

Kerry Abrams, “Immigrant Sponsorship”

U.S. immigration law retains a curious practice of requiring most applicants for a green card, and, in many cases, a temporary work visa, to be sponsored by a U.S. citizen relative or U.S.-based employer. This practice has roots in earlier domestic relations doctrines of marital domicile and master-servant relations, which enabled husbands, parents, and employers to influence or even legally mandate the migration of those in positions inferior to them in legal hierarchies. This paper teases out the nuances in these earlier doctrines, showing not only the origins of the current system but exploring the fissures and inconsistencies in the law as it developed. Competing theories of women’s marital and citizenship identity at the turn of the 20th century, for example, produced contradictory doctrines of a wife’s identity in state domicile rules, national citizenship statutes, and the emerging immigration system. The maintenance of these marriage-based notions of membership may help to explain why we have retained a sponsorship system while simultaneously implementing rules (such as Violence Against Women Act exceptions and portability of H-1B employment visas) designed to ameliorate the harsh effects of spousal or employer sponsorship.

***Guyer v. Smith*, Personal Status Laws, and the Practice of Citizenship**

This paper examines the enduring influence of personal status laws on the regulation of *jus sanguinis* citizenship in American law. Long after the Fourteenth Amendment guaranteed *jus soli* birthright citizenship to all persons born in the United States – including those of “African descent” – race-salient personal status laws continued to serve as the backbone of laws governing the citizenship status of foreign-born children of American parents. Careful examination of *Guyer v. Smith* illustrates this point. *Guyer* is a little-studied 1864 Maryland Court of Appeals case involving the citizenship status of the foreign-born children of a white American father and a woman “of African descent.” Supporting its holding that the children were not citizens, the *Guyer* court built on two legal principles that were firmly established in slaveholding states, and that endured even as slavery’s legal substructure was crumbling: the illegality of interracial marriage, and personal status laws that recognized the unmarried mother as the source of status for her children, including slave status prior to emancipation. The *Guyer* court’s interpretation of the federal statute governing parent-child derivative citizenship provided the authoritative well into the twentieth century, but the racial sociolegal context of *Guyer* was routinely obscured in sources citing to the case. Once we recuperate the role of race and sex-based status laws in the *Guyer* opinion, the case provides a window into the complex origins and enduring legacy of such status laws in the regulation of citizenship even today.

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Matthew Lindsay, “The ‘Immigration Crisis’ in U.S. History and the Making of Modern Immigration Law”

The federal government’s authority to regulate immigration has stood for more than a century as an anomaly within American public law, largely unmoored from the Constitution and buffered against constitutional review. Since the Supreme Court first adopted the so-called “plenary power doctrine” in the *Chinese Exclusion Case* in 1889, courts and policymakers alike have premised the extraordinary breadth of congressional and executive authority over immigration on the purported importance to the nation’s security of controlling aliens’ access to and conduct within U.S. territory. This premise is particularly striking when we consider that the policy issues that have long characterize the vast majority of immigration regulation—namely, labor, economic dependency, and common crime—bear little or no obvious relation to national security. This paper examines the history of this foundational premise of modern immigration lawmaking and enforcement in the period before the advent of the plenary power doctrine. Throughout the nation’s first century, state and federal authority to regulate immigration developed in the shadow of numerous and recurrent “immigration crises,” characterized variably by the interrelated problems of political allegiance, economic fitness, and racial assimilability. Critics of liberal immigration identified such crises as early as the 1790s, and then periodically throughout the nineteenth century, but it was not until the post-Civil War era that the immigration power came to embody the “crisis” trope—first through Congress’ federalization of immigration regulation in the 1870s and 1880s, and finally through the Supreme Court’s consolidation of the plenary power doctrine in the 1890s.