

# Present Tense

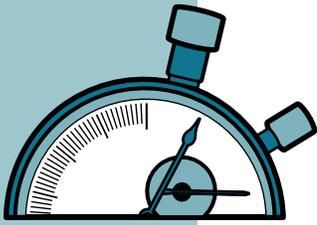
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## Troubling Citizenship: Arizona Senate Bill 1070 and the Rhetorics of Immigration Law

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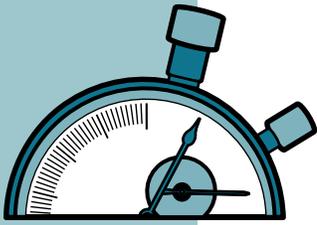
## Troubling Citizenship: Arizona Senate Bill 1070 and the Rhetorics of Immigration Law

Gale Coskan-Johnson

On April 23, 2010, amid celebration, consternation, ambivalence, and horror, Arizona Governor Jan Brewer signed Senate Bill 1070 (S.B. 1070) into law. The text of S.B. 1070 asserts that it will “discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States” (State of Arizona Senate 1). The law claims the ability to purge Arizona of individuals who do not possess documents in which the federal government has legitimated their juridical right to be present in the United States. Supporters of the law claimed that it was necessary, because the federal government had failed to enforce immigration law well enough to protect the residents of Arizona from “illegal aliens.” Several months after signing SB 1070 into law, Brewer warned in an interview with Fox News that there were “headless bodies” in the Arizona desert, insinuating vaguely that either the victims or the perpetrators were “illegal.” Ostensibly, she wished to impress upon the nation the seriousness of the danger that the law intended to forestall (“Truth-O-Meter Says”). After dodging journalists’ persistent requests for clarification, Brewer admitted that there were no bodies, and that she had “misspoke” (“Jan Brewer Finally Admits”). Brewer’s headless bodies, it would seem, were the tropic casualties of a particular way of imagining the border.

In “Gates Locked and the Violence of Fixation,” Ralph Cintron defines rhetoric as “that disciplinary art that imprecisely tracks the making of social imaginaries” (51). Thus, rhetoric works to trace the ways that the collective life of the community slides from the official discourses of the state to the rhetorics of the everyday. One sense in which such making may occur can be found in McGee’s classic “In Search of the People.” McGee’s “people” are “a fiction dreamed by an advocate” and “political reality” is established when they agree “to participate in a collective fantasy” (343). In this essay, I track the relationship between US state law, federal law, and the collective life of the community. I ask what kind of citizen is invited to participate in the collective fantasy that I argue is invoked in current immigration law. What kind of imaginary does such a fantasy produce and in what ways does it echo throughout less formal public discourses? In order to explore these questions, I bring together three disparate textual sites: US immigration law, theories of citizenship, and right-wing grassroots protest. I argue that current US immigration law, at both the state and federal levels, invites individuals to participate in a deeply troubling mode of citizenship.

To continue, I turn to S.B. 1070’s article 8B:



For any lawful contact made by a law enforcement official or agency of this state or a country, city, town or other political subdivision of this state where *reasonable suspicion* exists that the person is an alien who is unlawfully present in the United States, a *reasonable attempt* shall be made when *practicable*, to determine the immigration status of the person. (1, emphasis added)

Opponents of the bill argued that the law legitimated racial profiling and that it gave police the legal right to harass people of color (“Racial Profiling”). Many in the police force suggested that the law would drive a wedge between officers and members of the community, who, because of the lack of papers on their person or in their family, would fear coming forward as witnesses to crime (Thornburgh). The impending law generated massive protests and economic boycotts, which failed to deter the passage of the law.

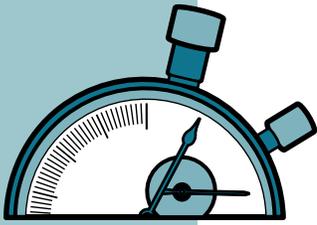
On April 11, 2011, the Obama administration filed a “Motion for a Preliminary Injunction” to prevent the implementation of S.B. 1070. The federal government argued, “the power to regulate immigration is vested exclusively in the federal government, and that the provisions of S.B. 1070 are therefore preempted by federal law” (qtd. in Bolton 2). The injunction recognizes that “unlawful presence in the United States is not a federal crime, although it may make the alien removable” (qtd. in Bolton 5). The administration’s argument rests on state preemption of federal law, and it turns on the alleged desire of the State to protect “legally-present aliens (and even United States citizens)” (qtd. in Bolton 16) from undue harassment by

police. The injunction asserts:

Mandatory determination of immigration status for all arrestees conflicts with federal law because it necessarily imposes substantial burdens on lawful immigrants in a way that frustrates the concern of Congress for nationally-uniform rules governing the treatment of aliens throughout the country—rules designed to ensure our traditional policy of not treating aliens as a thing apart. (qtd. in Bolton 15)

Evidently “our traditional policy of not treating aliens as a thing apart” is different from the one that includes the “[alien and sedition act](#) of 1798, the [Chinese exclusion act](#) of 1882, [Japanese internment](#) during WWII, the legal statute in force until 1952 that required candidates for naturalization to prove “whiteness” (Lopez), and what the ACLU calls “the unprovoked detention of hundreds of Arab, South Asian, and Muslim men after 9/11” (“Chertoff Shows No Remorse”). The government’s argument imagines a paternal, sovereign state acting to preserve the rights of both citizens and (“legal”) non-citizens; however, history suggests that the United States has been quite keen to engage in nation-building practices that “treat particular parts of the population as things apart.”

The federal suit also references foreign policy and asserts a desire not to offend allies. It points out that away from the border, neither citizens nor visitors from visa-waiver countries are likely to carry evidence of citizenship—in the language of the suit, such individuals would be “swept



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up” along with actual “illegal” aliens. In the narrative produced by the juridical processes around S.B. 1070, the federal government is positioned as a rational, lawful agent that makes use of the Constitution to protect citizens and aliens alike from the hysterical excesses of state government, while [in the words of the Daily Show’s Jon Stewart](#), “Arizona is the meth lab of democracy.” In effect, this binary performs a parody of Spivak’s critique of the western savior narrative<sup>1</sup> —in this case, the Federal Government is saving brown people from right-wing extremists. In fact, the practice of current federal immigration policy confounds the progressive rhetoric mobilized in the federal suit against S.B. 1070.

To begin with, we might ask about what NPR has called “a quieter change in the enforcement of citizenship and visas,” which “is happening along parts of the northern border.” This quieter change evidently refers to powers granted to the border patrol by Congress after 9/11 (Singel). This policy extends the jurisdiction of immigration officials by 100 miles from the nearest international border, and the ACLU points out that the policy effectively creates a “constitution free zone” in a band around US territory (“Fact Sheet”).<sup>2</sup> Second, the Immigration and Customs Enforcement Agency’s Section 287(g),<sup>3</sup> established by Congress in 1996, “permits the federal government to delegate immigration enforcement powers to states and local officers” (Capps et al. 1). In other words, the law empowers local and state police, anywhere inside US territory, “to screen people for immigration status” (Capps et al. 1). Following the

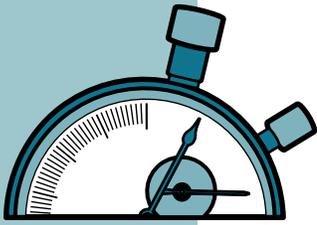
aggressive implementation of these policies, the Obama administration has pointed proudly to its record of deportation, which was at record highs in both 2009 and 2010 (Preston). According to CommonDreams.org, deportations “more than doubled during the Bush administration” and they continue to increase significantly under President Obama (“[Obama Administration Immigration Deportations](#)”). Briefly put, the arguments made by the Obama administration against S.B. 1070 are equally valid for both the 100-mile border extension policy and 287(g).<sup>4</sup>

While I find this state/federal juridical puzzle intriguing in and of itself, and I wonder why the public sphere is so quiet about it, what I aim to do here is to trouble citizenship. Thus, I ask, what kinds of citizenship practices produce and are produced by such laws? The speech act that is enacted at the *border* is an explicit performative—the declaration of citizenship. In the vast majority of cases, it is short and simple and familiar to any US citizen who has crossed into the US:

Border official: “Citizenship?”

Traveler: “United States” or “American.”<sup>5</sup>

The state compels the citizen to perform the nation in endless acts of reiteration that bring the state into being over and over again, sedimenting its historical construction. To refuse is to risk being turned away. The border has become naturalized as an exceptional space where *everyone* is aware that exceptional rules apply to normal behavior.<sup>6</sup> There is, nevertheless, an interesting tension in this exchange in which citizens are



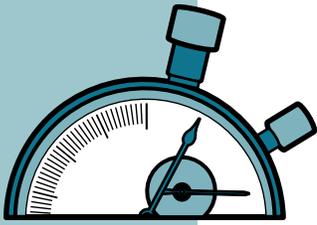
simultaneously fearful and reassured since the border guard will no longer (after 9/11) take the citizens' word for it but will examine their faces for signs of nervousness or subterfuge, search their passports for signs of forgery, and finally run their passport numbers through a private system of databases contracted to the US government by private corporations (Epstein 2).<sup>7</sup> On the border, the "good citizen" is fearful but is also relieved to witness the nation-state working to protect the citizens. Individuals are interpellated into subject positions as citizens of the nation-state, and in the process they produce the national other. The question is this: what kind of citizen is brought into being by current practices of US immigration law?

The current geopolitical border of the United States brings into being practices of citizenship that are resolutely founded on fear of the other. Arizona S.B. 1070, the 100-mile border extension policy, and 287(g) each work to shift bordering practices into every day life at the center of the nation. Each time a US citizen on an Amtrak train in Rochester New York, or in a laundry mat in Miami Florida or a bus station in Phoenix Arizona declares their citizenship to a border agent or local official, they are drawn into a "politics of complicity" (Mohanty 8) with nation-building practices that seek to identify who is out of place in the nation. As the ACLU argues, bordering methods employed by the administration may be *sweeping up* legal residents and even citizens as well as establishing non-citizens as a "people apart." In fact, there is no qualitative difference between the bordering practices of the federal government and those proposed by

Arizona's S.B. 1070; at both juridical levels, citizens are invited to view non-citizens as always already suspect, and to place the notion of security above the principle of justice.

If current state bordering practices produce a xenophobic citizen preoccupied with security, what types of citizenship emerge from current citizenship theory? Westheimer and Kahne identify three types of citizenship education: the personally responsible citizen, the participatory citizen, and the justice-oriented citizen. They ask what kind of citizen would support an effective democratic society (2). They find that only the third model allows for a citizenship "with politics" and they argue that a depoliticized citizenship may produce "service and character" but it "will not promote democracy" (3). In "A Discourse Theory of Citizenship," Asen argues that if citizenship were viewed as a "mode" then "it could not be restricted to certain people, places, or topics" (195). Asen is interested in a kind of "unruly" citizenship that "arises in part from the historical contingency of restrictions on citizenship" (195). These writers push against the limits of accepted definitions of citizenship in encouraging ways; however, both tacitly accept the notion of citizenship as a legal, juridical status. Unruly or not, all of their citizens are citizens.

Hence, Bosniak observes, "what is striking is that most theorists of citizenship treat the presumptively bounded character of the community of citizens as a given, ignoring the fact that the very category of "citizen" (as it is conventionally understood) presupposes the existence of outsiders to the nation-state's membership" (33).



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She suggests the phrase “citizenship of aliens” as a performative paradox that asserts the value of the non-citizen while simultaneously exposing “the [exclusionary] character of previous conventional formulations of the universal.” Bosniak explicitly links her voice to Honig, who has fundamentally challenged the status of the term citizenship. Honig examines a wide range of texts to suggest ways that the “foreigner” performs particular kinds of work for the nation such that xenophilic notions of the good immigrant produce xenophobic notions of the bad immigrant (84). In other words, both liberal and conservative discourses on immigration lead to the scapegoating of the immigrant, because they fail to sever the link between democracy and the nation state that produces the nation’s others.<sup>8</sup> As an alternative practice, Honig suggests:

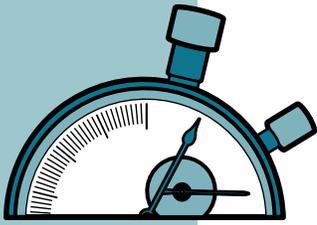
Rather than return home to the nation and love it ... fully and completely, democratic actors could move their fellows into democratic action along multiple registers: subnational, antinational, transnational, and national. (118)

In order to demonstrate how, instead, xenophobic underpinnings of the law and border security may surface among democratic actors in community discourses, I turn to a [video from Yorba Linda, California](#) that depicts a protest against a Muslim community organization.

The organization apparently intended to raise money for battered women and homelessness (“Hate Comes to Orange County”). Both the visual and verbal

rhetorics of the protest mobilize an extreme form of nationalism. As women, men, and children walk from the parking lot into the building, the protesters, girded by American flags, chant “USA!, USA!” “Go back home!” “Stupid terrorists,” “Mohammed was a child molester,” and “Why don’t you go beat your wife like you do every night!” I would like to suggest that these protesters have close political (if not familial) ties to some of the proponents of S.B. 1070 to the extent that these groups also work to articulate the limits of the nation-state. In the rhetoric of the protest, the citizens recognize who is not at “home” in the nation.

Agamben tells us that the sovereign democratic state works constantly to define its limits by locating “bare life”—the body that is included through exclusion and excluded by inclusion in the life of the nation through the law: “the law applies to him in no longer applying, and holds him in its ban in abandoning him outside itself” (50). In other words, the nation-state (re) produces itself through a citizenship that recognizes its strangers (Ahmed). The three immigration laws examined here point to a legal discourse that gives credence to Agamben’s description of the modern democratic state. “Bare life” can be found dying of exposure in the southwestern deserts of the US where representatives of the state have made it illegal for citizens to leave jugs of water for weary travelers by naming the practice “littering” (“Man Faces Jail”). This democratic nation-state, by definition, “works to treat particular parts of the population as things apart.” In rhetorical studies we are in an excellent position to recognize the ways that collective national fantasies are produced in the meeting of the minds between speaker and audience, state and citizen,



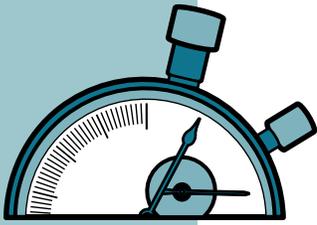
and to articulate the ways that such fantasies become political reality. If current immigration law encourages the sedimentation of xenophobic forms of citizenship, a national imaginary infused with fear of the other, then those of us invested in rhetorics that elevate social justice above security must work to create a different future.

### Endnotes

1. In "Can the Subaltern Speak?" Gayatri Spivak constructs the sentence "white men are saving brown women from brown men" in order to capture the subject position of the British in India and their relationship to the abolition of sati (93).
2. It is not completely clear how such internal checkpoints, often quite far from the border, claim Fourth Amendment legitimacy. They may constitute the stretching of a 1976 Court Ruling on [US versus Martinez-Fuerte](#), which affirmed the Border Patrol's right to stop and question motorists at "reasonably located checkpoints" away from the US/Mexican border.
3. For an interesting presentation of the history of 287(g) and the "Secure Communities Program" that is currently replacing it and that has been rejected by the Governors of three states so far, see "[Issue Briefing Series, Issue #3: 287\(g\) and Secure Communities: The facts about Local Immigration Law Enforcement](#)" from The United States Conference of Catholic Bishops' "Migration and Refugee Services/Office of Migration Policy and Public Affairs, May 2011. Web. 9 June, 2011.
4. Such arguments have been made

persuasively by the ACLU and appear on *Democracy Now*, among other sites.

5. I am assuming that the one crossing the border here is a juridical citizen of the United States.
6. It is important to note the relative speed at which this process of naturalization has taken place. Benedict Anderson points out the paradoxical sense in which nations are imagined by nationalists as "primal" in spite of the historian's recognition that the modern nation, bounded by (allegedly) fixed territorial boundaries—borders—is a product of modernity.
7. Epstein explains, "A key factor in this 'biometricisation' of the borders is the increasing convergence of public and private sectors. The biometrics technology industry, for one, is flourishing: it repented [sic] a US\$ 1,56 billion market in 2005, forecast to more than double to US\$ 3.4 billion in 2007, and to further expand US\$ 5.26 billion by 2010 (2).
8. Honig calls for a "democratic cosmopolitanism" (102) informed by a female gothic model of democracy (109) that embraces uncertainty, distrusts its leaders, and that eschews the unifying practices of nation building. In such a model of democracy, one would always acknowledge that the "good man" leading the nation is the very one that might possibly plan to cut your throat in the dead of night. You can never take your eyes off her or him. In such a model of democracy, the passionate attachments so often reserved for the nation could turn elsewhere.



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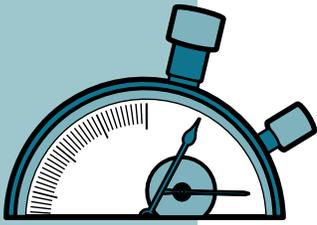
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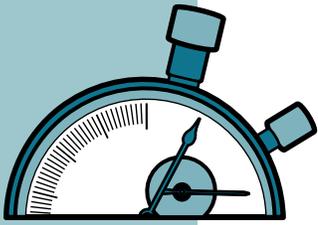
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