in the midst of crisis and fierce partisan struggle, politicians pushed for legal norms of inclusion or exclusion, motivated by political expediency rather than idealized visions of citizenship. It is a story in which national identity is less a way that people think about themselves than a juridical status, a bond of law between State and individual.⁴ Belonging to the political community is perceived as a basis for claims-making rather than for sentimental attachment.⁵ It is, then, a story of laws rather than of ballads; of exclusion enforced rather than of community imagined.⁶

We will tell this story by analyzing the efforts of two young American nations who, within a decade of setting themselves up as federal republics, sought to purge themselves of allegedly dangerous foreign elements. We will look at the United States' alien and naturalization laws of 1798 and Mexico's 1827 law for the expulsion of Spaniards as snapshots that freeze the nation-building process so that it can be dissected, as they allow us to explore the contentious mechanisms through which xenophobia became legitimized and institutionalized, and nativism crystallized into law. This article will examine the power play that, in the context of competitive politics, led to the particular conceptions of one of the contending parties becoming the legal norm and

general text on nationalism." John Breuilly, "Historians and the Nation," *History and Historians in the Twentieth Century*, ed. Peter Burke (Oxford: Oxford University Press, 2002), pp. 55-87, 79-80. See also Ernest Renan, "What Is a Nation?" *Becoming National: A Reader*, ed. Geoff Eley and Ronald Grigor Suny (Oxford: Oxford University Press, 1996), pp. 45, 52; for nationalist celebrations and the establishment of a civic calendar, David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776-1820* (Chapel Hill, London: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1997); Mona Ozouf, *La fête révolutionnaire, 1789-1799* (Paris: Gallimard, 1976); for "nationalist" literature, Doris Sommer, *Foundational Fictions: The National Romances of Latin America* (Berkeley: University of California Press, 1991); for symbolic construction through statistics, maps, exhibits, etc., Benedict Anderson, "Census, Map, Museum," *Becoming National*, pp. 243-259; Raymond Craib, *Cartographic Mexico: A History of State Fixations and Fugitive Landscapes* (Durham, London: Duke University Press, 2004); Mauricio Tenorio, *Artifugio de la nación moderna. México en las exposiciones universales, 1880-1930* (Mexico: Fondo de cultura económica, 1998).

⁴ Patrick Weil, *Qu'est-ce qu'un Français? Histoire de la nationalité française depuis la Révolution* (Paris: Grasset, 2002), pp. 10-12. I agree with Weil in that laws of nationality do not necessarily reflect a particular conception of the nation.

⁵ The focus on legal structures explains why our most important sources are the parliamentary debates that resulted in the exclusionary laws. For the Mexican case, newspapers are still the best source for the congressional debates of the late 1820s and early 1830s. See Claudio Lomnitz, "Nationalism as a Practical System: Benedict Anderson's Theory of Nationalism from the Vantage Point of Spanish America," *The Other Mirror: Grand Theory through the Lens of Latin America*, ed. Miguel Ángel Centeno and Fernando López-Alves (Princeton: Princeton University Press, 2001), pp. 329-359.

⁶ For Tomás Pérez Vejo, when studying nationalisms, "it is not bills, laws, or even constitutions which should draw our attention. We are talking about ballads, not about political norms." Tomás Pérez Vejo, "La construcción de las naciones como problema historiográfico: el caso del mundo hispánico," *Historia Mexicana*, 53:2 (October-December 2003), pp. 275-311, 297.

the ways it shaped how these laws were executed. It will explore the jurisdictional conflicts that, in the context of federation, arose around the issues of citizenship and immigration and throw light on how these confrontations were resolved. The comparison between these two cases, with their differences and similarities, will clue us into why, within the broad, collective process of nation-building, different paths were taken.

If the comparative exercise is considered to be more useful when tracking similarities—rather than working with apples and oranges—comparing the experiences of the prosperous, expansive “Colossus of the North,” with those of its unstable, diminished, impoverished neighbor may seem futile.⁷ On paper the United States and Mexico seem close to Marc Bloch’s paradigm for successful comparisons: “societies that are at once neighboring and contemporary, exercising a constant mutual influence, exposed throughout their development to the action of the same broad causes . . . and owing their existence in part at least to a common origin,” but the chasm that separates the two realities seems too great. The “distant neighbors” have embodied, above all, radical difference, radically simplified: the opposition between Spanish and British legacies in the New World, between Protestantism and Catholicism, modernity and backwardness, American success and Mexican failure. Their differences have been synthesized into powerful and deeply evocative images: Edmundo O’Gorman’s “irreconcilable contrast,” Octavio Paz’s “*el otro lado*,” Daniel Cosío Villegas’s “American extremes.”⁸ But the juxtaposition of Mexico and the United States as moral opposites is not particularly fertile intellectually in that it allows even the most lucid and able to indulge in stereotypes and generalizations that would otherwise be inadmissible.⁹

⁷ In his seminal 1928 article on comparative history, Marc Bloch wrote that a “more limited horizon” would be “richer in results.” Marc Bloch, “Contribution towards a Comparative History of European Societies,” *Land and Work in Medieval Europe: Selected Papers by Marc Bloch* (Berkeley: University of California Press, 1967), pp. 44–81, 46. On the other hand, John H. Elliot’s masterly *Empires of the Atlantic World* states that comparative history should be concerned with similarities as well as differences and take into account the connections between the histories that are being compared. John H. Elliot, *Empires of the Atlantic World: Britain and Spain in America. 1492–1830* (New Haven, London: Yale University Press, 2006), pp. xvi–xviii.

⁸ Edmundo O’Gorman, “Do the Americas Have a Common History?” *Do the Americas Have a Common History? A Critique of the Bolton Theory*, ed. Lewis Hanke (New York: Knopf, 1964), pp. 103–111, 107–110. See also Charles A. Hale, “Edmundo O’Gorman, Mexican National History, and the ‘Great American Dichotomy,’” *Journal of Latin American Studies*, 36 (February 2004), pp. 131–145; Octavio Paz, “El espejo indiscreto,” *Obras completas*, vol 5: *El peregrino en su patria* (Mexico: Fondo de cultura económica, 1993), pp. 421–436, 421; Daniel Cosío Villegas, *Extremos de América* (Mexico: Tezontle, 1949).

⁹ See, for instance, often addressing the Latin American region as a whole, Louis Hartz, *The Founding of New Societies: Studies in the History of the United States, Latin America, South Africa, Canada, and Australia* (New York: Harcourt, Brace and World, 1964); James Lang, *Conquest and Commerce: Spain and England in the Americas* (New York: Academic Press, 1975); Juan Ortega y Medina, *La*

If these inevitable, emotionally charged, and ultimately superficial contrasts are not useful, a more grounded comparison of the processes that shaped the trajectories of these two neighboring, densely if unevenly connected North American nations might prove constructive in two ways.¹⁰ On one hand, a comparison that analyzes the distinct responses to common, expansive transoceanic processes—in this case nationalism, liberalism, constitutionalism, and democratization—contributes to airing out two historiographical traditions that have tended towards exceptionalism. This is perhaps more relevant to Mexican historiography. The broader scope of recent work, which has taken on the Iberoamerican world as a whole,¹¹ has brought forth a richly textured, complex connected history. However, it has not disturbed one of the more recurrent tropes of the region's historical narrative: its alleged "inadequacy," its inability to "correctly" adapt the "foreign" models it misguidedly insists on adopting.¹²

evangelización puritana en Norteamérica. Delendi sunt Indi (Mexico: Fondo de cultura económica, 1976); Lawrence E. Harrison, *Underdevelopment Is a State of Mind: The Latin American Case* (Lanham: University Press of America, 1985); Claudio Véliz, *The New World of the Gothic Fox: Culture and Economy in English and Spanish America* (Berkeley: University of California Press, 1994). Francisco Valdés Ugalde has recently written, "Destiny and fate may be the appropriate words to summarize these two historical paths, representing the discrepancy between self-command and sovereign decision . . . and the oppressing burden of circumstances. . . . This is the main difference between the politics of the United States of America and the United States of Mexico." Francisco Valdés Ugalde, "Janus and the Northern Colossus: Perceptions of the United States in the Building of the Mexican Nation," *The Journal of American History*, 86 (September 1999), pp. 568-600, 575. In recent years, a more nuanced vision has emerged in the fields of comparative, international, and transnational history: Alicia Mayer, *Dos americanos, dos pensamientos. Carlos de Singüenza y Góngora y Cotton Mather* (Mexico: Universidad Nacional Autónoma de México, 1998); Camilla Townsend, *Tales of Two Cities: Race and Economic Culture in North and South America: Guayaquil, Ecuador, and Baltimore, Maryland* (Austin: University of Texas Press, 2000); Elliot, *Empires*; Ana Rosa Suárez Argüello and Marcela Terrazas Basante, ed., *Política y negocios. Ensayos sobre la relación entre México y los Estados Unidos en el siglo XIX* (Mexico: Universidad Nacional Autónoma de México, Instituto Mora, 1997); David Montejano, *Anglos and Mexicans in the Making of Texas, 1836-1986* (Austin: University of Texas Press, 1987); Charles W. Bergquist, *Labor and the Course of American Democracy: US History in Latin American Perspective* (New York, London: Verso, 1996); Andrés Reséndez, *Changing National Identities at the Frontier: Texas and New Mexico, 1800-1850* (Cambridge: Cambridge University Press, 2005).

¹⁰ David Thelen, "Mexico: The Latin North American Nation: A Conversation with Carlos Rico Ferrat," *The Journal of American History*, 86 (September 1999), pp. 467-480.

¹¹ See François-Xavier Guerra, *Modernidad e independencias. Ensayos sobre las revoluciones hispánicas* (Madrid: Editorial MAPFRE, 1992); José María Portillo, *Crisis atlántica. Autonomía e independencia en la crisis de la monarquía hispana* (Madrid: Fundación Carolina. Centro de estudios hispánicos e iberoamericanos, Marcial Pons Historia, 2006); Jaime E. Rodríguez O., *The Independence of Spanish America* (Cambridge: Cambridge University Press, 1998); Victor Uribe-Urán, "The Birth of the Public Sphere in Latin America," *Comparative Studies in Society and History*, 42:2 (April, 2000), pp. 425-457; as well as the editorial projects undertaken by these and other scholars.

¹² See Claudio Lomnitz, *Deep Mexico, Silent Mexico: An Anthropology of Nationalism* (Minneapolis: University of Minnesota Press, 2001), pp. xvii, 127.

Thus, a comparison of the two nation- and state-building processes, centered on a common effort to exclude, will highlight the dynamic, tentative, and deeply contentious makeup of both experiences and show that final outcomes had more to do with politics than with models or legacies. It thus destabilizes common knowledge, serving as a rough check to “given” explanations based on a society’s fixed “nature”¹³—Puritan, individualist, acquisitive, democratic, and forward-looking in one case; Spanish/Indian, Catholic, communalist, authoritarian, and imprisoned by the past in the other. If comparison shuts the door on some of the wrong answers, it also helps construct more plausible explanations in that by identifying commonalities and specifics, it brings to the fore the internal logic of structures, their interactions and transformation.¹⁴ Putting these two experiences side by side will shed some light on the post-revolutionary republican experiment, as the elites of the Atlantic world strove, armed with only sketchy roadmaps, to reinvent political legitimacy, redraw the borders of community, and put together an operational machine for government.

THAT WHICH DOES NOT BELONG TO US: CONSTRUCTING FOREIGNNESS

By the late 1790s, the war that France had begun in 1792 to save the revolution from an international monarchical conspiracy had become a war of conquest and a source of funds and booty that the *Directoire* government was unwilling to give up. It was wreaking havoc on Atlantic shipping, including that of neutral powers such as the United States. In 1798, French naval aggression against American commerce and the French government’s deeply condescending attitude toward the young republic exacerbated the already tense political climate in the United States.¹⁵ In response to the “quasi-war” with France, which had unleashed wide-ranging fears and strident jingoism, the Adams administration and the Federalist majority in Congress endorsed a series of laws that they hoped would protect the country. Their actions reflected both the statesmen’s need to avenge the nation’s slighted honor abroad and the politicians’ desire to neutralize political rivals at home. Con-

¹³ Bloch, “Contribution,” p. 67; Theda Skocpol and Margaret Somers, “The Uses of Comparative History in Macrosocial Inquiry,” *Comparative Studies in Society and History*, 22 (April 1980), pp. 174-197, 178-181.

¹⁴ William H. Sewell Jr., “Marc Bloch and the Logic of Comparative History” *History and Theory*, VI:2 (1967); Maurice Aymard, “Histoire et comparaison,” and Lucette Valensi, “Retour d’Orient. De quelques usages du comparatisme en histoire,” *Marc Bloch aujourd’hui. Histoire comparée et sciences sociales* (Paris: Éditions de l’École de hautes études en sciences sociales, 1990), pp. 271-278, 307-316.

¹⁵ For a survey of the period, see Alexander DeConde, *The Quasi-war: The Politics and Diplomacy of the Undeclared War with France, 1797-1801* (New York: Scribner, 1966); Stanley Elkins and Eric McKittrick, *The Age of Federalism* (New York, Oxford: Oxford University Press, 1993), pp. 257-302, 303-374, 529-580.

sequently, Congress voted, by very close margins, a series of preparatory measures that created a direct federal tax, increased public debt and the size of the regular army, and called for greater vigilance over the foreign-born and the potentially disruptive. The Democratic Republican opposition denounced these measures as burdensome, unnecessary, and dangerous.

The legislation that unleashed the most virulent hostility, and mobilized all of the Republicans' rhetorical and organizational arsenal, was that which aimed at internal enemies: those alleged fifth column and seditious elements that diluted the patriotic unity with which America needed to face its foe. The Alien Friends Act gave the president authority to remove, without judicial process, any foreigner whom he considered a threat to the country's "peace and safety."¹⁶ The Sedition Act, which reformed the previous "Act for the punishment of certain crimes against the United States," authorized the prosecution of anyone responsible for the publication of "any false, scandalous and malicious writing" against the government.¹⁷ These laws were to be in effect only for as long as the national emergency lasted and were set to expire in 1800. At the same time, in order to limit foreigners' access to American citizenship, Congress modified the 1795 Act of Naturalization by extending the residency period required from five to 14 years. The law also established that aliens had to register at the nearest district court within 48 hours of their arrival.

The violent measures of 1798 wove together the anxieties of a threatened nation, distrust of the 'foreign element,' and the jealousies of the party in power. The vitriolic political rhetoric of the Early Republic, intensified by the fears and enthusiasm unleashed by the French Revolution, arose in exceptional circumstances. Nonetheless, this political process was not unique. Thirty years later, Mexican political discourse resonated with the same sort of themes and violence. In the late 1820s, in the midst of ferocious partisan struggles, an unsettling economic crisis, and rumors of Spanish plans to recover its former colony,¹⁸ a clumsy conspiracy to restore colonial rule was discovered in Mexico City. In response, and riding on a wave of popular Hispanophobia, unsteady federal governments published three laws—in 1827, 1829, and 1833—ordering the expulsion of those born on the Spanish peninsula. The *gachupines*, as they were derisively called, were now considered "enemies of independence" and their presence deemed incompatible with the new nation's happiness, and even its survival.

¹⁶ Smith, *Freedom's Fetters*, in Appendix.

¹⁷ Smith, *Freedom's Fetters*, in Appendix.

¹⁸ The rumors turned out to be true. In July of 1829, Isidro Barradas, at the head of 4,000 men, sought to recover Spain's former colony. He was defeated without having been able to advance from the coast.

Nativists in each of these cases targeted very different groups. In the United States, the Federalists feared the radical immigrants, especially the “wild” Irish and Scottish political émigrés who had associated and agitated for reform in Britain, had moved to the United States in the face of increasing pressures, and had become active, highly effective Jeffersonian Republicans.¹⁹ In Mexico, those who pressed for the expulsion of Spaniards strongly resented the presence of arrogant, wealthy, powerful men who still acted as if they were the lords of the land and allegedly acted as the minions of an imperial power that refused to come to terms with the independence of its former colony. Unlike the British American Loyalists who, after the Declaration of Independence had been prosecuted and exiled because in remaining “the King’s friends” they had refused to recognize the authority of the new state governments, the Spaniards who, in 1821, decided not to return to the Mother country, tacitly accepted independence and the new government. The resident Spanish population was small—around 6,300—but it was prosperous, as most of the merchants who controlled overseas commerce in Mexico City were *peninsulares*. Elite Spaniards were socially prominent and politically conspicuous, both in the army and in government. The claim that independence would be a sham while both “the stick” and “the loaf of bread” remained in Spanish hands resonated with broad sectors of the population, for whom the Spaniards’ enduring privileges belied the promises of the new order.²⁰

Xenophobia, in these as in all cases, was not something new. Hostility towards “foreign” elements had broad popular appeal and had been important in forging anti-colonial stances as imperial crisis degenerated into war. In 1774, for all the ethnic, religious, and cultural diversity of the 13 colonies, the First Continental Congress protested against the Québec Declaration, in which George III had allowed the former French colony to remain Catholic and keep part of its legal system. The delegates claimed this to be “a great danger (from so total a dissimilarity of religion, law and government) of the neighbouring British colonies, by the assistance of whose blood and treasure the said country was conquered from France”²¹ In New Spain, especially

¹⁹ Michael Durey’s survey of British political exiles shows that nearly one-half of them were involved in journalism and pamphleteering, while 18 radical émigrés edited 49 newspapers and magazines, mostly in the middle states. Michael Durey, “Thomas Paine’s Apostles: Radical Emigrés and the Triumph of Jeffersonian Republicanism,” *The William and Mary Quarterly*, 3rd Ser., 44 (October 1987), pp. 661–688, 670, 682.

²⁰ El Hermano del Payo del Rosario, *El Hijito del Coyote que cuidaba las gallinas, o sea suplemento al número primero de su Señor padre* (Puebla: reimpresso en la imprenta liberal de Moreno Hermanos, 1824), p. 4.

²¹ “Declarations and resolves of the First Continental Congress,” October 14, 1774, at www.yale.edu/lawweb/avalon.

during the late eighteenth century, hostility towards those born on the peninsula, expressed through word or deed, became a vehicle for very different types of social discontent. The enlightened *intelligentsia* defended America from European condescension through erudite works.²² Patrician members of corporate bodies plaintively addressed a King they felt was snubbing his American subjects. Clever, if vulgar, verses deriding the gachupines were hawked on city streets, revealing the bitterness of middle class *criollos* who resented peninsular arrogance and the modernizing policies of a Crown that seemed increasingly unsympathetic to New World interests.²³

To the impoverished peasant and urban artisan, in a context of aggressive fiscal and social reform, the gachupín landowner, miner, priest, foreman, or storekeeper came to embody all that was unfair about the colonial system. After 1808, in the midst of the paranoia unleashed by the Napoleonic invasion of Spain and Portugal, peninsular Spaniards were identified not only as haughty, greedy, and exploitative leeches, but also as godless agents of French despotism. During the war of independence, these men became the main target of an insurgency that made “Death to the gachupines!” one of its battle cries. The negative image of the gachupín proved to be very resilient and was reinforced throughout the nineteenth century by the often abusive relationships of Spanish landowners and moneylenders with peasants and workers. The relative ease with which he could become the scapegoat for society’s ills long survived the war against Spain and the mother country’s formal recognition of Mexican independence in 1836, culminating in the violence directed against Spaniards during the 1910-1920 Revolution.²⁴

In both the United States and Mexico, then, nativists could capitalize on inherited fears and prejudices. Nonetheless, their rejection of the targeted

²² Such as Juan José de Eguiara y Eguren, *Biblioteca mexicana* (1755); Francisco Javier Clavijero, *Historia Antigua de México* (first published in Italian; Cesena: G. Biasini, 1780-1781).

²³ John H. Elliot has shown how a similar impulse to modernize imperial structures and increase revenue from the colonies played out differently as the British Atlantic broke into two and crisis was contained in Spain’s American possessions. Elliot, *Empires*, pp. 301-368.

²⁴ On popular Hispanophobia during the revolts of the 1760s, see Felipe Castro, *Nueva ley y nuevo rey. Reformas borbónicas y rebelión popular en Nueva España* (Zamora: El Colegio de Michoacán, 1996); during the war of independence, Eric Van Young, *The Other Rebellion: Popular Violence, Ideology, and the Struggle for Mexican Independence* (Stanford: Stanford University Press, 2001). For the “privileged” nature of Spanish immigration to nineteenth-century Mexico, Clara E. Lida, comp., *Una inmigración privilegiada. Comerciantes, empresarios y profesionales españoles en México en los siglos XIX y XX* (Madrid: Alianza Editorial, 1994). For popular and elite reactions to Spaniards’ wealth and power in the mid-nineteenth century, Romana Falcón, *Las rasgaduras de la descolonización. Españoles y mexicanos a mediados del siglo XIX* (Mexico: El Colegio de México, 1996). For the revolution, see Alan S. Knight, “The Mexican Revolution: Bourgeois? Nationalist? or Just a ‘Great Rebellion’?” *Bulletin of Latin American Research*, 4 (1985), pp. 1-37.

groups did not stem from these strangers being disturbingly different or their upsetting local custom. Both the transformation of aliens into internal foes and their defense were articulated in the new language of republican rights and the sovereign people's prerogatives. With independence, both countries had sought to establish a broad basis for membership in the brand-new national community associated with revolutionary principles and the conviction that they would make the New World better than the Old. In the United States, despite fears of seeing "the common class of vagrants, paupers and other outcasts of Europe" become American citizens, the perceived need to people the land and an idealized vision of the republican experiment made for generous terms when establishing the rules for integration into the polity. The Naturalization Acts of 1790 and 1795 granted citizenship upon application to "any alien, being a free white person," of "good character" who had resided under the jurisdiction of the United States for two years according to the first law—for five according to the second—who renounced his former allegiance, and who swore to support the Constitution.²⁵ In Mexico, in 1821, the two documents which consummated independence, the Plan of Iguala and the Treaties of Córdoba, displayed similar liberality in defining citizenship. All of the territory's inhabitants, regardless of their origin, were recognized as participants in the new political pact, as long as they were willing to recognize the authority of a "moderate"—i.e. constitutional—monarchy. In a context of momentous political changes, the individual's right to choose to whom he owed allegiance was acknowledged. The basis of membership in the new community was adherence to the Plan de Iguala's "three guarantees": independence, religious exclusivity, and the reconciliation between those who chose to become Mexicans.²⁶

In order to counter the exclusionary measures, opponents of the laws sometimes appealed to older ways of imagining community but stressed the

²⁵ *The Public Statutes at Large of the United States of America by Authority of Congress*, 18 vols. (Boston: Little, Brown, 1845-1875), pp.1:103, 414 at www.loc.gov. See Congressman Jackson in *The Debates and Proceedings in the Congress of the United States: With an Appendix Containing Important State Papers and Documents, and All the Laws of a Public Nature, with a Copious Index, Compiled From Authentic Materials*, House of Representatives, 1st congress, 2nd session (Washington: Gales and Seaton, 1834-1856), pp. 1151-1152 at www.loc.gov [cited henceforth as *Annals of Congress*].

²⁶ Álvaro Matute, comp., *Antología. México en el siglo XIX. Fuentes e interpretaciones históricas* (Mexico: Universidad Nacional Autónoma de México, 1984), pp. 228-231. The common conception of the 1820-1821 independence movement is that it is a conservative reaction to the radicalism of the recently reinstated Spanish Cortes and the Cádiz constitution, in that it was led by Agustín de Iturbide, a former *realista* officer who had fought against the insurgents and hoped to establish a monarchy. Nevertheless, most of the insurgent leaders adhered to the Plan of Iguala, which promised a constitution "peculiar to the country" and rejected the Cádiz constitution's exclusion of *castas*—men of African ascendancy—from citizenship. Jaime del Arenal, *Un modo de ser libres. Independencia y constitución en México, 1816-1822* (Zamora: El Colegio de Michoacán, 1992).

promises held out by revolution. In Mexico, those seeking to shield the Spaniards from popular fury reminded the public that they shared with Mexicans “the same religion, the same habits and customs, and had never rebelled against the . . . nation.”²⁷ Their having “lived in a country without contradiction,” established their families there, worked the land, and invested their capital, gave them “an indisputable right, which is known as vicinage (*vecindad*), to live in the country, which no one can take away unless they incur in personal faults.”²⁸ Along the same lines, in the North American capital, a group of Irishmen led by William Duane²⁹ reminded the people’s representatives of the message sent to the Irish by the Continental Congress in 1775, which claimed the American continent to be the “safe asylum [. . .] in which *many thousands* of your country men have found hospitality, peace and affluence, and become *united to us* with all the ties of consanguinity, mutual interest and *affection*.”³⁰

Furthermore, the laws’ opponents argued that, in a republic, it was the state’s first duty to protect the civil and natural rights of men, and that to do this “the difference between citizens and foreigners, friends and enemies” could not be taken into account.³¹ They pointed out the inconsistencies of those who sought to protect the new regime by perverting its principles. In Mexico it was argued that, in decreeing a general expulsion, Congress was usurping the powers of the judiciary. It was taking away the Spaniards’ rights “to be heard, before the imposition of so grave a punishment, and to all the legal recourses established against arbitrariness and tyranny, and for the discovery of the truth.”³² In the

²⁷ Senator Paz in “Cámara de Senadores,” *El Águila* (October 9, 1827), p. 1.

²⁸ “Política: Discurso sobre la expulsión de los naturales y ciudadanos de esta República nacidos en España,” *El Sol* (September 14, 1827), p. 1.

²⁹ Duane was one of the radical journalists that contributed to creating the “earthy, boisterous, brash,” popular rhetoric of the Republicans in the 1790s. Following 1798, he worked under Benjamin Franklin Bache at the Philadelphia *Aurora*, a foremost Republican newspaper, which he ran with Bache’s wife after its editor was arrested under the Sedition Act and died of yellow fever. Duane had spent his youth in Ireland as a rebellious journalist and was identified with other radical immigrants in Philadelphia. Secretary of State Pickering hoped to arrest him under the Alien Act but could not, as Duane had been born in America in 1760. Smith, *Freedom’s Fetters*, pp. 276-292; Michael Durey, *Transatlantic Radicals in the Early American Republic* (Lawrence: University of Kansas Press, 1997), pp. 235-236; James Tagg, *Benjamin Franklin Bache and the Philadelphia Aurora* (Philadelphia: University of Pennsylvania Press, 1991), pp. 284-285.

³⁰ *The Plea of Erin, or The Case of the Natives of Ireland in the United States, fairly displayed in the fraternal address of the 1st Congress, in the year 1775, and in the respectful memorial of the Republican Irish, who had consequently sought an asylum in America, addressed by them to the congress of the year 1798*, (Philadelphia: printed at the office of the Freeman’s journal, 1798), p. 1 at www.loc.gov. The emphasis is in the original.

³¹ Senator Florentino Martínez in “Cámara de Senadores,” *El Águila* (September 26; October 9, 1827), p. 1.

³² Senator Molinos in “Cámara de Senadores,” *El Águila* (September 23; October 9, 1827), p. 1.

U.S. House of Representatives, Republican Edward Livingston complained, “All the barriers that the wisdom and humanity of our country had placed between accused innocence and oppressed power are at once forced and broken down...No indictment; no jury; no trial; no public procedure; no statement of the accusation; no examination of the witnesses in its support; no counsel for defense; all is darkness, silence, mystery and suspicion.”³³

In their adversaries’ views, French aggression against the United States and Spanish antagonism towards its former colony proved the obsolescence of the old ways and belied the early optimism of independence and revolution. When defending the rights of man, they retorted, one had to “set the enemy apart, for he could not receive the same considerations as those offered the friend, or one who was neutral.”³⁴ The right of remaining in a country, they claimed, was “vested in no alien.” Foreigners entered and remained “by the courtesy of the sovereign power,” which might “at pleasure be withdrawn.”³⁵ Above all, the—at best, rather questionable—rights of strangers meant nothing when the fate of the nation was at stake and those under fire by the law were dangerous, above all because they threatened the survival of republican government.

The republic was, then, in both countries, depicted as a precious but fragile thing, however foreigners were said to be a menace to it for different reasons. Those pushing for the Spaniards’ expulsion claimed that Mexico was under the constant menace of a vengeful colonial power that was reluctant to give up its empire. They insisted that Madrid counted among the Spanish residents in Mexico numerous willing soldiers for its *reconquista*. Cheap pamphlets transformed Spaniards into paragons of evil, into wild dogs—*coyotes*—who were so underhanded and devious that republican justice would never be able to keep them in hand, into grotesque criminals who brazenly described their despicable nature in amusing prose: “We Spaniards,” stated a gachupín typical of the ephemeral literature of the period, “are plotting and scheming. We are the cause of a thousand calamities, we rape, kill, behead, steal, adulterate; and since so many men bear with us, and forgive and forget our crimes, we have become the prototype of all vices.”³⁶ Moreover, gachupines could not live without “things to hang on themselves, titles, degrees and ridiculous pageants, all of which are

³³ Livingston in *Annals of Congress*, 5th Congress, 2nd session, p. 2010.

³⁴ Senator Castillo in “Cámara de Senadores,” *El Águila* (September 26, 1827), p. 1.

³⁵ [Henry Lee? John Marshall?] *The Awful Crisis Which Has Arrived...* (Richmond: Thomas Nicolson, 1799), p. 2 at www.loc.gov.

³⁶ *Premio a los Americanos por gachupines y frailes. Diálogo entre el padre Arenas, el general Arana y D. Agustín de Iturbide* (Puebla: Oficina del ciudadano Pedro de la Rosa, 1827), p. 3.

unknown in republics.” They only recognized “the government of tyrants,” and would always conspire to unseat an elected government.³⁷ They were genetically incapable of republicanism: allowing them to remain put the “glorious system” in grave danger. In the United States, Federalists argued that the citizen virtues required to sustain the republic could only be bred by profound knowledge of how it worked, immediate contact with its institutions, and the frequent fulfillment of its duties. Because of this, the most frenzied among them claimed that citizens could only be born, not made.³⁸ Although Federalist efforts to make naturalization impossible—by establishing that the residency requirement should coincide with the immigrant’s natural life span—failed, Congress did manage to practically multiply the required residence period by three.

If the Federalist “republican soil” argument did not seem particularly convincing, it is perhaps because, unlike Mexico’s gachupines, who were widely perceived as a holdover of iniquitous colonial hierarchies, the aliens the Federalists feared made conspicuous displays of their republicanism. Consequently, they would argue that it was the radicalism of Republican émigrés and those “sham patriots” who held “the Rights of Man in one hand, the seeds of Rebellion in another,”³⁹ that was extremely dangerous to the republic. Mexican Republicans dreaded absolutist Spain, but the United States faced an ambitious revolutionary France, who was conquering Europe not by the strength of the sword but through the cunning wiles of seduction, which only the hardy native-born could resist. As Judge James Iredell claimed, in Switzerland, the Netherlands, and Italy, France, with her “arts” and “smooth words,” had beguiled “warm partisans not nominally French citizens, but completely illuminated by French principles, electrified with French enthusiasm, and ready for any sort of revolutionary mischief.” If she could, she would similarly destroy American freedom on the arms of,

³⁷ Spes in Livo, *Día de Gloria o de luto para los enemigos de la patria. O defensa de la segunda parte de Váyanse los gachupines, sí no, les cuesta el pescuezo* (Mexico: Imprenta de la testamentaría de Ontiveros, 1827), p. 3.

³⁸ “Strangers,” Congressman Harper argued during the discussion of the 1798 Naturalization Law, “could not have the same views and attachments as native citizens.” Congressman Harper in *Annals of Congress*, House of Representatives, 5th congress, 2d session, p. 1568 at www.loc.gov. For Federalist efforts to restrict the definition of national identity, from Congress and from the bench, see Rogers M. Smith, “Constructing American National Identity: Strategies of the Federalists,” *Federalists Reconsidered*, ed. Doron Ben-Atar and Barbara B. Oberg (Charlottesville: University Press of Virginia, 1998), p. 19-40.

³⁹ Theodore Dwight and John Lathorp, cited in Seth Cotlar, “The Federalists’ Transatlantic Cultural Offensive of 1798 and the Moderation of American Democratic Discourse,” *Beyond the Founders: New Approaches to the Political History of the New American Republic*, ed. Jeffrey L. Pasley, Andrew W. Robertson, and David Waldstreicher (Chapel Hill, London: University of North Carolina Press, 2004), pp. 274-299, 282, 284.

well intentioned but guileless foreigners. The logic of democratic representation and full citizenship rights for naturalized aliens made these naïve immigrants more dangerous still, for it opened legislative councils to “the intrigues of other countries.”⁴⁰ Thus, the Federalist promoted a moderate, circumspect, American-bred republicanism that was profoundly different from “French” metaphysics in both tone and character.⁴¹

Interestingly, in both cases, in the midst of passionate rhetoric that aimed at mobilizing popular sentiment, there seems to have been little said about religion as an identity marker: the French, and, by extension, their Republican friends were accused of being “godless Jacobins,” as were many of the radical Mexican politicians who called for expulsion. Jefferson’s deism was condemned by his Federalist foes, and in Mexico, some of the Spaniards petitioning to stay would allude to their charitable actions towards the Church, but on the whole, religious references are conspicuously absent. Recent research has pointed to the importance of religion in both new nations as a crucial element shaping the way people thought about themselves, political authority, and their conception of what was right. Religious discourse was a cultural matrix that translated, adapted, and popularized the values of the new order.⁴² Contemporaneously, issues such as disestablishment and Sunday mailings in the U.S. and religious toleration, the secularization of higher education, and disentanglement of Church wealth in Mexico were explosive political topics.⁴³ Nonetheless, religious difference was not used to justify exclusion. This absence suggests conscious evasion rather than the endorsement of a secular national identity. Although more thorough research needs to be done on this complex topic, it would seem that, during these two crises, religion was perceived as too slippery a weapon to be brandished in political battle, in the multid denominational United States as much as in exclusively Catholic Mexico.

⁴⁰ James Iredell, in the Case of Fries, Case No 5, 126, Circuit Court, D. Pennsylvania 9F. Cas.826; 1799 U.S. App. LEXIS 35; 3 Dall 515. April 1799.

⁴¹ Seth Cotlar, “The Federalists.” I owe much to this very suggestive article.

⁴² For the importance of religion in shaping political culture in the early republic, see Nathan O. Hatch, *The Democratization of American Christianity* (New Haven: Yale University Press, 1989); Brian F. Connaughton, *Dimensiones de la identidad patriótica. Religión, política y regiones en México, Siglo XIX* (Mexico: Universidad Autónoma Metropolitana, Miguel Ángel Porrúa, 2001).

⁴³ In the case of Mexico, the debates surrounding these issues would become especially heated with the publication of Vicente Rocafuerte’s essay on religious toleration in 1831 and the efforts of the 1833 Congress and Valentín Gómez Farías’ administration to curtail the Church’s power.

ALIEN LAWS AND THE MECHANICS OF POLITICAL DECISION

Thus during the early years of national life in United States and Mexico, the strain of domestic and international tensions fed into virulent xenophobia to become exclusionary law. Despite distinct cultural contexts, the rhetoric seems surprisingly similar in that it turned unwanted aliens into dangerous animals—wily coyotes or “noxious frogs”—and insisted that aliens who sympathized with revolutionary France in the United States and Spaniards in Mexico threatened the survival of free government. The opponents of these laws decried the fact that those seeking to save the republic subverted its tenets by disregarding the individual choice and allegiance of those who had chosen to emigrate and remain in America. Politically inclined aliens in the U.S.—“Jacobins”—and resident Spaniards in Mexico—“despots”—were thus collectively constructed as enemies of the nation. Nevertheless, despite these similarities, the execution of the exclusionary measures was significantly different.

Like the rest of the emergency measures undertaken by the Adams’ administration, the Alien Act passed by a narrow margin and was in force for only two years.⁴⁴ Subsequently, no foreigner was processed under the Alien Act, although some of the prosecutions under the Sedition Act were tainted by anti-foreign sentiment.⁴⁵ With Jefferson in the White House and a Republican majority in Congress, the expiration of these laws passed without noise or regret. In 1802, Congress reformed the Naturalization Act, and returned in essence to the relatively generous—if one happened to be white—conditions of 1795. Conversely, in Mexico, the frenzy against the gachupines pushed a divided and weak Congress to enact three expulsion laws that, despite their arbitrary and inconsistent application, were responsible for the exile of half of the country’s Spanish population in a little over six years.⁴⁶

Why were Mexico’s expulsion laws more radical, farther reaching, and more intransigent than the alien laws of federalism? It could be contended that it was the peculiar characteristics of the Spanish population resident in

⁴⁴ 46 to 40 the former, 44 to 41 the latter, *Annals of Congress*, 5th congress, 2nd session, p. 2028 at www.loc.gov.

⁴⁵ Not for lack of trying, argues James M. Smith, “The enforcement of the Aliens Friends Act of 1798,” *The Mississippi Valley Historical Review*, 41 (June 1954), pp. 85-104; Marion R. Casey, “The Limits of Equality: Racial and Ethnic Tensions in the New Republic, 1789-1836,” *Race and Ethnicity in America: A Concise History*, ed. Ronald H. Baylor (New York: Columbia University Press, 2003), pp. 41-62, quote 44.

⁴⁶ In some cases, their absence was only temporary, since many of those exiled returned in the 1830s. Sims, *Descolonización*, p. 217-242; Clara E. Lida, “Introducción,” *Una inmigración*.

Mexico that explains the distance between the two experiences. The relationship between resident Spaniards and Mexicans was, compared to that of immigrants and native citizens in the United States, more intimate, consequently more intense, and unavoidably more violent, as is illustrated by the public voices that condemned those “unnatural” and “traitorous” Mexican women who had married Spaniards.⁴⁷ Moreover, there is, in Hispanophobia, a strong element of class resentment, grounded on the everyday experiences of many Mexicans, that seems absent in Federalist xenophobic discourse. One could also argue that Mexico’s more strident, defensive brand of nationalism is the consequence of its weakness in the arena of world politics, epitomized by the loss of half of its territory in 1848. Furthermore, the idea that one is dealing with two completely different situations is reinforced by historiography: American historians have described Federalist measures as exaggerated and paranoid, while Mexican historiography has perpetuated the idea that expulsion was a logical response to a real problem.⁴⁸

These differences are, of course, important. I would nonetheless argue that Mexico’s vulnerability and its suffering real trauma in the hands foreign powers throughout the nineteenth century do not sufficiently explain the radicalism of its expulsion laws. In the wake of independence, both young American nations experienced difficulties when facing a disdainful Old World that refused to acknowledge them as full-fledged members of the international community. Although there is no reliable way to measure such attitudes and sentiments, there is little reason to think that prior to the 1829 Barradas expedition Spain appeared to be a greater threat to its former colony than did revolutionary France to the young United States. Similarly, before the U.S. defeat of Britain in 1812, it would be difficult to argue that it was more confident than would be its neighbour to the south during the early years of independence. In both countries, then, a sector of the political class responded to crisis in the same way: by attacking “foreign elements.” They relied on similar rhetorical devices and, as will be shown, in both cases, nativists sought to gain political advantage from riling against internal foes. But the effects of the U.S.’ alien laws were more limited. This section will show that the different outcomes of similar strategies are a reflec-

⁴⁷ *El Cardillo de las Mujeres* (Mexico, 1828).

⁴⁸ Smith, “The Enforcement;” Smith, “Constructing,” p. 29; Jesús Reyes Heróles, *El liberalismo mexicano* (México: Fondo de cultura económica, 1957-1961); Romeo Flores Caballero, *La contrarrevolución en la Independencia. Los españoles en la vida política, social y económica de México (1804-1838)* (Mexico: El Colegio de México, 1969). For a different take on Federalists’ policies, see Joanne B. Freeman, “Explaining the Unexplainable: The Cultural Context of the Sedition Act,” *The Democratic Experiment: New Directions in American Political History*, ed. Meg Jacobs, William J. Novak, and Julian E. Zelizer (Oxford: Oxford University Press, 2003), pp. 20-49.

tion of the different ways in which U.S. and Mexican politicians interpreted democracy, liberalism, and federalism and put them into practice.

THE RIGHT TO DETERMINE: FEDERALISM

In the U.S. in the 1790s, as in Mexico in the 1820s, republicanism served as the grammar of political discourse. Within systems that had been set up as democratic and federal, these exclusionary laws embodied sites of conflict where state and federal authority met and where the people's will confronted established law. The processes through which they were debated and enacted highlight that, as James Kloppenberg has written, "the more radical and profound truth about popular sovereignty is that it puts everything up for grabs."⁴⁹ They illustrate the contentious construction of new political systems in which the locus of sovereignty, the role of "the people" out-of-doors, and the adequate relationship between the different branches of government and between state and federal authority remained only partially resolved issues. It can ultimately be argued that it is the mechanics of newfangled politics that explain the different manner in which these laws were executed.

The conflicts let loose by the alien laws did not only concern the way unwanted foreigners were treated, but also who had the right to establish who was not wanted. As the former American colonies became independent nations, one of the new governments' main challenges was redefining the relationship between rulers and ruled, as the latter were assumed to be sovereign. The United States and Mexico set up federal republics—in 1824 in the case of Mexico, after its short-lived and ill-fated monarchical experiment. Thus, at least two instances of legitimate, allegedly sovereign authority could lay claim to citizen loyalties: the state and national governments. In both the United States and Mexico, the constitution left to the states those "precious rights" that bonded government and citizen most strongly—such as that of defining the right of suffrage—but gave Congress the authority to establish a uniform rule of naturalization.⁵⁰ Consequently, in both cases, the exclusionary measures triggered jurisdictional disputes by setting against each other, on uncertain ground, two instances of authority that could justifiably claim the right to define the boundaries of the political community.

In the United States, it seems clear that by 1798 the framers had been successful in their efforts to establish in the federal constitution the "more pro-

⁴⁹ James Kloppenberg, "From Hartz to Tocqueville: Shifting the Focus from Liberalism to Democracy in America," *The Democratic*, pp. 350-380, 351.

⁵⁰ U.S. Constitution, Art. 1, Sec. 2; Art. 1, Sec. 8; Title 3, section V, Article 50, "Constitución de 1824," October 4, 1824 at www.cervantesvirtual.com.

found criterion of legality,”⁵¹ in that, as Federalists and Republicans fought over the Alien and Sedition Acts, most of their arguments focused on the laws’ constitutionality. According to the Federalists, Congress, in order to preserve “public safety,” could enact all measures that would enable the government to protect itself. The broad powers assigned to the president were defended as an extension of his constitutional responsibilities as commander in chief.⁵² In addition, they argued that foreigners had not been a part of the constitutional covenant and could not hope to enjoy the same rights as those who had. Their opponents found the acts harmful, dangerous, and disturbing but would not have an easy time grounding a rights-based defense on a document so austere and pragmatic that it originally mentioned citizen rights only to affirm that the citizens of each state were entitled to the “privileges and immunities of Citizens” in the others.⁵³

The Republicans consequently insisted on a strict construction of a constitution expressly designed to keep power checked and stressed the restraints it placed on federal authority. They saw the Alien Law as setting a most dangerous precedent. Swiss-born congressman Albert Gallatin, who, because of his foreign birth, had been once unseated as a Senator, warned that the constitutional clauses and the “necessity” that supposedly justified the drastic measures envisioned, could well be used against “seditious and turbulent citizens [who] might be as dangerous to the peace of the country, as aliens of a similar description.”⁵⁴ But the Republicans’ strong constitutional argument was that the bill contravened section 9 of Article I, which denied the federal government the authority to prohibit “the migration or importation of such persons as any of the states now existing shall think proper to admit” before 1808. In 1787, this clause was clearly meant to protect the slave trade. Ten years later, it was reinterpreted and extended to affirm the right of the states to regulate the immigration and residence of aliens within their territory, for the right to “import” persons would prove “very useless” if the federal government were empowered to order their immediate removal. The Irish Republicans of Philadelphia had no qualms about appealing to this clause, as it contained “no designation of color, nativity, or condition, and the general mass of foreigners [was] more important, than the ignorant and inefficient class” to

⁵¹ Jack N. Rakove, *Original Meaning: Politics and Ideas in the Making of the Constitution* (New York: A.A Knopf, 1996), p. 130.

⁵² See, among others, Sewall and Otis, *Annals of Congress*, 5th congr, 2d session, 1790-1792 at www.loc.gov.

⁵³ Art. IV, sect. 2; Art. I, sect. 2 at www.yale.edu/lawweb/avalon.

⁵⁴ Smith, “Constructing,” p. 37; Congressman Gallatin in *Annals of Congress*, 5th congress, 2d session, pp. 1977, 1981 at www.loc.gov.

which it alluded.⁵⁵ The crux of the Republican argument was that the right to determine who belonged, and who did not, rightfully lay with the states.⁵⁶

The clashes set off by the promulgation of the Alien and Sedition Acts illustrate the distance between different visions of the federal constitution, and the fact that working a system of powers delegated and reserved was thornier than it might have seemed at first. They also exemplify the contentious search for a “disinterested umpire” within the American system, for a final instance that would resolve political discrepancies between different levels of government. If the Constitution was considered by all to be the foundation of law, it still had to be determined who was to be the judge of compliance with constitutional principle.⁵⁷ Few apparently adhered to the solution put forth by Congressman Livingston, the Alien Act’s most vigorous opponent in the House, who claimed that “whenever our laws manifestly infringe the Constitution under which they were made, the people ought not to hesitate which they should obey.”⁵⁸ Most Republicans were, in general, more circumspect. The *Kentucky Gazette*’s “Friend to Peace,” for instance, asserted that although an unconstitutional law was “unquestionably void,” it could only be declared to be so by the judiciary. The people could rely on “constitutional remedies,” but had to respect it while it was not derogated. “Resistance by a part of the community [to legitimate political authority],” this journalist insisted, “puts an end to all government.”⁵⁹

Accordingly, even as the Republican delegates to Congress, in the face of the Federalists’ dismissive attitude, exhorted their colleagues to heed the voice of their constituents, respectfully articulated through petitions, they were not willing to set up the people-out-of-doors as sovereign by allowing them to take the law into their own hands. Conversely, the efforts of Thomas Jefferson and others to constitute the states the arbiters of the constitutionality of the law failed. The Virginia and Kentucky resolutions, drafted by these states legislative assemblies in response to what they deemed were the

⁵⁵ *Plea of Erin*, p. 2.

⁵⁶ Noah Pickus, *True Faith and Allegiance: Immigration and American Civic Nationalism* (Princeton: Princeton University Press, 2005), pp. 34–46. The fact that the controversy was essentially about federalism is perhaps more obvious in the Republican defence of the Sedition Act. Republicans such as Saint George Tucker recognized “broad police powers” to restrict freedom of speech, but felt these rested with state governments. William J. Watkins Jr., *Reclaiming the American Revolution: The Kentucky and Virginia Resolutions and their Legacy* (New York: Palgrave Macmillan, 2004), pp. 40–42.

⁵⁷ See William E. Nelson, *Marbury v. Madison: The Origins and Legacy of Judicial Review* (Lawrence: University of Kansas Press, 2000).

⁵⁸ In *Annals of Congress*, 5th congress, 2d session, p. 2013 at www.loc.gov.

⁵⁹ In *Kentucky Gazette*, June 20, 1798, quoted by James M. Smith, “The Grass Roots Origins of the Kentucky Resolutions,” *The William and Mary Quarterly*, 27 (April, 1970), pp. 221–245, 225.

unconstitutional actions of the federal government, met with the decided opposition of most states and the ambivalence of many Republicans.

The Virginia resolution, penned by James Madison, stressed that it was the state legislatures' duty to

watch over and oppose every infraction of those principles which constitute the only basis of that union, because a faithful observance of them can alone secure its existence and the public happiness. . . . [Since] the powers of the federal government as resulting from the compact to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact; . . . In case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states, who are parties thereto, have the right, and are in duty bound, to interpose, for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them.⁶⁰

Nevertheless, only the young state of Kentucky, whose political class maintained strong bonds to the Virginians, echoed the Old Dominion's resolution. Between February and October 1799, local legislatures declared themselves incompetent to supervise the acts of the federal government and unauthorized "to consider and decide on the constitutionality" of its legislation.⁶¹

Politics in the 1790s in the United States were characterized by the violence that wracked them. Nevertheless, the struggles that arose from the promulgation of the 1798 legislation show that, despite bitter partisan rivalry, these conflicts were resolved through institutional channels. They illustrate how open-ended the federal system set up in 1789 was, how the outcome of its workings could be defined by confrontation or consensus, and how it reflected shifts in power politics. Thus, in 1798, federal authority over naturalization was not questioned, while the states' prerogative to decide on the constitutionality of law was denied. Nonetheless, this did not reflect a trend towards strengthening of the national government, as is illustrated by the 1795 ratification of the 11th Amendment, which affirmed state sovereignty by curtailing the right of individuals to sue sovereign states in federal court.⁶²

⁶⁰ "Virginia Resolutions of 1798, pronouncing the Alien and Sedition laws to be unconstitutional, and defining the rights of the States," *The Debates of the Several State Conventions on the Adoption of the Federal Constitution*, 5 volumes, ed. Jonathan Elliot (Philadelphia: J.B. Lippincott & Co.; Washington: Taylor & Maury, 1836-1859), pp. 4:528-529 in www.loc.gov.

⁶¹ New York, Rhode Island, *Debates of the Several State Conventions*, pp. 4:538, 533 in www.loc.gov.

⁶² See Smith, "Constructing."

The Mexican debate over expulsion also reflects shifts in power politics but suggests a more rigid construction of federalism, in which the balance of power tilted decisively in favor of the states. Furthermore, the Constitution, as a “higher criterion” of legality, did not channel confrontation. The issue of expulsion exploded on the stage of national politics, where it had provoked loud rumblings since independence, with the enactment of an expulsion law by the state of Jalisco, on September 3, 1827, when the Federal Congress took it upon itself to decide on the constitutionality of such a measure. Those who sought the law’s derogation claimed that, as we have already mentioned, it went against the Plan of Iguala, the Treaties of Córdoba and article 30 of the Constitutive Act, which established the protection of the rights of “man and citizen” to be a duty of government.⁶³ The state legislatures had to heed these legal precedents, which were the “lawful explanations of public opinion,” binding to the nation as a whole, and not the “whistles and shouts of four miserable men who have been seduced.”⁶⁴ If in the United States the Federal Constitution was held up as the final test by which to judge the legitimacy of a norm—even as its clauses remained open to different interpretations—those who wanted the Spaniards out of Mexico summarily disqualified constitutional principle. Nothing the states did, they argued, could contravene “hallowed article 30,” because the federal government had not promulgated any law to regulate the protection of rights, and so the state legislatures could not act “in contradiction to laws that do not exist, and that no one knew if they ever would.”⁶⁵

The absence of such a law, they insisted, was not a sin of omission; it was by design that the federal government lacked the power to enact such legislation. It was local legislators, the communities’ “respectable fathers,” who had the right to implement any measure that would guarantee the safety of the states.⁶⁶ State assemblies were to be the final arbiters of all controversies. While opponents of the law appealed to the importance of the judicial branch, its defenders contended that the defense of the nation could not be trusted to the courts. Its formulas and procedures, argued Valentín Gómez Farías, were “very healthy and respectable indeed, but they were not enough in extraordinary cases when the criminals [are] numerous.”⁶⁷ On the other

⁶³ “Acta constitutiva de la Federación,” (January 21, 1824), at www.cervantesvirtual.com.

⁶⁴ “Discurso que pronunció el presidente del congreso de Jalisco, c. Luis Portugal. . .”; Senator Molinos in “Cámara de Senadores,” *El Águila* (September 13, 26, 1827), p. 1.

⁶⁵ Senators Acosta and Martínez Zurita in “Cámara de Senadores,” *El Águila* (September 26, October 9, 1827), p. 1.

⁶⁶ Senator José Ma. Alpuche in “Cámara de Senadores,” *El Águila* (September 20, November 29, 1827), p. 1.

⁶⁷ Senator Valentín Gómez Farías in “Cámara de Senadores,” *El Águila* (December 18, 1827), p. 1.

hand, the hispanophobes threatened that setting Congress up as “a general censor, charged with ascertaining the malice, prejudicial nature or usefulness” of state law would not be tolerated by local governments.

Consequently, the right of the federal government to intervene in local matters was categorically denied: its sovereignty was “partial;” that of the states’ “authentic.”⁶⁸ A radical conception of political representation ran parallel to this confederal view of sovereignty. These men saw the legislative as the only branch of government that was truly representative of the people, and superior to the other two powers. Local legislative bodies represented the “most powerful barriers . . . against the unfortunate tendency of those in power to broaden . . . the limits of their attributions,” and they should therefore hold practically unbounded authority. The “social pact” demanded that they have the prerogative, which might seem “exorbitant” and “unjust,” to banish undesirable individuals.⁶⁹ It was their duty “to expel one or more members of society if they considered it convenient for the conservation and safety of the state, without taking into account the rights of citizenship, nativity, naturalization, hospitality, or any other individual right that can never prevail in detriment of public health.”⁷⁰

In the end, the Federal Congress found itself sucked into the same vortex of mass hysteria, popular demonstrations, and armed uprisings that had already pushed 12 states to decree the removal of Spaniards: from November 1827 on, Congress read and debated five expulsion bills. An expulsion law ordering the removal of all Spaniards, with some exceptions, was finally proclaimed on December 20, as the “voice of the people” could only be obeyed. The law implied that Mexican citizens had the right not only to demand their will be done, but to ensure that it would be, by force if necessary; like most of the state laws that preceded it, the federal law granted full amnesty to those who had taken up arms and destroyed life and property in order to exact the legal deportation of the gachupines.⁷¹

The 1827 federal law was more moderate than those of the states in that it stipulated that its measures would last only as long as Spain refused to rec-

⁶⁸ José Ma. Alpuche in “Cámara de Senadores,” *El Águila* (November 19, 1827), p. 1.

⁶⁹ “Cuestión importante;” “Política: ¿El congreso general está facultado para expeler a los españoles fuera de la república? ¿Las legislaturas particulares gozan de esta facultad en los límites de sus respectivos territorios?” *El Amigo del Pueblo* (October 3; September 26, 1827), p. 1.

⁷⁰ “Noticias nacionales. Dictamen de las comisiones unidas de gobernación y puntos constitucionales, sobre proposiciones del Sr. Blasco relativas a que los estados no pueden expulsar extranjeros de su territorio,” *El Águila* (October 14, 1827).

⁷¹ Harold D. Sims, *Descolonización en México. El conflicto entre mexicanos y españoles, 1821-1831* (Mexico: Fondo de cultura económica, 1982), p. 128.

ognize Mexican independence. Like its predecessors, it was especially unforgiving towards Spanish members of religious orders and *capitulados*, the soldiers that had been sent over from the peninsula towards the end of the war of independence, and who had decided to lay down their arms and remain in Mexico after the triumph of the Plan of Iguala. But it did make exceptions for those Spaniards who had fought for independence, had rendered useful services to the nation, or had married Mexican women—as long as they kept up “marital life”—or had Mexican children. Such moderation was short-lived: in 1829, with the consolidation of a radical majority in Congress, and the arrival of former insurgent leader and democrat Vicente Guerrero to the presidency, a new expulsion law was drafted that excepted only those medically certified to be too old or sick to move.

DEMOCRACY AT WORK

These laws embodied sites where different levels of authority confronted each other, while facing the “people” from whom stemmed their legitimacy. In both countries, these laws could but reflect democratic politics and express its reach and limitations. By enacting measures that restricted aliens’ access to membership, the Federalists sought, in what turned out to be a losing move, to “strengthen their constituents . . . while disadvantaging their opponents.”⁷² But by celebrating an American identity rooted in British legacies and New World exceptionalism, they were also playing to an audience they knew would respond. The Federalists’ nationwide effort to mobilize public opinion relied on the strong, widespread nationalist feelings that had been goaded by French arrogance.⁷³ These had done much to bolster the Federalist victory of 1796, in which they had “outdemocrated” the Jeffersonian Republicans,⁷⁴ and they hoped for a repeat performance. They failed, in part, because Federalist rhetoric alienated important sectors of the population. The “revolution of 1800” was brought about by, among other things, the rejection of German Americans.⁷⁵

Seth Cotlar has persuasively argued that, despite the Federalists’ electoral debacle, their late 1790s offensive was successful in that it managed to “center” American political discourse by “inventing” a revolutionary tradition, which, unlike that of France, was moderate, deferential, and con-

⁷² Smith, “Constructing,” p. 20.

⁷³ This wave of patriotism is illustrated by the numerous patriotic addresses sent to John Adams. Elkins and McKintrick, *The Age*, pp. 588-589.

⁷⁴ Doron Ben-Atar and Barbara B. Oberg, “Introduction: The Paradoxical Legacy of the Federalists,” *Federalists*, pp. 1-16, 8.

⁷⁵ Smith, “Constructing,” p. 39.

tained.⁷⁶ The ultimate success of the Federalists' strategy depended on the responsiveness of their audience, on its striking a nerve among the general population. As Cotlar suggests, Jefferson's 1801 inaugural address's emblematic sentence, "We are all Republicans, we are all Federalists," reflects a shift to the right in public opinion, as does the moderation of even the most radical journalists in 1798-1799, when they focused on condemning with solid arguments the Federalists' extreme measures, rather than "simply abusing their opponents."⁷⁷ For all their "conservative" bent, the moderation of American democratic discourse and the legitimization of American nativism were a product of democracy at work.

On the other hand, the unresponsiveness of state legislatures to Virginia and Kentucky's appeal to bolster states' rights on the issues of naturalization and alien rights consolidated federal authority over these issues.⁷⁸ Conversely, the outcome of the crisis did not give greater weight or meaning to federal citizenship, which remained undefined until after the Civil War and its content unsubstantial until the second half of the twentieth century.⁷⁹ On the contrary, the resistance unleashed by the Federalists' efforts to raise money through direct taxation is evidence of the flimsiness of the bond that joined individual citizens to the federal government and of the fact that the perceived "French menace" was not strong enough to change this.⁸⁰ As Thomas Jefferson wrote, although many "respectable" men had been "enveloped in the . . . delusion" of the need for war with France, this "disease of the imagination" was soon defeated, as the Federalists had sent "the Doctor on his way to cure it, in the guise of a tax gatherer."⁸¹

In Mexico, for all its alleged authoritarian, centralizing bent and absolutist heritage, the weight of democratic dynamics is heavier still, and the weakness of the federal government more obvious. For many, republican government held out the promise of greater access to power for those that had previously

⁷⁶ Cotlar, "The Federalists," p. 275.

⁷⁷ Cotlar, "The Federalists." For signs of "greater maturity" in radical Republican publications, see Durey, *Transatlantic Radicals*, pp. 251-253.

⁷⁸ Since the 1795 Naturalization Act, the Federalists in Congress had managed to establish naturalization as an exclusive federal priority. Smith, "Constructing," pp. 37-38.

⁷⁹ For a very suggestive article on citizenship in the nineteenth century as one of many categories of status, and not necessarily one that was very important, see William J. Novak, "The Legal Transformation of Citizenship in Nineteenth Century America," *The Democratic*, pp. 85-119.

⁸⁰ Ben-Atar and Oberg, "Introduction," p. 6.

⁸¹ Thomas Jefferson to John Taylor, November 26, 1798, *The Works of Thomas Jefferson in Twelve Volumes, Federal Edition, Collected and Edited by Paul Leicester Ford* (New York, London: G.P. Putnam's sons, 1904-1905) at http://memory.loc.gov/ammem/collections/Jefferson_papers/index.html. Jefferson was referring specifically to the XYZ affair.

been excluded. Politicians on the outside—often young and provincial—sought to break up the monopoly of old colonial elites by resorting to radical rhetoric and political organization. Despite the fact that political discourse insisted on the dangers of faction, parties were formed, both at the local and national levels, often benefiting from the spaces and networks set up by freemasonry. Members of the newly created lodges of the rite of York, supposedly established under the auspices of the first U.S. minister to Mexico, the *yorkinos*, faced the staid, aristocratic, Scottish rite Masons—*escoceses*—who thought of themselves as the natural leaders of the new republic. In their assault on established hierarchies, hostility towards Spanish residents proved to be an emotional issue with broad popular appeal.⁸²

Thus, in the republic to the north, despite evidence for the decline of deference in British America with the coming of the revolution—and even before⁸³—even the most radical Republicans seemed wary of goading “the people” into taking the law into their own hands. South of the border, no such qualms disturbed the up-and-coming politicians who had self-consciously styled themselves as the “American” party.⁸⁴ The *yorkinos* claimed that not even constitutional law was to be above popular will, expressed directly by the crowds on the streets. The prerogatives of the federal government as representative and as a guarantor of individual rights were denied, as were the possibilities for its acting as a counterweight to state initiatives. In the late 1820s, Hispanophobia came to embody patriotism and a commitment to the struggle against privilege. Perhaps more significantly, it became the vehicle for an alliance between the popular sectors, resentful of the enduring privileges of Spaniards, and an ascending political elite that was not yet secure of its bearings. Unlike speaking and acting on more controversial issues—such

⁸² At a local level, the party confrontation during the early republic in Oaxaca, studied by Peter Guardino, is specially illuminating. In the state capital, the aristocratic “Oils”—who claimed to rise inevitably above their contenders—fought the more popular “Vinegars.” The former sought to maintain social hierarchies, the latter to tear them down. Peter Guardino, *The Time of Liberty: Popular Political Culture in Oaxaca, 1750-1850* (Durham: Duke University Press, 2005). For Mexico City, see Richard A. Warren, *Vagrants and Citizens: Politics and the Masses in Mexico City from Colony to Republic* (Wilmington: SR Books, 2001). For the *yorkinos* and *escoceses*, on the national stage, see Lorenzo de Zavala, *Ensayo histórico de las revoluciones en México, desde 1808 hasta 1835* (Mexico: Fondo de cultura económica, Instituto cultural helénico, 1985); Michael P. Costeloe, *La primera república federal de México (1824-1835). Un estudio de los partidos políticos en el México independiente, 1824-1835* (Mexico: Fondo de cultura económica, 1975), pp. 20-60, 58-60, specifically on hostility towards Spaniards.

⁸³ See the articles by Michael Zuckerman and Aaron Fogleman and the commentaries by Robert A. Gross and John M. Murrin in *The Journal of American History*, 85 (June 1998); Richard R. Beeman, “Deference, Republicanism and the Emergence of Popular Politics in Eighteenth Century America,” *The William and Mary Quarterly*, 3rd Ser., 49 (July 1992), pp. 401-430.

⁸⁴ Alfredo Ávila, “El Partido Popular en México,” *Historia y Política. Ideas, procesos y movimientos sociales*, 11 (2004), pp. 35-64.

as the tariff protection demanded by urban artisans—railing against the resident Spaniards implied very little costs, political or otherwise.

The Federalist rants against foreign radicalism were compelling enough that they contributed to a toning down of Republican discourse, but, along with Federalist fiscal initiatives, they also estranged certain sectors of voters. Conversely, in Mexico, rhetorical—and sometimes physical—attacks on Spaniards apparently earned their perpetrators greater popularity. This suggests that the place occupied within the political system by those affected by exclusionary measures is another factor that helps explain the difference in outcome: while Irish immigrants joined—and sometimes led—American citizens in a wave of protests and petitions against Federalist legislation, the resident Spanish, with the exception of the fortnightly newspaper *El Contra-Cardillo*, apparently had little to say in public to refute the raucous pamphlets that demanded their expulsion. To belie the accusations that they were “savage,” turbulent, and incapable of republican virtue, the Irish made theirs the “respectful” language of the decorous petitions sent to Congress by other groups of “freemen” and insisted on the importance of foreigners, and particularly of Irishmen, to the independence, prosperity, and well-being of the United States.⁸⁵ Inversely, *El Contra-Cardillo* constructed an image of the Spaniard living in Mexico as a decent man, prosperous and influential, who in the end was not so different—since it is really a question of perspective and tone—from the arrogant, wealthy, exploitative, meddling gachupín of popular lore.⁸⁶

But above all, the Irish protesters managed to latch on to the political discourse and organizational structures of the Republican Party, which would—despite the presidential election having been so close⁸⁷—raze their opponents in 1800. The universal, democratizing, and “revolutionary” language that they opposed, in the heat of partisan struggle, to the skepticism and circumspection of the Federalists, was consecrated—if in more moderate terms—as the language of those in power.⁸⁸ Spaniards’ ineffective

⁸⁵ *Plea of Erin*, p. 3. See also William Duane, *A Report on the Extraordinary Transactions*, quoted by Douglas M. Bradburn, “‘True Americans’ and ‘Hordes of Foreigners’: Nationalism, Ethnicity and the Problem of Citizenship in the United States, 1789-1800,” *Historical Reflections/Réflexions Historiques*, 29 (Spring 2003), pp. 19-42, 38. Bradburn considers that the “invention” of the “hyphenated American,” a national identity that celebrates foreign origin, arises from this controversy.

⁸⁶ See *El Contra-Cardillo*, num.2, num.3.

⁸⁷ John Ferling, *Adams v. Jefferson: The Tumultuous Election of 1800* (Oxford: Oxford University Press, 2004).

⁸⁸ See Joyce Appleby, *Capitalism and the New Social Order: The Republican Vision of the 1790s* (New York: New York University Press, 1984); Andrew W. Robertson, “‘Look on This Picture . . . And on This!’ Nationalism, Localism and Partisan Images of Otherness in the United States, 1787-1820,” *American Historical Review* (October 2001), pp. 1263-1280.

defenders were the elitist, politically moderate escoceses, who deplored factionalism and appeals to what they thought of as the populace. These men could do little in the face of the vertiginous rise and impressive mobilizing capacity of their rival yorkinos, who, without hesitation, made hostility towards the gachupines one of their banners.

The Spaniards were reluctant to fight their fight in public, even as the archives paint a picture of them that is very different from that of the pamphlets. In their petitions, Spaniards appealed to state governors or to the president, pleading to be excepted from the law, because they had Mexican families and had “showered this land with the sweat of their brow.” Their “shaky old age,” “mortifying illnesses,” and “notorious poverty,” prevented them from obeying the law. They relied on the written testimony of local notables—the town priest and doctor, municipal office-holders, militia commanders—to prove that they were “good men,” of “religious sentiment” who should be allowed to remain in the country. With few exceptions, both the Spaniards and their advocates insisted they had never “taken part in political convulsions,” had never “spoken against the system that rules us,” but “stayed quietly at home.” After Mexico’s transformation “from colony to sovereign nation,” they had obeyed the law “happily and with the greatest resignation.”⁸⁹ Their strategies relied on a network of personal contacts, not on a public defense of rights. As the Irish in Philadelphia proudly and collectively took on the role of the active, virtuous republican citizen, the Spaniards in Mexico claimed to be nothing but quiet, stay-at-home subjects.

RECONSTITUTING THE BODY POLITIC

These two episodes, then, throw light on the tentative construction of a machinery for government during the early years of independence in two young American nations, as they clue us into the tensions and contingencies that riddled the fashioning of new political communities. With independence, many of the principles that had structured belonging—allegiance to the King, imperial identities, and, in the case of Spanish America, the community of the faithful—became obsolete. They were replaced, in principle, with what James Kettner has called, and with all the ambiguities it implies, “volitional citizenship.”⁹⁰ As has been shown, in both countries, it was supposed

⁸⁹ See Archivo General de la Nación, Mexico City [henceforth AGN], Expulsión de Españoles, vol.15, especially exp. 1, 2, 3; vol.49, exp.1. Exceptionally, José María Quintero claimed to have fought for independence and to have become “identified with the interest and future fate of even the last of the Mexicans.” AGN, Expulsión de españoles, vol.15, exp.11.

⁹⁰ James Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill: Published for the Institute of Early American History and Culture, Williamsburg, Va., by the University of North

to be the will of the adherents—more often than not implicit—and their acceptance to live by society's rules that lay the foundations for belonging. Nevertheless, as these struggles over the definition of membership attest, voluntary association was difficult to maintain as a rule: the individual's volition was to be limited by the state's needs. Under the threat of war, the premise that individual will was the cement that bonds political communities together became untenable.

Thus, in September of 1799, an American court denied Isaac Williams the right to forswear his American citizenship. Williams, a sailor who had chosen to become a French citizen, was charged with committing "acts of hostility" against British shipping, in violation of the 1794 treaty between Great Britain and the country of his birth. Williams was found guilty, as it was affirmed that an individual could not simply give up being American. The judge claimed that the compact between the community and its members could not be dissolved without the community's consent or default.⁹¹ Similarly, in Mexico in the late 1820s, long time residency and local attachments, which had traditionally constituted membership in the broader political community, were, in the case of Spaniards, declared invalid.⁹² In the words of a radical Mexico City newspaper, someone's choosing a country as his fatherland (*patria*) did not give him the right to call himself a citizen.⁹³ In the case of the gachupines, it did not even give them the right to remain there. In both cases, opening the door to the national community—and regulating who could do what within it—was claimed to be strictly a prerogative of the state.

Nonetheless, the criteria that the state would rely on was not established at once, as a coherent and harmonious whole that would define the character of the nation. These two sets of laws, which forcefully excluded certain groups from the political nation, responded to particular circumstances and had more to do with political convenience than with enduring visions of imagined community. Moreover, in Mexico, the heated debate over expulsion does not seem to have influenced the legal norms through which the

Carolina Press, 1978); see also Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in US History* (New Haven: Yale University Press, 1997).

⁹¹ William's case. Case #17, 708 Circuit Court, D. Cnt, 29F Cas 1330; 1799 U.S. App. LEXIS 39; 2 Cranch 82, September 1799.

⁹² For the primacy of local attachment and the sanction of community in the definition of membership within the Spanish monarchy, see Tamar Herzog, *Defining Nations: Immigrants and Citizens in Early Modern Spain and Spanish America* (New Haven: Yale University Press, 2003).

⁹³ "Política. Breve examen de los discursos publicados en *El Observador Republicano*," *El Amigo del Pueblo* (October 24, 1827), p. 1.

federal government sought to transform foreigners into natives. The 1828 naturalization law combined traditional criteria for membership, such as Catholicism, vicinage, marriage to a Mexican woman, the exercise of “useful” industry, and good behavior, with newer principles of evident civic attachment, evidenced by a declaration of intent filed in writing a year before applying for citizenship and commitment to sustain the constitution. In order to encourage immigration—and prevent foreign residents from claiming to be subject to foreign jurisdiction—the law recognized colonists as citizens after one year instead of two.⁹⁴

Similarly, in the United States, the Federalists showed little interest in hindering immigration. They just hoped to prevent those who had recently emigrated from voting. After the Alien Act expired and the Naturalization Act was reformed, and until the second decade of the twentieth century, naturalization and immigration remained relatively open processes, despite immigration having become a profoundly contentious topic in the last decades of the nineteenth century.⁹⁵ Nativism reared its head frequently,⁹⁶ but lacked the political weight to influence federal law. Because, in many states, the right to vote did not depend on citizenship—either state or federal—immigrants, naturalized or not, represented an attractive constituency. Interestingly, Jeffersonian republicanism, in its battle against patrician federalism, articulated a powerful and enduring vision of American citizenship as open to all “liberty loving, self-improving,” mobile men, who carried with them a set of unalienable rights that would be both the building block and the bulwark of an expansive “Empire of Liberty.”⁹⁷ This vision of citizenship was not codified into law or reflected by jurisprudence until much later. In Texas in the 1830s, it did, however, collide with Mexico’s prerogative to police rights within the political community.⁹⁸

⁹⁴ “Ley. Reglas para dar carta de naturaleza,” *Legislación mexicana, o colección completa de las disposiciones legislativas expedidas desde la independencia de la República, ordenada por los Lics. Manuel Dublán y José María Lozano*, April 14, 1828 (México: Dublán y Chávez, 1876-1904) at <http://biblioweb.dgsca.unam.mx/dublanylozano/>.

⁹⁵ Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (New York: Russell Sage Foundation; Cambridge, London: Harvard University Press, 2006), pp. 199-242.

⁹⁶ John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (New Brunswick: Rutgers University Press, 1955).

⁹⁷ Foremost among these rights would be access to land. See Elkins and McKittrick, “The Yeoman Republic” *The Age*; Banning, *The Jeffersonian*, pp. 203-204. For Jefferson’s success in “fusing emotionally charged convictions into single discursive grid,” see Joyce Appleby, “Without Resolution: The Jeffersonian Tension in American Politics,” *A Restless Past: History and the American Public* (Lanham: Rowman & Littlefield Publishers, 2005), pp. 19-39.

⁹⁸ In Texas, colonists and land speculators—mostly, but not exclusively, American—defended their “absolute and total right to sell, dispose or alienate” their property, while the Mexican government claimed its right to regulate ownership of land through federal colonization laws. See Miguel Soto,

Literature on nations and nationalism has, in recent times, centered on the creation of, in the words of Ernest Renan's much quoted 1882 lecture, a "great solidarity," a "soul," a "spiritual principle."⁹⁹ The nation is seen as the result of the painstaking but relatively consensual construction of a common set of symbols and images, rituals and stories uniting a diverse population.¹⁰⁰ It is presented as the outcome of the progressive and accumulative action of print—and later television—of invented traditions, and of compulsory schooling and military service. This paper looks at an aspect of nation-building that has less to do with promoting affective attachments and nationalist feelings than with the authoritative construction of a national polity through exclusionary law. In the midst of international and domestic crisis, foreigners in the United States in 1798 and Spaniards in Mexico in 1827 were forcefully excluded—physically, in the case of the Spaniards—from membership in the political nation, despite their expressed will to belong and their adherence to the republican project.

Putting the Alien and Naturalization Acts of 1798 and the Expulsion of Spaniards law of 1827 side by side shows that in both the United States and Mexico during the early republican period many of the terms of federalism and constitutionalism were still undefined. Both young nations had yet to determine issues such as the extent of the prerogatives of state and federal authorities and how confrontations between them were to be resolved. We hope to have shown that the play of adversarial, democratic politics and of the competition between jurisdictions were more important at these critical junctures in shaping the norms that regulated membership than the ways in which the nation was imagined or the political models they were building on. Comparative analysis suggests that if the American exclusionary laws of the 1790s were more contained than those of Mexico's, it is due to the way in which democratic and federal politics were structured rather than to the weight of colonial legacies, to institutional arrangements, or to prevailing images of national communion.

Thus, in Mexico, the outcome of the struggle over expulsion, in a context where up-and-coming members of the "popular party" faced the "enemies"

"Texas en la mira. Política y negocios al iniciarse la gestión de Anthony Butler," *Política*, ed. Suárez Argüello and Terrazas Basante, pp. 34-35. As Andrés Reséndez has shown, Mexican nationals were just as likely as colonists from the United States to embrace this vision of citizenship which linked land to the "ideals of liberalism and home rule." Jaime E. Rodríguez O., "Masonic Connections, Pecuniary Interests and Institutional Development Along Mexico's Far North," *The Divine Charter: Constitutionalism and Liberalism in Nineteenth-Century Mexico* (Oxford: Oxford University Press, 2005), p. 125.

⁹⁹ Renan, *Becoming National*, pp. 52-53.

¹⁰⁰ For the political nature of nationalist mythology, see Rogers M. Smith, *Stories of Peoplehood: The Politics and Morals of Political Membership* (Cambridge, New York: Cambridge University Press, 2003).

of independence, was settled by the “voice of the people” articulated on the streets, in pamphlets, and through the state legislatures. In contrast, American politicians—“Federalists” and “Republicans”—appear more secure, more reluctant to play the democratic card to the hilt, and more committed to constitutional supremacy and the principle of divided sovereignty, although this did not lead to the construction of a stronger central government. The different strategies adopted by the targeted groups also proved influential, as the Irish immigrants to the United States skillfully used petitions, pamphlets, and newspaper articles to make their case, while the Spaniards residing in Mexico were unwilling or unable to fight their fight in public.

We also hope to have shown that the overworked, tenuous concept of nation-building remains fertile ground for historical inquiry. “The Nation,” has become, in some ways, the object of historians’ condescension: we expose its artificial and instrumental nature, stress the importance of dynamics that go beyond it, and decry the fact that it monopolized historians’ attention for so long. Nevertheless, in our efforts to understand the past, we need to address it if only because, in the last two centuries, the nation was the inevitable frame of reference—when not the obsession—of those who sought and exercised political power. As we have attempted to show, exploring the efforts to define the nation and determine its rules for membership in two young republics allows us to probe the mechanics for political decision and the ways in which authority was allocated and governance set up post-revolutionary contexts. Furthermore, because nation-building has been a practically universal phenomenon, a comparative perspective that traces different responses to similar problems brings to the fore contentious issues and possible explanations that can sometimes remain buried in the narrative of national history: Thus, in the case of the United States and Mexico, Edmundo O’Gorman’s “irreconcilable contrast” does not make a dialogue between their pasts impossible: it makes writing their histories more complex and more interesting.

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