Exceptions to Exclusion: A Prehistory of Asylum in the United States, 1880-1980

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Abstract

This dissertation focuses on migrants mostly left out of scholarship on American refugee policy and resettlement programs and disrupts the scholarly dichotomy that analyzes the restrictionist handling of immigrants and the welcome accorded refugees. It does so by providing a history of political exiles, war widows and orphans, sailors, and students, who came to the United States and asked, with the help of advocates, to be accorded refuge. It is a history that shows how concepts of persecution and protection underlying our contemporary asylum system, which was created in 1980, have a long genealogy; they developed in campaigns on behalf of these "pre" asylum seekers and were strengthened by appeals to American ideals (of freedom and opportunity) and rights (such as due process and equal protection). Coalitions of asylum advocates were diverse, comprising organizations focused on newcomers—like the Hebrew Immigrant Aid Society and the American Committee for the Protection of the Foreign Born—while also drawing support from organizations focused on international cultural exchange, labor, and civil liberties and human rights. Because asylum-seekers were noncitizens, legal advocacy on their behalf was exhortatory and aspirational; that asylum-seekers were sometimes political radicals or in illegal status led to conflicts and hesitations among advocates who were professionals (lawyers, social workers, educators) and co-ethnics with their own priorities and commitments. Before World War II, many asylum seekers gained refuge, though their persecution claims were not officially recognized. After World War II, persecution claims were recognized selectively. Throughout the period covered in this dissertation, the claims of these exceptional pre-asylum seekers and their handling helped define the concept of refugee and its distinction from other migrants. By focusing on contestation by advocates and the discretion of officials, my dissertation explores a fundamental tension at the heart of American asylum: the myth of refuge and commonplace exclusion.

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At the 20th century US history dissertation workshop and the doctoral colloquium in literature and culture, I shared different parts of this dissertation with groups of Harvard peers, who gave me helpful feedback. Thank you also to the Massachusetts Historical Society for hosting a workshop on a very preliminary version of chapter 4. Thank you to Deirdre Maloney and Marlou Schrover, who gathered a wonderful group of scholars to discuss and write about gender and migration, and who helped me conceptualize what became chapter 3. After reading an early version of that chapter, Nancy Cott asked me the kind of deep questions that sent me back to the archives and led me to reframe my arguments. At the dissertation's earliest stage she also put me in touch with the family of Isaac Hourwich. Learning about him, a protagonist in chapter 2, got me thinking about issues that dominate this project and, perhaps, future ones. As time went on, Nancy also became the astute reader I was writing for—and she provided constructive criticism of my work in the final stretches. If my arguments are not clear and my text too heavy, it's because I didn't revise in some of the ways she suggested.

Thanks to my original Am. Civ. cohort, Lauren Brandt and George Blaustein, for help in many ways during my time at Harvard. Thanks to program administrators Christine McFadden

and Arthur Patton-Hock for advice and, perhaps most of all, patience. Arthur helped make me feel like finishing was just on a horizon that kept receding.

I have a fetish for archives and a special fondness for archivists; the people who helped make doing research for this dissertation from late 2008- early 2011 the most intellectually exciting period of my life thus far are too numerous to list here. I will especially thank Dan Necas at the Immigration History Research Center at the University of Minnesota, who pointed me towards sources essential to several chapters. Also, at the National Archives in Washington D.C., Bill Creech went way beyond the call of duty, screening literally hundreds of immigration files for me. Thank you to Zack Wilske at the USCIS's historical library for helping me with indexes and numerous questions. Thanks also to archivists at the Labadie Collection at the University of Michigan and the Special Collections at the University of Arkansas for helping me during my research visits and with follow-up photocopy requests. Thank you to the Sezginers for a wonderful place to stay near Berkeley and Stanford. Thanks also to Cimmy and Kelsey, who photographed archival material for me when my newborns kept me from traveling. Fellowships from Harvard's GSAS and smaller grants from Harvard's Warren Center and Center for Political Studies and from the University of Minnesota helped to fund my research. I had to finish this dissertation far from the Harvard libraries and its amazing staff and resources, so I would like to thank the librarians and interlibrary loan offices at Princeton University and the University of Connecticut for making this feasible.

I feel strongly that historical research on immigration, even with a domestic U.S. focus like mine, should engage with sources in languages other than English. Thank you to those who provided me with excellent translations: Sarah Failla, Kelly Johnson, Sebastian Schulman, and

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There are people who have inspired me that I am certain do not know it, so I feel all the more reason to mention them here. In 1998 Thomas Archdeacon of the University of Wisconsin taught a summer class on American immigration history at Columbia University, where I was an undergraduate. I've been hooked since then. When I was back in Morningside Heights after my oral exams a few years later, Samuel Moyn's lectures on the history of human rights were eye opening. In 2006, at the beginning of my focused work on this dissertation, Deborah Anker allowed me to audit her Harvard Law School class on immigration and refugee policy and met with me to discuss asylum advocacy. Debbie exposed me to issues and activists crucial to my understanding of asylum. In 2008 Margot Canaday generously took the time to explain to me, in detail, how to do research in seemingly impenetrable post-WWII INS records. Truly forbidden fruit!

I'd like to make just one self-reflexive, historiographical note about the context of my research and writing. My extended graduate school career coincided with the U.S.'s war on terror: I was in my first graduate school classroom for a language qualifying exam when planes hit the Twin Towers. This long war, and the rise of Homeland Security, has had very important effects on asylum, effects I do not address head-on in this dissertation, though they were on my mind. I worked on the proposal for this project as thousands of immigrants took to the streets in early 2006 to protest the broken U.S. system. The economic crisis of the past few years, not to mention congressional dysfunction, have made it harder to fix. Its relationship to asylum has, also, been on my mind. The same is true about both the unprecedented number of people

deported by the Obama administration and the unprecedented number of people to whom the same administration hopes to give discretionary relief.

This dissertation has taken four difficult years too long to finish. Still, these personally intense years have deepened my understanding of emotion, power, and the way things really work. Some friends have been there for me when I've needed them most: Julie Choffel and Jason Chang, Emily Farbman and Scott Gelber, Noam and Rebekah Maggor, Mark Overmeyer-Velazquez and Jordi Hertz, Galit Seliktar and On Barak, Rebecca Tobin, and Zoe Trodd.

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Tremendous thank you to my parents, Sam and Rebecca Schacher, for unwavering support, both practical and psychological.

Emma and Sally, my favorite girls, you are wondrous.

Ed, I love you.

Dedication

This dissertation is dedicated to Esther Schacher, my paternal grandmother, who died when I was twelve. Though too young to really get to know her, I could tell even then that she was a mystery not only to me. Her refuge-seeking during and after WWII seemed to be a key.

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Note on Terminology and Use of Sources

I use the term "asylum seekers" to refer to people from other countries who sought to be admitted or to remain in the United States because they were persecuted in the countries they came from or feared persecution if they returned there. How asylum seekers, their advocates, and American judges and officials defined persecution is a central subject analyzed in this dissertation.

In this dissertation, I use court documents, Immigration and Naturalization Service files, and the papers of organizations and attorneys to fill out the basic social history of asylum-seekers who have left little other paper trail. These sources provide factual information that cannot be found elsewhere. These archival sources include interviews and testimony where the asylum seekers' own words can be found, though, of course, in response to particular questions and through translators. In the words of historian Peter Gatrell, "at best one might describe this as a sensitive kind of eavesdropping."[1] As I am interested in both the stories of the asylum seekers and their interpretations by advocates and officials, I make the most of the limitations in these sources. I have also done my best to be a super-sensitive eavesdropper by finding more than one file on each case, i.e. a social work or advocacy organization file *and* an immigration file or a court case. Most files, too, are not univocal, in that they contain affidavits from relatives and employers, reveal disagreements between officials, or manifest varying perspectives among advocates. Many files contain translated family correspondence and other personal documents, sources that seem less mediated or geared to fit a particular kind of story. This makes the framing and the use of the information in these sources more interesting. I believe the sources reveal a great deal about the *experience* of asylum-seeking, but, as the discourse theorist Robert Barsky

[1] Peter Gatrell, *The Making of the Modern Refugee* (New York: Oxford University Press, 2013), 294.

has written, at the very least, they allow us to "learn a lot about the *system* that has been set up to determine the validity of refugee claims"[2] [italics mine]. I focus especially on the memoirs and personal papers of advocates who were once refugees themselves, believing that these shed particularly interesting light on the process of asylum mediation and framing.

I agree with the historian Mae Ngai that "anti-restrictionist" is an inappropriate general appellation for 20th century advocates of immigration reform, asylum advocates included.[3] I use the term "asylum advocate" to emphasize support for the admission of particular asylees. Some of the advocates I discuss were opposed to all or many existing restrictions on overall immigration, while others were not. I use the term "restrictionist" to refer to those opposed to the admission of particular asylum seekers. I analyze when these restrictionist attitudes coincided with support for exclusion of immigrants more generally or with restriction based upon certain criteria.

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[2] Robert Barsky, *Arguing and Justifying: Assessing the Convention Refugees' Choice of Moment, Motive and Host Country* (Burlington: Ashgate, 2000) 15.

[3] Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 248.

Chapter 1: Introduction—Asylum Dialectics, Asylum History, Asylum Stories

Overview

Asylum was recognized in U.S. law for the first time in 1980, but its genealogy in the U.S. stretches back a century. The concepts of protection and persecution, which predate the advent of international refugee law and underlie contemporary asylum, developed from the late 19th through the mid 20th century in response to the migration of refuge-seekers and the strategies of their advocates, who sought to overcome the constraints of federal immigration restriction. Advocates, in effect, Americanized an ancient concept of asylum in response to particular attempts to exclude or deport particular migrants. At the heart of much asylum advocacy was the notion that the U.S. was an "asylum for mankind," a notion that papered over actual obstacles to asylum but also kept alive the hopes of asylum-seekers.

A major goal of this dissertation is to trouble the categories the federal government has drawn in recent decades between immigrants, refugees, and asylees, categories which obscure a rich history of migration and political and intellectual contestation. First of all, the term refugee did not appear in legislation at any time between the late 19th century, when the federal government took control over the regulation of immigration, and the Second World War. During the Cold War, federal law introduced a limited definition of refugee as someone who feared persecution in his home country and applied to enter the U.S. from a non-Communist country to which he had fled. This dissertation challenges a Cold-War historicization of the refugee concept by exploring the development of a key building block—persecution claims—which advocates began helping immigrants raise in the interwar period, when immigration restriction was at its height. In the wake of World War I, advocates for Jews and Armenians asked for their admission to the United States as protection against discrimination and violence because of their

religious belief. Then, beginning in the 1930s, immigrants and labor-oriented advocates, drawing on a robust view of workers' rights, made claims that emphasized the connection between economic and political persecution. These were domestic asylum antecedents to post-WWII U.S. refugee policy as well as to international refugee law, as embodied in the 1951 United Nations Convention Relating to the Status of Refugees.

Second, the 1980 Refugee Act included the first distinction of the category of asylee. The 1980 law classified asylees as those who, based upon fear of persecution in their home country, applied for refugee status *on or after arrival* to the United States. But, as the next chapter shows, anti-extradition campaigns on behalf of foreign "political criminals" in the United States in the first decade of the twentieth century should be seen as forerunners of late twentieth century asylum advocacy. These campaigns highlighted the tension between asylum and sovereign control over the entry and sojourn of foreigners; the latter was first articulated in the 1890s and remains the crux of restrictionism. Moreover, as chapters 4 and 5 show, migrants requested refugee status *from within* the United States for years before 1980. In the 1940s, 1950s, 1960s, and 1970s, migrants from all over the world came to the U.S. in temporary or illegal statuses, raised persecution claims to prevent their deportation, and tried to adjust their status to permanent resident under various legislative provisions. Advocates for these asylum-seekers tried to gain them refuge by associating it with constitutional rights like due process and equal protection. In the late 1960s and 1970s advocates argued that the rights accorded to asylum seekers under international law were latent in America's traditional conception of refuge—as embodied in the Bill of Rights, the 14th Amendment, and the Statue of Liberty– and pushed for the explicit recognition of these rights in domestic law and the practice of immigration officials.

Asylum advocates were professionals (social workers, lawyers, educators) and internationalists of different stripes (socialists, missionaries, diasporic ethnic leaders, pacifists, communists, anticommunists, and human rights activists) who frequently disagreed among themselves about the best strategies to take in handling cases and dealing with immigration restrictionists.[1] In the narrative section of this chapter, I illustrate how, in the middle decades of the twentieth century, these disagreements impacted attempts at legislative reform and the cases of two asylum seekers. These advocates were internationalists who nonetheless embraced the idea that America was an exceptional nation of refuge and their varied commitments informed their understandings of this refuge. As mediators between foreigners and the American state, advocates negotiated the difficulties of allegiance, radicalism, and fraud; this made advocacy by co-ethnics particularly fraught.

Like their advocates, seekers of asylum did not fit into neat categories. Their motives for migrating were not exclusively economic or political. They were not exclusively victims or deceivers in their methods of migrating. In each chapter, I discuss seekers' representations of asylum when these are accessible in interviews, letters, memoirs, fiction, or poetry. These representations frequently responded to the treatment asylum seekers received and the representations of others. The poetry I analyze later in this introduction points to asylum's potential and its limits; it illustrates the desire for reconciliation between the ideal and the reality of refuge and the difficulty of achieving it.

The asylum seekers featured in this introduction raised specters that have been at the heart of restrictionism: racial otherness and political nonconformity. Restrictionists also relied on more technical barriers, like documentary requirements and violation of time limits on stays in

[1] I use the terms "asylum seekers" and "asylum advocates" colloquially to refer to those who sought sanctuary from persecution and those who supported them, respectively. I will be explicit when referring to the legal definition of asylum inscribed in the 1980 Refugee Act.

the United States. Advocates contested these ideological and paper walls by raising the specters of death and statelessness as the consequences of deportation. By focusing on barriers to asylum and attempts to break them down, this dissertation bridges the divides that currently exist between histories of European, Asian, and postcolonial migration and between histories of immigration, deportation, and refugee policy.

This chapter introduces many of the advocates and advocacy organizations that are prominent in later chapters. In this chapter and throughout the dissertation, I focus on particular laws and cases to relate a social and political history of asylum-seeking and a cultural and intellectual history of conceptions of asylum. In later chapters I examine: the cases of political exiles from Russia, Mexico, and India who sought to avoid criminal extradition in the first two decades of the twentieth century (chapter 2); the accounts of Jewish and Armenian survivors of World War I era violence who claimed they were religious refugees and should be exempt from exclusion (chapter 3); the contentions, from the 1930s through the 1960s, of deserting sailors from countries such as China and Yugoslavia that deportation would subject them to maltreatment (chapter 4); and the arguments of foreign students from countries such as Iran and Nigeria that they be allowed to remain in the United States rather than be deprived of rights and opportunities in their home countries (chapter 5).

One of the dichotomies that dominates contemporary asylum discourse is political versus economic refugees, with restrictionists arguing that the latter should not be granted asylum. Several scholars have pointed out that that there was no political/economic distinction in the definition of persecution in the 1980 act, nor was there such a distinction drawn in the 1951 convention. Historians have documented how the experiences of resettled Displaced Persons in the United States after World War II was, at times, not so different from that of guest workers.

During the Cold War, as my chapter on sailors shows, distinguishing political and economic persecution remained a challenge. For example, the Polish American Immigration and Relief Committee [PAIRC] took up the case of a seaman who deserted his vessel in the US in 1949. The seaman worked in his uncle's auto repair shop after WWII but "due to high taxes, which were placed on private enterprises" in Poland, his uncle closed the shop. Left unemployed, he managed to get a job on Polish ship by working without pay as a chauffeur for the president of the Polish Seaman's Alliance, a man he had met at his uncle's shop, and by bribing one of the ship's officers. While at sea, he got into an argument and expressed views against the Warsaw regime; the security officer on board threatened to dismiss him and have him arrested upon return to Poland if he did not become a member of the Communist Party. PAIRC believed he would be subject to persecution upon return to Poland not only because of these shipboard conflicts, but also because he was a member of the Polish underground during WWII.[2] The dichotomy between economic and political has been used rhetorically as an argument for restriction, but is far removed from the experience of migrants. Advocates for them were much more interested in the nature of the persecution they faced—by state authorities? economic discrimination or extortion and imprisonment?—than in the mixture of economic and political push and pull factors that prompted their migrating. This is very much a live debate today.[3]

[2] Case of Alojzy Nieckarz, box 3, Polish American Immigration and Relief Committee paper, Immigration History Research Center, University of Minnesota [hereafter PAIRC papers].

[3] Fatma E. Marouf & Deborah E. Anker. "Socioeconomic Rights and Refugee Status: Deepening the Dialogue Between Human Rights and Refugee Law," 103 *American Journal of International Law* 784 (2009). In an article about the refugee/migrant distinction drawn during the 2015 asylum crisis in Europe, the historian Tara Zahra points out, "since the very moment that refugee was defined in international law, the distinction between 'refugee' and 'economic migrants' has been malleable in practice and often used to willfully exclude individuals considered undesirable from a political, cultural or economic perspective." (Tara Zahra, "The Return of No-Man's Land: Europe's Asylum Crisis and Historical Memory," *Foreign Affairs,* Sept. 22, 2015, https://www.foreignaffairs.com/articles/western-europe/2015-09-22/return-no-man-s-land (accessed Oct. 3, 2015)).

Though my focus in this dissertation is on asylum seekers and their advocates, the officials hearing their claims play important roles as well. Prosecutorial, administrative, and to a lesser extent, judicial[4], discretion is a large theme in this dissertation, as it is in immigration and refugee scholarship generally. Discretion plays into adjudication in two ways, though they are related. The first is on the level of determinations about who deserves refuge.[5] The second involves what kinds of refuge to provide.[6] Discretion is not inherently restrictive; it can work to the asylum seekers' favor. In 1914, though, when asylum advocates supported a statutory exemption of refugees from a literacy test for admission, restrictionists suggested instead giving discretion to the immigration authorities in such cases, sure that this would limit those eligible.[7] Between World War II and 1980, discretion also tended not to work in asylum seekers' favor because of a "fixation on aspects of the applicant's manner of entering the United States" and

[4] The discretion of federal judges plays a more limited role because of the narrowness of review accorded the courts in the immigration field. Ruth Bader Ginsburg, in *INS v. St. Cyr* (533 US 289, 2001) referred to this as a " kind of lawless discretion" accorded the immigration agency. Special deference to agency in asylum cases is usually rationalized by referring to the inherently political nature of asylum decisions.

[5] Recent large scale studies that integrate qualitative and quantitative data have confirmed important disparities in the handling of cases by asylum officers at the local level. One such study found that "although the relationship between human rights conditions in applicants' countries and [asylum] grant rates suggests that the asylum adjudication system is fairly accurate in separating valid from unwarranted claims, our data indicate that factors other than an applicant's well-founded of persecution have some correlation with asylum officers' decisions." Some of the factors that mattered most were the filing deadline imposed on applicants, officer's personal characteristics, whether the applicant had dependents or entered legally, and concerns about security after 9/11. Andrew Schoenholtz, Philip Schrag, and Jaya Ramji-Nogales, *Lives in the Balance: Asylum Adjudication by the Department of Homeland Security* (New York: New York University Press, 2014), 207.

[6] For a new book that documents how the ideology of judges influences their granting of different forms of relief to asylum seekers, see Banks Miller, Linda Camp Keith and Jennifer S, Holmes, *Immigration Judges and US Asylum Policy* (Philadelphia: University of Pennsylvania Press, 2015).

[7] Robert Zeidel, "The Literacy Test for Immigrants: A Question of Progress," Ph.D. dissertation, Marquette University, 1986, 327-8. The instincts of restrictionists were right. As Roger Baldwin of the ACLU noted in the 1920s,"One of our U.S. secretaries of Labor once said to me, 'I don't much care what kind of an immigration law Congress passes as long as I can make the rules and appoint the inspectors.'" "The Capital of the Men without a Country," *Survey* 58 (August 1, 1927), 460-67 (quotation on 461). (Thanks to Nancy Cott for this reference).

"assumptions about…the overseas refugee admissions process."[8] One scholar has argued that asylum seekers were accorded temporary admission or even detained, rather than given permanent residence that would allow them to work, stay close with family, and gain other benefits, precisely because they did not experience "a bleak existence of uncertain but perhaps indefinite duration in a refugee camp" in a third country, but came directly to the United States. The limbo status they got in the U.S., the argument implies, stands-in for that privation and as a test of asylum seekers' true desperation.[9] Funding and capacity of the immigration bureaucracy has always had an impact on whether and how asylum seekers were sought out for deportation. What is clear is that discretion in the handling of asylum seekers is pervasive in Western countries, emphasizes that there is no natural or positive right to asylum, and has responded to political and economic pressures that fluctuate over time and across locales. I spend a good deal of time in most of the chapters that follow showing how the immigration authorities (and, sometimes, later in the century, officials at the State Department) went out of their way to grant asylum seekers forms of relief in ways that did not recognize their persecution claims. This, too, has contributed to a myth of America as an asylum while leaving asylum seekers in twilight or limbo statuses. The chapters that follow also show how limits on other modes of achieving residence led to increases in persecution claims—and then the belief that all persecution claims were just lies to justify illegal entry. The legal scholar Hiroshi Motomura has recently called contemporary asylum a kind of legalization, given that many asylum seekers arrive without papers or are admitted but later lose their lawful status.[10] This dissertation shows that this is

[8] Deborah Anker, "Discretionary Asylum: A Protection Remedy for Refuges Under the Refugee Act of 1980," *Immigration & Nationality Law Review* (1989) 296.

[9] David Martin, *The New Asylum Seekers: Refugee Law in the 1980s* (Kluwer Academic Publishers, 1988) 10.

[10] Hiroshi Motomura, *Immigration Outside the Law* (New York: Oxford University Press, 214) 195.

precisely what asylum has been for over a century. To provide just one example, advocates selected by Secretary of Labor Frances Perkins to suggest immigration reforms in 1933 recommended that "the Secretary of Labor be given discretion to permit a person subject to political persecution or to racial or religious persecution in the country of his last permanent residence… who has lived in the US for two years to establish his right to remain."[11]

Finally, a word about exceptionalism and exceptions. Recently, scholars have pointed out that some of America's early exceptions to exclusion for the politically and religiously persecuted existed in similar forms in other places as well, especially Great Britain.[12] Caroline Shaw argues that "it was the British who first and most powerfully incorporated the provision of relief for persecuted foreigners into their national, and then imperial, raison d'être" in the 19th century.[13] In fact, Americans engaged (or competed) in this process contemporaneously. But this dissertation is less interested in the story of advocacy for refuge at a time of relatively open borders. It focuses on advocacy for refuge as restrictionism increased. Some scholars looking at this dynamic see exceptions to exclusion as just "ever finer expressions of sovereign power" or as an "alternative exercise of state power."[14] The latter was certainly the view of restrictionsists; but it is a view that fails to account for the ability and variety of migrants who gained asylum.[15]

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[11] *Report of the Ellis Island Committee*, March 1934, 99.

[12] Alison Bashford and Jane McAdam, "The Right to Asylum: Britain's 1905 Aliens Act and the Evolution of Refugee Law," *Law and History Review* 32.2 (May 2014) 309-350.

[13] Caroline Shaw, *Britannia's Embrace: Modern Humanitarianism and the Imperial Origins of Refugee Relief* (New York: Oxford University Press, 2015), 3. Shaw's argument that codification of refugee protections in British law at the beginning of the 20th century "must be seen as something of a defeat for the vitality of broad normative claims on refugees' behalf" resonates with the argument in this chapter about legal categorization and the 1980 Refugee Act, which codified asylum in the United States.

[14] Daniel Margolies, *Spaces of Law in American Foreign Relations* (Athens: University of Georgia Press, 2011) 23.

[15] "Despite the multiplicity of refugee experiences and reasons for flight, conventional analyses of the subject remain committed to a mode of interpretation that works to efface this multiplicity." Peter Nyers, *Rethinking Refugees: Beyond States of Emergency* (New York: Routledge, 2006), xiv.

Other scholars emphasize that restrictive American immigration laws were not simply exclusive, but selective.[16] Extending this line of argument, to gain refuge, asylum seekers had to have the right ideology, religion, family ties, education, and skills. Those who gained refuge had roots in America and could make an economic contribution. Some advocates in this dissertation supported this conception of asylum, while others challenged it as too narrow. The tension between these views is evident in the slippage in the (aspirational) language about asylum in America as at the same time a right and a privilege. As a 1908 editorial in the *Nation* put it: "England and the United States are the only two great nations which still offer generous rights of asylum to opponents of political misrule. England, however, is now the close diplomatic friend of Russia. All the more reason why this country should be carful not to withdraw a privilege which, by the very nature of our institutions and our history, we owe to the champions of political progress the world over."[17]

The case studies in this dissertation suggest that there are both comparisons and contrasts to be drawn between the US and other destinations asylum seekers tried. Russian revolutionaries also found refuge in Britain and Canada in the first decade of the 20th century; Armenians also went to France and Cuba after WWI; Polish seamen tried Sweden and Argentina in the 1950s, while Yugoslav seamen went to Australia; Nigerian and Iranian students went to England and Germany in the 1960s. Much more research needs to be done to tease out the handling of these migrants in these different countries and the kinds of advocates or networks available to them there. Was the designation refugee invoked and, if so, how did it resonate with the public and

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[16] Amy Fairchild, *Science at the Borders: Immigrant Medical Inspection and the Shaping of the Modern Industrial Labor Force* (Baltimore: Johns Hopkins University Press, 2003); Paul Kramer, "Empire Against Exclusion in Early Twentieth Century Trans-Pacific History," *Nanzan Journal of American Studies* 33 (2011) 13-32.

[17] "Pouren and the Right of Asylum," *Nation* Nov. 26, 1908, 509.

politicians and fare in administrative or judicial proceedings? As the immigration historian Donna Gabaccia has pointed out, leaders and natives in various countries refer to migrants in "vastly different ways" that reflect how "human population movements figure in nation-building and in the historical imagination of nations."[18] What is perhaps unique about the United States vis-à-vis refugees is the way a persisting assumption that America is the ultimate asylum has underpinned both the refusal of the United States to adopt international law standards or make asylum more attainable and the push for the United States to do just that.[19]

Exceptionalism was sometimes given a bit of boost by restrictionists who went to extremes in trying to justify limits on asylum. In order to deny the potential persecution a migrant would face upon return to his homeland, these restrictionists would minimize the difference between the rule of law in United States and that in, say, Tsarist Russia or Communist China. For example, opponents of extradition to Russia in the early twentieth century argued that it was wrong to send fugitives back because they would be denied jury trials. John Bassett Moore justified these extraditions by pointing to the fact that trial by jury was not guaranteed to Americans when they were tried in extraterritorial courts in China or Turkey. Or, for another example, in 1951 a U.S. Attorney argued that deserting Chinese seamen who said they would be persecuted if returned to China were not entitled to administrative findings regarding the merits of their persecution claims or even to hearings about them; the seamen should be treated, the U.S. Attorney said, just like enemy aliens during war (despite the fact that some of them had actually sailed for the allies during the war). When one of the lawyers for the seamen pointed out that the

[18] Donna R. Gabaccia, "Nations of Immigrants: Do Words Matter?" *The Pluralist,* 5.3 (Fall 2010), 5-6.

[19] For an analysis of how exceptionalism (particularly beliefs in its individual rights and economic bounty) has been marshaled by both immigration restrictionists and immigration liberals see Carl J. Bon Tempo, "American Exceptionalism and Immigration Debates in the Modern United States," in *American Exceptionalisms,* eds. Sylvia Soderlin and James Taylor Carson (Albany: SUNY Press, 2011), 147-166.

U.S. Attorney General "admit[ted] that in China there are atrocities…that many persons have been unfortunately deprived of their liberty…without due process of law," the U.S. Attorney responded, "We say the same thing happens in this country…the Attorney General must be aware that prisoners in this country have been shot by sheriffs; that persons have been lynched by mobs."[20] In cases like these, advocates for refugees argued that extraterritorial courts, lynch mobs, and the treatment of enemy aliens should not be held up as embodiments of American justice. They were the exceptions, advocates argued, whereas rights for aliens and refuge for the persecuted were the rule. This, too, is a live debate today.[21]

This dissertation shifts the focus away from considering as refugees only those designated by the U.S. federal government as such in advance; instead it examines the reasons for forced migration, the paths (frequently protracted) taken by migrants, and the reception they received upon arrival. Understanding the long history of asylum in the United States is especially significant since, over the past 15 years, the US oversees refugee program has shrunk (predominantly because of security concerns) even as asylum claims have risen.[22] As is apparent right now—with Central American children traveling thousands of miles on the tops of trains to ask American border guards for refuge and Syrians embarking on rickety boats to gain a tenuous refuge on the outskirts of Europe—asylum seeking is the face of 21st century refugee-hood. The significance of what scholars have called "remote control"—the processes of screening and

[20] The US attorney made this argument in the *Chen Ping Zee* case, discussed in chapter 4. Stenographer's minutes of proceedings on Dec. 21, 1951 in *United States ex. re. Chen Ping Zee, Tong Ah Shu, Chang Chie Mon, Wong Ah Weh, Lee Chou Shek, Wong You Fong v. Edward Shaughnessy,* INS New York District Director, Dec. 21, 1951, p. 71, RG 21, 70 Civ. 155, Box 568662 (38234), NARA NY.

[21] This debate is frequently subsumed within the larger question of the relationship between liberalism and racism or exclusion. For an overview of positions in this debate, see David Scott FitzGerald and David Cook-Martin, *Culling the Masses: The Democratic Origins of Racist Immigration Policy in the Americas* (Cambridge: Harvard University Press, 2014) 4-7.

[22] See the chart of asylum grants versus refugee admissions in Banks Miller, Linda Camp Keith, and Jennifer Holmes, *Immigration Judges and U.S. Asylum Policy* (Philadelphia: University of Pennsylvania Press, 2015) 7-8.

excluding migrants abroad that began in the nineteenth century and dominated in the 20th century —has dwindled in the face of today's 'gate crashing' asylum seekers.[23] How to relate accounts of violence and persecution to officials in the United States and to negotiate immigration statuses and find remedies so as to stay in the country, processes that have not yet been addressed by historians of American refugee policy and immigration law and that I explore at great length in my dissertation, preoccupy current asylum seekers and their advocates.

Asylum Dialectics

The goal of this dissertation is to unravel the long history of asylum. I begin by showing that the development of protections for asylum seekers has not been linear and steadily increasing in liberality. Over the past century, definitions of persecution have widened and narrowed partly in response to a dialectic dynamic between advocates and restrictionists. In this section I analyze some of what has been lost and been achieved in the contemporary regime. The post - 1980 history of asylum does not mark a clean and novel break from the past.

The 1980 Refugee Act codified in domestic law the United Nations' definition of a refugee: a person who is unwilling or unable to return to the country of his nationality or residence because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.[24] The 1980 Act's most important innovation was the recognition of asylum—allowing applications for refugee status by those who made their way on their own to the United States or one of its borders or ports. However advocates downplayed this aspect in order to secure the Act's passage. After that was achieved,

[23] On remote control, see Aristide Zolberg, *A Nation By Design: Immigration Policy and the Fashioning of America* (Harvard University Press, 2006), especially 264-267.

[24] This definition of refugee is based on the 1951 UN Convention Relating to the Status of Refugees. Though U.S. representatives helped write this definition in the post-WWII years, the U.S. did not ratify the convention until 1968. The definition was not incorporated explicitly into U.S. domestic law until 1980.

the asylum provision was implemented poorly by an immigration service wary of asylum seekers.[25] Criticism and litigation in the 1980s regarding the standards used in asylum adjudication and the lack of access to counsel by asylum seekers led to the advent of a specially trained Justice Department "asylum officers" corps to conduct asylum interviews and to the prioritizing of asylum cases in a burgeoning number of law school immigration clinics affiliated with local legal service organizations.[26] Asylum law became an increasingly human rights oriented sub-specialty within the newly booming specialty of immigration law.[27] The first

[25] Most congressional debate on the 1980 legislation focused on its provisions regarding the orderly selection and resettlement of refugees from oversees, not the asylum provision. Policymakers in Congress and the Executive branch assumed that asylum applications in the wake of the Act would be low (a few thousand a year). David Martin, who worked in the State Department and supported passage of the 1980 act, refers to its asylum provision as a "near-afterthought." [Martin, *Asylum Law Sourcebook* (Federal Publications Inc., 1994]. Advocates and NGOs thought of the asylum provision differently, but did not highlight this. Michael Posner, a human rights lawyer who helped write the language of the asylum provision to meet the needs of Haitian and Ugandan refuge seekers, has said that it was "intentionally kept quiet" so as not to detract from the larger goal of winning the bill's passage. A few weeks after the passage of the Refugee Act, thousands of Cubans and Haitians made boat journeys to South Florida. In 1981, the Reagan administration scaled up old deterrence methods of detention and perfunctory screening for asylum seekers. [*United States as a Country of Mass First Asylum*: Hearing Before the Subcomm. on Immigration and Refugee Policy of the Senate Committee on the Judiciary, 97th Congress, 1981, Statement of Doris Meissner, Acting Director, Immigration and Naturalization Service, 12-13]. Given that the history of immigration legislation in the last third of the twentieth century is riddled with unintended consequences, this history of the Refugee Act is not anomalous. (Roger Daniels, *Guarding the Golden Door: American Immigration Policy since 1882* (New York: Hill and Wang 2004]).

[26] For early criticism of the implementation of the Refugee Act, see Arthur Helton, "Political Asylum under the 1980 Refugee Act: An Unfulfilled Promise," *University of Michigan Journal of Law Reform*, 17.2 (1983-84) 243-264. For the asylum officer corps, see Gregg Beyer, "Establishing the United States Asylum Officers Corps: A First Report," *International Journal of Refugee Law*, 4.4 (1992) 455-485.

[27] There really was no such thing as immigration law per se before World War II; attorneys handling immigration cases specialized in labor law, criminal law, constitutional law, and administrative law. In 1949 the American Bar Association's [ABA] administrative law section created a subcommittee on immigration and naturalization. In the 1950s and 1960s, the American Association of Immigration and Nationality Lawyers [AILA] leadership expressed opposition to the national origins quotas and inhumane administrative practices and supported admission of refugees, but it wasn't until the late 1960s and 1970s that annual conferences focused on training, advocacy, and representing the indigent, and the 1990s that AILA published its own educational materials, including its first guidebook to asylum law. By this time it had gone from a small organization comprised of mostly attorneys who spent part of their careers working for the government to a large professional organization of lawyers (working in firms, corporations, and legal services or community organizations and clinics) whose opponent was the government, though the tone/type of relationship between these opponents varied a great deal. The American branch of the International Law Association [ILA] established a committee on asylum in the early1960s; it began pushing for a more liberal approach after the United States ratified the U.N. refugee convention in 1968. Committee Chairman Alona Evans's reports on U.S. practice convey a resigned critique of the treatment of asylum seekers; they reflect the "disappointed expectations" of many political scientists (like Evans) and international lawyers regarding human rights before the mid-1970s. After that, those working in international law began to focus on human rights and

major immigration law textbooks, written for new law school classes on the subject in the 1980s, included increasingly larger sections on refugees and asylum, until, in the 1990s and 2000s, the topic was split off into its own books.[28] The same years also saw the introduction and growth of asylum law projects by the National Lawyers Guild, the American Civil Liberties Union, the Lawyers Committee for Civil Rights Under Law, and the Lawyers Committee for Human Rights. These programs relied on the support of the Ford Foundation and other donors, as did asylum casework in legal aid and legal services offices, which were prohibited by law from using federal funds towards counsel for the undocumented.[29] (Unlike criminal defendants, those facing deportation are not entitled to state appointed attorneys at public expense.) Ford Foundation not only supported asylum appeals, litigation, and policy research, but also educational programs and

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placed asylum in that context. Before the 1970s, too, a handful of lawyers dominated the immigration-refugee field; Jack Wasserman chaired the ABA immigration subcommittee, headed the Washington D.C. AILA branch, and served on the International Law Association's asylum subcommittee. Between 1975 and 1985 AILA's membership tripled, from 600 to 1,800 members; it doubled again to about 4000 by 1996 and then increased to 10,000 in 2006. [See *Immigration Bar Bulletin*, December 1947-December 1968; Leslie Levin, "Specialty Bars as a Site of Professionalism: The Immigration Bar Example," *University of St. Thomas Law Journal*, 8.2 (2011), 194-224. Proceedings of the American Branch of the International Law Association, Vol. 1967-1968, pp. 63-114 and Vol. 1969-1970, pp. 90-95; Samuel Moyn, *Last Utopia: Human Rights in History* (Cambridge, MA: Harvard University Press, 2010), for international law in the postwar period, quote about disappointment is p. 205.]

[28] The earliest immigration law treatises were compilations of statutes, regulations, and judicial opinions authored by INS attorneys like Frank Auerbach and Charles Gordon or Congressional assistants like Walter Besterman. In 1961, Jack Wasserman, a former member of the Board of Immigration Appeals and the most important attorney representing immigrants at midcentury, published the first edition of his immigration guidebook; thirty years later, Ira Kurzban, another prominent immigration attorney, began publishing a similar handbook for practitioners. In 1985, law school professors Thomas Aleinikoff and David Martin published the first edition of their immigration law textbook. It has been continually updated since then; in 2007, they turned the section on asylum into its own book on forced migration. Another prominent textbook by law professor Stephen Legomsky has come out in several editions since the early 1990s. The most used casebook on refugee and asylum law is by professors Karen Musalo, Jennifer Moore, and Richard Boswell. Though some of the academic authors of textbooks since the 1980s do stints of work for the U.S. government, there are a larger proportion of independent advocates among them. Many asylum attorneys have been influenced by rights movements—for the civil rights, welfare rights, prisoners rights, and human rights.

[29] Leila Kawar, "Legal Mobilization on the Terrain of the State: Creating a Field of Immigrant Rights Lawyering in France and the United States," *Law & Social Inquiry*, 36.2 (Spring 2011) 354-387.

materials geared towards familiarizing pro bono attorneys and judges with the asylum process.[30] Asylum advocacy in the United States at the dawn of the twenty-first century was legalistic and driven by non-profit organizations, including those with religious affiliations or ethnic-group orientations, in relationship with human rights organizations in other countries.

Scholars have recently begun to analyze the role of advocates in the origins of asylum, paying particular attention to 1970s cause lawyering on behalf of refuge seekers.[31] To take just one important group of asylees as an example, Jeffrey Kahn convincingly describes a "dialectic of escalation" from the 1970s through the 1990s in which attorneys for Haitian asylum seekers used the federal courts to constrain INS [Immigration and Naturalization Service] actions and INS officials found new ways to evade legal rulings in handling Haitians.[32] Probably the most important way the INS did this was through interdiction. Since 1950, those in deportation proceedings have been eligible to apply for discretionary withholding of deportation on the grounds that they would be persecuted in their home countries. The 1980 Act made withholding mandatory and extended eligibility not only to those inside the country facing deportation after entry but also to those facing exclusion upon arrival.[33] This was supposed to insure U.S. law

[30] For example, in the mid 1980s, the Ford Foundation supported two joint projects of the Lawyers Committee for Human Rights: a project with the Association of the Bar of the City of New York to train volunteer lawyers to handle asylum cases and a series of international human rights law seminars for federal judges at the Aspen Institute. [Ford Foundation grants 81-50827, 82-00950, 83-50436, 83-51033, 84-00836, Ford Foundation Archives, Rockefeller Archives Center]

[31] Rebecca Hamlin and Philip Wolgin, "Symbolic Politics and Policy Feedback: The United Nations Protocol Relating to the Status of Refugees and American Refugee Policy in the Cold War," *International Migration Review*, 46.3 (2012) 586-623; Rebecca Hamlim, "Ideology, International Law, and the INS: The Development of American Asylum Politics," *Polity,* 47. 3 (July 2015), 320-336. In the 2011 version of her U.S. asylum law treatise, Deborah Anker writes that the passage of the 1980 refugee act and many positive changes in the asylum system since then "are the product of outside voices," including NGOs and the federal judiciary [Anker, *Law of Asylum in the United States* (St. Paul, Minn.: Westlaw, 2011) 33].

[32] Jeffrey Kahn, "Islands of Sovereignty: Haitian Migration and the Borders of Empire," Ph.D. dissertation, University of Chicago, 2013, 61.

[33] Until 1996, those being deported from the United States were accorded more due process rights and avenues of relief than those being excluded. Exclusion was supposed to apply to those who had not yet made an entry into the

adhered to the international law standard of non-refoulement, or non-return of refuge seekers to territories where their lives or freedoms are threatened. The interdiction of boats of Haitian refuge seekers got around this requirement: the government argued that the Haitians never arrived at the United States so it could force them home.

An ongoing advocacy-enforcement dialectic also makes it clear that the 1980 law did not mark a clean break from the past. As advocates for refuge seekers appealed increasing numbers of administrative rulings to the federal district courts, a 1996 law limited the review of withholding decisions in the circuit courts of appeal; this was a move that mirrored a 1961 law designed to curb what the Justice Department believed were delay tactics by advocates in the lower courts.[34] Even after the end of the Cold War, foreign policy continued to influence asylum grants: after fifteen years of cause-lawyer activism and litigation to force ideology out of the adjudication of Central American asylum claims, a 1997 law made it much easier for Nicaraguans than Salvadorans and Guatemalans to regularize their status. Central American activists responded with a mass "comment" campaign to proposed regulations that would implement the law and managed to narrow the disparity, but most Salvadoran and Guatemalan

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country, whereas deportation applied to those who had. The distinction was problematic, though, because "entry" was technically defined: a refuge seeker could be paroled into the country by the INS without effecting "entry" and therefore later be subject to exclusion whereas a refuge seeker who had evaded INS inspection and then was later picked up by the INS was subject to deportation. I discuss the importance of this distinction further in chapter 3.

[34] The provision in the 1961 law is in section 5 of P.L. 87-301. The 1996 law provision is INA § 242(b)(2), 8 U.S.C.A. §1252(b)(2). The judicial review of exclusion and deportation rulings has oscillated since the late 19th century, even though classical immigration law generally tends towards judicial deference to administrative decisions. [Henry M. Hart, Jr., "The Power of Congress To Limit Jurisdiction of Federal Courts: An Exercise in Dialectic," 66 *Harvard Law Review* (1953); Peter Schuck, "The Transformation of Immigration Law," *Columbia Law Review* 84 (1984) 1-90.] As one legal scholar put it in 1996, "the history of judicial review in immigration cases looks like an example of Newton's Third Law of Motion, that for every action there is an equal, and opposite, reaction. As noncitizens challenged governmental decisions via writs of habeas corpus…Congress amended the immigration laws…These latest changes are part of the continuing efforts of Congress to control the timing, scope, and nature of judicial review of immigration proceedings." [Lenni Benson, "Back to the Future: Congress Attacks the Right to Judicial Review in Immigration Proceedings" *Connecticut Law Review*, 29 (1996-1997), 1419.] Benson predicted that after the passage of the 1996 law, like after the passage of the 1961 law, advocates would still find avenues for habeas petitions. And she was right. [Nancy Morawetz, Back to Back to the Future? *New York Law School Law Review*, 51 (2006-2007) 113-131.]

beneficiaries were ineligible for naturalization until the late 2000s, making them vulnerable to recent deportations of those convicted of an expanded definition of crimes regardless of length of residence or family ties.[35] [In the past and today, those granted only withholding of deportation on persecution grounds (rather than asylum) have no residency status and thus no ability to bring family into the country.] More generally, asylum adjudicators sometimes still rely on problematic sources about conditions in asylum seekers' countries of origin, including State Department assessments that may be affected by U.S. foreign policy considerations.[36] Interpretation of persecution is the key issue in asylum adjudication, and developments at the administrative and judicial levels have varied widely, sometimes taking steps towards a human rights interpretation, other times reverting back to older standards.[37]

This dissertation goes back further than the advocacy-enforcement dialectic of the 1970s to contextualize contemporary asylum. It goes back to the origins of federal control over immigration to show how advocates have framed asylum seekers as deserving of refuge rather than exclusion or deportation.

The federal courts have been a battle-ground between the INS and attorneys for refuge-seekers for decades. From the 1920s through the 1940s, advocates were unsuccessful challenging the deportation of asylum seekers on constitutional grounds. (They most frequently invoked the eighth and ninth Amendments, invoking protection against cruel and unusual punishment that

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[35] Susan Bibler Coutin, "Falling Outside: Excavating the History of Central American Asylum Seekers, " *Law & Social Inquiry* 36.3 (Summer 2011) 569-596.

[36] Anker, 2011, 124.

[37] "The Board [of Immigration Appeals] and U.S courts have not applied a principled human rights approach, and their determinations of what actions constitute persecution frequently seem ad hoc. Even within the same circuit, courts have often reached apparently conflicting results." (Anker, 2011, 204).
Federal judges "selectively apply precedent and…use creative statutory interpretation or discretion to elide existing doctrine or congressional intent" and make decisions that are in line with their convictions about the fairness of deportation. Anna Law, *The Immigration Battle in America's Courts* (New York: Cambridge University Press, 2010) 14, 162.

would be the result of deportation and claiming asylum was a preserved right not explicitly enumerated by the Constitution.) But habeas corpus petitions sometimes did win concessions from the immigration service; the INS sometimes reopened proceedings to avoid the cost of fighting appeals and the consequences of the rare occasion when a judge ruled in favor of a refuge-seeker on statutory or procedural grounds. Other times the immigration service responded to habeas petitions with a vengeance; it was harsher upon reconsideration and used that harsh ruling as a precedent and deterrent. This provoked renewed court challenges and the cycle of contestation continued. I discuss these battles and the assertions of various advocates, immigration officials, and judges in chapters 3 and 4.

When an asylum-seeker was allowed to stay, some advocates—prominent Jewish-American lawyer Max Kohler is a good example in chapter 3—amplified the achievement, hailing it as a victory not only for the individual petitioner but for the "right of asylum" in general. In contrast, the INS claimed that a discretionary stay simply was an exception to a general restrictive policy that recognized no such right.[38] Notably, an exception that shielded migrants from deportation also had the effect of sidestepping the protections asylum would afford. Frequently, after long stretches of insecurity, refuge seekers who had been granted temporary admission or stays of deportation were able to achieve a more permanent residency status. Later in this chapter and in the ones that follow, I analyze the legislative provisions passed between the 1920s and the 1960s allowing for this regularization of status.

[38] In some ways this tension still exists today. Technically, there is no "right" of asylum in the United States; the 1980 law mandated that refuge seekers be given the right to ask for asylum and to prove they are eligible to be granted it by the U.S. government. But advocates assert that there are "exceptional limitations" on the exercise of discretion in asylum as compared with discretionary authority in handling immigration cases more generally. See Anker, *Law of Asylum in the United States* (2011), 519 and Deborah Anker, "Discretionary Asylum: A Protection Remedy for Refugees Under the Refugee Act of 1980," *Virginia Journal of International Law* 1(1987).

The notion that the United States was an "asylum for mankind" not only obscured real difficulties faced by refuge seekers in limbo status but also served as a cover for government inaction or delay. Perhaps the best example of this is America's relationship with the United Nations Convention on Refugees. To justify the United States's reluctance to sign the 1951 convention, Louis Henkin, the official U.S. delegate to the committee writing the convention, claimed "there really were no refugees in the United States" because they "immediately enjoyed all the rights of residents" that "were of such breadth that as a whole they far exceeded the common denominator set by the convention." "The measures laid down in the convention were not required in order to ensure the protection of refugees in the United States," Henkin claimed. Henkin also claimed that refoulement was not something the United States dealt with because it was "not so geographically situated as to receive many illegal entrants."[39] As this dissertation will show, Henkin's statements about the rights of admitted refuge-seekers and the lack of illegal entrants in the 1950s were not accurate. But that didn't make his argument any less powerful. Henkin marshaled exceptionalism in two ways: he spoke of the U.S.'s profound humanitarian consideration for refugees, but denied that statelessness and expulsion were American problems. In 1978, Henkin admitted that "the United States has not been a pillar of human rights, only a flying buttress, supporting from the outside…we have not accepted international human rights for ourselves." He particularly noted that "We have adhered to few international human rights

[39] Summary Record of the Twenty-Sixth Meeting of the First Session of the Ad Hoc Committee on Statelessness and Related Problems, Feb. 10, 1950, UNECOSOC E/AC.32/SR 26, page 11 and Summary Record of the Fortieth Meeting of the First Session of the Ad Hoc Committee on Refugees and Stateless Persons, Aug. 22, 1950, UNECSOC E/AC.32/SW.40, page 30.
This perfectly fits David Martin's observation that those interested in refugee policy at midcentury "took for granted certain natural barriers to movement that kept the numbers of direct asylum seekers tolerably low and thereby shielded the West from having to confront certain fundamental tensions." Martin, "The New Asylum Seekers," in *The New Asylum Seekers: Refugee Law in the 1980s, Ninth Sokol Colloquium on International Law* (Norwell, MA: Kluwer Academic Publishers, 1988) 8.

agreements," only lately signing on to the Protocol Relating to the Status of Refugees.[40] Even when the U.S. did sign on to the Protocol in 1968, State Department officials insisted that doing so did not necessitate any change in U.S. law or practice; that, in effect, the U.S. was already abiding by it (when it was not).[41]

A similar example involves the United States's stance in regards to the asylum provision in the 1948 Universal Declaration of Human Rights [UNHDR] and the 1977 Convention on Territorial Asylum. During the drafting of the Human Rights convention, delegates debated whether article 14 should go beyond declaring an individual's right to seek asylum by calling on states to actually grant them asylum. In May 1948, the United States suggested that the provision state that "temporary asylum" be granted.[42] Granting immigrants temporary admission on a discretionary basis out of humanitarian concern was what the immigration service had already been doing for decades. And, granting "temporary protected status" to asylum-seekers is still, today, a popular American policy.[43] (As I discuss in chapter 5, temporary asylum was, in Orwellian immigration legalese, sometimes called its opposite: "Extended Voluntary Departure").[44] In its final form, Article 14 of the UNHDR declares "the right to seek and to enjoy

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[40] Henkin, "Constitutional Rights and Human Rights," *Harvard Civil Rights-Civil Liberties Law* Review, 13.3 (Summer 1978), 623.

[41] Statement of Laurence A. Dawson, Sept. 20, 1968, 90th Congress, 2nd Session, Senate Executive Report No. 14, "Protocol Relating to Refugees," Appendix, 6 and 8.

[42] UN Doc. E/CN.4/AC.1/20 (May 5, 1948) 8.

[43] Bill Frelick & Barbara Kohnen, "Filling the Gap: Temporary Protected Status," *Journal of Refugee Studies* 8 (1995) 339; Joan Fitzpatrick, "Temporary Protection of Refugee: Elements of a Formal Regime" *American Journal of International Law*, 94.2. (2000) 279-306; Susan Marti, Deborah Meyers and Andy Shoenholtz, "Temporary Protection: Towards a New Regional and Domestic Framework," *Georgetown Immigration Law Journal*, 12.4 (Summer 1998) 543-588.

[44] Extended Voluntary Departure or EVD "developed in an ad hoc fashion in the 1960s and 1970s as a...form of relief from deportation. The executive typically, though not exclusively, directed it at nationals of particular countries, often for humanitarian reasons or because conditions in the noncitizens' home countries were dangerous or chaotic. Certain deferrals, characterized after the fact as examples of EVD, were not understood at the time to be

in other countries asylum from persecution." The United States voted in favor of the British amendment replacing the phase "seek and be granted" to "seek and enjoy," weakening the requirement that states provide asylum.[45] Refugee law scholar Atle Grahl-Madsen concedes that the provision did not mean much for asylum seekers but "was instrumental in bringing about" later attempts to write an international asylum convention that, again, "did not improve" the position of asylum seekers.[46] Alona Evans, an American political scientist, was involved in these later attempts, including the preparation of a draft of a convention on territorial asylum between 1970 and 1972 that was submitted to the United Nations in 1977.[47] Though Evans thought the goal of international law was increasingly to secure "better protection of the individual," she still believed that "asylum is discretionary" and mandatory language was not appropriate in the convention. She suggested that the language of the 1954 Caracas convention on asylum –"Every state has the right, in the exercise of its sovereignty, to admit into its territory such persons as it deems advisable"—was "not entirely dated" twenty years later.[48]

These examples show how the myth of asylum was detached from migrant experience and justified the lack of explicit recognition of a right to asylum in law and practice. But the

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exercises of EVD, underscoring the murkiness of the sources of discretionary decision making…in immigration law." Adam Cox and Christina Rodriguez, "The President and Immigration Law Redux," *Yale Law Journal*, 125 (2015) 122-123 (citing Sharon Stephan, "Extended Voluntary Departure and Other Grants of Blanket Relief from Deportation," Congressional Research Service, 85-599, EPW, 1985).

[45] UN Doc. A/C.3/SR.122 (Nov 4 1948), 344.

[46] Grahl-Madsen, *Territorial Asylum* (New York: Oceana Publications, 1980) 5, 63.

[47] On the 1977 conference see *Problems of Protection: The UNHCR, Refugees, and Human Rights*, ed. Niklaus Steiner, Mark Gibney and Gil Loescher (New York: Routledge, 2003), 110-112.

[48] Evans's notes and remarks (dated August 24, 1970) on the draft of the asylum convention are in folder: American Branch ILA, Committee on Legal Aspects of Asylum: Conferences 1970-1972, Box 50, Alona Evans Papers, Wellesley College Archives. See also Alona Evans, "The Individual an International Law," *International Law Studies Series. US Naval War College*, 62, 710-713. The wording adopted by the UN in 1977 was that "each contracting state, acting in the exercise of its sovereignty, shall endeavor in a humanitarian spirit to grant asylum in its territory to any person eligible for the benefits of this convention." Grahl-Madsen writes that this formulation is "a far cry from affording an asylum-seeker a subjective right to be given asylum." [*Territorial Asylum*, 63].

myth of asylum also kept alive the possibility of making it a reality and influenced the way activists, writers, and policymakers conceived of refuge.

Throughout the middle decades of the twentieth century, advocates like Ira Gollobin and David Carliner, pioneers of the immigration bar, challenged the INS's rejection of persecution claims in court and worked with organizations like the American Committee for the Protection of the Foreign Born [ACPFB] and the American Civil Liberties Union [ACLU] to shape public discourse on asylum. In the 1930s Gollobin was particularly active in trying to prevent the deportation anti-Nazi Germans and those who fought against Franco in the Spanish Civil War. The ACPFB's strategy, he wrote, was to defend the foreign born both in courts and in Congress and to appeal to the conscience of the American people; "its approach was a combination of [legal] defense committees and broad, public campaigns." [49]

In the 1930s, both the ACLU and the ACPFB pushed at the boundaries of the interwar conception of refugee and articulated definitions of asylum that are broader than those of today. Several scholars have argued that the interwar definition of refugee was focused upon legal statelessness and group belonging, rather than on "the social causes underlying the refugees' legal predicament" or individual dissidents.[50] This was not the case for the ACLU and the ACPFB. The ACLU published a pamphlet entitled "The Right of Asylum" in 1931, 1935, and 1937. The versions varied slightly but all emphasized the predicament of dissidents, particularly anarchists, communists, and "colonials escaping the tyranny of imperialism," who would be

[49] Ira Gollobin, "Winds of Change: An Immigration Lawyer's Perspective of Fifty Years" (Center for Immigrants Rights, 1987), 10 Box 1, Ira Gollobin Papers; TAM 278; box 1; Tamiment Library/Robert F. Wagner Labor Archives, New York University.

[50] See, James Hathaway, "The Evolution of Refugee Status in International Law," *International and Comparative Law Quarterly*, 33(1984) quotation on page 361, and G. Daniel Cohen, "From Displaced Persons to Political Refugees: The Postwar Roots of Asylum Seekers," paper presented at Asylum: A Workshop on History, Theory, and Practice, February 11, 2011, Center for International History, Columbia University.

subjected to "summary and arbitrary treatment or to social and economic discrimination" if returned to their home countries. The ACPFB connected asylum to economic and labor rights. Dwight Morgan of the ACPFB published a pamphlet in 1936 in which he claimed the right of asylum was destroyed because workers fleeing fascism were being deported to face persecution and death. According to Morgan, this made the immigration service "guilty of complicity in murder" as well as strikebreaking. "Our 'haven of refuge,'" Morgan wrote, "lies in the unity of all the people who build this country against the tyranny that menaces us."[51] Despite their emphasis on German asylum seekers, the ACLU and ACPFB pamphlets made absolutely no reference to the 1933 League of Nations Convention on German refugees. [The ACLU pamphlet noted that "political refugees are legally recognized only in formal and meaningless phrases."[52]]

As is clear in the case studies discussed later in this chapter, the ACLU's national office did not take up many immigration or asylum cases during the early Cold War. This was because the ACLU's national leadership, unlike that of the ACPFB and the National Lawyers Guild, did not want the organization representing communists and immigration litigation in the federal courts was dominated by cases involving communists.[53] At the time, David Carliner was a law

[51] Dwight Morgan, *Foreign Born in the United States* (New York: American Committee for the Protection of the Foreign Born, July 1936), 16-17, 79.

[52] "The Right of Asylum," 1937, page 12, Reel 157, ACLU Records, Roger Baldwin Years, Public Policy Papers, Department of Rare Books and Special Collections, Princeton University Library.

[53] In July 1950, the ACLU's Alien Civil Rights committee recommended "the ACLU should take no part in those deportation cases where it is proved that the alien is a member of the Communist Party since membership in the Communist Party justifies deportation." The following year the committee altered its stance. Though the ACLU supported the exclusion of members of the Communist Party and affiliated organizations from admission as immigrants and from naturalization, it opposed their deportation from the U.S. Still, the ACLU soon stopped getting involved with deportation cases involving even *past* communist membership. As Burt Neuborne, ACLU's legal director in the 1980s, justified it in 2006: "After the bad precedents set in the 1950s McCarthy era cases, in which advocates were fighting the deportation of people who had been members of the Communist Party for three months in 1919 and they still lost in court, immigration was not seen as a civil rights issue. It was seen as a hopeless issue." Aryeh Neier, who held prominent positions at the ACLU in the 1960s and 1970s, was less exculpatory in 1978. "It was tough in the 50s to defend communists and we ran away." [See Letter from George Soll to A.L.Wirin, October 31, 1950, Folder 41, Box 825; Letter from George Soll to Ann Fagan Ginger, January 18, 1951, Folder 40, box 826, Letter from Herbert Monte Levy to Mary Henderson, Dec 31, 1951, folder 34, Box 826, and "ACLU Statement on

partner of Jack Wasserman, the most prominent immigration attorney in the country, in Washington D.C. and worked on a few ACLU cases involving the right to passports. In the 1960s, Carliner handled all kinds of immigration litigation—he argued against the exclusion of gay immigrants in the Supreme Court case *Boutilier v. INS* (387 U.S. 118 (1967)) —and persecution claims by asylum seekers not only from China, Poland, and Yugoslavia but also from Iran, Indonesia, and Korea. Carliner pushed the ACLU to increase its involvement with alien rights from the late 1960s onward and was influential in the revision of the ACLU policy statement on asylum in 1977. *The Rights of Aliens: The Basic ACLU Guide* (New York: Avon, 1977), which includes a section on the right to asylum and which Carliner wrote pro bono, was the ACLU's "main effort at public education in this area" in the 1970s.[54]

These examples show that attention to asylum seekers has waned and waxed and the definition of asylum has narrowed and broadened. In some instances the treatment of refugees in the past could be more forgiving.

For example, procedural rights for refuge seekers were eroded in 1996 by the introduction of a new "expedited removal" process for those whom immigration inspectors suspected of using fraud to enter the country. In contrast, in the 1950s and 1960s, false papers

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Immigration, Naturalization, and Deportation of members of the Communist Party," 11/5/52, Folder 1, Box 208, ACLU papers. Burt Neuborne is quoted in quoted in Kawar, 366. Aryeh Neier is quoted in J. Anthony Lucas, "The ACLU Against Itself," *New York Times Magazine*, July 9 1978, 11.]

[54] On Carliner's career, see his 1997-1998 oral history through the Oral History Project of the Historical Society of the District of Columbia Circuit. Carliner explained in detail how he helped to prevent the deportation of those with persecution claims in the 1960s in his April 10, 1980 testimony for the plaintiffs in *Haitian Refugee Center v. Civiletti* (503 F. Supp. 442). This testimony is available in box 12 of the Haitian Refugee Collection, Sc MG 315, Manuscripts, Archives, and Rare Books Division, Schomburg Center for Research in Black Culture.
Regarding Carliner's work with the ACLU, all from American Civil Liberties Union Records, Public Policy Papers, Department of Rare Books and Special Collections, Princeton University Library: Memo from Carliner to Aryeh Neier, April 17 1975, on "Alien and Immigration Civil Liberties Problems," Aliens, 1973-1991, Subgroup 3, Regional Offices Files Series, Box 3642; Letter from Ira Glasser to Michael Teitelbaum, May 27, 1980, Alien Rights Program, 1980, Subgroup 3, Organizational Matters Series, Box 2212; Letter from David Carliner to Aryeh Neier, April 24, 1975, Carliner, David; 1973-1978, Subgroup 2, Organizational Matters Series, Box 218, Folder 1.

did not necessarily disqualify someone from refugee status; legislation recognized the possibility that they were used by those without alternatives and desperate for refuge.[55] As far back as the 1910s and the 1930s, advocates successfully made the case for lenient exit document requirements for refugees fleeing Russia and Germany.[56] As this dissertation shows, acts of fraud—especially the use of false identification papers or the claiming false relationships, the reliance on "fixers" and smugglers, and lies about intent to remain permanently—reinforced restrictionists' doubts about the credibility and morality of asylum seekers and presented significant challenges for their advocates. The use of false marriage and family identities by Armenian genocide survivors trying to enter the country was a particular concern of the Armenian-American social workers I examine in chapter 3; it was the one of the most important issues shaping their relationships with their clients and the immigration authorities and their view of refuge in America in the restrictionist 1920s.

Many of the advocates I discuss, like Isaac Hourwich (chapter 2) and Edith Lowenstein (chapter 4), were refugees themselves and, equally important, were intellectually well-versed in

[55] When the fraud exclusion ground was incorporated into the 1952 Immigration and Nationality Act it included a materiality requirement that was explicitly designed to exempt refugees; the conference report on the legislation claimed that the fraud bar "should not serve to exclude or to deport certain bonafide refugees who in fear of being forcibly repatriated to their former homelands misrepresented their place of birth." [H.R. Rep. No. 2096, 82nd Congress, 2nd Session, 128]. When, despite this exemption, the immigration authorities attempted to deport Russians admitted under the DP Act who has misrepresented their nationality, a 1957 statute prohibited the deportation of a refugee on the basis of misrepresentations of nationality, place of birth, identity or residence. [H. Rep. No. 1199, 85th Congress, 1st session, 9-11]. The 1980 Refugee Act included a waiver of fraud for those granted asylum applying for permanent residency status. [INA §209(c), 8 U.S.C. § 1159 (c) (1982).]

[56] In a 1913 Senator Robert LaFollette criticized a proposed provision, which failed to pass, requiring that immigrants present "penal certificates or certificates of character" issued by their home governments. "This would admit to this country…not those who have been persecuted for their political opinions; not those who love liberty and who have preached the doctrine of a republican form of government in Russia and other countries…If they have been under police surveillance and police espionage, watched and dogged at every step and turn, and finally, in despair of enlarging the liberties of the people of their own country, they desire to seek a home for themselves and their families in America, they would have small chance indeed of procuring a certificate of good character, without which they would be excluded from this country under this provision." (49 Cong. Rec. 1771).
In 1934, Carrie Chapman Catt and Secretary of State Cordell Hull corresponded about the need for leniency by consuls regarding required documents "not available" because of "personal risk" to those seeking visas who were forced to leave their home country. (quoted in Harold Fields, *The Refugee in the United States* (New York: Oxford University Press, 1938) 10-11, n.7.

the social sciences and comparative law. Their understanding of political economy and the role of law in society led them to articulate nuanced conceptions of refuge. As far back as 1908, among his many advocacy strategies—which included criticism of U.S. commissioners, political lobbying with the Roosevelt administration, and petitions and protests from labor and religious groups —Isaac Hourwich collected press accounts and affidavits from Latvian immigrants that attested to conditions in Courland in the wake of the Revolution of 1905 and the danger his clients would face if the U.S. sent them back. This strategy is a staple of human-rights-oriented asylum advocacy today.

Some liberal aspects of the contemporary asylum system may be carry-overs from the past. The United States is one of the only countries whose domestic law arguably expands the U.N. definition of refugee by granting asylum eligibility to those who have suffered past persecution independent of fear of future persecution; even if conditions have changed in the home country, past "atrocities" can merit "humanitarian asylum."[57] Where did this pre-occupation with past persecution come from? It was included not only in the Displaced Persons Act of 1948 but also implied in the 1917 immigration law's literacy test exemption for those fleeing religious persecution, an exemption whose language Max Kohler helped to write to apply to his co-religionists immigrating from Russia, and which I analyze at length in chapter 3. The provision exempted from the literacy test "all aliens who shall prove to the satisfaction of the Secretary of Labor that they are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, whether such persecution be evidenced by overt act or by laws or governmental regulations that discriminate against the alien or the race to which he belongs because of his religious faith." This language, with its focus on

[57] Anker, *Law of Asylum*, 55 n.1, 66-67, 77-80.

persecution rather than statelessness, is more akin to the international law language of the post-WWII period than that of the interwar period.[58] Indeed, the language of the 1917 provision broadened a persecution exception that existed briefly in British immigration law and pushed the concept of asylum in American domestic law from an exception to extradition for a political offence into a basis for admission for humanitarian reasons. Moreover, the 1917 provision prefigured what the historian Samuel Moyn has recently called the invention of "Christian human rights" by European Catholic theorists and Protestant leaders in the 1930s.[59] In 1934, the same year that the eminent scholar of Central Europe C.A. Macartney, writing in the *Encyclopedia of Social Sciences*, defined refugees as those lacking effective state protection, Kohler insisted that the U.S. Ellis Island Committee (asked by Secretary of Labor Francis Perkins to study immigration problems) on which he served avoid using the term "refugees," which was "likely to be construed in a much more limited fashion than was intended," and instead use language "along lines of State Department consular instructions of Sept. 5, 1933 substituting for refugees 'persons subject to political persecution or to racial or religious persecution in the country of their last permanent residence, whether such persecution be evidenced by overt acts, or by laws or governmental regulations that discriminate against the alien or the race or religion to which he belongs."[60]

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[58] The wording of the 1951 UN convention, which was incorporated in the 1980 Refugee Act, specifies that a refugee is a person who fears being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion. "The records of the preparatory work of the convention do not include any discussion of religion as a ground of persecution"; its significance was accepted because advocates and officials—in the United States and elsewhere—had been considering it for years. (See Andreas Zimmerman, ed. *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: a commentary* (New York: Oxford University Press, 2010) 381.

[59] Moyn introduces his concept of Christian human rights here: http://blogs.ssrc.org/tif/2015/05/29/christian-human-rights-an-introduction/ (accessed June 30, 2015)

[60] Kohler to Thomas Thacher, Feb 26 1934, Folder 18, Box 12, Papers of Max J. Kohler, American Jewish Historical Society, Center for Jewish History, New York]. The Report of the Ellis Island Committee (March 1934)

Not surprisingly, the State Department and INS did not interpret this provision as broadening the refugee definition. Soon after the consular instruction was issued, visa division and immigration officials agreed on the language of a provision allowing for leniency in the procuring of exit documents by those subject to political or religious persecution in Germany. In doing so, they deliberately avoided using the term refugee so that consuls would have broader discretion to decide whether documents should be required. Assistant Secretary of State Wilbur Carr maintained that "the law does not authorize awarding different treatment to different classifications." Also, around the same time, Carr analyzed the 1917 Act, choosing not to focus on the liberality of the persecution exemption, but on President Wilson's comment that the persecution exemption "would oblige the officer concerned [with assessing the persecution claim] in effect to pass judgment on the laws and practices of a foreign government and declare that they did or did not constitute religious persecution. " Carr believed that this would be a danger to American interests and raise "very serious questions of international justice and comity" between the U.S. and Germany. [61]

A final example shows how definitions of persecution have narrowed and then widened again. The 1917 exception to the literacy test emphasized that discrimination, not just imprisonment or physical danger, qualified as persecution; this was a conscious expansion, pushed by advocates I discuss in chapter 3, upon the language in the British 1905 Aliens Act and other variations. (The British Alien Act defined persecution as "involving danger of

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recommended that both the stateless who entered illegally and the persecuted admitted only temporarily be given permanent residency status.

[61] Correspondence in files 150.01/2168 and 150.01/2110, Box 13, RG 59, Visa Division: Correspondence Regarding Immigration, 1910-1939, NARAII.

imprisonment or danger to life and limb.")[62] As I discuss further in this chapter, in 1934, Congress passed a law to allow anti-Bolshevik "White Russians" to regularize their status. The law originally defined the beneficiaries of the bill as those who would face "bodily harm as a result of religious or political persecution." The mention of bodily harm was dropped from the version of the bill as finally passed because its drafters believed "one may be persecuted because denied the means of making a livelihood and yet not subject to bodily harm."[63] As I discuss in chapter 4, in 1950, Congress passed legislation which gave the Attorney General discretionary power to withhold the deportation of any non-citizen that "would be subjected to physical persecution" if returned to his or her home country. When Congress passed the sweeping Immigration and Nationality Act [INA] of 1952, this provision was maintained, and became Section 243(h) of the new act. This provision was far narrower than the UN definition of a refugee outlined a year earlier. Advocates like Edith Lowenstein pushed for its expansion. When Congress passed its sweeping amendments to the INA in the Hart-Celler Act of 1965, the phrase "physical persecution" in Section 243(h) was finally dropped.

But this chronicle of "on the book" definitions of persecution does not fully explain who shaped them and whom they affected. As I show in chapter 3, just because a broad ranging religious exemption existed in the 1917 act does not mean that it helped most of those seeking asylum after World War I or that immigration officials granted asylum to those who made claims to the exception. A consistency in the long history of asylum in the United States is that laws

[62] For an interpretation of the British Aliens Act as a "domestic antecedent" and "countermodel" to modern international refugee law see Alison Bashford and Jane McAdam, "The Right to Asylum: Britain's 1905 Aliens Act and the Evolution of Refugee Law," *Law and History Review* 32.2 (May 2014) 309-350.

[63] A Report to accompany a entitled "A Bill to provide for legalizing the residence in the United States of Certain Classes of Aliens, April 4, 1934, 150.01/2203, Box 13, RG 59, Visa Division: Correspondence Regarding Immigration, 1910-1939, NARAII.

could not predict need and contest between advocates and immigration officials ensued whenever asylum seekers found their way to America.

An Obscured (Pre)History

Immigration law fits people into sharply divided categories. For over a century immigration law has distinguished immigrants from temporary migrants and then, after World War II, distinguished refugees from both.[64] Law textbooks tend to use these categories as organizing devices. Though a foreign student might have political reasons for remaining in the United States, his case would be presented in a textbook section devoted not to asylum but to non-immigrants. So, for example, in Stephen Legomsky's 1992 textbook, the 1978 case *Mashi v. I.N.S* (585 F.2d 1309) is placed in a subsection on nonimmigrants devoted to "educational categories." This placement makes sense given that Mashi was threatened with deportation for violating his student status. The problem is that it removes the case from the context of several others—including those involving more explicit claims that deportation would lead to persecution—by Iranian students in the United States who participated in protest activities against the Shah in the 1970s. Mashi had violated his student status after he was arrested at a demonstration and held in jail by U.S. authorities; by the time he was released, he had missed an exam for one of his courses, which he was advised to drop, and therefore did not have enough credits for foreign student status.[65]

[64] The 1885 contract labor law distinguished foreign temporary residents and the 1907 law required that those arriving declare their intention to stay permanently or temporarily and officially classified them as such. Sailors and students, the focus of chapters 4 and 5 respectively, were admitted temporarily under the 1924 immigration law. The first recognition of refugees came in the Displaced Persons Act (1948), and then later in Refugee Relief Act (1953) and the Refugee-Escapee Act (1957).

[65] Stephen Legomsky, *Immigration Law and Policy (*Westbury, NY: Foundation Press, 1992) 269-278.

Asylum and refugee law textbooks have a similar lack-of-context problem. Most of these textbooks organize their cases—including those that preceded the 1980 refugee act but that are still cited as precedent—based on the different refugee grounds (race, religion, nationality, membership in a particular social group, or political opinion) and forms of persecution. This makes it difficult to contextualize the person making the claim in any other way; it also presents the persecution issue as the one that mattered most—rather than foreign policy or anything else. The 1969 case *Djordje Kovac v. I.N.S.* (407 F.2d 102) is presented in the textbook *Refugee Law and Policy* (and in other textbooks and treatises on refugee and asylum law) as an important early decision defining persecution as encompassing economic harm.[66] That this case was part of a long series of cases involving deserting sailors (some with radical political views and some claiming to be defectors from communism) and their particularly presumptive, cursory, and expedited handling by the immigration service since at least as far back as the 1940s, is not apparent in the textbook. Like many seamen, Kovac, who did not speak English, was not represented by a lawyer at his deportation hearing; counsel for the government at that hearing even told him that raising a persecution claim "would be wasting his money."[67] Nonetheless Kovac claimed he joined the Yugoslav merchant marine after being denied employment in the skilled occupation for which he was trained because of his refusal to cooperate with the secret police. The court ruled that "pressure or harassment in the home country leading to substantial economic disadvantage" was sufficient ground to confer upon the Attorney General the discretion to withhold Kovac's deportation from the United States. Besides the influence of the

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[66] Karen Musalo, Jennifer Moore, and Richard Boswell, *Refugee Law and Policy: A Comparative and International Approach* (Durham: Carolina Academic Press, 2001) 223-230.

[67] Petitioner's Brief in Support of Petition for Review of an Order of the Immigration and Naturalization Service, filed by Jack Tanner on August 9, 1967, 4-5, *Djordje Kovac v. INS*, No. 21913, Records of the United States Court of Appeals for the Ninth Circuit, RG 276, NARA San Francisco.

Cold War context, the Kovac decision put the emphasis on the motive of persecutor and reflected a class bias in evaluating skilled workers as more subject to persecution. Conceiving of economic persecution as forcing people to take employment out of keeping with their skills did not help most sailors in the 1960s, many of whom did not have special training. But this definition of economic persecution does reflect an expansive notion of the dignity and self-worth associated with work[68] and a more psychological sense of persecution (rather than economic deprivation that threatens physical survival) in line with a legislative change in the standard of withholding from deportation on persecution grounds adopted in 1965.[69] Contextualizing the Kovac case is especially important because its definition of persecution is frequently used by judges and asylum administrators to this day. I situate the Kovac and Mashi cases and others like them in broader social context in chapters 4 and 5, which focus on seamen and students, respectively.[70]

Most legal textbooks also provide historical introductions that outline refugee provisions since World War II. Few focus on the provisions in the Displaced Persons Act and the Refugee Relief Act that allowed those already in the United States to apply for refugee status on the grounds that they feared persecution. Historians focusing on overseas U.S. refugee programs

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[68] Michelle Foster, *International Refugee Law and Socio-Economic Rights* (New York: Cambridge University Press, 2007), 102.

[69] In 1965, those in deportation could apply for relief on the grounds that they would be subject to persecution on account of race, religion or political opinion if sent to their native countries. Before 1965 the law required showing the probability of physical persecution.

[70] Contextualization of these cases seems all the more important given the recent debate over what level of economic harm should qualify as persecution and the treatment of foreign students in United States in the wake of 9/11. On these issues David Martin, T. A. Aleinikoff, Hiroshi Motomura, and Maryellen Fullerton, *Forced Migration: Law and Policy*, 2nd Edition (West 2013) 133-139; Jonathan Falkler, "Economic Mistreatment as Persecution in Asylum Claims: Towards a Consistent Standard," *University of Chicago* Legal Forum (2007) 471-501; Victor Romero, "Noncitizen Students and Immigration Policy Post 9/11," *Georgetown Immigration Law Journal* 17(2003); Stephen Legomsky and Cristina Rodriguez, *Immigration and Refugee Law and Policy*, 5th Edition (Foundation Press, 2009) 393-397 and 826-828; Fatma Marouf & Deborah E. Anker, "Socioeconomic Rights and Refugee Status: Deepening the Dialogue Between Human Rights and Refugee Law," *American Journal of International Law* 103 (2009) 784.

have generally not acknowledged that these, and subsequent provisions in general immigration laws allowing those who were admitted temporarily to apply for suspension of deportation and adjust to permanent immigrant status, have affected many refugees. This gap in the historiography only serves to distinguish and privilege refugees from overseas (and thereby legitimate the overseas processing system and question the "bona fides" of refuge seekers who do not go through it.)[71] Historians have also for the most part left unanalyzed the "243(h)" provision of the immigration law—the provision which, since its first incarnation in 1950, has allowed the attorney general to withhold deportation on persecution grounds. All of these provisions were forms of statutory discretionary relief: the laws contained specific eligibility requirements and authorized the Attorney General, in his discretion, to grant or deny relief. So, in each case, the migrant had the burden of proving eligibility and 'deservingness.'[72] If the eligibility requirements reflected a Cold War framework, the discretionary handling of cases reflected how Cold War-era defection and refugee-hood were defined in relationship to class and to race.[73] For example, as chapter 4 shows, seamen from China and Yugoslavia had a hard time

[71] Focus on the overseas program upholds the idea that the goal of refugee policy is government control over forced migration, rather than the provision of protection for refuge seekers (who disrupt this ability to control their movement.) For accounts of U.S. refugee policy see Carl J. Bon Tempo*, Americans at the Gate: the United States and Refugees During the Cold War* (Princeton: Princeton University Press, 2008) and Gil Loescher and John Scanlan, *Calculated Kindness: Refugees and America's Half-Open Door, 1945 to the Present* (New York: Free Press, 1986). Perhaps because historians of Asian immigration are particularly attentive to legal exclusions and exceptions, they have recently begun to analyze the impact of provisions affecting refuge seekers already in the United States: Madeline Hsu, "The Disappearance of America's Cold War Chinese Refugees, 1948-1966, *Journal of American Ethnic History* 31. 4 (summer 2012) 12-33.

[72] The 1948 Displaced Persons Acts authorized the Attorney General, upon the concurrence of Congress, to adjust the status of up to 15,000 lawfully admitted non-immigrants who established that that they were displaced from their home country and could not return there because of persecution or fear of persecution on account of race, religion or political opinion. The 1953 Refugee Relief Act allowed for the adjustment by the same procedure of 5000 such migrants. The 1950 Internal Security Act and the 1952 Immigration and Nationality Act included a provision allowing those subject to deportation to apply for relief if they could prove they would be physically persecuted upon their return. The 1952 version of this provision gave the Attorney General more discretion over relief.

[73] Class-bias is obvious in the preferences accorded skilled and professional immigrants and refugees in postwar legislation. The 1952 McCarren Walter Act gave 50 percent of each nation's quota to skilled immigrants and 1958 legislation to admit Portuguese refugees from natural disaster in the Azores and Dutch refugees from the former

qualifying for 243(h) status and seamen generally were precluded from adjusting to permanent residency; seamen were just not considered refugee material. As chapter 5 shows, students seemed more likely refugees and more easily qualified for relief from deportation and adjustment, unless they were exchange visitors. Exchange status raised a whole host of its own geopolitical concerns. Recognizing that some exchange students might have political reasons to not want to return home, a legal provision allowed for a waiver on those grounds—but the waiver was difficult to procure. Those seamen and students who could not get relief from the INS and could afford to continue their appeals, turned to the courts or to private legislation (where again, seamen were at a disadvantage, this time because of Congressional rules and attitudes). Archival material on these appeals and bills, analyzed in chapters 4 and 5, help to piece together the stories of seamen and students who sought refuge and their advocates. Close examination of these cases allows for a more fine-tuned analysis of the development of the distinction between political refugee and economic migrant.[74]

There were many avenues, then, for those in the U.S. or at its borders seeking refuge to

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colony of Indonesia gave priority to professionals, scientists, and intellectuals. By the late 1950s, the "normative" or "ideal" refugee was not unskilled or working class. See P. Wolgin, "Beyond National Origins: The Development of Modern Immigration Policymaking," (Ph.D. dissertation, UCBerkeley, 2011), ch. 4. Tempo's history of the Hungarian and Cuban refugee programs pay little attention to these issues. There has been very little analysis of defection in this regard, although Susan Carruthers has pointed to its significance in "Between Camps: Eastern Bloc "Escapees" and Cold War Borderlands," *American Quarterly*, 57.3 (Sept. 2005) 912. Scholars of Vietnam-war era programs are much more attentive to race; for a recent theoretical exploration of "racialized rhetoric" in the handling and representation of Vietnamese refugees see Mimi Thi Nguyen, *The Gift of Freedom: War, Debt, and Other Refugee Passage*s (Durham: Duke UP, 2012) ch. 2.

[74] Some scholars have fruitfully explored this issue in their analyses of the figuration of refugees in the discussion of "surplus population" and unemployment in Europe in the aftermath of WWII and the labor program aspect of the resettlement of Displaced Persons in the United States. Stephen Porter points out that "the DP program came to look more like a massive, and at times, highly exploitative international employment service than [an] humanitarian-based endeavor." (Porter, "Defining Public Responsibility in a Global Age: Refugees, NGOs, and the American State (Ph.D. dissertation, University of Chicago, 2009, p.194). For a good summary of the European scene see chapter 1 of Peter Gatrell, *Free World? The Campaign to Save the World's Refugees, 1956-1963* (New York: Cambridge University Press, 2011).

make persecution claims in the years preceding the 1980 Act. Part of the reason that they have not been analyzed by historians is because the INS did not publicize its policies on these issues nor did it publish complete statistics on the number of people who applied.[75] Moreover, INS files I examined on the administration of the 243(h) provision, adjustment of status, seamen deportations, and exchange student waivers required Freedom of Information Act requests. These classified files included only the policy memoranda and handful of cases that the INS decided to keep; others, like those of Polish sailors who tried to adjust their status under the DP and Refugee Acts, could only be found buried in the files of advocacy organizations that took up their cases. Even when dealing with more accessible and copious INS material from the early years of the twentieth century, I found persecution claims were hard to isolate. For example, the INS Annual Reports give the false impression that there were few immigrants who claimed exemption from the literacy test on persecution grounds from 1919 through 1923. But the only way to find these claims is to sift through hundreds of administrative case files of appeals from exclusion for those years. It is worth the effort. The files contain dozens of INS interviews with immigrants, particularly Jews and Armenians, along with supporting material from attorneys and organizations, raising the issue of persecution and appealing for refuge. These files not only belie assertions of the insignificance of the literacy test exemption for understanding conceptions

[75] In March of 1957, when Supreme Court Justice Felix Frankfurter asked for "statistics as to the number of applications for suspensions [of deportation] submitted and the number denied," the INS admitted that it did not maintain these statistics. [March 7, 1957 memorandum by Maurice Roberts re. *U.S. ex. rel. Hintopoulos v. Shaughnessy*, Box 1, General Folder, Maurice Roberts Papers, General/Multiethnic Collection, Immigration History Research Center, University of Minnesota].
"A careful distinction must be drawn between reported and unreported § 243(h) decisions. The initial determination by the immigration judge is not published, although portions of the officer's opinion infrequently appear in the published reports of a reviewing body. The Board publishes some of its opinions. Since the great majority of cases reviewed by the Board and the courts involve denial of relief, it is difficult to determine from that record how often an alien successfully proves his claim of persecution before an immigration judge. The Board can reverse a judge's grant of relief. Moreover, the INS no longer releases information on the annual number of § 243(h) applications and their disposition. From 1953 through 1956, however, there were 2,364 applications of which at least 738 were granted" in note 7 of "Judicial Review of Administrative Stays of Deportation: Section § 243(h) of the Immigration and Nationality Act of 1952," *Washington University Law Quarterly* (1976), 61.

of persecution, but also provide an excellent case study for analyzing the response of immigration officials to refuge seekers and the role of advocates in framing their claims.[76]

Interrogation of the framing of persecution claims is the bread and butter of what might best be called contemporary "critical refugee studies."[77] Much has been written about the way advocates shape the stories of refuge seekers, especially to best fit legal criteria to gain asylum. Language scholars and anthropologists have been most critical of how this process "others" the refuge seekers, decontextualizing and dehistoricizing their experiences in ways that appeal to Western stereotypes of "Third World" barbarism and victimization. A part of this argument is also that, in making these exceptional claims on behalf of refuge seekers, advocates legitimate the exclusion of all other immigrants that do not fit the bill. Another related critique is that asylum advocacy is at odds with human rights advocacy, diverting resources to the few persecuted who manage to escape rather than to the many persecuted who remain in the home country.[78]

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[76] For a dismissal of the significance of the literacy test exemption, see Tempo, 15.

[77] Robert Barsky, *Constructing a Productive Other: Discourse Theory and the Convention Refugee Hearing* (Philadelphia: John Benjamins NA, 1994); Liisa Malkki, "Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization," *Cultural Anthropology*, 11.3 (Aug. 1996), 377-404; Jacqueline Bhabha, "Internationalist Gatekeepers: The Tension Between Asylum Advocacy and Human Rights," *Harvard Human Rights Journal* 15 (2002) 155-181; Amy Schuman and Carol Schulman, "Representing Trauma: Political Asylum Narrative," *Journal of American Folklore,* 117. 466 (Autumn 2004), 394-414; James Dawes, "Atrocity and Interrogation," *Critical Inquiry*, 30.2 (Winter 2004) 249-266; Miriam Ticktin, "Policing and Humanitarianism in France: Immigration and the Turn to Law as State of Exception," *interventions: International Journal of Postcolonial Studies* 7 (3) 2005: 347-368. Critical refugee studies is devoted to scrutinizing the refugee category in the recent past, particularly the dynamics of refugee camps and relief efforts, the workings of the United Nations refugee screening processes, and the history of post-Vietnam war refugee resettlement. In doing so, it highlights "the hidden violence behind the humanitarian term 'refuge'" and "disrupts the U.S. rescue and liberation myth" that erases the workings of U.S. power and responsibility for generating refugees. (Yen Le Espiritu, *Body Counts: The Vietnam War and Militarized Refuge(es)* (University of California Press, 2014) 18.

[78] This latter argument betrays an unconscious bias against the asylee, assuming that his migration, albeit forced, is in some way also a conscious refusal to fight for human rights in his home county. For example, as I discuss in chapter 4, Indonesian seamen who refused to sail out of New York on ships supplying the Dutch authorities in 1948 were deemed by a federal judge to be deserters rather than refugees; if they were truly "political," the argument ran, they would go home and fight for their independence. This perspective ignores the fact that many refugees were and are vigorous transnational or diasporic activists.

The argument that the asylum system and asylum advocates legitimate the overall exclusion and deportation regime (by carving an exception that applies only to a few) itself has a very long history. In 1931, in her important book criticizing deportation practices, Jane Perry Clark writes:

> The early history of the United States shows the country to have been a refuge for those driven from their own countries by political oppression. With political refugees came a crowd of convicts of less desireable qualifications for the upbuilding of the country. The framers of the immigration law were faced with the problem of excluding the really undesireable and yet letting into the "asylum for all oppressed" those who were mere political convicts in the countries from which they came…By 1891, humanitarian friends of the politically oppressed in other countries had hit upon the happy thought of preventing exclusion for commission of mere political crimes by inserting the 'moral turpitude' phrase in the law of that year. Thus, among those excluded were 'persons who had been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude.' But it was explicitly stated that 'nothing in this act shall be construed to apply to or exclude persons convicted of a political offense notwithstanding said political offense may be designated as a 'felony, crime, infamous crime, or misdemeanor involving moral turpitude' by the laws of the land whence he came or by the court convicting.' In that day our national fears had not been actively aroused and we had not yet been led to put up bars against political radicals. Even anarchists convicted of conspiracy in Russia and ordered to long and desolate exile in Siberia might instead find refuge here…The increased emphasis [today] on alien criminals and their possible deportation gives pause for thought as to just what the law is at present and where the difficulties lie. First and foremost, there are the problems involved in defining moral turpitude. This classification inserted in the law from purely humanitarian motives has become a bugbear to administrative officials and aliens alike…"[79]

The contemporary idealization of the traumatized, victimized migrant in the United States seems to be the flip-side of the coin to what might be called the social Darwinist approach to forced migration, popular in the immediate post WWII period, that emphasized the fitness of those resettled. At the height of the Cold War, fleeing itself became noble. In his 1955 speech accepting the Nobel Peace Prize for the Office of the United Nations High Commissioner for Refugees (UNHCR), Dr. Gerrit Jan van Heuven Goedhart said "admitting a refugee is always done by the sovereign decision of a sovereign state entitled to put up whatever conditions for admission it sees fit. Demographically, any organized migration is therefore a sort of reversed Darwinistic process: not the "survival," but the "exodus" of the fittest… The refugee problem…is not the problem of people to be pitied, but far more the problem of people to be admired. It is the problem of people who…had the courage to give up the feeling of belonging, which they possessed, rather than abandon the human freedom which they valued more highly." [http://www.nobelprize.org/nobel_prizes/peace/laureates/1954/refugees-lecture.html#not]
After the 1960's a new kind of tone and texture came to dominate American public culture, one which venerated and validated discussions of group suffering (as had occurred during the Holocaust). The showcasing of testimonial narratives from Central American refuge-seekers during the 1970s and 1980s moved closer to the contemporary focus on victimization.

[79] Jane Perry Clark, *Deportation of Aliens from the United States to Europe* (New York: Columbia University Press, 1931), 161-2, 164.

In short, Clark argues that refugee advocates, in order to protect those who committed political crimes, drew a distinction between them and convicts, a distinction that expanded the state's ability to exclude the latter. As I will discuss in the next chapter, the "political offence" exception already existed in the general immigration laws of 1875 and 1882. And, the moral turpitude phraseology was first introduced in a restrictionist 1889 Congressional report, which, contra Clark, certainly did express concern about anarchism.[80] In response, those who pushed for the passage of the 1891 law said they did not want to set moral standards for those seeking asylum.[81] Rather than blame refugee advocates for demonizing immigrants, it is more fruitful to analyze the dynamic between refugee advocates and immigration restrictionists. This is what I attempt to do at the beginning of the next chapter, as I analyze the exceptions carved out for political refuge-seekers in late nineteenth century immigration and extradition laws. The historical evolution of these exceptions is especially significant given that contemporary U.S.

[80] Report No. 3792 to accompany H.R. 12291, January 19, 1889, House of Representatives, 50th Congress, 2nd Session. The proposed bill included the provision excluding anyone "who has been legally convicted of a felony, other infamous crime, or a misdemeanor, involving moral turpitude." The report argued: "The time has now come to draw the line, to select the good from the bad, and to sift the wheat from the chaff…Take the class of persons known as anarchists…Here they have proved a lawless, turbulent class, and the whole country is familiar with their recent acts of violence [a reference to Haymarket]. These disorderly persons do not come here to uphold and maintain our form of government…and believe disobedience to it is perfectly justifiable. This class of persons ought to be rigidly excluded from entering this country."

[81] Here is an exchange from when the bill including the moral turpitude provision was discussed in the House of Representatives (*Congressional Record*, Feb. 23, 1891, 3176-3177.)
Mr. Butterworth (Ohio). While that is true, yet I am also aware of the fact that an immigrant may be thoroughly ruptured in morals, and unfit for citizenship on that ground, and yet pass muster under the bill, unless he be one of the convicted class.
Mr. Covert (NY). Ah, sir, who shall set up or dare to set up in this country a code of morals to which must confirm the character of every man who seeks an asylum here? Will my friend say that an inspection officer shall determine who are and who are not equal to the moral standard which he or I may desire to establish? Should a court of law, even, be entrusted with this absolute power? Given a man in good physical health; given the quality not embraced in the inhibited classes specifically mentioned; given the fact that an immigrant comes here willing and prepared to conform to the laws of the land, I say that he ought to be permitted to cast his lot among us. Neither my friend nor I have the right to examine into his creed or his system of faith. Neither he nor I have the right to establish a moral standard to which he shall attain before he is permitted to bare his strong right arm and to hew out for himself a livelihood on these shores.

law excludes from asylum a much broader class of "criminals" than are barred from refugee status by international law.

Some scholars claim that the problem with asylum goes beyond legitimation of exclusion. "This book," write Carol Bohmer and Amy Shuman in *Rejecting Refugees*, "is about the disconnect (even hypocrisy) between the ideas of a nation welcoming asylum seekers and our actual practices." Like other critics in this vein, Bohmer and Shuman use the fate of the S.S. St. Louis as their metonym. They open their book by telling the story of how, in 1939, the U.S. authorities refused to allow the 937 Jewish passengers on this ship to land, sending them back to Europe, where 254 of them were later killed by the Nazis. "In restrospect," Bohmer and Shuman write, "the plight of the St. Louis has come to represent a moment of national shame. Nevertheless, we continue to do similar things every day…Mostly this happens without public knowledge or public scrutiny…We in the West talk a good game about providing a safe haven for those fleeing persecution, but we also talk a lot about securing our borders…We use political criteria for deciding who get in and who doesn't, so some applicants are sent back, perhaps to die just like those on the St Louis did."[82]

A story that better captures the dialectical dynamic driving asylum is that of the S.S. Quanza, another ship carrying refugees that docked in Norfolk about a year after the St. Louis incident. Most of the ship's passengers had already disembarked in New York, but 83 passengers were not allowed to land in Vera Cruz, Mexico and were ordered returned to Europe. When the ship stopped in Norfolk for coal, a maritime lawyer named Jacob Morewitz (who handled several

[82] Carol Bohmer and Amy Shuman, *Rejecting Refugees: Political Asylum in the 21st Century* (New York: Routledge, 2008)1-2. For another, less heavy-handed use of the St. Louis incident to convey a sense of the persistent inadequacies of the U.S. asylum system, see Bill Ong Hing, "No Place for Angels," *University of Illinois Law Review* (2000) 590-91. Hing writes that the 1980 "refugee law was an attempt by Congress to treat refugee and immigration policies as separate and distinct…Concerns about controlling immigration have dominated Refugee Act applications ever since" (595).

of the sailor cases I discuss in chapter 4) filed a lawsuit against the ship in federal court, buying advocates like Cecelia Razovksy of the National Council of Jewish Women and Rabbi Stephen Wise of the American Jewish Congress a chance to lobby the State department to admit its passengers. (While the ship was docked off shore, one passenger, a German student named Hilmar Wolff, jumped and swam for the beach, was picked up by the Coast Guard, and returned to the ship.) Roosevelt asked Secretary of State Breckenridge Long to work out a plan with his Presidential Advisory Committee on Political Refugees [PACPR]; the State department agreed to waive visas and allow temporary admission to those who the PACPR would certify as refugees. Patrick Malin, PACPR staff member and later executive director of the ACLU, verified the validity of visas for Latin American countries held by some passengers and found all the rest of the passengers to be "bona fide" refugees. Secretary Long was furious because he had assumed only a small number would be admitted. In response, Long convinced Roosevelt to take visa issuing authority away from the PACPR; henceforth only consuls in Europe could issue emergency refugee visas and, by the end of the year, only after extensive security checks. By the following year, refugee immigration had decreased to 25 percent of allowable quotas. Thus, a victory for asylum advocates led to a vigorous counter-response.[83]

This dissertation shows that the engine of change regarding asylum today—the relationship between migrants, advocates and the immigration authorities–has a long history. I argue that it is too simple to claim that, consistently and across the board, advocates for refuge seekers have legitimated the larger immigration system or that the asylum system is, with all its inadequacies and problems, a sham. Why, despite knowledge of exclusion laws, immigration

[83] The INS file on the Quanza is 56054/218, RG 85, Entry 9, National Archives and Record Administration, Washington D.C. It reveals that almost all of the Quanza passengers successfully adjusted to permanent status. For information about the Quanza see Henry Feingold, *The Politics of Rescue* (New Brunswick: Rutgers University Press, 1970) 143-148. See also Razovsky's account of the incident, Re: S.S. Quanza, Sept. 16, 1940, Box 5, folder 1, Papers of Cecilia Razovsky, P290, American Jewish Historical Society at the Center for Jewish History, NY.

quotas, and America's "calculated kindness" towards refugees, have so many tried and gained refuge in the United States? During the first two thirds of the twentieth century—with quotas limiting admissions and deportation for those without valid visas— how did refuge-seekers who made it to the United States make their cases to stay? Did the diverse advocates who took up their cases see asylum as an end in itself or a means to some other cause? What is the best way to interpret the mix of idealism and realism or instrumentalism in their strategies?

Not surprisingly, 20th century refugee policy is inflected by many of the same race and class distinctions that have marked immigration restriction. The key question remains, however, as to why, in a gatekeeping oriented and security conscious world, refugees have been attended to at all, and how this attention and its justifications have changed over time. Historians have looked at this question with a combination of cynicism and exceptionalism. I am interested in the various meanings that have been invested in asylum, especially those concerning family, nationality, and individuality—elements that have been deemed most threatened by persecution and most worthy of repair.

My analysis reveals the partiality of both hagiographic accounts of humanitarian asylum advocacy and subaltern critiques of asylum advocates for their gatekeeping. I show that in taking up the cause of asylum, advocates sometimes sharpened and sometimes blurred the distinction between refugees and immigrants. In what ways did advocates for refuge seekers represent them and for what reasons? The representation of Jewish and Armenian suffering, which I discuss in chapter 3, does draw on gender and cultural stereotypes and betray efforts at social control by ethnic leaders; advocates stressed the kind of victimization they thought would elicit the most discretionary relief. But, as I discuss in chapter 2, Isaac Hourwich avoided stereotypes of Russian peasantry in his defense of his clients, was particularly sensitive to the ways that legal

language depoliticized them by framing them as criminals rather than revolutionaries, and drew attention to the absurdity of assuming that official Russian depositions were credible evidence given that they were deliberately mistranslated to deny repression. Also, both Hourwich's cases and the efforts of conservative leaders on behalf Armenians after WWI drew powerful rhetorical parallels between extradition and exclusion of refugees and fugitive slave laws. In other words, advocates had another frame to use in making the case for refuge. Indeed, these early twentieth century asylum campaigns were born out of the feeling that, with the advent of federal immigration restrictions in the late nineteenth century, the United States was betraying the Civil War's rebirth of freedom.

Moving into the 1930s, World War II, and the Cold War, there are different ways to assess the strategies of advocates. The advent of fascism and Communism changed a great deal. It led to infighting among refugee advocates and splits between interested organizations, but it also gave them new allies and enemies in their campaigns. For example, William Standard, lawyer for the National Maritime Union discussed in chapter 4, took up the cause of seamen from fascist-dominated areas of Europe and Asia who were stranded in the United States in part to advance the cause of labor and the Communist party. As more specialized immigration lawyers increasingly came to dominate advocacy after World War II, they pursued an indirect strategy.[84] Because there was no recognition in American law of the right of a refuge seeker to enter and remain in the United States, advocates approached asylum through association with other constitutional rights and protections—to due process, free speech, and equal protection—for those who made it to the U.S. This strategy situated their advocacy within the mainstream of

[84] See footnote 5 on the development of immigration law as a professional specialty. After the passage of the complicated 1952 INA [better known as the McCarren-Walter Act], lawyers came to play a more prominent role in immigration advocacy, eventually taking over the field previously dominated by settlement and social workers. This dissertation chronicles turf wars between social workers and lawyers from the 1920s through the 1950s.

Cold War era legal liberalism, with its emphasis on non-discrimination and negative liberties, but, because refuge-seekers were noncitizens and sometimes in illegal status, the strategy was also exhortatory and aspirational.[85] As we shall see in chapter 4, Edith Lowenstein won an important victory in a case involving a sailor denied a 243(h) hearing, but her inability to get the federal courts to review INS handling of seamen deportations in the early 1960s made her realize that the problem was deeper. "Ever since 1952, while the well-meaning agitated for the liberalization of the INA [Immigration and Nationality Act]," Lowenstein wrote in 1963, "they neglected to watch piece-meal legislation abrogating rights, and have been insufficiently interested in the administration of the law;" after the passage of the 1965 immigration act, which abolished the National Origin quotas, Lowenstein wrote that "instead of discrimination on account of race we now have a discrimination on social status."[86] The arc of Lowenstein's career attests to the important impact of asylum-related issues on the development of immigration advocacy more generally; Lowenstein moved from handling persecution claims in deportation cases to handling cases involving welfare and health benefits for noncitizens.[87] Lowenstein's course on "Immigration Law and Client Representations" was attended in the 1960s mostly by representatives of voluntary organizations working with refugees, but in the 1970s by a growing

[85] For a discussion of the contours of Cold War legal liberalism, see Risa Goluboff, *Lost Promise of Civil Rights* (Cambridge: Harvard University Press, 2007); David Ciepley, *Liberalism in the Shadow of Totalitarianism* (Cambridge: Harvard University Press, 2006). For the status of aliens in constitutional law see Gerald Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law* (Princeton: Princeton University Press, 1996) and Hiroshi Motumora, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States* (New York: Oxford University Press, 2007).

[86] Memorandum of My Personal Views of S.1932 and Related Matters (undated, 1963) and Letter from Lowenstein to Edwin Newman, February 8, 1966, Folder: Personal, Box 14, Interpreter Releases Records, General/Multiethnic Collection, Immigration History Research Center, University of Minnesota.

[87] Lowenstein wrote amicus briefs in *Graham v. Richardson* (403 US 365, 1971) and *Mathews v. Diaz* (426 US 67, 1976), foundational cases in the field of constitutional protections for non-citizens. See Thomas Aleinikoff, David Martin, Hiroshi Motomura, Maryellen Fullerton*, Immigration and Citizenship: Process and Policy*, 6th edition (Thomson West, 2008), chapter nine.

number of lawyers from firms.[88] By the time she served as president of the American Immigration and Nationality Lawyers Association [AILA] in 1973-1974, Lowenstein argued that the right to asylum could only be achieved if the status of all immigrants was reconceived. The theme of the AILA conference that year was "The Rights of the Alien." She told the conference:

> Among the speakers who preceded me, more than half, when they talked about the rights of aliens, really spoke of privileges rather than rights. The majority of applications before the immigration service is decided on a discretionary basis…Discretion can be beneficent or malicious, but it is always insecure… Our Association is one of the very few groups with technical know-how and, I hope, sufficient heart. It has a moral obligation to work for the improvement of the substantive as well as the due process rights of aliens.[89]

The remainder of this chapter is a narrative account of conflicting attempts by advocates to define asylum and negotiate with immigration authorities over administrative practice and the cases of two asylum seekers; and their interpretations of their experience. I introduce many of the advocates who play prominent roles in the chapters to come. I also highlight ideological disputes and legislative developments that influenced the discourse on asylum throughout the mid- twentieth century.

"Couldn't get a Passport from Heaven": Midcentury Sagas

On Sunday April 6, 1930, two leftist Italian exiles, anarcho-syndicalist Armando Borghi and socialist Vincenzo Vacirca, were debating revolutionary alternatives to fascism at Cooper Union in New York. Midway through the debate an immigration inspector stepped out on to the stage and approached Borghi, who jumped down into the audience and ran out of the room. A fight ensued between the audience and plainclothes police officers, one of whom began a chase outside and shot and killed an onlooker. Roger Baldwin, co-director of the ACLU, immediately

[88] See Lowenstein's syllabi and rosters in folders: New School and Course, Box 14, Interpreter Releases Records.

[89] Edith Lowenstein, "Rights of the Alien," *Interpreter Releases* (American Council for Nationalities Service), vol. 51, no. 52, Sept. 23, 1974.

condemned the attempted arrest of Borghi, calling him a political refugee. A few days later, editors of the Italian-American anti-fascist labor newspaper *Il Nuovo Mondo* asked the ACLU to help it launch a campaign for legislation to protect those like Borghi for whom return to Italy would mean danger. According to the editors, this was not just a problem for prominent journalists. "Hundreds of Italian workers…fear being picked up by the immigration authorities and being deported to death or to a living grave," they wrote.[90] The newspaper devoted its May Day issue of 1930 to promoting the effort to, as contributor A.J. Muste wrote, "restore the sacred right of asylum," which, as contributor Norman Thomas explained, "was lost in the narrow and intolerant reaction following a war allegedly waged for democracy."[91]

This was not the first time Borghi had a run-in with the immigration authorities and he was certainly not the first prominent Italian to fear deportation since Mussolini came to power. After the backlash against the Palmer raids of 1919 and the "deportation delirium" of 1920, the immigration service, which was an agency in the Department of Labor, did not engage in large-scale round-ups of radicals. But the 1924 immigration law, which reduced the national quotas and instituted the consular visa system, made it much more difficult for Italians to enter the country and gave the immigration service ostensibly non-political grounds to use for political deportations.[92] Especially after he was directly implicated in the murder of a reformist socialist deputy in the Italian parliament in 1924, Mussolini cracked down on his political opposition both

[90] Letter from the Arturo Giovannitti and Girolamo Valenti to the Executive Committee of the ACLU, April 19, 1930, vol. 393, reel 72, American Civil Liberties Union Microfilm; 1917-1950; American Civil Liberties Union Records: Subgroup 1, The Roger Baldwin Years, Public Policy Papers, Department of Rare Books and Special Collections, Princeton University Library. [Hereafter ACLU Papers].

[91] Clippings from *Il Nuovo Mondo*, Reel 74, ACLU papers.

[92] It is for this reason that there is a lack of historical scholarship on political deportations in the 1920s. According to Ann Fagin Ginger, "It is impossible for anyone outside the immigration service to determine the exact number of political deportation arrests made" in the 1920s. Ginger's study skips that decade and picks up again in the 1930s. [Ann Fagin Ginger, "Political Deportations in the United States," *Lawyers Guild Review*, 14 (1954-5), 97 n.21]. Daniel Kanstroom writes that the Harry Bridges case (beginning in 1936) marked "the return of ideological deportations," implying a lull in the interim. [Daniel Kanstroom, *Deportation Nation* (Cambridge: HUP, 2007) 186].

at home and abroad, feeding the sympathetic U.S. State Department a steady stream of surveillance reports on Borghi and others, reports that were then passed on to the immigration service. In 1927 the immigration authorities arrested Borghi as an anarchist—deportable under a 1918 immigration law—and for a secondary violation as well—for having overstayed his visitor's visa, an advent of the 1924 law. A coalition of liberals, radicals, and co-ethnics similar to those protesting the execution of Sacco and Vanzetti came to the defense of Borghi and others threatened with deportation to Italy in the late 1920s, including the communist Vittorio Vidali. (He too was arrested on a technical charge: for entry without inspection and quota number.) Supporters flooded the immigration service with protesting telegrams, raised bail money, held mass meetings, got press notice, and hired defense lawyers. They sent the immigration service newspaper clippings regarding the harsh fates of other anti-fascists deported to Italy.[93] Their efforts set the pattern for anti-deportation campaigns throughout the interwar period. [94] During deportation hearings, the two men and their lawyers used a strategy that continued to be successful throughout the 1930s: they made it impossible to establish that they were the kind of radicals deportable under U.S immigration law, i.e. those who advocate the overthrow by force or violence the government of the United States. When asked about his views, Borghi refused to

[93] The clippings included "Fascisti Punish Italian, Sent Back from Boston; He Gets 12 Years in Prison for Activities Here," *New York Times,* July 31, 1927, A1.

[94] Though there has been little attention paid to the details of these deportation defenses, historians have recently done exceptional research on the interwar Italian-American community. The anti-fascist coalition was a fractious minority of anarchists, socialists, communists, and trade unionists. Philip Cannistraro and Gerald Meyer, *The Lost World of Italian American Radicalism: Politics, Labor and Culture* (Westport, CT: Praeger, 2003); Jennifer Guglielmo, *Living the Revolution: Italian Women's Resistance and Radicalism in New York City, 1880-1945* (Chapel Hill: University of North Carolina Press, 2010); Marcella Bencivenni, *Italian Immigrant Radical Culture: The Idealism of the Sovversivi in the United States, 1890-1940* (New York: New York University Press, 2011). These build on the valuable survey by John Patrick Diggins, *Mussolini and Fascism: the View from America* (Princeton: Princeton University Press, 1972).

answer directly and instead provided the immigration inspectors with a written statement of his philosophy.[95]

What kind of defense could secure them asylum? Then and throughout the mid-twentieth century, advocates pointed to "political" exceptions in immigration and extradition law. In defense of Vidali, ACLU attorney Arthur Garfield Hays made reference to the exceptions to exclusion for political offenders in the immigration laws "ever since the first one was passed" and Clarence Darrow referred to the refusal of the U.S. government to extradite Christian Rudowitz, a case he was involved in and which is discussed in chapter 2. In the words of Hays: " [Black shirts] arrested his [Vidale's] family…took him into the streets, shot him…he may no less be a political refugee than one who has committed a crime...if sent back [he] will go not only to punishment but probable death."[96] Borghi testified that Fascists burned his house and took his son hostage to force Borghi's return to face punishment. But this argument—what more contemporary sociologists would call the "escape from violence" definition of a refugee—did not influence the immigration administrators.[97] That both Vidali and Borghi stopped in several other countries between Italy and the United States (both in Germany, Vidali in Russia and Algiers and Borghi in France and Canada) seemed to the immigration authorities to negate arguments about "flight from political persecution." To the immigration authorities, quotas and visas were bread and butter not, as Darrow put it, "things that don't involve life, liberty or traditions of the country or those things that reach deeper than anything else, the humane feelings that men have when these situations are brought to them." Darrow added, about Vidali, "He

[95] Borghi's philosophical statement and letters from his supporters are in his INS File, 55613/119 Entry 9, RG85, National Archives and Records Administration, Washington, D.C. [Hereafter NARAI].
[96] In re: Vittorio Vidale, argument presented before the Board of Review in behalf of the alien, May 2, 1927, INS file 55587/241, Entry 9, RG 85, NARAI.

[97] Aristide Zolberg, Astri Suhrke, and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (New York: Oxford University Press, 1989).

entered without a passport or visa…and, of course, all political offenders come that way, they couldn't get a passport from heaven. A trifling matter, and the penalty in this case would be death."[98] But to the immigration authorities, Vidali and Borghi were law breakers not political offenders and their deportation was not conceived as a punishment. The immigration service thought it humane enough to temper expulsion with a modicum of consent. Both men were granted the opportunity to "voluntarily depart" at their own expense to another country of their choice. Vidali sailed for the Soviet Union. Unfortunately, the Italian consulate refused to renew Borghi's passport, making him unable to travel to any other country.

Despite the misgivings of radicals on his defense committee about negotiating with American officials and politicians (in their words, "the bastards you have to deal with"), attorney Harry Weinberger asked several congressmen to help gain Borghi more time.[99] This kind of split among advocates—between an adversarial and a deferential attitude to government officials, between an emphasis on mass protest and behind-scenes pressure—was a staple of refugee defense campaigns long before and long after this case. Fiorella La Guardia took up Borghi's case in Washington, but asked Forrest Bailey of the ACLU and Weinberger to try their best to make sure "there was no noise" by Borghi's defense committee about the case and that Borghi himself "sit tight and keep quiet."[100] This too was a typical demand made of those refuge seekers granted discretionary stays; the stays were privileges and they could be withdrawn if the refuge seeker misconstrued it as a right to free speech and agitation.

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[98] In re: Vittorio Vidale, argument presented before the Board of Review in behalf of the alien, May 2, 1927, INS file 55587/241.

[99] Letter from Van Valkenberg to Harry Weinberger, March 10, 1928, Box 11, Folder 12, Harry Weinberger Papers, Manuscripts and Archives, Yale University Library.

[100] Letter from Forrest Bailey to Harry Weinberger, March 30, 1928, Folder 11, and Letter from La Guardia to Weinberger, March 29, 1928, Folder 13, Box 11, Weinberger papers.

After approached by Weinberger, the Italian embassy agreed to give Borghi a travel document. It turned out to be not a passport but a "foglia di via," which Borghi refused to use since it would lead to his being forwarded to Italy, but which another lawyer, Isaac Shorr, used to secure further extensions of stay from the immigration service. "This sort of document," Shorr wrote the immigration service, "is generally issued in Italy and abroad to ex-convicts and other similar characters for traveling purposes…[it] is itself a notice to the police in Italy and adjoining countries that the subject is to be guarded and prompted to be going on to his destination."[101] Shorr worked in one of the only New York law practices to focus its energies on immigration cases at this time; Shorr's partner, Carol Weiss King, was just starting her career but was fast becoming the country's pre-eminent authority on the deportation of radicals.[102] To prevent a court challenge of its deportation order, the immigration service completely dropped the "political" charge that Borghi was deportable on the grounds that he was an anarchist, but continued to insist that he was deportable for having remained in the country longer than the time allowed a visitor. To those, like the Italian Embassy via the U.S. State Department and Senator David Reed, who wrote to complain that Borghi was being handled with too much leniency, the immigration service contended that he was difficult to track down and his deportation stayed out of "hesitancy to deport him to Italy" where he was "admittedly wanted for a political offense"; to those, like the ACLU and Senator Duncan Fletcher, who complained that Borghi was being

[101] In The Matter of Armando Borghi, April 17 1928, 55613/139, RG 85, Entry 9, NARAI

[102] For better or worse, the question of asylum for radicals played a prominent role in the development of the immigration bar, which was so small in the 1930s that the ACLU had a difficult time putting together a committee on alien civil rights; the ACLU's Lucille Milner wrote Max Kohler on June 13, 1933 asking for his help, as "we are called on frequently to advise in alien cases and, as you know, there are very few lawyers in the [NY] city who are qualified to advise in this field." [Kohler papers, Box 11, Folder: ACLU]. More than thirty years later, Edith Lowenstein noted that immigration litigation was dominated by cases involving communists, a "fact, in my opinion, that has influenced the attitude of the courts towards immigration" [Lowenstein to Frank Dearness, July 26 1968, Box 14, Interpreter Releases Records]. This had a profound effect on the ACLU's policy on immigration cases at midcentury. For information on Shorr and King (and their third partner, Joe Brodsky) in the 1920s and 1930s, see Ann Fagan Ginger, *Carol Weiss King* (Niwot: University of Colorado Press, 1993) ch. 6 and 7.

treated too harshly, the immigration service wrote that "political refugees were not exempt from the quota act" and that Borghi had "flouted the law of this country" and acted in "bad faith."[103]

As Shorr searched in vain for an alternative country of refuge, Borghi was reunited with his lover, the Italian poet and orator Virgilia D'Andrea, in Brooklyn. The couple had fled Italy in 1923 but Borghi had crossed the Atlantic first. Now D'Andrea had arranged to marry an Italian American so that she could enter the United States outside the quota as the wife of a U.S. citizen. The Italian embassy alerted the American authorities of her whereabouts and subversive lectures and, just three months before the Cooper Union episode, D'Andrea was confronted by the immigration authorities about her anarchism, her entry into the country under false pretenses, and her affair with Borghi—the latter two grounds to deport her as a woman who had come to the U.S. for immoral purposes. D'Andrea—a believer in free love and direct action—denied any improper relationship with Borghi or radical views, insisting on her respectability and demanding that the immigration service retract its "unwarranted attack on my chastity." "I knew Mr. Borghi in Italy in the journalistic and literary field, where I also met Mussolini, the present Fascist Dictator," D'Andrea told the immigration service, with not a little irony, pointing to the latter personal connection as a source of her authority on the evils of fascism. If anyone was improper, she claimed, it was the "fascist rowdies" who interrupted her lectures and attacked her.[104]

Certainly D'Andrea knew just how to manipulate the gendered biases of the immigration

[103] Second Assistant Secretary of Labor William Husband to Assistant Secretary of State W.R. Castle, Aug. 30, 1929; Second Assistant Secretary of Labor Husband to Senator David Reed, January 2, 1930; Commissioner General Harry Hull to Senator Duncan Fletcher Oct. 2, 1928; Commissioner Harry Hull to Henry Ward, Roger Baldwin and Forrest Bailey, April 17, 1930, all in Borghi's INS file 55613/139A.

[104] Deposition of Virgilia D'Andrea, January 1930, INS file 55613/139A.

law to her advantage. As we shall see in chapter 3, many refugee women used marriage to gain entry and some were not as successful in fending off deportation. Still, these women were not seen by their advocates as political refugees. It is not surprising given her method of entry and also because Italian authorities and radical exiles saw Borghi as the chief dissident, that the defense campaign did not refer to D'Andrea at all.[105] In 1938 a federal judge sided with a refugee's defense committee that "only females" could be excluded for entry for an immoral purpose.[106] D'Andrea's successful evasion of the immigration laws allowed her to continue speaking to admiring crowds. For his part, Borghi did not leave the country as required by the immigration service and lived what he called a "clandestine life," foregoing public lectures and publishing under pseudonyms. The immigration service continued hunting for him among the Italians of Brooklyn through the mid-1930s. "More bitter torment" for him was having "lost the comrades" who never recovered from the immigration service a large sum of bail money they raised for him.[107] As we shall see, funds for bail and for the cost of transportation for voluntary departure was a perpetual problem for refugee advocates and organizations; conflicts between organizations over tactics were frequently exacerbated by money matters. For the refuge seeker, the foothold gained could be a bitter pill.

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[105] Robert Ventresca and Franca Iacovetta, "Virgilia D'Andrea: The Politics of Protest and the Poetry of Exile," in *Women, Gender and Transnational Lives: Italian Workers of the World*, ed. Donna R. Gabaccia and Franca Iacovetta (Toronto ; Buffalo : University of Toronto Press, c2002) 311.

[106] *J. Rudolph Mill v. Commissioner of Immigration*, decision issued by U.S. District Judge in the Southern District of New York, July 25, 1938. The immigration service tried to bar Mill from re-entering the U.S. (after fighting for the Loyalists in Spain) because he intended to return living with a woman with whom he was not legally married. [reported in *Monthly Bulletin* (International Juridical Association), 7.2 (August 1938) 14]. This decision was consistent with higher scrutiny of female sexuality and relationships by the immigration service in the early years of the twentieth century; see chapter 1 of Deirdre Maloney, *National Insecurities: Immigrants and U.S. Deportation Policy since 1882* (Chapel Hill: University of North Carolina Press, 2012).

[107] Armando Borghi, *Mezzo Secolo Di Anarchia* (Napoli: Edzioni Scientifiche Italiane, 1954) 353 [translation mine].

While Borghi lay low, advocates for him and others debated how best to pursue the right of asylum in the United States. At the first meeting to discuss the asylum issue after Borghi's Cooper Union episode, Arthur Hays suggested using the courts to challenge deportations[108]: "a stiff argument on behalf of a political refugee by some uninterested organization would be evidence enough for the Federal courts to rule in his favor and allow him to stay."[109] Hays's hopes for a favorable court ruling were perhaps a response to a recent decision by Judge Learned Hand that sympathized with an anti-fascist's fear of persecution in Italy. "His offenses are apparently political," Hand wrote in the Giletti case, "and it would seem…we should not make it an incident of the execution of our own laws that the offender should be subjected to the discipline of another country for crimes of that character…Further, while we cannot, of course, say how much ground there may be for his fear of violence, there can be no reasonable doubt that that fear is real, and that alone is a severe penalty." Here Hand anticipated by decades the taking of "subjective" fear into account when considering asylum claims. Unfortunately, this decision, like Hand's numerous decisions involving immigrants in the interwar period and particularly a case involving an Armenian refugee in the 1920s (and discussed in chapter 3), did not challenge the discretion of the immigration service to deny voluntary departure in lieu of deportation, but only suggested administrative leniency in the name of preventing harsh punishment and probable suffering.[110] Hand, like other liberal judges working within the plenary

[108] This stance is of a piece with the ACLU's shift, under Hays's counsel, in the 1920s towards viewing the courts as "an inviting venue" for securing civil liberties. See Laura Weinrib, The Liberal Compromise: Civil Liberties, Labor and the Limits of State Power, 1917-1940 (Ph.D. dissertation, Princeton University, 2011) 214.

[109] Memo 7/11/30 on the May 6, 1930 luncheon conference on the right of asylum, vol 393, Reel 72, ACLU papers.

[110] *United States ex rel. Giletti v. Commissioner of Immigration, Ellis Island* (No. 133, Circuit Court of Appeals, Second Circuit, 35 F.2d 687, 1929). This decision refers to the Armenian case, *United States ex rel. Karamian v. Curran* (No. 140, Circuit Court of Appeals, Second Circuit, 16 F.2d 958; 1927). The salience of the subjective element of fear to asylum adjudication was not officially recognized until the issuance of the UNHCR handbook on

power doctrine, dealt in "phantom norms" rather than constitutional rights when handling immigrants; as Hand wrote in another 1930 decision: "statutory provisions, so confused, contradictory, minute and manifold, as the immigration laws, inevitably produce…caprices. Still the whimsies that they create give us no power to dispense with the language; indeed, the more detailed they are, the less latitude we are given, perhaps deliberately. We can, and of course we should, weld them as far as their language admits, into a rational whole, but for more we have no warrant."[111]

The immigration service allowed Gilleti to depart voluntarily while court proceedings were underway. But in another case in 1930, a court challenge and administrative discretion pointed towards a different outcome. Though a judge suggested that Guido Serio, a Communist who had been attacked and threatened before leaving Italy, be permitted to depart for Russia, the immigration service insisted on his deportation to Italy, claiming that "Serio had sought to destroy our Government and was not entitled to the right of asylum." The argument was that deportation laws existed for the protection and welfare of the United States and "that welfare and protection is best secured by the alien's deportation to Italy."[112] (Or, as Roger Baldwin of the ACLU ruefully paraphrased it "aliens who promote hostility to our government deserve whatever they get in Italy"). After the Wickersham Commission report, released in the spring of 1931, explicitly criticized the handling of this case, the immigration service agreed to allow Serio to depart for Russia. But conflict over the case persisted as the immigration service and advocates

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determining refugee status in 1979 and the U.S. Supreme Court's decision in *Cardoza-Fonesca* (480 US 421) in 1987.

[111] Hiroshi Motomura, "Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation," *Yale Law Journal* 100 (1990), especially 564-575; *United States ex rel. Georgas v. Day*, 43 F.2d 917.

[112] This administrative decision in the Serio case, made in late 1930, is quoted in Reuben Oppenheimer, *Report on the Enforcement of the Deportation Laws of the United States*, 5th Report of the National Commission on Law Observance and Enforcement (Wickersham Commission), United States: GPO, 1931, 122.

publicized contrasting accounts of its significance. In early 1932, President Hoover's Secretary of Labor William Doak wrote an article in the *New York Herald Tribune* defending the immigration service, claiming that it never had any intention of sending Serio to Italy and was always willing to have supporters arrange for his departure to Russia. Carol Weiss King denied this, claiming the immigration service initially fixed Serio's bail at "the exorbitant figure of $25,000," so that he remained in jail for six months. John Haynes Holmes of the ACLU retorted that Doak "was moved to permit [departure for Russia] only after the utmost pressure upon him." The law was enforced, Holmes claimed, not with a "kind heart" but according to the "anti-radical prejudices" of officials.[113] What did not come out in the papers was Roger Baldwin's behind-the-scenes negotiations with Doak and attorneys for Serio and others like him facing deportation; most of the attorneys were affiliated with the International Labor Defense [ILD], an organization with ties to the Communist Party and dedicated to the defense of those arrested for labor activism and radical politics.[114] Baldwin tried to get Doak to agree to allow all arrested communists to voluntarily depart in exchange for getting their attorneys to agree to drop court challenges of their deportation orders. Neither side was interested in cooperating.[115]

As we shall see in chapter 4, conflict over voluntary departure policy grew even more

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[113] William N. Doak, "Why Aliens Are Deported," *New York Herald Tribune*, Jan. 24, 1932, SM3; Carol Weiss King, "The Case of Guido Serio," *New York Herald Tribune*, Feb. 7, 1932; John Haynes Holmes, "Alien Deporting Methods," *New York Herald Tribune*, Feb. 14, 1932, A7.

[114] The ILD began as the American branch of the Communist Party's International Red Aid organization. But the ILD was also supported and influenced by many non-communist labor defenders. (For the origins of the ILD see Bryan Palmer, *James P. Cannon and the Origins of the American Revolutionary Left, 1890-1928* (Champaign: University of Illinois Press, 2007) 262-63. For its later defense campaigns, see the finding aid for the organization's papers at the Schomburg Center, NYPL: http://archives.nypl.org/scm/20647 (accessed September 5, 2015)).

[115] Baldwin to Doak, July 17, 1931 and Doak to Baldwin, July 22, 1931; Baldwin to Isaac Shorr, July 23, 1931, Shorr to Baldwin, July 28, 1931, George Maurer to Baldwin, August 1, 1931; Baldwin to Will Irwin Aug. 14, 1931 and Oct. 1, 1931, all on reel 80, volume 454, ACLU papers.

intense in the mid-1930's when advocates came to disagree among themselves about whether relying on the discretion of the Roosevelt administration, challenging deportation orders in court, and arranging for refuge in Russia were truly the best ways to handle the issue of asylum. Events of the mid-1930's also impacted the other track of asylum advocacy sparked by Borghi's case: the effort to pass an amendment to the immigration law that, as Roger Baldwin of the ACLU suggested, would allow "bona fide political refugees" from whatever country and "whatever their political views" to enter and remain in the United States.[116] Over the course of the 1930s, asylum amendments were devised, coopted, and compromised, becoming other things entirely. The way this happened reveals a great deal about asylum dialectics, about the give and take between various advocates and officials with different ideologies and goals. It is important to note, too, that American advocates crafting asylum legislation made no reference to the contemporaneous attempts by the League of Nations to develop a non-refoulement international law standard.[117]

In the immediate wake of the Serio case, Roger Baldwin suggested an amendment to the immigration law that explicitly "legalized" the policy of permitting deportable aliens who feared returning to their home countries to depart for another country.[118] Carol Weiss King drafted a bill, introduced by La Guardia as H.R. 12406, to allow aliens ordered deported to leave the country at their own expense for any country that would receive them; King designed the bill to "take from petty officials in the Labor Department the power to grant or deny so-called 'voluntary departure,' a power which in certain cases amounts practically to a sentence of life or

[116] Letter from Henry Ward, Roger Baldwin, and Forrest Bailey to Herbert Hoover, April 7 1930 in Borghi's INS file 55613/139A.

[117] For a discussion of these efforts see chapter 4 in Claudena Skran, *Refugees in Inter-War Europe: The Emergence of a Regime* (New York: Oxford University Press, 1995).

[118] Baldwin to Reuben Oppenheimer, Nov. 30, 1931, reel 80, ACLU papers.

death."[119] The first ACLU pamphlet on "The Right of Asylum," published in June 1931, included a suggested amendment written by Carol Weiss King "to establish a right of political asylum outside the quotas for bona fide refugees from foreign tyrannies"; it defined "refugee" as any alien indicted for political offences, holding proscribed beliefs, or affiliated with proscribed organizations in his native country who might be subjected to harsh treatment if returned. The following year, Baldwin asked different lawyers to help perfect the language of a bill that avoided all discussion of admission outside the quota or of excluded aliens and focused on exempting refugees from deportation. In the end the ACLU opted to push a bill, drafted by Columbia Professor Joseph Chamberlain (an expert on legislative drafting with an interest in refugee issues) and introduced by Senator Royal Copeland of New York on June 30, 1932, that gave the Secretary of Labor the discretion to allow to remain in the United States any refugee liable to punishment as a political offender in the country to which he was to be deported. The ACLU believed this bill, though it did not authorize the new entry into the country of any refugees, would effectively protect from deportation not only radicals but those already admitted temporarily or who had entered illegally. Carol Weiss King believed that relying on discretion would not likely afford refugees much protection, while social worker Marian Schibsby worried that the bill would shelter criminals from deportation and was too inclusive to pass. Baldwin, like King, would have preferred a bill that made it mandatory to permit refugees to remain (rather than merely expand the Secretary of Labor's discretion and rely on sympathetic administration), but didn't think that would pass.[120] In fact, Baldwin asked Copeland to introduce this bill despite

[119] *Monthly Bulletin* (International Juridical Association) July 1932, 1.

[120] See S. 4941 and correspondence between Baldwin and Copeland in June 1932, and Schibsby to Baldwin, July 30, 1932 and Baldwin to Schibsby, August 2, 1932, reel 89, vol. 529-530, ACLU papers. For King's view see *Monthly Bulletin* (International Juridical Association), July 1932, 2.

the fact that he knew that the Department of Labor would oppose it. Ed Campbell, the ACLU's representative in Washington, spoke at length with Robe Carl White, Assistant Secretary of Labor, about the bill and White warned him that introducing it could be counterproductive: "in view of the present domination by the patriotic societies of Congressional opinion on immigration questions, there would be a danger…that it might actually be amended or changed to defeat its very purpose." Baldwin decided to take his chances, hoping that once the Copeland asylum bill was on the record, the ACLU could use it to "make a campaign" to "build up a movement for ultimate passage."[121]

Before there was any movement on the ACLU's asylum bill, in early 1933 Congressman Robert Bacon (R, NY) proposed a bill that would legalize the status of those who entered the U.S. prior to January 1, 1933 and could not be returned to any country to which it was lawful to deport them "because of the likelihood of bodily harm as a result of religious or political persecution."[122] The bill was designed specifically for temporarily admitted anti-Bolshevik "White Russians" who could be subject deportation once the United States resumed diplomatic relations with the Soviet Union; the bill was supported by patriotic organizations like the Daughters of the American Revolution and by the State Department. This was not the first act to legalize the status of those in the United States without residency; a registry act of 1929 had legalized the status of those who entered the United States prior to June 3, 1921.[123] But the Bacon bill was the first registry act that specifically referred to those fearing persecution. It was

[121] Ed Campbell to Roger Baldwin, May 5, 1932, Ed Campbell to Baldwin April 30, 1932, Baldwin to Ed Campbell, May 6, 1932, vol. 530, reel 89, ACLU papers

[122] H.R. 14457, January 27, 1933, 72nd Congress, 2nd Session, in INS file 55876/27.

[123] That registry act also stipulated that beneficiaries must have resided continuously in the United States since entry and be of good moral character; moral and residence requirements persisted in adjustment of status legislation in the post WWII era.

precisely for this reason that Robe Carl White came out against it in late March 1933 and tried to persuade President Roosevelt's new labor secretary to do the same; as we shall see in chapter 2, White had been an opponent of refugee relief in the 1920's as well.[124] According to White, "the religious and political refugee clause" was too broad and "throws it open for use" in a way that "would tend to break down the restrictive policy of our government." The provision, according to White, would be used by anyone who had entered in a "surreptitious and irregular manner" and determining who was a refugee "would prove a very difficult administrative problem."[125] Congressman Victor Palmisano (D, MD) introduced another version of the bill that dropped the "bodily harm" requirement and addressed the problem of fraud by including a provision excluding anyone "who withheld from the immigration authorities necessary information concerning his personal history."[126] The ACLU supported the bill, trying to figure out a way to get it to extend relief to anti-fascists; "we've got to use the Russians to help the others," Baldwin wrote Campbell, adding, "this is a job of strategy in which we have to do our outmost to bring both the Colonel [Colonel Daniel MacCormack, Roosevelt's immigration commissioner] and the [House Immigration] Committee into agreeing on a general, rather than specific, form of relief to political refugees."[127] When the bill was finally debated, it was clear that this would be tough. "My principal objection," said Congressman Thomas Jenkins (R, OH), "is to confusing the

[124] Roosevelt's Secretary of Labor Frances Perkins relied on White, a Hoover appointee, to help her clean house when she took control of the notoriously corrupt immigration service from William Doak. Perkins considered White a "knowledgeable and honest" bureaucrat, as did Roger Baldwin of the ACLU, who wrote that White was the "smartest man" on immigration in Hoover's labor department. White thus exerted significant influence over asylum policy into the Roosevelt years. [Kristin Downey, *The Woman Behind the New Deal: The Life of Frances Perkins, FDR's Secretary of Labor and His Moral Conscience* (New York: Random House, 2010) 141; Baldwin to Lucille Milner, April 31, 1932, vol. 530, reel 89, ACLU papers.]

[125] Memorandum for the Secretary, March 27, 1933, by Robe Carl White, INS file 55876/27.

[126] Report No. 1097 to Accompany H.R. 8850, Certificate of Registry to Certain Political and Religious Refugees Living in the United States, 73rd Congress, Second Session, March 28, 1934.

[127] Baldwin to Campbell, March 26, 1934, vol. 697, reel 107, ACLU papers.

question of granting favors to a few hundred Russians whose lives may be at stake with a far reaching question of who might be political or religious refugees… Anybody who might come here surreptitiously might claim that he is a political refugee, and he thereby would come within the provisions of the bill... Let us keep up the bars."[128] The version of the bill finally passed and the implementing regulations issued by the Labor Department insured that anti-fascists would not qualify.[129] In the wake of the bill's passage, rather than join ranks, advocates concerned with those it left out—radicals and Jews fleeing fascism—adopted conflicting strategies.

For those affiliated with International Labor Defense, Colonel MacCormack's endorsement of the Palmisano/Russian Refugee bill in the name of America's traditional support for asylum attested to the hypocritical and limited vision of the Roosevelt administration. During the discussion over the bill, Carol Weiss King told Baldwin "I do not believe that Congress will extend the bill to cover radical groups and my own opinion is that the best thing to do is to have nothing to do with the situation at all unless other groups can be and are included."[130] That same year, writing on behalf of the ILD, King expressed disappointment that the report of the Ellis Island Committee (the group of liberals appointed by Frances Perkins, Roosevelt's Secretary Labor, to suggest ways to improve the administration of immigration laws) did not rewrite the statute on the deportation of radicals to make it less sweeping (i.e., to apply only to those guilty of overt acts of violence in connection with their beliefs and not to opponents of the government

[128] *Congressional Record*, June 4, 1934, 10433-10437. Jenkins remained a staunch restrictionist throughout the 1930s, resisting Roosevelt's later efforts to allow full use of the German and Austrian quotas for refugees, insisting that immigration should be limited to "10 percent of the quotas." [quoted in David Wyman, *Paper Walls: America and the Refugee Crisis, 1938-1941(*Amherst: University of Massachusetts Press, 1968) 47.]

[129] "Concerning the Registry of Aliens Under the Act of June 8, 1934, The Russian Refugee Act," *Interpreter Releases,* Vol. XI, No. 21, July 13, 1934.

[130] Carol King to Baldwin ,March 27, 1934, vol. 697, reel 107, ACLU papers

who observe the country's laws).[131] In June 1934, King wrote an uncompromising right of asylum bill for the newly founded American Committee for the Protection of the Foreign Born [ACPFB].[132] The bill was actually a proposed amendment to the section of the immigration law that barred and expelled immigrants for radical political opinion[133]; King's amendment excepted from exclusion and deportation any alien who is a "refugee for political, religious, or racial reasons," including "any person who is a fugitive…because of economic or religious beliefs or race, and might be subjected to criminal prosecution or summary and arbitrary treatment or social or economic discrimination" if returned to the country of his nativity or of which he is a citizen.

Meanwhile, Baldwin asked New Dealers and Roosevelt administration insiders—U.S. Attorney David Wainhouse, Columbia administrative law professor Walter Gellhorn and his student Harry Rosenfield—to draft an updated ACLU pamphlet on the Right of Asylum (published in 1935) and a legislative bill. The proposed right of asylum bill adopted King's definition of a refugee but excluded "Asiatics" and the physically or mentally diseased from its purview even as it provided that those likely to become a public charge (another long-established excluded class under the immigration law and a provision consuls used to shut out impoverished refugees) and those ineligible for naturalization because of their Communist or pacifist beliefs could qualify as refugees. Qualified refugees were to be admitted on a non-quota basis for five years, at which point, if they were of good moral character and remained in the United States,

[131] Ginger, *Carol Weiss King*, 195.

[132] Letter from Dwight Morgan of the ACPFB to Baldwin, June 14, 1934 and Nov. 24, 1934, enclosing the Right of Asylum Bill written by King, vol. 697, reel 107, ACLU papers.

[133] The law passed in 1918 (40 Stat. 1012) and revised in 1920 (41 Stat. 1008) that provided for the exclusion and expulsion (any time after entry) of anarchists and similar classes, including anyone who advocated, or was affiliated with a group that advocated, the destruction of property, opposition to organized government, or the overthrow of the U.S. government.

they were to be given permanent residency status. Joseph Chamberlain and social worker Cecelia Razovsky of the National Council of Jewish Women opposed the introduction to Congress of this or any other asylum bill for fear that it might rally "anti-alien and anti-communist" Congressmen and jeopardize the passage of a pending bill (the Kerr bill) that relieved families threatened with hardship and separation because one of its members was subject to deportation on a technical charge.[134] New York Congressman Vito Marcantonio first introduced the ACLU/Gellhorn bill in 1935[135] and then New York Congressman Emmanuel Celler introduced it in 1936 and 1937.[136]

Events abroad—including the Spanish Civil War, the Japanese full-scale invasion of China, and the German annexation of Austria—changed the political dynamics and further divided the advocates. In April 1938 a coalition of Jewish and Christian advocacy groups (including the American Jewish Committee, the American Jewish Congress, the Federal Council of Churches, the Hebrew Immigrant Aid Society, the Young Women's Christian Association, and the National Council of Jewish Women) pushed for the postponement of a hearing on the Celler bill, arguing that it might jeopardize public support for President Roosevelt's recently announced international conference at Evian to address German and Austrian refugees. "Public discussion of [asylum] bills...is bound to let loose a flood of bitter…anti-Jewish agitation," they

[134] Draft of asylum bill by Walter Gellhorn and accompanying explanatory memo, May 28, 1935, vol. 774, reel 116; Chamberlain to Baldwin, May 30, 1935; Razovsky to Baldwin, May 31, 1935, vol 117, all in ACLU papers.

[135] H.R. 8384, 74th Congress, 1st Session, June 6, 1935, A Bill to Assure to Certain Aliens Asylum within the United States. The opening paragraph only slightly modified King's original definition. "No alien shall be excluded from admission or deported from the United States of America if such alien is a refugee for political, racial or religious reasons from the country of his origin; if such alien is a fugitive from that country because of his political or religious beliefs or because of his racial origin; or if such alien might be subjected in that country to criminal prosecution or summary or arbitrary treatment, or to social or economic discrimination on account of his political or religious beliefs or because of his racial origin." [A copy of this bill is in Box 13, Folder 74th Congress: 1935-1936, American Committee for the Protection of the Foreign Born Records, Special Collections Library, Labadie Collection, University of Michigan, Ann Arbor].

[136] The version introduced on June 23, 1937 was H.R. 7640, A Bill to assure to certain aliens asylum within the United States, vol. 1087-88, reel 157, ACLU papers.

argued.[137] The American Committee for the Protection of the Foreign Born, on the other hand, thought the Evian conference was diversionary; when a left-leaning French organization dedicated to asylum for anti-fascists solicited support for a delegation to Evian, ACPFB secretary Dwight Morgan replied:

> We fully appreciate the importance of [your] work…and would certainly contribute if we could. However, this committee, which has very limited resources, is heavily burdened with the defense of anti-Nazis and other refugees now in the United States whose status is not clear and who are facing deportation under the present immigration laws of this country. One might suppose that the US, in taking the initiative in calling the conference, has adopted a liberal attitude toward refugees who have entered this country without the proper immigration visas, etc. Such is not the case. The attitude of the immigration service in this country concerning the cases of refugees facing deportation is not a liberal one and this committee is constantly occupied with taking such cases into court and fighting for asylum for those who are at present in this country.[138]

The ACPFB spent the mid 1930s, as detailed in chapter 4, trying to prevent the deportation of German seamen and radicals, and the end of the decade trying to make sure that some longstanding residents who had gone to fight in the International Brigade in Spain were not shut out from the U.S. upon return.[139] By 1938, too, Gellhorn was ambivalent about the "Asiatic" exclusion in Celler's bill. He wrote Dwight Morgan, "personally I question whether this provision should be retained. Whatever may be the national policy in respect to barring Asiatics, I do not favor or approve differentiating the treatment accorded various nationalities in the

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[137] April 6, 1930 letter from Read Lewis, on behalf of a coalition of organizations, to Congressman Samuel Dickstein, chairman of the House Committee on Immigration and Naturalization, vol. 1087-88, reel 157, ACLU papers.

[138] Letter from Morgan to International Bureau for Respect of Right of Asylum and Aid to Political Refugees [*Bureau International Pour Le Respect Du Droit D'Asile Et L'Aide Aux Réfugiés Polititiques*], July 26, 1938, Box 19, ACPFB Records, Special Collections Library, Labadie Collection. This French organization was founded in the wake of a 1936 conference on the right of asylum in Paris, sponsored by a coalition of left leaning and communist-party affiliated organizations (like the International Juridical Association, the International Labor Defense of France, and the General Union of Trabajores), with the aims of helping anti-fascists refugees regularize their status and gain the right to work and relief. [See flyer for the conference in vol. 902, reel 133, ACLU papers].

[139] Among the ACPFB clients ordered excluded upon their return from Spain in 1938 were Mirko Markovich, Herman Kolping, Steve Tsermegas, Felix Kusman, Henry Albertini, and Paul List. ["America is Their Home" pamphlet in the case file for Paul List, Box 40, ACPFB files].

present connection." Gellhorn also worried about a provision of the bill making deportable any refugee who entered illegally. "When they flee from their home countries, some of them may filter into the United States without complying with formalities," he wrote.[140] With imperfect asylum legislation stalled, Borghi languished in an insecure status.

Another refuge-seeker who similarly fell through the cracks was H.T. Tsiang, a Chinese writer. Tsiang arrived in the United States the same year as Borghi. Tsiang too fled political repression—he was arrested as a young man for his anti-government activism; later, having worked as an aide to Sun Yat-sen's secretary and for another left-leaning Kuomintang official, Liao Zhongkai, who was assassinated, Tsiang feared purges by the increasingly powerful right wing of the KMT.[141] Like Borghi, Tsiang arrived in the United States on a temporary visa; Tsiang enrolled as a graduate student at Stanford in 1926. (Under the exclusion laws then in force, Chinese people who could not claim derivative citizenship could not enter the United States unless they were coming temporarily as merchants, teachers or students.) Tsiang worked briefly at the KMT daily Young China and then, frustrated by its conservativism, left to edit an independent weekly periodical Chinese Guide in America, led rallies against Chiang Kai-shek's persecution of party radicals, and handed out leaflets critical of the KMT. Like Borghi, Tsiang was arrested by the immigration service in 1927 on two charges, one political and one technical. When the International Labor Defense took up his case, the immigration service dropped the argument that Tsiang was deportable as a communist, but insisted that he was deportable for

[140] Letter from Gellhorn to Morgan April 6, 1938, vol. 1087-88, reel 157, ACLU papers.

[141] Floyd Cheung, "H.T. Tsiang: Literary Innovator and Activist," *Asian American Literature: Discourse and Pedagogies* 2(2011) 57-76.

abandoning his student status.[142] A federal court judge disagreed, pointing to Tsiang's "consistent and uncontroverted history of constant attempts to continue" his studies.[143]

Soon after, Tsiang left for New York, where he enrolled at Columbia University in the summer of 1928, at NYU in 1930, and at the New School in 1932. Tsiang got involved with the literary left, publishing protest poems in the *New Masses* and *Daily Worker*, and self-publishing his first novel, *China Red*, in 1931. The novel is epistolary, but it only includes the letters written to a Chinese student in America (a fictionalized version of Tsiang) from his girlfriend in China, not the letters from him to her—formally capturing Tsiang's shadowy presence in the U.S., the supposed asylum for mankind. As Tsiang prefaces his 1935 masterpiece *The Hanging on Union Square,* "What is unsaid/ Says,/And says more/Than what is said/Says I." What *China Red* conveys through the girlfriend's letters is Tsiang's critique of hollow American liberalism; it is a kind of novelistic version of the communist strategy of "boring from within." Though Tsiang is quite an original writer hard to situate within a tradition, it is fruitful to consider China Red in relationship with other fictions that forefront exiles and letters—the epistolary stories of Vladimir Nabokov and Edwidge Danticat, for example—to emphasize insufficient refuge. In one section of the novel, the girlfriend encloses invented letters from the student's dead mother and grandmother in order to try to influence the student's political activities; this is a send-up of the political use of family letters to try to control the movement of exiles and defectors, an important

[142] The original warrant of deportation, issued May 5 1927, accused Tsiang of failing to maintain the status of a student and for being "an alien who writes, publishes…or who knowingly circulates, distributes, prints, publishes…material advising…the overthrow by force or violence of the Government of the United States or of all forms of law." Even when the government officially dropped the latter as a ground of deportation, it connected Tsiang's political activity with the former ground of deportation. Tsiang was ordered deported on Dec. 17 1927 because he "remained in the United States for the purpose of aiding radical and Bolshevistic-inclined factions in this country, rather than attend school." [Defendant's Pretrial Memorandum, *Tsiang Hsi Tseng v. Albert Del Guercio*, Civil No. 19291, Records of the U.S. District Court for the Central District of California in Los Angeles, RG 21, NARA Riverside.] For the ILD's work on Tsiang's behalf see the organization's 1929 list of "Deportation Cases," vol. 360, reel 63, ACLU papers.

[143] *Ex Parte Tsiang Hsi Tseng*, No. 19650, Northern District of California, S.D., 24 F.2d 213, 1928.

theme in chapters 4 and 5. Letters from home did not sway the fictional student but he did return to China—as a deportee of the American government—and was executed by the KMT. If this ending of *China Red* was Tsiang's attempt to make a tragedy of the farce that was his own 1928 deportation proceeding, had he waited a decade to write the novel, he would have more material to draw upon. In 1937 the immigration service again sought out Tsiang for his failure to attend school and demanded that he "communicate monthly" with the INS office. Tsiang didn't write "and when confronted with the fact of his failure, he stated that it was up to the school to write, whereas he was not in attendance at any school."[144]

Tsiang did write many letters—to acquaintances, politicians, writers, and lawyers—when he spent several months at Ellis Island between the fall of 1939 and the spring of 1941. Detained in September 1939 for not maintaining his student status, Tsiang claimed that condemnation of Japanese aggression in his recent novel *And China Has Hands* (1937) would put him in danger if he was returned to occupied China. In the spring of 1940, Anita Block, Tsiang's drama teacher at the New School, and Ira Gollobin, a lawyer who handled many cases involving Asian students and sailors for the American Committee for the Protection of the Foreign Born, claimed Tsiang had not resumed his studies for health reasons and got him released from Ellis Island and a six-month stay. Though Tsiang began attending the New School again on a scholarship in the fall of 1940, he was detained at Ellis Island for deportation in November. Gollobin sued out a writ of habeas corpus to get the immigration service to reconsider the case, but the service, which by now had moved from the Labor to the Justice Department, would not budge. When the federal district court judge dismissed the writ in February 1941, Gollobin appealed Tsiang's case to the Circuit Court. When that appeal was dismissed the spring, Tsiang's deportation was delayed by

[144] Quoted in Defendant's Reply Brief, *Tsiang Hsi Tseng v. Albert Del Guercio*, Civil No. 19291, Records of the U.S. District Court for the Central District of California in Los Angeles, RG 21, NARA Riverside.

the introduction of a private bill on his behalf by Congresswoman Jeanette Rankin. When a reporter from *P.M*. visited him at Ellis Island in the summer of 1941, Tsiang gave him a poem: "Three meals a day and a bed at night/...But the locked door, guard and matron,/ Yes, my boy, you are in prison/...How long are you going to stay?/ Some tell you this, some tell you that,/ Wait, wait, and your hair turns grey./…I smoke, I read and I write./ My first vacation in ten years, a delight."[145] Tsiang's letters from this period are mostly appeals for help, though even these contain barbs of protest. (This strategy is similar to one Tsiang perfected as a self-publishing author: he used letters of rejection or criticisms of his books as blurbs to promote them.[146]) Tsiang wrote New York Congressman Vito Marcantonio, for example, that the Attorney General "is wasting U.S. money and time for nothing. He is known as the one who boasts of catching small fly [sic]. But now, in my case, he is further exposing himself as merely a jackass who does not know who is the friend and who is the enemy."[147]

Tsiang also sent Marcantonio a 73-page manuscript of poems entitled "Deportation" that he composed while at Ellis Island. The poems can stand on their own, but also must be read as part of Tsiang's mode of appeal for support—he wanted to make his case seem urgent, but not hopeless. Tsiang had earlier sent two of the poems to Jerome Britchey of the ACLU when he felt he could "no longer cheer" Gollobin up and wanted to rally others to his cause, especially given his strong ties to the literary left and the Chinese American community; "I have been in New York twelve years," Tsiang wrote, "and through my work I had the opportunity of knowing

[145] This poem was published in PM on August 8, 1941. The clipping, along with information about Gollobin's defense and Rankin's bill, is in Tsiang's ACPFB case file, Box 49, ACPFB collection, Labadie.

[146] See the rejection blurbs from publishers at the beginning of *The Hanging On Union Square* (1935). At the end of this book, Tsiang also published "Comments on *China Red*," many of which are only partly favorable.

[147] Tsiang to Marcantonio, June 12, 1941, Box 46, Folder: American Committee for the Protection of the Foreign Born, Vito Marcantonio papers, MssCol 1871, Manuscripts and Archives Division, The New York Public Library.

many people."[148] To Marcantonio, Tsiang wrote, the poems were "for your information about immigration matters in general and some part is for your amusement rather."[149]

The manuscript is divided into two sections, "Isle of Tears" and "Kingdom of Pear," the first which refers to Ellis Island, and the second which refers to heaven or youth (a pear is a symbol of immortality, since pear trees live a long time; in Chinese culture, pears are also associated with purity, generosity, justice, benevolent administration, prosperity, and good fortune, all of which play into Tsiang's poems).[150] But Tsiang emphasizes the connection between the two sites (Isle and Kingdom) as much as the contrast, and both seem to stand for America. Tsiang explains the significance of the two parts in the "introduction" that precedes them:

Through the aid of friends
And mercy of the King,
Jailed in Winter
I was freed in Spring.

Old man, Time
Are you fair?
Forever, you put me out of
The Kingdom of Pear.

The Isle of Tears section contains a group of "social significance" poems describing cruelty and tragedy at Ellis Island (including the gruesome suicide of an excluded German Jew and the "brutal" treatment of a Chinese woman by immigration officials), and two poems that refer derisively to the Statue of Liberty. But it also includes a group of juvenile poems and other

[148] Letter from Tsiang to Jerome Britchey, February 27, 1940, enclosing two poems, vol. 2172, reel 181, ACLU papers.

[149] Tsiang to Marcantonio, June 12, 1941, Box 46, Folder: American Committee for the Protection of the Foreign Born, Vito Marcantonio papers, MssCol 1871, Manuscripts and Archives Division, The New York Public Library.

[150] The manuscript of poems is enclosed in box 46, Folder: American Committee for the Protection of the Foreign Born, Vito Marcantonio papers, MssCol 1871, Manuscripts and Archives Division, The New York Public Library. All poems below come from this manuscript.

lyrical and colloquial poems conveying a mix of sorrow and joy, hope and despair. The Kingdom of Pear section is invested with a sense of both love and loss. It is a Chinese taboo to divide a pear among friends as the word fen li (sharing a pear) is pronounced the same way as separation. Tsiang translates this idea into English in the opening poem of the Kingdom of Pear section:

Many many thanks for your pear. But look here:
  Pear, the word, is spelled a bit like tear.

Your Walter is wild—as a wild cat.
  Your Pauline is a pretty apple—so good to look at.

And your Alice is music, is a song:
  She makes me write all day long.

Many thanks for your pear. But listen here:
  Is it a pear? Is it a tear?

The poems in this section describe the speaker's observations of and encounters with Walter, Pauline, and Alice for two weeks while at Ellis Island. The style is a cross between Gertrude Stein's *Three Lives* and Langston Hughes's Semple stories. Though one poem reminds us, "A jail is jail, it can't be heaven," when spending time with the three youngsters the speaker is prolific, "I catch the ghost; I put it in black and white." The speaker/writer also reenacts a Chinese folktale about a pear seed. In the folktale a poor man jailed for stealing a pear out of hunger eats the fruit but saves the seed and then claims it would yield pears of gold to a person who never cheated or lied. Saying that it was no use to him as a common thief, the poor convict offers the seed to the emperor, high officials, wardens and guards, but no one accepts it because none have a clear conscience; in the process, they come to see the injustice of imprisoning the poor man and set him free.[151] In Tsiang's version, the jailed speaker considers whether to eat or save a pear "for some other day/when Isle of Tears will be as dry as a dried fruit,/ Let this pear

[151] Robert Wyndham, "The Marvelous Pear Seed," in *Tales People Tell in China* (New York: Julian Messner, 1971).

smile, laugh, and then salute." But the speaker gets mad and eats the pear, only to feel "sorry for the past" and to resolve to salvage its core. Later, when he is transferred to a new cell, forgets the core, and wants to retrieve it, he tells the guard and "guard tells the guard-king," but all they do is "sneer." This seems to hint at the speaker's desire to hold on to a positive image of America and its promise of freedom, only to have it denied. Later, Alice and Pauline give him a pear for sticking to his convictions as a writer and refusing to conform. The last lines are: "Who said 'Pear is a tear!' I say no--/What a nice vacation, Ha, ha, ha!/I'm one book richer, Rah, rah, rah!" These last lines make sense in the context of a note Tsiang appended to the *The Hanging on Union Square*, explaining that he wrote his novels in a few weeks but then spent years raising money to print and distribute them, and the observation of an immigration inspector that Tsiang was "underweight and undernourished in November 1938, having spent his money to publish books."[152] For Tsiang, Ellis Island was both a jail and a vacation. But, once freed, he was still not really let in to America. One poem from the first section captures a sense of what Tsiang could not have:

Something

Back again, looking for something—
  Looking for winter? Looking for spring?
Hat lost, shoes missing,—no harm done—
  Forget the old, buy a newer one.

If, that missed something is really something—
  By all means, find it, either in winter or spring!

Since I have missed that—my something—
  I mind not winter, mind not spring.

Again, as we shall see, had Tsiang waited a decade to write this poem, he would have more material to draw upon.

[152] Quoted in Defendant's Reply Brief, *Tsiang Hsi Tseng v. Albert Del Guercio*, Civil No. 19291, Records of the U.S. District Court for the Central District of California in Los Angeles, RG 21, NARA Riverside.

Tsiang's stay at Ellis Island overlapped with Borghi's. Borghi was arrested on November 30, 1940, after Arthur Hays advised him to register as required by the Smith Act. Borghi was troubled to have to share his cell with fascists, particularly a wealthy man who nonetheless received a charity basket from Italian nuns and a group of Italian sailors who had engaged in sabotage on lend-lease ships. He fared better when he was in the infirmary, looked over by a doctor who knew who he was and sympathized with his views. After four months, Borghi was released when Gaetano Salvemini and Walter Toscanini guaranteed that he was not an agent of Mussolini and Hays put up a large bail. "All this was absurd, inexplicable," Borghi later wrote in his memoirs. "I could never defend myself because I was not accused of anything, I was not questioned by anyone…I had registered with many illegal immigrants who were never disturbed."[153] Once released, Borghi threw himself into public anti-fascist activity. In 1944, with Mussolini defeated, Borghi was ready to return to Italy and requested that the order of deportation against him be put into effect; the government turned down his request. Borghi was able to return to Italy the following year. Looking back on his time in America a few years later, Borghi wrote:

> There is no doubt that the American [immigration] law against anarchists was absurd, and if it had been applied to me, inhuman. But the practice was humane…Why not recognize that a difference existed between a country ruled by laws and savage practices, such as Fascist Italy, and a country governed by absurd law but in practice civilized? Why should I not be grateful for the hospitality that this country after all, and even through tragic vicissitudes, had not denied me for so many years. After all, in America I have been able to live; in Italy I would have been killed. It is a certain difference.[154]

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[153] Armando Borghi, *Mezzo Secolo Di Anarchia* (Napoli: Edzioni Scientifiche Italiane, 1954), 361 [translation mine].

[154] Armando Borghi, *Mezzo Secolo Di Anarchia*, 348. To be clear, some Italian leftists in illegal status had a different impression. Ezio Taddei, an anarchist and writer who arrived as a stowaway in 1938 and who gravitated toward the Communist party while in the US, was offered a chance to regularize his status at the end of the war but opted to return to Italy. When an immigration officer insisted on the difference between American freedom and Italian fascism, Taddei denied it. Here is his account of the exchange:
" 'I can't understand your decision…You are giving up America!...Listen to me: in Italy, who was in charge before? Who was the boss, Mussolini or the people?'
'Mussolini,' I said…

For Tsiang, who wanted to remain in the United States rather than return to China in the late 1940s, the absurdity of the immigration law remained uppermost. One major problem was that though the immigration service technically dropped the charge that Tsiang was deportable for his political views, the charge continued to influence discretionary decisions by immigration officials handling his case. It also affected the way the ACLU handled his case. Although Roger Baldwin appealed to the Department of Labor on Tsiang's behalf in early 1940, by December of that year the ACLU's board of directors voted "not to take any action in the Tsiang deportation case" since it seemed "to involve no civil liberties issues," but just technical immigration status violations.[155] After he was released from Ellis Island in 1941, though Rankin's private bill was not enacted, Tsiang was not re-arrested for the duration of the war. As I discuss in chapter 5, this was in line with the government's general policy on stranded Chinese students who could not return home. In the spring of 1946 Tsiang requested that his case be reopened and the deportation order vacated. The immigration service refused and another private bill was introduced on Tsiang's behalf to delay his deportation. This process repeated one more time and it was not until the end of the decade that new hearings were held to determine if Tsiang was eligible for suspension of deportation.

The same 1940 law (the Smith Act) that required aliens to register also included a provision giving the Attorney General discretion to suspend deportation in meritorious cases. [In 1940, the immigration service was transferred from the Department of Labor to the Department

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'Now, listen carefully. Here in America who is in charge: the government or the people?'
'The government.'
'No! think about it…'"
(Taddei, *Ho rinunciato all liberta* (Milano: Le edizioni sociali, 1950) 5-7, translated in Martino Marazzi and Ann Goldstein, *Voices of Italian America: A History of Early Italian American Literature with a Critical Anthology* (New York: Fordham University Press, 2012)).

[155] Baldwin to Houghteling, March 10, 1940; Minutes of the meeting of the Board of Directors, December 2, 1940, vol. 2172, reel 181, ACLU papers.

of Justice]. At the time of the law's passage, it was limited to those who were racially admissible and eligible for citizenship and who could prove that deportation would result in serious economic harm to citizen or legally resident family members; those excludable on political grounds were not eligible.[156] So, Tsiang was ineligible as an unmarried Chinese man, even if he was no longer deemed ineligible as a communist. In 1948, the provision was amended, eliminating the racial bar and the family requirement, and mandating only that an applicant for suspension of deportation prove good moral character for the previous seven years.[157] Tsiang was by this time living in Los Angeles, home of the ACLU's most radical regional affiliate, whose attorneys refused to adhere to the mandate of the organization's board to turn the ACLU into a partner of the U.S. government in its the fight against communism.[158] Leo Gallagher, an attorney affiliated with the Southern California ACLU, represented Tsiang at a series of 1950 hearings attesting to his eligibility for suspension. Though the hearing inspector found Tsiang eligible, an assistant commissioner who reviewed his case denied Tsiang suspension, considering him unworthy of discretionary relief in January 1952. The implication of the denial was that Tsiang did not merit discretionary relief because he deliberately flouted the immigration laws, complying with none of the rules governing the stay of students in the United States and merely using student status to illegally stay in the country and eventually attain permanent residence. When, in 1955, though he had been in the United States for thirty years, Tsiang was summoned

[156] See title II, section C of 54 Stat. 670.

[157] Public law 863, 80th Congress, is analyzed in *Interpreter Releases*, vol. XXV, No. 32, July 1, 1948 and No. 36, July 20, 1948.

[158] Special Meeting of the Alien Civil Rights Committee, July 27, 1950, folder 30, Box 77 and response from from A.A. Heist, executive director Southern California ACLU, August 2, 1950, folder 31, Box 77, Organizational Matters, Board Committees, 1941-1990, ACLU papers. For the politics of the national ACLU and its affiliates in this period Judy Kutulas, *The American Civil Liberties Union and the Making of Modern Liberalism, 1930-1960* (Chapel Hill: University of North Carolina Press, 2006). Kutulas notes that Leo Gallagher and Arthur Wirin were criticized by ACLU board members for their radicalism and communist sympathies.

to surrender for deportation, SCACLU-affiliated attorneys Arthur Wirin and Stanley Fleishman thought his case was worth fighting. Fleishman believed Tsiang had been denied relief "because the Service did not like some of his past political activities and writings" and asked the Washington office of the ACLU to appeal the Justice department's determination. Herbert Monte Levy, ACLU staff counsel in Washington, refused to take up the case; Levy claimed he had lost a similar case in 1953. Even if it could be proven that the government was engaged in a campaign of continued harassment against Tsiang, Levy wrote, that would not be a sufficient legal defense against deportation.[159]

Wirin and Fleishman, working pro bono, decided to fight for Tsiang's right to stay through the federal court in Los Angeles. Their primary argument was that the commissioner's denial of Tsiang's suspension of deportation—on the grounds that Tsiang was never a student in good faith and because his presence was not in the "best interests of this country"—was biased and discriminatory, violating Tsiang's due process right to a fair hearing and his first amendment right to free speech. "The effect of denying suspension to an alien for what he may have said some twenty-eight years earlier not only constitutes a prior restraint on speech, but fails to allow for political rehabilitation (assuming such be deemed necessary) during the intervening period." They also made an argument regarding the logistics and the danger of deportation, an argument that, as we shall see in chapters 4 and 5, was gaining increased traction in cases involving Chinese seamen and students in the 1950s. Tsiang's attorneys argued that, given its lack of diplomatic relations with the People's Republic of China, the U.S. had not gained China's assurance that it would accept Tsiang and that Tsiang had no passport authorizing his entrance into China. If the U.S. deported him as it planned, Tsiang might be stranded indefinitely in (British) Hong Kong, "a Philip Nolan [the protagonist in Edward Everett Hale's famous story

[159] Levy to Fleishman, January 3, 1956, folder 8, box 833, Series 3: Subject Files, reel 95, ACLU Archives.

"The Man Without a Country"]…illegal in any land into which he might set foot," or "thrust across the International bridge" to mainland China to "almost certainly be faced with physical persecution." "It seems evident," they argued, that "having resided some thirty years in the United States and finding himself in Communist China without papers" Tsiang "would understandably be viewed with suspicion." "An overstay of a student's permit should not be punished with physical persecution," Fleishman concluded.[160] In response, the U.S. Attorney said that the government would not attempt to deport Tsiang without first securing him a travel document. The U.S. Attorney defended the discretionary power of justice department officials to deny Tsiang's suspension of deportation, quoting the decision in *U.S. ex. rel. Kaloudis v. Shaughnessy* (180 F.2d 489, 1950), a seaman case discussed in chapter 4: "The power of the attorney general to suspend deportation is a dispensing power…It is a matter of grace, over which the courts have no review."[161] The judge hearing Tsiang's case agreed, and also accepted the assurance of the government regarding deportation to China. Thus Tsiang was left in limbo, put out of the Kingdom of Pear. Tsiang's career in the 1950s and 1960s—as a Hollywood actor playing stereotypical roles in movies and television and starring in his own one-man production of Hamlet—has baffled critics; perhaps it is best to consider it in the context of a repeated pattern of arrest and reprieve, a constant dialectic of harshness and kindness, that characterized his experience of refuge in America.[162]

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[160] Plaintiff's Brief In Lieu of Oral Argument and Plaintiff's Closing Brief in Lieu of Oral Argument, *Tsiang Hsi Tseng v. Albert Del Guercio*, Civil No. 19291, Records of the U.S. District Court for the Central District of California in Los Angeles, RG 21, NARA Riverside

[161] Defendant's Reply Brief, *Tsiang Hsi Tseng v. Albert Del Guercio*, Civil No. 19291, Records of the U.S. District Court for the Central District of California in Los Angeles, RG 21, NARA Riverside.

[162] In one of the poems in the "Deportation" cycle, Tsiang writes "Memory is such an everlasting chain,/Why must I remember the bitter, not the sweet!/ I keep myself busy to wash off all the disdain—/But waking hour is ghost's feast and a ghosts's treat."

It was precisely this dialectic that Edith Lowenstein, a young attorney, encountered in her work handling immigration cases in the 1950s. The problem, Lowenstein came to believe, was partly a product of the fact that religious and ethnic organizations represented constituents at immigration service deportation hearings but did not challenge adverse administrative rulings in court. Even if courts remained deferential to discretion, the threat of court challenge could help protect the rights of aliens.[163] As we shall see in chapter 4, Lowenstein became particularly interested in the administration of section 243(h) of 1952 immigration law granting the attorney general the power to withhold deportation when "in his opinion" the deportee would be subject to physical persecution in his home country.[164] This provision gave the attorney general the keys to the kingdom. Where did this leave the right of asylum?

Lowenstein was herself an asylee. Born into a middle class German Jewish family in 1910, Lowenstein studied sociology, economics and law at the University of Heidelberg, completing her doctoral thesis on comparative corporate law in 1933. She arrived in New York on a student visa in 1934 and studied at the University of Chicago Law School, where she did research on comparative labor law. Lowenstein's parents joined her in the United States in 1936, though her father died soon afterwards. Upon graduation in 1939, Lowenstein moved to Washington D.C., where she worked as a lawyer in the Justice Department; during the war, she worked in a special division that prosecuted foreign agents and afterwards transferred to the alien property litigation division. Through the 1940s, Lowenstein did not interest herself in immigration issues. But two translation projects during these years influenced her later approach

[163] Memoranda from Reed Lewis to David Freeman in 1954 and early 1955 detailing and justifying Lowenstein's legal defense of alien rights, Common Council for American Unity; 1954-1959; Fund for the Republic Records, Box 58, Folder 2-3; Public Policy Papers, Department of Rare Books and Special Collections, Princeton University Library.

[164] 132 66 Stat. 214 1952.

to the status of refuge-seekers. The first was her participation in the translation of exiled political theorist Ernst Fraenkel's *The Dual State*, a treatise on governmental arbitrariness and expansion of discretionary executive power under National Socialism.[165] Just as Borghi's writings on Mussolini in Italy made him keenly aware of the comparisons and contrasts between law on the books and law as practiced in the United States and Italy, so too Lowenstein used her knowledge of the workings of the fascist state to make intellectually sound analogies between Nazism and Communism when defending clients threatened with deportation to Hungary and Yugoslavia. [166] But *The Dual State* was not only about Nazism, but its opposite: the role of law in creating a social *Rechtsstaat* that ensured fairness of social relations and guarded its weakest members against economic exploitation. Fraenkel argued, from his own experience as a labor lawyer, that workers believed the legal system could help bring about social justice.[167] Lowenstein adopted this conviction in taking to court the cases of Yugoslav seamen faced with deportation, convinced that she could gain justice for them despite the daunting odds detailed in chapter 4.

While she was working at Justice, Lowenstein was asked to translate a selection by 19th century German jurist Rudolf von Ihering for Felix and Morris Cohen's *Readings on*

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[165] Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship*, translated from the German by E. A. Shils, in collaboration with Edith Lowenstein and Klaus Knorr (New York: Oxford University Press, 1941).

[166] Lowenstein prepared a brief defending a Hungarian refugee who had been paroled into the United States in 1956 but was threatened with deportation for having been a member of the Communist Party of Hungary from 1948-1949. Lowenstein defense relied on the fact that the refugee's membership was involuntary. "The analogy," Lowenstein explained, "is that involuntary membership in a dictatorship-dominated and governed country is not necessarily the result of an outspoken threat. The threat may be implicit. In the case of my client, his immediate superior was under criminal investigation for an offense against the state." [Letter from Lowenstein to Magdalena, Nov. 13, 1958, Folder: Confidential Information, Box 14, Interpreter Releases Records, General/Multiethnic Collection, Immigration History Research Center, University of Minnesota.] The case Lowenstein was working on was *United States of America ex rel. Gyula Paktorovics, Relator-Appellant, v. John L. Murff*, 260 F.2d 610, 1958.

[167] William Scheuerman, "Social Democracy and the Rule of Law: The Legacy of Ernst Fraenkel," in *From Liberal Democracy to Fascism: Legal and Political Thought in the Weimar Republic*. eds. Peter C. Caldwell and William F. Scheuerman (Boston: Humanities Press, 2000) 74-105.

Jurisprudence and Legal Philosophy. The excerpt, "In the Heaven of Legal Concepts," is the story of a law professor who falls asleep and dreams he has ascended to a paradise equipped with a hair-splitting machine, a legal fiction machine, and a path of dialectic deduction. Von Ihering mocks the worship of legal abstractions removed from the real world and lawyers who do not consider the practical consequences of their legal principles.[168] Though known among fellow immigration attorneys as scholarly and "highly intellectual," as soon as Lowenstein embarked on her career as an immigration specialist in the early 1950s, she began planning a study that would illuminate the impact of the immigration law on "aliens already here," providing "factual data in a field not lacking abstract discussion of the law."[169] Lowenstein's analysis of hundreds of immigration cases, which was published in 1957, avoided a whiggish view, showing that the 1952 immigration law shared many features with its predecessors and created many more problem cases than it resolved. The study was organized based on what clients experienced (what they wanted to do and avoid, rather than what they were designated) and their conflicts with the immigration authorities. Lowenstein wanted "to let the cases speak for themselves" and "bear eloquent witness…to the need for a humanitarian approach to deportation."[170] In the years to come, Lowenstein never approached the right of asylum as an abstraction, but as a secure status to be achieved in the real America.

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[168] *Readings in Jurisprudence and Legal Philosophy*, vol. II (New York: Little, Brown & Company, 1951) 678-689.

[169] Author interviews with Leon Rosen and James Orlow (about Lowenstein); Edith Lowenstein, *The Alien and the Immigration Law: A Study of 1446 Cases Arising Under the Immigration and Naturalization Laws of the United States* (New York: Common Council for American Unity/Oceana Publications, 1958) vii.

[170] Edith Lowenstein, *The Alien and the Immigration Law: A Study of 1446 Cases Arising Under the Immigration and Naturalization Laws of the United States* (New York: Common Council for American Unity/Oceana Publications, 1958) ix, 28

Part I: Persecution of Individuals and Groups

While historians have discussed the anti-Chinese and anti-pauper origins of federal immigration restriction, exclusions against convicts have been less explored. Chapter 2 argues that the political exception to the anti-convict provision in the immigration law helped carve out the distinction between unwanted criminal immigrants and individual political exiles. This distinction continued to be important as the century moved on, but was affected by the categorization of immigrants primarily by group (national origin or race) and by the increasing influence of national security concerns on immigration policy, processes that really began during WWI and continued into the post-WWII period. The distinction was imported into international refugee law when the International Refugee Organization and then the United Nations Convention on the Status of Refugees barred from refugee status "ordinary criminals extraditable by treaty," war criminals, and those who assisted in persecuting others. The distinction between criminal and refugee remained contentious after the passage of the 1980 Refugee Act as was clear in the handling of Cuban Marielitos. Concern remains over granting refugee status to Muslim men for fear of their ties to terrorist organizations and to men with gang ties from Central America. Because immigration violations themselves are criminalized, whether such violations taint refugee claims remains a live issue as well.

World War I marked a turning point when refugees began to be associated less with "political offenders" or "fugitives" and more with targeted ethnic groups fleeing violence. The targeting of groups both overseas and by nativists in the United States, led advocates to think in terms of group protections, such as an exemption from exclusion for those fleeing religious persecution. That definitions of religious persecution could not account for individual variety within the Armenian and Jewish experience is apparent in immigration case files from the early

1920s. This tension remains, perhaps, the key issue in asylum adjudications today that depend on individual determinations as to membership in a social group. Another parallel between past and present is clear. As race and restriction came to dominate immigration policy, gender and family ties became ever more important mediating factors. Women were specially treated, as refugees and as dependents.

The advocates for political and religious refugees in these two chapters also grappled with the problem of proof. As Hourwich complained about one of his anti-extradition cases: "To establish the political nature of the crimes, it was necessary to prove that a revolution had taken place in Russia…establishing this occurrence on the basis of the American theory of formal proof is not as simple as it seems…Kindly produce the original proceedings of a revolutionary congress, the participants of which either have been executed or are in hiding!...Historical events can be established through their representation in historical works by authoritative historians…The defense presented a book…and had to prove the author as a scholarly authority."[1] Max Kohler similarly complained about proving religious persecution: "except through the application of the principle of taking judicial notice of the facts, it is very difficult to prove these facts in a court of law. Many incidents are often involved, occurring in distant places, and to many third parties, many of which may not be within the personal knowledge of the alien fleeing from religious persecution. It is very difficult also to secure corroborative witnesses so far away, having personal knowledge of the facts."[2]

Beyond the issue of evidentiary standards, both Hourwich and Kohler grappled with problems of translation. Hourwich argued that the depositions submitted by the Russian

[1] I. Gurvich (Isaac Aaronovich Hourwich), "Delo Purena," *Russko-amerikanskii rabochii* [Russian-American Worker] September 1908.

[2] Respondent's Brief, 28-29, *Tod v. Waldman,* 266 U.S. 113 (1924). U.S. Supreme Court Records and Briefs, 1832-1978. Gale, Cengage Learning. DW104758558.

government were officially translated in such a way as to obscure the political situation and abuse of power on the ground in Russia. Hourwich did not think that the Russian consul, who was intent on extradition and was an interested party, should have the power to certify translations of evidence. Kohler found problematic that refugees could be excluded "if the Government [i.e. INS] interpreter made any error in interpretation or formulation." Both Hourwich and Kohler turned to Profesor John Wigmore, Dean of Northwestern University Law School and the preeminent authority on evidence, for support, but the problems of translation in asylum cases seemed intractable.[3]

In one of Hourwich's cases, too, translation was related to credibility. A Commissioner decided that one man was a criminal rather than a refugee because a translated deposition about him presented by the prosecution seemed to ring more true than his own oral testimony. "The story of Rudowitz," the commissioner wrote, "with all the opportunity of the witness stand, lacks substance and verisimilitude; whereas that of Leshinsky, confined to a short disposition, taken in the Lettish language, translated into Russian and again into English, is rich in both qualities." These are the same problems advocates and asylum seekers face today.[4]

[3] Opinion of John H. Wigmore, included as Appendix II in *The Case of Jan Janoff Pouren* (New York: Royal Stationary Co, 1909). Letter from Kohler to Wigmore, March 29, 1933, Box 2, Papers of Max Kohler, American Jewish Historical Society, Center for Jewish History, NY). Kohler wrote to Wigmore: "I was deeply interested in what you say [in Wigmore's new edition of *Principles of Judicial Proof*] about errors in interpretation from a foreign language, a matter that I have had extensive experience with [in immigration cases]... A most extraordinary blunder in this connection arose in *Tod v Waldman* [a case involving a persecution claim], which I took up in my brief in the US Supreme court and I was much disappointed that the court ignored that point."

[4] Decision by Commissioner Mark Foote, 16649/26, RG 59, Numerical and Minor Files of the Department of State, 1906-1910, Microfilm M862, reel 969, NARA.

Chapter 2: Extradition, Immigration, and the Contours of American Political Asylum, 1875-1920

> "There is abundant evidence that the 'cause' of the American Revolution, as Paine put it in *Common Sense*, ceased long ago to be 'the cause of all mankind.' Unless, that is, we choose to regard the continuing desire of millions of people to immigrate to the United States from all quarters of the world as a kind of uncelebrated revolution in slow motion. Critics often forget that America has been less a refuge for the privileged orders than for peasants, artisans, and dissidents of various kinds who have often translated hope for a better world into flight to a promised land…American responses to foreign revolutions…[are] grounded in the social history of particular groups, factions, classes, and political ecologies but also illuminated by an intellectual history that discovers long-term continuities, traditions, reenactments, and symbolic meanings…Foreign revolutions could play a crucial role in redefining the sources and nature of evil; in constricting or extending America's concepts of equality; and in changing the meaning of America's own revolutionary tradition…Even misunderstanding [of foreign revolutions] has broadened accepted notions of desirable change… Foreign revolutions have helped Americans to tune or adjust the inevitable tension between changing ideals of perfection and present reality."
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> David Brion Davis, *Revolutions: Reflections on American Equality and Foreign Liberations* (Cambridge: Harvard University Press, 1990)

Overview

Most histories of American immigration restriction begin with the advent of federal immigration laws in 1875, 1882, and 1891, all of which provided for the exclusion and deportation of convicts, with the exception of those who had committed political crimes in their homelands. Most histories of American extradition chronicle a steadily growing number of late-nineteenth century bilateral treaties incorporating a lengthening list of crimes for which criminals could be surrendered from the country of refuge to the country where the crime was committed; almost all of these treaties included a political offence exception to extradition (i.e., a stipulation that extradition would not take place if crimes were political.)[1] In fact, these two histories begin earlier and are intimately connected. The next section of this chapter analyzes the give and take between early extradition and immigration laws, highlighting the fact that there have been both liberal and exclusive aspects to American immigration and extradition policy from America's beginnings.

[1] For the wording of these exceptions see " 'Political Offence' in Extradition Treaties Between the United States and Other Countries," *American Journal of International Law*, 3.2 Supplement: Official Documents (April 1909) 144-52.

Recent interpretations have stressed that extradition in the late nineteenth century, not unlike immigration law, was an assertion of American sovereignty and power.[2] They have also stressed that limits placed on the political exceptions in extradition treaties and immigration laws between 1886 and 1907 were responses to perceived immigrant radicalism and anarchism, and specifically the bombing at Haymarket and the assassination of President McKinley. How then do we explain the refusal of the U.S., in 1908-1909, to extradite Christian Rudowitz and Jan Janoff Pouren, immigrants who had been involved with murder and the destruction of property during the revolution in Russia's Baltic provinces in 1905? In 1909 and for forty years after, both officials and advocates pointed to the refusal of extradite these agrarian socialists as a testament to America's liberal asylum tradition.[3]

This chapter shows that the truth is somewhere in between early and recent interpretations. Scholars have shown that there were divergent responses to Haymarket; the political trial that ensued was an object lesson for both law enforcement and reformers of all persuasions and the defendants not sent to the gallows were pardoned in 1893. Jane Addams, one of the most influential Progressive activists in the United States and a defender of Christian Rudowitz, believed "the only cure for anarchy was free speech and open discussion of the ills of which opponents of government complained."[4] McKinley's assassination (by an anarchist of

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[2] Daniel Margolies makes this argument in his book, *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond* (Athens: University of Georgia Press, 2011). Margolies is critical of this assertion of sovereignty, but his analysis of extradition as a reflection of growing state power is fundamentally the same as those who justified it at the time. Scholars analyzing U.S. crime control efforts in comparative perspective, however, have pointed out that U.S. extradition treaties were more assertive than effective and that the U.S. was relatively late to get involved with transatlantic policing. See, Mathieu Deflem, *Policing World Society: Historical Foundations of international Police Cooperation* (New York: OUP, 2002).

[3] The diverse list of people who invoked these cases as a testament to America's asylum tradition includes Oscar Straus, Secretary of Commerce and Labor (which oversaw the Immigration Service); liberal immigration attorney Max Kohler; Dwight Morgan, secretary of the radical American Committee for the Protection of the Foreign Born; and Phillip Jessup at the State Department.

[4] Quoted in James Green, *Death in the Haymarket* (New York: Pantheon, 2006) 286.

American birth but foreign extraction) provoked local harassment of anarchists and the passage of the first anti-anarchist provision in the immigration law of 1903.[5] But only a few people were excluded for anarchism in the ten years that followed and one of the most famous of these cases— that of John Turner, the well-known British activist, who did not advocate violence— seemed to many Americans a violation of freedom of speech. (Turner's arrest by Secret Service agents was unsettling to many. The judiciary's role in Haymarket and Turner's expulsion, which was backed by the Supreme Court, only increased what one historian has aptly called the "muted fury" of the labor movement and progressives towards *Lochner* era courts.[6]) In the wake of the McKinley assassination, the newly installed President Roosevelt called for resolute international action against anarchists, claiming them more depraved than slave traders, but his administration later refused to join with much of continental Europe in signing an agreement providing for police expulsion and surveillance of anarchists; neither the international protocol nor the national secret police and spy system it would require was supported by Congress and most Americans.[7] Though many Americans opposed assassination and terrorism in the name of political change, liberals threw their support behind the 1905 Russian revolution. Electoral politics and ethnic votes were as important factors in extradition policy as in immigration policy; their influence on the outcome of the Pouren and Rudowitz cases should not be underestimated. At the end of the first and the beginning of the second decade of the twentieth century, smaller but still strong

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[5] Sidney Fine, "Anarchism and the Assassination of McKinley," *American Historical Review* 60.4 (July 1955) 777-799. The historian John Higham refers to the response to McKinley's assassination as "a short-lived wave of zenophobia." Higham, *Strangers in the Land: Patters of American Nativism, 1860-1925* (New Brunswick: Rutgers University Press, 1955) 111.

[6] William Ross, *A Muted Fury: Populists, Progressives, and Labor Unions Confront the Courts, 1890-1937* (Princeton: Princeton University Press, 1994).

[7] Richard Jensen, "The United States, International Policing and the War Against Anarchist Terrorism, 1900-1914," *Terrorism and Political Violence* 13: 1 (2001), 15-46.

regional and leftist coalitions rallied around "revolutionists" from Mexico and India. The definition of "political crime" in relation to immigration and extradition was debated and contested. These contestations paralleled domestic fights over free speech and criminal syndicalism. Prominent attorneys such as Clarence Darrow and Gilbert Roe, better known for defending native-born radicals, took up the cases of Russian and Indian "politicals" facing extradition and deportation.[8]

Leaving aside the different ideologies, goals, and tactics of various groups of exiles in the United States—and even of individuals within these groups—that could be deemed "political," Mexican opponents of Diaz differed in that their homeland was just across the southwestern border. Mexican exiles were frequently arrested for extradition by local officials in border states that anomalously maintained the right to hand over individuals to foreign powers in the late 19th century (rather than relinquishing this right to the federal government). As the historian Daniel Margolies argues, "this extreme localization of a foreign affairs process and the great deal of autonomy and extralegal abuses it created," differentiated extradition relations with Mexico.[9] But the British and Russian governments, like the Mexican government, had consuls and private detectives monitor exiles in the United States and encourage American officials to suppress their oppositionist activities. This surveillance, and especially the use of informants, had a corrosive effect on immigrant communities, which were already divided ideologically.[10] If extradition is

[8] The domestic contests revolved around local attempts to repress socialists and anarchists from speaking publicly and the suppression of publications about sex sent through the mail. (see David Rabban, *Free Speech in Its Forgotten Years* (New York: Cambridge University Press, 1997). Darrow advocated for the pardon of the Haymarket defendants and represented Turner. He helped with Rudowitz's defense just after representing the IWW's William Haywood. Roe defended several Indian activists after he defended Margaret Sanger.

[9] Margolies, 22.

[10] A good example of the effect of surveillance on the Mexican-American community in 1908 was recounted by Lazaro Gutierrez De Lara, an exile in the United States and Socialist Party organizer. "Two pretended employment agencies were operated at the same time in Los Angeles for the purpose of luring unsuspecting Liberals into Mexico

framed only as a reflection of the significance of territoriality (returning criminals to be tried in the countries where they committed crimes), and, in the American context, as an assertion of sovereignty and state power, it is hard to understand its co-existence, and sometimes dependence on and partnership with, foreign and private agents on American soil who were employed and paid by foreign governments. In the first decade of the 20th century, the Russian consulate hired one of the foremost American international law firms, Coudert Brothers, to handle its extradition cases and to work closely with Pinkerton detectives and immigrant informants to track Russian fugitives in the United States.

The historian Katherine Unterman has recently argued that deportation proceedings were a blunter instrument and so replaced extradition as the way to rid the United States of undesirable radicals by the second decade of the twentieth century.[11] Political fugitives from Mexico, this argument goes, were summarily deported across the border by immigration officers, thereby avoiding more time consuming and costly extradition proceedings that required judicial hearings where evidence of guilt was examined. But Mexican "Revoltosos" in the United States were also charged with violations of neutrality (i.e., launching military expeditions against a country with which the United States was at peace). Neutrality prosecutions, which targeted not only foreign

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under the promise of good jobs…An American in charge of one of the employment offices, named Crowley, was soon afterwards shot in broad daylight in his place of business by an assassin who mysteriously escaped. I have every reason to believe that Crowley was assassinated because he knew too much of the business of Diaz's agents in Los Angeles and was attempting to extort blackmail. Spies were all about. [The Mexican consul] Lozano attempted to hire some of my best friends…I have evidence that Diaz spies were given extraordinary powers to go through the mail of Mexicans at the local post office and I have evidence that several municipal detectives were regularly paid by the Mexican consul." (L. Gutierrez De Lara, "Story of a Political Refugee," *Pacific Monthly* 25.1 (January 1911) 1-17.) Another notorious example occurred within the community of Indian anti-colonialists and led to the murder of one exile by another during their trial for anti-British activity that violated American neutrality laws. Joan Jensen, *Passage From India: Asian Immigrants in North America* (New Haven: Yale University Press, 1988) chapter 10. (Murder of Ram Chandra mentioned page 224).

[11] Katherine Unterman, "One Court's Freedom Fighter is Another Court's Terrorist," Occasional Papers Series, International Security Studies at Yale University, 2010; see also Katherine Unterman, *Uncle Sam's Policemen: The Pursuit of Fugitives Across Borders* (Cambridge: Harvard University Press, 2015) chapter 6.

exiles in the United States but their American supporters, highlight how the narrowing of political asylum was tied to the suppression of American radicalism.[12] Extradition and neutrality worked in tandem, though neither was effective in suppressing transnational oppositionist activity before World War I.[13] Moreover, though procedural differences in the handling of extradition and deportation cases are important, this chapter emphasizes the similarities between the uses of extradition and deportation and the resilience of the opposition to both.[14] By the first decade of the twentieth century, the Supreme Court had already decided that rulings regarding the political nature of crimes made by immigration officials *and* by judicial commissioners in extradition cases were not reviewable in federal courts.[15] Though the pattern for Mexican radicals seems to have been deportation when extradition failed, the Russian government frequently asked the Commissioner of Immigration for exclusion or deportation of alleged fugitives first, and, if that failed, applied for their extradition. [16] In one such case, involving Leibel Glucksman, a leather merchant from Lodz accused of forging notes to buy goods, the

[12] W. Dirk Raat, *Revoltosos: Mexico's Rebels in the United States, 1903-1926* (College Station: Texas A&M University Press, 1981) chapter 9. Of the 1912 neutrality prosecution against Ricardo and Enrique Flores Magon, Librado Rivera, and Anselmo Figuera in Los Angeles—accused of conspiring to and neutrality laws were augmented in order to prosecute Mexican revolutionists for *conspiring* to launch expeditions into Mexico, Raat writes "the unwritten and real charge was the Magonista alliance with American radicals, especially the hated I.W.W." (242-3).

[13] Congress frequently debated strengthening laws against trafficking of explosives for terrorist purposes but did not finally enact stronger legislation until 1909 (offenses against foreign and interstate commerce, us statues at large, vol 35 chapter 9 sections 232-36). After 1909, too, *all* U.S. extradition treaties included an attentat clause, which deemed assassination attempts against heads of government non-political offences.

[14] If the legal proceedings discussed in this chapter were put on a continuum, deportation proceedings accorded the alien the fewest rights, extradition had some more guarantees, but still not as many as criminal neutrality trials. The most politically aggressive aliens ironically were accorded the most legal safeguards.

[15] For limits on review in extradition cases, see *Ornelas v. Ruiz*, 161 US 502 (1896).

[16] See the cases involving Leviya Gorinstein, Lewit Glicksman/Leibel Glucksman, Adolf Lindfors, Joseph Schwejer, Nuhum Revzin, Heinrich Shauwe and Wilhelm Von Hoffman on reels 56 and 57 of the Reel 56 and 57 of the Records of the Imperial Consulates of the United States, M1486, RG 261, NARA.

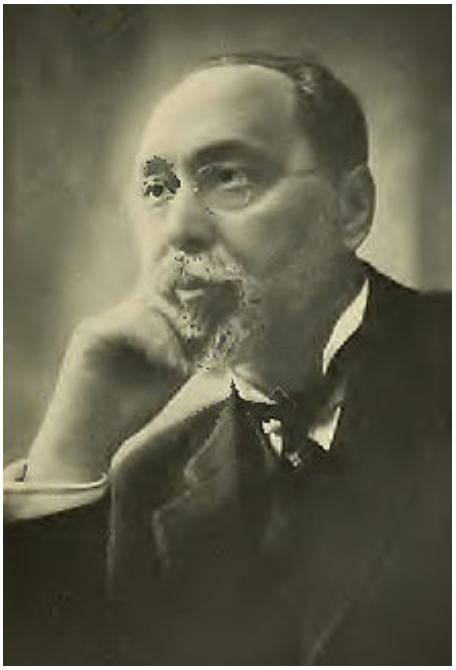
Russian consul sent word of his impending arrival to the Commissioner at Ellis Island. A Pinkerton agent boarded the ship when it arrived and helped an immigration inspector identify Glucksman. After the Board of Special Inquiry at Ellis Island admitted him (despite the presence of a lawyer representing the Russian consulate), the Russian government requested his extradition, the Pinkertons again tracking him while depositions were sent from Russia. When a U.S. Commissioner ordered his extradition, Glucksman challenged the ruling all the way to the Supreme Court. The court's decision was an important precedent limiting the rights of alleged fugitives in extradition cases. "It is common in extradition cases to attempt to bring to bear all the factitious niceties of a criminal trial at common law. But it is a waste of time…if there is present…such reasonable ground to suppose him guilty as to make it proper that he should be tried, good faith to the demanding government requires his surrender…We are bound by the existence of an extradition treaty to assume that the trial will be fair."[17] Those who did not have faith in the Russian justice, continued to oppose the extradition of alleged fugitives they believed were being sought for political activity. While Unterman is right to note the increasing power of the executive in the handling of foreign "politicals," this shift did not "shut down" public debate over political asylum.[18] Those opposed to extradition also fought against deportation. Louis Post, a Progressive magazine editor involved in the Rudowitz anti-extradition fight, later used his power as Assistant Secretary of Labor to reign in the "deportation delirium" of 1919-1920.

This chapter tries to capture the tenor of contestation over political asylum by giving voice to advocates on both sides. Though Isaac Aranovich Hourwich (pictured below, left) and John Bassett Moore (below, right) were lawyers born in 1860 who spent good parts of their

[17] *Glucksman v. Henkel*, 221 U.S. 508 (1911)

[18] Unterman, "One Court's Freedom Fighter is Another Court's Terrorist," 26.

careers working for the federal government, their perspectives and temperaments could not have been more different. One anecdotal comparison captures this well. Moore gave an Independence Day address in 1877 at which he contrasted the "calm and temperate proceedings of the men who signed the Declaration of Independence" with the "terror and anarchy" that attended the French Revolution. That same year, Hourwich caught the "America fever" but did not come to the United States until 1890, when running from the Russian political police. As his ship passed the Statue of Liberty, Hourwich "belted out the Marseillaise in French."[19]



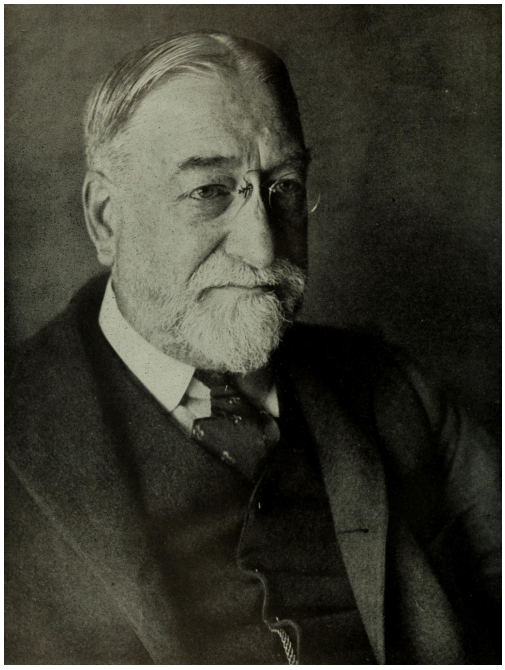


Figure 2.1, Isaac Hourwich, *Oysgevehlṭe shrifṭen* (Selected Writings in 4 volumes). New York: Yitsḥaḳ Ayziḳ Hurviṭsh's Publiḳatsyons Ḳomiṭeṭ, 1917. Volume 1.
Figure 2.2, John Bassett Moore, *World's Work*, XLIII. I (November 1921) 6. (photo taken by Paul Thompson).

[19] "Speech at Felton, Delaware, July 4, 1877" in *The Collected Papers of John Bassett Moore*, vol. 1 (New Haven: Yale University Press, 1944). Hourwich describes his dreams of coming to America at the time of the centennial and his later arrival in the United States in his memoir, *Zikhroynes fun an Apikurs* ["Memoirs of a Heretic"], which ran in the Yiddish newspaper *Freye Arbeiter Shtimme* between 1921 and 1924.

Both men were learned: Hourwich was known on the Lower East Side as "the Professor" and Moore was considered a scholar among American diplomats.[20] Both were prolific publicists, but the contrast in the tone of their writing is striking: Moore's is matter-of-fact, courteous, and understated, while Hourwich's is ironic, adversarial, and argumentative.[21] Giving Hourwich and Moore equal bidding is important because of the tendency of scholarship on American views of the Russian regime, and on transatlantic reform more generally, to marginalize the voices of immigrant intellectuals, especially if they did not fit the liberal mold. This replicates a problem that existed at the end of the 19th century, when it was harder for Hourwich to get articles that were critical of Moore's perspective published in journals of opinion than it was for prominent Protestant, native-born publicists who relied on Hourwich's expertise and knowledge.[22]

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[20] Richard Greenwald, *The Triangle Fire, Protocols of Peace, and Industrial Democracy in Progressive Era New York* (Philadelphia: Temple University Press, 2005) 104; Edwin Borchard, "John Bassett Moore," *American Bar Association Journal*, 32.9 (Sept. 1946) 575-82.

[21] Moore tended to use passive constructions and double negatives in order to temper his criticisms of American officials. Moore also hid is ideological perspective beneath critiques of form. For example, in an article on American policy towards the Hungarian exile Louis Kossuth, Moore obliquely praises the non-committal approach of Secretary of State Buchanan rather than directly condemn Secretary of State Daniel Webster's supportive approach. Then Moore criticizes the style rather than the content of Webster's letter expressing this support. Moore writes: "In the course of a few months the language and conduct of the government underwent so considerable a change that it would not have been discreditable to eminent statesmen to suppose that they considered the maxim expressed by Mr. Buchanan [i.e,. "not to interfere with the domestic concerns of foreign nations"] to be of doubtful wisdom. Such a supposition, however, would not have been well founded in all, or in many, cases…Mr. Webster's [expression of support for Kossuth] is generally known simply as the 'Hulsemann Letter.'…Its style is somewhat turgid and laborious, and it is pervaded by a truculence of expression not in harmony with the usual dignity of Mr. Webster's manner." (*Collected Papers of John Bassett Moore (*New Haven: Yale University Press, 1944) volume 1, 397, 399). Hourwich, on the other hand, published under a variety of pseudonyms in the first decade of the twentieth century so that his career would not suffer because of his outspokenness. He wrote to his daughter: "A government employee must not speak out his mind. You know I am a socialist. Very often people would invite me to lecture on socialism, but I dared not accept the invitation for had I done so, my chief [at the U.S. Census Bureau] would have learned that I am a socialist and I would have lost my job. More than that, I dared not address a meeting assembled to protest against atrocities of the Russian government, for the American government is friendly to the Czar's government and would frown upon a government employee denouncing Russian tyranny." (Letter from Isaac Hourwich to Rebecca Hourwich, Nov. 1, 1906, Box 1, Accession 98-M74, Rebecca [Hourwich] Reyher collection, Schlesinger Library.)

[22] George Kennan, one such prominent publicist, could not get either the *Forum* or the *Arena* to publish Hourwich's article on the extradition treaty with Russia, though Kennan believed the article "touched points not previously covered by anybody." (Letter from Kennan to Hourwich, September 28, 1893, enclosing rejection letter from Lambert of *Forum*, Box 11, Papers of George Kennan, Library of Congress). Wide-ranging and deeply researched books that nonetheless marginalize immigrant (but still American!) intellectuals like Hourwich are David Fogelsong,

Hourwich was a "legal narodnik," a socialist statistician, and a people's lawyer who took his clients' fates to heart. After editing a newspaper and practicing law for a few years, Hourwich began applying his contrarian expertise to his work at the United States Census Bureau in 1902, and a decade later, as chief clerk to a garment makers union, to Jewish and labor politics. Moore was a consummate realist who saw international law as an extension of diplomacy. When not working for the State Department—on the annexation of Hawaii or the control of Panama, for example—Moore worked as a "lawyer lobbyist" for American corporations seeking government support for overseas investments.[23] Hourwich was sometimes skeptical of law's efficacy from the left—questioning the independence of the judiciary—while Moore insisted on its instrumentalism from the right—seeing law as a tool of state interests. Though they both thought of themselves as professional experts, they were personally invested in political offence exceptions during the first decade of the 20th century. Twenty four years after he was exiled to Siberia and sixteen years after coming to America, Hourwich went back to Russia in 1906 and

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The American Mission and the 'Evil Empire': The Crusade for a 'Free Russia' since 1881 (New York: Cambridge University Press, 2007), Ian Tyrrell, *Reforming the World: The Creation of America's Moral Empire* (Princeton: Princeton University Press, 2010), and Leslie Butler, *Critical Americans: Victorian Intellectuals and Transatlantic Liberal Reform* (Chapel Hill: UNC Press, 2007). Some recent scholarship on transatlantic reform in this period challenges the focus on American-British relations, the emphasis on liberalism rather than ideologically diverse social politics, and the exclusive attention to native-born, Protestant reformers. See, for example, Axel Schafer, "Beyond Uplift and Efficiency: Isaac M. Rubinow, Immigration, and Transatlantic Health Care Reform, 1900-1935" in *Shaping the Transnational Sphere: Experts, Networks, and Issues from the 1840s to the 1930s*, ed. D. Rodogno, B. Struck, and J. Vogel (New York: Berghahn Books, 2015). Most scholars who discuss Hourwich have contextualized him within Russian and Jewish immigrant and socialist circles: Steven Cassedy, *To the Other Shore: the Russian Jewish Intellectuals Who Came to America* (Princeton: Princeton University Press, 1997); Tony Michels, *A Fire in Their Hearts: Yiddish Socialists in New York* (Cambridge: Harvard University Press, 2005); Michael Berkowitz, "Between Altruism and Self Interest: Immigration Restriction and the Emergence of American Jewish Politics in the United States," in *Migration Control in the North Atlantic World: The Evolution of State Practices in Europe and the United States from the French Revolution to the Inter-War Period*, ed. A. Fahrmeir, O. Faron and P. Weil (New York: Berghahn Books, 2003).

[23] For this aspect of Moore's career, see Cyrus Veeser, "Inventing Dollar Diplomacy: The Gilded-Age Origins of the Roosevelt Corollary to the Monroe Doctrine, *Diplomatic History*, 27.3 (June 2003) 301-326, and Benjamin Coates, "Transatlantic Advocates: American International Law and U.S. Foreign Relations, 1898-1919," (Ph.D. dissertation, Columbia University, 2010), chapter 4. Moore's clients include the Santo Domingo Improvement Company and the New York and Bermudez Company (holdings in Venezuela).

ran as an elector for the Second Duma (representative assembly); he won, but the Senate, the supreme court of the empire, annulled the election. Hourwich returned to America in 1907 after witnessing how the suppression of the 1905 revolution through both violent and technical means—arrests, torture, summary executions, banning political meetings and opposition parties, disenfranchising of legal voters, dissolving the Duma—united the opposition and radicalized the peasantry. "Indiscriminate, wholesale arrests threw thousands of peasants into contact with other political prisoners—Social Democrats, Social Revolutionists, Constitutional Democrats, Railway Union men, etc. with the result that the jails were turned into university extension centres. Those that were subsequently released for lack of evidence returned to their villages as graduates in political science," Hourwich noted in early 1907.[24] The cause of Pouren and Rudowitz, agrarian socialists who fled the repression, was, then, partly Hourwich's own. Moore had a connection to the case of Cipriano Castro, the ex-Venezuelan president who sought refuge in the U.S. but was initially excluded by the immigration authorities for ordering the shooting of a rebel opponent. A Federal Court admitted Castro, refusing to pass judgment on the methods used by governments to suppress revolution and giving a "purely political" veneer to a revolution against Castro that was supported for economic reasons by one of Moore's corporate clients.[25]

Moore believed that the political offense exception should be formally interpreted and that extradition should be insulated from domestic politics. Moore interpreted American history as affirming this view. His 1895 article on the Hungarian nationalist Lajos Kossuth should be read as a cautionary tale geared towards influencing asylum policy at the end of the century,

[24] Isaac Hourwich, "Russia, As Seen in Its Farmers," *World's Work*, 12 (March 1907) 8685.

[25] On the Castro case, see INS file 53166/8 and *United States ex rel. Castro v. Williams*, 203 F. 155, SDNY, February 15, 1913.

when Congressmen and officials were faced with exiled socialists and anarchists—what Moore called the "new species of social and political reformer." According to Moore, in 1850, Secretary of State Daniel Webster, seeking popular favor for his bid for the presidency, mistakenly expressed sympathy for Kossuth's cause and "inconsiderately" insulted a "friendly government" (Austria); Kossuth did not intend "to seek a home" in the United States but to "grotesquely" further his political agitation "under the protection of the stars and stripes." In contrast to the misguided past handling of the popular "revolutionist" Kossuth, Moore much preferred the way that the United States dealt with "Salvadorean refugees" ousted from office that Moore wrote about in another 1895 article. The previous year, a United States judge refused to extradite the former Salvadoran leaders, who were accused of killing and stealing as they fled a coup, on the grounds that their crimes were "incidental to and forming a part of political disturbances." This formal definition of political offence ostensibly did not evaluate the motives for, or the nature of, a crime, but only the relation of a crime to events. But there was also an implication that the presence of the ex-Salvadoran vice president and his companions did not have the "incendiary" effect on the American public that Kossuth did.[26] What is important is not only that it was "rather kindly" and "amoral" for Moore to refer to these corrupt and brutal ousted Salvadoran heads of state as "refugees," but also that, by referring to them that way, Moore implied they were welcome because they abandoned their political activity when they sought asylum in the United States.[27] Moore's distinction between revolutionist and refugees echoed a comment made by a Senator who, in 1894, was worried about foreign-born radicals in the United States. He

[26] "Kossuth: A Sketch of a Revolutionist," *Political Science Quarterly*, X (1895) and "The Case of the Salvadorean Refugees," *American Law Review*, 29 (Jan.-Feb. 1895), reprinted in *Collected Papers of John Bassett Moore,* vol. 1 347-421.

[27] Margolies, 297; Christopher Pyle, *Extradition, Politics, and Human Rights* (Philadelphia: Temple University Press, 2001)

introduced a bill, which was supported by the Secretary of the Treasury in charge of immigration, to deport them, so long as they were not "political refugees."[28]

Moore closed his article on the Salvadorans with a reminder that "the granting of asylum" was discouraged when it prompted interference in the affairs of other nations and proved injurious to national interests. For Moore, extradition was a testament to the triumph of order; asylum did not represent refuge or humanity, but its opposite: a relic of a barbaric time when law could not control vengeance and blood feuds.[29] Extradition treaties were, according to Moore, a testament to good faith and good relations within the family of "civilized" nations, some of which lacked elected national parliaments or guarantees of trial by jury and freedom of the press and religion. Indeed a sovereign could be civilized while his subjects were not (hence the lack of representative government or individual freedoms). For Moore, "civilized" was another word for *powerful*; "civilizing" could mean engaging in economic modernization efforts and imperial expansion—thus applying to Diaz's efforts in Mexico and the Czar's in Russia. Opponents to these sovereigns were, almost by definition, misguided, unseemly, and retrograde.[30] By the end of the first decade of the twentieth century, Moore believed the extradition system in the United

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[28] *Congressional Record,* August 6, 1894, volume 26, 8217; S. Misc. Doc 253 (53rd Congress, Second Session).

[29] "Asylum in Legations and Consulates and in Vessels," *Political Science Quarterly*, VII. 1 (March 1892), reprinted in volume 1 of the *Collected Papers of John Bassett Moore*.

[30] "Russia stands in diplomacy as one of the Great Powers of Europe and her treaty relations are all based upon the principle of national equality," Moore wrote in the fall of 1907. (Memorandum on asylum by John Bassett Moore, Cyrus Adler Correspondence Chronological Files, Box 1, Folder April-December 1907, American Jewish Committee Archives.) As we shall see, Moore's views about Russia were similar to those of John L. Foster and Andrew Dixon White, who served in diplomatic posts there the late 19th century. Though they lamented absolutism, they believed it was supported by Russia's ignorant and backward peasantry. In memoirs written during the first decade of the twentieth century, Foster and White described Nihilism in similar terms. Foster believed the nihilists "represented…a wild and desperate revolt against things as they then were in the social, moral and political world." White wrote that it was " a wild revolt, not only against the whole system of his own country, but against civilization itself." (Foster is quoted in Anna Mary Babey, *Americans in Russia, 1776-1917* (New York: Comet Press, 1938) 44; White is quoted in *The American Image of Russia, 1775-1917*, ed. Eugene Anschel (New York: Ungar 1974) 205.)

States was cumbersome and led foreign governments to take things into their own hands; in response, Moore wanted to get rid of almost all administrative and judicial procedures in order to facilitate the handing over of fugitives by the executive.[31]

Hourwich, on the contrary, believed that more safeguards needed to be put in place to protect fugitives from foreign government agents all too eager to use extralegal means to kidnap them. He did not believe in the Russian government's good faith in making extradition requests, nor that exiles would get fair trials if sent back to Russia. The Rudowitz and Pouren cases also showed that the extradition process could be a vehicle for engaging the public in foreign affairs and building alliances on the left. Analyzing the repression in Russia led Hourwich to write in 1907 that "One thing is certain, the revolution is not over."[32] Similarly, Hourwich saw Russia's attempt to extradite Rudowitz and Pouren as an opportunity to rally the opposition. Hourwich and a wide-ranging group of advocates formed a "Political Refugee Defense League" [PRDL] that succeeded, temporarily, in defining asylum as a haven for radical political protest. The PRDL saw extradition requests and proceedings as attempts to stifling dissent and activism in the United States; Pouren languished in an American jail for fifteen months and, along the southwestern border, Mexican exiles were arrested and detained numerous times. Many of these exiles were labor organizers or newspaper editors critical of the Diaz regime. The PRDL tried to turn the tables by criticizing the way the United States government had become complicit in the Russian and Mexican governments' harassment of political opponents and cruel treatment of political prisoners. One of the cases the League took up was that of Inez Ruiz, a man who had

[31] "The Difficulties of Extradition," *Publications of the Academy of Political Science*, 1.4 (July 1911), reprinted in volume 3 of the *Collected Papers of John Bassett Moore*.

[32] Isaac Hourwich, "The Political Outlook in Russia," *Atlantic Monthly*, 100 (July 1907), 116. See also, Hourwich, "Practically Civil War in Russia," *World's Work*, 13 (December 1906) 8327-8332.

been an active opponent of the Diaz regime for twenty years. It was Ruiz's 1896 extradition from the United States that the Supreme Court upheld when it ruled that a commissioner's decision about whether an offense was political was not subject to judicial review. Ruiz served sentences of several years in two notorious Mexican prisons, returned to the United States and, in late 1909, the PRDL hired attorneys to help prevent his second extradition. As soon as the commissioner released him, Ruiz was re-arrested by U.S. officials for a third time, locked up for a few more weeks, and finally freed on the eve of the Mexican revolution.[33]

In his essays and books after the turn of the century, Moore still celebrated the American Revolution as an ideal and a beacon, and drew very particular lessons from it as America became a "world power."[34] Though never one to balk at intervention, he thought the idea of intervening on behalf of democracy in Mexico was so inappropriate that he wrote President Wilson: "The Government of the United States having originally set itself up by revolution has always acted upon the de facto principle. We regard governments as existing or as not existing. We do not require them to be chosen by popular vote…we cannot become the censors of the morals or conduct of other nations."[35] (Elsewhere Moore echoed the words of Secretary of State William Marcy that "it is not within the competence of one independent power to reform the

[33] According to a PRDL statement: "His present release is proof that his [first] extradition was absolutely illegal and that ten years of his life wasted in Mexican dungeons were bloodgifts from the United States to the Mexican despot... Inez Ruiz is but one of a score of revolutionists who have spent months in American prisons waiting there for extradition, but only to be finally freed after every legal trick had been played and Mexican consuls aiding and abetting American officials, to do the work of Despot Diaz…Yet it is a fact that not a single refugee has been extradited to Mexico since the Political Refugee Defense League started its campaign of publicity more than a year ago. "Inez Ruiz, Mexican Revolutionist, Free," San Antonio, Feb. 9 1910, clipping in Scrapbook Z-Z 133 v. 2, Labor, 1910-11, John Murray Papers, Bancroft Library.

[34] "The Growth of Nationalism," Transactions of the Thirteenth Annual Meeting of the South Carolina Bar Association, January 24-25, 1906, reprinted in volume 3 of *Collected Papers of John Bassett Moore.*

[35] Lars Schoultz, *Beneath the United States: A History of U.S. Policy Toward Latin America* (Cambridge: Harvard University Press, 1998) 242.

jurisprudence of another."[36]) Moore reiterated this point in the introduction to his treatise on *The Principles of American Diplomacy* (1918). In that treatise he also represented the annexation of the Philippines as a continuation of the process of American territorial expansion that began right after the American Revolution. (Thereby, disregarding critics of American imperialism as misinformed.[37]) Moore never considered the American Revolution as unfinished but only as unfolding. Similarly, Moore never wrote of the Civil War as marking a new birth of freedom. His home state of Delaware, first to ratify the Constitution, Moore claimed "ever loved sweet freedom's air"; that slavery and black codes (to control freedmen) existed there for the next seventy-eight years did not matter. Indeed, when slavery comes up in Moore's work, it is depicted as aberrant, distracting, and beside the point.[38] In the conclusion to *Principles of*

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[36] Moore, The Russian Extradition Treaty, 263.

[37] "There prevailed after the war with Spain a disposition to assume that the United States would, as a result of that conflict, break with its past and enter upon a new career in which previous guides and limitations would be discarded. This hasty supposition was by no means strange. On the contrary, it was merely an illustration of a common phase of thought, which is constantly manifested in the tendency to regard existing things, no matter how lacking in essential novelty they may be, as wholly new, and, as a natural consequence, to estimate them in an absolute rather than in a relative sense. But in the acquisition of Porto Rico and the establishment of a virtual protectorate over Cuba, there was nothing to jar the nerves of even the most cursory reader of American history, while the acquisition of the Philippines could not be altogether startling to one who had reflected upon the detached situation of the remote Alaska…or upon the incongruous condominium which had for a number of years been attempted in the Samoan group [of islands] in that distant South Pacific. It is, therefore, not surprising that abnormal vaticinations and proposals due to excitement or to a want of information gradually faded away, while realities, with the aid of a certain continuity in thought and in temper on the part of the less vocal element of the population, eventually regained their normal sway." (*Principles of American Diplomacy*, reprinted in volume 4 of *Collected Papers of John Bassett Moore*, 477.)

[38] "Our National Development," Address at the Annual Meeting of the Sons of Delaware of Philadelphia, Dec. 7, 1901, reprinted in volume 2 of *Collected Papers of John Bassett Moore*.
"Introduction" to *The Political History of Slavery in the United States* by James Z. George (New York: Neale Publishing, 1915), reprinted in volume 4 of *Collected Papers of John Bassett Moore*. James George, a Mississippi Senator, argued that the cause of the Civil War was "the question of the balance of power [between the North and South] rather than that of slavery" and that "the South…in supporting its rights under the Constitution, was asserting the cause of political freedom." In his introduction to the book, Moore characteristically does not state outright that he agrees with George's argument, but praises George's "exposition of Constitutional questions" and "appeal to the calm and deliberate judgment after the passions of the hour have subsided and the embers of controversy have ceased to glow."
Moore's diminishment of the significance of slavery for understanding American history is evident in *Principles of American Diplomacy*, where he writes, for example: "The Declaration of Independence enumerates as among the 'inalienable rights' with which 'all men' are 'endowed by their creator,' 'life, liberty and the pursuit of happiness.' It

American Diplomacy, Moore writes that, "beginning with the Webster-Ashburton treaty" [signed with Britain in 1842], "the United States, at an important stage in the history of the [extradition] system, actively contributed to its growth by the conclusion of numerous conventions." Moore does not mention that extradition under the Webster-Ashburton treaty was impeded by Britain's refusal to surrender fugitive slaves.[39] Moore dismisses as completely "unjustified" those who opposed that treaty and those who "loudly denounced" later treaties as "traps for the recovery of political offenders." That the U.S. had not extradited political offenders "discredited" the opposition in Moore's eyes; Moore refused to consider that the opposition helped insure that political offenders were not extradited.[40]

Hourwich disagreed; in the Rudowitz and Pouren cases, Hourwich wrote, the legal defense had to "struggle to the utmost to uphold the right of asylum" in the face of "the formalities" and "reactionary tendency" of the courts.[41] Ultimately, as we shall see later in this

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has often been remarked that this dogma, like the associated 'all men are created equal,' was evidently considered an abstraction, since its announcement was not conceived to render inadmissible the continued holding in bondage of a large servile population. This criticism, however, cannot, certainly in its more sinister sense, be accepted as just. All general declarations of human rights to a large extent represent aspirations...So long as human conditions are imperfect, the realization of the highest human aspirations will be imperfect." (volume 4 of the *Collected Papers of John Basset Moore*, 388). "There was in the very existence of American Independence, permeated as it was with democratic republicanism, a force that exerted a world-wide influence in behalf of political liberty…While the United States refrained from aggressive political propagandism, the spirit of liberty that resulted from its independence was necessarily reflected in its diplomacy. It is true that the attitude of the government on certain special questions was for a long time affected by the survival in the United States of the institution of African slavery. It was for this reason that the recognition of Hayti, Santo Domingo, and Liberia as independent states did not take place till the administration of Abraham Lincoln, although such recognition had long before been accorded by European powers. But the attitude of the United States towards those countries was exceptional, and was governed by forces which neither diverted nor sought to divert the government from the general support of the principles on which it was founded." (volume 4 of the *Collected Papers of John Basset Moore*, 469).

[39] Moore was more forthcoming about this in his earlier treatise on extradition. "After this [Webster-Ashburton] treaty went into effect, many difficulties were encountered in its execution, especially in England and the British dominion, owing to…the controversies which arose in respect to fugitive slaves, whose surrender, even when they were charged with treaty offences, was always avoided. " (Moore, *Treatise on Extradition and Interstate Rendition*, vol. 1(Boston: Boston Book Company, 1891) 93.)

[40] Ibid., 470.

[41] Hourwich, "Delo Purena," *Russko-amerikanskii rabochii* [Russian-American Worker], Sept. 1908.

chapter, a great deal of public agitation and lobbying was necessary outside the courts to make sure the executive (President Roosevelt and Secretary of State Elihu Root) allowed those two men to stay in the United States. In the press and at protests, the extradition treaty with Russia was referred to as a fugitive slave law. The PRDL's support for exiles from Mexico melded with a critique of the role played by American capitalists and officials in Mexico's political economy and U.S. complicity in Diaz's policies. The anti-extradition campaigns led Hourwich to criticize the way officials and publicists conflated immigrants and criminality and to highlight the lack of liberty accorded to immigrants in the U.S. –especially in their encounters with the courts, police, and immigration officials.[42]

In his 1922 Yiddish book *The Development of American Democracy,* Hourwich described an unfinished process, and one marred by "anti-Democratic forces," among which Hourwich included the "monarchial power" of the President (especially in foreign affairs) and colonial rule in the Philippines and Puerto Rico. As early as the 1890s, Hourwich represented what he called an "anti-imperialistic view," telling attendants of a debate at the New York Social Reform Club that "Every one will admit that our Republic is no longer what it once was or what it was intended to be—a democratic Government of, by and for the people. It has become, rather, an oligarchy…this oligarchy, backed by a military power, would become doubly dangerous."[43] For the next twenty years, writing and speaking to audiences in Russia and the United States,

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[42] Hourwich, "Immigration and Crime," *American Journal of Sociology* 17.4 (Jan. 1912) 478-490. "The popular opinion that the immigrants furnish a high percentage of criminals rests upon the belief that this country is used as a hiding place by fugitive criminals from all quarters of the world…the statistics of crime in the state of New York, which is said to hold more than its proportionate share of the lawless immigrants, warrant only one of the following conclusions: Either the new environment enables this invading army of immigrants with criminal records to keep within the law; or else the criminal classes of Europe, contrary to the popular belief, furnish less than their proportionate quota of immigrants" (490).

[43] "The Annexation Problem, Prof. I.A. Hourwich, at the Social Reform Club, Opposes Territorial Expansion," *New York Times*, July 6, 1898, 7.

Hourwich pointed to parallel limits on political freedom in American and Russian history; he was especially critical of conceptions of the law as a manifestation of state power, or as something for officials to flout and ignore, rather than as a guarantee of rights.[44] As he reiterated in *Development of American Democracy,* "The people of the United States consider the law to be their 'sovereign' (emperor). The population of the Philippine islands is nothing more than the subject of this million-headed king." Hourwich also drew a connection between American colonial rule and John William Burgess's racist assertion, in *Reconstruction and The Constitution*, that "it is the mission of the white people to hold the reins of political power in their own hands, in the interests of global civilization and of all mankind." Indeed, one of Hourwich's main points in *Development of American Democracy* is that "the most fertile ground for the anti-democratic craft lies in the racial question." Hourwich saw racism as a key vehicle for keeping "democratic institutions under the actual rule of the capitalist oligarchy," analyzing how racism, for example, united "the entire white population of the southern states…regardless of the difference in class interests" and was invoked opportunistically by Republican and Socialist politicians as well.[45] Although American Socialist Party organizers and leaders had been important allies in the anti-extradition campaigns, Hourwich was scathing in his

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[44] I. Gurvich, "Chelovek s amerikanskoi skladkoi: Iz istorii izbiratel'noi kampanii." *Svoboda i ravenstvo*. [I. Hourwich, "Man of an American Mindset: From the Story of an Election Campaign," *Freedom and Equality*,] No. 15, March 6, 1907, pp. 4-7; Hourwich, Lectures on Russian Revolutionary History, November and December 1919, Rand School of Social Science, Tamiment Library Manuscript (TAM 245), Box 3, folders 61 and 2, Tamiment Library & Wagner Labor Archives, NYU.

[45] Hourwich, *Di anṭyiḳlung fun der Ameriḳaner demoḳraṭye* [The Development of American Democracy] (New York: Farlag ḳulṭur, 1922) 144, 158, 130.
Hourwich saw this opportunism as "tightly bound up with the American party system in which each American party wants to fool all the voters in his 'sack.' In order to do this, one must promise everyone only that which he desires. We are not dealing with principles here, just the success of the party-organization. An American party must therefore change its principles to match the demand of the moment." Hourwich, *Immigration in America*, volume 1 of *Oysgeyelṭe shrifṭen* [Selected Writings, in Yiddish] (New York: Yitsḥaḳ Ayziḳ Hurviṭsh's Publiḳatsyons Ḳomiṭeṭ, 1917) 191.

condemnation of the Party's anti-immigrant, and particularly anti-Asian, attitudes.[46] When the Industrial Commission of 1915 called for the deportation and bar to re-entry of immigrants who failed to register themselves with authorities, learn English, and naturalize within a specified time of arrival, Hourwich fumed, "The scheme…reveals the state of mind of our social reformers, who seek a remedy for the evils of capitalism in a reversion from *laissez faire* doctrine to the political philosophy of the German *Polizei-Staat*…The gist of its political theory can best be expressed in Russian police slang—'Pinch 'em and keep 'em out.'" [47]

Finally, Hourwich believed that WWI exacerbated all of these anti-democratic tendencies. This was partly because, internationally, political self-determination and territorial independence were equated with freedom. In a 1915 speech about the problems with Polish nationalism, Hourwich again drew on analogies from America's civil war era. "The main thing is actually the people and not the piece of land on which they live…the independence of a territory can lead to the enslavement of a part of the population…Before the Civil War, the abolitionists agreed that states had the right to secede, but during the war they sided with Lincoln. Why the change? Very simply, two principles came into conflict: the principle of territorial independence and the principle of human freedom. They knew that if the South was allowed to become independent, the blacks there would remain slaves, and for them human freedom was more preferable than territorial independence."[48] Hourwich also believed that, domestically, WWI signaled the death knell for personal freedoms guaranteed in the Bill of Rights. "The war has left an eternal

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[46] Hourwich was disgusted by the restrictionist majority report submitted by the Committee on Immigration to the Socialist Party convention in 1912 and adamantly opposed its assertion that "Race feeling is not so much a result of social as of biological evolution." (Hourwich, "Socialism and War," *New Review*, II. 10 (October 1914) 577).

[47] I.A. Hourwich, "The Walsh Report on Immigration," *New Review*, III.15 (Oct. 1915).

[48] Hourwich, "The Poles and The Jews" in volume 2 of *Oysgeyelṭe shrifṭen* [Selected Writings, in Yiddish] (New York: Yitsḥaḳ Ayziḳ Hurviṭsh's Publiḳatsyons Ḳomiṭeṭ, 1917.)

legacy—the unmaking of those points of the Constitution that guarantee freedom of speech and freedom of the press." Hourwich directed his ire at the U.S. Supreme Court and particularly its decision in a case involving the Postmaster General's revocation of mailing privileges to a socialist newspaper; the ruling, Hourwich argued, turned a general postal law into a censor against "enemies at home…even at times when the United States is at peace." Hourwich added, "it has become customary to declare a state of war as a means of breaking big strikes…When the class struggle sharpens, it is the end of all political freedoms."[49]

By the postwar period, Hourwich was disillusioned. As he writes in the foreward to a memoir published in the early 1920s, "I realize that my participation in the Russian revolutionary movement was only an episode in my life history that pressed its stamp on my life, but does not describe its whole character. I have passed half my life in America, where a revolutionary movement never existed and where one is still lacking today."[50] Hourwich also meditates in the memoir on the tension between, on the one hand, his revolutionary dismissal of legal reforms and, on the other, the powerful affect trials of revolutionaries had on the public. He mentions a defense attorney's "shining political speech" that got a Russian jury to declare Vera Zasulich innocent after she shot the highest ranking official in St. Petersburg; she claimed her act was an attempt to bring attention to the official's beating of a political prisoner. At another point in the memoir, Hourwich connects his advocacy in America to revolutionary stirrings in Russia. He

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[49] Hourwich, *Development of American Democracy*, 249, 254, 258.

[50] *Zikhroynes fun an Apikurs* ["Memoirs of a Heretic"], *Freye Arbeiter Shtimme,* Nov. 11, 1921. Hourwich also revealingly wrote in this forward, "I began to write down my memories for the *Freye Arbeiter Shtimme* fifteen years ago when I was in Russia at the time of the first revolution. If one can give the popular movement [*folksbavegung*] of those years the name "revolution." Influenced by the mood of the time I titled my articles "*Remembrances of a Revolutionary Soldier"*...A soldier is a man of discipline who follows what he's told and never asks questions. I've never been one of these. I am spiritually closer to Zangwill's Uriel Acosta than to a revolutionary hero type. From my childhood years I grew up a heretic and a heretic I have remained my entire life."
Acosta was a 16th century skeptic who had an embattled relationship with the Jewish community in Amsterdam. Israel Zangwill was a British writer and playwright who included a fictionalized biography of Acosta in his book *Dreamers of the Ghetto* (1898).

recalls in particular the 1872 extradition from Switzerland of the revolutionary Sergei Nechaev, who had fled Russia after murdering a former follower. "The decision of the Swiss government really angered me [*hot mir zeyer ufgebrakht*]. I also read the paper daily when Nechaev's trial took place in Moscow. When he was sentenced to twenty year's hard labor I felt tremendously [*shtark mitlayd*] for him." Hourwich notes also that, as an 11 year old, he did not understand, as he did now, that the man Nechaev murdered was actually "no traitor" to the revolutionary cause. Still, Nechaev's torture in Russian prison—he was placed in solitary confinement, beaten, chained hand and foot, and riveted to the dungeon wall—made his rendition unpardonable. He had been extradited to Russia as a common criminal, but Russia treated him as a political one. In the midst of a discussion of this case, Hourwich refers to his anti-extradition campaigns in the United States. "Here in America we managed in 1909 to fight for a refusal by the United States to surrender two Latvian revolutionaries who were also accused of murder: Pouren and Rudowitz. The Secretary of State at the time, Elihu Root, ruled with the defense stating that a common crime [*algemayne farbrekhn*] committed for political reasons has to be treated according to the international law for political crimes and for political crimes you are not permitted to extradite." Hourwich's implication is that his youthful indignation at Nechaev's extradition found its vindication in 1909.[51] In a lecture Hourwich gave in 1919, he elaborates on this connection between the cases, implying that he partly modeled his defense in the Pouren and Rudowitz cases on the defense in the Nechaev case. "In those days Russian trials, including political trials, were in a way public political demonstrations…the defense and the counsel [could] say what it wanted, and introduce any matter that they thought fit …This was a sort of

[51] Zikhroynes fun an apikurs [Memoirs of a Heretic], *Freie Arbeiter Shtimme*, January 20, 1921.

revolutionary propaganda carried from the court-room. "[52] Finally, it is clear from *The Development of American Democracy* that Hourwich saw his anti-extradition activism as part of an American radical tradition—what Hourwich would probably call a "heretical" or "minority" tradition rather than a "revolutionary" one. "The political development of the United States from the Civil War to the present war [WWI] is the result of a struggle between two directions…Through protests, demonstrations and petitions, independent voters try to show the ruling parties how many votes the opposition can influence…and in this way force the ruling parties to give into the opposition's demands…Progress in American politics has always come from the progressive minority."[53]

Political Crime Exceptions in American Extradition Treaties and Early Immigration Law

"Asylums invite men to commit crimes more than punishments deter them from them…great revolutions, both in states and in the views of men, have issued forth from places of asylum. But as to whether extradition is useful, I would not dare to say until there are laws better suited to human needs, and more lenient punishments that put an end to dependence on fickleness and mere opinion, so that persecuted innocence and despised virtue are protected; until tyranny has been banished."
--Cesare Beccaria, *On Crimes and Punishments and Other Writings* (1764), ed. Richard Bellamy and trans. Richard Davies (New York: Cambridge University Press, 1995) 92.

The first correlation in the treatment of "political" foreigners under immigration law and extradition treaties came in the late 1790s. Soon after the passage of the Alien and Sedition Acts, which were aimed a silencing and expelling supporters of the French Revolution and Irish Rebellion, Secretary of State Timothy Pickering arranged for the extradition of Jonathan Robbins, a mutinous sailor whose British ship was engaged in fighting revolutionary France.[54] The

[52] "Russian Revolutionary History," lecture 8, Dec. 8, 1919, Box 3, Folder 61, Collection 245, Tamiment Library.

[53] Hourwich, *Development of American Democracy*, 185-6, 203.

[54] It was President John Adams who had to formally hand over Robbins, and, in her authoritative account of the affair, Ruth Wedgewood speculates that "[President John] Adams might have felt an implicit license to treat an alien criminal summarily under the Jay Treaty [which included an extradition provision] because of his legislated

backlash against the assertion of American executive power in turning Robbins over to the British was very intense. Republicans were particularly incensed that Robbins would not be accorded a jury trial to determine whether his violent crimes were justified as a rebellion to achieve his liberty; Robbins' attorneys conceded he was involved in the murderous mutiny but claimed he was impressed and his captain was particularly brutal. It was Pickering again who urged Adams to sign warrants for the arrest of several outspoken foreigners under the Alien Act, which gave the President the power to expel foreigners on mere suspicion of revolutionary ideas. Opposition to the Robbins extradition and to the Alien Act helped Jefferson win the presidency. In his December 1801 presidential address, Jefferson criticized the Act: "Shall oppressed humanity find no asylum on this globe?" The Alien Act lapsed and the United States did not sign another extradition treaty until 1842. In the interim, immigration and extradition matters were left up to the states.

The Federalists and the Republicans emphasized different elements of Cesare Beccaria's definition of asylum in this section's epigraph. Jefferson did not believe that the United States should shun all extradition treaties, but advised only making them with countries that could be relied upon to administer justice fairly. He was critical of the exchange of criminals "between a free and arbitrary government" and, while serving as Secretary of State, opposed an extradition arrangement with Spain, arguing "most [criminal] codes…do not distinguish between acts against the government and acts against the oppressions of the Government. The latter are virtues, and yet have furnished more victims to the executioner than the former…We should not wish,

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emergency powers to exclude aliens under the Alien Act." [Ruth Wedgwood, "The Revolutionary Martyrdom of Jonathan Robbins," *Yale Law Journal*, 100 (1990-1991) 309.]

then, to give up to the executioner the patriot who fails and flees to us."[55] Jefferson did arrange for the return of maritime deserters to France, though this treaty was approved by Congress and had strict evidentiary requirements that were rigorously enforced by the judiciary. On the other hand, Federalist John Marshall, a Congressman at the time and soon a Supreme Court Justice, proposed that the President's opinion alone (without any role for the courts) should be sufficient condition for delivery of an offender to a foreign country. The definition and examples of political refugees in (federalist) Noah Webster's dictionary remained remarkably consistent from its first edition through the antebellum period. Those who should be accorded refuge, according to the dictionary, were *anti-revolutionaries* "from Hispaniola, in 1792; and the American refugees [Loyalists] who left their country at the revolution."[56] Though the use of the term refugee to refer to fugitive slaves was common among anti-slavery activists—from the time of the Revolution through the Civil War—this definition never made it into the dictionary.[57]

Two other issues that came up during the Robbins case are relevant to later contestation over the asylum for "politicals." The extradition of Robbins was made possible by a provision in the 1794 Jay Treaty, which was primarily designed to facilitate commerce between the United States and Britain. Irish immigrants had waged a vehement campaign against the treaty at the time of its passage, five years before the Robbins and Alien Act crises. This was an example of what the historian Donna Gabaccia calls "immigrant foreign relations," activity that has been

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[55] American State Papers, Foreign Relations, vol. I, 258. A year later, Jefferson wrote French Minister Genet, "The most atrocious offender is received as an innocent man" in the United States and its laws "have authorized no one to seize and deliver him. The evil of protecting malefactors of every dye is sensibly felt here, as in other countries, but until a reformation of the criminal codes of most nations, to deliver fugitives from them, would be to become their accomplice,—the former is viewed, therefore, as the lesser evil." [*Writings of Thomas Jefferson* (Ford ed.), vol. I, p. 462, quoted in Robert Rafuse, *Extradition of Nationals* (Urbana: University of Illinois Press, 1939) 11.]

[56] Compare Webster's *American Dictionary of the English Language* in the original 1828 and Merriam 1852 edition.

[57] Eric Foner, *Gateway to Freedom: the Hidden History of the Underground Railroad* (New York: W.W. Norton & Company, 2015).

overlooked by historians especially in the supposedly isolationist pre-Civil War era.[58] The undemocratic nature of secret extradition treaties made by the President and the Senate[59] with imperial or autocratic countries elicited increasing opposition from immigrants from those countries in the late 19th century. The other interesting thing to note is the "rights talk," including invocations of international law, by both sides during the controversy. Emmerich de Vattel's writings were invoked by Robbins' attorneys--who claimed that Robbins had a natural right to self-defense[60]--but also by defenders of the Alien Act, whose "references to Vattel shows that aliens could be expelled at will under the law of nations, which afforded no trial by jury."[61] To defenders of Robbins, the ambiguity of his American citizenship did not matter; his willingness to rebel made him, in legal historian Ruth Wedgwood's words, a "philosophical landsman" deserving of refuge.[62] Those opposed to the Alien Act argued that aliens within U.S. jurisdiction were entitled to the protection of American laws, not to mention "natural rights" like freedom of speech. This argument was compatible with a states rights argument: state power to admit aliens and unbridled federal power to expel them could not coexist.

Before the advent of explicit political exceptions, both New York State's extradition provision for the return of fugitives and its immigration law barring convicts betrayed concern that criminal codes in other countries insufficiently protected liberty and punished too harshly.

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[58] Donna Gabaccia, *Foreign Relations: American Immigration in Global Perspective* (Princeton: Princeton University Press, 2012) 37.

[59] The text of the Jay Treaty was not disclosed until a week after the Senate had voted in executive session to consent to ratification. After it was published in a Republican newspaper, public meetings and newspaper polemics tried to dissuade President Washington from ratifying the treaty. Even after the President ratified it, opponents spoke up in the House of Representatives.

[60] Wedgwood, 295.

[61] Gerald Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law* (Princeton: Princeton University Press, 1996) 54.

[62] Wedgwood, 318

(Proportionality of punishment was debated by early state legislators, again under the influence of the writings of Cesare Beccaria [63]). New York's 1822 extradition statute, revised slightly in 1827, provided that the governor could deliver over to representatives of a foreign government those fugitives charged with any crime, *with the exception of treason*, committed in the jurisdiction of that foreign government that would be punishable by death or imprisonment *in New York* if committed there. In addition, in words echoing the extradition provision in the Jay Treaty, the fugitive could only be handed over upon "*such evidence of the guilt* of the person…as would be necessary to justify his apprehension and commitment for trial had the crime charged been committed" *in New York State*.[64] A few years later, New York State passed an immigration law penalizing ship masters for bringing to the state "a foreign convict of any felony, which if committed *in this state* would be punishable therein."[65] Thus, like the state extradition statute, the state's immigration statute included a provision upholding the principle that came to be called "double criminality": to send back a fugitive, his act had to be considered a crime not only in the country from which he fled but also in his place of asylum. The passage of New York's immigration statute came on the heals of widely publicized incidents of the transportation of convicts from Germany but, soon after the immigration law's passage, Friedrich List, U.S. consul in Leipsig, suggested additionally requiring all emigrants have proof from the authorities of their home towns that they had not been punished for crimes, "*political punishments excepted*."[66] (Friedrich List had himself immigrated to the United States from Germany after

[63] Marcello Maestro, *Cesare Beccaria and the Origins of Penal Reform* (Philadelphia: Temple University Press, 1973).

[64] "An Act to provide for delivering up Fugitives from Justice," passed April 5, 1922, revised in 1827. (Revised Statutes if New York, 1827, tit. i. §§8-11, p. 33.)

[65] Act of April 25, 1833, ch. 230, 1833 N.Y. Laws 313.

[66] List's March 8, 1837 letter is included in House Report No. 1040, 25th Congress, 2nd session, 54-55.

serving a sentence for a political crime. So his suggestion was a kind of "immigrant foreign relations" stemming partly from personal experience similar to that of Hourwich, who was imprisoned for political reasons in his home country and was an immigrant political economist who spent part of his American career working for the U.S. government.) But it was arguably *from the idea* of double criminality (which was in both New York's immigration and extradition statute) that the American version of political exception to extradition evolved. The double criminality provision—that a fugitive should be delivered up on such proof of guilt as would justify his commitment for trial in the country where he was found if the crime had been there committed—was incorporated into American extradition treaties.[67]

The double criminality principle effectively provided protection above and beyond any explicit provision in a treaty precluding extradition for offenses of a "political character." Foreign autocrats interested in capturing "politicals" tended to resort to any means necessary to get supposed evidence of their guilt for some alleged crime; both the evidence and the crime could be dismissed during American extradition proceedings under the double criminality principle. Legislation in the 1840s and the 1860s provided that U.S extradition proceedings were not jury trials but public hearings before a judicial commissioner where the demanding foreign government had to show primae facie proof of the offence and probable cause that the alleged fugitive was guilty of the specific crime for which the extradition was requested; all submitted foreign depositions had to be authenticated by a U.S. consular officer and adhere to laws of evidence in the state where the hearing was held. If the commissioner decided extradition was

[67] As the eminent international lawyer Charles Cheney Hyde noted, all of the extradition treaties of the United States from 1794 through 1914 (with one inconsequential exception) included the double criminality requirement. Hyde explained, "the acts of an individual participating in…a revolutionary movement abroad could not always be regarded as morally wrongful in the country of asylum" which "enjoyed liberal laws and constitutional government." "Thus," Hyde concludes, "the very circumstances that rendered the modern practice of extradition practicable and habitual served likewise to check and discourage surrender of the political fugitive." Hyde, "Notes on the Extradition Treaties of the United States," *American Journal of International Law*, 8.3 (July 1914) 489.

warranted, a petition for habeas corpus could be filed in the federal courts. A commissioner's decision to deny extradition was final; a commissioner's or the court's decision to grant extradition was sent to the Secretary of State for affirmation or refusal.[68] (The commissioner system of handling extradition not only ensured the defendant a judicial hearing but also insulated the foreign policy establishment somewhat from diplomatic complications that could arise as a result of popular criticisms of foreign governments. The demanding government was required to pay all the fees associated with the proceedings, which was variously interpreted as a way to prevent frivolous extradition requests or as enabling foreign governments to bias proceedings.) Some immigrant advocates believed that the same court standards and evidentiary requirements that applied in extradition should be extended to *all* immigrants sent back to their home country (i.e., those who were not accused of crimes by their home governments but were simply deported by American authorities). When, in the 1850s, No-Nothing officials in Massachusetts began to summarily deport Irish immigrants, Irish-American newspapers in Boston and New York referred to the deportations as "extraditions" and demanded that legal procedures not be circumvented and that documentary evidence be provided.[69] On the other hand, Thomas Hart Benton and other southern politicians opposed an extradition treaty with Britain that incorporated the double criminality provision because they believed it would prevent the return of slaves who had committed crimes in the process of fleeing to Canada and the British West Indies; since slavery was abolished in the British empire, British courts would not

[68] Act of August 12, 1848 (9 Stat. 302-3); Act of June 22, 1860 (12 Stat. 84); Act of March 3, 1869 (15 Stat. 337).

[69] May 26, 1855 issues of the *Boston Pilot* and the *New York Irish-American*, quoted in Hidetaka Hirota, " 'Pretended Love of Personal Liberty': Antislavery, Nativism, and Deportation in Antebellum Massachusetts," paper presentation at the Massachusetts Historical Society Boston Immigration and Urban History Seminar, January 29, 2013.

allow the extradition of slaves who fought or stole their way to freedom because, in the places of asylum (like Canada), these acts would be seen as legal assertions of liberty.

Elements of American extradition procedure that were less about protecting the rights of fugitives and more about police power and state sovereignty were a product of the use of extradition as an international fugitive slave law. This was especially true of the "rule of non-inquiry," which meant that the United States would not inquire as to what kind of justice a person would receive in the country extradited to. From 1833 (when slavery was abolished throughout the British Empire) through 1863 (the Emancipation Proclamation), Canadian authorities successfully returned only one fugitive slave; they denied several requests and abolitionists foiled returns that were granted.[70] But in 1860, in the case of the last requested slave, John Anderson, who was charged with killing a white man upon making his escape from Missouri, a Canadian court decided to leave judgment as to the merits of his self-defense claim to the Missouri court, ignoring that Anderson, as an escaped slave, would not be given the opportunity to make that claim there. "We may be told," the Canadian judge wrote, "that there is no assurance that the prisoner, being a slave, will be tried fairly and without prejudice in a foreign country; but no court…can refuse [extradition]… by acting on such an assumption; nor can we be influenced by the consideration …that the prisoner, even if he shall be wholly

[70] Donald Macdougall, "Habeas Corpus, Extradition, and a Fugitive Slave in Canada," *Slavery & Abolition* 7.2 (August 1986) 118-128. Also beginning in 1833, the Mexican national government officially refused to extradite any fugitive slaves. Slave owners took matters into their own hands, offering rewards for returned slaves and sending slave catchers into Mexico, where "opposition to extradition did not necessarily translate into welcoming fugitive slaves into their communities," [Sarah E. Cornell, "Citizens of Nowhere: Fugitive Slaves and Free African Americans in Mexico, 1833-1857, *Journal of American History* (September 2013) 367]. Though both Canada and Mexico proved havens for fugitive slaves, "where the Canadians and British often resorted to legalistic technicalities in rejecting American requests for the return of fugitive slaves, the Mexican response had been both more nationalistic and more moralistic – not least because American efforts to recover their slaves south of the border were so much bolder…The aggressiveness of the U.S. efforts reflected not just the very different tenor of the two neighborly relationships but also the fact that the Mexican haven, unlike the Canadian one, bordered on a slave state." [Ethan Nadelman, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement* (University Park,PA: Pennsylvania State University Press, 1993) 45.]

acquitted… must still remain a slave in a foreign country."[71] This was essentially the same rule that was adopted in 1850 when the U.S. Congress made the rule of non-inquiry mandatory in all fugitive slave cases[72], but after the abolition of slavery, non-inquiry remained part of extradition policy, especially as the United States wanted to augment its commercial and political alliances with other countries. Extradition became more about maintaining world order and good foreign relations than justice for the criminal. As the historian Christopher Pyle writes, "The U.S. government would assert leadership within the 'family of nations' and seek the benefits of reciprocal extradition treaties with as many foreign regimes as possible, while the compilers of international law digests would record the effects of these developments on the law of extradition as if they had no moral consequences at all."[73] John Bassett Moore was one of those compilers of international law digests.[74] Moore's digest was a compendium of state behavior; it naturalized what was done and implied that past policy was a source of law.[75] The moral-formal split between abolitionists and judges in the antebellum era was not unlike the one that divided

[71] *In re John Anderson*, 20 U.C.Q.B.R, 173.

[72] The tenth section of the Fugitive Slave Act required that commissioners accept, without question, legal papers from slave states attesting to the alleged enslavement of fugitive slaves.

[73] Christopher Pyle, *Extradition, Politics, and Human Rights* (Philadelphia: Temple University Press, 2001) 118.

[74] See, volume 4 of Moore's *Digest of International Law* (1906), which devoted a long chapter to Extradition.

[75] William Seward, a politician who was also a moralist on the slavery issue, appears as an anomaly in Moore's Digest. Seward protected fugitive slaves from interstate extradition and extradited a Spanish slave dealer to Cuba in the absence of a bilateral treaty. Regarding the former (fugitive slaves), Seward had declared during the debate over the Fugitive Slave Law in 1850 that "there is a higher law than the Constitution." The rendition of slaves conflicted "with the laws of God." Regarding the latter (the Spanish slave dealer), Moore quotes Seward's position that "the sole elements of consideration" in whether to extradite a fugitive are "the traits of the alleged criminality as involving heinous guilt against the laws of universal morality." (volume 4 of Moore's *Digest of International Law* (1906), 250.) Other American officials in Moore's digest refused to surrender fugitives to another country if no formal extradition treaty sanctioning the surrender existed between the United States and that country. In his treatise on extradition, Moore quotes Seward's claim that the slave dealer was an "offender against the human race." "So far as depends on me as Secretary of State," Seward said, "Spanish slave-dealers who have no immunity in Cuba will find none in New York." (Moore, *A Treatise on Extradition and Interstate Rendition* (Boston: Boston Book Company, 1891), vol. 1, 35, n. 3.)

Hourwich and Moore in the late nineteenth century.[76] Opposition by abolitionists to the Canadian court's ruling in the Anderson case lead to a re-hearing and Anderson's release on a technicality; the power of formalism was such that many of the victories of the Political Refugee Defense League also relied on technicalities to prevent extraditions.

The laws of war—which gave soldiers criminal immunity when they resorted to destruction and violence—helped promote a morally neutral and circumstantial understanding of political crime in the 1860s. During the Civil War, the Union was mostly unsuccessful in its extradition requests for Confederates; President Lincoln and Secretary of State Seward could not convince Canadian judges that Confederates were criminals rather than soldiers. (When a judge sided with the St. Albans raiders, Confederates who attacked Vermont from a Canadian base and claimed that their acts were not crimes but acts of war, Seward shifted tactics. He persuaded the Canadian authorities of the danger that the war would extend to Canada so that the Canadians would prosecute the raiders for breaching Canadian neutrality. Stopping the political activity of foreigners with neutrality law prosecutions rather than extradition was a familiar tactic by the turn of the century). Judges in these cases saw the acts of the Confederates as "committed in the course of, or as an incident to" a political conflict[77]; this became an important standard by which to define political crimes in the late nineteenth century. In 1880 the International Law Association, made up of influential international lawyers from America and Europe, resolved that "acts combining all the characteristics of crimes at common law (murders, arsons, theft) should not be excepted from extradition by reason only of the political purpose of their authors"

[76] On the workings of the antebellum moral-formal divide, see Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1975).

[77] Decision of Judge Smith in *The St. Albans Raid*, compiled by L.N. Benjamin (Montreal, 1865), 469.

and "in passing upon acts committed during a political rebellion, an insurrection, or a civil war, it is necessary to inquire whether they are excused by the customs of war."[78]

It was also in the aftermath of the Civil War that the United States recognized the right of expatriation and signed treaties with 12 different countries recognizing that right, which, in the worlds of Max Kohler, "went further" than providing asylum in "freely enabling foreign fugitives to become naturalized here and sustained their rights as against foreign prosecutions for political offences committed before their arrival here."[79] Not unlike their later anti-extradition activism, Fenians (concerned with the fate of their fellows whose American citizenship was not recognized when they were rounded up for their protest activities in England) played an important role in expatriation politics and the American treaty with Britain.[80] Significantly, however, certain countries—Russia being a prime example—never acknowledged the right of expatriation.

In the 1870s, when the federal government took control over extradition and immigration policy, political criminals were clearly distinguished from common criminals. Soon after an Appellate court in New York found the state's extradition statute unconstitutional (on the grounds that extradition was a federal responsibility)[81], New York's Commissioners of Emigration detained criminal immigrants upon arrival and pressured steamships to take them back. The following year, the U.S. House of Representatives adopted the resolution of Representative Cox of New York requesting that the State Department furnish Congress with

[78] James Brown Scott, *Resolutions of the Institute of International Law* (Oxford: Oxford University Press,), 44.

[79] Max Kohler, "The Right of Asylum, With Particular Reference to the Alien," *American Law Review*, 51.3 (May-June 1917) 406.

[80] Lucy Salyer, "Reconstructing American Citizenship: The Fenian Brotherhood and the Expatriation Act of 1868," paper presentation at Harvard Law School Legal History Colloquium, Fall 2008.

[81] *People v. Curtis,* 50 N.Y. 321, November 19, 1872.

correspondence with "other governments as to the landing of foreign convicts on our shores; and what legislation…is necessary to prevent such outrages."[82] Among the correspondence submitted to Congress was a letter from Robert Schenck, American Minister in England, to Lord Granville from May 27, 1873 protesting "that a number of convicts have arrived at different times in New York…who have been discharged from British prison on the condition of their going to the United States." Schenck adds:

> I am sure that I shall need to use no argument to enforce the view taken by the Government of the United States in respect of such a mode of disposing of persons who are undergoing the penalty of their crimes…A very satisfactory and explicit statement of right in such cases is to be found in your lordship's note of the first of June last, addressed to Lord Lyons, in reference to the banishment of communists from a neighboring country. I find that your lordship then emphatically, and certainly with great justice, declared that 'Her Majesty's government cannot consent that England should be made a penal settlement for France' and 'cannot assent to the deportation to this country of the class of persons in question, whether they are provided or not with means of subsistence.' *As between free nations the rule and reason should certainly be stronger when applied, not to political offenders, but to persons convicted of crimes against municipal law*.[83] [Italics mine]

The difference between political criminals and others was thus assumed. After he was released from prison on the condition that he be exiled from the United Kingdom, Irish nationalist Jeremiah O'Donovan Rossa received an official welcome to the United States from the House of Representatives.[84] The publicized details of Rossa's particularly severe treatment in English prisons—including month long stretches with hands cuffed behind his back or in solitary confinement on a diet of bread and water—had led to pressure for his release and international sympathy. A few years later, a handful of America-based Fenians sailed to Australia to

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[82] *Congressional Record*, May 9, 1874, v. 2, 3727.

[83] *Landing of Foreign Convicts On Our Shores: A Report from the Secretary of State, with accompanying papers,* Ex. Doc. 253, House of Representatives, 43rd Congress, 1st Session, 31-2.

[84] David Sim, *A Union Forever: The Irish Question and U.S. Foreign Relations in the Victorian Era* (Ithaca: Cornell University Press, 2013) 132.

successfully break out six convicts serving life sentences in a British penal colony there; the prisoners received a celebratory welcome when they returned to New York.[85]

Given this sentiment—against convicts, unless they were political—it is not surprising that the Immigration Act of 1875 excluded "persons who are undergoing a sentence for conviction in their own country of felonious crimes, other than political or growing out of or the result of political offences**.**" This language—particularly "growing out of or the result of"—drew on a provision in Great Britain's landmark 1870 Extradition Act, which in turn drew upon a provision in the Franco-Belgian extradition treaty of 1833, that exempted from extradition those who engaged in "relative political offences": criminal acts, such as murder or robbery, that have a political motive or are in the furtherance of a political movement or a political uprising. The British Act and American extradition legislation in 1876[86] (and before) did not clearly define the political offence exception; the exception was included in each bilateral extradition treaty and determination as to whether the exception applied in a given case was left to the judiciary and the Secretary of State. (The British Act of 1870 was particularly liberal because, in addition to a political offense exception, it included a provision on "speciality," which contemporary commentators claimed was vital to preserving political asylum. The speciality provision was that "A fugitive criminal shall not be surrendered to a foreign state unless provision is made by the law of that state, or by arrangement that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her majesty's dominions, be detained or tried in that foreign state for any offence committed prior to his surrender other than the extradition crime

[85] Neil Whelehan, *The Dynamiters: Irish Nationalism and Political Violence in the Wider World, 1867-1900* (New York: Cambridge University Press, 2012) 76, 79. On Rossa's imprisonment see, Jeremiah O'Donovan Rossa, *Six Years in Six English Prisons* (New York: P.J. Kennedy, 1874).

[86] 19 Stat. 59.

proved by the facts on which the surrender is grounded." This provision insured that a fugitive extradited for a common crime could not be tried for a political offence.)[87]

When negotiating extradition treaties or responding to requests to surrender fugitives, U.S. officials were reluctant to concede to certain requests, particularly when these seemed to jeopardize political offenders. In 1874, treaty talks with Russia foundered in part because its foreign office wanted the United States government to agree to extradite those in the United States who had committed crimes against Russia while in a third country. At this time, Russian dissidents published and agitated against the Tsar in Switzerland and France—countries with whom Russia signed extradition treaties—and, from there, made their way to England and to the United States. Secretary of State Hamilton Fish also objected to the list of extraditable crimes Russia wanted to include in the treaty, which was modeled on the list of crimes in Russia's 1873 treaty with Switzerland, a treaty that included a political offence exception.[88] Some of the crimes, Fish wrote, "though not expressly political, might, it is believed, easily be made to serve as a pretext for the demand of a person whose punishment for a political offense might chiefly be desired." The Russians also objected to including in the treaty a double criminality provision requiring that "the party may be surrendered only upon such evidence of criminality as would

[87] For a discussion of the speciality principle in the 1870 Act see Nicholas Adams, "British Extradition and the Problem of the Political Offender (1842-1914)," Ph.D. thesis, University of Hull, 1989, 123-4.

[88] In 1871, before the two countries had an extradition treaty, Russia requested that the Swiss Confederation extradite the revolutionary Sergei Nechaev, the revolutionary whose handling so impressed Hourwich as a youngster. In the late summer of 1872, Russian agents found Nechaev in Zurich and trapped him into an arrest by the Swiss police. After deliberations and significant pressure by Russian diplomats, the Swiss Federal Council agreed to extradite him on the condition that he be tried in Russia as a common, not a political, criminal. This promise was not kept. He was condemned by a jury for being a revolutionist, publicly flogged, and then, instead of fulfilling the jury's (already harsh) verdict, was imprisoned "forever" in a St. Petersburg fortress at the personal instruction of Alexander II. Thereafter, the two countries negotiated an extradition treaty that included the explicit political offence exception. The exception did not prevent Russia from requesting a fugitive's extradition from Switzerland for a common crime, but, with the treaty in place, presumably the Swiss authorities would have grounds to deny the request if they deemed the crime political or to diplomatically remonstrate if the returned fugitive was tried in Russia for a political offense.

justify apprehension and commitment for trial according to the laws of the country where he is a fugitive if the offense had there been committed." This provision, Fish wrote, was nonnegotiable: it represented "a principle of personal protection of…fundamental importance…essential to personal rights." [89]

Around the same time, the U.S. rejected an extradition request by the Mexican government for eight men who attacked the Sonoran town of Magdalena, stole money and cattle in the name of a revolutionary enterprise, and then withdrew into Arizona. When the Mexican government asked for their extradition, the men had already been arrested by a U.S. Marshall for violation of neutrality laws "in making hostile incursions into Mexico." Acting U.S. Secretary of State Hunter argued that "the fact that they are charged [in the extradition request] with being revolutionists shows that whatever may have been their other crimes they may also have been guilty of a political offence for which the treaty stipulates that no extradition shall be granted."[90] But, in this case, the refusal to extradite was less a manifestation of concern for the rights of the accused than a desire to have the men held and tried in the U.S. Given, however, that a U.S. cavalry unit stationed in Arizona was put in charge of the men, it is unlikely they were tried. Unlike the Irish Americans arrested for violation of neutrality when they attempted to invade Canada ten years earlier, the Mexicans were probably not quickly released or given their arms back.[91]

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[89] Fish's comments are in letters addressed to Marshall Jewell at the legation in Russia, March 18, 1874 and May 9, 1874, enclosed in *Senate Executive Documents and Reports*, Exec.Doc.F, 50th Congress, Second Session, Ordered Printed March 18, 1892.

[90] Acting Secretary of State William Hunter to Senor Juan Navarro, September 22, 1880, *Foreign Relations of the United States*, 1880, 788.

[91] The historian Robert Gregg mentions only that the Cavalry suppressed "the conspirators" by "scattering" them. (Gregg, *The Influence of Border Troubles on Relations Between the United States and Mexico, 1876-1910* (Baltimore: Johns Hopkins Press, 1937, 97). For the handling of the Fenians who invaded Canada in 1866, see W. S. Neidhardt, *Fenianism in North America* (University Park, Pa.: Pennsylvania State University Press, 1975) 71-2.

Of Crimes and Politics: 1880s and 1890s

"Why should all the political killing be done by the tyrant and none by his tortured victims? If we meddle in this fight at all, must it be as the 'fugitive slave' catcher for this 'autocrat'?"
--Charles Frederick Adams, Brooklyn, *Free Russia*, 3.11 (June 1, 1893) 7.

"When the multiplication of criminals is regarded as a sign of human progress, it will be time to hail with unmixed delight the multiplication of extradition treaties. In our view, nations best show a perception of their mutual duties and interests by concerning themselves with the social condition and political welfare of peoples."
--Edmund Noble, *Free Russia*, 4.1 (Aug. 1, 1893), 3.

"Since the system of extradition has found favor, not in spite of the evils with which it was supposed to be identified, but because experience has shown that they do not exist, it may reasonably be anticipated that many of the restrictions which now bear on the operation of the system will ere long disappear before more rational views."
--John Bassett Moore, "Extradition," *American Law Register and Review*, 44.12 (Dec. 1896) 762.

In the 1870s and early 1880s a new kind of activity—"propaganda of the deed," violent attacks on property, people, and institutions meant to symbolize a larger structural assault on the social and industrial order—led to efforts to put limits on the political offence exception. The U.S. was relatively slow to do this despite growing anxiety among some officials and editorialists about violent agitators and social disorder. As a young anarchist-socialist in Russia at this time, Hourwich opposed assassination, believing that it was designed to force a constitution from the government and thus politicized a revolution that should focus on spreading propaganda and agitating for social and economic change among peasants and workers. Though morally opposed to terrorism generally, he was more sympathetic to what he called "Western European economic [or anarchist] terrorism," a more direct fight against unpopular economic exploiters that Hourwich believed would win widespread sympathy and lead to a revolution of the masses.[92] At this time, the U.S. was negotiating an extradition treaty with

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Under political pressure during a congressional election year, President Andrew Johnson issued executive orders to release Fenians arrested in the raids and return arms that were seized, and intervened with British authorities to try to get Fenian prisoners in Canada and Ireland released.

[92] Hourwich wrote about his views of terrorism in the segments of his memoir ["Zikhroynes fun an apikurs," ["Memories of a Heretic"] in the *Freie Arbeiter Shtimme* on March 31, April 7, and Sept 1, 1922. Hourwich supported the kinds of "direct action" that, in the American context, would be championed by the Industrial Workers

Spain, where anarchism had a mass following among the laboring classes, who engaged in strikes, sabotage, rioting, and arson. Spain asked that "malicious damage on railroads" be included on the list of extraditable crimes in its treaty with the U.S. in 1877, the year of the great railroad strike in the United States, but the U.S. refused.[93]

One of the crimes in the 1873 Russian-Swiss extradition treaty objected to by Fish involved "malicious injury to property," particularly the "destruction of buildings and steam engines," though the Russian government saw this provision more as a means to catch assassins—who had been targeting the Tsar and other officials since the late 1860s—rather than saboteurs engaged in "direct action" attacks on property or the means of production. In 1879 Leo Hartmann attempted assassination by blowing up a train car he thought (mistakenly) was carrying Tsar Alexander II. Hartmann fled first to France and then to England. The Russian government requested that France extradite Hartmann; popular support for him led the French to turn down the request but order his expulsion.[94] The Russians then asked England, but England

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of the World (the I.W.W.). He wrote elsewhere, "before my exile, I had sided with the members of the Black Repartition [Chyornyi peredel], and while in exile [in Siberia] had become a Marxist, although I must confess that my Marxism still smacked quite strongly of the old populism." (I. Gurevich (Isaac Hourwich), "The First Jewish Workers' Circles" *Byloe*, 4, Petersburg, 1907).
Black Repartition was a revolutionary populist organization that was established in St. Petersburg in 1879, when Hourwich was a student there. The organization renounced the necessity of political struggle, was against terror and conspiracy tactics, and preferred propaganda and agitation among students and workers. In 1880-1881, several of the organization's founders went into exile; some of them, including Georgi Plekhanov, Lev Deich, and Vera Zasulich shifted towards Marxism and established a Russian Marxist organization in Geneva in 1883.

[93] Walter Fifield, "A History of the Extradition Treaties of the United States" (Ph.D. dissertation, University of Southern California, 1936) 117.
"Overreacting" to an anarchist-inspired peasant revolt in southern Spain in 1873, the Spanish government "cracked down hard" not only on anarchists but the entire labor movement. (Richard Bach Jensen, *The Battle Against Anarchist Terrorism: An International History* (New York: Cambridge University Press, 2014) 15-16.)

[94] "Popular interest was aroused…The Russian Government denied any political character to the charge against Hartmann. The French government did not pass upon this question, however, but refused the extradition on other grounds—failure to establish identity and insufficient proofs of guilt. Francis Wharton [Moore's predecessor as an international lawyer and extradition expert at the Department of State] considered this as merely a pretext, and thought the French government really refused the extradition because it did not want to enter into a struggle against the Socialist and Anarchist parties who maintained that assassination of the Czar must be considered part of an

said not in the absence of an extradition treaty between the two countries.[95] The following year Hartmann set off to promote the Russian revolutionary cause in the United States on behalf of the *People's Will*, the wing of the radical Russian populist movement that advocated political assassination to provoke social and political change. (Hourwich belonged to the wing of the movement that opposed this approach; see note 92). In response to those Americans who thought of the Tsar as a reformer—who freed the serfs—rather than a despot, Hartmann told the *New York Tribune* that the struggle for political change in Russia was like America's Civil War: "You did not root out the curse of slavery in American without the shedding of blood. Do you think that any ruler will give liberty to his people without a struggle on the part of the people?"[96] The same analogy was drawn by the famed abolitionist Wendell Phillips a few weeks before, while others believed that "Americans have no interest in ameliorating a bad government by the incident of slaughter, whatever Wendell Phillips may say."[97] Critics of Hartmann likened him to the man who recently shot President Garfield and one editor opined that, unlike the protagonist in Edward Everett Hale's famous story, Hartmann did not "deserve to have a country."[98] Newspapers also quoted an Assistant Secretary of State say that, despite the lack of an extradition treaty, Hartmann was a criminal and would be handed over if the Russian government asked for him. Hartmann's supporters—a mix of Russian emigres, who formed the

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insurrectional movement which one was obliged to consider political." Lora Deere, "Political Offences in the Law and Practice of Extradition," *American Journal of International Law* 27 (1933) 255.

[95] The back and forth between the Russian and British governments on Hartmann's extradition occurred in March 1880. See note 81 in Bernard Porter, "The *Freiheit* Prosecutions," *Historical Journal*, 23. 4 (Dec. 1980), 847.

[96] "A Talk with Leo Hartmann," *New York Tribune,* August 1, 1881.

[97] An excerpt from Phillips' June 1881 speech is the epigraph to this section of the chapter. (note 20) "A Good Riddance," *The Independent*, August 11, 1881, 16.

[98] *New Haven Register*, August 3, 1981.

Russian American National League; socialists; and labor activists—claimed this gave license to Russian agents to kidnap him and Hartmann's lawyer asked the State Department to clarify its position. Secretary of State James Blaine responded that he could not make a statement regarding the extradition of Hartmann prior to a request for such action by Russian authorities. Blaine had this response published in the press in the form of a disparaging letter criticizing the propriety of the request for clarification of State's position and of extradition being taken up publicly rather than remaining a matter of official diplomatic negotiations.[99] Russia probably would have asked the U.S. for Hartmann had it not had extradition requests recently turned down by the United States because no treaty existed.[100] Hartmann's fear that he was being tracked by agents was probably well founded as well; the Russian Minister *had* expressed to Blaine "the belief that the Nihilist Conspirators have an efficient bunch of cooperationists in New York."[101] Though the U.S. did not contract an extradition treaty with Germany after unification, in 1879 the German authorities hired a Pinkerton agent in the U.S. to track political emigrants fleeing Germany's anti-socialist law and then a special agent in 1882 to follow Johann Most, a former Social Democratic deputy in the Diet who now espoused anarchism and the use of violence against monarchist governments.[102]

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[99] Letter from Blaine to Henry Wehle, August 9, 1881, *New York Times*, Aug. 10, 1881, 5.

[100] See the December 5, 1879 letter from William Evarts to Nicholas Shiskin refusing the surrender Theodore Nicolaieff Jurkowski since no extradition treaty existed; the letter refers to another denial on the same grounds the year before. (Enclosed in *Senate Executive Documents and Reports*, Exec.Doc.F, 50th Congress, Second Session, Ordered Printed March 18, 1892.)

[101] Letter from Blaine to John Watson Foster, June 19, 1881, cited in Norman Saul, *Concord and Conflict: The United States and Russia, 1867-1914* (Lawrence, KS: University of Kansas Press, 1996), 245.

[102] Dirk Hoerder, *Plutocrats and Socialists: Reports by German Diplomats and Agents on the American Labor Movement, 1878-1917* (New York: Saur, 1981) 366-369.

Irish nationalists were by far the most active advocates in the United States of this kind of violence. (And British authorities also employed Pinkerton agents and paid other spies to report on the activities of Irish Americans). In the early 1880s a "skirmishing fund" created by O'Donovan Rossa in the U.S. supported terrorist attacks on the Empire and on what "England regards as more sacred than life—'property.'"[103] Rossa had originally written of skirmishing as the rescue of Irish prisoners; many of his contemporaries saw the fund as the product of Rossa's imprisonment. John Boyle O'Reilly, editor of the *Boston Pilot*, wrote that "when she [England] had Rossa chained like a wild beast in the dark cells of Millbank and Portland [prisons] she was sewing the seeds of the dreadful 'policy of dynamite.'"[104] The bombing by Irish nationalists in the early 1880s resulted in one civilian death and many injuries, but most of the explosions failed to effect serious damage.[105] British authorities did not think that the bombers were liable to extradition: even if the bombers did not claim their crimes were political (and that therefore they were exempt from extradition), there was insufficient evidence to support extradition requests for the crimes covered by the existing treaty (i.e., murder or assault with intent to commit murder). When those involved with a March 1881 attempt to blow up the Mansion House (residence of

[103] *Irish World and American Industrial Liberator*, April 21, 1877, quoted in Jonathan Gantt, "Irish-American Terrorism and Anglo-American Relations, 1881-1885," *Journal of the Gilded Age and Progressive Era*, 5.4 (October 2003) 331. More expansively, Patrick Ford predicted: "With the tumbling down of those big English cities, down also would tumble England's credit. Down would go her insurance companies…Trade would be paralysed…India and all other British possessions would start to their feet. The English Democracy would rise…the Aristocracy would not wait upon the order of their going but would go at once. The lands stolen from the people of England would revert to them again an with the disappearance of this last relic if feudalism, up would ascend the English Republic." *The Irish World*, April 16, 1881, quoted in Whelehan*, Dynamiters,* 77.

[104] O'Reilly quoted in *Dynamiters*, 75. Rossa denied this, claiming that he was committed to violent revolution before his imprisonment.

[105] The one death occurred when a bomb planted by the United Irishmen (O'Donovan's group) exploded in an army barracks wall in Salford, near where Irish prisoners had been executed in 1867. Rather than destroy the barracks and armory, the bomb caused the wall to collapse outwardly and killed a seven year-old boy. The United Irishmen generally targeted symbolic places and put explosives outside empty town halls and government buildings. The stated goal was to strike at property without endangering life.

London's Lord Mayor, located directly across the street from the Royal Exchange and the Bank of England) escaped to the United States, Home Secretary William Harcourt wrote that "it was thought best to let them see that they are known and then they will not attempt to come back."[106] U.S. Secretary of State Blaine played both sides—condemning terrorists in talks with British officials but doing nothing in practice to suppress Irish-American support for them, including newspapers that collected money for terrorist acts or the trafficking of explosives from the U.S. to England.[107] In this way Blaine avoiding antagonizing the Irish-Americans, whose support he wanted for the Republican party. The 1882 immigration law included the provision that "all foreign convicts except those convicted of political offenses, upon arrival, shall be sent back to the nations to which they belong and from whence they came."[108] This provision was originally introduced by Democratic Congressman Cox of New York; since the late 1870s, Cox had been pushing for stronger legislation against convicts, while at the same time championing Irish nationalists, whose supporters heavily populated his district.[109] In 1883 Secretary of State Frelinghuysen wrote to the British minister to protest the "unwarranted" action of British

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[106] Lewis Harcourt Diary, March 26, 1881, quoted in Adams,198.

[107] James Russell Lowell, American minister to Great Britain, told British Foreign Minister Lord Granville that the newspapers could not be suppressed "until some definite proof should connect the violent language on one side of the Atlantic with specific actions on the other." (Gannt, 334). Though Blaine assured the British of cooperation in bringing to justice those responsible for manufacturing and shipping explosives to England, no prosecutions were brought. The "inertia" on the dynamite trafficking persisted until after the election in 1884, and, even then, lame duck President Arthur's call for a broadening the scope of the country's neutrality legislation did not lead to any new legislation (Sim, 159). It remained the law that the U.S. could only arrest those who literally carried dynamite on a ship. An 1885 House report that investigated London bombings concluded that there was "no evidence to justify the assumption" that immigrants living in the U.S. were directly or indirectly implicated. (Report 2960, *Dynamite Explosions in London, England*, Committee on Foreign Relations, House of Representatives, 48th Congress, Second Session, March 3 1885.)

[108] 22 Stat. 214. (Immigration Act of Aug. 3, 1882).

[109] For Cox's immigration bill, see *Congressional Record,* April 22, 1880, 2662; for his support for Irish nationalists, see *Congressional Record*, Jan. 26, 1882, 656-7 and Joseph Patrick O'Grady, *Irish-Americans and Anglo-American Relations, 1880-1888* (New York: Arno Press, 1976), 44 (mentioning Cox's presence at "a great Irish-American protest meeting…in Cooper Hall, New York" in 1882. He was there for the Irish vote).

consular agents in New York who were detaining Irish passengers arriving on British ships. This could certainly vitiate the political offence exception in the immigration law and, Frelinghuysen asserted, American officials were "competent and prepared…to aid in the apprehension of criminals."[110] As we shall see, assertions of territoriality when it came to immigration policy and protectiveness over political offenders did not extend to opposing Britain's use of secret agents and informants.

In fact, even formal limits on the political exception were in the offing. In the summer of 1882, in part in response to the shooting of President Garfield, the United States and Belgium concluded a new extradition treaty that incorporated an *attentat* clause stipulating that "an attempt against the life of the head of a foreign government, or against that of any member of his family, when such attempt comprises the act either of murder or assassination, or of poisoning, shall not be considered a political offence." The treaty also included among its list of extraditable crimes "willful and unlawful destruction or obstruction of railroads which endangers human life." In November 1882 the American government expressed its desire to resume negotiations with Great Britain to replace the limited treaty of 1842, elongating and updating the list of crimes. Renewed bombings by Irish nationalists in 1884 provoked negative comment in the American press; the feeling was that explosions in the London underground and Victoria railway station, Westminister Hall, and the Tower of London harmed the cause of Irish independence. Henry Wade Rogers, future dean of Yale Law School, quoting Vatell on the danger of a sovereign "letting loose the reins of subjects against foreign nations" and President Lincoln on the "duty of the Executive to exclude enemies of the human race from an asylum in the United States," called for adding "conspiracy to murder" to the list of extraditable offences in treaties and for

[110] Frederick Frelinghuysen to Sackville-West, March 3 and 14, 1883, *Notes to Foreign Legations in the United States from the Department of State,* Great Britain, vol. 19, (microfilm reel 48), RG 59, NARA.

handing over to England the Irish dynamiters whose crimes "are not political, but crimes against humanity."[111] This sentiment was echoed in Congress. Democratic Senator Thomas Bayard expressed indignation and sorrow at the bombings at Parliament and other London buildings, calling them, in a resolution that passed almost unanimously, monstrous crimes against civilization**.** In introducing the resolution, Bayard explained that an attack on "public buildings dedicated to a government of laws" reflected "a spirit which by destroying law will necessarily destroy all hopes of that liberty that can only exist under law."[112] Republican Senator Joseph Hawley of Connecticut, who had been a Union officer during the Civil War, denied that dynamite as used was a legitimate method of warfare and noted that the bombs in question "did not have the logic of assassination," since they were not directed at rulers as was "the bomb was against Alexander or against Napoleon." Republican Senator Ingalls, who knew about terrorism over slavery in his own bloody Kansas, voted for the resolution, but saw the dynamite as the product of a particular social and political environment. "Poverty, helpless and hopeless, oppression, ignorance, vice, the wrongs of centuries, are the ingredients of that minister of destruction. Every effect has its cause. Tyranny makes the nihilist."[113]

Thomas Bayard and John Bassett Moore—two patricians from Delaware—did not share Ingalls's point of view. In the spring of 1885, Bayard, an outspoken admirer of British political and social institutions and condemner of the "Dynamite Irish vote," became Secretary of State and Moore began working directly with him immediately on extradition matters.[114] Moore not

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[111] Henry Wade Rogers, "Harboring Conspiracy," *North American Review,* 138.331 (1884) 532.

[112] Congressional Record, 48th Congress, Second Session, Jan. 24 and 26,1885, 983, 997.

[113] Ibid., 999.

[114] For Bayard on the Irish vote see Thomas Bayard to E,J. Phelps, July 1, 1885, cited in Gantt, 353. A biographer of Moore emphasizes his and Bayard's close friendship and working relationship. (Richard Megaree, "The

only drafted a revised treaty with Britain and other countries that limited the political offence exception, making assassination and dynamite crimes extraditable, but also drafted revised extradition legislation that would, in a rejection of the speciality principle, allow a criminal to "be tried for another offense than that for which he was surrendered."[115] (Moore's bill also shifted the burden of the cost of extradition proceedings in the United States, including the cost of witnesses for the fugitive and the fees paid to the commissioner, onto the foreign government demanding his extradition. If the foreign government refused to pay, this would likely jeopardize the defense on behalf of the fugitive, especially given that it was up to the U.S. commissioner's "discretion" to order these witnesses subpoenaed.) These moves to narrow the definition of political crime and the rights of the fugitive began before the Haymarket Affair.[116] And though Moore's legislation was introduced to Congress many times in the wake of Haymarket, it never passed. Bayard and Moore were also unsuccessful in keeping drafts of extradition treaties out of the public eye before they were ratified. Despite best efforts, they could not insulate diplomatic negotiations from supporters of foreign revolutionaries. A statement in an 1883 editorial in

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Diplomacy of John Bassett Moore: Realism in American Foreign Policy," Ph.D. dissertation, Northwestern University, 1963, 24.) Moore's powerful role in setting extradition policy is evident in that Frank Partridge, solicitor of the State Department, relied on Moore's drafts of extradition treaties for negotiations with France, Sweden, Norway and Germany. He also solicited Moore's advice about whether it made sense to negotiate a new extradition treaty with Mexico. (Partridge to Moore, Feb. 27, 1892 and April 8, 1892, in Box 3, John Bassett Moore papers, Library of Congress).

[115] By August 4, 1885, Moore had a draft of the British extradition treaty that included a clause targeting dynamite criminals. His general extradition bill was introduced by Senator Gray in the first and second sessions of the 49th Congress as S. S. 2358 (May 5, 1886) and S. 3127 (January 12, 1887) and then again, slightly refined, as S. 3115, 50 Congress, First Session, June 11, 1888. In the accompanying "Observation on Extradition Bill," Moore explained that he found specialty "a very rigid rule which does not admit such trial, even in case of the clearest criminal conduct and a mere failure of the evidence to sustain the technical charge on which the extradition was granted." All of these documents are in Box 12, John Bassett Moore papers, Arthur Diamond Law Library, Columbia University.

[116] Prominent lawyers advocated limits on the political offense exception before Haymarket. In addition to the above mentioned article by Henry Wade Rogers that specifically addressed Irish dynamiters in 1884, Thomas Cooley, former dean at the University of Michigan Law School, wrote on "The Extradition of Dynamite Criminals" the following year. It explicitly responded to two events: the assassination of the Czar and the bombing of the Tower of London. (*North American Review*, 141.344 (July 1885), 54-59).

remained true until the end of the decade: "The United States population is unwilling to legislate for the aid of foreign governments trying to stifle internal discontent or to restrict in so doing the right of asylum and political refugees."[117] As one prominent attorney lamented to Moore in 1890: "People talk so much of the right of asylum. That talk…hampers every proceeding."[118]

At the behest of President Cleveland, Bayard, and Edward Phelps, a Vermont lawyer who was minister to England, negotiated a revision of the U.S.-British extradition treaty and submitted it for approval to the Senate in mid-1886. Bayard waited till then in the hope that signing a treaty with the administration of the liberal Gladstone, a convert to some form of Irish home rule, rather than his repressive Tory predecessor, would be "less likely to provoke challenge."[119] The revised treaty also added embezzlement to the list of extraditable crimes in order to facilitate the arrest of American confidence men in Canada, an issue of concern to the American business and banking community. But the treaty stalled nonetheless because of its clause aimed at dynamite offences. Included among the extraditable crimes was "malicious injuries to property whereby the life of any person shall be endangered, if such injuries constitute a crime according to the laws of both the high contracting parties."[120] The Senate received petitions from various Irish organizations opposing the treaty and postponed voting on it.[121] When it came up for debate in executive session in early 1887, the outspoken Virginia Senator

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[117] *Nation* XXXVI (1883), 333, quoted in O'Grady, 183.

[118] Cephas Brainerd to Moore, April 7, 1890. The letter elaborates: "except in very strong cases the disposition even on the part of the courts is to let suspects off… a man who commits a crime and runs away takes with him no rights and can acquire none in the land to which he flies. There is a lot of pure 'bosh' let off on the right of asylum, and I welcome any sensible attack upon it." Box 2, Moore Papers, LOC.

[119] Bayard to Edward Phelps, march 7, 1886, quoted in Sim, 166.

[120] New York Tribune July 20, 1886.

[121] See *Senate Executive Journal* vol 25: 539, 552, 576, 729, 735, 747-8, 752, 762.

Riddleberger (the only one to have opposed Bayard's resolution in 1885) denounced the dynamite clause as a covert plot to help the tyrannous British round up Irish patriots.[122] Debate was tabled once again. In the fall of 1887, the British official Joseph Chamberlain, an opponent of Home Rule who was visiting the United States as the leader of a delegation sent to resolve the US-Canadian dispute over fisheries, spoke with the Chair of the Committee on Foreign Relations to try to get the extradition treaty confirmed.[123] A revised version treaty introduced to the Senate in January 1888 amended the disputed clause to read "malicious injuries to persons or property by the use of explosives, or malicious injuries or obstructions to railways whereby the life of any person shall be endangered, if such injuries constitute a crime according to the laws of both the high contracting parties, or according to the laws of that political division of either country in which the offense shall have been committed, and of that political division of either country in which the offender shall be arrested."[124] The final sentence seemed to be an attempt to secure the arrest of fugitives liable under the recently passed Perpetual Crimes Act, one of a series of "coercion acts" over Ireland, providing for the imprisonment without trial of anyone supportive of Land League demonstrations, rent-strikes, and boycotts. Riddelberger tried repeatedly to get the treaty considered in an open, rather than an executive, session; as the *New York Tribune* noted, "the treaty will be ratified if the vote is behind closed doors, and rejected in the open."[125]

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[122] "A Rumpus in the Senate" *New York Times*, Jan 22, 1887, 5

[123] Phelps to Bayard, October 25, 1887 and Bayard Memo, Dec. 10, 1887, in Charles Callan Tansill, *The Foreign Policy of Thomas Francis Bayard*, (New York: Fordham University Press, 1940) xxxvi, 286.

[124] See Senate Executive Documents and Reports, Exec.Doc.H, 49-1, Jan. 12, 1888.

[125] *New York Tribune*, Feb. 3, 1888.

Protests against the treaty from diverse Irish organizations kept pouring in.[126] The Senate put off debate on the treaty until after the election. In the lead up to the election, Irish leader John Devoy criticized the Democratic administration for the treaty and reminded American readers that, if it passed, "there is not an act of resistance to tyranny classed as a crime by an infamous coercion act that cannot be brought under its provisions, and England's heavy hand can be laid on the Irish exile in this country...Coercion would be brought to the very door of the Irish citizen of the United States, and he would have the melancholy satisfaction of knowing that his own vote contributed largely to bring about that extraordinary state of things."[127] The Irish American National League, "a peculiar coalition of conservatives, moderates, and revolutionists" of Irish descent, similarly protested that the treaty threatened not only political refugees but their American supporters and that British anxiety to ratify the treaty was evidence of their refusal to concede right of self-government to Ireland.[128] But this League blamed Senator John Sherman, chair of the Foreign Relations Committee, and his fellow Republicans for the treaty's revised clause, claiming its wording was taken directly from the Irish coercion act and inserted at the behest of the British minister.[129] The treaty went into effect in 1890, and without the notorious clause. Even had the clause been included, it would have only provided for extradition after a

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[126] *Senate Executive Journal*, vol. 26 (1888-1889): 106 (petition from the Father Matthew Total Abstinence Society of Lawrence, Massachusetts); 193 (petition of citizens of Atlanta, GA); 420-1 (resolutions from the St. Patrick Pioneer's Society of Audenreid, PA, St. Patrick's Total Abstinence Society of Audenried, and the Tom Moore Literary Society of Honey Brook, PA) 435 (memorial of citizens of Iowa, resolution adopted at a mass meeting held in Minneapolis, MN), 445 (resolutions adopted at a regular meeting of the Emmett Club of New Haven CT]. These remonstrances outnumbered the petitions in support of the treaty by bankers.

[127] John Devoy, "Irish Comments on an American Text," *North American Review* LI 1888 282.

[128] Matthew Frye Jacobson defines the consciousness of this organization as a blend of Irish nationalism and Americanism. See *Special Sorrows: The Diasporic Imagination of Irish, Polish and Jewish Immigrants in the United States* (Berkeley: University of California Press, 2002) 29.

[129] "Eminent Irish Americans Declare Republicans Guilty," *Pilot*, November 3, 1888, 1.

crime had been committed, assuming the perpetrators could be found. In the following decade the British ratcheted up intelligence gathering via private informants and what it referred to as "extra-legal" use of agents and surveillance against Irish-American societies in the United States.[130] This activity by the British government, unlike extradition, persisted beneath the political radar.

The Russian government was interested in an extradition treaty with the United States not only to actually pursue revolutionaries but also as a symbolic tool, to dampen the momentum of the opposition; sending a draft of a treaty to the Russian Ambassador Struve in Washington in 1883, Foreign Minister Giers instructed that "the very fact of the existence" of such a treaty would signal Russia's omnipotence and destroy émigré hopes for American moral support. The attentat clause in the treaty was carefully crafted, providing that "murder of the Sovereign or the head of state" was not to be considered a political offence; the latter title ("head of state") was intended to remind Americans of the assassination of two of their presidents. Struve waited to start negotiations on the treaty until the time felt right: the fall of 1886, after the bombing at Haymarket and the conviction of the Chicago anarchists for conspiracy, a time when foreign-born radicals were under a cloud of suspicion.[131] In September, Baron Rosen, Russian consul in New York, gave Bayard a draft of the treaty, claiming it was modeled on the 1882 U.S.-Belgium extradition treaty. In fact, as Moore wrote in a note accompanying the American counter-draft, the Russian proposal differed from the treaty with Belgium in its lack of a double criminality principle (i.e., providing for surrender on such evidence of criminality as, according to the laws

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[130] Jensen, *The Battle Against Anarchist Terrorism: An International History*, 123.

[131] For the strategic language and timetable of the Russian draft, and the perspectives of the Russian officials involved, including Giers, Struve, and Rosen, drawn from the Russian Foreign Policy Archive, see V.I. Zhuravleva, "The Russian-American Convention of 1887 on the Reciprocal Extradition of Criminals," *Amerikanskii Ezhegodnik* [Russian] 1993: 116-126.

of the place where the fugitive may be found, would justify a commitment for trial had the crime been there committed.) Moore was willing to compromise and omit this provision as to the proper evidence, though he did replace it with "surrender upon mutual requisitions and according to their respective regulations and procedure." Moore also suggested broadening the attentat clause (from that in the treaty with Belgium) so that not only assassination and attempted assassination, but also "participation in said crimes" would not be considered political offences. During the course of negotiations over the treaty, the Russians did not agree to Bayard's request that they conclude a naturalization treaty with the United States (along with the extradition treaty) and Russia implemented a law eliminating any transparency of legal proceedings (thus making it impossible to tell how returned fugitives would be handled).[132] Nonetheless, Bayard signed on to the extradition treaty.[133] The attentat clause in the treaty as forwarded to the Senate read: "The murder or manslaughter, comprising the willful or negligent killing, of the sovereign or chief magistrate of the State, or of any member of his family, as well as attempts to commit, or

[132] Russia's leading international lawyer, F.F. Martens, had especially "close relations" with Foreign Minister N.K. Giers and warned him that the lack of transparency of Russia's legal proceedings might make the American government wary. For background on Martens, see Martti Koskenniemi, *The Gentler Civilizer of Nations: The Rise and Fall of International Law, 1870-1960* (New York: Cambridge University Press, 2002) and V. V. Pustogarov, *Our Martens: F.F. Martens International Lawyer and Architect of Peace*, ed. and trans. W.E. Butler (Boston: Kluwer Law International, 2000). Martens had been arguing since the 1870s that real political refugees had diminished and political criminals had increased. He was a member of l'Institute de Droit International, which in 1892 voted that acts that could be described as "diriges contre les bases de toute organization sociale" should not be considered political and exempt from extradition. (Koskenniemi, 68-9). States were increasingly aware, Martens wrote, of the "common danger of…contemporary political criminals…who call themselves socialists, anarchists, and 'dynamiters.'" (Pustogarov, 272).

[133] Moore's note and counter-draft is in Box 12 of his papers at the Columbia University Diamond Law Library. Moore conceded on the double criminality provision on the assumption that general American extradition legislation would ensure judicial inquiry into whether there was reasonable grounds to believe that the accused was guilty of the offence charged and whether the offence charged was extraditable. With Moore's memo and counter-draft is a letter from Thomas Bayard to George Lothrop, American minister to Russia (the date on the letter is hard to make out but appears to be January 14, 1887). Bayard writes: "while the conclusion of a naturalization treaty was not distinctly made a condition of the signature of the extradition arrangement, yet it was my desire that the two should, if possible, progress together; and there can be no doubt that if a conventional settlement of the naturalization [illegible] could be submitted to the Senate together with the extradition treaty, the ratification of the latter by that body would be more hopeful."

participation in, the said crimes, shall not be considered an offense of a political character." The lack of a naturalization treaty was of major concern to the American Jewish community since Russia did not recognize the right of expatriation. This meant that Russian-born American Jews were hassled by the Russian authorities and subject to all of Russia's anti-Semitic policies if they returned to visit or for business. Thus, an anti-Russian alliance was cemented between exiled radicals and naturalized American Jews (some, like Hartmann and Hourwich, were both by the 1890s). All of the issues that came up in the initial treaty negotiations—the broad attentat clause, the evidence in and scope of extradition proceedings in the U.S., and the treatment of American citizens in Russia—remained thorny issues that rallied opposition for the next twenty years.

The first uproar ensued when a leak at the State Department gave a copy of the treaty to the *New York World* before it was transmitted to the Senate for approval.[134] Russian political émigrés in New York (Hartmann among them) formed the Russian-American National League, organized rallies against the treaty in several cities, and gained the support of the Knights of Labor and prominent American radicals. "There are many Russians and Poles in Boston, Chicago and Milwaukee, as well as here [NYC]," said a spokesman for the League. "This new league is the most powerful way of uniting all the Russian-Americans and securing their moral help for the revolutionists in their native country."[135] Hartmann insisted, in speaking before a meeting of League members, "I do not protest against the proposed treaty because it would injure

[134] Although Bayard had "ceased to expect the observance of honorable secrecy in the Senate in relation to treaties," a leak from within his own Department was a different matter. Bayard asked John Bassett Moore and the Postmaster General to work with an inspector to root out who was responsible at State. The suspected culprit was John Haswell, an appointee of William Seward who headed State's Bureau of Archive and Indexes, who was assumed not in sympathy with the Democratic administration or to oppose this extradition policy. (Bayard to Phelps, July 1, 1886, quoted in the *Foreign Policy of Thomas F.Bayard*, xxxv; Folder on Russian Treaty of 1887, Box 162, John Bassett Moore Papers, Library of Congress.)

[135] "Russian Patriots' Plans: Hartman and His Countrymen Form a League," *Chicago Daily Tribune*, May 8 1887, 27.

the safety of the refugees, but as an adopted American citizen I protest against this republic encouraging that despotic monarchy and its tyrannies."[136] Non-Russian supporters drew analogies to American history. Henry George, at a Cooper Union meeting, called the treaty a "fugitive slave law."[137] Boston socialists compared Russia under Alexander III to America under George IIII; "we appeal to all lovers of liberty to raise their voices against such a hypocritical government, which with one hand erects statues of Liberty, and with the other helps to suppress it."[138] Protesters proclaimed that all political opposition and rebellion against authority in Russia—including publications and meetings—were conceived as conspiracies against the Tsar and practically all political criminals would be extraditable under the vaguely worded attentat clause: charged with having been implicated or complicit in some offense that could be construed as an attempt to participate in an effort to imperil the life of the Russian majesty. Opponents made their case in public and private letters to Senators who could refuse to ratify the treaty. An appeal that got a great deal of attention was from Sergei Stepniak, a revolutionary publicist who fled Russia (after assassinating the head of the secret police) and a favorite among London socialists. In a plea sent to Senator Hawley of Connecticut, Stepniak compared the Nihilists to Irish nationalists and claimed that the Nihilists condemned the assassination of Garfield "in a country where the citizens enjoy the right of freely expressing their opinions and where the will of the people not only makes the laws but chooses the persons who are to execute them." In contrast, "as the matter stands in Russia," a land of despotism and bureaucracy, "all

[136] "Russian Citizens in Protest," *New York Herald*, April 3, 1887, 12.

[137] "Dynamite Only for Rocks," *New York Times*, May 3, 1887, 8. George spoke first about a single tax on land, then about coercion bills in Ireland, and then moved onto Russia. "In that long duel between the Czar and the people, I am with the Nihilists. This treaty that Bayard has signed is a fugitive slave law."

[138] "Boston Socialists Protest," *Boston Daily Globe*, April 14, 1887, 2.

judicial guaranties, the freedom of speech…are violated shamelessly," and those clamoring for political change "are all connected in one way or another to regicide." The treaty, then, effectively nullified the political offence exception and condemned all political offenders to "capital punishment or worse" upon extradition to Russia.[139] The response to Stepniak's vindication of nihilists was various; the *Boston Daily Advertiser* of February 3, 1888 trod a middle path, claiming that Stepniak was unsuccessful "in his attempt to shift *entirely* the moral responsibility for dynamite plots from the shoulders of the nihilists to those of the administration" [italics mine]. Stepniak's most successful argument seemed to be his insistence that "if you disapprove, for one reason or another, of both contending parties [the Nihilists and the Russian government], the natural course to follow is to keep aloof…The maintenance of the asylum right in the status quo is nothing but a policy of non-interference." The Russian consul, Baron Rosen, recognized that Stepniak's appeal "made an extremely injurious impression on the public and on many Senators."[140] The treaty was discussed in closed sessions of the Senate in 1889 and 1890, but not ratified. And, newspapers and periodicals published accounts of the mistreatment of political prisoners in Russia, particularly their administrative sentences and physical tortures, and fomented broader opposition to the Tsarist regime.[141] Russian Ambassador Struve sent a sampling of such publications to the Foreign Ministry, complaining that "the main goal of this

[139] "A Nihilist Appeal: Stepniak Against the Russian Treaty," *New York Tribune*, Jan. 30, 1888, 2.

[140] Rosen's letter is quoted in Zhuravleva, 120.

[141] See *Free Russia* (New York and London), August 1890, for a report of violent and arbitrary treatment of political prisoners at Yakutsk, tortures at the mines at Kara (where political prisoners were sent to hard labor), and flogging of political exiles in Saghalien (now Sakhalien); the journal also refers to a 1888 decree by Galkin Vrassky, the head of the central prison department, that "no difference shall be admitted" in favor of political prisoners when it came to physical punishments and that "flogging with the rod and with the whip shall be admitted" (14). The December 1890 edition of *Free Russia* reported on American protests over the treatment of Sophie Gunzburg, who was sentenced to hang by a secret military tribunal for conspiring to write a revolutionary proclamation.

press campaign is to interfere with the ratification of our convention on he reciprocal extradition of criminals."[142]

In the meantime, American officials began to consider limitations on the political offense exception in the immigration law. In mid-1888 a House Committee, headed by Representative Ford of Michigan, conducted a detailed investigation on the evasion of the immigration laws and found, as had investigations in the past, evidence of assisted or encouraged emigration of convicts. But this committee also heard testimony from Johann Most and O'Donnovan Rossa. The two men were called upon to answer particular questions but both, unsurprisingly, had their own agendas.

Ford wanted Most to testify that increasing numbers of radicals were immigrating to the United States because "they are prosecuted in the Old World." Most conceded the expulsion of "two" nihilists from Switzerland, the suppression of socialism in Germany, and his own prosecution in England (for publishing an article supportive of the Czar's assassination), but denied that radicals were generally emigrating to the U.S. in large numbers since they could hold meetings in France and England and because they believed in staying put (or close to home) to have more impact where they knew conditions best. Most emphasized that further restriction on immigration was unnecessary while at the same time highlighting why some Congressman believed it was. When Congressman Ford asked the leading question—"don't you think" that the "greater toleration in this country" and "our liberal form of government would have a tendency to attract" radicals "more than any other country?"—Most pointed out that radicals were prosecuted in the United States as well, that he himself was arrested for unlawful assembly and that an anarchist military club was forced to disband because it was "not tolerated" by American

[142] Struve's 1890 missive is quoted in Zhuraleva, 121.

authorities. Glossing over a great deal of ideological conflict and diversity, Most testified that socialism encompassed anarchism and nihilism.[143] Asked why he had not naturalized, Most explained that he had refused to swear that he would obey the laws of the United States. "I like good laws and I will obey good laws, but bad laws I don't like at all," he told the committee.[144]

O'Donovan Rossa wanted to tell the House about British agents, "about England sending out men and employing men here to put up dynamite jobs." That was deemed out of the committee's jurisdiction. Ford wanted Rossa to testify about how the British authorities encouraged emigration of "common prisoners" from the prisons where he had been jailed for treason and the difficulty of detecting these ex-convicts on arrival the U.S. Rossa obliged, testifying that there was "no idea of reform" in English prisons and that prisoners there "looked forward to have a better field of work [for crime] here [in America] than in England." The British, Rossa said, "wanted to "get rid of them…just as they got rid of myself." But, in the wake of the London bombings, Rossa's own exemption from exclusion as a political criminal seemed more problematic than it did when he arrived in 1871. As mentioned earlier, many of his contemporaries believed that Rossa's prison experiences had hardened him into a dynamiter. So Rossa's testimony about his frequent association with common prisoners may only have made him seem more undesireable. Rossa even voiced concern to the Committee that "The report you make to Congress, they may pass some law to send back some of these prisoners again; if it

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[143] For an analysis of Most's call for a big tent of dissidents that he then tried to control see, Tom Goyens, *Beer and Revolution: The German Anarchist Movement in New York City, 1880-1910* (Urbana: University of Illinois Press, 2007) chapters 3 and 4. "He wanted to build a strong anarchist movement free of internal strife," Goyens writes of Most in the late 1880s. "Dismissing dissident comrades was his way of upholding the illusion that the revolutionary anarchists could remain and undivided force. Ironically, his acton caused less unity and more dissent among anarchists" (122). Goyens also notes that by, by this time, Most had tempered his advocacy for violence, and was moving towards a mild form of anarcho-syndicalism (100).

[144] Testimony of Johann Most, August 8, 1888, *Taken by Select Committee of the House of Representatives To Inquire into the Alleged Violation of the Laws Prohibiting the Importation of Contract Laborers, Paupers, Convicts, and Other Classes*, Misc. Doc. No. 572, 50th Congress, First Session, 247-253.

would be proven against me, I being one of the convicts sent out from England, that I was doing some nefarious work in America; that I was a bad citizen…and doing all kinds of bad conduct, I might come under the province of the law and send me back to England again."[145] Though he was a naturalized citizen, Rossa did not seem to feel very safe.

Perhaps this was because the Committee seemed to have their minds already made up. In early 1889 the Ford committee's report concluded that "disorderly anarchists, suppressed in Germany and England, had recently emigrated to the United States where "they have proven a lawless turbulent class, and the whole country is familiar with their recent acts of violence." Intent as they are "to destroy" the American form of government and to disobey its laws, "this class of persons, in the judgment of the committee, ought to be rightly excluded from entering this country."[146]

But Congress as a whole was not yet ready to exclude political criminals. In 1890, House and Senate committees continued to collect testimony on the merits of increased restrictions on immigration. Though several who testified (including labor and ethnic leaders) expressed concern over anarchists, none believed it would be feasible for consuls abroad or inspectors upon arrival to detect them in order to exclude them. A few suggested that there were radicals abroad who could make good citizens in the United States and that it would be better to see which foreigners proved disorderly in the United States after arrival and then send them back.[147] The

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[145] Testimony of O'Donovan Rossa, Aug 10, 1888, *Taken by Select Committee of the House of Representatives To Inquire into the Alleged Violation of the Laws Prohibiting the Importation of Contract Laborers, Paupers, Convicts, and Other Classes*, Misc. Doc. No. 572, 50th Congress, First Session, page 286.

[146] *To Regulate Immigration*, Report No. 3792, Jan. 19, 1889, 50th Congress, 2nd Session, 5.

[147] Report of the Select Committee on Immigration and Naturalization and Testimony Taken By the Committee on Immigration of the Senate and the Select Committee on Immigration and Naturalization of the House of Representatives Under Concurrent Resolution of March 12, 1890, Rept. No. 3472, 51st Congress, Second Session, January 15, 1891.

immigration law of March 3, 1891 included no exclusion based upon political views, though it did exclude those convicted of crimes involving moral turpitude. Just before the bill passed, an amendment was added without debate that "nothing in this act shall be construed to apply or to exclude a person convicted of a political offense, notwithstanding said political offense may be designated as a… crime…involving moral turpitude by the laws of the land whence he came or by the court convicting."[148] Exactly who was exempted by this amendment remained unclear, as was how the new law would effect enforcement in U.S. ports. Statistics do not indicate how many immigrants qualified for the political offense exception but do show the small number of convicts barred in the early 1890s—4 in 1890, 41 in 1891, 26 in 1892 (after the passage of 1891 the law), 12 in 1893, 7 in 1894—when hundreds of thousands of immigrants were admitted each year.[149] Moreover, other means—probably of limited effectiveness—were taken to prevent the landing of political radicals both before and after the passage of the 1891 law. Already in 1888, Secretary of State Bayard had a dispatch from the U.S. Minister in Brussels forwarded to the immigration inspectors in New York and Philadelphia "to use all vigilance to prevent the landing" of Oscar Falleur, who had been released from a Belgian prison on condition that he go to the United States. The Minister insisted that Falleur, a glass blower, was a "non-political convict," despite the fact that he was "one of the leaders in the disturbances which grew out of the strikes at Charleroi in the spring of 1886" and was sentenced to "twenty years imprisonment at hard labor…[and] deprived of all civil and political rights in perpetuity."[150] After the passage of the

[148] 26 Stat. 1084, signed into law on March 3, 1891.

[149] United States. *Annual report of the Superintendent of Immigration to the Secretary of the Treasury for the fiscal years ended 1892-1894* (Washington, D.C.: G.P.O.). see: http://pds.lib.harvard.edu/pds/view/6405487

[150] Letters from the Assistant Secretary of the Treasury to Commissioner of Immigration at Philadelphia, July 6 and August 30, 1888, enclosing Dispatch 357 (June 21, 1888) and 380 (August 16, 1888) from Lambert Tree (Brussels

1891 law, the newly established Superintendent of Immigration (in the Treasury Department) similarly forwarded to immigration commissioners in New York and Philadelphia reports from the Secretary of State regarding a "dynamiter" released from prison and "foreign anarchists expelled from France."[151] Again, extra-legal measures may have been more effective. By the early 1890s, the superintendent of police in New York City, the head of the U.S. Secret Service, and Pinkerton detectives had contacts with police in Russia.[152] Of course it was in their best interest to say so, but both Most and Stepniak insisted in 1888 that there were less than a dozen anarchists or nihilists who had recently sought refuge in the United States.[153]

Hourwich arrived in New York on October 12, 1890 and had no problem entering despite the fact that he had been convicted of both political and regular crimes in Russia. Hourwich was born into a middle-class, freethinking Jewish family in Vilna, educated in traditional Jewish

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Legation) to Thomas Bayard, Folder: 1888, Box 1, Records of the Office of Commissioner of Immigration, Letters Received, 1882-1903, District No. 4 (Philadelphia), RG 85, NARA Philadelphia.

[151] William Owen, Superintendent of Immigration, to Commissioner of Immigration, Philadelphia, Feb. 17, 1893, Folder: 1893, Box 2; Frank Larned, Acting Superintendent, to Commissioner at Philadelphia, Sept. 5, 1894, Folder: 1894, Box 3, Records of the Office of Commissioner of Immigration, Letters Received, 1882-1903, District No. 4 (Philadelphia), RG 85, NARA Philadelphia.

[152] Frank Carpenter, "The Russian Police and Their Methods," *New York Press*, Nov. 6, 1892.
The presence of Russian police agents and informants in the United States at this time is harder to verify, though mentioned in the exile and oppositionist press. "Some years ago," reported the editors of *Free Russia* in March 1893, " a fugitive offender from Russia, who had broken one of the army regulations, was pursued to a Western town by one of the Tsar's police agents, and there stopped in the street by the official. The man, unaware that he could not be carried back save by legal process, and being afraid that if he made any 'trouble' it would go the worse for him when he reached his native land, allowed himself to be taken half-way across the continent by the Russian policeman, lodged safely in a steamer and carried back to Russia." The Okhrana, or Russian secret police, requested surveillance from America as early as 1887. Though the Okhrana never establish a separate outpost in the U.S. (as it did in European countries), it did have secret agents working in American cities. The agents had official addresses at U.S. consulates but worked independently of them, filing reports directly to the Okhrana's headquarters in Paris and St. Petersburg in the 1890s, but much more frequently after the turn of the century. (See Guide to Okhrana Records, Hoover Institution Archives). As we shall see, the consulates employed private detectives and informants to help with the overt/legal business of extraditions.

[153] Most testified to the Ford Committee, that "there was scarcely a dozen, if there was that" recent anarchist arrivals (Testimony of Johann Most, Misc. Doc. No. 572, 50th Congress, 252). Stepniak's letter to Senator Hawley claimed, "of the men who took any part in the conspiracies of the last ten years there are actually in American not more than five or six individuals." (*New York Tribune*, Jan. 30, 1888, 2).

subjects and then at a classical gymnasium in Minsk. In the late 1870s, he studied math at the University of St. Petersburg, where he became interested in revolutionary activity, siding with, as mentioned earlier, the "Black Repartition" wing of the Russian revolutionary populist movement that was against terror and preferred propaganda. Caught in a raid with a pamphlet entitled "What is Constitutionalism," he was imprisoned for almost a year while awaiting his sentence for "creating and distributing printed materials in which the Czar's privileges are contested." He was sentenced, in 1880, to three years non-entry into St. Petersburg and sent back to Minsk. Once there, he got involved in an underground reading group and is arrested again for participating in debates and having revolutionary literature; this was in the wake of the Tsar's assassination in 1881 so that, after a month in a Minsk prison, he was sent to western Siberia by executive order, a process instituted against those considered politically unsafe in the absence of evidence sufficient to indict him. After a four year exile (living under police surveillance, not hard labor), he was additionally convicted of the (ostensibly) non-political crime of insulting a prison guard when trying to communicate with other exiles and spent an additional two months in prison among the general criminal population.[154]

Hourwich did not understate the horrible conditions he encountered when first sent to prison in St. Petersburg: "This seemed like one of the prisons of the Inquisition you read about in novels… they led me into a tiny room in which there stood a bed with a bare mattress...full of lice…somewhere close by there was a blacksmith's shop. The smoke came into my room. I was only allowed to go out in the morning to wash myself. I always had a headache." He later was sent to a more modern prison to await sentencing and began to take a social approach towards his punishment. He did his best to communicate—via coded taps on prison walls and secret notes—

[154] Hourwich described his first arrest in St. Petersburg in "Leaves from the Autobiography of a Russian Student," *Frank Leslie's Popular Monthly*, 52.3 (July 1901) 281-291. The information about his exile and further conviction comes from his memoir in *Freie Arbeiter Shtimme*.

with other "politicals" while there. When in Siberia, Hourwich preferred talking to the local town dwellers than with political exiles, who, with some exceptions, he found uninterested in intellectual conversation, aloof or bossy, and lacking in generosity, tolerance, and kindness. He came to believe that that the anarchist ideal of a society did not guarantee the rights of the individual; "our colonies of political exiles were a society in and of themselves… in such a society, there were disputes between individuals and there was no organized institution that could support the righteous side. Whoever wanted to and had the appropriate means could disgrace the other." Hourwich spent much of his time asking peasants why they were migrating eastward and took solace in their replies that they had become skeptical of the Tsar's promise of land redistribution; Hourwich believed this heralded a revolution. (For Hourwich there was a "link between weakening of belief in the Tsar's grace and immigration." Beyond this, Hourwich believed that since only the more well-off peasants could migrate, there was intensified inequality back home in the village). Returning from exile, Hourwich taught a circle among Jewish workers in Minsk about socialism primarily, but also about parliamentarianism, minority rights and majority rule, and consumer cooperatives. At the same time Hourwich was studying for his law degree. Hourwich then spent his two month sentence in regular prison talking with his fellow prisoners and teaching one of them Russian grammar and history. When he got out of prison, Hourwich started to practice law. He served first as a legal assistant for a lawyer defending students who were Greek Orthodox, a religious minority; Hourwich was impressed by the fiery martyr's defense of the half-blind local leader who quoted whole sections of the New Testament verbatim. Nonetheless they were all exiled to the Caucasus.

In 1887, when he began his legal practice, Hourwich's attitude toward the law was conflicted. He felt that the Russian legal reforms of 1864—which introduced public trials;

differentiation between the function of judge, prosecutor, and defender; juries for the gravest offences—were put in place with concessions to the "old inquisitorial procedure." Hourwich knew from his own experience about long periods of preliminary detention without knowing the charge (or while awaiting trial), exile to Siberia by administrative order (i.e. without trial) of those deemed dangerous to public order, and limits of prisoners' rights regarding self-incrimination while under police interrogation. In the late 1870s and 1880s, investigations of crimes and preliminary hearings were conducted by examining magistrates, with help from police, who used whatever means necessary to collect evidence against the accused, including illegal searches and extorted confessions. Witnesses could be easily arrested for the slightest suspicion they too were mixed up in the crime. After Zasulich's acquittal, the ability of the defendant to introduce additional evidence at trial rested wholly with the discretion of the judge, who looked at new witnesses with suspicion. Earlier, in the wake of the trial of Nechaev's group, which resulted in many acquittals and mild sentences, the government removed political crimes from the jurisdiction of juries. Also in the wake of the Zasulich case, all offences committed by private persons against officials on duty were withdrawn from the jurisdiction of the jury. Trial by jury did not extend to certain areas (Poland, Latvia, Estonia, the Caucasus) and the legal reforms were not introduced generally in Siberia (until 1909). When Hourwich was "tried" for insulting a prison guard, the proceedings were conducted entirely on paper: he and witnesses were called to court, without counsel, for statements and a report and judgment were made from a transcript several years later. Even in jury cases, judges could restrict the questioning and cross-examination of witnesses. Defense lawyers could not criticize measures taken during the course of the trial by the court and a judge could check counsel whenever he raised matters deemed to have no bearing on the case. In 1886 a ukase by the Czar repealed the fixed tenure of

judges (who, anyway, were mostly recommended for their jobs by ministers, who in turn received recommendations from prosecutors) so that the courts lacked independence. The Senate (Supreme Court, or highest court of appeals, that decided matters of law) had a reputation for inconsistency and prejudice (especially towards Jews). Still, when he began his legal practice, Hourwich did not want to tell his clients, whose faith had nowhere else to rest, that their hopes of finding justice in the courts was misplaced. In his memoir, he describes how he made a compromise with himself for the sake of his clients and because he needed a profession to support his growing family. He also resolved to raise the bar as high as he could and endeavor to tip the scales towards justice in criminal trials. For his first case, Hourwich defended a man arrested for the third time for theft only ten days after he was released from prison. Hourwich laid out for the jury what he called "Robert Owen's Torah" and argued that a society which did not care for its citizens, drove them to crime.[155] He gave a vivid description of life in in prison (which the judge objected to and instructed the jury to ignore) and pointed out that his client could not find work upon release. Hourwich's first big trial, which the governor attended, came soon afterwards, in March 1888, when he defended a group of Jews who helped their co-religionists avoid conscription by producing hundreds of false witnesses to testify as to their need for release from military service. (Jews were by law prohibited from offering substitutes and were disqualified from other exemptions allowed non-Jews). The head of the group was named Gerson Gluckmann, who the Russian government first had to get back from Austria. The Austrians refused to extradite Gluckmann for fraud and forging official documents to get young men out of the draft; the Austrians claimed that trespasses in matters of military service was

[155] Robert Owen was a Welsh social reformer and utopian socialist who founded the experimental community of New Harmony in Indiana in the 1820s. Owen believed human character is formed by circumstances over which he has no control, and so men cannot be properly praised or blamed. The key to the correct formation of man's character, Owen believed, was placing him under the proper physical, moral and social influences in his earliest years.

excluded from the list of extraditable offences in the treaty between Russia and Austria and that forgery of official documents would be imprisoned in Austria for only a few months and therefore was not an extraditable offense under the treaty. The Austrians agreed to extradite him when the Russians charged him with bribing police and recruiting officers. In Minsk, Gluckmann was indicted precisely for those frauds and forgeries for which extradition had been refused, and for other crimes that had not been raised in the extradition request. He was not indicted for bribery and the prosecution presented no evidence at the trial to support that charge (for which he had been extradited). The prosecutor told the jury that Gluckmann's offense was against the state, while Hourwich argued that it should be treated like any other crime. He began by quoting Isaiah's prophecy and claiming that we all believe that a time will come when men will hammer their swords into plowshares and an eternal peace will ensue; he conceded, though, that as long as we live in a time of war, all citizens must do their duty and not merely rely on others to do it for them. Hourwich felt this strategy—particularly the authority of Isaiah—had the desired effect and made the defendants seem like less serious criminals than the prosecutor contended. While Gluckmann was sent to Siberia, the others received lighter sentences. Hourwich's appeal to the Senate on the ground that the trial and conviction violated the Austro-Russian extraditing treaty—since Gluckmann was found guilty for actions which ought not to have been considered by the court while the action charged against him to the Austrians in the extradition procedure had been a mere pretext—was dismissed as "unworthy of consideration." Hourwich developed a reputation as a good criminal defense lawyer, though he found the responsibility hard to deal with. "Most lawyers just took it all with 'ice in their veins' [*afgenume zayer kaltblutik*], but Hourwich's "heart would beat fast" at trials. When a client he considered innocent was sentenced to five years katorga (penal labor in a remote camp), Hourwich was

forced into bed for 17 days following the trial. [156] Hourwich's legal advocacy reflected a theory of human behavior, criminal responsibility, and social justice that was at the heart of his opposition to autocracy. For him, courts were political spaces even when the defendant was not being charged with a political crime.[157]

Hourwich did attend small political meetings at this time and took to advocating a "social-democratic" point of view. He became a contact for visiting radicals until, in the summer of 1890, the political police ordered a search of his apartment (while he was out) and his arrest. He shaved his beard and fled the country using a borrowed and then a false passport (for which, among other charges, he was tried in abstentia, at what Hourwich claimed was the wrong place—an *okruzhnoy* (circuit) court rather than local court for minor violations that punished with fines). His route went from Minsk to Vilna to Petersburg to Teroki (Finland) to Stockholm to Hull to Liverpool to New York.[158] He probably had no trouble with the immigration authorities upon arrival because he came "incognito" and on a second-class ticket, rather than in steerage; Hourwich himself believed it was because, in 1890, "a white immigrant" could land in

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[156] Hourwich wrote about "Robert Owen's Torah" in the memoir installment in *Freie Arbeiter Shtimme* on Nov. 9, 1923; about his Isaiah strategy on Nov. 16th, and about his trepidation on the 28th.
Hourwich analyzed the limits of the Russian legal reforms of 1864, referring to some cases from his own legal practice, in "The Russian Judiciary," *Political Science Quarterly*, 7.4 (Dec. 1892) 673-707.
For historical reviews of the Russian legal reform that largely confirm Hourwich's observations, see William Wagner, "Tsarist Legal Policies at the End of the Nineteenth Century: A Study in Inconsistencies," *Slavonic & East European Review*, 54.134 (July 1976) 371-394 and Richard Wortman, "Russian Monarchy and the Rule of Law: New Considerations of the Court Reform of 1864," *Kritika: Explorations in Russian and Eurasion History* 6.1 (Winter 2005) 145-170.

[157] Hourwich was not alone in this. See, Louise McReynolds, "Witnessing for the Defense: The Adversarial Court and Narratives of Criminal Behavior in Nineteenth Century Russia," *Slavic Review* 69. 3 (Fall 2010) 620-644.

[158] Hourwich mentions in his memoir that, when he was in Finland en route to the US, he spent time studying English grammar and that on the boat over he managed to speak with a Scotchman by throwing in some Latin for the hard "philosophical" words. Hourwich was adept with languages. He spoke Yiddish at home as a small boy, but later switched to Russian, after his mother taught him to read it at age six; he learned to read Hebrew at heder; his family had a German maid and he could understand that (but not write it well); at Gymnasium in Minsk, he learned French, Latin and Greek. By the time he left for the US, he could understand Polish, Ukrainian and Church Slavic (old Bulgarian), some of which he learned in Siberia while living with exiles from other parts of the empire.

New York without being stopped.[159] Once in New York, Hourwich immediately became involved with exile politics—giving lectures about his experiences to galvanize support for the revolutionary movement in Russia and, in a Russian language newspaper he edited, calling on Russian revolutionaries in America to "use the Irish Fenians and nationalists as examples." He was also working on his Ph.D. in political economy at Columbia University.[160] He overlapped there, in 1891, with John Bassett Moore, who, having just completing his treatise on extradition, became a professor of International Law and Diplomacy. In the opening of the treatise, Moore defined extradition as a "contract" between states, with the fugitive the object—not a rights bearing individual. [161]

After the passage of the March 1891 immigration law, Congress was flooded with petitions from all over the country and a variety of organizations "calling almost unanimously" for further restriction of immigration and Congress responded with more investigations in 1892.[162] Collected testimony focused on the handling of inspection at the newly opened Ellis

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[159] Hourwich wrote about his admission to the United States in his memoir installment in *Freie Arbeiter Shtimme* of Dec 28, 1923. The search of Hourwich's Minsk apartment and his escape to the United States were also mentioned in *Free Russia*, October 1890, 9 and November 1890, 10.
In 1890, white cabin passengers were barely examined upon arrival and only a half of one percent of those in steerage were excluded. Asian laborers, in contrast, were excluded altogether and those coming in cabins were closely questioned.

[160] For a notice of Hourwich's lecture, see *Free Russia* (New York and London), April 1891, 7. Hourwich's January 8, 1892 editorial in the Russian newspaper *Progress* read: "By its policy, the Russian autocracy created a Russian Ireland in America, and the Russian revolutionaries must make this Ireland, using the Irish Fenians and nationalists as examples, an auxiliary detachment in the struggle against the state. " (quoted in Robert A. Karlowich, *We Fall and Rise: Russian-Language Newspapers in New York City, 1889-1914* (Metuchen, NJ: Scarecrow Press, 1991) 114-115.

[161] John Bassett Moore, *A Treatise on Extradition and Interstate Rendition*, vol. 1 (Boston: Boston Book Company, 1891) 4 .

[162] "The only petitions noted that did not call for restriction asked for the exclusion of paupers and criminals, for the requirement of consular inspection abroad, and for admission of 'only persons friendly to our institutions.'…the petitions approached 550 in number, representing twenty-three or more states. Labor organizations were particularly active as petitioners...as well as churches, granges, and many groups of people identified as citizens of a given state

Island, particularly determinations of those "likely to become a public charge" and their admission on bond to immigrant aid societies. When the Ellis Island Commissioner John Weber was asked if "it would not be human nature to err on the side of the liberal interpretation of the law rather than restrict them?," he replied, "I have sent back in the last year as many as the old State board sent in five years." Still, Congressmen worried about the Commissioner's "sympathy" and pushed for an inspection board, insisting, "three men would have a harder heart than one man would have."[163] Weber also submitted a report of an investigation he and other commissioners had done abroad on "the causes which incite immigration to the United States." The report highlighted Tsar Alexander III's discriminatory policies and laws against Jews (including arrests, expulsions, conscription laws, and employment and educational restrictions.) It also noted that criminals were not being systematically sent to the United States, though isolated cases occurred; it was the opinion of the commissioners that most of these cases could be detected on arrival "by reason of the experience gained by officials charged with the duty of watching for and returning them."[164] Still, in the wake of Alexander Berkman's attempt to kill Henry Clay Frick at Homestead, President Harrison asked Congress in his December 1892 State of the Union Address, for "more careful" inspections in order "to keep out the vicious" and "the civil disturber"; a month later the House Committee on Immigration suggested adding "persons belonging to any society or organization which sanctions or justifies the unlawful destruction of

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or county." (E.P. Hutchinson, *Legislative History of American Immigration Policy, 1798-1965*, (Philadelphia: University of Pennsylvania Press, 1981) 105.

[163] *Immigration Investigation*, Proceedings of the Senate and House Committees on Immigration, Acting Jointly, at Ellis Island, April 29, 1892, 356, 360.

[164] *Report of Commissioners of Immigration on Causes which Incite immigration to U.S.*, vol. 1: Reports of Commissioners, H.exdoc.235/1, 52nd Congress, 1st Session, February 22, 1892, 125, 129.

life or property" to the categories of excluded immigrants in a bill passed by the Senate.[165] With little time to debate the amendment and get it passed the Senate before the end of the Congressional session, the House Committee dropped it. The law passed by Congress and signed by Harrison in early 1893 did *not* add an anarchist exclusion, but did include a provision mandating "boards of special inquiry" to assess whether to exclude doubtful immigrants detained upon initial inspection. [166] This law, Hourwich claimed, established an "inquisitorial procedure for the admission of immigrants" and, with it, "Freedom of immigration was rejected as a general principle of American law."[167]

The Supreme Court certainly seemed to agree; in the 1892 *Nishgimaru Ekiu* decision and the 1893 *Fong Yu Ting* case, the Court proclaimed that the power to exclude was "inherent in sovereignty" and that deportation was not a punishment, thereby giving inspectors the ability to exclude and deport as they pleased.[168] Scholars of international law like Henry Wade Rogers has been arguing for a while that "plenary power" conferred on the government the power to extradite "anarchists, nihilists, assassins, and dynamite fiends," who are "not political offenders, but outlaws and the enemies of human kind."[169] By the spring of 1893, Superintendent of Immigration Herman Stump—formerly a Congressman from Maryland and Chair of the House

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[165] Immigration and Contract Labor Laws, Report No. 2206, House of Representatives, 52md Congress, 2d Session, January 7, 1893.

[166] 27 Statutes-at-Large 570.

[167] Hourwich, "Economic Aspects of Immigration," *Political Science Quarterly*, 24.4 (Dec. 1911) 615.

[168] *Nishimuru Ekiu* ruled that federal courts should treat decisions of immigration officials as final; *Fong Yu Ting* ruled that those in deportation proceedings were not entitled to due process rights. In his message to Congress in December 1893, President Cleveland said "The right to exclude any or all classes of aliens is an attribute of sovereignty."

[169] Henry Wade Rogers, "International Extradition," *Forum*, Feb. 1889, 619-20.

Committee on Immigration that supported the anarchist exclusion amendment to the 1893 law—suggested that Congress pass an additional law "giving power to courts having criminal jurisdiction to deport all aliens who within a period of two years from the date of landing are convicted of any crime or misdemeanor, which, in the opinion of the court, renders them undesirable citizens, or convinces it that they are not attached to the principles of the Constitution of our Government and to the good order and well-being of society in general. This would rid us if alien anarchists, criminals, and turbulent spirits who are opposed to the laws of God and man."[170]

By the time Stump published this report, the long-delayed extradition treaty between the United States and Russia was ratified. In the fall of 1892 Secretary of State John Foster instructed Minister Andrew Dickson White to quietly and quickly take up extradition treaty negotiations with the Russian government once again, this time in far-away St. Petersburg. White's description of his negotiations reveal that the Russians were pre-occupied with attacks against the Czar; when White suggested using the wording in the U.S. treaty with Belgium for the attentat clause ("when such attempts [on the life of the sovereign] comprises the act either of murder or assassination or of poisoning"), Foreign Minister Cantacuzene retorted dismissively, "then we are to tell the Emperor that unless he…is actually murdered, nothing can be done."[171] Final negotiations occurred between Cantacuzene and Foster in Washington in late January 1893, after which Foster submitted the resulting treaty to the Senate, urging the "political importance" of its expeditious ratification for the maintenance of good relations between the two governments.

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[170] *Annual report of the Superintendent of Immigration to the Secretary of the Treasury for the fiscal years ended June 30, 1893* (Washington, D.C.: G.P.O.), 11.

[171] White to Foster, Dec. 20, 1892, enclosed with *Letter from the Secretary of State transmitting Correspondence between the Governments of the United States and Russia relative to the pending Extradition Treaty between those Governments*, Senate Confidential Report Executive C., January 28, 1893, 52nd Congress, 2nd Session.

The Russians had agreed to the insertion of a double criminality clause (that extradition "shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime or offense had been there committed"), Foster affirming that this did not "suggest any possible distrust" of Russia's judicial procedure, but was necessary in order to make arrests and detentions in the United States. The attentat clause was brought more in line with the wording in the Belgian treaty, though the Russians insisted on maintaining the added ability to pursue conspirators to assassination so that it read "An attempt against the life of the head of either government…when such attempt comprises the act either of murder or assassination or of poisoning or *of accessorship thereto*, shall not be considered a political offence" [italics mine].[172] The Senate secretly approved the treaty on February 6, 1893. Senator David Turpie of Indiana offered an opposing resolution in open session on the 7th but it did not pass. President Harrison signed the treaty into law during his rushed last days in office when he also notoriously signed a treaty to annex Hawaii, which Russia had secretly agreed to support.[173] Besides the modified assassination clause, the treaty also contained a clause making forgery of government documents an extraditable crime, a provision that would imperil fugitives who escaped on false passports.

The secrecy and the speed of the treaty's ratification contributed to a huge outcry when it was made public afterwards, though there was little that could be done to reverse course. It was hard for many people to understand what America could gain from such a treaty—since few who committed crimes in the United States sought refuge in Russia—so there was a great deal of

[172] Foster to White, October 14, 1892, and Foster to John Sherman (Chairman of the Senate Committee on Foreign Relations), Jan. 27, 1893, ibid.

[173] Norman Saul, *Concord and Conflict*, 386.

speculation about ulterior motives and quid pro quos. Besides raising the Hawaii connection, some critics believed the Harrison administration made a concession to Russia in order to gain its support in negotiations with the British over sealing in the Bering Sea. There may be some validity to this theory, though Secretary of State Foster certainly never admitted it and Minister Andrew Dickson White's sense of diplomatic duty and wariness of criminality in the United States probably would have led him to favor the treaty regardless. [174] In response to criticism of the treaty's ratification, both American political parties took the moral high ground, Democrats blaming Harrison and Foster, Republicans claiming the 1893 treaty an improvement over the 1887 original. Critics of the Russian regime—the same socialist and emigre contingent as in 1887, plus more recently-escaped political exiles (like Hourwich and E.E. Lazarev) and a by-now more expansive group of allies, including many prominent American clergy, clubwomen, labor leaders, philanthropists, politicians, professors, and reformers (discussed further below)—

[174] As historian Norman Saul summarizes the Bering Sea dispute: "The U.S. claimed that it had inherited, through the purchase of Alaska and the accompanying Pribylov Islands, a one hundred mile water right and proprietary jurisdiction over the seals, wherever they might wander. It supported the principle of controlled hunting by the North American Commercial Company, whose profits from a new, twenty-year contract, were in jeopardy. Britain and Canada stood for competitive enterprise and freedom of the seas, though they balked at a threatened extinction of the seals. Russia at first responded favorably to the American position, not only because of its own vested interest in sealing but also out of long-standing hostility to Britain…in early 1893 Russia proposed to Britain the establishment of a protective no-hunting zone of thirty miles around the islands as a modus vivendi; in return, Russia would back Britain's claims for compensation for seized ships. The United States protested this Russian 'betrayal',' but…Russia was miffed about not being a party either to arbitration or to the development of the postulate that seals in open seas remained national property…the arbitration settlement provided a sixty-mile zone and the banning of hunting on the eastern side of the Bering Sea and north of 35 degrees latitude during the summer months…The American government was very unhappy with this outcome…John Foster, who was in charge of presenting the American case in Paris, decried the crucial lack of Russian support." (386-7). For Foster's efforts on those negotiations, see the chapter on him in *American Secretaries of State and Their Diplomacy*, ed. Samuel Flagg Bemis (New York: Cooper Square, 1963). Andrew White wrote Francis Garrison on June 20 1891 that kindly words to Russia would do more good than denunciations. (Andrew Dickson White Papers, reel 55). In his autobiography, White writes, "it is best for Americans not to be too prompt in believing all the stories of alleged sufferers from Russian despotism…That there are many meritorious refugees cannot be denied; but any one who has looked over extradition papers, as I have been obliged to do, and seen people posing as Russian martyrs who are comfortably carrying on in New York the business of counterfeiting bank-notes, and unctuously thanking God in their letters for their success in the business, will be slow to join in the outcries of refugees of doubtful standing claiming to be suffering persecution on account of race, religion, or political opinion." See *Autobiography of Andrew Dickson White* volume 2. (New York: Century, 1905) 105.

believed the treaty lent support to despotism and disregarded fundamental American ideals of democracy and freedom from oppression, ideals associated with the concept of asylum. Russia's Internal Minster I.N. Durnovo revealingly reported to Tsar Alexander III that the treaty "dispelled all the émigrés illusions about the weakness of the Russian government and at the same time had significantly undermined the prestige of Kennan."[175]

George Kennan was a prominent journalist whose lectures and articles about Siberian exiles inspired ongoing opposition to the treaty and to the Russian government generally in the late 1880s and early 1890s. Citing the Italian criminologist Lombroso, Kennan described Russian political prisoners as a rare breed more physically and psychologically akin to Christian martyrs than to Chicago anarchists or common criminals.[176] Traveling through Siberia, he was struck by the nobility and education of the exiles (especially their attention to Herbert Spenser and American history), and their sincere commitment to political change. Kennan's combination of patriotism and fascination with the exiles led him to characterize them as possessing character he felt needed shoring up in America while at the same time being inspired by ideals embodied in the Constitution and the Bill of Rights. The political exiles had all the virtue of good citizens, it was the Russian government that was backwards and criminal. "I wish that I were bound to them [Russian exiles] by the tie of kindred blood," Kennan wrote, though he knew their allegiance and

[175] Durnovo's report is quoated in Zhuravleva. Almost ten years later, Kennan was still smarting from this defeat. "I have never known the country to be more united on a question of foreign policy. But all this storm of protest came too late. It didn't get underway until March, and the treaty was secretly ratified the first week in February…The treaty went through as a result of a 'conspiracy of silence.'" See Letter of Kennan to Foulke, February 17, 1911, Box 4, William Dudley Foulke papers, Library of Congress.

[176] In a book on political crime and revolution, Lombroso noted the "beautiful physiognomies" of Russian nihilists that distinguished them from "vulgar criminals." (Cited in *Free Russia* (Sept. 1892, 3-4). In a lecture that he gave on Russian political exiles in the 1890s, Kennan projected on a screen portraits of learned and aristocratic political exiles juxtaposed to police photographs of ordinary convicts. He told the audience that he did this "in order that you may appreciate the enormous difference between common criminals sent to Siberia for burglary or murder and political offenders sent to Siberia for their devotion to liberty." (Russian Political Exiles, Box 4, Folder 6, George Kennan Papers, NYPL).

destiny was to the heroic struggle for Russian freedom.[177] Hourwich was a man that impressed and even stirred Kennan; he later entitled a biographical article about Hourwich "How Russia Loses Good Citizens."[178] In fact, one of the things that incriminated Hourwich when the police searched his Minsk apartment was a copy of Kennan's *Siberia and the Exile System*; soon after Hourwich arrived in America, he published a section from this work in the Russian language newspaper he edited. (The two men figuratively became kin when Hourwich named one of his children, born in 1904, after Kennan.) But whereas Kennan looked at Russia and found adulation for all things American, Hourwich viewed Russia as on the road toward socialism.[179] (Hourwich's Columbia University thesis, a Marxist framing of the interviews and research he did while in Siberia, analyzed economic changes in the Russian village, particularly the shift in ownership in land from the nobility to a merchant class and the advent of a rural proletariat to work the land.[180])

After the first version of the treaty was exposed in 1887, Kennan spoke to Senators and distributed his articles about Russia. He believed that, even if the treaty had a political offence exception, it "would most certainly be abused by the Russian government" since "it would be an easy matter to trump up a charge of murder or forgery or burglary against a political refugee, secure his extradition, throw him into prison, and after a lapse of a year or so declare that he had

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[177] See Kennan's *Siberia and the Exile System* (1891), which was a compilation of many of his articles on the subject, especially vol. I, 100-1, 179-187 and vol. II, 343-4 and 451-455.

[178] George Kennan, "How Russia Loses Good Citizens," *The Outlook*, July 26, 1913, 714-717.

[179] As David Foglesong points out, "by the time Kennan launched his crusade, there were few uncritical admirers of capitalist America among Russian intellectuals and revolutionaries, who were increasingly influenced by socialist ideas." (*American Mission and the 'Evil Empire,'* 17).

[180] Issac Aaronovich Hourwich, *The Economics of the Russian Village* (New York: Columbia College, 1892).

escaped from custody when, in reality, he had been sent to the mines."[181] By the 1890s, the writings of Kennan and Stepniak inspired widespread—popular, grassroots, and prominent—public opposition to the treaty. Petitions and editorials from around the country were re-published in the spring 1893 issues of *Free Russia*, a journal run by Lev Goldenberg (one of the founders of the Russian American National League[182]), Francis Garrison (son of the famous abolitionist), and Edmund Noble (a transplanted Scottish journalist and author, married to a Russian woman), with funding, in addition to receipts from about 900 subscribers, coming primarily from Jewish banker Jacob Schiff and Jewish diplomat (and later Cabinet member) Oscar Straus. For a year after the passage of the treaty, *Free Russia* featured a pull-out petition for abrogation. The Ohio, Illinois, and New York state legislatures, and organizations as diverse as the American Federation of Labor, the Farmer's Alliance and Industrial Union of Oregon, the Lithuanian Alliance, and the Young Men's Hebrew Literary Society of Milwaukee voiced their disapproval of the treaty and support for abrogation.

A commonly voiced criticism of the treaty was that it would send back accused, but not necessarily guilty, Russians to a country where they would not be tried for what they were extradited for nor receive a fair trial. The Russian American National League pointed to Hourwich's Gluckmann case: "If such are the methods employed by Russian courts in cases in which only indirect political considerations are involved (military service), what can be expected

[181] Kennan to William Dudley Foulke, Dec. 20, 1887, Box 1, folder 2, Kennan papers, NYPL.

[182] Goldenberg participated in student protests in St. Petersburg in the late 1860s. He served a term in prison and then fled abroad in 1872. He worked on various émigré newspapers until going to New York in 1887. (see Frederick Travis, *George Kennan and the American Russian Relationship, 1865-1924* (Athens: Ohio University Press, 1990), 206).

in the prosecution of crimes purely political?"[183] A petition from Philadelphia pointed out that though Russia wanted to extradite offenders against the Tsar as common criminals, they would not be treated as such once there; under Russian domestic law they would be denied a jury trial, subject to exile by administrative decree if acquitted and to capital punishment if found guilty, all unlike common criminals. Critics also argued the treaty provided for the extradition as common criminals of political offenders who used forged passports to escape. A related criticism was that the attentat clause, with its commitment to surrender "accessories" to attempts on the Tsar's life, seemed to strip American commissioners and courts of determining whether an offence was political. Under Russian law, any person who wrote about or joined a society that opposed the "dignity" of the Tsar or who did not expose knowledge of, or gave shelter to, a member of such society, would be considered guilty of plotting against the Tsar's life. "Under the charge of attempted assassination any political offender whatsoever, any patriot who has planned his country's liberation, and perhaps even persons in nowise implicated in political projects…might, under the terms of the this treaty, be seized on American soil and returned to Russia." This seemed to make the United States an ally of Russian administrative and judicial practice. The most prominent petition against the treaty, sent on March 30th to the President, the Department of State, and the Senate Foreign Relations Committee by Charles Francis Adams and signed by numerous prominent New Yorkers, particularly stressed the importance of not letting the U.S. courts facilitate such jurisprudence. "Whatever may be our feeling in regard to a certain class of

[183] The League also pointed to the case of Leo Deutsch, a well known revolutionary, who was extradited by a German principality in 1884, for the "common crime" of attempted murder of an alleged agent provocateur, and was sent to the Kara mines for punishment as a political offender. Rubin Protas, a student of the Berlin Technical Institute who, when extradited by the Prussian government in December 1889, was exiled by administrative process, without any trial whatsoever. "Russian Justice," *Free Russia,* 3.8 (Mar. 1, 1893) 7.

political refugees from Russia, we cannot as the price of expulsion of these men, sacrifice every principle of personal liberty and public justice which the United States represents." [184]

Most protests did not seem to consider, as an editorial in the *Portland Telegram* pointed out, that Russians in the United States might be defended by the workings of the principle of double criminality. "There exists the international interpretation that the rule of the land in which the man is at the time of the desired extradition prevailed. An 'accessory' must then be an 'accessory' according to our understanding in the United States." [185] Secretary of State Gresham, in defending the treaty, argued that "the Russian penal code is not to control in determining the question whether or not a person accused is subject to extradition, but proof of the actual commission of the crime must be made." President Cleveland similarly argued that the treaty was not "subject to the construction that would prevent our Government deciding in every case whether the offense was a political one or not."[186] Critics pointed out that it would be difficult, procedurally, for political offenders to prove they were not common criminals, especially because the Russian government could use "corrupted" depositions, which the American commissioner would be bound to accept as evidence sufficient to secure commitment for trial—and therefore extradition. All the Russian government had to do was secure affidavits, even false ones, against the fugitive. "A few perjured witnesses, a few official documents with big seals, a couple of adroit police agents to manage the case, and the thing is as good as accomplished," an

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[184] Petition, signed by, among others, Francis Barlow, Chauncey M. Depew, Felix Adler, Robert Collyer, William Dodge, Thomas Edison, John Fiske, Richard Watson Gilder, William R. Grace, W.D. Howells, Charles Scribner, and Spencer Trask, reprinted in *Free Russia* Mar 1, 1893, 8.

[185] Reprinted in *Free Russia*, 4.1 (August 1, 1893) 10.

[186] "Russian Extradition Treaty: Secretary Graham Explains the Political Offense Exception, *New York Times,* March 18, 1893, 10; "The Russian Treaty: President Cleveland Says it is Carefully Worded," *New York Times*, May 1, 1893, 1.

editorial in the *Labor World* remarked.[187] The petition from the prominent New Yorkers went so far as to compare extradition procedure in the United States to procedures in a foreign court, since "the prisoner is not entitled to any protections guaranteed by the Bill of Rights." "There is so great a conflict between American and Russian ideas of what constitutes conclusive evidence and proof of guilt that an extradition treaty between the two countries…would…make the people of the United States aiders and abettors of Russian injustice." Critics thought the treaty, by requiring the surrender to the Russian government of incriminating documents found in the possession of the fugitive, enabled the Tsar to discover and punish his political accomplices. Thus, the treaty "used the police and law courts of the United States in the infamous business of supporting Russian despotism."[188] "It seems to me," William Dean Howells said, "that it puts us exactly in the position we occupied under the fugitive slave law, only we send back the fugitives to a foreign instead of a domestic master of whom the latter might have some claim on us…If a man is extradited to Russia, there are no safeguards." There would be "no way to learn the fate of the unhappy person who we had handed over," given the secrecy surrounding Russian justice and a gagged Russian press.[189]

In a letter to President Cleveland protesting the treaty, Kennan outlined the lack of accord between Russian and American criminal law as the heart of the opposition to the extradition treaty. He pointed out that in Siberia, none of the reforms introduced by Alexander II applied:

> I myself saw in the pestilential forwarding prison of Tiumen, Western Siberia in 1885 an alleged fraudulent bankrupt named Tiufin who had been awaiting trial for two years and a half. His brother who was supposed to be implicated with him had already died in prison of typhus fever while awaiting a hearing. Inasmuch as Russian refugees accused of crime

[187] Reprinted in *Free Russia,* April 1, 1893, 3.9, 14

[188] "Twenty Reasons Why the Extradition Treaty with Russia Should be Abrogated," *Free Russia*, 3.12, July 1, 1893, 4. (written by Edmund Noble).

[189] "William Dean Howells Condemns the Russian Extradition Treaty," *Free Russia*, 3.11 (June 1 1893) 9.

> in Siberia may succeed in reaching our Pacific coast and may be called for by the Russian government under the provisions of the this treaty, we are confronted by the question of whether we should be acting justly, to say nothing of acting mercifully, if we should send these accused persons back to Siberia to languish a long term of years perhaps in prison and then be tried without benefit of counsel in one of the unreformed Siberian courts.

Kennan added that those Russian refugees from the center of the Russian empire—the provinces of St. Petersburg, Moscow, Kiev, Kharkov, Pultava, and most of the large cities—who managed to make it to the East Coast of the United States, would be extradited back to places under a declared "state of siege" since 1881, where governors general had the right to order any case to be tried by field court-martial (which frequently imposed the death penalty, in contrast to civil courts). Under martial law, governors general could banish obnoxious persons without the formality of any trial—exile by administrative process—for up to five years. "Suppose the Russian government does not act in good faith," Kennan wrote, and requests a political offender for a common felony? Kennan argued:

> The system of criminal jurisprudence which prevails in Russia, notwithstanding its modification by Alexander II, is still far more archaic and medieval than the system which prevails in the United States not only in methods but in principles…Where it does prevail, [trial by jury] has been so limited and mutilated by imperial decrees…since the accession to the thrown of the present Emperor that it now has comparatively little value…In nearly all cases where offences have been withdrawn from jury trial they have also been withdrawn from open court and have been tried in secret…evidence of a determination on the part of the government to subordinate the judiciary to the bureaucracy…and to restrict the legal rights of the accused…A perusal of the able and dispassionate article [by Isaac Hourwich] on the Russian Judiciary, which I enclose herewith, will show to what an extent this is done in practice."[190]

Indeed it was Hourwich who, in another article, took up the task of explicitly repudiating John Bassett Moore's legal defense of the treaty.

Though the articles of both men were about the law, it was as if they were talking a different language entirely, their assumptions were so at odds; Moore over-emphasized a

[190] Kennan to President Cleveland, March 11, 1863, Box 30, Kennan papers, LOC.

restrictive and orderly view of the United States, while Hourwich over-emphasized its openness and freedom. For example, Moore's defense of the treaty, published in *Forum* in July 1893, said this of the opposition to the forgery clause: "Is it not simply to deny the right of government to exist, to say that its acts may be forged and counterfeited with impunity?" Moore also argued that objection to this clause is "based on the theory that it is an inherent right of man to change his home absolutely at will and that the United States ought to treat unauthorized emigration as analogous to a political offense." But, "emigration is but the beginning of the migratory act which ends in immigration," and Moore pointed out, "no government has more positively denied the right of free and voluntary migration than the United States." Further Moore asked rhetorically, "has it been found that persons who commit crimes in countries whose governments are, in our opinion, undesirable, are of a milder type than our own criminals?" Trial by jury is not crucial, Moore claimed, as Americans were tried in consular courts (extraterritorially) without them. Moore argued finally that "any government will be despotic when assailed by assassins" and that rebellion was responsible for the advent of government repression.[191] In the May 1894 *Yale Review*, Hourwich argued that Moore was putting the cart before the horse. "Any government will be assailed by assassins if it becomes despotical," Hourwich writes, and points as proof to the exiling of intellectuals in Russia before any assassination attempts. For Hourwich, all crimes were potentially political; what made them political was not only the motives of the fugitives but the perceptions of the authorities, not only the nature of the offense itself but how it was investigated, tried, and punished. Hourwich further asked: why should the United States government help enforce a passport system that the Russian people and the Russian government itself recognize as unrealistic? "During 1880-1883 a regular trade in forged certificates of

[191] John Bassett Moore, "Russian Extradition Treaty," *Forum*, 15 (July 1893) 629-646.

discharge from military service was going on in Western Russia and Poland…Thousands of young men, who had availed themselves of those certificate fled from Russia and landed on these shores…Have the United States any interest in the surrender of such fugitives to Russia?...[T]housands are held [in Russia] year in and year out for infractions against the [internal] passport regulations. Most of them are laborers looking for employment outside of the prescribed 20-mile zone [around their homes]…[do they really] belong among those outlaws who threaten the peace of any civilized community? Public opinion in Russia in the negative."[192] Forgery should be extraditable, Hourwich argued, only if it is a crime in violation of property rights, not if it involves violations on freedom of movement and mobility, which would not be recognized as crimes in the United States. At the end of his article, Hourwich acknowledged that extradition with Russia was incompatible with "the traditional policy of free asylum policy to which this country has hithero adhered." Hourwich's preferred solution was termination of the treaty. If not, the treaty's role in the upholding of Russian sovereignty should at least be squarely admitted and the "strained" notion of a political offense exception abandoned. The assertion that the treaty did not contemplate the surrender of political refugees seemed to Hourwich a ridiculous charade.

[192] Isaac Hourwich, "The Russian-American Extradition Treaty," *Yale Review*, May 1894, 85-7. For confirmation of Hourwich's account of increasing amounts and social acceptance of illegal migration within the Russian Empire in the 1870s and 1880s see David Moon, "Peasant Migration, the Abolition of Serfdom, and the Internal Passport System in the Russian Empire, 1800-1914," in *Coerced and Free Migration: Global Perspectives,* ed. David Eltis (Stanford: Stanford University Press, 2002), 348, 355-6. The Russian government was very aware of this unauthorized movement and that its passport laws were inhibiting economic development and frontier settlement; Russia liberalized residence and movement controls in 1894, 1897 and 1906, though not for ethnic minorities or political dissidents. See Mervyn Matthews, *The Passport Society: Controlling Movement in Russia and the USSR* (Boulder: Westview Press, 1993) chapter 1. Though regulations concerning departure from Russia remained severe and the government "kept tight control over dissidents," it "had practically no enforcement of its emigration prohibition" and, by the turn of the century, "the large, illegal migration out of Russia involved false passports and smuggling operations." (Dorothea Schneider, "The United States Government and the Investigation of European Emigration in the Open Door Era," in *Citizenship and Those Who Leave: The Politics of Emigration and Expatriation*, eds. Nancy Green and Francois Weil (Chicago: University of Illinois Press, 2007) 197, 203).

Almost a year elapsed between Moore and Hourwich's articles. In the interim, the United States was in the midst of the panic of 1893. The panic put a damper on activism around the treaty: opponents put off asking the President to immediately take action on its abrogation because he was busy with "urgent business relating to the present financial condition of the country" but, by the spring of 1894, asked Congressmen to introduce resolutions calling for its termination, hoping that even if they failed to pass, they would attest to strong feeling against the treaty at a time when the public attention was focused on "so many important home questions" and "the needs of so many persons thrown out of employment."[193] After completing his degree at Columbia, Hourwich had taken a lectureship in statistics at the University of Chicago. Hourwich got involved with the county's Populist Party—which, two years later, cost him his position at the University[194]—and was an unconventional teacher, leading his students on excursions to canvass the city's growing homeless population in the winter of 1893. "Curiously enough," the *Chicago Tribune* reported of their December 1893 census of men who slept at City Hall, "the large number of men out of employment does not seem to have affected to any large extent the price of labor. The usual rates have been maintained, but the uncertainty and scarcity of work have been the immediate causes of destitution, so far as it had affected the parties interviewed."[195] This finding reinforced Hourwich's belief that immigrants should not be blamed for unemployment. But others felt differently, including some among the labor leaders who vocally opposed the extradition treaty. At a March 7, 1893 protest at Carnegie Hall, John Swinton, a prominent labor editor, denounced the treaty in front of a prominently Russian-

[193] "The Abrogation Society in Working," *Free Russia*, 4.1. Aug. 1 1893, 8; "Society for the Abrogation of the Russian Extradition Treaty," *Free Russia*, 4.10, May 1 1894, 3.

[194] "Says He's Not a Red," *Chicago Tribune,* May 23, 1895, 1.

[195] "Statistics of the Destitute: City Hall Lodgers to be Questioned by Students of Sociology," *Chicago Tribune*, Dec. 10, 1893, 12; "Census of the Poor," *Chicago Tribune*, Dec. 14, 1893, 6.

American crowd, calling it a fugitive slave law that would scandalously deprive half his audience of asylum. The treaty, Swinton argued, "is un-American in principle and purpose—it is the handiwork of the Czar. And who is this Czar? A tyrant who belongs in the category of monsters."[196] A year later, Swinton had found a new monster. He argued that "the supply of labor far outstripped the demand, immigrants add to the crowds of unemployed in the cities, capitalists exploit the situation by hiring workers on their own terms, and there is no escape to the West now that the 'free lands of other years are fenced in.'"[197] For the next two decades, labor leaders would remain in the anti-extradition coalition, but nativism would eventually win out. The Panic of 1893 led to a popular demand for restriction of immigration and Congress received over a hundred petitions for restriction during its session at the beginning of 1894; two bills were introduced for the declared purpose if protecting American labor. Moreover, even as opponents of the extradition treaty worried about those who escaped Russia on forged passports, the House proposed a bill to require consular inspection abroad in order to insure that criminals never made it to American shores. The bill mandated that no immigrant would be admitted without a consular certificate to show that an investigation has been made into his background. While the Senate opposed this plan because it would require too much of consuls and might arouse objections from foreign governments, the Senate pushed instead a bill providing for the

[196] Swinton's remarks are reprinted in *Free Russia*, 3.8 (March 1893) 5.

[197] Swinton quoted in John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (New Brunswick: Rutgers University Press, 1955) 71. Higham insightfully writes about the "Nationalist Nineties": "The chief socialist movement of the day called itself Nationalism…above all, this sentiment manifested in astonishingly belligerent attitudes toward foreign governments…it is hard to doubt that these bellicose outbursts flowed from the same domestic frustrations that generated nativism…Not all jingoes were nativists or all nativists jingoes, but both the aggressive psychology of one and the defensive reaction of the other provided instinctive rallying points for a society dubious of is capacity to compose its conflicts" (75-6).

exclusion and deportation of anarchists.[198] The bill did not pass, but sensitivity about the taint of anarchism was detectable in protests against the treaty. The Russian American National League reprinted the 1881 letter by Russian revolutionaries condemning the assassination of Garfield, pointing to the compatibility of these revolutionaries with America. The League even stopped referring to Russian revolutionaries as "Nihilists" and started referring to them as "Constitutionalists."[199] The protest from the prominent New Yorkers ended thus: "A protest of the people against the consummation of so important a measure…should…be considered as a…distinct protest against an un-American system...it should not impute to those who sign it an approval of assassination."

There were also hints, at some treaty protests, of more elitist strain of restrictionism, a restrictionism concerned not so much with foreign labor competition or imported radicalism, but with influxes of inferior "stock." At an April 1893 protest in the Central Music Hall in Chicago, where, the *Herald* reassured, immigrants "formed only a small section in a gathering that was distinctly representative of the best elements in Chicago citizenship," it was resolved that "None can be true Americans who forget that America is America…that our inherited wealth of liberty moves us to the deepest sympathy for the lovers of liberty…who are seeking to open the way to freedom for their countrymen, and the *smaller* their number the more reverent the homage we pay to their courage" [Italics mine].[200] Several speakers at the meeting condemned Russian rule as uncivilized and represented the treaty as a sullying "Anglo Saxon justice" or breaching asylum in "Anglo-Saxon America." In general, the language of the 1893 anti-extradition treaty

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[198] E.P. Hutchinson, *Legislative History of American Immigration Policy* (Philaelphia: University of Pennsylvania Press, 1981) 110-112.

[199] "Appeal of the Russian American National League," *Free Russia*, 3.9 (April 1, 1993), 8.

[200] "No Tools of a Despot: Chicagoans Make Strong Protest," *Chicago Herald*, April 24, 1893.

campaign, which was much broader and attracted more upper class support than that of 1887, did not welcome boatloads of refugees to America, but expressed abhorrence with Russia's autocracy and exile system. Its tone is captured well on the April 12 cover of *Puck* magazine. Lady Liberty is a tiny figure way off in the background, Siberia's vulture is much closer at hand, and there is no refuge in sight. Uncle Sam ponders whether the treaty lends moral support to despotism.

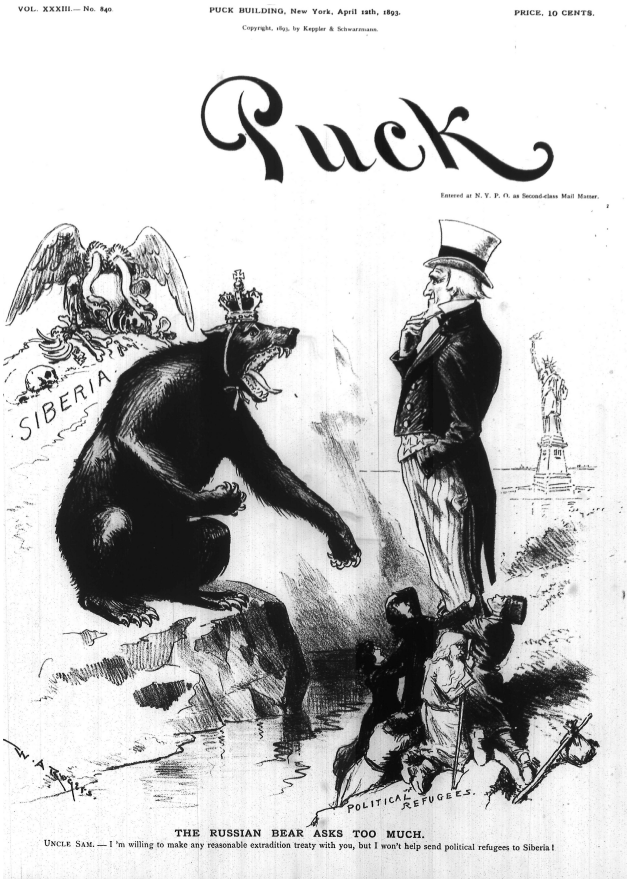

Figure 2.3, Cover of *Puck* magazine, April 12, 1893.

The anti-Russian treaty coalition's ethnic diversity was mostly a strength; its strains also became much more significant later on. At the same Chicago Music Hall meeting, Emil Hirsch, an influential rabbi and social reformer, opened his speech: "I cannot, like most of you, point to an Anglo-Saxon lineage, but I can refer back to ancestors who have been made to feel what

Russian-civilization really means…Russian justice means for 5,000,000 people who have for 400 years lived in that country, the deprivation of everything that makes life worth living."[201] The Jewish American press was uniformly supportive of the protests; a characteristic *American Hebrew* editorial noted, "It is our intimate acquaintance with Russian methods in dealing with 'Jewish interests' that enables us to speak with fuller emphasis of the need of dealing at arm's length with a government whose principal diplomatic stock in trade is duplicity, chicanery, and corruption. Whatever may have been the friendly relations subsisting between this country and Russia, the two countries are as wide apart in spirit as they are geographically. The principles and institutions of the two peoples are as diverse as they well can be."[202] That the newspaper put the phrase 'Jewish interests' in quotations is telling; for established "uptown" Jews (mostly of German descent and American-born), the anti-treaty fight was a testament to the American-ness of Jews. Many "downtown" Jews (newer arrivals from Eastern Europe) felt the same way. The Russian American National League put out a call "To all Russians, Poles, Lithuanians, Hebrews, Finns and other Former Subjects of the Czar of All Russias" to unite and fight: "We Russian exiles, driven by monstrous persecutions of the despotic autocracy of Russia, we are the true representatives of the Russian people, and we shall be their spokesmen. We are about two millions of citizens of the United States of America!...We must endeavor to prove to our Senators that American liberty is still alive, and the Declaration of Independence is not a dead letter. Organize, fellow citizens…Declare to the political parties that not a single vote of a former

[201] "Rabbi Hirsch's Denunciation," *Chicago Herald*, April 24, 1893.

[202] Reprinted in *Free Russia*, 3.9 (April 1 1893), 14. In another editorial, the *American Hebrew* noted, "One need not be a professional student of Russian diplomacy to observe and appreciate the fact that that phrase, 'attempts to murder the Czar,' can and would be made to cover a multitude of sins. Its elasticity can, however, be best understood by those who remember how skillfully 'villages' are construed to be 'towns' and vice versa whenever Russian officials wish to utilize such construction as a means of persecuting the Jews." (reprinted *Free Russia*, 3.8 (March 1, 1893), 8.)

Russian subject, and now an American citizen, will be cast for the party" which will not push for abrogation.[203] Louis Rosenfeld, who gathered subscribers for *Free Russia* among his Jewish acquaintances, wrote Francis Garrison that, "The persecution of the Jews is but an outgrowth of the state of affairs in Russia, an incident only. Those of other than the Orthodox church will be as badly off as the Jews when their turn comes. Already Protestant priests are on the road to Siberia for proselytizing. Do not think for a moment, that it is because I am an Israelite (as you may possibly know) that the Society has my sympathy. I am a human being first—an Israelite afterwards, and for this reason I want to help your Society all I can afford to, by working for it."[204] Hourwich, too, at this time in his life, did not dwell on the distinctiveness of Jewish oppression in Russia. He focused his attention on political and economic questions. In his memoir, Hourwich remembers that, at the time they happened, he saw the Kiev pogroms of 1881 as a misguided revolt of the people with which revolutionaries needed to sympathize. The language of Hourwich's Jewish workmen's circle in the late 1880s was Russian; Hourwich did not begin to write in Yiddish until after he already wrote in English. The Russian-language newspaper he edited from New York and Chicago in the early 1890s announced "class interests and spiritual solidarity link the local Russian Jewish population with the oppressed masses in Russia."[205] Hourwich ended an 1891 analyzing anti-Semitic policies in Russia with the comment that, "It appears that the persecution of the Jews is a constituent part of a calculated and well planned scheme on the side of the government. By instigating the Estonians and Lettonians against the Baltic Germans, the latter and the Poles against the Jews, and the orthodox Russian

[203] *Free Russia,* Aug. 1, 1893, 4.1. 9.

[204] Rosenfeld letter is quoted in Garrison to Kennan, June 24, 1891, Box 30, Kennan papers, LOC.

[205] "Russkaia gazeta na amerikanskoi pochve," *Progress*, December 6, 1891, 1. See, also, Steven Cassedy, *To the Other Shore*, 69.

'nation' against all, the government intends to put one half of he population of the empire—the orthodox Russians—in the position of a 'predominating nation' prevailing over all the rest through their all powerful national autocratic government. '*Divide et impera*!'"[206] *Free Russia* portrayed the persecution of Jews and other national and religious minorities as part of one overall autocratic "system": "the system under which men and women are exiled or imprisoned without trial by administrative process, offenders lodged in dens of filth and disease, Jews persecuted on account of their religious belief, female prisoners flogged to death by prison officials, and Stundists wives violated because they will not accept the Orthodox faith."[207] The lack of distinction between political and religious refugees was apparent, too, in the 1896 Congressional debate over exemptions from a proposed literacy test for immigrants. When one Congressman proposed that Cubans be exempted –"if we had the power to extradite them…to the Spanish government, the people of the US would almost rise in revolt before they would see it done," another Congressman remarked—the plight of Armenians and Jews were quickly raised as well.[208]

This is not to say that ethnic divides and prejudices were non-existent among those who opposed the treaty, only that they were downplayed. A letter from Francis Garrison to Kennan about funding for *Free Russia* in the summer of 1893 gives a sense of distinct roles and tensions: " [Jacob] Schiff has already written me that he can do nothing further and evidently feels a little

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[206] I.A. Hourwich, "Persecution of the Jews," *Forum* 11 (August 1891) 626. A bit earlier in the article Hourwich argued: "To bring confusion into the ranks of the adversaries of autocracy, to deceive a portion of them by representing that autocracy advocates the interests of the Russian 'people' against 'Jewish capital,' to demoralize the others by exciting the instincts of selfishness of a 'predominant nation,' and consequently to break up the spirit of liberal and radical opposition by creating a strong 'national' party among the educated classes, in sympathy with the government—such is the obkect of the present 'national' [anti-Semitic] policy of the autocracy."

[207] "A Reply to a Reply," *Free Russia*, 4.1 (Aug. 1, 1893) 3.

[208] *Congressional Record*, 29, Dec. 17, 1896, 236.

aggrieved that of the $600 which we had to raise last year to pull the paper through, three quarters of the whole were contributed by himself and his friends; nor does he feel that the circulation of a few hundred copies is worth the amount expended. I do not look at it the same way he does, for I think that the influence and value of a paper are often largely beyond all proportion to its circulation…Mr. Goldenberg, as usual, in undaunted and hopeful…continues to live on a starvation pittance and he is as devoted and self sacrificing as he has been ever since he took up this burden [of editing the paper]."[209]

It is also important to note that Oscar Straus, who delivered Kennan's letter to President Cleveland and helped Garrison raise money for *Free Russia* from Jewish donors, was not given a straight answer in the spring of 1893 when he inquired about the status of the treaty from Bayard. Straus wrote him that opponents of the treaty believed that the provision allowing for the extradition of persons who attempt the life of the Czar was an "undue" concession made by Bayard to the Russian government. Straus continued: "At a meeting held at Carnegie Hall a few evenings ago to protest against this treaty, consisting of representative labor organizations and friends of Russian Freedom, reference was made to you as being responsible for this treaty." [This is putting it mildly; at the protest, Swinton "was especially severe on ex-Secretary Bayard…to whom he applied some stinking adjectives."[210]] Straus's letter added: "Mr. Barnet Phillips, one of the editors of the *New York Times*, called upon me today to give him the facts so that no injustice might be done to you. If you see no objection to your giving me a brief resume of the negotiations conducted under you I will be in a position to give Mr. Phillips the information, so that the subject may be intelligently presented. Mr. Phillips is a warm admirer of

[209] Letter from Garrison to Kennan, Aug 25 1893, Box 30, Kennan papers, LOC.

[210] "The Treaty Denounced," March 8, 1893, *New York Times*, 1.

yours, and will make the most discreet use of the information I give him." [211] Bayard replied that, so far as he remembered, "none but persons who had committed the crimes enumerated in the treaty—and non political in their essential character; crimes defined, punished, and abhorred by all civilized peoples—could be surrendered under its terms." He insisted, too, that his primary intention had been to have the extradition treaty with Russia accompany a treaty of naturalization, whereby Russia would recognize the right of expatriation and the acquired American citizenship of former subjects.[212] Bayard's memory and intention were rose-colored, but, by March of 1893, beside the point. No naturalization treaty had been negotiated and the ratified extradition treaty provided for the surrender of those who left Russia on forged passports. Nonetheless, Straus passed Bayard's letter onto the *New York Times*, which reprinted it practically verbatim.[213] Straus wrote back to Bayard that he was "gratified to learn that a treaty of naturalization was coupled with the extradition treaty, thereby assuring equal rights to citizens of the U.S. and putting an end to the discriminations that have been made for years and are still being made against American citizens of the Jewish faith [who return to Russia]." Straus did add, however, that, "personally, I am in favor of no extradition treaty with Russia…I have given a great deal of attention to this subject for the last three years and I have no delusions in reference to the persecutions…in that empire. There are too many victims in this city [New York], men of intelligence and education, who more than corroborate the official reports of Col. Weber and statements published in Europe." [214] (Weber, as noted above, was the Ellis Island Commissioner

[211] Straus to Bayard, March 10, 1893, Box 18, Letter Book 3, Oscar Straus papers, LOC.

[212] Bayard to Straus, March 11, 1893, Box 2, folder 1891-3, ibid.

[213] "Mr. Bayard Misrepresented," *New York Times*, March 15, 1893, 9.

[214] Straus to Bayard, March 15, 1893, Box 18, Letterbook 3, Oscar Straus Papers.

who reported on discriminatory policies against Jews in Russia that contributed to their immigration). When, a few weeks later, John Bassett Moore wrote Bayard about "the attempt to work up false views and dangerous sentiment in relation to the treaty of extradition with Russia," Bayard wrote Moore about his exchange with Straus. Bayard wrote Moore: "I can plainly see that 'Jewry' is not to be satisfied and that the 'Race issue' is sought to be transferred to this land of free speech and printing in order to reflect upon the struggle in Russia." Bayard also implied that opposition to the treaty in the press was the product of Jewish money: "articles that fill the press by procuration." Russia, Bayard wrote Moore, had been subject to "much unjust accusation." [215] Two weeks later, Bayard complimented Moore on an advanced draft of his article defending the treaty in the *Forum*. Bayard's comments reveal his disdain for democracy in foreign affairs. "Your paper," Bayard wrote Moore, "will throw light upon that dark space called the popular mind."[216] (Referring to the opposition as Jewish and popular seems to overlook the many opponents of the treaty who were prominent "Anglo-Saxons.") In July 1893, Bayard sent a copy of Moore's article to M. de Staal, the Russian ambassador.[217] Perhaps this explains why, despite ongoing protest against the treaty and a Congressional resolution calling for abrogation, "by 1893 Russian envoys believed their counter-propaganda was proving successful" and "they believed Russia generally had the sympathy of both the US government and the American people."[218] Significantly, over the next two or three years, the attention of Jewish leaders like Straus shifted towards mistreatment by Russian officials of American Jews of

[215] Bayard to Moore, April 14, 1893, John Bassett Moore papers, LOC.

[216] Bayard to Moore, May 11, 1893, ibid.

[217] Bayard to Moore, July 27, 1893, ibid.

[218] Foglesong, *Evil Empire*, 27.

Russian descent; in 1894 and 1895, Russian consuls in the United States refused to visa the passports of American Jews who wanted to return to Russia for a visit and officials in Russia arrested some of the American Jews who did make the trip.[219]

The petition against the treaty by prominent New Yorkers argued that since diplomatic courtesy forbids suspicion and treaties rely on good faith, once the treaty was in place, the political bearings of an extradition case could only be known if a notorious political refugee was requested. "Political offenders might be sent for on criminal charges without creating a ripple of public interest because the public would be absolutely ignorant of the facts." On the other hand, Kennan asserted that, if it could not prevent the treaty, all the public protest against it would prevent the United States from ever surrendering anyone to Russia. Howells speculated that if an attempt were made to extradite a man who had forged a passport to escape Russia, a "mob of Russian-Americans assisted by Americans" might attempt his "violent rescue." Bayard believed that "a single trial in Russia of a culprit extradited by the United States would compel publicity…and procure an exposure of the real methods of administering justice in that land that would…relieve that county from much unjust accusation."[220] As it turned out, each of these predictions were only partly accurate. Documents from the Russian Foreign Policy Archive analyzed by V.I. Zhuravleva reveal that "Between 1893 and 1917, thirty-eight cases were brought in the Russian Embassy in Washington…The overwhelming majority of these were 'common' criminals who had committed grand larceny or murder. In such cases the American side strictly observed the terms of the agreement and extradited the fugitives. But when the czarist government asked for the return of its subjects who had participated in the revolution of

[219] Correspondence about such cases are collected in Cyrus Adler and Aaron Margalith, *With Firmness in the Right: American Diplomatic Action Affecting Jews*, 1840-1945 (New York: American Jewish Committee, 1946) 235-260.

[220] Letter of Bayard to Moore, April 14 1893, Box 212, Moore Papers, Library of Congress.

1905-1907, it was refused." But, although the Russian embassy only pursued 32 cases, the Russian government sought out initial warrants for many, many more. At the U.S. National Archives, practically the entire book of warrants of arrest for extradition spanning 1886-1910 are for Russian subjects, though there are only a few Russians in the book listing those people actually surrendered.[221] In his 1911 article on "The Difficulties of Extradition," Moore mentioned a minister who "made rather frequent applications for preliminary warrants for the arrest of fugitives, but rarely afterwards applied for warrants of surrender." The minister had found, Moore wrote, "the ordinary legal process to be troublesome, expensive, and altogether uncertain."[222] Evidence from the archives of the Russian Imperial Consulates in the United States suggests that, in following the "legal process," a big part of the Russian government's outlay went to Pinkertons who were hired to follow and spy on alleged fugitives (especially at their workplaces).[223] It is impossible to know what the government typically did when it did not take the legal route, but it is not surprising that exiles were wary of spies and informants; the Okhrana, Russia's secret police, did have both in the United States.[224] The minister told Moore that the "plan he followed" was to "hint [to the fugitive] that his only hope of leniency might lie in voluntary return," plus an "offer [of] first class steamer passage." During the Rudowitz case,

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[221] Compare "Extradition Warrants of Arrest 3/2/1886-11/25/1910" to "Extradition Warrants of Surrenders, June 2, 1886-Dec. 29, 1910," both in RG 59, NARA.

[222] Moore, "The Difficulties of Extradition," 318.

[223] Reel 56 and 57 of the Records of the Imperial Consulates of the United States, M1486 (National Archives Microfilm). On a similar system at work in Canada, see Vadim Kukushkin, "Protectors and Watchdogs: Tsarist Consular Supervision of Russian-Subject Immigrants in Canada, 1900-1922, *Canadian Slavonic Papers*, XLIV, 3-4 (Sept.-Dec. 2002) 209-231.

[224] The records of the Okhrana include information about agents and informants in the United States, though there were many more in European countries. Socialists assumed that the Tsar's "corps of spies" in America was much greater than it was. (Guide to the Okhrana Records, Hoover Institution Archives, Stanford; Gustavas Myers, "The Tsar's Spy System in America," *Harpers Weekly,*52 (November 28, 1908), 9-10.)

supporters were wary of a young Russian whose extradition, for a minor forgery charge, was also requested by the Russian government. The Russian consul in Chicago had a long chat with him and seems to have convinced him to return to Russia "voluntarily" before sending him to await departure in a cell he shared with Rudowitz. The *Chicago Daily Socialist* believed the consul had asked him to spy on Rudowitz.[225] What was clear to Hourwich was that "had he made fight for his liberty," he would not have even been extraditable under the treaty since his forgery did not involve any offense against property. "There ought to be some provision made for the assignment of counsel to persons arrested in extradition proceedings if they have no means to engage counsel," Hourwich argued.[226] This would prevent manipulation of all kinds by the Russian government.

One of the reasons that Hourwich's article was published at all—a year after the treaty was ratified—was because of an event in the fall of 1893 that, as Kennan wrote, made the whole issue relevant again. In September, sympathetic American sailors on board a whaling bark picked up several convicts who had escaped in a boat from the Russian penal colony on Saghalien [now Sakhalin] Island. "As soon as they saw the stars and stripes, every man bent to his oar and pulled toward us," mate Peckham told the San Francisco *Examiner*. "As they drew near," Peckham said, "one of our sailors, who is a Russian, hailed them. The men answered, asking to be taken on board our ship, saying they were shipwrecked sailors from a Russian ship. We hoisted their boat on board and at once saw that the men were not sailors, but convicts." After they were delivered to shore, a few of Saghalien escapees declared themselves political prisoners, and all wrote an appeal to the American people, describing in detail Saghalien tortures:

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[225] "Spy is Used in Rudowitz Case," *Chicago Daily Socialist,* Nov. 18, 1908, 1.

[226] Hourwich to Louis Marshall, Nov. 19, 1908, Box 21, General Correspondence, AJC Archives.

shackles, beatings with a knout (whose lashes were brass tipped), hunger, and work at night in the freezing woods, blood soaking through their shirts, until they were covered in red ice. Initially, the San Francisco Immigration Commissioner did not know what to do: "My duty is to prevent from landing unregistered Chinese laborers, immigrant convicts or contract laborers. When these are brought here, I do not allow them to leave the vessel which transported them, but require the ship to return them whence they came. There is nothing in the law, however, to cover this particular instance." Rumors circulated that the Russian government would request their extradition. Concerned treaty opponents in Chicago considered sending Hourwich to San Francisco to investigate. In a letter to the San Francisco Chief of Police, the Russian consul explained that he would not request the extradition of the Saghalien convicts, pointing to a provision in the treaty specifying that it did not apply to offenses committed before it was signed. The Russian minister in Washington was more frank: "Russia can spare...her common convicts, if America has room for them. If they were political refugees, we would have immediately demanded their extradition." Revealingly, the Russian consul in San Francisco did request that the Chief of Police provide him with the names of those in the United States who provided assistance to the Saghalien convicts. " I think," the consul wrote, "it would be advantageous for similar future occurrences if knowledge could be obtained now [about] who the people are that lend their assistance to criminals." The Immigration Commissioner in San Francisco had by then gotten word from Washington to take depositions from the men about their convictions in Russia—two were implicated in murders and one in a robbery, one convicted of smuggling and one of counterfeiting, one sentenced for striking a drunk officer, one for support for "Nihilist" workingmen, and one for not informing on a nihilist. In late November, Washington ordered the release of all of them; newspapers reported that, though most of them would have been barred as

convicts under the act of 1891 had they tried to enter as immigrants, the US government would "not prevent the landing in this country from an American vessel of men, convicts though they may be, picked up in distress on the high seas." The San Francisco police chief replied to the Russian consul that, during the short time the men had been at the local prison at the behest of the Immigration Commissioner, only a keeper of a local variety theater had provided them with any assistance; several of the Saghalien prisoners went on exhibition at the "Midway Plaisance" after their release. By 1895, two of the men—who said they had been sent to Saghalien for supporting Nihilists and for hitting an officer—were charged with murder and burglary, respectively, in California.[227]

That year, the Russian government requested the extradition of Ivan Ribitcki accused of stealing horses and forging a bill of sale. The trivial charges made many *Free Russia* supporters suspicious. Why would the Russian government exert so much energy to catch a petty thief? Ribitcki claimed he was not actually the man who committed this and was in fact wanted for political offenses. Commissioner Lorenzo Semple in New York decided he deserved extradition. The decision attested to the way racist conceptions of immigrants colored U.S. extradition practice. A triumphant Frederic Coudert, permanent American counsel to the Russian government, told the *New York Evening Post*:

> Sympathy may easily be thrown away upon a man who has fled from Russia and whose recovery is desired by that government. Many people at once assume that the man has been persecuted at home for some opinion or act proper to a freeman. The fact is, however, that Russian criminals of the most dangerous class are constantly coming to this country, where they pursue their criminal careers unless we are so fortunate as to be able to send them back to their own country, to be dealt with as they deserve. We clearly

[227] Clippings about this case from the San Francisco newspapers collected in the Records of the Imperial Consulates of the United States, M1486 (National Archives Microfilm), roll 129, target 5. Also included is a letter, dated November 8, 1893, from the Russian consul in San Francisco to the Chief of the San Francisco police, and the Chief's reply to the consul on November 28. *Free Russia* reported on the case in its November and December 1893 issues.

> established the identity of Ribitsky [sic.], and convicted him of lying straight through. He is an ignorant and stupid Pole, of the lowest type, whom one could not possibly suspect of being a political criminal. He is just a horse thief, and merits the two years' or so imprisonment he will get in Russia, where horse stealing is a less serious crime than it is in the West of our own country.[228]

Probably the most famous extradition case of the day was in the West and it involved more than horse stealing. On December 10, 1892, a large group of armed men crossed into Mexico from Texas and attacked a barracks of Mexican soldiers at the San Ygnacio ranch and then returned to Texas. The attack was actually one of the last in a series of raids committed in the early 1890s by followers of Catarino Garza, a journalist in South Texas intent on overthrowing Diaz in the name of nationalism, liberalism, and progress.[229] Though Garza had the support of Texas Mexican merchants and ranchers as well as poor farm workers, John Bourke, a US Army captain stationed in the area, claimed the followers of Garza had "acquired, if they did not inherit" the dangerous cunning of bandits and "lawless cutthroats." According to Burke, under the cover of proclamations and manifestos against Diaz, the San Ygnacio "marauders" engaged in "vile outrage" and then "wearing no uniform could rapidly throw away or conceal their arms and resume their wonted role of peaceful shepherds or ranchmen" on the Texas side of the border.[230] Detachments of American troops (aided by Mexican and black

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[228] The *Post* (October 29, 1895) clipping is in Moore's extradition scrapbook, John Bassett Moore papers. See also the editorial in the *New York Times*, October 30, 1895, 4, which claimed that "the case looks suspicious and the zealous explanation of the counsel makes it look more so."

[229] Elliott Young, *Catarino Garza's Revolution on the Texas-Mexico Border* (Durham: Duke University Press, 2004) 114, 129-130. Young writes: "What were the Garzistas fighting for? They publicly declared that they opposed Diaz because he had betrayed the liberal principles of no re-election and individual freedoms, and had begin to see out the country to foreigners. Although they did not provide many details about the kind of society they wanted to construct once the regime was overthrown, they promised to distribute 'vacant lands' to anyone who would cultivate them, to establish free trade, and to restore municipal and state sovereignty. The language of the manifestos as well as the historical references to the 1857 Constitution linked the revolution to a long history of popular liberalism in Mexico."

[230] John G. Burke, "Our Neutrality Laws," Fort Allen, CT, 1896, 31.

Seminole scouts) were sent to search for and arrest them. The Mexican consul in San Antonio believed the San Ygnacio raiders were "criminal adventurers" and "pretended revolutionists" and requested their extradition for murder, arson, and robbery. But other US army officers and officials recognized them as revolutionists of an "irresponsible," popular kind. Like John Bassett Moore, military officer George F. Chase, who negotiated the surrender of many of the San Ignacio raiders, used "revolutionist" as a slur: "These people are born Revolutionist. They have little or no respect for constituted authority…We may expect constant trouble from the…irresponsible element now occupying our Rio Grande border. Any man among them seems competent to start a revolution." [231] The extradition was further complicated by the jurisdiction of the Texas authorities, the fact that armed Mexican officers went into Texas to retrieve Mexican soldiers who went with the raiders, and the US citizenship of a few of the raiders. At the extradition hearing of Inez Ruiz in May 1894, a witness for the prosecution (one of the retrieved Mexican soldiers) referred to the raid as part of the "Garza revolution," but called the raiders bandits because of the way they "hollered like animals" while shooting at the barracks. The distinction between bandit, soldier, and revolutionary seemed to break down even as this witness was stating it: "A bandit to my way of thinking is one who goes to rob and not to kill. These were armed, they did not fight like soldiers; they shot and hollered like animals; our crowd shot but did not holler. They did not demand of the barracks to surrender…I saw no banner or streamers, only saw the red band around their hats…We [the Mexican soldiers] had no banner there. There were some women there in the barracks with the soldiers, they stayed there…He [a leader of the raiders] told them [soldiers taken as prisoners] that they were free men and should

[231] Chase is quoted in Margolies, *Spaces of Law*, 311.

live up to the constitution."[232] At the extradition hearing of Jesus Guerra, the defense introduced translations of the printed manifestos and plans of the San Ygnacio raiders. In these manifestos, Diaz was the barbaric outlaw, not the revolutionists. "Mexicans!," one such manifesto read:

> Today the poor is deprived of what he has, the free thinker is murdered, and the press is gagged…There is no respect for the Constitution…We have retrograded to an inquisitorial time, worse than that of Torquenada as now our people die of hunger by the despotism of Gen. Porfirio Diaz. We shall raise up our heads, abated by so many misfortunes. Give the alarm, which formidable echo should shake the throne of that outlaw, who has buried in the mud with the glory and greatness the national liberty. We…take to the sword, and guided by the love of our country re-conquer in the battlefield the right which we are deprived of…The shades of Cuauhtemoc, Morelos, and Juarez are watching us from eternity, expecting to see us comply with our duty as they have done…We shall go as faithful soldiers of justice.[233]

Another proclamation, offered by the defense in the case of Inez Ruiz, was addressed to soldiers in the Mexican army. It directly contradicted the testimony of a witness for the prosecution claiming that the raiders were bandits who did not respect families. [234]

> Brave Mexican Soldiers… one is our banner, one our territory, we speak the same language and want the same end, the greatness of our country and mutual happiness…The armies of democratic countries are composed of free men…But you do not embrace arms of your own free will…Who deprives you of your freedom, who prevents you from living with your family, is not the Country but Porfirio Diaz, that bad Mexican, who has mortgaged the country to foreign markets, that bad son, who has murdered his brothers…We meet face to face because you are defending an injustice, you are the brutal power, who do not think, sustained by a thief who robs the country to pay you a small salary. We are the power of the right, we think what we do, no one pays us to embrace the arms. The imbeciles and servants call us desperadoes, but our conscience gives us the name of Patriots…We have read a book which our fathers wrote with their blood. There we learn to elect our magistrates by free suffrage, there we learn to think as citizens. And there we are raised to the category of free men. That book is named: the Constitution of 1857. If the tyrant who pays you to kill us would govern with that law, we

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[232] Testimony of Francisco Ramirez, May 28, 1894, Extradition hearing of Inez Ruiz, RG 59, Extradition Case Files, 1836-1906, Box 39.

[233] This "manifesto" was dated Nov. 1892. It was submitted by the defense in the matter of application for the extradition of Jesus Guerra, RG 59, Extradition Case Files, 1836-1906, Box 41, pages 45-46.

[234] Testimony of Refugio Martinez, June 1, 1894, in the extradition proceedings of Inez Ruiz, RG 59, Extradition Case Files, 1836-1906, Box 39.

> would be calm, cultivating the land, and taking care of our families. But we see the injustices committed every day, we see the peril of the country, and we do not vacillate a minute in abandoning all to go to the battlefield, to defend the rights of our people outraged. Mexican soldiers, if you wish to avoid the spilling of blood, join our party of the revolution.[235]

The US commissioner decided that Ruiz and Guerra were extraditable. A federal court judge—the same judge who dismissed charges against the two men for violating neutrality laws—overturned the commissioner, claiming the San Ygnacio raid was political within the meaning of the extradition treaty with Mexico. The Supreme Court reversed that decision. Citing the authority of *Fong Yue Ting v. United States*, the Supreme Court ruled that "in extradition proceedings, if the committing magistrate…in arriving at a decision to hold the accused, has before him competent legal evidence on which to exercise his judgment as to whether the facts are sufficient to establish the criminality of the accused for the purposes of extradition, such decision cannot be reviewed on habeas corpus."[236]

John Bassett Moore approved of this ruling, but wanted more. Specifically he hoped for abandonment of "rigid adherence to the rule," set down by the court in *U.S. v. Rauscher* (119 US 407, 1886), that a person extradited for one offence could not be tried for another without having the opportunity to return to the jurisdiction of the government by which he was surrendered.[237] Significantly, after Inez Ruiz was extradited in the summer of 1896, the Mexican government

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[235] This was signed by Rafael Ramirez, one of the leaders of the San Ygnacio raid. The translation of the original was submitted the commissioner in Ruiz's extradition proceedings on June 8, 1894. RG 59, Extradition Case Files, 1836-1906, Box 39.

[236] *Ornelas v. Ruiz*, 161 US 502, March 16, 1896.

[237] "It is more than questionable whether the rule against trial for any other than the extradition offence should be adhered to among nations. Arising out of the anxiety of governments to prevent perversion of the process of extradition, especially for the purpose of trying fugitives for political offences, experience has shown that a rigid adherence to the rule often works to defeat of justice…it may well be argued that the strict rule against trial for other than the extradition offence should be modified." John Bassett Moore, "Extradition," *American Law Register and Review*, 44.12 (Dec. 1896) 757-58.

tried him not for the crimes for which he was extradited, but as a participant in the Garza revolution and was sentenced to be shot; Ruiz escaped by fleeing to the United States. Hourwich was appalled by the Supreme Court ruling in *Ornelas v. Ruiz* and recognized that it meant those concerned about the extradition of Russian political exiles had to direct their appeals to the executive (rather than the courts).[238]

But there were others who distinguished more sharply between the handling of Mexican and Russian fugitives. Some opponents of the Russian extradition treaty in the 1890s claimed that they were amenable to an extradition treaty with Canada or Mexico. Judge Tulley, at the 1893 Chicago meeting, said that "The law of extradition arises, it is true, from the necessities of different nations, but it is only justifiable, in my opinion, between nations with contiguous territory." In his correspondence regarding the Russian extradition treaty, Secretary of State Fish noted that a different standard might apply in regard to Mexico. "In the conclusion of extradition treaties…Countries whose territories border on each other may readily consent, in the view of a sure administration of justice and the punishment of crime, to surrender persons charged with offenses for which they might hesitate to subject the party to transportation to a remote part of the globe."[239] Secretary of State Gresham referred to the San Ygnacio raiders as bandits interested in stealing horses, munitions, and supplies from the barracks; Gresham claimed their retreat into Texas—rather than advance into Mexico—proved they had no political intent.

But things seemed to change under a later administration. In 1897, Secretary of State Sherman refused to extradite Jesus Guerra, arguing that the San Ygnacio raid was "revolutionary" and that Guerra had not committed any offense against private parties. Sherman reversed

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[238] Hourwich, "Delo Purena," *Russko-amerikanskii rabochii* [Russian-American Worker], Sept. 1908

[239] Fish to Jewell, June 5 1874, in Senate Executive Documents and Reports, Exec.Doc.F, 50-2, Jan. 8, 1890.

Gresham's reasoning: "after the Mexican soldiery had been…disabled in battle and all resistance overcome, and San Ygnacio and the surrounding country lay at the mercy [of the raiders], and pillage was at length within their easy grasp, the evidence fails to show any attempt" at it by the raiders, who instead returned to Texas. "The obligation of extradition," Sherman wrote, "is interpreted in a limitative manner and in favor of the right of asylum." Mexico's foreign minister was so disturbed by this turnaround that, in early 1898, he gave notice of the termination of the extradition treaty between the United States and Mexico; the treaty, Minister Romero wrote Secretary of State Sherman, lacked "sufficient precision to prevent the confusion of purely political offenses with those of the common order perpetrated under some political pretext, as is demonstrated by what has recently occurred in the case of Jesus Guerra."[240] A new treaty was ratified in 1899 and contained a clause that extradition would not take place where the offence charged was "of a purely political character." The Mexican government hoped this would lead to the extradition of anyone who incidentally committed common crimes connected with others of a political character. Anticipating future problems, Moore had suggested that "governments, while extending their conventional relations on the subject, should each provide by law for the surrender of criminals without reference to treaty obligations."[241] That never happened and, as discussed in the next section of this chapter, when the Mexican government sought Ruiz's extradition again in 1910, the US refused.

Moore seemed more pleased with the direction the executive moved in when dealing with Irish "politicals." In the spring of 1883, when two Irishmen involved in the infamous Phoenix

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[240] Secretary of State Sherman to Mexican Minister Romero, Dec. 17, 1897, *FRUS* 1897, 410, 412; Romero to Sherman, Jan 24, 1898, *FRUS* 1898, 510.

[241] John Bassett Moore, Extradition," *American Law Register and Review*, 44.12 (Dec. 1896) 762.

Park murders (of the Chief Secretary and Permanent Undersecretary of Ireland) were known to be in the United States, the British Minister was opposed to requesting their extradition. Besides the fact that the men were accomplices and not charged with specific offences as required by the treaty, "the complete subserviency of the State Department to the Irish element in New York and the influence it will in this case exercise on the Commissioner [handling the extradition proceedings in New York] renders success extremely unlikely."[242] Seventeen years later, Joseph Mullett and James Gitzharris, who were convicted in England of complicity in the Phoenix Park murders, arrived in New York on the steamer Lucania. When held for questioning by a Board of Special Inquiry under the immigration law of 1891, the Irishmen claimed they should not be excluded because they were convicted of a political offense. The Board ordered their exclusion and Commissioner of Immigration upheld that ruling, deciding on June 20, 1900, "after conference with the Attorney General and the Solicitor-General, that the offence of which they were convicted was murder in the ordinary sense."[243]

Also, two years later, the Supreme Court ruled, in a case involving a Russian fugitive, *Grin v. Shine* (187 U.S. 181), that extradition treaties were "an extension of our immigration laws prohibiting the introduction of persons convicted of crimes, 18 Stat. 477, by providing for their deportation and return to their own country, even before conviction, when their surrender is demanded in the interests of public justice." The court asserted that "where the [extradition] proceeding is manifestly taken in good faith, a technical noncompliance with some formality of criminal procedure should not be allowed to stand in the way of a faithful discharge of our

[242] West to Granville, March 13, 1883, quoted in Joseph Patrick O'Grady, *Irish-Americans and Anglo-American Relations, 1880-1888* (New York: Arno Press, 1976) 181).

[243] John Bassett Moore, *Digest of International Law*, vol. 4 (Washington: GPO, 1906) 184.

obligations." Specifically, the defense on behalf of Grin had argued that the Russian government had not complied with the treaty obligation to provide an authenticated copy of the warrant of arrest or of some other equivalent judicial document, issued by a judge or magistrate of the Russian government. The Supreme Court dismissed this argument. "It can hardly be expected of us that we should become conversant with the criminal laws of Russia, or with the forms of warrants of arrest used for the apprehension of criminals." Further: "While the treaty contemplates the production of a copy of a warrant of arrest or other equivalent document, issued by a magistrate of the Russian Empire, it is within the power of Congress to dispense with this requirement, and we think it has done so by Rev. Stat. sec. 5270," the 1882 American law that detailed procedures to be followed in extradition cases, and that did not require a warrant of arrest, or other equivalent document, issued by a foreign magistrate. Notwithstanding the 1893 extradition treaty between the United States and Russia, the Supreme Court asserted, "Congress has a perfect right to provide for the extradition of criminals in its own way…and to declare that foreign criminals shall be surrendered upon such proofs of criminality as it may judge sufficient."[244] Thus, Hourwich exclaimed, "it turned out that eleven years before the signing of the treaty [of extradition between the United States and Russia], Congress had cancelled some of its points in advance!"[245]

Still, it is fair to say that, at the turn of the century, America's attitude towards asylum and the handling of foreign political criminals was not firmly set—certainly not as firmly set as it was for European governments who met in Rome in 1898 to coordinate a "social defense against

[244] *Grin v. Shine,* 187 U.S. 181, 1902.

[245] Hourwich, "Delo Purena," *Russko-amerikanskii rabochii* [Russian-American Worker], Sept. 1908

anarchists." According to US attorney James Beck, who had urged sending an American delegate to the conference, "the fear that the word 'anarchist' might be construed to include political offenders prevented the United States form taking any part." [246] Congress had also yet to pass any immigration bill explicitly barring anarchists. Congress passed its first new law regarding extradition procedure (since the 1882 law) in the spring of 1900. The law provided for the extradition of those who committed crimes in territory "occupied by or under the control of the United States" and then took refuge in the United States. In other words, this law was designed to make sure those who committed crimes in Cuba or the Philippines were returned for trial to courts in Cuba and the Philippines. The law, which seems like an effort at imperial social control, also included, for the first time in American extradition legislation (rather than a treaty), an explicit political offense exception, providing that "no return or surrender shall be made of any person charged with the commission of any offense of a political nature."[247] Moreover, as one Rudowitz supporter pointed out, "the [1882 extradition] law ought to be changed so as to take away the hearing from a fee officer [i.e. the US commissioner] and put into the hands of a judge, as I am told it's done now in extraditions to and from the Philippines."[248] According to the 1882 law, the foreign government requesting the extradition paid the fees of the Commissioner in extradition proceedings[249]; "at each federal court there are usually several commissioners and

[246] James M. Beck, "The Suppression of Anarchy," address given at the Twenty Fifth Annual Meeting Proceedings of the New York State Bar Association, Jan. 21-22, 1902 (Albany: The Argus Company, 1902), 159.

[247] 31 Stat. 656 (Act of June 6, 1900).

[248] Julian Mack to Louis Marshall, Dec. 6, 1908, Louis Marshall Correspondence, Box 4, folder 1, AJC Archives.

[249] 22 Stat. 215 (August 3 1882).

the choice of commissioner for each case is made by the foreign government. Naturally, these people [commissioners] look out for their own interest!," Hourwich exclaimed.[250]

That American extradition and immigration policies towards politicals were not consistently hostile at the turn of the century certainly does not mean it was a heyday for advocacy on behalf of the Russian political opposition. Francis Garrison believed that Americans should be focusing their criticisms on American oppression in the Philippines rather than Russian autocracy. Kennan, coming back from a jaunt in Cuba, felt that the "interests of the Americans, like the moving beam of a warship's search light, plays on forty different things a week, and doesn't stay long on anything" and complained that "when a single individual calls attention to [cases of Russian injustice], half a dozen other writers dispute his statements." [251] Hourwich complained that the press and literature in the United States misrepresented both Russian revolutionaries and the Russian government.[252] A weary Felix Volkhovskii, a Russian

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[250] Hourwich, "Delo Purena," *Russko-amerikanskii rabochii* [Russian-American Worker], Sept. 1908

[251] On Garrison's disillusion, see Letter of Edmund Noble to Volkhovskii, March 23, 1901, Felix Volkhovskii Papers, Houghton Library. For Kennan's complaint, see Letter of Kennan to Felix Volkhovskii, Nov. 30 1899, Box 6, Kennan Papers, Library of Congress.

[252] In his late 1919 lectures on "Russian Revolutionary History," Hourwich noted:
"When Catherine the Second ascended the throne, she wanted to play the part of a liberal monarch…an enlightened monarch…The idea is perhaps strange to our modern minds, but I will recall to your memory the fact that even a few years ago, this idea was very popular in the American press. You might recall, there were articles published, as far a I remember, in the *Literary Digest*, which met with very favorable reception here, extolling the virtues of Czar Nicholas the Second. He was really one of those ideal absolute monarchs – he had blue eyes, he was a very good father and husband, and in general he was a man of symbolistic and futuristic aspirations. In short, here was an ideal monarch whose whole life was given to the service of his subjects. Of course, that is not exactly our form of government here, but we realized that in those days there might be different forms of government adapted to different countries. Russia is a country which is ripe for this benevolent enlightened absolutism. As a matter of fact if you will take our press here for the past 30 years and probably more—practically since the beginning of the revolutionary movement in Russia, you will find that it was always more favorable to the Russian absolute monarchy than to the Russian Revolutionists. There were exceptions of course, but the editorial tone was always favorable to the idea of 'enlightened absolutism.' 'Enlightened absolutism' was taken to be the genuine thing...As a matter of fact, Catherine the Second extended serfdom very much further than it had been known before."
"Some twenty five years ago, I went to see a popular melodrama I think in the Chicago or the New York theatre. It was called *Siberia.* It represented first, a scene in a room where revolutionary conspirators gathered. Of course, there

émigré in London, wrote Edmund Noble in the U.S. to ask if he could get Bret Harte to write a "burlesque of what the people want in a Nihilist novel."[253] Noble rejected the idea as a detriment to the cause. For the most part, the "Nihilist" genre was devoted to intrigue prompted by a Russian beauty and daring escapes from Siberia, without any realistic sense of exile politics.[254] Noble's own 1901 novel, written with his Russian-born wife Lydia Pimenoff, is a historical romance of the 1870s in which the granddaughter of a Polish princess and a Siberian exile eventually escape to London where they vaguely plan to continue their agitation for social change in Russia.[255] Back in reality, Lydia Pimenoff actually had a very hard time returning to Russia to visit her family in the year the novel was published; she was initially refused a passport by the Russian consul for having once given a speech in Boston on constitutionalism in Russia. Even as there were encouraging signs of revolt in Russia itself, the Russian government's persistent attempts at suppression and extradition of dissidents throughout Europe extended its

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was a well-meaning American who came there and saw all the abuses of the administration, and he brought those abuses to the attention of the good Czar, and the good Czar simply opened his eyes when the good American told him what the bad officials had done, and he punished the bad officials, etc. But the introductory scene represented a secret meeting of conspirators. They were all seated around the table, and every one of them had a long white beard….As a matter of fact, …the Revolutionists at all times were young people."
Hourwich lectures, November and December 1919, Rand School of Social Science, Tamiment Library Manuscript (TAM 245), Box 3, folders 61 and 2, Tamiment Library & Wagner Labor Archives, NYU.

[253]For the suggestion of a burlesque: Letter of Noble to Volkhovskii, Jan 26, 1900, Volkhovskii papers.

[254] Some examples of the genre include Walker Kennedy's *In the Dwellings of Silence: A Romance of Russia* (New York: Dodd Mead and Company, 1893), which is pro nihilist and John Leys, *The Black Terror: A Romance of Russia* (Boston: L.C. Page and Company, 1900), which is anti.
As one recent analysis of American fictional representations of Russia in the late nineteenth century argues: "these novels offered little historical information about Russia, but they reified notions of imperious nobles, exquisite women, ubiquitous secret police, and reckless but brave revolutionaries. Through repetition and reiteration in the pages of fiction and the press, Russia began to be associated with a powerful set of evocative and sedimentary images that seamlessly linked the possession of high culture and noble bearing with the capacity for violence and radicalism…In most novels, the American hero or heroine redeems the Russian nihilist…They soon abjure propaganda by deed, and their subsequent immigration to the United States further mitigates the theme of violence." Choi Chatterjee, "Transnational Romance, Terror, and Heroism: Russia in American Popular Fiction, 1860-1917," *Comparative Studies in Society and History* 50.3 (2008) 756, 775.

[255] Pimenoff-Noble*, Before the Dawn: A Story of Russian Life* (Boston: Houghton Mifflin, 1901), 123.

reach into England; the foreign office and Okhrana successfully pressured the London Home Office and police to investigate the exile Vladimir Burtsev, who was then tried and convicted for threatening the life of the Czar in the pages of his journal.[256] As we shall see, the advent of the revolution in 1905 led the Russian government to extend its reach to the United States.

Contest over Asylum, 1901-1909

"In his stirring appeal to the American colonists in 1776, Thomas Paine said 'this new world hath been an asylum for the persecuted lovers of civil and religious liberty …Hither have they fled, not from the tender embraces of the mother but from the cruelty of the monster.' This describes the case of Christian Rudowitz…a patriot in the truest sense …Shall this fellow worker, this comrade of ours, this heroic soul, be handed over?"
--Eugene Debs, "Appeal for Rudowitz," December 26, 1908

The assassination of President McKinley set off an anti-anarchist panic in the United States. Years later Hourwich pointed to this moment as an important impetus for the suppression freedom of the press in the United States.[257] At the time, Hourwich stressed the differences between the Russian and the American contexts. In Russia, Hourwich noted, the police maintained a general system of supervision covering the doings of everyone in the empire, with all meetings for any purpose under the strict control of the police, all periodical publications

[256] On Burtsev's case see Donald Senese, "Le vil Melville: Evidence from the Okhrana File on the Trial of Vladimir Burtsev," *Oxford Slavonic Papers* 14 (1981) 147-153, and Alan Kimball, "The Harassment of Revolutionaries Abroad: The London Trial of Vladimir Burtsev in 1898*," Oxford Slavonic Papers* 6 (1973) 6: 48-65.

[257] In *Development of American Democracy,* Hourwich described the case brought by New York State against Johann Most: "On the same day that the crazy Czolgosz shot President McKinley in Buffalo, the weekly edition of Most's *Freedom* was published in New York, in which an old article from the German *Forty-Eighter* by Herwegh on "the murder of tyrants" was reprinted. The article was printed for the first time in 1851 in a revolutionary German newspaper which was published at the time in Boston. The article was later reprinted in his collected works, which was published in New York about ten years before McKinley's death. Most reprinted the article simply to fill an empty space in his newspaper. Immediately after the unfortunate issue was sent out by the post office, Most read the telegram that Czolgosz shot McKinley. It was entirely coincidental that the reprinting of Herwegh's article had any connection with Czolgosz's attempt on the President's life. But the "New York State Newspaper" turned him into the authorities, and he was brought to court and sentenced to a year in prison. At that time there was no law against the theoretical propaganda of political terror, so he was accused of breaking the law that forbid the spreading of inappropriate written materials. He appealed to the highest court, but it did not help. The introduction of a censor through the Postmaster-General was only the first step."

subject to press censorship, and any person "suspected of being a dangerous character" subject to arrest and deportation to Siberia without the formality of a trial. "Surely more could not be done to prevent the perpetration of attempts upon the lives of the Czar and high government officials." "And," Hourwich asks, "what are the results?" Numerous political assassinations and attempts at assassination. "No quarter was given to the terrorists when caught…Yet this has no deterrent effect upon their fellow-conspirators."[258] A year later, Hourwich noted that two Russian cabinet ministers had been assassinated in the interim and attempts on the lives had been made on the two governors and a chief of police. In the United States, Hourwich noted, "the indignation over the murderous assault upon President McKinley was sincere and universal, and the mentally unbalanced assassin was disavowed even by those upon whom public sentiment sought to fasten the moral responsibility for the crime. In Russia, on the contrary, the Government has deemed it necessary to proclaim a state of siege in the most populous sections of the country and sympathy with the slayers of the ministers is widespread among the college bred class and factory operatives." Hourwich concluded his article by noting that, in late 1902, 'Down with Autocracy' is shouted defiantly in the streets of the capital and troops have to be called out to restore peace. "On one occasion," Hourwich writes, "they were ordered to fire upon a crowd of workingmen in as suburb of St. Petersburg. It is rumored, however, that four regiments have since refused to obey the command."[259] A year and a half later, Hourwich was instrumental in fomenting such rebellious sentiments among Russian troops by shipping anti-tsarist propaganda to Japan for distribution among Russian prisoners of war.[260]

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[258] I. A. Hourwich, "The Russian Police and Political Assassination," *Independent* 53 (October 3, 1901) 2345.

[259] Isaac A. Hourwich, "The Political Situation in Russia," *Forum* 34. 2 (Oct. 1902) 298, 309.

[260] Frederick Travis, "The Kennan-Russel Anti-Tsarist Campaign Among Russian Prisoners of War, 1904-1905," *Russian Review* 40.3 (July 1981) 273.

Hourwich had in fact simplified, for the sake of comparison, the response of American anarchists like Emma Goldman to the McKinley assassination, which she was accused of inspiring. Though she insisted she had nothing to do with the assassination, she did not believe the assassin was crazy and had sympathy for him. "It was apparent," Goldman wrote in her autobiography, "that he had sought in anarchism a solution of the wrongs he saw everywhere about him." Goldman penned an article asserting that the assassin "Leon Czolgosz and other men of his type…are driven to some violent expression…because they cannot supinely witness the misery and suffering of their fellows. The blame for such acts must be laid at the door of those who are responsible for the injustice and inhumanity which dominate the world."[261] Though Goldman was critical of Clarence Darrow and other American radicals for pushing her to denounce Czolgosz as crazy, Darrow himself spoke about crime in 1902 in language akin to Goldman's. " I do not believe that people are in jail because they deserve to be," Darrow told a group of prisoners at the Cook County jail. "They are in jail simply because they cannot avoid it on account of circumstances which are entirely beyond their control and for which they are in no way responsible…There is one way to cure all these offenses, and that is to give the people a chance to live."[262] A year later, a U.S. Commissioner in Indianapolis refused to extradite an Irishman, James Lynchehaun, who had been convicted by a British court of the violent attack on his landlord during a period of agrarian agitation and martial law on Achill Island. The commissioner provided this rationale for his decision: "Would the [attack] have occurred save for the long chain of moving causes that preceded it—the discontent of the tenants as a class, the agrarian agitation, the enactment of odious laws, the disagreements between the various tenants

[261] Emma Goldman, *Living My Life* (New York: Alfred A. Knopf Inc., 1931) chapter 24.

[262] Darrow's address is reprinted in *Attorney for the Damned*, ed. Arthur Weinberg (New York: Simon and Schuster, 1957) 3-15.

in the island and their landlords, the knowledge that like disagreements existed all over Ireland."[263]

Significantly, in his decision in the Lynchehaun case, besides citing extradition case precedents (the Ezeta case and *Ornelas v. Ruiz*), the commissioner drew upon selective analogies from American history, particularly from the American Revolution and the Civil War; U.S. Commissioners did this in the Pouren and Rudowitz cases and in most cases involving political exceptions. "Surely the followers of John Brown…had they escaped to a foreign country, could not have been extradited," the Commissioner wrote, emphasizing the fact that though the causes of both Brown and Lynchehaun were visionary and hopeless, they were nonetheless political. Further, comparing the tactics of the Irish Revolutionary Brotherhood to those of the American colonists, the commissioner wrote: "For many years before the war of the [American] revolution the loyalists suffered cruelties unspeakable at the hands of the American colonists. These brutalities form a striking parallel with the acts done by the tenantry in the west of Ireland between 1880 and 1894."[264] Also significant is the fact that threat of Lynchehaun's extradition lead Irish American leaders to form a defense committee and calls attention to the ethnic patriotism that flows from America's tradition of asylum. "If the English government's demand was allowed to go unchallenged in this case," the Committee asserted, "precedent would be established which would in years to come deprive many a soldier of liberty from securing shelter under the protecting folds of the American flag, that glorious emblem which waved in battle over the Irish Brigade in the Civil War under the leadership of the 'escaped convict,' General Francis

[263] Reprinted in *Irish American Victory Over Great Britain in the Lynchehaun Extradition Case* (The Defense Committee, 1903).

[264] *Irish American Victory Over Great Britain in the Lynchehaun Extradition Case* (The Defense Committee, 1903.), 126.

Meagher, who was 'sentenced to death' by the same English government." Finally, the defense committee believed that Lynchehaun's arrest by a Pinkerton agent should concern not only the Irish in America but "all good Americans" who opposed the presence of "paid spies of a foreign government on American soil."[265] This issue was important in future anti-extradition campaigns.

When Emma Goldman was pressed by investigators about her sympathy for Czolgosz, she asserted that Czolgosz's crime "was an act of self defense," calling Czolgosz a victim of "the McKinley regime" that represented Wall Street and American imperialism. While few accepted this argument in the American context, many believed it applied in Russia. On July 24, 1904, a university student threw a bomb into the carriage of Russia's Minister of the Interior, von Plehve. Von Plehve had few American champions—he had placed limits on Russia's provincial assemblies, he had ordered the execution of striking workers, and he had helped instigate the Kishinev pogrom in 1903. The *New York Times* contrasted the assassination of von Plehve to the assassination of Lincoln; "in sober truth, the violent act of the Russian who has slain Plehve...is the one effective method of political agitation or of political criticism which the Russian form of government leaves open to a Russian. The fate of Plevhe…is that which he had invited during his whole official life."[266] In the wake of the assassination of Plevhe, Kennan wrote:

> I am forced to regard [political assassination in Russia] as the logical and almost necessary outcome of murderous lawlessness on the part of the ruling officials. A government cannot disregard its own laws and then expect its adversaries to be bound by them. Killing by assassination is the natural reply to killing by imprisonment and exile without hearing, trial, or judicial inquiry. Russian ministers of the interior… again and again sent into Siberian exile by executive order political offenders who had just been tried by a court and acquitted. In every case where an offender of this kind died as the direct result of his imprisonment or exile, he was virtually killed by the government not only without due process of law, but in direct violation of law and in cynical disregard of the findings of a duly constituted court. A minister of the interior who deals in this way…

[265] Explanatory Statement (by the Defense Committee), ibid.

[266] Editorial, "The Killing of Plehve," *New York Times*, July 29, 1904, 6.

> virtually incites to acts of violence men and women who would never resort to the methods of the vendetta if any other means of resistance and protest were open to them… murder was resorted to as a means of protest and self defense.[267]

Though prominent opponents of the treaty in 1893 diligently pointed out that they did not condone assassination in Russia, prominent members of a revived "Friends of Russian Freedom" society in 1904-5 such as Alice Stone Blackwell had no such scruples.[268]

Jewish leaders had also come to accept a more radical stance. In the wake of the Kishinev pogrom, and even more so in the face of the pogroms that accompanied the repression of the revolution, Jewish leaders were more than willing to support both the arming of Jewish defense groups in Russia and immigrants upon arrival to the United States.[269] Members of the American Jewish Committee, founded in 1906, were active supporters of the anti-extradition campaigns on behalf of Pouren and Rudowitz. Perhaps one of the reasons they got involved stemmed from their disillusionment with the limited definition of asylum that Moore advocated in the face of anti-Jewish violence in Odessa in 1907.

Odessa at this time was an extremely violent city where the killing of policemen by revolutionaries sparked counterrevolutionary riots and the reactionary Union of True Russian People (popularly known as the Black Hundred) gained control of the town council and had

[267] Letter to the editor of the *Kobe Chronicle*, August 4, 1904, Box 1, folder 5, Kennan papers, NYPL.

[268]On Blackwell's support for terrorism as a revolutionary strategy in the Russian empire see Shannon Smith, "From Relief to Revolution: American Women and the Russian-American Relationship, 1890-1917, *Diplomatic History* 19.4 (Fall 1995) 601-616.

[269] See Zosa Szajkowski's sensitive work on this topic. "The Impact of the Russian Revolution of 1905 on American Jewish Life," *YIVO Annual of Jewish Social Science* 1978 17: 54-117 and "Paul Nathan, Lucien Wolf, Jacob H Schiff and the Jewish Revolutionary Movements in Eastern Europe 1903-17*," Jewish Social Studies*, 1967 29(1): 3-26.

backing of the Governor.[270] Jews, who made up approximately a third of the population, were targeted indiscriminately during the counterrevolutionary riots, which involved beatings, shootings, and the looting of homes and stores. Some Jews were involved in defense committees, many sought to emigrate, schools closed and merchants suspended business in protest.[271] The riots continued in the fall notwithstanding the recall of the governor and promises of arrests.[272] The American Jewish Committee's asylum sub-committee asked John Bassett Moore for his opinion on the feasibility of using the American consulate in the city as a haven, hoping for a construction of international law that would sanction the U.S. government to make this offer of extraterritorial protection. Through its National Relief Committee, the AJC was prepared to furnish funds necessary to feed and otherwise provide for any refugees taken in but Louis Marshall wanted assurance that the plan was within the law. Moore told Herbert Friedenwald, secretary of the AJC, that the general policy of the United States was to "restrict the right of asylum to its narrowest limits" but "drew the distinction between the right of asylum and the granting of mere shelter to victims of mob violence." [273] Moore agreed to prepare a memo on the issue for the AJC's committee and sent it to Friedenwald in late October.

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[270] "Odessa Jews in Panic," *New York Tribune,* Feb 7, 3; "Odessa Under Mob Rule," Feb 21, 1907, *Chicago Daily Tribune*, 1; "Municipal Election Results in Reactionist Victory," *New York Tribune,* April 8, 1907, 2; "Black Hundreds Unleashed After Murder of Policemen," *New York Tribune,* May 21, 1907, 1; "Jews Again Attacked," *New York Tribune,* May 22, 1907, 3.

[271] "Daily Assault Jews in Russia," *Los Angeles Times*, Feb. 21, 1907, 11; "15,000 Jews Leave Odessa," *New York Times*, March 2, 1907, 4; "Odessa Jews Slain, Police Looking On," *New York Times*, Sept. 3, 1907, 4; "Odessa Exporters Close Exchange,' *New York Times*, Sept 4, 1907, 3; "Rioting Closes Bourse," *Washington Post*, Sept 4, 1907, 3; "Odessa Reign of Terror," *Chicago Tribune*, Sept 6 1907, 8.

[272] "New Odessa Massacre, New York Tribune, Sept 17, 1907, 3; "Another Odessa Pogrom," *New York Times*, Oct. 7, 1907, 4; "Russians in Odessa Continue Their Persecution," *Los Angeles Times*, Oct. 8, 1907, 14

[273] Marshall's request is in the AJC Executive Committee minutes, October 6, 1907; Friedenwald wrote Mayer Sulzberger of his meeting with Moore on Oct 22, 1907, April-December 1907 folder, Box 1, Chronological Files, American Jewish Committee Archives.

The Moore memo was not encouraging. It explained that the 1897 instructions issued to diplomatic officers by the State department allowed for the "temporary shelter[ing] of any person whose life may be threatened by mob violence," though discouraged asylum for "unsuccessful insurgents" and "fugitives." But, Moore pointed out, American consuls and consulates in Russia, which are governed by the 1832 treaty between the United States and Russia, did not enjoy even this immunity. Though temporary refuge was provided in consulates in Greece and the Danubian provinces in the 1860s, Moore continues, "it must be born in mind that both…were more or less under foreign tutelage" while Russia "stands in diplomacy as one the Great powers of Europe and her treaty relations, including those affecting consuls, are all based upon the principle of national equality."[274] Moore's reference to the 1832 treaty was bound to rankle: the AJC believed that Russia was violating it by refusing to recognize the passports of American Jews. Louis Marshall soon came to see it as particularly egregious that "our government will deliver political offenders who have sought asylum here into the hands of the Russian government…humbling ourselves at the feet of the murderous Czar who has defiantly violated the treaty of 1832, which guaranteed to our citizens the right of entering Russia."[275]

Just at the time when Moore wrote his asylum memo commending Russia's power and civility, Hourwich published articles describing its degeneration into civil war, which he had witnessed first hand, and predicting the overthrow of the regime. Facing military losses, a general strike, and peasant attacks on property owned by landlords, in late 1905 the Czar called for the establishment of a Duma and issued a manifesto granting civil liberties to the population.

[274] Moore's October 30 1907 memo, "The Question as to Possible Refuge in Consulates in Russia for Persons whose Lives are in Danger of Mob Violence," is in April-December 1907 folder, Box 1, Chronological Files, American Jewish Committee Archives.

[275] Letter from Louis Marshall to Louis Littauer, Sept. 21, 1908, Louis Marshall Correspondence—Subject Files, Box 4, File 1, ibid.

Almost immediately reactionary groups began battling with those supporting revolution. By July 1906, the first Duma was dissolved; in response, assaults on government officials tripled. In September 1906, martial law was imposed in many provinces. Supporters of revolution went into hiding and began robbing banks, shops, and estates. Peasants stop paying taxes and engaged in work strikes. Fifty-five members of the Second Duma were indicted for conspiracy to overthrow the monarchy; some fled Russia while others were sentenced to various forms of penal servitude in Siberia. Repression, Hourwich wrote in 1907, only united the opposition.[276]

Hourwich came back to the United States at a time when the American government was using its army and secret service to suppress radical labor activity, especially in the west, like a 1907 mining strike in Nevada sponsored by the Industrial Workers of the World. Notoriously, the previous year an American volunteer force crossed the border into Mexico to help suppress a mine workers strike at the Cananea Copper Company owned by William Greene, who battled the Western Federation of Miners in his home state of Arizona. A testimony to the fluidity of agitation and enforcement in the borderland, Lazaro Guitirez De Lara, who was arrested by Mexican forces for lecturing at Cananea during the strike, was arrested again for lecturing in a Los Angeles plaza after he escaped to United States, this second arrest based on a charge of robbery allegedly committed in Mexico, a charge brought to the attention of the Los Angeles police by the Mexican consul. In 1907, it was up to local Southern Arizona residents to protest the kidnapping of Manuel Sarabia, the editor of an opposition newspaper and member of the

[276] Hourwich, "Practically Civil War in Russia," *World's Work*, 13 (December 1906); Hourwich, "Russia, As Seen in Its Farmers," *World's Work*, 12 (March 1907); Hourwich, "The Political Outlook in Russia," *Atlantic Monthly*, 100 (July 1907).

Mexican Liberal Party, from Douglas, Arizona at the behest of the Mexican consul and with the help of local American immigration and law enforcement officials and hired thugs.[277]

Both De Lara and Sarabia were married to American women and supporters hoped that the protests of women in particular, including their wives and family members, would make them and other Mexican revolutionaries seem less threatening and more worthy of asylum.[278] The marriages of Mexican revolutionary socialists to middle and upper class American women was a leftist counterpart to the relationship between Diaz and wealthy American capitalists that the Political Refugee Defense League criticized, a relationship framed, as the cultural historian Shelley Streeby notes, as a "transamerican melodrama."[279] The PRDL, Hourwich, and liberal opinion generally believed that a similarly close Russian-American relationship was in evidence during the attempts to extradite Pouren and Rudowitz. "The true object of the present campaign of extradition is not hard to guess," an editorial in the *Nation* noted. "The Russian authorities wish to create the impression that America can no longer be looked to as asylum for enemies of the established order…The open door should not be closed to them, an open door far more important to the general welfare of humanity than one admitting thousands of bales of American

[277] For details about De Lara, Sarabia, and others see United States House Committee on Rules, *Providing for a Joint Committee to Investigate Alleged Persecutions of Mexican Citizens By the Government of Mexico*, 61st Congress, 2nd Session, June 8-14. Also, Manuel Sarabia, "How I Was Kidnapped," *International Socialist Review*, 9. 2 (May 1909) 853-862 and L. Gutierrez De Lara, "Story of a Political Refugee," *Pacific Monthly* 25.1 (January 1911) 1-17.

[278] "Women and the Mexican Prisoners," *Chicago Daily Socialist,* March 23, 1909; "Women to Sell Papers Again," *Chicago Daily Socialist*, March 27, 1909; "Mexican Wives to Sell Papers, *Chicago Daily Socialist,* GET DATE; "To Save Mexicans: Political Refugee Defense League Will Block Diaz's Regime," *New York Call*, April 1, 1909, 4.

[279] "The Heiress and the Revolutionist" *Chicago Inter- Ocean*, January 10, 1909, 3; "Yankee Heiress Weds Diaz' Foe: Miss Trowbridge Is Bride of Sarabia; To Use Wealth to Aid Mexicans," *Chicago Daily Socialist*, Dec. 30, 1908; "Manuel Sarabia Wins Boston Girl, January 2, 1909, *New York Call*. Elizabeth Trowbridge, "Political Prisoners Held in the United States: Refugees Imprisoned at the Request of a Foreign Government" (Los Angeles: Mission Press, 1908) enclosed in Letter from Sumner A. Whittier to Department of State, 1741/86-97, RG 59, Numerical and Minor Files of the Department of State, 1906-1910, reel 186, NARA**.** Shelley Streeby, *Radical Sensations: World Movements, Violence, and Visual Culture* (Durham: Duke University Press, 2013) 113.

cotton goods to Manchuria."[280] Images of slavery, repression, and prison tortures figured prominently in anti-extradition campaign iconography just as they did in anti-Diaz propaganda more generally. "The Mexican rurales have rivaled the Russian Cossacks in their exhibition of brutality," an editorial in the *Chicago Daily Socialist* noted on Dec. 30, 1908. "The formation of a union is a capital crime, the striker is an outlaw, and the opponent of the existing government…is a fugitive from 'justice,' to be hunted to his death without regard to national boundary lines. In all this work, the government of the United States has been an active accomplice of the Mexican authorities." According to another *Chicago Daily Socialist* editorial a few weeks later, extradition of revolutionaries to Mexico and Russia was proof of the "bloody alliance" the United States maintained with autocrats.[281] In the cases of extraditions to Russia, America was depicted in the socialist press as doing Russia's bidding; the weakness of the U.S. was typically emphasized rather than capitalist greed (though the *Chicago Tribune* was accused of silence in the Rudowitz case because it "was controlled by the McCormick family, the dominant financial interest in the International Harvester Company" that sold a great deal of equipment to Russia.[282]) In figure 2.5 below, the men being handed over to Mexico by "Wall Street" are "Fornaro," "Villareal," and "Magon," agitators and publicists against Diaz in the US who were threatened with extradition.

[280] "Pouren and the Right of Asylum," *Nation*, 87, 2265 (Nov. 26, 1908), 510.

[281] Editorial, "Helping Diaz in His Work of Murder," *Chicago Daily Socialist*, March 5, 1909.

[282] *Chicago Daily Socialist*, Nov. 30, 1908, 1.

SATURDAY, AUGUST 15, 1908.

BACK TO RUSSIA?

Commissioner Shields Helps Agents of Czar.

Despite the fact that political refugees are supposed to find shelter in this "land of the free," United States Commissioner Shields yesterday ordered that John Janoff Pouren, a participant in the revolutionary movement in the Riga territory in December 1906, be delivered up to the bloodhounds of the Czar's government. It may be, however, that this "friendly service" to the Russian tyrant will not be consummated as Pouren's attorneys, Parsons, Hurmitch, and Pollack, of this city, have applied for a writ of habeas corpus and the case will be brought out in the Federal Courts.

Commissioner Shields in his decision declares that Pouren is charged by the Russian government with being a common murderer and all-around criminal and that the crimes of which he is accused were not political ones, consequently he should be extradited under agreement, made with Russia by the Cleveland administration.

Pouren has been a prisoner here since January last, and earnestly denies having taken part in common acts of violence, claiming that according to an official declaration of the Russian minister of the Interior before the Duma, the Riga country was in a state of revolt against the government in 1905 and 1906, and that whatever violence he may have committed was in the service of the revolutionary forces. It remains to be seen if the Federal Courts will decide that this country shall descend to the level of Switzerland and act as a watch dog for the Russian autocracy.

FETCHING FOR THE CZAR

A NEWSPAPER FOR THE WORKERS.

June 22-1909

"ONE GOOD TURN DESERVES ANOTHER."

By M. de Zayas.

Figure 2.4, *New York Call,* August 16, 1908.
Figure 2.5, *New York Call*, June 22, 1909.

The Political Refugee Defense League, on the other hand, was depicted as manly defender of American tradition. By 1909, a forceful pro-refugee stance also competed in Socialist Party ideology with an increasingly anti-immigrant one.

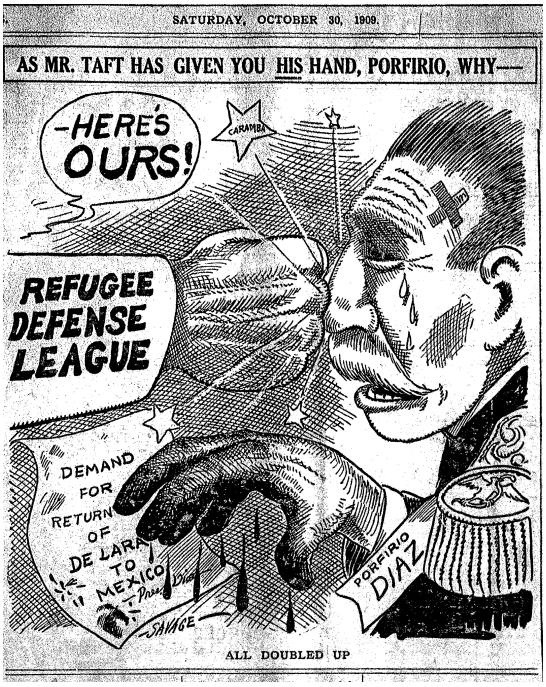

Figure 2.6, *Chicago Daily Socialist*, November 13, 1908.
Figure 2.7, *Chicago Daily Socialist*, November 27, 1908.
Figure 2.8, *Chicago Daily Socialist*, March 8, 1909.
Figure 2.9, *Chicago Daily Socialist*, October 30, 1909.

Given the prominence of women in the PRDL—like settlement workers Jane Addams and Lilian Wald and socialist organizer Luella Twining—the macho socialist cartoons that ran particularly in the *Chicago Daily Socialist* during the anti-extraditon campaigns are all the more

striking. Algie Simons, the newspapers editor and member of the Socialist Party's national executive committee, was focused on Socialist Party politics and was certainly aware that the SP saw a dip in votes in 1908-9. The asylum issue was a way of building party support and the bold cartoons can be seen as appeals. SP strength and the right of asylum for the persecuted were aspirations—not realities. As the cultural critic Walter Kalaidjian has written in another context, "the typical symbols of proletarian solidarity—…the assertive upraised fist…the muscle bound torso, the strained but determined visage-- stand not so much as phallic icons of working class hegemony but as uncanny symptoms of its absence." [283]

In early January 1908, the Russian Consul General in New York requested the extradition of Jan Janoff Pouren, a Latvian carpenter accused of murder and robbery during the 1905-6 revolution and repression in Courland in the Baltic provinces. The defense, lead by Hourwich (pro bono, with Simon Pollok, another Russian refugee lawyer, and later aided by Herbert Parsons, Republican Congressman from New York) claimed the Baltic "agrarian disorders," including Pouren's attack on a Czarist-backed landlord, were political in nature in that they were part of an organized, popular revolutionary campaign; as such, Pouren was exempt from extradition under treaty. [284] The Russian government, represented by Frederic R. Coudert and

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[283] On Algie Simons's role in Socialist politics and newspapers, see Alen Ruff, *"'We Called Each Other Comrade': Charles Kerr & Company, Radical Publishers* (Chicago: University of Illinois, 1997) and Kent and Gretchen Kreuter, *An American Dissenter: the Life of Algie Martin Simons, 1870-1950* (Lexington: University of Kentucky Press, 1969). The Kalaidjian quote is from his *American Culture Between the Wars: Revisionary Modernism & Postmodern Critique* (New York: Columbia University Press, 1993) 138.

[284] Hourwich to Nissin Behar, January 14, 18, 25, 1908, Box 5, folder 24a, Hourwich papers, Houghton. "A meeting of six Russian organizations (including one from the Baltic provinces) was held last night, to take in the matter of John Pouren, the Lettish revolutionist who has been held at the request of the Russian government for extradition. A number of friends of the arrested man, who have known him both in Russia and in this country, were present, among them also an ex-member of the 2nd Douma for the City of Riga, Mr. Osohl. …it was unanimously decided that the organizations would back him up in his fight for freedom against the Russian government. It appeared that while he was in jail, two lawyers had called on him…as the man is poor and his friends have but limited funds…the organization found it impossible to comply with the demands of those attorneys and resolved to request Mr. Simon O. Pollock and myself to render Mr. Pouren legal assistance as a matter of charity… Both Mr. Pollock and myself have acceded to their request, as a matter of principle, and shall do all in our power to help

John Murray of Coudert Brothers, claimed Pouren was a common criminal and denied that any political upheaval or persecution had occurred.

It was clear from the get-go that this case was going to be contentious. First, the Russian government tried to get Pouren out of the country quickly and unnoticed. On January 3, a Pinkerton detective went to the house where Pouren was living and said he was there to help Pouren find a job. Once Pouren was outside, a deputy U.S. Marshall arrested him and Coudert contacted U.S. Commissioner John Shields, a friend of John Bassett Moore and a favorite among foreign governments (the British consul had tried unsuccessfully to get the Lynchehaun proceedings hearings moved into Shields's court), for a warrant. To the dismay of Coudert, who pointed to *Grin v. Shine* for support, Shields insisted that the Russian Consul get a certificate from the Secretary of State. After this was secured, John Murray (of Coudert Brothers) brought witnesses before Commissioner Shields to testify that Pouren was the man sought by the Russian government. The first witness was Karl Hoffmeister, a machinist who rented Pouren a room when he arrived in the United States a year earlier. During cross-examination, when asked if he had spoken to the Russian consul or if he was a member of the Black Hundreds, Hoffmeister insisted that he was "an honest American citizen." The next day, Hoffmeister informed Coudert Brothers that he had received a threatening letter accusing him of being a spy that he suspected

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him….[Pouren is an] unfortunate man whom the Russian government is seeking to get into its famous torture chamber, in order to extort from him such testimony as the Police authorities of Riga may deem necessary for their purposes…The Russian government evidently desires to make a test case of this application and has for this reason selected an obscure man…If they should succeed in establishing a precedent in this case, they will certainly use it as a weapon against every Russian Revolutionist who has sought refuge in this country… Realizing this, all Russian Revolutionary Organizations have formed a joint committee, which is determined to fight this case up to the United States Supreme Court if necessary, in order to protect the right of asylum against the attack by the Russian government…there is not the slightest doubt in my mind that he [Pouren] is one of the so-called "Waldbrueder," one of the revolutionary organizations in the Baltic provinces. According to the testimony of witnesses for the prosecution, the attacks upon private individuals charged against him, were committed in revenge for spying; the saloons set on fire in pursuance of a revolution of the Revolutionary Committee which prohibited the sale and use of intoxicants in order to cut off the excise revenue of the Government and of the barons. It is therefore clearly a political case."

was sent by the New York branch of the Lettish Social Democratic Party. John Murray wrote to the Russian Consul that, if this persisted, "we will have considerable difficulty in obtaining from such witnesses all that they know" about Pouren and suggested that the Consul ask the Russian Embassy in Washington to get the U.S. federal authorities involved. [285] The Embassy promptly complained to the State Department that one of its witnesses was threatened by radical friends of Pouren. State had the Justice Department especially employ a secret service agent to interviewe members of the Lettish society in New York—who claimed Hoffmeister wrote the letters himself and then blamed them. The Secret Service agent reported back to a young Felix Frankfurter, then assistant U.S. Attorney, that the witness was in no danger.[286] In fact, much more vulnerable were Latvian refugees who worried that the Russian government might try to extradite them or seek out their families and comrades in Courland if they publicly testified in court on Pouren's behalf. When John Zeman, who had been in the United States less than three months, took the stand for the defense on June 3, he was repeatedly asked to reveal those who hid him before he left Latvia. "Who can guarantee that the people with whom I was hiding will not get into trouble through this statement?" he asked.[287]

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[285] John Murray to N. de Lodigensky, January 18 1908, reel 57, Records of Imperial Russian Consulates in the United States, National Archives Microfilm Publication, M1486.

[286] The report by special agent Schroeder, submitted to Frankfurter and forwarded to Attorney General Charles Bonaparte and Secretary of State Elihu Root, is dated February 17, 1908, file 10901/8-9, reel 749, Numerical and Minor Files of the Department of State, 1906-1910, National Archives Microfilm Publication M862.

[287] Murray's response to Zeman's testimony exemplifies the Russian government's handling of the case generally. Zeman testified that, in November 1905, he was a delegate from his town to the Lettish Congress in Riga that voted to close down government liquor shops and stop paying taxes and serving in the army and called for the election of new local governments and popular militias. After the congress, Zeman went back to his town to report on it and the town elected a new administration and judges. He went into hiding in January 1906. When asked why, Zeman said: "Because a punitive regiment with an estate holder at the head of it was marching through the country and shooting all those members of the executive committees, the members of the new courts and those delegates who were elected from the volosts to the Congress." When Zemen testified to hiding from the persecutions of the Russian police, Murray objected to the use of the term "persecutions." Murray refused to acknowledge Zeman's political activity or any political upheaval at all. "I object to any proof from witnesses, on the ground that the only competent proof which can be presented before the commissioner is semi-official recognition of the United States of the

To avoid this problem, during the initial hearings, from January through August 1908, the defense's strategy was to focus less on Pouren's deeds and more on those of the Russian government. One of Hourwich's main contentions was that the Russian depositions had been deliberately mistranslated to deny evidence of systemic repression in Russia; he pointed out that the Russian word for a "inquisitor" was translated as "inquirer" or "magistrate" and Russian phrases like "when the political circumstances changed" were translated as "when he got the chance." That letters sent home by Pouren were immediately turned over by their parents, unopened, to the police was a testament to all-encompassing fear, Hourwich claimed.

The defense presented evidence of what happened in Pouren's provinces to generate this fear: revolutionaries gained control over the area, holding elections, establishing local governments, and financing a militia and then were forced to flee to the woods once the army began punitive expeditions to take back control. Pouren's confederates in crime, Hourwich argued, were executed by extraordinary fields courts martial; their confessions were brought forward by the Russian government as evidence against Pouren, evidence that Hourwich claimed should not be admissible in an American court. A woman named Anna Lasdin testified that her parents had been tortured because she gave food to revolutionaries in the forests where Pouren was hiding. Still the prosecution claimed the defense never linked Pouren's crimes directly to this rebellious

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existence of the political revolution or some sort of recognition on the part of the Russian government of the existence of a revolution; and any other testimony is incompetent in this proceeding." Zemen's testimony, Murray insisted, was "not the best evidence;" the only admissible proof of the "so-called Congress" would be the original proceedings of it. When Zeman refused to name names, Murray requested that he be directed to answer. Hourwich retorted that "The commissioner is probably aware of the fact that the man has recently arrived from Russia under the impression of the Russian methods of procedure and he is simply afraid to give any clew to his whereabouts lest the police might ascertain." The Commissioner finally said, "I don't think it is material at this stage. We are not trying any other people" besides Pouren. (Stenographic minutes of proceedings for the extradition of Jan Janoff Pouren, June 3, 1908, Box 5, Hourwich papers, Houghton.)

political activity and the presiding commissioner and the State department solicitor agreed.[288] To address this, Hourwich spent the late summer and early fall of 1908 collecting affidavits from Latvians living in the United States who knew Pouren and of his activities in the old country; Hourwich forwarded these affidavits directly to President Theodore Roosevelt. Roosevelt found the affidavits compelling and wrote to Root that he did not want any action taken on the case without his knowing about it.[289] The newly formed Pouren Defense Committee and Political Refugee Defense League also widely circulated an official Russian Duma report detailing the use of police tortures to extort testimony about suspected revolutionaries, including those used on Pouren's eight year old daughter so that she would reveal her father's whereabouts.[290] Besides writing letters to the *New York Times* about the case, Hourwich wrote articles about it for the Russian and Yiddish press.[291]

When William Walling, on behalf of the League, delivered thousands of pro-Pouren petitions, bearing 69, 625 signatures from 41 states, to the State Department, solicitor James Brown Scott ordered that they be stowed away in a trunk in the basement; for Scott, it was the judiciary's role to decide if the evidence met extradition treaty requirements and the executive's role to review the decision and administer the case with diplomatic tact. "Feelings of sympathy

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[288] Commissioner Shields claimed that "the testimony tends to establish merely pillage and plunder now sought to be sheltered behind a political movement." James Brown Scott felt "No evidence was offered showing that the offences with which the accused is charged had any connection with the revolution other then that they occurred during revolutionary times." (Memorandum September 19, 1908, 10901/12-13, Numerical and Minor Files of the Department of State, 1906-1910, National Archives Microfilm Publication M862, reel 749).

[289] President Roosevelt to Root, Sept. 5, 1908, in *Letters of Theodore Roosevelt*, ed. Elting Morison (Cambridge: Harvard University Press, 1952).

[290] Hourwich submitted his collected testimony to the President on October 2, 1908, Numerical and Minor Files of the Department of State, 1906-1910, National Archives Microfilm Publication M862, reel 749.

[291] Houwich, "Delo Purena," *Russko-amerikanskii rabochii,* September 1908. See also *Jewish Daily Forward,* November 1908

[for the accused], however strong and well-merited, shall be subordinated to [treaty] obligations that go to the national integrity."[292] Assistant Secretary of State Adee reassured Russian Charge d'Affairs Kroupensky in Washington, D.C. that the State Department had "no intentions to pay any attention to articles in the papers or petitions."[293] Still, Hourwich's collected testimony, along with that collected by New York settlement worker Lillian Wald, made a strong case that Pouren should be accorded sympathetic treatment as a political refugee. Notables such as Julia Ward Howe, Samuel Gompers, Jacob Schiff, and William Foulke, as well as numerous labor unions, religious groups, local societies, and town councils across the country, wrote to the President on Pouren's behalf as the 1908 election approached. Ex-Congressman Littauer, Congressman Herbert Parsons, and Secretary of Commerce and Labor Oscar Straus stressed Russia's autocratic interference and convinced Roosevelt that preventing the extradition was in his own power and in the best interest of the Republican party.[294] Roosevelt eventually decided

[292] Memo to the Diplomatic Bureau by James Brown Scott, Feb. 18, 1909, 10901/86. Numerical and Minor Files of the Department of State, 1906-1910, National Archives Microfilm Publication M862, reel 750

[293] Russian Consul General to Coudert, Sept. 28, 1908, Records of Imperial Russian Consulates in the United States, National Archives Microfilm Publication, M1486, Reel 57.

[294] Littauer wrote Roosevelt a letter claiming the extradition of Pouren would lose the Jewish vote for the Republican party. Littauer got his argument from Louis Marshall of the AJC. Marshall pointed out to Littauer in a letter of Sept. 21, 1908: "The recent proceedings for the extradition of Jan Pouren, which have led to the issuance of an order favorable to the contentions of the Russian government, have aroused the Jewish community to a remarkable degree, although Pouren is not a Jew and comes from a region which is beyond the Pale of Jewish settlement…New York is full of Russians who participated, in one way or another, in the recent revolutionary movement…If the President would at once issue a statement to the effect that he declined to surrender Jan Pouren, because the offence with which he is charged is political in its nature and because the proceedings for his extradition are not consonant with the principles recognized under our system of government, I am confident that a degree of enthusiasm would be aroused among all classes of our Jewish citizens, which would be reflected in their actions as voters…All of the discontent resulting from the present economic conditions and the lack of employment which prevails…would utterly vanish and be forgotten in the face of a document which would be looked upon as a second Magna Carta or Declaration of Independence." On Sept. 23, Littauer wrote Marshall that he had written the President "practically main use of your entire argument."

he wanted to "handle this" himself, bypassing the Justice and State Departments.[295] He wrote Secretary of State Root that Pouren "ought not be given up" and that "we never should have has an extradition treaty with Russia." "Its conduct toward so-called political criminals is so inconceivably brutal and foolish and it is so indifferent to the truth in demanding the reclamation of offenders such as this man that we have no business to treat it as we do the average civilized nation," Roosevelt added.[296]

Despite Roosevelt's urging that Root make a quick announcement that the U.S. would not extradite Pouren, Root hesitated and took a milder course, reluctant to offend the Russian government. In mid-October 1908, Root requested that the case be reopened so that additional evidence could be presented to determine if Pouren was sought for a political offense. Pouren's supporters had forced the government to give an alien the same treatment it accorded a foreign government: "The courts have in the past repeatedly held fugitives, against whom a demanding government failed in the first instance to establish an extraditable offense, to await the production of further evidence by the demanding government, and fugitives have afterwards been surrendered upon such evidence produced. Fair play and justice would appear to require

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[295] As Oscar Straus recounted in his diary of late September 1908: "Just before the Cabinet meeting, the President asked me…[about] the effort of the Russian government to extradite…Pouren…I told the President that I was familiar with the case…and that it was quite evident, while the extradition was asked for under some criminal pretense, the real purpose was to get hold of a political refugee. He immediately summoned Professor James Brown Scott, the Solicitor of the State Department, and we discussed the matter together. I said to the President, in Scott's presence, 'You, Mr. President, certainly have the power to deny the delivering up of Pouren.' Scott stated that there was absolutely no doubt upon that subject, and informed the President that the papers had been sent to Root…The President immediately dictated a letter to Root about the matter. Scott informed him that he understood the subject had been referred to the Attorney General. The President said, we do not need an opinion of the Attorney General upon this matter and directed the request for his opinion be immediately withdrawn. Mr. Bonaparte, who is Attorney Generral, came in at the time and he was brought into the conversation, and was informed to return the papers to the State Department, and the President humorously stated that he did not think he required any opinion upon the subject, and turned around and said to me, I will handle that matter myself, clearly intimatind that the man would never be given up. He also dictated a reply to Littauer." (Oscar Straus Papers, Box 23, LOC).

[296] Letter of Roosevelt to Root, Sept 25, 1908 in *Letters of Theodore Roosevelt*, ed. Elting Morison (Cambridge: Harvard University Press, 1952).

that the fugitive in a proper case should be given similar reasonable opportunities."[297] Root also wrote Jacob Schiff a letter explaining that Commissioner Shields had been directed to reopen the Pouren hearing and intimated that Washington "would be pleased" if this was released to the press, which Schiff did. Root's letter also mentioned that the U.S. had recently "communicated with Russia an expression of the desire of this Government for a complete revision and amendment of the treaty of 1832 which provides for reciprocal rights of residence and travel on the part of the citizens of the two countries."[298]

When, on October 24, 1908, the Russian government went to court to challenge the legality of reopening the hearing, Root dismissed the proceedings before Commissioner Shields and Roosevelt directed that Pouren be released. But, before that could happen, the Russian government applied for a new warrant, which Root granted, to begin extradition proceedings anew under a different commissioner. A few days later, Christian Rudowitz, another Latvian peasant, was arrested for extradition in Chicago on charges similar to those in the Pouren case. Jewish leaders at the AJC wondered if Russia was "goaded" into "making these strenuous attempts to extradite inconsequential personages for the purpose of retorting to [our accusations that Russia was not observing the terms of the Treaty of 1832] that we are not observing the Treaty of 1887 but not giving up Russian refugees [that the Russian government] contends are ordinary criminals."[299] More radical Jewish immigrants believed that Russian officials saw an opportunity to succeed in its extradition requests, and in generally suppressing moral and

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[297] Elihu Root to John Shields, Oct. 13, 1908, Numerical and Minor Files of the Department of State, 1906-1910, National Archives Microfilm Publication M862, reel 749

[298] Root to Schiff, Oct. 19, 1908, 10901/53, Numerical and Minor Files of the Department of State, 1906-1910, National Archives Microfilm Publication M862, reel 749.

[299] Herbert Friedenwald to Louis Marshall, Dec. 1, 1908, Louis Marshall Correspondence—Subject Files, Box 3, AJC Archives.

financial support for the Russian revolution in the United States, in the context of a general panic among police officers, federal officials, legislators, and the public regarding Russian anarchists and criminals in the wake of the March 1908 Averbuch affair, which involved a young Russian Jewish immigrant (Lazarus Averbuch) who visited the house of Chicago's police chief supposedly with the intent to kill him.[300] As Jane Addams reported, "there are many hundred of adherents in the [Russian Jewish] colony to the theory that the boy [Averbuch] was obscurely induced to go to the chief's house by a man in the employ of the Russian government." "Would it not provoke to ironic laughter," Addams wrote, "that very Nemesis which presides over the destinies of nations, if the most autocratic government yet remaining in civilization should succeed in pulling back into its own autocratic methods the youngest and most daring experiment in democratic government?"[301]

Addams did not believe repression and "drastic police methods" were the appropriate response to immigrant radicalism or to protests of the unemployed during the economic depression of 1908. Imposing further restrictive measures in the immigration laws to make it more difficult for Russians to come to America would "close up the last loop-hole of escape for thousands of people living under an oppression and a persecution which are simply intolerable." Averbuch himself was a refugee from the Kishinev pogrom and had difficulty finding employment in Chicago. "One is driven at last to the Christian assertion that society is not safe unless it includes 'the least of these,'" Addams wrote, "and…this inclusion must be world wide with compassionate understanding for the outcast of every land, drawing him in to the reassurance and warmth of a fellowship against which he could not strive if he would." After

[300] Robert I. Goldstein, "The Anarchist Scare of 1908: A Sign of Tension in the Progressive Era," *American Studies* 15.2 (Fall 1974) 55-78; Walter Roth and Joe Kraus, *An Accidental Anarchist* (San Francisco: Rudi Publishing,1998).

[301] Jane Addams, "Chicago Settlements and Social Unrest," *Charities and the Commons*, May 2, 1908, 160.

Rudowitz's arrest, some social reform allies thought the campaign for his asylum was diversionary; University of Chicago law professor Ernst Freund told Addams and fellow members of the Immigrants' Protective League he felt that the "political nature" of the asylum issue "interfered with the success of the protection work" of the League, specifically a campaign to prevent exploitation of immigrants by employment agents. But Addams, who served as secretary of the Political Refugee Defense League, believed the fact that the public appeal for asylum "had to be based largely upon the contributions to American progress made from other revolutions" attested to the need for "a revival of civic morals." When she came to Chicago in 1889, Addams recounted, "great open meetings were held every Sunday evening in the recital hall of the then new Auditorium, presided over by such representative citizens as Lyman Gage, and where every possible shade of opinion was freely expressed. A man who spoke constantly at these meetings [was]…one who had been involved with the group of convicted [Haymarket] anarchists…One cannot imagine such meetings being held in Chicago today, nor that such a man should be allowed to raise his voice in a public assemblage presided over by a leading banker?" Addams was instrumental in promoting just such lively meetings to discuss the Rudowitz case in the coming weeks. [302]

Like Pouren, Rudowitz was not a well-known editor or political leader. He was an ordinary member of the Russian Social Democratic Labor Party in 1905-6. He fled official repression in the Baltic provinces and two years later he was settled in Chicago, keeping a low profile, and sending money home to his wife. To prove Rudowitz was a refugee and should not be extradited, his defenders not only to delved into his political consciousness and the conditions

[302] Ibid., 164-166. Minutes of the Meeting of the Executive Committee, Immigration Protective League, December 5, 1908, Jane Addams Papers Microfilm collection, reel 41. Jane Addams, *Twenty Years at Hull House* (New York: Signet, 1961) 273.

he had left, but also emphasized that that asylum in the United States meant permanence and possibility to him.

There was much about Rudowitz's case to capture the American imagination. The facts of the case seemed so much like a mystery or fairy tale, involving the murder of a Mrs. Wilhemina Kinze and her elderly parents, supposedly Czarist spies, by a group of Russian peasants, supposedly members of the revolutionary militia "Brothers of the Woods," Rudowitz among them. The lawyer for the Russian government claimed that Rudowitz was a disgruntled former tenant; as in the Pouren case, the strategy of the prosecution was to characterize all conflict in Russia in 1905-6 as labor disputes and local riots—fundamentally economic and personal, rather than political—or to claim that Rudowitz was part of a gang of bandits. The defense pointed out that Wilhemina's brother testified in a deposition that he feared "revolutioners" would attack him if he identified Rudowitz. Another man who was identified as having participated in the raid was summarily shot by Russian authorities. The defense contended that the depositions provided by the prosecution actually proved Rudowitz's offense was a political disturbance and that Rudowitz would be executed without trial if sent back to Russia.[303]

Rudowitz's Russian-born attorneys—Hourwich and Peter Sissman, a Chicago labor lawyer—avoided romantic arguments about the simple and redemptive role the peasantry played in Russia's unfolding history. In his reporting on the revolution in the rural provinces, Hourwich emphasized how repression, especially the institution of martial law and field courts martial, politicized and mobilized the peasants. He also acknowledged that, by 1906, especially in Odessa, revolutionaries that "specialized in 'expropriation' for political purposes…degenerated into

[303] "The Case of Christian Rudovitz," 1909 pamphlet, vertical file, Tamiment Library, New York University.

gangs of common robbers."[304] But, from the affidavits, it was clear that this was not the situation in Rudowitz's case. During the proceedings, Rudowitz testified that he was member of a revolutionary committee that decided to kill Kinze because information she gave to the Russian government caused the arrest and summary execution of a number of revolutionists; the central revolutionary committee of Rudowitz's district unanimously approved the killing of Kinze. Sissman put it this way in his closing arguments:

> Life always was a very cheap thing as far as Russian justice is concerned and exceedingly cheap at times like these…as always happens when people of one family or of one nation engage in a war among themselves, they will be found to be more cruel to each other than they will be to strangers…I am not attempting…to give the Social Democrats of Russia a cleaner bill than they ever claimed for themselves…[Regarding] the work they were engaged in….the only question…is whether it was an incident of the revolution…it may be rash at all times to be a revolutionist; but at least this American nation has also been rash enough to accord to revolutionists and political offenders of all stripes asylum. [305]

As in the Pouren case, Sissman and Hourwich did not focus their defense on the questions of innocence or guilt, but instead defined political crime as any crime that would be punished as such in Russia.

Charles Cheney Hyde, an expert on international law and one of Rudowitz's other attorneys, pointed to the Ezeta case as a precedent for the U.S. refusing to extradite those who had committed brutal, but political, crimes. Hyde noted that in the Ezetra case, the refugees committed acts of "the greatest brutality, contrary to the laws of war, contrary to the laws of peace and such as would have taken away all sympathy possible with the conduct of these men. For example, one of the charges was that of the murder of Henriquez [who] was…charged with being a spy. Thereupon General Ezeta struck him, ordered him to be hung. The man was stoned

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[304] Hourwich, "Practically Civil War in Russia," *World's Work* v. 13 (December 1906) p. 8329.

[305] A transcript of the Rudowitz trial was sent to the State department. This and all the following quotations from the trial come from the transcript in the Numerical and Minor Files of the Department of State, 1906-1910, National Archives Microfilm Publication M862, Roll 969.

and hung up in the plaza and two of the refugees helped to kill him; one of them firing into his body after he had fallen."

The fiery Clarence Darrow, another one of Rudowitz's lawyers, did not emphasize Russian tyranny or foreign violence in his defense, but, perhaps still thinking of his victory in the Big Bill Haywood case, focused on a tradition of support for revolution in America. If Rudowitz's crimes seemed violent, Darrow claimed, so were the acts of American patriots towards the loyalists after the American Revolution. The defense also called upon the staid John Wigmore, Dean of Northwestern Law School and the preeminent American authority on evidence, to offer his opinion on the Rudowitz case, and, surprisingly, it sounded a lot like Darrow's. Wigmore claimed that the killings were done solely for the purpose of punishing informers, upon the orders of the Social Democratic Party, and during a state of war. He then compared Rudowitz to Paul Revere and his militia to the Minute Men. But analogies worked for both sides. The commissioner who presided over the case claimed Rudowitz was "far removed in dignity" from the "Southern Gentlemen" who rebelled against the Union and more akin to a member of the James Brothers in Missouri after the Civil War. The implication was that Rudowitz's cause was both lost and degenerate. Rather than comparing the case to the American past, lawyers for the Russian government compared it to contemporary events. One lawyer for the prosecution compared Rudowitz and the other raiders to a lynch mob and anti-Asian immigrant rioters. Frederic Coudert later compared the case to those involving rebelling "*ladrones*" that the Phillipine Supreme Court ruled were bandits rather than political offenders. "Is there any reason or logic," Coudert asked, "in treating one of our citizens or subjects as a

highway robber or brigand, while considering a foreigner guilty of the same acts…innocent of ordinary crime?"[306]

Rudowitz's defenders minimized his un-naturalized status. Darrow claimed that, as far as constitutional rights were concerned, Rudowitz was "as much a citizen, as much entitled to the protection of the laws of this country and of this state as if he had been born here." Rudowitz's defenders repeatedly portrayed him as a common soldier who took a risk to support revolution and was forced into exile; having fled for his life, he was in the U.S. to stay and be a "steady" workman. Rudowitz sympathizers also placed the idealism of the anti-extradition campaign within an evolving American protest tradition. In his column in the *Chicago Daily Socialist*, the black preacher George Slater Jr. described a meeting of Rudowitz supporters in these terms:

> I witnessed the bridging of the great river…Jew and gentile, professional and manual laborer, man and woman…believer and unbeliever…white and black—all forgetful of their individual opinion in one heart-tied determination to save…refugees. I thought of what I had read of the meetings of the grand old abolitionists…In sprit this was the same kind of meeting—the only difference being that instead of white Americans working to free and protect the black slave and refugee—all men were represented here in protecting men the world over.[307]

Five and a half years after the Rudowitz protest meetings, Judge Ben Lindsay of Denver remembered them in a letter to Jane Addams. He was trying to arouse sympathy for the Ludlow miners and their families and wanted a copy of a speech he had heard by one of Rudowitz's lawyers. The speech was about the way oppressive conditions beget violence. "I am interested," Lindsay wrote Addams, "to know if the people who applaud and defend violence in Russia that is a response to a worse violence and oppression, are willing to even have charity and patience

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[306] Coudert made this comparison at a discussion on "The Nature and Definition of Political Offense in Extradition," *Proceedings of the American Society of International Law*, April 23, 1909, 140.

[307] George W. Slater Jr., "Mine Eyes Have Seen It," *Chicago Daily Socialist*, Nov. 9, 1908, 4. For information on Slater, see *Black Socialist Preacher: the Teachings of Reverend George Washington Woodbey and his Disciple, Reverend G.W. Slater, Jr.,* ed. Philip S. Foner (San Francisco: Synthesis Publications, 1983)

with it in this country to the extent of pointing out the violence and oppression on the other side…I know positively…that conditions in Southern Colorado…are just as bad for the oppressed workingman as they were for Rudowitz and his kind in Russia." [308]

Other Rudowitz advocates were wary of radicalism and focused on assimilation and uplift. Judge Mack wrote Louis Marshall of the importance of swaying conservative opinion into the Rudowitz camp.[309] One Rudowitz fundraising events was a special performance of Israel Zangwill's *The Melting Pot* for clergymen, academics, journalists, and settlement workers at the Chicago Opera House. Between acts, Jenkin Lloyd Jones, Unitarian minister of All Soul's Church, made an appeal on Rudowitz's behalf in the name of "that hospitality that makes America American." In a later sermon, Jones proclaimed "in this providing sanctuary to the persecuted…the United States gathers to its bosom not the refuse, but the cream…Broken men…but men who in their very defeat have gathered new strength." [310]

One of the more interesting cartoons published during the Rudowitz trial depicted him sitting in jail, in a suit, head in his hands, haunted by memories of Bloody Sunday. Bloody Sunday is the designation given to the events of January 2, 1905, when a procession of unarmed demonstrators, led by a priest, were fired upon by soldiers of the Imperial Guard as they marched towards the Winter palace to present a petition to the Czar. The events provoked public outrage and a series of massive strikes that marked the start of the Revolution. Rudowitz did not personally experience Bloody Sunday, as he was in Courland in the Baltic provinces at the time.

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[308] Letter from Ben. B. Lindsey to Jane Addams, June 5, 1914, Jane Addams Papers Microfilm, reel 5.

[309] Letter from Judge Mack to Louis Marshall, December 9, 1908, Louis Marshall Correspondence, Box 4, folder 1, AJC Archives.

[310] "Novel Plea For Rudowitz," *Chicago Daily Tribune*, Dec. 16, 1908, 3; "Pastor Pleads for Rudowitz," *Chicago Daily Socialist*, January 11, 1909, 1.

It is clearly meant to stand in for Czarist repression, just like the Kishinev pogrom, that provoked further opposition. This cartoon not only captures a sense of Rudowitz as a dignified and thinking man unjustly trapped behind bars, but can also be interpreted in more radical or conservative ways. Zangwill's play is about the liberation of its protagonist from traumatic memories of Kishinev into the melting pot of America. This Rudowitz cartoon assumes that he too will be liberated from memories of repression if he gains his right to American asylum. But would Rudowitz continue to be a revolutionist after his release from prison?

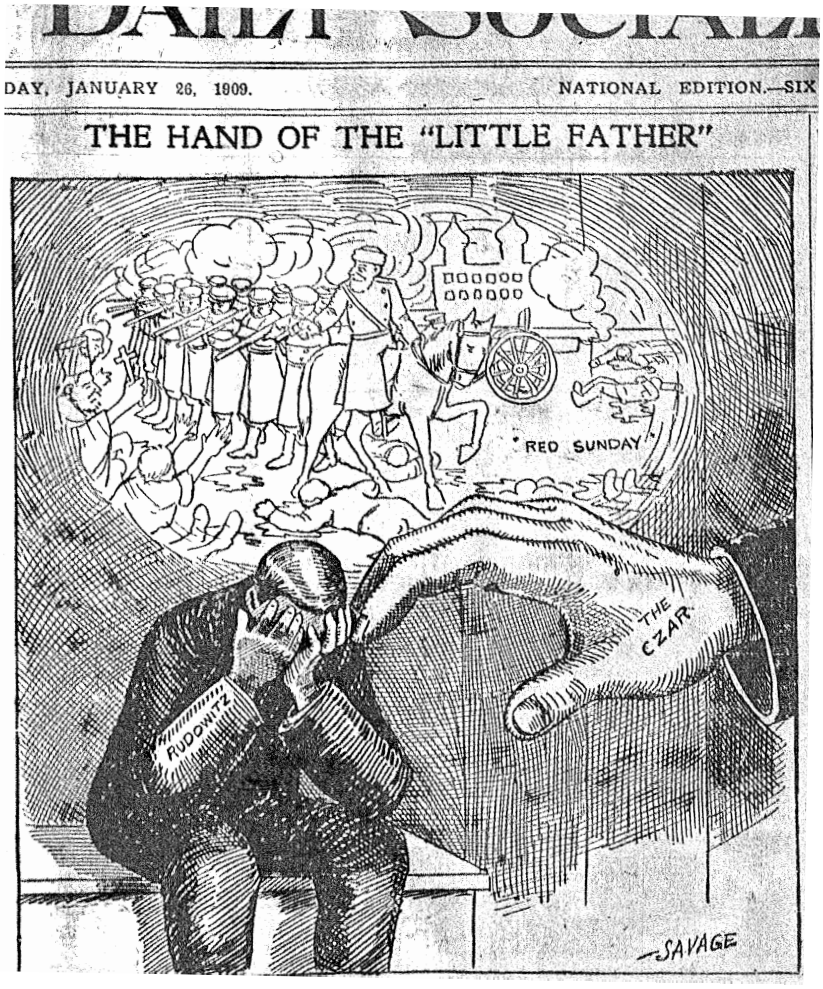

Figure 2.10. "The Hand of the 'Little Father'," *Chicago Daily Socialist,* January 29, 1909

At one of several meetings on Rudowitz's behalf that featured a diverse array of speakers, all of whom spoke their minds, Raymond Robins, a settlement worker who served on the Chicago Board of Education and was a key figure in the PRDL, avoided answering this question. He called out to the "ghosts of murdered women and children of Kishinev to haunt the American holders of Russian bonds in their beds at night." Robins claimed that these bankers likewise supported the extradition of Rudowitz and had the blood of the Czar on their hands. Robins focused on the fact that the campaign for Rudowitz was crucial to protect the right of asylum. "If the right of asylum to refugees be denied in America all the cardinal principles of liberty in this country will be jeopardized."[311] Hourwich addressed the question of Rudowitz's probable path when he criticized Zangwill's play as completely unrealistic.

> Here [in Zangwill's protagonist] you have a young Jewish man whose entire family was massacred before his eyes in Kishinev, and off he goes predicting the idea of the melting pot… The racial hatred, the anti-Semitism stems from the nationalism, he says, therefore abolish nationalism and there will be no more hatred or pogroms… This talk may be quite logical; it suits Zangwill, but not a young Russian with hot blood that is ignited like a match wherever he comes face to face with an injustice…The Russian revolutionary [character in the play] was also created by Zangwill in his own image… When she comes here [to the United States], Zangwill orders her to stay out of the affairs of the local Russian revolutionaries, because what's the use making conspiracies so far from Russia? Of course, if not, she could have fallen in with the gang of local socialists. Then, however, the play would not have appealed to Roosevelt. To prevent this, Zangwill gave her a place in a settlement. If you had a look at her, you'd never recognize that she had escaped from Siberia: a real American lady, you'd say![312]

In late January 1909, Commissioner Foote decided that Rudowitz should be extradited, but Secretary of State Elihu Root overruled this decision on the grounds that the offenses Rudowitz was charged with were political in nature. Rudowitz declared his intention to become a citizen, but he was soon out of work. Though many were unemployed during the economic

[311] *Chicago Daily Socialist*, December 1, 1908, 1.

[312] Hourwich, "Zangwill's Melting Pot," volume 2 of his *Selected Writings* (Yiddish), 42.

depression, the newspapers reported that Rudowitz was discharged from his job at Pullman because of the attention his case had attracted. The *New York Times* reported that potential employers turned him away "afraid they would get into trouble of some sort," thus portraying as dangerous the refugees who testified on behalf of Rudowitz and blaming labor activists who had joined his cause for his plight.[313] On March 26, 1909 the Chicago *Inter-Ocean* newspaper published an editorial labeling Rudowitz a dependent beggar rather than a worthy refugee and printed a cartoon lambasting his advocates as opportunists (figure 2.11). Raymond Robins was quick to defend the Political Refugee Defense League, which had provided Rudowitz with a small fund after his release. [314] In a surprising twist, while Rudowitz was living in Chicago after his release in the spring of 1909, a man or men purporting to be him, bogus Rudowitz's, began showing up to lecture on and raise money for the cause of political asylum at socialist meetings in Ohio, Kentucky, Tennessee, and Texas. This, apparently, was an American style flip-side of Russia's agent provocateurs.[315]

[313] "Rudovitz is Penniless," *New York Times*, March 24, 1909, 2.
[314] "Refugee Injured by Story in Inter-Ocean," *Chicago Daily Socialist*, April 6, 1909, 1.

[315] "Bogus Rudowitz Now in Texas," *Chicago Daily Socialist,* March 29, 1909, 3.

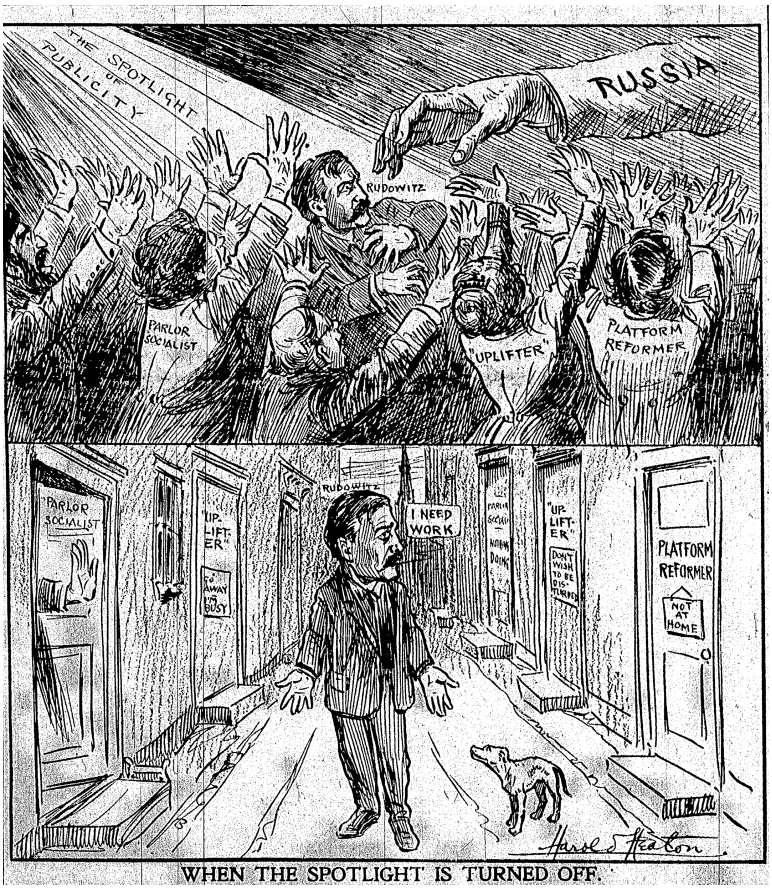

Figure 2.11 "When the Spotlight is Turned Off," *Inter-Ocean,* March 26, 1909.

Just around this time, the second federal commissioner in the Pouren case decided that he was a political refugee exempt from extradition under treaty and Pouren was finally released after spending almost fifteen months in the Tombs. Pouren himself claimed that all the while he was in jail he was confident that he would "eventually be free." "If I cannot go [back to Russia to fight for freedom], I will stay in America and serve the cause of justice here!" A few weeks later, Lillian Wald and Hourwich raised money to set him up in a small electrician shop of his own.[316]

[316] "News of Pouren's Freedom Causes Widespread Joy," *New York Call,* March 31, 1909, 1; "Revolutionists Cheer Pouren, *New York Call*, April 18, 1909, On the Pouren fund, see August 1909 correspondence in the Lillian Wald Papers, Columbia University, reel 107.

The Russian government was not pleased with the outcome of the Rudowitz and Pouren cases. Russian Ambassador Rosen wrote a note to the State Department explaining that the Imperial Government refused to accept the U.S. government's definition of an exempt political crime under the treaty.[317] Rosen pointed out that a Swiss court had recently surrendered a refugee just like Pouren and Rudowitz on the ground that his means were unjustified, hopeless, and not a direct attack on the state. "It is well known," Rosen pointed out, "that Switzerland has always been extremely solicitous about preserving intact the right of asylum." Rosen saw the American refusal to extradite not as generous but rather as belligerent. "Violent agitation" in the press and at public meetings had diverted the case "from the purely legal domain into the domain of politics, in a spirit openly hostile to Russia." [318]

Aftermath, 1910-1914

After the Pouren and Rudowitz cases, members of the Defense committees went different ways. New York Congressman Herbert Parsons, who served as counsel with Hourwich in the Pouren case, found the cause of equal rights for Jewish American citizens traveling in Russia more in keeping with his emphasis on Americanism.[319] On the other hand, Society of American Friends of Russian Freedom, an organization of mostly native-born moderate liberals, under the helm at this time of Immigrant Restriction League secretary James Bronson Reynolds, decided to

[317] Letter from Rosen to Secretary of State, April 25, 1909, 16649/51, Numerical and Minor Files of the Department of State, 1906-1910, National Archives Microfilm Publication M862, Reel 970

[318] Rosen to Root, January, 9 1909 letter to Elihu Root, Numerical and Minor Files of the Department of State, 1906-1910, National Archives Microfilm Publication M862, reel 750. The Swiss case referred to was that of Wassilieff, a Russian refugee accused of killing a Police chief in Pensa. The case is famous for its establishment of the "predominance test," which was used by Swiss courts thereafter to determine which offenders were exempt from extradition.

[319] On Parson's shift to the passport question, see letters from Parsons to Hourwich and Louis Marshall in January 1911, Series 2, Box 2, Folder 2, Parsons Papers, Columbia University Rare Books and Manuscript Library.

stick with a campaign to abrogate the Russian extradition treaty because it was not clearly an exclusively Jewish issue.[320]

Hourwich moved on to helping refugees in Canada and along the Mexican border. Hourwich was able to help prevent the extradition of Sava Fedorenko, another member of the Social Democratic Party, but only based upon a technicality, not because his crime was recognized as political.[321] In the summer of 1909, Hourwich was helping John Murray, a Los Angeles journalist, defend Mexican political refugees threatened with extradition and deportation.[322]

Some in the coalition moved towards concern with the rights of non-citizens. After helping to gather testimony for the Rudowitz defense, settlement worker and reformer Grace Abbott began writing about the inadequate treatment of aliens in the criminal courts. Abbott stressed the need for judges to stop thinking that a "foreigner feels disgrace less keenly, that his social position is already so low that he does not suffer very much from the experience of arrest and even of conviction." The lack of translators, counsel, and bail was a problem in extradition hearings and the courts more generally and Abbott felt they made it difficult for immigrants to secure justice. They prevented refugees from losing the remnants of their distrust of the law. The Rudowitz case made Abbott realize that for the asylum ideal to remain a reality to newcomers,

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[320] Letter from Reynolds to Parsons, Feb 14, 1911, Series 2, Box 2, Folder 3, Parsons Papers, Columbia University Rare Books and Manuscript Library. See also letter from Jacob Schiff to Cyrus Adler, Jan 27, 1911, reel 22, Schiff microfilm, Jewish Theological Seminary Library.

[321] Fedorenko allegedly shot a watchman when being taken to a village administrative office in a district in the Kiev province then under martial law. Besides this resisting arrest and murder charge, Fedorenko was wanted for supposedly murdering a peasant who worked to counteract a strike. Hourwich's notes and correspondence on the Fedorenko trial in Winnipeg are in Box 4, Hourwich Papers, Houghton.

[322] Mexican Files, Investigative Files of the Bureau of Investigation, 1908-1922, (National Archives and Records Service microfilm collection M1085), Reel 851, case No. 232, page 150-1.

reform had to come from within.[323] The need for such reforms was even more apparent in the southwest. When trying to explain to a 1910 Congressional committee how Mexican refugees were being mistreated by the courts and law enforcement in Texas, John Murray was grilled repeatedly about their citizenship status as if that were the problem.[324] The Arizona U.S. Attorney J.B. Alexander believed that imprisonment in the U.S. had "no terrors" for Mexican refugees, "while upon the other hand, they have a dread of being sent across the line into Mexico and there being imprisoned in Mexican prisons, which do not deal so leniently with them as they do in prisons in the United States."[325]

Many of the anti-Diaz Mexicans threatened with extradition had raided the town of Las Vacas, Mexico in late June 1908 and then returned to their bases in Texas. The Mexican government asked that the United States prevent this kind of border crossing and Roosevelt requested that district attorneys and marshals in Texas "make a searching investigation of Del Rio, El Paso and elsewhere to find out and apprehend the guilty parties."[326] Roosevelt was not the only one who had a different attitude toward these refugees than the Russians. The *Chicago Daily Socialist* reported on the Political Refugee Defense League's efforts on behalf of Mexican political refugees, it did so for reasons beyond preservation of the right of asylum. In a December 30, 1908 editorial, Algie Simons argued that if "American workingmen sit silent"

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[323] Biography of Grace Abbott by Edith Abbott, Folder 3, Box 90, Edith and Grace Abbott Papers, University of Chicago Archives. See Abbott's "The Treatment of Aliens in the Criminal Courts," *Journal of the American Institute of Criminal Law and Criminology*, 2.4 (Nov., 1911), pp. 554-567 and "The Immigrant as a Problem in Community Planning," *Publications of the American Sociological Society*, 1917.

[324] See Murray's testimony during United States House Committee on Rules, *Providing for a Joint Committee to Investigate Alleged Persecutions of Mexican Citizens By the Government of Mexico*, 61st Congress, 2nd Session, June 8-14, 1910.

[325] Letter from J.B. Alexander to Commissioner of Immigration, September 25, 1906, Box 5, U.S. Attorney for the District of Arizona, Letters Sent, RG 118, NARA Laguna Niguel, CA.

[326] Roosevelt's Telegram to Charles Bonaparte [Attorney General], June 29, 1908, letter 4780, E.E. Morison, ed. *The Letters of Theodore Roosevelt* v. 6, page 1099.

while Mexicans were prosecuted for neutrality and extradition, "they [American workingmen] will find that they have but prepared a weapon with which to beat down their own wages." "The peons of Mexico will soon be the most effective strikebreakers against American unions." Simons, as a member of the Socialist Party's National Executive Committee, was one of the promoters of the Party's adoption of a platform against immigration "from Oriental countries, or others backward in economic development" as early as 1907.[327] Though a restrictionist resolution was not adopted at the Party's annual convention until 1910, the right-center wing of the Socialist Party continued to push a restrictionist position even as it made exceptions for Mexican "politicals."

The same tension was visible within the Immigration Service. In 1907, counsel for the Mexican government requested that the U.S. Immigration Bureau issue a warrant for the arrest and deportation of certain members of the PLM (Mexican Liberal Party) in San Antonio. Previously Mexico had requested the extradition of these men for alleged participation in a violent raid on the town of Jimenez, but a United States commissioner had deemed the raid political and participation in it non-extraditable. In his memo on the case, Immigration Bureau Solicitor Charles Earl quoted the Supreme Court's decision in *Fong Yue Ting*, and agreed that the consequences of sending the refugees back, "however grave," should not be of concern since deportation was designed to protect American public welfare (while extradition was a diplomatic obligation.) Still, Earl wondered whether issuing a warrant for the arrest of the alleged Jimenez raiders on immigration law violations would "thereby enlarge[e] the rights of Mexico as defined by the extradition laws and treaties of the United States." "Political refugees are not among the excludable classes" such as the diseased, criminal or destitute that threaten the public welfare,

[327] Ira Kipnis, *The American Socialist Movement, 1877-1912* (New York: Columbia University Press, 1952) 277.

Earl wrote, and should not be deported simply for alleged entry without inspection. Earl decided the Mexicans should at the least be given a hearing to determine whether they could stay. Oscar Straus, the liberal Secretary of the Department of Commerce and Labor, which oversaw the Immigration Bureau, approved Earl's opinion. But Frank Sargent, former President of the Brotherhood of Locomotive Firemen and now Commissioner General of the Immigration Bureau, disagreed and wanted the whole complicated matter to be considered by the Justice and State departments. Sargent admitted that some "hold the view the United States is properly an asylum for political refugees" while others "think that such use of the country is already overstrained." Implying that he fell into the latter camp, Sargent wrote that "the authority to expel is broader than the authority to exclude" because refuge in the United States is a "privilege" rather than a right.[328]

The political offense exemption in immigration law had been narrowed by the 1903 exclusion of anarchists and the 1907 exclusion of anyone whose political offense involved ambiguously defined "moral turpitude." The 1907 law also included a provision that those who admitted to or were convicted of having committed political offenses before entry had to be otherwise admissible; this meant that political refugees could be excluded just like any immigrant who seemed "likely to become a public charge" for *any* reason. When Benzion Grochowsky, a blacksmith from Odessa, arrived at Ellis Island in February 1910, he told

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[328] Charles Earl, Memorandums of January 18, 1907 and February 13, 1907, INS records, RG 85, Entry 9, 52730/070, National Archives and Records Administration, Washington D.C. [hereafter NARA]; Frank Sargent, Memorandum of January 24, 1907, INS records, RG 85, Entry 9, 51466/77, NARA.
There was a good deal of tension between liberal and exclusionist immigration officials during the first decade of the 20th century. Sargent's memo suggests that vigilant exclusions applied to Chinese immigrants, criminals, and smugglers should be extended to other immigrants. For a good discussion of the culture of exclusion in which Sargent flourished, see Erika Lee, *At America's Gates* (Chapel Hill: University of North Carolina Press, 2003) 64-68 and 85. On the other hand, Straus used his discretion in an attempt to humanize the administration of immigration laws. For a discussion of other such efforts see chapter 8 of Lucy Salyer's *Laws Harsh as Tigers* (Chapel Hill: University of North Carolina Press, 1995).

officials he had been arrested when martial law was in force in the wake of the Revolution, but was never charged with a crime. When asked if he believed in assassination of the Czar, he said he was undecided; when asked if he would kill the Czar, he said he would support if it would benefit the people. He insisted he was not an anarchist because believed political revolution needed to precede a social one. Rather than risk his admission on appeal as a political refugee, the inspectors opted to exclude him as likely to become a public charge.[329] If advocates like Simon Pollock of the PRDL and Friends of Russian Freedom appealed and were willing to put up bond to insure the immigrant would not become public charge, however, admission could be granted in cases like this. Although Boleslaw Puczniewski acknowledged he had been arrested for distributing socialist literature and believed in assassination of public officials "in so far as the Russian Government is concerned, the Secretary of Commerce and Labor believed he was entitled to be landed "as a political refugee."[330]

Indeed, until the eve of WWI, advocates were successful in preventing immigration statutes from encroaching on asylum for refugees from the Russian empire. When Samuel Orlowsky (San Francisco) and Ernest Jaumsen (Boston), both escaped Siberian political prisoners, were declared by the Board of Special Inquiry to be agitators and anarchists and therefore inadmissible, Simon Pollock and other members of the Political Refugee Defense League collected depositions from immigrants who knew the exiles and could attest that they were socialists. In a 1913 letter to the Secretary of Labor on behalf of Ely Kogan, who had served a term of hard labor in Russia for being a member of the Bund and had been barred from entry to the United States for "moral turpitude," Hourwich wrote that immigrant inspectors needed to change their "mental attitude" toward political refugees. He suggested to the Secretary

[329] This case is in folder 8, box 10, Max Kohler papers, American Jewish Historical Society.

[330] INS file 52388/307

of Labor that "a general ruling be made by the Department, impressing on immigration officials that our immigration laws are designed to protect labor against unfair competition (the contract labor law) and to protect the community against paupers and criminals, but not to harass men who are seeking an asylum in this country from political persecution at home." The appeal for Kogan's admission was sustained but no such ruling was issued by the Department.[331] When an immigration inspector in San Francisco forwarded to the Immigration Bureau a stenographic transcript of an October 1913 talk on the revolution in Russia by the radical Indian anti-colonialist Har Dayal, a warrant was immediately issued for his arrest as an anarchist.[332]

Hourwich realized that if he wanted to have an impact on extradition in general, rather than just on extradition of Russian refugees, he needed to push for the revision of U.S. extradition legislation rather than simply abrogation of the extradition treaty with Russia. So, in early 1911, Hourwich wrote a bill, which was later introduced by Senator Robert LaFollette but never passed, to amend extradition procedure in ways that would give exiles from all countries the best chance at asylum. Hourwich's proposals (which drew on language in British and Belgian law and were explicitly designed to avoid the snags encountered in former defense campaigns and legal precedents that curtailed the rights of the fugitive) would essentially have turned extradition proceedings into American public exposés of foreign political repression. The bill called for jury trials and the admission of all evidence, including depositions collected abroad by American consuls, that would help the defendant, while limiting evidence that could be introduced by the foreign government (especially testimony that was coerced). It also incorporated a specific definition of political offence, rather than leaving it to be negotiated in

[331] INS files 53305/245, 53615/011, 53595/273, NARA. Letter from Hourwich to Secretary of Labor William Wilson regarding the Kogan case, April 1913, Box 5, Hourwich Papers, Houghton Library, Harvard University and INS file 53670/76.

[332] INS file 53572/92.

each extradition treaty. This would make it difficult for different standards to be used for exiles from different countries. Drawing on all available liberal U.S. legal precedents and his knowledge of Russian judicial practice, the bill defined "offence of a political character" in the broadest possible way as:

> Any criminal act committed with a political object or having a political purpose in view; or any act incidental to political disturbances or forming part of a political movement; in general, any offence subversive of the internal safety of a state; and any common crime connected with or committed in the execution of a political act or being the outcome of a political act; any offense defined by the penal laws of the demanding government as an offense of political character, or as an offense against the state, or against the established form of government, or as a crime of sedition or conspiracy; or any offense prosecuted under the penal statutes of the demanding government before special tribunals created for the prosecution of political offenses or crimes defined as offenses against the state, or against the established form of government.

The bill also took proceedings out of the hands of Commissioners—fee officers (beholden to consuls) with little legal training—and put them into the hands of federal judges. The bill called for the review of court decisions not by the Secretary of State—who had diplomatic obligations—but by the Attorney General, legal advisor to the President. It also included a provision slowing down the extradition process, insuring that the defense had time to mobilize and the accused was not swiftly spirited out of the country. [333]

A year after he drafted the bill, Hourwich campaigned against the narrowing of the political exception in immigration law. Senator Dillingham had introduced a bill that would exclude anyone "who has committed a felony or other crime or misdemeanor involving moral turpitude." Unlike past provisions in immigration law, this one used the word "committed" rather than "convicted" and included no political offence exception. Hourwich believed this provision

[333] The proposed bill, introduced as S. 2694 to the 62nd Congress, and Hourwich's explanatory notes on its provisions is in folder 18a, Box 5, Hourwich Papers, Houghton Library, Harvard University.

violated the rights of exiles and the very concept of territoriality upon which extradition was based:

> Any immigrant may be tried before immigration officers for an offence committed in his native country, although he has never been prosecuted for it at home…The decision…can only be reviewed by the secretary of labor…and cannot be reviewed by the courts…So in our eagerness to keep a few unskilled immigrants out of the country we have outdone the political inquisition of the Czar of Russia. I need not tell you that it is contrary to every principle of law to try a man for an offense committed thousand of miles away, before a tribunal which has normally no jurisdiction over the offence. [334]

During the course of the debate over the Dillingham bill, Elihu Root, now a senator from New York and formerly the Secretary of State that had refused to extradite Pouren and Rudowitz, introduced an amendment, at the request of Governor O.B. Colquitt of Texas, that would facilitate "running every Mexican revolutionary sympathizer out of the United States." The Root Amendment to the Dillingham bill mandated the deportation of "any alien who shall take advantage of his residence in the United States to conspire with others for the violent overthrow of a foreign government recognized by the United States." Hourwich thought this attack on Mexican exiles was "indefensible." In order to try and defeat this effort to suppress political activity by Mexicans in the Southwest, Hourwich framed the amendment as a threat to all politically active refugees. Anyone could accuse a refugee of sending money home to support revolution and have that refugee sent packing without a hearing. Hourwich rallied support for defeat of the bill among East Coast activists who probably would never have otherwise been aware of the measure. He wrote to Jane Addams and George Kennan about the amendment's broad implications. "If it is the intent of Congress to repress the activity of Mexican conspirators on American soil, it makes no difference whether they are aliens or naturalized American citizens. The Root amendment would reach only the aliens, leaving the naturalized Mexicans and

[334] Hourwich to LaFollette, Feb 15 1913, Marshall papers, American Jewish Historical Society.

those who were born in America at liberty to do that which an alien is liable to deportation for. If it is thought that our neutrality laws are lax, it is they that should be amended. On the other hand, the Root amendment deprives a foreign resident of the right to be tried by a jury with the usual guaranties of justice, and substitutes therefore a Russian method of administrative procedure."[335] Hourwich made his argument in the name of American liberty, invoking the Declaration of Independence and the duty of the people to throw off a tyrannical government. He added, " 'Conspiracy for the violent overthrow of a foreign government' is a very elastic definition…In practice such a law would give free scope to Russian spies to proffer charges of conspiracy against any un-naturalized Russian residing in the US." Though Root's amendment passed without debate in the Senate, several PRDL representatives and supporters testified against it at a hearing in the House; one of the witnesses was Johann Ohsol, a member of the Second Duma who recently emigrated to the United States and testified for the defense in the Pouren proceedings.

During the debate over the same Dillingham bill, the radicalism of the Lawrence strike was brought up, especially the way "direct action" socialists and members of the Industrial Workers of the World led immigrant workers to engage in "terrorism," particularly the destruction of property at the mills and attacks on workers going to work despite the strike. [336] That year, the Socialist Party voted to expel any member who advocated "sabotage or other methods of violence," highlighting a new consensus that this was criminal, not political, action. Now it was not just John Bassett Moore, but Victor Berger, who promoted a narrow conception of asylum. Congressman Burnett of Alabama, who was leading the charge for further

[335] Letters from Hourwich to Jane Addams, Edmund Noble, Louis Marshall and George Kennan, April and May 1912, Box 5, Hourwich papers, Houghton.

[336] Congressional Record, 48 March 18 1912, 3545.

immigration restriction, conceded during the debate that "one of he worst punishments that could be inflicted" on a Russian refugee would be that of being sent back to his country. That was precisely why Burnett believed the Root amendment—"the very threat hung over the man of that kind of deportation"—was such a good instrument of social control.[337]

[337] *Hearings Relative to the Dillingham Bill, S. 3175*, Committee on Immigration and Naturalization, House of Representatives, 62nd Congress, 2nd Session, May 4,7,8, 1912, 44.

> Q: Did you know before you came aboard the ship that persons that could not read were not admissible to the United States?
> A: Yes, but conditions were so terrible over there that we decided to take a chance, as necessity breaks iron.
> -- Board of Special Inquiry interview with Gitla Presser, March 10, 1921[1]

"Every effort to restrict or control immigration legislation from the time introduced in the first administration of Cleveland down to its introduction during the last administration of Wilson received a veto on the ground that the efforts to restrict destroyed the right of asylum, which has grown to be a world wide right. The asylum in the United States for the oppressed. All such attempts of law were vetoed until we got this quota law...All last year we had to stand out against refugees coming in…if we had any flexibility at all, it would have been all used up by refugees."
--Representative Albert Johnson, *Hearings Before the Committee on Immigration and Naturalization*, House of Representatives, 67th Congress, 4th Session, Dec. 16, 1922, 60.

> The fever of the desert was too much for the son of Sarkis Nourian and he was buried without a prayer…Movses saw Sarkis Nourian's advertisement…a scheme caked into shape… 'Oh, I so wished to come to America. So much. But the quota was full for years…Please, please, don't send me back'…Sarkis dwelled upon the idea of hushing this monstrous deception and going home with Movses as his son…The two will bury their secret, or better: because of their secret they will be closer to one another…Was not this boy, like himself, the victim of an irresistible tragedy? Orphaned of happiness, of comfort...Was not his own life and the life of this boy inextricably woven into that immense and inexplicable pattern which is that of the Armenian destiny?
> --"The Son" by Hrant Armen, *Hairenik Weekly,* III. 27 (August 28, 1936) 4

[1] INS file 54999/148, Entry 9, RG 85, NARA. (Hereafter, all "INS files" are from this archival entry number and record group.)

Overview

Immigration officials in the Department of Labor handled Armenians and Jews who arrived in the United States after World War I in a discretionary manner that blended exceptionalism and restrictionism in ways characteristic of asylum policy in the United States. This reflected the influence of a particular image of the religious refugee, an image developed in the United States by advocates involved in late nineteenth and early twentieth century missionary activity in the Ottoman Empire and in Jewish campaigns to protect their co-religionists in the Russian Empire and upon arrival in America. [2]

One of the latter campaigns was for an exemption from the literacy test for asylum-seekers. Section 3 of the 1917 immigration law exempted from the literacy test "all aliens who shall prove to the satisfaction of the proper immigration inspector or to the Secretary of Labor that they are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, whether such persecution be evidenced by overt act or by laws or governmental regulations that discriminate against the alien or the race to which he belongs because of his religious faith."[3] The same 1917 immigration law that included this literacy test persecution exemption also gave immigration officials discretionary power to admit excludable

[2] This chapter focuses mostly on Armenian immigrants originally from East-Central Turkey and Cilicia, particularly Kharpert and Marash, though many of them gathered in Aleppo, Beirut, Constantinople, or Smyrna after the deportations and abductions of WWI and before their immigration to the United States. I also discuss some cases of Armenians originally from Urmiya (in Iran). This chapter focuses mostly on Jews originally from what was southwestern Russia—the borderlands of Poland, Belarus, Ukraine, and Romania—and particularly the Ukrainian provinces of Volhyn and Podolia, an area with a long history of pogroms and a politically complicated post-WWI dynamic. Most of these Jews made their way (sometimes via Lemburg) to Warsaw or Danzig on their way to the United States. Armenian and Jewish immigrants were affected not only by religious violence during World War I, but also the civil wars and violence (Greek-Turkish and Polish-Soviet wars) that followed and ethno-nationalist population policies put into place in Turkey and Poland the early 1920s. In transit, besides stopping at the cities mentions, many of the immigrants passed through French, British, and German ports.

[3] 39 Stat 877.

immigrants temporarily on bond.[4] By admitting Jews and Armenians temporarily, rather than recognizing their persecution claims, immigration officials minimized criticism of their harshness and prevented court challenges without recognizing a right to asylum linked to particular forms of past suffering or to prospective rights.

The restrictionist framers of the literacy test in the 1917 law hoped it would prevent the entrance of Southern and Eastern European male laborers. Indeed, wives, mothers, and daughters of admitted or admissible immigrants were exempted from the literacy test altogether. Still, more women than men applied for exemption from the literacy test on *persecution grounds* in the years just after the war. In early 1921, Congressman Isaac Siegel of New York testified that between 150 and 200 such claims had been made in the previous 18 months; Siegel repeatedly referred to those making the claims as "girls."[5] My survey of approximately 300 INS case files from the period between 1919-1923 involving appeals of exclusion based upon, or based in part upon, illiteracy, reveals a disproportionate number of persecution claims by Armenian and Jewish women immigrants. For reasons elaborated later in this chapter, historians have not recognized the existence of these cases.[6] Not all of the women involved were young "girls," but all were "unaccompanied": they had lost their husbands, sons, and fathers during the war (and thus did not qualify for the more general exemption to the literacy test as wives, daughters, and mothers, though many had relatives—siblings, uncles, cousins—or suitors in the

[4] Provision 9 of Section 3 of the 1917 Act: The Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission.

[5] *Congressional Record*, 61, April 21, 1921, 550.

[6] "One does not hear of Jewish immigrants, including women, failing the [literacy] test," writes the historian Lloyd Gartner in "Women in the Great Jewish Migration," in *American and British Jews in the Age of the Great Migration* (Portland: Valentine Mitchell, 2009) 98.

United States.) Partly in recognition of the number of women's persecution claims in 1920, Louis Post, the progressive Assistant Secretary of Labor, established a "women's division" in the Immigration Bureau headed by inspector Katherine Herring. Herring was tasked with reviewing "special cases on appeal" that involved women and children, but, especially after Post retired in 1921, only some persecution claims received Herring's attention.[7]

Immigration inspectors were issued only vague guidelines by the Labor Department regarding how to assess persecution claims and, when sought out regarding the existence of persecution abroad, the State Department provided little help.[8] The handling of persecution claims, then, was largely ad hoc. Case files refer to different influences, especially media reports regarding the situation in Ukraine or the Near East that made religious persecution there "well" or "commonly" known. Immigration officials found it particularly difficult to assess appeals based upon "belated claims" to "refugee" status made by lawyers, organizations, relatives, or

[7] The Women's Division submitted memoranda on "special cases" relating to "the interests and needs of women and children immigrants." Herring wanted authority to review *all* appeal and deportation cases involving women or children, but was limited to writing memos *when required* by Labor Department and Immigration Bureau officials, who varied in their receptivity. As discussed later, Herring was usually, but not always, sympathetic to persecution claims. As was Post. Post was progressive not just in his interpretation of the immigration law with an eye towards the welfare and the rights of immigrants; he also was progressive in his handling of the civil service system, with an eye towards providing opportunities for women. In 1920 all civil service exams were open to women, but those in charge of hiring decided whether they wanted a man or a woman for the job. Post directed that "women already in the [Immigration] service [mostly working as matrons and clerks] be given preference in the selection for the position of Immigration Inspector." Women employees at the Bureau's stations across the country were given the opportunity to take a specially administered civil service exam; as a result, nine women with qualifying grades were appointed inspectors in March 1921 (two in Montreal and Seattle, one in New York, Boston, Baltimore, Philadelphia, and San Diego). So, while the Women's Division did not, in the end, have a clear-cut impact on the handling of persecution claims, it did lead to the promotion of women within the Immigration Bureau. (INS file 54933/785).

[8] Immigration service rules stipulated only that "clear and convincing proof of claims of exemption" from the literacy test be obtained by inspectors. There was no specification of what evidence was required. *Immigration laws: Rules of May 1, 1917* (Washington, D: Government Printing Office, 1917), 40. When a frustrated official sought out advice from the State Department to help assess claims, State's admittedly "not very responsive" response was that "the persecution of Christians and Jews was notoriously frequent in the former Ottoman Empire…[and] in Russia…One important aim of the readjustments now in progress [there] is to put an end to these outbreaks. It is to be feared, however that the present period or transition is peculiarly favorable to such manifestations." Letter of Bainbridge Colby to Secretary of Labor, Sept. 2, 1920, 150.676/37, Visa Division, Correspondence Related to Immigration, 1910-1939, General Records of the Department of State, RG 59, NARA.

prominent individuals (politicians, clergy, publicists) on behalf of women who made no such claims when first interviewed upon arrival. To more easily dismiss such appeals, in early 1921 the Commissioner General ordered all inspectors handling initial interviews to "very carefully" question illiterates "coming from such countries as Poland, Russia, Turkey or countries subject to Turkish rule with a view to placing them definitely and certainly on record as to whether or not they were subjected to persecution."[9] A week later Isaac Siegel told Congress that immigration officials had to "determine the meaning" of the persecution exception, and were interpreting it narrowly, in line with the increasing restrictionism of immigration laws.[10]

Unaccompanied women migrating to the U.S. after the war had to overcome not only the bar of illiteracy, but also several others. Many were deemed "likely to become a public charge" [LPC], a catchall immigration restriction commonly used against women traveling alone since they were deemed economically dependent (regardless of their skills or past work experience). Moreover, the wartime refugee image was one of rags, hunger, disease, and homelessness[11] and Armenian and Jewish women frequently had been dispossessed and arrived in the U.S. with little or no money; sometimes they received financial assistance or passage money from relief agencies abroad, which also was a bar to admission. In a few cases women were excluded or deported because they were found to have "constitutional psychopathic inferiority," a eugenically-inspired mental infirmity that first appeared in the 1917 law and was frequently

[9] Letter from Commissioner General to Commissioner at Ellis Island, April 13, 1921, INS file 52730/40. The Commissioner used the term refugee to refer to those with persecution claims despite the fact that refugee was not a recognized category in immigration law.

[10] *Congressional Record*, 61, April 21, 1921, 550.

[11] Homer Folks, *The Human Costs of War* (New York: Harper and Brothers, 1920). This book featured photographs of European (mostly Balkan) refugees by Lewis Hine, famous for his Ellis Island photographs, and thus connected the refugees to immigration.

applied to those who did not adhere to norms of domesticity.[12] The mental classification was assumed to "exist from infancy" and to be chronic. In order to prevent deportation, advocates for an immigrant diagnosed as mentally ill had to prove that the illness arose *after arrival*, so evidence of the traumatic effects of war were counterproductive. [13] Those unaccompanied

[12] According to the official Public Health Service *Manual of the Mental Examination of Aliens* (GPO, 1918), "there is an important group in the borderland between sanity and insanity…in this class are…the defective delinquents… and persons with abnormal sexual instincts…they may all be included in one general class and certified as constitutional psychopathic inferiority." (45) The scientific-sounding term "constitutional psychopathic inferiority" was originally pushed forward by Prescott Hall of the Immigration Restriction League, which supported eugenic theories. This deliberately obscured the fact that most American psychiatrists at the time were *not* supporters of race-based or strictly hereditarian explanations of mental illness but wanted the federal government to limit, and assume financial responsibility for, the number of mentally ill aliens in state institutions and used the immigration issue to gain recognition of their authority over determinations of mental illness. When "constitutional psychopathic inferiority" was first introduced by racist and restrictionist Congressmen in late 1914, some Congressmen questioned whether even doctors knew what it meant. Faced with this challenge to their expertise, psychiatrists and their professional associations rallied behind the phrase and their spokesman, Thomas Salmon, of the National Committee of Mental Hygiene, began to stress how the diagnosis particularly applied to social deviants. Gerald Grob, *Mental Illness and American Society, 1880-1940* (Princeton: PUP, 1983) 168-171; Ian Robert Dowbiggen, *Keeping America Sane: Psychiatry and Eugenics in the United States and Canada, 1880-1940*, chapter 213-31; *Congressional Record*, December 10, 1914, 82-83, 97; December 15, 1914, 204-206, 224; Jan 7, 1915 (1130-1133); *Report No. 95*, House of Representatives, 64th Congress, 1st Session, Jan. 31, 1916; *Congressional Record*, March 25, 1916, 4850; March 27, 1916, 4951-4953.

[13] Section 19 of the 1917 law authorized the deportation of "any alien who, within five years after entry, becomes [mentally ill] from causes *not affirmatively shown to have arisen subsequent to landing*." This shifted the burden of proof to the immigrant since the law previously mandated that the doctor show that mental problems arose prior to landing. Section 17 of the 1917 law mandated that the decision of immigration officials "shall be based upon the certificate of the examining medical officer and…shall be final as to the rejection of aliens affected with…any mental or physical disability." This gave a great deal of power to one doctor; most appeals were rejected on the basis of the public health service doctor's initial diagnosis, regardless of what happened subsequently. Still, Spencer Dawes, medical examiner for the New York State Hospital Commission, complained that advocates for "defective" immigrants managed, with the help of influential politicians, to get them in on bond or prevent deportations. "The State of New York…is almost constantly protesting to the federal officials concerning cancellation of warrants [of deportation], but without success." [Spencer Dawes, "Immigration and the Problem of the Alien Insane," and "Discussion," *American Journal of Psychiatry* 4 (1925), 456, 461.]
The effects of the law are clear in the case of Mabel Demurjian. Ten months after her arrival, 19 year-old Demurjian had a breakdown. Doctors at Manhattan State Hospital reported that she "continually tried to jump into a bathtub and immerse herself with water…thought she was doomed, was lachrymose;" they "tentatively" diagnosed her with manic depression. But the immigrant medical examiner certified that her depression was due to "constitutional psychopathic inferiority." According to him, her disease was hereditary and preexisting: "This is a case of a young Armenian girl whose mother died of grief and who has been disturbed since she witnessed her brother commit suicide before she entered the United States, hence the cause of her psychosis could not have arisen subsequent to landing." Demurjian's family contested these facts: her father was murdered by the Turks, her mother died of typhus, and her brother of influenza. Testimony about "the memory" of the "suffering which she had endured" and the "indelible impression" left by "horrors" she had witnessed during the persecutions of Armenians by Turks or a comparison of Demurjian to a "shell-shocked" soldier, however, did not help her case. After she left the hospital, she showed "no signs of mental disorder" when twice examined by other psychiatrists. One commended her for "coming through the trying experience of the last months of constantly wavering between the hope of remaining in

women who were pregnant or traveling with young children were considered LPC and suspected of sexual immorality.[14] The 1917 law excluded not only prostitutes but also those coming to the United States "for any other immoral purpose." Many young Armenian women who had been widowed, orphaned, or abducted during the war were encouraged by relief and ethnic organizations to marry Armenian men who had moved to America before the war; "picture bride" and similar immigration arrangements were increasingly scrutinized and frowned upon by

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this country and the despair of deportation." Still, the Assistant Secretary of Labor insisted that the examiner's original diagnosis was controlling and that there was a likelihood of future attacks of insanity. The Assistant Secretary also did not believe the assurances that Demurjian's family would cover her expenses. Demurjian was deported to Aleppo in April 1922. (INS file 55154/10).

A case that raised similar issues was that of Rachela (or Jennie) Adler. Adler was from Kobryn, a city in the Russian empire with a large Jewish population, many of whom emigrated to the United States in the late nineteenth and early twentieth century, including Jennie's father. The city was occupied by the Germans during World War I, the scene of much fighting during the Polish-Bolshevik war, and then handed over to Poland in 1921 (it is now in Belarus). Jennie was 20 years old when she arrived in the United States in April 1921. She worked steadily as a machine operator through the fall of 1922, when she developed fainting spells. Her estranged father and resentful stepmother found her "willful" and asked her to leave home and she lived with friends. Jewish organizations and her friends were reluctant to send her to a hospital, for fear that she might be deported, but her brother checked her into the Bellevue *medical* ward in September 1923. She was transferred from there to the psychopathic ward, and then, a week later, she was sent to Manhattan State Hospital on Ward's Island. There a medical examiner diagnosed her with constitutional psychopathic inferiority that could not have arisen subsequent to landing and predicted that she would not recover and would continue to be a public charge. In 1924 her brothers insisted that she was not insane, that the psychiatric hospital would make her worse, and, if released, they would insure she did not again become a public charge. Jennie's brother denied that she had any mental illness before coming to the United States but also said that "she saw some terrible things" in Kobryn, including "her sweetheart murdered before her eyes…and also her uncle have his arm cut off." The immigration authorities ordered her deportation, but the Polish government refused to accept her back, claiming she did not have Polish nationality. (The Polish "passport"—really just a document permitting exit—Jennie had used to come to the United States was issued on January 25, 1921 by the Polish Administration of Concentration Camps and the Zone of War Operations). Spencer Dawes agreed that Jennie was "much improved" in 1925 and released her to her family on a bond "pending her deportation." She lived in limbo status in the United States until 1927, when the State Department again failed to procure her a passport and the INS finally canceled her deportation. (INS file, 55237/970; see case file for Adler in Box 2, Series II: New York Immigration files, 1920-1938, National Council for Jewish Women, Department of Service for the Foreign Born Records, Yeshiva University Special Collections.)

[14] In March 1921, the Commissioner General was not impressed with Dina Braunstein's account of her pregnancy as the product of rape and believed she should be excluded as LPC; Katherine Herring did not question the story, but, since Braunstein's parents were still abroad, did "not believe there would be any great hardship involved" in excluding her and sending her back to them. Grace Abbott of the Immigrant Protective League wrote a letter to the Labor Department on behalf of relatives who "appeared altogether sincere in their desire to help the girl and their conviction that she is fundamentally a good girl." (INS file 54999/320). The claim by advocates for Bayzan Zilfian and her daughter Siranouche—"that their relatives and friends have been killed by the Turks and the aliens have suffered much during the deportation by the Turks"—was "not believed to represent the correct facts" by officials in Washington. A March 1921 letter from the assistant commissioner at Ellis Island insinuating that Siranouche was born out of wedlock influenced this view. (INS file 54999/166.)

officials who saw them less as attempts at rescue and more as opportunities for trafficking.[15] In 1919 the Armenian National Union – a coalition of Armenian political, religious, and welfare organizations—opposed the showing of a film, based on a memoir by Aurora Mardiganian, that graphically depicted the "ravishing" of Armenian women during the genocide, claiming that its sensationalism "hurt Armenian feelings"[16]; the film's sensationalism seems also to have led, in 1922, an Assistant Secretary of Labor to readily accept allegations that Mardiganian engaged in sexual "misconduct" before arriving in the United States and an immigration investigator to ask her if she exchanged sex for admission.[17] Especially after 1921, immigration officials were more interested in investigating cases of Armenian and Jewish women suspected of coming for immoral purposes or of using "subterfuge" to evade the newly passed quota law, than in considering rape during genocide or pogroms as relevant to religious persecution claims.[18] There was a similar disregard in the exclusion—rather than admission for medical treatment, which

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[15] For the reliance of Armenian genocide survivors on picture- bride arrangements, see Isabel Kaprielian-Churchill, "Armenian Refugee Women: The Picture Brides, 1920-1930," *Journal of American Ethnic History*, 12.3 (Spring 1993): 3-29.

[16] The report of the Armenian National Union is quoted in Vartan Matiossian, "The Quest for Aurora: On 'Ravished Armenia' and its Surviving Fragment," *Armenian Weekly*, April 15, 2014.

[17] In 1917 Mardiganian arrived with a naturalized Armenian who claimed she was his daughter. Five years later, the immigration authorities discovered that the naturalized Armenian was not her true father (who had been killed in 1915). Assistant Secretary of Labor E.J. Henning felt the allegations that Mardiganian had "a lurid career before attempting to enter the United States"—particularly her having lived with two different Armenians and a Turk—merited investigation and, if true, her deportation. After her arrest, an inspector asked Mardiganian whether she had been asked "to marry…or to live…or do anything with" the naturalized Armenian who brought her to the United States or with anyone else. (INS files 54290/493 and 55227/244).

[18] In the case of Anna Sherbetjian, the immigration authorities felt that being stabbed in the neck during the Armenian deportations, sexual "violation" in a harem, and subsequent enslavement as a domestic servant in a Turkish home was "no basis for exemption because of religious persecution." The officials were more concerned with the fact that the "picture husband" Sherbetjian intended to marry had paid her passage. (INS file 54766/777). The fact that Spunce Schneiderman initially testified that she was coming to join her father rather than her uncle in order to be exempt from the literacy test led the immigration authorities to dismiss as self-serving her further testimony of rape, beatings, and the destruction of her home when first Bolsheviks and then Poles took over her town. Even if her testimony were true, the Commissioner General deemed the abuse "to have been principally or wholly caused by the war conditions" and insufficient to establish exemption from the literacy test on persecution grounds. (INS file 54999/790).

was permitted under the 1917 and 1921 laws—of those with injuries that were clearly a product of wartime or postwar violence.[19]

In the wake of WWI, most immigration officials were interested in gatekeeping and used all kinds of arguments and strategies to get around exemptions. In cases involving Jews arriving from Romania, immigration officers claimed that it was ambiguously defined "racial prejudice" rather than religious persecution that was involved, and so did not come under the exemption. It is especially unclear what they meant by this when witnesses testified that conversion would have ensured them security.[20] A Jewish woman from Russia was not deemed persecuted because she was hidden "and being protected" from soldiers and bandits by "those not of her faith." At the same time, the Bureau also justified her exclusion based on bad interfaith relations that did not rise to the level of persecution but were a product of the "lawlessness which accompanies civil war and revolution, in which neighborhood hates enter into."[21] An Ellis Island official admitted that "notwithstanding all I have read about the matter," he was still "somewhat in doubt as to" whether "persecutions against Armenians…have been more of a political rather than of a religious character." All he was sure about was that, "certainly…it is obvious that this ground [i.e. persecution] will be urged as sufficient reason for the admission of any illiterate Armenian who

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[19] When the Kaminer family arrived in the United States from Russia in 1922, they explained their 10 year old daughter Sonia's defective knee by claiming "when the Bolsheviks entered the house to rob us…Sonia was slow in running downstairs [to the cellar]. She was caught by the Bolsheviks and struck in the knees by the butt of a rifle." The Immigration authorities refused to admit her and the family sent her to Bremen—their port of embarkation—for treatment. Cecilia Razovsky finally managed to get her a visa to the United States in 1934 as conditions in Germany worsened. (INS file 55255/152; Case file in Box 3 Series II: New York Immigration files, 1920-1938, NCJW Department of Service for the Foreign Born Records, YU Special Collections).
It is worth pointing out that in May 1916 eugenicist and restrictionist Robert DeCourcy Ward published an article in *Scientific American Monthly* entitled "Immigration and the War" positing the importance of keeping out "the mental and physical derelicts of the war" so that they did not pass their infirmities onto their offspring.

[20] Case of Toba Simarin, INS file 55180/634

[21] Case of Riva Kisliouk, INS file 55190/859

may come her from any of the territory formerly comprising the Turkish Empire."[22] If an Armenian or Jewish refugee stopped too long in another place on her way to the United States, even if that place was a rescue home, orphanage, or a refugee camp or if she only had permission to stay there in transit temporarily, she was typically found by immigration inspectors not to be escaping persecution in her last place of residence and sent back to that place. Many young Armenian women who lost their parents and were exiled from their homes in East-Central Turkey in 1915 eventually made their way to French occupied Syria before coming to the United States. Many were excluded and sent back there by the immigration authorities.[23]

Representatives of the Hebrew Sheltering and Immigrant Aid Society [HIAS]—an organization run and supported by East-European Jews and immigrant associations, with additional backing from, and collaboration with, prominent German-American Jews—were aware that restrictionists were calling for the imposition of immigration quotas or even laws suspending all immigration specifically to prevent the admission of Jewish refugees after the war.[24] Did this affect the way HIAS advocated for immigrants in exclusion hearings? How did

[22] Marie Armaotian, INS file 54766/771

[23] Alice Kalochian, INS file 55190/572. Many other cases like this are discussed in this chapter.

[24] Testimony of John Bernstein, President of HIAS, Emergency Immigration Legislation, *Hearings Before the Senate Committee on Immigration*, 66th Congress, 3rd Session, January 4, 1921, 131-143. Two years later, Albert Johnson, chairman of the House Committee on Immigration, stated that "The present 3 percent [quota law] was made necessary … on account of the [Ukrainian Jewish] refugees pouring in from Poland." (House of Representatives, 67th Congress, 4th Session, on H.J. Res. 394, Dec. 5, 1922, 168). Ten days letter, he said the same: "Refugees from Russia…that came into Danzig and other seaports…the fact that there were so many…led to the passage of the 3 percent act. That [law was passed] right in the face of great distress." (House of Representatives, 67th Congress, 4th session, on H.R. 13269*,* Dec. 15, 1922, 7). In July 1922, Louis Marshall admonished leaders of Jewish organizations in England from publicly advocating the emigration of Jewish refugees to the United States. "There is now under consideration a further amendment intended to reduce the annual quotas to two percent. Are you aware of the reason for this? The debates of the Congress of the United States distinctly show that a majority of our legislators have become convinced that America is being made the dumping ground for European refugees… Against such arguments we are waging an unequal battle and the right of asylum, which has been one of our finest traditions, is being ignored." (Marshall on behalf of the AJC to Joint Foreign Committee of the Jewish Board of Deputies, July 21, 1922, Louis Marshall Selected Papers, Immigration, Box 2, AJC Archives).

HIAS respond to the narrow way immigration officials interpreted "persecution"? Increasingly, this chapter shows, when making appeals, HIAS downplayed persecution claims and forefronted suitors or relatives (siblings, uncles and aunts, nieces and nephews) in the United States who would care for women and ensure they would not become public charges. [25]

Missionaries and social workers concerned about Armenians moved in the same direction. The 1921 immigration law—which was in effect from June 1921 through June 1924—set the annual quota for each nationality group at 3 percent of the number of foreign born persons of that nationality enumerated in the 1910 census. The only immigrants exempt from the quota were minor children of U.S. citizens.[26] During debate over this law, the Senate explicitly rejected a religious persecution exception modeled on the wording of the exception to the literacy test that was geared specifically toward Jews and Armenians.[27] After the devastating fire at Smyrna in late 1922, debate was held in the House of Representatives on a bill that would explicitly allow refugees from Turkey into the United States outside the quota, which had been exhausted for the year. Relief workers were careful to frame the measure as one that would unite families by allowing those already in the United States to petition for the admission of relatives. Here is an exchange between Charles Vickrey, general secretary of Near East Relief—an organization

[25] As elaborated later in this chapter, before the 1921 quota law went into effect, HIAS raised the issue of persecution of various kinds on behalf of illiterate women from Romania, Syria, Greece, Poland and elsewhere. [These cases appear in folder 11, MKM15.19, 254.4.10, HIAS records, YIVO archives]. But most HIAS appeals from this period were for public charge or medical treatment cases. In 1921, appeals mention "rich" or "financially responsible" immediate relatives in the US and the "tragedy" of deporting aliens back to places where conditions are chaotic and they have no one to help them. By 1922, the focus of appeals is more exclusively on not becoming a burden and the help of relatives; fewer cases refer to conditions abroad and fewer still emphasize the significance of these conditions. When immigrants were children or parents, the appeals would refer to the unfavorable effects of deportation on their "tender" and "advanced" ages. [For these trends, see cases on reel 3, MKM 10, RG245.2, HIAS Ellis Island Bureau, HIAS records].

[26] 42 Stat. 5

[27] *Congressional Record* 61, May 3, 1921, 966-967.

chartered by Congress, supported by prominent businessmen and statesmen, and run by missionaries—and Congressman Klezca, Republican representative from Wisconsin:

> Kleczka: Do you not think that a distinction should be made rather on the ground of allegiance? Do you not think that if there is a government in existence and it is able to take care of its nationals, we should look to that government for relief, and that if any relief is accorded, it ought to be accorded to those who have no government at all to protect them?...do you not think that those who have no government and nobody to care for them should receive first attention?
>
> Vickrey: I should say so. All through this law there is the supposition that the person to whom the applicant [i.e., the refugee overseas] would primarily look is the son or the brother who has come to America, established his citizenship, perhaps acquired a fortune, and who would like to give a home to his mothers and sisters.[28]

Saving womenfolk thus overshadowed concern for statelessness. (And, again, the State Department refused to provide advice regarding the admission of refugees[29]). When restrictionist Congressmen claimed the bill would defeat the quota law and would open the floodgates, advocates insisted numbers would be small, that it would not set a precedent for other refugees, and that limiting admission to relatives would be in line with the quota law. Aghavnie Yeghenian, an Armenian American social worker for the Young Women's Christian Association [YWCA], argued that Armenians were being driven out of their native land in a total manner unlike other refugees and that the quota from Turkey was much smaller than that of other countries "where there was misery and suffering." It was "a most elementary human obligation of the United States" to admit Armenian refugees who were relatives of American citizens and

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[28] *Hearings on H.R. 13269, Admission of Near East Refugees*, 67th Congress, 4th session, Dec. 15, 16, 19, 1922, 86.

[29] Secretary of State Charles Evans Hughes wrote House Immigration Committee Chairman Albert Johnson on Dec, 21, 1922: "While I should be glad to be of any further assistance to your Committee in ascertaining facts I regard to the general refugee situation in the Near East or other parts of the world which you may consider pertinent with reference to the question which is before you, I do not feel that it would be appropriate for this Department to express a judgment on this question of immigration policy." (Committee on Immigration and Naturalization Papers, 67th Congress, Box 394, RG 233, NARA).

residents. These refugees had "rightful homes" in the United States. The bill providing for their admission was "the exception which goes with all absolute rules. It is the moral side of the restrictive law."[30] Despite these arguments, restrictionist Congressmen from the South and West voted down the bill in the House Immigration Committee.

When faced with Armenian and Jewish refugees arriving in excess of the quota from the summer of 1921 through the spring of 1924, immigration officials sometimes allowed them in temporarily to relatives, although much less than before (under the 1917 law). For a short time in late 1922, those Armenians already admitted temporarily were not ordered deported when their time was up "with the hopes that Congress would pass" the refugee legislation. [31] But new arrivals were not necessarily allowed in, especially if they were illiterate. In October 1922, HIAS's Ellis Island committee reported that illiterates "were strongly affected by the present policy of the Labor Department" and made up a significant percentage of their exclusion and deportation cases.[32] In August 1923, a Young Women's Christian Association social worker provided the INS with a list of four cases of young Armenians, all coming to the United States to join uncles and siblings, whose cases had been handled differently during the same month; two were excluded as excess quota, one paroled to her brother, and one admitted temporarily on bond. The only explanation the Immigration Bureau could provide for this disparate treatment was that "no particular hardship" was felt to be involved in the exclusions because each had a parent

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[30] Aghavnie Yeghenian, Letter to the Editor, *New York Tribune*, Dec. 24, 1922, A4.

[31] 55270/545; 55270/544; 55270/561; 55270/587; 55270/573

[32] Report of Ellis Island Bureau for October 1922, MKM 15.19, Xc-14 (Reports on activities at Ellis Island 1921-22), 254.4.10, HIAS records, YIVO archives. That month the same number of HIAS Ellis Island clients (20) were excluded and deported for illiteracy as for excess quota. For the exclusion of a Jewish illiterate women in November see the case of Dwoira Grinstein, INS file 55270/562.

remaining abroad.[33] In 1922, immigration officials argued that deporting "family units" or reuniting families overseas through exclusion of some of their members was humane—regardless of past experiences or future prospects abroad.[34] When entire "family units" of Armenians arrived in late 1922 and early 1923, while the refugee legislation was being debated, they were definitely excluded as excess quota since the bill only contemplated allowing in relatives with family members already in the United States.[35] Some officials argued that temporarily admitting excess quota immigrants that involved "peculiar hardships" ("wives and children coming to husbands and fathers, widowed mothers coming to sons") was inhumane, since they were legally inadmissible and would ultimately be forced to leave.[36] The argument seemed to be based on the idea that being forced to leave the United States after a short stay was somehow more devastating than, say, living in limbo in a transit port. But, it is clear from the case files that the argument was also based on the knowledge that, if allowed in temporarily, immigrants were harder for the Immigration Service to deport. Whatever the real reason, the

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[33] Letter from Mary Hurlbutt to Irving Wixon, August 28, 1923 and Response from Husband to Hurlbutt, September 18, 1823, INS file 55360/429.

[34] Letter of Robe Carl White, June 22, 1922 In re: Abraham Bastanjian, wife Hussnigar, and child Roupan, INS file 54766/967; see also White's letter about deporting the whole family in case 55265/197.
In early 1922, the Immigration Bureau refused to admit a woman and her children so they could join her husband and other children already in the United States. Instead, the Bureau suggested that the entire family be deported together. Assistant Secretary of Labor Henning wrote Isaac Siegel on January 20: "It is the policy of the government not to separate families. I cannot understand how the father and the other children got in last April when part of the family was still in Europe. The separation of the family took place at that time and not now. The present act does not separate a family but merely bars the reuniting of the family by bringing the rest of them here. There is no bar to their being reunited by the father returning with them. The separation, however, was there voluntary act last April which should not have been approved by the United States by admitting the father." INS file 55021/19.

[35] A good example of this is a case of an Armenian couple who traveled from Batoum to Constantinople; the husband fought with the Allies. The Department argued that they "are apparently not refugees, and certainly they are not relatives within the scope of the refugee relief bill now pending before the US Senate. It is a family unit and they are young and strong" and "no hardship in returning these aliens to Batoum." INS file 55270/594, 598.

[36] INS files 55190/32; 54999/183; 54999/475.

policy proved unfair since, in late 1922 and again in 1924, Congress passed remedial legislation allowing those people temporarily admitted "for reasons of humanity" and because of "unusual" or "extreme hardship" to remain permanently.[37] There was little publicity given these two bills, but advocates for Armenian and Jewish immigrants were interested in them.[38] It is also clear that there remained *many* temporarily admitted Jews and Armenians in the United States who did not qualify for adjustment through this legislation.[39] As immigration advocate Max Kohler told Congress, "to have people here who cannot become citizens and who cannot be deported…creates a bad atmosphere in the country…they have a Damocles sword hanging over their heads all the time" that "affect[s] their conduct in all other matters."[40] Moreover, both the

[37] 42 Stat. 1065; 43 Stat. 669.

[38] Mihran Kalaidjian to Albert Johnson, Feb. 9, 1922, House Committee on Immigration and Naturalization Papers, 67th Congress, Box 394, RG 233, NARA; Albert Johnson to Madison Grant, June 4, 1924, HJ Res 283, Papers Accompanying Specific Bills and Resolutions, House Committee on Immigration and Naturalization, 68th Congress, Box 52, RG 233 NARA.

[39] Approximately 200 temporarily admitted people were supposed to be adjusted by the1924 law. Since less than half of the over 5800 Jews and Armenians temporarily admitted in the period covered by the 1924 law—between mid-1922 and mid-1924—left the country, there were Armenian and Jews who remained unadjusted. Agniv Kurdian, who had come to the United States in November 1922, remained, in 1928, unable to adjust to permanent residence. Though she had made "reference to the political conditions existing in Turkey" at the time of her initial admission for a six-month visit and when appealing for an extension, the INS refused to consider her case one of "extreme hardship" covered by the 1924 act. This despite the fact that Kurdian could be deported to Turkey, since the Turkish authorities did not permit the return of Armenians or issue them passports. In 1928, Kurdian could not leave the United States to see her husband, nor could she petition for his admission. Similarly, W.W. Husband, Commissioner General of Immigration, told a representative of the Union of American Hebrew Congregations that no action to enforce departure would be taken in the cases of over 1500 temporarily admitted Russian Jews. But neither would their status be adjusted despite Husband's belief in the "tragic" circumstances of their admission and "hardships of great severity" that deportation would impose. (For the numbers to qualify under the remedial legislation, see "Permitting Certain Aliens to Remain Within the United States," House Report No. 995, 68th Congress, 1st Session, June 5, 1924. For the number of Armenians and Jews temporarily admitted and departing, see Table 4 in the Appendices of the *Annual Report of the Commissioner General of Immigration* for the years 1923 (page 44), 1924 (page 38), and 1925 (page 39).) Kurdian's case file is 55301/361; on the Russian Jews, see Annual Report of the Union of American Hebrew Congregations (Cincinnati, OH: Nay & Kreidler, 1924) 9472.)

[40] When Kohler added that "they ought to be made to feel that they are a part of our people, and ought to be—," the Chairman of the House Immigration Committee cut him off and said "They ought to recognize the fact that they beat their way into the United States." See *Proposed Amendments to the Immigration Act of 1924,* Hearings before the Committee on Immigration and Naturalization, House of Representatives, 71st Congress, Second Session, January 27, 1930, 297.

1922 and the 1924 laws precluded the adjustment of those temporarily admitted who were inadmissible or deportable *on any other ground* besides exceeding the quota, such as LPC, illiteracy, immorality, or insanity. So, Jews and Armenians who appealed their exclusions and were admitted on bond for any of those reasons could not adjust. Eventually, many of these people were able to adjust, but the process took many years and sometimes litigation.

Jewish and Armenian immigrants excluded in the early 1920s joined the ranks of others like them waiting for quota slots in Warsaw and Constantinople. HIAS and the Joint Distribution Committee (a Jewish relief agency) helped establish a stocking factory in Walholin, near Warsaw, to employ unaccompanied girls and the Near East Relief and the YWCA ran embroidery and sewing classes in Scutari outside Constantinople; these were considered not only opportunities for training and employment, but ways to keep women from dishonest travel and document brokers, "white slavers" and "powder and paint."[41] Jews from the Ukraine and Russia who had come to the United States via Poland were not permitted to return to Poland for permanent residence[42]; many Jews who were excluded or deported from the United States listed

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[41] Report for Mr. Bernstein, August 8, 1921, 245.4.12, MKM15.22a, Folder 12, Europe-3, HIAS records, YIVO archives; see also case file for Judas Asofsky for HIAS's efforts to keep a young woman waiting in Warsaw from the "white slave traffic," Box 2, Series II: New York Immigration files, 1920-1938, National Council for Jewish Women, Department of Service for the Foreign Born Records, Yeshiva University Special Collections. For the Scutari center see letters from Margaret White, folder 4, reel 63, YWCA of the USA Records, Sophia Smith Collection, Smith College, Northampton, MA. (hereafter YMCA Smith).

[42] The case of Jennie Adler (mentioned in footnote 12) was "merely another case where an alien has resided in Poland, secured a Polish passport, and proceeded to the United States, and when we attempt to deport the alien the Polish government refused to accept the alien, claiming they cannot establish her legal domicile." (Letter from W.W. Brown to Commissioner General of immigration, Dec. 27, 1924, INS file 55237/970). Jews from Russia and the Ukraine were "greeted with open hostility" in Poland in 1920 and most "regarded their stay in Poland as purely temporary while they waited for entry visas to Canada, the United States, Palestine and other countries." Konrad Zielinski, "Population Displacement and Citizenship in Poland, 1918-1924," in *Homelands: War, Population, and Statehood in Eastern Europe and Russia, 1918-1924*, ed. Nick Baron and Peter Gatrell (London: Anthem, 2004) 100. John Bernstein, President of HIAS, noted at an organizational meeting on the situation abroad that, "Permission was granted [to Ukrainian Jews] to go through Poland…Between us we have to know that while we were receiving [in the U.S.] 5,000 to 6,000 a month from Poland [in late 1920 and early 1921], they were not Polish Jews, but at least 90% Ukrainian Jews with Polish passports." (Report by Hugo Pam and Discussion, MKM15.22a, Folder 12, Europe-1, 245.4.12, HIAS records, YIVO archives).

their addresses as HIAS Warsaw or Danzig and HIAS arranged with affiliated organizations for their landing in West European ports (like Southampton or Bremen, Antwerp or Rotterdam, Paris or Riga), though some returned to areas under Soviet control.[43] The National Council of Jewish Women, headed by social worker Cecilia Razovsky, referred cases of Jewish women deported for illiteracy to a cooperating Jewish agency abroad and arranged for "the teaching of reading and writing to the deportee in order to have the girl return to the United States after she is able to pass the literacy test."[44] After the passage of the 1924 quota act, Jewish organizations scrambled to find alternative refuges so that Jews stranded in European ports were not deported to Russia; when Jews headed to Cuba in large numbers, a consortium of American Jewish organizations sent money and representatives there to provide medical relief and social and educational aid.[45] Armenians were mostly deported to way stations and port cities they had traveled through like Aleppo, Beirut, or Marseilles; in the latter city, Armenians stayed at the Hotel Levant and tried, with the help of YWCA workers, to learn to read in order to make another attempt at admission.[46] (French law required deportees to pass trough France without stopping, but this law was not enforced). The 1921 Quota Law mandated that preference within the quotas be given to relatives of U.S. citizens and residents, but by mid-1923 there were already more people in the

[43] See cases of Fruma Wilenski, Massa Grossman, Rosa Haber, Rwyka Kaplan, Benjamin Sinuk, Records of the Warsaw Consulate, Volumes 109, 110, 111 (1923-1925). RG 84, NARA.

[44] A Report on the Work of the Bureau of International Service of the National Council of Jewish Women, February 15, 1927, Box 1, Folder 1, Cecelia Razovsky Papers, American Jewish Historical Society, Center for Jewish History.

[45] Emergency Committee on Jewish Refugees, Box 18, file 2, General Correspondence, American Jewish Committee Archives.

[46] "Millie Nadjarian…is staying at Hotel Levant; was referred to us by Mr. Brandony of Migration Bureau at Companie Generale Transatlantique. While waiting for an answer from America, we are trying to teach Millie some English…We are trying to use the best we can this time of long waiting for so many of them in trying to teach reading to those who are illiterate and will absolutely need it to enter America." Marseilles Port Report for November 1921, reel 154, YMCA Smith.

preferred class than the quota for Turkey allowed. In Aleppo, the American consul had to discriminate among those in the preferred class, granting only one in four visas; given this level of discretion, it is not surprising that the consul decided to deny a preference visa to an Armenian woman because she had lived with a Turk.[47] The 1924 law (the Johnson-Reed Act) further raised the bar by reserving preferences to relatives only of *citizens* and within an even smaller quota (2 percent of the number of foreign born persons of each nationality enumerated in the 1890 census).[48] And it was just at this time that Armenians had to fend off a court challenge—backed by the Department of Labor—of their racial admissibility to citizenship; in defense of their "whiteness," Armenians insisted on their distinction from Turkish Muslims, with whom they did not "intermingle."[49] Thus, restrictionism and opposition to it emphasized ethnic purity. On the one hand, in late 1925, a missionary appealed on behalf of Armenian girls in Aleppo and Beirut unable to join their relatives in the United States because of the quota law. "Their parents were murdered by Turks and…the position of these girls is terrible…These Syrian towns have much deteriorated since the war and are not at all fit places for a pretty girl of 15 years to be alone."[50] On the other hand, by this time, the Turkish government refused entry and passports to Armenians whom the United States wanted to deport.[51]

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[47] See the consul's rejection of a visa to Satenig Aghajamian, Correspondence of the American Consulate in Aleppo, Syria, 811.1, 1923, volume 93, RG 84, NARA.

[48] 43 Stat 153. Wives and children under 18 of citizens could enter outside the quota. Husbands, parents and children between 18 and 21 of citizens had preferences within the quota.

[49] Earlene Craver, "On the Boundary of White: The Cartozian Naturalization Case and the Armenians, 1923-1925," *Journal of American Ethnic History*, 28.2. (Winter 2009) 46.

[50] Letter of Emily Robinson, November 24, 1925, 860j.48/213, reel 8, Microfilm T1192, Records of the Department of State Relating to the Internal Affairs of Armenia, 1910-1929, NARA.

[51] See the case of Rose Adomian, INS file 55526/20. On March 2, 1928, the Immigration Bureau closed her case since "Turkish authorities will under no consideration issue passports for aliens of the Armenian race." See also, "Rules Governing Conditions of Entry into and Travel in Turkey, Order of Ministry of Interior, Published by

Family unity was a principle called for by both restrictionists and advocates for immigrants. In 1925, the Department of Labor's Naturalization Bureau directed examiners to prevent the naturalization of men with wives and children abroad on the grounds that the men had deserted their families. Restrictionists claimed that family separation was an individual choice (the phrase used was "voluntary act")—of immigrating alone or of not returning to Europe. To their minds, the solution to family separation was having fathers go back.[52] The aforementioned social workers, Cecelia Razovsky of National Council of Jewish Women's Department of Immigrant Aid and Aghavnie Yeghenian, who headed the YWCA's Department of Immigration and Foreign Communities, protested that many Jews and Armenians had no homes or countries to return to. Further, they argued that it was the quota law and the naturalization policy that made it impossible for families to unite since only the relatives of citizens received non-quota or preferential status. The policies created what both Razovsky and Yeghenian called a "vicious circle. " As Yeghenian phrased it, "if he became a citizen, he could bring over his family, but if his family is not already here he cannot become a citizen."[53] Or as Razovsky put it: "denying citizenship to men whose families are abroad and refusing visas to women abroad because their husbands in this country are not citizens." Razovsky also claimed the policies also imperiled young Jewish women who had gone to Cuba. "Unable to proceed to their relatives here, great numbers of transmigrants were through…urgent necessity—since they had no home to which to return—driven into lands where modern facilities for their protection

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Anatolian Agency," enclosed in American Foreign Service Report from the American High Commissioner, Turkey, to the Department of State, July 30, 1924, 867.111/150, reel 82, Microfilm 353, Records of the Department of State Relating to the Internal Affairs of Turkey, 1910-1923, NARA.

[52] *Admission of Certain Relatives*, Hearing Before the Committee on Immigration, U.S. Senate, 69th Congress, 1st Session, 48-49; 68.

[53] Aghavnie Yeghenian, "Y.W.C.A Service in the United States," *Women's Press*, May 1925,

are entirely lacking…Not infrequently have relatives in this country applied to social agencies to assist them in locating sisters or nieces who have suddenly ceased answering letters and have disappeared."[54] Armenian women and their relatives were in the same situation. Armenian migrants "preferred to leave for Cuba than wait in Marseilles for a chance of reaching their relatives in the USA," a social worker in France observed in late 1924.[55] Under the present immigration laws, a social worker in Boston observed the following year, "people are realizing more and more the fact that the chance of bringing their relatives to this countries is very small…compelling them to resort to illegal means…American citizens go to Cuba and marry girls who are anxious to come to this country and can do so in no other way. In most cases, these marriages turn out to be unhappy ones."[56] In 1927 Yeghenian argued, in a published a report drawing on the YWCA's case files, that amending the immigration law was the remedy for the tragically broken homes of Armenians.[57]

If read against the grain, though, Yeghenian's report hints at the inadequacy of family and ethnic unity as a solution in some cases involving Armenian women in the 1920s. Many cases involved daughters who were "lost" during the war years and for a few years afterwards; by the time they were found, they were over 18 and thus ineligible to immigrate outside the quota. The report refers to the case of a man who lost track of his family during the Armenian

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[54] Cecelia Razovsky, "America's Present Immigration Policy: The Visa and Quota Laws as they Affect the Clients at Social Agencies," 1925, Box 1, Folder 1, Razovsky Papers.

[55] J. E. Bourseiller (of the International Migration Service), Marseilles Reports, July-November 1924, Box 29, Folder 13, International Social Service United States of America Branch records, Social Welfare History Archives, University of Minnesota.

[56] Report of the Armenian Secretary for 1925, Boston International Institute, Box 1, The International Institute of Boston, Massachusetts Records, General/Multiethnic Collection, IHRC Archives, University of Minnesota.

[57] A. Y. Yeghenian, A Study of One Hundred Separated Families From the Records of the International Institutes, Box 528: folder 17, YWCA of the U.S.A. Records, Sophia Smith Collection, Smith College, Northampton, Mass.

deportations of 1915 and got a message from his wife after the armistice that ransom money was needed to get a Turkish family to deliver a niece to an orphanage in Syria run by the Near East Relief. In another case, a man discovered that, when he naturalized and could bring over his wife from Syria outside the quota, she had given up her Christian faith and "ran away with a Mohammedan." My close analysis of 200 such cases[58] reveals that the YWCA's Armenian-American social workers were particularly challenged by cases of survival that involved inter-ethnic sex or migration experiences that highlighted intra-ethnic problems. Migration-related fraud—a consequence of post-war geopolitical and economic disruption coupled with unprecedented legal restrictions on immigration—was a further preoccupation of social workers concerned with the respectability of the ethnic community. In these cases, though unity with husbands and relatives in the United States was a consolation—after experiences of loss and suffering, in the face of restriction and statelessness—it was not always ideal for Armenian women. Analysis of the cases shows how immigration law exacerbated problems that were a product of war, forcing those who were already in hard situations to make choices that led to further hardship. Working through these difficult Armenian cases was Yeghenian's way of coming to terms, personally and professionally, with the legacies of the Armenian genocide. It also heightened her awareness of the importance of paying attention to women's needs and rights in immigration advocacy.

Yeghenian's career attests to some unexpected connections, beyond the typically mentioned one between American missionaries/educators and Armenian immigrants. Yeghenian was born in Corlu in 1895, educated at American schools in Constantinople, and left for the

[58] My analysis draws upon confidential case files involving Armenians from the YWCA's International Institutes in Massachusetts, Connecticut, and Ohio in the 1920s. It was the practice of the Institutes to employ "nationality workers," or co-ethnic (i.e. Armenian American) social workers to handle these cases. The case files are housed at the University of Minnesota's Immigration History Research Center [IHRC].

United States in the summer of 1915. Yeghenian achieved prominence within the YWCA despite her Apostolic faith and support for Soviet Armenia; both made her feel all the more American and she used her diverse religious and political connections to resolve tricky cases. This was all the more important considering the very different orientations of organizations and advocates involved with Armenian migrants in the 1920s.

Seeking Asylum, 1921-1923

These conflicts were most tangible at a moment of transition and crisis: the chaotic months after the 1921 law went into effect, when ships carrying Armenians and Jews desperately tried to make it to Ellis Island before the monthly allotment of the annual quota for each country was exhausted, new immigration officials handled cases with unprecedented discretion, and advocates called for exceptional leniency.[59] After the immediate crisis past, emergency measures remained in place—and had important impact on migration and advocacy in the years that followed.

In 1921, control over immigration decisions was in the process of passing out of the hands of progressive Assistant Secretary of Labor Louis Post and Acting Secretary of Labor for Immigration Matters Rowland Mahany in Washington[60] and Commissioner Frederick Wallis in

[59] For the latter: see the letter of G.H. Papazian, president of the Armenian National Union of America (founded in 1917 to represent the Armenian General Benevolent Union, the Armenian Apostolic and Protestant Churches and liberal political parties) in an August 17, 1921 appeal to the Commissioner of Immigration (INS file 55166/229) and Letter of Dec. 9, 1921 to the Secretary of Labor from Louis Marshall on behalf of the Joint Distribution Committee and the Hebrew Immigrant Aid Society (INS file 55166/451).

[60] In an appeal for the liberalization of the immigration laws, Mahany told Congress in 1926: "It is not in accordance with the dignity nor the purpose nor the destiny of the United States of America to go upon record as a nation or a government that sunders families, violates the tenderest feelings of the human heart, and affronts civilization by measures which result in extraordinary cruelty. As Acting Secretary of Labor, it became my task in large degree to pass upon immigration cases, and it is a terrible obligation upon an official to be compelled, in obedience to law, to affix his signature to a decree which revolts every feeling of his heart and soul and mind." Mahany frequently did his best to temper the harshness of the law in cases involving Jewish and Armenian refugees.

New York. Taking their places were Assistant Secretary of Labor E.J. Henning and Ellis Island Commissioner Robert Tod and Assistant Commissioner H.R. Landis[61], supporters of restriction and of limiting appeals and advocate contact with immigrants. Robe Carl White, who chaired the board that reviewed exclusion cases appealed to the Secretary of Labor in Washington and then served as Second Assistant Secretary of Labor, believed in strict interpretation of the law and opposed any recognition of refugees as distinct from immigrants. Just before the quota went into effect, the Commissioner General of Immigration W. W. Husband complained to Henning that persecution claims were "not made in good faith" and that Armenians and Jews were "coached" by advocates "to claim they are refugees." "The sooner everybody concerned knows that the law is going to be enforced in cases such as this, the easier it is going to be to bring about a humane application of it, for prospective immigrants will be stopped at the source – will not reach here only to be returned, possibly after weeks of detention and the expenditure of considerable money."[62] Because of meagre appropriations, the Immigration Bureau was eager for steamship fines, which made officials even less inclined to recognize persecution claims that would exonerate the ships from bringing over those ineligible for admission. (Ships were fined $200 for every immigrant determined to be excludable for illiteracy upon arrival.) Immigration inspectors frequently asked illiterate immigrants if their reading ability had been tested by the steamship

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(Admission of Relatives, Soldiers, etc. *Hearings Before the Committee on Immigration and Naturalization,* House of Representatives, 69th Congress, 1st Session, Feb. 4, 1926, 10).

[61] In 1924, Landis gave a speech calling for more restriction: "Ellis Island has long been part of New York City's protection from foreign invasion…The old days of 5,000 a day are passed. Commissioner Curran has said that he will not undertake to examine more than 2000 a day; and this number only if they are the so-called Nordics…While a Scandinavian ship may have not more than one-tenth of one percent of its passengers detained, a ship from the Mediterranean may have as high as thirty to eighty-five percent, and that tells the story of why immigration men are in favor of the census of 1890 as a basis for the quotas." (Address by H.R. Landis April 26, 1924, Conference on Immigration Policy, quited in Deirdre Maloney, *National Insecurities: Immigrants and U.S. Deportation Policy Since 1882* (Chapel Hill: University of North Carolina Press, 2012) 129).

[62] Husband to Henning, April 6, 1921, In re: Esther Spiegel, INS file 54999/183.

before sailing; some said no, some said yes, some said they were asked to sign their name as proof of literacy. That the steamship companies contested the fines—sometimes on the ground that they believed the immigrants were refugees and exempt from the literacy requirement—did not change matters for the immigrants but did add fuel to the argument that steamships were interested in subverting the law.[63]

The steamship Gul Djemal, which had a reputation for insolvency, delays, and violating immigration laws, arrived in New York on September 13, 1921.[64] Though the quota for Armenians coming from Turkey was already exhausted, the immigration authorities handled Gul Djemal passengers in an inconsistent and confused manner, allowing some Armenians in and excluding others. An administrative order admitting those who began their voyage before the

[63] Section 9 of the 1917 immigration law states that it is unlawful for steamship owners or their agents to bring to the U.S. anyone excludable for illiteracy under section 3 of the law. Further: "If it shall appear to the satisfaction of the Secretary of Labor that this disability might have been detected by the exercise of reasonable precaution prior to departure of such aliens from a foreign port," the steamship "shall pay…$200" for each illiterate passenger, "provided further that nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of the United States aliens who are by any of the provisions or exceptions to section 3 exempted from the excluding provisions of said section." Sometimes steamship companies argued that they should not be held accountable if the passports of the migrants were visa'ed by U.S. consuls. But only some consuls refused to visa the passports of illiterates. As of early 1922, the consul in Constantinople did not do a literacy test before issuing visas and neither did steamships there. French steamship lines were particularly criticized for bringing over illiterate Polish Jews, who had no trouble getting visas from the consuls in Warsaw. The route taken by many Polish Jews was from Danzig to Le Havre to the United States. Although the Compagnie Generale Transatlantique did medical and literacy tests in Le Havre, the port was renown for its numerous excluded returnees and deportees, about whom the steamship companies were "always touchy."
(Letter from Alexander Schluger (HIAS Warsaw) to Jacob Fain, July 18, 1921, 245.4.12, MKM15.22a, Folder 12, Europe-3, HIAS records, YIVO archives; INS case file 54866/447, on French lines; "Confidential Survey of Migration Conditions in Constantinople," folder 2: Near East Migration Work, reel 64 and Report from Le Havre, Dec. 31, 1921 and France Migration Service Bureau Report, July-August, 1922, folder 2: France, Migration Service, reel 154, YWCA of the USA Records, Sophia Smith Collection, Smith College, Northampton, Mass. [hereafter, YWCA Smith].)

[64] In late 1920, the steamer left allied-occupied Constantinople for New York with more than half of its 900 passengers lacking visas and passports (Letter from the French Embassy to the Secretary of State, Oct. 19, 1920, 867.111, RG 59, NARA). Reports about the steamer's economic troubles and change in management were reported in *The Orient* (Constantinople), January 19, 1921 and June 29, 1921. Ellis Island officials lamented the "ignorance or contempt of law" manifested by the "little irresponsible" Ottoman-America line "operating the SS 'Gul Djemal." (Letter to Commissioner of Immigration, Oct 18 1921, INS case file 55079/338c). The U.S. Public Health Service doctor tasked with inspecting emigrants in Constantinople said the ship "slipped by" the health regulations in the fall of 1921 (Interview with Dr. Hoover, October 10, 1921, folder 2: Near East Migration Work, reel 64, YMCA Smith).

passage of the quota act helped several migrants who had been en route—through refugee camps and several transit ports—for months, though other passengers who should have qualified were sent back.[65] The haste to exclude also influenced the handling of cases involving Armenian illiterates. The authorities paid little attention to Gul Djemal passenger Shoushanig Ohanessian's claim to religious persecution based upon the killing of her parents, probably deportees, and her husband, probably a labor conscript, near Erzeroum in 1915; wary of arranged marriages and suspicious of anything that hinted at the buying of women, the authorities also dismissed an appeal by her fiancé, a man twenty years her senior who she had never met but who sent her passage money and made the trip from Detroit to New York to meet her upon the ship's arrival.[66] Ohanessian, like many of the Gul Djemal's passengers and other illiterate Armenians arriving on different ships at this time, had no chance to talk with an attorney. The haste of the immigration authorities led to the exclusion of some women for illiteracy even though they could read; others were excluded because they did not understand how to make persecution claims.[67] Ohanessian's exclusion was approved by the INS's central office in Washington on September 19th and she

[65] For a copy of the Sept. 21, 1921 order see file 55079/338c; case 55175/777 involves a family who arrived on Gul Djemal and should have qualified but was excluded. The generally skeptical attitude of the immigration authorities towards passenger claims to qualify is clear in a letter of the assistant commissioner in New York, which concludes "If the slightest concession is made to people who are interested in breaking down the immigration restrictions, they immediately use that concession as an argument for securing further concessions." (Landis to Commissioner General, September 28, 1921, INS file 54789/917).

[66] The Ohanessian case is case INS file 55175/735. For discussion of conditions in Erzurum in 1915-1916 see Ara Sarafian, ed. *United States Official Documents on the Armenian Genocide*, vol. II, the Peripheries (Watertown: Armenian Review, 1994), documents 5, 28, and 81. For an immigration's official's wariness about arranged marriages particularly in cases of men bringing over illiterate women, see Memorandum by I.F. Wixon, April 11, 1922, INS file 55166/141.

[67] For the rushed exclusion of a literate Armenian woman for illiteracy in November 1921, see INS file 55175/507. Elichbagh Barsoum, a 22 year old from Kharpert, was excluded for illiteracy in September despite the inspector clearly sensing that she, unrepresented by an attorney, should have been exempt. She told inspectors that she was exiled from her home, that her parents were killed, and that she had "lived among the Arabs" for several years, and spent the last year in Aleppo. When asked "have you been subjected to religious or racial persecution during the last period of your residence in Turkey," she said no. The inspector followed up: "Did you understand the question?" (INS file 55175/506).

was sent back to allied-occupied Constantinople, where she had lived from 1919 through 1921, on the Gul Djemal just four days later.

A few weeks later an outcry ensued after Charles Knightley, a man involved with overseas relief efforts and a Boston-based welfare society, testified to Congress that a group of recently excluded Armenian women were "outraged and murdered" by Turks upon their return.[68] The Chairman of the House Committee on Immigration and E.J. Henning passed this information to the State Department, which queried the consulate in Constantinople, which asked YWCA workers who looked after women migrants there to investigate. With the help of Armenian clergy, a YWCA worker tracked down several of the Armenian Gul Djemal deportees—including Ohanessian—and concluded that their alleged persecution upon return was "false propaganda" against Turkey.[69] The YWCA worker felt that the best way to prevent future incidents was for officials to enforce the quota law strictly so that Armenians did not sail for the United States with false hope of admission; "It is the exceptions and the admission under bond, and in excess of quota that has caused the mischief at this end," wrote the YWCA worker involved in the Constantinople investigation.[70] The investigation helped to solidify the relationship between the YWCA and the American consulate; by early 1922, YWCA workers had set up an office in the consulate and were testing the literacy of potential emigrants. The handling of this incident also foreshadowed a split in 1924 between the overseas or foreign

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[68] *Hearings before the House Committee on Immigration and Naturalization*, Dec. 19, 1921, 193.

[69] Correspondence about the investigation include:
a)Letter from Secretary of State Charles Evans Hughes to Representative Albert Johnson, April 5, 1922, Records of the US House of Representatives, HR67A-F18.1, Box 394, RG233, NARA. b) Despatch 110, March 1, 1922 from the High Commissioner in Constantinople to the Secretary of State, 860j.4016/113, Records of the Department of State relating to Internal Affairs of Armenia, 1910-1929, Reel 5, Microfilm T1192, NARA. c) Folder on Migration Work, reel 64, YWCA Smith. "False propaganda" referred to in the January-February 1922 report from Constantinople to New York.

[70] Letter from Ruth Larned to Mary Hurlbutt, Feb. 2, 1922, ibid.

division of the American YWCA, which supported a postwar U.S. treaty of amity and commerce with Turkey, and the YWCA's Department of Immigration and Foreign Communities in the U.S., headed by Yeghenian, which believed the treaty left its Armenian immigrant constituents "without any redress for horrible sufferings and wrongs."[71] Moreover, unlike their counterparts abroad, YWCA workers in the United States pushed for exceptions from the quota for Armenians with relatives in the United States. But these fundamental distinctions were left unaddressed because Armenian-American YWCA social workers at Boston's International Institute discovered that Knightley was defrauding local Armenians of money given to him to purchase steamship tickets for their relatives abroad.[72] This confirmed the importance of protecting migrants from unscrupulous brokers and middlemen, a cause all YWCA workers, zealous of their moral authority, rallied behind. Other advocates did the same. The Armenian National Union disavowed all relationship with Knightley and "presented a bill of complaint to the Immigration Office against Mr. Knightley on the grounds of exploitation."[73] But immigration authorities went further than merely refusing to have dealings with Knightley. They investigated George A. Topakyan, the representative of another reputable Armenian welfare agency, who had initially found Knightley's claims plausible.[74] They disbarred a former Armenian interpreter,

[71] See the competing positions of the two YWCA divisions in the Turco-American Treaty, 1923-1927 folder on reel 64, YWCA Smith.

[72] Case 26, Box 11, Closed Case files of the Boston International Institute, Immigration History Research Center, University of Minnesota [IHRC]. See, also, discussion of Knightley's fraud in Monthly Report, Migration Service Bureau, France, July-August 1922, reel 154, YMCA Smith.

[73] Letter of Ruth Larned, YWCA Migration Secretary, to Foster Stearns, American Embassy Constantinople, April 17, 1922, 860j.4016/158, Records of the Department of State relating to Internal Affairs of Armenia, 1910-1929, Reel 5, Microfilm T1192, NARA. See also letter from McChester Macomber to Commissioner General, Aug. 16, 1921, that says that the president of the legal branch of the Armenian National Union called at the Boston immigration office "and filed a verbal protest against what he termed was the exploitation by Mr. Knightley of the relatives of Armenians arriving at this port." INS file 54789/917.

[74] The hostile interview and treatment of Topakyan of the Armenian Immigrant Welfare Society in file 52370/14.

Leon Thomasian, who had tried to help illiterate Armenians verify their persecution claims.[75] The immigration authorities also began to suspect that Near East Relief was illegally "stimulating" immigration in its efforts to send orphans in its care to relatives in the United States.[76] In late December, when over 1000 immigrants were detained for deportation at Ellis Island, the commissioner permitted "excess quota" Armenians to enter on bonds to their relatives,

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[75] For the barring of interpreter Leon Thomasian from Ellis Island, see INS file 55166/304. Thomasian had been interpreter for the first immigrants at Ellis Island to raise the persecution defense against exclusion for illiteracy, which is discussed again later in this chapter. The interview of these immigrants with inspectors took place on June 22, 1917, just after the literacy test went into effect. Half way through the interview, one of the immigration inspectors asked Thomasian: "Mr. Thomasian, do you recognize these people [the immigrants] from their personal appearance and language as being of a class of Christians who have been persecuted by the Turks?" Thomasian's affirmative response only convinced the inspector who asked him; the other two inspectors present did not think the immigrant family's story (of murder, fire, and fleeing) and Thomasian's identification were enough to prove persecution. INS file 54290/8

[76] "Apparently the Near East Relief is going just a little further than the average person who contributes funds to it for the use of destitute and starving people in Armenia…this organization is engaged…in assisting, of not actually stimulating, immigration." Memo from Solicitor Peters for Commissioner General, April 18, 1922, file 55166/229, RG 85, Entry 9, NARA. See also inquiry in to Near East Relief's role as stimulator of immigration by Secretary of Labor James Davis to Secretary of State Hughes, August 6, 1921, INS file 54789/917.

Given this accusation, it is not surprising that the NER kept its immigration-related work out of the public eye. From the many statements denying interest in immigration made by NER representatives to Congress in the 1920s and from reading missionary James Barton's organizational history of NER, published in 1930, one might not realize that NER orphans fanned out into a diaspora including France and the United States and beyond.

Through the mid-1920s, Americans working for NER had a great deal to do with refugee migration, devoting much of their energy to tracing relatives, handling remittances, negotiating with consuls for documents, and visiting migrants at way stations abroad. After the armistice, NER was especially active in Constantinople, the Caucasus, and Cilicia (the region of modern Turkey just north of Syria), the latter a region to which many Armenians returned after their deportation. Adelaide Dwight, a social worker whose parents and grandparents had been missionaries in Turkey, worked for NER to help trace relatives, handle remittances, and facilitate emigration ("Her Job is Finding Lost Armenians," *New York Tribune,* June 27, 1920, 66). Dr. Mabel Elliot of NER, who evacuated Marash with the French and Armenians, helped the Armenian nurses and interpreters who worked for her get to the United States in 1920 (see Elliot's *Beginning Again at Ararat* (New York : Fleming H. Revell, 1924, 137-141). Carris Mills, an American woman in Constantinople who remained involved with the League of Nations' section on the deportation of women and children in the Near East until 1927, was instrumental in helping a few hundred Armenian women emigrate to the United States. (Helen Johnson Keys, "Drama Beside the Bosporus," *Christian Science Monitor*, June 23, 1937). Sometimes Armenians sent by NER on group passports to relatives in France or other countries eventually made their way to the United States. A caseworker in Connecticut who was helping a father try to bring his son to America found out that NER has sent him with a group of 29 boys from a Beirut orphanage to godmother's "house full of Armenians" in Marseilles. (Hamasian case, International Institute of Connecticut, Case files, Box 3, IHRC, University of Minnesota)

The complex historiography of the Armenian genocide and its representation has also obscured NER's migration work. For example, a photograph of an NER administered orphan evacuation from Barton's account has been subsequently *misread* as a depiction of an Armenian "death march." See Tessa Hoffman and Gerayer Koutcharian, "'Images that Horrify and Indict: Pictoral Documents on the Persecution and Extermination of Armenians" *Armenian Review* 1992 45(1-2): 180.

but then declared that future excess quota arrivals would be examined on board the ships they arrived on to facilitate exclusion and limit appeals.[77] This certainly was not the hoped for outcome for Jacob Tertzag, a Boston-based attorney who had served as treasurer of the Armenian National Union, and other lawyers who were Armenians and friends of Armenians and committed to their recognition as refugees. These advocates were trying to find ways to extend the persecution exemption, rather than dismiss it, in the face of the quotas.

Because so many ships tried to make it to New York at the same time during the chaotic middle months of 1921, some were diverted to Boston, which lacked sufficient staff and took on emergency interpreters, including Jean Danielson.[78] Jacob Tertzag, who, before immigrating to the U.S., had studied at an American missionary school (Euphrates College) in Kharpert and then worked at the American consulate there, complained that Danielson poorly interpreted for Vartanouche Katchadourian, an illiterate woman originally from Kharpert, who was excluded in November 1921 and then again in 1922, when she tried to enter the United States a second time. This despite the fact that she told immigration inspectors that her parents had been "massacred."[79] Tertzag refused to give up; he requested that Katchadourian be allowed to try to reenter a third time in 1923, having spent the intervening months in Marseilles learning to read and having corresponded with an Armenian-American suitor willing to go there and bring her back with him. Tertzag also appealed the rejection of the religious persecution claim of another illiterate Armenian woman to a Boston federal court; in that case, the Soghanalian case discussed

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[77] Ellis Island Commissioner Robert Tod's Dec 27th order to examine migrants on board is in INS file 55079-338D. For the investigation of George Topakyan of the Armenian Immigrant Welfare Society and criticism of Near East relief see Memo from Peters to Husband, April 18 1922, 51666/299.

[78] INS file 54750/2a.

[79] INS case files 55018/351 and 55236/45.

later in this chapter, Tertzag won an important legal victory. Around the same time, Everett Wheeler, a prominent New York corporate attorney with strong missionary ties, similarly wanted to challenge the expedited exclusion of Armenians in late 1922 and 1923. To do this, Wheeler had to take on Ellis Island commissioner Robert Tod, who agreed with James Patten, vice president of the Patriotic Order Sons of America: "generosity and humanity [toward refugees from the Near East] can only be practiced at the expense of our own people and our civilization."[80]

Some advocates for Armenians were wary of challenging the INS in court out of fear that this would only lead to more administrative backlash or, in the words of Rev. Mihran Kalaijian, head of the Armenian Department of YMCA in New York, "further excite the animosity of Commissioner Tod."[81] In 1922, Tod had taken away Kalaidjian's permanent pass to Ellis Island

[80] For Robert Tod's approval of Patten's "very clever" view "on the Armenian situation," see Tod to Albert Johnson, Feb. 27, 1923, House Committee on Immigration and Naturalization Papers, 67th Congress, Box 394, RG 233, NARA. In his his testimony at before Congress in early 1923, Patten explained his view: "The appeal of those who would admit the millions and millions of refugees of the Near East touches the heart, but such generosity and humanity can only be practiced at the expense of our own people and our civilization…It was known that the creation of various small nations there and the clash of minorities and majorities for control by force and bloodshed would result in massacres and will continue for years to result in massacres. We already have all of these peoples we can assimilate…It is admitted that the millions of refugees that are or soon will be in southeast Europe and westert Asia are 'homeless,' 'poverty stricken' people. We have already in our bulging public institutions far more than our share of foreign countries' public burdens. It is all very well to say relatives of such refugees, who left their relatives 'over there' generally to come here and parsimoniously gather together a 'little fortune' to carry back there and spend, are heartbroken over the 'family – separation' and want to bring their own here to care for them: but our experience with defective relatives brought in under bond and other assurances…is that most of them become public charges upon the community in a very short time and as a practical matter it is impossible to deport. It would cost much more to bring the average refugee here than it will take to support that refugee over there somewhere almost indefinitely. The Near East Relief was organized by those who foresaw what is happening and what will continue to happen in Levantine countries—one massacre after another—for the very purpose of taking care of these very refugees." (*Hearings of the House Committee on Immigration*, 67th Congress, 4th session, January, 22 1923, 517).

[81] Mihran Kalaidjian to Everett Wheeler, April 4, 1923, Folder 9, Everett Wheeler Papers, New York Public Library. In 1922, Armenian businessmen in New York began financing Kalaidjian's work as Armenian secretary for the McBurney YMCA in New York City. The management of the Y, concerned about "discredit or unfavorable comment upon the association," was pleased with Kalaidjian's decision not to pursue Tod in court. Instead, the Y's leadership sent a petition to Tod, appealing for more humane discretion. [Meeting of the Committee of Management, March 15, 1923 and April 19, 1923, McBurney YMCA Records. YMCA of Greater New York. Kautz Family YMCA Archives. University of Minnesota].

and replaced it with a temporary one because Kalaidjian was appealing the cases of detained Armenians.[82] In one case involving an Armenian woman with trachoma, the INS denied Kalaidjian's application for her hospital treatment in the United States because a writ had previously been taken out to prevent her speedy deportation. Assistant Commissioner Landis considered the writ an "obstructionary tactic" by advocates who were "not entitle[d] to any special favors from this Department."[83] In early 1923, despite Wheeler's urging, Kalaidjian refused to challenge Tod's handling of the deportation of 51 Armenians, all of whom had escaped the recent fire that destroyed much of the city of Smyrna and ended the Greco-Turkish war. Though a writ of habeas corpus had been issued before the ship set sail and its master offered to bring the Armenians back to Ellis Island, Tod insisted the deportation proceed. When confronted by the writ, Tod reportedly accused the pro-bono attorney for the Armenians of taking up their case for the fees.[84]

Over the next several years, heedless exclusions and deportations, circumscribed advocacy by lawyers and social workers, and discretionary parole to relatives developed without adequate consideration of the past experiences or the eventual fates of the immigrants. Given that Katchadourian spent time at an Armenian 'safe house' in Aleppo before migrating, she was was likely raped or abducted during the war, though details about this never surfaced as she was not examined as to the particulars of her wartime experience and they were not raised in the appeals.[85] Like Katchadourian and Ohanessian, most excluded Armenians were returned not

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[82] Letter of Robert Tod to Commissioner General. September 26, 1922, INS file 52730/14.

[83] Letter from H.R. Landis to Commissioner General, Feb. 24, 1922, INS file 55195/515.

[84] "Refugees Deported In Spite of a Writ," *New York Times*, Feb. 3, 1923, 1.

[85] The only hint in Katchadourian's file is a letter from a lawyer representing the Armenian National Union stating that Katchadourian "almost lapsed into barbarism" during the war. (INS file 55018/351). For information on

home, but to a port-city. Desperate for refuge, Armenians frequently bided their time in Marseilles or traveled to Havana before trying to enter the U.S. [86]

Many Jews from Poland and the Ukraine went through similar experiences after the war, becoming what the historian Tobias Brinkman calls "supranational transmigrants and refugees."[87] As with the Armenians, post-WWI restrictionism had important consequences for advocacy on behalf of Jewish immigrants. Jewish American lawyers who worked with HIAS—Louis Marshall, Max Kohler, Louis Gottlieb, and Isidore Herschfield among them—had regular contact and a good rapport with Washington immigration authorities and other government officials. Still, in 1921, the immigration authorities accused HIAS of representing clients from Poland with fake passports and visas and of illegally stimulating immigration (the latter was the same accusation made of Near East Relief.) Suspicion of HIAS found its popular expression in journalist Kenneth Lewis Roberts's testimony before Congress and articles in the *Saturday Evening Post*, collected in *Why Europe Leaves Home* (Indianapolis: Bobbs-Merrill, 1922). Roberts asserted that HIAS was "the greatest organized stimulator of undesirable immigration to America that has ever existed" and that Jewish immigration was being "misrepresented by sentimentalists and near-Americans as being a movement of oppressed people in search of religious freedom" (56, 96). [88] Marshall defended HIAS vehemently, asserting that it did not

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Aleppo institutions for women refugees see Victoria Rowe, "Armenian Women Refugees at the End of Empire: Strategies of Survival," in *Refugees and the End of Empire: Imperial Collapse and Forced Migration in the Twentieth Century* (New York: Palgrave Macmillan, 2011) 152-174.

[86] By the time of the investigation into the Gul Djemal deportees, Ohanessian had reportedly already set off for New York once again.

[87] Tobias Brinkman, "From Immigrants to Supranational Transmigrants and Refugees: Jewish Migrants in New York and Berlin Before and After the Great War," *Comparative Studies of South Asia, Africa, and the Middle East*, 30. 1 (2010) 47-57.

[88] Roberts's nativist anti-semitism—which emphasized both Jewish biological difference and disloyalty—is clear in his dismissal of persecution claims by Jews he interviewed in Europe: "There were many who talked a great deal

fund migration and was not involved in the document fraud in Warsaw. Marshall insisted that HIAS "protested" against "frauds" perpetrated by "free-lance" Jews from America who went to Poland as "so-called delegates of what are called Landsmannschaften." These men "acted on their own initiative, and the frauds that they perpetuated were of their own devising," Marshall averred.[89] "There is not a shadow of truth in the suggestion that the organization [HIAS] has directly or indirectly been engaged in the violation of any provision of our immigration laws,"

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about the terrible treatment which they had received at the hands of the Poles and the Bolsheviks. Beards had been cut off, they declared; throats had been cut; they had been thrown from moving trains; they had been robbed and beaten. I questioned these people carefully. These things of which they had spoke had not happened to them, but to people of whom they heard. I spent three days at the HIAS headquarters, and never a man came forward who had these things happen to him. The nearest thing to it was a small elderly Jew with an enormous hook nose… he told me a harrowing tale. He had been riding in a compartment with six Polish soldiers returning from the war… They told of Jews they had killed and of Jews they were going to kill…. 'But,' I asked him, 'did they do anything to you?' The little man shook his head. 'Why not?'… 'They didn't know I was a Jew!' Nobody could have possibly mistaken him for anything else." (*Why Europe Leaves Home*, 62-3). "One of the clusters with which I talked touched on the subject of fighting; and its members were unanimous in declaring that nothing on earth would make them fight for Poland. Poland, they said, did not give them equal rights with the Poles…They said that there were many more Jews in [a particular Polish] town…but that they never tried to vote at elections for fear the Poles might hurt them. I asked if anybody had been killed in the town within their memory, and they said that nobody had been. They simply didn't wish to take a chance on voting. Needless to point out, we have had the same situation in the [American] South for a long time"(95). Roberts again drew a parallel between Jews and former slaves in his Congressional testimony: "The Russian Jew or the Polish Jew or the Rumanian Jew crowd and push to get up to you. The Slovaks or the Czechs or Croats or Slovenes are more stolid…a doctor in Antwerp, who had charge of a great many emigrants, told me that there was only one way in which these people—he spoke particularly of the Polish Jew—could be handled, and that was by driving them. They were used to being driven and bawled at, and you couldn't treat them in any other way. They had to be shouted at." [*Immigration, Hearing Before the House Committee on Immigration and Naturalization*, 67th Congress, 2nd Session, December 14, 1921, 104].

[89] Marshall to Secretary of State Charles Hughes, Sept. 30, 1921, 860c.48/448, reel 18, Microfilm M1197, Records of the Department of State Relating to the Internal Affairs of Poland, 1916-1944, NARAII.
For a discussion of the relief activities of landsmanshaften, including the sending of hundreds of delegates to hometowns in 1920-1921, see Daniel Soyer, *Jewish Immigrant Associations and American Identity in New York, 1880-1939* (Cambridge, MA: Harvard University Press, 1997) chapter 7. According to Soyer, most delegates, who had experience in small-time business and communal activism, brought significant amounts of material aid and boosts of morale to their hometowns. There were, of course, "incompetent, unlucky, or dishonest delegates," and "even legitimate delegates might try to make money by manipulating unstable exchange rates." In Poland, delegates were considered "disreputable" and a nuisance by the American consul and suspected of being Bolshevik spies by local Polish officials. (See Letter from Hugh Gibson to the Secretary of State, January 3, 1920, 860c.48/425, reel 18, Microfilm M1197, Records of the Department of State Relating to the Internal Affairs of Poland, 1916-1944, NARAII.) When an American caught for smuggling by Polish border guards claimed his object was to "give emigrants of Poland every possible assistance on their journey to the United States," Jewish organizations disavowed all connection to him, telling the State Departmemt that "they have no representatives who are sent abroad for the specific purpose of assisting Jewish emigrants from Poland or ay other country to the United States." (Letter from Robert Woods Bliss to Ellis Loring Dresel (in case of Kalman Hochberger), April 14, 1921, 860.48/422, reel 18, Ibid.)

Marshall argued. "On this side of the water," Marshall wrote, "[HIAS] seeks to help the immigrants to communicate with their relatives. It does its utmost to protect them against swindlers and exploiters…Its work in Europe has consisted in…in helping them to present their petitions for passports and visas and in performing other legitimate service that is needed by helpless men, women, and children who have been the football of fate during the agonizing days of the great conflict from which they have been the sufferers. It has never supplied any money for the purpose of enabling immigrants to come to this country."[90] In the organization's iconography from this period (see Figure 3.1), depictions of HIAS's motto—the Hebrew phrase "hachnassas orchim v pidyon shivuim," which comes from Mishnaic laws of charity and literally translates as "the welcoming of guests and the redemption of captives"—emphasized that the redemption referred to helping detained immigrants *in the U.S.* (rather than providing funds for potential migrants oversees). One of HIAS's goals, its membership certificate insisted, was "to take proper measures to prevent ineligible persons from emigrating to the United States ."[91] Marshall wrote to HIAS president John Bernstein, "We must seek to outdo any other part of the

[90] Marshall to Secretary of Labor James Davis, Dec. 9, 1921, 55166/451.

[91] The picture below is from a September 1921 HIAS membership certificate. The words "pidyon shivuim" or "redemption of captives" is written next to the man on the left with the suitcase who HIAS, in the form of the angel, has just helped leave Ellis Island. The right hand side emphasizes HIAS's role of fostering a welcoming environment towards worthy immigrants in the United States, in the spirit of Abraham welcoming the angels. Beneath this picture, the certificate lists HIAS's mission as "to facilitate the lawful entry of Jewish immigrants at the various ports in the United States; to provide them with temporary shelter, food, clothing and such other aid as may be found necessary; to guide them to their destinations; to prevent them from becoming public charges by helping them to obtain employment; …to take proper measures to prevent ineligible persons from emigrating to the United States; …to make better known to the people of the United States the many advantages of desirable immigration and to promote these objects by means of meetings, lectures and publications." (Thanks Valery Bazarov of HIAS for a scan of this document.) This kind of messaging belied the fact that almost 40,000 Jews in the United States sent private remittances to relatives in Eastern Europe through HIAS in 1922. (See Zosa Szajkowski, Private and Organized American Jewish Overseas Relief, 1914-38, *American Jewish Historical Quarterly*, 57:1 (September 1967) 61.) The HIAS *Immigration Bulletin* for 1916-1922 contains numerous stories about Isidore Herschfield's efforts to get remittances, migration documents and steamship tickets to relatives abroad.

American people…in avoiding even the appearance of illegality."[92]

Figure 3.1, HIAS membership certificate, September 1921, courtesy of Valery Bazarov, HIAS.

Wary of attacks by nativists, the persecution claims HIAS continued to raise in the aftermath of the 1921 quota law were limited to Jewish immigrants who, as a result of the Soviet-Polish war and the civil war in the Ukraine, experienced what one historian has called "the worst" anti-Jewish violence and sentiment "in almost three centuries."[93] As Louis Marshall wrote the Secretary of State in April 1921, "Of all the horrors to which human-kind has been subjected, there are none that approach those experience by the Ukrainian Jews during the past four years. They have been massacred to the extent of tens of thousands…their property has been looted and destroyed. They have been driven from pillar to post. They have been the victims of the Bolsheviks and of the armies of Petlura, Denikin and Wrangel, and of the many guerilla bands that have infested the country. They have lived in a seething hell. If, therefore, their eyes are turned toward America, that has in the past given asylum to the oppressed peoples of the

[92] Louis Marshall to John Bernstein, Dec. 13, 1921, Louis Marshall Corrrspondence, 245.4.8, MKM 15.16, VIII-4, HIAS records, YIVO.

[93] Eli Lederhendler, "Hard Times: HIAS under Pressure, 1925-1926," *YIVO Annual* 22 (1995), 109.

earth, are they to be pointed out in an official report as imperiling this country?"[94] In July 1921, a HIAS representative met with the American consul in Warsaw in order to try to insure that visas be given to these refugees fleeing to Poland from pogroms in the Ukraine pogroms." The consul replied that "no organization…is able to satisfy this office that a person who has been living the past few years in Russia, who has just come into Poland from Russia, is a person who will not prove inimical to the best interests of the American government." Since the immigrants "pouring in from Ukraine, Volhynia, Minsk" could not "prove whether they are fleeing from Bolsheviki rule or whether they are in sympathy with it," the consul would only issue visas to wives and minor children and parents over 55 years of age of U.S. citizens. [95] The State Department likewise seemed skeptical of Marshall's characterizations of events in the Ukraine.

> Mr. Marshall refers to the unspeakable horrors that have raged…in the Ukraine. Since Petlura joined forces with the Poles…no disturbances of this sort…have occurred…Petlura [would] not have encouraged any such outrages as of late [as]…he is seeking foreign recognition…reports of horrors in the Ukraine….are attributable to the Bolshevists…the Bolshevist chiefs…are preponderatingly [sic] Jews, and the atrocities which they commit are, rightly or wrongly, laid at the door of the Jewish population. Mr. Marshall's recommendation appears to involve the general question of foreign interference on behalf of minorities…It is plain that where repression of such minorities is spontaneous and local, foreign interference is useless…In the Ottoman empire, the protests of foreign powers against massacres fostered by the Government only succeeded at best in preserving persecuted remnants for a holocaust on some future better occasion.[96]

[94] Louis Marshall to Charles Evans Hughes, April 27, 1921, Box 11, General Correspondence, Immigration, 1920-1923, AJC Archives.

[95] Memorandum from Consul Huddle relative to Conversation with Mr. L. Grunbaum and Mr. A.L. Schluger, director of HIAS Warsaw, July 6, 1921, and Letter from American Consular General L.J. Keena to Secretary of State, July 25, 1921, Correspondence of American Consulate General Warsaw, 811.1, 1921, volume 96D, RG 84, NARA.

[96] Memorandum in Regard to the Statements of Mr. Louis Marshall, 1920, 860c.4016, reel 15, Microfilm M1197, Records of the Department of State Relating to the Internal Affairs of Poland, 1916-1944, NARAII.

Ohannessian's summary exclusion on the Gul Djemal in September 1921 was referenced a few weeks later in the Immigration Bureau's denial of the persecution claim of Chana Szumska, a 64-year-old Jewish woman from the Ukraine. Since the cases were quite different, the reference points to a general tendency to deny persecution claims.[97]

Szumska was from the town of Proskurov, the site of an exceptionally bloody pogrom on the afternoon of February 15, 1919. After suppressing a Communist uprising by two Ukrainian army regiments quartered in the town, soldiers in General Petlura's Zaporozhian Cossack brigade and the Third Regiment in the Ukrainian army, acting under orders of their commander, Semesenko, divided themselves into small groups and went door to door looking for Jews, killing about 1500 men, women, and children and destroying their homes. Looting continued into the night. [98] The next winter, retreating Russian White army troops under Denikin plundered the town. Soon afterwards, Szumska and her family left for Lemberg, Poland (about 150 miles away), to escape the Bolshevik army. Despite the fact that Commander Semensenko's responsibility and the disciplined military execution of the Proskurov pogrom was reported in the newspapers in 1919 and has never been disputed, the Assistant Commissioner General decided that she was subject to "no more than the lawless acts by uncontrolled troops."[99] Given that, in the Ukraine at this time, anti-Jewish sentiment was expressed in political terms (i.e, the labeling of all Jews as Bolsheviks), it is not surprising that Szumska did not seem to be able to distinguish

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[97] The Szumska INS case file is 55180/651.

[98] Ronald Sanders, *Shores of Refuge* (New York: Henry Holt and Company, 1988), 343-346.

[99] Memo by Special Assistant Commissioner Larned, Nov. 25, 1921, INS file 55180/651. For one such newspaper account see: "Ukrainians Kill Thousands of Jews: Organized Pogroms Sweep the Country Under Direction of Commanders of the Armies," *New York Times* May 27, 1919, 2. The INS response seemed to resonate with that of the State Department's; Secretary Lansing claimed, in late 1919, that "Southwestern Russia…is in a state of turmoil…The heads of the army seem to be more of the medieval type…in such a state of anarchy as exists there, we are without the power to help the unfortunate inhabitants." ["U.S Can't Aid Jews in Ukraine," *New York Times*, Dec. 11, 1919, 6.]

clearly between political and religious persecution, a distinction that was assumed by the American officials who interviewed her. The fact that Proskurov's Jewish population was large and that its Christian population called for an end to the pogrom, also weighed against Szumska during her interview.[100] Economic conditions for Jews in the Ukraine and especially for Szumska—a childless widow dependent on her extended family, at the head of which was a baker, whose small income was supplemented by daughters who worked as clerks —were precarious; in the United States, Szumska had three prosperous nephews. Perhaps for this reason, Szumska seemed to have a hard time distinguishing push or pull motives for migration.[101] Finally, the questions by inspectors implied that proving persecution would require Szumska to know the precise motivations of persecutors. Here are excerpts from Szumska's interview with the INS inspectors:

> Q: What is your purpose in coming to America?
> A: I have no other place to live—I have no children of my own…Children of my sister invited me to come to join them….
> Q: You left the town of Proskurow…for the purpose of coming to the United States and not to save your life?
> A: I am coming to the United States which is for the purpose to die my own natural life and not to be killed.
> Q: Were you yourself subjected to any persecution?

[100] During the pogrom, a Ukrainian man named Kocheronovsky ran into the street and took hold of a fleeing child, shouting at the soldiers "Christians, what are you doing?" He and the child were killed on the spot (quoted in Henry Abramson, *A Prayer for the Government: Ukrainians and Jews in Revolutionary Times,* 1917-1920 (Harvard University Press 1999), 127). According to Max Payne, a representative of the American Joint Distribution Committee who visited Prosurov a few months after the pogrom and collected accounts of what happened, "the local priest…met the Cossacks with the cross and in full canonicals, entreating them in the name of God to stop the slaughter, but they killed him at the door of his own church." (cited in Committee of the Jewish Delegations, *The Pogroms in the Ukraine Under the Ukrainian Governments (1917-1920): Historical Survey with Documents and Photographs* (London: J. Bale & Danielsson, 1927) 59). The day after the killings began, the Polish mayor and chairman of the municipal council and a prominent local Ukrainian were instrumental in getting Semosenko to issue orders to end the pogrom.

[101] This was not an uncommon problem among those claiming exemption from the literacy test on persecution grounds. As Congressman Isaac Siegel told the House of Representatives, in cases when "a girl said that she expected to be able to get along better in this country, that she had come here for two reasons—to escape persecution and in order to relieve her conditions," the immigration officials denied her exemption. (*Congressional Record*, 61, April 21, 1921, 550.)

A: I had to hide myself in the cellar and in the attic in order to protect myself…They burned the house where I and the family was living. They robbed us of all of the property…
Q: Prior to the war did you live in peace and harmony with your Christian neighbors?
A: Yes.
Q: About how many Jews lives there?
A: I do not know, but there are about 10 synagogues…
Q: Was this persecution which you state you experienced incident to war conditions or was it solely because of your religious belief?
A: I do not know...
Q: Did you complain to the regularly recognized authorities of your district regarding this treatment which you experienced?
A: There could be no complaint made against soldiers at that time, the town being held by General Petlura…
Q: These disorders that you described…were they general disorders on account of the political situation?
A: I think so…
Q: What was the reason that these armies of Petlura engaged in making disorders in the Jewish quarters instead of making them in other parts of the city?
A: I do not know.
Q: Did they consider that there were [more] Bolsheviks in that part?
A: I do not know…
Q: Since the soldiers went away you haven't suffered any damage, or disorders, have you?
A: They were doing it on several occasions,--leaving the town and coming back to the town. [102]

Louis Gottlieb of HIAS insisted to the immigration authorities that Szumska was a religious refugee, but to try to help Szumska qualify for the literacy test exemption, HIAS's brief focused less on the paramilitary nature of postwar pogroms, which differed markedly in scale and character from those before the war, and more on a stereotyped portrayal of pre-war conditions, arguing that "it is common knowledge that very few members of the Jewish faith had any opportunity or facilities to obtain an education" in Russia during the Czar's reign.[103] But

[102] Szumska's account generally fits historian Henry Abramson's description of the lived experience of Jews in her place and time: "not constant persecution, but rather relative normality (within the context of civil war, of course) punctuated by sudden, violent attacks."

[103] The scale of the postwar pogroms, which killed tens of thousands of Jews, dwarfed previous periods of pogrom violence (hundreds between 1881-1884 and a few thousand in 1905-1907). For (conservative) statistics on Jewish deaths see N. Gergel, "The Pogroms in the Ukraine in 1918-1921," *YIVO Annual of Jewish Social Science* 6 (1951),

references to the past and to presumed sympathies could be a double edged sword; Assistant Secretary of Labor E.J. Henning wrote to a Congressman who made a special appeal for Szumska that: "She lived years with a certain family from the country from which she came and there is no apparent reason why she cannot live with them again. There is a great pressure from Europe to bring over here the orphaned, the aged, the lame and the halt; and we must remember the interest of the United States as expressed in its laws even though our hearts are deeply touched by the plight of these unfortunates."[104] On December 3, 1921, Chana Szumska was sent back to Poland, a place she—like many Jews from the Ukraine—had lived briefly before coming to the United States. Szumska would not be able to stay there long since, in early 1923, Poland ordered all Ukrainian Jews to leave or be deported to Russia.[105]

Cases involving immigrants whose testimony was less clear than Szumska's were particularly challenging for HIAS. Shame regarding a sexual assault, the strangeness of the literacy test itself, or a lack of familiarity with American terminology ("religious persecution")

237-251. WWI effectively changed the nature of pogroms because during the World War violence was ordered from above and anti-Semitic propaganda molded Jews as an enemy within and without. If, in prerevolutionary Russia, anti-Jewish violence originated from below and the role of the military was the (eventual) suppression of pogroms, during the civil war period after WWI, army units were responsible for most of the killing and the civilian population joined in looting after it was initiated by troops. [See Oleg Budnitskii, *Russia Between the Red and the Whites, 1919-1920* (Philadelphia: University of Pennsylvania Press, 2012), chapter 6.] As discussed later in this chapter, advocacy on behalf of Jewish refugees in the early years of the twentieth century depended on assumptions about the nature of pogroms that impeded careful analysis of historical specificity and change in their character. [See Sam Johnson, "Uses and Abuses: 'Pogrom' in the Anglo-American Imagination, 1881-1919," in *Jews in the East-European Borderlands: Essays in Honor of John D. Klier*, ed. Eugene M. Avrutin and Harriet Murav (Brighton: Academic Studies Press, 2012) 147-166.

[104] Henning to John Q. Tilson, Dec. 1, 1921, INS file 55180/651.

[105] Benjamin Dubovsky of the National federation of Ukrainian Jews of America reported to the HIAS Board of Directors on February 20, 1923 that a recent decree mandated that 12000 Ukrainian Jews needed to leave Poland by March 1, 1923. (volume 4, RG245.1, HIAS Records, YIVO archives). In May 1923, H.L. Fraenkel, secretary of the Federation of Polish Jews in Great Britain, reported to the American Jewish Committee that the Polish government allowed Russian and Ukrainian refugees assured American visas until September to go. (letter from H.L. Fraenkel to American Jewish Committee, May 26, 1923, Folder: Poland, 1917-1924, Box 8, General Correspondence, American Jewish Archives.)

accounted for why many young women did not tell the truth at their initial immigration interviews. HIAS mostly tried to prove persecution by collecting corroborating accounts. At her initial immigration interview in March 1921, 25 year-old Pesie Hirsch responded "never" to the question "did you ever suffer any persecution on account of any religious belief that you might have entertained?"[106] As proof that she did in fact suffer persecution, HIAS submitted family correspondence describing the pogrom in her village near the town of Zaleszczyki in November 1920. (In the early twentieth century, the town was part of the Russian Empire; though it had large Jewish and Polish populations, the area around it was populated primarily by Ukrainian country folk. After the war in 1918-1919, Zaleszczyki became part of Poland. Today Zalishchyky is in Western Ukraine.). According to an account of the 1920 pogrom sent by the father of Pesie's brother-in-law to his son in New York, Pesie's mother and brother were killed, while Pesie, her sister, and her father ran to hide in the house of a gentile neighbor. When found there, they were taken into the street and beaten and then the two girls were "dragged away by a Polish officer…and taken to a monastery to be converted," an eventuality that was prevented through appeals by Jews to a local priest. When Pesie was called back for a re-hearing at Ellis Island, it was clear she interpreted the question regarding persecution at her initial interview as asking whether she had ever been prevented from attending religious services, which would have been impossible since her village lacked a synagogue. When asked what happened to her father, she told the immigration inspectors that "the Poles beat him over the head and cut his beard off." (Beard cutting, very common in Poland at this time, was an attack on religious observance, but

[106] Pesie Hirsch's INS file is 54999/278.

was not considered serious religious persecution by American officials[107]). She also referred to the "Polish army" as driving her out of her town during the war and claimed that "the peasants got worse to the Jews after the war"—an insight confirmed by historians studying the effect of the war on ethnic violence. [108] When asked explicitly if she had been attacked, she answered "Yes, they got us out of bed during the night and chased us out into the streets naked." Reviewing the case, the Commissioner General believed "the evidence is convincing that she was a victim of religious persecution"; although conflicting, Pesie's emphasis on sexual violation and the letter's emphasis on threatened conversion fit the popularly depicted alternatives to martyrdom for religious refugees: rape and apostasy. But despite finding the evidence convincing, the commissioner nonetheless recommended that Pesie's appeal be dismissed and that she be admitted for three months to her brother.[109] Ultimately, in most cases like these, the Imiigration Bureau did *not* officially recognize persecution claims but allowed temporary admission as a matter of *discretion*.

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[107] On the significance of beard cutting, see Julia Eichenberg, "The Dark Side of Independence: Paramilitary Violence in Ireland and Poland After the First World War," *Journal of Contemporary European History* 19, 3 (2010) 240-242. Both Henry Morgenthau, who was sent to Poland by the State Department to report on anti-Semitic violence and wrote a condemning report, and Hugh Gibson, American minister to Poland, referred to this activity as "minor." [Morgenthau Report, American Commission to Negotiate Peace Mission to Poland, October 3, 1919, 860c.4016/169 and Letter from Gibson to Phillips, July 6, 1919, 860c.4016/136, reel 15, Microfilm M1197, Records of the Department of State Relating to the Internal Affairs of Poland, 1916-1944, NARAII]. Gibson did not seem to investigate a complaint by an American Jew visiting Poland who was "defaced" by a "Haller fellow" who "sawed" off his beard with a knife at a railroad station in "broad daylight." [Letter of Aron Offen to Hugh Gibson, March 4, 1920, Box 92, Folder: Jewish Question/Reports, Hugh Gibson papers, Hoover Institution Archives].

[108] Violence against Jews in Eastern Galicia in the 1919-1920 was consistently begun by detachments of Polish troops or volunteers in Haller's army. They frequently rallied underemployed local populations that were resentful of the scarcity of provisions and high prices for food and believed Jews had German connections (and were war profiteers, food speculators and smugglers) or were Bolshevist spies. Alexander Prusin, *Nationalizing a Borderland: War, Ethnicity, and Anti-Jewish Violence in East Galicia, 1916-1920* (Tuscaloosa: University of Alabama Press, 2005), chapter 6.

[109] The INS insisted that the steamship that brought Pesie to the United States pay the fine for bringing over an illiterate, something it could not do if she was deemed exempt from the test.

Though advocates responded by aiming for discretionary admission, it was a moving target and became increasingly rare in the wake of the quota law. In early 1922, HIAS's representative at Ellis Island complained that the rushed handling of cases did not allow for administrative appeal of exclusion orders before immigrants were put on boats for "premature deportation."[110] This was leading relatives "to resort to other means of staying deportation."[111] By this he meant relatives were asking non-HIAS advocates to make appeals in Washington, securing support from the press and politicians, and hiring (at high cost) lawyers to challenge exclusion orders in court. [112] HIAS also asked lawyers, who usually waived fees, to file writs of habeas corpus in some cases but typically did this to try to get concessions from the immigration authorities and agreed to withdraw the writs if the cases were administratively reopened. Immigration officials reacted negatively if these arrangements—to discontinue court proceedings

[110] According to "Information Relative to The Immigration Laws and Their Enforcement in Connection with the Admission of Aliens" issued by the Bureau of Immigration on July 5 1923, "the officer in charge at the port may refuse to accept an appeal filed by the alien (or any society, attorney, relative, or friend, with his knowledge or consent) more than 48 hours after exclusion…or if the alien has been removed from the immigration station for deportation." (Box 13, folder 12, Max Kohler Papers, America Jewish Historical Society, Center for Jewish History).

[111] Letter of W.M. Neubau (HIAS Ellis Island representative) to John L. Bernstein (president of HIAS), Jan. 31, 1922: "The common practice has been to forward records in appeal cases, after their review by Mr. Landis, Assistant Commissioner [at Ellis Island], to Washington where they are heard by a Board of Review. There the interests of the alien are defended by Mr. Gottlieb…Lately, however, whenever in the judgment of the [Ellis Island] officials they feel that there is no merit to a case, the information concerning the case is either wired or telephoned to Washington and instructions are asked concerning the disposition of the case. Invariably the recommendation of the Assistant Commissioner [Landis] is acted upon favorably," with prompt "telephonic order to deport…I may state in this connection that practically since the beginning of this new administration, it has been a great task for us, once the alien is placed on the steamer, to insist the authorities remove him. It has become a necessity therefore for the relatives in all of these cases to resort to others means of staying deportation. Of course, you can readily see that at a time like this, when the detention quarters are not overcrowded, there is obviously no need of rushing deportations in this manner. When some months ago, appeals were multiplying rapidly and the capacity of the Island was taxed, there might have been ground for such procedures. Now given the emergency has passed and in justice to relatives and to immigrants we are trying to serve, I strongly feel that more opportunity ought to be given to the alien to have his case heard."[folder 14, MKM15.19, 254.4.10, HIAS records, YIVO archives].

[112] See the exchange of letters between Grace Abbott and HIAS regarding a case in which relatives secured "good publicity" in Chicago papers and the Immigrant Protective League sent a telegram to the President and an appeal to a Senator; HIAS believed this made matters "complicated" and "too many interfered." (folder 8, MKM15.19, 245.4.10, HIAS records, YIVO archives).

in exchange for discretionary relief—leaked to the press.[113] If a writ was not withdrawn, the federal court usually dismissed it, holding to a very narrow standard of review and deferring to the discretion of the immigration authorities.[114] As we shall see, Max Kohler took one literacy test persecution claim case all the way to the Supreme Court; the appeal prevented deportation, but the Court did not rule on the issue of persecution and sent the case back to the immigration authorities for determination. The release of Jewish immigrants on bond during court appeals angered the immigration authorities since they found ways to stay. When illiterate immigrants were admitted on bond, HIAS and the National Council of Jewish Women (NCJW) encouraged them to learn to read during their stay so that they could pass the test before their time to leave. This strategy was successful in some cases—Pesie Hirsch's for example.[115]

But allowing for retesting after entry was a *discretionary* policy that some immigration officials always opposed and that fell out of favor with Immigration Service more generally by

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[113] This is what happened in the case of Samuel Goldman, a young Polish boy who was prevented from joining his father in Syracuse when the Ellis Island authorities deemed him feebleminded upon arrival in 1921. The Syracuse Jewish community hired a lawyer, who made the claim that the feeblemindedness was the result of malnutrition, but a federal court dismissed his appeal. The community asked Louis Marshall for help. Marshall delayed the Goldman's deportation with an appeal that he was admissible as the son of a US citizen. Marshall also asked a Congressman to pressure the Department of Labor to admit Goldman. The Department signaled that it would consent to Goldman's admission providing court proceedings were discontinued. When this was leaked to the press, the Assistant Secretary of Labor retreated and declared the case open. The Department admitted Goldman "only when the publicity died down and the issue appeared as a matter of daily administration." (Maddalena Marinari, "Liberty, Restriction, and the Remaking of Italians and Eastern European Jews, 1882-1965, (Ph.D. dissertation, University of Kansas, 2009) 68).

[114] See the letter of attorney Morris Jablow to John Bernstein, President of HIAS, August 3, 1921, folder 8, MKM15.19, 254.4.10, HIAS records, YIVO archives. This letter involved writs of habeas corpus in two literacy test cases that Jablow handled for HIAS. Jablow withdrew the writ in one of the cases and pursued appeals in the courts in the other. (The cases were that of Esther Reichking, INS case file 54999/592, and Berel Newman, INS file 54999/449). In the New York district, between July 1, 1922 and June 30, 1923, 100 writs were withdrawn, 191 dismissed in favor of the government, and only 47 sustained in favor of the alien. (INS case file 52730/40).

[115] Pesie Hirsch was successfully able to read three Yiddish test cards, one with a descriptive passage of the Palace from the Book of Esther, one with an account of provisions from the Book of Joshua, and one lyrical blessing from the Book of Psalms. At the time of her test (late summer 1921), though the law specified that reading was sufficient, the immigration authorities required understanding of what was read, a requirement HIAS challenged in court. (Case of Berel Newman, 54999/449.)

1922.[116] So, for those admitted temporarily, marriage proved a safer way to get out of the literacy test (by becoming exempt as a wife). This is what several illiterate Jewish and Armenian women did, especially those who needed to begin working as soon as they arrived and could not devote their time to intense study.[117] George Topakyan asked Louis Gottlieb to handle the case of a 20-year old illiterate Armenian woman who had been admitted temporarily in 1922. The issue of past persecution was never raised in appeals on her behalf, though Topakyan asked the immigration commissioner "in the name of humanity to use your influence...as she will marry an Armenian…and is one soul we can save." She did not learn to read but was allowed to remain after she married and had a child.[118] This kind of appeal and resolution reinforced traditional gender roles; Topakyan's goal was reclaiming Armenian women (dismissing the the value of literacy for them) and restoring the Armenian ethnic community through family formation.[119] In another case, a Jewish woman named Elke Kaplan, from a village near Minsk, had two years of

[116] Soon after the literacy test became law, Louis Post disagreed with Commissioner General Caminetti about temporary admission of illiterates (INS file 54285/28). The policy in early 1919 was that those illiterates the INS had been unable to deport because of the war and had since learned to read be afforded another opportunity to pass the literacy test (INS file 54295/36). By early 1921, the next Commissioner General W.W. Husband sent out an instruction that illiterates who wanted to remain be retested to demonstrate their ability to read at the end of their temporary stays (INS file 55866/962). But, by the late summer and fall of 1921, when some immigrants failed retests and requested extensions, officials questioned the legality of the temporary admission of illiterates altogether (INS files 54866/153, 54670/436, 55265/439).

[117] "Feige Cohen, a splendid woman of 38, who, though bonded for illiteracy, is employed in domestic service…She has failed in one examination and is faced with deportation…We do everything in our power in face of the tragic circumstances (for Feige has no relatives abroad and must return to a home where misery and deprivation await her) to secure a stay of deportation and to obtain for her an opportunity for another examination when she may be more successful. The stay is secured. Feige has another three months…we feel that, should she be able to obviate her illiteracy, she will be a most desireable resident for our country." *The Immigrant* (Monthly Bulletin of the NCJW's Department of Immigrant Aid), I.9, April 1922.

[118] INS file 55270/545.

[119] Lerna Ekmekcioglu insightfully points to "remasculinization" as the motive for "those men who rescued women, ordered their rescue, or fathered them, married them, or married them off. Armenian men who were made to witness violations of their families, or were away when they were violated, now had a chance to do what they felt they should have been doing before: protecting their women." (Ekmekcioglu, "A Climate for Abduction, a Climate for Redemption: The Politics of Inclusion during and after the Armenian Genocide," *Comparative Studies in Society and History* 55.3 (2013) 549.)

schooling before her father died in the fighting in 1920 and she "could not attend further."[120] After she was admitted temporarily to the U.S., Kaplan was a client of the NCJW but could not learn to read so managed to remain in the United States only by marrying.[121]

The NCJW's idealistic promotion of literacy as part of its Americanization program for immigrant women downplayed the reliance on administrative discretion and marriage in many cases. It also presented a Manichean view of the lack of educational opportunity in the old world and its availability in the new. This obscured the particular wartime and postwar violence and disruption that so impacted the lives of many NCJW clients, not to mention the economic and gender-based constraints they faced in the United States. But these disruptions and constraints are apparent in non-winning entries submitted by immigrant women to a NCJW essay contest in the early 1920s. The theme was "The Most Important Day of My Life." Though one of the NCJW judges noted that "in most cases the 'happiest day' was when the writer set foot on American soil," many of the entries had a different emphasis. [122] One woman described a day in August of 1920, when fighting raged between Poles and Bolsheviks, and her family was separated from her father and she thought he was killed. She was happiest she had ever been when he came looking for them during a lull in fighting. Minnie Formam wrote of the day of her

[120] Elke, who was a teenager when she arrived, also hinted that she had been sexually molested during the pogroms. Inspectors asked her why, if, as she claimed, all Jews were being attacked in her town, her mother and sister remained there. Elke answered: "I am a bigger girl and was mistreated more than the younger children and the elderly people." INS file 55340/241.

[121] Kaplan's NCJW case file is in box 2, Series II: New York Immigration files, 1920-1938, National Council for Jewish Women, Department of Service for the Foreign Born Records, Yeshiva University Special Collections.

[122] The winning essays were published in *The Immigrant*, VI.2, November 1926. They were as much about the significance and difficulty of departing from the old world as they were about the excitement and joy of arriving in the new. Four of the essays were on departures and four on arrivals. Others were about learning to read, giving birth, getting married, a son's bar mitvah, and a daughter's recital. All the entries for the contest, including essays that did not win and that had a significantly less happy aspect, are available in the collection Essays by Jewish-American Immigrant Women (written in connection with English language classes given by the National Council of Jewish Women's Department of Immigrant Aid), Manuscripts Division, Department of Rare Books and Special Collections, Princeton University Library.

parents' death during one of the pogroms at the time of the Russian Revolution. "I saw a bandit aiming his gun at my father. I dashed in front of him to save him, but just as the bandit was going to pull the trigger my mother dashed in front of me and received the bullet through her heart. From that moment I do not know what happened but when I came to myself I was on the floor, my mother and father near me lying unconscious." Another woman, Rose Genet, wrote that the sudden death of her father—who was also "killed by bandits at the time of the Revolution"—put an end to her education.[123] The realities—rather than the ideal—of refuge in United States also find their way into essays on such topics as "How America has helped me" and "Reasons for coming to America." One woman insisted a bit too much that the past was behind her: 54-year old Sonia Leviant from Kiev, wrote that "After the army war the civil war started…[In America], I am not afraid somebody is coming to our house to kill us. I am not afraid they take away our clothes…when I think about Russia I am afraid now."[124] A woman named Anna Levy, who was illiterate upon arrival, wrote about how, soon after joining her brothers in the United States, she was "taken out of school to go to work." She married and then sent for parents.[125]

[123] These three essays are in VIII: The Most Important Day of My Life; Essays by Jewish-American Immigrant Women (written in connection with English language classes given by the National Council of Jewish Women's Department of Immigrant Aid), Box 1, Folder 9; Manuscripts Division, Department of Rare Books and Special Collections, Princeton University Library.

[124] V: How America Has Helped Me; Essays by Jewish-American Immigrant Women, Box 1, Folder 6; Ibid.

[125] II: Reasons for Coming to America; Essays by Jewish-American Immigrant Women, Box 1, Folder 3; Ibid.

Placing Interwar Asylum Seekers in U.S. Immigration Historiography

These cases and their handling by advocates raise themes that, for the most part, have not been adequately addressed by historians of immigration to the United States. Histories of Jewish and Armenian immigration to the United States tend to end around World War I and leave unanalyzed the immigration of the early 1920s—which was still large, though differently structured in response to conditions abroad and American immigration restrictions.[126] In assuming that by the time immigration from Europe picked up after the war, the quota laws went into effect, historians have overlooked the 1920-1921 window when advocates pushed hardest for the recognition of persecution claims and immigration officials were most willing to grant them. Especially after the passage of the 1924 Johnson-Reed Act, the number of immigrants decreased dramatically for the next fifteen years, but, as the only history of Jewish immigration to the United States during these years puts it, "the law's meanings were created, over the course of many years, as a result of the actions of lawmakers, other government officials, political and aid organizations…and migrants themselves…[T]he reordering of the nation's boundaries…happened in an uneven manner with much contention and confusion."[127] The rules were particularly amorphous regarding Jews and Armenians because, throughout the 1920s, they

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[126] More than 20,000 Armenians came to the United States in the early 1920s, only slightly fewer numerically than those who entered in the years immediately preceding the war and far more proportionately given the estimates of Armenians killed in the immigration-sending regions during the war. Extrapolating from Minasian's table 3, between 1911-1915, 26,987 Armenians were admitted; between 1920-1924, 21,722 Armenians were admitted. [Edward Minasian's *They Came From Ararat* (PhD University of California, Berkeley, 1961)]. Significantly, there were far fewer departures of Armenians from the United States during the latter years. Data on Jewish immigration is available in the statistics sections of the *American Jewish Yearbook*, volumes 24-27. Between 1911 and 1915, about 411,000 Jews entered the U.S.; between 1920 and 1924 about 272, 000 came. Again, percentages of departures were lower in the latter years. The majority of the Jews came from Poland and Russia, which experienced tremendous deportations and population upheaval during the war years and pogroms afterwards.

[127] Libby Garland, *After They Closed the Gates: Jewish Illegal Immigration to the United States, 1921-1965* (Chicago: University of Chicago Press, 2014) 2.

were frequently referred to as refugees not only by the press and by advocates, but by legislators and officials who were well aware that, the persecution exemption to the literacy test notwithstanding, no such clear category existed in American law. This kept the dynamic between immigrants and restrictionists more two sided than it would have been otherwise, and discretion played a large role. Here is an exchange during a Congressional hearing in the wake of the chaotic implementation of the 1921 quota law: [128]

> Chairman Johnson: These particular people…Armenians…were refugees in the truest sense of the word?
> Assistant Secretary Henning: Yes…In a matter involving an Armenian girl…persons in her neighborhood have been massacred…she has escaped from a harem…Now we must send her back…the law is the law. I got a telegram this afternoon a yard long, talking about the crime about to be committed, the unusual cruelty, unknown in the administration of this law in years hone by.
> Mr. Sabbath: What is meant was a crime against humanity…
> Henning: They think it is a natural crime, sometimes, to enforce a law.
> Mr. Vaile: They meant that the law was a crime.
> Mr. Raker: It is not a crime to enforce a law of the United States, and the United States us getting pretty low down when these leading citizens talk about obeying the law being a crime.
> Mr. Siegel: Your old statute [the 1917 law] is still in force, and in cases of great distress, the Secretary of Labor still has the power to admit them under bond.

The 1917 law and particularly its persecution exemption are other understudied topics among immigration historians. As mentioned earlier, the large number of *femes sole* who raised persecution claims to get exemptions from the literacy test was unexpected; perhaps this is why historian Jeanne Petit's history of the way "manhood, womanhood, and sexuality" framed the debate over the literacy test before its passage does not even mention the persecution

[128] *Hearings Before the Committee on Immigration and Naturalization,* House of Representatives, 67th Congress, Second Session, December 13, 1921, 67-68.

exemption.[129] In her analysis of the 1917 act, Young-In Oh focuses on the way literacy was assessed by the INS, particularly the use of difficult and symbolic Biblical passages translated into immigrant languages from the King James version.[130] Oh insightfully discusses the lack of uniformity in the administration of the test, but does not extend her discussion of inspector discretion in evaluations of literacy to their evaluations of persecution claims.[131] In fact several cases involving persecution claims were turned into cases involving the nature and fairness of the literacy test. This is because, as noted above, some Armenians and Jews were admitted temporarily and then began learning to read, yet sometimes still had trouble passing the retests. Frequently immigration inspectors claimed they did not understand well enough what they were reading. Sometimes there was a mismatch between the language and subject matter they were taught by tutors or in literacy classes and the test cards used by the immigration bureau.[132] Immigration advocate Max Kohler, who was most interested in persecution claim cases, nonetheless complained that the way the literacy test was administered was unreasonable because it relied on translators. The immigrant read from a card, the translator interpreted the immigrant's words into spoken English, and the inspector compared the interpretation to the official English translation of the card. "It is obvious," Kohler wrote, "that the alien is held responsible, under this scheme, for the blunders of the interpreter. If the interpreter retranslates

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[129] Jeanne Petit, *The Men and Women We Want: Gender, Race, and the Progressive Era Literacy Test Debate* (Rochester: University of Rochester Press, 2010).

[130] Young-In Oh, *Struggles Over Immigrants' Language: Literacy Tests in the United States, 1917-1966* (El Paso: LFB Scholarly Press, 2012) chapter 2.

[131] Given Oh's focus on the test's Protestant bias, it is not surprising that she does not address the persecution exemption, which legislators intended for Jews and Armenians. That Jews and Armenians were the groups singled out for exemption is clear from Congressional debates over the test; see for example *Congressional Record*, January 31, 1913, 2704; *Congressional Record*, Feb. 25, 1916, 3163-3164.

[132] INS files 54999/148; 55265/441; 55255/368; 54960/777.

badly, the alien is judged to have read incorrectly! Unless the interpreter is omniscient, variances in retranslating are bound to occur!"[exclamation points in the original].[133]

More general histories of American refugee policy downplay the significance of the persecution exemption to the literacy test; one scholar calls the provision "stillborn" given the passage of the 1921 and 1924 quota laws that guaranteed no spots for refugees.[134] This dismissal also seems merited if one were to rely on the statistics regarding exemptions from the literacy test based on religious persecution provided in the Annual Reports of the Commissioner General of Immigration for the period between June 1917 through June 1922. These reports hide the persecution claims that were raised on appeal and how such claims influenced discretionary admission. For example, according to the Annual Report spanning June 1920 through June 1921, one Jewish female illiterate was granted exemption from the literacy test on persecution grounds while all others (5140) were admitted to join relatives. All 294 illiterate Armenian women were reported to have been admitted to join relatives.[135] It is clear from the immigration case files in the archives that many of these admissions were to (distant) relatives that did not exempt the women from the test according to the statute. Persecution claims may have also influenced some of the 171 temporary admissions. (The remaining 449 were debarred).[136] Moreover, statistics do not reveal how many of the 957 appeals to exclusion based on illiteracy for that year raised the issue of persecution and how many of the 338 illiterates admitted permanently on appeal had their persecution claims accepted. In the INS archives, I found 15 cases of Jewish women whose

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[133] *Tod v. Waldman*, 266 U.S. 113 (1924). Respondent's Brief. File Date: 10/20/1924. *U.S. Supreme Court Records and Briefs, 1832-1978*. Gale Cengage Learning, 52.

[134] Carl Bon Tempo, *Americans at the Gate* (Princeton: Princeton University Press, 2008) 15.

[135] *Annual Report of the Commissioner General of Immigration*, Fiscal Year Ending June 30, 1921, pages 34-35

[136] Ibid., page 124.

persecution claims on appeal led to their admission that year; in more than half of these cases, persecution claims were explicitly recognized.[137] Though INS Annual Reports stop providing any statistics on the persecution exemption after 1922, both INS and HIAS archives indicate that illiteracy remained a concern to the organization and that persecution figured *among the issues* raised in appeals on behalf of immigrants by HIAS through 1924.

As discussed in the next section of this chapter, in developing the persecution exemption to the literacy test, advocates emphasized legal impediments to Jewish education in the Russian empire. Advocates representing arriving immigrants after the war had little understanding of the variations in the kinds of education Jewish and Armenian women received depending on, for example, age, class, birthplace, and familial religious observance. These factors made it difficult to make good cases for asylum based purely on the fact that immigrant women were Jews or Armenians. Young Armenian women, for example, would have had more access to education than their elders, but these same young women would have also had their early education disrupted by war and deportations.

Other ways that advocates framed Armenian and Jewish victimization impacted the persecution claims. In the case of Armenians, abduction of Christian women and children by Muslims was the dominant persecution motif. The goal of postwar Armenian leaders and advocates was to reclaim women and to suppress the taint of their captivity. [138] Advocates depicted the victimization of Armenian women in very particular ways that tended to render some of their experiences invisible. Immigration interviews reveal assumptions by inspectors

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[137] INS files 54999/41; 54999/73; 54866/873; 54999/286; 54960/973; 54960/99; 54960/745; 54960/555.

[138] Ekmekcioglu, "A Climate for Abduction, a Climate for Redemption"; Vahe Tachjian, "Mixed Marriage, Prostitution, Survival: Reintegrating Armenian Women into Post-Ottoman Cities," *Women and the City, Women in the City*, ed. Nazan Maksudyan (Berghan Books, 2014), 86-106.

about these experiences that colored their views. The publicity material for relief organizations hid some of the realities of the post-war situation for Armenian women that made their migration difficult, like the prevalence of venereal disease[139] and the refusal to abandon children borne to them in Muslim homes. Heightened attention to particular forms of female victimization did not necessarily translate into increased acceptance of Armenian women's persecution claims.

In the case of Jews, in their campaigns to raise awareness about pogroms and elicit official U.S. government protests about them in the early 20th century, Jewish organizations placed undue emphasis on *officially* sanctioned persecution by the Russian government.[140] Many of the postwar immigration interviews painted complex pictures of life for Jews in towns within the former Russian empire; immigration inspectors did not know how to assess claims of persecution based upon them. Max Kohler pinpointed the problem in testimony to Congress in early 1923. When asked if pogroms in Poland "were directed by Government orders," Kohler responded that in 1919, "the leading representatives of the Government in command of districts, even when warned, refrained from using efforts to stop" them. "It is," Kohler said, "a question of tweedledum or tweedledee whether you call it assassination by a mob which the Government could and should have prevented or whether you call it pogroms." As to whether immigration of Jews could still be attributed to persecution in 1921 and 1922, Kohler said: "There have been

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[139] A promotional June 1919 American Committee for Armenian and Syrian Relief *News Bulletin* features a picture, on page 9, of a "victim of Turkish cruelty" in the Near East Relief hospital in Aleppo. In the original print of this picture, the sign above the woman's head identifies her and the reason she is in the hospital: "Aroosiag Mutafian, syphilis." This is not visible in the published version. The original print is number 204 in the Near East Relief Collection, Aga Kahn Division, Fine Arts Library, Harvard University. For the prevalence of venereal disease see *Medical Work of the Near East Relief*, ed. George L. Richards (New York, 1923), 21.

[140] Sam Johnson, "Uses and Abuses: 'Pogrom' in the Anglo-American Imagination, 1881-1919," in *Jews in the East-European Borderlands: Essays in Honor of John D. Klier*, ed. Eugene M. Avrutin and Harriet Murav (Brighton: Academic Studies Press, 2012) 147-166. In a recent lecture on the legacy of the Kishinev pogrom, Steven Zipperstein has argued that the most canonic of all assumptions among Jews regarding the late imperial Russian regime was that government officials at the highest levels were directly responsible for pogroms. This assumption was mobilized to block restrictions on Jewish immigration to the United States.

some reports on occasion of mob violence since against Jews in different sections of Poland…You could scarcely regard [all] those Jews [coming from Poland] as still victims of pogroms or as refugees fleeing from religious persecution except for the important fact that an economic boycott is still in force and makes life almost intolerable for a large percentage of the Jews in Poland." Whether this economic boycott was a "governmental action" was also a complicated question, Kohler pointed out, since it was started by a prewar Polish official "commonly regarded as the power behind the throne in connection with every government that has been set up since then in Poland." Kohler also noted that "there has been such systematic action against all religions by the soviets" that "it is at least an open question" whether Jews coming from areas controlled by them were "fugitives from religious persecution." "Moreover," Kohler added, showing again that for him no clear line distinguished economic persecution from other forms, "the communistic system of the soviet bears most heavily on the Jewish tradesmen."[141]

Scholars who have recently begun to analyze how family ties became so central to American immigration policy in the 20th century (especially in preferences for admission) have also neglected to emphasize the significant role refugees played in the process from as early as the post-WWI period.[142] In the interwar period and in the post WWII period, advocates were

[141] Statement of Max Kohler, Hearings Before the Committee on Immigration and Naturalization, House of Representatives, 67th Congress, 4th Session, January 5 1923, 444.

[142] An emphasis on family unity is clear as early as the 1922 bill, discussed at the beginning of this chapter, that proposed dealing with the Armenian refugee crisis by allowing United States residents to petition the Commissioner General of Immigration for admission outside the quota of relatives who fled Turkish territory. Though he overlooks the significance of post-WWI refugees, Yuki Oda insightfully analyzes the ways "the family question was prominent in post-World War II refugee law and practice," pointing out that the Displaced Persons Act of 1948 and the Refugee Relief Act of 1953 "allowed for family immigration in a manner that was not possible under general immigration law," particularly in admitting outside the quota relatives and their families through marriage, those who restrictionists saw as new family units. (Yuki Oda, Family Unity in U.S. Immigration Policy (PhD Dissertation, Columbia University, 2014) 212).

interested in the admission of both refugees and relatives, but restrictionists (not interested in humanitarian admissions) pushed them towards focusing on relatives. A good example of this is evident in the same Congressional hearings of early 1923 just cited, during which Abraham Rosenberg, President of the Federation of Polish Hebrews of America, was asked, no less than four times, for assurance that he was interested in the admission of Polish Jews because they were wives and children of men in the United States rather than because they were fleeing persecution.[143] In administrative hearings, court cases, and Congressional hearings, advocates argued that allowing Jewish and Armenian relatives to unite with family in the United States was especially needed since they had no place else to go. In response to restrictionists who wanted to promote family unity by sending husbands and fathers back "home," advocates argued there was no nation to which they could return.[144] Without states to focus on, family and religion were central to Jewish and Armenian cultural identity. Immigrant advocates made a virtue out of necessity and celebrated this form of identity in the 1920s. "The family relation is the most sacred known to man," Louis Marshall told Congress in 1928.[145] The YWCA International Institutes adopted the philosophy of approaching immigrants primarily as members of families and nationality communities, rather than as individuals. YWCA social workers defined nationality as "a natural social unit…which has developed out of common interest and almost unconscious loyalty bonds…self maintained by nationality feeling, by dependence on a common

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[143] Statement of Mr. Abraham Rosenberg, Hearings Before the Committee on Immigration and Naturalization, House of Representatives, 67th Congress, 4th Session, January 5 1923, 408, 414, 415, 416.

[144] Statement of Stephen Wise, *Hearings Before the Committee on Immigration and Naturalization, House of Representatives,* 68th Congress, 1st session, Jan. 3, 1924; Statement of John Abajian, *Hearings Before the Committee on Immigration and Naturalization*, House of Representatives, 69th Congress, 1st Session, Feb. 25, 1926, 123.

[145] Amendments to Immigration Act of 1924, *Hearings Before the Committee on Immigration and Naturalization,* House of Representatives, 70th Congress, 1st session, March 27, 1928, 29.

language, by a need of social security, and by a sense of common culture and experience in a foreign land."[146]

Ten years after the implementation of the 1921 quota law, social workers had come to see Armenians and Jews as distinct from other immigrants in their need for asylum, pointing especially to their anomalously low departure rates.[147] But, they did not present them as persecuted ethnic minorities as much as members of families torn asunder by the immigration laws. Though American Jewish organizations and social workers in this period have been well documented, less has been written about parallel advocacy within the Armenian American community. Yeghenian argued that admitting Armenians to the United States would strengthen the American social fabric. "Can laws discriminate and so make a large portion of the population unhappy and embittered, and without seriously hurting the unity of the nation itself?"[148] Her report on the separation of families emphasized that Armenians, though disproportionately affected, were just one of many immigrant groups suffering because of the Quota Law. Yeghenian argued that it was in America's self interest to amend a law that "embittered and disillusioned the immigrant" and "tended to destroy in him the positive forces on which good citizenship can be built." The Quota Law created "tragedy in the life of the foreign born."[149]

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[146] "Philosophy: The Nationality Community as the Working Unit," Edith Terry Bremer's definition of nationality, Box 9, International Institute of Boston Records, IHRC.

[147] The National Council for Jewish Women's annual report for the year ending April 1, 1933 pointed out that "In only two cases was the number of admissions larger than the number of those who departed. These are the Armenians and the Hebrews. The Armenians show an increase of 142…while the Hebrews of 1045." Box 1, National Council of Jewish Women, Department of Service for the Foreign Born Records, Yeshiva University Archives.

[148] Aghavnie Yeghenian, "Separated Families: A New Foreign-Born Problem Growing Out of Restricted Immigration," *Women's Press*, November 1927, 759.

[149] Yeghenian, A Study of One Hundred Separated Families From the Records of the International Institutes, 2.

How did Yeghenian, who had come to the United States just a decade earlier, come to this point of view? Despite the predominance of "ethnic" social workers in the immigration field, historians have not considered the impact of their backgrounds on their perspectives.[150] Yeghenian's perspective sheds light on the stances that the Protestant establishment and reform-oriented professional women took on certain foreign policy and immigration issues.[151] Though Yeghenian never wrote or spoke about the relationship between her personal and professional life, it can be read between the lines. Over the course of the 1920s, Yeghenian rechanneled her bitterness about the Armenian experience in Turkey towards advocacy on behalf of immigration reform. For Yeghenian, casework was a refuge from the horrors of the war years, though it proved more consoling than empowering for many of her female clients.

Yeghenian arrived in New York in September 1915, at age 20. Her father, a businessman in Constantinople, died just before she left there, but she never specified the circumstances. When interviewed by the *Brooklyn Eagle* in January 1916, she spoke about her education—particularly two years of sociology taught by Ellen Deborah Ellis of Mount Holyoke, who was visiting Constantinople College—and her professional plans. She explained that "it was not until

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[150] In a review of a book that forefronts the role of social workers as mediating access to relief for immigrants in this era, the (late) historian Michael Katz points out that the author "writes extensively about 'social workers' but leaves them a shadowy group, not describing their backgrounds, education, or responsibilities and distribution among public and private agencies." Michael Katz, "Borders and Bootstraps" (review of Cybelle Fox, *Three World of Relief*: *Race, Immigration, and the American Welfare State from the Progressive Era to the New Deal*), *Dissent* (Winter 2013) 90.
In general, Armenian organizations and lawyers interested in migration have been much less written about than their Jewish counterparts. Besides their smaller numbers and prominence, this is also because, in a time of nationalism and restrictionism, advocates saw themselves as engaged in projects of reconstruction and were quick to disavow emigration even as it was happening. Vartan Malcolm, probably the most famous Armenian-American lawyer and author of a book on Armenian immigrants, wrote that Armenians in America should "go back to Armenia" after the war. M. Vartan Malcolm, *The Armenians in America* (Boston, 1919), 141.

[151] I am using the term Protestant establishment in the way William Hutchinson uses it in his essay in *Between the Times: The Travail of the Protestant Establishment in America, 1900-1960* (New York: Cambridge University Press, 1989), 3-18.

the situation became strained" in Turkey, and when she saw that she could not go into teaching, "the highest calling that a woman in Turkey can adopt,"[152] that she decided to come to the United States to study "organized social work" in the hope of bringing the methods she learned back to her home country. The greatest problems there, she said, with unintended poignancy given her own biography and the events unfolding in Turkey, was the care of widows and orphans.[153] She spent the next few months working as a volunteer for the Brooklyn Bureau of Charities. In 1917, she began working as a "nationality worker" to the Armenian immigrant community for the YWCA's International Institute in New York City. In 1919, when she began working on immigration matters for the National YWCA, she recruited Armenian students intending to return abroad for a "Summer Training School for Old Country Service" and spoke at an Armenian Women's Club on the "Significance of Americanization Efforts in this Country." In December, Yeghenian wrote an article for the YWCA's publication *Foreign Born* on "Armenians Here and Abroad" that focused mostly on marriage customs and women's roles. While marriage customs were "old fashioned,"[154] not so Armenian women generally. Armenian women "will respond to a good lecture on current events, political affairs… She will unquestionably enjoy a talk about some woman's movement in the United States better than a lecture on American cooking, " Yeghenian asserted. "The only ill feeling that may exist toward America just now grows out of fears and hopes concerning the attitude of the American government towards independent Armenia…The American government has been silent on the

[152] In the early twentieth century, teaching young girls was one of the few careers to provide educated Armenian women with a respectable job and wages. Mary Mills Patrick, the principal of the American College for Girls in Constantinople, noted that of the college's large number of Armenian students between the years 1871 and 1924, eighty percent were reported to have become teachers. (Patrick, *A Bosporous Adventure* (Stanford University Press, 1934) 233.)

[153] "Takes up Social Service Work in the Interest of Armenians," *Brooklyn Daily Eagle*, January 28, 1916, 8.

[154] Yeghenian particularly points to the tradition of early marriage and a wife's subordination to her husband's family, and particularly his mother.

question and the Armenians are beginning to feel that America is not so 'idealistic' as it has professed to be."

Figure 3.2, Aghavnie Yeghenian, from "An International Institute for Young Women," Division for Foreign Born Women, National Board YWCA, October 1918, Box 520, Folder 18, YWCA of the USA Records, Sophia Smith Collection, Smith College, Northampton, MA.

The following year, Yeghenian began to handle international casework and wrote up a study "of the Armenian bride situation…suggesting possible methods for the protection of the many young Armenian girls who are coming to the United Stares as immigrant fiancées"; her recommendations were referred to the Armenian Archbishop in the US and the Patriarch in Constantinople.[155] In May, Yeghenian reported to the YWCA's Committee on Foreign Born on the predominance of women among Armenian immigrants coming to the US, either to join relatives or "on their own responsibility. " "She told one story of a shoe-blacking parlour where three men, one who had lost a wife and five children in exile, and one who had lost a wife and

[155] Annual Report for the Work of the Department for Foreign Born Women, 1920-21, folder 10, Box 527, YWCA of the USA Records.

one child, and one unmarried, who have sent for a sister to bring over three girls rescued from exile whom they are going to marry." [156] In August, Yeghenian appealed to Louis Post on behalf of 16 year old Serpouhi Ghureghian, who was threatened with exclusion for illiteracy. Ghureghian told the immigration inspectors that Turks killed her family, took her captive, and tried to convert her to Islam. When asked if she was an "inmate of any Turkish harem" she replied that she was not, that she was kept to do housework. Yeghenian's letter to Post reveals a seamless blending her personal and professional perspectives (for the latter, she switches to first person plural).

> This child is one of the victims of the horrible Armenian deportations of 1915. She was 11 years old when her family were killed and she was taken a slave to serve some savage Turk. She has survived all her sufferings in a miraculous way. Her only refuge in earth is her brother who is an American citizen and an ex-soldier... It seems to me as if the makers of the law for the literacy test could not have had in mind such cases as these. The child never had the opportunity of learning during the last five years and what she had learned she has completely lost… As you might well judge yourself, our interest in this case is a human interest. While we as an organization are doing our best to interpret America to the foreigner and to impress him with he sanctity and inviolably of our laws, we do not feel that we will be interpreting the voice of the American people if we allowed an unfortunate girl to go back to Turkish rule. To her as well as to her citizen brother the American law would remain incomprehensible and cruel. We are therefore interested to secure such help for you as will enable them to appreciate and love as well as respect our most precious laws an traditions.

Though Acting Secretary Mahany, who found Ghureghian's story "honest and sincere," was inclined to admit her outright, he opted instead for temporary admission under bond. By the end of the year, Ghureghian was able to pass the literacy test and adjust to permanent status.[157]

A few months later, when support for Armenian independence had waned and just as the first quota law was about to go into effect, Yeghenian wrote her only confessional article about

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[156] Minutes of the Committee on Work for Foreign Born Women, May 20, 1920, Folder 7, Box 519, Ibid.

[157] INS file 54866/650.

how "to be an Armenian in America is to be bitterly disappointed." "But why do I suffer? Haven't I the privilege of living in America, a privilege envied by others of my countrymen? …I walk about like one in a dream…I pass through the streets where American children play…and in my vision rise the rows of our orphanages…The bright side of every situation points out to me with unmistakeable clearness the other, darker side, the Armenian side." [158] This tension continued in late 1922 when Yeghenian managed to get her sister (and sister's husband and daughter) temporarily admitted, despite the exhausted quota, just at the time that Congress failed to pass legislation allowing Armenian refugees to enter outside the quota. In her personal appeal to the Board of Review and Robe Carl White on behalf of her sister's family in November 1922, Yeghenian explained that "they were already refugees in Constantinople from the Balkan War of 1912; that they had…fled from several invasions of the Turkish and Bulgarian armies respectively in their home town [in Eastern Thrace] and had never been able to return there. As a result of these harrowing experiences in 1912," Yeghenian said, "they had reason to fear anew the return of the Turkish army to Constantinople soon after the Smyrna disaster." Yeghenian went to Washington to make this appeal armed with a letter of introduction from Emma Bailey Speer, President of the YWCA. Yeghenian also had the backing of the YWCA's National Board to "assist in…securing temporary suspension of the 1921 quota regulations for Turkish territory which will permit persecuted Christians to join relatives and friends in this country." Yeghenian had received this go ahead after reporting to YWCA's Foreign Born department on the situation in the Near East: "The Turkish Nationalist army…is clamouring to march on into Constantinople, impatient to repeat the fate of Smyrna on the unprepared and unprotected Christian

[158] "An Armenian in America," *New Republic*, June 29, 1921, 142-3.

population"[159] The Board of Review in Washington agreed to let Yeghenian's family in for a year, especially because the unusual hardship deportation would cause for Yeghenian's 10 year old niece and taking notice of "the dangers to which children are exposed because of conditions in the Near East."[160] Congress, too, was taking notice of these conditions. The YWCA's Foreign Born Department sent out letters urging supporters to petition Congress and the President in support of legislation that would allow Armenian refugees into the country outside the quota. When the bill failed to pass, Yeghenian was furious. At the 5th Annual Conference of International Institutes in Washington DC in May 1923, Yeghenian gave a bitter speech on "Near East Refugees": "Conditions in the refugee camps have gone from bad to worse…There is no other available land for these people when Greece definitely decides to put them out—everywhere they turn the doors are closed. That is why we asked the United States to make an exception to the quota law and admit at least those who have a claim to be here…We rebel against the quota law because it is unfair: that from a country like England where people are safe in their own land, prosperous and powerful, the quota law admits about seventy-seven thousand, and from the whole of Turkey, where there are several nationalities torn away from their homes, from their cultural backgrounds, with no place on earth to go, the quota law admits only about two thousand a year." Yeghenian explained that, when working on the refugee bill, she was asked to collect data on how many Armenians might petition for relatives to be admitted. The

[159] Meeting of the Department for Work with the Foreign Born, October 9, 1922, Folder 7, Box 519, YWCA of the USA Records.

[160] INS file 55270/565

responses she received to questionnaires filled out by Armenians in the United States impressed and touched her.[161]

The tension in Yeghenian's experience continued when her sister's family was admitted permanently under the remedial legislation in 1924 just as the new Quota Law went into effect and separated so many Armenian families. In a May 1925 article that was a prelude to her separated families study, Yeghenian wrote about how the Quota Law embittered and disillusioned immigrants. "The Armenians say 'vicious Turkish propaganda has succeeded so far in the United States that the government is putting the Armenians out of the country." Yeghenian then recommitted herself to advocacy that was as personal as it was professional. "The belief… that the United States Government is against them is something that must be dispelled…For we believe, as a result of sad personal experience, that it is not a good thing for a country to have a population divided."[162]

By this time, the YWCA's overseas workers dealing with migration were spun off into an independent organization called the International Migration Service [IMS]. Yeghenian became the liaison between IMS and the YWCA's International Institutes serving immigrant communities in the United States. This networking allowed social workers to follow cases internationally—to, for example, keep immigrants in the United States in touch with relatives overseas who were waiting for visas, or to keep track of those immigrants who were excluded or deported from the United States. Yeghenian reported on the kinds of Armenian cases she was handling: young girls being treated for trachoma overseas; immigrants from Constantinople ordered deported but unable to return there due to a new Turkish ruling forbidding entry to

[161] Aghavnie Yeghenian, Near East Refugees, Folder 19, Box 521, YWCA of the USA Records.

[162] Aghavnie Yeghenian, "YWCA Immigration Service in the United States," *Women's Press*, May 1925.

Armenians; investigations of the social and financial standing of prospective bridegrooms for young Armenian girls. Yeghenian also spoke out against a ruling by the Immigration Bureau that step-children not be considered eligible for non-quota status; this was particularly hard on young Armenian widows with children who remarried and then were faced with the prospect of leaving behind a child. In the summer of 1925, Yeghenian toured 17 European cities, interviewing U.S. consuls about their administration of the quota law and visiting immigration stations. [163]

Upon her return, she was faced with a new dilemma. The Foreign Division of the YWCA, upon the request of its secretary stationed in the Near East, wanted the National Board to take a public position in favour of US ratification of the treaty of commerce and amity with Turkey. The Department of Immigration and Foreign Communities felt it could not support the treaty because Armenian immigrants opposed its disregard of the rights of minorities and Armenia's claim to independence. Yeghenian wanted the YWCA to remain neutral and wrote Speer a long letter in March 1926 explaining her position. "No one will deny that there is plenty of unfriendliness and revenge in a good many Armenian hearts" but opposition to the treaty on that ground, Yeghenian wrote, "would be quite childish and I, for one, would not take any share in it." Yeghenian opposed the treaty because "not only does it not provide for any reparations for the wrongs of the past, but it does not offer any relief to the tragic conditions of the present." Armenian churches and schools in Turkey were, Yeghenian wrote, "gradually passing under Turkish control." "No Armenian who has once left Turkey for any reason is allowed to return.," she wrote, adding, "I myself was denied admission to Constantinople, my native city, this past

[163] Minutes for Department of Immigration and Foreign Communities, October 9, 1923 and November 12, 1924, January 14, 1925, January 13, 1926, Box 519, YWCA of the USA Records.

summer, even though I went on an American passport." Yeghenian put no stock in the argument that ratification would bring about a constructive shift in Turkish policy towards Armenians. [164]

Yeghenian did not address an argument made by proponents of the treaty that she would have to grapple with in her casework. Some who supported the treaty opposed continued efforts to reclaim Armenians from Muslim homes. The position of at least some YWCA workers on the ground in Turkey was that "most of these particular women in Asia Minor are still there to some extent through choice, since during the Allied occupation they had opportunity to leave if they wanted to…They do not want to leave unless they can better their position, and others have been there so long that they could no readjust to another mode of life. "[165] Another tension in Yeghenian's casework stemmed from her emphasis on family unity as the primary vehicle for immigration reform. Marriage, as American historians have shown, could not contain the problems faced by clients of social workers in the 1920s.[166] Yeghenian criticized the Quota Law for "disregarding the individual" immigrant in the name of "national welfare" and "national unity."[167] But her own and the International Institutes' focus on family and ethnic unity at times displaced commitment to women's rights.

In her early years at the YWCA, Yeghenian "gathered and translated a notebook of inspirational extracts from the writings of foreign authors for use at staff meetings or prayer

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[164] Yeghenian to Speer, March 10, 1926, folder 1, reel 64, YWCA of the USA Records.

[165] Letter from Elizabeth Mayston to Charlotte Niven, enclosed in dispatch of July 15, 1926 from Mark Bristol to Secretary of State, 860j.48/219, reel 8, Microfilm T1192, Records Relating to Internal Affairs of Armenia, 1910-1929, NARA.

[166] Anna Igra, *Wives Without Husbands: Marriage, Desertion, & Welfare in New York, 1900-1935* (Chapel Hill: University of North Carolina Press, 2007); Regina Kunzel, *Fallen Women, Problem Girls: Unmarried Mothers and the Professionalization of Social Work, 1890 to 1945* (Yale University Press, 1993).

[167] Aghavnie Yeghenian, "Separated Families: A New Foreign-Born Problem Growing Out of Restricted Immigration," *Women's Press*, November 1927, 759.

services, to show the universal desire that exists in the hearts of all men for spiritual communion, a desire, once the language barrier is down, which reveals Christian fellowship in a startling fashion."[168] In her March 1926 letter to Speer on the treaty Yeghenian wrote:

"The Armenians find it difficult to understand how, in the name of Christian tolerance, anyone could be placed in a position to say that a wrong cannot be righted. The victims, as everyone knows, are still suffering… It certainly grieves the Armenians deeply to see their Christian friends in the Near East, mainly the American missionaries, saying that Turkish wrongs are of the past, and that the new government has begun a new day." It is clear that the Y's foreign division, and Yeghenian's early mentor Deborah Ellis, had shifted their attention from Armenian to Turkish women.[169] In her letters in favor of the treaty, Ruth Woodsmall, the YWCA Near East Secretary (in the Foreign Division) pointed to changes that had taken place in Turkey, particularly "the emancipation of women."[170] Other "Christian friends" who had formerly decried Armenian suffering did not believe Armenian immigrants should come to the United States for refuge; a primary example of this is Anna Tillinghast, who was very active in the World Christian Temperance Union and was an adamant restrictionist in her handling of Armenian cases as Commissioner of Immigration in Boston in the 1920s. This is not to say that Yeghenian had no allies among prominent Protestant female internationalists, professionals, and reformers; Edith Terry Bremer of the YWCA and Mary Hurlburt of IMS were some of her strong supporters. But it did mean that she had to carve out her own path.

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[168] Annual Report for the Work of the Department for Foreign Born Women, 1920-21, folder 10, Box 527, YWCA of the USA Records.

[169] Ellen Ellis and Florence Palmer, "The Feminist Movement in Turkey," *Contemporary Review*, 105 (Jan. 1 1914), 857-864.

[170] Ruth Woodsmall to Stephen Wise, May 17, 1926, reel 64, YWCA records.

The Refugee Image and The Limited Refuge of the Law

Advocates for post-WWI Armenian and Jewish immigrants devised their legal arguments for admission and definitions of religious persecution in relationship to larger humanitarian campaigns abroad and ethnic lobbying in the United States. Despite differing conceptions of the role of religion in American public life, prominent attorneys for Armenians and Jews—Everett Wheeler for the former and Louis Marshall for the latter—carved out a remarkably similar and limited haven for women refugees. Max Kohler, who worked with Marshall and independently, had more success because he focused steadfastly on power imbalances in the interactions between immigrants with strong asylum claims and "the worst of our American bureaucracy."[171]

The different temperaments of the three lawyers and how they conceived of religious liberty and asylum in the United States is well captured in their responses to Justice Brewer's decision in the 1892 Supreme Court case *Church of the Holy Trinity v. United States* (143 US 457). A lower court ruled that the Church's hiring of a British rector and pastor should be considered a violation of the 1880 law banning the importation of foreigners under labor contracts. Justice Brewer, writing for the court, argued that though Christian ministers were not listed in the statute among those exempt from the law, Congress never intended to exclude them. "No purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people," Brewer wrote.

Everett Wheeler made Brewer's decision the basis of his understanding of American national identity and of the law. Wheeler specifically focused on Brewer's words, in the decision, that "It is a familiar rule that a thing may be within the letter of the statute and yet not within the

[171] Letter from Louis Marshall to Max Kohler, March 16, 1924, referring to Kohler's brief in *U.S. ex. re. Fink v Tod* as "one of the strongest arraignments of the worst of our American bureaucracy." (in Box 12, folder 9, Papers of Max Kohler, American Jewish Historical Society, Center for Jewish History, New York).

statute because not within its spirit nor within the intention of its makers" and that the United States was "a Christian nation." Twenty years after Holy Trinity decision, in the wake of the passage of the 1921 quota law, Wheeler wrote letters to Congressmen complaining that immigration officials "put a narrow and literal construction" on the statute, making no exceptions in line with the spirit of the law. Citing the *Holy Trinity* decision, Wheeler argued that, properly construed, the quota law had "no application in cases of Christian brethren who are fugitives from Moslem persecution."[172] The *Holy Trinity* decision and the handling of Armenians were important to Wheeler as a devout and active Episcopalian, a denomination very engaged with the Armenian immigrant community as well as with missions to and relief for Armenians abroad. Wheeler handled just a few immigration cases in his legal practice—which focused on patent and admiralty law—but helped form a Christian Social Union "to bring educated men taking an active part in the organized work of the Christian churches into closer relations with the plain people" and "saw more of the Armenians…than of any of any other" immigrant group.[173] Beginning in 1896, in the wake of violent attacks on Armenians throughout the Ottoman Empire, Wheeler (along with Justice Brewer) served as a director of the National Armenian Relief Committee, which sent money to missionaries providing religious and vocational training to young Armenians in Eastern Turkey. From then on, Wheeler expressed outrage at attacks on American missionaries and their native charges and called on the United States government to demand compensation and insure protection, with force if necessary.

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[172] Wheeler to Senators Copeland and Colt, Feb 21, 1923, Box 3, Folder 7, Everett P. Wheeler papers, Manuscripts and Archives Division, The New York Public Library.

[173]Wheeler to Senator Reed, March 13, 1924, Ibid; Everett Wheeler, *Sixty Years of American Life: Taylor to Roosevelt, 1850-1910* (New York: E.P. Dutto & Company, 1917), 474.

Over time, Wheeler's "spirit of the law" argument about the rights of *Americans* abroad morphed into one about entitlement of *Armenians* to national self-determination, or at the very least, an American backed mandate. In 1896, Wheeler gave a speech before the American Board of Commissioners for Foreign Missions that was primarily a legal brief demanding an indemnity from the Ottoman government for the damage wrought on the property of American missionaries during the attacks on Armenians of the previous year. But he came to the conclusion that "It were base to desert our citizens who…have gone to perform imperative obligations of humanity; it were more base to…leave not only our own, but those whom they have benefitted, exposed to the cruelty and oppression of the Turk."[174] In early 1922, when making his case for American intervention on behalf of the Armenians, Wheeler mistakenly referred to this speech, which he still thought relevant, as "the Duty of the United States of America to *Armenian* Citizens in Turkey," rather than the original "to *American* Citizens in Turkey."[175] Also important to note is the emphasis of the 1896 speech on the noble sacrifice and heroism of female missionaries who sheltered Armenians. After the war, Wheeler focused on Armenian women refugees. Wheeler's postwar appeals emphasized "the heroism of Armenian women who have suffered everything including the death of their loved ones, exile and dishonor, who have no definite hope for themselves or for their country. Yet they carry on, sending their children to school, toiling at unaccustomed and difficult tasks, keeping their families together against fearful odds. It is heroism which must bear fruit in the char of their children."[176] At all times, he called for a "manly" response by the U.S. government. [177]

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[174] Everett Wheeler, *The Duty of the United States of America to American Citizens in Turkey* (New York: Fleming H. Revell Company, 1896) 36.

[175] Wheeler to Barton, Feb. 18, 1922, box 3 folder 8, Wheeler papers.

[176] Wheeler to Henry Cabot Lodge, April 19, 1923, Box 5, folder 7, Ibid.

Wheeler wanted desperately for WWI to have the same kind of redemptive possibility as the American Civil War, a war he had opted out of fighting at age 21. In a letter to the President on Armistice Day in 1922, Wheeler wrote of his hope that his only son—who died serving as a surgeon in the 16th infantry during WWI—did not make a sacrifice in vain. "The Angora government has driven citizens from their homes, killed some, destroyed their property not only in violation of the treaties but with their assurances of protection. It is obvious that if they get possession of Constantinople and the neighboring district they will do the same. I urge…it is your right and duty to take possession of that city and the neighborhood and hold it in pledge until we obtain indemnity for the past and security for the future…I am satisfied that you will have cordial support in such vigorous action as Lincoln had when he called for volunteers after the firing at Fort Sumter. But permit me to suggest that…your oath of office did not bind you to defend the Constitution when it is popular to do so. The treaties are the law of the land and it is your duty to take care that they are faithfully executed cost what it may."[178] But it was very clear to Wheeler that his arguments were not convincing the administration of what he saw as their duty. From the time of the refusal of the U.S. to accept Woodrow Wilson's promised mandate over an Armenian homeland, Wheeler continued his crusade for Armenians by fighting for their refuge in the United States. Wheeler believed America's treatment of Armenians was a "great crime" and a "great sin" (the two were somewhat indistinguishable in his mind); he frequently ended his letters on the subject with this invocation: "If we do not repent have we not reason to fear the judgment pronounced by our Lord in the 25th chapter of St. Matthew upon those to

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[177] Wheeler, *Duty of the United States*, 39; Wheeler to Frederick Wallis, Feb. 13, 1923, Box 5, folder 7, Wheeler papers.

[178] Wheeler to President Harding, November 11, 1922, Box 5, Folder 6, Wheeler papers.

whom he said 'I was a stranger and ye took me not in." [179] The cause of Armenian refugees threatened with deportation also allowed the aged Wheeler to become the abolitionist he had not been in his youth. When Commissioner Tod deported 50 Armenians despite a writ of habeas corpus and just as President Harding was calling for Americans to contribute money to the relief of Smyrna refugees, Wheeler felt the hypocrisy and criminality of it all was too much to stand. In an angry letter to Judge Learned Hand, who dismissed Wheeler's attempt to hold Tod in contempt of court, Wheeler wrote:

> It seems to me the fundamental point is the attitude which the judges should assume towards the immigration law as applied to refugees from religious and racial persecution. You may say that it is the duty of the courts to enforce the law but for centuries it has been recognized to be a right of the court to exercise some discrimination in the method of enforcement… the Fugitive Slave Law…was obnoxious to the moral sense of a great body of northern people. It was justified on the ground that the return of fugitives from slavery was one of the compromises of the Constitution. Nevertheless many judges felt they had the right to be astute and protect fugitives from the compulsory return to slavery... At present there is a law in force which is interpreted in this case as another fugitive slave law. As enforced by government officials it enforces the return to slavery of many persons who have fled to this country for refuge from religious and racial persecution. There is no such excuse for those as there was in 1850, there is no treaty with Turkey requiring their return. In fact the Turks do not want them. They have been driven out and if they are forcibly sent back by us to Turkish jurisdiction they will be enslaved or killed. Therefore it seems to me that the courts should look with favor upon all proceedings to obtain the liberation of these fugitives and to use their powers to the utmost to procure such liberation.[180]

In many of his letters to Congressmen the following year, Wheeler repeatedly told this story: "I heard Frederick Wallis, who was stationed in the immigration office at the port of New York during the administration of Wilson, state at the Armenian dinner that he has seen at Ellis Island women who had fled from virtual slavery in Poland, had paid a

[179] Letter to Reverend Max Rice, Feb. 20, 1922 and Letter to Bishop Oldham of Albany, Feb. 23, 1922, Folder 7, Box 3, Everett P. Wheeler Papers, New York Public Library.
[180] Wheeler to Hand, March 31, 1923, Box 3, folder 9, Wheeler papers.

US consul for a visa to their passport, and had paid their passage to America, resist deportation. They tried to kill themselves and to throw their children into the bay. Government officials bound them hand and foot and carried them on board ship."[181]

Though Louis Marshall's advocacy had a completely different basis, like Wheeler, Marshall moved from legalistic arguments about the rights of Americans towards emphasizing American responsibility towards religious refugees. Son of poor, uneducated German immigrants, Marshall believed the Constitution and classical liberalism had been his vehicle of ascent as a Jew in America and that it could afford the same possibility for his co-religionists. Marshall believed Jewish advocacy should focus upon the strengthening of constitutional norms of religious toleration and keeping religion out of government. [182] Responding to Brewer's decision in an 1896 article, "Is Ours a Christian Government?," Marshall argued that the answer was definitely no, drawing on precedents and statements pointing toward full separation between church and state.[183] A decade later, Marshall, along with wealthy, German-American Jews, founded the American Jewish Committee [AJC], an organization devoted to helping "persecuted" Jews in all countries and particularly in the Russian empire in the wake of pogroms between 1903 and 1906. One of Marshall's and the Committee's early successes was a campaign to get the United States government to abrogate its 1832 commercial treaty with Russia. The treaty gave Americans doing business in Russia the same freedoms and protection as Russian nationals

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[181] Letter to Senator Sterling, April 16 1924, Box 3, folder 7, Wheeler Papers, NYPL

[182] On the Constitution as a means of acculturation, see Jerold Auerbach's *Rabbis and Lawyers* (Bloomington: Indiana University Press), 118-119; 120-1. In a radio address Marshall referred to the U.S. Constitution as "an instrument of sacred import" and "the hope and refuge of millions of the oppressed and persecuted." ("Calls Constitution 'Our Holy of Holies,'" *New York Times,* March 7, 1928, 27.)

[183] *The Menorah Journal,* XX.1, January 1896, reprinted in *Louis Marshall, Champion of Liberty: Selected Papers and Addresses*, ed. Charles Reznikoff (Philadlphia: Jewish Publication Society of America, 1957) 936.

on the condition that Americans submitted to the laws of the land, including those laws that restricted Jewish travel. During the campaign, Marshall spoke of looking "to the spirit rather than the letter" of the treaty.[184] "I am convinced," Marshall wrote Congressman Herbert Parsons, "that if the United States gives notice of an abrogation…, Russia, fearing moral isolation…will yield and will enter into new treaties…that will…eventually help to better conditions in Russia [for Russian Jews], which is, after all, what you and I are seeking to accomplish."[185] When the treaty was abrogated, Marshall claimed it was a glorious victory for constitutional guarantees and "the first breach…in the wall of the Pale of Settlement." [186] Regardless of whether or not the campaign was truly about Russian (rather than American) Jews, the campaign bolstered Marshall's conception of persecution as a form of discrimination and of protection as equality under the law. In 1915 the AJC committed itself to "full rights for the Jews in all lands and the abrogation of all laws discriminating against them"; in 1921, Marshall claimed the Eastern European minority rights treaties "practically write into the constitutions of new states the same guarantees of human rights and human liberties that are the distinctive feature of our American constitutions."[187]

Marshall's focus on discrimination and legal equality affected his approach to immigration advocacy and, as discussed further below, his shaping of the immigration literacy

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[184] Letter to Herbert Parsons, Feb 1, 1911, Reznikoff 76.

[185] Letter of Louis Marshall to Herbert Parsons, Jan. 28, 1911, Folder 2, Box 2, Series II, Herbert Parson Papers, Rare Books and Manuscripts Library, Columbia University.

[186] Letter to Rabbi Joseph Stoltz, January 1912, Reznikoff, 103.

[187] Letter to Bernard Richards, March 16, 1916, Raznikoff, vol. 2, 515; Letter to Isaac Frank, June 3, 1921, Reznikoff, vol. 2, 557. Marshall's proposed "Bill of Rights" to be guaranteed by new Eastern European states included access to citizenship, equal civil rights, autonomous communal institutions, and minority representation, reflecting a tension between individual rights—which he associated with the United States-- and group rights—which he saw as necessary in Europe.

test exemption. Throughout his career, Marshall was zealous of his role as Jewish spokesman and did not appreciate when other Jewish American leaders challenged his outlook, a domineering authority that came to be known as "Marshall law." This was particularly apparent in efforts to combat restrictionist immigration legislation, which Marshall believed needed to be undertaken by lawyers and carefully so as not to promote an image of increasing numbers of beleaguered newcomers, and thereby backfire. "Marshall insisted," a recent biographer writes, "that agitation for open immigration undertaken in most other sections of the Jewish community, by newspaper pundits, local community leaders, and other interested parties, was unhelpful, amateurish meddling." This even applied to the efforts of the aging lawyer Simon Wolf, who "pitched his appeals straight to the hearts of the bureaucrats" upon whose good faith he relied to help immigrants. Marshall's advocacy more generally was "analytically cogent, but emotionally detached." "Even as European civilization descended into slaughter and mayhem [at the beginning of Word War I], Marshall tended to view the world as an extended courtroom wherein professional advocacy, judiciously basing its claims of constitutional rights, could stave off the dark threats of human irrationality." [188] Marshall's belief in the power of law on the books meant he did not focus on how little changed for Jews after the abrogation of the Russian commercial treaty or the implementation of the Polish minority rights treaty. Nor did he anticipate the difficulties and hostility Jewish asylum-seekers would face upon arrival in the United States after WWI. Max Kohler, who was more involved with the on the ground encounters between immigrants (lacking due process rights) and officials (accorded great discretion in interpreting statutes), better anticipated the problems faced by those with persecution claims. Kohler told

[188] Matthew Silver, *Louis Marshall and the Rise of Jewish Ethnicity in America: A Biography* (Syracuse: Syracuse University Press, 2012) 114, 116, 27, 267.

Congress in 1912 that "serious difficulties would arise in connection with the manner of proof of this fact from abroad, especially in view of the administrative tribunal, as to whether they are in fact fleeing from….persecutions."[189] In a letter to the Commissioner General of Immigration in the 1920s, Kohler complained of "strong anti-Semitic bias…affecting the rights of Jews *even before the law*" [italics mine]. "A number of instances were called to my attention," Kohler wrote the Commissioner, "in which high officials in your department "seemingly discriminated (possibly unconsciously) in matters involving the exercise of discretion against Jewish immigrants…particularly in the matter of admitting excess quota cases as a matter of grace." [190] Knowledgeable of the kind of reception accorded Jewish immigrants by immigration officials, Kohler doubted that "common knowledge" of Jewish persecution in Russia could be depended upon as the key to admission for illiterates.

Kohler, the grandson, son, and nephew of prominent Reform rabbis, sought less recognition for his advocacy and was the only one of the three lawyers to focus on immigration law and to take up many immigration cases (representing Chinese, Indian, Syrian, and Jewish immigrants) gratis. He also worked on immigration matters for the Board of Delegates on Civil Rights, a branch of the Reform movement's Union of American Hebrew Congregations. When Justice Brewer died in 1910, Kohler wrote a tribute in the *American Hebrew*, praising him for "uphold[ing] the cause of the weak against the strongly entrenched powers that be, and particularly of the helpless, well-nigh friendless, immigrant." Kohler speculated that the Jewish public had formed an erroneous impression of Brewer based on his "Christian nation" comment.

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[189] *Relative to the Further Restriction of Immigration*, Hearings Before the Committee on Immigration and Naturalization, House of Representatives, 62nd Congress, Second Session, January 11, 1912, 33.

[190] Kohler to Commissioner Husband, March 23, 1927, Box 13, Folder 11, Papers of Max Kohler, American Jewish Historical Society, Center for Jewish History, NY.

This was taken out of context, Kohler asserted, since Brewer's *Holy Trinity* opinion referred to equality of rights for Jews; Kohler quotes Brewer's writing in the *Holy Trinity* decision that "any Jewish synagogue should [be able] to [lawfully] contract with some eminent Rabbi to come to this country and enter its service as pastor." Kohler also praised Brewer's "long and valuable investigation into our history…to show how prominent a part religion has ever played and still plays in our midst" and Brewer's quoting with approval of "some of our most forcible expositions of religious liberty."[191] The same year Kohler wrote this article, he was asked by HIAS to represent an increasing number of Jews facing exclusion at Ellis Island in the wake of a circular by General Commissioner of Immigration William Williams instructing inspectors to establish "beyond a doubt" that each immigrant could find employment and would not become a public charge. Inspectors excluded people based upon impressions of their physical ability to work (i.e., "soft hands") and local economic conditions (i.e., an oversupply of bakers and tailors in New York). Sometimes family or friends, including private charitable organizations, who testified and offered assistance were deemed not sufficiently concerned or not legally obliged to help so unable to guarantee incoming immigrants against dependency. Looking back on his career years later, Kohler believed his most important legal victories challenged this discretion in public charge determinations.[192]

In fact, the first time a persecution exception to a restrictive immigration law was proposed, it was in an effort to exempt refugees from economic bars to admission. In 1906,

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[191] Max Kohler, "Justice Brewer and the Theory that this is a Christian Nation," *American Hebrew and Jewish Messenger*, April 1, 1910, 573. In line with his interest in religious liberalism, Kohler's favorite novels in the 1880s were *Robert Elsmere* by Mary August [Mrs. Humphry] Ward, and *John Ward, Preacher*, by Margaret Deland. Unlike Marshall, who was a Republican, both Kohler and Wheeler were Democrats, members of the Citizens Union and Civil Service Reform Association, and admirers of Daniel Webster.

[192] The cases were *In the Matter of Hersch Skuratowksi* (SDNY, 1909) and *Gegiow v. Uhl* (239 US 3, 1915).

when the House of Representatives was debating a restrictive immigration bill, Representative Lucius Littauer of New York proposed an amendment that "an immigrant that proves that he is seeking admission to this country to avoid prosecution or punishment on religious or political grounds, for an offense of a political character, or prosecution involving danger of imprisonment or danger to life and limb on account of religious belief, shall not be deported because of want of means or the probability of his being unable to earn a livelihood." In making the case for this amendment, Littauer pointed to "the horrors of the Russian situation from Kishinef to Bialystok," implying that refugees from pogroms in Russia would arrive poor and dependent. Representative Gardner of Massachusetts, a fervent immigration restrictionist, insisted that, since the language of Littauer's amendment was taken from the British Alien Act, it should, as did the British version, include the words "solely" (as in "proves that he is seeking admission to the country solely to avoid prosecution") so as to limit the applicability of the exception. Gardner also said that he would not oppose having this made an exception to the proposed literacy test, but did oppose making such an exception to a restriction (against admitting paupers) that had been in place since the first federal immigration law in 1882.[193] The Littauer amendment, modified by the word "solely," passed the House as an exception for refugees to the "likely to become a public charge" bar, but later was dropped from the bill in exchange for the dropping of the literacy test provision and clauses restricting the admission of immigrants with "poor physique" and "low vitality." In 1907 the entire bill was shelved in exchange for a federal commission to study immigration—the famous Dillingham Commission. Kohler's report to the Commission insisted that "self supporting persons overcome by sudden calamity, like … the Russian Jewish persecutions" should not be excluded for want of means. "The exodus of such unfortunates,

[193] *Congressional Record*, 40, June 25, 1906, 9164-5.

suddenly and unwillingly compelled to seek new homes in a new land of promise, does not, even *prima facie*, indicate likelihood to become a public charge."[194] When, in 1911, the Dillingham Commission finally released its reports and recommended a literacy test for admission, legislation was quickly proposed that included a test and an exemption for "all aliens who shall prove to the satisfaction of the proper immigration officers or the Secretary of Commerce and Labor that they are seeking admission to the United States solely for the purpose of escaping from religious persecution." Max Kohler immediately debunked the argument for including the word "solely" in this provision because of the English precedent, recounting the legislative history of persecution exemption in the British Alien Act, quoting several criticisms of its wording voiced in Parliament, and claiming it had proved "quite inadequate as administered by British immigration officers." Kohler preferred the alternative wording suggested by Charles Dilke: "persons coming to escape persecution by reason of the treatment of the religious body to which he belongs."[195] In 1912, Kohler, Marshall, Leon Sanders of HIAS, and other Jewish leaders came up with their own phraseology for a literacy test exemption to suggest to Congressmen: "Provided however that this act shall not be applicable to any person who shall immigrate from any country wherein persecution is directed against the religious denomination to which he belongs by means of laws, customs, regulations, orders or otherwise, or to any person seeking to avoid persecution because of political beliefs or activities."[196] (This language

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[194] "Recommendations to the Immigration Commission," reprinted in Max Kohler, *Immigration and Aliens in the United States: Studies of American Immigration Laws and the Legal Status of Aliens in the United States* (New York: Bloch Publishing Co., 1936), 8-9.

[195] Max Kohler, "Immigration and the Right of Asylum for the Persecuted," Address delivered before the Eastern Council of Reform Rabbis, Oct. 20, 1913, 94, reprinted in ibid.

[196] Initial discussion about the phraseology occurred at a meeting in late 1911; Marshall suggested the final phraseology to several Congressmen in early 1913. (Minutes of Conference on Immigration, Dec. 30, 1911, folder 4;

was designed to counter the phraseology proposed by Senator Burnett exempting from the literacy test, "All aliens who shall prove to the satisfaction of the proper immigration officers or the Secretary of Commerce and Labor that they are seeking admission to the United States solely for the purpose of escaping from religious persecution.") The language proposed by the Jewish leaders was introduced by Representative Murray of Oklahoma and defeated in January 1914.

Marshall had particular reasons for opposing the word solely in the literary test exemption. Marshall argued that it was ridiculous to assert that a refugee came to the United States "solely" for the purpose of escaping from persecution since "he at the same time comes here for the purpose of…earning a better livelihood."[197] The need to work was "incident to the persecution which they have suffered," Marshall claimed, pointing to Russian laws and edicts that discriminated against Jews by restricting their economic opportunities (excluding them from certain professions and limiting their rights to own property, for example). Then, complimenting the "humane motives" of restrictionists like Burnett, Marshall turned the forced necessity of refugee migration into a consensual virtue, asserting that "surely" legislators would not want to let in solely those refugees who are "willing to pursue a life idleness," but rather those who "seek…to become useful members of the community."[198] Marshall's strategic handling of the refugee image in response to the nativists was clear in other way as well. In 1907 Marshall had opposed the above-mentioned clause excluding immigrants of "low vitality," claiming this restriction "would apply most harshly against those refugees who are coming to our shores from Russia, and who are the victims of the most inhuman persecution, subjected to attacks of the

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Letters from Marshall to Sabbath, Lodge, and Dillingham, Jan. 1, 1913, Folder 8; Box 1, Louis Marshall Papers, American Jewish Historical Society.

[197] Letter to Senator William Dillingham, January 1, 1913, Reznikoff, 123.

[198] Letter to Senator Edward Smith, February 17, 1914, Reznikoff, 128.

Black Hundreds, whose families have been massacred, and who come in a state of great mental depression, due to excitement, worry and grief." [199] By 1913, Marshall was warier of acknowledging the painful impacts of persecution that made it difficult to distinguish Russian Jewish refugees from those deemed "undesireable" by restrictionists because physically, morally, or mentally unfit and a potential burden on the state. "The survival of the fittest is a principle which cannot be ignored," Marshall wrote Leon Sanders of HIAS.[200] Also, while Marshall believed the exemption to the literacy test should refer to religious and *political* persecution, since "it is sometimes diff to draw the exact line" between them. "The students of history reason that, wherever there has been religious persecution, it has ordinarily commingled with political elements, and that "as a matter of fact, persecution is a dual monster partaking both of a political and a religious character." But Marshall did not insist on this addition of political persecution because some Congressmen believed it would lead to an influx of refugees coming over the southern border fleeing the Mexican revolution.[201] As discussed in the next section of this chapter, the fact that the exemption did not explicitly recognize the connection between political and religious persecution led to the rejection of many persecution claims."[202]

Marshall also initially had little knowledge of how the literacy test would affect Jewish refugees. In 1907, Marshall claimed that the illiteracy provision "does not affect our Russian Jewish immigrants very seriously, since probably 98 percent of the men can read and write in

[199] Letter from Marshall to Governor Page, January 28, 1907, in Reznikoff, 113.

[200] Letter to Leon Sanders, April 18, 1913, Reznikoff, 126.

[201] Letter to Senator Thomas, reprinted in the Congressional Record, Dec 16 1914, 261.

[202] Marshall to J. Hampton Moore, Dec. 13, 1913, folder 9, box 1, Marshall Papers, AJHS.

some language."[203] Kohler, on the other hand, included in his report to the Dillingham Commission a reference to the fact that, according to U.S. government statistics for the first decade of the 20th century, 26 percent of Jews coming to the United States were illiterate. This actually compared favorably to the government's tally of 39 percent illiteracy rate of *other* [non-Jewish] immigrants coming from Russia. A study on Jewish immigrant illiteracy and educational conditions in Russia, conducted by Kohler, Hourwich, Helen Winkler of the NCJW (among others) and published as a Senate report in 1914, confirmed (through interviews with immigrants) the accuracy of the government statistics and noted the existence of quotas for Jewish students at Russian schools.[204] Marshall seized on this aspect of the report and, also influenced by Lucien Wolf's article "The Legal Sufferings of the Jews in Russia," concluded that "the illiteracy which exists among the Jews in Russia is directly due to the operation of discriminatory laws."[205] Marshall made the argument that a literacy test would be particularly unfair for Russian Jews who were especially inclined to education and yet singled out for educational discrimination. "A people which, during the darkest of the Middle Ages, taught its children assiduously, so that education was a religious precept, has been restrained by law from sending them to the schools."[206] (Marshall did not mention the significant numbers of Russian

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[203] Marshall to Edward Lauterbach, February 9, 1907, cited in Judith Goldstein, *The Politics of Ethnic Pressure: The American Jewish Committee Fight Against Immigration Restricyion, 1906-1911* (New York: Garland, 1990) 126

[204] Senate Document No. 611, Jewish Immigration: Report of a Special Committee of the National Jewish Immigration Council Appointed to Examine Into the Question of Illiteracy Among Jewish Immigrants and Its Causes, 62nd Congress, Second Session, March 24, 1914.

[205] Marshall to J. Hampton Moore, Dec. 13, 1913, Box 1, Folder 9, Louis Marshall Papers.

[206] Letter to Senator Edward Smith, February 17, 1914, Reznikoff,130.

Jews who converted in order to attend Russian schools.[207]) Lack of schooling in Russia, Marshall argued, only made those who arrived in the United States "most zealous in their efforts" to educate themselves and their children.[208]

When Congresmen claimed the exemption was "giving preference to Jews," Marshall claimed it would be "just as effective when applied…to the Armenians who live in Turkey."[209] Mihran Kalaijian represented Armenians in ways that paralleled Marshall's representation of Russian Jews. By doing so he implied that, though Armenians were worthy of the exemption because of their persecution, the exemption would not open any floodgates. In his testimony before Congress, Kalaidjian pointed out that Armenian illiteracy, which the same government statistics set at 20 percent in 1910, was the lowest for immigrants coming from the region (non-Armenian immigrants from Turkey had illiteracy rates of 60 percent; from Syria, 54 percent). This was a significant improvement in the Armenian literacy rate; a Senate report in 1892 claimed that 44/100 Armenians over 16 years of age who arrived in New York between February and October of that year were illiterate.[210] Kalaidjian quoted a report on advances in Armenian education: "The Armenian schools…have been constructed and maintained with the voluntary contributions not only of wealthy Armenians but more so with those of the common people and poor communities…in Turkish Armenia…there were, in 1903, 585 Armenian schools with

[207] On apostasy and schooling in Russia see, Benjamin Nathans, *Beyond the Pale :The Jewish Encounter with Late Imperial Russia* (Berkeley ; Los Angeles : University of California Press, 2002) chapter 7.

[208] Letter to Senator James Reed, Dec. 12, 1914, Reznikoff, 150.

[209] Letter to John Burnett, Dec 19, 1916, Reznikoff, 158.

[210] Senate Report No. 1333, 52nd Congress, Second Session, II.

52,000 pupils, as against 150 Turkish schools with about 17,000 pupils in the same region."[211] These statistics do not take into account the numerous schools for Armenians established by foreign missionaries in the late nineteenth century. In 1903, there were, according to a U.S. consular official, sixty American schools in the vilayet of Beirut alone.[212]

It would be hard to craft an exemption to account for all aspects of the illiteracy problem among Jews and Armenians. The 1914 Senate report emphasized, for example, the discretion of local Russian authorities to prevent the operation of private Jewish schools and Jewish attendance at local public elementary schools in accordance with their moods and inclinations or secret ministerial circulars and decrees. "Jewish subjects in Russia" the report stated, "are frequently denied what the written law allows them." Indeed the Russian Code explicitly provided that young Jewish children be admitted to schools "without discrimination." The problem was that the law was a "dead letter" and "there is no court of appeals on this matter."[213] How would an incoming immigrant, then, prove he was subject to this kind of persecution? As Kohler wrote Marshall, "it is absurd to expect illiterate immigrants on application to enter, especially without counsel, to establish this fact."[214] (Kohler thought that, if the burden of proof was to be on the illiterate immigrant and a Board of Special Inquiry decided to exclude him, the

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[211] Statement of Mihran Kalaidjian, "In Behalf of Armenians," Hearings Before the Committee on Foreign Affairs, House of Representatives, 67th Congress, Second Session, March 7, 1922, 29.

[212] Benjamin Fortana, *Imperial Classrooms: Islam, the State, and Education in the Late Ottoman Empire* (New York: Oxford University Press, 2002), 77.

[213] "Report of a Special Committee of the National Jewish Immigration Council Appointed to Examine the Question of Illiteracy Among Jewish Immigrants and its Causes," Senate Document 611, 63rd Congress, 2nd session, pages 13 and 19. According to the report: "In many State and municipal schools Jewish pupils are absolutely refused admission. The fact that under the law Jewish subjects are supposed to be permitted to run private and communal schools having the program of State schools does not ameliorate this condition, because it is very difficult for Jewish subjects to procure licenses to open such schools."

[214] Letter from Kohler, Dec. 28, 1916, folder 4, box 2, Louis Marshall Papers.

immigrant should be entitled to a rehearing before a new Board and with the assistance of counsel and the privilege to produce evidence**.)** Another problem was pointed out at a Congressional hearing in 1916. Marshall explained to the House Immigration Committee that Jewish women were much more likely to be illiterate than men because, just like himself, most Jews living in Russia "are not necessarily suffragists." He explained: "The duties that are devolved upon the man as the head of the family, in performance of religious duties and occupations, are such that the preference in education is given to the men." [215] Here Marshall conceded that Jewish women in Russia faced discrimination within the Jewish community beyond any official discrimination. An immigration official, not attune to the complexity of the situation, might dismiss the persecution claim of a Jewish woman who conceded that her father sent her brothers, but not her, to school. Parsing official discrimination was itself complex: the 1914 Senate report noted that though one Russian law provided that male and female students could not be taught in the same room—effectively barring girls from cheders, or Talmud Torah schools—another law said that Jewish children of both sexes could receive education in the same room. The Senate report also noted that in the Kiev education district in 1911, "more Jewish boys were debarred from attending [State] elementary schools than Jewish girls…the outcome of a rigorous policy on the part of the authorities…not to admit, as far as possible, Jewish boys to school. The same rigor is not applied to Jewish girls." The latter issue seemed to have a corollary within the Jewish community itself. Jewish education reformers in Russia [*maskilim*] established girls schools not only because they wanted to counter the ignorance of women, but also because they knew that the schools' modern, secular curricula would arouse less hostility if they were designed for students who did not really matter to traditional Jewish society.

[215] Hearings Before the Committee of Immigration and Naturalization, House of Representatives, 64th Congress, 1st session, Jan. 20, 1916, 25.

Surveying the varied and complicated educational situation for Jewish women in Russia at the turn of the 20th century, the historian Shaul Stampfer was most struck by the fact "that a large numbers of women could read…despite the fact that they hardly went to school."[216]

The situation for Armenians in Turkey was also complex. Access to schooling, and basic literacy and numeracy, was increasing among Armenian girls by the turn of the century, though the U.S. government statistics revealed that, like Jewish women, Armenian immigrant women were about twice as likely as men to be illiterate. Some memoirs by Armenian immigrants describe disapproval of female education (meaning book learning, rather than trades and skills) by older relatives in turn-of-the-century working class families.[217] In an early 20th century novel, feminist writer Zabel Esayian portrayed illiteracy as facilitating the exploitation of poor Armenian women workers in Constantinople.[218] Beginning in the late nineteenth century, well educated Armenian women in Constantinople organized women's benevolent associations devoted to the promotion of education among rural Armenian women. One of the largest of these organizations successfully established schools in Cilician towns, but were plagued by governmental repression between 1894 and 1908. Then, after a series of massacres of Armenians in Cilicia in 1909, some Armenians felt the organization should distribute basic foodstuff rather than open schools for orphaned girls.[219] Still, as Yeghenian's mentor Deborah Ellis pointed out, after the Young Turk Revolution in 1908, the reformist Turkish government was eager to

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[216] Shaul Stampfer, "Gender Differentiation and the Education of Jewish Women," in *Families, Rabbis, and Education: Traditional Jewish Society in Nineteenth Century Eastern Europe* (Oxford ; Portland, Or.: The Littman Library of Jewish Civilization, 2010.), 187. Also helpful in documenting the variety of experiences is Eliyana Adler, "Educational Options for Jewish Girls in Nineteenth Century Europe," *Polin,* 15 (2002) 301-310.

[217] Dirouhi Kouymjian Highgas, *Refugee Girl* (Watertown, MA: Baikar Publications, 1985), 111, 158.

[219] Victoria Rowe, "Cilicia: The View From the Constantinople Women's Organizations," in *Armenian Cilicia*, ed. Richard Hovannisian and Simon Payaslian, (Costa Mesa, CA: Mazda Publishers, 2008) 373, 386.

promote the education of women and Armenians (and other non-Muslim subjects) were the first beneficiaries.[220] Progress was cut short, however, by the Balkan Wars and World War I.

A significant determinant of illiteracy among Jewish and Armenian immigrants born after the turn of the century was the suspension of their learning and the disruption of their lives by the violence and dislocation wrought by pogroms and wars. During the debate over the literacy test, Congressman Gorman of Illinois said: **"**the disastrous effects of war have much to do with depriving men and women of an opportunity to acquire an education…Europe has been afflicted with several wars…the Balkan states are now prostrate… If we intend to maintain our country as the founders intended it…as an asylum for the oppressed…we ought to determine the fitness of those who seek asylum on our shores by a standard other than that of an illiteracy test.[221]

Given the complexity of educational conditions, an illiterate Jewish or Armenian woman was probably more likely to be recognized as a victim of religious persecution if she were forced to flee or physically attacked. But, Marshall's shift away from defining persecution as physical violence became increasingly pronounced. "To the ordinary mind, which may include that of an immigration officer," Marshall said, persecution "implies the exercise of force and violence…But there are forms of persecution which are infinitely worse than these, more subtle, and more effective—the slow but continuous operation of repressive, oppressive and discriminatory laws and regulations."[222] The persecution of Jews in Russia, Marshall believed, consisted principally of the latter, "sometimes accompanied by violence, but only occasionally."

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[220] "Soon after the Constitution," Ellis wrote in late 1913, "a number of Ottomans (all non-Mohammedans) were sent to Europe to study. Some of these women are now teaching the the Government schools in Turkey." ("Feminist Movement in Turkey," 860).

[221] *Congressional Record*, 51, Feb. 2, 1914, 2775.

[222] Reznikoff, 142.

Marshall was wary of definitions of persecution that would encompass only victims of pogroms. As debates over the literacy test continued in Congress, Marshall proposed that the language of Burnett's exemption be modified to read "for the purpose of escaping persecution as evidenced by overt acts or by discriminatory laws or regulations." "Unless the exemption clause covered that," Marshall wrote Senator Thomas, "it would tend to confine the immigrant to proof of methods of persecution *which are no longer in vogue,* and deprive him of the right of proving the actual facts, which constitute persecution of a character ten times worse than a St. Bartholomew night's massacre."[223] [italic mine] Isaac Hourwich disagreed with Marshall's view given the unfolding events of WWI. Referring to the mass expulsion of Russian Jews (from Russia's western front) and to the deportations of Armenians in Turkey in 1915, Hourwich said "we have just witnessed right now a proceeding before which St. Bartholomew's Night fades into insignificance."[224] Also in early 1916, Congressman William of New York argued that, given the way "contending armies have swept forward and backward…across Poland and the Russian Jewish 'Pale,'" plundering, murdering, and reducing inhabitants to "vagabondage and starvation," and the "holocaust" situation on the ground in Turkey, where "tens and hundred and thousands and tens of thousands" of Armenians had been killed, now was not the time to pass a law that might shut them out Jewish or Armenian immigrants. "My French Huguenot ancestors fled from persecution and landed here on our shores in this country, and yet I am asked to keep out the

[223] Marshall to Senator Thomas, Dec 21, 1914, Folder 14, Box 1, Marshall papers. St Bartholomew's massacre refers to the violence directed at Huguenots in France in 1572.

[224] Hourwich continued: "We are now living in extraordinary times….We need not anticipate a large immigration [after the war]…there will be, however, two exceptions: the Armenian people and the Jewish people, who have been ruined…their relatives will endeavor to bring them over here, so that they can make a living in this country. We are confronted with the persecution of Armenians because they are Christians and the persecution of the Jews because they are Jews. At a time like this it behooves the Congress of the United States to take into consideration the exceptional conditions in which these people find themselves." [Hearings Before the Committee of Immigration and Nauralization, House of Representatives, 64th Congress, 1st session, Jan. 20, 1916, 20].

Armenian of today…who would come in precisely the same condition that my ancestors came."[225] All of these comparisons of Jews and Armenians to Protestant Huguenots—the group that introduced the word refugee to the English language—attest to the power of the image of the United States as a religious country without an established church and offering refuge to those of various confessions within the Judeo-Christian tradition.

During the war the analogy used most by missionaries working with Armenians was not to the Huguenots but to the Acadians. (Again, the fact that Armenians were compared both to Protestant (Huguenots) and to Catholic (Acadian) refugees attests to a lack of focus on their Apostolic faith per se rather than an emphasis on them as essentially Christian refugees who made their way to a denominationally pluralistic American asylum. In the context of World War I, the analogies also make America the ultimate savior of the Armenians, rather than their traditional 19th century European protectors—the French (who attacked the Huguenots) and the British (who expelled the Acadians). Or, the American colonists actually involved with the expulsion of the Acadians could be compared to the Americans after WWI who did not take up a mandate for an independent Armenia.[226]) To avoid censorship in the spring and summer of 1915, missionaries near Adana used a code when writing about the plight of Armenians in their letters home, constantly referring to the "Evangeline situation."[227] This was a reference to Henry

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[225] *Congressional Record,* 53, March 25, 1916, 4871, 4882.

[226] For a history of the expulsion of the Acadians, see John Mack Faragher, *A Great and Noble Scheme: the Tragic Story of the Expulsion of the French Acadians from their American Homeland* (New York: W.W. Norton & Co., 2005).

[227] On May 20 1915, a missionary at Adana wrote James Barton of the American Board of Foreign Missions: "I have been reading Evangeline this morning. I have never so deeply felt the pathos of that poem. It stirs the very depths of one's soul. But when such history repeats itself before one's eyes one realizes the depths of sadness and suffering and pathos of it. Oh, that this war would cease! What awful suffering it is bringing to the world! We hoe that benevolent contributions will increase there is much need." W. Nesbitt Chambers send a postcard to Barton on June 3, 1915 from Adana: "Nothing from you for some time. The health of the circle is good and the Evangeline situation continues…The ladies in Hadjin are well but are in distress because of conditions…they are in the situation

Wadsworth Longfellow's epic poem about the separation of Evangeline from her fiancée during the expulsion of the Acadians from Nova Scotia by the British in 1755; after years of vainly searching, Evangeline settled in Revolutionary-era Philadelphia and worked as a Sister of Mercy among the poor and sick, including, in the end, her long lost love. Her name, which meant bearer of the gospel, made Evangeline the embodiment of Christian faith, saintly endurance, resignation, and service; Longfellow portrayed her as loyal, selfless, kind, patient, religious, and pure. Longfellow also imagined her as a successful immigrant to America. Her search represented a quest for spiritual transcendence and she resettled, in the end, in a city of brotherly love, "an ideal, ecumenical Christian community, in which Catholicism is able to co-exist with various Protestant churches," including Swedish Lutherans and Quakers, whose "Thee and Thou" reminded her of her old home.[228] Some missionaries and Everett Wheeler thought America would similarly give refuge to the Armenians, who, like the Acadians, had been pawns of competing European powers and whose Christian faith was similarly ancient.

But there were messy realities to face on the ground in the postwar Near East, as well as the restrictionists in Congress and in the Immigration Service. In December 1918, a Near East

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of witnessing a grand rue." On another postcard to Barton on June 26, on which there is some blacked out lines: "Evangeline is much in our minds and our hearts. Benevolence should manifest herself to the full extent of her power." In a letter of June 12, 1915, Edith Cold writes, "Our horizon has so greatly changed we hardly recognize ourselves. Almost no magazines or papers come to us so we are reading some from the classics. Especially are we making a study of Longfellow, and his well-known epic poem about the Acadians. So vivid are the events and so often do we read it that we now know it by heart. Mrs. Coffing was a worker for many years but I think tho she read and experienced much she never has occasion to study this particular poem." Finally, on August 23, 1915, Lucie Borel wrote to Miss Lamson from Goezneh near Adana: "Toward the end of the school year there was a kind of pause. Evangeline's story would not come true after all and hope quietly grew. Alas, alas, there was just enough time for us to relax and our hearts are heavy again…to tell the truth letter writing is getting an art…mine are too long usually and though perfectly anodyne reach their destination in a mutilated condition…what is the sense of writing when having much to say you cannot express it in words?" (Central Turkey Mission, 1910-1919, volume 23, Letters A-CHA, reel 669 and volume 24, Letters CHR-G, reel 670, ABC16.9.5, American Board of Commissioners for Foreign Missions archives, Houghton Library, Harvard University.)

[228] For a reading of Evangeline that emphasizes Longfellow's view of her as a successful immigrant to a "Christian multi-culture" America, see Andrew Higgins, "Evangeline's Mission: Anti-Catholicism, Nativism, and Unitarianism in Longfellow's *Evangeline*," *Religion and the Arts* 13 (2009) 547-568.

Relief bulletin that advertised the story of Aurora Mardiganian (*Ravished Armenia*) also printed an extract from a relief workers' letter describing how "the story of Evangeline has been actually lived thousands of times in Turkey—and a far sadder story than Longfellow ever could have imagined. Betrothed young people have been separated for years, and the girl has suffered all of the horrors of deportation and slow starvation."[229] In 1919, missionaries described the Armenian women who made it to a rescue home in Adana: "Osanna…before many months will become a mother. She is only 16 and not responsible for her condition. Think of what this home means to such girls. Theolinda was kept as a wife for five years before being sold to Turkish gendarme."[230] These unions between "white" Armenians and "Asiatic" Turks and the resulting mixed offspring jarred with the Evangeline poem which, in the words of one critic, "enshrines the Acadians, often condemned for intermarrying with the Mi'kmaq, among the prestigious white races."[231] The hope

[229] *News Bulletin* (American Committee for Armenian and Syrian Relief), vol. II, No. 7, December 1918.

[230] Letter of May 14, 1919, enclosing description by Elizabeth Webb, who ran a rescue home in Adana, reel 669, vol. 23, Central Turkey Mission, 1910-1919, Letters A-CHA, ABCFM archives.
For an analysis of the "Rescue Movement" under the auspices of the League of Nations and a rescue home at Aleppo, see Keith Wautenpaugh, "The League of Nations Rescue of Armenian Genocide Survivors and the Making of Modern Humanitarianism, 1920-1927, *American Historical Review*, 115.5 (December 2010): 1315-1339.

Immediately after the armistice, the military authorities in different regions ordered the release of Armenian children and women. After that, women made their way to relief stations on their own and NER worked with the Armenian Church and other Armenian organizations to find family members who were living as wives or servants in Turkish, Arab or Kurdish homes. Accounts of the actual release and escape of women from Muslim homes present a very complex picture. In *Daughter of the Euphrates* (New York: Harper & Brothers, 1939), Elizabeth Caraman describes how her "deliverance" was facilitated by the Turkish wife of the man who wanted to marry her. In *The Lions of Marash* (Albany : State University of New York Press, 1973), NER worker Stanley Kerr describes a sheik's accompanying his "adopted" Armenian children to an NER recue home to make sure they would be well cared for. In listening to several hundred interviews with Armenian survivors who had been hidden during the deportations, Richard G. Hovannisian found examples of difficult rescues: a child who refused to talk to her mother when claimed from the Turkish family she left her with, a tearful separation from kind caretakers ("Intervention and Shades of Altruism During the Armenian Genocide," *The Armenian Genocide : History, Politics, Ethics* (Hampshire : Macmillan, 1992).)

[231] "The poem established the Acadians not as 'people in between' but as Europeans…[even] *Northern* Europeans…imagining the Acadians as Normans." (Ian McKay and Robin Bates, *In the Province of History: The Making of the Public Past in Twentieth Century Nova Scotia* (Ithaca: McGill-Queen's University Press, 2010) 94-5.)

At a home run in collaboration with Near East Relief in Harput, YWCA workers worried about the 'Turk babies' their wards brought with them and instituted a policy of keeping women a month before giving them material for new clothes because 'some tried to run away after a few days to return to the Turks. Report of the

of missionaries at the rescue home in Adana and elsewhere was to redeem girls through appropriate work and marriages, frequently to Armenian men who had formerly immigrated to America.[232] *Ravished Armenia* was a very sensationalist re-writing of *Evangeline*; both were also released as films in 1919. (See similar iconography in relief and film posters below, figures 3.3, 3.4, and 3.5 [233]). Interestingly, Nora Waln, the Near East Relief publicity director who worked with Aurora on *Ravished Armenia*, was a Quaker from Philadelphia. While Longfellow's poem provides only a brief account of Acadian expulsion and devotes much of his poem to Evangeline's wanderings in America, Aurora's memoir is almost exclusively focused on the persecution of Armenians by Turks and their allies. (*Ravished Armenia* associates religious persecution with sexual degradation by presenting conversion to Islam and entrance into a harem as the only alternatives to death for Armenian women.) But despite its graphic depiction of Turkish sexual violence against Armenian women, the narrative emphasises Aurora's evasions, never detailing her rape or apostasy, allowing her to retain an image of pious purity. It also

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Oversees Committee of War Work Council, 149-50, folder 5, Box 707, YWCA of the U.S.A. Records, Sophia Smith Collection, Smith College, Northampton, Mass. [hereafter, YWCA Smith]

[232] One YWCA worker explained that, without guidance, those Armenian women who had been taken by the Turks would remain morally tainted — "discouraged with life" and "hardened in their ways and low in their ideals" — and might, because prices were high in comparison with wages, "get in with powder and paint" and turn to prostitution. Work and marriage to Armenians seemed the best way to save such women; at one rescue home, Armenian women learned how to weave and sew and helped one girl, about to be married, prepare her trousseau. (Letter from Margaret White to Sarah Lyon, 15 April 1919, folder 4, reel 63 and Report of Margaret White for October 1919, folder 4, reel 63, YWCA Smith).

[233] As Peter Balakian notes, in reference to the NER "Lest We Perish" poster on the left, below: "Images of women in need were central to NER poster iconography, and the viewer's knowledge of the realities of sexual violence that Armenian women endured or perished from was part of the subtext of all of these visual presentations. However, the NER poster images transformed women from conditions of emaciation and destitution to pop culture figures who appear more as damsels in distress from pulp fiction or silent films. In one of the most well-known posters, a young woman stands against a white backdrop with her arms reaching out to us. She's an alluring figure who dominates the poster. Although her red kerchief falling over her floral dress has an ethnic touch about it, her flowing hair is black, and with her porcelain white skin and deep-set eyes and beautiful mouth, she looks more like a movie actress than a supplicating refugee." Balakian, "Photography, Visual Culture, and the Armenian Genocide," in *Humanitarian Photography: A History,* ed. Fehrenback and Rodogno (New York: Cambridge University Press, 2015), 104-5

contrasts persecution in Turkey with religious liberty and security in the United States, where there was 'so little of tragedy… [and] suffering.' In the last chapter of the book, Aurora provides a rushed account of her trip through Russia to the United States – leaving the details of her passport and fare arrangements vague, implying the support of the American relief organisation and embassy. She rejoiced at the welcome and safety symbolised by the Statue of Liberty; the support of "kindly Americans" made her "as happy as ever I can be."[234] This image of grateful rescued Armenian women migrants was echoed in press stories.[235] In fact, Aurora's immigration case file reveals a more complicated picture of her immigration and her reception. She gained entry into United States by posing as the daughter of a naturalized Armenian. She admitted to immigration inspectors upon arrival that she had sexual relations with her Turkish captor before she could escape. In the course of a later investigation, inspectors also learned that Aurora's mother had died a natural death in 1905, which contradicted the story of the mother's martyrdom recounted in *Ravished Armenia*. In pleading her case, Aurora's attorney noted that she was in the middle of a lawsuit against the makers of the film to recover salary owed her.[236]

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[234] Aurora Mardiganian, *Ravished Armenia; the story of Aurora Mardiganian, the Christian girl, who lived through the great massacres* (New York: Kingfield Press, 1918) 103-4, 201.

[235] 'Her thumb bears red tattoo mark of Moslem slave: Broken in health, Armenian girl reaches home of wealthy New York brother - Thinks she is in heaven', *The Atlanta Constitution*, 24 January 1920, 7B; '"Y" Envoy adopts waif; Armenian boy, found beside track, to have American home," *New York Tribune,* 30 May 1921, 16.

[236] INS case files 55227/244 and 54290/493. In his book on the film based upon the memoir, Though his account of Mardiganian's immigration is only partly accurate, Anthony Slide documents her experiences making her memoir into a film. "On arrival to the United States…she was to become the victim of another form of exploitation—capitalism and a society looking for a cause worthy of its white, Christian wrath…her story came to the attention of [screenwriter] Harvey Gates…She was to receive $15 a week to star in a film version of Ravoshed Armenia." While filming, she fell and broke her ankle, but shooting continued. "It became obvious that not only was the girl having difficulty meeting the social responsibilities forced upon her by public appearances, but also that there were too many presentations for one individual to handle. Aurora Mardiganian made her last personal appearance with the film in Buffalo NY on May 10 or 12, 1920. At this point…Gates…hired seven Aurora Mardiganian look-alikes to appear with the fim in the future…In February 1921, Aurora Mardiganian sued…for an accounting of the monies owing to her." (Slide, Introduction, *Ravished Armenia and the Story of Aurora Mardiganian*)

Figure 3.3, "Lest We Perish," 1918, Library of Congress http://www.loc.gov/pictures/item/98503175/
Figure 3.4, William Fox Presents *Evangeline, Motion Picture News,* August 30, 1919, 1760.
Figure 3.5, Ravished Armenia by Howard Chandler Christy 1918, *American Weekly*, January 12, 1919.

Though it reached a crescendo during the war and its immediate aftermath, the American rescue of victimized Armenian women and children had been a staple of imagery in American missionary publications since the 1890s, like the *Helping Hand Series* of the National Armenian Relief Committee; James Barton, secretary of the American Board of Commissioners for Foreign Missions, and Everett Wheeler served on its Executive Committee. From the late 1890s through the 1920s, *Helping Hand Series* featured pictures and articles about missionaries teaching Armenian women and girls to read the bible, sew, weave, embroider, cook and do housework at "industrial orphanages." Many of the children were "massacre orphans" and the series featured regular accounts of abduction and rescue, sometimes referred to as "redeeming captives." "We believe that there is no class of girls in the country who will make better wives than the majority of those who are now being trained in these [Rescue] Homes and these Christian [industrial] schools," reported a missionary from the Kharpert region in a letter printed in the December 1899 issue of *Helping Hand Series*.

It is important to point out that there was a more progressive strain of American missionary-sponsored education in the Ottoman Empire, particularly in Constantinople, where, by the early years of the twentieth century, the American College for Girls, Yeghenian's alma mater, provided "non-sectarian" higher education comparable to women's colleges in the United States and gave graduates chances for professions.[237] Moreover, American women doctors created a central place for themselves in mission hospitals by arguing that they were needed to provide care for Armenian mothers and children in dire need. Then, many young Armenian women were trained by these American women doctors. Some immigrated to America and came to resemble the independent Evangeline, nursing the poor and sick, at the end of Longfellow's poem. [238] As Agnes Israelian, who excelled as a student at American missionary schools in Kharpert and immigrated to America in 1910 to pursue a medical degree, told an interviewer years later: "My family is Armenian (Apostolic)…Father could not read and write but was anxious to educate the children…Mother was sickly…broadminded. A Christian missionary took three [out of her seven] children to school...If it wasn't for the missionaries, I don't think I would have been educated… It was in my mind to study, to go far ahead…Everybody thought I was

[237] Barbara Merguerian, "Missions in Eden: Shaping an Educational and Social Program for the Armenians in Eastern Turkey, 1855-1895, " in *New Faith in Ancient Lands: Western Missions in the Middle East in the Nineteenth and Early Twentieth Centuries*, ed. Heleen Murre-van den Berg (Leiden: Brill, 2006) 241-63; Frank Stone, "Mt. Holyoke's Impact on the Land of Mt. Ararat," *Muslim World*, 66. 1 (Jan. 1976) 44-57; Barbara Reeves-Ellington, "Constantinople Woman's College: Constructing Gendered, Religious, and Political Identities in an American Institution in the Late Ottoman Empire," *Women's History Review* 24: 1 (2015), 53-71.

[238] Virginia Metaxas, "Ruth A. Parmelee, Esther P. Lovejoy, and the Discourse of Motherhood in Asia Minor and Greece in the early Twentieth Century," in *Women Physicians and the Cultures of Medicine*, Ellen More, Elizabeth Fee, and Manon Perry, Eds. (Baltimore: Johns Hopkins University Press, 2008), 274-293; Isabel Kaprielian-Churchill, *Sisters of Mercy and Survival: Armenian Nurses, 1900-1930* (Antelias: Armenian Catholicosate of Cilicia, 2012). Kaprielian-Churchill writes: "The number of Armenian nurses and student nurses in the ten American [missionary] hospitals in 1914 was about fifty-one, and this number increased dramatically during, and especially after, the war…young Armenian nurses in Aintab and Kharpert were inevitably caught in the vise between tradition and innovation…Armenian families reared their daughters to marry…condemned nursing as…degrading…[But] those who pursued nursing and health sciences opted for a profession…Their [American] teachers…became role models of what women could become…While some [Armenian] girls married and never again took up nursing, others never married and made a life-long career of nursing." (100-118; 477)

coming [to America] to get married. I never thought about marriage." Israelian was in the middle of a pathology exam when she got the news of the deportation of her family in 1915. She "asked God what to do," and the answer she received was "let them see from above your success and rejoice." She "passed that examination with flying colors." After she became a doctor, in 1920, she sent money to her surviving younger sisters so that they could immigrate to the United States. Israelian practiced in Boston for fifty years and worked at Massachusetts General Hospital, where she took care of many Armenian immigrants sent to her by the International Institute.[239]

But the emphasis of the *Helping Hand Series* was not on higher education and independence; it was focused on "the value of manual training" and on readiness for marriage.[240] It must be "kept constantly in mind," that girls "must have such general training as will fit them to be good housekeepers."[241] "Marriage…is usually the only way in which we are able to dispose of our girls, unless they are physically deformed in some way. We can seldom keep a girl as teacher unless there is some such cause for not marrying."[242] Wheeler's support for the rearing of Armenian girls in this way was of a piece with his opposition to women's suffrage in the name of "the purity and permanence of Christian home and Christian marriage." "God has given to each person and to each sex distinctive gifts and powers and the path of duty and honor is in making the most of these…and not in grasping for those given to others," Wheeler wrote,

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[239] Oral history interview with Agnes Israelian, V. L. Parsegian Oral History Collection, Columbia Armenian Oral History Archive.

[240] *Helping Hand Series*, vol. 10, No. 1 (December 1907), 2. The June 1910 issue, for example, reported about plans to set up an "industrial farm" in Kharpert, "similar to Tuskegee and Hampton Institutes." "Too many [who attend college] are trained away from their people."

[241] "Girls Industrial Work," *Helping Hand Series,* vol. 10, No. 1 (December 1907), 23.

[242] *Helping Hand Series*, vol. 9, no. 2, March 1907, 11.

adding that women should love their children, be discreet and chaste, keep their homes, and obey their husbands.[243] For Wheeler, providing refuge for Armenians was an anti-modernist form of atonement. Wheeler believed that the persecution of the Armenians was partly America's responsibility. In his review of Longfellow's poem, John Greenleaf Whittier referred to the expulsion of the Acadians, which was carried out by Colonial troops, as "that dark page of our Colonial history"; a National Armenian Relief Committee pamphlet similarly listed as one of the "supreme reasons" for saving Armenian orphans, "We share the guilt of their wrongs, for they are suffering on account of the criminal greed, jealousy, and falsehood of the Powers of Christendom, who not only maintain but aggravate the Turkish hell."[244] In a letter to Senator Reed of Pennsylvania, Wheeler made the case for admitting Armenian immigrants:

> It is not solely because they are sufferers that I would admit them; but the very fact that they are loyal to their own religion and are willing to suffer banishment and the loss of their goods rather than give it up is proof that they are persons such as we want in this country. You will remember, for example, that when the Huguenots were driven from France because they would not give up their religion they became the most useful citizens in England and in this country. Personally I have seen more of the Armenians who have been driven away from Turkey than of any other race. I find them intelligent, industrious, honest and truly religious. Surely those are the qualities that are needed in this country. We have become the richest and most prosperous country in the world and the tendency of that sort of prosperity has been with us as it always has been, to make us love material things too much and to be conceited of our own merits."[245]

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[243] Everett P. Wheeler, "The Influence of Christianity Upon the Condition of Women" (New York: Man-Suffrage Association, 1915).

[244] Frederick D. Greene, "Wards of Christendom," (New York: National Armenian Relief Committee, 1897), 11. Other reasons listed by the pamphlet are: "We can make reparation, in part at least, for our share of the crime by rescuing these absolutely destitute orphan boys and girls of tender age who, without our aid, are dying like dogs in the gutter, or being driven to enter the homes of Muslim fanatics who orphaned them," and "This work is of vast future significance…for in the new day that must dawn on Bible lands, these children, if rescued and given Christian training, will be the nucleus of a new and nobler generation."
"The image of orphans," as the historian Nazan Maksudyan has pointed out, "was that they were, first, endangered by the modernizing world…and second, that they themselves were new dangers engendered by that world. Still, a threat can always be turned into an opportunity…refugees can always be refashioned." (*Orphans and Destitute Children in the Late Ottoman Empire* (Syracuse: Syracuse University Press, 2014) 11.

[245] Letter to Reed, March 13, 1924, Ibid.

In his memoirs, Wheeler emphasized how much had changed during his lifetime, especially the modernization of transportation and communication, and in reminiscing about his legal cases, Wheeler focuses on his telegraph, elevated railroad, and steamship cases; Wheeler had a reputation for clear diagrams to help juries understand shipwrecks. He only recounts one "lost cause": Wheeler's failed attempt to turn an admiralty case into an occasion for rescue. In 1898, a Cuban in Jamaica chartered a British boat to sail to pick up refugees in Cuban ports; American naval officers maintaining a blockade at the port of Guantanamo seized the ship and sent it, in charge of a prize master, to Savannah for adjudication. "It did not seem possible that this government, after so stoutly protesting in the face of all the world…that the war [with Spain] was undertaken solely in the interest of humanity, should confiscate a British vessel for asking permission to promote this object," Wheeler wrote.[246] But a federal judge in Georgia decreed the ship should be condemned as a lawful prize and the Supreme Court affirmed. Interestingly, around the same time as this forfeiture of a refugee ship, the U.S. Congress was debating one of the earliest bills proposing a literacy test for immigrants and whether to include an exception for Cuban refugees. When a Senator suggested exempting Armenians as well, Henry Cabot Lodge argued that the "Cuban case can be distinguished…these people are right at our doors…they have no other country to turn to but the US…the Armenian fleeing from oppression can cross—as thousands of them have done—the nearest boundary to Russia. He is surrounded by countries in which he will be entirely safe."[247] In the debates over the literacy test and the exemption in the years to come, Lodge steadfastly opposed including explicit exemptions for specific groups (like

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[246] Everett Wheeler, *Reminiscences of a Lawyer: A Few Pages from the Record of a Busy Life* (Poughkeepsie, NY: The A.V. Haight Co., 1927) 63.

[247] *Congressional Record*, 29, Dec. 17, 1896, 238.

Armenians and Jews). So, not surprisingly, when Wheeler wrote Lodge in March 1922 to ask if the language of the religious persecution exemption in the 1917 bill could extended to the quota act in order to give refuge to Armenians, Lodge replied:

> That question has been before the Houses and the Committee of Congress in various forms for some time. It has always been opposed on the ground that it would lead to evasion of the law on a very large scale. That is the reason the exemption is confined now to the operation of the illiteracy test and the danger is in extending it further; in fact, even as an exemption from the illiteracy test it is believed to have led to considerable evasion of the law…by fraudulent claims of persecution. [248]

One case dramatically reveals the limited refuge accorded to Armenian women in the early 1920s.[249] In December 1922, immigration officials issued a warrant of deportation for 21-year-old Araxie Serijanian. Araxie was an educated Armenian Catholic originally from Constantinople. She came to the United State in the company of the mother of her fiancé, who had emigrated years before and who she had never seen. Mihran was a 30-year-old Protestant shoemaker from Ordu. He and Araxie were married the day after she arrived, notwithstanding Mihran found her frail for his taste and Araxie did not want to marry. Araxie quickly became pregnant with twins but Mihran insisted she work as an embroiderer in a factory. Araxie gave birth to twins, one of whom died right after birth. Soon after the delivery, Araxie was responsible for all the housework. She felt her mother and recently-arrived brother-in-law were always finding fault with her and that Mihran took their side. She had a physical fight with her mother-in-law. The two had quarreled over whether to baptize the child and how to raise it. Neighbors urged Araxie to send her mother-in-law away. Instead, Araxie left home and went to live with friends. It was at this time that she also spent some time at Bellevue hospital, until her brother

[248] Lodge to Wheeler, March 10, 1922, Folder 8, Box 3, Wheeler papers.

[249] Documents in this case are in Box 4, Wheeler papers and 55237/313, RG 85, Entry 9, NARA I.

from Chicago picked her up and dropped her off with friends. In September 1922 she took Mihran to domestic court and he was ordered him to pay her $12 a week, which he sorely resented. She spent another spell at Bellevue, then at home quarreling with Mihran, then with friends in New Jersey.

After a nighttime trip to New York to visit her child (who Mihran had put into the care of another woman), Araxie's friends brought her to the State hospital on Ward's Island in November 1922. The state medical examiner deemed her a person of constitutional psychopathic inferiority at the time of her entry. Wheeler requested a second opinion and the doctor found that Araxie had become unhappy because she was treated like the "family drudge" and her mother in law forced her to do difficult work. Worried that his suit against Ellis Island Commissioner Tod had tainted his reputation with the immigration authorities, Wheeler asked a prominent Washington, DC attorney to attend to Araxie's appeal in his stead. At the appeal much was made of the oppressive mother-in-law, a stereotype the Board of Review seemed to appreciate. But the Board upheld the deportation order. In April 1923, Wheeler succeeded in getting Araxie paroled from the hospital temporarily by appealing directly to the state medical examiner. Wheeler wanted to pursue an appeal in federal court, though Mihran initially feared it might lead the immigration authorities to pursue immediate deportation. Having represented steamship companies in the past, Wheeler used his connections to find out that the steamship Belvedere, which would have carried Araxie back, was "laid up." Wheeler submitted a brief requesting an injunction against the deportation warrant, hoping that this strategy would allow the federal court to consider both issues of fact and law and arguing that similar use of injunctions had recently been made in cases growing out of the prohibition law. Wheeler's brief emphasized that Araxie's deportation would deprive her child of the care, protection, and support of his mother to which

he was entitled by "the Christian religion," the laws of New York, and the Constitution of the United States ("a deprivation of property without due process of law in violation of the 5th amendment"). Wheeler also argued that the initial medical examiner had not taken into account "the national temperament of the Armenian race, which is more excitable than that of the Anglo-Saxon race and more prone to sudden outbreaks of temper, sometimes good and sometimes bad." He submitted NER documents attesting to the crowded and diseased conditions of Constantinople, where, as of March 23, 1923, 32,000 refugees gathered from all over Turkey, not to mention that four ships of refugees from the interior waited in harbor and that the previous day's death toll in the refugee camps was 72. Wheeler tried to patch up the family dispute, writing Mihran's brother that the family should be united, but the brother refused to help the appeal with an affidavit of support. In July, Wheeler withdrew the appeal when a new Ellis Island commissioner, Thomas Curran, said to be more liberal, replaced Tod; Wheeler hoped that with the rush of new cases, Araxie's case might be overlooked.

Since by this time Turkey was not allowing for the return of Armenians, the deportation order was held in "abeyance." Araxie remained in the United States in a limbo, stateless status. Having emphasized family unity and a "good home" (to highlight the evil of separation and conditions abroad) and papered over domestic disputes, Wheeler had gained Araxie no concrete rights. Mihran comes off as a good husband in Wheeler's brief; Araxie appears passive: Wheeler claims she was the victim of religious persecution in Turkey and of a nervous attack in the United States and that she "used violence which by accident resulted in serious injury to the mother of said Mihran." Given Wheeler's adamant opposition to divorce[250] it is not surprising

[250] Wheeler served on the Episcopalian Commission on Holy Matrimony in 1915 which issued a report warning of the dangers of mixed marriages and calling divorce an evil threatening the nation. On June 7 1921 he wrote a letter to Right Rev William Hall Moreland, DD, the Bishop of Sacremento CA, "It seems to me that this subject of the relation between husband and wife and the duties of the spouses to each other and their children should receive more

that the couple's separation and Araxie's domestic court order are never mentioned in his papers about the case. Wheeler's charity-oriented states-right belief that New York was obliged to provide for services for its residents, also led Wheeler to downplay the fact that Mihran had been reluctant to pay Araxie's hospital bills or pay for her support while they lived apart. Significantly, before Araxie's release from the hospital, a social worker had visited Mihran to ask him if he agreed to be a good husband. One of the medical reports in the INS file relates Araxie's claim that Mihran "mistreated her and struck her and was stingy." Wheeler's notes indicate that six weeks after she was paroled, Mihran told him that he was unemployed and that his wife had not yet taken the baby; "that she put this off from week to week." Wheeler writes, "I told him the case would be stronger if she could take care of the child herself. He said she was working at embroidery and earning some money with which she paid for the care of the child." This was not Wheeler's idealized Christian home.[251]

Wheeler's handling of this case fits with his overall advocacy strategy after Congress refused to consider his proposals to exempt Armenians from the quota law. Wheeler shifted to a more accommodating and conservative stance. On March 27, 1924 he wrote Senator Colt, "The sacredness of the family tie is fundamental in Christian civilization. Let us admit for the sake of argument that it is desirable to restrict immigration into this country, but I submit that clearly this should be done with some respect to the laws of humanity and of Christian civilization and that the law should not be made so as to compel the US officials to break up families."[252]

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attention in the pulpit than it does…I am in entire sympathy with your criticisms upon existing social conditions. I have myself had a very happy married life and no one can possibly appreciate more than I do the beauty and sacredness of such a life." [Box 5, folder 3, Wheeler papers]

[251] Documents in this case are in Box 4, Wheeler papers and in INS case file 55237/313, RG 85, Entry 9, NARA I.

[252] Box 3, Folder 7, Wheeler Papers.

Louis Marshall professed also adamantly professed the sacredness of the family tie, but his emphasis on this was more pragmatic. In 1922 the wife and child of a Rabbi Gottlieb were excluded as in excess of the quota. A federal court judge overturned the ruling, claiming that though the 1921 law it did not explicitly exempt them, they were exempt as they had been under the 1917 act. The judge invoked the *Holy Trinity Case* and claimed that "the entire scope of the legislation prevents narrow interpretation. The separation of a man from his family is concededly a great hardship and dangerous to the welfare of society."[253] A Circuit Court judge, who also pointed out that sending the wife and child back to Jerusalem would be an unusual hardship given conditions there, upheld the decision, claiming that they were exempted by "both the letter and the spirit of the statute, construing both acts as one."[254] He claimed that admitting a minister while excluding his family is "unreasonable and absurd." Marshall represented Gottlieb when this decision was appealed to the Supreme Court. Marshall refuted the contention that the separation of Gottlieb from his family was the result of his own act; Gottlieb, Marshall contended, was "a religious refugee, unable to bring his family along because of his and their unfortunate pecuniary condition."[255] It was the quota law that separated the family, Marshall argued. This argument required the crucial assumption that Gottlieb's domicile embraced that of his family; that once he was in the United States, he had a right to have his family join him. Marshall's notion of separation relied on that idea of unity. Marshall lost the case, the Supreme Court ruling that the plain words of the statute left no room for construction. Just before the Court issued its decision, the 1924 law went into effect, explicitly exempting wives and children

[253] 278 F. 564.

[254] 288 F. 295.

[255] Brief for Respondents, Commissioner of Immigration of the Port of New York vs. Gittel Gottlieb and Israel Gottlieb, 14, Max Kohler Papers, folder 10, box 10, American Jewish Historical Society.

of clergy from the quota; the immigration service agreed to allow Gottlieb's wife and child to adjust in the United States. For the next ten years, advocates championed the principle of family unity in order to try to get other refugees exempted and admitted. Unity, although it relied to begin with on a notion of forced displacement, forefronted dependence and protection.

Though Kohler shared some of Wheeler's traditional views of women and Marshall's view of the sacredness of the family, his focus in immigration cases remained steadily fixed on the way immigration officials deprived immigrants of their rights. While Marshall was working on the Gottlieb case, Kohler was working on two other cases that eventually went to the Surpeme Court, *U.S. ex. rel. Fink v. Tod* and *Tod v. Waldman*. Pauline Fink arrived from Poland with her family in 1920 and was ordered deported as feebleminded. Her family, her teachers, and Congressman Perlman went to great lengths to have other doctors—including a special panel under the auspices of the Surgeon General in Washington—certify that she was not feeble minded, but only a deaf-mute. What really galled Kohler was the dismissive way that Ellis Island Commissioner Robert Tod ignored the instructions of his Washington superiors because he resented Perlman's involvement and publicity given the case. Instead of reopening the case for a consideration only of the question of whether Fink's deaf-mutism would affect her ability to earn a living and render her LPC, Tod had Fink reexamined for feeblemindedness at Ellis Island and ordered deported. At the Supreme Court, the Solicitor General admitted Tod's errors and the Court ordered Fink released.

In the second case, *Tod v. Waldman*, Kohler argued that immigration officials had unfairly denied the persecution claim of a woman who the literacy test exemption was intended to cover. Szejwa Waldman, a 32 year-old widow, and her three young daughters arrived in New York in late 1922. She was given two faulty literacy tests—one which did not test her on words

"in ordinary use" (as required by the 1917 law) and a second in *two* languages (Yiddish and Hebrew)—and Washington authorities unlawfully directed that the family be excluded without further chance of appeal when she failed the second. The Boards of Special Inquiry that gave Waldman the tests never considered the possibility that she might qualify for exemption from the literacy test on persecution grounds. This despite the fact that Waldman told immigration inspectors upon arrival that she left her home town of Prokurov because she was "in fear of repetition of pogroms." She testified that during the pogrom in Prokurov in 1919 she had hid with her children and twenty five of her relatives were killed. Interestingly, HIAS's appeal right after this interview did not emphasize the pogroms but only that "as is commonly known, in the past, when this girl was a child, little thought was given to the education of a girl and however anxious the parents may might have been to give the child an education, there were no facilities under the regime of the late Czar." The HIAS appeal noted that Waldman had financially responsible relatives to take care of her and that conditions in Russia were such that she would suffer hardship if compelled to return. The appeal, in other words did not make the claim that Waldman should be admitted by right, but only at the discretion of the immigration authorities.[256]

Waldman gave additional testimony in late 1923, after a Circuit Court of Appeals ruled the tests faulty and that she should have been given a right to appeal. She told inspectors that her flight from Proskurov was immediately precipitated by another pogrom in 1920, when her sister was "touched" and shot. When asked what she understood the meaning of a pogrom to be, Waldman said: "they were killing big children and liitle children three weeks old." She also said that though she never attended school, she knew how to read Yiddish on arrival. She claimed she

[256] INS file 55265/59

was nervous at the time of the test because her daughter had recently been taken away for an examination of her slight physical disability. At this second hearing, Waldman was retested and deemed literate.[257] But, the immigration authorities declared that this determination was reached merely because the Supreme Court decided to entertain the government appeal and that the Secretary had not adopted this new test.

In his brief to the Supreme Court, Kohler quoted the *Century Dictionary*'s definition of a pogrom—which emphasized officially countenanced organized massacres—and quoted several published accounts of what happened in Prosurov. He also cited the report on Jewish illiteracy published by the Senate in 1914, which noted that Jewish children were refused admittance to the city schools in Proskurov, though the schools were supported by the income of the Jewish population. Kohler wanted the Court to decide the issue of persecution rather than send the case back to the immigration authorities for another hearing since "practical experience has shown that injustice is apt to result by referring a case back to the immigration authorities, who commonly bitterly resent an appeal to habeas corpus proceedings." Kohler explained the problem with determining whether an immigrant qualified for the exemption during a hearing before the Board of Special Inquiry: "an immigrant unfamiliar with our laws and customs, nervous and cowed, and afraid to volunteer any information, and testifying through interpreters, themselves only moderately intelligent, can seldom intelligently adduce the evidence before the Board of Special Inquiry necessary to bring himself within such exemption, or to secure corroborative evidence there." Kohler contended that the regulation requiring "clear and convincing proof" of persecution was too high and did not accurately interpret the 1917 immigration law (which only required that the proof "satisfy" the Secretary of Labor). Since the

[257] INS file 55231/913--In re: Szejwa Waldman, Oct. 24, 1923

wording of the American exemption was based upon the analogous exemption in the British Aliens Act, Kohler noted that Parliament did not require strict legal proof but only hearsay evidence or "common fame" as to persecutions abroad to corroborate the testimony of the immigrant. Kohler pointed to the legislative history of the 1917 act, including statements by Representatives and Senators who favored the test but recognized the existence of persecution against Jews in Russia and against Armenians in the Turkish dominions. He also noted that, despite Congress's acceptance of Marshall's argument against including the word "solely" in the exemption because of the pervasiveness of mixed motives, officials in Waldman's case refused to acknowledge this.[258]

The Supreme Court did not take up the merits of Waldman's persecution claim or suggest that it should be decided by a lower federal court. "The questions are technical ones involving the educational qualifications of an immigrant in a language foreign to ours…The statute intends that such questions shall be considered and determined by the immigration authorities. It would seem better to remand the relators to the hearing of the appeal, by the Secretary and his assistants, who have constant practice and are better advised in deciding such questions." The Supreme Court mandated that upon this appeal, "the Secretary of Labor make a definite finding" as to whether Waldman was "relieved from the test" because she was a "refugee from religious persecution." The Court also noted that the record of the case did not sufficiently set forth the details of the literacy test so it could not asses if it was fairly administered.[259] Despite this, the Assistant Commissioner General of Immigration refused to make any changes in record keeping

[258] *Tod v. Waldman*, Respondent's Brief,. *U.S. Supreme Court Records and Briefs, 1832-1978*. Gale, Cengage Learning. 14 July 2014.

[259] *Tod, v. Waldman* et al. 266 US 113, November 17, 1924.

on the grounds that it would lead to fraud: "It is quite certain that if the records of hearings before boards of special inquiry were to contain the exact language of the tests accorded, their content would soon become public property and worthless for the purpose for which they were designed." The Immigration Bureau also ignored the Supreme Court's suggestion to release Waldman on bond pending compliance with the mandate. Most important, the Immigration Service refused to make a determination as to whether Waldman qualified for the persecution exemption to the literacy test. When the Board of Review finally took up her case in September 1926, they admitted her not because she was a refugee, and not even because she had passed the literacy test, but ruled that she was exempt from the test as the mother of an admissible literate child.[260] Despite this administrative intransigence, Kohler declared victory in the case. "Refugees can be exempt from the literacy test on the ground that they are fleeing from religious persecution," he announced to the press.[261] As discussed in the next section of this chapter, the Waldman case was a culmination of a circuitous history in the interpretation of the persecution exemption by the INS and the courts.

[260] INS file 55265/59--G.E. Tolman to Robe Carl White, December 16, 1924; Henning to Commissioner of Immigration, April 11, 1925; In re: Szejwa Waldman, September 9, 1926

[261] "Religious Persecution Exempts," *American Israelite,* September 23, 1926, 1; "Religious Refugees Enter Without Test," *New York Times*, September 14, 1926, 8; "Pogrom Refugees Can be Exempt from the Literacy Test," *Jewish Daily Bulletin,* Sept. 14, 1926, 1.

Persecution Claims and the Literacy Test Exemption, 1915-1927

The literary test and its persecution exception came into force just as the United States entered World War I in 1917. But, beginning in late 1914, HIAS representatives began appealing exclusions by claiming that their clients were something more than war "refugees," that "the immigrant of Jewish faith …must be considered as separate and apart from the ordinary immigrant…and…the benefit of the doubt, and the large discretion vested" in the immigration service exercised in their favor, especially when evaluating "likely to become a public charge" and "poor physical development." HIAS's Ellis Island representative claimed that one young man excluded for these reasons was a,

> Refugee from Jerusalem from which place he was compelled to flee on account of persecution and starvation. We believe that it would be unjust and inhuman to permit the deportation of such an alien, if that were possible. He is a Russian subject, and as such was compelled to emigrate from Turkey, which is now at war with Russia. In view of his age, which would make him subject to military service in Russia, he was not permitted to return to his native country, and therefore the only place in this world where he could go to was the United States, where he believed he would find his cousin… special consideration is given to the Belgium refugees and therefore an exception ought to be made in the cases of refugees from Palestine where conditions are similar, if not worse than in Belgium. In Belgium, the Belgians are taken particular care of, and have a government of their own to look out for their interests, whereas the Russian Jew in Palestine hasn't even got the moral support of his own native country. He is persecuted by the Turk because he is a Russian subject, and persecuted by the Russians because he is a Jew. In other words, it's a question of being between the Devil and the Deep Sea.

(This letter was written just after the House passed an amendment to a proposed literacy test that exempted citizens of neutral nations trying to escape war in their country, particularly referring to Belgians).

The Immigration Service did not respond to the persecution claim, but it did decide that the immigrant would be paroled to the custody of his HIAS, with the understanding that he would be produced for deportation when called for; the "general attitude and the "policy which

will be pursued" by the Department was that "instead of requiring that aliens coming from Turkey shall be immediately returned, the conditions of hardship and danger existing in that country by virtue of the war will be regarded as sufficient reason for a lenient course of the same kind as is being pursued with respect to aliens coming from countries to which it is impossible to deport because of such war situation." The Department also hoped that "everything possible is being done by the Jewish organizations to discourage and to obviate any necessity for the embarkation for this country of Jews who have been living in Palestine—to care for them in some manner that does not involve their applying for admission to a US port." [262] At East Coast ports, HIAS and the National Council of Jewish Women found that, after the passage of the literacy test, many of the early illiterate arrivals were Sephardic, coming from Greece and Turkey. They too could not be deported because of war conditions, and the NCJW and HIAS secured bonds so they could be temporarily admitted.

In 1915 and 1916, HIAS focused attention particularly on immigrants coming from Russia, emphasizing that they were refugees in a way that Jews from, for example, war-torn Greece were not.[263] In mid-1915, it was possible to send Jewish immigrants who were excluded back to Russia on ships sailing from New York to Archangel or from San Francisco to Vladivostok, routes "well removed" from the dangers of the 'war zone.'" HIAS representatives

[262] Simon Wolf to Secretary of Labor, INS file 53620/235; Letters from Samuel Littman of HIAS, March 2 and 3rd, 1915; Letter of Parker to Wolf, March 12, 1915, INS file 53895/264.

[263] When Jewish immigrants coming from Salonica were excluded as LPC at Ellis Island in 1916, Louis Post agreed to HIAS's request to postpone deportation "until the allegation…that the aliens are, in fact, refugees, be looked into." At their interviews, the immigrants were asked whether they were coming "to escape the actual conditions there or to better [their] condition," and the HIAS representative conceded that he could not tell from their answers—which revealed mixed motives, particularly emphasizing that war conditions made it very difficult to make a living in Salonica—whether they were "refugees in fact." Alfred Hampton, Assistant Commissioner of Immigration, wrote Post that he did not think they were refugees and advised deportation. Post agreed with Hampton's decision but allowed an immigrant who had brothers in the United States to enter on bond. (INS file 54171/281.) HIAS always gave more attention to Russian Jews than to Jews coming from Turkey and Greece (many of whom were Sephardic Jews), but, as discussed further below, unexpectedly faced many illiteracy cases of Sephardic Jews in the years immediately following the war.

went to meet with the Secretary of Labor to convince him of the "inhumanity of sending rejected [Jewish] immigrants back [to Russia] at this time with…the hardship of *étape* confronting them."[264] As Hourwich elaborated in a brief, upon disembarking in Russia, Jews would be fined for violation of passport laws (since most left the country without passports) and forced to travel over 1000 miles by foot, sleeping in local prisons along the way, from either port to the Pale of Settlement. By October 1915, Assistant Secretary of Labor Louis Post decided that "Hebrews be not deported to Russia…until they can be admitted to their homes with the same degree of safety that deported non-Hebrew Russians can be admitted to theirs. This does not necessarily mean that there shall be no deportations of Russian-Hebrews until the old routes terminating near the Pale can be safely resumed, but that such deportation shall be delayed until they can be made without subjection of the alien to special hardships or war dangers."[265] This response was vague—seeming to acknowledge that Russians Jews needed special consideration because they suffered special hardships, but also not guaranteeing that all deportations would cease and implying that the hardships were related to war dangers, not religious persecution.

But this policy did seem to influence the handling of the cases of numerous Jewish men who fled service in the Russian army and arrived in San Francisco and Seattle in late 1915 and 1916. Most of the men who arrived were destitute—having exhausted any funds they had on the long, bribed-filled journey (since they lacked appropriate documents) through Siberia, Manchuria, and Japan—and some had slight physical ailments (in at least one case, self-inflicted, to try to avoid military duty.[266]) HIAS established branches in San Francisco and Seattle to

[264] Minutes of HIAS's Board of Directors, Volume 2, July 13, 1915, MKM25.1, RG245.1, HIAS papers, YIVO.

[265] October 23, 1915, 53854-39 J.

[266] INS file 54076/53.

handle these cases and immediately began appealing exclusions by offering to find housing and employment for the men, especially for those who had no relatives in the United States or knowledge of how to contact them. As HIAS's Leo Schwabacher wrote from Seattle, "these men only left their native cities when they were already under bombardment from the enemy or after the enemy had already taken possession of them and that under those conditions they were glad to escape with their bare lives. Hence they have no papers on them which would give them an American address."[267] In most cases, immigration inspectors and the Immigration Commissioner thought the men should be excluded for their poverty and lack of job prospects, but Post allowed them in on bond.[268] In one case, an inspector betrayed a belief that the immigrant was a shirker, but, more frequently, Jews fleeing Russian military duty were considered, as one of the case files read, "sort of refugees," who would be killed for desertion if returned home.[269] In 1916, the Assistant Commissioner General reassured a worried attorney

[267] 54076/15. Between June 1915 and March 1916, Schwabacher reported to the Commissioner of Immigration, approximately 800 Jewish immigrants arrived in Seattle. "With the exception of about a dozen…all were young men of between 20 and 35 years of age."

[268] I discuss here arrivals to Seattle, but the HIAS branch in San Francisco worked the same way. As Erika Lee and Judy Young write in their book on Angel Island: "The organization went to great effort to help contact relatives through the Yiddish Press and to find sponsors willing to provide Jewish immigrants with jobs or post bonds on their behalf. Most important, HIAS attorneys had an excellent track record of filing and winning legal appeals on exclusion cases. Of the 321 Russian Jews who arrived in San Francisco between April and December of 1915, twenty-seven appeals were filed and sustained. Of the 364 arrivals in 1916, twenty-one were assisted wih appeals and all were landed except for one." Young and Lee mention as exemplary the case of Lebe Shneeveis, who arrived penniless in San Francisco in September 1915 and told an inspector at Angel Island "I served seven months in the Russian army, and after that in view of the way the Jews have been treated in Russia, I decided not to stay with the army any longer, and made my escape." Though he was ordered excluded, not having any relatives and poor employment prospects (at his trade of carpentry) in the vicinity, HIAS got him a job offer and appealed his case Secretary of Labor. HIAS's appeal was sustained in the wake of the *Gegiow v. Uhl* decision (discussed above) and he was admitted on bond. (*Angel Island: Immigrant Gateway to America* (New York: Oxford University Press, 2010) 225-6).

[269] 54076/24 and 54076/31. In the former, when asked why he left when he did, Aron Vertlieb said, "They were taking people from the class I belonged and they were going to take me; when I left my wife's two brothers were killed in the army." The inspector followed up with: "you are not very loyal to your government?" Vertlieb answered: "Everybody should not get killed, somebody must remain and if we all go to war we all get killed." The latter case involved Leiser Bloch, a clerk who left Russia when he received notice that he would be called; his brother was a prisoner in Germany. He was deemed to be "another case of a…Hebrew who is a sort of refugee." He

that desertion of a Russian subject from the Russian army, either during war or in time of peace, would be regarded as "an offense purely political, not involving moral turpitude."[270] HIAS made the case that "Jews of Russia are justified in leaving that country even in time of war because of the persecutions to which they have been subjected, and to which they are now subjected in spite of the splendid [military] services which large numbers of them are rendering to the country of their birth. While they are required…to offer their lives for their country, no consideration is shown to them for their sacrifice, and they are still victims of the same discriminatory laws and disabilities because of their religion."[271] Five years later, in contrast, fear of military service by men from a discriminated-against religious minority was dismissed much more contemptuously. In 1922 Rev. Mihran Kalaidjian and lawyer Vahan Kalendarian pled the case of 36 year old Leon Hotonian, one of the 50 Armenians slated for deportation by Robert Tod, by claiming that, as an Armenian man (as opposed to the wife and children he left in Constantinople), his life was particularly at risk and that he would be subject to military service upon return. (During World War I, conscription of Armenian men, in contrast to Muslim men, frequently led to work in unarmed labor battalions and death). The inspectors at Ellis Island marked his file "not refugee—exclude." On Dec. 22, 1922, Assistant Secretary of Labor Robe Carl White affirmed that "the military service of aliens abroad is a matter of no concern to this government."[272] In another case

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landed on bond and got a peddling job in Minnesota. He enlisted and was sent oversees with a Canadian contingent with British military forces.

[270] Hampton to Anderson, Carney & Peterson, March 18, 1916, INS file 52730/70.

[271] Leon Sanders to Secretary of Labor, March 23, 1916, 54076/7. As 27 year-old Lazar Schmurr told the inspectors as Seattle when asked why he had left Russia: "I had served my time in the army and I was wanted to re-enlist and I didn't want to do so and left. We were driven around from pillar to post and persecuted and that was one reason I didn't want to fight for Russia. Had I and my family been treated decently, I would have gladly gone to war." (54076/20).

[272] INS file 55270/587

that year, White turned down the appeal of an Armenian immigrant who claimed that, if returned, he would be killed as a traitor for having fought with the French against the Turks in Cilicia.[273] Perhaps the shift reflects a change in attitude towards military service; equally important, as discussed further, the refugee image had become increasingly feminized.[274]

After the literacy test went into effect in May 1917, it was mostly Russian Jewish women, rather than men, who had trouble passing the test at West Coast ports. They too were mostly admitted, but in a different ways than the war deserters. In Seattle in July 1917, twenty year-old Slata Schneiderman was paroled to HIAS and then to her uncle because "of the great hardship…involved in enforcing her deportation to Russia by way of Japan." The Commissioner General was explicit that her admission was "strictly as a war proposition" and not a precedent for future guidance.[275] Another measure resorted to in the case of 19-year old Rifka Shirmuk, who arrived in Seattle in the summer of 1918, was admission as a temporary worker during the war (similar to Mexican workers who were admitted regardless of literacy[276]). Shirmuk was paroled temporarily to work, her employer had to sign a contract, and Shirmuk had to sign an agreement that she would surrender to the immigration authorities after the war. HIAS did not raise a persecution claims on her behalf, even though she had not had an opportunity to go to school in Russia.[277]

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[273] INS file 55235/251 (White's ruling was on May 11, 1922).

[274] Christopher Capozzola, *Uncle Sam Wants You: World War I and the Making of the Modern American Citizen* (New York: Oxford, 2010); Nicoletta Gullace, "Sexual Violence and Family Honor: British Propaganda and International Law During the First World War," *American Historical Review*, June 1997, 714-747.

[275] INS file 54307/21.

[276] In 1918, the requirements of the the 1917 law relating to literacy, the head tax, and contract labor were waived for Mexican laborers by the Commissioner General of Immigration with the approval of Secretary of Labor. (Departmental Order No. 52461/202).

[277] INS file 54466/40.

Illiterates who landed at East Coast ports could not be deported across the Atlantic because of the war risk and so were detained. HIAS got into the mode of asking for admission to relatives and for literacy retests for immigrants who learned to read in detention, rather than making claims for admission based on the persecution exemption.[278] This was especially the case because, as mentioned earlier, of the large number of Sephardic women coming in. These women did not come from Russia, so the case could not be made that they were denied educational opportunities because of Russian laws. In 1917, the HIAS Board authorized the hiring of a Sephardic worker to handle immigrants coming from Greece and Turkey.[279] (Some of the early literacy test cases involved Sephardic Jewish women who were admitted temporarily and who learned to read Ladino rather than Yiddish.[280])

In the few early, wartime cases where the persecution claim came up, Kohler's predictions—of the trouble immigrants would have articulating persecution claims, of the problems with translation, and the administration of the literacy test—were already apparent, even though inspectors were relatively receptive to the claims. Twenty-four year old Brucha Punchik arrived at Angel Island with her sister in late 1917, was unable to read (she could pick out letters, but could not say the words), and was diagnosed with defective hearing. She told the inspector that, three years earlier, "The Jews of my native village were being driven out and I was stunned and thrown to the ground by an explosion. They were burning up the houses and I was thrown to the ground and lost my senses...Now my mind is all mixed up...I remember some

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[278] One illiterate Jewish Greek woman was paroled in this way, the immigration officials taking special note of her good behavior at the station. INS file 54334/344.

[279] Minutes of the HIAS Board of Directors, Sept. 12, 1917, RG245.1, MKM25.1 HIAS papers, YIVO archives.

[280] See INS file 54766/618.

things and others I do not." An immigration inspector asked twice if her illiteracy was the result of a state of war or religious persecution, and, because the answers were complicated and mixed—""The Germans were bombing the town and the Russian Cossacks were driving us out of our village with whips...My flesh was swollen for six months afterwards from the blows…We were robbed and driven out by the Cossacks in order to keep us from falling into the hands of the Germans"—the Board of Special Inquiry did not consider her exempt from the literacy test on persecution grounds. HIAS's John Bernstein appealed on her behalf, explaining that she suffered more than she said at her interview and even more than he could specify (implying, perhaps, a rape, beyond the brain injury she suffered):

> Her home in the province of Cholm was captured…and she and her family were…subjected to unspeakable atrocities. While fleeing to Siberia, together with a three-year old niece, she was separated from the rest of the family. The child which Miss Punchik was carrying was stabbed to death in her arms by a Cossack. This and similar acts on the part of the Cossacks caused Miss Punchik to become a nervous wreck. Added to this the noise of the gunfire deafened her temporarily…Her sufferings and experience in the war zone affected her mind to the extent that she forgot how to read. She wrote words in Yiddish and Russian for our investigator, but could not read them. [281]

Rather than admitting her permanently, the Immigration Service paroled Punchik to HIAS and her relatives.

The first literacy test case at Ellis Island that raised the religious persecution exemption involved an Assyrian family from Urmiya (in Iran). No lawyer represented them and almost every problem that could come up in evaluating their claim, did come up. They testified that relatives had previously been killed by Turks so when the Turkish army came toward their town, they fled, following the withdrawing Russian army. To determine if the exemption applied, one inspector oddly asked the only member of the family who passed the literacy test if she was

[281] Hearings Dec. 5 and 12, 1917; Letter from John Bernstein, HIAS, INS file 54304/108.

persecuted. She answered that "The Turks were going to massacre me" and then, when asked what they attempted to do, she claimed she could quite understand the interpreter, who was Armenian (and so did not speak Syriac, the language she spoke and was tested in). Then, another inspector asked the male head of the family (who spoke English) if he had any documents from a U.S. consular officer to show that the family emigrated because of religious persecution. Given that no such documents existed, it is not surprising that he had none, though he did claim that he was sent to the United States by the American missionary, Dr. Shedd (who he mentioned by name). When asked specifically about persecution, he claimed that it was religiously motivated because the Turks wanted them to convert, though he conceded that religious troubles commenced with the war and that "the Turks know our sympathy with the allies." [282] Of the three inspectors, one dismissed their persecution claim, one accepted it based on "common knowledge" of persecution of the "class of aliens" of which they were a part, and one believed they needed better proof of persecution to qualify. It also turned out that the head of the family, although he originally claimed he could not read, was able to read when tested a week later. "The statement I made at primary examination was that I could spell and read. I was told," he said, "that that was not reading." Apparently, after being told this by the inspector, when shown the reading test card, he did not attempt to read it because, he said, "I did not believe I could read it the way you wanted it." (There were other cases later, especially when Ellis Island was crowded and immigrants had no advocate, when, if the male head of the family

[282] Urmiya changed hands between the Ottomans and the Russians twice during 1915 and 1916 and disorder, disease, shortages, and violence was great. British missionaries left the city, but American and French missionaries remained. In 1917, the Russian forces left the city. "According to approximate figures given by the American missionary Dr. Shedd…When he Russians withdrew, about 8,000 Christians left with them…during this five month period the number of Christians murdered in the city was approximately 1,000, while the number who died from epidemic disease was 4000." (Bulent Ozdemir, *Assyrian Identity and the Great War: Nestorian, Chaldean, and Syrian Christians in the 20th Century*, trans. L.M.A. Gough (Whittles Publishing, 2013) 62.)

said he could not read, he was not tested and the whole family ordered excluded.[283]) When the case reached the Ellis Island Commissioner, he wrote ,"as to whether the persecution referred to was wholly of a religious nature, or due, in part, to the exigencies of war between the Turkish and Russian forces, this office has no means of determining." Apparently, "wholly" was another word for Marshall's dreaded "solely." Officials in Washington ruled that the family should be exempt from the literacy test and admitted them on July 5, 1917. Officials were careful, however, to note that this was a wartime decision and not a precedent.

> While the bureau recognizes that in many instances the question of religious persecution is an intangible one, still it thinks, in view of the evidence adduced in this case and of the well known fact that a state of persecution in that region is officially recognized by the Government, as instanced by supplies forwarded by this government to the unfortunate people in that region of Asia, the proof of exemption from the illiteracy test is about as "clear and convincing" under subdivision 7 as the case is susceptible of during the present state of war. It is accordingly recommended that the appeal be sustained, without making this case a precedent, each case to be decided as it arises on its own merits. [284]

By the summer and fall of 1918, when it was again safe to deport over the Atlantic and Louis Post was away, immigration officials became stricter regarding the admission of illiterates and tried to deport some who had been let in temporarily. Those who married since arrival were allowed to stay. Appeals from HIAS tended to get Jewish women treated more liberally than non-Jewish illiterates in terms of being allowed to retake the test after being temporarily admitted or to being able to enter as dependents to a broader array of relatives than should technically have exempted them under the law.[285] The same inspector who rejected the Assyrian family's persecution claim was amendable to admitting an illiterate woman as exempt from the

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[283] See, for example, INS file 54999/159 (March 1921).

[284] INS file 54290/8.

[285] INS file 54188/736

test because she was coming with her literate child.[286] (In other words, interpreting liberally the 1917 law's exemption that a legally admitted alien could bring in his illiterate mother). This had important implications for the way women's claims were handled for the next several years.

Officials went out of their way to find ways to admit illiterate women as dependents rather than recognize their persecution claims. In mid-1920 several illiterate Armenian women landed at Ellis Island. Mary Armaotian, a young widow whose husband had been killed "during the massacres," was excluded in May for illiteracy because she had not been "personally" persecuted since the end of the war and because her town had been occupied briefly by the British, though she claimed they did not bring security and that "everything was torn to pieces; nothing was left." Ellis Island Commissioner Uhl wondered if persecutions against Armenians were political rather than religious and worried that, if Armaotian was exempted on grounds of religious persecution, this ground would be claimed "as sufficient reason for the admission of any illiterate Armenian." The INS opted to admit her on bond, which it implied could be canceled when she learned to read, though it did not guarantee she would be permanently admitted. In fact, the bond was canceled when she wed, marriage exempting her from the test more surely in the eyes of the INS than her alleged persecution.[287] In August, Dirouhi Mateosian, a 63-year-old widow and dressmaker from Smyrna, was excluded for illiteracy. Vartan Malcolm, a leading Armenian-American attorney, appealed on her behalf, and an affidavit he secured from her nephew pointed out that Mateosian should be exempt from the literacy test because, "like all Armenians," she was persecuted because she is "a Christian" and had been "compelled to leave Turkey." The Bureau did not recognize this group-based persecution claim but admitted her

[286] INS file 54290/51

[287] INS file 54766/771

temporarily on bond in light of the fact that she had family in the United States, but not in Turkey, to take care of her and "in view of the conditions now existing in her native country." Mateosian was admitted permanently only after she legally adopted another nephew as a son, thereby exempting her from the literacy test as an aged parent of a U.S. resident. E.J. Henning of the INS could "think of no other way in which the Department or any one else could ever legalize the admission" of Mateosian.[288] On the other hand, men with strong persecution claims but also characteristics that seemed to render them dependent were not admitted, even just temporarily and with the assured support from family. For example, Benia (Benjamin) Feingold, a 30 year old Jew from Zivotov, Ukraine, arrived at Ellis Island in July 1922 and was excluded as illiterate and as having a physical defect—muteness—which would make him likely to become a public charge. Officials insisted on his deportation, refusing to allow him in temporarily. His mother submitted an affidavit explaining that discrimination against Jews had made it impossible for Benjamin to get an education when he was young and that he had more recently fled a pogrom in his home town. Robe Carl White dismissed the pogrom in his town as unsubstantiated. By 1922, "unusual religious disturbances" against Jews were no longer considered "common knowledge" to be taken into consideration in evaluating persecution claims. Instead, the mother's affidavit was "hardly evidence" to exempt him from the test since "it is common knowledge that the majority of Hebrew aliens in Russia are able to read and most of them grew up under similar conditions; and, in fact, the mother who makes this affidavit is able to sign in Hebrew, so that conditions would not have prevented her teaching him to read their language."[289]

[288] INS file 54866/638

[289] INS file 55255/88.

A survey of HIAS briefs in illiteracy cases reveals that the organization was never content to base claims for admission only upon the persecution exemption. Appeals pointed to the availability of support from relatives or asked for discretionary admission because of difficult conditions abroad that would make it inhumane to deport.[290] Stressing these other factors makes sense because, by late 1920, there seemed to be no consistency in the way that Jewish women were questioned about illiteracy. On September 20, 1920, Fani Perlmutter, a Jewish woman from Poland, was asked about persecution; the next day, Blima Waigova, another Jewish woman from Poland, was not asked about persecution, though her Board of Special Inquiry inspector was chaired by the same inspector.[291] When HIAS appeals did raise persecution claims, they frequently used boilerplate language (echoing the phraseology of the literacy test exception) that emphasized the lack of educational opportunity and seemed rather unconvincing to officials, especially when clients did not mention persecution at their immigration interviews. The claims about illiteracy generalized about educational opportunity in ways unlikely that were vague and unlikely to convince an immigration inspector.[292]

It is clear from immigration interviews that many Jewish women assumed religious persecution meant intimidation, beatings, robbery, burning of homes, and interference with religious worship or the work and economic activities of Jews, rather than educational discrimination.[293] When mentioning a lack of schooling, they frequently referred primarily to family circumstances and poverty. When asked if she ever attended school, Chaia Potashnik, a

[290] INS files 54766/504; 54866/516; 54866/626; 54866/732; 54866/759; 54866/831.

[291] INS files 54960/41 and 54960/45.

[292] INS files 54866/343; 54866/399; 55270/562.

[293] INS files 54866/416; 54866/419; 54866/426

20-year old illiterate dressmaker from Kielce, told immigration inspectors, "my father died when I was a young child and I had no opportunity to go to school…There were schools [in the town] but there was nobody to send me to school."[294] For many, education was more something that was done at home or informally. (Brucha Punchik, the woman who claimed she read fluently before her trauma, said she went to Hebrew school for only a few months and learned to read at home.) I found only one persecution claim that adhered to the exception according to Marshall Law. Here's the immigration interview of Ety Defrim, a 33-year old widow, who arrived at Ellis Island on September 24, 1920:

> Q: [To] What do you attribute your inability to read?
> A: Because I was not permitted to attend school.
> Q: Who prevented you from going to school?
> A: By the government.
> Q: On what ground?
> A: On the ground of my religious belief. Only a certain percentage of Jews were permitted to go to school from our town.
> Q: Were you ever persecuted on account of your religious belief?
> A: Yes.
> Q: In what manner?
> A: I was not allowed to go to school and I was too poor to get a private teacher.[295]

In many cases involving Armenian women, inspectors at Ellis Island rejected compelling persecution claims by focusing exclusively on opportunity to go to school and whether a lack of such opportunity was the result of official religious discrimination. When 19 year old Siranouch Boyadjian of Erzeroum arrived at Ellis Island in 1921, she told inspectors that, in 1915, the Turks "took" her father and that she was "exiled" with her mother, who died "on the way." She spent the next few years being "taken from place to place"—Port Said and then Aleppo—until, in 1919, she ended up in a "school for orphans" in Beirut. One inspector seemed to think she

[294] INS file 54866/860.

[295] In the Matter of Ety Defrim, Nov. 1, 1920, MKM 15.19, XC-12, HIAS papers.

should have gained literacy there, though she explained that it was "a place where young girls go to work…a real manufacturing place," and she worked as an embroiderer. Another inspector thought she should have acquired literacy before the deportations, back in Erzeroum, since she testified that some Armenians went to school there.

> Q: "Can you explain why some Armenians were permitted to go to school and you were not permitted to go to school?
> A: Prior to my exile, I was small—12 years of age. I was only one child and my parents were in fear, more or less, of the Turks getting hold of me to kidnap me, so they tried to keep me at home.

The inspectors attributed Boyajian's illiteracy to personal factors rather than religious persecution and ordered her excluded. Officials in Washington agreed that she came "within none of the exemptions under the Immigration Act." [296] In another case, inspectors ignored the larger picture of persecution described by 21-year old Aravim Demurdjian, who was deported by the Turks from her home village in the province of Sivas and spent several years working for an Arab family in Syria. (Her brother, a U.S. citizen and ex-soldier, travelled from the United States to Syria in early 1920, arranged for her "release" from this household, and travelled with her to the United States, via Cherbourg.) In rejecting her claim, the inspectors also seemed to assume that gender discrimination and religious discrimination were mutually exclusive, rather than see the former as compounding the latter. Here is an excerpt from her immigration interview at Ellis Island on June 22, 1920:

> Q: How is it you are unable to read?
> A:I didn't go to school.
> Q: Did the authorities prevent you girls going to school that were of a school-going age?
> A: The Turkish authorities in the vicinity were the direct cause for not having a school there.

[296] INS file 55190/561. Athough her persecution claim was rejected, Acting Secretary of Labor Theodore Risley, who showed compassion for Armenians in other similar cases, admitted her temporarily on bond "in view of the extreme hardship that would result in her immediate deportation."

Q: Did any of the boys in your village go to school?
A: The boys were permitted to go to school at least two months during the winter time
Q: Well, what prevented the girls from going with the boys?
A: We didn't attempt to go to school. The school was so poor that they could only take the boys and the girls did not have an opportunity to go.
Q: How long did you live in that village?
A: I lived there sixteen years.
Q: After that where did you go?
A: We left our home and it took us four months to reach Hama. First we arrived at Aleppo and remained there a couple of days and then sent to Hama, and I have remained there since.
Q: Were there any schools in Hama?
A: There are a good many Arabian schools...there but there are no Armenian schools.
Q: Couldn't you go to the Arabic school?
A: We were taken to an Arabic house and I was working for them for nothing. [297]

Testimony regarding physical violence, or what the literacy test exception referred to as "overt acts," seemed to be more convincing at least to officials in Washington. Assistant Secretary Louis Post had already adopted, in cases involving the political deportees Emma Goldman and Flores Magon, the principle of not sending back immigrants to places where they would face physical persecution,[298] and he applied the same principle to religious deportees. But, it was one thing to use his discretion to delay deportation and admit immigrants temporarily and another thing to affirmatively accept persecution claims and admit immigrants permanently.[299] Post was relatively liberal in his assessment of the credibility of testimony by immigrants and appeals from advocates. Here is an excerpt from the immigration interview of Malke Herskowitz, a 24- year old illiterate Jewish woman from Poland, on Sept. 3, 1920:

Q: Have you ever experienced any persecution on account of your religion or nationality?
A: Yes.

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[297] INS file 55866/172.

[298] See Louis Post, *The Deportations Delirium of 1920: A Personal Narrative of an Historic Social Experience.* (Chicago: CH Kerr, 1923), 17-18, 21, 170.

[299] For example, Post admitted temporarily on bond an illiterate Jewish women from Greece to visit with family members in the United States. "Human consideration favors admission but she is not exempt from the literacy requirement," he wrote. INS file 54866/785.

Q: In what way?
A: I was persecuted on account of my religion. All the Jews in Poland were persecuted during the revolution, and through pogroms.
Q: What was the nature of your persecution?
A: I was assaulted in the street and they came in our store and broke our windows, and so forth.
Q: What do you mean by 'our store'?
A: In my foster mother's store.
Q: How long ago was this?
A: 6 years ago.
Q: Who were these people who abused and persecuted you?
A: Poles.
Q: Did any of them strike you at any time?
A: When they came in and started to break everything, I ran away from the place. I was not struck.
Q: Then you did not leave Poland because of recent persecution?
A: Now it is the same thing.
Q: I understood you to say that you had not been persecuted in the last 6 years.
A: It is all the time over there; the persecution is there all the time.
Q: That, as I understand, occurred 6 years ago?
A: The persecution continues all the time.
Q: When was the last act of persecution to you?
A: 6 weeks ago, when I left my little town for Warsaw. I was persecuted.
Q: What was the nature of the persecution that time?
A: The Polish soldiers came into the train and persecuted all the Jews there. They made me pay 100 Polish marks to be let alone.

The Board of Special Inquiry unanimously excluded Malke as unable to read. HIAS filed a notice of appeal. In forwarding the case to Washington, Ellis Island Assistant Commissioner Byron Uhl affirmed the order, claiming that she could not be landed permanently "unless her story of religious persecution is founded on fact." HIAS's brief asked for her permanent admission as exempt from the literacy test because of persecution, but also asked, if that claim were rejected, that she be let in under bond to her family (the foster parents she mentioned, who had already been admitted). "She has absolutely no one in Poland. That country is now in the throes of a great war against the Russian Bolsheviki, and conditions there are such that it would be most disastrous to this young girl, traveling alone, to be sent back to the center of military activity to again face starvation and persecution." On September 14, 1920, Post admitted Malke

permanently, without a bond, thereby "accepting" her statements as to religious persecution and recognizing her claim.[300] About two months later, Post again recognized the persecution claim of an illiterate Jewish woman from Poland who inspectors unanimously excluded. Here is an excerpt of the interview with 18-year old Syma Silberman, an orphan, coming to join her siblings in the United States.

> Q: Did you ever attend school?
> A: Yes.
> Q: How long?
> A: Six months.
> Q: How long ago has it been since you attended school?
> A: 9 years.
> Q: Have you ever experienced any persecution on account of your religious belief or nationality?
> A: Yes.
> Q: How and when? What was the nature of the persecution?
> A: I can't explain how.
> Q: You have just stated that you have been persecuted. Tell the board who persecuted you.
> A: There was general persecution where I lived and I was afraid that at any moment it might fall upon me, so I left before they could get to me.
> Q: Were you at any time prevented from attending your religious duties?
> A: They threw stones and demolished the Jewish house of worship.
> Q: Who did this?
> A: The mob.
> Q: What was the nationality of the people?
> A: The Poles,
> Q: Were they soldiers or civilians?
> A: Soldiers and civilians
> Q: When did this happen?
> A: About a half a year ago when everybody left the town.

HIAS filed a notice to appeal her exclusion and the Ellis Island Commissioner forwarded the case, without comment, to Washington on November 6, 1920. HIAS's brief emphasized not just the persecution claim but also that, as her brother had testified, her parents died when she was young (so that she had little chance to learn to read) and the "great hardship" she had suffered in her effort to reach her relatives in the United States. Congressman Isaac Siegel also contacted

[300] INS file 54866/873.

Post about the case and may have provided him with details about persecution that Syma could not explain. On November 10, Post sustained the appeal and admitted Sime permanently.[301]

In other cases, Post's decisions blurred the boundaries between discretionary and affirmative admissions. When asked by an immigration inspector if she ever experienced persecution, Feige Kornblut said that first Russian and then Polish soldiers "were beating the Jews on account of their religion and I was among them." Post sustained HIAS's appeal without specifying why and required that relatives supply a bond assuring she would not become a public charge. At her interview, Kornblut testified that she had been asked if she could read when she boarded the ship to come to the United States and she answered that she could not. The Immigration Service held that the Red Star Line was liable for a fine since Kornblut "was admitted temporarily on bond"; in fact, though, the bond had nothing to do with ensuring her departure. By admitting Kornblut in this vague way, Post penalized the steamship, but not the immigrant.[302] In cases where the immigrant, at her interview, answered that she was not subject to persecution, though HIAS argued she was, Post typically sustained her exclusion and directed temporary admission; this left the door open for less sympathetic administrators to later recommend deportation, regardless of what happened in the interim. For example, Leah Kolchik, a 29 year old widow who arrived at Ellis Island in July 1920, denied that she was subject to persecution and explained her illiteracy thus: "I had no father and at the age of ten years I was compelled to go to work." The inspectors recommended her exclusion. HIAS appealed using standard group persecution language that echoed the exemption in the 1917 Act ("under the former regime of the Russian czar, very little opportunity was given to the alien, a member of the

[301] INS file 54960/530.

[302] INS file 54960/170. From 1917 to 1921, fines were imposed on transportation companies when illiterates were admitted temporarily (INS files 54866-731 and 54866/821).

Jewish race, to attend school as, under the empire, governmental regulations and, until the end of the Great War, overt acts on the part of the Russian-Polish officials and non-Jewish population discriminated against the race to which the alien belongs because of her religious faith") and requesting, secondarily, that she be admitted temporarily to her aunt and cousins since it "might prove disastrous to her life" to deport her to Poland while it was in the throes of the war against the Bolsheviks. Ellis Island Commissioner Uhl forwarded the case to Washington, noting that "many illiterate Polish-Hebrews have been coming here recently on French Line vessels." Post affirmed her exclusion but, on August 11, 1920, admitted her temporarily on bond "in view of present conditions in Poland" and fined Compagnie Generale Transatlantique. When she was called back to Ellis Island in March 1921, she was married, pregnant, and had learned to read Yiddish. Two out of the three inspectors nonetheless ordered her deportation on the grounds that she was admitted on the condition that she leave at the end of her temporary stay; the inspectors believed she should be "re-excluded as illiterate at the time of her original application for entry." Though the Commissioner General ultimately ordered her admission, the restrictionism of the inspectors was a sign of the times.[303] When 26 year old Feiga Stipelman, an illiterate Jewish woman from Podolia, arrived in 1922, she was not asked about persecution at her interview. HIAS and several Congressmen intervened on her behalf, asking that she be retested and claiming that she suffered religious persecution. Officials in Washington allowed for reexamination as to her illiteracy but refused to even consider her persecution claim because she had not raised it at her original hearing and because she said had family still residing in Podolia. This despite the fact that relatives in the United States claimed she did not, in fact, know the whereabouts of her family in Podolia, as she had fled Proskurov during the pogrom. To escape,

[303] INS file 54866/447. See also the similar case of Chaie Warszawksa, INS file 54866/840.

"she had to jump through a window and was then apprehended and the few cents that she had with her were taken from her and the ruffians in doing this stabbed her on the side of her body which until this day show the stiches of her wounds." (She made her way to Lvow, where she was issued a Polish passport in 1921, and then to Warsaw, where she was issued a visa to come to the United States in 1922, her aunt in the US sending her money to travel to New York via Rotterdam). Though she showed some ability to read Yiddish, she failed two reexaminations as to her illiteracy. Her attorneys filed a writ of habeas corpus in the federal district court and, when that was dismissed, appealed to the Court of Appeals. When dismissing the writ, the judge asked that the case be reopened; Stipelman was reexamined in 1923, after having spent almost a year detained at Ellis Island, and passed the literacy test. Because the case had gone to court, officials in Washington were reluctant to use their discretion to admit her, even though she had learned to read and had relatives in the United States to support her. They admitted her because the Ellis Island Commissioner accused the lawyer handling her case of demanding an "exorbitant" amount from her relatives and because Stipelman had been a model inmate at Ellis Island, "keeping the quarters in model shape and instructing those with whom she was associated as to their conduct, cleanliness, and welfare." [304] This was a far cry from granting her right to enter on the grounds of persecution.

Graphic claims of persecution that invoked the Orientalist redemption narrative (popularised by Aurora Mardiganian's tale) were a double-edged sword for Armenian women. The power of this narrative meant that if advocates told tales of *potential* sexual risk at the hands of the Turks, illiterate women could sometimes gain admission even when they themselves told inspectors that they had not suffered religious persecution. In one such case, an affidavit from a

[304] INS file 55265/439.

Syrian-American newspaper editor recently returned from a visit to Mount Lebanon claimed that "alone and an orphan and a Christian" 25 year old Salimi Rameh would "almost certain to be taken as a white slave by men of other religious beliefs" if returned to her home town there. This convinced Louis Post that Rameh (a Maronite Christian) should be exempt from the literacy test as "a religious refugee" in April 1920. (At her original hearing, she had told inspectors she was "coming to the United States for the purpose of working and earning my living," adding "I understand that America is a merciful country and people get full protection.")[305] In another case, a woman's brother appealed on her behalf, arguing that her initial denial of persecution was a product of feminine shame. Here is an excerpt from the re-opened hearing:

> Q: After your father's death, you say you lived alone?
> A: Yes, but I slept in my cousin's house.
> Q: Were you ever interfered with or troubled while living alone?
> A: Yes, when I was living alone some of the Mohammedans came and frightened me. That is what caused me to sleep at my cousin's house.
> Q: Did they molest you in any way on account of your religious belief?
> A: Yes, the Mohammedans persecuted me and made bad remarks to me. At one time they wanted to do me bodily harm and I wanted to live with my cousin. I went and lived with my cousin.
> Q: Did anyone of them mistreat you in any way, or do you bodily harm?
> A: The Turkish soldiers frightened us when we were on the streets and called us names.
> Q: Did anyone strike you?
> A: They were in the habit of striking every girl who was on the street alone.
> Q: Did anyone ever strike you individually?
> A: Yes, they strike us when they see us on the street alone.
> Q: Why was that?
> A: Because they hate Christians.
> Q: Was this persecution that you say existed, was it against you or against the Turkish Christians generally?
> A: Yes, against all the Christians.
> Q: How do you account for… the statement… you made…only a few days ago that you were not persecuted?
> A: I was ashamed to make statements in the presence of 5 or 6 gentlemen, being a girl. I am ashamed to say what they did to me.

[305] INS file 54766/627.

Q: Tell us what they did to you…Explain to the Board just what you experienced in the shape of persecution from the Turks you speak of. Did they do anything further than use the lash you speak of in the way of persecution?
A: They followed every girl in the streets—I was one of them—and they put hands on us and tried to get the best of us morally.
Q: Were these married Turks?
A: I do not know. They were Turkish soldiers and some native Mohammedans.
Q: Has your brother or any relatives suggested to you to make these statements?
A: No.

Two rehearing examiners believed that this testimony did not change the status of the case, while one examiner (who redirected the questioning towards "Turkish Christians generally" and objected to the Board chairman's demand for details after she said she was ashamed), believed she should be admitted. "Her statements are borne out by the general knowledge that comes to us through the press of the attitude of the Mohammedan toward the Turkish Christians," he wrote. The Washington authorities opted to admit her temporarily on bond, the Assistant Commissioner General of Immigration insisting that "the reason for her coming is as she first testified: 'Brother sent for me to keep house for him and to work—I had no one over there.'"[306] In another case, when a 28 year old Armenian woman, Anna Sherbetdjian, actually told a detailed account of the "indignities" of forced conversion, "violation" by a Turk, and unpaid domestic labor in a Turkish home, officials were sceptical of her innocence, especially since she was coming to the US to meet a fiancé she had never seen and who paid her passage. Protests from women's clubs, politicians, and church leaders horrified at the possibility of sending her back into danger led to her admission temporarily on bond.[307] The prevalence of the narrative of persecuted Christianity and harem slaves meant restrictionist administrators could dismiss graphic persecution claims as scripted, or what they called the "stock exemption" among illiterate women coming from the

[306] INS file 54766/974.

[307] INS case 54766/777.

Near East.[308] In one case, officials dismissed a detailed testimony of beatings and theft as a "subterfuge"; they used the same word to characterize Rameh's supplementary testimony (quoted at length above), the Assistant Commissioner General adding that "the contention of religious persecution bids fair to become popular with illiterates coming from Armenia, Syria, and other portions of Turkish or former Turkish territory."[309] Without advocates forcefully making the case for admission, indications of customs considered backward and eastern could lead to exclusion. An illiterate Armenian woman, who arrived with a 15 year-old girl she intended for her son's wife, was rebuked by an inspector who told her "under the laws of the United States a child of that age cannot be legally married."[310] Migration arrangements by Armenians were increasingly looked upon as suspiciously instrumental and coercive, and therefore un-American. In 1921, the Assistant Commissioner of Immigration at Ellis Island and in Washington believed that the case of an 18 year-old Armenian girl coming from Constantinople to marry a man who paid her uncle to bring her over, was testament to the fact that "the bringing of girls of certain races to the United States for matrimonial and other purposes has become a matter of the most sordid commercialism."[311] Their assumptions were confirmed when they discovered that Harotune Selvian, a rancher from near Fresno, had travelled to Armenia in 1919 to "rescue" several women, brought them through Ellis Island as his supposed close relatives in August 1920, and provided them to his neighbours as wives for a fee.[312]

[308] INS file 54766/952.

[309] INS files 54766/966 and 54766/974.

[310] INS case 54999/363.

[311] INS case 55180/434.

[312] INS case 55063/51.

Perhaps cases like these made restrictionist officials in Washington somewhat amenable to working with Katherine Herring, who Louis Post appointed to head the new Immigration Bureau Women's Section in late 1920 and who had previous experience investigating "white slavery" cases.[313] Before doing that in the capacity of a special immigration inspector, Herring had worked as a special agent in the Children's Bureau. As a medical doctor, Herring was also qualified to advise examiners in cases involving immigrants showing signs of disease or defects.[314] Post's goal in establishing the Women's Section was "to utilize to the best advantage the viewpoint of women [in the Immigration Service] relating to the interests and needs of women and children immigrants." Herring was to "prepare memoranda" in "special" immigration cases "involving women and children" when requested to do so by the Commissioner General or his Assistant.[315] As discussed below, Herring had, for the brief period in 1921 which the Women's Section was operational, *some* impact in the handling of cases involving Armenian and Jewish immigrants and persecution claims in illiteracy cases. But it is also clear that Immigration Bureau officials did not refer to Herring all the cases that were within her purview. In March 1921 alone, Herring was not called in for a case involving a Yugoslav woman ordered excluded for a skin condition who left without the baby she birthed at Ellis Island; to help determine if an illiterate woman who was estranged from her husband should be

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[313] See, for example, Herrings efforts in a prostitution case involving Russian Jews who came to New York from Rio De Janeiro, Brazil in 1917. INS 54290/268.

[314] Herring was born in Iowa in 1876, worked as a clerk for the Department of the Interior, got a degree in medicine, and then joined the Children's Bureau. She also worked temporarily on special projects for the U.S. Public Health Service. She worked for the Immigration Bureau from the fall of 1916 to the spring of 1922, first as a special inspector, then as chief assistant to the Division of Information, and then as head of the Women's Section. Herring subsequently worked for the Treasury Department as a narcotics inspector (from 1922-1930). Herring never married and lived, for a time, with her sister, who also worked, in various capacities, for the federal government. (Civilian Personnel file for Katherine M. Herring, National Personnel Records Center, NARA).

[315] INS file 54933/185.

exempt from the reading test; to evaluate whether to admit a 20-year old illiterate Greek woman coming to a brother and a 35 year old man who wanted to marry her and paid her passage.[316]

There were also several instances where Herring confirmed, or even enhanced, restrictionist rulings. In early 1921, after public health service medical examiners confirmed that a 17 year old Polish Jewish girl was an "imbecile," Herring recommended her deportation, despite HIAS's appeal that "this condition was bought about during the fighting between the Russia and and the Germans around Warsaw in 1915-16, when the child was struck with terror and shocked into imbecility during a bombardment."[317] An appeal on behalf of an Armenian woman and her daughter, who was certified with trachoma, asked that they be admitted to their husband and father, considering they had no relatives left alive in Turkey and the hardships they had suffered during the deportations. Herring believed that the daughter was mandatorily barred from admission and suggested they both be sent back, not even considering admission of the daughter for hospital treatment, which was a common practice.[318] When Herring was called in on some cases involving women traveling with children who officials believed likely to become public charges, Herring tended to agree that they should be sent back to their husbands abroad—even in cases where the husband had deserted the woman or abused her—in the name of not separating the families, requiring husbands to support their children, and the "possibility of reconciliation" between the spouses.[319]

[316] INS files 54999/108, 54999/231, 54999/212.

[317] INS file 54866/861

[318] INS file 54999/166

[319] INS files 54999/45 and 54999/242.

Herring was, however, consistently liberal in advocating the adjustment to permanent status of those illiterate women who had been admitted temporarily and subsequently learned to read or got married. She began her work at Women's Bureau just when many of the illiterate women who were admitted on bond to visit family in mid-1920 were coming to end of their stays. If they requested extensions, Herring was sent to investigate. Herring interviewed the above-mentioned Brucha Punchik, who, after being paroled temporarily, joined her relatives in New York, began working, and got married. A similar case involved Eva Dobrin, an illiterate Romanian woman whose persecution claim was rejected but who Post admitted temporarily on bond to visit her brother in 1920. A few months later, she still could not pass the literacy test but had made some progress in learning to read and also was engaged to be married. In early 1921 Herring recommended her stay be extended.[320]

Herring's record on the recognition of religious persecution claims is mixed, though mostly liberal. In March 3,1921, when asked whether she suffered persecution in Lublin, 26 year old Chaja Lederfarb told immigration inspectors that, "just because we were Jews," she "was molested" and her "parents were robbed of their horses" and "were left without any means of support." The inspectors unanimously ordered her excluded as unable to read. HIAS appealed and Herring recommended, on March 15, that she should be admitted as exempt from the literacy test. "It is well known that such persecution [of the Jews] as this girl claims has occurred in Poland," Herring wrote. Assistant Secretary of Labor Henning sustained Lederfarb's appeal and admitted her on March 17.[321] On March 7, 1921, when asked whether she suffered persecution in Kovno, 27 year old Gana Bajer told immigration inspectors: "I was driven out of town when

[320] INS file 54866/827

[321] INS file 54999/41

the war broke out; all the Jews were driven out." On March 16, just as she had in the case of Lederfarb the day before, Herring recommended exemption of Bajer from the literacy test. "The Department has held that persecution of the Jews" as Bajer described "is religious persecution within the meaning of the law." This time Henning disagreed, arguing on March 21, 1921 that, "the evidence does not indicate whether or not there was any persecution in the recent past form which she is now escaping." Since her brother-in-law and several Congressmen appealed on her behalf, the Bureau agreed to admit her temporarily; a few months later, Bajer passed the literacy test and was admitted permanently.[322] But, on the tough cases, on the cases where the distinction between individual and group persecution was explicit, Herring and increasingly restrictionist officials tended to rule the same way. On March 10, 1921, when asked if she and her sister, orphans, experienced persecution, 20 year old Gitla Presser answered: "we personally did not, but other people in the same village did," adding that their village was "constantly" on Bolshevik, Polish, and Ukrainian military occupations and it had been "burned down and almost everything detsroyed and there is no place to work." Herring and Henning, on March 16 and 17th respectively, recommended temporary admission because of the extreme hardship they would experience if returned to Poland at that time. But after Gitla still had not learned how to read after a few months, the Assistant Commissioner General urged that she be deported as "any further extension of time will be regarded as for the sole purpose of enabling the alien to read and thereby nullify the purpose of the law." Herring did not weigh in, but Assistant Secretary Theodore Risley, who consistently showed compassion in cases involving Jewish and Armenian illiterates, pointed to the "suffering" she had experienced and the "disastrous" conditions still existing in her home country and extended her stay a few more months in late 1921.

[322] INS file 54999/69.

Unfortunately, in the coming months, the Assistant Commissioner's viewed would prevail and she would be deported.[323]

Other tough cases involved changed testimony: when an illiterate woman claimed she was not persecuted at her first interview and, upon rehearing, claimed she had faced persecution. Herring, like other officials, tended to be skeptical of such changes. On March 12, 1921, when asked if she was persecuted, 29 year old Esther Spiegel said no; the inspectors ordered her exclusion as an illiterate and Herring wrote that "no particular features" in the case justified relief. Herring did not find compelling HIAS's claim that Spiegel was "the subject of religious persecution and discrimination under the former Russian autocracy" and "that as a Jewess no opportunity was given her to attend public school." Officials in Washington adamantly refused HIAS attorney Leo Gottlieb's request that Spiegel be admitted temporarily on bond ("the obvious purpose of which was to afford the alien the opportunity to learn to read"), and only reluctantly granted a Congressman's request for a week-long stay to submit evidence of persecution. "It has become the common practice," the Commissioner General wrote on April 6, 1921, "in the cases of Hebrews excluded from admission on the ground of illiteracy to later present claims to exemption on the ground of religious persecution…Generally speaking, such claims are not made in good faith." He added: "after orders of deportation are made and aliens are accessible to visitors, they are coached to claim they are refugees…the next step being to importune the Department for a stay of deportation and a reopening of the case." (The Commissioner General then argued that refusing the stays and the re-openings was more "humane," because it would deter prospective immigrants from attempting to come only to be excluded and detained.) Given this reluctance, it is not surprising that the Commissioner General

[323] INS file 54999/148.

did not what he called Spiegel's "eleventh hour" further testimony—that her parents had been killed by Polish soldiers, who also beat her when she refused to do the work they demanded of her and put her out of her home—justification for exempting her from the literacy test. [324]

The problem, of course, was that persecution claims were, as frequently as not, made in good faith and there were legitimate reasons for taking additional testimony. On April 24, 1921, immigration inspectors asked Spunce Schneiderman, a 29-year-old illiterate woman from Krasnostaw in Volyn, an area plagued by pogroms in 1919 and fought over during the Polish-Soviet war, a vary narrow question regarding persecution. "Was there any persecution on account of race or religion that prevented you from going to school?," they asked. Schneiderman answered in the negative, but pointed out that there were no schools. The next day, Ellis Island Commissioner Uhl ordered the hearing reopened, instructing inspectors to obtain evidence on the question of whether Schneiderman was seeking admission to the US to avoid religious persecution. "Confine yourself to the essential particulars," he wrote. "It is not essential to ascertain whether the alien concerned has or has not attended school or the cause of illiteracy.". When asked directly what persecution she experienced, Schneiderman testified that she had been raped (the terms she used, as translated, were "insulted and beaten" "by men," and she referred to women in particular, including herself, "escaping thru windows") during the Bolshevik invasion of her town. She said that her home had subsequently been ransacked by Polish soldiers ("doors were broken open, our furniture was broken up, our bed covers were torn open…walls were broken up and the floor torn to search for money and treasure hidden there) and that she had been forced, at gunpoint, to take to the woods. When asked what was the "impelling force" which caused her to migrate to the United States, Schneiderman proffered a paratactic reply that

[324] INS file 54999/183

refused to give primacy to anything but the desire to leave: "I had no bread and my mother died and my sisters were all in the United States and the Bolsheviki were beating me, so I decided to go to America." Examiners then asked whether she would have stayed in Volyn if she had been "well-to-do" and had relatives there. "I would have gone anyway," Schneiderman said, "to seek refuge." The examiners were not satisfied "as to the cause of the persecution," and upheld the decision to exclude. Forwarding the record to Washington, Uhl commented—in a phrase that simultaneously captures the subjectivity of his assessment and his attempt to make it seem objective—the "the impression is created" that Schneiderman was a victim of military conflict, rather than religious prejudice. William Husband, Commissioner General of Immigration, agreed that the "abuse" Schneiderman experienced was "principally or wholly caused by war conditions" that "does not appear to establish exemption from the literacy test." The intercession of a New York congressman, an appeal by a lawyer, and affidavits attesting to contemporary Polish "pogroms very much worse" than those "under the former Russian government," convinced authorities to admit her for three months. While Schneiderman's lawyer emphasized the peril that would befall "an unprotected girl" sent back to Poland—"alone, with no friends to turn to, with little or no funds, with little or no opportunity to become employed, in a country overrun by strife, I shudder to think what the end of this young woman would be"— one of Schneiderman's sisters, who had arrived in the US only a few weeks before, pointed out that inspectors never asked her about education or persecution because she was coming to join her husband—"Because my sister happens to be unmarried should not make it impossible for her to enter the United States," she insisted. "As a matter of fact, we all started at the same time, but were compelled to leave Spunce behind because her ticket had not arrived, and the same reasons that compelled us to leave were the reasons that compelled her to leave….Conditions in the town

became absolutely intolerable." In the summer of 1921, Schneiderman's request for additional time to pass the literacy test, which an immigrant inspector seconded because of her "remarkable" progress towards reading after less than three months, provoked Assistant Secretary of Labor Henning to fume:

> The literacy clause is mandatory and the Department cannot consider temporary admission for the purpose of educating aliens. I do not want to see any such reference made in any case. Law is the only anchorage we have in this Government to secure our liberties and it must not be treated lightly. The alien gave very little thought to that matter, devoting an hour on three evenings of the week to study and devoting practically all of her time to earning money. To me this indicates a contempt for our law and making light of the unusual privilege extended. Aliens who feel that way about our laws and our institutions, in my judgment, will never become Americans at heart and are not of the desirable classes.[325]

By mid 1921, belief that illiterate immigrants disregarded the law sidelined concern for persecution. Inspectors had dismissed Schneiderman's additional testimony because they were convinced, they wrote, that she had "absolutely no regard for the truth where falsehood promises any reward." They formed this impression because Schneiderman had told the U.S. consul who visa'd her passport, steamship officers at her port of embarkation, and immigration inspectors upon arrival that she was joining her father, rather than her uncle, in the United States; she conceded, at the second hearing, that "someone" in Rotterdam had told her to do this, presumably so that she would not be barred from landing for illiteracy. All subsequent officials who made rulings in Schneiderman's case (Uhl, Husband, Henning) made reference to her fraud and lack of credibility.

The quota law that went into effect in mid-1921 drastically reduced the number of Armenians and Jews allowed admission. Single Armenian women who arrived with children had

[325] INS file 54999/790.

already been tainted by suspicions of "illegitimacy" [326]; after the passage of the quota law, they were scrutinized even more closely. Immigration authorities looked more askance at the use of picture bride arrangements by illiterates, preferring that intended husbands to go overseas to pick up their brides and then return with them.[327] The new law and policies led to both an increase in fraudulent marriages and suspicions of them. One of the more elaborate schemes to get around increasing official scrutiny of marriage arrangements and scepticism regarding persecution claims involved two young Armenian women, Almas Najarian and Vartanouche Eremian.

Almas's husband had died while serving in the Ottoman army and her children died during the deportations in 1915. During these deportations, a Turkish soldier forced Vartanouche to live with him. After the war, Armenian soldiers serving in the French army demanded her release. She was pregnant at the time. Hearing that she would have trouble entering the US with a newborn, illegitimate child, she paid an Armenian man to play the role of her husband. Almas and Vartanouche met at an emigrant hotel in Marseilles. An Armenian "fixer" there suggested to Vartanouche that she exchange passports with Almas, who could not read so would be barred from entering the United States as an illiterate. Almas then posed for a new passport picture with the Armenian man Vartanouche had hired and with Vartanouche's child. The plan was for Vartanouche to travel alone and for Almas, traveling with Vartanouche's child as her own, to claim exemption from the literacy test because she was coming to join this photo-husband. Upon arrival, first inspectors denied that Almas legally qualified for a persecution exemption based on

[326] The persecution claim of Bayzan Zilfian and her daughter Siranouche – "that their relatives and friends have been killed by the Turks and the aliens have suffered much during the deportation by the Turks"—was "not believed" to "represent the correct facts" by the immigration authorities. This interpretation of the facts had been influenced by a March 1921 letter from Ellis Island assistant commissioner insinuating that Siranouche was born out of wedlock. INS case 54999/166.

[327] See opposition to admitting illiterate women to intended husbands in case 55175/735 (September 1921), and case 55236/45 (November 1922).

her claim: "my foster-father did not care to send me to school but wanted me to do all the heavy work […] the only reason that they deported us was because we were Christians and there was no chance of going to school or church." Suspicious of her travelling with a child to join a soldier who left her, one of the inspectors asked Almas if she was pregnant and, though she denied it, put her through a "special medical test" after the passport scheme was discovered. As for Vartanouche, given "the amount of falsification indulged in," the authorities refused to use their discretion to let her in temporarily on bond to her relatives. They asked her if, in addition to paying the picture husband, she also had "immoral relations" with him. Inspectors also asked whether the Turk who compelled Vartanouche to live with him during the war had many other women, if he "outraged" Vartanouche's younger sister, and whether Vartanouche tried to run away. Vartanouche's answers seemed to disappoint them. Vartanouche said she was the only woman the Turk selected and that he supported her and her sister. This sister testified that Vartanouche had to leave behind an older child she bore him because the Armenian soldiers "did not want to take the child away from him."[328]

Since the State Department never provided concrete guidance to the Immigration Bureau regarding persecution abroad, immigration inspectors and officials in Washington were left on their own to assess geopolitical changes and conditions abroad. First this led to inconsistency and contradiction; by 1922, it was a vehicle for increasing restrictionism. In May 1921, Commissioner Husband declared that "war is not in progress in Poland" and that no "grave hardship" should prevent the return there of an illiterate Jewish woman; a month later, Husband decided against deporting an illiterate Jewish woman to Poland because "recent persecution of

[328] INS cases 55018/371 and 55018/392.

Jews in Poland is well known."[329] In the fall of 1921, when illiterate Armenian and Jewish women arrived at Ellis Island, Assistant Commissioner Larned ordered them deported, whereas Assistant Secretary Theodore Risley admitted them temporarily, citing harsh and threatening conditions and persecution claims that, though not entirely conclusive, were not controverted.[330] By this time, those immigration inspectors who asked about persecution (not all did), demanded that illiterates provide "specific instance" of "persecution solely on the ground of religion or race."[331] In early 1922, the tide toward restrictionism had definitely turned. Although 23 year old Riva Kisliouk told immigration inspectors that she had spent three years hiding "in-disguise" among non-Jewish neighbors, working as a domestic, "to save her life" from soldiers and bandits in Zhytomyr, Ukraine, Assistant Commissioner General Larned deemed "the difficulties she encountered due to the rigors of war instead of persecution because of religion." In response to an appeal, Robe Carl White noted that Kisliouk's attorney:

> was only able to show that she comes from near Kiev…and that it is in this particular region that the greater part of the Pogroms and religious persecution of the Jews have taken place, of which, as a historical fact, he asserted this Board [of Review] must take judicial notice. The Board, however, feels that the application of the law is not to be on the basis of general information and persecution in the historical past, but to persecution which the individual alien is leaving his or her country to avoid…She states that they were killing Jews in the streets, but that her non-Jewish friends knew her well and protected her. At this distance and in view of the practical impossibility of obtaining official information as to conditions in many regions in Russia, it is impossible to say that the violence she tells about was religious persecution. It was probably lawlessness which

[329] INS files 54960/41 and 54960/555.

[330] INS 55175/503 (September 17, 1921: Siaranous Aharounian, 25, and son Krikor, 8, "she states that she was exiled from her home and has been living among the Turks and Kurds…there is no conclusive evidence of personal persecution. However the conditions from which she came are clearly indicated to have been hostile."); file 55180/634 (October 29, 1921: Toba Simarin, 19, "six affidavits recite numerous and various acts of cruelty and outrage against the Jewish people in the neighborhood in which she lived…There is no evidence in the record to controvert either the evidence of the alien or or any of the statements in the affidavits…proof of individual instances of persecution is not entirely conclusive.").

[331] INS file 55190/216.

accompanies civil war and revolution, in which neighborhood hates—family, political and otherwise—enter into."[332]

In June 1922, 41 year old Chaje Berkowitz, an illiterate widow from Zaslaw, Ukraine, arrived in at Ellis Island with a Polish passport stamped "Born in Russia." She told inspectors she never went to school, as she was "left an orphan," and that she was "threatened to be killed several times," once by the Bolshevists on Yom Kippur. Ellis Island Assistant Commissioner Landis deemed the experiences Berkowitz described "due more to the political unrest in Russia than to religious persecution," and the Commissioner General in Washington agreed. When she appealed, Robe Carl White claimed that what Berkowitz described "of course amounts only to evidence that she has been the threatened victim of violence and lawlessness which, in view if the general conditions as we understand them to be in Russia, cannot be regarded as religious persecution but rather the lawlessness and disorder that accompanies revolution and civil war." White argued that, as a woman in the "prime of her life" and having a brother in the United States with ample means to support her, Chaje should, after the steamship returned her to her port of embarkation, go to "one of the more orderly countries in Europe" and "reside there permanently in safety" or learn to read and apply to return to the United States. Appeals from Congressmen led the Immigration Bureau to reopen the case for further evidence of religious persecution. At the re-hearing, Berkowitz explained that she had fled to Warsaw from the Ukraine in the fall of 1920. Though the hearing was to learn more about her experience of religious persecution, the inspector questioned Berkowitz almost exclusively about the money she received from her brother via an emigrant committee in Poland. The inspectors re-ordered her deportation. "What persecution she may have suffered was at the hands of the Bolsheviki…It is said that the heads of the Bolsheviki government in Russia are of the Hebrew race, and

[332] INS file 55190/859, White's decision is Jan. 11, 1922.

permission to persecute Jews because of their religious belief by their own race is altogether unlikely," a memorandum for the Commissioner General said, affirming the ruling. When she appealed this ruling, Berkowitz's testimony at the re-hearing that she did not receive much money from her brother but had worked to support herself while in Poland—testimony that proved she was not LPC or an assisted alien—was used against her. The Immigration Bureau's Board of Review claimed the fact that she engaged in work in Poland and "practically supported herself" there proved that it was a place of permanent residence for her. The language of the 1917 law exempted from the literacy test those coming "to avoid religious persecution in the country of their last permanent residence; Berkowitz did not qualify, then, because she had not experienced persecution in Poland. The purpose of the exemption, the Board stated, "was not…to favor aliens who could show that sometime in their lives or that somewhere they had suffered religious persecution." Louis Gottlieb of HIAS and Berkowitz's brother protested that she could not return to Poland. "Poland will allow aliens in transit from other countries to remain a sufficient length of time in order to perfect their passports and arrange their sailing; sometimes it takes as long as two years to do this. However…when an alien is deported and returned to that country, the Polish authorities no longer allow the aliens to settle in that country but insist upon their immediate departure to the country from whence they came." If deported to Poland, Gottlieb claimed, Berkowitz would have to return to Ukraine, "and thereby again be subjected to religious persecution." The Immigration Bureau conceded that Poland was not Berkowitz's last permanent residence, but was unsure "whether or not such persecution actually exists [in Ukraine] as alleged." The Bureau decided that, given "that many aliens who are unable to read will often resort to the claim of religious persecution for the purpose of securing admission when, as a matter of fact, no actual persecution exists," it would ask the State Department for a for an

official report on the question. Berkowitz was admitted on bond temporarily while waiting for a reply from State "as to whether or not people of the Jewish and other races are being persecuted in Russia," particularly Ukraine. An October 1922 reply from Under Secretary of State William Phillips noted that, though numerous reports had been received relating to the nationalization of church lands and to the conviction of bishops and priests by the Soviet authorities, "these reports do not indicate that there has been any persecution in Russia, including the Ukraine, on the score of sectarian faith." "It is possible," Phillips added, "that in some outlying districts not thoroughly under Soviet control, bandit activities have taken a racial character, resulting in isolated cases of persecution. To what extent these bandit activities might be characterized as 'religious persecution' instead of ordinary political disturbances, this Department is unable to say." Unfortunately for the Immigration Bureau, when the time came to deport Berkowitz, she had learned to read. [333]

In a similar mode, the Immigration Bureau consistently dismissed persecution claims by asserting that, despite what happened to them during the deportations of 1915, Armenian women had not been persecuted if they subsequently transited through areas under British or French occupation.[334] As the French withdrew from Cilicia in late 1921 and attacks on Armenians were reported to the State Department and in the newspapers, immigration authorities insisted that an excluded family from Aintab had nothing to fear, arguing that "Turkish violence [against Armenians who cooperated with the French] will probably not take place until some months have elapsed, for the reason that it is thought that the Turks will not wish to bring any political

[333] INS file 55235/886.

[334] INS case files 54766/771, 55018/351, 55154/10, 55190/572.

complications until they have settled into full control of the territory.'[335] By the following year, there was a disconnect between requests for refuge by Armenian women who claimed they had suffered and lost everything between 1915 and 1917 and evaluations of these claims by immigration authorities focused on the feasibility of sending them back in 1922. The dynamics of the Greco-Turkish war seemed to colour the way officials interpreted the very different dynamics of earlier events.[336] When an illiterate Armenian woman arrived in July 1922, an immigration inspector asked her if she "at any time" suffered persecution on account of religion. She replied that she had been deported, stripped of all of her clothing, and feared for her life in 1915. The authorities decided "persecution she claims to have suffered was the result of conditions of war."[337] In another case that month, an illiterate Armenian woman told the immigration authorities that she fled for her life when Turks killed her mother and brother and then spent the next several years in a British-run refugee camp. The Bureau thought these experiences were "due more to political strife than racial or religious persecution" and excluded her. Her ship took her back to her port of embarkation, Marseilles, in 1922, and she took up residence in a refugee camp there (Camp Oddo). [338]

A ruling in a similar case prompted the only federal court rebuke of the Immigration Bureau's handling of persecution claims. In 1924, Judge George Anderson, writing for the First Circuit Court of Appeals, affirmed a lower court's ruling that an illiterate Armenian woman

[335] INS case file 55021/24. For State Department reports, see file 860J.4016 in Records of the Department of State relating to internal affairs of Armenia, 1910-1929, microfilm T1192, NARA.

[336] Donald Bloxham has noted that "The Armenian genocide was a one-sided destruction of a largely defenceless community….the dynamics were slightly different in many of the events of 1917-1923, and markedly so in the Greco-Turkish war. The latter episodes, in all their bloody complexity, would…be a vital factor in retrospectively shaping external perceptions of the 1915-1916 genocide." (Bloxham, "The Roots of American Genocide Denial: Near Eastern Geopolitics and the Interwar Armenian Question," *Journal of Genocide Research*, 8.1 (2006): 31).

[337] INS case 55255/210.

[338] INS case 55255/350.

named Ossana Soghanalian was entitled to admission as "a fugitive from religious persecution." Anderson wrote that the immigration authorities had denied her not only a fair hearing, given her testimony, but also an impartial hearing, taking as a historic fact requiring judicial notice the persecution of Armenians in Turkey. Soghanalian had testified that the Turks killed her parents during the deportation of the Armenians of Hadjin and that she was seized and kept in a harem for three and a half years. She testified that, although she went to school about four years, "when we were deported by the Turks in 1916 to the deserts…we had gone through so much that I have forgotten all that I learned." "It is as much the duty of the immigration officials to admit aliens exempted from the general policy of exclusion as it is to exclude those falling within the excluded classes. Administrative officials may not ignore essential parts of the statutes they are administering," Anderson admonished. What Anderson was actually doing was interpreting a vague exemption statute liberally, while immigration officials interpreted it narrowly and arbitrarily. Anderson quoted the Supreme Court's decision in *Jan Fat v. White* that the power of immigration officials "is a power to be administered…under the restraints of the tradition and principles of free government applicable where the fundamental rights of men are involved, regardless of their origin or race." Immigration bureau officials were particularly upset by Anderson's decision because Soghanalian lived in France for a year on her way to the United States and could have been returned there, thus avoiding the growing problem the Bureau was having deporting Armenians because of Turkey's refusal to take them back. The escape route Soghanalian took mattered little to Anderson who quoted her saying that "if the government of the United States sends me back, I will throw myself overboard, as I have no place to go to."[339]

[339] *Johnson, Commissioner of Immigration v. Tertzag*; *Ex parte Soghanalian,* 2 F. 2d 40 (Nov. 5, 1924).

The Immigration Bureau was upset by this ruling, but they had come to expect "an antagonistic attitude" from Anderson of Massachusetts.[340] Anderson had become extremely wary of immigration officials a few years earlier when he reviewed their procedures of arrest, detention, and hearings during the red raids of 1920. "A more lawless proceeding it is hard for anybody to conceive," Anderson cried. "Talk about Americanization! What we need is to Americanize people that are carrying out such proceedings as this. We shall forget everything that we ever learned about American Constitutional liberty if we undertake to justify such a proceeding as this." In *Colyer v. Skeffington*, Anderson had claimed immigration officials used "terroristic methods" that betrayed "lawless disregard for the rights and feelings of aliens as human beings."[341] Even so, in that case, Anderson referred some of the alleged radicals back to the Bureau for further hearing. The Soghalian case therefore took his unusual critique of the immigration authorities even further.

But Anderson's decision was a definite outlier. After dismissing the Armenian case contempt proceedings against Commissioner Robert Tod, five Federal Court judges in New York agreed to a "set of Rules," formulated upon Tod's request by Learned Hand, regarding the handling of writs of habeas corpus (see Figure below). "I think the Government is to be congratulated," Tod wrote the Commissioner General of Immigration, "on this spirit of co-operation on the part of the Court towards limiting the issuance of writs at the last minute."[342] In general, the courts did not question the discretion of the Immigration Bureau in evaluating

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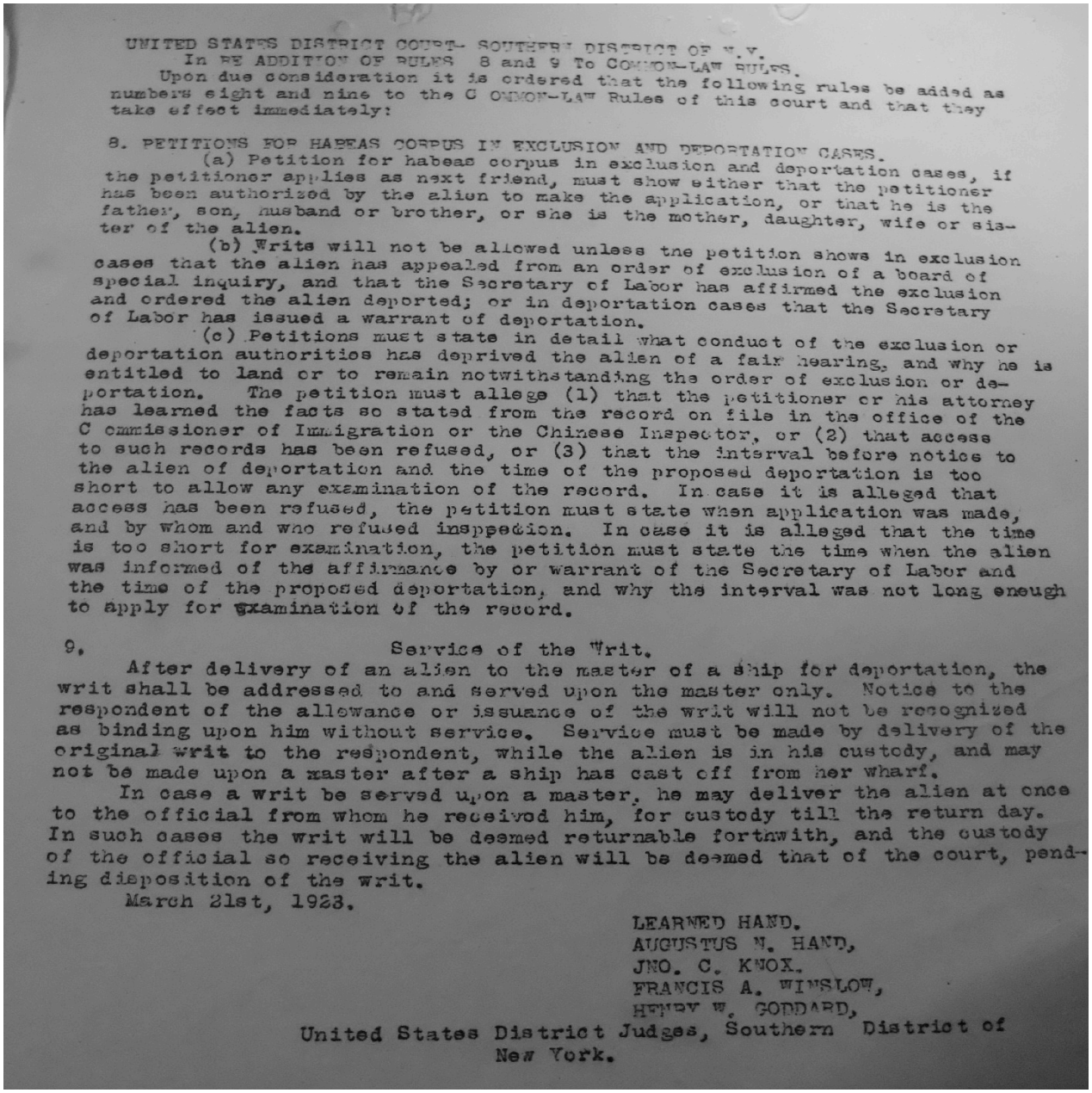
[340] Letter from Commissioner Johnson (East Boston) to Commissioner General Husband, October 18 1924, 52730/40, RG 85, Entry 9, NARA I.

[341] Anderson quoted in Lucy Salyer, *Laws Harsh as Tigers (*Chapel Hill: UNC Press, 1995), 238. For more on Anderson see Alan Rogers, "Judge George W. Anderson and Civil Rights in the 1920s," *Historian* 54.2 (Winter 1992) 288-.

[342] Tod to Husband, April 23, 1923, INS file 52730/40.

persecution claims. The most they could do was ask the Department to reopen the case for further hearings or recommend leniency.



UNITED STATES DISTRICT COURT- SOUTHERN DISTRICT OF N.Y.
In RE ADDITION OF RULES 8 and 9 To COMMON-LAW RULES.

Upon due consideration it is ordered that the following rules be added as numbers eight and nine to the COMMON-LAW Rules of this court and that they take effect immediately:

8. PETITIONS FOR HABEAS CORPUS IN EXCLUSION AND DEPORTATION CASES.

(a) Petition for habeas corpus in exclusion and deportation cases, if the petitioner applies as next friend, must show either that the petitioner has been authorized by the alien to make the application, or that he is the father, son, husband or brother, or she is the mother, daughter, wife or sister of the alien.

(b) Writs will not be allowed unless the petition shows in exclusion cases that the alien has appealed from an order of exclusion of a board of special inquiry, and that the Secretary of Labor has affirmed the exclusion and ordered the alien deported; or in deportation cases that the Secretary of Labor has issued a warrant of deportation.

(c) Petitions must state in detail what conduct of the exclusion or deportation authorities has deprived the alien of a fair hearing, and why he is entitled to land or to remain notwithstanding the order of exclusion or deportation. The petition must allege (1) that the petitioner or his attorney has learned the facts so stated from the record on file in the office of the Commissioner of Immigration or the Chinese Inspector, or (2) that access to such records has been refused, or (3) that the interval before notice to the alien of deportation and the time of the proposed deportation is too short to allow any examination of the record. In case it is alleged that access has been refused, the petition must state when application was made, and by whom and who refused inspection. In case it is alleged that the time is too short for examination, the petition must state the time when the alien was informed of the affirmance by or warrant of the Secretary of Labor and the time of the proposed deportation, and why the interval was not long enough to apply for examination of the record.

9. Service of the Writ.

After delivery of an alien to the master of a ship for deportation, the writ shall be addressed to and served upon the master only. Notice to the respondent of the allowance or issuance of the writ will not be recognized as binding upon him without service. Service must be made by delivery of the original writ to the respondent, while the alien is in his custody, and may not be made upon a master after a ship has cast off from her wharf.

In case a writ be served upon a master, he may deliver the alien at once to the official from whom he received him, for custody till the return day. In such cases the writ will be deemed returnable forthwith, and the custody of the official so receiving the alien will be deemed that of the court, pending disposition of the writ.

March 21st, 1923.

LEARNED HAND.
AUGUSTUS N. HAND,
JNO. C. KNOX.
FRANCIS A. WINSLOW,
HENRY W. GODDARD,
United States District Judges, Southern District of New York.

Figure 3.6: Rules for the US District Courts in the Southern District of NY, INS file 52730/40, NARA.

In 1923, New York judges dismissed two writs challenging the rejection of persecution claim cases. The first involved an illiterate Jewish woman, Anna Ghersin, from Harlou, Romania. Ghersin initially told the immigration inspectors that she came to the country to marry

her fiancé, and only raised the issue of persecution on appeal. The court felt the examiners were on sure ground in finding her claim suspect. If religious persecution has "been the real reason…why the relator left her home to come to the United States, it was her duty to have said so…There was no affirmative duty imposed on" the examiners. "The relator had a full, fair and complete hearing," the Henry Wade Rogers wrote for the court.[343] In a similar case later that year involving David Koch, an illiterate Polish tailor, Rogers wrote that "whether or not the alien had come to the United States to escape religious persecution was a question of fact, and, like other questions of fact, was for the immigration authorities and not for the court…The weight of the evidence [at the hearing] was for the immigration authorities."[344] Koch had claimed that, during a pogrom, he was robbed, his house was torched, and his wife and children killed. But, because Koch obtained a passport before the pogrom, the immigration authorities felt his intention to come to the United States was not motivated by persecution.

After these rulings, Ghersin and Koch did not surrender for deportation, infuriating the Ellis Island authorities. In May 1924, Landis complained of Ghersin: "it is true she has learned to read while at large on bond…but she should be judged as of the day when she applied for admission…she has defied the constituted authorities not only by writs of habeas corpus, which were dismissed in the District and Appellate courts, but also by refusing to surrender herself in accordance with the mandate of those courts. Failure to deport would be putting a premium on such actions. Deportation is justified in this particular case and may serve as a warning to other aliens." Though the Washington authorities initially agreed, HIAS attorney Isidore Herschfield insisted that Ghersin never received notice to surrender after the decision of the Circuit Court

[343] *United States ex rel. Ghersin v. Commissioner of Immigration at Port of New York*, 288 F. 756 (March 13, 1923).

[344] *United States ex. rel. Boxer v. Tod*, 294 F. 628. (November 5, 1923).

and that, before that decision, she had married. Her first child was born in October 1923 and another was on the way. So, in August 1924, the Bureau sheepishly canceled the warrant for her deportation.[345] In the Koch case, after an initial habeas corpus petition was sustained by the District Court, Koch was released without bond. When the Circuit Court reversed, the Bureau issued a warrant and sent out an inspector to arrest Koch. As of early 1924, the Ellis Island commissioner complained, "relatives and attorneys are withholding facts as to the alien's whereabouts."[346]

A few months after Hand dismissed the contempt case against Tod, he handled another Armenian writ case. Thirteen year old Virginia Jefferian arrived at Ellis Island without a passport. She was coming to join her father in the United States, but since he was not yet naturalized, she was subject to the quota and it was already exhausted. When she was excluded, her father's appeal to the Immigration Bureau was denied, and so he sued out a writ of habeas corpus to prevent her deportation. Hand seemed unsure what to do; he at first "reserved decision and released the alien on Court bond." A week later, he dismissed the writ. In doing so, however, he reassured: "This little girl, must, indeed face another sea voyage alone…She will however return to her mother…not in Armenia where she will be in danger, but in Marseilles where she will be safe."[347]

Three years later, the New York Circuit Court of Appeals handed down an important decision in an Armenian case, *U.S. ex. rel. Karamian v. Curran*. In many ways, the case of Yerwand Karamian is reminiscent of the first persecution claim case heard at Ellis Island in 1917

[345] INS file 55382/174.

[346] Curran to the Commissioner General, Feb. 28, 1924, INS file 52730/40.

[347] INS file 55385/295; encloses a copy of Hand's December 12, 1923 in *US ex rel. Victoria Jafferian v. Curran*.

involving the family from Urmia. What happened to Karamaian might have happened to that first family had they not be able to get to the United States as soon as they did.

Karamian, born in 1906, was the child of a Christian missionary in Urmia. Both of his parents were killed in 1915 and he was taken by the Turks, along with other orphaned boys. When he refused to convert, he was burned with a hot steel rod on his right leg (from the hip to below the knee, so as to prevent kneeling for prayer). In 1917, missionaries paid to take him and other orphans to live in a refugee camp in Bagdad. Four years later he was forced to flee more religious violence and he went to India and then to Marseilles. He took a ship from St. Nazaire, France, to Vera Cruz, Mexico in late 1924. He stayed in Juarez for a few months and, refused a visa by the American consul there, he illegally crossed over into the United States in September 1925. After spending three months in jail for illegal entry, he asked to be deported to Mexico or Marseilles, but the Immigration Service insisted on Persia. According to the Immigration Service, there were "no extenuating circumstances which justified lenient consideration in this case, this alien being one of the usual smugglers across the Mexican border." Karamian claimed he would be subjected to persecution in Persia. Judge Henry Goddard, of the District Court in New York and one of the signers of the rules above, "found this insistence by the Department to deport him to Persia, under the circumstances evidenced by the record, difficult to understand, for while conditions in the country from which he has escaped have improved to some degree, admittedly the boy would still be subjected to further suffering and danger." Judge Goddard ordered that he be deported to France. The Government appealed, claiming that a writ could not be granted to change the place of deportation, which was at the discretion of the Secretary of Labor. The Circuit Court of Appeals ruled:

> We are of opinion that Karamian 'came from' France, because he had been there long enough to have a place of abode, whether it was technically a residence or domicile, or

> neither of them, we do not regard as material; he 'started' from France for the United States, so he 'came from' that country. But whether another alien, though passing through the same regions, but having a different life history, would be viewed in the same way cannot be affirmed; every case depends on its own facts. Conclusion is, the relator should be sent…to St. Nazaire, whence he sailed, or to France generally, whence he came, or, if France refuses him, to Mesopotamia, where he resided before he abode in France, or to Persia, the country of which he is a citizen...In doing what we think the law requires, we further feel it right very pointedly to call to the attention of the Secretary of Labor what weight of responsibility for possible human woe the statute places on his shoulders. This man has, on this record, been viewed with disfavor because he was detected in trying to smuggle himself within our borders. This is natural enough, and he is not an ignorant, uninformed person, to be excused by his ignorance. Yet, on the same record, to send him back to Persia is a step fraught with such probabilities of suffering that we publicly hope for the exhaustion of every possibility, including congressional action, before this man is doomed to the land of his birth.[348]

A final Armenian writ case testifies to the ascendance of increasing restrictionism. In September 1925, 45 year old Gulizar Azizian arrived at Ellis Island with her 9 year old daughter Vartanoosh. They were originally from Urmia. The two were excluded because Gulizar was illiterate. While, in 1920, as we have seen, women like Gulizar were given a chance to enter as the parent of an admissible child, by 1925 she was barred and not given permission to land even temporarily. Gulizar claimed they had suffered persecution between 1915 and 1917, and that she "was always a refugee" since then. When briefly in Constantinople, she had not been permitted to work; when she lived in Athens for a year, she was "helpless" and could not speak the language; when in Marseilles, she was "cheated to or three times by certain agents." "I have lost everything, including 22 male persons in our entire family," Gulizar told the immigration inspector. "I have nobody to go back to." Judge Thomas Thacher of the Southern District of New York—who did not sign the rules above—dismissed a writ of habeas corpus brought on behalf of Gulizar and Vartanoosh in November 1925. Their attorney appealed. Citing the Waldman case,

[348] *U.S. ex. rel. Karamian v. Curran*, 16 F.2d 958, Second Circuit, 1927. Transcript of Record is in case file 9297, Container 3027, RG 276, NARA NY.

the attorney for Gulizar claimed her literacy test was not in accordance with the law. Even if the test were fair, the attorney argued, she should have been exempt on persecution grounds. The U.S. attorney argued that the case was more like Ghersin's than Waldman's because Gulizar did not immediately make a claim of persecution. "At the first hearing…she testified that she was coming here to join her brother and remain permanently. She made not the slightest intimation that one of her reasons for coming here was to escape persecution, of which there was no danger in the place from which she came, and to which she had not been subjected for many years in the immediate past. It was only at the second hearing after she and her relatives had had the benefit of consultations with counsel that this claim was advanced." Despite the fact that the mother and child had relatives who promised to support them in the United States, the Bureau also insisted that Vartanoosh was likely to become a public charge. In a tone reminiscent of the Ellis Island circular Kohler had fought in court almost twenty years earlier, the U.S. attorney asserted that their "relatives may now be willing to provide for the child, but they are not legally bound to do so. They can and may at any time change their intention and leave the child necessarily dependent on the public for support." The Circuit Court ruled that it was "absurd" to allow a girl of 9 to exempt a parent from the literacy test. The court also agreed with the U.S. Attorney that that Gulizar's "halting" persecution claim was an "afterthought." "While common knowledge enables us to recognize in this most unfortunate woman a victim of what are too well known as 'Armenian massacres,'" the court wrote, "neither evidence nor common report enables us to say that what happened in Urmia in 1917 was a religious persecution, as distinguished from robbery and banditry at a time and in a place of social dissolution, if not political revolution." The best

the court could do was send Gulizar back to Marseilles and "hope that" she "will learn to read, and again knock at the door." [349]

Ethnicity, Respectability, and Refuge

The social workers at the YWCA International Institutes in various U.S. cities encountered many cases like Azizian's. Armenian American social workers or "nationality workers" spent much of their time helping to locate refugee relatives abroad and then helping them "adjust" on arrival. But they also dealt with more difficult cases involving deportation. The Institutes saw themselves as serving not just women, but the entire ethnic community, and relied on male religious and business leaders in the communities for support. As noted earlier, International Institutes emphasized the importance of nationality, which in its celebratory form fostered folk festivals and cultural appreciation, but it also resonated with the ethnic essentialism of the 1920s.[350] Also, emphasis on nationality as a positive source of sociological and psychological cohesiveness[351] led workers to attribute economic and family problems to mixed marriages, rather than to gender discrimination.[352] The Armenian-American social workers were well-educated, middle-class women and many were single. This did not translate into support for

[349] *US ex. rel. Azizian v. Curran* (12 F.2d 502; Second Circuit, 1926); Briefs for both sides in case file 9070, container 2973, RG 276, NARA NY

[350] "The International Institute's approach is on the basis of a respect for, and a recognition of, natural social cohesiveness of the nationality consciousness." December 1929 report, Folder: Reports 1910-1934, Immigration, reel 100, YWCA Smith.

[351] "We believe that the nationality sense is naturally a dominant factor for any foreigner…Work for the individual is inseparable from an interest in and cultivation of the nationality community that circumscribes her life. A foreign community is a psychological unity." Edith Terry Bremer, "International Institute—Re-Analysis of our Foundations," in Confidential Proceedings of the Conference of International Institutes, Washington D.C., May 14-16 1924, folder 6, Reel 100, YWCA Smith.

[352] Derm. case, International Institute of Boston, Closed Case files, Box 1, Immigration History Research Center, University of Minnesota. (I have disguised the names of confidential case files.)

the dissolution of arranged marriages or the pursuit of professional ambition by their female immigrant clients. In one case, a client was discouraged from defying "the customs and conventions of the nationality group" and from attempting to "accomplish things practically outside of her means."[353] This condescension was sometimes mirrored by clients who referred to social workers as unfortunate "*eksik etek*" (which literally translates as 'short skirt' and idiomatically disparaged intellectual, unmarried women) and who turned to male co-ethnics—frequently lawyers, steamship agents, or church and benevolent society leaders—for help with remittances and migration arrangements.[354] A pamphlet on the International Institute adult education program included only one class focused on "the Civic Rights of Women"; all the rest focused on domestic science, handcrafts, and folk arts.[355] Armenian social worker Olympia Yeranian was active in an Armenian Professional Women's Club that met at the Boston International Institute; she noted that it "represented quality rather than quantity so there has been no attempt to increase membership."[356]

Armenian-American social workers strove to portray Armenian families in the best possible light, which was not always easy. Because many Armenian women married men they barely knew in order to get into the country, problems inevitably arose. Though frequently called upon, International Institute social workers tried not to serve as witnesses in divorce cases, so as not to seem to take sides between man and wife rather than represent the ethnic community as a

[353] Arz. Case, International Institute of Boston, Closed Case files, Box 1, IHRC.

[354] Case 699, International Institute of Boston, Closed Case files, Box 16, IHRC.

[355] Florence Cassidy, Adult Education in International Institutes, International Institute of Boston, Box 13, IHRC.

[356] Report of Armenian Secretary, July-December, 1933, Institute Reports, 1933, Box 1, International Institute of Boston, IHRC

whole.[357] The social workers also worked closely with the immigration authorities, mostly helping to facilitate admission and to legalize the status of their clients or as interpreters. It was the general policy of the YWCA not to "take any action which might be interpreted as […] trying to influence the government to set aside the laws on behalf of migrants." Aghavnie Yeghenian and Olympia Yeranian helped to secure entry for their friends and siblings and acted as advocates in their personal capacities in some cases, but they consistently condemned outright fraud like the use of false names and the claiming of false familial relationships.[358] This was sometimes a hard balancing act. In one case, immigration authorities treated three newly arrived Armenian girls poorly on the assumption that they were lying about their supposed father. According to the Immigration Commissioner, Armenians were "very affectionate and devoted to their children" and the man claiming to be the father had not visited the detention center often enough; the fact that he could not do so without risking his job was not the Commissioner's concern. Yeranian and Yeghenian wanted to help the girls, who had suffered through deportations, servitude in a Turkish home, and years in several Near East Relief orphanages before coming to the US and who behaved like "real ladies and never did anything they should not do" while in detention. But the two social workers agreed that they could not help if the man was in fact the uncle and not the father of the girls.[359] Cases involving Armenian women who were not as compliant and modest as these three girls were even more challenging for the social workers because they had little support from the ethnic community. One such Armenian woman, though pitied because she was orphaned during the war, was deemed a disgrace because she

[357] Bohh. case, International Institute of Boston, Closed Case files, Box 1, IHRC.

[358] In case 617, box 15, International Institute Boston, IHRC, Yeranian acted in her capacity as a "private individual," but then closed the case when she found out the client used a false name.

[359] Case 216, International Institute Boston, Closed Case files, Box 12, IHRC.

lived an "indecent" life. While the woman shunned contact with Yeranian, Armenian community leaders expected her to take responsibility for marrying the woman off, sending her to a school of correction, or getting her out of town.[360]

For Armenian-American social workers, ethnic allegiances compounded already mixed motives towards rescue, objectivity, and social control.[361] Yeghenian and Yeranian were positioned between the world of their clients and that of American social welfare professionals with missionary backgrounds. By the late 1920s, Yeghenian had begun to see the reconstruction difficulties of the Armenian community as a product of restrictive immigration laws that prevented family unification among the foreign born more generally.[362] Still, even though she was in charge of the entire YWCA's immigration department, Yeghenian remained the point person for *Armenian* migration cases handled by the various International Institutes. Cases that that involved women who had been living in Turkish homes since the war put Yeghenian in touch with the Armenian Prelacy, relief organizations, missionaries, and consuls and forced her to make difficult accommodations. In one case, restrictive Turkish emigration and American immigration laws and a daughter's attachment to her Turkish life (especially her Muslim faith), made uniting her with her mother in the US impossible.[363] In another case, Yeghenian helped obtain a divorce

[360] Case 503, International Institute Boston, Close Case files, Box 14, IHRC.

[361] For insight into the mixed motives of social workers in the 1920s, see Daniel Walkowitz, "The Making of a Feminine Professional Identity: Social Workers in the 1920s," *American Historical Review*, 95.4 (1990) 1051-1075, and Regina Kunzel, F*allen Women, Problem Girls: Unmarried Mothers and the Professionalization of Social Work, 1890 to 1945* (Yale University Press, 1993).

[362] Yeghenian's 1927 separated families study, "The Family of the Foreign Born Under Restrictive Immigration," highlighted 100 cases of separated families from the records of different International Institutes. 23 of the cases involved Armenian families and the rest involved families of other nationalities.

[363] Case 502, International Institute of Boston, Closed Case files, Box 14, IHRC.

because a woman who had been forced to live with a Turk felt the three children she had borne him would not be accepted by her husband in the United States.[364]

The allegiances and values of social workers were put to the test when one of their clients, Yeranouhie Ananian, was threatened with deportation from the U.S. Yeranouhie spent the war years in a German orphanage in Kharpert. After the war, she moved to an American funded Near East Relief orphanage in Beirut until it closed down and she was sent to live in Marseilles. Prevented by the quota law from coming directly to the US, Yeranouhie travelled to Mexico and then Cuba. A man named Maroukian, a US citizen, travelled from Providence, Rhode Island to Cuba and he and Yeranouhie married. The couple came to the US and Yeranouhie filed for divorce. Immigration authorities learned that Maroukian had been paid by a non-naturalized Armenian, the brother of Yeranouhie's old friend, to bring Yeranouhie into the country since only the wives of citizens were exempt from the quota. The authorities also learned that Yeranouhie was pregnant. To deport Yeranouhie on the grounds that she entered the country for an immoral purpose, the immigration authorities needed evidence that she had sexual relations with both men. They subpoenaed an Armenian-American social worker from the Rhode Island International Institute who reluctantly testified that Yeranouhie told her that the baby she was carrying was her friend's brother's. "As an Armenian woman," the Rhode Island social worker wrote Yeranian, "I have interest in Mrs. Maroukian to help her any way we can, but…I believe that anything you could do for her would reflect more against your work with the Armenian community then it could help her. The Armenian community feels that the whole case has done the Armenians generally so much harm…if the immigration authorities had not acted so strict on this case perhaps others would try the same thing." Yeranouhie told Yeranian that she only consented to

[364] Ku. case, Interntational Institute of Connecticut, Closed Case files, Box 5, IHRC.

marry under false pretences because she had such a miserable life during the war in Turkey and that she had decided to do anything to get out of the orphanage and into the US.

After Yeranouhie's son John, was born, she "begged" to leave him in the US, but the immigration authorities "advised" her that she should not be separated from her child. While she and John were on their way to Ellis Island for deportation, Yeranian wrote Yeghenian that she felt "very sorry for the poor woman, who has to bear the burden of her sin, as well as that of two men who are really responsible for her misfortune." Yeghenian's was concerned too—but focused more on professionalism and advocacy; she wrote Yeranian that this case provided "invaluable experience in cases of this kind…of help to other Institutes" and was "illustrative of the terrible human tangles involved in our restrictive law." Indeed, Yeranouhie's deportation proved very complicated. Because Turkish authorities would not allow the return of Armenians, she was sent to Cuba, but the Cuban authorities refused to admit unaccompanied married women without their husband's consent and anyone who had a passport indicating they were deported for "immoral purposes" since that implied involvement with prostitution.

Soon after Yeranouhie was deported, several members of the Armenian Women's Patriotic Club approached Yeranian and "expressed their regrets that worker [Yeranian] had not told them of the baby before the deportation because they would have been glad to adopt him."[365] While Yerahounie was in detention in Cuba, the secretary of the Anglo-American Association there forwarded to Yeghenian a copy of a strongly worded letter of protest he sent to the American immigration authorities. The letter pointed out that while the authorities treated the "white slavers" like barely tainted orphan rescuers, they had turned Yeranouhie into a refugee once more, she having no country to return to, and pushed for the deportation of her American-

[365] Report of the Armenian Secretary, October-November-December 1927, Box 1, Folder 5, Institute Reports, 1927, International Institute of Boston, IHRC.

born child, ignoring his citizenship rights. Yeghenian found this protest "splendid" because, she admitted, "the sordid circumstances of the case were so appalling" that "it did not occur" to her to try and prevent the deportation. Thus the problem of statelessness had been overshadowed by other concerns. Yerahounie eventually managed to get a transit visa through France, where she had a hard time. "Dear sister," Yerahounie wrote Yeranian from Marseilles, "We neither have a bed to sleep in nor dishes and spoon to eat food…Our people have changed a lot…they do not even want the baby in the house, nor me either." After some difficulties, Yeranouhie got an identification card so that she could stay in France; in order to work to support herself, she had to put John in an orphanage not that different from the one she grew up in.[366]

Yeranouhie's deportation was indeed a test case in that it affected the way International Institute social workers handled other cases. In 1928 an Armenian woman came to the International Institute seeking protection from the man she was living with. He was an Armenian she had taken up with during the war, after the death of her parents, to avoid being given in marriage to a Turk. The couple were never officially married, though they claimed to be when they entered the US, so Yeghenian and Yeranian were worried that if the woman brought her case to court, the immigration authorities might issue a warrant for her deportation.[367] Another case involved a woman whose pregnancy seemed to precede her marriage in Cuba; she had been shunned by her husband but kept shut-in by her husband's family since her arrival in the US. Yeranian advised against any court action because of the threat of deportation or any publicity because of the "bad effect it would have on the standing of the Armenians in the community." [368]

[366] Case File 576, Box 15, International Institute of Boston, IHRC and INS case 55611/376.

[367] Case 750, box 16, International Institute Boston, IHRC.

[368] Case 732, box 16, International Institute Boston, IHRC.

A case that got a great deal of publicity involved a 70 year old illiterate Armenian woman who, after a five year wait, received a preference visa to join her son in the United States. When she arrived, the Immigration Service requested that the son appear and he telegraphed that he was not the woman's real son. Immigration Commissioner Tillinghast publicized the case as a warning to the Armenian community, taking special photographs of herself with the woman, to run side by side with newspaper stories in several Boston papers speculating that "the real son, not holding citizenship, secured some friend to represent him…who fraudulently brought about the admission of an alien into the country." "The Commissioner," the articles said, though "sympathizing deeply with her plight…has no alternative but to recommend deportation."[369] The truth, as Yeranian learned, was more complex. The real son was a citizen, and in fact a prominent Armenian American, who had filled out paperwork for his mother's preference visa. The fake son had done the same and the visa for his mother became available first. When the fake son's mother died before she could set sail, an Armenian agent in Marseilles suggested that the real son's mother travel on the visa of the fake son's mother. The real son, Yeranian noted in her report in the case, "does not wish to have the truth exposed because he does not wish to lose his standing as a good citizen of this country." Yeranian believed that, with the mother languishing in detention and not eating the food there, "the proper thing" for the real son to do was "to tell the whole truth and abide by the decision of the immigration authorities."[370]

[369] That this was a carefully publicized case is clear because Tillinghast had several photographs taken in order to present herself as sympathetic but strict; the various photographs are preserved in her papers at the Schlesinger Library (Anna Churchill Moulton Tillinghast Papers, 1911-1945; folder 13, Schlesinger Library, Radcliffe Institute, Harvard University, Cambridge, Mass.). Photo variations ran alongside an article "Woman Immigrant, 70, Faced Deportation," *Boston American*, Dec. 20, 1929 and "Immigrant Faces Unhappy Holiday," *Worcester Evening Gazette*, Dec. 23, 1929.

[370] Per/Adj case, Box 2, Boston International Institute closed case files, IHRC.

Yeranian thought it best to keep Yeranouhie Maroukian's "whole story" out of the public eye twelve years after her deportation. By that time, this strategy did not primarily preserve the good image of Armenian immigrants, but rather shored up the image of the United States as a generous nation of refuge. On January 30, 1940, the *New York Herald Tribune* ran a glowing story on John Maroukian, "12 Years Away, Boy, 13, Returns to Be American." It is worth quoting the story at length to realise how myths are made:

> John Maroukian, a native of Boston, arrived Wednesday on the liner Siboney…He was one of the many repatriates from France aboard the vessel…His first stroke of good fortune after the ship docked was in meeting Miss Olympia Yeranian…Immigration officials notified Miss Yeranian that the boy was aboard the ship. His name was familiar to her, and she recalled that last September the State Department had asked her to testify to the boy's American citizenship. Somehow the State Department had learned that that thirteen years ago Miss Yeranian, then a social worker in Boston, had helped the boy's mother fight against poverty and desertion. John's father, an American citizen of Armenian birth, died soon after the baby was born. Mrs. Maroukian was married again, this time to Simeon Moussouyan. They went to France, taking John along and making their home at Marseilles. Moussouyan, an Armenian, served in the French army against the Nazis…When John's mother heard that the State Department was repatriating Americans in France she agreed that her boy should come her if he wanted to. A boy scout, John arrived with a blanket slung across his shoulders and his few belongings packed neatly in a small satchel and a paper parcel…With Miss Yeranian as interpreter, he said yesterday he did not have enough to eat in France…He brought ration cards along, thinking they would be necessary somewhere along the line…Visitors yesterday found John a sociable boy, ready to smile or play checkers. He is thin, his cheeks are pale, but given a few more dinners of corned beef and cabbage, such as he had yesterday, there is every reason to believe, Miss Yeranian said, that eventually he will realize his ambition of being able to send for his family.

By the time John came back to the United States, the Armenian-American community was probably secure enough to handle the truth about Yeranouhie's experience. In 1940, Mary Srabian, who immigrated to the United States from Kharpert in 1924, told her granddaughter, who was collecting Armenian folktales, the story of "The Bear Husband." The story was about a pretty little girl named Mary who, while gathering food with friends, was seized by a bear who took her captive and made her his wife. She lived with him for five years, bearing him a bear-

child and becoming herself black in color and covered with hair. One day, the bear forgot to close the entrance to his cave and Mary escaped. She ran home to her mother her who shuddered when she saw her, but took her back in. When the angry bear attacked the village where Mary lived, her mother called the villagers together and told them why the bear was angry but that she could not give Mary back to him. The village youths killed the bear. Mary, bearlike, remained in the village for the rest of her life.[371]

The story quoted as the third epigraph to this chapter comes from the Boston-based Armenian cultural magazine *Hairenik*, which was devoted to cultivating a proud Armenian American identity that did not shirk from grappling with the legacy of the genocide. The dedication on its inaugural issue of March 1, 1934 was a poem:

> We dedicate this paper to the flame
> Of Youth whose light shall lead us on, and to
> The generation past who bore the shame
> Of violence, and yet remained as true
> To freedom's cause as on the day of birth
> …
> So shall we bind ourselves to hold
> The sacred memory of martyred men,
> Forgetting shame in song whose words are bold,
> And building with the power of a pen.

Armenian-American literature depicting first-generation immigrants typically focuses on memories of the lost homeland, the horrors and trauma of genocide, or alienation and adaptation in America.[372] There are few depictions of what the long, multi-part migration process was like

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[371] Susie Hoogasian and Emelyn Gardner, "Armenian Folktales from Detroit," *Journal of American Folklore,* 57.225 (July-Sept. 1944), 162.

[372] A good anthology whose early entries reveal these tendencies is *Forgotten Bread: First Generation Armenian American Writers,* ed. David Kherdian (Berkeley: Heyday Books, 2007).

for Armenian refugees in the interwar year.[373] As the INS and International Institute case files reveal, for many it included several years in a refugee camp in Syria or Lebanon, an orphanage in Greece, or a boarding house in Marseilles; in all of these places, refugees recovered and died of disease, settled and fought among compatriots and natives, struggled to find work and go to school, relied upon and resented officials, started churches and newspapers.[374] There are few literary accounts of the arduous efforts of American relatives to find family members and bring them over to the United States, especially in light of their dispersal and stringent immigration requirements. These efforts involved the placing of searcher advertisements in newspapers and with Middle East relief organizations, paying for medial treatment and reading lessons in port cities, and making arrangements for entry through Canada or through a marriage in Cuba. What was the impact on families of all of this moving, settling, waiting, spending and arranging? The story "The Son" by Hrant Armen, an Armenian lawyer from Detroit, provides one answer.[375] The unity Armen portrays in this story is a distinct response to persecution and loss.[376] Like Yeghenian's study of separated families, Armen's story connects the tragedy of the genocide with the tragedy of immigration restriction. The story also attests to ability of the Armenian

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[373] There are even fewer portrayals of *women* migrating, which is all the more striking given their demographic dominance among survivors. In her survey of Armenian American literature, Margaret Bedrosian locates only one story, written much later, depicting a "fairly typical situation" of the 1920s: a young survivor agrees to marry a much older Armenian in America because her orphanage is closing. See Bedrosian's *The Magical Pine Ring: Culture and the Imagination in Armenian American Literature* (Detroit: Wayne State University Press, 1991) 57-8.

[374] For recent historical treatments, see: Nicola Migliorino, *(Re)constructing Armenia in Lebanon and Syria* (New York: Berghahn Books, 2008) ch. 2 and Maud Mandel, *In the Aftermath of Genocide: Armenians and Jews in Twentieth Century France* (Durham: Duke University Press, 2003).

[375] "The Son" was reprinted in *Hairenik, 1934-39: An Anthology of Short Stories and Poems,* ed. William Saroyan (Boston: Hairenik Press, 1939).

[376] A good deal of Armenian American literature focuses on conflict and estrangement between fathers and sons, compounded by the divide of the genocide. For overviews that emphasize this theme see Khachig Toloyan's essay in *New Immigrant Literatures in the United States*, ed. Alpana Sharma Knippling (Westport, CT: Greenwood Press, 1996), especially pages 27-37 and Lorne Shirinian, "Lost Fathers and Abandoned Sons: The Silence of Generations in Armenian Diaspora Literature," *Armenian Review*, 43.1 (Fall, 1990): 1-17.

community to acknowledge the fraud that stemmed from the combination of a desperate desire to immigrate and the strict American immigration laws. The sadness of the many who lost family and the difficulties of the immigration law are melded into one hardship that defines Armenian identity. With the "power of the pen," Armen seeks to turn tragedy into an ennobling unity, to make a virtue of necessity.

Armen's story starts a bit like a play, set in Boston in 1925. We are introduced to Sarkis Nourian, the middle-aged Armenian owner of "FRANKLIN'S SHOE HOSPITAL." A passing policeman knows that the only way to rouse Sarkis from his perpetual brooding is to ask if he has heard any word of his son in response to searcher advertisements in the Armenian paper. This is a daily routine not only of the policeman, but also of the mail carrier and all the local tradesmen. With shining eyes and in a soft voice, Sarkis responds to this everyday question in historical and symbolic terms:

> I'll find my son, you watch. He comes in my dreams so often…He is there somewhere in Syria. My wife died, but he's alive. She died on the way. Lots of women died, lots of men too. They were killed, most of then on the way to Syria where they were being deported by the Turks, maybe you read all that in the papers, eh? I know she died, but nobody wrote me that my son died…I'm going to hear from my Diran. He's a lion like Jack Dempsey…I'm going to send him to college…I'm paying for Leon's education…he comes from the same town in Armenia, same town where I was born. He's a nice boy. But my son is better looking and tall… You know, he had a birthmark as big as a silver dollar right over his heart.

In referring to his son as a lion, Sarkis was invoking the figure of the fire-haired King Vahakn from the pre-Christian Armenian origin myth. [377] But, right from the start, "He's a lion like Jack Dempsey," and we are faced with the Americanizing of Armenian myths and uncertainty about

[377] The birth of Vahakn is depicted thus in a 5th century history of Armenia by Moses of Khorene: "Heaven and earth were in travail/ And the crimson waters were in travail./ And in the water, the crimson reed/ Was also in travail./ From the mouth of the reed issued smoke,/ From the mouth of the reed issued flame./ And out of the flame sprang the young child./ His hair was of fire, a beard had he of flame,/ And his eyes were suns." [See *Armenian Legends and Poems*, ed. Zabelle Boyajian (New York: E.P. Dutton, 1916).]

the identity of the real son, despite the stamp of nature. As in Hawthorne's story "The Birthmark," the narrator's perspective in "The Son" is ominous and knowing. Sarkis, the narrator tells us, "argued within his soul" to convince himself his son survived and was waiting to be rescued; a "colored shoeshine boy" named Joe (Armen's Everyman parallel to Hawthorne's Aminadab) "sure 'nough[ed]" Sarkis's speculations. Given the realities of what happened to Armenians in Turkey, "in almost all instances," the narrator explains, the persistence of this searching by Sarkis and other Armenians in America was testimony to "pitiful hope transcending into the realm of improbability."

When the mail carrier brings Sarkis an oversized letter and "with a flourish that smacked of mystery and ceremony" points to Diran's name, Sarkis is unable to speak. "The speech that was so suddenly smothered in his throat became articulate in the recesses of his soul: Cruel, cruel boy, to keep this aging father in terrible suspense." With that we are plunged into Sarkis's "mind's eye" as he pictures Diran writing the letter. Wrapped up in this "radiant" vision of his "leonine" son, Sarkis passes over the letter's lack of filial endearments; its story of savagery, survival, escape, and determination stirs Sarkis, assuring him that suffering has been rewarded and turning his world into "one immense heart." While watching some high school athletes, Sarkis pictures Diran as a baseball-playing, Christ-like, Vahakn:

> His feet apart, his trunk upright, while the bat in his grip shook fearfully because of the mighty voltage of Diran's arms electrifying its wooden fibres. Here he swings. Huh!…His taut muscles relax and his skin aglow with energy, glistens in the sun, while over his heart the birth-mark, as large as a silver dollar, now flames its purple into some exotic medal that God almighty affixed upon his breast as an eradicable seal, to give the world the Providential assurance of a perfect human being.

Even with all this build up, Armen's dénouement is still powerful. Watching his newly arrived son take off his clothes for a bath, Sarkis anticipates seeing the birthmark "painted with

the sacred blood of martyrs, which God chiseled over his heart as an assurance," and shudders at its absence. When Sarkis asks what became of the mark, the boy confusedly tries to cover his nakedness and kneels down to beg Sarkis to let him stay in the United States. He tells Sarkis that, during the deportations, he and Diran had been taken up by Arab villagers to work as shepherds, that Diran had died of illness, and that he, Movses, had escaped to Beirut, where he saw Sarkis's advertisement. Since the immigration quota was filled, the only way for him to get to the United States was as the child of a United States citizen. So he told Diran's story to the Prelacy at Aleppo and then wrote to Sarkis under his son's name. As Sarkis considers killing the boy for his deception, Movses's stifled sob breaks the silence in the room. Sarkis wonders:

> Was not this boy, like himself, the victim of an irresistible tragedy? Orphaned of happiness, of comfort, even of grudging opportunity to melancholy existence; a hostile world, a life embittered with infinite sadness. Was not his own life and the life of this boy inextricably woven into that immense and inexplicable pattern which is that of the Armenian destiny?

"In that sob," he narrator writes, "Sarkis heard, as he had never heard before, the tragic destiny of race utter a consoling cry."

The next day Sarkis and Movses attend a welcome banquet as father and son, telling nobody of their secret. Unlike Hawthorne's Aylmer, Sarkis seems to have made the right decision by refusing to reject "the best the earth could offer" and by finding "the perfect future in the present."[378] But Sarkis also let the non-Armenians at the banquet—the civil servants and the shopkeepers and their wives—celebrate a faith and salvation they misunderstand, in part because they do not know the impact of the genocide. Sarkis's tears at the party leads the mail carrier and

[378] Nathaniel Hawthorne, "The Birthmark," in *Young Goodman Brown and Other Tales* (New York: Oxford UP, 1987), 191-2.

his wife to comment, in the story's last lines, on the distinctiveness of Armenian sentiment and feeling.

One of the Boston International Institute cases involved a false son and non-Armenian perceptions of him.[379] The father of the family had come to the United States from Turkey in 1912 to avoid military service. The mother and her 5 children were deported from their home to the desert of Syria in 1915. The two eldest children were sold and the others died. After working as a domestic in a Muslim home, the mother made her way to Constantinople, and from there to the United States. She and her husband located a boy who they thought was their eldest son and brought him to the United States in 1921. It was clear to the three of them and to Armenians from their hometown in the United States that they were not related, though everyone kept up appearances, including the local priest. The boy was difficult to manage and his parents resorted to beatings and punishments, provoking a school teacher to tell the boy his parents were remiss. When the boy echoed this at home, more beatings ensued. At a meeting with the boy's father, the teacher said "there were plenty of American men who would be only to glad to become a father to the boy." Yeranian tried, with only moderate success, to mediate between the school and the parents.

Aghavnie Yeghenian seemed to find a resolution to some of the tensions in her life and work when she visited Soviet Armenia in 1930-1931, a trip she wrote about for the *Christian Science Monitor* and then in a published memoir called *The Red Flag at Ararat* (1932). The memoir's latent structure—an extended implied comparison of the refuge for Armenians provided by the Soviet Union to that provided by the United States—makes Yeghenian's emphasis on unity all the more striking. Yeghenian fittingly ends her memoir with a depiction of

[379] Case number 381, Boston International Institute Close Case files.

model towns for Armenian refugees near Mount Ararat; these towns are named after villages in Turkey and sponsored by refugees from those villages living in America. This, and the memoir as a whole, was Yeghenian's answer to the problem of Armenian statelessness.

Work for the YWCA and within the confines of restrictive United States immigration quotas led Yeghenian to envision America as a refuge for surviving relatives and Soviet Armenia as a refuge for Armenians without family in the United States. She makes this perfectly clear in two scenes at the end of the memoir that revolve around the figure of a young boy. In the first, Yeghenian spends a day in the town of Leninagan searching for the son of clients from Ohio who had been trying, without success, to bring him over to the United States for the past six years. Yeghenian hires a carriage, fills it with neighborhood children, and commences her "adventure," "in the role of the fairy godmother." In the course of the search, Yeghenian hears rumors that the boy was a "good-for-nothing" who refused to go to school or get treatments for his trachoma, reasoning that in America he would be forced to work, while in Armenia he could live off his parents' remittances. When Yeghenian and the boy finally meet, the "face to face" conversation is a moment of "wonder" for him. "I want to go to America," he tells Yeghenian. "You see I had never seen anyone from America before who would tell me something about it. " A few days later, Yeghenian attends a poetry reading celebrating the 10th anniversary of the Soviet Republic at which a new national symbol is evoked—"The Golden Haired Lad," another figure reminiscent of King Vahakn—to represent Armenia. Yeghenian is buoyed by this new image, so unlike the old depiction of Armenia as a starving, "horror stricken child, an orphan of massacred parents, who appealed to the world for pity and charity."[380]

[380] Aghavnie Yeghenian, *Red Flag at Ararat* (New York: Women's Press, 1932) 145, 150, 151, 167

Boys like these are present in Yeghenian's Armenian social work case files, which shed light on the nature of diasporic nationalism and the ability of relatives in the United States to bring over family members. In one case, a man involved in a long attempt to secure a U.S. student visa for a distant relative in a Greek orphanage decided that it would make more sense to send the boy to Armenia. As the orphan "had not had systematic schooling due to war conditions," it would take him a long time to get through college, the man told Yeghenian. Had the boy been able to stay in the U.S. after graduating, the man would have been willing to "make the sacrifice." But given the expense of educating the boy in the United States and his temporary status, the man felt it best that the boy "go to Armenia and help in the rebuilding of the country." The boy did not like that idea and instead decided to open a rug business in Athens.[381] As in Yeghenian's memoir, trachoma proved a difficult barrier for refugee boys. In 1922, a widow who recently arrived and remarried in the United States refused to ask her husband to pay for her son's eye treatments in Marseilles because the husband had his own oversees relatives to support. Hoping he might be able to work in his step-father's business when he arrived in the United States, the 15 year old son began training as a tailor in Marseilles, though he got no money from his parents and lived in poverty. A conviction for a petty crime and eye treatments for his trachoma put off his arrival in the United States until 1930.[382] Another trachoma case presented Yeghenian with the opposite problem: she had to persuade an eager father who "refused to admit the truth" about his 13 year old son's "hopeless" condition that his help would not change

[381] Case 71, Boston International Institute Files, Immigration History Research Center, University of Minnesota.

[382] Case 182, ibid.

matters. Not surprisingly, this father turned elsewhere and an ex-priest-turned- steamship-agent successfully got his son from Athens to the U.S. in 1927.[383]

When Yeghenian returned from her trip to Armenia, she continued to work at the YWCA but she also pursued a law degree at Yale. She sensed that immigration law was getting more technical; she needed to deal not just with with immigrants but with immigrant statuses. In a 1930 speech to International Institute social workers Yeghenian emphasized that immigrants not only have "acute problems of adjustment" to life in the United States but "get entangled in a body of law which is specifically enacted for them and of which they know little." "We must have a certain technical knowledge of the existing immigration law if we are to help."[384] But despite her shift towards law, Yeghenian she never lost the interest in the social problems of women and girls that she brought with her to America in 1915. In the late 1930s she ran a Social Service Bureau at the New York City's Magistrate's Court[385] that catered to women who found themselves in situations like Yerahounie had been.

[383] Case 42, Ibid.

[384] Aghavnie Yeghenian, "Seminar on Immigration Law and Case Problems," 11th Annual Conference of International Institutes, 1930, Box 522, YWCA of the USA Records

[385] Mae Quinn, " 'Feminizing' Courts: Lay Volunteers and the Integration of Social Work in Progressive Reform," in *Feminist Legal History: Essays on Women and Law*, eds. Tracy Thomas and Tracy Boisseau (New York: New York University Press, 2011).

Part 2: Contructing the Economic versus Political Refugee

In the 1940s, the United States contributed to a bifurcation between "refugees" and "migrants" by helping to establish separate international organizations addressing each.[1] But in practice, postwar US policies regarding migrants and refugees were entwined. Exceptions to restriction were driven as much by economics as by politics so that a migrant with "human capital" was more likely to gain refuge than one with only the sweat of his brow, even though both entered in temporary, non-refugee status. The chapters that follow—on students and sailors—discuss the way that these trends intersected with foreign policy and immigration advocacy. In this way, they provide a historical backstory to what became a familiar, if utterly untenable, distinction between economic and political refugees in the 1970s and 1980s. Though advocates tried to break down the economic-political divide, the immigration reform and the human rights movements did not focus on socioeconomic inequality. In the end, the mobility and persecution claims of sailors and students advanced the cause of asylum, but did not achieve it.

As chapter 4 shows, sailors were almost never eligible for refuge. This was the case even at the height of the Cold War, when sailors from Communist countries could have been seen as defectors. Ernest Moy, an ardent Republican and supporter of the Chinese Nationalists, wrote a strident memo to the Justice Department and Senator William Knowland about deportation to the Chinese mainland of seamen who "jumped ship" during WWII and were members of a seamen's union affiliated with the Kuomintang. "It is apparent to me," Moy wrote, "that the Immigration section of the Department of Justice is neither informed on nor interested in our struggle against international Communist aggression and the weapons our Communist enemies employ

[1] Rieko Karatani, "How History Separated Refugee and Migrant Regimes: In Search of their Institutional Origins," *International Journal of Refugee Law*, 17.3 (2005), 517-541

effectively against us."[2] Not just Chinese seamen, but all "ship jumpers" were targeted for deportation. So far were seamen from refugee status that the 1960 "Fair Share Law," which was designed solve the European refugee problem, included a provision making seamen ineligible for adjustment of status from temporary to permanent residence.[3] Emanuel Celler, who a historian of refugee policy calls the "dean of liberalizers" among Congressional immigration reformers, made an exception for foreign seamen.[4] "Frankly," Celler wrote to an attorney representing seamen, "I do not believe that the absolutely necessary liberalization of our immigration laws should include provisions benefitting alien crewmen…It would cause a complete breakdown of our immigration policy if we were to condone seamen's desertions…on the sole ground that they found a spouse in the United States."[5] Maurice Roberts, an attorney who worked on immigration matters in the Justice Department from the 1940s through the 1970s and was considered a liberal in his commitment to due process for aliens, nonetheless limited the hearings available to seamen who raised persecution claims.[6]

Despite, or perhaps because, of this marginalization, seamen protested. In 1952, "two crews of a California Texas oil tanker returned to Canton as 'repatriated seamen' caused a disturbances and, as a result, the People's Government required that all repatriated seamen hold

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[2] Moy to Knowland, April 17, 1955, Box 136, Walter Judd Papers, Hoover Institution Archives, Stanford.

[3] 74 Stat. 504 (July 14, 1960).

[4] Carl Bon Tempo, *Americans at the Gate* (Princeton: Princeton University Press, 2008) 89

[5] Letter from Celler to Elmer Fried, April 14, 1961, Box 16, Folder: Immigration, General, 1961-1962, Emanuel Celler Papers, Library of Congress

[6] Roberts wrote the brief in the seamen persecution case *Glavic v. Beechie,* which was relied upon by the U.S. attorney in formulating his argument in *Stanisic v. Urbano*, a case discussed in chapter 4. (Letter from U.S. Attorney Sidney Lezak to Department of Justice, Jan. 15, 1965, Box 1 of 4, Maurice Roberts Papers, General/Multiethnic Collection, Immigration History Research Center, University of Minnesota).

'entry permits' into China."[7] This made future deportations difficult since the United States had no relations with Communist China, though eventually the U.S. worked through a steamship company and the British authorities in Hong Kong to get permits. Leftist and liberal attorneys representing seamen pointed to their unique position (their frequent exits/entrances and their ties to certain home ports) and to the way they were singled out as a class by the immigration law—and demanded that this not preclude them from asylum.

Students were a different kind of exception: they were considered valuable but difficult to manage. The importance and also the challenge of foreign students and recent graduates was captured in a phrase often used to describe them: "hard core." The term originated in the United States during the Great Depression and referred to an irreducible group of unemployable people.[8] After WWII, the "hard core" referred to those intellectuals and professionals in European Displaced Persons camps who no country wanted to take, preferring domestics, farmers, and miners.[9] When Chinese students and intellectuals in Hong Kong in the 1950s were referred to as hard core it implied that they were a small, prized group "whose talents and training and past experience made them targets for Communist pressure and equipped them to make the greatest contribution to the free world." The goal of a group called Aid to Refugee Chinese Intellectuals, Inc. was to make sure that help was given to "**t**he hard core of the intellectual leadership of China" in Hong Kong since the "seeming indifference of the West provides fuel for the Communist propaganda mills and gives the lie to American words about freedom, security and

[7] M.H. Miltzlaff, General Passenger Agent, American President Lines, to Edward Shaughnessy, Feb. 19, 1952, INS file 56565/605.

[8] Pierce Williams, "Hard-Core Unemployment," *Survey Graphic*, June 1938, 346-351.

[9] Edward B. Marks, Jr. "The 'Hard Core' DPs," *Survey*, September 1949, 481-486

refuge.[10] Those foreign students who made their way to the United States and became politically active were, in the 1960s and 1970s, considered a dangerous, small minority of radicals whose agitation would make countless other foreign students reluctant to return to their home country. In 1962, Philips Talbot at the State Department called for the deportation of approximately 25 "hard core" Iranian students who were disseminating oppositionist literature that negatively impacted American relations with Iran.[11] Iranian officials complained not only about the insulting student propaganda, but also about the "brain drain" from Iran that it contributed to. [12]

[10] Papers of Aid to Refugee Chinese Intellectuals, Inc., Box 1, Hoover Institution Archives, Stanford.

[11] Philips Talbot, "Agitational Activities of Anti-Shah Iranian Students in the United States," FRUS 1961-1963, XVIII, document 333.

[12] Report by Iranian student supervisor Ehsan Naraqi, 1966, 12-13, Folder 19, Box 244, Bureau of Educational and Cultural Affairs collection, University of Arkansas Special Collections

Chapter 4: Foreign Seamen "Desertion" and "Defection" in the United States, 1920s-1960s

"This is the only country in the world on which a foreign seaman was given that opportunity to be able to take a rest and change vessels. That was in the spirit of that great statue in New York's harbor, the Statue of Liberty."[1]

"'Alien' seamen…seem to be almost in a class in by themselves...constantly drawn in two directions, one in the line of their duty and the other in the direction of wanting to acquire some status here."[2]

"Should not seamen be regarded 'as people' and should it not be recognized that their anti-communism is as real as those persons who came in with [permanent] visas?...The principle is that these people do not have the opportunity of asylum and if deported to an Iron Curtain country, there is almost certainly an element of persecution involved."[3]

"Senator Simpson: It seems to me that alien crewmen…are a very specially defined class of aliens in the Immigration Act, and they seem to have fewer rights than many other illegal aliens…
INS Commissioner Nelson: I think part of that…goes back historically, because of the crewmen, in going back and forth, you do get ship jumpers and deserters, and under our laws, they are handled in a more summary procedure."[4]

"Then comes the thick fog that conceals…the way a sailor might conceal his intentions."[5]

[1] Statement of Thomas Christensen, *Proceedings of the Third Annual Convention of the National Maritime Union*, July 7-14, 1941, 242.

[2] Immigration Commissioner Earl Harrison to Abner Green, June 17, 1946, Box 16, Papers of the American Committee for the Protection of the Foreign Born [ACPFB Papers], Labadie Collection, University of Michigan.

[3] Ann Petluck, Comments on Report Regarding Stay of Deportation Under 243h, Meeting of Committee on Migration and Refugee Problems, April 27, 1959, American Council of Voluntary Agencies for Foreign Service, Inc., folder 17, Box 357, reel 263, Immigration and Refugee Services of American microfilm, IHRC.

[4] Hearings Before the Subcommittee on Immigration and Refugee Policy, Committee on the Judiciary, 99th Congress, 1st Session, Nov. 5, 1985, 34-5.

[5] Anthony Bukoksi, "North of the Port" *North of the Port: Stories* (Dallas: Southern Methodist Univ., 2008) 156.

Seamen and the Delineation of Asylum

Sailors seeking to stay in the United States have spanned the ideological, geographical, and color spectrum and have blended political and economic claims for refuge. This chapter argues that the tendency of the immigration authorities to see foreign sailors as deserters—beginning in the interwar period, increasing during World War II, and continuing through the Cold War era—made it difficult for them to gain refugee status and its associated benefits. They sought relief in the courts, and decisions involving seamen make up a disproportionate number of important rulings interpreting 243(h)—providing for a stay of deportation on persecution grounds—and the power to deport more generally at midcentury. In the early Cold War, Polish sailors experienced the benefits and drawbacks of attaining high-profile defector status. In contrast, the persecution claims of Greek sailors were distrusted, not only because Greece was an ally in the Cold War, but also because Greek sailors deserted in such large numbers. The handling of the numerous claims by seamen from China and Yugoslavia in the 1960s was a more complicated matter and reveals how Cold War era refugee-hood was defined in relationship to class and to race.

Seamen overstaying was conceived as evasive in three ways. Ship-owners thought of those who left ships in ports as willful violators of work contracts. More generally, policymakers and officials argued that seamen who left their ship impeded the functioning of foreign shipping and international commerce. Second, though merchant mariners have a civilian status, because merchant marines function as naval auxiliaries, a seaman's decision to leave ship and overstay on shore connoted disloyalty and shirking an obligation to serve his country, and this was especially true during wartime or anytime a state assumed control over shipping. Third, immigration laws prohibited seamen from landing and remaining ashore in the name of public

welfare and safety; deserters were potential threats to moral and physical well-being, a drain on local resources, and economic competition for American workers. In times of heightened concern about national security, immigration and intelligence authorities also suspected seamen of being subversive couriers or organizers who used their seamen status as a false cover.

Law and policy, however, carved out exceptions that allowed foreign sailors access to America. The Seamen's Act of 1915, discussed further in the next section of this chapter, gave foreign seamen an opportunity to sign off their ships in American ports in order to sign new contracts on foreign-sailing ships. During World War II, the United States War Shipping Administration assumed a coordinating role among allied shipping missions, overseeing both the welfare and the whereabouts of foreign seamen. Advocates for seamen took advantage of these exceptions to advance the cause of seamen's rights. In the 1930s and 1940s, this meant the fight for better living and working conditions on ships of any flag and equality of treatment for all sailors. Carol Weiss King of the American Committee for the Protection of the Foreign Born and Thomas Christensen of the National Maritime Union saw desertion as just one effective form of collective action. When they took up the cause of labor leaders and radicals facing deportation, Chinese or colonial seamen who were maltreated and detained, or those stranded in the United States because of political change in their homelands, advocates portrayed seamen as refugees for both political and economic reasons. In the 1950s and 1960s, these kinds of claims took on different valences in the hands of Cold War era ethnic leaders such as Wladyslaw Zachariasiewicz of the Polish American Immigration and Relief Committee [PAIRC], who was focused on condemning Communism abroad, and in the hands of immigration-reform oriented attorneys like Edith Lowenstein of the American Council on Nationalities Service, who was most

interested in broadening the right to refuge in America, and especially making it accessible for those of the working class.

The cases in this chapter make clear the double or dialectical nature of seamen's status in the first two thirds of the twentieth century. Though punished severely, collective action was incredibly effective: delaying transport (especially when aligned with longshoremen and other land-based transport unions), threatening international relations, and jeopardizing increasingly valuable and huge ships and amounts of cargo. Traveling to ports all over the world meant seamen had access to goods and information others did not. It also meant they were away from their homelands during times of political change and were left vulnerable to statelessness. Statelessness itself was a double-edged sword: it left seamen without protection when at sea, but also made them hard to deport once ashore. Especially in the 1930s and 1940s, advocates frequently raised statelessness as an argument against deportation. The following decade, the immigration law specified that a seamen seeking temporary landing in the United States prove he had permission to enter some foreign country afterwards. But advocates in the 1950s protested against the deportation of seamen who were not technically stateless but who "never established any residence" in any non-Communist country.[6] A combination of power and weakness in the seaman experience was apparent in other ways as well. Seamen identification papers were forever being scrutinized and forged.[7] Laws limiting the number of foreign seamen allowed to

[6] Felix Burant to INS in the case of Tadeusz Ostrowski, August 14, 1953, box 3, Polish American Immigration and Relief Committee paper, Immigration History Research Center, University of Minnesota [hereafter PAIRC papers].

[7] After the 1952 McCarran Walter Act tightened screening requirements for foreign crewmembers, inspectors uncovered numerous fraudulent documents. On the first large passenger ship screened, with great fanfare and advanced warning, under the new rules, no less than 43 of the 974 crewmembers, or over 4 percent, "had identification papers that appeared to have been tampered with…by substitution of photographs and in other ways." Presumably, percentages would be higher on less important and high profile ships and certainly on cargo ships and oil tankers. ("Alien Law Bars 269 Of Liberte's Crew," *New York Times*, Dec. 24, 1952, 1). Beginning in 1958, the INS found that Greek seamen whose names appeared in a "lookout book" (mostly because they were associated with the Federation of Greek Maritime Unions, an organization banned in Greece and on the U.S. Attorney General's list

serve on American vessels led to false claims of citizenship or nationality, which led to doubts about *any* such claims.[8] While American intelligence agencies and the immigration authorities suspected seamen of being spies and smugglers, they also used seamen as agents and informants.

Beyond the issue of identity was the issue of intention: would a foreign seaman given leave to land really depart from the United States? Even if he was committed to being a *seaman*, he might opt to reship on a boat sailing coastwise (domestically) and remain in the United States. Or he might continue sailing foreign from a U.S. port, but consider that U.S. port—rather than a port in his home country or elsewhere—as his home base, especially in the post-WWII era when so many of the world's ships passed through American ports.[9] Once familiar with a port city, he

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of subversive organizations) – and so were precluded from entering the United States, were "applying for admission as crewmen in possession of new Greek seamen's books in which the spelling of their names is changed slightly." These were extremely hard to catch because the books were valid—"the identities are not changed…only the English equivalent of the Greek name and the book number are different…It can be assumed that in most cases the changes are deliberate, yet there are no grounds for Service action against these aliens." (Memo from O.I. Kramer, March 11, 1963, CO714-P, RG 85, NARAII). Also in 1963, a seaman on a Norwegian ship reported that landing permits issued by the INS were being sold in foreign countries (Marine Intelligence Summary for November 1963, CO714-P).

[8] This was particularly true of Asian seamen, but applied to others as well. For example, during World War II, the INS investigated a Chinese seaman named Lim Ming Doon who used a seaman friend's ship service record in order to get membership in the National Maritime Union and a job on a War Shipping Administration ship; the INS inspector investigating the case claimed "this incident is merely one in a series of fraudulent practices being initiated by Chinese seamen." (Louis Kaye, Report of an investigation, Sept. 13, 1943, INS file 56084/639A). In the early 1950s, a Polish seaman named Janusz Sobik enlisted in the American Air Force claiming Puerto Rican citizenship (since he spoke Spanish very well, having lived in Spain for two years). He was discharged for "fraudulent enlistment" and then arrested by the INS for deportation (W. Zachariasiewicz to Edmund Cummings, April 9, 1953, Box 4, PAIRC papers). In 1963, a Greek-American lawyer in Baltimore was disbarred for having advised a Greek seaman who had jumped ship twelve years earlier to assume a false name and claim he was American-born. ("George B. Petite is Disbarred," *Baltimore Sun*, Jan. 17, 1963). The Lithuanian seaman Simas Kudirka, who was notoriously denied asylum in the U.S. in 1970, turned out to have a claim to American citizenship (through his mother's birth in the United States) and, eventually, the Soviet Union released him from prison in 1974 and the U.S. granted him entry.

[9] There are many reasons for this prominence of foreign-flagged ships in U.S. ports, not least of which was U.S. demand for oil transported in increasing numbers of tankers flying flags of convenience. According to a mid 1960s INS report, "The world's tank ship fleet grew to a record total if 3279 vessels. Although the United States tank ship fleet ended the year 1963 with 16 fewer vessels, Liberia surged further ahead as the leading flag registry. In this connection, it should be noted that the Liberian flag ships are one of the two registries on which most desertions occur." (Marine Intelligence Summary for August 1964, CO714-P).
Another reason was "the increasing disparity between the (rising) value of US trade relative to the rest of the world and the (falling) proportion of exports and imports carried on American flag vessels" between the 1950s and the 1970s. High labor costs meant that cargo ships flying the American-flag had difficulty competing. (Alan W. Cafruny,

might get a higher-paying job in an ethnic enclave or shipping-related business and stay put, especially if he married and started a family (as increasing numbers of seamen based in U.S. ports did in the post-WWII era.[10]) Immigration rules were designed to prevent the landing of seamen who seemed likely to stay and to prevent those who did stay from achieving residency status. This was true even if the seaman asked for asylum. Immigration officials considered seamen asylum requests to be admissions of intention to stay rather than to ship out. Just asking for asylum, then, turned a "bona fide" seaman into an illegal migrant.

Advocacy on behalf of seamen gained heat from the economic and legal deprivations seamen faced. Collective action by seamen was penalized as mutiny in most countries. Asian, Arab, and African or African American seamen, when not barred from ships altogether, worked longer hours under worse conditions than their European counterparts; they were paid less and were shut out from leadership positions on American, British, Dutch and Norwegian ships, where they were frequently segregated and relegated to the dirtier and more menial jobs in the engine and steward departments. Despite the Seamen's Act, many foreign seamen, and especially Asians, were denied shore leave in U.S. ports, and later laws limited the number of non-citizens allowed employment on American ships, which again disproportionately affected Asians who were ineligible for citizenship until the 1940s. Then, "discriminatory legislation" made it difficult for *all* foreign seamen to achieve citizenship.[11] The significant role foreign

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Ruling the Waves: The Political Economy of International Shipping (Berkeley: University of California Press, 1987) 228.).

[10] In 1954, the NMU found that 64 percent of seamen were married, up from 8 percent in 1936. "4,000 merchant seamen make Philadelphia their home port…more than 60 percent…are married…and an estimated 40 percent own, or are buying, their homes." (William Gottlieb, *This is the NMU* (1955), 110.)

[11] As detailed in this chapter, the eligibility for naturalization of foreigners who entered as seamen was curtailed in the 1930s, but the Central Office of the INS and various federal court jurisdictions adhered to different interpretations of laws that themselves changed in 1918, 1929 and 1940, so that the issue remained unresolved through the late 1940s. The 1950 Internal Security Act's amendments to the Nationality Act definitely prohibited the

seamen played in the allied merchant marines were overshadowed by attempts to prevent desertion during WWII. Investigation, detention, and deportation strategies used by the wartime INS were codified and ratcheted up in the 1950s. By the 1950s and early 1960s, legislation, regulations, and assumptions by inspectors limited the ability of seamen, unlike other illegal or temporary migrants, to have full hearings upon arrival or expulsion (and a say as to where they would be sent)[12] or the chance to remain in the United States and adjust to permanent residency (despite many years and attachments to the United States).[13]

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naturalization of those who entered in seamen status, regardless of their length of actual residence or service on American vessels. [Annual Report of the Commissioner General of Immigration, 1927, 13; A.R. Archibald (INS district Director, Baltimore), "Alien Seamen," Lecture No. 26, Dec 10 1934, 13. "Alien Seamen: Employment Disabilities and Naturalization Procedure," *Interpreter Releases*, Dec. 8 1936, 322; Joseph Cushman, INS Lecture: The Naturalization of Alien Seamen, May 6, 1943; section 27 of 64 Stat 987 (1950)]

[12] The 1952 Immigration and Nationality Act created a separate set of procedures (under sections 252 and 254) governing the admission and deportation of seamen. Newly arriving seamen were not accorded exclusion hearings or administrative appeals of a boarding inspector's decision regarding shore leave. If the boarding inspector decided to admit him for shore leave (for the period of time during which his vessel was in port or to reship on another vessel within 29 days), the seaman was granted a temporary landing permit and could not secure an extension of stay. A seaman who overstayed was entitled to a regular deportation hearing, though, by the late 1950s, the practice of the INS was to detain seamen (rather than release them on bail) pending deportation proceedings. If the seaman's landing permit was revoked while his vessel was in port (because the INS believed he was not a "bona fide" seaman or did not intend to depart), the seaman could be arrested without warrant, granted no hearing whatsoever, and placed immediately back on board the vessel. If that was not possible, he would be deported "in any other manner at the expense of the transportation line which brought him to the United States." See Jack Wasserman, *Immigration Law & Practice* (Philadelphia: American Law Institute, 1961) 149-150.

[13] The 1952 Immigration and Nationality Act provided that the Attorney General could suspend the deportation of an alien with long residence or when deportation would cause exceptional hardship to an alien's legally resident or citizen family. The law also provided that aliens legally admitted to the United States in temporary status could apply to adjust their status to permanent, provided that an immigrant quota visa or a non-quota visa (as the spouse of a citizen, say) was available to him. By the mid-1950s, the INS tended to refuse seamen suspension of deportation and were even tentative about granting seamen voluntary departure (i.e., allowing them to arrange their own departure at their own expense so that they could, later, reenter). In 1960, the Immigration and Nationality Act was amended to explicitly bar seamen legally admitted for temporary shore leave from adjusting their status (section 10 of PL 86-648). In 1962, a new consular regulation stopped the issuance of visas to crewmen by consuls in territories adjacent or contiguous to the United States, thereby further impeding adjustment via pre-examination (whereby foreign seamen living in the U.S. might travel to these territories, rather than farther off home countries, to pick up immigration visas and then return to the United States in permanent status). This was true even for those crewmen who had American spouses. A provision of P.L. 97-885 (1962) made seamen who had overstayed their leave, even those who had been in the United States for 10 years or were married to an American citizen, ineligible for suspension of deportation. "While a person conceivably would be able to avail himself of the remedy of suspension of deportation if he came to the United States as a stowaway, as an illegal border crosser or in any other conceivable manner, he is absolutely barred from relief if he entered as an alien crewman." *Interpreter Releases*, vol. 39, No. 48, Dec. 15, 1962, 323. The 1965 Immigration Act removed the bar against suspension of deportation for seamen who

Under 1930s fascist and 1950s communist regimes, political officers on merchant vessels monitored seamen and had those who did not conform to party dictates disciplined and dismissed.[14] In the 1940s Spanish sailors were "pretty thoroughly cowed" by Franco's secret police stationed on their ships.[15] On Polish ships in the late 1950s and early 1960s, segments of crews belonged to a government sponsored seamen's organization; these crewmembers met once a month and an elected president "maintained a list of the members, read publications to them, formed opinions as to their activities and ideologies and wrote reports to the central organization."[16] This was a form of state-steamship company cooperation in the control of seamen movement and activity that, in less extreme forms, pervaded shipping worldwide. Almost universally consuls sided with ship-masters when disputes arose. Frequently consuls were themselves in the shipping business. During World War II, allied shipping missions in the United States worked with the American immigration authorities and the War Shipping Administration to man allied vessels; the members of the allied shipping missions of Greece, Norway, and the Netherlands were ship-owners or close to them and opposed the involvement of seamen's unions.[17] In 1956 a Chinese seaman, who had arrived on a ship subsidized by the

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arrived before July 1, 1964, but the 1965 Act kept intact the bar against adjustment of status for seamen. For those seamen who were caught soon after arrival in the late 1960s, the only relief available was voluntary departure, and that was discretionary.

[14] John D. Harbron, *Communist Ships and Shipping* (New York: Frederick A. Praeger, 1963).

[15] Interrogations of Spanish sailors by US Army Intelligence Officers, February 1943, quoted in Brooke Blower, "New York City's Spanish Shipping Agents and the Practice of State Power in the Atlantic Borderlands of World War II," *American Historical Review* (February 2014), 136.

[16] In the Matter of Wieslaw Wierzbowksi, A15-990-065, January 18, 1971, Box 4, Polish American Immigration and Relief Committee paper, Immigration History Research Center, University of Minnesota [hereafter PAIRC papers].

[17] Probably the most famous shipowner who also served as a consul for a time was Aristotle Onassis, but almost all Greek consuls serving in important ports had ties to shipping. Spyros Skouphopoulos, Greek consul in New York during WWII, was a shipowner. The relationship between other foreign shipowners and their state authorities in America during WWII was strong as well, as evidenced by the roles played by Adrian Gips of the Holland American Line on the Netherlands Shipping Committee in New York and by shipping magnate Oivind Lorentzen as

Taiwanese government and flying its flag, called the imprisonment for desertion and inability to re-ship as a seaman that he would face if returned to Taiwan "prosecution by the Nationalist Government for being a traitor."[18] In the 1950s, Greek authorities blacklisted known organizers and outlawed the predominant left-leaning seamen's union altogether.[19]

In the United States, the Cold War had a devastating effect on the National Maritime Union's relationship on with foreign-born seamen and their advocates, especially those with Communist ties; by 1949 the union began forcing non-citizen members out and had fired general counsel William Standard, who had taken up their cause.[20] In addition, federal court decisions in the late 1950s and early 1960s limited U.S. union activity to American seamen on American flag ships.[21] Foreign seamen were also adversely affected by postwar developments in U.S. shipping, especially the selling off of surplus American ships to foreign registries and the shift of American-owned ships to flags of convenience [FOCs]. By the mid 1950s, many American-

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director of the Norwegian Shipping and Trade Mission [Notraship] in New York. Lorentzen owned ships managed contrary to Nortraship policy, raising concerns about manipulation of power and profit motives.

[18] Record of Sworn Statement by Fue Chie Mong, Chula Vista Detention Facility, California, November 20, 1956, page 4, INS file 56565-605.

[19] On the proscribing of the Federation of Greek Maritime Unions and the "atmosphere of trust" between the Greek state and shipowners in the 1950s and 1960s, see chap 7 of Gelina Harlafits, *Greek Shipowners and Greece, 1945-1975* (London: Athlone Press, 1993). There is plenty of evidence for this in INS files. Upon arrival in the US in 1965, the crew of the Greek ship SS Gardenia complained bitterly of poor conditions and pay; " a pay restriction imposed by the Greek consul in New York prohibited the Master from giving more than $10 per month per man." (Marine Intelligence Summary May 1965, CO 714-P, RG 85, NARA II (accessed through FOIA)).
Harlaftis's book generally shows the "favourable treatment which shipowners enjoyed in their demands from *all* postwar Greek governments and particularly the Greek dictatorship between 1967 and 1974." [italics mine]

[20] In 1949, the union began retiring members who were not citizens. Out of a total membership of approximately 45,000, there were approximately 5000 non-citizen members of the NMU at midcentury, three quarters of whom lacked residency status (meaning they were admitted as seamen, not as immigrants) and who therefore could not naturalize under the Internal Security Act of 1950 regardless of how long they had been in the country or the amount of time they had served on American-flag vessels in the past. ("Our Alien Members," (undated but circa 1951), Box 99, National Maritime Union Papers, Special Collections and University Archives, Rutgers University, New Jersey.)

[21] The federal courts handed down decisions restraining picketing of foreign flag ships in the 1950s and the Supreme Court outlawed campaigns to unionize American owned foreign flag ships in 1963.

owned ships had switched to Liberian or Panamanian registry and hired crews of foreign seamen in the United States, some of whom had formerly overstayed and many of whom not been to their home countries in years.[22] In the 1960s, the INS refused to allow groups of foreign seamen protesting conditions on FOCS or demanding higher pay to debark in US ports on the grounds that they were likely deserters/illegal immigrants.[23] This trapped seamen and helped foster a lowering of shipping wages and standards globally by the 1970s. As the historian Leon Fink has shown, in the end of the 20th century, seafarers unions—the Europe-oriented International Transport Federation working with unions of Filipinos, Indians, and others—responded to this challenge by funding a robust ship inspection regime and negotiating wage and benefit agreements with a large group of major shipowners that covered two-thirds of the world's seamen, including hundreds of thousands working under FOCs. Still, "even the union-run FOC campaign…largely neglected the political agency of the seafarers themselves...'It doesn't really

[22] Comments from Immigration Inspector, Portland, Oregon, March 5, 1957, INS file 56364/52.2

[23] "Tampa reported that 15 [Greek] crewmembers had to be returned to the Liberian SS Beatrice…these crewmen refused to return to the vessel indicating that it was not safe… [they] were detained on board [by the INS] and placed under guard [by the shipping company] until the vessel sailed."(Marine Intelligence Summary, Aug. 1964, CO 714 P). "San Pedro reported the arrival of the Liberian flag vessel M/V Fenix…The crew consisted of men of various nationalities, including 12 Spaniards…[who] advised the Captain that as the vessel was sailing to Japan they demanded an additional dollar per day wage increase. The owner, Captain, and Spanish consul at Los Angeles conferred with the crewmen and advised them that their shipping contract was being fulfilled by the vessel…The crewmen stated that unless their demands were met they would refuse to sail with the vessel. Section 252(b) [of the Immigration and Nationality Act, which gave an immigration officer the discretion to revoke temporary shore leave to crewmen who he believed would not depart] was invoked and the Spanish crewmen were ordered detained on board and deported from the United States. At the request of the vessel, permission was granted to remove the detained crewmen from the vessel and deport them by air to Spain." (Marine Intelligence Summary for December 1964, CO 714 P). "Norfolk advised of the arrival of the SS Azuero [a former American Liberty ship, sold to Greek owners, but flying the Panamanian flag]…There appeared to be considerable dissension among the Brazilian crewmen aboard because their wages were lower than those paid the Greek crewmen performing the same jobs aboard the ship. The Brazilian consul, after conferring with the Master and the agents, stated that he would not interfere in he wage dispute. Future arrivals of this vessel should be watched closely."(Marine Intelligence Summary May 1965, CO 714 P).

matter who the crew are: the vessel will have the agreement [with the union], not the workers.'" On FOCs, many seamen fear complaining about exploitation would lead to loss of their jobs.[24]

This chapter addresses the refuge-seeking component of the foreign sailor experience that is missing from histories of migration and labor. Among labor historians, there may be a mistaken perception that desertion means an abandonment of labor activism, because it implies a desire to stop sailing, rather than a repudiation of maltreatment or the pay scale and conditions on a particular ship or ships flying a particular flag. This view resonates with the view of ship captains who tended to equate "poor sailor" and "desertion-prone."[25] It also resonates with the INS's unrealistic insistence on the clear-cut distinction between those who intend to immigrate and those who want to continue being seamen. In fact, it was frequently not desertion, but detention and deportation after a short overstay that stymied continued maritime careers. [26] If they did in fact stop sailing, many seamen became active members in unions on land.

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[24] Leon Fink, *Sweatshops at Sea: Merchant Seamen in the World's First Globalized Industry, From 1812 to the Present* (Chapel Hill: University of North Carolina Press, 2011), chapter 7, quotation on 197.

[25] "The captain [of a German freighter]…hired nine Spanish crewmen…they proved to be such poor sailors and, in his opinion, desertion-prone, that they were discharged at the first European port of call." Marine Intelligence Summary for September 1966, CO714-P.

[26] This was true even of anti-communist sailors at the height of the Cold War. For example, Henryk Durasinski was a Polish sailor who left his Polish ship in an American port in 1947 and sailed in and out of U.S. ports on foreign vessels seven times until he could not find a berth within his allotted shore leave and got picked up by the INS for overstaying just a few days longer in late 1951. He told the INS he had *no interest* in remaining permanently in the U.S., but needed more time to find a foreign ship to sail out on. The INS refused to release him and he remained in detention for eight months. From detention, he wrote to the Polish American Immigration and Relief Committee [PAIRC], the only Polish organization that handled sailor cases, which helped him get parole; the organization may have also encouraged him to apply for DP status and relief from deportation on persecution grounds. What is clear is that his primary interest was getting a status that would allow him *to pursue his career as a seaman*. In another Polish case, Jan Marzec was admitted temporarily as a seaman in 1951 and, a few weeks later, was arrested for overstaying and detained by the INS in Boston for seven months under orders of deportation to Poland. The INS advised PAIRC, which took an interest in his case, "to attempt to get a berth for Mr. Marzec." PAIRC executive secretary Wl. Zachariasiewicz replied in a letter on April 7, 1952 that "no shipping line is willing to employ a seaman who is in detention." (Case files on Durasinki and Marcek are in Box 3, PAIRC Papers).
In the early 1960s the INS sent American officials in Hong Kong information regarding every Chinese deserter, which was passed on to the British Mercantile Marine office. If such a seaman applied there for work, he was denied seaman's book (needed for employment aboard British ships) for three years. (F.J. Noble, Hong Kong to R.H. Robinson, Travel Control, May 17, 1963, CO714-P). As was finally recognized by the Board of Immigration

Though historians of the twentieth century U.S. have documented the significance of seamen as first settlers or seed migrants and conduits of commerce and political ideology, there has been little historical scholarship to date analyzing desertion.[27] A general lack of attention to deserters may stem in part from their status as illegal migrants who left a limited paper trail and kept a low profile. While contemporary ethnic communities were protective and silent about deserters in their midst,[28] better educated "uptown" migrants attempted to distance themselves from "downtown" deserters.[29] In retrospect, too, ethnic historians tended to focus on model minorities—on rural Norwegians, conservative Greeks, upper class South Asians—rather than urban, leftist, or working class deserters.[30] Asian seamen went from being 15 percent of the world's seamen in 1960 to 67 percent by 1987; recent union strength and demographic prominence has lead contemporary historians to excavate the history of seamen from India,

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Appeals in 1973, deporting a seaman "may prevent him from obtaining employment as a seaman on ships coming to the United States" because, the fact that he was "inadmissible upon return" "would put the master of the vessel to considerable expense to prevent" his landing. "If the seaman did land without authorization a fine could be imposed." (In re: Ioannis Dimos, A15 364 662, Los Angeles, Nov. 30, 1973, Box 1 of 2, Maurice Roberst Papers, IHRC).

[27] Joan Jensen, *Passage from India: Asian Indian Immigrants in North America* (New Haven: Yale University Press, 1988); Josephine Fowler, "From East To West: Ties of Solidarity in the Pan-Pacific Revolutionary Trade Union Movement, 1923-34," *International Labor and Working Class Histo*ry 66 (Fall 2004) 99-117. The fact that a recent excellent international history of merchant seamen and their unions (mentioned above) by Leon Fink, a historian who has written elsewhere about labor and immigrants in the United States, makes little mention of the impact of desertion and does not analyze the relationship between immigration and activism by and for seamen, attests to gaps in the scholarship.

[28] As dramatized in Arthur Miller's 1955 play *A View from the Bridge* about Italians on the Brooklyn waterfront, roundups by immigration authorities kept ethnic communities quiet and those who informed were disdained.
[29]Vivek Bald's scholarship on the invisibility of early South Asian immigrants, many of whom were deserting sailors, is illuminating in this regard. (Vivek Bald, "'Lost' in the City: Spaces and Stories of South Asian New York, 1917-1965," *South Asian Popular Culture*, 5.1 (April 2007) 59-76.)

[30] For revisionist attempts to insert seamen into ethnic history, see David Mauk, *The Colony that Rose from the Sea: Norwegian Maritime Migration and Community in Brooklyn, 1850-1910* (Norwegian American Historical Association, 1997); Daniel Frontino Elash, "Greek American Communists and the San Francisco General Strike of 1934," *Journal of the Hellenic Diaspora* 33 (March 2007), 23-38; Vivek Bald, *Bengali Harlem and the Lost Histories of South Asian America* (Cambridge, MA: Harvard University Press, 2013).

Pakistan, and the Philippines.[31] But this has made the history of most seamen who deserted at U.S. ports at mid-century—who were Southern and Eastern European and Chinese—all the more invisible. Significantly, Greek crewmen were by far the lead deserters from the second half of 1950s through the mid-1970s, with Chinese seamen coming in second in the 1960s.[32] The immigration historian Ann Pegler-Gordon has recently pointed out that scholars of Chinese American history generally focus on the western United States—where most Chinese immigrants arrived—but, during the first third of the twentieth century, most Chinese seamen arrived in the east.[33] Later in the century, desertion was much more prevalent on the East Coast.[34] In the early 1960s, the INS was especially concerned that numerous Greek and Chinese seamen were consistently deserting from particular vessels docking in ports of New York, Newark, and Philadelphia. Some of the Greek deserters had previously arrived several times on the West

[31] The statistic is from Fink, 184-5. For a deeply researched social history of Indian seamen see G. Balachandran, *Globalizing Labor? Indian Seafarers and World Shipping, 1870-1945* (Oxford University Press, 2012). For an excellent analysis of how racial constructions in the colonial context, structural changes in the shipping industry, and the Philippine state's and crewing agencies' promotion of labor export have funneled Filipinos into a dominant position in the lower echelons of the contemporary world's merchant fleet see Steven McCay**,** **"**Racializing the High Seas: Filipino Migrants and Global Shipping" in *The Nation and Its Peoples: Citizens, Denizens, Migrants*, ed. John S.W. Parks and Shannon Gleason (New York: Routledge, 2014), chapter 8.

[32] *Annual Report of the Immigration and Naturalization Service*, table 22 for 1955 and 1956; table 28 for 1957-1975, and table 31 for 1976 and 1977. No statistics on desertion exist in later reports, though the 1978 report mentions that "the two predominant groups of deserting crewmen continued to be of Greek and Chinese nationality and vessels of Greek and Liberian [a FOC used by Greek ship owners] registry had the highest rates of desertion" (19). Cafruny notes that in the 1950s "most seamen on ships flying flags of convenience were in fact Europeans" (*Ruling the Waves*, 94). In 1963, 81% of Greek nationals deserted Greek and Liberian flag vessels while 63% of the Chinese deserted Norwegian, British and Dutch flag vessels. (Marine Intelligence Summary for July 1963, CO714-P). Interestingly, in a 1973 survey of the needs of Greek immigrants in New York City, a Greek-American community action committee suggested following the model of the Chinese-American community in providing help—particularly "free law counseling"—for crewmen who jump ship. Hellenic American Neighborhood Action Committee, In., *The Needs of the Growing Greek-American Community in the City of New York* (New York: HANAC, 1973) 37.

[33] Ann Pegler-Gordon, "Shanghaied on the Streets of Hoboken: Chinese Exclusion and Maritime Regulation at Ellis Island," *Journal for Maritime Research*, 16. 2 (2014) 229-245.

[34] In 1965, the INS reported that 486 Chinese crewmen deserted. "The ports at which there were 10 or more deserters were as follows: Baltimore: 43, Boston: 16, New Haven: 10, New Orleans: 5, New York: 125, Newark: 156, Philadelphia: 24, San Francisco:33, San Pedro: 32." (Analysis of Chinese Crewmen Desertions—Fiscal Year 1965, CO 714-P).

Coast of the United States but waited until the vessels arrived on the East Coast before deserting. One Chinese seaman advised another in 1963, "the West Coast has been said to be the strictest area where many seamen have been apprehended. I advise you not to land there."[35] West Coast cities had a long history of detaining and deporting seamen without much in the way of due process. There also seems to have been more cooperation with the INS by West Coast Chinese seamen's associations.

Writing within a historiographic binary of victimization and militancy, historians have generally been cynical about the value of law and legal action for seamen.[36] Those who write about migrant seamen assume they were up against a double legal bind—maritime labor law and immigration law were both stacked against them.[37] S.K. Chang's "The Banana Freighter" captures the predicament of seamen disposability in the 1960s.[38] In the story, American immigration agents raid Chinatown restaurants to find seamen, one of whom they put on a plane to Taiwan, where he will be fined for desertion and barred from sailing for six months. The seaman gets off the plane at a stopover in Tokyo to catch a ship back to America, giving a fellow passenger, a Chinese student, some money to deliver to his wife in Taiwan. This student, who narrates the story, is patronizing—in the sense of being simultaneously superior and protective of

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[35] Memo from James Greene, October 5, 1962, re: Multiple Crewmen Desertions; Marine Intelligence Summary for July 1963: Letter from Lau Kai Young to Lau Sui Ping, enclosed in Marine Intelligence Summary for August 1963, all in CO714-P.

[36] For the militant side of the binary, see Bruce Nelson, *Workers on the Waterfront: Seamen, Longshoremen and Unionism in the 1930s (*Urbana and Chicago: University of Illinois Press, 1988). For the victimization side see E. Kay Gibson, *Brutality on Trial* (Gainesville: University of Florida Press, 2006). The latter, an account of a successful court challenge by American seamen, is prefaced by the statement that "only in the rarest instances did merchant seamen secure justice." (Forward by Series Editors, xiii).

[37] For an insightful examination of the ways that this was the case for Indian seamen see Ravi Ahuja, "Mobility and Containment: The Voyages of South Asian Seamen, 1900-1960" *International Review of Social History,* 51 (2006) supplement, 111-141.

[38] Chang's story was published in 1976 but the picture it paints of a seaman from Taiwan was over a decade old, as is clear from comparable cases analyzed later in this chapter.

the seaman; on the plane, he dutifully gives the seaman his address and also berates him for his inappropriate, loud talk. (This "talk" is about the seaman's poor wages and hiding ashore and the student's green card and trip to Taiwan to find a woman to marry). The narrator had only grudgingly agreed to an immigration agent's request that he chaperone the seaman/deportee on the plane and felt awkward about delivering money to a family he did not know in Taiwan. The story ends with the narrator getting a letter from "some shipping company in Panama" explaining that the seaman had fallen to his death in a cargo hold being loaded with bananas on a Japan-South American line freighter. The company was "in no way legally responsible" because the seaman had boarded the ship illegally.[39] This story—told from the perspective of the reluctant co-ethnic "advocate"—captures the way that many foreign seamen in the U.S. were neglected.

Many seamen were so summarily deported or excluded they did not have a chance to plead their cause and did not have adequate legal help, even if they could have afforded it. But organizations like ACPFB and PAIRC, working pro bono[40], took up the cases of seamen (some who, unable to get jobs as crewmembers, came to the U.S. as stowaways and claimed they were

[39] S.K. Chang, "Banana Freighter," translated by Jeffrey Toy Eng, *Chinese Pen*, (Summer 1987) 82-92.

[40] Both organizations raised money to cover the costs of seamen's cases. I discuss the ACPFB's strategies later in this chapter. PAIRC raised money from the Polish-American community to support its services for seamen, especially money for parole bonds, and its staff did not charge seamen when it represented them at INS hearings. The committee occasionally gave seamen small sums of money (usually in the form of loans); it focused its attention on helping them find employment. (PAIRC 10th anniversary reports, Box 29, PAIRC papers). According to a 1953 history, PAIRC was financed by a "supporting membership" of several hundred people and relied on private individual donations and fundraising events (like an annual ball and a boat ride) (T.T. Krysiewicz, "The Polish Immigration Committee in the United States, MA thesis, Fordham University, 1953, 28). Though PAIRC received funding from the U.S. government for its network of staff stationed in Western Europe devoted to counseling Polish refugees and processing their resettlement applications, its central office in New York relied only on private (rather than government) funds. This bifurcation persisted into the 1970s. "The Committee has a…resettlement grant for refugees coming through our auspices from Austria, Belgium, France and West Germany, which covers approximately one half of our expenses per person. All political asylees processed in the United States are not covered by this grant." (1981 Memo to United Way, Box 29, PAIRC papers).

refugees.[41]) Indeed, the fact that U.S. immigration law was so tough on seamen made those who deliberately supported them seek out innovative strategies. Without discounting the other kinds

[41] The distinction between refugee, seaman, and stowaway was especially blurry in the immediate aftermath of World War II.
Between 1945 and 1950, several groups of Baltic refugees, who sailed *their own boats* from Sweden, landed at East Coast ports lacking proper documents and claiming refugee status; the INS let them in temporarily and voluntary groups and interested attorneys tried to find other countries that would accept them. Most were eventually allowed to remain in the U.S., though the later groups were detained for many months to deter future arrivals. [INS files 56257/822 and 56226/344, "Sweden asked to take back 84 refugees," *Baltimore Sun*, Dec. 1, 1948, 2; "363 Baltic Refugees Find U.S. Homes after Fleeing Russians," *Baltimore Sun*, March 3, 1950, 1]. A Justice Department official told the ACLU that the "the Department regards them as in a different category from stowaways for whom steamship companies are responsible [for shipping out]…[But] a preference [should not be given them with] thousands of displaced persons waiting their turn for legal entry." [Roger Baldwin, Memo on Stowaways, November 1946, Box 824, ACLU papers].
The ACPFB's branch in Oregon represented Spanish anti-fascist stowaways who came to the United States in 1947 via Holland and France. All of the stowaways thought the ship was going to Venezuela, and wanted to go there; the INS wanted them returned to France. The ACPFB could not get them asylum in the United States, but stalled the to raise money for them and get them visas for Venezuela. [Box 19, Folder: Spanish Stowaways, 1947-1948, ACPFB papers].
Some of PAIRC's clients were seamen who had stowed-away. Bronislaw Nadolny, for example, was in the Polish underground during the war, then served in the Polish Navy, went to Navigation College for the Merchant Marines in Gdynia, and then sailed on Polish ships. At a stop-over in Le Havre, he learned that "the Russian State Police had arrested some boys from the underground" and had his name, so, at the boat's next stop in Casablanca, he asked the French authorities if he could stay as a political refugee. He stayed there for a couple of months and then went to Marseilles to look for a job as a sailor. He got work on a Swiss and then a Norwegian ship. The latter discharged him in Havana, Cuba, where he could not get work as a sailor and had no permission to work ashore. No Polish visas were available to come to the U.S. as an immigrant. In late 1949, he stowed away on a ship heading to the U.S., arriving as a stowaway from Cuba. PAIRC provided a parole bond for temporary admission and money to get to his relatives in Cleveland. After a hearing in 1951, the INS gave him four months to make arrangements to depart for another country and he tried to get a visa to Argentina. Later, PAIRC put his name on private legislation to regularize the status of a group of Polish sailors. [Nadolny case file, Box 3, PAIRC papers.] In 1952, PAIRC handled another seaman-cum-stowaway case: that of Romuald Sacewiz. He too was in the Polish underground, employed in the Polish Navy, and then the Polish Merchant Marine. The first time his ship stopped at a non-Polish or Russian port, he deserted; the British authorities there gave him a six months stay and limited employment authorization. He could not find work. He stowed away and arrived in the U.S. in 1952. By this time, INS was stricter about stowaways, especially those without family ties in the United States. PAIRC wrote the British consulate to inquire whether he would be admitted to England if returned and tried to stall his exclusion by having a private bill introduced on his behalf by Senator Herbert Lehman. Insisting on keeping him in detention at Ellis Island, the INS wrote PAIRC: "The stowaway problem has become very serious notwithstanding that precautionary measures have been taken to control it…Under existing law, it is incumbent upon the steamship company to return Mr. Sacewicz to the port of embarkation. However, because of the pending bill, execution of the excluding order has been stayed…favorable action cannot be taken upon your request for parole." [W.F. Kelly to Rev Felix Burant, August 31, 1952, Box 11, PAIRC papers].
According to a November 1953 memo from the Commissioner General of the INS: "It was early suggested that as a practical solution [to the problem of stowaways], stowaways should be treated in the same manner as malafide seamen, i.e., ordered detained aboard and deported on the vessels which brought them without further hearing or appeal. These proposals culminated in section 273d of the Immigration and Nationality Act (of 1952) under which alien stowaways are now detained and deported aboard the vessels which brought them, without further administrative hearing or appeal. [Commissioner to Assistant Attorney General, November 4, 1953, Folder: Tope priority files, 1950s, Box 1 of 2, Maurice Roberts Papers, IHRC]
Starting in the early 1960s, a ruling by the INS that gave more rights to stowaways who were refugees also widened the due process accorded seamen who wanted to seek asylum. In 1963, the Board of Immigration Appeals ruled (in

of action that seamen took and their losses in the courtroom, this chapter argues that foreign seamen, with the help of advocates in U.S. ports, were adept at using the law to their advantage.

The focus of this chapter is on those advocates who saw legal cases involving seamen as part and parcel of a larger advocacy effort for economic and political refuge. Ira Gollobin—an attorney who went on to shape the anti-deportation campaigns of the American Committee for the Protection of the Foreign Born from the 1930s through the 1960s and then the asylum campaign for Haitians for the Church World Service of the National Council of Churches in the 1970s and 1980s—first decided to specialize in immigration law when he realized what *seamen* were up against. As he explained:

> At Ellis Island [in 1936] I asked the detainee why he was being held. He had come as a seaman to the United States before July 1, 1924. Immigration law provided that persons coming before that date were not deportable, no matter how they entered. Thus, he felt secure against deportation. However, when the Depression came, he lost his job in…Michigan and decided to try his luck in Buffalo ...[Because] he had traveled by the northern route through Canada (nonstop, at night, without ever having left the train), an [immigration] inspector arrested him because, having made a new entry into the United States after 1924, he was no longer protected… Incredulous, I verified his story with the inspector….and then…found a decision by the Federal Court of Appeals for the New York area squarely upholding the immigration authorities' position. The ruling struck me

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the case of Sergio Martin Vidal) that a Cuban stowaway ordered detained on board who absconded had effected an entry into the United States and was entitled to a regular deportation hearing when he could present his persecution claim. The INS decided that "although no precedent decision has been found, the same reasoning should be applied in the case of a crewman who is refused permission to land, detained on board, and subsequently absconds from the vessel." (James Greene to Regional Commissioners, April 26, 1963, CO714P (accessed through FOIA), RG 85, NARA II). This kind of opportunity to present an asylum claim was not accorded stowaways and crewmen upon arrival or even to seamen granted temporary shore leave or parole. The ruling thus actually gave more due process to those who *escaped custody* than those who were permitted leave as seamen and wanted to raise persecution claims. The latter were accorded only cursory hearings by enforcement officers.

After the passage of the 1980 Refugee Act, an Appellate court ruled that stowaways should be accorded full procedural rights in applying for asylum. (*Yiu Sing Chun and Jee-Chiu Shan v. Charles Sava*, 708 F.2d 869 (Second Circuit, 1983). This was later applied to absconding seamen. (*Markushev v. INS*, 26 F.3d 1118 (5th Circuit, 1994)). The rationale was that though neither stowaways nor crewmen had a right to an exclusion hearing (given to arriving immigrants with visas) under the immigration law, this did not limit their procedural rights under the Refugee Act. But, as discussed at the end of this chapter in more detail, stowaway or seaman status, in different ways, continue to significantly limit the ability to attain refuge, if not to have a hearing on a persecution claim. (*Marczak and Kowalczyk v. Greene*, 971 F2d 510 (Tenth Circuit, 1992); *Mikeli Waldei v. INS* (938 F. Supp. 362, Eastern District of Louisiana, 1996); *Ali Shah v. Attorney General*, 221 Fed. Appx. 121 (Third Circuit, 2007) and 273 Fed. Appx. 176 (Third Circuit, 2008*); Dalibor Dimitrijevski v. U.S. Attorney General* 363 Fed. Appx. 710 (Eleventh Circuit, 2010), *Luis Armando Paez Restrepo v. Holder*, 610 F. 3d 962 (Seventh Circuit, 2010).)

> as bizarre and arbitrary. I decided that a field of law beset with such rulings presented me with a challenge to defend basic human values and cherished national traditions.[42]

As we shall see, seamen cases highlighted fundamental issues in immigration law, especially definitions of "entry," that underlay the rights accorded to all asylum seekers**.** (This is because those who have not officially entered—regardless of whether they are actually in the United States—were accorded few due process guarantees; exclusion proceedings were much more summary than deportation proceedings). In the 1950s, once the immigration law provided that the attorney general could suspend the deportation of anyone who would be subject to persecution in their home country, Gollobin began bringing persecution claims on behalf of sailors, some of whom were Communists or radicals who feared being sent back to countries allied with the United States (i.e., not typical Cold War era refugees).[43]

Earlier cases involving seamen, especially radicals and those who claimed they feared being sent home, have had a significant impact on asylum and deportation, but not in the ways claimed by the few legal scholars who have taken note of them. Atle Grahl-Madsen's *Status of Refugees in International Law* cites only a handful of American examples, one of which is *United States ex rel. Weinberg v. Schlotfeldt* (D.C.N.D. Ill., 26 F.Supp. 283), a 1938 case involving a stateless Jewish sailor illegally in the country. A Chicago judge stopped his deportation to Czechoslovakia

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[42] Ira Gollobin, "Winds of Change: An Immigration Lawyer's Perspective of Fifty Years" (Center for Immigrants Rights, 1987), Box 1, Ira Gollobin Papers; TAM 278; box 1; Tamiment Library/Robert F. Wagner Labor Archives, New York University.

[43] One of his more notorious cases, discussed at greater length later in this chapter, involved Polychronis Paschalidis, a Greek seaman who headed the American branch of the Federation of Greek Maritime Unions, proscribed by both the Greek and American governments as a Communist-affiliated organization. To fight Paschalides's deportation, Gollobin collected a great deal of material attesting to the fact that he would be persecuted—certainly arrested and imprisoned, perhaps in the camp for political prisoners on the island Agios Efstratios, or sentenced to death—if returned to Greece. Though the immigration authorities did not grant a stay of deportation on persecution grounds, they allowed Paschalides—who had an American wife and two American children—to depart under order of deportation for Poland, after Gollobin secured him admission there in 1956. [Paschalides's case file is in Box 44, ACPFB papers].

on the grounds that it would be cruel and unusual punishment (i.e., a violation of the eighth amendment to the Constitution) to return a person to a place "where his property would be confiscated, where his life might be in jeopardy, and from which, if he were permitted to enter at all, he would be forced immediately to flee." Grahl-Madsen cites this case as an important development in refugee rights.[44] But at the time of *Weinberg*, the vast majority of sailors—or anyone else, for that matter—who appealed to the federal courts for asylum on the grounds that they would be cruelly punished or persecuted if deported were unsuccessful; by 1947, a federal judge deemed *Weinberg* the exception that proved the rule.[45]

Most scholars of deportation have written about the case of Harry Bridges—the Australian Wobbly seaman turned longshoreman and union leader. The amount of energy devoted by the Immigration Service to this case for over twenty years, its influence on legislation regarding the deportation of *past* Communists, and Bridges's ultimate success in staying and naturalizing were exceptional.[46] A similar midcentury case was that of Kwong Hai Chew—a National Maritime Union patrolman who the Supreme Court ruled (in 1953) was wrongfully detained for over two years when his ship returned to the U.S. in 1951 and who then spent over a decade fighting his exclusion (on the grounds that he was a communist in the mid- 1940s) through further

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[44] Atle Grahl-Madsen, *Status of Refugees in International Law* (Leyden: A.W. Sijthoff,1966) 86.

[45] For cases involving sailors whose appeals were rejected see: *Ex parte Kurth* (S.D. Cal. 1939, 28 F.Supp. 258), a case involving German sailors appealing deportation to the Nazis; *Glikas v. Tomlinson* (N.D. Ohio, E.D., 49 F. Supp. 104, 1943), a case involving a Greek sailor appealing deportation to Cardiff, seat of Greek Government-in-Exile since the Nazi occupation of Greece; *Soewapadji v. Wixon* (U.S. Court of Appeals, 9th Circuit, 157 F.2d 289, 1946), a case involving Indonesian sailors who claimed they would be punished by the Dutch government for their anti-colonialism. These cases are discussed more fully later in this chapter. As Judge Rifkind wrote in a 1947, "I have been able to find but one case which, after the establishment of the quota system, gives any recognition to the concept of asylum…All the other relevant authorities point the other way.(*United States ex rel. Von Kleczkowski v. Watkins*, SDNY, 71 F. Supp. 429, 1947)

[46] For a good discussion of the Bridges case see Kanstroom, *Deportation Nation* (Cambridge: Harvard University Press, 2007).

administrative and court proceedings (with the help of Ira Gollobin). The Bridges and the Chew cases bolstered what legal scholar Hiroshi Motumura has called "phantom" subconstitutional procedural rights accorded to aliens.[47] But Chew and Bridges were *legal residents who eventually attained citizenship*—a status that midcentury immigration policy made it increasingly difficult for foreign sailors to attain. As this chapter shows, Otto Richter, Nicholas Kaloudis, and Ivan Mrvica, among many other sailors of Bridges's and Chew's generation, contributed to the war effort and had strong attachments to the United States but were forced out in the decades that followed. Though Richter and Kaloudis had ties to radical groups, Mrvica did not.

The argument of the historian Mae Ngai—that in the 1950s, the INS administratively unmade illegal aliens from Europe—applies to *some* of the European seamen who had been in the United States for many years or had formed families before WWII, but not to most of the European seamen who overstayed during WWII or the years that followed. Sometimes discretionary relief was denied because immigration officers thought seamen dodged war service in the allied merchant marines; sometimes it was denied in the name of discouraging illegal immigration and the cutting of the quota line.[48] Moreover, if the INS's postwar discretionary legalization policies were, as Ngai writes, a "boon" to refugees from Europe who had entered "by way of tourist or visitor visa," they did not apply to most refugees who entered as seamen.[49]

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[47] Besides Bridges and Chew, Motumora analyzes the case of Wong Yang Sung, another excluded sailor, but does not note that all of these "phantom norm" cases involved seamen; see "Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation," *Yale Law Journal* 100 (1990), especially 564-575.

[48] *United States ex. re. Ciannamea v. Neely* (202 F2d 289, Seventh Circuit, 1953): quotes immigration officer stating that denying relief was "in the interest of a proper enforcement of the immigration law" and part of an effort to "stamp out desertions" by "thousands" of Italian seamen who were avoiding "compliance with the quota law"; *Vichos v. Brownell* (230 F 2d 45, District of Columbia Circuit, 1956): quotes an immigration officer denying discretionary relief to a Greek seaman who "knowing of the need for allied seamen did not return to the sea when he was physically able to do so as a matter of whimsy on his part."

[49] Mae Ngai, *Impossible Subjects*, 87.

Under the Displaced Persons Act (1948) and the Refugee Relief Act (1953)—which primarily catered to applicants overseas —some non-quota refugee visas were available to those nonimmigrants temporarily admitted to United States who feared persecution if deported. But INS inspectors limited the ability of seamen to qualify by claiming they were not "bonafide nonimmigrants at the time of entry" because they "concealed intent to remain." As PAIRC came to realize, the INS had no way of administratively recognizing a person who entered as a seamen and wanted to continue being a seaman (i.e., sailing out of the United States), but also feared persecution if returned to Poland.[50] Sometimes the Board of Immigration Appeals (a quasi-judicial body within the Justice Department that was responsible solely to the Attorney General) or the federal courts ruled that seamen should be entitled to these DP and refugee statuses.[51] In response, though the 1957 Immigration Act defined a "refugee-escapee" as "any alien who, because of persecution or fear of persecution on account of race, religion, or political opinion has fled from a Communist or Communist dominated area, " an INS regulation precluded seamen from Yugoslavia and China from eligibility for refugee visas under this provision.[52] In direct

[50] In one representative case, a seaman left his Polish ship in New York in early 1949 and, despite "strenuous efforts," was unable to find a job as a crewmember on other foreign lines so remained in the United States. He claimed he was forced to leave his Polish ship because it was returning to Poland (for the first time in several years, as it had been plying between Italy and the U.S.), where he would be persecuted for his anti-communism. When asked by an INS inspector what his intention was when he landed, the seaman said he wanted to settle in the U.S. and look for employment on a ship to sail out as a seaman; in a letter to the Board of Immigration Appeals, he clarified that he "did not desert to remain in New York." The INS rejected his application for adjustment of status as a refugee. (Case of Maksymilian Jan Guc: Letter February 13, 1953; Sworn Statement to Special Inquiry Officer Julian Mack in Proceedings under section 4 of the Displaced Persons Act, July 7, 1955; Mack's rejection of Guc's application for adjustment of immigration status, July 26, 1955, in Box 3, PAIRC papers.)

[51] See, especially, *Cheng Lee King v. Carnahan* 253 F2d 893, 9th Circuit, 1958.

[52] At this time the U.S. has not adopted the U.N. definition of a refugee, nor was the United States a party to an international convention on refugee seamen signed by eight European maritime nations in 1957 which, though never guaranteeing asylum, did help seamen to obtain documents and permission to land in order to change ships.
An INS regulation regarding the administration of the 1957 Act limited its refugee visas to those in the United States in *visitor* or *student* status, excluding crewmen .The regulation was 8 CFR (1959 pocket part) § 245.1: "a special non-quota visa shall not be held to be available under section 15 of the Act of September 11, 1957, unless the alien, having been admitted as a non-immigrant visitor or student prior to April 18, 1958 has been allocated such a visa but

contrast to Chinese students and intellectuals, and unlike even longstanding Chinese residents in illegal status (i.e., "paper sons"), Chinese deserters were, for the most part, excluded from refugee and adjustment provisions in the 1950s.[53]

Seamen from Poland, China, or Yugoslavia also raised persecution claims under section 243(h) of the Immigration and Nationality Act of 1952, a provision that gave the Attorney General discretionary power to stay deportation to any country where "in his opinion" the alien "would be subject to physical persecution" if returned to his or her home country. But chances for seamen to get relief under 243(h) were worse than under the RRA: the 243(h) evidentiary standard was the higher—requiring proof of imminent likelihood of physical punishment rather than projected fear of persecution as required by the Refugee Relief Act.[54] Also, the two kinds of cases were handled by different branches of the INS; adjustment applications under the Refugee Relief Act were handled by the examinations division and could be appealed to the Board of Immigration Appeals while 243(h) claims were handled by the enforcement division and decisions were forwarded by deportation officers to the Commissioner of the INS for approval. Most enforcement officers regarded 243(h) claims by seamen—which made up the vast majority of persecution claims in 1953-1954—as "dilatory" at best; they were particularly dismissive of seamen who argued "a less favorable economic condition which could be expected to result from

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the Director, Office of Refugee and Migration Affairs, Department of State." When crewmen applied for the visas, the INS relied on this regulation, did not transmit applications to the State Department, and told crewmen they were ineligible.

[53] Seamen were left out of the transformation described by Madeline Hsu in *The Good Immigrants: How the Yellow Peril Became the Model Minority* (Princeton: Princeton University Press, 1015). Hsu writes: "Refugee relief programs furthered the transformation of Chinese into welcome and valued immigrants…whose limited numbers and symbolic value in the war on communism enabled not only the warm reception of readily assimilable, educated new immigrants but also redemption for resident Chinese Americans." (132)

[54] This was true in the cases of Sun Tong Cheng (M.A. Moore to John Clemson, Aug. 17, 1953) and Giuseppe Vidulich (Memo of May 9, 1955, A-8155986), seamen who applied for both forms of relief (INS file 56336/243h).

deportation would constitute physical persecution."[55] When the INS began rejecting 243(h) claims made by Greek, Spanish, Chinese, and Yugoslav seamen, Ira Gollobin and other attorneys told the courts that the rejections seemed arbitrary and argued that the INS should be required to conduct formal adjudicative hearings and allow for administrative appeals. In 1955-1956 several factors—a Congressional report critical of the handling of 243(h) cases, stays by federal judges who rebuked the INS for rejecting 243(h) claims, and prominent re-defections to the Soviet Union and Poland, among others—led the immigration service to mandate that all hearings regarding persecution claims be handled by special inquiry officers who were attorneys (what today would be called immigration judges) and to temporarily stay 243(h) cases until country-specific conditions and policies could be determined. Still, among the model cases circulated by the INS to guide special inquiry officers as to persecution in different countries, all of the ones involving seamen, as opposed to students or businessmen, were rejections.[56] Persistent lobbying and connections in Congress eventually helped many Polish sailors, but special private legislation did not change principles and enforcement practices. In 1958, INS Commissioner Swing believed that desertions were one of the "most critical problems facing the [Immigration] service," and did not shy away from revoking landing privileges from Polish seamen it suspected might desert and using coercive tactics to get Polish seamen back on their ships.[57]

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[55] "Procedures That are Followed Where Allegation of Physical Persecution is Made Under the Law," Feb. 13, 1953; INS Commissioner Mackey to Assistant Attorney General, "Method of Deciding Claims that an Alien would Be Physically Persecuted if Deported to a Particular Country, Feb. 18, 1853, INS file 56336/243h, RG 85, NARA.

[56] Memo from Louis Cates, Aug. 24, 1956, INS file 56336/243. "In connection with my efforts to secure a few typical Chinese deportations cases in which witholdings of deportation had been granted [as models for how to handle 243(h) claims]… a desirable case would be one involving either a Chinese student or a Chinese alien with a highly valuable technical knowledge. "

[57] Letter from Commissioner Swing to Mr. Curtis, August 18, 1958 and Telegram from Patrick Malin to Swing, August 4, 1958 in file: Richard Eibel, Box 835, ACLU papers.

Lowenstein and other attorneys fought these tactics in the courts; still, when advocates won small victories, the INS responded by implementing policies that sidestepped them in the name of deterring desertion.[58] For example, in *Szlajmer v. Esperdy* (188 F. Supp. 491, SDNY, 1960), Judge McMahon agreed with Lowenstein's argument that a Polish seaman who asked for asylum while on shore leave should be entitled to a 243(h) hearing on his persecution claim and rejected the government's "fiction" that the seaman's request for asylum implied he was "a mala fide ship jumper" or a "deserter not worthy of attention."[59] But, in 1962, the INS promulgated a regulation that put seamen cases back into the "enforcement" track they were in ten years earlier while technically complying with the ruling in Szlajmer. The regulation gave District Directors (in charge of immigration enforcement in different regions) the discretion to parole seamen who claimed they feared persecution in Communist countries.[60] Unlike in 243(h) hearings, the seaman was not entitled to a full evidentiary hearing regarding his persecution claim before a trained "special inquiry" immigration officer. And, since parole was not considered an entry, if the parole were revoked at the discretion of the enforcement officer, the seaman could be summarily expelled—deported or simply placed back on board the boat upon which he arrived—without a hearing. In 1964, the Court of Appeals for the Fifth Circuit upheld the legality of these procedures in a case involving a Yugoslav seaman.[61] Though, as mentioned in the introduction to this dissertation, Lowenstein helped convince a court that a Hungarian who had been paroled

[58] The general INS tactic was to let challenges "pile up in the courts" until they were "returned for proceedings in line with modified Service processes." INS General Counsel to Acting Assistant Commissioner, Enforcement Division, Jan. 4 1956, INS file 56336/243h pt. 2.

[59] US. ex. Re. Julius Szlajmer v. P.A. Esperdy, U.S. District Court for the Southern District of New York, 188 F.Supp.491, October 26, 1960; Brief Amicus Curiae by Edith Lowenstein, folder 19, Box 838, Papers of the American Civil Liberties Union, Mudd Library, Princeton University.

[60] "Crewmen Alleging Persecution," *Interpreter Releases*, 39.18, May 7, 1962, 135-6.

[61] *Glavic v. Beechie* 340 F.2d 91 (5th Circuit, 1964).

into the United States was entitled to a hearing before being deported, the decision in *Paktorovics* specifically limited its application to the "sui generis" parole of Hungarian refugees in late 1956.[62] So a paroled Chinese seaman—who feared persecution if expelled and whose parole had lasted several years—could not point to the case as a precedent that applied to him.[63]

Lowenstein was also frustrated by seamen's cases that highlighted the U.S.'s narrow definition of refugee. In 1962 the Board of Immigration Appeals upheld the rejection of a Yugoslav seaman's 243(h) claim despite the fact he had been recognized as a refugee under the U.N. convention.[64] In response, Lowenstein began to take up Yugoslav seamen cases to push for a broadening of the persecution standard. She achieved a victory in *Sovich v. Esperdy* in 1963 when an appellate court ruled that "physical persecution" upon return of a seaman to Yugoslavia was not limited to "torture" but could include "long" "imprisonment for illegal departure." (The court relied for its power to review the case on the important precedent of another seaman's case, *Dunat v. Hurney*, in which the court ruled that the denial of "all means of earning a livelihood" once returned to Yugoslavia could constitute persecution. [65]) In these cases, the courts recognized that a seaman who had left his ship and sought asylum in the United State would be subjected to forms of economic discrimination (like deprivation of employment) and prosecution in the courts (for leaving the county) in Yugoslavia that were tied to political persecution. In response to *Sovich*, the INS asked the State Department for information regarding "possible

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[62] *United States of America ex rel. Gyula Paktorovics v. John L. Murff* (Second Circuit, 260 F.2d 610, 1958).

[63] *Siu Fung Luk v. Rosenberg* (Ninth Circuit, 409 F.2d 555, 1969). See also *Wong Hing Fun and Ng Sui Sang v. Esperdy* (Second Circuit, 335 F2d 656, 1964).

[64] In re: Ante Cavlov, A-15809142-New York, Board of Immigration Appeals, September 27, 1962, INS file CO243.35P (via FOIA)

[65] *Sovich v. Esperdy*, 319 F.2d 21 (Second Circuit,1963); citing *Dunat v. Hurney*, 297 F. 2d 744 (Third Circuit, 1961).

prosecution, confinement and length thereof for desertion of a Yugoslav crewman from his vessel or escape from Yugoslavia if returned to that county." State replied in early 1964 that a recent Yugoslav law granted amnesty to those who illegally crossed the state frontiers and if a seaman were to be prosecuted for desertion, that would not constitute persecution "as we understand the definition."[66] Lowenstein came to believe that the only way to get seamen a chance at asylum was to change the wording of the 243(h) provision in the immigration law so that its definition of persecution was in line with the definition of refugee in the Refugee Relief Act.[67] Partly in response to the advocacy of Lowenstein and other liberal lawyers, the 1965 immigration law did widen the 243(h) provision's persecution standard beyond "physical."[68] But the new 243(h) provision did not, as Lowenstein thought necessary, circumscribe the discretion granted to the Attorney General.

The situation for Chinese seamen in the early and mid 1960s was even more difficult because the INS singled them out for scrutiny. Though Greek seamen deserted ships in much higher numbers, the INS did not track and investigate Greek desertions in the way it did Chinese. Moreover, the INS targeted Chinese seamen who overstayed for "interrogation" regarding assistance they received from Chinese American organizations at a time when they could not be

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[66] James Greene, Deputy Associate Commissioner, INS to John H. Diggins, Jr., Chief, Field Operations Division, Visa Office, July 17, 1963 and Diggins to Greene March 27, 1964 (INS file CO243.35-P). State based its assessment on an April 16, 1964 letter from the Consulate General of Yugoslavia explaining that "A Yugoslav citizen who, while employed in the Yugoslav Merchant Marine, deserts his ship and remains abroad is answerable only from a disciplinary point of view to the administrative organ of his enterprise. The heaviest penalty which may given such a person following disciplinary proceedings is prohibition of employment and sailing on any ship of the Yugoslav Merchant Marine for a period of three years. Otherwise, such a person may at all times obtain employment in enterprises in other economic branches or in public services or state institutions."

[67] Lowenstein to Abbott Laban, counsel to Senator Kenneth Keating, May 15, 1964, Box 13, folder: Yugoslavs, 1962-1964, American Immigration and Citizenship Conference records, Social Welfare History Archives, University of Minnesota.

[68] According to the 1965 law "Section 243(h) is amended by striking out 'physical persecution' and inserting in lieu thereof 'persecution on account of race, religion, or political opinion."

deported: from mid-1962 through mid-1965 there was a general moratorium on deportations of Chinese to the Far East coinciding with President Kennedy's special parole program facilitating the migration of Chinese refugees to the United States. As attorneys Abraham Lebenkoff and Jules Coven discovered, the moratorium never completely stopped the deportation of seamen to Hong Kong.[69] But after the moratorium was lifted, the deportation of Chinese seamen picked up, with the INS using the information it had collected to find seamen and criminally prosecute them and anyone or organization that assisted them to find housing and employment or to avoid apprehension and departure. PAIRC certainly never received the same scrutiny from the INS for its role in "effecting desertions." [70]

Besides expanding the 243(h) standard, the 1965 law also included a provision for refugee visas ("7th preference" or 203(a)(7) visas) and, like previous refugee laws, allowed some of these visas to be allotted to qualified applicants who were already in the United States. The INS then began denying seamen's applications for these visas, arguing that since seamen were generally ineligible for adjustment of status, they were not eligible for these visas. Coven argued this was doubly unfair to Chinese seamen because they could not apply for 203(a)(7) visas abroad as there was no office in Hong Kong to process applications for them. Despite the fact that these refugee visas were designated for those who fled Communist countries, as of 1967, applications could only be filed in Austria, Germany, Greece, France, Italy, and Lebanon. (Senator Hiram Fong's accusation that this was racially discriminatory, since it made it difficult for Asians to apply, was denied by the State Department, which claimed that the "huge numbers"

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[69] See *Wong Hing Fun and Ng Sui Sang v. Esperdy* (Second Circuit, 335 F2d 656, 1964); *Lam Tat Sin v. Esperdy* (Second Circuit, 334 F. 2d 999, 1964).

[70] O.I. Kramer, Association Deputy Regional Commissioner, to District Directors, Northeast Region, Feb. 10, 1965, INS file CO714P (via FOIA).

of Chinese migrants in Hong Kong were deemed "illegal" by the British and were not under the mandate of the U.N. so the "problem" of making determinations as to their refugee status and prioritizing among applicants for the small number of 7th preference visas available "would be most difficult."[71]) Federal courts in California, New York, and New Jersey upheld the deportation orders of seamen claiming to be refugees under the 1965 act.[72] In late 1967, when the Supreme Court denied certiorari in the first case of this kind, newly seated Justice Thurgood Marshall took no part in the decision since he had represented the INS as Solicitor General in the case.[73] The following year, Coven argued a similar case before the Supreme Court, but the Court did not address the heart of the issue—whether it was constitutional to deny crewmen the ability to adjust their status; its ruling focused on which lower federal court had jurisdiction to review the case.[74] In 1969, the Supreme Court denied certiorari in another of Coven's 203(a)(7) Chinese seamen cases.[75] Coven explained what happened:

> When the issue was first considered, Thurgood Marshall was Solicitor General. He thought the U.S. should be processing refugee applications in Hong Kong. Why don't we? His lawyers said it was a State Department issue and courts should not get involved. But not long after the case got tied-up on the jurisdictional issue and the case was denied certiorari, the State Department set up refugee processing in Hong Kong. When I visited, Sam Feldman [INS district director in Hong Kong] said I had a hand in the opening of that

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[71] Letter to Hiram Fong from William B. Macomber, Jr., July 25, 1967, reprinted in *Congressional Record,* Vol. 113, No. 124, August 8, 1967, 11131-33.

[72] *Chan Hing, Lai Cho v. P. A. Esperdy*, No. 66 Civ. 364, 262 F. Supp. 973, SDNY, 1966; *Tai Mui, v. P. A. Esperdy*, No. 66 Civ. 316 263 F. Supp. 901, SDNY, 1966; *Cheng Ho Mui and Pun Yi Pan* v. Dominick Rinaldi, Civ. A. No. 368-66, 262 F. Supp. 258, NJ District Court, 1966; *Wing Wa Lee v. INS*, No. 21060, 375 F.2d 723, Ninth Circuit, 1967.

[73] *Wing Wa Lee v. I.N.S*, 389 U.S. 856.

[74] *Chen Fan Kwok* v. INS, 392 U.S. 206.

[75] *Cheng No Mui et. al. v. Rinaldi*, 395 U.S. 963.

office. Sometimes when you loose, you win.[76]

Though Coven takes too much credit,[77] crewmen seeking asylum and their advocates *in the U.S.* had an influence on the handling of refugees *overseas* in ways that have not been acknowledged by historians of refugee policy. Unfortunately Coven's clients did not benefit. Denied adjustment under 203(a)(7), the seamen asked for voluntary departure to go to Hong Kong to apply for refugee visas from there. As a matter of discretion, the INS insisted on their deportation—thus precluding them from re-entering—and the Board of Immigration Appeals denied their appeals. Because of what the INS called "the troublesome enforcement problems presented by deserting crewmen," seamen were effectively denied all avenues to refuge.[78]

In 1969 the U.S. Supreme Court, with Justices Black, Douglas, and Marshall dissenting, upheld the summary proceedings put in place by the INS in the wake of the *Szlajmer* ruling. As soon as Veljko Stanisic, a Yugoslav seaman who had been admitted for shore leave, requested asylum, an INS inspector revoked his shore leave landing permit on the grounds that admission was only granted a seaman when an immigration officer was satisfied that the seaman intended to leave. As we shall see, throughout this chapter, the *retroactive* invalidating of a seaman's admission when he overstayed or asked for asylum remained a consistent policy—under various guises—from the 1920s through the 1960s. In this case, as soon as Stanisic's landing permit was

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[76] Author's phone interview with Jules Coven, March 22, 2013.

[77] Senator Fong's argument that "the establishment…of refugee offices in Asia and the Pacific undoubtedly would greatly enhance America's image in that critical area of the world" was probably influential (Fong to Dean Rusk, August 8, 1967, *Congressional Record,* Vol. 113, No. 124, August 8, 1967, 11131-33.) But I believe that geopolitical concerns like that have less *actual (*rather than formal or rhetorical) impact on immigration and deportation policy.

[78] Matter of Wing Chung Pui, BIA 1969, Matter of Yeung Man Wa, BIA 1970, In re: Yeung Hung King, BIA Decision, March 31, 1971; In re: Lam Chuen Ching, BIA Decision, Aug. 31, 1971; In re: Mou Wong Hung, BIA Decision Dec. 30, 1971, all in Box 1 (of 2), Maurice Roberts Papers, IHRC.

revoked, the INS treated the him as *if he had not entered*. The Court upheld this interpretation of Stanisic's presence and that it did not entitle him to procedural rights, particularly the right to have his persecution claim heard by a Special Inquiry Officer who had no enforcement duties.[79] The rationale for treating Stanisic this way was not articulated by the government in its brief; the "serious problem presented by alien crewmen"—a problem that had been framed by the INS over the course of half a century—was assumed.[80] Ed Ennis of the ACLU filed an amicus brief on behalf of Stanisic that argued: "no substantial disruption of foreign shipping is caused by giving the crewmen [who make claims of political persecution] full deportation proceedings."[81] Stanisic's attorney hoped the Supreme Court would consider the substance of his persecution claim and pointed to Yugoslav laws that allowed for a wide range of penalties that could be inflicted upon him, including forfeiture of his right to serve at sea and imprisonment for many years.[82] The Court did not examine Stanisic's background, the specifics of his persecution claim, or the basis for the rejection of his claim by the INS officer. Ennis anticipated this approach by the Court, writing to the seaman's attorney that evidence regarding persecution in the home country "cannot be conclusive one way or another," a sign that the fact-finding strategies of later human rights oriented asylum attorneys—especially specific country-research reports and investigative missions—had not yet taken hold.[83] In his brief Ennis pointed to the fact that

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[79] *I.N.S v. Stanisic*, 395 U.S. 62; see also *Siu Fung Luk v. Rosenberg*, No. 22672, 409 F.2d 555, Ninth Circuit, March 28, 1969.

[80] Petitioner's Brief, *INS v. Stanisic*, filed 12/5/1968, page 34, *U.S. Supreme Court Records and Briefs, 1832-1978*. Gale, Cengage Learning.

[81] Amicus Brief. *INS v. Stanisic,* filed 1/22/1969, page 20, *U.S. Supreme Court Records and Briefs, 1832-1978*. Gale, Cengage Learning.

[82] Respondent's Brief, filed 1/25/1969, pages 17-18, *U.S. Supreme Court Records and Briefs, 1832-1978*. Gale, Cengage Learning.

[83] Ennis to Bernhard Fedde, Jan. 20, 1969, Folder: *INS v. Stanisic*, Box 1449, ACLU papers.

Article 32 of the UN Convention and Protocol Relating to the Status of Refugees, which the U.S. had acceded to in 1968, required that those claiming refugees status be accorded full due process rights ("a hearing on that issue [that] cannot be relegated to an "interview" or "interrogation"). But Ennis did not argue that the non-refoulement standard of the convention precluded Stanisic's deportation.

By the early 1970s, deportation cases involving Chinese crewmen represented by Coven were some of the first to invoke the non-refoulment standard, though the courts rejected it. In these cases the courts did not assess the seamen's persecution claims but ruled that overstaying made them illegal aliens—they had "violated the terms of their initial entry into the country and were not lawfully within the territory"—so they were not entitled to the protection of the Refugee Convention according to its Article 32-1 ("The contracting states shall not expel a refugee *lawfully* in their territory.")[84] Coven argued that since the State Department released a policy statement on asylum in early 1972, State and the INS had been considering persecution claims without regard to the immigration status of applicants. William Douglas, the only Justice who wanted to grant certiorari in one of these cases, seemed unsure as to what the INS's administrative practice in asylum cases was.[85] This confusion is not surprising. The State Department's asylum policy statement was formulated in response to the outcry that ensued when Simas Kudirka, a Lithuanian seaman who jumped from a Russian fishing boat onto an American Coast Guard cutter (anchored just off Martha's Vineyard), was promptly returned to

[84] See *Kan Kam Lim v. Rinaldi*, 361 F. Supp. 177, New Jersey District Court, 1973, upheld by the 3rd Circuit in 493 F.2d 1229, 1974; see also *Ming v. Marks*, Nos. 73 Civ. 545, 73 Civ. 1342, 367 F. Supp. 673, SDNY, 1973, upheld by Second Circuit, 505 F.2d 1170, 1974.

[85] Bench memo in *Kan Kam Lin v. Rinaldi*, October 1, 1974, container 681, William O. Douglas Papers, Library of Congress.

his Soviet officers. And yet, soon after the issuance of the policy statement and guidelines, the INS put forward a requirement of "lawful admission" when handling asylum claims.[86]

So the pattern that recurs throughout this chapter continued: when, as a result of a seaman's case, policy improved generally for those seeking refuge, seamen asylum seekers were specifically disqualified. What is clear is that the perception of foreign seamen and the policies surrounding their admission, shore leave, and overstaying in the U.S., fundamentally delineated the meaning of asylum from WWI through the early 1970s.

Setting the stage: the Desertion Problem in Interwar Period

"To construct legislation which will enable the Immigration Service to prevent the unlawful entry of aliens in the guise of seamen without interfering with the legal and inherent shore privileges of bona fide seamen is a difficult if not impossible task."
--*Annual Report of the Commissioner General of Immigration*, 1924, 22.

Foreign sailors in U.S. ports and exclusionist complaints about them were nothing new in the interwar period.[87] But the "problem" of sailor desertion in the United States arose with renewed intensity in the 1920s in the context of a conflict of laws.

In 1915, the United States Congress passed the Seamen's Act, which gave foreign sailors the right to demand half their wages and sign off their ships in American ports and

[86] The INS's preoccupation with "lawful admission" in the 1974 *Kan Kam Lim* Brief in Opposition to Certiorari is not at all apparent in a 1971 INS memo on the handling of asylum claims, including those of crewmen. Compare "Applicants for Asylum, General Instructions," from Associate Commissioner James Greene to Regional Commissioners, October 8, 1971. (INS CO File 212.43, RG 85, via FOIA) to Brief in Opposition (On Petition). File Date: 9/12/1974. *Kan Kam Lin v. Rinaldi* (Dominick), 419 U.S. 874 (1974). U.S. Supreme Court Records and Briefs, 1832-1978. Gale, Cengage Learning, Gale Document Number: DW3900115945.

[87] Beginning in 1901 the Attorney General ruled that, while seamen were not expressly subject to immigration laws, this exemption applied only to genuine seamen, not for those who wanted to enter and stay in violation of exclusion laws. So, the Immigration Service had a right to examine crews. In 1907 the Immigration Service required that a 500 bond for every Chinese seamen granted shore leave in order to ensure his departure; no such bond were required of other seamen. Worried about the potential loss of the bond, ship masters refused Chinese seamen shore leave, which was resented. This led to attempts of Chinese to desert and also to conflicts on board, which led captains to call in the Immigration Service.

deprived masters of foreign ships of local assistance in the United States in reclaiming deserters through arrest and imprisonment. According to Andrew Furuseth, head of the AFL-affiliated International Seamen's Union and champion of the Act, "seamen of all nations will have the same right to personal freedom while within the jurisdiction of the United States;" a union-circulated picture celebrating the Act was captioned "And it came to Pass. The soil of the United States becomes Holy Ground."[88] The rationale was that this was the only way to compel owners of foreign ships to raise wages to the American level, equalize international competition in the matter of seamen's wages, and help to make American ships competitive. Supporters hoped the law would give a foreign seaman, who had signed on to a foreign ship at low wages in a foreign port, the ability to sign off that ship with enough money in his pocket to find a job on another vessels for higher wages in an American port.

The Act did not change most aspects of the foreign seamen's experience. The Seamen's Act gave foreign seamen some ability to use U.S. courts to enforce payment of past wages earned, but left untouched the jurisdiction (governed by *treaty*) of foreign consuls, whose primary purpose was serving foreign ship owners economic interests in resolving internal disputes involving labor conditions on foreign vessels, and the role of U.S. courts in facilitating the arrest, imprisonment, and surrender of foreign seamen accused of disciplinary infractions on foreign vessels.[89] The Act also could not account for the effect of various foreign laws criminalizing desertion; a foreign sailor who deserted in America could be

[88] Andrew Furuseth, "The Seamen's View of the Seamen's Act, " *San Francisco Chronicle,* May 4, 1915, 18; Charles R. Clee, "Desertion and the Freedom of the Seaman," *International Labour Review*, 13 (1926) 666.

[89] George Garbesi*, Consular Authority over Seamen from the United States Point of View* (Martinus Nijhoff, The Hague, 1968) ch. 5; Walter Macarthur, *The Seaman's Contract* (San Francisco: James H. Barry Co, 1919).

punished if he returned to his native country.[90] Or he might have trouble finding a ship that would hire him back home.[91] Also, the U.S. Department of Commerce did not inspect foreign vessels to confirm safety and labor conditions met American standards as per the Seamen's Act's requirements.[92] Not surprisingly, when desertions from Norwegian vessels in the port of New York increased in 1916, the Norwegian consul blamed the new law but Norwegian seamen said the law was just a pretext for doing what they always did when prospects for better berths or work ashore were to be had.[93] Even Furuseth admitted that wartime conditions, and not the Act, forced wages up on European and American ships.[94] But by 1922, freight rates had fallen dramatically, a worldwide shipping slump was underway, the International Seamen's Union had lost most of its membership, and wages diverged. Furuseth spent the rest of the decade blaming Chinese seamen. He and Senator William King pushed relentlessly and unsuccessfully for the passage of a bill that would prohibit entry into U.S. ports of any vessel carrying crewmembers ineligible for United States citizenship. Their argument was that foreign ships (European and Japanese) manned by Asian crews would steal the carrying trade of the United States. Not surprisingly, the bill was opposed by foreign embassies and shipping

[90] "By mid-1917, recent British recruits composed a full third of the U.S. merchant marine, and British prosecutions for desertion multiplied." (Link, 139). It is important to keep in mind that many European home countries did not have the resources to apprehend deserters upon their return; the German consul told an American immigration official that "deserters go unpunished unless the ship owners file a complaint and insist upon prosecution." [Deportation of Alien Seamen, *Hearing Before the Committee on Immigration and Naturalization*, House of Representatives, 68th Congress, Second Session, on Proposed amendments to HR 11796, January 28, 1925 , 241]. Laura Tabili documents the reluctance of local magistrates to convict colored deserters [Tabili, "*We Ask for British Justice:" Workers and Racial Difference in Late Imperial Britain* (Ithaca: Cornell University Press, 1994) 151].

[91] "Shipowners could and often did practice numerous forms of discrimination, especially in connection with hiring and discharge, against seamen who deserted abroad and subsequently returned home." Elmo Paul Hohman, Maritime Labour in the United States: The Seamens's Act and Its Historical Background," *Internatonal Labour Review*, 38.2 (August 1938) 216.

[92] Hyman Weintraub, *Andrew Furuseth: Emancipator of Seamen* (Berkeley: University of California Press, 1959) 135.

[93] Mauk, 58.

[94] Weintraub, 137.

lines that claimed it would impede trade.[95] American shipping companies were adamant that prohibiting them from hiring Chinese seamen would inhibit the competitiveness of American shipping in the Pacific since these seamen were paid considerably less than their European counterparts on both American and foreign flag ships.[96] (Asian seamen on European ships worked on colonial labor contracts called Lascar or Asiatic articles. Though such unequal contracts did not have an official name in the United States, they nonetheless existed and were highly restrictive and discriminatory. "As late as 1937," Ann Pegler Gordon points out, "a judge ruled that the employment articles on which the Dollar Lines employed Chinese seamen violate US law and 'amount to peonage.'"[97])

But the desertion provision of the Seamen's Act did have an important impact on the categorization of seamen in the immigration laws that passed soon afterwards. The Immigration Act of 1917 accommodated the Seamen's Act by allowing foreign seamen to land for the purpose of "reshipping foreign," or finding jobs as crewmembers on other vessels that would sail to foreign ports. A regulation later fixed 60 days as the temporary stay allowed for this purpose of reshipping foreign. Another regulation, carried over and extended from Chinese exclusion, that required bonds guaranteeing the departure of all landed Chinese and "Asiatic barred zone" seamen was deemed illegal by federal courts in New York and Baltimore in 1923, thus requiring the same treatment by the immigration service for seamen of all nationalities, *at least in those*

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[95] *Foreign Relations of the United States Diplomatic Papers*, 1928, Volume I, 838-844; 1930, Volume 1, 252-255 ; 1931, volume I, 815-821; 1932, volume 1, 944-954.

[96] For this opposition see, for example, the statement of the Pacific American Steamship Association during the Hearings before the Committee of Immigration and Naturalization of the House of Representatives, 68th Congress, 2nd Session on Proposed Amendments to HR 11796, January 1925, pages 131, 141; also Petition of the American Asiatic Association in opposition to Senate bill 7 and House bill 4648, April 22, 1932, INS file 55597/788, RG 85, National Archives and Records Administration [hereafter INS file]

[97] A. Pegler Gordon, "Shanghaied on the Streets of Hoboken," 236.

ports.[98] The regulation had provoked expressions of concern by the British government (concerned about South Asian crews) and a Japanese shipping lines as well as protests by Chinese seamen, many of whom had worked on ships transporting U.S. troops and munitions during WWI. In 1920, an "Oriental Seamen's Union" boarded ships docked in New York to inform seamen of "opportunities for securing better conditions which are afforded through the exercise of their rights and privileges under the Seamen's Act" [99]; the New York Chinese Seamen's Association was incorporated in 1922 and it provided legal assistance to Chinese seamen. In Seattle in 1922, when the bonding regulation was enforced and shore leave denied to them, Chinese seamen protested by deserting.[100]

Congressmen increasingly worried about the possibility that Asians barred from entry because of their race, subversives barred by immigration laws in 1918 and 1920, and immigrants excluded because of national quotas implemented in the immigration law of 1921, would be "bootlegged" into the country "in the guise of seamen."[101] They were hard to catch because,

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[98] Regional independence, especially to avoid court mandates, was, and remains, common in the immigration service. The cases were *United States ex rel. Hochung v. Tod,* (S.D.N.Y) August 10, 1922 and *United States ex. rel. Lum Young v. Stump,* 292 F. 354, July 5, 1923 (INS file, 54490/7). A few months after the decisions, a representative of the immigration service told Congress, "The Secretary says the decisions of the courts apply locally only. A case decided in Baltimore applied only to Baltimore, and a decision in New York applies only in New York." [*Restriction of Immigration, Hearings Before the Committee on Immigration and Naturalization, House of Representatives*, Sixty-Eighth Congress, First Session, January 29, 1924, Statement of Jeremiah Hurley, 1120].

[99] Annual Report of the Commissioner General of Immigration, 1920, 321.

[100] L. Weedin (Seattle) to Commissioner General of Immigration, Aug. 29, 1922, INS file 55490/7L.

[101] Emergency Immigration Legislation, Hearings Before the Committee on Immigration, United States Senate, Sixty-sixth Congress, Second Session, on H.R. 14461, January 7, 1921, Statement of Andrew Furuseth, 215. In an article called "Bootlegging in Orientals," secretary of labor James Davis fixated on deserting seamen and provided an example that revealed the complexity of the problem: "Seventy-three Chinese stowaways were found on board a vessel in San Francisco harbor by immigration authorities…It was found that these seventy three stowaways had been, for years, members of the crews of various steamers running between our country and China. They would go back from San Francisco to Hong Kong as seamen, and there they would refuse to sign up for the return trip…and a raw crew was recruited to take their places. But instead of staying ashore, they dtowed away on the same ship and as soon as it was ready to set out to sea, they came out from hiding, manned their places, and rought the ship to America. When they arrived at San Francisco, they hid away again and the dummy crew was on deck and also ready for shore-leave under the provision of our sixty-day shore leave law. Once ashore, this dummy crew would

though the 1917 law gave officials more power to inspect arriving crews, as a representative of the Immigration Service testified, "you take a crew of about 700 or 800 men…mustered and lined up, and they pass by in a line, and it is impossible to detect these...It is a visual examination and the examination oftentimes is not completed until the ship arrives at the dock and the opportunity for these men to get off is then presented, and they do get away."[102] Once admitted, "as a practical proposition it is utterly impossible to locate these seamen."[103] Though the 1917 law imposed a $5000 penalty for knowingly signing a crewmember with the intension of landing him in the United States, it was practically impossible to enforce.

The major immigration restriction on alien seamen came in a provision of the 1924 immigration law mandating that shipping companies detain on board and ship out with any seaman who an immigration inspector examined and suspected was not "bonafide" and pay a $1000 fine for each of these seamen who managed to escape. The only definition of "bonafide" provided in the law was "seeking to enter temporarily…solely in the pursuit of his calling as a seamen." At East Coast ports inspectors deemed malafide those who had relatives in the United States, who seemed inexperienced, or were listed on the crew list as "first trippers."[104] The result was that one third of Italian and Greek seamen were ordered detained on board in New York, a much larger percentage than sailors of other nationalities. A circular logic prevailed in West

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vanish…the regular crew of professional sailors on the ship would then come out of their hiding, take their posts and retuen to China to go through this performance gain and again until they got caught." (The article was reprinted in James Davis, Selective Immigration (St. Paul: Scott Mitchell Publishing Co., 1925), 69-74).

[102] *Restriction on Immigration, Hearings Before the Committee on Immigration and Naturalization, House of Representatives, Sixty-Eighth Congress, First Session*, January 29, 29, 1924, Statement by Mr. Luhring, 1121-2.

[103] Edward H. Henning (Assistant Secretary of Labor), Immigration Policy of the United States, *Proceedings of the Academy of Political Science in the City of New York*, 10.4. (Jan. 1924) 630.

[104] *Deportation of Alien Seamen, Hearings before the Committee of Immigration and Naturalization of the House of Representatives, Sixty-Eight Congress, Second Session, on proposed Amendments to H.R. 1179*6, Statement of Jeremiah Hurley, special representative on Seamen's Work for the Immigration Service January 26, 1925, 193.

Coast ports: the escape of Chinese sailors from detention confirmed the suspicions of their fides behind the orders to detain, justifying, for example, the L.A. commissioner's notice to ship masters "to detain on board all Oriental crews."[105] This apparently was also the unwritten practice in Boston; a steamship owner told Congress in 1925, "we get a verbal order at Boston…from the immigration authorities to hold the aliens aboard that are not eligible for citizenship, and they are mostly Chinese." When told by a Congressman that this practice was illegal under the Seaman's Act, the steamship owner replied, "we are between the devil and the deep blue sea… First of all the [Seaman's] Act says you must let them go ashore and the other [immigration] law says, in effect, that if they go ashore they will get away from you. And if they get away we are fined $1000."[106]

Looking back, the 1920s does seem like an "anything goes" era when it comes to the regulation of the movement of foreign seamen. Regardless of the Seamen's Act or what they were told by the immigration authorities, some foreign shipping companies tried to hold Asian seamen on board—but they lost crewmembers anyway. Reports of Chinese crewmembers on Cuban sugar ships landing in the United States, never to be located again, "came in from all points along the eastern seaboard and the Gulf Coast."[107] Though "Lascar articles" specified that Indian seamen on British ships could discharge only in India, these contracts were broken with "greater regularity in the 1920s."[108] Some Indian, Malay, and Chinese sailors signed shipping

[105] Letter from Joseph Conaty to Commissioner General, October 26 1927, INS file 55597/788.

[106] *Hearings before the Committee of Immigration and Naturalization of the House of Representatives, Sixty-Eight Congress, Second Session, on proposed Amendments to H.R. 11796,* Statement of Mr. Oyen, January 26, 1925, 188.

[107] Elliott Young, *Alien Nation: Chinese Migration in the Americas from the Coolie Era Through World War II* (Chapel Hill: University of North Carolina Press, 2014) 184.

[108] G. Balachandran, "Crossing the Last Frontier: Transatlantic Movements of Asian Maritime Workers, 1900-1945", *Maritime Transport and Migration: The Connections Between Maritime and Migration Networks*, ed. T.

articles voluntarily forsaking shore leave in the United States; they were allowed to get off the ship only for short shopping excursions, sometimes under guard. Yet even some of these seamen got away. Though an executive order mandated that all crew lists be visaed by American consuls abroad, in practice the consuls visaed crew lists without examining the crews; moreover, those ships arriving in the U.S. with non-visaed crewmen frequently applied for, and received, exemptions from the Department of State.[109] So, in practice, a handful of immigration inspectors in U.S. ports were responsible for the over a million seamen from all over the world who arrived each year during the 1920s. The port of New York alone handled about half of the seamen who arrived in the US each year and more than half of the deserters—high numbers that officials believed too low since there were based upon self-reporting by the steamship companies.[110] The steamship companies successfully fended off footing bills for desertions by delaying payment and contesting their fines with the immigration service and in court.[111] As desertion numbers rose, Congress was reluctant to give more money to an Immigration Service not up to the task, thus perpetuating the problem of an inability to enforce the laws because of, as agency

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Feys, L.R. Fischer, S. Hoste and S. Vanfraechem (St. John's, Newfoundland: International Maritime Economic History Association 2007) 99.

[109] "I have heard of isolated cases where consuls of really investigated a crew and required the removal of certain seamen from the crew before visaing the manifest; but my information is that such an occurrence is very rare." T.M. Ross report, Oct. 7, 1935 13, INS file 55854/370.

[110] According to the Annual Reports of the Commissioner General of Immigration, 973,804 seamen were examined in American ports in 1922, 449,278 in New York. 1,118,999 in 1928 and 517,471 in New York. Of the 5879 deserting seamen in 1922, 3292 were in New York. Of the 12357 deserters in 1928, 8043 were in New York.

[111] *Hearings before the Committee of Immigration and Naturalization of the House of Representatives, 68th Congress, 2nd Session on Proposed Amendments to HR 11796,* January 1925, pages 233, 235.

representatives testified again and again, the need for more inspectors and "the depleted state of our appropriation."[112]

Keeping track of seamen who came ashore was a problem. Many reported deserters may have subsequently shipped out. The immigration service could not easily determine whether a seaman who got off the vessel he arrived on later shipped out given that "men change their names," making comparisons of crew lists (which the immigration service began keeping in 1917) quite worthless, and "[foreign] consuls could not have dependable records," since many sailors got on or deserted right before a foreign ship sailed.[113] Issuing identification cards to seamen (as per a 1918 Treasury Department regulation) was extremely time consuming[114] and just created more confusion since they were "transferred for anything from a drink to a dollar."[115]

Those seamen who, after leaving their foreign flag ships, began sailing on American flag ships could get discharges (that were sometimes forged) from these ships and certificates from U.S. shipping commissioners or customs agents (who did not inquire as to the immigration status of seamen) that facilitated their further employment and naturalization.[116] Specifically, between

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[112] *Hearings before the Committee on Immigration of the United States Senate, 69th Congress, First session, on S.3574, A Bill To provide for the Deportation of Certain Alien Seamen*, March 25, 1926, 4; *Hearings Before the Committee on Immigration and Naturalization of the House of Representatives, Sixty Ninth Congress, First Session, on H.R. 11489*, May 14, 1926, 18.

[113] *Hearings before the Committee of Immigration and Naturalization of the House of Representatives, 68th Congress, 2nd Session on Proposed Amendments to HR 11796,* January 1925, page 235.

[114] Annual Report of the Commissioner General of Immigration, 1919, 274.

[115] Discussion of Reports Made at Conference of Immigration Officials, June 4, 1933, page 6, INS file 55597/788.

[116] A good example of this is the case of Sarkis Sarkisian. He arrived in the United States as a seaman in 1923. Soon after arriving, he declared his intention to naturalize. Before shipping out on an American ship the following year, he received a seaman's certificate (indicating he was an alien) from the Department of Commerce. In Baltimore in 1932, after showing his "first papers" and claiming he lost his seaman's certificate, he received a "Seaman's Protection Certificate" indicating that he was an American citizen, though he had never naturalized. Sarkisian used this certificate to sail in and out of the United States on American ships unbothered by the INS until 1942, when all seamen were required to have passports. [Interview November 27, 1942, in INS file 55854/370 M]

1918 and 1935, a law provided that seamen with three years service on American flagged vessels could petition for naturalization (file a declaration of intention), receive a "seaman's protection certificate" (which entitled him the same right to sail and receive the same protection as a citizen), and be granted citizenship in an expedited fashion (with no additional period of residence).[117] In 1925, the Supreme Court interpreted this provision to apply only to those who were racially eligible for citizenship; in 1925 and 1926, federal courts in New York, California, and the District of Columbia handed down opposing decisions regarding whether the provision applied to those who were only admitted temporarily for the purpose of reshipping but who instead remained in the United States (i.e., "deserters").[118] Clearly there was a lot of variety but overstayers were certainly naturalizing. Sometimes such seamen offered to pay the head tax required for admission and used the receipt given them to petition for naturalization.[119] Those overstaying seamen who the immigration service managed to catch and ship out—usually through a process of "reshipping foreign in lieu of deportation" so as to avoid government expense—frequently just shipped right back to U.S. ports.[120] The immigration service learned about the presence of deserting sailors through personal complaints—from cuckolded husbands,

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[117] On the issuance by port commerce officials of "limited certificates of American citizenship" to foreign seamen who had done this three year service see Memorandum to the Solicitor, May 28, 1929, enclosing General Letter No. 287 from the Commissioner of Navigation, INS file 55597/788. On fraudulently acquired certificates see Letter of Harry Hull to John S. Woodruff, U.S. Shipping Board, August 31, 1928, INS file 55597/788A. On seamen naturalization, see Joseph Cushman, Lecture—The Naturalization of Alien Seamen, part of a Course of Study for the Members of the Immigration Service, May 6, 1943.

[118] *Toyota v. United States* (268 US 402); In re. Connal (8 Fed. 2d 374), October 1, 1925, In re Linklater (3 F.2d 691), Jan. 26, 1925, In re Bror Alfons Jansson, Supreme Court of the District of Columbia, Jan. 4, 1926, and In the Matter of William Marchant and Fritz Spuytenberg, United States District Court for the Northern District of California, January 30, 1925.

[119] *Deportation of Alien Seamen, Hearings Before the Committee on Immigration and Naturalization, House of Representatives*, 69th Congress, 1st session, January 21, 1926, 6, 31, 67.

[120] In 1925, for example, an average of 30 seamen a month were reshipped foreign in lieu of deportation from the port of New York. There were about 2400 outstanding warrants of deportation for seamen. INS file 54645/139.

from disappointed in-laws, from down-and-out American sailors—only some of which proved useful.

The handling of foreign seamen during the 1920s was necessarily fluid: it varied by district and changed over time because the courts issued conflicting opinions interpreting the law and the immigration service, hampered by a limited budget and personnel, relied on outside help with diverse interests, particularly ship owners and guards, seamen's missions, and metropolitan police. In the mid 1920s, Italian seamen successfully challenged flagrantly arbitrary inspection in New York, but a California court ordered that "blanket orders" to detain Italian sailors on board did not exempt the ship from fines for seamen who escaped.[121] Until 1931, federal courts were divided on whether seamen were deportable at any time after entry or only within three years of entry.[122] A September 30, 1925 article in *Le Lloyd Français* pointed out that though ship owners could be served with writs of habeas corpus if they prevented seamen from landing, "in the case of a ship putting in at a port for too short a time for the habeas corpus procedure to operate, the master would have a chance of escaping."[123] Indeed ships were likely to ship out with the detained seamen: habeas corpus proceedings were costly and required legal representation and freight vessels frequently pulled into ports like Galveston, San Pedro, and Norfolk for coal for

[121] See, for example, *United States ex. Re. D'Istria v. Day*, 20 F.2d 302 (Court of Appeals, 2nd Circuit), June 6 1927; and *Navigazione Libera Triestina v. United States*, 36 F.2d 631

[122] The relevant cases are *Nagle v. Hansen* (No. 4913, Circuit Court of Appeals, Ninth Circuit, 17 F.2d 557, 1927); *United States ex rel. Rio v. Day (*No. 235, Circuit Court of Appeals, Second Circuit, 24 F.2d 654, 1928), *Zurbrick v. Traicoff* (No. 5514, Circuit Court of Appeals, Sixth Circuit, 38 F. 2d 811, 1930). As I discuss later in this chapter, in 1931 the Supreme Court, in *Phillippides v. Day* (288 U.S. 48), resolved the issue in favor of deportation any time after entry.

[123] Quoted in Clee, 816.

less than 24 hours.[124] Near Norfolk a special detention system developed to accommodate British shipping companies, such as the Barber Line; in order to abide by a provision of the British Merchant Shipping Act prohibiting the employment of Indian crews in North Atlantic ports during winter months, the Line would temporarily leave their "Lascar" crewmembers in company barracks and hire temporary replacement crews before sailing northward.[125] Other British steamship companies, such as the Ellerman and Cunard lines, campaigned for exceptions to this rule and brought Indian seamen to northern ports in the early 1920s.[126] In Philadelphia, a zealous district director, anxious about the difficulty shipping company guards had of effectively preventing escape and wary of stevedores with access to the ships facilitating escape, tended to bring all malafide seamen from the ship to the immigration station for detention—which was officially against the rules.[127] In Portland in the early 1920s, the immigration inspector in charge "receive[d] from steamship companies rewards to be paid through his office to informants [who helped in the apprehension]…of Japanese and Chinese deserting seamen."[128] Several foreign steamship companies were wary enough of fines to hire private detectives to guard their ships, trail after seamen on shore leave and, if necessary, force them back to ship.[129] In 1925, after

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[124] The process at Norfolk was called "putting in for bunker." Despite consulting with representatives of the steamship lines at the Hamptons Roads Maritime Exchange, the immigration service had no luck imposing fines on these ships for desertions. Port of Norfolk report, October 19 1931, INS file 54645/139.

[125] Letter of Edwin Schmucker, inspector at Norfolk, May 7, 1940, INS file 55854/370. The "lascar line" provision was justified on the racist grounds that Indians could not withstand the cold weather; British unions had fought for the inclusion of this provision to discourage the hiring of Indian workers on U.S. bound ships and to make North Atlantic routes white only at least from October-March of every year.

[126] *Bengali Harlem*, 143-144.

[127] J.L. Hughes, District Director, to Commissioner of Immigration and Naturalization, February 25 1938, INS file 55854/370A

[128] Report of James Hurley, special representative for seamen's work, to the Commissioner General, October 25, 1922, INS file 54645/149A.

[129] Statement of Joseph Mayper, Chairman and Counsel, Transatlantic Passenger Conference, New York City, *Hearings Before the Committee on Immigration United States Senate*, 73rd Congress, Second Session, on S. 868, A

receiving a complaint from the German consul about frequent desertions in Savannah, an immigration inspector rebuked the superintendent of that city's Seamen's Home**,** a Christian mission, for assisting German sailors to find employment in the coastwise trade (i.e., on ships sailing domestically rather than shipping foreign; the 1920 Merchant Marine Act mandated that all goods transported by water between US ports be carried in US flag ships crewed by US citizens or permanent residents). By 1927, the Savannah police were keeping alien seamen "under surveillance," visiting jails and hospitals to look for them, and the immigration service was apprehending and reshipping German seamen without applying for warrants.[130]

In some southern cities, police officers were on the lookout for "vagrant" seamen regardless of immigration status. In Baltimore, police would stop at the seamen's hotel and check discharge papers to see how long sailors had been ashore and drag them to court where their sentences might be suspended if they shipped out.[131] In 1929, a diverse group of foreign seamen in Houston wrote the Department of Labor, asking it to "use its good office to restrict the sabotage of unemployed bonafide [foreign] seamen by the Police department of this city…the men have to stop somewhere until employment is obtained by them and…the freedom of the City and Port is denied them." The Commissioner General of Immigration replied that it had no authority to dispute the enforcement of a city ordinance.[132] While Texas ports were notorious for

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Bill for the Deportation of Certain Alien Seamen, April 17, 1934, 32; Affidavit of the Master of the Steamship Chloe about the hiring of Pinkerton detectives to watch Greek seamen, INS file 56035/25.

[130] Report of Edgar Whatley, Inspector in Charge at Savannah, April 4, 1927, INS file 55597/788.

[131] Charlie Rubin, *Log of Rubin the Sailor* (New York: International Publishers, 1973*)*, 111-112

[132] Letter of Higinio Rodriguez, Frank Stone, Philip Robertson, Archie Montgomery, John Taylor, Ray Buins, and Michael Cariglio, 1929, INS file 55597/788c; Response letter by Harry Hull, Nov. 4, 1929, 55597/788c. Texas ports were notorious for their racism and nativism.

In the 1930s, the maritime leader Gilbert Mers claimed that Brownsville and Port Isabel refused to allow blacks to enter the cities. In Texas City, Filipinos could not get berths. In Gulf ports, "light" Puerto Ricans and Latin American sailors who could pass for either black or white were seen as a threat to American sailors—both black and

their racism and nativism, New York was different and a much better place to desert, though INS officials did their best to find supporters. In 1918, a white British sailor who had deserted helped a more recent Indian deserter at the New York Seamen's Institute to file a petition of intention to naturalize so he could sail on U.S. merchant ships; in 1927, an immigration service official spoke with staff at the Institute, which was a private welfare agency supported by clergy, philanthropists, and shipping lines, to put a stop to such assistance.[133] Also that year, when Chinese crewmen, who felt they were being underpaid and were unfairly denied shore leave, attempted to leave a the Dutch ship they arrived on, they were attacked by the Hoboken (NJ) police, held incommunicado at Ellis Island, and secretly placed on board a ship sailing back to the Netherlands; still, these "shanghai methods" provoked a considerable outcry by the Chinese Seamen's Institute, the Chinese consul, the ACLU, and New York Congressman Fiorello LaGuardia.[134]

The immigration service issued regulations providing for the deportation of foreign seamen who were permitted to land temporarily in order to reship for a foreign country and instead got other jobs sailing coastwise or on shore. But the service needed tips to learn about these sailors and special means to catch them, and even when caught, the service did not have the means to deport them. The service relied especially on foreign legations, ship companies, and employers. Foreshadowing what would happen on a much grander scale during World War II, the immigration authorities, at the behest of the British Military Mission, rounded up

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white—sailing on segregated ships. (Gerald Horne, *Red Seas: Ferdinand Smith and Radical Black Sailors in the United States and Jamaica* (New York: NYU Press, 2005) 64-66.)

[133] Bald, *Bengali Harlem,* 124; Port of New York report by Jeremiah Hurley to Commissioner General of Immigration, Sept. 13, 1927, INS file 54645/139; *Supplemental Information on Deportation of Alien Seamen, Hearings Before the Committee on Immigration and Naturalization, House of Representatives, Sixty Ninth Congress, First Session on H.R. 11489*, May 14, 1926, Statement of Jeremiah Hurley, 18.

[134] Ann Pegler Gordon, 230.

179 Chinese sailors who had deserted British ships and were working at munitions companies in Pennsylvania in 1919. Few of the seamen expressed a desire to reship on British vessels, "on account of the alleged hardships they claim they would have to endure at the hands of some shipping masters because of them having previously deserted the same or other vessels," and some demanded American level wages to do so. Lacking the appropriations to deport the seamen to China, the immigration service tried to get the British government to pay the cost. By the time an arrangement was made, most of the seamen had shipped out on Dutch vessels.[135] In 1923, when the immigration authorities attempted to round up Indian, Egyptian, African and Malay seamen employed by the Central Railroad of New Jersey in Ashley, the company refused to cooperate until they were able to hire another group of "Indian, Africans…of the same type and class" to take the places of those who were arrested.[136] Prompted by a letter of complaint from the local machinists association, the immigration authorities did another check of the railroad's employees at its Elizabethport plant. It turned up only "250 negroes…all of them natives of New Jersey and Pennsylvania" who the machinists "no doubt" confused for East Indian and African deserters.[137] Throughout the 1920s, the immigration authorities service received letters of complaint from native-born seamen about aliens working in boats sailing coastwise and from members of the International Seamen's Union about employment of Chinese seamen on American ships generally.[138] These letters

[135] Letters of Hughes to Commissioner General, August 6, 1918 and September 3, 1918, Letters from Wiley to Commissioner General, April 24, 1919 and INS file 54410/644.

[136] Letters of Jeremiah Hurley to Commissioner General of Immigration, February 23 1923, INS file 54645/139.

[137] Letter of Jeremiah Hurley to Commissioner General, March 2, 1923, INS file 55645/139.

[138] See letters to the Department from Andrew Furuseth January 10, 1931 and October 19, 1926, 55597/788c

typically led to investigations that did not turn up many deportable sailors.[139] This was true not only because American seamen tended to "exaggerate" and to "lack knowledge" about foreign seamen and local conditions, but because immigration officials did not have the wherewithal or the authority to compel masters of coastwise vessels, proprietors of hotels, or employers of at ship building companies to inspect their employees for deserting seamen.[140] When James Hurley, the immigration service official in charge of seamen affairs, wanted to inspect James Shewan & Sons, a huge dry dock and ship repairing plant in Brooklyn, for foreign seamen on staff in late 1928, representatives of the company protested that "if the aliens left their employment it would disrupt their organization."[141] Eventually the company agreed to cooperate but, in the interim, laid off one hundred and fifty foreign workers. Of the fifty workers Hurley and his staff examined at the plant, only two were eligible for deportation. Other investigations also tended to uncover networks of restaurants and boarding houses catering specifically to co-ethnic seamen. Most of these businesses were run by former seamen who had gained permanent residence; not surprisingly, many seamen "became indebted" to these establishments while looking for opportunities to reship. [142]

Inspectors screening seamen upon arrival had only a few tips in their manuals: higher officers are "almost without exception" bonafide, Chinese and Japanese seamen should be

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[139]Letter of the District Director at Jacksonville to Commissioner General, May 5, 1931; Letter of the District Director of Norfolk to the Commissioner General, March 2, 1932, both in 55597/788.

[140] Report from Inspector in Charge, Houston, February 19, 1931, INS file 55597/788.

[141] Report by James Hurley to the Commissioner General of Immigration, January 23, 1929, 54645/139.

[142] In following up upon a complaint about Chinese deserters, Inspector P.A. Donahue discovered a network of sailors with a "keen sense of duty toward each other" who opened up "seamen boarding houses to provide food and shelter for themselves and their less fortunate fellow workers" who could not find work on ships (Report of Chinese Inspector to Commissioner General, Oct. 1, 1921, INS file 54490/7). The Historian Vivek Bald has written about how Indian seamen formed similar "clandestine networks" at this time. *Bengali Harlem*, 98.

examined with extra care, records of prior sea service are useful indicators. [143] These did not help much. The 1929 Annual Report of the Commissioner General of Immigration noted that of the 802 seamen arrested for deportation who were permitted to reship foreign, 801 had had previous experience as seamen.[144] Some inspectors resorted to using "catch questions" such as whether a seamen would accept employment ashore at several times the pay on ship, which all seamen, except those coached not to, would answer somewhat in the affirmative and so precisely the wrong people would be detained on board.[145] Immigration officials' determination that a seaman was "malafide" and deportable if he worked on shore while looking for an opportunity to reship confused even the restrictionist chairman of the Committee of Immigration and Naturalization of the House of Representatives. "Your belief," Chairman Albert Johnson asked Jeremiah Hurley, "is that a man may come ashore under the [Seaman's] Act to reship foreign and cannot even sell a newspaper but must remain idle if he stays until the 60 days are up?" Mr. Hurley answered in the affirmative, explaining that, regardless of the sailor's interest in reshipping, taking up any employment ashore was a sign of "abandoning his calling" and "a violation of his agreement to land here temporarily for the purpose of reshipping foreign."[146] Policies meant to deter desertion only seemed to foster it. Lawyers for ship-owners provided the immigration service with numerous reports of the unintended consequences of arbitrary and over-zealous "malafide" determinations by immigration inspectors. In October 1930, for example, immediately upon boarding an Anglo-Saxon Petroleum Company ship in New York

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[143] "Procedure in Inspection of Arriving Aliens—Inspection of Seamen," Feb. 15, 1934, INS file 55955/500B, 31.

[144] Annual Report, 20.

[145] Statement of Ira L. Ewers, *Deportation of Certain Alien Seamen, Hearing Before the Committte on Immigration, United States Senate, Seventy-First Congress, Second Session, on S.202*, April 7 1930, 25.

[146] *Hearings Before the Committee on Immigration and Naturalization of the House of Representatives, Sixty-Ninth Congress, First Session on H.R. 11489*, May 14, 1926 17-18.

harbor, an immigration inspector told its master that he planned to order the detention of all 37 Chinese crewmembers even though all of them had reliably served on this and previous company vessels for long voyages with stops in New York. Not given shore leave, ten men tried to escape detention, and four succeeded in deserting. In another case the following year, an immigration inspector in Norfolk ordered detained on board all seamen on a Greek ship who had never before sailed into *an American port*. The three seamen who escaped detention had been seamen for several years and had never previously deserted.[147]

Despite local variations and irrationality, the decade was marked by definite and long lasting trends in the conceptualization of desertion and the treatment of foreign seamen. Some immigration inspectors considered sailors who overstayed to be men who were paid low wages and who sought work on shore—sometimes as strikebreakers, sometimes lured into doing so by co-ethnic agents or shipping agents (who then profited by then furnishing ships with replacements for deserters for high fees).[148] The immigration service showed occasional interest in investigating steamships, particularly from Mediterranean and Baltic ports, that seemed to sign on excess crewmembers or had unusually high numbers of stowaways and deserters, suspecting ship masters might be profiting by pocketing money from these men for bringing them over.[149] But by mid-decade, most immigration inspectors came to see the problem not as one of tractable sailors or corrupt shipmasters but of a "willfully" lying "horde of pretenders" who deserved a

[147] "Some Cases Illustrative of the Result of Attempting to Detain Seamen on Board," Appendix to Memorandum to the Commissioner General from Kirlin, Cambell, Hickox, Keating and McGrann, October 28, 1937, INS file 55854/370A.

[148] Report by Jeremiah Hurley about the port of Philadelphia, November 30, 1926,; Report of Edgar Whatley, Inspector in Charge at Savannah, April 4, 1927, Report of Commissioner at New Orleans to Commissioner General, January 4, 1927, all in INS file 55597/788.

[149] Letter of W.W .Husband to Frank Kellogg, Aug 5 1927, regarding desertions from Navigazone Libera Triestina ships, INS file 55597/788; Letter of Husband to Corsi regarding Polish ships, INS file 55854/370. See also the Sept. 15 1927 report by Hurley on the prosecution of Portuguese shipmasters involved in a smuggling ring from Cape Verde islands to New Bedford, INS file 54645/139.

penalty beyond deportation, to be inflicted on them while they were in the United States.[150] With limited resources at its disposal and thousands of seamen to monitor, the immigration service concentrated most on investigating deserting crewmembers involved with smuggling (of drugs, alcohol, and immigrants), a focus which only heightened association of the "alien seamen problem" with deception, criminality, and immorality.[151] In 1926 Jeremiah Hurley regaled Congress with tales of convictions of crewmembers for smuggling Greek and Syrian immigrants from Marseilles to Norfolk, of "Malays, East Indians, Arabs and Africans" who left their ships and were "engaged in bootlegging, committing all sorts of crimes" in Perth Amboy, and of Italian deserters who were working as gunmen and murderers-for-hire in Chicago.[152] In 1927, Andrew Furuseth told Congress that he opposed allowing Asian seamen entry into the United States not because they undermined wages but because "they are the most expert smugglers the world has ever known. They smuggle narcotics in here."[153] Seamen from the Mediterranean, he added, are "next to the Chinese, the most reliable smugglers."[154] Indeed without these sailor smugglers, who "are gradually taking charge of the ocean," Furuseth implied, there would be no smuggling by sea.[155]

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[150] Memorandum from the Commissioner general to the Secretary of Labor, Dec 29 1926, INS file 55597/788; Annual Report of the Commissioner General of Immigration, 1927, 14; T.M. Ross report, Oct. 7, 1935, 6, INS file 55854/370.

[151] A good example of this emphasis is apparent in a 1927 investigation into a confrontation between New Orleans border patrol inspectors and a Brazilian ship captain who refused to consent to arrest of a crewman who had allegedly smuggled stowaways. INS file 54645/139.

[152] *Hearings Before the Committee on Immigration of the United States Senate, 69th Congress, First Session, on S. 3574,* March 25, 1926, 57-59.

[153] *Hearings Before the Committee on Immigration and Naturalization of the House of Representatives, 69th Congress, Second Session, on S.3574*, February 23, 1927, 10.

[154] *Hearings Before the Committee of Immigration and Naturalization of the House of Representatives, 68th Congress, Second Session, on Proposed Amendment to H.R. 11796*, January 26, 1925, 160.

[155] *Hearings Before the Committee in Immigration of the United States Senate, 69th Congress, First Session, on S.3574,* March 25, 1926, 17.

Granted, disreputable lifestyles had for a long time been associated with sailor town culture; some had opposed the Seamen's Act on the grounds that sailors would spend their half wages in bar and brothel sprees in American ports.[156] But, by the interwar period, beyond alcohol and smuggling, seamen were associated with a trifecta of racial, economic, and sexual degradation: among them there were many who were Asian and black, "brutish" workers and violent radicals, and homosexuals or sexually diseased.[157] (The latter were particularly prominent in American ports because inspectors ordered "afflicted" seamen to hospitals for treatment at the expense of their ship).[158] This image—what one historian has called "the myth of bachelor Jack" and another has deemed "one dimensional"—persisted despite evidence to the contrary and its obvious promotion by self-interested parties.[159]

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[156] "The sailors go ashore, carouse, fail to report back for duty on time, delay the ship, and have the satisfaction of only having their money taken away from them that way." (H.C. Calvin and E.G. Stuart, *The Merchant Shipping Industry* (New York: John Wiley and Sons, Inc., 1925), 335.

[157] For a good discussion of the image of "industrial seamen in popular culture," and particularly in the plays of Eugene O'Neil and the fiction of Claude McKay, see Link, *Sweatshops at Sea*, 146-148. The image of the sailor as "trade" was best captured in this era in the paintings of Paul Cadmus. On sailors and homosexuality in the interwar period see George Chauncey, *Gay New York: Gender, Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994) 78-9, 155-7, 192-3.
There is some evidence of homosexuality and reactions to it in the case files of organizations handling seamen immigration cases. The case file of one seaman, who visited the National Council of Jewish Women after overstaying his shore leave, describes him as displaying "floridity of conversation" and an "affected French accent." It is not clear from the file what difference this made, only that the NCJW took him on as a client, but the seaman opted to seek out help from HIAS. After WWII, the St. Louis branch of the Polish American Congress was much more clearly intolerant. In 1953, it backed off from its initial interest in helping a seaman threatened with deportation. This seems to have been based upon a reinterpretation of the seaman's sex encounter with a man as consensual. [Case file of Alexander de Gonsler, Box 3, Series II: New York Immigration files, 1920-1938, National Council for Jewish Women, Department of Service for the Foreign Born Records, Yeshiva University Special Collections; Case file Michel Roman, Box 3, Papers of the Polish American Immigration and Relief Committee, Immigration History Research Center, University of Minnesota].

[158] 41 Stat. 1082, An Act to Provide for the Treatment in Hospital of Diseased Alien Seamen (December 26, 1920)

[159] "Seafarers often remained embedded within family and kin networks and were not invariably a source of trouble in ports. Indeed, their portrayal as irresponsible, single young men was largely a construct of self-interested ship-owners anxious to limit any liability towards the families and dependents of their crew," argues Robert Lee. "By focusing on the sexual behavior of individual seafarers," Lee adds, "wider health issues which contributed directly to excess occupational mortality, such as inadequate accommodation, heating and lighting on board ship, were effectively marginalized because improvements in working conditions required significant financial investment by shipowners." Lee, "The Seafarers' Urban World: A Critical View," *International Journal of Maritime History*, 25.1 (June 2013), 27, 62. Valerie Burton similarly argues that "imputing moral failings to the seafarer shifted attention

It was during the late 1920s and 1930s that the immigration service adopted seamen as the bad boys of temporary immigrants—a status they continued to hold for decades—and began deliberately handling them with severity, making examples of those who overstayed, in efforts to deter illegal immigration. The Deportation Law of 1929, which forbade readmission of deportees and made reentry to the US a felony punishable by fine and imprisonment, particularly targeted sailors. The law explicitly included those who had been deported through reshipping foreign ("any alien ordered deported who has left the United States shall be considered to have been deported…irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed") and prohibited those who had previously been deported not only from signing off a vessel in a U.S. port, but also from shore leave ("an alien subject to exclusion…under this section who is employed on a vessel…shall not be entitled to any of the landing privileges allowed by law to seamen.") [160] Also, because of their bad moral image, seamen sometimes had a harder time qualifying in the mid-1930s for newly instituted discretionary forms of relief from deportation for those deemed deserving by the immigration service.[161] The handling of the case of Athanasios Vassiliades brings this out well. Vassiliades signed off his ship in New York in late 1929 and was slated for deportation for overstaying in 1933, by which time he was supporting his American-born wife. His case was held in abeyance by the immigration service (now under the direction of Frances Perkins as Secretary of Labor)

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from the real cause of his difficulties in providing for a family," namely "how labour was used by the vast majority of shipowners." Burton, "The Myth of Bachelor Jack: Masculinity, Patriarchy and Seafaring Labour" in *Jack Tar in History: Essays in the History of Maritime Life and Labour*," eds. C. Howell and R.J. Twomey (Fredericton, New Brunswick: Acadiensis Press, 1991) 184-5.

[160] 45 Stat. 1551 (March 4, 1929).

[161] For a summary of these forms of discretionary relief, see the section on "the unmaking of illegal aliens" in Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 75-89.

while legislation was pending that would give the service discretion to prevent deportations in "hardship" cases like this.[162] Stays were generally accorded only to those without police records and with no or only brief records of receipt of public relief.[163] In 1936 a social worker filed a report on Vassiliades with the immigration service that raised an old, dismissed criminal charge against him and made him seem like a stereotypical lascivious and sneaky sailor: the report referenced "illicit" premarital sex,[164] venereal disease, and marriage to circumvent the immigration laws. To the immigration service's district director in New York this proved that he was "not of a creditable nature" and attested to the "wretched state" of his home life.[165] In 1939 the Commissioner General insisted, despite retractions from the social worker and letters of support from several branches of the Greek-American Order of Ahepa and many Greek Orthodox churches, that his case was "not meritorious" and that his deportation would "not be a great loss to his [American] family," which now consisted of two American born children and another on the way. No help were reports emphasizing that his wife was entirely dependent upon him and that "the children think more of their father than their mother."[166]

Just around this time, increasing numbers of Greek desertions led an immigration service inspector to presume the existence of "a smuggling ring in Greece which is obtaining

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[162] In re: Anthanasios Vassiliades, Board of Review decision, Aug. 28, 1933, INS file 55805/154.

[163] *Report to Accompany List of Stayed Deportation Cases Called for in House Resolution 350*. H.doc. No. 74-392 (1935); L.P. Winings to Daniel MacCormack, Nov. 27, 1935, INS file 55884/474; Deportation of Criminals

[164] When the parents of his future wife learned that she had sexual relations with Vassiliades, a neighbor, they called the police and had him arrested for rape. The court dismissed the charge.

[165] Summary of International Institute Y.W.C.A. Investigation Regarding Athansios Vassiliades, January 10, 1936; Comment by Byron Uhl to Commissioner General of Immigration, January 27, 1936, INS file 55805/154.

[166] Letter from Edith Terry Bremer to Commissioner James Houghtelling, July 8, 1938; Letter from Commissioner Houghteling to Solicitor George Reilly, November 8, 1939; Progress Report Visit to the home of Athanasios Vassiliades on October 14, 1937, all in INS file 55805/154.

employment on Greek vessels for would be immigrants." The inspector also found letters between seamen and relatives living in the United States about their planned desertion and jobs in Greek restaurants. [167] There was no suggestion in this report or other contemporary reports on Greek seamen that desertions were the result of deteriorating work conditions on Greek ships, which had been steadily reducing manning, increasing hours of work, and decreasing wages in the 1930s.[168] A 1935 Greek regulation that gave captains control over feeding their crews—which led them to cut corners and pocket profits—became a major source of contention and labor disputes on Greek ships.

To better understand desertion of foreign seamen in U.S. ports by the 1930s, it is important to keep the larger political economy of shipping in mind. The report on Greek seamen just quoted also states that immigration inspectors were particularly suspicious of seamen "in positions requiring little or no sea experience, such as messmen and coal passers." By the interwar period, most seamen did not work on deck, but rather in the engine room or as service-staff in cabins and kitchen (common jobs were fireman, oilers, water tenders, and cooks and stewards).[169] The men who took these jobs were like other migrants in an industrial economy, many trying to earn money to send back to their more rural homes. A segmented or "two-track" labor market hardened despite protest from colonial seamen who worked for lower wages and in worse conditions and were locked out of benefits achieved by unions of their white

[167] Report of Joseph Burget, immigrant inspector, February 1, 1938, 55854/370A.

[168] "Labour Relations in the Interwar Period," chapter 7 in Gelina Harlaftis, *A History of Greek Owned Shipping* (New York: Routledge, 1996).

[169] The interwar ship set up was as follows. A ship master, or captain, was employed by the ship-owner and acted as his agent; the master was responsible for the management of the vessel and the crew. The crew consists of licensed mates, radio officers, engineers, and sometimes doctors; seamen on deck (able and ordinary seamen, deck boys), in the engine room (oilers, wipers, stokers, firemen, water tenders), and in the stewards department (cooks, messmen, waiters, cabin attendants). On American ships, a typical crew would consist of mostly Northern Europeans in the licensed ratings and Asians in the stewards department.

counterparts.[170] The transition from sail to steam also threatened British dominance of the seas. During the interwar period, it still had the largest merchant marine but that of the Norway, Greece, and Japan grew quickly, especially focusing on oil and fruit carriers. Wages for all seamen on these vessels generally remained lower than on American ones. In a prequel to what would happen to a much greater extent after WWII, the vast fleet of publicly owned ships built in the United States during the World War I era were steadily sold off to private owners, some of whom transferred to foreign "flags of convenience" to avoid having to abide by the hours, conditions, and safety requirements of the Seaman's Act. Those concerned about the effect of these transfers on labor continued to push for legislation in the spirit of the Seaman's Act that attempted to make American ships more competitive by forcing up wages on foreign ships. One such bill provided that foreign seamen could use American courts to challenge wage withholdings by foreign ship-owners, especially allotments to seamen families in the home country, that were deducted from the half-earnings seamen were entitled to when signing off in U.S. ports. The bill failed to pass, as it was opposed by the U.S. State Department, which received complaints from foreign legations and was worried about retaliatory measures against American ships and discriminatory freight rates on cargoes to American ports. As a report submitted by Senator Royal Copeland of New York, chair of the Committee of Commerce and known for close ties with shipping interests, asserted: "such proposed legislation does violence to…the necessities of international commerce." And the report added, in a rebuke of the Seamen's Act, "it is questionable how far the United States should go toward…inducing foreign

[170] Fink, 158.

seamen on foreign vessels to violate their contract."[171] More successful was legislation, justified in the name of national defense and the promotion of commerce, that gave loans and subsidies to American ships so that they could compete with foreign ones without rolling back the Seaman's Act. The first of these laws, the Merchant Marine Act of 1928, mandated that two-thirds of the crewmembers on ships with contracts to carry mail had to be American citizens. Later legislation extended this requirement to all American ships. The 1936 Merchant Marine Act mandated that 75 percent of the unlicensed crew of all vessels flying the American flag be U.S. citizens and excluded non-citizens from the crews of government subsidized cargo vessels. (It allowed non-citizens to be employed only as stewards on government subsidized passenger vessels).[172] In 1928, aliens comprised 44 percent of crewmembers on American merchant ships; in 1933, 25 percent; in 1936, 16.6 percent.[173]

Just when the Depression left many foreign ships and foreign seamen idle in American ports, it became harder for these seamen to gain work on American vessels that were beginning to make up a larger share of world shipping.[174] A Supreme Court decision in 1929 exacerbated the problem. In *McDonald v. U.S.* (279 U.S. 12) the court ruled that a foreign seaman broke the continuity of his residence in the United States each time he shipped out on a ship of foreign registry. So until he became a citizen, a foreign seaman had a hard time finding employment on

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[171] "Payment of Seamen on Foreign Vessels," Senate Report 833 submitted by Mr. La Follette to accompany S.2945, 70th Congress, April 17 , 1928; *FRUS*, 1928, volume 1, 838; FRUS, 1929, volume 1, 1007; *Congressional Record*, February 23, 1931, 5734.

[172] Paul Maxwell Zeis, *American Shipping Policy* (Princeton: Princeton University Press, 1938) 148, 183.

[173] "Composition of the Labor Force in the Merchant Marine," *Monthly Labor Review*, February 1936, 349.

[174] A survey of 300 foreign seamen who were receiving relief in New York in 1935 found that 90 of them had remained in the country illegally, 34 of whom had come from the same country within the year and were under 25. All were unsuccessfully seeking work on higher paying American ships. Reginald McAll, "The Citizenship of Alien Seamen and their Opportunities of Employment," *Interpreter Releases,* XV, 36, Aug. 2, 1938, 293.

an American flag ship, but if, because of this, he accepted work on a foreign flag ship, he postponed his naturalization by another five years. This applied to married seamen who had been in the United States for many years; McDonald had entered as an immigrant in 1920 and had a wife and child legally domiciled in Boston. It also applied to American owned ships under foreign flags; McDonald was a master of a United Fruit ship under British registry.[175] [Another important Supreme Court decision of the same year, *Claussen v. Day* (277 U.S. 398), affirmed the same principle by ruling that immigration officials consider it a new entry each time an alien seaman returned on a vessel from abroad]. To make matters even worse, the 1929 law forbidding the landing of seamen previously deported made it difficult for foreign seamen to find jobs on those few *foreign* vessels that were sailing out of U.S. ports during the Depression: "Masters of foreign vessels will not sign on a seamen for round trip voyage from a US port when such a seaman has been in the United States for upwards of 60 days for fear that such a seaman may be detained on board by the immigration authorities when the vessels returns to a US port."[176]

By 1931, thousands of seamen, native-born, naturalized, and foreign, were destitute in U.S. ports. Seamen's missions helped, but could not keep pace with demand.[177] A Copenhagen daily newspaper complained that 30 to 40 unemployed Danish sailors were applying for help every day at the consulate in New York.[178] They were easy scapegoats. The day after the Supreme Court ruled, in *Philippides v. Day* (283 US 48, March 23, 1931), that deserting seamen

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[175] For a good summary of the case and its implications see "Alien Seamen: Employment Disabilities and Naturalization Procedure," *Interpreter Releases*, Dec. 8 1936 , 322.

[176] Memorandum to the Commissioner General In re: Deportation or Expatriation of Alien Seamen, May 24, 1933, 55587/788F.

[177] "Joint Committee Seeks $100,000 To Aid Seamen, Fund to Be Used to Care for 1,000 Now Believed Destitute in New York," *New York Herald Tribune*, Nov. 8 1931, A8.

[178] Translation from the Dec. 8, 1931 *Berlingske-Tedende,* INS file 55597/788D.

could be deported no matter how long they had been in the country, the Secretary of Labor ordered immigration officers to begin a round-up of foreign seamen in the name of unemployed Americans.[179] As the commissioner of immigration wrote in the *New York Herald Tribune,* the Supreme Court "created vacancies" through "the jobs and positions held by thousands of men from alien shores who arrived in the United States some years ago as 'able-bodied seamen'—and who have neglected to sail away again," "illegal" entrants who "evaded and spurned our laws at the beginning of their stay—and they took and held jobs that able-bodied American citizens, with families to support, needed and wanted and were capable of filling."[180] [See below, figure 4.1, for the negative depiction of outgoing deserters in the graphic that accompanied this article].

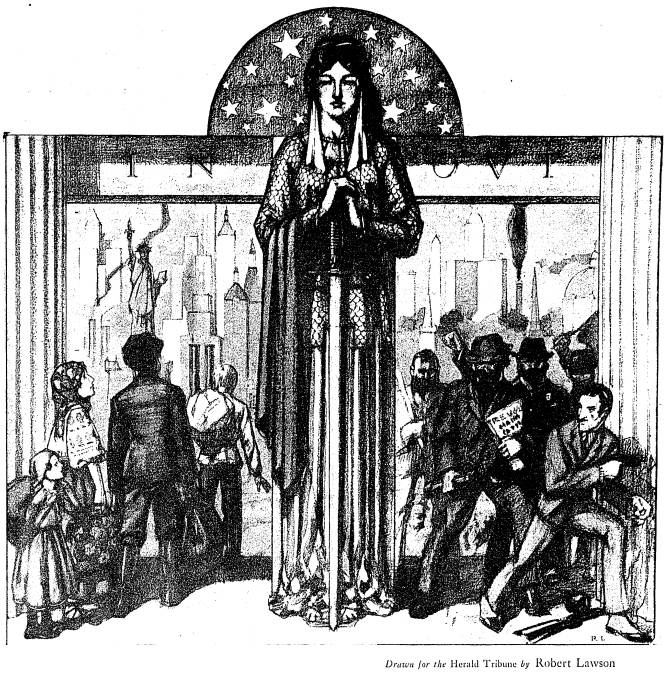

Figure 4.1, "Guarding America's Gates," by Robert Lawson, *New York Herald Tribune*, April 12, 1931.

Seaman unemployment persisted and, despite the Roosevelt administration's adoption of new approaches, antagonism towards foreign seamen continued to flare up locally. Soon after

[179] Sees Jobs in Wake of Alien Round-Up, Labor Secretary Lays Plans for Speedy Deportation of 100,000 Seamen," *Baltimore Sun*, March 25, 1931, 2.

[180] Harry Hull, "Guarding America's Gates," *New York Herald Tribune*, April 12, 1931.

assuming office, D.W. MacCormack, Roosevelt's Commissioner of Immigration, convened a committee of Immigration Service officials who suggested that, given the economic depression, it might be necessary to allow foreign seamen more than sixty days to reship and that repatriation, rather than deportation, would be welcome by unemployed foreign seamen, would relieve charities, and would reduce competition with American seamen. On the advice of Ellis Island Commissioner Edward Corsi, in June 1933 the immigration service repatriated at government expense a few dozen seamen who had been in the United States less than three years and who, "having fallen into distress," asked to be sent home. This was a "privilege" that was "not equivalent to deportation" in that it did not ban seamen from returning.[181] The same month MacCormack ordered the immigration commissioner in Boston to retract a circular forbidding masters of foreign vessels from signing off seamen lest they become public charges and allowing inspectors to deem arriving seamen malafide "because of economic conditions and not because of bad faith." The Boston commissioner explained that the circular was issued because of "repeated requests that this office do something to assist American seamen and others in securing employment by barring and deporting aliens;" of complaints from the Boston Seamen's Friend Society that it was overburdened by foreign seamen; and because, given the lack of jobs available, "it was a foregone conclusion that a large proportion of the seamen discharged would be additions to the heavy burden upon the tax payers of this Commonwealth."[182] The following year, the Federal Emergency Relief Administration's Transient Division began a short-lived

[181] "Corsi offers a Plan to Repatriate Seamen," *New York Times*, July 21, 1932, 20; "Stranded Seamen to Get Free Passage," *New York Times,* June 23, 1933, 37. A letter from a top immigration official mentioned that the repatriation program was "inaugurated in the early part of this past summer" and attracted "quite a number of alien seamen residing in New York City…but the number has been negligible since the beginning of the present fiscal year," which started July 1 1933. Letter from A.R. Archibald to Harry P. Solomon, Oct. 4, 1933, INS file 55597/788F.

[182] Letters of the Boston Commissioner to the Commissioner General, May 29th and May 6, 1933, 55597/788F.

program for seamen. The program was riddled with administrative controversy all along the East Coast, but most especially in Baltimore, where local officials were opposed to giving public relief to seamen. More conflict arose because seamen demanded control over relief distribution, ship-owners claimed the program encouraged loafing and strikes, and seamen's missions and conservative ISU members accused it of subsidizing communism. When its budget was cut, local administrators began disqualifying foreign-born seamen, particularly Poles, from relief, despite federal opposition.[183] Meanwhile, on the West coast, the maritime strike of 1934 was complicating enforcement of immigration policies regarding seamen. Seamen participating in the strike or fearful of crossing the picket line overstayed their 60 day allotted shore time and many were being "fed daily by public charities." In San Pedro, if the immigration service initiated any deportations, union leaders threatened to bring in hundreds of seamen who had "remained longer" with "the view of bringing the matter strongly to the attention of the Central Office."[184] In New York, between 1934 and 1937, city politicians called for investigations into the number of aliens on relief and, after the passage of a federal law barring illegal aliens from the Work Progress Administration, many seamen lost their WPA jobs: Vasilliadies, the seaman discussed earlier, was among them. In 1935 inspector T.M. Ross completed a major survey of alien seamen— who he referred to as "a necessary evil"— that called for more stringent screening procedures, limits on shore leave, and increased prosecutions. Ross lamented having to rely on the assistance of steamship companies to "conserve our natural and national rights in endeavoring to avoid a constant infiltration of aliens ineligible to citizenship." He complained

[183] Jo Ann Argersinger, "Assisting the "Loafers": Transient Relief in Baltimore, 1933-1937," *Labor History*, 23 (Spring 1982), 242. FERA programs forbade discrimination based on race, color, religion, political affiliation or activities, and citizenship status. In practice, significant discrimination did occur.

[184] Memo of W.A. Brazie to F.W. Berkshire on "Alien seamen leaving their vessels at this port since the inauguration of the seamen strike," July 16, 1934, 55854/370.

about seamen "go[ing] on relief on arrival," and approved of efforts in Philadelphia and New Orleans to investigate and deport seamen on relief. Ross also reiterated a point that came up in MacCormack's 1933 meeting: the need for close working relationships between immigration commissioners (in the Department of Labor) and shipping commissioners (in the Department of Commerce), who signed seamen onto American ships, in order to prevent foreign seamen from shipping out coastwise. In some ports, relations were good enough that immigration inspectors boarded coastwise vessels to check for foreign seamen or shipping commissioners reported on foreign seamen to the immigration service.[185] In the fall of 1935, the American Committee for the Protection of the Foreign Born [ACPFB] reported that immigration inspectors in Detroit were checking up on and arresting foreign sailors on American boats sailing on the Great Lakes.[186]

Even when the number of seamen entering the United States dropped off during the Depression, spotting those who would overstay was difficult. According to Ross's 1935 seamen survey, determining which seamen were mala fide upon arrival—meaning that they intended to remain rather than reship— required that boarding officers be "guided by intuition" and have the ability of "mind readers."[187] Inspectors were governed "largely by the appearance of the [sea]man—whether they believe he is telling the truth or not." In the mid 1930s, the immigration commissioner at Ellis Island conceded that despite giving crews of the Polish Gdynia-America line ships "special examination," nothing indicated who might leave the ship. Investigation only led to "a certain address in Brooklyn that is a rendezvous of deserters"; interviews with those the immigration service managed to find revealed that one sailor, Jan Sudnik, had entered the United

[185] Report of Inspector T.M. Ross, Oct 7 1935, page 33, INS file 55840/370.

[186] "Labor Department Starts Drive on Foreign Born Seamen, "ACPFB press release, September 9 1935, Box 8.

[187] Report of Inspector T.M. Ross, Oct 7 1935, page 16, INS file 55840/370.

States 24 times before opting to stay and that another, Feliks Kowalski, chose to stay to get married to a woman he had known "for years."[188] If a seaman was not questioned until many years after deserting, his explanation of his original intent would almost certainly be colored by views adopted in the interim. Here is the July 1938 exchange between an immigration officer and Solomon Weinberg, the stateless Jewish sailor mentioned in the introduction. Before coming to the United States as a seaman (mess-man) in 1927, Weinberg had worked as a dentist in Germany for a year. After arriving in the United States, he worked in a dress factory in New York, on an American oil tanker sailing along the West Coast, and as a grocer in Chicago.

> Q: Was it your intention to remain permanently in the United States when you came here at that time [in 1927]?
> A: That's a hard question to answer.
> Q: Was it your intention to remain permanently in the United States when you came here at that time?
> A: After I missed the ship, why I remained permanently here.
> Q: How did you happen to miss the ship?
> A: Well, I got back too late and it was sailed already.
> Q: Did you make any attempt to get another boat and sail out of the United States?
> A: No.
> Q: Why didn't you?
> A: Because America is the best country to live in.
> Q: Where was your first place of employment in the United States after you deserted the SS Berlin?
> A: Does the term "deserted" have to go in there? After all, I missed the ship: I didn't desert it….
> Q: Have you any statement to make at this time, in your own behalf, as to why you should not be deported from the United States?
> A: War clouds are all over Europe, especially the Jewish situation…I would rather die for this country than go back.[189]

It's worth pointing how far apart were the perspectives on Weinberg's motives in this ostensibly

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[188] INS file 55777/214

[189] This is quoted from a July 13, 1938 immigration interview, which is exhibit 2, in the *Weinberg* case file (*U.S. ex. rel. Solomon Weinberg v. Fred Schlotfeldt*, District Director of Immigration in Chicago, Habeas Corpus case files, 1929-1942, Case 46, U.S. District Court, Northern District of Illinois, Eastern Division) in RG 21, National Archives in Chicago.

non-adversarial hearing. The inspector asked Weinberg if he or any of the other members of the crew had smuggled narcotics into the United State. Weinberg's attorney, on the other hand, asked Weinberg why he left Germany in 1927 and Weinberg told him "because Hitler started his campaign to come into power and started against Jews." Also significant is the fact that, in order to return to go to visit his sick mother in Poland in 1931, Weinberg had obtained a false passport by using the naturalization certificate of an acquaintance. He used this passport to secure a seaman's book, and thus could sail on American coastwise ships as a supposed American citizen. Not surprisingly, the INS interviewer asked Weinberg if he was "ever connected with the smuggling of narcotics or anything else into the United States." [190]

Seamen statelessness was a problem that had been building through the 1920s. European seamen were at sea when land changed hands after WWI and they missed opportunities to secure their nationalities. In 1925 Britain passed an order prohibiting the landing of colored seamen without British passports, which few longtime sailors had. This created what seamen thought of as death ships that took advantage of those without countries and what shipowners thought of as "boarding houses on the high seas…for the benefit of deported seamen who have no passports and who therefore cannot be landed."[191] Many seamen lost their citizenship simply for being away too many years or for failure to do mandatory military service. Shortly after Weinberg came to the U.S. he lost his Czech citizenship because he failed to register for the military when he came of age; Vassiliades, who was from Istanbul and whose parents still lived there, was not immediately deportable because, as he told a social worker, he was "a man without a country":

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[190] Ibid.

[191]B. Traven's novel *Death Ship*, written in the 1920s and published in 1934, captures the seamen's perspective. The quotation offering the ship-owners perspective comes from the Statement of Mr. G. F. Ravenel, Assistant to the President of the International Mercantile Marine Co during the *Hearings before the Committee of Immigration and Naturalization of the House of Representatives, Sixty-Eight Congress, Second Session*, on proposed Amendments to H.R. 11796, January 26, 1925, 124.

Turkey refused to accept him, insisting he was a Greek, and it took Greece a long time to issue him a passport. The 1935 seamen survey noted that in New Orleans consuls of many South American countries "particularly in cases of colored seamen, will not investigate [nationality]… unless birth certificates are produced by us, which are rarely in our possession, so that we are at a standstill in effecting their deportation." Ross suggested deeming "malafide" all "seamen of uncertain nationality whom it would be impossible to deport (Hondurans, Panamanians, Russians, Scandinavians absent from their country for seven years, British subjects from Canada, Australia, South Africa etc. with no domicile in those countries)."[192] This is just the most straightforward example of the immigration service using statelessness as a reason to reduce rather than expand the rights of these already-vulnerable seamen. The previous year, the immigration service opposed allowing seamen to appeal "malafide" determinations by immigration inspectors on the grounds that this would lead to ships sailing off without them and leaving them stranded in the U.S. without passports.[193] When the immigration service could not get a passport for a sailor, it frequently just held him in detention for months. This happened in the case of Frank Watson, who came to the U.S. from British West Africa in 1917 and worked as a seaman (waiter) on various American ships until 1927. When he was first arrested for overstaying in 1931, he was released when the immigration service could not secure him a passport from the British authorities and therefore could not deport him. He was arrested again in 1936, while working for the Federal Theater project in Harlem, and detained at Ellis Island for fourteen weeks, though there was no reason to think it would be any easier to get him his passport.[194]

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[192] T.M. Ross report, Oct. 7, 1935, page 5, INS file 55854/370.

[193] Statement of E.J. Shaughnessy, Deputy Commissioner of Immigration, *Hearings Before the Committee on Immigration of the U.S. Senate, 73rd Congress, Second Session, on S.868 A Bill to Provide for the Deportation of Alien Seamen,* April 18, 1934, 39-40, 43-4.

[194] Frank Watson case file, Box 50, ACPFB papers.

In some cases, advocates used statelessness to their advantage, rallying opposition by pointing out the absurdity of some of the deportation attempts and trying to use the complicated passport acquisition or renewal process to their advantage. The case of Dimitri Camenos captures this well. Camenos was born in Rumania in 1901 to Greek-orthodox Turkish parents. He signed off his ship in the United States in 1925, married a Hungarian immigrant, and sailed on American ships until he was arrested in 1936 for overstaying. He was ordered to be deported to Greece. The American Committee for the Protection of the Foreign Born challenged this deportation in court, in the press, and with the immigration service, declaring it would be a "flagrant injustice" to send Camenos to someplace he had never been and where he knew nobody.[195] The ACPFB managed to gain several stays of deportation, during which time Camenos's wife naturalized and had a child, and proved to the immigration service that Camenos was morally worthy enough to qualify for "preexamination," whereby he was given a chance to go to Canada to get the first preference immigration visa his wife petitioned for on his behalf and was assured readmission to the United States as a legal permanent resident. (After submitting his paperwork, including an "affidavit in lieu of passport" because neither Romania nor Turkey would issue him a passport, the American consul in Montreal took a long time approving his application, probably because the quotas for both of those countries were small and oversubscribed.) [196]

When immigration officials increasingly turned to reports from public relief institutions to identify deserters, social workers and lawyers disagreed as to how to handle cases of deserting

[195] Letter of Abner Green, March 23, 1937, Camenos case file, Box 26, ACPFB papers.

[196] This "preexamination" program to adjust the status of those illegally in the United States who would be eligible for non-quota or preference quota visas by virtue of their family relationship to American citizens began in 1935. In 1940 briefly suspended the program so immigrants were sent to Cuba instead.
Under the 1924 immigration law, husbands of American citizens were not entitled to non-quota status, but only to first preference. (Wives of American citizens were entitled to nonquota status).

sailors. As mentioned earlier, Vassiliades's case was on the list of "hardship cases" whose deportations had been stayed by the Immigration Service under Perkins; in 1936, Congress requested reports about the cases and the INS turned to social workers for help.[197] While immigration service personnel collected police and relief reports and summoned immigrants for further hearings, Edith Terry Bremer, long-time leader of the YWCA's work with the foreign born, advised social workers to offer help to the communities and families of these immigrants lest they get "so frightened that they rush to engage lawyers." Bremer also advised social workers to confidentially "cooperate [with immigration inspectors] in securing the desired information as to record of self-maintenance along with the record of relief they are securing. A work record…property owned, bank accounts are the positive factors which will illumine the total facts."[198] [emphasis in original]. The Y, in other words, helped the government with its check-up in order to try and insure that families—even those on relief—were kept intact and that as many of the hardship cases as possible remained on the "stayed" list. Kyra Malkovsky, the social worker who investigated Vassiliades in 1936, mentioned that he "worked at different odd jobs" and "would be capable of holding regular employment," but certainly did not emphasize the positive, instead focusing on, as mentioned earlier, rumors of past sexual immorality and his cleverness at outwitting the immigration service, most recently telling an inspector he was on relief for less time than was accurate.[199] When threatened with deportation Vassiliades did

[197] For the context of this Congressional resolution see Mary Ann Thatcher, *Immigrants and the 1930s: Ethnicity and Alienage in Depression and On-Coming War* (New York: Garland, 1990) chapter 6.

[198] Strictly Confidential Bulletin XVII—Status of Stayed Deportation Cases, September 24, 1936, Folder 5, Box 524, Subseries B, Series IV, Record Group 6, YWCA of the U.S.A. Records, Sophia Smith Collection, Smith College, Northampton, Mass. [Hereafter YWCA papers]

[199] Bremer's stance was similar to that of many social workers in the Northeast and the Midwest who worked to prevent or at least moderate immigration officials' investigation of relief rolls. Clearly, some social workers even in liberal New York, Kyra Malkovsky among them, did not adhere to Bremer's direction and sent the immigration service negative reports regarding those they thought deserved to be deported, like deserting seamen. This was a role

engage a lawyer—Carol Weiss King of the ACPFB—who filed a writ of habeas corpus in federal court and contacted Malkovsky. The ACPFB wrote mainstream newspapers to publicize the case and promoted a petition and letter writing campaign in the Greek-American community. Bremer quickly wrote MacCormack's successor, James Houghteling, to assure him that the Y had "nothing to do" with the court case and publicity, but also forwarded more positive home-visit reports about Vassiliades and "expressed our hope that this man may be granted a further stay… so that he can care for his American citizen family."[200] Houghteling believed that the ACPFB had "engineered the reversal of the social service report," had fed inaccurate "sob stories" to the media, and was deliberately trying to "browbeat" the immigration service. He talked to Bremer and claimed that she agreed that the immigration service "would be quite right in proceeding with the prompt deportation of Vassiliades" in the name of preventing future "illegitimate agitation" in deportation cases.[201]

Another conflict between social workers and the ACPFB arose in the case of Walter Saupe, a 19-year old seaman (coal passer or trimmer) from Penig. When the Second Engineer and Nazi organizer on his ship told him that he would be sent to a concentration camp for refusing to

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that many more social workers played in the southwest to facilitate the deportation of Mexicans. (On this issue, see Cybelle Fox, *Three World of Relief: Race, Immigration and the American Welfare State from the Progressive Era to the New Deal* (Princeton: Princeton University Press, 2012), chapter 6). Kyra Malkovsky was one of the growing number of first-and second-generation European case workers employed by the Y.W.C.A. She was born in Minsk, was a volunteer nurse in St. Petersburg during World War I, and came to the United States in 1917. After five years as an employee of the Russian embassy in New York, she began a long career as a social worker with the Y's International Institute of New York City. She also was co-founder in 1925 of the Children's Welfare Society, and worked for Church World Service and the Tolstoy Foundation (which worked with Russian refugees) in Austria, Rome, Italy, and the United States after WWII. Though she specialized in working with Russians, at the time she reported on the Vassiliades family, she was working with immigrants of all nationalities. The only indication I could find of her sense of her role in cases like his was a general statement avoiding any responsibility: "For the past year or two the Immigration Service has changed its policy somewhat and has brought pressure on them ["stayed deportation cases"] to leave the country voluntarily or else be deported." (1939 Advisory Service Department Report, Box 2, folder 8, Kyra Malkovsky Papers, Immigration History Research Center, University of Minnesota.)

[200] Letter of Bremer to Houghteling, July 8 1938, INS file 55805/154.

[201] Houghteling memorandums of October 3, 1938 and September 29, 1938, INS file 55805/154.

salute the swastika with "Heil Hitler," Saupe deserted his ship in New York in 1935. The immigration inspector who reviewed his case thought that Saupe's "political opinion is no justification for violating the immigration law," and ordered him deported to Germany. The chairman of the Board of Review came to the same conclusion but for opposite reasons: Saupe had testified that he was "not a member of any political organization in Germany prior to his departure" so he could not be a political refugee. Both the American Committee for the Protection of the Foreign Born and the National Council of Jewish Women took up his case. The ACPFB strategy was to make a case for Saupe as a "political" by pointing to *labor* conflicts on the ship: ILD lawyer Irving Schwab raised the point that the Second Engineer also threatened to beat him up if he did not join the Nazi "Labor Front," which was required to keep a job sailing on Hamburg-America Line ships.[202] It also publicized the Saupe case, which was written up in several newspapers and magazines; the *People's Press* stressed that "back in Germany, from the age of 12, he had been in progressive labor groups."[203] This story and others based on ACPFB press releases emphasized what it perceived as collusion between the German authorities, the pro-Nazi German-American press, and the U.S. immigration service in a "dragnet for anti-Nazis": the German Consulate published a notice requesting information about Saupe in the *Deutche Staats-Zeitung* and three days later, while working as a busboy in a restaurant, he was arrested by an immigration inspector without a warrant. [204] "To us," wrote Wallace Spradling of the ACPFB, "this indicates a pretty close tie-up between the Labor Department and the Nazi

[202] The comments by the inspector and the chairman and Schwab's brief are in Saupe's INS file, 55911/520.

[203] "U.S. Orders Boy Deported After Nazi Spies Find Him," *People's Press,* March 7, 1938, 5. (clipping in Saupe's ACPFB case file, Box 48, ACPFB papers.)

[204] Lawrence Cane, "Uncle Sam, Snatcher for Hitler," unmarked newspaper clipping and Press Release, May 22, 1936, "Walter Saupe Ordered Deported," both in ACPFB Saupe case file, Box 48.

Movement."[205] The NCJW opposed the ACPFB strategy. In the words of the NCJW's Augusta Mayerson:

> The American Committee for the Protection of the Foreign Born came in with this young man and were going to fight the whole matter on the theory that America was the land of asylum. A young lawyer, Irving Schwab, with whom I had a very lengthy conversation, insisted that they would pursue the matter along that line rather than be practical and make application for voluntary departure. I had to inform him that I still felt that it was more practical and better for him to request a voluntary departure rather than fight the government officials.[206]

The NCJW and its allies also asserted that the ACPFB's publicity pushed the immigration service to insist on Saupe's deportation, getting "the boy into a worse jam than he already was," and the German consulate to refuse to issue him documents he needed to go to another country, the consular official in charge "literally yelling [at Saupe] 'you will go back to Germany you cannot escape that.'"[207] The ACPFB countered that this was putting the cart before the horse and blaming anti-fascists for fascism; it insisted that media attention was crucial to staying deportation. Louis Adamic, who wrote a piece in *The Nation* about Saupe based on one of the ACPFB releases, was adamant: "If Saupe will be deported, it will be because of the law under which his case comes. The purpose of my article was to fight that law."[208] In the end, though, it was the NCJW that secured Saupe a certificate of nationality for temporary travel approved by the State Department, that paid for Saupe's trip to Cuba in the fall of 1936, and that got him the

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[205] Spradling to Frank Bohn, Emergency Committee to Aid German Refugees, February 19, 1936, ACPFB Saupe file.

[206] Augusta Myerson's views are in Saupe's NCJW case file, Box 4, Series II: New York Immigration files, 1920-1938, National Council for Jewish Women, Department of Service for the Foreign Born Records, Yeshiva University Special Collections.

[207] Letter from Katherine Newborg to Louis Adamic, ACPFB Saupe file; Memo from Augusta Mayerson to Cecelia Razovsky, June 16, 1936, Saupe's INS file, 55911/520.

[208] Adamic's statement is in his June 7, 1936 letter to the ACPFB in its Saupe case file, Box 48, ACPFB papers. Adamic's article on Saupe was called "Shall we send them back to Hitler" and was published in *The Nation* on March 25, 1936, 377-8. A copy of this article is in Saupe INS immigration file.

affidavits he needed to secure a visa there to re-enter the United States as a permanent resident.[209] There was also disagreement about the disposition of bond money, used to bail Saupe out of detention during his deportation proceedings, that was returned when Saupe left for Cuba. The money had originally been raised by the ACPFB, which received contributions from the ACLU and the International Labor Defense. These organizations wanted the money back—to put to use in further defense campaigns. The NCJW, which took credit for Saupe's departure, wanted to use the money to set up a bank account for Saupe to facilitate his trip to Cuba and for his use upon his re-entry to the United States.

The Vassiliades and Saupe cases reveal a great deal about the way advocates handled deportation and asylum cases in the 1930s. The YWCA and NCJW's caution regarding media attention was of a piece with that of other social workers and voluntary organizations working with poor European immigrants in the 1930s. As other historians have noted, in a political environment of nativism and restrictionism, these social workers continued to support immigrants but believed the best way to help them was inconspicuously and in close collaboration with more liberal executive-branch government officials.[210] In this they clashed with leftist groups like the Jewish Labor Committee and the ACPFB who mobilized highly publicized protests and congressional lobbying campaigns. The divide, however, went beyond this well documented public/private dichotomy and had important implications for overstaying

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[209] "Cuba is the most liberal of all nearby countries" for "aliens who have come to the United States illegally and who are now anxious to straighten out their status." *Interpreter Releases,* XVII.19, May 8, 1940, 148.

[210] Regarding the opposition of Jewish leaders and voluntary organizations to publicity see chapter 2 of Stephen Porter, "Defining Public Responsibility in a Global Age: Refugees, NGOs and the American State" (Ph.D. dissertation, University of Chicago, 2009). The historian David Wyman documented that "the strategy of muting the refugee issue" and "to discourage newspapers from reporting" on it was adhered to by most liberal groups "including the American Friends Service Committee, the YWCA, the American Committee for Christian Refugees and the Foreign Language Information Service." David Wyman, *Paper Walls; America and the Refugee Crisis, 1939-1941* (New York: Pantheon, 1968) 23-4.

sailors. Groups like the Y and the NCJW did not challenge the immigration service in court, knowing how much officials resented habeas corpus suits, especially if, as Houghteling complained, the suits were used "as a basis for bargaining."[211] The non-adversarial stance of the social workers and other liberal groups meant that, as Edith Lowenstein lamented years later, cases of communists dominated deportation litigation, and "influenced the attitude of the courts towards immigration."[212] The divide also led to different experiences for impoverished seamen. Throughout the 1930s, the NCJW's New York branch tried to help overstaying Jewish sailors to adjust their status.[213] But if the sailors could not depart or find work, the NCJW and other Jewish agencies arranged to provide private relief for them, referring to their cases as "non-refugee illegals," to try to prevent their coming to the attention of the immigration service.[214] The ACPFB, on the other hand, handled more of the cases of already arrested and detained seamen and tried to turn their economic grievances and penalties for desertion into grounds for political asylum. Another good example of this is the case of Ervin Muhlmann, who, in the summer of 1936, wrote the ACPFB from immigration detention:

> If I get deported to Germany, I certainly will be sent to prison for deserting a German boat. They will take my passport away in Germany where there would

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[211] Memorandum from Houghteling to Mr. Brown, Sept. 29, 1938, Vassiliades INS file, 55805/154.

[212] Letter of Edith Lowenstein to Mr. Dearness [of the American Council for Nationalities Service], July 26 1968, Box 14, Interpreter Releases collection, IHRC Archives, University of Minnesota. Lowenstein thought the remedy was to have "more social agency cases of merit taken to court," adding that "immigration law is becoming increasingly technical and even in the most social-work minded [International] Institutes, legal assistance in these cases would be helpful." (23-24)

[213] Besides the aforementioned case of Alexander De Gonsler (see note 108), NCJW case files from the 1930s include the case of Edward Celenko (Austrian), who arrived in the United States in the 1920s, married an American citizen, and regularized his status through pre-examination. (Box 3, Series II: New York Immigration files, 1920-1938, National Council for Jewish Women, Department of Service for the Foreign Born Records, Yeshiva University Special Collections.)

[214] Memo from Cecilia Razovsky to Augusta Mayerson, December 29, 1939, regarding the provision of relief to a Latvian seaman who remained illegally in New York. [Papers of the National Refugee Service, RG248, MKM 13.23, Yivo Archives, Center for Jewish History, New York]

> not be any work for me because I am not a member of the Nazi party. There would be no further sense of my living. I couldn't find work in Antwerp or Rotterdam, not even getting a chance to go there so I beg you to use your influence in my favor. I am neither a Jew nor a communist but I would rather stay here…The only crime I committed is to jump the boat in order to find a new existence because I was a poor man.

The ACPFB, which took up Muhlmann's case, put out press releases calling him an "anti-Nazi refugee seaman" and demanding that he "be granted the right of asylum since he faces persecution if ever returned to Germany." "Only immediate protest," the ACPFB claimed, "can save this refugee from a Nazi concentration camp."[215]

Though many seamen who were not politically active appreciated the help of the ACPFB, there were others who resented it. An appreciative seaman was Johannes Wiegel. He jumped ship in September 1936 and was reported to the immigration service by his uncle, who found Wiegel in bed with his wife. At his immigration hearing Wiegel said nothing about being a refugee; he wrote the ACPFB that he had been a member of a workers' sports club and was wanted by the Nazis for having helped its leader escape to Denmark. The ACPFB sued out a writ of habeas corpus; Judge Robert Patterson quickly dismissed it, claiming it was "hard to see why a writ" was taken out since Wiegel "had no fair grievance against the order of deportation."[216] Wiegel managed to reship to Jamaica and wrote the ACPFB that he was "grateful." "If you had not taken my case in your hands I would have deported to Germany long ago."[217] There were others who wrote quite different letters. Frederick Beijerbach is a case in point. During a hearing at Ellis Island on September 5, 1934, Beijerbach claimed he had been arrested by the Nazis "for

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[215] Muhlmann's letter and the press releases (dated July 3 and July 10, 1936) are in Muhlmann's ACPFB case file, Box 40, ACPFB papers.

[216] INS case file, 55935/335.

[217] Letters from Johannes Wiegel from Ellis Island, March 15, 1937 and from Kingston, May 25 1937, ACPFB Wiegel file, Box 50, ACPFB papers.

political reasons," though he also admitted applying for assistance from the German consul in Le Havre before coming to the United States. Less than two weeks after the hearing, Beijerbach wrote a letter to the commissioner at Ellis Island: "I am not a political refugee from Germany, by any means. Please see to it that I be sent back to Germany as soon as possible." Irving Schwab, who had been handling his appeal, accused a Lutheran social worker at Ellis Island of pressuring Beijerbach not to "cast any reflection upon the Hitler government by taking the position which he did" and "to induce him to return to Germany." Social worker Amanda Schneider countered that the attorney had asked Beijerbach to "be used as propaganda against the Hitler regime…to appear at meetings, and make a personal testimony" in exchange for admission to the United States. She claimed Beijerbach requested to be returned to Germany upon realizing he had become "a victim of a communist party." [218] The previous year Cecelia Razovsky had noted a tension between radical lawyers and social workers: International Labor Defense attorneys wanted the chance to freely consult with detainees on Ellis Island while social workers claimed that not all detainees wanted to be represented by ILD, which "took on cases of any aliens, even when the aliens are not members of heir political group and where there is no radical principle at stake, in order to strengthen their organization."[219]

Not surprisingly, there were many sailors that neither the communist lawyers nor the social workers managed to help. Hubert Wachtler deserted his ship in June 1933 and was deported to Germany two years later. When questioned by an immigration inspector in Miami, Wachtler said he deserted when he learned that, upon return to Germany, his ship would be "laid up." He elaborated: "I was on shore in Germany without work from the Depression for months

[218] Letters from Irving Schwab (December 17, 1934 and November 2, 1934) and Amanda Schneider (November 16 1934) are in Wiegel's INS case file, 55872/137.

[219] Complaint sent by Razovsky, July 12, 1933, Folder 17, Box 12, Max Kohler papers.

and months, then when I heard the ship would tie up over there I decided to stay here and look for work…I have done nothing wrong in this country and wish to be left stay [sic.] here so I can work."[220] The immigration shipped Wachtler from Jacksonville to New York to catch a boat to Germany. A member of the crew of the boat from Jacksonville alerted the International Labor Defense about his case. In early June 1935, Irving Schwab sued out of writ of habeas corpus to delay his deportation but the ACPFB did not see any way they could make a successful claim that he was a refugee or wage a mass campaign to raise the money needed to cover the legal costs or bail. Saupe reported to the ACPFB from Ellis Island that "the Lutheran social worker will not talk to him because he looks like a Jew. On the other hand, the Jewish social workers there will have nothing to do with his case because he is not a Jew."[221] The ACPFB encouraged Wachtler to appeal to other organizations such as the American League Against War and Fascism. Wachtler reported back that "the contacts I made have been negative. Yesterday I received a letter from Dr. [Stephen S.] Wise which tells me it can't be anything done [sic.] in that matter."[222] [Around this time Rabbi Wise was the "Young Turk among Jewish leaders," leading public protests against German fascism and anti-Semitism.[223]] Wachtler did have one champion, A.W. Partak, editor of the Florida *Deutches Echo*, who liked Wachtler when he met him in Miami and wanted to help him "because I know what happens to deportees in Wachtler's condition under the present regime. It makes no difference whether they are Jews or Gentiles."[224]

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[220] INS case file 55895/511

[221] Letters of Dwight Morgan to A.W. Partak and Gertrude Hunt, June 11 1935.

[222] Wachtler to Spradling, June 19, 1935.

[223] Saul Friedman, *No Haven for he Oppressed: United States Policies Toward Jewish Refugees* (Detroit: Wayne State University Press, 1973) 145.

[224] Partak to ACPFB, June 17, 1935

Just before Wachtler was deported, Partak, wrote the immigration service that though "it has always been my policy that any one in the U.S. illegally should be deported," "as conditions are now in Germany, this man Wachtler is quite liable to be given penalties far more than he deserves." Partak pointed out that in another case he was familiar with, not involving a seaman, "the individual is working, under bond, and is allowing a portion of his earnings to accumulate for leaving the country." Patrak believed that, given the danger seamen faced if deported to Germany, the same leniency should be afforded Wachtler.[225]

Since the immigration service learned about deserters from police files, advocates also received appeals for help from seamen who were criminals. The case of Antonio Marchese raised the question of when a convicted seaman's case seemed "political" enough to be taken on by the ACLU. Marchese was paid off his ship in 1926 and remained in the United States until he was deported to Italy in 1934. In the interim he worked at a New Jersey shipyard, where he was injured in 1933, and soon after arrested for passing counterfeit money. At that point, he was questioned by an immigration inspector, who refused to provide him with an interpreter. At a follow-up hearing, he claimed he had paid the head tax—which was the standard way that overstaying seamen regularized their status until 1929—and had the papers to prove it at his Hoboken boarding house. An immigration inspector found no such documents in his rooms, but did find "a number of books, papers, and pamphlets, all of a Communistic and anarchistic nature." When confronted with this, Marchese denied being "mixed up with any party at all." But he insisted that he was in the country legally and that he wanted "to fight deportation."[226] He wrote

[225] Partak to Perkins, June 18 1935, INS case file 55895/511.

[226] INS file for Marchese, 55834/55. For a discussion of the use of head tax receipts to facilitate naturalization, see Statement of W.J. Peterson, General Manager, Employment Service, Pacific-American Steamship Association, Deportation of Alien Seamen, Hearings Before the Committee on Immigration and Naturalization, House of Representatives, Sixty-Ninth Congress, First Session, January 21, 1926, 2-9.

to Roger Baldwin of the ACLU: "I am a radical and if I am deported to Italy I will lose many years of liberty or maybe something else, so I beg your help." A lawyer who went to Ellis Island and interviewed Marchese at Baldwin's request managed to get a promise that Marchese would be allowed to depart voluntarily if funds could be raised and a visa procured for travel to another country; the lawyer also suggested that Baldwin inquire with the Italian consulate "whether or not his story is true and whether or not he is wanted for anything in Italy." The immigration service also wrote Baldwin that Marchese served time for counterfeiting, though the crime was not reason for his deportation given that it occurred more than five years after he entered the country. With that and no further investigation, Baldwin decided that Marchese's "apparently not a civil liberties case," though Baldwin suggested that the lawyer "do something personally for the poor devil."[227]

Marchese's difficulty proving his legalized status reflected a shift in the rules regarding the naturalization of seamen. A law passed in 1929 required that those foreign seamen who wanted to naturalize had to provide proof of "lawful entry for permanent residence."[228] A 1935 law outright repealed the provision of the 1906 naturalization act allowing seamen who filed declarations of intention to be considered "citizens for the purposes of service and protection on American vessels."[229] So, by the mid 1930s, it was no longer possible for a deserter to pay the head tax, declare his intention to become a citizen, sail coastwise for three years, get a limited certificate of citizenship from a customs agent, and then naturalize. And though shipping

[227] Correspondence between Roger Baldwin and Albert Kane, June 23 and 29, 1934 , Volume 690, reel 106, ACLU papers.

[228] 45 Stat. 1512, Section 4, March 2, 1929.
At least one Indian seaman who naturalized in the early 1920s had his citizenship annulled after the *Bhagat Singh Thind* ruling that Indians were not white. The case of Jan Mohamed is mentioned in Balachandrian, 103.

[229] 49 Stat. 376.

commissioners still sometimes signed up deserters for coastwise trips, they frequently reported them to the immigration service. It is also true that in the late 1920s and 1930s, many deported European sailors had a harder time when they got back home. Though I cannot be sure, it is almost certain that Marchese faced jail time for desertion upon his return to Italy, not to mention possible additional punishments for his political beliefs. In the mid-1920s, Italy had one of the harsher laws on the books regarding desertion abroad, mandating prison for a year and more severe treatment depending on the circumstances.[230] For seamen who were "political,"—which typically meant they were active in unions—consequences could be severe. When Casimo Cafiero, formerly a member of the socialist Italian Seamen's Federation, returned to Italy as a seaman in 1925, he was arrested and was sentenced to six months in jail.[231] It is hard to know if Muhlmann, who managed to ship out elsewhere and avoid returning to Germany, would have been interned in a concentration camp as the ACPFB claimed. Wachtler's letters to the ACPFB from Dresden soon after he was deported indicate that he avoided this fate, at least in the short term. More ominously, when the immigration service tried to investigate the statements of the social worker regarding Beijerbach, his parents in Heidelberg said they had no knowledge of his whereabouts. As we shall see, whether or not punishment for desertion in the home country constituted persecution and how to prove this persecution would occur upon return were issues taken up by advocates and the courts more forthrightly in the post WWII period. In 1938, Roger Baldwin conceded that "some lawyers have taken advantage of that claim [of political persecution] in cases where there is no evidence to support it" and insisted on providing as much proof as possible in cases he brought to the attention of the immigration service. Perhaps to avoid

[230] For a list of penalties for dissertion in different countries in the mid 1920s, see Appendix A to Charles R. Clee, "Desertion and Freedom of the Seamen," 13 *International Labor Review* (1926), 832-844.

[231] Cafiero case file, Box 26, ACPFB papers.

such difficulties, and political concerns discussed in the next section, by the late 1930s the ACLU was referring all cases involving deserting seamen with persecution claims to the ACPFB.[232]

For much of the interwar period, immigration officials overlooked the fact that, for colonial seamen in particular, there was a connection between smuggling, poor conditions and pay on ships, and political activism. Port reports by seamen inspector Jeremiah Hurley and Congressional hearings on alien seamen did not consider that seamen were smugglers not only of goods and of people but of particular kinds of people and information, and especially anti-colonialist political literature. While pull factors—particularly the desire to work in the United States and evade restrictive immigration laws—were a refrain in immigration reports about immigrants entering in the guide seamen, push factors—particularly those associated with political conditions in home countries—remained unacknowledged. Hurley's 1927 report regarding the increase of smuggled seamen from Cape Verde to New Bedford, Massachusetts, for example, did not consider that Portuguese political changes—especially the ascendency of Antonio de Oliveira Salazar—may have contributed to this rise.[233] At this time the British were extremely worried that if Indian seamen deserted in American ports, radical activists would be hired in their place in order to travel to India and elsewhere around the empire undetected.[234] Boarding house operators and employment agents were found to be planting Indian revolutionaries, their literature, and their guns on British ships sailing out of New York in the

[232] Roger Baldwin to James Houghteling, October 10, 1938, reel 157, volume 1085, ACLU papers. Telegram from ACLU referring Albert Morwitz to the ACPFB regarding the case of Vincenzo Brunetti, Italian deserter and anti-fascist, who was denied voluntary departure and feared persecution if deported, May 27, 1938, reel 157, volume 1085. Jerome Britchey to the National Council of Civil Liberties, May 22, 1939, referring the case of stateless seaman Ludwig Hassler to the ACPFB, reel 168, volume 2069.

[233] Port of Boston Report, September 15, 1927, INS file 54654/139.

[234] Balachandran, 104.

early 1920s.[235] In most ports the immigration authorities did not have the manpower to make sure that Asian seamen didn't get off ships let alone to patrol the harbor to see who—like co-ethnic immigrant organizers—might visit their ships while in port.[236] Also, while Hurley and Furuseth's views of seamen as smugglers were echoed in mainstream media reports, sympathetic defenses of deserting seamen appeared in the black and ethnic press and among progressive and politically active lawyers in the 1920s, who were especially sensitive to the maltreatment of Indian and African seamen by white ship officers.[237] Right after World War I, anti-imperialist Ghadr party activists and their liberal American allies intervened when 39 Indian seamen were rounded up by immigration inspectors without warrants and with the help of local police and a railroad company detective, and then threatened with violence and jail if they refused to sign articles for a British ship. The seamen, according to their defenders, were "being shanghaied against their will and by lawless proceedings."[238]

The ACPFB took up the cases of colonial seamen who deserted in the 1920s, were picked up after the mid-1930s check-ups of police and relief records and coastwise vessels, and then were detained by the immigration service for long periods while passports were sought for their deportation. In 1936 the ACPFB handled the case of Albert St. Clair, a former seaman from

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[235] Vivek Bald, "Desertion and Sedition: Indian Seamen, Onshore Labor and Radicalism in New York and Detroit, 1919-1930," in *The Sun Never Sets: South Asian Migrants an Age of U.S. Power* (New York: New York University Press, 2013), 86.

[236] "Indian's leading communist, M.N. Roy, had developed an extensive and active scheme of using seamen to smuggle material—primarily propaganda literature printed in Europe—into India in 1923-1925." Jonathan Hyslop, "Guns, Drugs and Revolutionary Propaganda: Indian Sailors and smuggling in the 1920s," *South African Historical Journal* 61(4) 2009, 841. On communist organizing among Chinese and Japanese seamen see Josephine Fowler, *Japanese and Chinese Immigrant Activists: Organizing in American and International Communist Movements, 1919-1933* (New Brunswick: Rutgers University Press,) chapter 5.

[237] "Hold Six Indian Seamen Here for Alleged Mutiny," *Baltimore Afro-American*, August 1, 1925, A10 "Liberian Seamen Killed," *Baltimore Afro-American* Jan. 10, 1925, 1.

[238] Statement of Murray Bernays, INS file 54410/644. See also, in the same file, the letter to the Commissioner General from Agnes Smedley on behalf of Friends of Freedom for India, August 2, 1920.

Trinidad who worked for the WPA and had an American-born wife and children; the case of Cipriano Lucio, a seaman from the Dutch West Indies who had continued to sail on American ships for several years; and the case of Hassan Ali, an ex-seaman from Bengal and member of a Cafeteria Employees Union, who wanted to depart voluntarily.[239] Though some European sailors—like Saupe and Camenos and Vassiliades—were eventually able to overcome the misgivings of the immigration service about their illegal entry and immorality and secure their residency through pre-examination, Asians were denied this privilege before the World War II era. In 1935 the ACPFB supported the Filipino Seamen's Association protest against the ISU's barring of longtime sailors from union membership and employment; the ACPFB condemned the union measure and the legislation calling for the "return of unemployed Filipinos to the Philippine Islands" as "discrimination and persecution."[240] Citizenship requirements in Merchant Marine legislation lead to increased scrutiny of sailors claiming to be Puerto Rican; the ACPFB waged a long campaign on behalf of Raimundo Estrada, a Puerto Rican seaman who the immigration service insisted was Chilean and continuously detained and deported in 1936 and 1937. For the ACPFB, the Estrada case was typical of others who were imprisoned at Ellis Island and who the immigration service was too intent on deporting to investigate. Estrada was turned into a "number in the files of the Labor Department: no longer a human being, just a 'damned foreigner.'"[241]

As we shall see, by the 1930s and 1940s, anti-colonialist sentiment became more obvious among African and Asian seamen and the Communist Party would make headway among them

[239] Case file of Hassan Ali, Box 20; Case file of Albert St. Clair, box 48, and Letter from Cipriano Lucco, Box 2, all in the ACPFB papers.

[240] "Filipino Seamen's Association Protests Discharge of Filipino Seamen on the West Coast," ACPFB press release, July 15 1935, Box 8.

[241] Letter of Abner Green to Bruce Bliven, August 13, 1936, Raimunda Estrada case file, Box 31, ACPFB papers.

and among European sailors, particularly Greeks and Norwegians, in American ports. Already in 1928, the communist affiliated International Labor Defense was taking up cases like that of seamen Paul Zanetti "threatened with deportation to Italy because he made communistic propaganda on board the ship on which he was a fireman."[242] As we shall see in the next section, radical seamen from Europe fought to gain relief from deportation by asking for asylum. Though ACPFB press releases proclaimed victory when it helped gained Muhlmann voluntary departure, in cases involving labor activists, the ACPFB came to see departure as an "evasion" and insisted that "no application or suggestion of voluntary departure should be made."[243] Neither social workers nor the ACPFB saw asylum as a challenge to the immigration quotas.[244] But the ACPFB did see asylum as a way advance the cause of labor.[245]

Labor Radicals and Stranded Seamen in the 1930s

"Edward Corsi, formerly commissioner of Immigration of New York Harbor, has written a book about Ellis Island called *In the Shadow of Liberty*. To Otto Richter…and others held for deportation to Germany, this is more than a grim joke. For them Ellis Island is in the shadow of the swastika."
--Dwight Morgan, *The Foreign Born in the United State*s (New York: American Committee for the Protection of the Foreign Born, July 1936) 14.

In the 1930s hearings on the bill to further exclude foreign seamen were chaired by Representatives Martin Dies (D,TX) and Samuel Dickstein (D, NY) and started to take on a

[242] ILD deportation cases, vol. 360, reel 63, ACLU papers.

[243] Dwight Morgan to Robert Millikan, November 2, 1934, Saderquist Case file, ACPFB papers.

[244] When the ACLU sent Cecelia Razovsky the draft of a bill granting asylum to political refugees, she worried that it gave those subject to deportation non-quota status and opposed its introduction to Congress. Letter from Razovsky of the NCJW to Lucille Milner of the ACLU, May 31, 1935, Reel 117, vol. 781, ACLU papers.

[245] "We here make no brief for any lowering of the gates where immigration is concerned. It is our program...to fight discrimination against the foreign born….and to obtain the right of asylum," Letter from Abner Green of the ACPFB to Edward Keating, editor of *Labor,* a weekly newspaper of 15 railroad labor unions, August 28, 1936, Box 2, ACPFB collection.

different tone.[246] As we have seen, seamen were singled out for being "bad characters," especially "racketeers and criminals," and for draining relief coffers and taking jobs on shore from Americans.[247] But, increasingly, seamen were labeled subversives, particularly Communists. Andrew Furuseth wrote the House Committee on Un-American Affairs that "Communists have been devoting their attention to capturing the seamen for the purpose of using them as carriers…reminding them of the fact that the laws passed for their protection in the United States are disregarded…within the past week I was visited…by four members of the Communists' organization with the proposal that they should be admitted to our union."[248] To be sure, Furuseth and members of his International Seamen's Union [ISU] had railed against the I.W.W. for years, but they were now wary of the "good headway" among the unemployed, black and foreign seamen made by organizers of the newly formed Marine Workers Industrial Union [MWIU], an affiliate of the communist party.[249] [The MWIU deliberately promoted the interests of non-white and foreign seamen, demanding government unemployment relief, equal pay for

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[246] Both Congressmen were champions of investigations into "un-American activities." Dies used probes into Communism against the New Deal. Dickstein, who chaired the House Immigration Committee, was interested in investigating anti-Semitism and fascism and criticized Dies's focus on Communism. The Venona cables astoundingly revealed that, in 1938, Dickstein helped a Soviet agent get a visa and took money from the NKVD for information on pro-fascist groups in the U.S. The evidence suggests, however, that he was paid a lot of money but provided little, if any, documentary material. See chapter 7 of Allen Weinstein and Alexander Vassiliev, *The Haunted Wood: Soviet Espionage in America* (New York: Modern Library, 2000).

[247] Dies told Congress that "The thousands of aliens illegally entering the United States under the guide of seamen compete with the American workmen…The unemployment problem can never be solved so long as we permit foreigners to enter this country…The bill will not only help labor but it will promote law enforcement in the United States…Many of these aliens become racketeers and criminals." Congressional Record, 73rd Congress, 2nd Session, (1934) 78, pt. 4, 3738.

[248] Letter from Furuseth to John McCormack, January 15, 1935, as printed in Deportation of Alien Seamen, *Hearings before the Committee on Immigration and Naturalization*, House of Representatives, Seventy Fourth Congress, First Session, on H.R. 5380 and H.R. 2885, March 18 1935, 8-9.

[249] Investigation of Communist Propaganda, *Hearings Before a Special Committee to Investigate Communist Activities in the United State*s, House of Representatives, Seventy First Congress, Second Session, Pursuant to H. Res. 220, Part 6, Volume 1, New Orleans, November 17 1930, Testimony by seamen and longshoremen, pages 256 - 285, quote page 261.

equal work, and eligibility for all jobs and shore privileges regardless of race and nationality. Still, Furuseth overestimated the MWIU's recruitment abilities.[250]]

The shift in emphasis toward radicalism was visible as well in the treatment of seamen by immigration officials, local authorities, and seamen's missions beginning in late 1930. The New York police department's new Bureau of Criminal Alien Investigation, which was created to aid the federal immigration service catch criminals, began targeting "Red" seamen.[251] When, in December 1930, unemployed seamen affiliated with the MWIU handed out circulars at the Seamen's Church Institute in New York and threatened to picket if it did not turn its reading room into a shelter, managers of the Institute arranged for informants to monitor meetings of this and other radical seamen's groups—attended mostly by "men of foreign extraction with a few negroes among them"—and created a "debarment list" to keep "radicals" out of the Institute.[252] Before the Supreme Court gave him the authority to round-up overstaying seamen generally, Hoover's Labor Secretary, a man the MWIU referred to as "Deportation Doak," increased the number of immigration inspectors looking for radical seamen in the largest round-ups for foreigners that had occurred in years.[253] In January, February, and March of 1931, squads of

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[250] William Standard, *Merchant Seamen: A Short History of Their Struggles* (New York: International Publishers Co.,Inc., 1947) 57-65. Estimates of MWIU membership vary, but a good estimate places it at about 5000 in 1934. Nelson, 84. The ISU's black organizer, David Grange, and middle class black were somewhat successful, at least for a while and in some places, in their drive to keep black waterfront workers away from Communists. (Horne, 28-33.)

[251] John Walker Harrington, "City and Federal Authorities Join Forces to Weed Out those Illegally Here," *New York Herald Tribune*, March 1, 1931, A5.

[252]The Dec. 19, 1930 demands of the Unemployed Marine Workers Committee are in the folder Staff (SCI) Correspondence, Dec. 19 1930-November 10, 1934, Series 10, Seamen Church Institute Archives, Benjamin S. Rosenthal Library, Queens College. Reports on meetings beginning Dec. 19 1930 can be found in the same series, in folders J.J. Kelly –Correspondence April 7 1930-March 2 1940 and May 2 1935-Dec 18 1936. Employee J.J. Kelly was close with the NYPD and called "Old Slip" whenever there whenever he felt he needed them. By the following year, Reverend Archibald Mansfield, superintendent of the Institute, wrote "by under-cover men I am kept informed up to the last minute regarding communist propaganda and attacks not only on Seamen's Agencies but on ship owners and consulates " (Memo from Mansfield to Miss Buffington, October 20, 1932, folder: Mansfield—Correspondence—October 1 1932-April 9 1934, Series 10, SCI Archives).

[253] "Seamen Deported by Thousands," *Marine Workers Voice,* November 1932.

local police and federal inspectors raided seamen halls, boarding houses, and relief homes in and around Baltimore and New York City to arrest seamen.[254] Most raids were sanctioned or abetted by staff and managers of the homes. The procedure was for policemen and agents to enter in plainclothes, lock the doors, demand evidence of legal residence from those in attendance, and arrest those who could not provide this proof. Many of the seamen searched and blocked from leaving were American citizens, which in itself outraged civil libertarians, but evidence emerged that, at least in one instance, informants pointed out particular "troublemakers" for interrogation. On the night of February 14, 1931 a group of policemen and immigration agents raided a dance at the Finnish Workers' Education Association. The local secretary of the Finnish Whites, a Fascist organization, scanned hundreds of attendees and pointed out those seamen to be arrested.[255] Despite condemnation of interrogations and detentions without warrants by no less than Senator Wagner and Robert Oppenheimer, author of the Wickersham Report, Doak remained unmoved.[256] He claimed the seamen were criminals and communists; "the worse the aliens are, the louder that [Civil Liberties] crowd shouts."[257] These kinds of raids and tactics continued.[258]

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[254] "63 Aliens Held for Deportation in Hoboken Raid, " *New York Herald Tribune*, January 27, 1931, 3; "18 Alien Seamen Seized on Salvation Army Ship," New York Herald Tribune, Fen. 1, 1931, 19; "105 Aliens Seized at Seamen's Home, Examination of More Than 4000 Called 'Routine" Act in General Round-Up," New York Times, February 4, 1931, 3; , "25 Alien Seamen Taken In Raids Here Recently," Baltimore Sun, March 24, 1931, 11.

[255] "Finnish Fascist Called Spy," *New York Herald Tribune*, March 30, 1931, 9. See also "Memo on Alien Raids From the American Civil Liberties Union," March 3, 1931, folder 454, reel 80, American Civil Liberties Union Records, and letters regarding the raid in the ACLU folder, Box 11, Max Kohler papers. An enclosed letter from Captain McDermott of the New York Police Department to Robert Baldwin reports that "this raid was made with the cooperation of the Finnish Whites."

[256] Theodore Wallen, "Experts Declares Deportation of Aliens is Illegal," *New York Herald Tribune*, April 17, 1931, 16.

[257] Gardner Jackson, "Doak the Deportation Chief," *The Nation*, March 181931, 295

[258] Stranded Seamen Held a Menace Here, NYT, Nov 15, 1931, 32. Seamen's Home Raid Planned in Drive on Aliens, NYHerald Tribune, Nov 15 1931, 5. Seven Here Face Deportation to the West Indies, Baltimore Afro-American, July 30, 1932, 11.

In 1932 and 1933 the immigration service intervened in disputes between radical seamen and private relief homes. The Marine Workers Industrial Union led rowdy demonstrations at the Seamen's Church Institute, accusing it of restricting admission, charging too much for beds, baths, and meals, and of throwing seamen out if they did not accept offers to ship out, regardless of pay or condition. [259] Managers of the Institute urged a physical "counterattack" by seamen unsympathetic to the MWIU and told police not to arrest these seamen along with the protesters; Institute managers also contacted Doak about the possibility of deporting foreign seamen involved in the protests.[260] In the fall of 1932, unemployed Norwegian seamen similarly protested outside the Brooklyn Norwegian Seamen's Home, asking for better accommodations,[261] relief, and a rotary system of hiring. The seamen especially resented the connection between shipping companies and the seamen's home, whereby ships only hired men who stayed at the home and the home could evict those who refused to ship out for the Norwegian wage scale. Those leading the protests were arrested and deported by the immigration authorities.[262] After Roosevelt took office promising federal relief, protests at the seamen's homes administering relief grew more vehement. In May 1933, the MWIU led a sit-in

[259] Nelson, 94-5.

[260] Letter from George Zabriske to Mr. Trench, July 16 1932 and Letter from J.M. Wainwright to William Doak, October 21 1932, both in folder of Zabriske correspondence, Series 10, Seamen Church Institute Archives, Benjamin S. Rosenthal Library, Queens College.

[261] When a Seamen's Church Institute investigator visited the Norwegian home three years later, he found the food to be of poor quality and meager quantity and the lodgings run-down and lacking modern washrooms and recreational facilities, "depressing…colorless…but perhaps the Norwegians like it that way." The cook told him that the food was about as good as the seamen got aboard Norwegian ships and that accommodations were not any better in Norway. Report on visit to Norwegian Seamen's Church and Mission, Brooklyn, May 4, 1935, Box 15, folder: Federal Relief for Merchant Seamen in the Port of New York, 1934-36, Seamen Church Institute Archives.

[262] Gus Alexander, *Society's Stepchildren Fight Back: The Story of the Scandinavian Seamen in America*, pamphlet in Box 97, National Maritime Union Papers, Special Collections and University Archives, Rutgers University, New Jersey.

at the Y.M.C.A. Jane Street Mission protesting the eviction of seamen.[263] The immigration service initiated deportation hearings against sixteen seamen—mostly Finnish and Danish—arrested by the New York City Police department for disorderly conduct during the protest. The International Labor Defense [ILD], the Communist Party's legal defense organization for arrested labor activists, did not see these seamen as deserters who had overstayed their leave but as "militant workers fighting for the right to live." The ILD accused the immigration service of deporting them "solely" because of their activism and of acting as a "strike-breaking agency"; "the United States Department of Labor, under the leadership of Frances Perkins, is continuing the policies of the infamous Doak regime under a cloak of 'liberalism,'" charged John Ballam, New York ILD secretary in a letter to D.W. MacCormack, commissioner general of immigration. "We demand…an end to the use of this weapon against the working class," Ballam added. Dwight Morgan, of the American Committee for the Protection of the Foreign Born, echoed Ballam's call to give the detained seamen "unconditional freedom." In response, Perkins claimed that she did not instigate the arrest; MacCormack reminded Ballam that it was the Department's duty to enforce the deportation laws against those it learned were illegally in the country and insisted that his "attempts to remedy any injustices or irregular procedures on the part of agents of this Department " be taken as "good faith" efforts.[264]

As we have seen, moderate advocates, like Cecelia Razovsy of the NCJW and Edith Bremer of the YWCA, were more amenable to relying on the good faith of MacCormack and

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[263] "Barricades Rise in Relief Struggle," *Marine Workers Voice*, June 1933, 1.

[264] Letters from John J. Ballam to Frances Perkins May 13 and 19, 1933 and to D.W. MacCormack, June 9, 1933; telegram from Dwight Morgan to Frances Perkin, June 7, 1933; Letter from Frances Perkins to Ballam, May 13, 1933 and from D.W. MacCormack to John Ballam, June 5 1933, INS file 55842/525.
For a good history of the ILD defense campaigns in the interwar period see Rebecca Hill, *Men, Mobs and Law: Anti-Lynching and Labor Defense in U.S. Radical History* (Duke, 2008), chapter 5.

Labor Secretary Frances Perkins when it came to deportation matters.[265] This is because they did not take up the cause of communists and other radicals subject to deportation for ideological reasons. Throughout the decade they supported legislation that expanded the discretion of the Commissioner General to suspend deportation in cases when it would mean economic hardship for dependent family members but precluded this discretion in cases of involving radicals. Though Bremer expressed concern about mandatory deportation of alien communists, the YWCA's Board refused to even consider opposing it.[266] When put on the spot, Razovsky told Congress that she had not had many communist cases and that she was generally opposed to discretion in the handling of their cases.[267] In an internal report, Razovsky explicitly suggested that new legislation should "authorize the exercise of discretion in cases of persons of good character who…have near relatives, but specifically except from discretionary authority and thus leave deportation mandatory in cases of anarchists, communists, criminals, and the immoral classes."[268] Roger Baldwin of the ACLU was on the fence. He believed that Perkins would not round-up trade union leaders and striking workers for deportation and reassured Dwight Morgan of the ACPFB that "the Department of Labor will certainly not send these men [labor activists and communists] to countries where they will be subject to persecution" but instead grant them

[265] "We respect the integrity of the present Immigration and Naturalization Service….Certainly, we are convinced of the sincerity of purpose of the present Service." Statement of Edith Bremer, Hearings Before the Committee on Immigration and Naturalization of the House of Representatives, Seventy Fourth Congress, First Session on H.R. 6795, April 10, 1935, 135.

[266] On June 28, 1932 Mrs. Emerson wrote Ms. Hiller that it would be "impossible" to get YWCA's National Board to approve Bremer's suggestion to oppose the deportation of communists. Box 429, folder 1, Foreign Born, Deportation, 1926-1935, Record Group 6--Program, Series III—Public Advocacy, YWCA of the USA Records.

[267] Testimony of Cecelia Razovsky, National Council of Jewish Women, Hearings on H.R. 11172, House of Representatives Committee on Immigration and Naturalization, April 22, 1937, 31, 35.

[268] Report 12/14/36 page 11, folder 8, box 2, Cecelia Razovsky papers, AJHS, Center for Jewish History.

voluntary departure to other countries.[269] Still Baldwin was dismayed in 1935 when he learned of a case when MacCormack "violated his own declared policy" in this regard, deporting a communist to "fascist" Yugsolavia.[270] MacCormack justified his action in this case by claiming that he had no authority to stay deportation in communist cases and that legislation proposed to give him this authority would not pass Congress and would "prejudice the possibility of obtaining any remedial legislation whatsoever."[271] Frances Perkins, who was responsive to concerns by immigration advocates but wary of attacks from the right, sent mixed messages about radicals facing deportation. During a case involving the anarchist editor Vincent Ferrero, Perkins told a delegation of supporters "My advice is to have him disappear and we will not look for him."[272] But it was Perkins's handling of the San Francisco maritime strike that was most important. On the one hand, Perkins resisted sending in federal troops to interfere with the strike. On the other hand, she authorized the San Francisco immigration service to cooperate with local officials to "with promptness" "take into custody and deport any alien who…teaches communism."[273] As Carol Weiss King pointed out, this was "a misstatement of the law," which did not specifically mention communism as a deportable offense; in 1934, a communist was deportable only if it were shown that he taught or advocated the overthrow of the government by force or violence. King believed that Perkins's telegram "was a positive encouragement to the

[269] Baldwin wrote Allan Harper on March 8 1933 that he could "count on Frances Perkins to take precisely the stand we do regarding aliens" ACLU papers, reel 97, vol 608. Baldwin to Morgan, Feb 5 1935,

[270] Letter from Baldwin to MacCormack, April 25, 1935. (Case of Marihjan Frgagic), reel 115, volume 767, ACLU papers.

[271] Letter from MacComack to Baldwin November 9, 1934 and April 23, 1935; In a letter from Heywood Broun, May 19 1936, MacCormack explained: "There is a strong sentiment in Congress against the alien radical. Had we attempted to obtain discretion not to deport in such cases there would not have been the faintest possibility of our obtaining relief for the 98 percent of deserving cases."

[272] Quoted in *Anarchist Voices*, ed. Paul Avrich (Princeton: Princeton University Press, 1995) 148.

[273] "Merriam Radios Roosevelt," *New York Times*, July 19 1934, 2.

lawless treatment of radicals then underway" in San Francisco, where the California National Guard, San Francisco Police, and vigilantes attacked the headquarters of radical organizations and arrested hundreds of people found there or near these offices.[274] The ACPFB interpreted the Perkins telegram as "promis[ing] the full cooperation of the Labor Department in the use of deportation laws to break the strike."[275]

In 1934 and 1935, ACPFB anti-deportation campaigns on behalf of radicals were inseparable from seamen's economic protests. When Swedish-born Ray Carlson was arrested because an undercover immigration inspector reported on his organizing of a branch of the International Labor Defense and a relief administrator complained about "his communistic ideas" and his "inciting people to make unreasonable demands," an ACPFB-led cross-country tour on Carlson's behalf rallied foreign seamen in the process of organizing radical Scandinavian Seamen's Clubs.[276] On ACPFB flyers, pictures of Carlson were accompanied by "human interest" biographies "with the deportation case more or less in the background" so as to emphasize him as an individual and worker, "rather than just a factor" in an immigration case; pictures of Carlson's wife and American-born son were also included to raise "very sharply" the issue of breaking up his family.[277] Though this publicity was geared to gain sympathy for Carlson and humanize him, Carlson himself thought about his deportation in political terms,

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[274] "San Francisco," *Monthly Bulletin*, Vol. 3, No. 2 (July 1934), 8.

[275] ACPFB petition, February 4, 1935, reel 115, folder 768, ACLU papers.

[276] Letter from Matthaus Gerspacher, patrol inspector, to Spokane Immigration and Naturalization Service, May 26, 1933 and Letter from Avis Reid, Washington Emergency Relief Administration, to Spokane Immigration and Naturalization Service, May, 9, 1934, INS file 55844/155; Letter from Dwight Morgan to Ray Carlson, January 15, 1936, Carlson file, Box 26, ACPFB papers, Labadie Collection. Morgan wrote Carlson: "Last Friday night I spoke to about a hundred and fifty Scandinavian seamen in Brooklyn. The next day they were visited by the immigration service but they were sufficiently well prepared to chase them out before they could do any damage."

[277] Letter from Dwight Morgan to Robert Millikan ACPFB to Robert Moore, August 3, 1935, Saderquist file, Box 48, ACPFB papers, Labadie.

maintaining quite a detached view of his fate. After he was deported to Sweden, he wrote to the ACPFB to ask whether his plans to bring his family to Sweden would conflict with a plan the organization might have for his wife to naturalize and then petition for him to re-enter to the United States, a plan that would mean lengthy separation. "If you think that [a prolonged campaign for a right to return] will…help the defense of others, I am as ready as always to line up with you in your great struggle." The ACPFB wrote to Carlson that, given that the organization had other cases to use in its fight for asylum, "you need not make a sacrifice." On his homeward voyage via Hamburg, Carlson reported he spoke of his deportation with the passengers on board. "Ladies and Gentleman is my crime so bad that I can't be considered a human? Is it a crime to fight for justice?" he asked them. He also took the opportunity to "distribute reading material amongst the crew," who he claimed was dissatisfied with their work conditions and pay. "The propaganda goes on against Hitler mainly among Jews on the ship," he reported. [278] Carlson's attitude towards asylum and anti-fascism is akin to that of "the Red saint with the long view" in Irwin Shaw's story "Sailor off the Bremen": "It's not a personal thing."[279]

The ACPFB helped the ILD launch a similar campaign for Gust Saderquist, a former seaman and a Communist, who was arrested for deportation to Sweden after organizing an unemployment relief rally for unionized granite cutters in Maine. The ACPFB advised Saderquist's lawyers that, despite some precedents to the contrary, membership in the

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[278] Letter from Ray Carlson to the ACPFB July 13, July 16, and August 12 1935; Letter from Novick, Spradling, Morgan to Ray Carlson, September 10, 1935, Carlson file, Box 26, ACPFB papers.

[279] Irwin Shaw, "Sailor off the Bremen," *New Yorker*, Feb. 25, 1939, 15-18. Shaw's story was probably inspired by an assault after a swastika flag was torn down from the German liner "Bremen" at an anti-fascist demonstration on July 26, 1935, just around the time of Carlson's deportation. The trial of the "Bremen Six" –arrested at the demonstration—drew hundreds of radicals to a New York courtroom to listen to Vito Marcantonio decry German fascism.

Communist Party, without advocacy of the use of force or violence, was not sufficient grounds for deportation and should be contested in court; it also suggested asking for continuances and appeals "with the objective of dragging out the case" to "secure as much time as possible for the development of a mass campaign."[280] The ACPFB felt that the more protest aroused, the more likely the U. S. attorney would be to allow extensions. In arguing the case, "At all points we must use all our force to bring in the real issues of union activity." The message of the mass campaign would be that the deportation was an effort to suppress "the struggles of the workers" by depriving them of their most active and radical leaders. The ILD printed leaflets about the case in Swedish and English for workers clubs and trade unions and handed out "protest postcards," addressed to the immigration officials and the judge handling Saderquist's case, decrying "the tyrannous campaign of deportation and persecution of foreign born workers as an attack on all labor and a violation of the traditional right of asylum and of the democratic rights and liberties of the American people." [When the city council of Portland refused the defense committee an open air permit on the ground that speakers at the meeting would discuss a pending court case and be guilty of contempt, the American Civil Liberties Union offered to support an application for mandamus.] The ACPFB also publicized the case of the seaman Otto Sohkanen, who was arrested for deportation in San Francisco for "remaining longer" and being a member of the MWIU during the 1934 waterfront strike. As part of the defense campaign, George Andersen, an ILD lawyer who also served as counsel for Harry Bridges and many other sailors, made the argument that Sohkanen should be given asylum in the United States because he would be cruelly punished if deported to Finland, where he served in the Finnish Red army and took ships from Viborg to Leningrad in 1918. Andersen claimed that Sohkanen should be eligible to

[280] Letter from Dwight to Richard Moore, August 3, 1935; Letter from W.H. Spralding to Richard Moore, July 15 1935 and to Nathan Greenberg, July 23, 1935, Saderquist file, Box 48, ACPFB papers.

register as a political refugee under a law passed in 1934, the Palmisano bill discussed in the introduction to this dissertation, that was designed to help regularize the status of "white Russian refugees." This bill, however, was restricted to those deportable under the 1924 act and who arrived before July 1, 1933. Thus, the court found, it was not applicable to Sokhanen, who was being held for deportation under the 1918 immigration law aimed at anarchists and communists.[281]

In deportation cases involving radical German seamen, an asylum strategy was effective in rallying a broad spectrum of support, though the diverse array of advocates disagreed about how to handle these cases. This was true even as after the Communist Party abandoned its opposition to the New Deal in favor of an antifascist united front. Moreover, the more amenable the immigration service seemed to be to considering alternatives to deportation, the more important tactical differences seem to be among members of the anti-deportation advocacy coalition.

Perhaps the most famous anti-fascist sailor case was that of Otto Richter. After getting a beating from the police on the night of the Reichstag fire, Richter shipped out on North German Lloyd's "Esta," but threats from the pro-Hitler crew prompted him to desert in Seattle in August 1933. He was 19. During the San Francisco maritime strike the following year, Richter worked in a Workers International Relief soup kitchen and was picked up for vagrancy when vigilantes and police, tipped off by the Industrial Association of San Francisco, raided "communist hangouts." Richter was one of several hundred people arrested as "aliens" during the strike, most of whom proved to be citizens of the United States; the arrests were proof to the ACPFB of collusion between the immigration authorities and strike breakers.[282] Richter was first charged

[281] Case file of Otto Sohkanen, Box 50, ACPFB papers.

[282] The Workers International Relief was an organization established by Willi Munzenberg and the Soviet Communist party to support striking workers around the world. An immigration file list arrests during the San

only with "remaining longer." At his initial hearings at Angel Island in the summer of 1934, Richter requested the opportunity to reship foreign or to depart voluntarily for Russia and the immigration service agreed to allow him to do so. In later hearings, Richter asked instead that he be allowed to stay in the United States. The shift from voluntary departure to asylum represented evolving ACPFB policy. In the fall of 1934, Dwight Morgan of the ACPFB issued a pamphlet, originally written by the ILD, advising those interested in Richter's case that:

> Some have looked upon voluntary departure to the Soviet Union for workers held for deportation to fascist countries as a substitute for mass struggle against deportation. At the present time, with scores of workers being held for deportation to fascist countries, reliance on this policy would be ruinous, as it involves heavy expense leading to endless repetition of the same procedure, without the building of any real and permanent defense. Reactionary elements are seeking to prevent the foreign born workers from active struggle for higher wages and unemployment insurance with the threat of deportation, and by these means to divide the workers in order the more easily to suppress them. We, therefore, must organize the American workers into a mighty movement against the deportation and the persecution of the foreign born and for united struggle against the menace of fascism here, in the United States. The Palmisano Bill, passed in the last session of Congress, grants asylum in the United States to those supporters of the czarist regimes who have fled from the Soviet Union, but its wording is intended to exclude the political refugees from fascist countries. Thus the upholding of the "American tradition" [of asylum] would become, in effect, the upholding of czarism. Instead, then, of asking for 'voluntary departure' for those who would face persecution if returned to fascist countries, we must demand that they be recognized as political refugees and be granted the right to remain here.[283]

Francisco strike shows that Richter was charged with vagrancy on July 18 1934 [INS file 55875/902]. His name was mentioned in an article describing the raid in *The Daily News,* July 18, 1934, http://www.sfmuseum.org/hist4/maritime16.html [accessed September 10, 2010].
When questioned by immigration official on the day of his arrest Richter said: "This afternoon I was on Haight Street…About 25 or 30 men came in the house and began to demolish everything…I ran up the stairs, then the police arrived and there was some fighting done, then there were three policemen who told us to go home. There was a fat man there, not a policeman, and he told the policemen they should take us in their car to Fillmore Street. These policemen were in uniform and were willing to take us to Fillmore Street, but then two automobile loads of plain clothes police arrived and brought us to the City Prison." [Statement of Fritz Richter, July 18, 1934, S.F. No. 12030/24159, Folder: Richter Case, Box 43, Walter Gellhorn papers, Columbia University Rare Books and Manuscripts Library.]

[283] "Suggestions on Handling Deportation Cases," Folder: Richter Case, Box 43, Walter Gellhorn papers, Columbia University Rare Books and Manuscripts Library. The same pamphlet is in the ILD folder in box Box 19 of the ACPFB papers, Labadie.

In order to justify his claim that he would be persecuted if returned to Germany, Richter told the immigration service that he had been a member of he Young Pioneer corps of the Communist Party in Germany, though he denied being a member of the Communist Party in the United States. The response of the immigration service to Richter's shifting request was skeptical: "after an order of deportation has been issued against him on the charge of "remaining longer" he is trying to pose as a political refugee (Communist) in order to delay or prevent deportation…he is either one or the other and if a Communist should be deported as such and if he claims not to be should be given no more time from now on than would be considered reasonable in securing a passport and a visa to proceed to some other country."[284] Since Richter made no efforts to leave voluntarily, in late 1934 the immigration service booked him on a deportation train to Galveston to catch a boat to Germany. A writ of habeas corpus was sued out in federal court by attorneys George Andersen and Leo Gallagher. [Gallagher had just been kicked out of Germany for his efforts, as part of an ILD delegation, to assist in the legal defense of communist George Dimitroff, charged with the arson fire that destroyed the Reichstag building]. The federal judge quickly denied the writ. The ACPFB, which was leading the Richter defense campaign, began a publicity campaign to try to get the immigration service to stay his deportation. After learning of the case from Morgan, Roger Baldwin spoke with Commissioner General MacCormack, who agreed to extend the time for voluntary departure but not to interfere with new arrangements being made to send Richter on a deportation train to New York. Once Richter arrived in New York, Baldwin offered to help the ACPFB get him a visa and raise funds for his travel to the Soviet Union.[285] Baldwin opposed the ACPFB's plans to "take the case into the courts" again in

[284] Memo of D.C. Mead, immigrant inspector, October 29, 1934, to San Francisco District Director, S.F. file No. 12020/24159, Richter Case, Gellhorn papers.

[285] Baldwin to Dwight Morgan, Dec. 19, 1934, Reel 106, volume 690, ACLU papers.

New York; Baldwin wrote Morgan "you have little to justify it" and correctly predicted that another writ would "get turned down."[286]

Despite these objections, the ACLU did help with the court proceedings. The Communist attorney Joseph Brodsky petitioned for another writ in New York, claiming that the deportation of Richter violated the Constitution's prohibition against cruel and unusual punishment and "the spirit" of the Palmisano bill. The ACPFB submitted affidavits from Klara Deppe, an exiled teacher and writer, and Kurt Rosenfeld, a former member of the Reichstag, both of whom Baldwin was helping to adjust from visitor visas to permanent residence.[287] Both testified to their belief, based on the experiences of opponents of the Hitler regime that were known to them, that Richter would face imprisonment and possibly death if returned to Germany. Deppe testified regarding the death of Hans Kist, an antifascist deported from Canada who was brutally killed in a German concentration camp.[288] Just before Brodsky and Osmond Fraenkel of the New York Civil Liberties Committee argued for the writ in court, other ACLU affiliated attorneys, Charles Recht, Samuel Rosensohn and Hollingsworth Wood, submitted an amicus brief in support of the writ on behalf of several clergyman including Francis McConnell, John Haynes Holmes, Stephen Wise, Bradford Young, Guy Emery Shipler, and William Spafford. The brief argued that asylum was a natural right traceable from antiquity to present day United States, that its abridgement by immigration law was a violation of the 9th amendment to the Constitution ("the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people"), and that a limitation on returning political refugees should be read into immigration

[286] Baldwin to Morgan, January 29, 1935, Reel 115, volume 767, ACLU papers.

[287] Memorandum Concerning the Application of Klara Deppe for change of status, May 8, 1935 and Memorandum concerning the Application of Dr. and Mrs. Kurt Rosenfeld for change of status, May 29, 1935, both in volume 767, Reel 115.

[288] Copies of the Rosenfeld and Deppe affidavits are in Richter's ACPFB case file, box 47, Labadie collection.

laws just as it has been read into extradition treaties. The brief said:

> A person seeking asylum has the right of protection of humanity. The political rights of sovereignty are circumscribed by those considerations of humanity, of which the principle of sanctuary is a part. Especially in our country, where the judiciary is the arbiter and the interpreter of the powers of the State, it is proper for the judiciary to transcend the political-historic concepts of statecraft in their relation to the primary humanitarian concepts.[289]

Judge Alfred Coxe of the Southern District of New York disagreed; he dismissed the writ arguing that "It is for Congress to say what aliens may remain in the United States and the courts have no authority…interpolate into statutes something entirely foreign to their plain meaning."[290] The ACPFB promptly appealed to the Circuit Court and convened a meeting of interested lawyers to consider how to move forward.

Despite it being contrary to Labor Department policy to allow for bail while deportation cases were pending in court, the immigration service agreed to Richter's release. The U.S. attorney agreed to an adjournment of court proceedings of several months, from the spring to the fall of 1935. Advocates responded differently to these concessions. The ILD lawyers wanted to push for asylum, while others did not want to jeopardize the government's liberality. Walter Gellhorn, an administrative law professor at Columbia University who helped write the ACLU asylum bill discussed in the introduction and who would soon go to work for Social Security Board, was "persuaded that we really have no sound legal argument of any description." The "soundest of unsound approaches" to his mind was to differentiate between economic immigrants and political refugees. He suggested arguing that the immigration laws were meant to restrict admission "of persons who came primarily to participate in its economic life" so "that

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[289] Memorandum in *United States of American ex. rel. Kurt Karl Otto Walther, alias Fritz or Otto Richter, relater vs. Commissioner of Immigration, Ellis Island, New York, respondent,* 19, Otto Richter case file, Box 47, ACPFB papers.

[290] Memorandum on writ of habeas corpus, March 30, 1935, Folder: Richter Case, Box 43, Walter Gellhorn papers.

there should not be too great a diffusion of our economic advantages," but did not imply "rejection of the older policy of giving asylum to persons subject to political persecution" whose "number has always been small" and "character and ability have usually been much above the average." He believed that the brief should emphasize precedents like the *Holy Trinity* decision (discussed in the previous chapter) that recognized the judicial power to interpret statutes since "the sole chance of success in a case like Richter's is to find a sympathetic judge who will interpret an exception." He also suggested, echoing Baldwin's earlier admonition, keeping the case out of court. Gellhorn believed that the U.S. Attorney had consented to postponements of the argument on appeal "apparently in order to permit the possibility of some executive action favorable to the alien." "Our chances of favorable administrative action will be bettered if there aren't a number of judicial pronouncements against us and I'm terribly afraid that there won't be any for us," Gelhorn wrote.[291] But the ACPFB and other attorneys wanted to fight in court and continue a publicity campaign emphasizing asylum as a worker's right. Charles Recht reiterated the argument of the amicus brief in pamphlet form for a mass audience. The pamphlet's forward explained that right of asylum "is not of mere academic interest in our day, but of deep concern to all believers in democratic institutions, and in particular to the disenfranchised workers who more and more often find themselves compelled to invoke that right." Recht wrote about the "privilege of voluntary departure" from the perspective of a "'Red'" worker: "as a rule he has been arrested in connection with organized protests at relief stations or at unemployment meetings. When taken into custody he is already destitute. He remains in prison a number of months and his health becomes affected. Added to this is the prospect that the pauperized individual is to be transshipped to some other country whose language and habits are strange to

[291] Gellhorn to Charles Recht, April 27, 1935 and Gellhorn to Thomas Eliot December 21, 1935, Richter case, Gellhorn papers.

him and where he has no friends or relatives and where conditions of employment for him may not be better than they are in the U.S." He added that, in practice, certification by the U.S. government that a deportee is a communist "is hardly a recommendation which would induce an unrelated government" to welcome him. [292]

In late 1935 Morgan wrote Baldwin for help interceding with the immigration authorities, but insisted on the cancelation of the warrant of deportation rather than voluntary departure. Baldwin reported back that cancelation was impossible and further extensions of time before deportation would not be granted "where the aliens conducted activities or agitation which would be likely to bring them into public notice."[293] Baldwin wanted to keep the case quiet and to rely on discussion with the immigration service. His approach attests to the fact that, even at the height of the popular front, when he was most committed to defending the agitation of militant workers and to civil liberties as a tool of labor, Baldwin sought out government officials and distinguished between the suppression of economic and political rights.[294] He suggested that deportation might be stayed if the ACPFB secured precise information regarding Germany's laws criminalizing membership in the Communist Party.[295] Gellhorn sent an affidavit on this topic by Richard Littauer, a German lawyer, to the lawyers handling Richter's appeal.[296] Gellhorn also spoke to a Labor Department "insider" about the best way to approach the

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[292] Charles Recht, *The Right of Asylum* (New York: Social Economic Foundation, Inc. 1935), 2, 31-33,

[293] Morgan to Baldwin, October 29, 1935 and Baldwin to Morgan, November 5, 1935, volume 768, reel 115, ACLU archives.

[294] For a good discussion of Baldwin's outlook at this time see chapter 16 of Robert C. Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union* (New York: Columbia University Press, 2000).

[295] Baldwin to Morgan, Nov. 12, 1935, volume 768, reel 115, ACLU archives.

[296] It covered statutes outlawing Communist activity and excluding former communists from economic and social life and the powers of the police to detain communists, and regulations concerning German citizens coming back from foreign countries.

immigration authorities.[297] In January 1936, Gellhorn informed the immigration authorities that Richter would drop his appeal if given voluntary departure with the caveat that "The ACPFB indicated that…they in no way acquiesce in the Department of Labor's ruling that Richter is deportable… [since the ruling is] opposed…to the right of asylum." Gellhorn also assured the authorities that "nothing will be done…for purposes of delay."[298] Despite this, four months later, Baldwin complained that the ACPFB "takes the position that the right of asylum here takes precedence over voluntary departure and has, therefore, declined to make any arrangements to send Richter to some other country, although they would be able to do so."[299]

Indeed, during the spring and summer of 1936, the ACPFB engaged in another mass action campaign, focusing especially on newspaper publicity, letter writing campaigns and talks and radio shows featuring Richter and his supporters. Richter had married an American citizen during his months out on bail, but given the timing of his marriage and his radical background, the immigration service refused to consider him eligible for a stay of deportation on grounds of hardship and family separation.[300] On the day Richter was to surrender to the immigration authorities at Ellis Island for deportation, the ACPFB organized a protest march from its headquarters down Broadway to South Ferry; Richter and his wife marched in front wearing a poster-board asking for asylum (see figure 4.2, below).

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[297] Gellhorn to Alexander E. Racolin, December 16, 1935.

[298] Gellhorn to Gerard D. Reilly, January 21, 1936.

[299] Baldwin to Florence Bayard Cane, May 20, 1936, reel 129, vol 873, ACLU papers.

[300] Letter from W.W. Brown to Roger Baldwin, May 18 1936, reel 129, vol 873, ACLU papers. In the spring of 1936 Congressman Dickstein proposed a bill mandating the deportation of aliens who marry American citizens in order to obtain admission to the United States. The bill as passed in the spring of 1937 (50 Stat. at large 164) would not have applied to Richter because he did not marry in order to procure a visa. But passage of this bill is testament to the wariness at this time of policymakers and the INS regarding marriages of convenience. (see *Legislative Bulletin*, Feb. 19, 1937, *Interpreter Releases*, XIV No. 6.)

Figure 4.2, Photo of Otto Richter and his wife, *Forward* (Yiddish), July 14, 1936.

After surrendering to the authorities, Richter began a hunger strike while supporters rallied at Union Square listening to speakers representing the International Ladies Garment Workers Union, the American Student Union, and the Socialist Party, among others. Richter refused to eat until assured he would not be deported to Germany; he was taken to the hospital by the immigration authorities on day 14 of his strike and released on bail two weeks later. The ACPFB attributed his release to "nation-wide public protest" and "innumerable" telegrams from labor and fraternal organizations. It was this pressure, the ACPFB claimed, not the Department of Labor's inherent liberality, that was keeping Richter in the U.S. Once Richter was out on bail, even as it sought a visa so he could leave the country, the ACPFB continued its campaign. In response to an editorial accusing Richter of forging a passport and wanting to overthrow the U.S. government, the ACPFB filed a libel suit against the Hearst-owned newspaper chain that owned the paper that published it. For the ACPFB, this was further proof of Hearst's nefarious influence

on immigration and labor politics; Hearst papers spurred public opinion against striking seamen in 1934 and against asylum in 1936. The ACPFB also argued that Richter should be granted an additional stay of deportation to enable him to prosecute the libel suit. [301] In early July, Cecelia Razovsky of the NCJW and Gerhart Seger of the Deutch-Amerikanischer Kultur-Verband were instrumental in securing Richter the possibility of temporary admission to Belgium. The plan was for Richter to secure a visa in Antwerp to return to the United States to rejoin his wife. Richter asked the ACPFB whether he should agree to this; Morgan wrote him that "while this is not the best arrangement in the world, it is perhaps the best that can be made under the circumstances."[302] A month later the issue was moot because the "Belgium minister of justice changed his mind."[303] Although Seger did not report the reason for this, it is probable the Belgian authorities rightfully worried that Richter's radical background would have made it difficult for him to secure a visa to the United States or elsewhere within the six months allotted. In late summer the ACPFB managed to get Richter permission to go to Mexico. It was against policy to allow voluntary departure to contiguous territory; that Richter was allowed to attests to the desire of the immigration authorities to be rid of him. The ACPFB was determined to have the last word. It put out a press release announcing that Richter and his wife crossed the border on October 28, 1936, the 50th anniversary of the dedication of the statue of liberty. Richter and his supporters spent the next two years appealing to Perkins for permission to re-enter the United

[301] Information about the ACPFB's spring and summer 1936 publicity campaign, poster-board protest, hunger strike, and libel suit comes from the Otto Richter files, box 47, ACPFB Papers. The editorial piece condemning Richter was entitled "Right of Asylum," and ran in the *New York American* on July 9, 1936. The article distinguished between refugees of the past who "came to build" and contemporary refugees who "came to destroy."

[302] Letter from Morgan to Richter, July 3 1936, 874, reel 129, ACLU papers

[303] Letter from Gerhart Seger to ACPFB, August 17, 1936, Box 2, ACPFB papers.

States, to no avail. [304]

While the ACPFB was campaigning against Richter's deportation, Carol Weiss King was working on an article about seamen strikes. In it, King defined desertion as a voluntary abandonment of a ship.[305] In a sense, it is akin to voluntary departure. She argued that a sailor's ability to desert or depart is not nearly as powerful as the right to protest and stay (as in a "sit down strike" and "asylum"). As we have seen, the policy of voluntary departure rankled some advocates since it seemed to recognize deportation as unjust while evading all responsibility for aliens, especially since advocates had to arrange for visas and cover travel costs. To change conditions on a ship would require mass desertion by an entire crew; what was needed to uphold political and religious liberty in the United States was an asylum policy for refugees. [306] This the United States emphatically did not have. The ACPFB supported legislation, sponsored by Congressmen Vito Marcantonio and Emanuel Celler of New York, that would give asylum to those political and religious who entered illegally.[307] Neither proposed bill got very far in Congress. By 1938, when two communist seamen, one who had been in a concentration camp and the other who had escaped Nazi pursuit, deserted in San Francisco, were arrested for

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[304] Richter to the ACPFB, May 4, 1937; Letter from Edward Shaughnessy, Acting Commissioner of Immigration to Bertha Richter, August 26, 1937; Letter from Dwight Morgan to Frances Perkins, April 1, 1938; Letter from Frances Perkins to Oswald Garrison Villard, September 17 1938, ACPFB Richter case files.

[305] "Rights of Seamen to Strike," *Monthly Bulletin of the International Juridical Association,* 4.12 (June 1936), 6.

[306] As Dwight Morgan, secretary of the ACPFB wrote, "it seems to me that this [voluntary departure] is an admission…that the Labor Department's order of deportation…is harsh …There is no solution to the problem of political refugees in searching the world over to find an asylum for one individual at a time while permitting reactopnary elements to destroy the principles of political and religious liberty for which this country has stood. We must insist that…Otto Richter and other anti-fascists facing deportation be permitted to remain in the United States." [Morgan to Bruce Bliven, April 25 1936]. In a follow up letter five days letter Morgan wrote Blevin: "the offer of voluntary departure made by the Labor Department is meaningless except perhaps as an attempt on their part to 'pass the buck' and that even though a visa could be secured in one case, it would weaken the defense in the others. It would strengthen the illusion in the mind of many people that this issue can be evaded. " [Box 2, ACPFB Papers].

[307] Marcantonio's bill was HR 8384 (74th Congress, 1st Session); Celler's was HR 7640 (75th Congress, 1st session), reintroduced later as HR 5687.

vagrancy in Santa Barbara, and threatened with deportation to Germany, Roger Baldwin helped to get them voluntary departure and explicitly asked A.L. Wirin not to represent them in court on behalf of the ACLU. "The efforts of the Union were used to procure a stay and permission to leave the country on the assumption that [seamen] Kurth and Habermann would leave and not use the time to prepare a test case."[308] Wirin did take up the case individually and the decision, *Ex Parte Kurth*, handed down by Judge Yankwich in a Los Angeles federal court, rejected Recht's earlier argument in Richter's case; Yankwich wrote that "The Constitution of the United States…does not confer any rights except in the instances where those rights are specifically enumerated…Even assuming that prior to the enactment of the restrictive immigration statute the right existed, its enactment abolished it."[309]

In the meantime, shipping company and government policies were contributing to the radicalization of foreign seamen and their alliances with organizing American seamen. Greek seamen, especially those affiliated with the Spartacus Club (the Greek language affiliate of the Communist Party), had played an important role in the 1934 west coast maritime strike.[310] That same year, the Greek government sent police officers from Piraeus to Rotterdam to arrest seamen affiliated with the left leaning Seamen's Union of Greece who were engaging in a sit-down strike on six cargo ships.[311] Greek seamen struck because they were discontent with working conditions on the ships, which were old and undermanned, and their low wages at a time—

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[308] Baldwin to Wirin, May 29, 1939, folder 2070, Reel 168, ACLU papers.

[309] *Ex parte Kurth et al*., District Court, S.D. California, Central Division (28 F. Supp. 258), June 29, 1939.

[310] Elash, Greek American Communists and the San Francisco General Strike of 1934; Dan Georgakas, "Greek-American Radicalism: The Twentieth Century" in Georgakas and Paul Buhle, eds. *The Immigrant Left in the United States* (Albany: SUNY press, 1996)

[311] Alexander Kitroeff, "The Greek Seamen's Movement, 1940-1944," *Journal of the Hellenic Diaspora* 7.3-4 (Fall-Winter 1980), 80.

during the Italo-Ethiopian war—when Greek ship-owners were making considerable profits. In late 1935 Greek seamen on a cargo ship about to sail from Australia to the United States demanded higher wages. After an agreement was reached, the seamen set out only to face a fire in the ship's coal stores for several weeks of the voyage. When the ship arrived in Maryland, Greek consular officials and local police detained 15 crewmembers at the Baltimore jail and then transferred them to New York for deportation to Greece to stand trial for mutiny.[312] The ACPFB publicized the fact that the seamen were granted no hearings and that the American authorities shanghaied the sailors. "The American government aided the Greek government to crush the protest of seamen against unbearable conditions on a Greek ship."[313] The ACPFB saw deportations of seamen to Greece under the regime of General Metaxas, who was hostile to political opposition or labor activism and sent seamen who protested into exile, as cooperation with "fascists." By this time, with the advent of the popular front, the Communist Party stopped referring to all liberals as fascists, so the ACPFB's labeling of Greece as fascist is not simply propagandistic name calling.[314] 1936 was also a year of wildcat strikes among American seamen on Atlantic and Gulf ports who were fed up with the ISU and were beginning to build support for the new C.I.O. supported National Maritime Union. One of the many complaints about ISU leaders was that they did not support organizing among foreign seamen.[315] In June of 1937, just

[312] "Maritime Saga of Rebellion, Fire Ends Here, *Baltimore Sun*, Sept. 15 1935, 22

[313] "Fifteen Seamen Deported to Face Mutiny Trial in Greece," ACPFB press release, September 23, 1935, Box 8.

[314] Contemporary historians and political scientists have documented Metaxas era repression of the labor movement and the left, but generally have considered his regime more authoritarian than fascist in the mode of Germany. See Neni Panourgia, *Dangerous Citizens: The Greek Left and the Terror of the State* (New York: Fordham University Press, 2009) 39-48; Polymeris Vaglis, *Becoming a Subject: Political Prisoners During the Greek Civil War* (New York: Berghahn Books, 2002) 39-44; and Aristotle Kallis, "Neither Fascist nor Authoritarian: The 4th of August Regime in Greece (1936-1941) and the Dynamics of Fascistisation of Europe in 1930s Europe," *East Central Europe* 37 (2010) 303-330.

[315] The dissident I.S.U. rank and file committee in New York published an article in their weekly newsletter calling on union leadership to support foreign seamen. "They have conducted a number of successful strikes in the past few

before sending delegates to the inaugural NMU convention, the Baltimore Maritime Council helped Greek seamen to get better food and pay from the captain on the Greek ship Elicon.[316] That fall, the law firm Melton, Lebovici, and Arkin, which was affiliated with the NMU, challenged without success, the INS order to detain on board the Greek sailors of the ship "Anna Bulgaris" in Jacksonville. The sailors were detained because immigration officials were wary of Greek deserters and because some were discontent with conditions on the ship and reportedly threatened the master. [317] Increasing detentions of Greek seamen on board ships or at immigration stations in U.S. ports were explained differently by the immigration service and by radicals. I.F. Wixon, deputy commissioner, claimed Greeks were deserting in relatively larger numbers than seamen of other nationalities and were using "the seaman route…to gain unlawful entry."[318] Investigators deemed malafide, Wixon insisted, those Greek seamen who had formerly deserted and lived illegally in the U.S. or who expressed an intention to remain. C. Chriss, editor of the New York-based Communist Greek newspaper *Empros,* and M. Savides, president of the Greek Workers Educational Federation, believed desertions were the result of poor conditions on Greek ships and that INS determinations to detain seamen were made at the behest of ship captains and owners. As soon as ships reached ports, they claimed, Greek masters and ship agents informed immigration authorities that crewmembers who complained about conditions were radicals who intended to desert and get on relief. In Savides mind, detentions of these men

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months and increased the strength of their club membership…They have made several attempts to get the cooperation of our unions—sending letters and delegations—but our officials refused to have anything to do with them. In the interests of unity and solidarity of all seamen we should see that support is given to their coming struggles." *ISU pilot*, June 21, 1935, 2

[316] Greek Seamen Given Hand by Balto. Council, *NMU Pilot,* June 11, 1937.

[317] INS file 55965/308

[318] I.F. Wixon to J.C. Monroe &Co, Feb 23 1938, 55854/370A.

were "frame ups." According to Chriss, "If the crews want to desert the ships they can do so in any other country in Europe or America [Western Hemisphere nations]. The idea behind the plan of the Greek captains is not to allow the seamen to land in this country so that they would not have to pay them pay them part of their wages…The immigration officers…should not allow themselves to be used as catchpaws and tools by…Greek captains." [319]

Scandinavian seamen also gained the support of American seamen, especially in their efforts to prevent strikebreaking by fresh crews brought over by Norwegian ship owners. The 1930s was, anomalously, a growth period for the Norwegian merchant fleet, especially its modern tankers. The immigration service's 1935 seamen survey noted the significantly lower wages prevailing on Norwegian versus American vessels, a difference maintained by Norwegian ship owners discharging crews on their ships docked in U.S. ports and bringing in replacement crews from Norway who they would sign on at lower wages in line with the Norwegian wage scale. This defeated the intention of the Seamen's Act—by never allowing seamen to sign on to foreign ships in U.S. ports at the prevailing American pay scale—and disadvantaged American ships, especially since most of the Norwegian vessels plied back and forth between the U.S. and the West Indies (carrying sugar, oil, and bananas) on regular bi-weekly schedules. [Or, as was pointed out at the NMU constitutional convention, sometimes the Scandinavian ships were chartered by American companies]. Most of the transits could not pay the cost of their transportation, so it was docked from future wages. Norwegian shipping companies also enticed poor young men with few employment prospects in Norway to ship out as "workaways" by promising to eventually discharge them in New York, where supposedly jobs were plentiful and wages high. ("The system of these companies," a seaman's relative informed the immigration

[319] Savides to Perkins, March 7 1938 and C. Chriss to I.F. Wixon, February 24, 1938 both in INS file 55854/370A.

service, "is that when one crew is about to finish its contract in New York…they immediately have another crew on hand coming from Norway hired under the Norwegian contract."[320]) The Scandinavian Seamen's Club, organized first in New York in 1935, was established to combat this practice; it was originally affiliated with the syndicalist Scandinavian Workers' Union in the United States, but soon came under strong Communist influence.[321] The Club registered seamen to try to enforce a rotary system of hiring, whereby those on the beach longest would be the first to be put up for jobs on Norwegian ships, and to back demands for higher wages. In 1935, Norwegian, Danish, and Swedish seamen registered with the Club successfully refused to ship out until they got wage increases.[322] In early 1936, the Norwegian vice consul in Philadelphia turned to the immigration service for help, protesting that the seamen were "taking upon themselves the powers which have been delegated to the Norwegian consul" by "not accepting any position offered them aboard any of the Norwegian vessels for the schedule of pay aboard these vessels." An immigration inspector in Philadelphia promptly investigated the seamen's club and recommended the deportation of members, all bona fide seamen, who had been in the United States longer than 60 days.[323] The Commissioner General opted instead for a survey of Scandinavian seamen in different ports. By this time, branches of the club existed not only in New York and Philadelphia but also in Baltimore, New Orleans, San Francisco, and San Pedro. Boasting a membership of 2500, the Scandinavian Seamen's Club joined in the fall 1936 strike

[320] J.F. Tozzi to Inspector King, Feb. 13, 1936, INS file 55854/370.

[321] Per-Anne Brunvoll, "The Seamen's Club in the United States: a Small Organization with Heavy Consequences" *Sjofartshistorisk Arbok* (Jan. 1992), 99-195.

[322] "Scandinavian Seamen Fight," *ISU Pilot*, October 10, 1935, 6. "With the Scandinavian Seamen," *ISU pilot,* October 18 1935, 7.

[323] Confidential Memorandum of Inspector Horowitz to the District Director at Gloucester City, NJ, March 13, 1936, file 55854/370.

that helped form the National Maritime Union and, at the NMU's Constitutional convention in 1937, asked for help in opposing the practice of "foreign shipping companies in shipping duplicate crews from the home country and paying off the old crew of another ship" in an American port.[324] The NMU promptly obliged, telegramming Perkins two months later to protest the attempt to replace a crew made up of Scandinavian Seamen's Club members on the Danish ship Nordkap with a transit crew brought over on the Berengaria.[325] The complaint did not stop prevent the eventual replacement, but it did lead the immigration inspectors to perform a close examination of the arriving transits. They were found admissible, even though none had any money whatsoever and all had their passage paid by the Nordens Steamship Company. The firm Melton, Lebovici, and Arkin successfully got a federal court to temporarily stay the dismissal of the original Nordkap crew and force the steamship company to provide passage for those among the crew who wanted to be repatriated.[326] In early 1938 Herbert Lebovici and Philip Dorfman, a Philadelphia labor lawyer, represented a group of Scandinavian seamen in Philadelphia who refused to get off the ship "Wind" to be replaced by another crew brought over from Norway. "They did not get off the boat until forced to do so by U.S. marshals bearing warrants obtained by the owner on behalf of the Norwegian consul from a federal court judge. The warrants were secured after the owners got a proclamation from the U.S. State Department enforcing a 1928 treaty between the U.S. and Norway giving Norwegian consuls control over the internal affairs on Norwegian vessels in American ports.[327] Around the same time the district

[324] Minutes of the Constitutional Convention, Fourteenth Session, July 16, 1937, 226-230, Box 90, NMU papers, Rutgers.

[325] Telegram of Mervyn Rathbone and Thomas Ray to Frances Perkins, September 4, 1937, INS file 55854/370A.

[326] INS file 55955/360.

[327] INS file 55957/751.

director in New Orleans asserted that the immigration service should not allow "an alien seaman ashore over sixty days to dictate the terms and conditions under which he will reship" and issued warrants to arrest members of the Scandinavian Seamen's Club who had remained longer. "To adopt any other attitude," he wrote to the Commissioner General, "would tend to lessen the prestige of our Service and lose control of the alien seamen situation as it exists at the present time." [328] By this time, though, the Scandinavian Seamen's Club [SSC] had won the backing of representatives of Swedish and Norwegian unions in the International Transport Workers Federation, who hoped to "discourage the shipment of their members as replacements for SSC crews" in the US and "win the same conditions aboard Scandinavian ships that the SSC has won in the three years of its existence."[329] The agreement between the SSC and the unions abroad was facilitated by the NMU in the name of "the whole progressive movement of maritime labor…on an international scale."[330] The NMU *Pilot* reported that "the SSC, on the average, has wage scales 100% higher than those of the Scandinavian unions."[331]

Bringing over crews as transit passengers to transfer to ships in American ports was a practice engaged in predominantly by Norwegian ship-owners in the mid-1930s; in 1933 the immigration service tried to discourage the bringing in of Chinese seamen replacements by

[328] Eugene Kessler to Commisisoner of Immigration and Naturalization, May 19, 1938 INS file 55854/370A

[329] Agreement between Sven Lundgreen and Ingvald Haugen (for ITF and the Scandinavian Seamen's Unions) and Gustav Alexander, Hans Carlsen, and D.W. Aagaard, for the Scandinavian Seamen's Club, November 20, 1937, Vasa Hall (564 Dean Street, Brooklyn), Folder: Scandinavian Seamen's Club, Box 14, International Longshoremen's and Warehousemen's Union collection, Bancroft Library.

[330] Statement of Thomas Ray at the Meeting of the Scandinavian Seamen's Club, May 16, 1938, Folder: Scandinavian Seamen's Club, Box 14, International Longshoremen's and Warehousemen's Union collection, Bancroft Library.

[331] Scandinavian Seamen's Convention Marks New Era for Organization, *Pilot*, November 26, 1937, 6.

ordering the exclusion of Chinese transits brought to their attention by the ISU.[332] When dissenting ISU seamen asked leaders of the New York Lien Ti Society of Chinese seamen to join the strike that helped form the NMU, the Society understandably hesitated. The incentive was clear: a survey of seamen's wages on American flag ships on the Pacific Coast in 1935 found that non-unionized Chinese cooks and stewards earned from one-fifth to one-tenth the wages of their unionized white counterparts.[333] But could they trust the white seamen and withstand attention from the immigration authorities that striking would bring? Lien Yi leaders asked that, in return for their support, the new union demand not only an equal wage scale for Chinese seamen but also equal opportunities for Chinese seamen for shore leave. Both issues continued to be a problem for Chinese seamen in general for many years after the formation of the NMU. The NMU supported strikes by Chinese seamen—particularly a June 1937 sit-down strike in New York harbor to protest discriminatory treatment—even if some letters to *The Pilot* betrayed a lingering view among the rank and file that Chinese were "coolie" seamen that could not but undermine American labor.[334] The NMU's constitution included a provision that there be "no

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[332] Letter from D.W. MacCormack, Commissioner of Immigration, to H.H. Bachke, Minister of Norway,January 20, 1934, INS file 55854/656; to Letter from Cordull Hull to Frances Perkins, Sept. 17, 1937, VD8111.111Vessels-Nordkap; Letter of James Houghteling to Cordell Hull, April 16, 1938, INS file 55854/370A: "Practically all of the replacements sent to this country are represented by Norwegian seamen.""Urges Washington to Bar Chinese Crew," *New York Times,* Jan. 20, 1933, 37; *Annual Report of the Secretary of Labor*, 1933, page 59: "Last winter some 200 Chinese were brought from China to New York as passengers to be employed on a vessel of the same line scheduled to make a world cruise. It was determined by the Department after considerable reflection that they were inadmissible under the law and regulations, so all were returned to China at the expense of the vessel bringing them. The action in this case will discourage further attempts of this nature."

[333] "Wage Structure in Deep-Sea Shipping," *Monthly Labor Review* , 45 (July 1937) 38-55; see particularly chart page 45.

[334] On the strike, see "Refused Shore Leave, Chinese Crew Sit Down," *Pilot* June 18, 1937, 3, Pilot "Chinese on SS President Taft Win Demands," *Pilot,* June 25 1937, 5. The letter to the editor, which ran on page 2 of the June 4, 1937 issue of the *Pilot* and was signed PC 1090, claimed: "If the Dollar Line employed American workers to repair their boats, thousands of workers would be released from the relief rolls and employed under union conditions and wages. Instead the ship-owners take the government subsidies, hire Chinese coolie labor at 50 cents a day, and pocket the subsidy that wa to go to pay American maritime workers decent wages. Thus the American tax payer gets it coming and going. His money goes to the steamship companies at the same time he is forced to carry part of the tremendous relief burden."

discrimination against any union member because of his race, color, political affiliation, creed, religion, or national origin," a provision that helped Ferdinand Smith, a Jamaican union leader and later NMU vice president, convince thousands of black seamen in southern and gulf ports to join. Like Smith, many of the NMU's officials were Communists or fellow travelers. The NMU counted among its allies radical Chinese seamen who formed the Chinese Seamen's Patriotic Association after they were purged from the KMT dominated Lien Yi Society.[335] During the 1939 NMU convention, after it was pointed out that Filipino union members were unable to naturalize and that Harry Bridges was an alien, a resolution mandating that officers of the NMU be citizens of the United States was rejected 78 to 43.[336] That same year, the ACPFB donated "more space in its Souvenir Journal than was paid for" to the NMU.[337] The relationship between the two organizations began with the ACPFB taking up the cases of Juan Fabre Cruz, Richard Strauwald, and Henry James Randall who were subject to deportation after taking active part in the 1936 strike. Hans Dittman, a German sailor picked up by INS in 1936, got several stays through ACPFB; he eventually shipped out and came back and then refused to reship in May 1938 without a bonus, which was NMU's stance at the time.[338] By the late 1930s, NMU counsel William Standard was representing many foreign sailors in both suits for damages and habeas corpus petitions, while the ACPFB was helping NMU members naturalize and fight deportation.

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[335] Peter Kwong, *Chinatown New York: Labor and Politics, 1930-1950* (NY: Monthly Review Press, 1979), 123.

[336] Proceedings of the Second National Convention of the National Maritime Union of America, July 11, 1939, 475.

[337] Letter from Abner Green to George Hearn, January 3, 1939, Box 4, ACPFB papers.

[338] See Dittman's case file in Box 29, ACPFB papers. The ACPFB put out a press release on September 9, 1937 about renewed efforts to force ship owners to pay bonuses to seamen sailing into Spanish and Chinese. The release noted that Thomas Ray, of the Maritime Council of the Port of New York, wrote the Maritime Commission to protest the lack of legislation protecting American sailors sailing in war zones.

The National Maritime Union allied with foreign seamen not just for practical reasons, but also for ideological ones. By the mid 1930s, many American sailors had come to suspect that not only the immigration service but many other agencies of the United States government were in league with ship owners. A highly publicized Congressional investigation of the shipping industry in 1935 revealed that a web of waste, corruption, and manipulation dominated U.S. Shipping Board sales and subsidies to private companies. Labor also believed the U.S. Shipping Board's hiring halls undermined union halls. They were opposed to U.S. Commerce Department-issued continuous discharge books; they feared these "fink" books would be used to blacklist strikers since they showed gaps in service.[339] (Continuous discharge books were issued by the British Board of Trade to keep track of seamen on British bottoms. Joseph Weaver, Director of the Bureau of Maritime Inspection and Navigation told the *Boston Globe* of June 21, 1936 that the discharge book was meant to deal with radicalism in the merchant marine and "is patterned somewhat after a passport.") In 1937 the U.S. Maritime Commission charged with mutiny the crew of the government-owned, privately operated "Algic." The Commission claimed the crew's refusal to handle cargo by strikebreaking longshoremen in Montevideo, Uruguay, was an unlawful strike against the U.S. government.[340] William Standard, who defended the crew of the Algic in federal court, argued that seamen had a right to trade unionism in a safe harbor.[341] For NMU president Joseph Curran, the trial of the Algic crew was part of a larger attack on seamen that needed to be fought politically. He wrote in late 1937:

> Seamen on the East Coast are really awakening politically. This is very important in view of the legislation which the Maritime Commission is now planning….By

[339] Joseph Goldberg, *The Maritime Story* (Cambridge: Harvard University Press, 1958) 186

[340] *The Story of the Algic Case*, Box 96, NMU papers.

[341] William Standard, "Algic Legal Aspects," *Pilot*, December 10, 1937, 5.

> this time you have heard about the ALGIC…The crew is still in jail and the trial is coming up today or tomorrow. We don't believe they will be able to convict this crew, but it is obvious to us that they are not attempting to convict them, but are utilizing this incident to promote a campaign of adverse publicity. The papers are carrying wild tales of mutiny, murder and desertion and the extreme danger to passengers of mutinous crews, etc. [Joseph] Kennedy [chairman of the U.S. Maritime Commission] has three or four lawyers working on a bill which provides for Government regulation, compulsory arbitration, Coast Guard training, shipping halls run by the government, strikes to become illegal…To this end Kennedy is now using the ALGIC and other situations. [342]

It was also at this time that Joseph Kennedy pushed for the deportation of Harry Bridges claiming "it's immaterial whether he's a Communist…he's a trouble-maker and a pest and does not deserve the tender consideration bestowed on him by Madame Perkins."[343] As the decade wore on, NMU members became increasingly committed to a strong political action campaign, which included support for Bridges, and its members resented infringements upon their ability to engage in such action. The NMU and many others widely publicized and protested when the Moore-McCormack lines posted a gag notice on all of its ships banning "argumentative discussions of existing political conditions."[344]

A significant part of the NMU's political action campaign involved support for anti-fascist boycotts, which were spearheaded by foreign seamen, and for the loyalist cause in the

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[342] Letter from Joseph Curran to Z.Z. Brown, November 3, 1937, Seamen - Trade Unions - U.S. Nat. Maritime Union Correspondence 1937-48 & Undated, Box 10, International Longshoremen's and Warehousemen's Union papers, BANC MSS 77/168 c, The Bancroft Library, University of California, Berkeley.
For a public airing of these and other NMU grievances see "The Maritime Commission versus the Seamen: A summary of the more specific instances of the anti-labor policies followed by the United States Maritime Commission and the Bureau of Marine Inspection and Navigation (Washington, DC, C.I.O. Maritime Committee, 1939).

[343] Kennedy is quoted in Daniel Kanstroom, *Deportation Nation*, 189. Kennedy accused Bridges of disrupting West Coast shipping "to satisfy his lust for power," a trait that might better have characterized Joseph Kennedy himself during what President Roosevelt called his "hard-hitting" maritime commission years. Those who worked with him on the Commission confirmed Curran's view that Kennedy "was a genius at public relations." David Nasaw, *The Patriarch* (New York: Penguin, 2012), 271, 279.

[344] General Ships Order Number 17 signed by Robert C. Lee, folder: Merchant marine, 1939-1940, Box 48, Vito Marcantonio papers, Rare Books and Manuscripts Division, New York Public Library.

Spanish Civil War, which also attracted seamen of many nationalities. In 1935, Norwegian seamen in New Jersey affiliated with the Scandinavian Seamen's Club refused to sail a ship laden with scrap iron headed for Italy, an action denounced by the Norwegian consul general and supported by a diverse group of pacifists, anti-fascists and African Americans opposed to the war on Ethiopia.[345] Two years later Norwegian seamen in Mobile refused "a bribe offer of a bonus" to sail a scrap laden ship to Japan; an NMU representative commended their action and helped get them paid off the ship.[346] A similar strike in Brooklyn two months later combined economic and political action: a crew that demanded to be paid off of a ship that would carry war material to Japan was told by the master to go to the Norwegian consul; the consul refused to pay, calling them deserters, and secured another crew to replace them. The original crew forced their way back onto the ship and determined to sail it as far as San Pedro, where it would take renewed action.[347] In San Pedro, after three Chinese crewmen walked off another ship headed to Japan, three Greek seamen followed in sympathy.[348] Tony Ambatielos, one of the Communist seamen involved in this campaign and later an important leader in the Greek seamen's movement, said it made him "change course" towards a popular front fight against fascism.[349] (Hostility towards Greek shipwoners was particularly intense because many were engaged in gun-running for Franco.) Anton Eriksen, a Norwegian American who served as shipping agent for Norwegian ships in New Orleans and ran a boarding house for seamen, complained that Scandinavian

[345] Rubin, 175.

[346] "Norwegian Seamen Win Strike Over Sailing Scrap Iron to Japan," *Pilot*, October 15, 1937, 3.

[347] "Norway Tanker Refises to Sail in War Zone," *Pilot*, December 17, 1937.

[348] Nelson, 262.

[349] Antōnēs Ampatielos, *Mia zōē ston agōna : me meterizi to Hellēniko karavi* (Athēna : Synchronē Epochē, 1996), 62. Hereafter referred to as Ambatielos memoir.

Seamen Club seamen would sail a ship carrying oil to Loyalist Spain at the Norwegian pay scale but demanded American wages and a war bonuses to sail a ship to Franco's Spain. The NMU praised the Club for this stance.[350] The NMU *Pilot* published letters from union "brothers" who had gone to fight in Spain and the story of a Spanish sailor who, after being tortured and put to work as a stevedore for the rebels, stowed away on a British ship and was threatened with deportation back to Spain from Baltimore; the NMU helped prevent his deportation.[351] The cause of seamen who fought for the loyalists was also taken up by the ACPFB, who helped prevent their exclusion upon return to the U.S. seamen who wanted to re-enter the U.S. after fighting for the loyalists.

The Nazi-Soviet pact in the summer of 1939 strained these ideological commitments and worsened tensions among advocates for radical seamen. A good example of this involves the politics of the Scandinavian Seamen's Club [SSC] and the NMU.

In December 1937 the immigration service in Philadelphia raided the hall of the Scandinavian Seamen's Club and arrested 27 seamen who had been in the United States longer than sixty days. Two local labor and seamen's lawyers, Albert Morewitz and Philip Dorfman, Charles Melton (of Melton, Lebovici and Arkin) from New York, Thomas Christensen, the vice president of the National Scandinavian Seamen's Club, and a C.I.O. maritime representative met with immigration officials to request that deportation be stayed as all of the seamen were waiting to ship out via the rotary system, none were public charges or criminals, and none had taken jobs

[350] Report of INS inspector Malone Rourke to the District Director at New Orleans, May 17, 1938, INS file. 55854/370A. Eriksen was considered a "crimp" by the Scandinavian Seamen's Club, as was his counterpart in San Francisco, Thor Olsen. Olsen worked with consuls, ship owners, and managers of hotels to ship out seamen not affiliated with the Club. (see "A Statement of Facts!," Folder: Scandinavian Seamen's Club, Box 14, International Longshoremen's and Warehousemen's Union papers, BANC MSS 77/168 c, The Bancroft Library, University of California, Berkeley.)

[351] "Writes from Spain; Many make Statements," *Pilot*, May 28, 1937, 5; "Stowaway Tortured By Fascists is Released with Baltimore Action," *Pilot*, July 9, 1937, 7.

ashore or coastwise. The January 1938 issue of the Scandinavian Seamen's Club newspaper, *Paa Tørn*, ran a front-page article entitled "Konsul Moe—En Judas," blaming the raid on the Norwegian consul, Matthias Moe, who had reported to the immigration service that several seamen deserted in Philadelphia after they were not allowed to sign off a ship headed to Franco's Spain. The same issue of *Paa Tørn* included one English-language article by Melton, Lebovici and Arkin entitled "The Legal Problem Confronting a Scandinavian Crew Which Refuses to Go to a War Area" and a cartoon by Einer Larssen emphasizing that shipping and immigration policies were forcing Club members to aid the despised cause of fascism. The drawing of seaman gagged and crucified on a swastika overshadowing Scandinavia is eerily prescient.

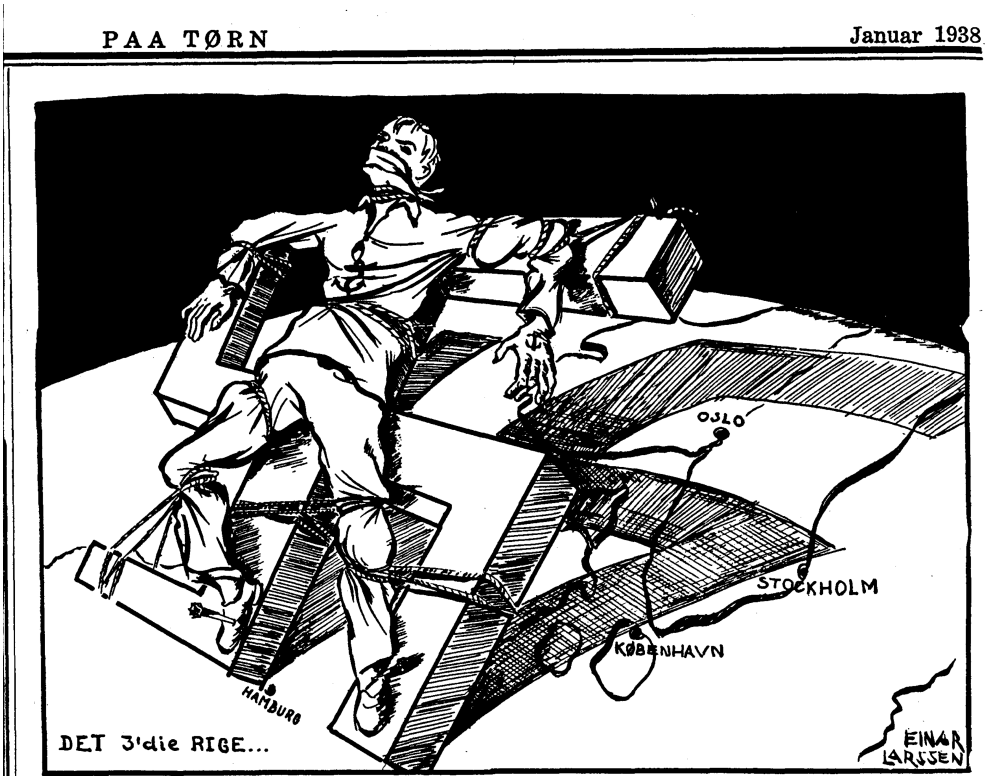

Figure 4.3, Cartoon by Einar Larssen, *Paa Tørn*, January 1938.

On June 20, 1940, almost a year into the Nazi-Soviet pact and 6 weeks after the German invasion of Norway and Denmark, the *NMU Pilot* republished the Larssen cartoon with a caption that gave it quite a different meaning: "Club officers charge Norwegian and British shipping

interests with labeling them pro-Nazi in order to break the club and force seamen to work for worthless Norwegian kroner." At the time of the Nazi invasion, most of the Norwegian fleet was on the high seas or in foreign ports. In several U.S. harbors, German consuls entered Norwegian vessels to try to convince them to sail for Norway. Norwegian government officials in exile, however, chartered many of them to the British government, an arrangement that led to fixed freight rates for ship owners and the lowering of wages on these ships to the British level. The article that accompanied the cartoon, "Scandinavian Seamen Refuse to Be Crushed" reports on a trip to Washington by now Scandinavian Seamen's Club President Thomas Christenson. Christenson went to speak to U.S. State Department officials regarding the British Embassy's "political complaint" that the Club "was financed through funds supplied by the German consuls." Christenson explained Club members refusal to sign on to these ships in this way: "The [Norwegian] ship-owners are trying not only to force our men to work for money that isn't any good, but also to accept the inferior British [wage] scale…It looks to us as if the British were trying to tell the U.S. which labor organizations to suppress."[352] The NMU supported the Scandinavian Seamen's Club, claiming that "it is Norwegian shipowners who are trying to discourage men from sailing on vessels bound for Great Britain" out of a desire to redirect ships to safer and more profitable runs.[353] There was truth to this contention, as some Norwegian ship owners were reluctant to give over their ships to the management of Norwegian government and to British charter. Still, throughout 1940, the *Pilot* tried to redirect attention away from the NMU's refusal to support the allies, and towards their support for higher wages and bonuses for foreign seamen sailing into war waters and their help for victims of Franco. (Spain was officially

[352] NMU *Pilot*, June 20, 1940.

[353] "Norwegian Operators Accused of Maneuvers to Destroy the SSC," *Pilot,* July 12, 1940.

neutral and the Loyalists supported by the Communists, so Franco remained a target for NMU criticism during the time of the Nazi-Soviet pact). One issue of the *Pilot* featured these stories: "Yugo-Slav sailors supported by NMU in Bonus Strike," "Philly gets Banner from Grateful Egyptian Crew on British Vessel," and "Spanish Refugee Tells of American Seamen's Kindness During Trip."[354]

The official opposition of the CIO maritime committee (which represented the National Maritime Union and the International Longshoremen's and Warehousemen's Union) to American aid to the allies also put it in sympathy with foreign sailors from occupied countries who deserted their ships. The NMU wanted to make sure that wage scales in American ports were maintained in the face of approximately 2,500 Scandinavian, Belgian, French and Dutch seamen stranded there and the numerous Chinese crews held on board ships. Seamen employed on vessels controlled by governments-in-exile were subject to taxes to fund these governments; some foreign operators were holding onto the allotments deducted from wages usually designated for seamen's families back home. Norwegian seamen were skeptical that they would ever receive the difference between their wages and British scale, which was being put into a fund to be paid out after the war.[355] Chinese seamen were paid little and then charged a high exchange rate; "when American vessels compete for cargo with British vessels employing Chinese crews at these deplorably low wages, the inevitable result must be the depressing of the American wage standard."[356] NMU president Joseph Curran announced: "we recognize the community of interest between ourselves and foreign seamen. Our industry is more or less

[354] All in the *Pilot*, Feb. 23, 1940.

[355] Distribution of the money in the fund remained unresolved until 1972.

[356] *Pilot*, Feb. 23, 1940.

international in that a seamen of one nationality often finds himself sailing on a ship of another nationality...it is to our interest to help protect the conditions of foreign seamen victimized by war—if for no other reason than to protect our own conditions." [357] The NMU Council resolved to contact the State Department about "exploitation by foreign shipowners," help organize "those still sailing foreign ships without trade union protection," and "place the union's legal apparatus at the disposal of the foreign seamen."[358]

In June 1940, William Standard represented the Belgian crew of the "Gandia," which was tied up in Brooklyn during the Nazi invasion of Belgium. When Belgium surrendered, the crew tried to draw its wages and discharge but the master refused. The crew sued and a federal judge in Brooklyn granted the seamen the balance due them. The court took jurisdiction since the occupation of Belgium deprived the seamen of a forum in their own country to press their claim.[359] Many stranded seamen, particularly Scandinavians, began to look for work on American owned vessels flying under Panamanian and Honduran flags, which did not have the citizenship requirements of American flag ships and did not have to abide by U.S. neutrality or labor laws.[360] So, besides opposing transfers of American ships to foreign flags, the NMU decided to establish a Pan American Department, headed by former Scandinavian Seamen's

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[357] Press release, July 22, 1940, Folder: National Maritime Union, 1940-1941, Carton 10, International Longshoremen's and Warehousemen's Union Papers, BANC MSS 77/168c, Bancroft Library, University of California, Berkeley.

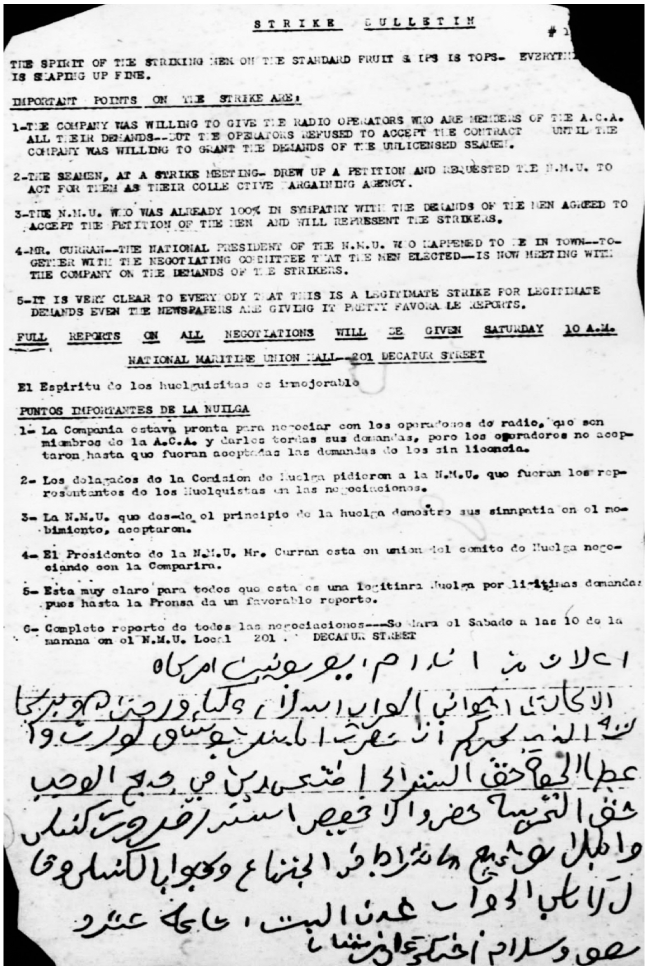
[358] "NMU is Not Asking Stranded Seamen to Quit Their Unions," *Pilot,* Sept. 6, 1949.

[359] Press release, July 22, 1940, Folder: National Maritime Union, 1940-1941, Carton 10, International Longshoremen's and Warehousemen's Union Papers, BANC MSS 77/168c, Bancroft Library, University of California, Berkeley.

[360] Already in 1939 16 Standard Oil of New Jersey vessels had been transferred to Panamanian flag. By 1942 it was estimated that approximately 20,000 allied seamen were sailing on American owned or controlled ships under Panamanian flag, about fifteen percent of whom were Scandinavian.
For the history of the transfer of American ships to Central American registry during these years, see Rodney Carlisle, *Sovereignty for Sale: The Origins and Evolution of the Panamanian and Liberian Flags of Convenience* (Annapolis: Naval Institute Press 1981), chapter 5.

Club president Thomas Christenson, to organize foreign crews on transferred ships. Christenson asked the NMU to give seamen on these ships special attention because "the conditions on most of these vessels are a direct threat to your standards, your very existence, as well as that of ours." In December 1940, over 300 seamen, a vast majority of them foreign, on vessels flying the Honduran flag but owned by the American company Standard Fruit, went on strike and won wage increases, shorter working hours day, and the NMU as their bargaining agent. As reported by an NMU delegate who visited the ship Atlantida in New York, "one member of the black gang [the boiler room firemen] asked the donkey man [in charge of the black gang] if the union would do anything for him, stating he was an Arabian…the donkey man…stated, yes brother, this NMU knows that all our blood is red, so the donkey man brought all the black gang out on the picket line…the crew was composed of about fifteen different nationalities and different colors and languages…yet the boys came out on strike for a common cause. They stood on the street shivering."[361] During the strike, the NMU put out the trilingual leaflet (English, Spanish, Arabic) below.

[361] Letter from Joseph Stack, December 16, 1940, published in the *Pilot,* December 27, 1940.



STRIKE BULLETIN

#1

THE SPIRIT OF THE STRIKING MEN ON THE STANDARD FRUIT SHIPS IS TOPS- EVERYTH[...]
IS SHAPING UP FINE.

IMPORTANT POINTS ON THE STRIKE ARE:

1-THE COMPANY WAS WILLING TO GIVE THE RADIO OPERATORS WHO ARE MEMBERS OF THE A.C.A. ALL THEIR DEMANDS--BUT THE OPERATORS REFUSED TO ACCEPT THE CONTRACT UNTIL THE COMPANY WAS WILLING TO GRANT THE DEMANDS OF THE UNLICENSED SEAMEN.

2-THE SEAMEN, AT A STRIKE MEETING- DREW UP A PETITION AND REQUESTED THE N.M.U. TO ACT FOR THEM AS THEIR COLLECTIVE BARGAINING AGENCY.

3-THE N.M.U. WHO WAS ALREADY 100% IN SYMPATHY WITH THE DEMANDS OF THE MEN AGREED TO ACCEPT THE PETITION OF THE MEN AND WILL REPRESENT THE STRIKERS.

4-MR. CURRAN--THE NATIONAL PRESIDENT OF THE N.M.U. WHO HAPPENED TO BE IN TOWN--TOGETHER WITH THE NEGOTIATING COMMITTEE THAT THE MEN ELECTED--IS NOW MEETING WITH THE COMPANY ON THE DEMANDS OF THE STRIKERS.

5-IT IS VERY CLEAR TO EVERYBODY THAT THIS IS A LEGITIMATE STRIKE FOR LEGITIMATE DEMANDS EVEN THE NEWSPAPERS ARE GIVING IT PRETTY FAVORABLE REPORTS.

FULL REPORTS ON ALL NEGOTIATIONS WILL BE GIVEN SATURDAY 10 A.M.

NATIONAL MARITIME UNION HALL--201 DECATUR STREET

El Espiritu de los huelguistas es inmejorable

PUNTOS IMPORTANTES DE LA HUELGA

1- La Compania estava pronta para negociar con los operadores de radio, que son miembros de la A.C.A. y darles todas sus demandas, pero los operadores no aceptaron hasta que fueran aceptadas las demandas de los sin licencia.

2- Los delegados de la Comision de Huelga pidieron a la N.M.U. que fueran los representantes de los Huelquistas en las negociaciones.

3- La N.M.U. que des-de el principio de la huelga demostro sus simpatia en el movimiento, aceptaron.

4- El Presidente de la N.M.U. Mr. Curran esta en union del comite de Huelga negociando con la Compania.

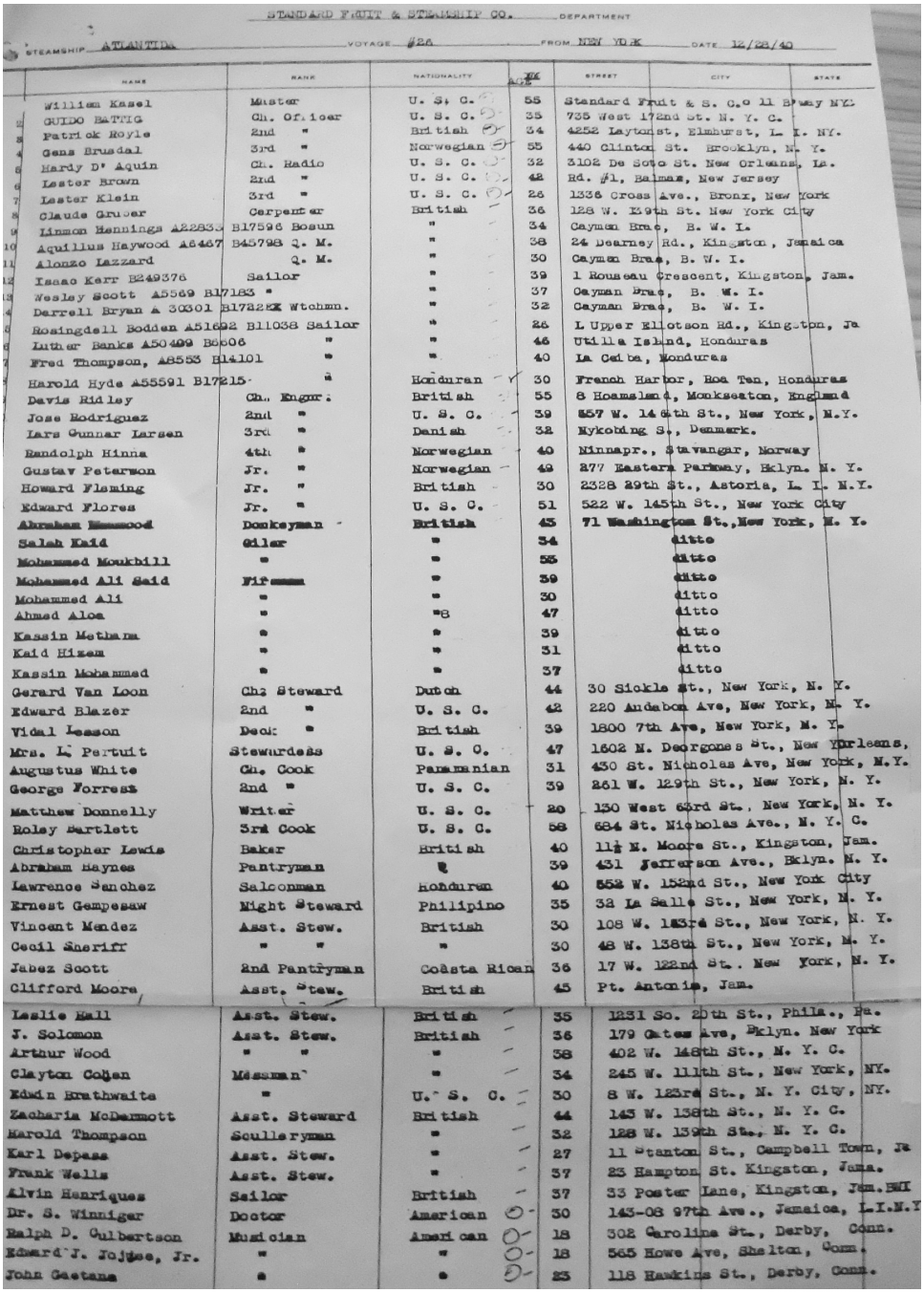
5- Esta muy claro para todos que esta es una legitima Huelga por legitimas demandas pues hasta la Prensa da un favorable reporto.

6- Completo reporto de todas las negociaciones---Se dara el Sabado a las 10 de la manana en el N.M.U. Local 201 . DECATUR STREET

Figure 4.4, Trilingual NMU strike bulletin, reprinted in *Pilot*, Dec. 27, 1940, 3.

On the next page is the crew list of the Atlantida, indicating that the donkeyman is Abraham Mamood; since he and his department were "British" and "Arabian," they probably shipped from Aden. Many other "British" crewmen on the Atlantida were from Jamaica and the W. Indies.[362]

[362] The crewlist is exhibit B-1 in the file on Standard Fruit & Steamship Company, Box 3, William Standard Papers, Kheel Center, Cornell University Library. This file also contains, as exhibit R, the agreement between the NMU "in representation of the unlicensed personnel of the foreign flag fleet," including the Antalida, of Standard Fruit. According to Tony Lane, an expert on the British merchant marine in the twentieth century, seamen from "the Arabic corner of the empire, centered on Aden" –and specifically Adenese, Somali, and Yemeni firemen—were recruited in large numbers during WWII. [Lane, *The Merchant Seamen's War* (New York: Manchester University Press, 1990, 32]. In her 2009 novel *Black Mamba Boy* based upon the life of her grandfather, a seaman in the 1940s from British Somaliland, Nadifa Mohamed writes of the value of the "dark green passport" that "was all that the western world needed to know about him; he was a subject of the British empire. The passport determined where he could go and where he couldn't, the ports where his cheap labor would be welcome and the ports where it would be not." Still, he managed to get his first job as a fireman on a British ship in Port Said with the help of clansmen who found him the position and raised money for a bribe. All of the firemen on the ship he sailed out on in 1947 were Somali, but the rest of its seamen were white Brits, who mocked the Somalis and got paid more.



STANDARD FRUIT & STEAMSHIP CO. DEPARTMENT

STEAMSHIP ATLANTIDA VOYAGE #26 FROM NEW YORK DATE 12/28/40

NAME	RANK	NATIONALITY	AGE	STREET	CITY	STATE
William Kasel	Master	U. S. C.	55	Standard Fruit & S. C.o 11 Broay	NYC	
GUIDO BATTIG	Ch. Officer	U. S. C.	35	735 West 172nd St. N. Y. C.		
Patrick Royle	2nd "	British	34	4252 Laytonst, Elmhurst, L. I.	NY.	
Gens Brusdal	3rd "	Norwegian	55	440 Clinton St. Brooklyn, N. Y.		
Hardy D' Aquin	Ch. Radio	U. S. C.	32	3102 De Soto St. New Orleans,	La.	
Lester Brown	2nd "	U. S. C.	42	Rd. #1, Balmas, New Jersey		
Lester Klein	3rd "	U. S. C.	26	1336 Cross Ave., Bronx, New	York	
Claude Gruber	Carpenter	British	36	128 W. 119th St. New York	City	
Linmon Hennings A22833	B17596 Bosun	"	34	Cayman Brac, B. W. I.		
Aquillus Haywood A6467	B45798 Q. M.	"	38	24 Dearney Rd., Kingston,	Jamaica	
Alonzo Lazzard	Q. M.	"	30	Cayman Brac, B. W. I.		
Isaac Kerr B249376	Sailor	"	39	1 Rousseau Crescent, Kingston,	Jam.	
Wesley Scott A5569	B17183 "	"	37	Cayman Brac, B. W. I.		
Derrell Bryan A 30301	B17822 Wtchmn.	"	32	Cayman Brac, B. W. I.		
Hosingdell Bodden A51622	B11038 Sailor	"	26	L Upper Elliotson Rd., Kingston,	Ja	
Luther Banks A50499	B6606 "	"	46	Utilla Island, Honduras		
Fred Thompson, A8553	B14101 "	"	40	La Ceiba, Honduras		
Harold Hyde A55591	B17215 "	Honduran	30	French Harbor, Roa Tan,	Honduras	
Davis Ridley	Ch. Engnr.	British	55	6 Hoamsland, Monkseaton,	England	
Jose Rodriguez	2nd "	U. S. C.	39	557 W. 146th St., New York,	N.Y.	
Lars Gunnar Larsen	3rd "	Danish	32	Nykobing S., Denmark.		
Randolph Hinna	4th "	Norwegian	40	Ninnapr., Stavangar,	Norway	
Gustav Peterson	Jr. "	Norwegian	49	277 Eastern Parkway, Brklyn.	N. Y.	
Howard Fleming	Jr. "	British	30	2328 29th St., Astoria, L. I.	N.Y.	
Edward Flores	Jr. "	U. S. C.	51	522 W. 145th St., New York	City	
Abraham Hammood	Donkeyman	British	45	71 Washington St., New York,	N. Y.	
Salah Said	Oiler	"	34	ditto		
Mohammed Moukbill	"	"	55	ditto		
Mohammed Ali Said	Fireman	"	39	ditto		
Mohammed Ali	"	"	30	ditto		
Ahmed Aloe	"	"8	47	ditto		
Kassin Methama	"	"	39	ditto		
Kaid Hizem	"	"	31	ditto		
Kassin Mohammed	"	"	37	ditto		
Gerard Van Loon	Ch. Steward	Dutch	44	30 Sickle st., New York,	N. Y.	
Edward Blazer	2nd "	U. S. C.	42	220 Audubon Ave, New York,	N. Y.	
Vidal Leason	Deck "	British	39	1800 7th Ave, New York,	N. Y.	
Mrs. L. Pertuit	Stewardess	U. S. C.	47	1602 N. Georgones St., New	Orleans,	
Augustus White	Ch. Cook	Panamanian	31	430 St. Nicholas Ave, New York,	N.Y.	
George Forrest	2nd "	U. S. C.	39	261 W. 129th St., New York,	N. Y.	
Matthew Donnelly	Writer	U. S. C.	20	130 West 63rd St., New York,	N. Y.	
Roley Bartlett	3rd Cook	U. S. C.	58	684 St. Nicholas Ave., N. Y.	C.	
Christopher Lewis	Baker	British	40	11½ N. Moore St., Kingston,	Jam.	
Abraham Haynes	Pantryman	"	39	431 Jefferson Ave., Brklyn.	N. Y.	
Lawrence Sanchez	Salcoman	Honduran	40	552 W. 152nd St., New York	City	
Ernest Gempesaw	Night Steward	Philipino	35	38 La Salle St., New York,	N. Y.	
Vincent Mendez	Asst. Stew.	British	30	108 W. 183rd St., New York,	N. Y.	
Cecil Sheriff	" "	"	30	48 W. 138th St., New York,	N. Y.	
Jabez Scott	2nd Pantryman	Costa Rican	36	17 W. 122nd St. New York,	N. Y.	
Clifford Moore	Asst. Stew.	British	45	Pt. Antonio, Jam.		
Leslie Hall	Asst. Stew.	British	35	1231 So. 20th St., Phila.,	Pa.	
J. Solomon	Asst. Stew.	British	36	179 Gates Ave, Brklyn. New	York	
Arthur Wood	" "	"	38	402 W. 148th St., N. Y. C.		
Clayton Colyen	Messman	"	34	245 W. 111th St., New York,	NY.	
Edwin Brathwaite	"	U. S. C.	30	8 W. 123rd St., N. Y. City,	NY.	
Zacharia McDermott	Asst. Steward	British	44	143 W. 136th St., N. Y. C.		
Harold Thompson	Scullaryman	"	32	128 W. 139th St., N. Y. C.		
Karl Depass	Asst. Stew.	"	27	11 Stanton St., Campbell Town,	Ja	
Frank Wells	Asst. Stew.	"	37	23 Hampton St. Kingston,	Jama.	
Alvin Henriques	Sailor	British	37	33 Foster Lane, Kingston,	Jam. BWI	
Dr. S. Winniger	Doctor	American	30	143-08 97th Ave., Jamaica,	L.I.N.Y	
Ralph D. Culbertson	Musician	American	18	302 Carolina St., Derby,	Conn.	
Edward J. Tojjee, Jr.	"	"	18	565 Howe Ave, Shelton,	Conn.	
John Gaetana	"	"	23	118 Hawkins St., Derby,	Conn.	

Figure 4.5, Crewlist of the SS Atlantida, December 28, 1940, exhibit B-1 in Standard Fruit & Steamship Company file, Box 3, William Standard Papers, Kheel Center, Cornell University.

For William Standard, the successful strike affirmed the idea that foreign seamen employed on American owned vessels, regardless of flag, were entitled to the legal protection enjoyed by American seamen, including the National Labor Relations Act.[363]

[363] Press Release, December 31, 1940 Folder: National Maritime Union, 1940-1941, Carton 10, International Longshoremen's and Warehousemen's Union Papers, BANC MSS 77/168c, Bancroft Library, University of California, Berkeley.

The situation of stranded-ness altered the meaning of desertion for seamen and further intertwined economic and political motivations. In the fall of 1939, the Polish consul asked police to prevent mutiny by crewmembers of the S.S. Batory who were demanding back wages and engaging in a "stay-in-strike" to prevent the ship's service as a carrier to England.[364] Many crewmembers left the ship and appealed to the immigration authorities for permanent admission "being now without country and having no place to go."[365] The INS was particularly wary of crewmembers with little sea experience, suspecting they were refugees. An immigration inspector considered malafide a 25-year old Spanish greaser "who was a bank clerk prior to sailing" and ordered him detained on board. But, after his lawyer filed a habeas corpus petition claiming he would be executed or mistreated if returned to Spain and the Mexican consulate offered him "haven," the INS arranged for him to sail out to Vera Cruz at the exp ense of the agents of the Yugoslav steamship he arrived upon.[366] Cecelia Razovsky managed to arrange for a stay of deportation for Max Zinn—a cook on a French ship for several years who was dismissed because, having been born in Munich, he was considered an alien enemy—so that the NCJW could arrange for him to enter a South American country.[367] Shortly afterwards Razovsky wrote the immigration service to request that it establish a policy that seamen unable to return to their places of residence because they would be interned or because they lacked valid travel

[364] "'Mutiny' on Batory in Hudson Averted," *New York Times*, Sept 23, 1939, 1.

[365] INS file 56035/20; see also "150 of Batory Crew Discuss Their Status," *New York Times*, Sept. 25, 1939, 37.

[366] INS file 56044/875. Around the same time, the State Department, at the behest of the Spanish embassy, told the INS that persecution claims by Spanish deserters were "groundless" and should be given no credence. Secretary of State to the Secretary of Labor [VD150.526/241], April 18, 1940, INS file 55854/370C.

[367] Cecilia Razovsky to James Houghteling, November 29, 1939 , Papers of the National Refugee Service, RG248, MKM 13.24, Folder 523, Appeals by Cecelia Razovsky, 1939-1940, Yivo Archives.

documents be allowed to remain in the United States and seek employment.[368] For the immigration service, allowing for the transit of crewmen through the United States was one thing; letting them stay in the United States was another. The INS responded to Razovsky that, although it realized that "aliens of certain nationalities would naturally hesitate to go into the war zone," it could not, given the large number of beached seamen in American ports, authorize a more general liberalizing policy regarding seamen.[369] Indeed, at some ports, inspectors had become less liberal at this time, ordering detained on board (or even in immigration stations or jails) any seaman who sought to be paid off from vessels sailing into the war zone (on the ground that they were malafide because they would not be able to reship foreign within sixty days.)[370] "Of late our officers have ordered detained on board quite a number of Greek seamen employed on vessels of Greek registry which have entered into contracts to deliver scrap iron to Great Britain," wrote deputy Commissioner Wixon in October 1939.[371] When the general manager of a Finnish line requested permission to sign off a ship's Jewish doctor (a member of the crew) in New York, the district director at Ellis Island was opposed.[372]

The general policy at the time, authorized by Marshall Dimock, second assistant secretary of labor, was to accommodate requests, particularly from legations and agents of shipping lines, to transfer crewmembers ordered detained on board to other vessels under the same flag or ownership that were about to sail out. This policy put the immigration service in the middle of increasing numbers of disputes at the end of 1940, by which time the INS and Dimock had

[368] Cecelia Razovsky to Edward Shaughnessy, Dec 12, 1939, INS file 55854/370B.

[369] Houghteling to Rasovsky, Jan. 3, 1940 , INS file 55854/370B.

[370] Letter from Mary Ward, Boston INS Commissioner to Commissioner I.F Wixon , November 10, 1939, 55954/370B.

[371] Wixon to Houghteling, October 10, 1939, INS file 55854/370B.

[372] Bryan Uhl to IF Wixon, June 19, 1941, regarding Norbert Schnabel, 55954/370D.

shifted from the Labor to the Justice Department. The relationship of Greek seamen with Greek consuls was very tense: the communist Greek Seamen's Union had been driven abroad by the Metaxas regime while many in the consular service had ties with Greek shipowners living in exile.[373] Radical New York based Greek seamen particularly disdained a "fanatical fascist" Greek consular official, Nicholas Courbellis.[374] Attorneys and agents of the Greek shipowners complained incessantly to the INS about desertions and asked that the INS take all seamen ordered detained on board to immigration stations for detention.[375] Meanwhile, the FBI and Greek consuls passed on information to the INS about the communist ties of Greek deserters.[376] The Norwegian legation and the conservative Norwegian Seamen's Association insisted that Scandinavian Seamen Club members were communists and "fifth columnists," and, if not for their solicitations, there would be no stranded seamen.[377] The National Maritime Union responded with a resolution against red-baiting, declaring "trade union movements in Germany, Italy etc. were destroyed on the basis of first destroying the communists," and another on "foreign seamen and the FBI," asking that the foreign seamen be given their rights and declaring solidarity with seamen of all nations.[378] A major INS investigation on desertion found that

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[373] Alexander Kitroeff, "The Greek Seamen's Movement, 1940-1944," *Journal of the Hellenic Diaspora* 7.3-4 (Fall-Winter 1980), 73-97.

[374] Translations from the Boston-based Greek newspaper *Ethnos*, INT-32A-35; Memo on Greek Shipping from Robert Reynolds to DeWitt Poole, April 18, 1942, INT -14GR-74, both from Files of the Foreign Nationalities Branch of the Office of Strategic Services [RG226.8], NARA.

[375] Wixon to Houghteling, October 10, 1939, 55954/370B.

[376] Inspector Patrick Farelly interview with FBI informant regarding deserting Greek seaman now under communist influence, June 27 1940, INS file 55854/370C.

[377] Memorandum In re: "A Meeting held between members of the Norwegian Diplomatic Corps, officials of the Norwegian Seamen's Union, and representatives of the Immigration and Naturalization Service," November 26, 1940, file 55955/997A.

[378] Third Biennial Convention, Resolution number 53, Box 90, NMU papers, Rutgers.

communist groups were having an impact, but that other causes were too, including desire for better wages, food, and treatment and unrest due to the war and occupation. Investigators found, for example, that Dutch seamen, whose ships had been taken over by the British admiralty, were upset at a reduction of bonuses and feared their families in occupied Holland would be penalized if they sailed against the Germans. Chinese seamen insisted that "desertions were due to poor treatment at the hands of the captain and the [Dutch oil] company" that employed them.[379] Nonetheless, suspicion of "outside agitation" among foreign crews continued. Investigators believed that certain New York Chinatown shops, seamen's organizations, and benevolent societies were fronts, though they had little definite evidence.[380] The central office of the INS circulated to all district directors an instruction, which it received from the FBI, that the British sent to its consular officers regarding Chinese desertions. " In most cases," it said, "these desertions are not caused by wage disputes, nor do they result from ill treatment on board although these are the 'lines' the crews will most likely take. We have good reason for believing that these desertions rep the work of a highly organized subversive group."[381]

1940 was a year of intense suspicion of subversion and disloyalty, especially of radical and foreign seamen. In June, President Roosevelt issued an executive order mandating more thorough inspection of alien seamen's documents; all seamen were required to surrender passports, bearing their fingerprints, to the immigration authorities at the time of landing. The seamen were supposed to then be re-fingerpinted when picking up their passports for departure. This measure was "part of a broad national program of keeping 'close tabs' on all aliens within

[379] Re: Desertion of Crews of Foreign Vessels in United States Ports, May 21, 1941, INS file 56056/165.

[380] The report mentioned the Nah Wah Tea Parlor (and Lou King), the Chinese Seamen's Institute (and Wen Ho), and the Tai Pang Association (and Yim Fong), INS file 56056/165.

[381] Memorandum for Major Schofield from J. Edgar Hoover, May 13, 1941, INS file 56045/356.

the borders."[382] Legislation was proposed to penalize maritime work stoppages in violation of contracts and to hold in custody aliens ordered deported but whose deportation could not be effected. The ACPFB fought the latter, calling it a concentration camp bill. A provision of the Alien Registration Act of 1940 (better known as the Smith Act), was designed specifically to overturn a court decision holding that past membership in the communist party was not grounds for deportation. The new provision was used to start another round of deportation proceedings against Harry Bridges, his lawyers, and activist seamen.

As we shall see in the next section, war conditions and the crackdown by the U.S. authorities turned seamen into refugees and the labor lawyers who represented them began invoking a language of human rights. In this context, and as the U.S. nudged out Britain as the world's greatest sea power, would the Seaman's Act promise—of giving foreign sailors a chance to sign off and seek a better berth—have any reality?

[382] "The President Issues New Executive Orders Restricting the Entry of Nonimmigrant Aliens and Alien Seamen," *Interpreter Releases*, XVII.27, June 14, 1940, 201, 206.

Keeping 'Em Sailing: The WWII Alien Seamen Program, 1941-1946

"Collaboration between allies in one of the most vital of war services bears no resemblance to the old practice of aiding in the arrest of deserting seamen, a practice abandoned by the United States under the Seamen's Act of 1915."
--Phillip Jessup, *American Journal of International Law*, 36.4 (Oct 1942) 655-6.

"We left our families behind to serve on Allied ships because we wanted to do our share…but British and Dutch ships…are prejudiced against us…The object of arrest [by the INS] is apparently to force us to continue working like slaves for low wages."
--Letter to Chinese consul general, New York City, from seaman detained at Ellis Island, *Chinese Nationalist Daily* and *Chinese Daily News*, Jan. 27, 1943.

"Seamen are not allowed to straighten out their status because maybe they will stop sailing."
--Carol Weiss King, Sept. 14, 1945, meeting at the NMU.

"We have witnessed a complete denial of the mandate or wishes of the Atlantic Charter or the conferences at Cairo and Yalta [in] the actions that are being taken in Indonesia…in French Indo-China…These facts many people know and seamen have had a chance to find out: they have been down there."
--NMU delegate David Slivka at the National Conference on the Foreign Born in Post-War America, Oct. 20, 1945

The immigration service began to address the problem of deserting alien seamen as a *wartime* problem in May 1941 while America was still officially neutral but there were concerns about desertions from vessels carrying lend-lease cargoes.[383] Representatives from the Justice Department, the Maritime Commission, and the State Department came up with a regulation, issued as Order C-31, that alien seamen were to sail out within the time the vessel on which they arrived did so. This effectively prohibited foreign seamen paying off in the U.S. Seamen on tankers which only spent a few hours in port essentially had to forego shore leave. For ships in port longer, another regulation stated that shore leave was to be granted upon consent of the master and the immigration authorities. This generally meant that it was not allowed. These rules provoked surprise and protest from seamen who had come to see the chance to get off their ships in a U.S. port as an economic right; the rules were deemed "undemocratic" by the NMU.[384] An Egyptian engineer complained bitterly about his inability to sign off a Norwegian vessel in

[383] Lend Lease began in March 1941.

[384] Resolution #34, Third Annual NMU Convention of the NMU, July 1941.

protest. "The food [on board]…is not fit for a prisoner…employees… work about sixteen hours a day without extra pay… My pay is about $60 after deduction of Royal Tax…while I have four souls (dependents) in Egypt. It is not possible for me to describe to you the humiliation placed upon the employees and the officers since the issuance of the order denying the 'rejection' concerning food and work. Inasmuch as the Government of the United States is free and just, we beg and request the return of full freedom as it was before."[385] Greek seamen were "seriously disturbed" that the order meant they had to man "death traps," adding that Greek ship owners "have transferred their headquarters to New York for their personal safety and also their larger profits."[386] The inability to sign off British and Dutch vessels and to sign on to American vessels flying the Panamanian flag led seamen from Sumatra, Malaya, Borneo, and India to claim they were Filipino and had been sailing for years on Standard Oil and United Fruit ships.[387]

Advocates tried to fight the order in court, though without much success. In July, 27 Chinese crewmembers of the British SS Dorcasia refused to continue sailing on the ship and were taken into custody in New Jersey by the INS. William Standard accused the immigration service of inserting itself into labor disputes by refusing to allow crews with legitimate grievances an opportunity to sign off.[388] Standard also represented a Chinese crew kept under "virtual servitude" for nineteen months on the British ship Tricula, having signed articles in Singapore that had a rider denying them shore leave in New Zealand, South Africa, Canada or

[385] Translation #503 (by inspector Habib A. Bishara), Letter of F.A. Yousseff to the American Immigration Service, July 15, 1941, file 55854/370D.

[386] Letter from N. J. Cassavetes to Lemuel Schoenfield, May 13 1941, 55854/370C.

[387] This was according to immigrant inspector Charles Aldridge, who had served in the U.S. army at Mindanao, Jolo and Luzon between 1912-1915. [Memorandum to Inspector in Charge, Port Arthur, Texas, July 24, 1941, INS file 55854/370C.]

[388] Standard's memo, "In the Matter of Detained Seamen and Their Right to Reship," also mentions the imprisonment of the crew of the "Hertha Mearsk" in Chatham County Jail, Georgia, for their refusal to accept a pay cut. The memo is in INS file 55854/370D.

the United States. Conditions on the Tricula, Standard claimed, "were reminiscent of by-gone years," including "assaults and humiliations by officers on members of he crew" and "poor food." When the ship arrived in New York, Standard applied for a writ of habeas corpus. A federal judge held that he had no discretion to grant the seamen shore leave.[389] The immigration service, at the behest of the State Department and the British Ministry of Shipping, kept the seamen detained until Ng Hop Choon, the Singapore crew contractor for Anglo-Saxon Petroleum (Shell), arrived in New York to "clean up crew troubles."[390] Philip Dorfman brought a habeas corpus suit on behalf three Greek seamen and a Hungarian radio operator who were ordered detained on board the Greek ship Mount Taygetus when it docked in Philadelphia. The three Greeks claimed all they wanted was to sign off "so we could get another vessel since we did not like the conditions on the Mount Tygetus." [391] The British Ministry of Shipping wrote to the INS Philadelphia office, accusing the seamen of engaging in a "sit down strike" and jeopardizing cargo "vital to England," since the Mount Tygetus was to sail to Halifax and then join a convoy across the Atlantic. A District Court judge dismissed the writ, though he expressed a belief that "human rights were involved" in detaining the men. A British military intelligence officer attended the hearing on the writ and pressed the INS to try especially to get the radio operator to sail with the ship, presumably as a double agent, but the operator "strongly repudiated any desire to remain with the vessel." [392] Representatives of Greek shipowners insisted that they could not make improvements or raise wages because of the taxes the Greek government imposed on

[389] Proceedings of the Third National Convention of the National Maritime Union, July 1941, Report of William Standard, page 177-8.

[390] INS file 56077/491.

[391] Interview with Nikitas Aggelis, June 24, 1941, INS file 56080/94 (the other seamen are files 56080/93, 95 and 96.

[392] Memorandum by H.R Zaepfel, assistant district director in Philadelphia, June 5, 1941, INS file 56077/483.

shipping and the fixed freight rate agreed upon by the Greek government for ships it chartered to the British. The Greek government in exile, like the Norwegian, was dependent on the revenue raised from shipping (mostly money earned above the fixed freight rate paid to shipowners).[393]

In August 1941 the immigration service circulated a confidential instruction that order C-31 was not to be modified if desertions were to be prevented and ship delays avoided. It ignored the alternative of fining onshore employers of seamen [394] and could do nothing about shipping company maneuverings to avoid dangerous transatlantic runs.[395] [Shipping companies also complained that when Asian crews deserted, ships were delayed not only because they had to hire or ship-in new seamen but also because ship quarters needed to be made "suitable" for white crews. The distinction in accommodation was not seen as part of the problem.[396]] Keeping foreign sailors on their ships was also crucial to priorities of State and Commerce: adhering to the neutrality act and preserving American ships. Admiral Emory Land, head of the Maritime Commission and later the War Shipping Administration, was interested in building up the U.S. merchant marine and preferred to give requisitioned allied ships rather than American ships to Britain in 1941.[397] The rivalry between Britain and the United States for maritime supremacy was understated but tangible throughout the war.[398]

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[393] Gelina Harlaftis, *A History of Greek-Owned Shipping*, 229.

[394] Luis F. Pardo, counsel to Greek ship owners, suggested in a letter of July 14 1941 that "a law be passed for those people who are illegally employing sailors who are fit to sail, informing them that they will receive a very heavy fine or punishment." INS file 55854/370C.

[395] In early 1941, the Gulf Oil Corporation "evaded" the requisition of some of its tankers to the British by shifting them from Belgian to Panamanian registry. Gulf Oil planned to sail the tankers between Venezuela and Philadelphia. See letter from the District Director in San Antonio, January 24, 1941, INS file 55854/370C.

[396] "Before the [U.S. entered the] war Chinese were…put into cramped quarters, eight Chinese in space normally allotted to four Britishers." Sid Kline, "British Treatment of Chinese Seamen Stirs Conflict Between 2 Allies in U.S." *PM*, May 12, 1943.

[397] When British officials initially requested ships from the United States the previous year, Land told them they would have to build their own shipyards in the United States, which is what they did. Then the United States used

By the time the U.S. officially entered the war, all the European governments-in-exile (Belgian, Dutch, Polish, and Yugoslav, besides the aforementioned Norwegian and the Greek) had taken control of their nations' merchant ships outside occupied areas; for the most part, the ships were under the management of the line owners, who acted as agents for government shipping ministries. The governments-in-exile also established maritime courts in England to try deserters,[399] and, through consulates and shipping missions in the United States, asked the Immigration and Naturalization Service for help preventing desertions. Approximately 45,000 seamen from the merchant marines of the occupied countries shipped in and out of U.S. ports, 6,000 of whom left their ships between September 1939 and the spring of 1942.[400] The large number of desertions from the United Kingdom might partly be accounted for by the fact that a seaman's pay in the British Merchant Navy was around 12 pounds per month (minus insurance), less than half that of his American counterpart (who also made overtime pay and received better bonuses). **(**"United Kingdom" deserters also likely included seamen from the West Indies and colonies looking for a way to immigrate.) Greek seamen similarly earned much less than their

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the British-built yards as models for its own shipbuilding program. After the United States entered the war, Land advised the United States to retain title over lend-lease ships. He also advised using Liberties, ships not well suited for American liner operations, for foreign allocation, rather than more commerce-oriented cargo ships and tank vessels. Land believed the latter should be retained for future use in the American merchant marine. For the diplomatic and military context, emphasizing American suspicions of British requests for help and Anglo-American rivalry, see Kevin Smith, *Conflict Over Convoys: Anglo-American Logistics Diplomacy in the Second World War* (Cambridge: Cambridge University Press, 1996), chapter 3.

[398] Cafruny notes a shift in the Anglo-American rivalry since WWI. During WWI the US was more nationalistic and competitive. During WWII, the US took on a more hegemonic, caretaking role. (*Ruling the Waves,* 80)

[399] The extra-territorial maritime courts were established under Britain's Allied Power's Act and their jurisdiction and workings are well explained by R.S. T. Chorley in *Modern Law Review* 5.2 (Nov. 1941) 118-120. The courts enforced merchant shipping laws and maritime conscription laws of the allied governments. They courts could order seamen to serve on their country's vessels, require seamen to report for duty along the British coast, or order seamen interned.

[400] Statement and proposals of Marshall Dimock to the War Manpower Commission, July 15, 1942, Box 56, Marshall Dimock Papers, Franklin Roosevelt Presidential Library, Hyde Park, NY.

American counterparts; Greek desertions were high considering the relatively small size of its merchant marine. (See footnote 414 for further discussion on wage differentials).

Approximate Number of Seamen in This Country
Who Left Their Ships Since September 1, 1939
(As of April 1, 1942)

Belgium	182
China	434
Czechoslovakia	186
Denmark	140
Greece	610
India	56
Netherlands	424
Norway	684
Poland	114
Russia	24
United Kingdom	924
Others	2222
Total	6000

Schedule of Approximate Maximum Wages Paid A.B. Seamen (Per Month)

American	$300
Panamanian	225
Honduran	200
British	75
Greek	100
Norwegian	80
Dutch	80
Yugoslav	148

Figure 4.6, Statistics on desertion from and wages on Allied vessels, Report of the Special Interdepartmental Committee on Maritime Labor, 1942, Marshall Dimock Papers, Franklin Roosevelt Presidential Library.

In January 1942, the Greek shipping mission especially requested that the INS apprehend and detain deserters and then allow Greek officials to speak to them at the various immigration stations. Appeals to their patriotism and love of homeland, the Greek shipping minister believed,

would convince most Greek seamen to reship on Greek vessels.[401] T.T. Scott of the British Merchant Shipping Mission was more cynical about the motives of deserters and proposed that the INS deport to England any allied seaman who deserted from British or allied ships based in the U.K.[402] The Order of Ahepa, a conservative Greek-American fraternal organization, believed that seamen were averse to sailing under the Greek flag because these ships did "not afford them the advantages and security they think they should have during the emergency," and suggested that "all seamen of Allied Nations" be permitted to legalize their entry and accept service in the U.S. merchant marine.[403] The NMU's National Council similarly assumed that deserters wanted to "participate actively in our all-out war effort" and suggested eliminating citizenship requirements on American vessels so that foreign seamen could sign up.[404] [These seamen would get then get the benefits of American seamen while on board and, after five years service, would be eligible for citizenship.] These Americanization plans would obviously boost Ahepa and the NMU's membership. A lawyer for seamen detained by the INS argued that his clients only deserted so as not "to be the vassals or slaves" of shipowners; he added, "nor do they feel that this great government of the United States should have as its declared policy to…compel these men to sail on Greek vessels."[405] The U.S. Justice Department leaned towards compulsion,

[401] Uhl to Special Assistant to the Attorney General, enclosing report on Greek seamen, January 10, 1942, INS file 55854/370D.

[402] Letter from Scott to Savoretti, January 13, 1942, 55854/370D

[403] George Vournas to Lemuel Schofield, January 28, 1942, 55854/370E.

[404] Resolution Adopted by the National Council of the NMU, January 12-19, 1942, 55854/370D

[405] Brief on behalf of P. Venzanaris, M. Diakos, S. Yorgandis, K. Kondis, A. E. Apostolokos , I. Benardis, E. Philipides, K. Rapitis, D. Yorgaris, M. Kamenis, I. Rokotis, A. G. Apostolokos, P. Bouritis (Feb. 5, 1942), enclosed in a letter from David Siegel to Vito Marcantonio, Feb. 13 1942, Folder: Greek Seamen, box Box 46, Marcantonio papers, NYPL.

believing a strong "deterrent to further desertion" was necessary.[406] In early February, Dimock (now assistant immigration commissioner, and soon to be director of manning for the War Shipping Administration) and T.T. Scott (now representing Britain's Ministry of War Transport) met with Adolf Berle at the State Department and decided that "the matter was one…involving political, labor, coordination…and welfare factors" and that "the most effective approach…would be the creation of an interdepartmental committee" that would contact "domestic and foreign agencies as might have an interest in the matter and quickly formulate a plan."[407] Representatives of the allied governments quickly made it clear to this American interdepartmental committee (representing the U.S. State and Justice departments and the War Shipping Administration) that they considered desertion a law enforcement problem and "no discussion was had on the question of the parity of wages [and conditions] or the uplifting of seaman morale."[408] At a meeting in late February, the allied governments suggested that "naturalization proceedings by allied seamen be suspended for the duration of the war" on the principle that "seamen who are subject to the conscription laws of their own countries should not be allowed to abandon their nationality."[409] In contrast, Thomas Christensen of the NMU's Pan-American department advocated establishing a central shipping pool of foreign seamen in major cities to allow them to sign off and sign on to allied vessels expeditiously but without giving up their ability to seek different berths. Christensen noted that "if nationals [of the allied governments] are held to sail on vessels of their registry only, it will interfere in securing crews

[406] Lemuel Schofield to District Director at New York, January 13, 1942, 55854/370D

[407] Memorandum for the file, February 5, 1942, INS file 56035/66.

[408] Memorandum for Mr. Dimock, Feb. 17 1942, INS file 56035/66.

[409] Paper discussed at the Allied meeting on February 25, 1942, Container 49, Marshall Dimock Papers, Franklin Roosevelt Presidential Library, Hyde Park, NY.

for vessels of Latin American registry and thereby delay their operation."[410] The ACPFB suggested another strategy that acknowledged both the needs of the allies and the American ties of foreign seamen: "that an effort be made to secure special naturalization privileges for foreign-born seamen who leave the United States on foreign flag ships."[411]

The U.S never went as far as the British wanted; the British hoped the Americans would adopt regulations similar to an Order-in-Council in place in Canada mandating the detention or forced reshipment of seamen thought "likely" to delay ships.[412] But, by March, the interdepartmental committee had accepted the proposal of the allied shipping missions to give each "a prior call on the services of its own seamen for manning its own ships," recognizing that governments under Axis occupation considered merchant marines manned by their own men symbols of their continued national existence.[413] The committee knew that there the American merchant marine paid much more than the others; the U.S. pushed the allies to raise wages to keep ships sailing, but did not commit to equalizing wages across United Nations vessels or to eliminating disparities of pay for Asian seamen on European ships.[414] The committee

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[410] Christenson to Berle, Feb. 24, 1942, 55854/370D .

[411] Minutes of the Emergency Meeting of the National Board of Directors of the American Committee for the Protection of Foreign Born, Feb. 2, 1942, Administration: Board of Directors Minutes, 1941-1944, Box 1, ACPFB papers.

[412] T.T. Scott of the British Merchant Shipping Mission sent Dimock the Canadian Order-in-Council as a model of "how best to deal with the desertions of Allied seamen in this country." Letter from Scott to Dimock, March 2, 1942, with enclosure of the Canadian Merchant Seaman Order, Container 49, Dimock Papers.

[413] Report of the Special Interdepartmental Committee of Maritime Labor, April 7, 1942, Container 49, Dimock Papers.

[414] According a July 31, 1942 affidavit by Dimock: "Most of the Allied governments have taken steps to improve their wages and conditions of employment. This was part of the agreement entered into between this Government and the Allied Governments when initiating the program of cooperation and control…Wages of British and Dutch seamen have increased from $70 to $90 a month; Norwegian seamen now earn $105 a month; Greeks and Yugoslavs earn around $150, whereas in the early part of this year their wages were below $100 a month. The most noticeable improvement has been made in the case of the Chinese, who earned $40 a month at the beginning of this period [March 1942], their wages are now $80." (War Shipping Administration Recruitment and Manning Organization Information Circular No. 15, August 10, 1942). Four months later, Dimock "told the Chinese

recommended that American, as well as Honduran and Panamanian ships—mostly American owned and paying wages comparable to American ships—stop signing on *new* allied seamen beginning in April 1942 so as not to divert them from ships of the exiled European merchant marines. (The rule did not effect alien seamen already sailing on American vessels). The committee assumed that each of the exiled merchant marines would create "conciliation

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[government] representatives that the question of [parity of] wages [for Chinese seamen on United Nations vessels] is something that…could not be discussed by this [the U.S.] Government." ["The Chinese Seamen Problem," Nov. 3, 1942, INS file 67084/639].

According to a memo put out by the NMU and the ACPFB in March 1943, seamen on American ships averaged $200 a month, Norwegians $105, Greeks $84, and Chinese $76. Curran clarified that, according to the Greek Maritime Union, Greek wages were $114 on paper, but $6 was deducted in taxes and $28 as a forced savings bonus, which seamen did not believe would be returned. The Chinese Consolidated Benevolent Association in New York (which represented Chinese seamen's organizations, among others) clarified in April that the average monthly wage, which it claimed was $65, was "grossly inadequate" for Chinese seamen because, at prevailing prices in China, it required at least $125 to support a family of three. Moreover, no war risk insurance or compensation of any kind had been paid to the families of Chinese seamen lost in action. For survivors of torpedoed ships, British and Dutch shipping companies only allowed $40 to $60, varying with the different lines, for each man in payment of personal property and tools lost. [Memorandum on H.R. 1681 and the Manning of Foreign Flag Ships, Box 4, folder: Seamen Deportation; Curran to Vito Marcantonio, April 8, 1943, box 52, folder: NMU; Letter to Congress from the Chinese Consolidated Benevolent Association, April 28, 1943, box 51, folder: China, all in Vito Marcantonio papers].

According to documents submitted to Dimock by T.T. Scott of the British Shipping Mission, Chinese seamen on British oil tankers made significantly less per month than their white counterparts: the basic monthly wage for a British sailor working for the Anglo Saxon Petroleum Company was 12.12 pounds, and for a Chinese sailor 7.15 pounds. The British justified this by claiming Chinese seamen did not pay income tax and got signing bonuses and by asserting that more Chinese seamen needed to be hired to do the same work (since they believed Chinese did not work as hard and were less capable). ["Comparison of Manning and Wages of British and Chinese Seamen Serving Upon Similar British Vessels," enclosure from T.O. Scott to Dimock, Oct. 10 1942 and enclosure from Clifford Gale to Leonard Leach, April 1, 1943, INS file 56084/639].

The Chinese and British governments negotiated an agreement in early 1944 that brought wages closer together, though did not eliminate all inequalities of conditions. The agreement was geared towards employment of Chinese seamen on Anglo-Saxon Petroleum Company Ltd. and A. Holt & Company ships "whether sailing under the British flag or the Netherland flag." [Agreement Between the Government of the United Kingdom and the National Government of the Republic of China in Regard to the Employment of Chinese Seamen, May 19, 1944 (INS file 56084/639)]. Anglo Saxon Petroleum (Shell) maintained reserve pools of seamen both in England and in the United States. Crew lists maintained by the INS (file 55854/370B) indicate that Asian sailors coming into U.S. ports on allied ships were mostly on those flying British and Dutch flags, especially on Shell tankers. Besides demanding the same wages as white crew members, some Chinese sailors who deserted these ships and were detained by the INS agreed to reship so long as they were not placed on tankers, a condition that the INS deemed unreasonable.

Below is the War Shipping Administration's breakdown of basic wage plus war bonuses (in dollars) for seamen on U.S. and foreign flag dry cargo ships in 1944. (Data adapted from appendices in "Comparative Analysis of Rates of Earnings and Conditions of Work of the Merchant Marine Personnel on Foreign Flag and U.S. Vessels," Nov. 15, 1944, Labor Agreements Division, WSA).

	U.S.	GreatBritain	Greece	Netherlands	Norway	Belgium
1st Officer	449	156	255	189	184	176
3rd Engineer	392	134	210	145	151	140
Able Seaman	202	96	112	103	115	98
Fireman	207	100	120	104	116	98
Second Cook	230	94	83	92	98	96

machinery" involving representatives of seamen's unions and shipowners to resolve disputes over conditions; the INS agreed to inspect ships, investigate grievances, and engage in "informal" mediation of disputes. Most important, the INS adopted a policy, suggested by the interdepartmental committee, of apprehending seamen from Axis-occupied countries who arrived in the U.S. after September 1, 1939 and overstayed their leave. If they refused to reship on vessels of their nationalities, the INS would deport them to the allied seamen's pools in Halifax and England.[415]

In the spring and summer of 1942, advocates for foreign seamen opted to accommodate this program and focus on helping in the war effort. William Standard wrote to Ira Gollobin that it was "utterly without justification" for foreign seamen to demand that "during these trying days" they obtain increases in wages equal to those prevailing on American flag ships."[416] ACPFB policy was not to challenge the detention of foreign seamen in federal courts, feeling "that such actions would be disruptive to our war effort." "We recognize that some injustices must be worked in individual cases…we do everything in our power to correct such injustices…but any case taken into court would necessarily become a test case and serve to create confusion as to the responsibilities and duties of foreign seamen in this country during this time of war."[417] The ACLU praised the INS for granting Chinese seamen shore leave "on a parity with seamen of other nationalities," a concession to the Chinese government (with new, wartime clout) and in the hope that it would lead to a drop off in sit-down strikes and desertions by Chinese seamen on

[415] Report of the Special Interdepartmental Committee on Maritime Labor, April 7, 1942. Box 49, Marshall Dimock Papers.

[416] Standard to Gollobin, July 29, 1942, folder: Alien Seamen, Box 16, ACPFB papers.

[417] Abner Green to Karl Olsen, Nov. 3, 1942, folder: Alien Seamen, Box 16, ACPFB papers.

British and Dutch ships.[418] Radical foreign union leaders—like Tony Ambatielos—helped get seamen to ship out on allied vessels in the name of keeping the ships moving. A manifesto of the Greek Seamen's Union, signed by Ambatielos among others, appealed to its members (approximately 600 out of the 3000 Greek seamen in the U.S.) to return to their ships. "Wage scales, questions of food, safety and general working conditions can easily be straightened out once the crews return to the boats and organize themselves as American crews are organized."[419] To keep American ships moving, the War Shipping Administration, through which the U.S. government had taken control of the American merchant marine and made private ship owners their general agents in operating vessels, agreed with the NMU to recognize existing collective bargaining agreements in exchange for a no-strike pledge. The National War Labor Board was established to settle any labor disputes that arose and attempt to establish uniformity in wages and working conditions on American ships.

Whether or not the Board could settle a wage dispute involving foreign seamen on foreign flag vessels chartered by the WSA was a matter of dispute; Standard and Christensen pushed for the same scale of wages on all these ships, while Admiral Land opposed establishing "American standards of employment" on foreign flag vessels controlled by the WSA.[420] Besides the inactive foreign ships in U.S. ports requisitioned for the war effort in 1941, the WSA also gained jurisdiction over ships seized in Brazilian ports and ships transferred to it by the British Ministry of War Transport; WSA continued to take jurisdiction over additional ships during the

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[418] Roger Baldwin to Earl Harrison, August 4, 1942, reel 213, federal legislation, Chinese shore leave, ACLU papers

[419] Translation of the Manifesto of the Greek Maritime Union, July 1942, INT-14GR-145, Files of the Foreign Nationalities Branch of the Office of Strategic Services [RG226.8], NARA.

[420] E.S. Land to E.M. Morgan (Chairman of the War Shipping panel at the National War Labor Board), July 12, 1944, National War Labor Board Case Files: Standard Fruit and Steamship Company 3/9/43-2/45, Box 3, William Standard, NMU General counsel's files, 1937-1949. #5258. Kheel Center for Labor-Management Documentation and Archives, Cornell University Library

course of the war, and especially after the Armistice with Italy. According to Land, the WSA controlled vessels under the flags of Great Britain, Brazil, France, Cuba, Latvia, Sweden and the Philippines; "most of these vessels, as well as those operated under the flags of Panama and Honduras, begin and end their voyages in the United States…Upon their acquisition by the WSA the terms and conditions of employment to which crews are accustomed…were maintained. Wage scales, as well as the sum total of the foreign seamen's rights including social insurances, workmen's compensation, pensions…have all been maintained in conformity with the laws and standards of the several nations...as the best means of assuring smooth and uninterrupted operation…[and] upon the insistence by some of the nations."[421] Many originally Danish, Finnish, or Italian ships under WSA jurisdiction were operated by private American shipping lines (like Waterman, Grace, American President, and Alcoa) under Panamanian flag. [Thus, the war facilitated the growth of the fleet of American ships under Panamanian flags that began with the flagging out of oil and fruit company ships in the interwar period.] To make matters more complicated, to replace torpedoed or bombed ships, the U.S. leased American ships (frequently referred to as lend-lease lease ships) to the allied shipping authorities for use later in the war; though WSA held onto the titles to these ships, they flew under allied flags. Most of the ships were transferred to Britain, but the U.S. also gave ships to the other allies.[422] For example, the U.S. gave twelve Liberties, eight tankers, and four larger freighters to Notraship, the Norwegian Shipping Mission, in New York. The Norwegians re-chartered the ships back to the U.S. and the WSA allocated their cargoes and routes. As historian Peter Elphick writes, "Although they flew foreign flags and were foreign manned and operated under Norwegian shipping laws, they were

[421] Ibid.

[422] Over the course of the war, Britain received 200 ships; Russia received forty-three; Norway, Belgium, the Netherlands, Greece and China together received fifty.

in effect used like units of the American merchant marine." "It nearly took a sit-down strike" to get the crew quarters insulated—a right demanded by Norwegian seamen—on one of the transferred Liberties.[423] With the cooperation of the Dutch Ministry of Transport, the WSA also took jurisdiction over more than a dozen vessels flying the Dutch flag and manned by foreign crews; Chinese and Indonesian members of these crews struck for higher wages and better conditions during the war.[424] Javanese seamen on one of these ships, whose home port was in the U.S., wrote the INS: "We would like very much to go back on the ship as we feel that we are Americans too" but "the pay of $20 a month [what they pay us in Java] is not enough for living expenses in America."[425] The WSA's role in matters relating to foreign flag ship gave potency to foreign seamen's invocations of American standards and freedoms.

Problems with the Alien Seamen Program were apparent by late summer 1942. In his memoir, Ambatielos claimed that though he managed to get the more radical sailors to ship out, 1000-2000 Greek seamen remained ashore, prompting calls for INS raids by the Greek authorities.[426] Between April and July 1942, almost 3000 seamen of allied nationalities were arrested for overstaying; the INS adopted a policy of not releasing them on bond pending deportation. Hundreds of seamen filled immigration detention centers and spilled over into jails, prisons, and camps; most notoriously, sailors in New York were sent to Riker's Island, and, on the West Coast, Chinese sailors were sent to Sharp Park, where they eventually clashed with

[423] Peter Elphick, *Liberty: The Ships that Won the War* (Annapolis: Naval Institute Press, 2001) 384-5.

[424] Lists of foreign flag ships under WSA's jurisdiction can be found here: http://www.usmm.org/foreign.html and http://www.armed-guard.com/panama.html [accessed June 13 2013].

[425] Letter to Lemuel Schofield from Mssrs. Sukep, Karta and Salam Bin, Sept. 23, 1943, 55854/370P

[426] Ambatielos memoir, 110.

Japanese detainees.[427] Some arrested seamen wanted to ship out, but vessels of their nationalities— particularly from the much depleted Greek and Yugoslav fleets—were not available so they "sat idly in detention stations." The morale of Greek seamen in custody of the immigration authorities was decidedly low—"most of them were never detained as prisoners at any previous time…and it hurts them knowing that their mothers, sisters and brothers in Greece are dying from famine and Gestapo executions," as one Greek-American observer put it.[428] When interviewed in August after he'd spent over a month in a Baltimore city jail, Kyriakos Fournaris said he was willing to sail out when a ship became available since he was "whole heartedly with the allies of the democracies" but that "since I have been in jail, I am not very well. Sleeping in the jail is hard on my health." [429] [The INS admitted that poor conditions at the jail—which had unlighted cells, few showers, and no outdoor spaces for recreation—were "not comparable in any manner whatsoever" to the immigration detention facility at Fort Howard, Maryland[430]]. Indeed, there is good evidence that the strategy of detaining the sailors for deportation made some more aware of their anomalous status and less ready to ship out. When Joseph Karel Van Den Broeck, of Antwerp, arrived in New York he intended to reship, but while he was detained at Ellis Island he "made up my mind to remain in the United States…I cannot

[427] "Don't Treat Us Worse than Nazis, Imprisoned Allied Seamen Beg," *New York Post*, October 5, 1942; Chinese seamen were removed from the Sharp Park detention camp after raising the Chinese national flag and a poster taunting Japanese interned there. ["Chinese Flag Taunts Japanese Internees, " *New York Times*, July 7 1943, 4] .

[428] Letter of Theodore Theodorus July 13, 1942, INS file 55854/370G.

[429] INS file 56122/212. Fournaris said this just around the time that Marshall Dimock, in a speech on morale problems among maritime personnel, told the National Association of Seamen's Welfare Agencies "if we want to get the confidence of seamen, we must think of them as men, and not think of them as patients. "Maritime Personnel and Morale Problems During the War," June 29 1942, Box 56, Dimock papers.

[430] Report of Deputy Commissioner Edward Shaughnessy re: visit to the Baltimore City Jail on Aug. 12, 1942, file 55854/370H.

go back to my country…I am a refugee and have no country."[431] Ironically, the valuable ship (the Norwegian Kosmos II) used to deport Fournaris and Van Den Broek (and 46 other seamen) was torpedoed on its way to England in late October 1942. Fournaris and at least five other Greek deportees on the ship were reported "lost at sea" and no compensation granted their families.[432] Cecilia Razovsky reported that "a [Greek] seaman who had remained longer than permitted explained when asked why he had not departed that he had been torpedoed five times and he was getting 'a little tired of it.' Adequate protection for their families, should the men fail to return, would no doubt serve to secure greater cooperation from the seamen."[433]

Some sailors agreed to ship out if conditions on certain ships were improved, but mediation mostly proved impossible. According to historians Philip Kaplan and Jack Currie, "in common with his American equivalent, the British merchant sailor had the right to decline the first two ships offered to him" but was required to take the third if he wanted remain in the seaman's pool in 1942.[434] The Alien Seamen Program certainly departed from this policy:

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[431] INS file 56090/78.

[432] Memo In re: The question of compensation by the united States Government in the Cases of Aliens who lose their lives or are injured while being deported, November 17, 1942, INS file 55854/370L. Fournaris had been a seaman for 15 years and had a wife and two young children on Chios. After leaving his ship at Galveston in August 1940, he moved to Bethlehem, Pennsylvania to live near his cousins, naturalized American citizens, and registered for the U.S. army. He later worked in a restaurant, as a painter, and then in a shipyard in Baltimore. When he died, two of his brothers were fighting in Libya with the British army. It is not clear from his INS file whether Van Den Broek died or was rescued after the deportation ship was torpedoed. As of November 17, 1942, 39 of the 48 deportees were still missing from the Kosmos II, which went down on October 28.

[433] Razovsky,"Problems of Alien Seamen," *Interpreter Releases*, Vol. 20. Issue 29, August 9, 1943, 207. The following year, Razovsky wrote Dimock: "One of the subjects about which we find there is very little definite information is in connection with the protection of allied seamen and their families. Would it be possible for you to let me know whether there is an insurance scheme for the seamen in the united nations' pools…It would be helpful if we received information with regard to each nationality, including the Chinese." Dimock revealed his lack of interest in this question when he replied to Razovsky, "may I suggest that you write to the various Allied Shipping Missions in New York, requesting from them information regarding various insurance schemes for Allied Seamen." (Razovsky to Dimock Feb, 18, 1944 and Dimock to Razovsky, Feb. 29, 1944, Box 231, folder 12, reel 145, Immigration and Refugee Services of America microfilm).

[434] Kaplan and Currie, *Convoy: Merchant Sailors at War* (Annapolis: Naval Institute Press, 1998) 27-8

according to INS Instruction 75 (issued June 1942), "seamen will be required to reship when a berth becomes available, although they should not necessarily be forced to accept the job if a justifiable reasons exists, but they should be required to accept a second opportunity." Moreover, as an August 1942 memo from Ellis Island reported, "some United Nations consulates have not been seeing eye to eye with the [INS] Central Office" regarding justifiable objections; the Norwegian shipping mission considered those seamen who specified *any* reshipment conditions as unwilling to reship and subject to detention and deportation. [435] [The Norwegian consulate in New York also hired a private detective—who sometimes represented himself as an FBI, INS, or Coast Guard agent—to unlawfully arrest seamen and deliver them to police stations and the consulate.[436]] Christopher Stephano, a prominent Greek American businessman (who could "hardly be accused of leftist tendencies"), complained to Dimock that Greek shipowners would not make the smallest of concessions and that the Greek shipping ministry would do "nothing of its own accord" to intervene.[437] Stephano reported to the OSS that Nicolas Rethymnis, owner of the SS Anghyra, whose captain had insufficiently fed its crew and denied it agreed upon bonuses, refused altogether to discuss ship disputes.[438] [Seamen issued 22 protests against the shipping firm Rethmynis & Kulukundis in May 1942 alone[439]]. By the end of the summer, the INS seemed to maintain that foreign seamen had to accept the first berth offered them no matter what;

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[435] Report by inspector J.A. Christopherson to New York District Director, Aug. 12, 1942, 55854/370H.

[436] Watkins to Shaughnessy, Dec. 26, 1942, INS file 55854/370M. The Norwegian consul general insisted that the detective did not so misrepresent himself though conceded he wore a badge marked "Standard Bureau of Investigation" and showed a U.S. Coast Guard Identification Card marked "detective." (Letter from R. Christensen to Mr. Pindyck, December 5, 1942, INS file 55854/370N.

[437] "The Seaman Problem—Retrospect and Prospect," undated, Summer 1942, Box 49, Dimock papers.

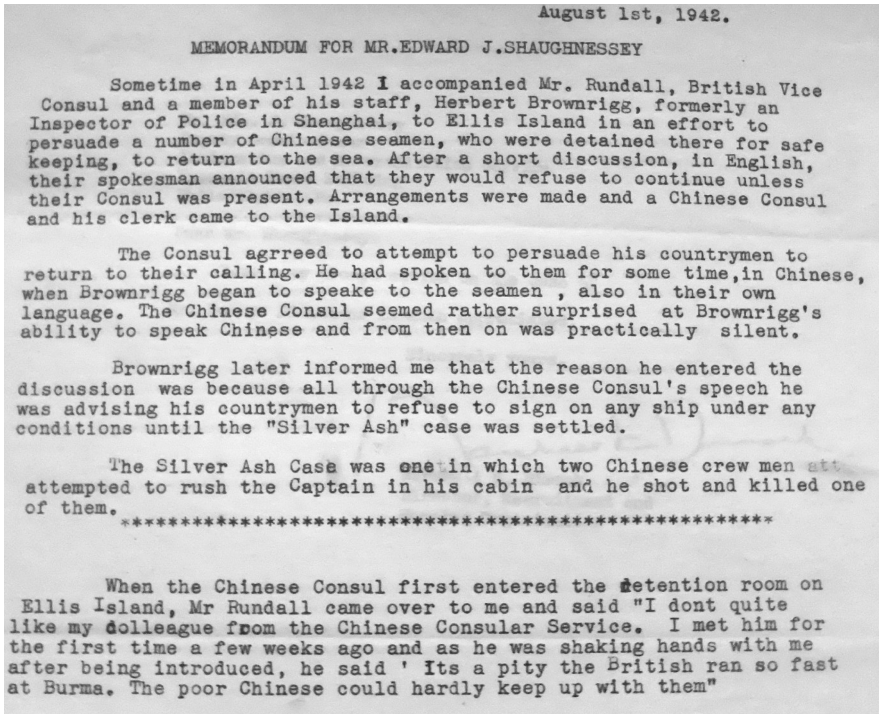
[438] Memo on conversation about Greek seamen, with Mrs. Christopher Stephano, July 8, 1942, INT-14GR-144, Files of the Foreign Nationalities Branch of the Office of Strategic Services [RG226.8], NARA.

[439] Letter from seaman S. Sgouros printed in the *Greek American Tribune*, June 19, 1942, INT-14GR-186, Files of the Foreign Nationalities Branch of the Office of Strategic Services [RG226.8], NARA.

instruction 85, issued in late summer, specified that "seamen who are willing to reship but insist on specifying their own conditions are to be classified as unwilling."

In dealing with Chinese seamen protesting pay and conditions, the INS went even farther. When Chinese seamen on the British ship Silverash, which was docked in Brooklyn, protested because they had not been paid their wages and were not allowed ashore, the master shot and killed one sailor, who had allegedly attacked him, and had 10 arrested by the New York police for rebellion. The charge was withdrawn, but the captain was acquitted and never punished by the British, and the family of the killed seaman not compensated. The incident became a *cause celebre* in 1942 and highlighted the harsh and discriminatory treatment accorded Chinese sailors.[440] This treatment, and wages lower than their white counterparts, helps explain continued protests and desertions by Chinese seamen. The below memo, from a visit to Ellis Island, attests to the significance of the Silverash incident and also to the fact that, certainly among immigration bureaucrats, not all allies were created equal.

[440] For the influence of this incident overseas see Gregor Benton, *Chinese Migrants and Internationalism, Forgotten Histories*, 1917-1945 (New York: Routledge, 2007) 58 and Tony Lane, *The Merchant Seamen's War* (New York: Manchester University Press, 1990) 167. Later in 1942, Chinese seamen in New Orleans refused to reship on vessels flying the Dutch flag given that "Dutch officials at Curacao [a few weeks earlier] had machine-gunned and clubbed some 15 Chinese seamen and seriously injured more with their sabers." [W.W. Knopp, INS district director at New Orleans, to Commissioner, Nov. 19, 1942, 56084/639].



August 1st, 1942.

MEMORANDUM FOR MR.EDWARD J.SHAUGHNESSEY

Sometime in April 1942 I accompanied Mr. Rundall, British Vice Consul and a member of his staff, Herbert Brownrigg, formerly an Inspector of Police in Shanghai, to Ellis Island in an effort to persuade a number of Chinese seamen, who were detained there for safe keeping, to return to the sea. After a short discussion, in English, their spokesman announced that they would refuse to continue unless their Consul was present. Arrangements were made and a Chinese Consul and his clerk came to the Island.

The Consul agrreed to attempt to persuade his countrymen to return to their calling. He had spoken to them for some time,in Chinese, when Brownrigg began to speake to the seamen , also in their own language. The Chinese Consul seemed rather surprised at Brownrigg's ability to speak Chinese and from then on was practically silent.

Brownrigg later informed me that the reason he entered the discussion was because all through the Chinese Consul's speech he was advising his countrymen to refuse to sign on any ship under any conditions until the "Silver Ash" case was settled.

The Silver Ash Case was one in which two Chinese crew men att attempted to rush the Captain in his cabin and he shot and killed one of them.

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When the Chinese Consul first entered the detention room on Ellis Island, Mr Rundall came over to me and said "I dont quite like my colleague from the Chinese Consular Service. I met him for the first time a few weeks ago and as he was shaking hands with me after being introduced, he said ' Its a pity the British ran so fast at Burma. The poor Chinese could hardly keep up with them"

Figure 4.7, Memorandum from Thomas Gibney to Edward Shaughnessey on Chinese Consul's visit to Ellis Island, August 1, 1942, INS file 55854/370H, NARA.

[The lease of two American Liberty ships to China was initially delayed because of concerns by the British and the WSA that the higher wages paid to Chinese seamen employed on them would increase agitation for equal pay among Chinese seamen on allied ships.] Dimock conceded that whenever "trouble [with Chinese seamen] of any kind arises aboard ship, the Captain appeals to the Port Captain; the Port Captains of New York and San Francisco are becoming increasingly officious and are ordering the District Directors of Immigration and Naturalization to take the men off forthwith, a power which is not properly within their jurisdiction."[441] "High handed methods" of immigration officials reflected racist exclusion-era assumptions; I.F. Wixon, INS district director at San Francisco whose anti-Chinese views lingered into the postwar era, dismissed all strikes as efforts to get into the country and claimed it was "natural that officers

[441] "The Seaman Problem—Retrospect and Prospect," undated, Summer 1942, Box 49, Dimock papers, FDR library, Hyde Park.

examining Chinese seamen...look upon them with suspicion."[442] Protest over the maltreatment of sailors united the Chinese-American community; one of the epigraphs to this section is a protest letter that was printed *both* in the Communist *Daily News* and the Nationalist *Chinese Daily*. But, as the historian Charlotte Brooks points out, though ROC representatives seized on the Silverash incident to display their authority, claiming they were investigating the case and working to negotiate a just conclusion, they helped little. Their "unwillingness to demand real improvements for seamen on British ships" and inability to do anything "substantive to change the poor treatment that Chinese sailors endured on foreign ships" more generally, disappointed many Chinese New Yorkers.[443] Chinese seamen seemed to pay little heed to criticisms of desertion by Chinese consuls, but, since the consuls were their only officially recognized representatives, Chinese seamen detained by the INS did appeal to them for help.

Assistant immigration commissioner Edward Shaughnessy claimed that the INS held a "middle road" between labor on the one had and shipping interests on the other, but he revealed leanings towards the latter when he claimed that Chinese strikers were "greater offenders" than deserters and questioned the motives of the NMU.[444] When passing on to a journalist a letter of complaint from a detained Yugoslav seaman, an NMU member recently released from Ellis Island wrote:

> I am withholding the name of the author to protect him against spiteful reprisals on the part of the immigration department or other government officials, but I am giving

[442] Wixon to Shaugnessy March 1 1943, 56084/639A; Wixon to Carusi, April 17, 1946, 55954/370V. Wixon wrote that the strikes were "a veritable racket [and actuated by outside influence]…through which Chinese have succeeded in gaining entry…we must adopt extreme measures if we hope to be successful in overcoming" it. [Wizon to Carusi April 20, 1945, INS file 56084/639]

[443] Charlotte Brooks, *Between Mao and McCarthy: Chinese American Politics in the Cold War Years* (Chicago: University of Chicago Press, 2015) 60.

[444] Shaughnessy's Memo for Harrison, Nov. 2, 1942 and Memo for the file, Dec 23, 1942, 56084/639A. Shaughnessy served for three years as Chief Chinese Inspector for the INS before the repeal of exclusion.

> you my own name and address, although I have had some very sickening experiences of my own which might be aggravated by associating myself with any drive to get those [Yugoslav] men of their prison (for prison it is). I would rather someone else had taken the first step but it looks like those boys don't have a friend in the world...We American seamen have our unions to look after our interests, but the lot of most foreign seamen is a sorry one indeed…Their exiled governments are often too reactionary to care a brass button for the men that keep the ships sailing. If they carry their complaints no further than to the officers of their ships they make themselves dependent upon the good will of the ship's master only to discover that all too often he bears them no good will; if, on the other hand, they resort to self-help they are decried as radicals and treated as such. How easy it would be to check desertions from those foreign ships if only there were a minimum of insight and good will; but those qualities are lacking not only in the owners and operators of those foreign vessels, but in the US authorities as well. Their prejudices against alleged radicalism is so pronounced that they decided to sit on the poor devils good and hard and teach them a lesson rather than to eliminate the basic causes for the smoldering dissatisfaction and the resultant desertions.[445]

An advocate for Greek seamen similarly wrote "I have interviewed approximately 250 seamen, ranking from captain to plain sailors and the reasons given to me for desertions were wage underpayment, food unfit for human consumption long hours without rest, and lack of insurance for families in Greece." If the seamen protested, these conditions while on board, they were "taken on deck, locked up" for the duration of the voyage and "accused of being a communist" as soon as the ship reached a port where Greek representatives could be found. [446] According to Thomas Christensen's January 1943 report to the National Maritime Union:

> Representatives [of our union] have pointed out the absolute necessity for equality of treatment, economically and socially, of the Chinese seamen…Greek and Yugoslav seamen…feel, in view of the policies their governments have had, that they can expect no aid in solving their problems from the representatives of their governments. We think it is necessary for our union to concern itself with this problem… Because of the continued weakness in the over-all planning of manpower problems in the relation to foreign flag vessels, the Union has been called upon time and again to help solve problems arising on board vessels of various nationalities. We have made a sincere effort to refer these

[445] Letter from Richard Westhoff to Drew Pearson, April 15, 1943, enclosed in a letter from Westhoff to Marcantonio, April 16, 1943, Box 52, folder: National Maritime Union, Marcantonio papers, NYPL.

[446] Letter of Theodore Theodoros, March 31 1942, INS file 55854/370E.

> problems to the representatives of…the seamen's union of the country under whose flag they are sailing.[447]

(A more caustic observer pointed out that "Ellis Island and other immigration stations…have been acting as glorified fink stations for foreign ship owners [who actually constitute the governments in exile]… Shipping through bonafide unions such as the Panama Division of the National Maritime Union and the Greek Maritime Union have been affected"[448]). Though INS representatives had regular contact and conferences with consuls, allied shipping ministries, and ship owners, they put off meetings with union representatives of foreign seamen and had those considered troublesome investigated and ordered to sail out.[449] The Dutch consul specifically asked for the continued detention and deportation of FM van Dijk, a "colored native of Dutch Guyana" and "an agitator."[450] The INS arrested Ambatielos and investigated other Greek Maritime Union leaders upon the request of the Greek consulate.[451] [In his memoir, Ambatielos claimed his arrest by the INS backfired because it mobilized opposition among both Greeks and Americans to the Alien Seamen Program and the Greek authorities]. Soon after he helped mediate between sailors and the INS at Sharp Park, Chinese seaman Raymond Young was denied extension of shore leave.[452] The British shipping company Alfred Holt pressured the INS

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[447] Report of Pan American Department to the National Council Meeting, January 19, 1943, folder: Alien Seamen, 1943-1945, Box 16, ACPFB papers.

[448] 1943 memo (likely by Melton and Lebovici), folder: Alien Seamen, 1943-1945, Box 16, ACPFB papers.

[449] On Oct. 19, 1942, Admiral Land of the War Shipping Administration told the Investment Banker's Association that union organizers "ought to be shot at sunrise." (Joel Seidman, *American Labor from Defense to Reconversion* (Chicago: University of Chicago Press, 1953), 177).

[450] Teixeira de Mattos to Dimock, August 18 1942, I

[451] Memo for Mr. Shaughnessy, March 11, 1943, enclosing statements from April 1942 about Ambatielos by Charles Melton and Commander Michos of the Royal Greek Navy, INS file 55854/370P2.

[452] For Raymond Young's role as mediator, see Letter from I.F. Wixon to Commissioner, July 7, 1943, in *Seamen-Deportation, 1943-1946.* 1943-1946. Records of the Office of Chinese Affairs, 1945-1955 Collection. U.S. National Archives. *Archives Unbound* through UConn library, Gale Document Number: SC5001262957. Four months later

to deport "for subversive activities" a former steward on one of their ships who overstayed his leave in the U.S. and began organizing Chinese seamen with Young.[453] Captain Tucker of Anglo-Saxon Petroleum similarly complained to an INS Inspector about the "considerable trouble" among Chinese crews caused by Edward Lin, who helped one such crew sue for false arrest.[454] The INS generally opted to forego labor negotiations and to rely on its own inspectors and interpreters to convince seamen to reship.

In the fall of 1942 the INS was forced to suspend most seamen deportations. Greek and Yugoslav seamen had challenged the legality of their deportation to England; the INS tried to justify deporting them there on the grounds that it was the seat of their government in exile. Federal courts in New York, Boston, and Baltimore ruled that the immigration law only provided for deportation to the *territory* of the home country or country from which the deportees last came[455]; the only seamen who could legally be deported to Britain were those who signed on to ships (and, hence, "last came" from) there before coming to the U.S. So INS commissioner Earl Harrison ordered that detained seamen who could not be deported be paroled or released on bond. In line with the general INS policy favoring shipping interests over labor, the INS would not

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Commissioner Earl Harrison wrote Wixon that "it would be inadvisable to grant extension of shore leave" to Young, adding that "in your discretion [Young] may be taken into custody."(Harrison to Wixon, Nov. 22 1943, INS file 56084/639.) Young was taken into custody and sent to Ellis Island, where he continued to represent detained seamen and to convince them to reship. (Memo from Thomas Gibney to James O'Loughlin, Feb. 11, 1944 and John Lock to Roy Donnolly, March 9, 1944, regarding the disposition of Chinese seamen now detained at Ellis Island, INS file 56084/639B).

[453] Censorship report—May 6, 1943, intercepted Letter to Alfred Holt & Company, enclosed in letter from Ralph Holton, INS assistant district director, to Shaughnessy, June 6, 1943 (INS file 56084/639). See also, "Raw Deal Handed Chinese Seamen Imperils Unity," *Pilot* April 23, 1943; and I.F. Wixon to Earl Harrison, March 4, 1944, INS file 55854/370Q.

[454] "Additional Strictly Confidential Notes Concerning Edward Hung Lin, alias Lin Hung Yow, alias Yu The Lin, December 14, 1942, INS file 56084/639.

[455] *Moriatis v. Delaney*; *U.S. ex. rel. Janavaris v. Nicholls*; *United States ex. rel. Miskic v. Uhl*. Melton, Lebovici and Arkin represented Miskic.

parole seamen to unions representing foreign seamen (like the Chinese Seamen's Association or the Greek Maritime Union) but only to consuls, who the INS recognized "directly or indirectly represented the operators" or ship owners.[456] The allied shipping ministries were supposed to provide board and stipends for sailors in their "nationality pools" waiting to ship out, but they did not do so adequately or equally.[457] The Greek consulate was "very vague as to what housing facilities" they provided their seamen.[458] One Greek-American businessman claimed that the Greek consuls were "discouraging Greek seamen from placing themselves under the jurisdiction of Greek authorities in order that provision for the payment to such Greek seamen of $3.00 per day may be made inoperative."[459] By early 1943, both the Norwegian and the Greek consuls, in order to "reduce expense," were not accepting seamen for parole because berths were not available for their immediate reshipment.[460] The Netherlands Shipping mission provided separate bungalows for Indonesian seamen near the Long Island rest home for Dutch sailors; but though Gani Ben Ali, a seaman from Ambon, left his ship in New York because of "difficulty on board with the foreman" and wanted to reship, the Netherlands consulate was "not willing to house him."[461] Meanwhile, the office of naval intelligence and the OSS requested that some

[456] Letter from Thomas Gibney to James O'Loughlin, March 10, 1943, INS file 55854/370S1; Shaughnessy to Landon, Nov 2 1942, 56084/639; Harrison to Christensen, November 10 1942, 56084/639.

[457] The British sponsored an Indian Seaman's Club in New York. Given that it was the only one of its kind and that it opened, upon the request of Indian sailors, two years after the opening of British clubs for white sailors in allied ports all over the world, it seems less a testimony to British good will than to an effort to stave off discontent among Indian seamen. For a description of the club, established in 1943, see Bald, *Bengali Harlem*, 182. Recreational clubs for Chinese seamen in New York and Boston did not effectively prevent desertions. The British consulate housed Chinese seamen in Chinese boarding houses at the major ports.

[458] Memo from Thomas Gibney, August 14, 1942, 55864/370H.

[459] N.J. Cassavetes to Francis Biddle, Oct. 15, 1942, 55854/370M.

[460] Harrison to Shaughnessy, May 19, 1943, 55854/370O.

[461] "Dutch Seamen Get Long Island Home," *New York Times*, July 13, 1943. Gani Ben Ali's case is in file 56150/491. When asked in July 1943 by the INS if he had a lawyer, another sailor from Ambon named Dawood

detained seamen be released "in the interest of the national defense."[462] Many seamen who were released went to work in war industries, especially machine shops and shipyards, despite the frequent opposition of their consuls or Shipping Missions. Seamen who wanted to sail on American or Panamanian ships needed to be "released" by their consuls, which was not frequently done (even when European ships were not available). Chinese seamen required the permission of British or Dutch consuls (rather than the Chinese) if they wanted to sail on American, Panamanian or Honduran vessel, a situation which angered Christensen of the NMU and the Chinese consul. When the INS discovered that Chinese seamen were using fraudulent discharge papers to get in the jointly run WSA/NMU shipping pool for placement on Panamanian ships, Christensen refused to comply with the INS's request that union help "enforce the immigration laws" by questioning Chinese seamen, examining their papers, and sending them to the INS.[463]

The Allied shipping ministries and Dimock were convinced that the new policy of releasing seamen led to increasing desertions, especially by Chinese seamen from British and Dutch ships; Dimock even claimed that Chinese desertions were leading to spillover desertions by Javanese and Indian seamen.[464] With the invasion of North Africa, Dimock urged the INS to "accelerate its program of arrests of seamen of United Nations nationalities illegally in this

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Hadji Abdoellah replied "I wanted the Dutch consul to represent me, but he doesn't seem interested." [INS case 56151/57]

[462] Letter from Donald Downes to Mr. Shaughnessy, Sept. 10, 1942, regarding Spanish seamen to be released for counter-espionage work for OSS, 55854/370I; Letter of Thomas Gibney to Shaugnessy October 1, 1942 regarding Yugoslav seamen to be released for an anti-sabotage navy squad, 55854/370J; Memo by deputy commissioner Joseph Savoretti for Mr. Shaughnessy, November 9, 1943, regarding changing the status of Indonesian seamen to temporary visitor so they could work in the San Francisco office of the OSS, 55854/370P.

[463] Letter from Tom Gibney to James O'Loughlin, October 8, 1943, 56084/639.

[464] "Javanese and Indian seamen naturally take the position that if nothing is done to arrest Chinese crews," Dimock wrote, "they may as well take advantage of the opportunity to remain in this country themselves." Letter from Marshall Dimock to Commisioner General Earl Harrison, Dec. 16, 1942, 56084/639.

country."[465] In late 1942 and early 1943, the INS conducted several "spectacular raids" to round up deserters in New York, Boston, Baltimore and Philadelphia, precisely what the initial guidelines for the Alien Seamen Program had disavowed.[466] An estimated 5000 Chinese were interviewed in Manhattan, Brooklyn, Newark, and Jersey City tenements, restaurants, poolrooms, and other "usual haunts" in a fruitless search for Chinese deserters from a particular British troop-carrier. Speculating about the golden lining to finding "a needle in a haystack," the INS director in New York suggested that "it is possible that the Chinese merchants and restaurant owners whose establishments have unquestionably suffered a loss of business as a result of our searches may take some action among their own groups which will have the effect of encouraging future Chinese arriving seamen to return to their ships."[467] Around the time of the raids, Adolph Berle wrote to Fiorello La Guardia, asking if he might help "rally the Chinese [restaurant keepers and laundrymen] in [New York's] Chinatown and have them lend a hand in sending the sailors back to work" rather than employing and hiding them. La Guardia met with representatives of the Chinese Chamber of Commerce, fraternal organizations, businessmen and the Chinese press. They were "willing to cooperate" but insisted that "something must be done to protect the rights of these [sea]men if they are really wanted and needed back on the ships." "The fact is," La Guardia wrote, "either agencies of the [British] Government or private steamship companies have been guilty of the most unpardonable and cruel treatment of these men."[468] Not surprisingly, T.T. Scott dismissed all "allegations about bad treatment and

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[465] Letter from Dimock to Commissioner Earl Harrison, Dec 7 1942, 56045/356.

[466] These original guidelines are laid out in "Instructions Concerning Deportable Alien Seamen," March 31, 1942, 55854/370E; Liu Liang-Mo graphically describes the raids in his columns in the *Pittsburgh Courier* of January 9, 1943 and March 27 1943.

[467] W.F. Watkins to Commissioner, Jan. 11, 1943, 56045/356

[468] Berle to LaGuardia, January 4, 1943; La Guardia to Berle, Jan. 18, 1943, FRUS, 791-794.

aspirations for equality with British seamen" as "red herrings"; "desertions are fundamentally an exodus from the sea service," he asserted, "in order to get into" the United States. "It is just maddening to think that we must put all this extra work on our fine seamen so that John Chinaman can make his contribution to the war effort by washing clothes or underwear in Chinatown."[469] The last search for the deserters from the troop-carrier happened on March 21, 1943; this time the immigration service had help, even beyond the usual local police, in rounding up sailors. Agents of the British Cunard Line led the 15 hour raid. Cunard picked up 18 deserters from their ship, 17 "volunteers" to take the place of others, and fifty others who originally entered as seamen. The Chinese Consulate General, which had just posted manifests in Chinatown calling for Chinese seamen to return to the sea, was furious and was reluctant to cooperate in the efforts to get the fifty detained at Ellis Island to reship.[470] Below is the first part of a list of 125 Chinese seamen in detention at Ellis Island, many of whom were picked up in the raids of early 1943. The "willing to reship" column reveals the concerns of Chinese seamen.

	File No.	Arrived S/S	Rating	Signed on at	Willing to reship?
1) Ah Choy	174/932	Merak..10/1/42	Ch.Cook	Arr.in transit	Only at same wages as white crew members.
2) Ah Chun	174/675	Algonquin.10/5/42	Sailor	" " "	...Only upon receipt of compensation for leg injury on ship.
3) Ah Moey	174/507	Queen Mary.9/19/42	Sailor	" " "	...Only on U.S. or Panamanian ship.
4) Ah Moh	174/926	Carelia.10/6/42	Storekeeper.	Liverpool	Only at same wages as white crew members.
5) Ah York	174/13	Horn Shell..6/3/41	Ch. Cook	Birkenhead	No.
6) Chan Cheong	174/776	Teucer..10/24/42	Fireman	Hong Kong	Only at same wage paid American seamen.
7) Chan Chow	174/933	Tjileboet.1/30/42	Sailor	Hong Kong	Only if Chinese Consul approves contract.
8) Chan For	174/677	Standella.9/8/42	Q'Master	Swansea	Only if reimbursed for baggage lost on ship.
9) Chan Gum Dai	174/763	Tosari..12/31/41	Greaser	Batavia	No.
10) Chan How	174/872	Ocana...4/25/42	Donkeyman	Singapore	No.
11) Chan Kam	174/678	Standella.9/8/42	Sailor	Swansea	Only at same wage as white crew members.
12) Chan Kam(Chen Chin)	174/934	Salabangka.9/16/40	Cook	Amsterdam	Only on U.S. ship.
13) Chan Kwong	174/935	Tjileboet 4/6/42	Q'Master	Hong Kong	Only at same wage as white crew members.
14) Chan Lam	174/777	Rhexenor 4/10/42	No.3 Steward	S'p'on	Only at same wage as white crew members(no oil tanker).
15) Chan Sang	174/679	Standella 9/8/42	Sailor	Swansea	Only at same wage as white crew members.
16) Chan Tay	174/695	Standella 9/8/42	No.3 Fireman	Swansea	Only at same wage as white crew members.
17) Chan Yue	174/839	Tjileboet 4/6/42	Sailor	Hong Kong	Only at same wage as white crew members(no oil tanker).
18) Chan Yung	174/869	Rhexenor 4/10/42	Asst.Steward	Singapore	Only if Chinese Consul approves contract.
19) Chang Ban	174/936	Empire Moonrise 12/2/42	" "	Calcutta	Only on U.S. or Panamanian ship.
20) Chang Han Teng	174/871	Circe Shell 4/27/41	No.2Fireman.	Liverpool	" " " " " " .
21) Chang Keong	174/778	Ville d'Anvers 9/12/42.	Utilityman	New York	" " " " " " .
22) Chang Sang	174/937	Unknown, abt.10/1942	Sailor	Singapore	Only at same wage as white crew members.
23) Chang Yung Dong	174/779	Granville 8/22/42	Sailor	Hong Kong	Only if released from detention.
24) Charles Chaw	174/878	Unknown, abt. 9/1942	Q'Master	Singapore	Only at same wage as white crew members.
25) Cheng Ming	174/681	Standella 9/8/42	Sailor	Swansea	Only at same wage as white crew members.
26) Cheng Yin	174/781	Teucer 10/24/42	No.2 Fireman	Hong Kong	Only upon receipt of accrued wages.(No other condition
[illegible] heong Lang Seng	174/782	[illegible]	[illegible]	[illegible]	[illegible]

Figure 4.8, Partial list of Chinese seamen detained Ellis Island, early 1943, INS file 56084/639, NARA

[469] T.T. Scott to O'Loughlin, April 23, 1943, 55854/370P2.

[470] Watkins to Commissioner, In re: SS Empress Scotland, March 22, 1943, 56084/639.

Though some INS officials worried that the Alien Seamen Program was antagonistic to labor, the agency refused to adopt strategies that would foster reshipment without resorting to detention and deportation. [471] Stephano had suggested that the United States take over the management of Greek ships for the duration of the war.[472] Yugoslav seamen in New York asked that, for the duration of the war, they be given legal temporary resident status so that they could work as longshoremen.[473] Carol Weiss King proposed legislation providing that, contra the *Claussen* decision (see page 462), trips in and out of the United States by foreign seamen on allied vessels *not* be considered an absence; this would encourage reshipment by those who wanted to apply for permanent residence.[474] A pro-bono attorney for detained Chinese seamen suggested that, when the war ended, Chinese seamen who served on American *or British* boats "should be granted at least residential rights in this country."[475] Lin Yutang claimed a "solution" true to the American way would be to "secure the consent of Chinese seamen" by letting them "sign up on the ships they prefer."[476] The INS dismissed these approaches, insisting on using coercion rather than consent, a stick not a carrot.

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[471] The INS district director in Baltimore consistently complained that the INS was meddling in labor disputes—and showed sympathy for the seamen's demands for fair compensation and conditions. See Delany to Commissioner September 5, 1942, regarding the plight of European seamen on the Panamanian SS Gloria; Delaney to Commissioner, May 18, 1943, regarding the plight of Goanese seamen on the Dutch "Kota Baroe." (INS file 55854/370I and R).

[472] Dimock, "The Seamen Problem," Box 49 , Dimock Papers.

[473] "The Case of the Yugoslav Seamen," memo enclosed in a April 9, 1943 letter from the OSS to the Department of Justice. The seamen had given this memo to Zlatko Balokovich, a well known Croat-American violinist and president of the American Croat Congress. INS file 55854/370Q.

[474] King to Shaughnessy, August 12, 1942, 55954/370K

[475] Letter from Nathan Shapiro to the Department of Justice, Jan 20, 1943, INS file 56084/639.

[476] Letter to the editor, *PM,* May 16, 1943.

By spring 1943, the INS successfully appealed the adverse court decisions and sought a legislative amendment that would legalize deportation to governments-in-exile or, to allow for the deportation of Chinese seamen as well, to the country of registry of their vessels.[477] The extent to which labor's opposition to the bill was dismissed was clear when a Congressman told Thomas Christensen, who was just about to read a statement he prepared before the House Committee on Immigration and Naturalization, that "We do not agree with anything you say anyway."[478] Christensen's statement argued that a government-run centralized international hiring pool of foreign seamen would not only lead to more fair and efficient manning of foreign ships but would also eliminate unregulated shipping agencies involved in the hiring process that could leak information to the enemy about the movement of allied vessels. Congressman Vito Marcantonio, like the NMU and the ACPFB, advocated for a centralized pool and argued that the U.S. government should insure better treatment of seamen on foreign ships. He told Congress, "You will not bring about the sailing of these ships by threats of deportation...these foreign ships are carrying our munitions and carrying other supplies and are being paid by the Government of the United States…These seamen risk their lives to deliver for us and for the United Nations…it is the duty of the War Shipping Administration to try and enforce upon these companies a decent wage standard, living standard, and working conditions for these seamen." The Chairman's gavel came down on Marcantonio, another Congressman denigrated critics of the bill as "spokesmen for certain radical groups," and the last word in the debate was given to a Congressman who insisted "it is time to forget…social gains [i.e., higher wages, shorter hours, better living

[477] "The Seaman Program Scored a Point," INS *Monthly Review*, I.1, (July 1943), 15-18.

[478] "To Authorize the Deportation of Aliens to Countries Allied with the United States," House Committee on Immigration and Naturalization, 77th Congress, Second Session, Nov. 18, 1942, 83.

conditions] and devote our energy to winning the war."[479] The opposition to the bill that gained more traction—and led to important revisions before it passed —came from the Chinese government—which had clout as a wartime ally and demanded a say over where its nationals were deported.[480] Eventually the Chinese government agreed that Chinese seamen could be deported to India to join the Chinese army there. The law as passed provided that, for the duration of the war, seamen could be deported to the seats of their governments-in-exile or, if the seamen's home country was occupied but his government was not in exile, to a country "which is proximate" to their home country. (The unspecified occupied country and proximate one were China and India).

When the Alien Seamen Program started in early 1942, Marshall Dimock expressed some concern about upholding the interests of the allies rather than the "predominant" role of the United States—"the Number One shipping nation of the world" that "must assume the role of leadership."[481] Whatever his early misgivings, as the war went on, Dimock came to strongly endorse the shipping and deportation proposals of the British and the Dutch.[482] Sailors from the colonies protested this, evoking the principles of the Atlantic Charter and the justice of the U.S. government, and offering to ship out on American bottoms. When detained in May 1943, Hossain Ben Tahir, a sailor from Pontianak (Borneo), wrote the INS: "the fact that some foreign

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[479] *Congressional Record,* March 23, 1943, 2387, 2388-9, 2383,

[480] Aide de Memoir from Chinese Ambassador to Secretary of State, April 10, 1943, in *Seamen-Deportation, 1943-1946.* 1943-1946. Records of the Office of Chinese Affairs, 1945-1955 Collection. U.S. National Archives. *Archives Unbound* through UConn library, Gale Document Number: SC5001262957.

[481] "The Seaman Problem—Retrospect and Prospect," Summer 1942, Box 49, Dimock papers.

[482] Dimock to Harrison, April 30 1943, 56084/639. During the course of the war, Dimock developed a reputation for inconsistency amongst advocates for foreign seamen. As Abner Green of the ACPFB put it, "During the war, Chris [Thomas Christensen] and I expressed our position. Dimock agreed, but then put the [alien seamen] program into effect. He said one thing and then did something el**se."** [Minutes of Meeting, Sept. 14, 1945, in Ferdinand Smith's [NMU] office, with Abner Green, Carol King, Constance Kyle Lamb, Arthur Phillips, Shirley Ross, and Ferdinand Smith present. Folder: Alien Seamen, Box 16, ACPFB Papers]

powers fight one another from time to time to assume control over my country does not alter my status or my birth right of my native land. Since under the present conditions of war I cannot be deported to my native land, which has temporarily passed to Japanese control, and since your country has taken a moral responsibility to liberate my country…it is natural and logical for me to expect shelter and protection from your great government."[483] In July, the INS ordered Ben Tahir deported to the Netherlands Government-in-Exile in England. Nojeng Bin Moksene from Celebes (though longtime resident in Singapore and seaman on British ships) wrote the INS around the same time that "I have no confidence in the foreign government of Netherlands, who had failed to protect us from the intruders [Japanese]…I am willing to join the American army or American merchant marine…The morale of the Asiatic people under detention has already been greatly depressed, I hope your government will do something about it…I firmly believe we Asiatic people in detention here are ready to contribute our united efforts in the service of your government only, in which we have absolute faith, and hope of our future liberation from the bondage of all foreign oppression."[484] Moskene was likewise ordered deported to the Netherlands Government-in-Exile in England in July 1943. Chinese seamen in detention also protested their deportation in the name of their homeland and of human rights. "It was because we were desperate that we had to desert our ships and take refuge in the United States," Chinese seamen at Ellis Island wrote in a 1943 petition to Congress. "We regard America as a land of liberty and fraternity…if we are sent back to England, we are afraid….although we are regarded as low-class coolies, hired at very low wages, we have our own dignity and respect. We know

[483] INS file 56140/193

[484] INS file 56151/45.

that we should struggle forward." [485] "India is not our homeland," Chinese seamen in detention at Glouchester insisted. "It is the hope [of Chinese seamen] that some day soon they return to China and their families…All we Chinese ask from the immigration service is fair treatment…We are human beings and understand right from wrong. Sending Chinese to India is persecution. The kind of persecution your countrymen are dying on the battlefields to eliminate the same as the Chinese are fighting against."[486] A few months later, one of the same, still-detained seamen wrote the INS: "We know that the American government cannot tell the British nation how it shall run its vessels…But we also know that the American government will not force any human being into a situation that encourages slavery and discrimination."[487] The following year, an incident involving Chinese seamen on the Anglo-Saxon Petroleum tanker "Diplodon" revealed just how far the INS had to go to accommodate British interests. Nine seamen agreed to reship if the steamship would provide each of them with two blankets for their use on board. The steamship refused and demanded that the INS detain the seamen and find additional Chinese seamen to take their places. The INS inspector took the matter up with the British consul and "told him that it seemed foolish…that we should continue feeding and paying for the detention expense of 9 seamen when only the cost of blankets for them was involved; further, that we would have to pick up many more than 9 to find that number who would be willing to reship and would fill the job classifications." The consul—and then the Director of the British Ministry of War Transport—refused to help. So the INS picked up 25 seamen; 8

[485] "Petition Addressed to the Congress of the United States by a Representative of Chinese Seamen Detained on Ellis Island (Suen Sui-fung), May 1943, INS file 56045/356.

[486] Letter to Earl Harrison from detained Chinese seamen, July 1943, INS file 56045/356.

[487] Fung Sang's letter to S. J. Sproul, Sept. 10, 1943, 55954/370P.

reshipped on the Diplodon, and 26 (the 9 who asked for blankets and the 17 others picked up) remained languishing at Ellis Island weeks later.[488]

In 1943 and 1944, not only union leaders and lawyers for seamen, but Congressman, federal judges, and members of the Board of Immigration Appeals (or the BIA, which was established in the Justice Department in 1941 to review the decisions of INS inspectors[489]) began to encounter cases of injustice and to express concerns about the Alien Seamen Program's assumptions and administration. Congressman Samuel Dickstein, who introduced the legislation discussed above on the deportation of alien seamen, visited Ellis Island in March 1943 to try to convince detained Chinese seamen that they could not continue "taking it easy while the war is burning" and that their actions "might hurt the passage of the bill to remove restriction against Chinese," referring to the revocation of the Chinese exclusion law, which was being debated in Congress. Dickstein learned that most of the detained were war survivors and wanted to reship if given their back wages and guaranteed equal pay and decent conditions. Several had been torpedoed and had never received appropriate compensation from British operators; others complained of abuse and unfair treatment, even in a lifeboat. This is the story one sailor told about his 8 day ordeal after his British ship sank:

> The Chinese were told to wait until all the white men got on the lifeboat…Each of the white men got a blanket and there were only 2 blankets among the 5 Chinese…The Chinese received only half as much food ration as the white men…The Chinese had to get the water out of the lifeboat…One day this boy was feeling kind of sick, he couldn't do the work, but the third officer who was in charge of the lifeboat commanded him to do it…he was feeling too sick so he didn't do it. The next day he wasn't given any food at all. [490]

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[488] Memo by Sylvester Pindyck to Edward Shaughnessy about the SS Diplodon, May 2, 1944, 56084/639B.

[489]The INS was prosecutor and court of first instance, while the BIA could review its decisions .The BIA, then, was appellate in character though still part of the Justice Department, not the judicial branch. The BIA was administratively responsible to the Attorney General, rather than being a part of the INS.

[490] Statements taken from eight Chinese se men in detention at Ellis Island, May 21, 1943, 56084/539A. The lifeboat story is that of Pang Ling, page 14.

The following year, Jack Wasserman, then a member of the BIA, called for reform of the seamen's program, which he believed had "become an end in itself" rather than aiding the war effort by getting able bodied and experienced seamen back to sea where they could be of most help, let alone maintaining a "humane understanding of the social aspects of cases."[491] One of the cases Wasserman singled out was that of 22 year old Leung Lee Choy, pictured below.

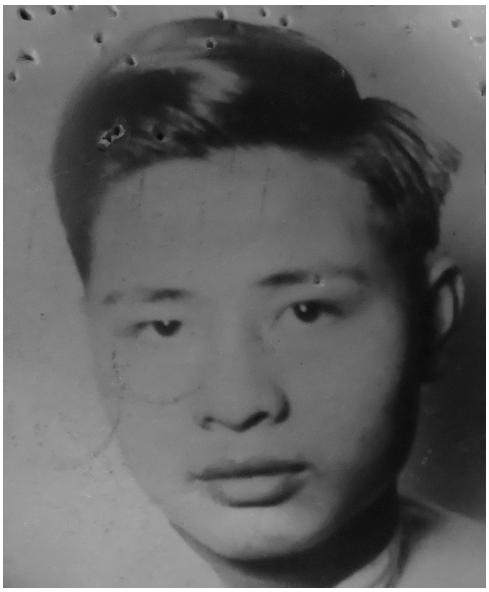

Figure 4.9, Leung Lee Choy, INS file 56168/889.

Choy's family was killed in the bombing of Canton/Guangzhou (when he was 17) and he walked for three days to Hong Kong. From there he shipped out, for the first time, as a "fireman's boy" on a British boat in June 1941. The ship sailed to Norfolk and then to Canada, where it joined a convoy to England. It crossed the Atlantic again in late 1941, arriving in Boston just a few days after the U.S. entered the war. Denied shore leave, all the firemen went on strike, though Choy continued his work as cook for them. He was able to get off the ship using the pass of a crewmember granted leave. On shore he worked in a laundry and a grocery store and then served

[491] Jack Wasserman, "Administration of the Seamen Program," 55854/370Q.

for seven months in the U.S. army, before he was honorably discharged with a severe leg injury in late 1943. After spending several weeks recuperating, he started as a welder in a Bethlehem Steel shipyard, where he was able to work sitting down. When he tried to naturalize, the INS issued a warrant for his arrest as a deserter. While detained, the public health physician who examined him believed he was faking his injury and declared him fit to reship; the INS requested his deportation to India. His attorney got him another check-up to confirm the permanence of his disability and argued against his deportation before the BIA in the spring of 1944.[492] In Wasserman's eyes, Choy was a refugee, a disabled veteran, and a useful war-industry worker whom it made no sense to detain or deport since he was not an able seaman.

Wasserman was not the only official to criticize the program along these lines. The Melton and Lebovici complained that Ellis Island inspectors altered the records of Greek and Norwegian seamen in order to facilitate their deportation though they were willing to ship out. At a hearing on a petition for a writ of habeas corpus in the case of a detained Norwegian seaman, a federal court judge directed the U.S. attorney to take up with the Selective Service the matter of inducting the seaman into the army, despite the order of deportation against him. The judge indicated that "a lot of these deported seamen are lying around the British Isles" unable to reship and that "the program of deporting seamen was a lot of foolishness."[493] In an August 1943 article in the INS's *Monthly Reporter*, Commissioner Earl Harrison felt the need to explain the agency's "true position" on seamen program deportations that separated families. The 1940 (Smith) Alien Registration Act gave the INS the discretion under provision 19c to legalize the status of illegal entrants with resident or citizen parents, spouses, or minor children who would suffer serious

[492] INS Case 56168/889, NARA

[493] Memo for the file by Arthur Phelan, Sept. 22, 1943, INS file 55854/370S2.

economic detriment as a result of their deportation,[494] but the Alien Seaman Program effectively precluded such suspension proceedings. Harrison justified the deportation of a Yugoslav seaman who had a pregnant American wife (and worked in a company repairing ships) by pointing out that war required "very harsh" separations and comparing the deportation of seamen to the deployment of soldiers.[495] In response to the article, the seaman's pro-bono attorney wrote Harrison in November to explain that, despite entreaties, representatives of the Yugoslav government had done nothing to help the seaman reship on a Yugoslav vessel and refused to release him so that he could sail out on an allied vessel. Having been deported to England several weeks previously, the seaman was still awaiting assignment to a ship. While waiting, he received "barely enough for his subsistence" and could not send money to his wife, who had depleted her savings and could not work at her advanced stage of pregnancy. The lawyer claimed this was not "an isolated instance" but that "the policy generally fails to produced the desired results." "Unfortunately I cannot offer statistics concerning the number of man hours…lost… cases [of idle Yugoslav seamen in New York], however, make the realism of the seaman policy questionable."[496] A few months later Cecelia Razovsky pointed out that very harsh separations were being demanded of many foreign seamen not supposed to be subject to the Seamen's Program and there was no attempt by the WSA or the INS to address this. Razovsky wrote Dimock that she had asked the Board of Immigration Appeals to cancel the warrant of

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[494] This was the first ever provision in immigration law that allowed a temporary migrant to adjust to permanent resident without leaving the United States. (Those who would be subject to exclusionary bars because of mental or physical disability, race, criminality, or radicalism were not eligible.) Each person adjusted was charged to the quota of their native country (unless they belonged to the non-quota categories). After it was approved by the Attorney General, a summary of each suspension case had to be submitted to Congress; if Congress took no adverse action prior to adjournment, the adjustment was finalized.

[495] Earl Harrison, "Leaving Ships In Wartime," INS *Monthly Review*, I.2, (Aug. 1943), 5.

[496] Andrew Reiner to Earl Harrison, Nov. 23, 1943, 55854/370Q

deportation in the case of a seaman who was Spanish "and therefore a neutral and consequently not subject to the Seamen's Program." "The Board was very much interested…and asked whether I had checked with the War Shipping Administration to make certain this was correct…they asked me…whether I could get this from you in writing…You know, many Danish and Swedish nationals have been denied permission to remain in this country on the ground that the Seamen's Program needed them."[497]

Major criticisms of the program were that it was chaotic, inconsistent, and confusing, with changing and divergently enforced policies regarding whether alien allied seamen could be inducted into the U.S. armed forces, work in defense industries, adjust to resident status, or reship voluntarily in lieu of deportation. In mid-1942, the INS did nothing to prevent inductions of allied seamen subject to deportation; a year later, under pressure from allied shipping missions, it asked for a regulation against this from the Selective Service.[498] Even so, local draft boards sometimes inducted these seamen and, in late 1943 and 1944, the Norwegian shipping mission sent the INS many letters protesting the induction of particular sailors and asking that they be discharged for reshipment or deportation. The Boston INS office, on its own initiative, sent inspectors to local draft boards to seek out information about inducted Chinese seamen in order to have them discharged and returned to the merchant marine.[499] Meanwhile, the Board of Immigration Appeals fielded many requests for exemption from the Alien Seamen Program from seamen claiming they had special skills needed for jobs on shore essential to the war effort or

[497] Razovsky to Dimock, March 31, 1944, Box 231, folder 12, reel 145, Immigration and Refugee Services of America microfilm).

[498] Memo for Mr. Harrison, May 24, 1943, 55854/370Q; Proposed Instructions of the National Selective Service System, July 31, 1943, INS file 55854/370P.

[499] Memo from Henry Nichols to Commissioner, March 1, 1945, INS file 56084/639.

had immediate family in the United States who needed their support. In the former cases, the War Shipping Administration initially recommended that seamen who were not in the licensed brackets (so doing low skill work aboard ships) be exempt from deportation since they were more valuable ashore. The WSA stopped making these recommendations after allied shipping missions complained. Writing in mid-1944, Wasserman noted that the WSA had come to "blindly" honor the divergent requests of the different consular authorities and recommended, for instance, that the BIA approve the deportation of machinists employed in the Bethlehem shipyards but exempt from the Seamen Program another machinist employed by a sub-contractor of Bethlehem. Despite Wasserman's report, in July 1944, upon the requests of the allied consulates and the WSA, Commissioner Harrison instructed inspectors from the New York office to enter industrial plants to arrest former seamen.[500] In cases involving seamen with close family ties in the United States, initially the Board of Immigration Appeals granted them suspension of deportation or voluntary departure and pre-examination, which allowed them to leave and return to the United States on immigration visas. Allied shipping missions—particularly that of the Netherlands—complained that seamen were marrying to avoid shipping out. Revised INS Alien Seamen's Program guidelines in the spring of 1943 provided that relief from deportation could be granted only to those whose marriages existed on May 1, 1943; the following year the date was pushed back to marriages existing on July 1, 1942 and then May 1, 1940.[501] Even these seamen were required to keep sailing by reshipping within 90 days, though without an order of deportation against them so as not to impede their ability to obtain shore leave and reentry upon return. The State Department withheld action on applications of seamen

[500] Earl Harrison to Victor Kwong, attaché of the Chinese Embassy, July 14, 1944, 55985/370R.

[501] Herman Landon, The Present Alien Seamen Program, INS Monthly Review, II, 5 (November 1944) 60.

for immigration visas and encouraged reshipment "in lieu of deportation," promising that, should they make applications for visas after the war, "due credit would be given to the seamen's service in the cause of the allied nations."[502] The few seamen that nonetheless managed to get visas from the State Department during the Seamen Program provoked complaints from the INS and allied shipping missions.[503]

Given the way that the Alien Seamen Program used arrests and detention to get seamen to reship and that ships were frequently not available when seamen agreed to do so, it is perhaps not surprising that "voluntary" reshipment "in lieu of deportation" was an unclear policy. As an attorney for a Greek sailor succinctly put it, "the departure in both [reshipment and deportation] is forced."[504] Chinese seamen detained at Sharp Park claimed "we do not fully understand the phrases stating that we definitely face deportation proceedings, and yet it depends on our attitude of willingness of reshipping foreign…We have never refused to reship, but merely asked for equality among fellow seamen." I.F. Wixon, district director at San Francisco, explained that, regardless of their "willingness" to reship under the right conditions, "berths could not have been secured for them under any conditions" because steamship lines, "having had so much trouble with seamen of that race," refused to sign them on. [505] In Los Angeles, where few Yugoslav

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[502] Herbert Travers, Memo for Mr. Shaughnessy: Applications for Immigration Visas by Alien Seamen, Jan. 4, 1944, 55854/370Q.

[503] Memo for Mr. Savorettii from Mr. Shoemaker, Oct. 20, 1943, INS file 55854/370O.

[504] Brief by Henry Lavine, filed Jan. 5, 1949, in *Panagiotis Glikas v. V.W. Tomlinson*, No. 21585, Northern District of Ohio, Eastern Division, RG 21, NARA Chicago.
Lavine added: "Laying all pretense aside, it is the desire of the department [the INS] to place this alien on a Greek vessel and to turn him over to the Interallied shipping interests now in London, England. He will then be forcibly placed on a vessel and compelled to work as a seaman. Under seamen laws he will not be permitted to land anywhere, with the possible exception of shore leave. Nor will he ne permitted to quit his seaman job for any reason and in all manner will become a life-long pawn in the hands of ship captains to do with as, when, and how they please."

[505] Sharp Park Chinese Seamen Association to Irving Fox Wixon, Feb. 7, 1944; Wixon to Harrison Feb. 23, 1944, INS file 55954/370Q.

vessels put in, Yugoslav seamen refused to reship and challenged their detentions in court. The problem of gauging willingness was compounded by the technical question of whether seamen could voluntarily reship after warrants of deportation had been issued against them. The Alien Seamen Program regulations published in June 1942 specified that reshipment was to be permitted at any point *until* the issuance of a warrant of deportation and Carol King and Thomas Christensen found that the New York office was not permitting reshipments after deportation had been ordered. But Commissioner Harrison and Herman Landon, head of the INS's exclusion and expulsion division, insisted that "no such deadline had been set," and, as of late 1943, the policy was established that reshipment was allowed until two days before the date arranged for deportation.[506] Still, even that deadline might be broken; as a New York inspector explained, "last minute…urgent calls" from consulates required "speedy action" to meet sailing schedules and led to "interrogation of seamen of the specified nationality then in detention at Ellis Island to ascertain if any who met the job qualifications was willing to reship."[507]

The situation at other ports seemed even more chaotic and dependent on the foreign consulates. In New Orleans, seamen from the British West Indies had been allowed to ship on American, Panamanian and Honduran vessels until mid-1943, when the British vice consul demanded that they be prevented from doing so, even though this would delay those ships and there was "no probability of their services being required on British vessels," which were not stopping at New Orleans.[508] At San Francisco, the Greek consulate's attorney "released" Greek seamen to work ashore for as long as they "remained on good terms with him." When asked by

[506] Herman Landon, Memo Re: Reshipment of Seamen after Warrant of Deportation Issued, Oct. 11, 1943, INS file 55854/370P.

[507] Sylvester Pindyck, "The Allied Seamen Program at New York," INS *Monthly Review*, II. 1, July 1944, 5.

[508] J.F. Delany to W.F. Miller, Feb. 2, 1944, 55854/370U. Also at New Orleans, the INS was asked to detain seamen who had "incurred the ill will" of the Norwegian consul.

the INS about seamen paroled to them, consular officials were evasive, though they continued to demand "general roundups of all Greek seamen…and forcible conveyance to New York…to the Greek manning pool," which was already too large. [509]

By late 1944 attorneys for seamen threatened to challenge the arbitrary and counterproductive elements of the program in court. Abraham Lebenkoff, an attorney who represented many seamen on the East Coast (and who Jules Coven later partnered with), wrote to the INS in November to ask why, on the same day, some Chinese seamen were released on bond while others were detained. The answer, though it seemed "logical" to the INS, had little to do with the cases of the individual seamen and everything to do with the availability of spaces on a deportation ship to India.[510] In San Francisco, around the same time, attorney George Andersen filed writs of habeas corpus on behalf of fourteen Chinese seamen for whom the INS conceded, "we have set up a condition with which they cannot comply, even though they expressed a willingness to sign on vessels." The WSA refused to reship seven of the Chinese seamen on American or Panamanian vessels even though they were qualified to do so according to Alien Seamen Program rules since they had arrived on Panamanian ships; the rest of the seamen were denied berths on ships of the Dutch and Norwegian lines that they arrived on since "they have on hand so great a surplus of Lascars and Javanese or their own nationals they have no room for Chinese seamen." INS District Director Wixon worried that a judge hearing the writs might question "why we should deport to India experienced seamen who are willing to sign on American vessels," especially since "radio and press in this area have stressed the need for American seamen, claiming that there is an actual shortage and that vessels may be tied up as a consequence thereof." Although the court dismissed the writs, the policies of the WSA, the INS,

[509] Report by Inspector M. Bertrand Couch, enclosed in I.F. Wixon to Joseph Savoretti, November 25, 1944.

[510] Carusi to Savoretti, November 15, 1944, INS file 56045/356.

and the foreign shipping ministries—all aimed at deterring desertion in order to keep ships moving—were clearly not having the desired effect. The threat that Andersen might appeal prompted the WSA to reconsider its policy for those seamen eligible to reship on American or Panamanian vessels and the INS to send the rest of the seamen to New York where "voluntary reshipments will be permitted up to the time of formal deportation." [511]

Despite the belief of INS district directors from all over the United States that there was an "overabundance of merchant seamen" to man allied ships in the spring of 1944 and again in the spring of 1945—resulting in the prolonged detention of seamen who wanted to reship—the Alien Seamen Program remained in place for almost a year after the war ended (*until the spring of 1946*), a situation the ACPFB decried as without justification and Carol Weiss King claimed was discriminatory, serving "only to keep a pool of seamen available to foreign governments at cheap wages " and singling out seamen for separation from their American families.[512] By late 1944, many seamen's advocates came to think that the allied shipping missions and U.S. officials were less concerned about wining the war than about postwar shipping. In 1944, William Standard argued that the National War Labor Board should take jurisdiction over wages paid alien seamen on foreign flag ships owned by Standard Fruit, a company with which the NMU had a collective bargaining agreement; both Admiral Land and the industry representative on the Board opposed the Board taking jurisdiction. In the end the Board's ruling was a small victory for the NMU: it mandated that alien seamen on *Honduran* flag ships *chartered to the WSA*

[511] Wixon to Savoretti, December 13, 1944; Savoretti to Wixon, December 19, 1944, and Wixon to Carusi, Feb. 23, 1945, all in INS file 55854/370S.

[512] "Urges Repeal of Foreign Seamen Program," October 1945, folder: Alien seamen, 1943-1945, Box 16, ACPFB papers; Carol King, "Aliens in the Postwar Period," *Lawyers Guild Review*, 5(1945) 329.

needed to be paid the same wage scale paid on American flag vessels.[513] But the limited nature of the ruling, issued in late 1944 and revised in early 1945, signaled that little was going to stand in the way of American shippers' flight to low labor costs on foreign flags after the war. And, Congress was already debating a bill to allow for the sale of U.S. government-owned ships to foreign buyers. Just as representatives of the allies were exerting pressure on the United States government to give them replacement vessels, so too were they pressuring those in charge of the Alien Seamen Program to keep up their labor supplies. It was not until *October* 1946 that the INS revoked the regulation that required masters of vessels to agree to shore leave, which potentially reduced seamen "to the status of peonage."[514] After the war ended the NMU complained that sticking to 29-days shore leave for alien seamen—rather than reverting to the pre-war 60 days—was "a hardship" for seamen with good shipping records who wanted to reship foreign. The union pointed to a case of a Honduran seamen who went to the INS office in New York to request an extension of time ashore because 20 days was "not sufficient time to find a ship in his [job] rating." He was arrested and taken to Ellis Island. Unless seamen like this could come up with money for a bond or find a way to reship from detention, they were subject to deportation. "Instead of finding things easier for the alien seaman who has done a swell job during the war, we find that hardships and obstacles are thrown in his way…Those men whose desire it is to stop shipping…are smart enough to go into hiding. Most seamen have been sailing

[513] National War Labor Board, Directive Order, November 27, 1944, and Amended Directive Order, February 23, 1945, Case No. 111-6058-D, Standard Fruit and Steamship Company and National Maritime Union of America, CIO, National War Labor Board Case Files: Standard Fruit and Steamship Company 3/9/43-2/45, Box 3, William Standard, NMU General counsel's files, 1937-1949. #5258. Kheel Center for Labor-Management Documentation and Archives, Cornell University Library

[514] Memo from Mulcahy to Wiggins, September 23 1946, 55854/370V.

for many years, they want to continue sailing, and if they overstay a few days it is usually because we are now shipping on a peace-time basis and competition for jobs is 45 days." [515]

One of Carol King's clients at the end of the war was Manfred Charasch, a German Jew who moved to Palestine in the 1930s, went to work as a seaman on British boats, was torpedoed three times, overstayed his leave in the United States, and got inducted into the U.S. army. The INS requested his discharge and arrested him for deportation to Great Britain. Charasch agreed to continue sailing but "refused to sail British because he was angry at the British position on Palestine"; the British consulate said he was "not releasable" and the INS refused him parole "under any conditions."[516] Similarly, in late June 1945 (after the war in Europe was officially over), the INS refused to let a Chinese seaman, who had been torpedoed while on a British boat and then overstayed his leave, ship out on a Norwegian vessel, which he believed offered higher pay and better treatment. When told by an inspector that he would be ineligible to reship on a Norwegian boat since he had never shipped on one in the past and that he would deported to India since he refused to reship on a British boat, the seaman insisted "I no longer belong to the British shipping company. When the ship was torpedoed my contract terminated…I do not wish to be deported to India; I have never been to that country." The seaman ended up reshipping on a British boat on August 6, 1945, the day the first atomic bomb was dropped on Hiroshima; an "unexecuted warrant of deportation" was issued after his departure. It is unclear whether this warrant would affect the ability of the seaman to re-enter the United States.[517] In late August

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[515] Constance Kyle Lamb (NMU) to W.J. Watkins (INS) , June 12 1946; Shirley Rose (NMU) to Watkins (INS), June 14, 1946; NMU conference with INS (NY), June 5, 1946, all in Box 17, folder: Alien seamen: 1946-1948, ACPFB papers.

[516] On Charasch, see Memo from Thomas Gibney to James O'Loughlin, April 12, 1944, 55854/370W; Minutes of Meeting, September 14, 1945, at Ferdinand Smith's NMU office, Alien seamen, 1943-1945, Box 16, ACPFB papers.

[517] Case of Wong Lee Ying, 0204-3044, Box 559, Chinese Exclusion Case Files, 1911-1955, Immigration & Naturalization Service Boston, MA Office, NARA Boston. In a somewhat similar case, a Chinese seaman shipped

1945 the INS's Edward Shaughnessy "saw no reason why special consideration should be given" to four seamen who had been involved in the incident on the "Silver Ash" in 1942; Thomas Gibney, INS inspector in New York, wanted these seamen to face deportation rather than be allowed to return voluntarily to a China newly free from the Japanese.[518] In the case of Choy, discussed and pictured above, the BIA ruled that he was required to depart voluntarily after the war ended; it did not consider allowing Choy to naturalize because he had entered the country illegally. Those seamen who were permitted shore leave (so entered legally) and then overstayed and served in the army were legally eligible for naturalization as of early 1943,[519] but the INS denied naturalization to enough seamen in that situation the following year that the ACPFB wrote to the Commissioner to complain.[520] In order "to preclude the naturalization" of "former alien seamen who are deserters from the merchant marines of their respective countries," the Army, at the behest of the INS and the allied shipping missions, had begun including on discharge papers the phrase "for the convenience of the government on account of alienage."[521] Another one of King's clients was Panagiotis Ioannos Paulogianis, a Greek seaman who was

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out as part of a crew on an American ship for a round trip voyage in September 1945 after which a "warrant of deportation was executed" for him by the INS. A federal appeals court ruled that "Simply because the Government permitted him to leave at his own expense…it does not make plaintiff's deportation something less than a Government-paid-for deportation." Though he was allowed to ship in and out of the United States for subsequent roundtrip voyages as a seaman on American ships, the INS claimed the deportation in 1945 broke the continuity of his residency and made him later unable to adjust his status. (*Sit Jay Sing v. Nice*, Northern District of California, Southern Division, 182 F. Supp. 292, 1960).

[518] Thomas Gibney to Edward Shaughnessy, June 10, 1945; Edward Shaughnessy to Herman Landon, Aug 22, 1945, 55854/370T and Z.

[519] As Edward Shaughnessy wrote to Norwegian Rear Admiral H. Diesen, Feb. 24, 1943, "Any person not a citizen who has served in the military forces…having been lawfully admitted to the U.S.…may be naturalized… after he has served in the Army for a period of thirty days…Lawful admission…means the actual admission at the time the alien arrived in the country was lawful…In the case of a seaman who is examined and granted shore leave at the time of his arrival, this constitutes a lawful admission even though subsequent to his admission he deserts and is illegally in the U.S." (INS file 55854/370O).

[520] Abner Green to T.H. Shoemaker, April 26, 1944, folder: Alien seamen, 1943-1945, Box 16, ACPFB papers

[521] Secretary of War to Earl Harrison, Aug. 28, 1943, 55854/370S.

married to an American citizen and father to an American-born son and who was inducted into U.S. Navy after being turned down by the Greek Navy. Upon the request of the Greek government, he was discharged from the Navy "for the convenience of the Government on the ground of alienage," so he could not naturalize. The BIA would not grant him suspension of deportation, but only reshipment. It wrote: "we wish to stress that this alien's return to sea does not mean that he will not be able to return to this country to rejoin his family…there is absolutely no likelihood that the Greek preference quota will be exhausted when this alien's services at sea are no longer needed."[522] As it turned out, by 1946 the Greek quota was oversubscribed. Matters seemed even more hopeless for an Indonesian seaman who entered in 1941 and then served in the army in 1943. He was denied citizenship because, though he was granted shore leave in 1941, he told the naturalization examiner in 1946 that he *intended* to remain at that time. He was, retrospectively, deemed an illegal entrant subject to deportation.[523]

Economic and political activity by left-leaning Greek and Indonesian seamen was evident towards the end of the war and carried over into the post-war period, placing the INS in the middle of volatile and highly publicized strikes, litigation, and deportations. The very same problems that were raised earlier—the INS's support of imperial interests and suppression of labor rights—were set in high relief.

The aforementioned "extreme distrust" of Greek seamen toward representatives of their government in exile was exacerbated in 1944 when it began suppressing the Federation of Greek Maritime Unions for its support of the communist resistance organization's [the EAM's] provisional government committee in Greece. The FGMU [or OENO, the acronym from Greek],

[522] Shaughnessy to Savoretti, Feb. 23, 1945 and In re: P. I. Paulogianis, July 13, 1944, both in INS file 55854/370Y.

[523] "Government Seeks to Deport War Veteran to Indonesia on Basis of Technicality," ACPFB *Lamp*, 28 (September-October 1946).

had formed in 1943 as a consortium of four unions (covering different ratings) with its headquarters in Cardiff and branches at New York, Buenos Aires, and other ports; FGMU members were the 9,000-10,000 seamen outside of Greece and it was headed by the leaders of the former Greek Seamen's Union. In 1944, the Greek government in exile asked that the British government investigate the "terroristic" tactics of the FGMU and an extraterritorial Greek Maritime court sentenced FGMU members to two years imprisonment for simply forming a ship committee.[524] Greek union leaders in New York began attributing the resistance of seamen to reshipping on Greek boats not primarily to low wages and poor conditions but to the fear "that they will be taken from the ship when it reaches the British Isles and called before a Greek Court to be dealt with summarily on unwarranted charges."[525] In October 1944 the exiled government returned to liberated Athens and, by early 1945, EAM's military organization [the ELAS] surrendered its arms. This was a violent and abusive time in Greece. Panagiotis Kalatjis, a seaman who came to the U.S. a few years later, testified that "his action in speaking out against the German occupation of Greece and in innocently joining the ELAS" led to his being beaten and tortured by Greek police officers in 1945. The police officers then arranged for his conviction, in abstentia, to over six years in prison for allegedly buying a false seamen's identification book.[526] Meanwhile, in New York, the Greek consulate informed the FGMU that it no longer recognized it as a union, refused to allow its members to reship on Greek vessels, and requested their arrest by the INS. According to the FGMU, seamen from the SS Hellas and SS

[524] Kitroeff, 90-91.

[525] Letter from the New York branch of the Federation of Greek Maritime Unions to Marshall Dimock, Jan. 20, 1944, 55854/370T.

[526] *Panagiotis Kalatjis, aka Peter Kallas v. George K. Rosenberg*, District Director INS Los Angeles, No. 17925, 305 F.2d 249 (9th Circuit, 1962). The conviction made it impossible for Kalatjis to adjust his status.

Ameriki—both of which were lend-lease Liberties given to the Greeks by the U.S.[527]—were discharged against their will in the U.S. in the spring of 1945 and then "condemned to unemployment under the pretext that they are to await transportation to London for trial."[528] According to the Greek Embassy, these seamen were slated for trial because they formed a ship committee, engaged in "anti-discipline acts," and ripped up the order regarding the de-recognition of the FGMU. "These men," wrote Chancellor Stefano Koundouriotis, "are a bad influence." [529] The INS decided to release the 12 seamen in question because it felt the Greek government was compelling them to overstay, which was against the policy of the seamen program.[530] But, even as the Greek government continued to discharge veteran seamen, WSA supported its efforts to bring over crews on transit visas from Greece and Buenos Aires to man lend-lease ships given to Greece by the U.S.[531] This practice prompted Nicolas Kaloudis and Emmanual Pitharoulis of the FGMU in New York to telegram the INS protesting "against Greek Mercantile Marine measures condemning to starvation Greek seamen who fought six years." While the seamen brought over from Greece received subsistence stipends, discharged seamen did not. "We request you to use your good offices to help the Greek seamen who ask from the Greek government either jobs or unemployment benefits." [532] The 5th Constitutional Convention

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[527] Elphick, 389.

[528] E. Pitharoulis, secretary of the FGMU in NY, to Shaughnessy and O'Laughlin, April 21, 1945; E. Pitharoulis to Edward Shaughnessy, April 30, 1945 enclosing "Statement on Withdrawal of Recognition of the FGMU by the Greek Government" and "Persecution of Members of Our Organization." 55854/370Y.

[529] Koundouriotis to J.F. O'Laughlin, May 17, 1945, 55854/370Y.

[530] Thomas Gibney to Edward Shaughnessy, June 7, 1945, re: Inter-Allied Seamen's Conference in New York, June 4, 1945, 55854/370T.

[531] Shoemaker to Shaughnessy, March 1, 1945, enclosing list of Greek seamen being brought to the United States for the manning of lend lease ships, 55854/370Y

[532] Telegrams from Pitharoulis (Sept. 7, 1946) and Kaloudis (Oct. 16. 1946), INS file 55854/370Z.

of the National Maritime Union pledged support for the FGMU against "attacks" from the Greek government.[533]

The month the Seamen's Program officially ended (March 1946) marked the passage of the Ships Sales Act, by which American ships (built at taxpayer expense) could be sold to foreign purchasers. The Act was supported by Admiral Land as sound maritime policy and by the State Department as necessary to European recovery and establishing postwar multilateral free trade, and, less publicly, providing the U.S. with political leverage. Soon afterwards, the U.S. Maritime Commission began selling ships on cheap credit to allied governments or individual shipowners on state guarantee. Those Greek ship owners who possessed capital in American banks—like the Livanos family, the largest of Greek ship owners, and the Kulukundis brothers of the aforementioned Rethymnis and Kulukundis (who spent much of the war living at upscale New York hotels, despite owning several apartment buildings in the city)—bought Liberties and tankers for cash and registered them under the Panamanian flag. For the rest, the Greek government guaranteed the purchase of 100 Liberties on behalf of its ship owners. The U.S. sold off the Liberties at a third of their original price, with the Greeks paying only a third of this bargain price up front. Washington's goal was to revive Greek commerce and the Greek economy; Greek shipowners were supposed to do their share by transferring all their other vessels from Central American to Greek registry, providing taxes for the bankrupt Athens treasury. It was almost foregone that the shipowners would not keep up their side of the bargain: an attempt to block the transfer of the Liberties themselves to Greek ownership without a

[533] Proceedings of the 5th National Convention of the National Maritime Union, July 2-13, 1945, 510, Box 90, NMU papers, Rutgers.

mandatory agreement as to tax payment was thwarted by the U.S. Maritime Commission.[534] In the end, the shipowners kept the Liberties and did not make flag transfers on the other vessels. Indeed they used the profits they made from chartering the Liberties to buy more ships to sail under foreign flag (Liberia was a popular one). Many shipowners kept their profits in foreign banks, thus evading Greek taxes; those shipowners living in luxury in New York remained free of taxes by the U.S. as well through the use of Greek diplomatic status. It has since been calculated the 100 Liberties sold to the Greek shipowners generated a combined income of thirty-five million dollars with a net profit of about eleven million dollars in 1947 alone. Greek officials who helped arrange the deals—like Sophocles Venizelos, head of the Greek economic mission to the U.S.—secured ownership of a Liberty ship and credit for his sister-in-law, the titular owner of an extensive fleet. Shipowner Stavros Livanos offered to pay for the schooling in the U.S. of the son of Nicholas Avraam, minister of the merchant marine who helped seal the Liberty ship agreement in 1946. According to Aristotle Onassis, who was not a part of this deal, the aforementioned Counselor Koundouriotis, the Greek official in charge of the seamen's program during the war, played "the role of the 'escoffier' in the 'last supper' of the 100 Liberties."[535]

By this time, the INS refused to give additional extensions of stay to FGMU leaders in New York, Emmanual Pitharoulis and Nicolas Kaloudis. Kaloudis had joined the Greek

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[534] Lawrence Wittner, *American Intervention in Greece 1943-1949* (New York: Columbia University Press, 1982) 176.

[535] Letter from Onassis quoted in a pamphlet on Greek shipping, Box 51, Folder: International Relations: Greece, Marcantonio papers, NYPL. See also Harlaftis, *A History of Greek-Owned Shipping*, 235-240. Paul Porter, head of the American economic mission to Greece in 1947, "was particularly dismayed by the determination of the Athens government to cater to the cupidity of the small Greek upper class." (Wittner, *American Intervention in Greece*,169). Onassis was working on an even more corrupt deal of his own. Under the Ship Sales Act certain types of vessels—specifically T2 tankers—could only be sold off to American-controlled firms. Onasis, Kulukundis and another Greek shipwowner (Niarchos), formed Panamanian companies that nominally were majority owned by Americans—trusted American citizen relatives and puppets. (*Sovereignty for Sale,* 145-147.)

Merchant Marine in 1934 and then served in the Greek Navy from 1938-1940. During World War II, he sailed on Greek, American and Panamerican ships with convoys to England, the Mediterranean and South Africa and then participated in the Anzio beachhead invasion in 1944, loading cargo and transferring troops under fire as a crewman on an American ship. He was a member of the NMU by then, and when he returned to the U.S. in 1944, he was elected an officer in the FGMU and granted permission by the INS to remain ashore in that capacity in order to encourage Greek seamen to ship out for the allies. In 1946 he married an American citizen and applied for U.S. citizenship. The ACPFB considered him just one of the many trade union leaders who were having trouble with the INS in 1946; it argued that Kaloudis and Pitharoulis could not be replaced and their departure would leave Greek sailors in the U.S. unrepresented.[536] In June 1946, the INS argued that "the exigencies of war no longer warranted their continued stay ashore" and that the FGMU had already been given enough time to replace them. Protests from supporters—especially from Greek American lodges of the International Workers Order and left-leaning trade unions, who responded to an ACPFB "Emergency" Letter—and appeals by Carol King helped secure Kaloudis and Pitharoulis a short extension of stay, when they were supposed to depart voluntarily.[537]

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[536] "Trade Union Leaders Selected for Deportation—Maritime Workers in New York: Trade Union Officials Denied Extension of Stay," *The Lamp* (ACPFB), No 26, July 1946.

[537] Letter from Joseph Savoretti, Assistant Commissioner of Immigration, to Greek American Council, June 19, 1946; ACPFB Emergency Letter, No. 10, June 14, 1946, "Greek Maritime Union Leaders Ordered to Leave United States"; Protest letter from Greek American Lodge, #995 (Lowell, MA) of the International Workers Order, June 18, 1946; Protest Telegram from Hellenic American Fraternal Society, International Workers Order, Philadelphia, to INS Commissioner, June 19, 1946; Protest letter from Artemis Lodge #942, International Workers Order, New York, June 19, 1946; Protest resolutions from the Hippocrates Lodge 940 of the IWO, Detroit, Michigan, June 20, 1946; Protest resolutions to INS Commissioner from Greek Committee, International Workers Order, Local 993, San Francisco, June 22, 1946; Protest letter from Local 1421 United Electrical, Radio and Machine Workers of America, June 24, 1946; Letter to INS Commissioner from Industrial Union Council of Tarentum PA, June 15, 1946; Letter from Milwaukee County Industrial Union Council, July 16, 1946; Letter from Fort Wayne Industrial Council, July 23, 1946; Letter from Milton Kaufman of the Civil Rights Congress to Commissioner of Immigration on behalf of Pitharoulis and Kaloudis, June 18, 1946; Protest letter from Michael Mandelenakis, American Council for a Democratic Greece, Sept. 23, 1946; Telegram from Ferdinand Smith of the NMU to INS urging extensions for

Meanwhile, their fellow FGMU members in Greece, including Ambatielos, were arrested, imprisoned, and exiled for collective action on Greek ships and for allegedly supporting Communist "bandits" in Greece's civil war. In early 1947, the U.S. government, worried about Communism in the Mediterranean and Middle East and excited to take over British hegemony there, resolved to send economic and military aid and advisors to the Greek government. President Truman told Congress in March that "the terrorist activities of several thousand armed men, led by Communists" made this aid imperative. Though prices of essential items in Greece had risen more than 300 percent since 1939 and wages lagged far behind, U.S. officials introduced an "incomes policy" that opposed wage increases (and also opposed price controls or shifting from consumption taxes to income taxes) and supported a ban on strikes; most American aid money went towards the military operation of the Greek government. U.S. advisors believed the Greek government's crackdown on the left during the summer of 1947—including the arrest of freely elected trade union officials—weakened the Communists and would facilitate further purges from the trade unions. The FGMU offices in Piraeus were raided and closed by the security police; several FGMU leaders were exiled to Icaria. A report by the Greek government (that the American Embassy endorsed and forwarded to Washington) claimed the FGMU "strangled the economic interests of the sea-working world, and sucks its blood through satanic propaganda"; leaders of the FGMU were "a gang of sadists, murderers, and thieves" whose "antisocial and antihellenic pursuits…created human monsters from vagabond elements, which were especially trained [by the FGMU] in criminal schools where degeneration and inhumanity are engendered." A promoter of the Marshall plan in Greece insisted to Congress that though

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Pitharoulis and Kaloudis; all in Case file for Emmanuel Pitharoulis, Box 45, ACPFB papers. See also: "Committee Wins Extension of Stay for Greek Maritime Union Leaders," *The Lamp* (ACPFB), No. 27, Aug. 1946; "Seeks One-Year Extension for Greek Maritime Leaders, " *The Lamp* (ACPFB), No. 28, Sept-Oct. 1946.

"the Greek government does reactionary and Fascist things from time to time," "it wants to follow our policies as closely as it possibly can."[538] On the other hand, Pitharoulis asked the NMU to "Do everything in your power to stop the American government from continuing its aid to the present reactionary Greek regime." At the annual NMU conference in the fall of 1947, Pitharoulis described the suppression of the FGMU as part of the Greek government's "persecution" of the Greek labor movement. "I appeal to you to do everything in your power to speed the release of our fellow trade unionists…Workers all over the world, and especially seamen, who made enormous sacrifices in this last war to end fascism, must see that their sacrifices were not in vain."[539] In response to an ILWU protest against the repression of the FGMU and Ambatielos's arrest in late 1947, the State Department quoted a letter by an American labor advisor in Greece: "The Communists…are… the victims of their own policies, decisions and activities."[540]

In U.S. ports, Greek ship captains continued to discharge seamen, especially with ties to the FGMU, in great numbers. In late 1947, the NMU sent a telegram to the White House protesting "the wholesale arrest and planned deportation to Greece of scores of Greek seamen…who are charged with remaining on U.S. soil over 29 days. Shipping is slow at the present time and justice demands relaxation of stringent regulations in this period. To deport

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[538] Wittner, *American Intervention in Greece*, 80, 87, 219-220.

[539] Proceedings of the 6th National Convention of the National Maritime Union, New York City, (Sept. 22-Oct. 15, 1947), 692-3, Box 90, NMU papers, Rutgers.

[540] Letter from Cleon Swayzee, Division of International Labor, Social and Health Affairs, to Louis Goldblatt, International Longshoremen's and Warehousemen's Union, July 13, 1948, Folder: Trade Unions—Greece—Federation of Greek Maritime Unions, Box 16, International Longshoremen's and Warehousemen's Union, Bancroft Library.
In 1948 the State Department estimated that it received about three hundred messages from American unions and locals protesting repression of Greek labor leaders and that about half were regarding the FGMU (Wittner, *American Intervention in Greece*, 386n.91).

these men to Greece would mean sending them to their death in view of the fascist character of the present Greek regime, which has declared the death sentence for trade unionists. These men served heroically in the cause of the United Nations during the war. Our country cannot now repay their heroism by deporting them to certain doom…We request their immediate release and the easing of the 29 day clause."[541] The INS opted not to heed this call for lengthened shore leave upon the recommendation of the FBI. "It has been reported that various seamen…are engaged in activities on behalf of the Communist Party. It would seem that giving them this additional time could serve to afford them additional opportunities to engage in their activities, to make additional contacts and generally engage in acts inimical to the welfare of this country."[542]

Around this time, attorney Jacob Morewitz (the same attorney who handled the S.S. Quanza case discussed in the introduction to this dissertation) began representing Greek seamen in Newport News and Norfolk in numerous libel suits against Greek vessels. Two of these cases involved crewmembers who refused to work or get off the ss Virginia and the ss Papazoglou. The FGMU claimed that the seamen "were asked to sign a yellow dog contract…waiving all rights to overtime pay for extra jobs and the six month bonus. Refusal to sign was accompanied with a threat that their papers would be confiscated and deportation would follow."[543] The captains of these ships and a representative from the Greek consulate told the INS that the

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[541] Telegram from Ferdinand Smith of the NMU, December 18, 1947, quoted in letter from the Department of State to the Attorney General and INS, January 21, 1948, 55854/370W.

[542] Director of the FBI to Commissioner of INS, August 28, 1947, INS file 55854/370W. As early as mid-1947 a Justice Department official suggested that deportations would be "a great implement to the now well-established Truman Doctrine." Letter from Alexander Campbell to Tom Clark, Aug. 1, 1947, quoted in Ellen Schrecker, "Immigration and Internal Security: Political Deportations During the McCarthy Era," *Science & Society*, 60.4 (Winter 1996) 398.

[543] Statement issued by the New York Branch of the Federation of Greek Maritime Unions, December 15, 1948, Trade Unions—Greece—Federation of Greek Maritime Unions, Box 16, International Longshoremen's and Warehousemen's Union, Bancroft Library.

seamen had no "legitimate grievances" but that their sit-down strikes were "due solely to their political allegiance" to the Greek Communist Party. Morewitz claimed the difficulties arose out of labor disputes—specifically demands for pay for removing and replacing hatch covers in port (which is typically longshoremen work) and for bonus pay for continuous service on the same ship (which had formerly been the rule for Greek shipping companies)—and complained that when a judge ordered striking crewmen off the Papazouglou, the INS arrested them after 29 days. In other cases, Morewitz said, INS inspectors seized seamen's books, refused to let seamen sign off, or detained them until the ship they arrived on was ready to sail out and then put them back on board. His "real complaint was directed against officials of the Greek government connected with the Greek Ministry and with the officials and representatives of Greek steamship companies in this country," the Assistant Commissioner of the INS reported after a meeting with Morewitz. Morewitz was, the report continued, "disturbed because this Government has turned ships over to the Greek government to be used in competition with American shipping and, at the same time, the steamship companies are doing everything within their power to gouge the Greek seamen." By the spring of 1948, despite a supposedly "hands off" attitude as far as the labor disputes were concerned, the INS was diligent to arrest any of the seamen involved in them who violated the immigration laws and to work with the FBI to investigate their communist ties.[544] These investigations involved interviewing informants and some ex-crewmembers (who were frequently not Greek, but Romanian) and monitoring which seamen interacted with FGMU

[544] Memo from Argyle Mackey, April 29, 1948 re: Greek seaman situation ay Newport News; Memo from Immigrant Inspector Suddath on Cases of Greek ships filed in the United States District Court, Norfolk and Newport News Divisions, in which Attorney J.L. Morewitz is interested, May 10, 1948; Michael Hoosack to Albert Del Guercio, Report of Greek Situation at Norfolk and Newport News, Virginia, May 10, 1948; W.F. Kelley to Watson B. Miller, May 10, 1948; Argyle Mackey, memo In re: Greek seamen, May 10, 1948; Albert Del Guercio to Commissioner, May 11, 1948, all in INS file 56253/195.

leaders like Kaloudis, who the INS, echoing the Greek Consulate, deemed a "dangerous Communist."[545]

Seamen from the Dutch East Indies engaged in strikes first for higher wages and better treatment on Dutch ships and then in opposition to sailing ships carrying munitions for use in the suppression of the independence movement in Indonesia. In 1943 Javanese crewmembers on the Klipfontein, a Dutch ship allocated to the WSA for use by the U.S. army, demanded higher wages [the Javanese were getting a monthly wage of $17 whereas the other seamen were getting more than twice that amount]. The army took the seamen off the ship and the INS picked them up for desertion once the ship sailed.[546] The INS slated the seamen, and other Javanese who had sailed in from the Pacific theater and refused to reship, for deportation to Paramaribo in Surinam (Dutch Guiana). The seamen gained the support of the CIO, which argued that "the treatment accorded these Indonesian seamen will become known to the people of the Southwest Pacific and on the Asiatic mainland," and thus "hamper" the war effort; INS Commissioner Earl Harrison responded to a CIO radio segment about the seamen with equal disdain, claiming the broadcast was "grist for the Japanese propaganda mill."[547] The Alien Seamen Program, as we have seen, persisted after the defeat of the Japanese and during the attempts of the Dutch (with the aid of American lend-lease materiel and British troops) to suppress the war for independence in Indonesia. Indonesian seamen on both coasts were reluctant to reship on Dutch and British vessels and claimed they would be persecuted if deported to Dutch controlled territory. By fall

[545] Memo for the file by W.W. Wiggins, chief Investigations Section, Aug. 12, 1948; W.F. Kelly to Del Guercio, Oct. 14, 1948; Albert Del Guercio to Commissioner, Nov. 8, 1948, all in INS file 56259/845.

[546] Memo from Shaughnessy to Mr. Landon, July 23, 1943, 55854/370P.

[547] Bjorne Halling, CIO Maritime Committee, to J. F. O'Loughlin, coordinator of the Alien Seamen Program, January 3, 1944; INS Commissioner Earl Harrison to I.F. Wixon, INS District Director, San Francisco, Jan. 25, 1944, 55854/370T.

1945, at the height of fighting in Surabaya, several Indonesian seamen in New York brought their predicament to the attention of the ACPFB and the NMU. In mid-October, the NMU held a mass meeting at which speakers "outlined the entire struggle that has been taking place in Indonesia in this period," protest telegrams were written to the American, British, and Dutch governments, and a request was sent to British longshoremen and seamen not to load and sail ships carrying troops to suppress Indonesian independence. According to David Slivka, of the NMU's political action committee, "a large group of [Indonesian] seamen notified us…that they would not go back to their ships, that they would sacrifice their clothes, valuables, gear and everything that they had aboard ship because of what they believed in, that they would not help the Dutch government or any government supply ammunition, arms, and supplies to these trips that will suppress their own people."[548] The NMU and several other supportive organizations held benefits to raise money for the seamen. Before turning themselves over to the INS a few weeks later, the seamen held a protest march and picketed at the New York offices of the WSA.[549]

On the west coast, lawyer Leo Gallagher, who headed the American Committee for a Free Indonesia in Los Angeles, complained that the Indonesian seamen had not been released from the Dutch consul's authority under the seamen's program; Gallagher brought habeas corpus proceedings in a Los Angeles federal court on behalf of seamen detained by the INS at Terminal Island because they refused to reship on Dutch vessels. Gallagher argued it would be cruel and unusual punishment to deport the seamen to Indonesia. Judge Ben Harrison claimed that Gallagher's only precedent—the *Weinberg* case [see pages 423 and 467, above] – was "without

[548] David Slivka's speech to the ACPFB's National Conference on the Foreign Born in Post-War America, October 20, 1945, page 20 of conference transcript, Box 4, ACPFB papers.

[549] "Indonesian Seamen Yield," *New York Times,* Nov. 21, 1945, 8.

authority" and that the court had no jurisdiction since deportation was at the discretion of the Attorney General. Though Judge Harrison said he sympathized with the decision in Weinberg—"we have a recognized fact of the massacre and the slaughter of the Jews during the wartime period"– the situation with the Indonesians was different. In response, Gallagher read a seaman's letter claiming that crewmembers who demanded to get off a ship upon its recent arrival in Batavia had been taken to a concentration camp and shot. Gallagher also pushed the idea that "as a result of the persecutions that have taken place during the war, we have adopted a policy… which is reflected in that [the *Weinberg*] decision…[that is] intended to give greater protection to political refugees." Gallagher pointed to Justice Murphy's concurrence in the recent Bridges decision that gave "aliens much more concrete and definite rights than they apparently had before." [In that concurrence, Murphy wrote that aliens who lawfully entered the country should be accorded rights guaranteed by the Constitution and that, given that deportation could result "in persecution, and even death," "human tenets" needed to be applied when dealing with it (*Bridges v. Wixon*, 326 U.S 135 (1945)]. Gallagher even made reference Learned Hand's 1929 Second Circuit decision in the *Giletti* case (35 F.2d 687), which involved an Italian anti-fascist threatened with deportation and is discussed in chapter 1. That was a decision, Gallagher noted, which held "that even if the fear is not actual, that if the men believe that they are going to be subjected to punishment, that that is fear that can be considered in determining." Judge Harrison retorted that, if that were the case, any seaman "could find refuge in this country." "Where a person has a conversion one way or the other while crossing the Pacific Ocean, it does not give him a special privilege to remain in this country where he would not have had the right had that conversion not occurred." The Judge determined that, despite having been admitted legally, the Indonesian seamen were not long-time "resident aliens" like Bridges; the Judge

considered them new arrivals who abandoned their ships, overstayed "without any permit of any kind," and "then immediately asserted the fundamental rights of this government." Regarding their potential persecution at the hands of the Dutch authorities, the Judge remarked "because they want to be revolutionists, they are no different than if they wanted to be revolutionists in their own country. They have to take that chance." When Gallagher pointed out that there was a distinction in that "in this particular case, we deliver the revolutionists over to be hanged," the judge insisted that the seamen "left that country when it was the same condition as it is in now." The Judge thus framed the deportation as a product of the seamen's own choice rather than a U.S. policy; according to the judge, the seamen "selected their own group" – "because they want to be revolutionists"—and had to face the whatever consequences. Still, the Judge told Gallagher to appeal to the INS because "I am confident that the Attorney General of the United States would not order men deported if he felt that they were going to be punished by it."[550] For Judge Harrison, given the seamen's choice, executive discretion, rather than asylum, was enough of a safeguard. Later, Gallagher wrote a letter to the judge, clarifying that "these Indonesian seamen did not recently sign up as seamen but…have been actively engaged as such since before Pearl Harbor" and that "it happens that these men are now in the United States because this was the first country where they were able to disembark and refuse further to man ships of Holland" when the war ended and the Indonesian Republic declared its intention to gain full independence.[551] And, in his appeal to the Attorney General and INS for political asylum for the seamen, Gallagher wrote: "Petitioners have manned Dutch ships throughout the war period,

[550] Reporter's Transcript of Hearing on Petition for Writ of Habeas Corpus, In re: Sowewadji, et al. (crewmembers of ship Poe Lau Laut), Hamin, et al. (crewmembers of Katoe Baroe) and Alimoerdjo, et al. (crewmembers of Manceran), No. 5382-0'C-Civil, District Court of the Southern District of California, May 22, 1946, pages 4, 8, 10-11, 14, 16-17, Box 2, Folder 2, Leo Gallagher papers, Southern California Library for Social Studies and Research (Los Angeles).

[551] Leo Gallagher to Honorable Ben Harrison, May 23, 1946, Box 1, Folder 46, Leo Gallagher Papers.

recognizing Nazi-fascism as the greatest enemy of mankind...Surely they should not now be turned over to Dutch fascism, exploiting in a most inhuman way the people of Indonesia."[552] In June 1946, Gallagher and George Annang, a U.S. citizen of Indonesian descent, led a picket at the Federal building in Los Angeles to protest the deportation. While Slivka and Gallagher emphasized that deportation of the seamen was a betrayal of the sacrifices of WWII and "a denial" of the Atlantic Charter's promise of self-determination, the Indonesia League of America (made up of Indonesians in the U.S) proposed that "Indonesians married to American wives, with or without children, should be permitted to reside in the U.S. until complete settlement of the Indonesian problem."[553]

Appeals and protests proved unable to stop the deportation. The INS looked upon Judge Harrison's decision as a "clear" confirmation that deportation "was not a matter over which the Court was given any jurisdiction" and as "coinciding with the written opinion of the local Federal District Judge Yankwich…(in the case of *Ex Parte Kurth*) [that] 'Asylum has never been a right.'"[554] The INS also would not extend the seamen's stay in the U.S., insisting that they were "racially ineligible for permanent residence in the United States and there was no means under existing law by which their status could be adjusted"; the State Department told the INS that "political considerations were not felt to be such as required any deviation from the normal procedure for the deportation of deserting seamen."[555] The INS transferred to San Francisco all

[552] Petition for Political Asylum, Folder: Indonesian Seamen, Box 19, ACPFB papers.

[553] Telegram from John Andu to INS District Director in New York, June 3, 1946, Folder: Indonesian Seamen, Box 19, ACPFB papers.

[554] Memo on Indonesian Seamen from Albert Del Guercio, INS District Director, Los Angeles to INS Commissioner General, July 3, 1946, INS file 56225/789.

[555] Commissioner Ugo Carusi to Harold Wilde, March 18, 1947; Hugh Cumming Jr. (Chief, Division of Northern European Affairs) to Mr. Travers (Chief, Visa Division), April 4, 1946, both in INS file 56225/789. Mr. Alexander of the Visa Division assured the INS that this represented State Department policy on the issue.

of the seamen (over 200) who refused to depart from both New York and Los Angeles. They were slated for deportation on June 12, 1946. A last minute appeal on their behalf (by advocates the INS District Director in San Francisco referred to derogatively as the [George] "Andersen clique"[556]) got the seamen off the ship, which sailed without them, but with their baggage, and brought the government tab for their detention and transport to almost $100,000. Over the objection of advocates and in spite of numerous protest petitions, the government opted to transfer all the seamen to a detention center far from an urban center, in Crystal City, Texas, to await deportation. While they were there, Gallagher's committee learned that seamen deported from the U.S. to Surinam during the Alien Seamen Program had recently been sent to Holland, where they were to collect their wages, but, as they approached Amsterdam, Dutch Military Police transferred them to another ship that sailed straight to Indonesia, from where nothing had been heard of them since.[557] Lawyers for the seamen in Texas made appeals in the courts and asked Senator William Langer to introduce a private bill to cancel the deportation of some of them. In early 1947, the Supreme Court denied petitions for certiorari regarding these seamen and the INS, which had come to believe that protests on behalf of the seamen were "communist inspired," received word from the House Judiciary Committee that private bills would not postpone deportation.[558]

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[556] Shoemaker to Kelly, June 13, 1946, INS file 56225/789. The seamen were represented by Harold Sawyer of the firm Gladstein, Andersen, Resner, Sawyer & Edises, which handled labor and civil rights cases and was general counsel for the International Longshore and Warehouse Union. Gallagher also continued to represent the seamen.

[557] "Dutch Government Assurane Cannot be Trusted," *Free Indonesia* (American Committee for a Free Indonesia) vol. 1, No. 2, Folder 46, Box 1, Gallagher papers. The cartoon above was featured on the cover of this publication.

[558] W.F. Kelly to Shaughnessy, Feb 20, 1947, 56225/606.

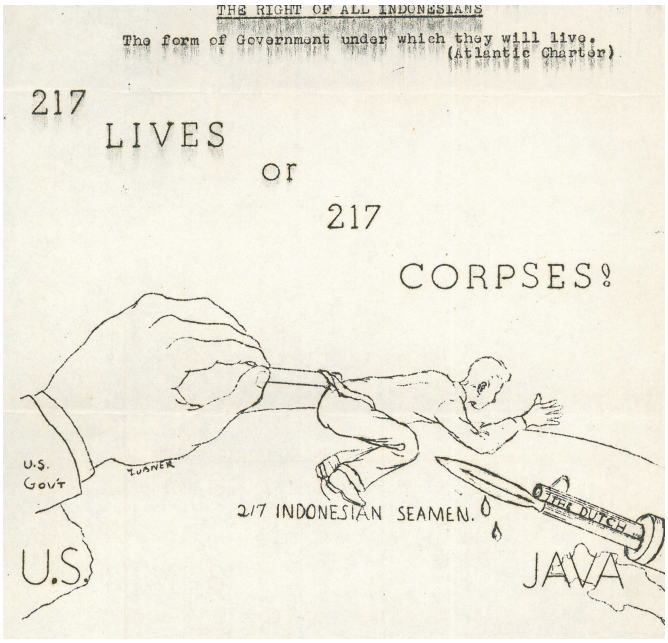

Figure 4.10, "217 Indonesian Seamen," *Free Indonesia* vol. 1, No. 2, Folder 46, Box 1, Gallagher papers.

With deportation now inevitable, a committee of advocates–including representatives of the ACPFB, the National Lawyers Guild, the Workers Defense League, and the National Maritime Union—shifted their focus to insuring that the seamen be delivered to the Port of Cheribon, the only one held by the Republic of Free Indonesia, on an American ship.[559] A memorandum submitted by the committee to the INS pointed to precedents the U.S. should follow: Indonesian sailors had recently been repatriated from India and Australia under the protection of British and Australian troops; in one case "the presence of a representative of the Australian government was the only factor which prevented the Dutch forces from seizing the repatriated Indonesians" while their ship was docked in the port of Batavia. "Even if the Netherland Government sincerely wished to safeguard the lives of these men," the memo argued, "it has put into operation an overall policy of violence which we have no reason to believe would be altered in this case." The American President Lines, operated by the U.S. government and the

[559] Carusi to Abner Green, Feb. 21, 1947, 56225/606.

only shipping line willing to handle deportation to Java, refused to land at Cheribon because it was too small, might be mined, and "might result in international complications."[560] This is undoubtedly a reference to the fact that the Dutch has just issued new trade regulations barring the export of commodities from Cheribon and would regard the arrival of American ships to that port with suspicion.[561] The INS and the State Department insisted on the sufficiency of assurances from the Netherlands Embassy that the seamen would face no reprisals upon their return. The seamen were deported to Batavia on an American President Lines' ship in early 1947. Upon their arrival, the seamen were given food and clothing by the Dutch Red Cross, turned over to the Indonesian republican authorities, and traveled unimpeded to the interior. Advocates considered this planned, safe return a testament to power of the pressure they put on the INS. It also can be seen as a reflection of the U.S. government's desire for a peaceful solution to the conflict in Indonesia, especially because a colonial war "would probably greatly strengthen Soviet influence in the area."[562]

Polish seamen also created problems for the INS and the WSA towards the end of the seaman program. In the late summer of 1945, crewmembers of two Polish ships demanded the right to sign off in U.S. ports since they were slated to return to Poland under the newly Soviet-dominated provisional government. "The change in [Polish] governments occurred while we were at sea and we could not express our opinion," one of the crews explained. "We decided to

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[560] Mr. Weymiller, Washington representative of the American President Lines, to McKenzie, Feb. 19, 1947, INS file 56225/606. When the Dollar Line was in bankruptcy in 1938, the U.S. Maritime Commission took it over and renamed it American President Lines. It emerged from WWII reorganized and expanded. It reverted to private ownership in 1952.

[561] Robert McMahon, *Colonialism and Cold War: The United States and the Struggle for Indonesian Independence, 1945-1949* (Ithaca: Cornell University Press, 1981) 146.

[562] Memorandum by Abbot Moffat, head of the State Department's Southeast Asian Division, quoted in McMahon, *Colonialism and Cold War*, 166.

leave our ship…we [expect that] we shall not be repatriated to Poland by force and we shall be recognized as…refugees…[and possibly] be engaged on board under American or Panama flag."[563] At first, the INS allowed the seamen to sign off, but the WSA prevented the seamen from reshipping on non-Polish ships, as per the rules of the Alien Seamen Program. At a Seamen's Program meeting in September 1945, "all of the representatives of the various Allied countries, in an off the record discussion, clearly indicated they would not sign on these deserting Polish seamen because of the delicacy of the diplomatic situation." Several Polish-American Congressmen, led by Representative John Lesinski of Michigan, expressed concern for the seamen. The State Department decided that the seamen must reship, but should not be required to do so on Polish ships. If they did not ship out, the State Department said, "before deportation was actually effected, consideration should be given to the question of possible danger to them in the event of their return to Poland."[564] By October, the seamen found berths on American army transport service ships, with the idea that, after the Alien Seamen Program ended, they might be given pre-examination. Since the seamen reshipped and were technically not recognized as refugees, and since the new Polish authorities had not yet established their emissaries in the United States, no diplomatic fall-out ensued. The handling of Polish deserters changed after 1947, when the U.S. was generally shifting away from a policy promoting repatriation to Poland (of Polish Displaced Persons in camps in occupied Germany) and towards recognition and resettlement of Polish refugees. When the INS seemed to turn a blind eye to mass desertions from two Polish ships in 1948 and early 1949, the Polish consul general in New York recalled the INS's very "different treatment" of the Indonesian seamen two years earlier.

[563] Telegram from the officers of the S.S. Opole to the Director of the WSA, July 9 1945, INS file 55854/370U.

[564] Shaughnessy to Commissioner Carusi, Sept. 21, 1945, re: The present status of the crew of the Polish SS "Tobrusk," INS file 55854/370U.

"The immigration laws of the United States should be applied to the Polish seamen in the same manner as they are applied to other deserting seamen."[565] Cold War-era 'desertion diplomacy' and competing U.S. and Polish propaganda on desertion in the 1950s is discussed later in this chapter.

Before moving further into the Cold War context, it is crucial to emphasize the way the Alien Seamen Program has been almost completely forgotten, despite its important impact. Details about the program were deliberately kept quiet during the war: most of the debate over the deportation legislation was held in Executive Session and, as Wasserman pointed out in his 1944 memo on the program, which was circulated only internally, "an exposé of the Seaman program, as presently administered, would subject the [Justice] Department to severe public criticism."[566] It is clear from the Los Angeles court proceedings regarding the Indonesians that neither Leo Gallagher nor Judge Harrison knew much about how the INS handled alien seamen during the war since so much about the program—especially operation instructions for administering the program—remained unpublished.[567] In 1945, while the program was still

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[565] Jan Galewicz, General Consul of Poland to the Immigration and Naturalization Service, March 21, 1949, 150. 60071/5- 2049, RG 59, Visa Division: Correspondence Regarding Immigration, 1945-1949, Container 141.

[566] Wasserman, "Administration of the Seamen Program," page 39, 55854/370Q.

[567] Here is an exchange from the court transcript (cited in note 504, pages 4-7).
"Judge: there was some reference concerning Instruction 750. Mr. Gallagher apparently was in doubt or did not know what that meant, and the Court did not know.
Gallagher: I do not know now…
Barber [Los Angeles INS official]: That Part 750 was a confidential instruction gotten out during the war and before the seaman policy had been made public. Although the Part 750 is operation instructions, they do not have the force of a regulation and they are not published. That was merely for the manner of handling seamen to effectuate the policy adopted by Congress and by the various representatives of allied governments meeting with our service to carry out the Seaman Program. The purpose of the program was to keep the seamen at sea as much as possible during the operations of the war…
Court: The petitioners are entitled to know what it is and this Court is entitled to know, if you are going to base your deportation upon a confidential instruction that was given which had not the force or effect of a regulation.
Barber: As to each regulation we have an operational instruction telling us how to effectuate that regulation. That is not an instruction which is published…the discretion is lodged in the Attorney General."

ongoing, it was already being mischaracterized and left out of histories of the war effort. (The program has continued to be ignored by most historians since then.) Marshall Dimock, one of the program's masterminds, did not mention it in his book on manning wartime ships; the book emphasized the efficiency and impartiality of the WSA and its careful public relations.[568] The official report to the President on the "United States Merchant Marine At War" provides only a tantalizing, if disingenuous, hint about the Program:

> One of the first knotty problems handled by the Recruiting and Manning Organization [of the War Shipping Administration] was that of halting desertions from allied vessels by seamen who wanted to enter this country illegally or ship on American vessels. By working with the various United States departments and foreign representatives, legislation was obtained to alleviate this situation. Desertions from United States ports from Allied vessels dropped sharply. The men were *for the most part* returned to vessels of their own nationality.[569]

Ignored was the coercive and circular logic underlying the program: because desertion was thought of in terms of delaying the sailing of ships, any action that delayed sailing—particularly protests about unfair treatment—was deemed desertion. So the INS and the British blamed the Chinese community for hiding sailors—focusing on eliminating "pull" factors in Chinatowns—rather than focusing on shipboard conditions.[570] More deeply, using detention (without the possibility of release under bail) and deportation as deterrents also made it impossible to ever judge favorably the motives of those who agreed to reship. The INS could dismiss what sailors called a desire to serve the war effort as an attempt to get out of jail and avoid expulsion. And, on

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[568] Dimock, *Executive in Action* (New York: Harper & Brothers, 1945).

[569] U.S. War Shipping Administration, *United States Merchant Marine at War* (Washington: Government Printing Office, 1944), 59, emphasis mine.

[570] As the historian Meredith Oyen has recently noted, "Given the fact that…Chinese seamen never secured equal treatment from their British employers, at the end of the war it was still hard to isolate out those who deserted in protest from those who simply saw a golden opportunity to immigrate to the United States." Oyen, "Fighting for Equality: Chinese Seamen in the Battle of the Atlantic, 1939-1945," *Diplomatic History*, 38.3 (2014) 546.

just a factual level, this account is misleading given that, over the course of the Alien Seamen Program, 18,940 seamen were apprehended and 1,461 deported.[571] Indeed, more foreign seamen were arrested by the INS for reshipment on the vessels of European allies during the war (at least 17,000) than served in the American merchant marine (an estimated 12,000 seamen of foreign nationality.) This whole issue is absent from American representations of the merchant marines in the 1940s, which emphasize the union membership and the meting-pot diversity on American ships.[572] (According to the CIO Maritime Committee, by mid-1948, "the great majority" of foreign seamen who served on *American* ships during the war had obtained residency in the United States." The American maritime unions had to push hard to achieve even this after the war; residency for those who served on foreign vessels was not on the radar).

Twenty years after the war, the Supreme Court's decision in *Mrvica v. Esperdy* revealed the profound impact of amnesia about the Alien Seamen Program. Ivan Mrvica, born in Dalmatia, deserted his ship in New York in January 1940, was picked up for deportation during the Alien Seamen Program, and agreed to reship on a Yugoslav vessel from San Pedro in October 1942, receiving permission to return as a seaman, which he did a few weeks later. The government later claimed that, when he sailed out in October 1942, Mrvica terminated "whatever foothold" he had in the U.S.; Edith Lowenstein, Mrvica's lawyer, argued that was not the case, pointing out that he maintained his union membership and had no travel documents which would have

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[571] James F. O'Loughlin, "Alien Seamen Program is Ended," INS *Monthly Review*, III.10 (April 1946), 289.

[572] See, especially, Richard Owen Boyer, *The Dark Ship* (Boston: Little Brown & Company, 1947). The novel was first serialized in *The New Yorker*.
The erasure of foreign sailors on allied ships from popular American representations of the war effort is captured in the film *The Key (*Columbia Pictures, 1958), which vividly portrays the experience on sea-going tugboats that rescued disabled convoy vessels in the North Atlantic. The film is based upon the book *A Distant Shore* (New York: Harper, 1952*)* by the Dutch immigrant writer and sailor Jan de Hartog. In the film, the book's Dutch captain-protagonist is replaced by an American.

facilitated his landing in any other country.[573] The Supreme Court majority refused to acknowledge the way the Alien Seamen Program used deportation to get seamen to reship, unable to conceive of "why the immigration authorities should have gone through a meaningless ritual…for the purpose of not deporting" Mrvica. Justice Goldberg, who spent part of 1942 interviewing foreign seamen in New York for the OSS, dissented vigorously.[574] "There was a shortage of merchant seamen during the war," Goldberg wrote, "and all available means were used to insure that foreign seamen stranded in this country would "ship foreign," i.e., on allied merchant ships."[575] The key piece of evidence in the Mrvica record was his executed 1942 warrant of deportation, on which an immigration official wrote "Reshipped." In fact, as internal archival INS documents show, in August 1942, the Yugoslav seamen's union had requested that, given the willingness of its members to reship, their deportation warrants be canceled. It was not until that summer and fall that the Yugoslav consul established a seamen's pool and began accepting arrested seamen, Mrvica among them (listed as #11, below right), for reshipment.

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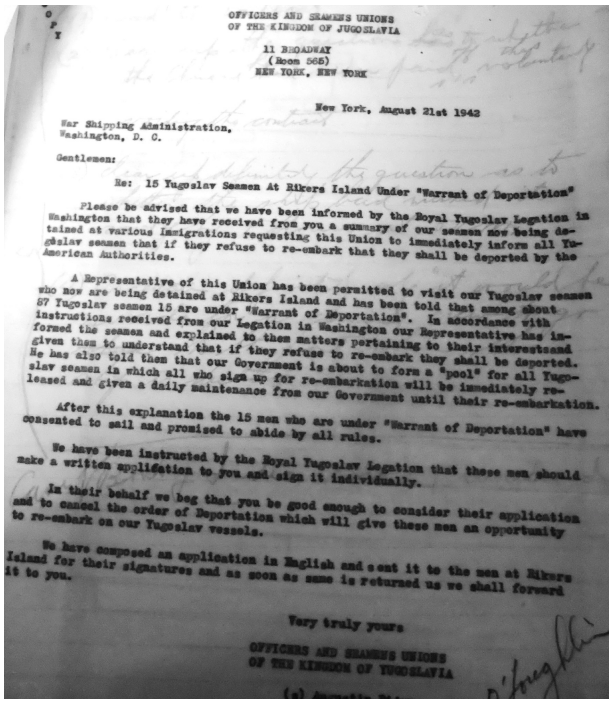
[573] Lowenstein, *Brief for the Petitioner;* Archibald Cox, *Brief for the Respondent*, in *Ivan Mrvica, Petitioner, v. P. A. Esperdy, District Director, Immigration and Naturalization Service.*, 376 U.S. 560 (1964) [*U.S. Supreme Court Records and Briefs, 1832-1978*. Gale, Cengage Learning, accessed June 15, 2013].

[574] For Goldberg's involvement with seamen during the war, see David L. Stebenne, *Arthur J. Goldberg: New Deal Lawyer* (New York: Oxford University Press, 19916), 31-2.; Bob Reinalda, "ITF Cooperation With American Intelligence, 1942-1944," in *The International Transportworkers Federation 1914-1945* (Amsterdam: Stichting beheer ISSG, 1997) 227.

[575] *Mrvica v. Esperdy, 376 U.S. 560* (1964)



OFFICERS AND SEAMENS UNIONS
OF THE KINGDOM OF JUGOSLAVIA

11 BROADWAY
(Room 565)
NEW YORK, NEW YORK

New York, August 21st 1942

War Shipping Administration,
Washington, D. C.

Gentlemen:

Re: 15 Yugoslav Seamen At Rikers Island Under "Warrant of Deportation"

Please be advised that we have been informed by the Royal Yugoslav Legation in Washington that they have received from you a summary of our seamen now being detained at various Immigrations requesting this Union to immediately inform all Yugoslav seamen that if they refuse to re-embark that they shall be deported by the American Authorities.

A Representative of this Union has been permitted to visit our Yugoslav seamen who now are being detained at Rikers Island and has been told that among about 67 Yugoslav seamen 15 are under "Warrant of Deportation". In accordance with instructions received from our Legation in Washington our Representative has informed the seamen and explained to them matters pertaining to their interests and given them to understand that if they refuse to re-embark they shall be deported. He has also told them that our Government is about to form a "pool" for all Yugoslav seamen in which all who sign up for re-embarkation will be immediately released and given a daily maintenance from our Government until their re-embarkation.

After this explanation the 15 men who are under "Warrant of Deportation" have consented to sail and promised to abide by all rules.

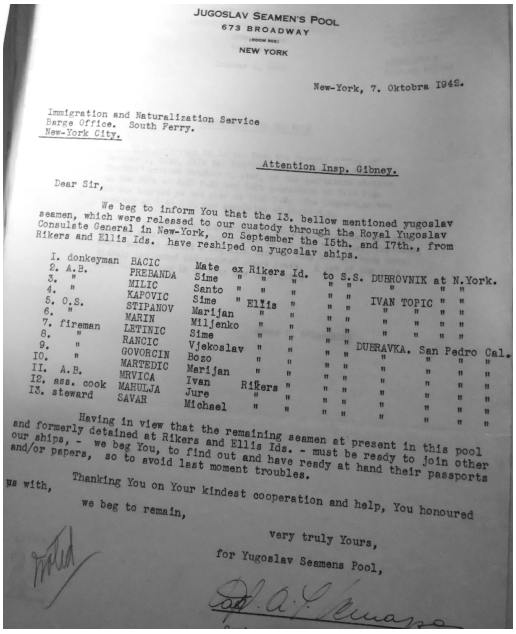
We have been instructed by the Royal Yugoslav Legation that these men should make a written application to you and sign it individually.

In their behalf we beg that you be good enough to consider their application and to cancel the order of Deportation which will give these men an opportunity to re-embark on our Yugoslav vessels.

We have composed an application in English and sent it to the men at Rikers Island for their signatures and as soon as same is returned us we shall forward it to you.

Very truly yours

OFFICERS AND SEAMENS UNIONS
OF THE KINGDOM OF YUGOSLAVIA



JUGOSLAV SEAMEN'S POOL
673 BROADWAY
NEW YORK

New-York, 7. Oktobra 1942.

Immigration and Naturalization Service
Barge Office. South Ferry.
New-York City.

Attention Insp. Gibney.

Dear Sir,

We beg to inform You that the I3. bellow mentioned yugoslav seamen, which were released to our custody through the Royal Yugoslav Consulate General in New-York, on September the I5th. and I7th., from Rikers and Ellis Ids. have reshiped on yugoslav ships.

I. donkeyman	HACIC	Mate	ex Rikers Id.	to S.S.	DUBROVNIK at N.York.
2. A.B.	PREBANDA	Sime	" " "	" "	" "
3. "	MILIC	Santo	" " "	" "	IVAN TOPIC " "
4. "	KAPOVIC	Sime	" Ellis "	" "	" "
5. O.S.	STIPANOV	Marijan	" "	" "	" "
6. "	MARIN	Miljenko	" "	" "	" "
7. firemen	LETINIC	Sime	" "	" "	" "
8. "	RANCIC	Vjekoslav	" "	" "	DUBRAVKA. San Pedro Cal.
9. "	GOVORCIN	Bozo	" "	" "	" "
I0. "	MARTEDIC	Merijan	" "	" "	" "
II. A.B.	MRVICA	Ivan	Rikers "	" "	" "
I2. ass. cook	MARULA	Jure	" "	" "	" "
I3. steward	SAVAR	Michael	" "	" "	" "

Having in view that the remaining seamen at present in this pool and formerly detained at Rikers and Ellis Ids. - must be ready to join other our ships, - we beg You, to find out and have ready at hand their passports and/or papers, so to avoid last moment troubles.

Thanking You on Your kindest cooperation and help, You honoured us with,

we beg to remain,

very truly Yours,

for Yugoslav Seamens Pool,

Figure 4.11, Letter from Officers & Seamens Unions of the Kingdom of Jugoslavia to War Shipping Administration, August 21, 1942, INS Alien Seamen Program file, 55854/370 H, NARA.
Figure 4.12, Letter from Jugoslav Seamen's Pool to INS, October 7, 1942, INS Alien Seamen Program file, 55854/370 I, NARA.

Moreover, Mrvica could not have been *legally* deported in the fall of 1942 because a federal court had recently determined that deportation to the seat of a government-in-exile was unlawful; it was not until 1943 that court reversals and legislation allowed for such deportations to resume. In fact, throughout the Alien Seamen Program there was confusion among administrators and seamen about whether what was happening was reshipment or deportation—and what the consequences would be. A Chinese seamen named Wong Yoke Pai who sailed in and out of the U.S. several times on British boats—one of which was torpedoed—between 1941 and 1945 did not realize that one of the times he sailed out he was actually being deported. Here are excerpts from his immigration interviews:

Q: You remained in Philadelphia following your arrival there on July 24, 1943 on the

Elona?
A: Yes.
Q: Then what happened?
A: Then I was picked up by the Immigration.
Q: Then what happened?
A: Then I went on board a British ship.
Q: At the time you were placed aboard this British ship…were you deported from this country?
A: They just placed me on the ship…
Q: This office contacted our Philadelphia office and it was found that you were…actually deported.
A: As I understood it I was given a chance to work on any boat to go out.

When Wong Yoke Pai left his last British ship in New York in 1945, he was hoping for better wages on an American ship. In 1949, having lived and worked in the United States for several years, he asked for permission to stay and for pre-examination. The Board of Immigration Appeals denied this request, though it "noted that the alien engaged in war shipping" and his attorney's claim that "to return him to China at this time would condemn him to join the hordes of his starving countrymen" fleeing Communist forces.[576] Like Mrvica and Wong Yoke Pai, many foreign seamen who participated in the Alien Seamen Program believed they could afterwards return to the U.S., sail in the U.S. merchant marine, or gain American citizenship. Many of the sailors who brought asylum claims through the 1950s and the 1960s had sailed in the allied merchant marine.

The Alien Seamen Program had an important impact on the later handling of seamen cases by the INS. In his memo on the program, Jack Wasserman noted its expedited appeals and deportation process: a detained seaman was given only three (rather than the customary fifteen) days to request a review from the Board of Immigration Appeals and, if no appeal was filed, the local District Director who initiated the arrest could direct his deportation. "The Seamen

[576] Case file 0203-6411 (Wong Yoke), Box 558, Chinese Exclusion Case files, Springfield and Providence, RG 85, Boston NARA.

Program has encouraged a deportation delirium," Wasserman wrote (alluding to a repeat of the rights violations that occurred in the wake of WWI).[577] In January 1946, Carol Weiss King complained that the INS were unnecessarily arresting foreign seamen who were married to American citizens and "holding them for extended periods of time until some lawyer pays attention to the situation."[578] Though applicable only during wartime, court decisions and legislation stemming from the Alien Seamen Program that allowed for deportation to the seat of governments-in-exile encouraged a more general and widely applicable detachment of the word "country" from any fixed meaning for the purpose of deportation; it no longer referred to a particular territory or place where the deportee had actually lived and instead made the destination of deportees arbitrary. When, in the fall of 1942, court decisions temporary outlawed deportation to exiled governments, the INS continued to deport seamen to the places where they *signed onto ships*, thereby linking deportation to their work contracts. Moreover, the initial seaman program deportation legislation mandated deporting each seaman to the country of his ship's flag; this was only abandoned because of the opposition of the Chinese government in 1943. When, a few years later, the United States refused to recognize Communist China, seamen from the mainland were deported to Taiwan, or to the countries where they signed on, or to the countries of the owners of their ships, or to any country willing to accept them. In the case of *Ng Kam Fook and Au Tong. v. Esperdy*, for example, two seamen, who were from the Chinese mainland and who arrived in the U.S. in 1953 and 1955, were determined by the INS to be subjects of the Republic of China on Formosa for the purposes of deportation; when Taiwan refused to grant them entry (neither having ever been there), they were ordered deported to Hong

[577] Jack Wasserman, "Administration of the Seamen Program," 55854/370Q, 38.

[578] Carol King to P.A. Esperdy, January 30, 1946, Correspondence 1934-1969, Box 3, ACPFB papers.

Kong and the Netherlands, respectively, the place where one shipped out from and the country which flagged the other's vessel, though neither was considered a national of either place. In upholding these deportations, the U.S. Court of Appeals for the Second Circuit cited a court decision upholding deportations during the Alien Seamen Program on the grounds that "a man's 'country' is more than the territory in which its people live. The term is used generally to indicate the state, the organization or *social life* which exercises sovereign power in behalf of the people" (italics mine).[579] The Court also could not conceive of how Ng Kam Fook or Au Tong might *not* have an allegiance to the Nationalist Government on Formosa if they did not support the Communist Chinese government. In fact, as discussed further below, many Chinese seamen, especially those who left the mainland before the Communist takeover, felt estranged from both Chinas in the 1950s and 1960s. In the Ng Kam Fook and Au Tong case, the U.S. government further argued that inquiring if Communist China would accept the seamen would "embarrass the decisions of the Executive Department as to foreign policies" because it would imply recognition of the regime, even though the U.S. government had in fact previously deported others to Communist China and the courts had previously ruled that advance inquiry into their acceptance would not imply recognition.[580] So, deporting Ng Kam Fook and Au Tong to Hong Kong and the Netherlands instead of the mainland was not actually a matter of foreign policy necessity, but an immigration policy choice. The immigration policy was justified as necessary

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[579] *Delany v. Moraitis*, 136 F.2d 129, Fourth Circuit, 1943, cited in *Ng Kam Fook and Au Tong v. Esperdy*, 320 F 2d 86, Second Circuit 1963.

[580] In *United States ex rel. Tom Man v. Murff*, 264 F.2d 926 (2 Cir. 1959), and in *United States ex rel. Leong Choy Moon v. Shaughnessy*, 218 F.2d 316 (2 Cir. 1954), the mainland of China was deemed a 'country' for the purpose of deportation. In the Man case, the court ruled that such deportation was subject to the condition of a preliminary inquiry of acceptability which, the court added, would not invade the [foreign policy] prerogative of the Executive Department. The Court argued that inquiring in advance from Communist China whether the seaman would be accepted, would imply no greater recognition of the Communist regime than the act of deporting him there.

to deter desertions and illegal immigration; the choice had the effect of putting the interests of shipping above those of seamen. The Supreme Court denied certiorari in *Ng Kam Fook and Au Tong*, but Justice Douglas and Black dissented, recognizing that "the question touches a basic human right."[581] Two further examples from the late 1950s, when desertion was a "primary concern" of the INS, will suffice to show the consequences of these Alien Seamen Program practices and precedents.[582]

In 1958, Ira Gollobin and attorney Abraham Lebenkoff took up the cases of Chinese seamen facing deportation, many of whom had sailed in the allied merchant marines during WWII. The seamen subsequently left Dutch ships and remained in the United States; a few years later, the INS, during an "all-out enforcement program" regarding seamen, arrested them for overstaying and wanted to deport them to the Netherlands.[583] Gollobin particularly objected to the way that, besides relying on the shipping line to procure documents for Chinese seamen, the INS had allowed Chinese seamen to stay in the United States for several years and apply for refugee status before requiring the shipping line to remove them. Lebenkoff challenged the deportation of one seaman, Tie Sing Eng, in court, claiming that he would not actually be allowed to stay in Holland, but would be to put to work on a Dutch ship idling (for lack of workers) in Rotterdam or would be transshipped to Communist China, where he feared persecution. The New York District Court dismissed this as unfounded and irrelevant because it claimed the Netherlands had agreed to accept Tie Sing Eng and that it was not the responsibility

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[581] *Ng Kam Fook and Au Tong. v. Esperdy,* 375 U.S. 955, Second Circuit, 1963.

[582] *Annual Report of the Immigration and Naturalization Service*, 1956, 12.

[583] *Annual Report of the Immigration and Naturalization Service*, 1958, 11.

of the U.S. to guarantee "asylum" for deportees thus accepted by other countries.[584] Gollobin subsequently learned that Chinese deserters from Royal Rotterdam Lloyd ships were, according to a manager of the shipping line, indeed deported "not to Holland, only via Holland to their place of domicile." This place was typically Singapore. But, as Gollobin noted, it was "an exaggeration" to call Singapore a domicile since frequently it was just the place were the seamen signed articles and some had not been there for years. (The seamen's home towns were usually in mainland China.) Moreover, the British had already denied Tie Sing Eng and many other Chinese seamen from the mainland permission to land in Singapore. So, Tie Sing Eng, who had deserted a Rotterdam Lloyd ship, could very well be "dumped," eventually, in Communist China. Or, he might, Gollobin speculated, "be required to ship on some Dutch line indefinitely until the Captain is able to and chooses to put him ashore at any country at any time."[585] In an affidavit, Lebenkoff used an unintentional double entendre to emphasize the way deportation would lead to the enslavement and disposal of Tie Sie Eng: "The Dutch government is cooperating with the private interests of the shipping companies" to "virtually shanghai" him.[586] Along with this affidavit, Lebenkoff submitted a letter, posted from Singapore, from a Chinese seaman who had recently been deported from the United States to Holland (figure 4.13, below).

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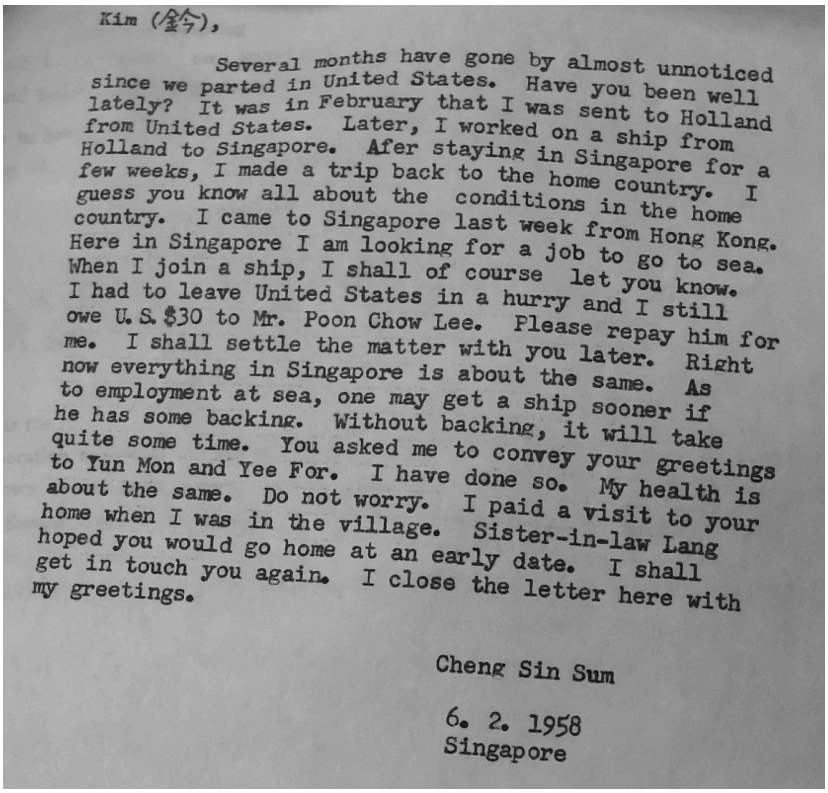
[584] *United States of America ex rel. Tie Sing Eng v. John Murff*, 165 F. Supp. 633, S.D.N.Y, 1958.

[585] Memo from Gollobin enclosed in letter to Mrs. Richard Walsh, May 22, 1959, Folder: Pearl Buck Letters, Immigration, 3 of 4, Ira Gollobin Papers; TAM 278; box 1; Tamiment Library/Robert F. Wagner Labor Archives, New York University.

[586] Supplemental Affidavit by Abraham Lebenkoff, Sept. 26, 1958*, United States of America ex rel. Tie Sing Eng v. John Murff*, Civ. 137-256, SDNY, Box Number 154A (638032)(47272), RG 21, NARA NY. Included is the above translated letter from Cheng Sin Sum to Yeung Jeung Kim.



Kim (金),

Several months have gone by almost unnoticed since we parted in United States. Have you been well lately? It was in February that I was sent to Holland from United States. Later, I worked on a ship from Holland to Singapore. After staying in Singapore for a few weeks, I made a trip back to the home country. I guess you know all about the conditions in the home country. I came to Singapore last week from Hong Kong. Here in Singapore I am looking for a job to go to sea. When I join a ship, I shall of course let you know. I had to leave United States in a hurry and I still owe U.S.$30 to Mr. Poon Chow Lee. Please repay him for me. I shall settle the matter with you later. Right now everything in Singapore is about the same. As to employment at sea, one may get a ship sooner if he has some backing. Without backing, it will take quite some time. You asked me to convey your greetings to Yun Mon and Yee For. I have done so. My health is about the same. Do not worry. I paid a visit to your home when I was in the village. Sister-in-law Lang hoped you would go home at an early date. I shall get in touch you again. I close the letter here with my greetings.

Cheng Sin Sum

6. 2. 1958
Singapore

Figure 4.13, Letter from Cheng Sun Sum to Yeung Jeung Kim, June 2, 1958, in Supplemental Affidavit by Abraham Lebenkoff, *United States of America ex rel. Tie Sing Eng v. John Murff*, Civ. 137-256, SDNY, Box Number 154A (638032)(47272), RG 21, NARA NY.

Though the letter certainly proves that its writer was not allowed to stay in Holland, it also highlights his ability to visit mainland China with seeming impunity, though he notes the poor conditions there. (This was the beginning of "Great Leap Forward" and major food shortages in China[587]). The INS used just such letters and affidavits from formerly deported Chinese seamen to deny the substance of seamen persecution claims. Secondarily, the letter confirms that Chinese seamen were best able to find berths in Singapore and Hong Kong; recruitment there was based upon personal connections with contractors—boarding house keepers or "head men" of each

[587] The famine was a product of natural disasters and poor harvests combined with chaos that resulted from the commune experiment of the Great Leap Forward. Rural collectives were combined to form larger people's communes where agricultural experiments failed and made it difficult to meet state grain production quotas (to supply urban areas and for export). Villagers, who were banned from owning their own land, could not secure enough food and were also recruited to work on misconceived irrigation construction projects.

shipboard department (engine, deck, stewards)—who provided crews to shipping companies. Contractors recruited seamen they knew, seamen who came from the same area of the mainland, but from whom they still exacted fees. As one contemporary observer put it, "The whole system made for a degree of dependence upon...crew contractors which encouraged practices grossly unfavorable to seafarers…On the other hand, to many seamen they provided…companionship of men of the same occupation, dialect and background…and some chance of assistance when out of work."[588]

Procedures put in place to deport deserting seamen were so expedited by the mid-1950s that their attorneys frequently could not keep track of them. In New York in 1956, two seamen, Chang Ah Ding and Chang Shing Hwa, left ships they had signed onto several years before in Hong Kong. The Chinese government purchased these ships from the United States in 1947, after the Ships Sales Act. (They were allocated to China Union Lines, Ltd. for partial compensation to a group of Chinese private shipping companies for tonnage sunk to blockade Chinese ports against Japanese invasion. In the wake of the Chinese Civil War, China Union Lines operated as a private company backed by the Chinese Nationalist government.[589]) After an administrative hearing in New York, Chang Ah Ding and Chang Shing Hwa were detained by the INS and flown to Texas to join another departing China Union Line ship to Taiwan before travel documents had been secured for them or their attorney learned of the decision in their case. This was a deliberate attempt by the INS to get the seamen away from New York, where a

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[588] Enrico Argiroffo (of the International Labor Office), "Recruitment of Seamen in Asia," *International Labour Review*, 95 (1967) 160.

[589] Feb. 3, 1950 telegram from Chien Yung-ming, chairman of China Union Lines, Limited, to Dr. V.K. Wellington Koo, Chinese Ambassador to the United States, in folder 5, Box 199, Walter Judd Papers, Hoover Archives; Letter from John C.Y. Yao, Sembodja Corporation of New York (agent of China Union Lines) to A.J. Salturelli (INS), July 18, 1956, INS file 55565/605.

federal court had just delayed deportation in a similar case until documents could be procured.[590] Both seamen were born in the northeast of Zhejiang Province on the East China Sea—Chang Ah Ding was born in Dhinghai, Chang Shing Hwa in Ningbo—and lived in Shanghai as young adults. Neither Chang Ah Ding or Chang Shing Hwa had ever lived in Taiwan, knew anyone there, or spoke the dialect, and, having "jumped" from Nationalist ships, would be subject to several months in jail and would have trouble finding berths in Taiwan; their only connection to the island was that it was where the headquarters of China Union Lines had relocated after the Communists took over mainland China. (It is not surprising that the INS had a hard time getting documents from the Taiwanese to accept sailors like these: the Taiwanese were wary of mainlanders for security reasons and also refused to accept those who lacked family or friends who could help them economically.[591]) After court proceedings in Houston at which the seamen could not testify because there was no adequate interpreter, a judge decided, in direct opposition to the Seaman's Act, that: "it seems to me the reasonable and just thing to do is to return them to that company which was their employer … if they are delivered back to their company…they haven't been hurt… If they have had a choice [as to where they would return to], it rests between them and that company. I don't see that the United States…should widen that choice."[592] The

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[590] *U.S. ex. rel. Lee Ming Hon v. Shaughnessy*, 142 F. Supp. 468, Southern District of NY, May 9 1956. In a later interview, Immigration Commissioner General Swing openly discussed this strategy in another case: "We had acquired transport planes so that we could transport civilian deportees on our own. We had a transport plane up there and flew him out of the New York jurisdiction before he could get a lawyer—took him down to McAllen (Texas) to a detention center and held him there." (Reminiscences of Joseph May Swing: oral history, 1967, Columbia University Rare Books Library).

[591] K.L. Yuen, Consulate General of the Republic of China, tp Sylvester Pindyck, July 16, 1954 (rejecting the application of a seaman for an entry permit to Taiwan because he lacked "two guarantors and satisfactory proof of financial ability to maintain himself"), INS file 56336/243h).

[592] Reporter's Transcript of Proceedings, *USA v. Ex Parte Chang Ah Ding and Chang Shing Hwa*, 9766 and 9767, United States District Court for the Southern District of Texas, Houston Division, August 10, 1956, pages 48-49, made part of the archival file in *Chang Ag Ding and Chang Shing Hwa*, United States Court of Appeals for the Fifth Circuit, No. 16272, RG 276, NARA Fort Worth.

Judge, who had been in the American merchant marines as a young man, was adamant that Chang Shing Hwa's Chinese passport was "valuable" and should be given back to him and, though he conceded it was his "own views" and "might not be the law," that a seaman should fulfill his contract and not "better himself by desertion."[593] The two seamen appealed their case to the Fifth Circuit, which dismissed it because the INS had by then secured the seamen travel documents to land in Taiwan. One dissenting judge noted that the desire of the seamen to be deported to Hong Kong was never considered and that "haste was the real vice" of the whole proceeding. He wrote:

> It robbed Court and counsel of that time essential to an orderly presentation of serious contentions affecting the present liberty (and perhaps the life) of two people…the District Judge was laboring under an irrelevant impression that these two Chinese former seamen were somehow seeking some greater advantage than they would have had had they remained aboard their respective ships, so that, if they were to be sent to Formosa, it was their, not our, fault. These considerations were not only without record support, they were wholly irrelevant. To this day this record shows nothing except that these men were being deported as former seamen. One can have that status without having committed any acts involving wrong in the usual sense…There was no adequate showing that the Attorney General had any basis for declining to deport them to the Port of Hong Kong as requested… Conceding that the widest latitude is necessarily invested in the Attorney General in dealing with aliens, this nation, for very wise reasons, has always taken steps that these strangers on our soil not be the victims of the bureaucratic absolutism in which they may have been reared, and that when law imposes upon an administrative official the obligation to use 'discretion,' it means at least a reasoned, honest good faith judgment having some reasonable support.[594]

This was a rare, liberal point of view.[595] When interviewed at the McAllen detention center in Texas, Chang Ah Ding and Chang Shing Hwa claimed they did not want to go to Formosa or to mainland China—since they believed they would be punished in both places, for deserting in the

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[593] Ibid, 78, 59.

[594] Dissent by Circuit Judge Brown, *Chang Ah Ding and Chang Sing Hwa v. U.S.*, No. 16272, 5th Circuit, 239 F. 2d 852, 1957.

[595] See, for example, the Board of Immigration Appeals ruling in Matter of M_L_, which includes a rebuke of a Chinese sailor for deserting in 1945. [Decision T-2659481, April 30, 1953].

former or for sailing on Nationalist vessels in the latter—nor did they want to sail out on a China Union Lines ship. (The ship Chang Shin Hwa deserted was known for low pay and poor treatment, conditions, and food.[596]) Both requested the opportunity to find a job as a crewmember on any ship other than a Chinese one.[597] In the end, the INS allowed them to pay their own way on an American President Lines ship bound for Hong Kong, relying on the steamship line to handle travel documents. American President Lines [APL] typically arranged for transit visas through Hong Kong to the mainland. (APL had a close relationship with the United States government; though operated as a private company, it was essentially owned by the Maritime Commission and its ships requisitioned by the government during WWII. In the 1950s, APL handled seamen deportations to China and, as discussed in the next chapter, the FBI and INS checked company records to monitor who voluntarily booked passage for the mainland).[598]

These two cases occurred after the early 1950s roundup of Chinese seamen suspected of Communist ties and the refusal of the Chinese Consolidated Benevolent Association (affiliated

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[596] Interview with Lee Feng Ming, who deserted SS Union Power a few weeks after Chang Shing Hwa, INS file 56565/605.

[597] Sworn statements by Chang Shing Hwa and Chang Ah Ding, October 9, 1956, INS file 56565/605.

[598] Memo from T.E. Flenniken (Deportation and Parole officer, San Francisco) to Stan Olson, (Chief Detention, Deportation, and Parole Section, San Francisco), Jan. 14, 1954, re: Deportations to China via Hong Kong, INS file 56336/243h. See also the description of procedure in the *Alfred Dodge Lu v. William P. Rogers*, Civ A 3766-56, 164 F. Supp. 320, District Court for the District of Columbia, 1958:
"The United States government maintains no diplomatic relations with the government in control of the mainland of China, and can never be sure that China will accept an alien until the alien is actually presented at its border. On the basis of its past experiences in cases of this kind the Service has every reason to believe that China is willing to accept plaintiff who is admittedly a native thereof. Accordingly, it will, in line with its usual procedure for returning Chinese illegally in this country to the mainland of China, secure from the British Consulate a transit visa granting plaintiff permission to travel through Hong Kong on his way to the Chinese mainland. Should plaintiff not be accepted upon reaching the boundary line of the Chinese Peoples Republic he will be returned to the United States, pursuant to the agreement of the Immigration Service with the British authorities at Hong Kong and the transportation line."
For a general history of the APL, see John Niven, *The American President Lines and its Forebears, 1848-1984* (Newark: University of Delaware Press, 1987).

with the Kuomintang) to help prevent their deportations.[599] By the mid 1950s, Chinese American organizations that aided seamen—like the On Leong tong or the Tung On, Som Kiang, and Wah Pei associations—were careful to express their concern in anti-Communist terms, even if they were critical of the Chiang regime. In cases like that of Chang Ah Ding and Chang Shing Hwa, the organizations supported the seamen's right to remain in the United States. The Chairman of the On Leong Merchant's Association claimed that deserters from Taiwanese vessels "have indeed violated the terms of their contract, but their dire circumstances deserve sympathetic consideration…There is now an excess of men over jobs in Taiwan…On the other hand…the shortage of manpower is felt everywhere within the overseas Chinese society [in the United States]. It is difficult to fill even a dishwasher's job in a restaurant." The seamen's supporters also argued that, if threatened with deportation, deserters from Nationalist ships would ask to go to mainland China rather than Taiwan (where, besides not finding employment, they would be thrown in jail for desertion and had no relatives.) But the mainland was not a real alternative for the seamen, wrote the editor of the New York-based *Chinese American Weekly*. "They will suffer when they are back on the mainland…Communist China has long regarded them as counter-revolutionaries and placed them on a black list…Furthermore, life of the masses on the mainland is very miserable. Even without being purged by the communisis, these seamen will find their livelihood a serious problem." Moreover, their choosing China would boost Communist propaganda, and "impair the prestige of Taiwan as well as the United States."[600]

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[599] INS file 56204/81; Him Mark Lai, *Becoming Chinese American: A History of Communities and Institutions* (Walnut Creek, CA: AltaMira/Rowman & Littlefield, 2004), 220-222 on harassment of the Kang Jai association.

[600] "Chou Chung-Min [of the On Leong Merchants Association] Clamors for Assistance to Seamen," *United Journal* (N.Y.), November 20, 1956, 3; "The Deserting Seamen Should Not Take a Chance," Letter to the Editor and response from the Editor, *Chinese American Weekly*, Dec. 6, 1956; both translations in in INS file 56336/243h. The editor ended his response in the *Chinese American Weekly* thus: "The National Government makes no effort to come to the rescue of its own anti-communist seamen, resulting in their gamble on a return to the mainland. What a shame! United States, a nation which stands for the universal emancipation of people held in slavery, is reluctant to

The anti-communism of the organizations that aided seamen was an important factor in their 243(h) claims, as many seamen would point to their affiliation with them or participation in their activities as proof of their public opposition to the Communist government and their persecution upon return to the mainland.[601] But, in July 1955, the INS composed a memorandum of suggestions for adjudicating 243h claims which stated that "mere nominal membership" in these associations—typically organized for social and mutual welfare and publicly supportive of the Nationalist government—would not "in and of itself" serve as a basis for a finding that the

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temper justice with mercy by permitting the several hundred seamen of the Chinese race – a negligible number—to remain temporarily in this country. We feel extremely concerned about the matter."
In *Between Mao and McCarthy*, Charlotte Brooks points out that the independent and moderate "Chin-Fu Woo, editor of the *United Journal* and the *Chinese American Weekly*, openly described the 'filth and corruption of the previous national government, and the likelihood that "Old Chiang…[will] bungle things all the way to the end…None of the independent editors embraced the KMT, but most of loathed the Communists just as much. The tragic course of the Chinese revolution, particularly beginning in 1958, suggests that this was at the very least an intellectually and morally viable position." (111).
In the spring of 1957, the INS told the State Department that it had "over 1500 cases of Chinese seamen who have illegally entered this country and whose deportation orders have been approved and for whom no country can be found which will accept them…Probably many of them, if Taiwan entry permits were granted, would then elect voluntary deportation to the mainland instead." (R.A. Aylward to David Osborn, April 4, 1957, re: Deportation of Chinese Aliens, file 210, RG 59, Bureau of Far Eastern Affairs/Office of Chinese Affairs, Decimal files, 1954-1957, Box 23.)

[601] At his 243(h) hearing, seaman Woo Zai Ling claimed he had "voiced his opinion many times at the Tung Wah Association as to his opposition to the Communist government," but the INS officer did not think this constituted "any particular action of importance against the present government in China." Woo Zai Ling also testified that he did not want to be deported to Taiwan because he had no relatives or friend there and would not be able to find work. "If he had a genuine belief that he would be persecuted in China," the INS officer wrote, "he would be willing to apply for permission to enter Formosa." (File E-057315, December 10, 1954). In a similar case, a seaman claimed to be a member of the Som Kiang association, which made contributions to the Chinese Benevolent Association to support the Chinese Nationalist Government. The INS officer again did not think that this would lead to his persecution by the Communists. (In re: Nee Kao Hong, Oct. 14, 1954). In another case, the INS denied a seaman's persecution claim despite his testimony that he was a member of the On Leong and the Tung On Associations and made many speeches critical of the Communist Government and personally donated large sums of money to the Nationalist government. The reason for denial in this case was "confidential information not of record, the disclosure of which would be prejudicial to the interests of the United States government," meaning that he was suspected of subversion. (In re: Toy Lee Wong, June 23, 1955). In yet another case, the INS officer recommended a stay of deportation for a seaman who was a member of the On Leong and Tong On Associations. The INS officer thought it "quite possible and even probable that his membership in these anti-communist organizations is known to those Chinese in New York who advocate the cause of the People's Government, and, therefore, possible and probable that his membership is known on the mainland of China. " The seaman also submitted a letter from a relative in Hong Kong stating that his name had been placed on a black list by the Communists. (In re: Ng Hong Sung, June 23, 1955). All in INS file 56336/243h.

applicant would suffer physical persecution if deported to China.[602] By the end of the decade, and even more so in the 1960s, the INS accused the seamen's organizations of facilitating desertion.[603]

While the INS monitored seamen who returned to the mainland as part of their anti-redefection program, [604] in most cases, "voluntary departure under orders of deportation"— as had been given Chang Ah Ding and Chang Shing Hwa—was deemed non-coercive—therefore distinct from Communist policies—and morally irreproachable (besides saving the INS a good deal of expense and effort getting documents). As discussed more fully later in this chapter, allowing Chinese seamen to remain in the United States or giving them refugee status (which was more readily done for Chinese students at the height of the Cold War) was rarely considered. At some points, even the pretense of voluntary departure was dispensed with and the State Department approved the INS's deportation of Chinese seamen at government expense to the

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[602] William Fliegelman (Special Inquiry Officer, New York) to A.C. Devaney (Assistant Commissioner, Examinations Branch, Central Office), July 12, 1955, re: Section 243(h) procedure, INS file 56336/243h.

[603] In 1956, the On Leong's leader Sing Kee was being prosecuted for facilitating illegal immigration. In 1959, an INS investigation in San Francisco discovered that six deserters from the ship Hong Kong Breeze found refuge at the Yook Ying Association, a small organization composed primarily of seamen from the Bo On district; in exposing this, the INS was gratified by the criticism of the Yook Ying association by other Chinese associations in San Francisco. When desertions of Chinese seamen increased in the mid-1960s, the New York office complained that the Chinese associations in the city did not help locating them. The Central Office ordered that all Chinese crewmen deserters caught by the INS in New York be "carefully interrogated" as to assistance they received in connection with their entry, maintenance, and employment. A few months later, "suspect patterns of assistance to deserters by several Chinese associations in New York," including the Som Kiang and Tung On associations, had emerged and the INS called for continued interrogations and pursuance of criminal prosecutions against the organizations most frequently involved in the more "flagrant cases." (Bruce Barber to Paul Posz, May 27, 1959, re: Seven Chinese Deserting Crewmen—SS Hong Kong Breeze; Deputy Associate Commissioner, Domestic Control, Central Office to O.I. Kramer, Associate Deputy Regional Commissioner, Dec. 22, 1964, Re: Chinese Crewmen Deserters; O.I. Kramer to District Director, New York, July 19, 1965, re: Chinese Crewmen Desertions—Assistance Rendered; all in INS file CO714, via FOIA).

[604] See memorandum by Edward Shaughnessy, June 5, 1956, in INS file 56364/51.6. The INS conducted interviews with deserters from Nationalist vessels who made arrangements to depart for the mainland, specifically asking them if they had been influenced or persuaded by communists to do so and informing them that "no individual could force them to return to Red China." (see In re: Hsiung Yuen Wang, January 28, 1957, Redefection Activity-Chinese, INS file 56364/80.9.1 Part 2).

mainland. As Secretary of State John Foster Dulles telegraphed the American consul in Hong Kong: "Immigration [and Naturalization Service] feels attempt must be made…if US immigration laws not become dead letter so far as Chinese deportees concerned. Chinese seamen have been jumping ship wholesale in US ports… INS considers that even token deportation will have strong deterrent effect."[605] Rejection of seamen refugee claims and their continued deportation during the Cold War belies the idea of the impassibility of the Iron and Bamboo Curtains or the notion that refugees flowed just one way, towards the West.[606] Seamen who jumped ship made up the vast majority of those deported to the mainland from the United States in the mid-1950s. The pictures below depict a group of deportees and voluntary departures, in March 1957. The ship they took from San Francisco, the APL's President Wilson, provided the backbone of the company's transpacific passenger service from 1948 until 1973.

[605] Telegram 3865 from Dept. of State to American Consul Hong Kong, May 28, 1954, in INS file 56565/605.

[606] "One of the most understudied aspects of the Chinese diaspora…is the migration of several hundreds of thousands of ethnic of ethnic Chinese persons to China in the years following the establishment of the People's Republic of China. The image of people fleeing communist rule in China is one that probably comes easily to mind for many people. Far less familiar is the image of people actually migrating to socialist China. Yet in the decade following the establishment of a socialist state in China in 1949, almost as many people migrated to the People's Republic of China as fled from it. Precise figures are difficult to arrive at, but the best estimates are that at least 500,000 and perhaps as many as 600,000 ethnic Chinese migrated to the People's Republic between 1959 and 1961. They came to China from all over the world: from the US and Canada…but above all from Southeast Asia….Before the arrival of tens of thousands of ethnic Chinese refugees from Indonesia in the late 1950s, most of those who 'returned' to China from Southeast Asia in the first half of the 1950s were deportees from Malaya whom the British authorities had identified as communist sympathizers…More than 700 Malayan Chinese arrived in Guangzhou on a single vessel in June 1952. Nearly three hundred of them were suspected communist members or sympathizers and the rest consisted of their immediate family members. Most were tin miners, farmers and unskilled workers." (Glen Peterson, *Overseas Chinese in the People's Republic of China* (New York: Routledge, 2012)). These Malayan Chinese were deported via the same route as seamen from the US. Ships dropped anchor in Hong Kong's Victoria Harbor while the refugees were unloaded onto smaller boats and then transferred directly to the Kowloon-Canton railway terminus at the top of the Kowloon peninsula, where they boarded special trains bound for the border.

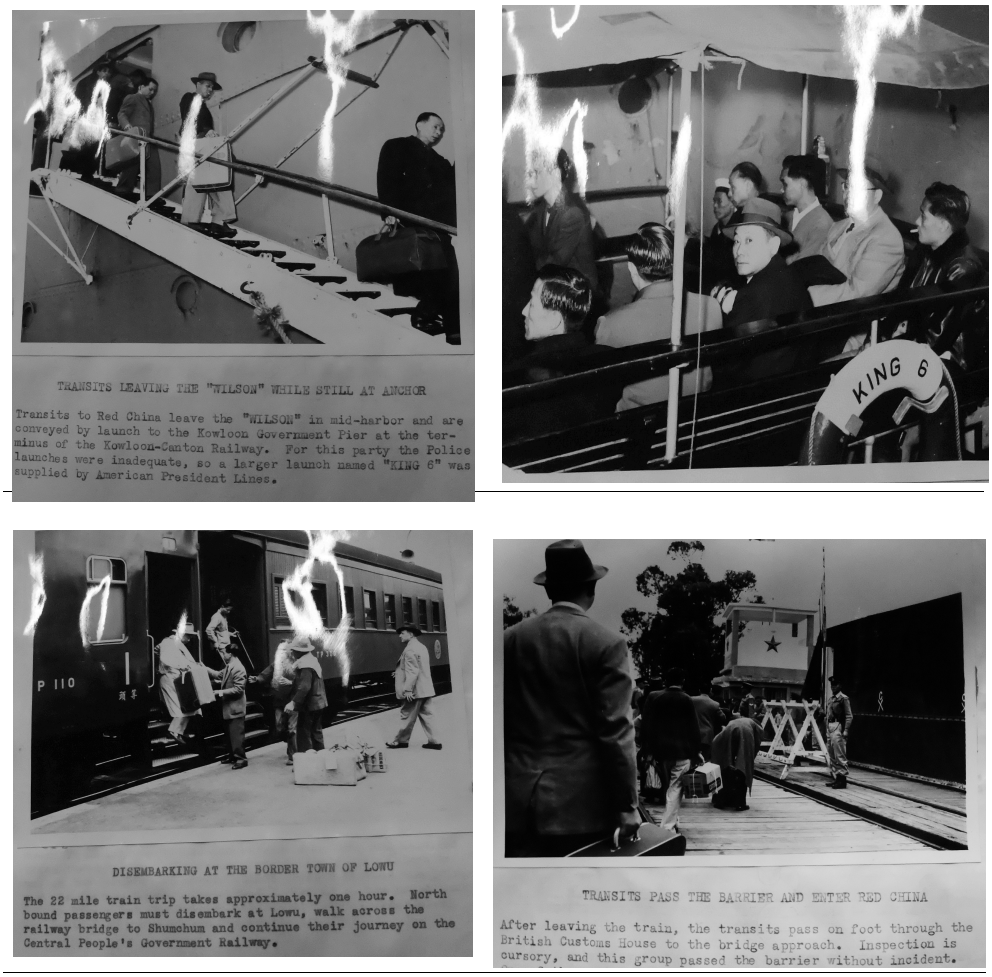

Figure 4.14, Returnees to China, 1957, INS file CO243.31, RG 85, through FOIA.

From Postwar to Cold War: Refuge Found and Lost (1946-1954)

"The Greek government's attack against the maritime unions follows closely the latter's demands for wage increases and the improvement of working conditions. Although the Greek government has attempted to mask these anti-labor attacks by political accusations [of allegiance to the Communist Party], none of the latter have been proven by evidence, while the connection between the economic demands of the seamen and their political persecution is open and flagrant." –Statement issued by the New York Branch of the Federation of Greek Maritime Unions, December 15, 1948[607]

"That all the aliens whose lives are in jeopardy in these [deportation] cases are little men (in the sense that they are not diplomats or figures of note) does not mean that they do not suffer at the hands of any form of totalitarianism when they reject such ideologies…The one difference is that the world observes the tortures of the [illustrious] and

[607] A copy of this statement is in folder: Trade Unions—Greece—Federation of Greek Maritime Unions, Box 16, International Longshoremen's and Warehousemen's Union, Bancroft Library.

the [lowly] conveniently disappears…There is and should not be any question of the degree of the stature of the person affected. There is but one question,—Will he be physically persecuted [if returned to his home country]? "—Alfred Feingold and Aloysius C. Falusssy, Petition for Writ of Certiorari, Supreme Court of the United States, *U.S. ex. rel. Nereo Dolenz v. Edward Shaughnessy*, Dec. 31, 1952, 9.

Between late 1946 and 1949 *some* foreign seamen who left their ships in the United States had a chance at residency. One option was preexamination. A seaman who had family ties and one year's residence could apply for this procedure so that he could leave and quickly return on a preference immigrant visa.[608] Those without family ties who had worked for at least one year on allied vessels sailing to and from ports in the United States during the war were given a priority in acquiring non-preference visas.[609] Seamen could also apply for suspension and eventual cancelation of deportation under provision 19c of the Immigration Act of 1917. The NMU complained that, in 1946, this actually rewarded those who stopped shipping out: you had to jump ship or overstay to get into deportation proceedings so that you could qualify for suspension. The NMU thought that eligibility should be extended to "seamen who want to continue shipping, but at the same time want to feel that this is their country."[610] Also, to qualify for suspension, a seaman had to prove good moral character and have economically dependent family members in the United States. In 1948, eligibility for suspension was expanded to allow Asians and those with long residence to qualify. This expansion was pending in Congress for a while, so that, beginning in late 1946, seamen cases were held in abeyance in anticipation of

[608] Regulations regarding preexamination at this time were collected in Interpreter Releases, 23.21 (May 27, 1946).

[609] As of 1946, relatives of citizens, skilled agriculturalists, and minor children and wives of permanent residents were given preferences in acquiring quota visas. Seamen (without family ties) who served a year in allied merchant marines during the war were according a priority in acquiring those quota visas remaining after the preference visas were allocated. "Priority of Quota Immigrants, *Interpreter Releases*, Vol. 24, No. 1, January 10, 1947.

[610] Shirley Rose (NMU) to Watkins (INS), June 14, 1946, folder: Alien seamen, June 1946-1948, Box 16, ACPFB papers.

passage of the bill.[611] This was important given that pre-examination required that an available quota visa be promptly available, an impossibility for seamen from countries with small or oversubscribed quotas; in 19c cases, when, approximately a year after suspension, the status of the seaman was adjusted, "the appropriate immigration quota for the fiscal year then current or next following" was reduced by one "regardless of the registered demand by first or second preference quota immigrants abroad" for up to 50 percent of a quota.[612] Because of these policies, several seamen who were represented by the ACPFB managed to regularize their status by 1948. Among them were Aslom Ali, an Indian seaman who arrived in 1936, married a Puerto Rican woman with whom he had three children, worked in American shipyards during the war, and qualified for 19c in 1948, and Panayotis Theodoropoulus, a Greek seaman who sailed in and out of the U.S. for three years *after* the war until granted a visa, which he picked up through pre-examination in Canada, as husband of an American citizen.[613] While handling immigration cases for the Common Council for American Unity, Edith Lowenstein helped many seamen—from Estonia, Switzerland, Norway, France, Italy, Greece, Finland, and the Netherlands—qualify for suspension of deportation or pre-examination.[614]

Seamen could also qualify for a provision in the Displaced Persons Act of 1948 that allotted up to 15,000 visas to those legally admitted as nonimmigrants who were "displaced from

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[611]"Deportation of 'Stranded' Aliens Deferred, *Interpreter Releases*, vol. 24, No. 47, November 3, 1947; Report of a Hearing Conducted at Chicago, Sept. 7, 1948, Senate Subcommittee on Immigration and Naturalization, 80th Congress, 2nd Session, 65.

[612] *Interpreter Releases*, Dec. 5, 1946 vol. 23, no. 46; *Interpreter Releases,* July 20, 1948, Vol 25, No. 36.

[613] See case files on these seamen in boxes 21 and 49, ACPFB papers, Labadie.

[614] Edith Lowenstein, *The Alien and the Immigration Law* (New York: Oceana Publications, 1958) 106, 124, 182, 200, 201, 250, 257. All the seamen had family ties that facilitated their adjustment. The French seamen, who was granted suspension, was one of the "not unusual" cases of a seaman who did not realize that a previous departure had been a deportation since he had been given the opportunity to ship out as a crewmember.

the country of their birth, nationality or last residence as a result of events subsequent to the outbreak of WWII" and are "unable to return…because of persecution or fear of persecution on account of race, religion or political opinions." But, for reasons discussed below, the immigration service was reluctant to give out these visas to seamen.[615] When rejecting the applications of Polish and Chinese seamen for DP visas, inspectors claimed the seamen intended upon admission to stay permanently and thus they entered illegally; in the parlance of the INS, "an alien who enters the United States with the concealed intent to remain is not a bona fide nonimmigrant on arrival." This was an update of the notion of malafide, first introduced in the 1924 Immigration Act. With the recognition of the concept of DPs in the postwar era, the idea of malafide shifted: now, if a sailor intended to defect, he could not get refugee status. Between 1947 and 1949 dozens of seamen abandoned the *Batory* and *Sobieski* as these Gdynia-America line Polish ships came more firmly under Communist control.[616] Polish American Immigration and Relief Committee [PAIRC] executive secretary William Zachariasiewicz wrote, "most…had their applications for adjustment of their immigration status as displaced persons denied on the grounds of their intention." [617]

Sometimes denials of DP status to seamen involved them arriving too late; the (revised) law allowed only those in the U.S. before April 30, 1949 to be eligible. Denials also involved

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[615] See, for example, the cursory handling of DP applications in the case of a Yugoslav seaman (A-9669698-NY, In re: L, reported in the *Immigration Bar Bulletin* 4.2 (July-Dec 1951), 13) and of a Chinese seaman (*United States ex rel. Keng Ho Chang v. Shaughnessy,* SDNY, 105 F. Supp. 22, 1952).

[616] There were particularly large numbers of desertions from the Sobieski in the spring of 1949 when there was a rumor that the ship "was to be transferred to Russian control and that Polish secret police agents were making lists of disaffected crewmembers who were to be taken into custody and possibly 'liquidated' upon their return to Poland." [Memo to Attorney General Tom Clark from INS Commissioner Watson Miller, March 31, 1949, NARA file 56270/510]

[617] Zachariasiewicz to Mrs. Melba Hyde, Feb 13, 1953, (in the case file of Jan Bartnicki), Box 3, Polish American Immigration and Relief Committee Papers, Immigration History Research Center, University of Minnesota. [Herafter, PAIRC papers].

interpretations of historical events. To qualify as a DP, a seaman had to prove that his displacement was the result of WWII. In November 1949, the Board of Immigration Appeals ruled that the conflict in Greece and the Communist conquest of China were not results of the war.[618] Some seamen were denied DP status because the INS claimed they had another place they could return to without fear of persecution. The INS ruled they could be deported or given voluntary departure to the place they last shipped from—to places like England, Argentina, Cuba, Brazil, Venezuela, Sweden, Norway—where they had been temporarily. But most of these seamen were stateless, had no residences to return to, and would not be able to find shipping or other employment there.[619] If the law's cut off date seemed arbitrary and the INS's historical interpretations of political events and claims about alternative refuges seemed dubious to Edith Lowenstein, the "intent to remain" disqualification seemed to her to be aimed exclusively at seamen.[620] DP status was denied on the grounds that the seaman's entry had been unlawful—because his intention to stay permanently was inconsistent with the terms of his temporary admission as a seaman –and so he was thus ineligible for adjustment regardless of whether his fear of persecution was merited. In other words, because of this disqualification, the merits of the seamen's applications were not examined by the INS. Even seamen who served as informants to the INS and the FBI regarding communist activity and control of the Sobieski were not accorded DP status if they admitted that they wished to settle permanently in the U.S. before

[618] These were the decisions in Matter of V, A-6179456 (May 11,1949) and Matter of YTH, A-9764773, (November 8, 1949) reported in *Immigration Bar Bulletin*, Sept.-Dec. 1949, 14 and Jan-May 1950, 18.

[619] See cases of Josef Bak, Victor Baniewicz, Bogdan Chylinski, Franceszek Folta, Boleslaw Karczmarzyk, Tadeusz Opalinski, Stanislaw Josef Tomczak in Boxes 3 and 4, PAIRC papers. PAIRC made an appeal for one such seaman: "If he returned to Poland, he would be liquidated. He can be deported to Sweden. However, the Swedish authorities would in turn deport him to Poland because unemployment is quite numerous in Sweden. A foreigner has no chance for a job." (Felix Burant to Senator Herbert Lehman, July 31, 1950). Another Polish sailor who, before coming to the United States, had deserted in Sweden, was given permission to stay there for six months. (Burant to INS Commissioner, June 11, 1952, Roman Semkow case file, box 4, PAIRC papers).

[620] Edith Lowenstein, *The Alien and the Immigration Law,* 92.

the ship docked.[621] By the early 1950s a few Polish seamen had their DP applications rejected because they were members of an organization or union affiliated with the Communist Party; the seamen and PAIRC claimed the affiliations were necessary to get jobs on ships to escape.[622] All these disqualifications for DP status had the effect of reserving the refugee category for intellectuals and displaced families rather than seamen. The contrast was particularly stark in that the INS adopted a more nuanced understanding of intent, a more generous definition of "involuntary" membership in communist groups, and leniency as regard fraud in cases involving students and those applying for DP status from abroad.[623]

PAIRC, established in 1947 to assist Polish refugees after World War II, found that many of its seamen clients were denied refugee status despite similar WWII era experiences as DPs the organization helped resettle in the U.S. Many of these seamen spent the war years in prisoner of war or forced labor camps, some were in the Polish underground, the Polish Armed Forced in the West and East, or the merchant marine in exile; some even applied for DP status in refugee

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[621] See cases of Adolph Marian Galacki (who kept in close contact with the FBI while working on the Sobieski) and William Koblielski (who testified against Grzelak, vice President if the Gdynia-America Lines, during his deportation proceedings) in box 3, PAIRC papers.

[622] Case files of Josef Bienkowski, Leon Glowacki, and Tadeusz Jerzy Pietrzak, box 3, PAIRC papers.

[623] An Austrian Jewish woman escaped to England during the war, was allowed to stay there on condition that she engage in domestic service, enlisted in an auxiliary of the British Army, and was sent to Austria after the war and then honorably discharged. Finding that the aunt who raised her had died in a concentration camp, she applied to emigrate to the U.S. as a DP. The immigration authorities in Austria found that she was ineligible because she could live in England. The Board of Immigration Appeals reversed this decision and gave her DP status. The Board wrote, "Much has been said as to the intent of the refugee…She was questioned as to her intentions and testified that when she left Austria to go to England she had never intended to stay in England…It is difficult to discern what the real intent of a person may have been…and if it is possible to determine this case on any other basis we believe it should be done…A more satisfactory test is the test of the scope of the alien's freedom of movement and employment [in England]. [Since her freedom in this regard is limited] we find that she is admissible to the U.S. as an eligible DP." [In the matter of S, A-7915468, *Interpreter Releases*, Vol. 28, No. 25, June 4, 1951, 169.] Around the same time, the Board of Immigration Appeals also ruled that a Russian who applied for DP status from Germany was eligible for admission even though he had once been a member of a professional organization affiliated with the Communist Party since "the practice in totalitarian countries of requiring workers to join organizations of this character is well known." The Board accepted the aplicants uncorroborated testimony that his membership was involuntary. [Matter of A., A-7910824, *Interpreter Releases*, Vol. 28, No. 26, June 12, 1951, 172].

camps in Europe before finding jobs and shipping out. Seaman Henryk Dutkiewicz is a good example. He served in the Polish Navy before the war, was in a prisoner of war camp for two years until he escaped, fought in the Warsaw Uprising, was again taken prisoner and sent to a forced labor farm and then an armaments factory. After he was liberated by the British army, he stayed in a DP camp until he shipped out on a WSA ship leant to the Polish Government-in-exile and that was engaged in bringing supplies to the occupying U.S. army in Germany. He shipped in and out of the U.S. on Panamanian vessels from 1947 through 1950. INS refused to adjust him into DP status on the grounds that "at the time of his entry [to the U.S. as a crewmember in February 1950] it was his intention to remain." [624]

The "intent to remain" disqualification makes it hard to gauge from case file records what precisely spurred seamen to leave their ships.[625] In the case of Polish seamen, for example, was it conditions in Poland, conditions on the ships, or groups like the Polish American Immigration and Relief Committee on shore? In order to qualify for DP status, and later for refugee status under the Refugee Relief Act of 1953, the seaman would have to tell the immigration service that he did not decide to remain in the U.S. permanently until *after* he was inspected and allowed ashore as a bonafide seaman. Some seamen certainly did come ashore intending to reship but had

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[624] Opinion in of the Examining Officer, A-9776508, 10/10/50; Father Burant to Henry Millman, Sept. 10, 1951, case file of Henryk Dutkiewicz, Box 3, PAIRC papers. See also, in that box, the case of Stefan Ciundziewicki, who served in the Polish merchant marine during the war, applied for refugee status in a Displaced Persons Camp in Italy, shipped out while his DP papers were processed, left his ship in the U.S. in 1950, and then had trouble adjusting his status.

[625] In his testimony to the President's Commission on Immigration and Naturalization, Father Burant of PAIRC said about the sailors who deserted the Batory and Sobieski three and a half years before: "So far none of them were deported, but not more than two or three have their stay legalized…Many were rejected by the hearing officers for they said the truth; they told the truth: That, leaving the ship, they had the intention of seeking asylum in this country. The law enabling them to legalize their stay excludes such a possibility. A series of appeals begin and they now say that leaving the Communist ship they had no intention of seeking asylum in this country; if they said they intended to stay here, they were not eligible. Indeed our laws are sometimes strange and complicated." (Hearings before the President's Commission on Immigration and Naturalization, Committee on the Judiciary, House of Representatives, 82nd Congress, Second Session, Oct. 1, 1952, 267).

trouble finding berths and met with other former seamen or representatives from organizations like PAIRC who convinced them to apply for refugee status.[626] Other seamen undoubtedly decided to defect before coming ashore but, warned by other sailors and coached by PAIRC, told immigration officials that they made their decisions only later in order to qualify for refugee status.[627] By 1950-1951, the INS's disqualification probably led to more, not less, concealment,

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[626] This *seems* to have happened in the case of Bronislaw Hauptman. He lived in Poland until 1948, at which point he left as a seaman and jumped ship in Uruguay, remaining there until 1951, and then shipping out again as a seaman. When his ship docked in Newark, N.J., he was admitted temporarily as a bonafide seaman. "He testified [in a hearing regarding his application for adjustment of status] that it was only after he had been ashore for several days that he was convinced by other persons that he should attempt to remain permanently."
A seaman by the name of Rogula definitely opted to remain in the US when he saw other Polish sailors doing so. He told an INS examiner: "I came in 1948 and I left in 1948 and then I came back in 1949 and I said to myself, so many other Polish seamen come here and stay here and are given the right to remain in the United States…and I who am looking for a place to live have also a right to be given asylum in the United States. "
In the case of Bronislaw Jozwiak, it is definitely the case that PAIRC urged him to apply for relief from deportation. Joswiak had been a Polish Falcon and, during the war, sailed as a crewman particularly to Brazil and Argentina, not coming to the U.S. until 1953. One immigration officer mentioned that, between his first deportation hearing in August 1954 and his second deportation hearing the following month, Jozwiak had "a change of heart." Revealing his assumptions about 'refugeeness,' the inspector also noted that "he would be more active in fighting communism were he an educated person."
[In re: Bronislaw Hauptman, INS File No. E-1293, Proceedings Under Section 6 of the Refugee Relief Act of 1953, and File No. A-10 107 216; File No. 0300-468130, In The Matter of Deportation Proceedings Against Zdzislaw Rogula, July 12, 1954; In re: Bronislaw Jozwiak, In Deportation Proceedings, all in Box 3, PAIRC papers.]

[627] Many seamen filled out forms detailing events in Poland that constituted persecution or made them fear persecution: arrest and investigation by security police, secret police visiting their homes, pressure to join the army or Communist Party, blacklisting or imprisoning of family members (see, case files of Jerzy Cyrkler, Edwin Majerholc, Stanislaw Morawski, Box 3, PAIRC papers). Kazimierz Rogalewski testified—and presented a letter from his father as proof—that his "entire family…had been forced by the Communists to leave their home town of Gdynia and assume residence in western Poland…as punishment…[for his] refusal to return to Poland." [Opinion of the Examining Officer, A-9825050, July 6, 1950, Kazimierz Rogalewski case file, Box 3, PAIRC papers.]
One file includes an admonition from Zachariasiewicz (of PAIRC) "that before appearing before the Immigration the next time you are called you should speak with us first" and an enclosed letter to the INS, written by Zachariasiewicz but to be signed by the seaman, that explains "I do not understand why my application as a Displaced Person has been denied…I know I did tell you when on the ship the seamen often spoke of living in a democratic country without any fears of persecution, but we never actually mentioned either the United States or any other country…It was ashore that I got the bright idea of remaining." [Zachariasiewicz to Henryk Pisowacki, Jan. 29, 1952, enclosing letter to INS of the same date, in the Pisowacki file, Box 3, PAIRC papers.]
The danger of telling the truth and the importance of advance coaching is clear in the case of Jan Kaczmarek, who filled out his own forms and had no legal counsel or PAIRC representative with him at his interview with the INS. On the application for DP status he wrote that "On board the MS Levant on which I was a crewmember, I found out the identity of a Communist agent, which information I immediately passed onto other members of the crew…The crew attacked the agent in the presence of the Captain. This action has been reported to the authorities in Poland, for which reason I cannot now return." When, at a follow-up INS hearing, Kaczmarek was asked when he first made up his mind to desert, he answered "On the trip before the last one…I said to myself, the next time I get into the United States, I am going to desert the ship and stay here." When asked what his intention was upon inspection at arrival, he answered, "I intended to remain in the U.S. permanently and to get a job." Not surprisingly, the INS rejected his

especially as PAIRC became better known as a well-connected organization with ties to an anti-Communist alliance of Congressmen (many of them Polish ethnics), Polish American and refugee organizations, Voice of America, and National Committee for a Free Europe; Zachariasiewicz prepared broadcasts for Radio Free Europe on PAIRC's assistance to seamen.[628] In cases of seamen who had several hearings—some with and some without PAIRC representatives present—the effect is clear. (Usually the PAIRC representative at the INS hearing with the seaman was Francis Sarnowiec, who had been a representative of Polish shipping services in New York before the war but resigned when the Communists took over). At his first hearing, Michael Lorek told an examiner that he intended to remain in the U.S. because he was blacklisted in Poland for refusing to join the Communist Party; at his second hearing, asked by a PAIRC representative to clarify "when that intention was clearly formulated," Lorek said "At the time when I came to the U.S. I was in inner strife, I was fighting with myself, with my conscience, whether I should come back to my children in Poland and face Communist reprisals, or leave my children and be abroad away from Poland in any country not particularly

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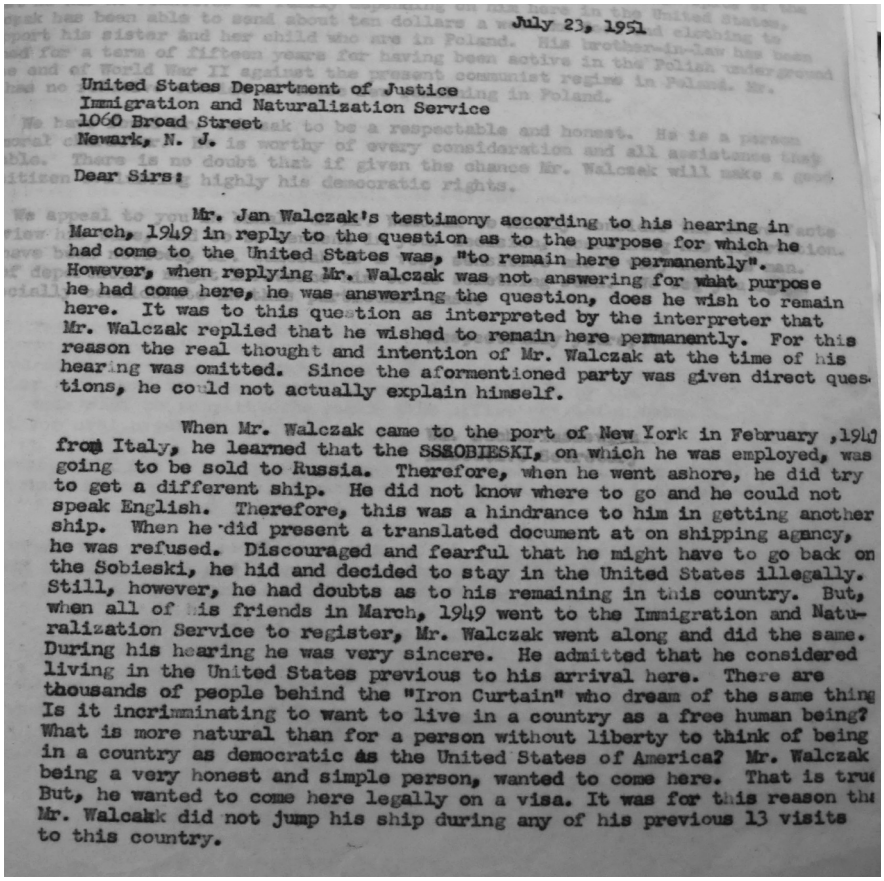
application for adjustment on the grounds that he had unlawfully entered the country; the INS never considered the merits of his persecution claim. When PAIRC finally learned of his case, it could only (disingenuously) claim that he misunderstood the question regarding intention, and thought he was being asked what his intention was once he already had been admitted. PAIRC's intervention in this case was unsuccessful. [See, Application by Displaced Person Residing in the U.S. to Adjust Immigration Status, D.P. Hearing A-9 825 079; Letter from Felix Burant to INS, Aug. 28, 1951; B.I.A. decision October 20, 1953, all in the case file for Jan Kaczmarek, Box 3, PAIRC papers.]

[628] PAIRC had a particulalry close tie to the Polish American Congress, which gave $1000 a month between October 1950 and December 1951 to PAIRC "for the purpose of aiding Polish political escapees and deportees, primarily to handle expenses in cases arising with United States immigration authorities, for those Polish persons held at Ellis Island in New York." (T.T. Krysiewicz, "The Polish Immigration Committee in the United States, MA thesis, Fordham University, 1953, 28).
PAIRC also asked Polish American Congress leaders across the country to investigate seamen cases that arose in places other than New York.
For a general history of PAIRC, see Janusz Cisek, *Polish Refugees and the Polish American Immigration and Relief Committee* (Jefferson, N.C.: Macfarland, 2006). See also, *Anti-Communist Minorities in the U.S: Political Activism of Ethnic Refugees*, ed. by Ieva Zake (New York: Palgrave Macmillan, 2009), especially chapter 1.

in the United States."[629] Several PAIRC case files include letters from Zachariasiewicz to the INS asserting that seamen had committed to escaping but had not formed any decision or plan beforehand to leave and remain "specifically" in New York City. [630] Other letters argue that, after leaving their Polish ships in U.S. ports, the seamen tried their utmost to ship out on other vessels.[631] Others emphasized that ineffective translation at INS hearings led to inaccurate responses by the seamen. Below is a typical appeal by Zachariasiewicz in a case of a seaman rejected for DP status.



July 23, 1951

United States Department of Justice
Immigration and Naturalization Service
1060 Broad Street
Newark, N. J.

Dear Sirs:

Mr. Jan Walczak's testimony according to his hearing in March, 1949 in reply to the question as to the purpose for which he had come to the United States was, "to remain here permanently". However, when replying Mr. Walczak was not answering for what purpose he had come here, he was answering the question, does he wish to remain here. It was to this question as interpreted by the interpreter that Mr. Walczak replied that he wished to remain here permanently. For this reason the real thought and intention of Mr. Walczak at the time of his hearing was omitted. Since the aforementioned party was given direct questions, he could not actually explain himself.

When Mr. Walczak came to the port of New York in February ,1949 from Italy, he learned that the SSSOBIESKI, on which he was employed, was going to be sold to Russia. Therefore, when he went ashore, he did try to get a different ship. He did not know where to go and he could not speak English. Therefore, this was a hindrance to him in getting another ship. When he did present a translated document at on shipping agancy, he was refused. Discouraged and fearful that he might have to go back on the Sobieski, he hid and decided to stay in the United States illegally. Still, however, he had doubts as to his remaining in this country. But, when all of his friends in March, 1949 went to the Immigration and Naturalization Service to register, Mr. Walczak went along and did the same. During his hearing he was very sincere. He admitted that he considered living in the United States previous to his arrival here. There are thousands of people behind the "Iron Curtain" who dream of the same thing Is it incriminating to want to live in a country as a free human being? What is more natural than for a person without liberty to think of being in a country as democratic as the United States of America? Mr. Walczak being a very honest and simple person, wanted to come here. That is true But, he wanted to come here legally on a visa. It was for this reason that Mr. Walcakk did not jump his ship during any of his previous 13 visits to this country.

Figure 4.15, Letter from Zachariasiewicz to INS, July 23, 1951, file of Jan Walczak, Box 4, PAIRC papers, IHRC

[629] In Proceedings Under Section 6 of the Refugee Relief Act in the case of Michal Lorek, File No. 0300-350503, in box 3, PAIRC papers.

[630] Zachariasiewicz to INS (Newark), August 4, 1952, in the case of Leon Lukaszewicz, Box 3, PAIRC papers. See also exceptions to the decision in the case of Jan Paklepa, box 3, PAIRC papers.

[631] Zachariasiewicz to INS (Newark), April 20, 1952, in the case of Tadeusz Pietrzak, box 3, PAIRC papers.

When a seaman was rejected by the INS for adjustment, one of PAIRC's strategies was to ask a Congressman to introduce a private bill to stall or prevent deportation. But House bills for individual seamen did not pass.[632] In the immediate aftermath of the war, some private bills were passed on behalf of sailors but, partly in response to the delays in Indonesian seamen cases discussed in the previous section, the House judiciary committee became very wary of bills for seamen. (The Justice Department and INS believed the enactment of private immigration bills encouraged a disregard of regular immigration procedures—particularly waiting for visas from abroad—while Congress was more concerned that private bills took up its time and energy and undermined public immigration legislation.) With the tremendous increase in the number of private bills introduced in the first postwar Congress, the House became averse to them in general and to bills for seamen in particular. On February 27, 1947 the House Committee adopted a policy negating any automatic stay of deportation upon introduction of a private bill unless the Committee addressed a communication to the INS concerning the bill.[633] The effect was immediate. At the behest of the ACPFB, on March 4, 1947, Vito Marcantonio introduced a private bill on behalf of Bernard William D'Souza, an Indian seaman who served in the British Navy for three and a half years and came to the U.S. as a seaman after the war. The INS wrote Marcantonio on April 15 that "in view of the resolution passed by the House…Mr. D'Souza's deportation will be proceeded with in due course."[634] In his history of Chinese immigrants in the immediate postwar period, the historian S.W. Kung found that only one deserter was granted

[632] Zachariasiewicz to Zygmunt Nathanski, June 16, 1952, and Zachariasiewicz to Mrs. Melba Hyde, Feb 13, 1953, box 3, PAIRC papers.

[633] Bernadette Maguire, *Immigration: Public Legislation and Private Bills* (New York: University Press of America: 1997) 24. A representative from the ACLU met with the

[634] Letter from Ugo Carusi to Marcantonio, Folder: Deportation, Box 46, Marcantonio papers.

permanent residence through a private bill and he had arrived in 1936; in contrast, 26 Chinese students had their status adjusted in this way.[635] He also found that Chinese migrants did not generally resort to introducing private bills to forestall deportations since bills that did not pass were generally not reintroduced in successive Congresses.[636]

The same cannot be said regarding Polish sailors, for whom bills were reintroduced again and again with the help of PAIRC. In requests for bills and letters to the INS on behalf of particular sailors, PAIRC offered Congressmen political support; PAIRC promised to "give good publicity in the Polish-American press to the Congressman who will introduce a bill…[which] may be of some value especially in view of the forthcoming elections."[637] PAIRC also emphasized anti-Communism and immigration reform in appeals to New York Senator Herbert Lehman; private bills introduced in the Senate *did* automatically stay deportation.[638] After large groups of seamen deserted en masse from the Batory and the Sobieski in New York and New Jersey in early 1949, the INS and PAIRC came to an agreement: if PAIRC brought the deserters into the immigration office, the INS (with the FBI) would do a security checks on each seaman and then parole them to PAIRC's care. One hundred and fifteen seamen were paroled to PAIRC in this way.[639] Then, in mid March 1949, PAIRC representatives had a conference with INS

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[635] S.W. Kung, *Chinese in American Life: Some Aspects of Their History, Status, Problems, and Contributions* (Seattle: University of Washington Press, 1962) 141. Comparing percentages of enacted bills for Chinese immigrants and all immigrants, Kung found that generally that "Congress was stricter toward Chinese nationals."

[636] Ibid., 142-3.

[637] Felix Burant to Francis Wazeter (President of the Polish American Congress), May 14, 1954, in the Zbigniew Joseph Birtus file, Box 3, PAIRC papers.

[638] Burant to Julius Edelstein (Executive Assistant to Senator Lehman), June 13, 1952, Baranczak file, Box 3, PAIRC papers.

[639] An INS publication in 1952 retrospectively explained what happened at the Newark office, but left out the important role of PAIRC: "[The] problem… involved… locating and rounding up the Polish seamen who deserted the SS Batory and SS Sobieski. Weeks went by with only a few apprehensions. The task seemed futile, inasmuch as more than a hundred aliens had to be located. However, during the third week, the case broke when an Army

officials, several Congressional Representatives [Mary Norton (D, NJ), Edward Hart (D, NJ), Charles Howell (D, NJ), Peter Rodino (D, NJ), Hugh Addonizio (D, NJ), Chester Gorski (D, NY), Antoni Sadlak (R, CT)]; the mayor of Newark and his secretary, John F. Saturniewicz; Walter Besterman, the clerk to the House Committee on Immigration and Naturalization; and James McTigue, general counsel of the DP Commission, to determine what kind of relief from deportation could be afforded the seamen. If a group private bill was introduced to Congress on their behalf and the INS were called upon for a report on the bill, the INS agreed to stay their deportation.[640] PAIRC publicized this as a tremendous success and a testimony to its concern for seamen and ability to help them by cooperating with the immigration authorities. (Below are "before" and "after" pictures that accompanied an article about PAIRC's help in the major Polish-American newspaper.)

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chaplain was located who had knowledge of the Poles who were residing in the United States…The surrender was finally arranged to take place on two different occasions. During each of the all-night sessions, notwithstanding the problems of transporting and feeding this large group, a total number of 126 warrants of arrests were issued and each alien's case processed." [R.G. Hoffeller, "The Newark, New Jersey, Office," *Monthly Review* (INS/Dept. of Justice) IX.11 (May 1952) 144-5].

[640] Letter from INS Commissioner Watson Miller to Attorney General Tom Clark, March 31, 1949, INS file 56270/510.

Grupa polskich marynarzy, którzy zeszli z okrętów „Batory" i „Sobieski", czekających na prze słuchy w Newarku. W pierwszym rzędzie siedzą pracownicy Polskiego Komitetu Imigracyjnego z dyrektorem ks. płk. Burantem na czele.

Before hearing

Ci sami nasi marynarze po przesłuchach. Uśmiechnięte ich oraz radosne twarze świadczą najwymowniej o korzystnym przebiegu przesłuchów i załatwieniu sprawy, głównie dzięki staraniom ks. Buranta i prezesa Wydziału Stanowego N. J., Kongr. Polonji Amer. p. E. Koźmora.

After hearing

Figure 4.16, Seamen from SS Batory and SS Sobieski, *Nowy Swiat*, March 23, 1949, 1, marked clipping in INS file 56270/510.

The happily-ever-after picture is somewhat misleading. The seamen were not deported, but neither were they given permanent status. A few years later, PAIRC's Father Burant wrote the Attorney General: "May I recall the case of Polish sailors…who…deserted Polish ships at New York as a visible sign of protest against the present Communist government in Poland. This mass exodus brought them at that time a well deserved publicity…However the immigration procedure that followed completely destroyed their enthusiasm. With a few exceptions because of marriage they are under deportation orders and live in constant fear." [641] The group bill that

[641] Father Felix Burant to Attorney General Herbert Brownell Jr., April 21, 1953, INS file 56336/243h.

was part of the original deal with the INS was reintroduced several times, with additional Polish seamen's names added on as they deserted, but did not pass until several years later. Most of the seamen remained in a limbo state—not deported but not residents; if they applied for DP status, however, their cases were administratively re-opened for scrutiny regarding their intent, as discussed above. PAIRC helped the seamen get jobs and sent some of them to work on farms—as they did for those who came over from DP camps in Europe; several felt they were underpaid for menial and unpleasant work that was beneath "the dignity of their positions as seamen."[642] In June 1949, two of these seamen—to PAIRC's dismay—asked to return to the Sobieski.

Much had already happened in the short interim between their desertion and their return. In late March, PAIRC told the INS that, according to one seaman, another mass desertion was eminent (i.e., that the entire crew of the Sobieski was planning to desert when the ship next arrived) and the FBI told the INS that a reliable informant said Communists saboteurs were being sent to the U.S. on the Batory and the Sobieski. "We realize that the majority of the crewmembers today would [desert because of] their anti-Communist sentiments," a Justice Department official said, "but by the same token, the situation is presented whereby this could likewise be a method of landing of Polish espionage or other subversive agents."[643] The FBI wanted the entire crews of the Batory and Sobieski held on board when the ships arrived.[644] The INS worried that if it did this, the seamen would file habeas corpus petitions and "it is probable that the court will rule against us and that such a decision might have repercussions."[645]

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[642] Conversation re: Deserters fro the Sobieski, June 9, 1949, INS file 56336/243h.

[643] Peter Brown's comments, March 25, 1949, INS file 56336/243h.

[644] Herbert Hoover to Peyton Ford (assistant to the Attorney General), March 23 1949, INS file 56270/510

[645] Memo by A.R. Mackey, March 28, 1949, INS file 56270/510.

Ultimately, after "exceedingly strict examinations" of the crews of the Batory and Sobieski, the INS decided to allow to land those "old-time seamen" they were "satisfied" would not desert and were not excludable as security risks.[646] Then, a few weeks later, in May 1949, Gerhart Eisler, a German Communist on trial in the United States, notoriously stowed away on the Batory while it was docked in New York and sailed with the ship to Europe.[647] The INS and the FBI suspected crewmembers of abetting Eisler's escape. In response, the Justice Department ordered that any Polish deserter who tried to re-sign onto the Sobieski be arrested by the INS. The sentiment was: "They may be couriers; we don't know what they are."[648] Increasingly, desertion was framed not just as an illegal immigration issue, but as a national security issue. Over the next few months, the INS began rounding up deserters, especially targeting those involved with labor unions. Port security and the screening of seamen became a higher priority among many government agencies at this time.[649] In August 1949, Senator Pat McCarren highlighted alleged Communist agents in "the guise of crew members" on the Sobieski and the Batory in his

[646] Memo by W.F. Kelly, March 30, 1949, INS file 56270/510.

[647] To say that the Eisler case had an important impact on the handling of foreigners within a Cold War national security framework would be an understatement. In 1946, when Eisler sought to leave the U.S., the FBI had a large file against him, trying to show that he was the top Comintern representative in the United States and that the Communist party was under Soviet control. He was detained by the INS and held without bail for months; as historian Ellen Schrecker writes, "detention by the INS at a time when he was trying to leave the country makes little sense unless we view the incarceration as a public relations gimmick, designed to bolster Eisler's image as a threat." By 1948 he offered to plead guilty for contempt of Congress (for not testifying before the House Un-American Affairs Committee) if the government would deport him after sentencing; the government refused. He snuck out on the Batory a few months later. Schrecker writes: "it was soon clear that his escape was more useful to the anticommunist cause than a long prison term would have been. It seemed to show that the Kremlin's American boss was a thoroughly unscrupulous [devious, conspiratorial] character who, like all Communists, believed himself beyond the law." Eisler then figured in campaigns against groups like the ACPFB: linking Eisler to it made it part of the international communist conspiracy. Pundits and politicians also claimed that Eisler's escape was evidence that the government was soft on Communists. Schrecker, *Many are the Crimes* (Princeton: Princeton University Press, 1998) 128-9.

[648] Conversation re: Deserters fro the Sobieski, June 9, 1949, INS file 56270/510.

[649] William Foley, "ICIS standing committee report," (1949), Folder: P-48, Box 5, Interdepartmental Committee on Internal Security (ICIS): Port Security Program, 1949-1950, Records Relating to Maritime Affairs, 1949-1975, Bureau of European Affairs, RG 59, NARA.

proposal for legislation that allowed for "more efficient…detection and deportation of undesireable aliens."[650] McCarran had a great deal of support in Congress.[651] It is important to clarify that that adjustments under DP Act, like under 19c, that were approved by the INS still had to be submitted by the Attorney General to *Congress* for approval, leading to delays and rejections by Congressmen who were immigration restrictionists or wary of seamen in particular.[652]

Seamen with current or past ties to radical organizations were explicitly ineligible for 19c relief, denied pre-examination, and were ineligible to adjust under the DP Act. Instead, they were subject to detention and deportation. Carol King was convinced that the INS was deliberately targeting "prominent individuals in important union positions" in order to stir up a red scare, arresting them "with a public fanfare that served no purpose other than publicity."[653] One seaman affected was Benoit Van Laeken, a Belgian-born member of the National Union of Marine Cooks and Stewards, longtime legal permanent resident, and a prominent activist since the 1934 San Francisco Strike. When the ship he was working on returned to the United States in June 1948, Van Laeken was refused permission to land and required to sail out with the ship;

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[650] "Ship Crews Fake, M'Carran Charges," *Los Angeles Times*, Aug. 12, 1949, 7; "Senate Told Spies Land at Boston," *Boston Daily Globe*, Aug. 2, 1949, 5.

[651] Representative Ed Gossett (D, TX), a member of the House Judiciary Committee's subcommittee on Immigration and Naturalization, was pushing for legislation that would allow military intelligence personnel to help with INS roundups. Gossett felt the situation in New York was critical. "New York in particular is a haven for those who seek illegal entry" because of "loopholes in law, inadequate immigration service forces, the absolute refusal of the New York courts to enforce such immigration laws as we now have...hundreds of lawyers make their living out of immigration practice. Many of them devote their time to helping aliens get in the country illegally or to remain here illegally…These are cases of stowaways who have slipped into this country; of deserting alien seamen…[Military Intelligence personnel] used to run down enemy aliens in times of war—they should help run down illegal aliens in times of peace. This is especially true since many of these aliens come into this country for subversive purposes." (Legislative Bulletin, *Interpreter Releases*, 27, 4, Jan. 10 1950, 29).

[652] The rejections marked a shift from the past since before 1948 there had "not been a single case where suspension was recommended by the Service and the Congress took adverse action." (Carol Weiss King to Robert Silberstein, May 21, 1948, Box 49, Folder 3: Immigration, 1947-1948, National Lawyers Guild Records, Tamiment Library).
[653] Report by Carol King, 15th Anniversary National Conference, Dec. 11 and 12, 1948, Box 5, ACPFB papers.

an informant—a former member of the union believed to be an agent of the Matson shipping line —had told the INS that he had been a Communist in the 1930s. According to a shipmate, the immigration officer boasted that at least a dozen seamen were in the same category as Van Laeken, "continuously on a ship….with no one allowing them to land…many… kept on a ship for as long as seven trips…slavery on American ships, with no chance of trial." [654] He sailed out, and when the boat returned, he was arrested and not told the charges against him. The INS argued he was subject to exclusion, despite his legal residence, on the grounds that he had "Communistic leanings" and that his admission was prejudicial to best the interests of the United States; since the war, the Attorney General could exclude such aliens without a hearing on the grounds that revealing the charges against them might be prejudicial to national security.[655] Van Laeken's attorney, from George Andersen's firm in San Francisco, argued that in seeking to summarily exclude him the INS was not only denying him freedom of thought, speech, press, and assembly guaranteed to lawful residents, but also was discriminating against him as a seaman. Seamen, the attorney claimed, were in a special class because their jobs required them to leave and re-enter the country. The INS then unfairly deemed each of their entries as new, thereby subjecting them to cursory exclusion proceedings. The argument in the habeas corpus petition ran: "Lawfully resident aliens whose occupations do not require them to leave the United States and return thereto, and who are not required by economic necessity to make foreign voyages, are not subjected by the Immigration and Naturalization Service, to arrest without warrant, to imprisonment, except upon issuance of lawful process, to proceedings seeking their exclusion or exclusion and deportation from the United States, or to any proceedings in which

[654] Peter P. Mendelsohn, "Alien in MCS is Held Prisoner Aboard His Ship," clipping from the *MCS Voice,* Van Laeken case file, Box 50, ACPFB papers.

[655] This power was granted the attorney general trough Presidential Executive Order 2523, Nov. 14, 1941.

they are not informed of the charges against them or the matters of law and fact asserted in connection with such proceedings, nor denied bail without just cause, but on the contrary, such lawfully resident aliens are accorded due process of law as guaranteed by the United States Constitution."[656] Carol King thought this argument was "clever" but correctly predicted that judges were not likely to agree that seamen faced risks not face by other residents who left the country. (King thought the discrimination argument was more convincing in the case of a group of seamen from Pakistan—some who had served on American ships during the war or who had been living in New York for years—who were rounded up by the INS for overstaying. "The arrests give every indication of race discrimination," King wrote the INS. "A man was arrested in the park. He was apparently 'spotted' just because he had dark skin." In the face of King's habeas corpus petition that the seamen were being detained "solely because they are of the Indian race," the INS released them on bail while their deportation cases proceeded.[657]) Still, after the writ for Van Laeken was denied, King did feel that an appeal was worth a try. "This is the kind of case, except for its Communist angle, where the guy is getting such a rooking that the court may surprise itself by being relatively decent."[658] The attorneys brought an appeal but

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[656]The groundwork for this argument was that: "your petitioner is a man without property or income save as earned by his own labor, and that by reason of his training and experience, he is best able to earn his livelihood by following his occupation of merchant seaman. That as a merchant seaman, your petitioner is required to and for many years past has, left the shores of the United States as a member of the crews of merchant vessels for foreign voyages, and return, in the same vessels to the United States; that he is prohibited by provisions of law from sailing on coastwise voyages [since such positions were limited to citizens], and that except by changing his occupation and obtaining work ashore, for which he is neither fitted nor inclined, he has no other means of earning his livelihood than by making such foreign voyages. The economic necessity is, therefore, the motivating force behind his various departures from and returns to the United States as a merchant seaman." In the Matter of the Application of Benoit Albert Van Laeken for a Writ of Habeas Corpus, Lloyd McMurray of Gladstein, Andersen, Resner & Sawyer, Dec. 17, 1948, 5-6, in *Van Laeken v. Wixon*, No. 28339, United States District Court, Northern District of California, Civil Case Files, Box 702, RG 21, NARA San Francisco.

[657] Letter from King to Deputy Commissioner Mackey, Aug. 29, 1949, and Mackey to W.F. Kelly, Sept. 7 1949, INS file 56283/533.

[658] Carol King to Lloyd McMurray, November 16, 1948, case file of Benoit Van Laeken, Box 50, ACPFB papers.

agreed to drop it if the INS granted Van Laeken a hearing. Then the INS delayed the hearing several months and denied Van Laeken bail. As with Gerhard Eisler, though the INS wanted to deport him, they would not let him out.

The same was true in the case of Per Eriksson, a Swedish born seaman who had been sailing since 1927 (working first as a coal fireman and then a diesel motorman) and fought against Franco in Spain. During the war, Eriksson, an official in the Swedish Seamen's Union in San Francisco, was active in getting stranded Swedish seamen sailing for the allies. In late 1947 Eriksson was arrested because between 1933 and 1939 he was member of the Swedish Communist Party, which the INS claimed was "an organization advocating the overthrow of the government of the United States by force and violence"; Eriksson was thus subject to deportation under the 1940 Alien Registration Act. At first the defense on his behalf—handled by George Andersen—fought to have the INS allow him to remain in the United States; later Eriksson just wanted to be granted voluntary departure rather than deportation (perhaps so he could maintain the ability to return to the United States with his American wife.) Eriksson had international support—a group of prominent individuals in Sweden formed a committee for him and Swedish veterans of the International Brigades in Spain requested that the Swedish legation in the U.S. take up his case. The CIO council in San Francisco also demanded that he be given voluntary departure. "This phony maneuver to deport Eriksson for is political beliefs…is part of the pattern of intimidation and union busting in order to defeat the solidarity of workers."[659]

The ACPFB, the San Francisco chapter of the Civil Rights Congress, and local maritime unions organized pickets and publicity supporting Eriksson and Van Laeken, but, in mid-1949, the defense campaigns could not gain more widespread national support. As Abner Green of the

[659] Case file for Per Eriksson, Box 31, ACPFB papers.

ACPFB wrote to William Glazier, the Washington representative of the Marine Cooks and Stewards Union: "I am sorry the efforts to get a delegation [to speak to the INS Commissioner about Van Laeken] brought so little results. However, that, as you can understand, is a reflection of some of the problems we face these days when we try to organize anything with trade unions…it is extremely difficult to get any of them involved in any kind of action."[660] By this time the national leaders of the NMU and other CIO affiliated unions had ceased to support the radical foreign seamen they once championed. Beginning in 1948 the NMU engaged in red-baiting and purging of its radical members, especially those who were foreign. Curran and his supporters carried on a campaign of intimidation. "In the case of the Negro and Latin American brothers," one NMU member reported, "it has been a subtle campaign. However, in the case of aliens, there has been an open vicious attempt to scare them…Caucus leaders have threatened to put the finger on any alien supporting a resolution or action put forward by the progressives."[661] The resolutions that provoked the most antipathy were those that criticized the Marshall Plan. In some places, especially in southern ports, the anti-communist Curran supporters had the backing of thugs, the local police, and the FBI. After dealing with internal NMU opposition, Curran accused the National Union of Marine Cooks and Stewards [MCS] and Bridges' International Longshore and Warehouse Union [ILWU] of Communist domination. When Van Laeken supporters were trying to rally trade union support, CIO leaders were attempting to expel the MCS and the ILWU (and nine other left-leaning trade unions) from the CIO because of their alleged pro-Soviet policies. It is also significant that, just when support for the Displaced Persons program was pushing formerly restrictionist AFL unions closer to immigration liberals, radical

[660] Green to Glazier, May 14, 1949, Van Laeken case file, Box 50, ACPFB papers.

[661] *Pilot*, April 23, 1948, quoted in Gerald Horne, *Red Seas: Ferdinand Smith and Radical Black Sailors in the United States and Jamaica* (New York: New York University Press, 2005) 158.

foreign sailors were being demonized and ousted from the formerly inclusive NMU.[662] Curran certainly did not see these radical foreign seamen as refugees. In fact, he met with the FBI and the Coast Guard about screening them off the waterfront. Radical foreign seamen who feared persecution in Greece could count on the support of the NMU through late 1949; after that support would come from those unions that were independent from the CIO—like MCS and the ILWU. [663]

The foreign seamen most affected by the red scare were members of the Federation of Greek Maritime Unions. Soon after the Greek government outlawed the FGMU in February 1948 (on the grounds that it was an arm of the Greek Communist Party rather than a bonafide trade union), Greek consular officials in the United States began complaining that FGMU members refused to recognize their authority and were fomenting labor disputes on Greek ships. In response, the INS, with the help of the FBI, started an investigation to prove that the branch of the FGMU in the United States was an organization contributing to, controlled by, and cooperating with the Communist Party in Greece. Nicolas Kaloudis, who had by now overstayed his extension and had an American born child, applied for adjustment under 19c; in May 1948, an INS official thought the opinion of the attaché of Greek Consulate General in New York that "any ship owner or ship captain of Greek origin will tell you Kaloudis is a Communist" should be "considered in connection with his application for suspension of deportation." [664] Later that year the Greek consulate in New York denied a visa to William Standard, who had been

[662] On the AFL's attitude toward the DP program and organized labor's defection from the resrictionist camp in the 1950s, see Daniel Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002) chapter 7.

[663] On the CIO anti-communist purges, see Robert Zeiger, *The CIO, 1935-1955* (Chapel Hill: UNC Press, 1995) chapter 9.

[664] Hoover to Attorney General, April 26, 1948; Letter from Albert Del Guercio to Commissioner General, May 11, 1948, INS file 56253/195.

terminated as General Counsel of the NMU and had been retained by the FGMU as a defense attorney for the trial in Athens of FGMU officials, including Ambatielos, accused of treasonable acts designed to overthrow the government. Ambatielos and nine other FGMU leaders were sentenced to death; protests from unions in the United States and around the world and pressure from the United Nations and liberal deputies in the Greek parliament led to suspension of the executions. But, as a pamphlet by the FGMU about the trial pointed out, "the attack on the FGMU is now taking place on American soil as well." In December 1948, a New York based Greek-owned shipping agency admitted to the State Labor Relations Board that it used a Greek government blacklist.[665] An FGMU pamphlet on the trial in Greece asked, "If a trade union black list can be used on American soil against any group of workers—how long before the same vile attack would be made against workers in American industries. If men can be deported for their work as trade union leaders—how long before American trade union leaders are persecuted."[666]

Around the same time as the trial of the maritime union leaders in Greece, the minister of Greece's merchant marine ordered seamen shipping from French and American ports back to Greece for trial on charges of mutiny and rebellion. Greek Consuls in the United States were instructed by the Greek Ministry of Merchant Marine to discharge these seamen and prevent their being signed as members of the crews of any Greek vessel. In Philadelphia, when four sailors discharged (in response to this instruction) refused to leave the SS Syros, the Greek consulate petitioned the U.S. federal court to order the seamen arrested and repatriated to Greece

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[665] The case was Sarantis Xanthopoulos vs. Centraamerican Shipping Agency, Inc. and is described in a December 11, 1948 FGMU press release, Folder: Trade Unions—Greece, Federation of Greek Maritime Unions, Box 16, International Longshoremen's and Warehousemen's Union papers, Bancroft Library.

[666] Forword, *Tony was Sentenced to Death,* Based on Letters from Betty Bartlett (FGMU pamphlet, 1949), Folder: Trade Unions—Greece, Federation of Greek Maritime Unions, Box 16, International Longshoremen's and Warehousemen's Union papers, Bancroft Library.

for trial. As in the "Wind" case ten years earlier (see page 96, above), the consul got a letter from the State Department affirming that a 1902 treaty giving Greek consuls control over the internal affairs of Greek ships in American ports was binding in this case. Philip Dorfman and Herbert Lebovici appealed on behalf of the seamen. But whereas in the Wind case they argued against the consul's policy on the ground that it promoted violation of the immigration laws by stranding discharged seamen, in the Syros case they refuted the consul's authority by invoking the refuge provided foreign seamen by the Seaman's Act. Dorfman and Lebovici argued that the refusal of the seamen to leave the Syros was part of a wage dispute—not a disciplinary infraction—over which exclusive consular jurisdiction was abrogated by the Seaman's Act so that the court could not facilitate their arrest. The question before the court was whether this was a political matter or an economic one, but separating the two was difficult.

The four Syros seamen, like other FGMU members and the seamen represented by Morewitz in Virginia (see pages 163-164), demanded extra pay for opening and closing hatches in port. The judge in the Syros case explained why:

> All of the crewmen respondents herein were employed under the terms of a collective agreement made at Cardiff, England on September 2, 1943 between the owners of Greek merchant vessels and representatives of the Greek seamen's unions [FGMU or OENO]. The Agreement provided for the payment of a bonus after six months continuous service and general regulations governing employment. In November, 1947, negotiations were conducted in Athens at the invitation of the Greek government in which the merchant ship owners, the [government-organized] maritime union of Greece, PNO, and the Federation of Maritime Unions participated. The result was an agreement dated November 29, 1947, between the ship owners, and the PNO, which eliminated, inter alia, continuous service bonuses and the payment of extra compensation to seamen for opening and closing hatches in port. OENO refused to consent to modification of the existing collective agreement with the ship owners, did not become a party thereto, and has persistently refused to accept or recognize the validity of the modification with respect to the employment of its members. The Greek Ministry had issued a regulation dated November 11, 1947 reciting the existence of disputes over demands of crews for extra pay for certain work and declaring that seamen were not entitled to extra pay for opening and closing hatches…The

> respondent seamen are members of the OENO, a federation of seamen's unions which was dissolved by the Greek Government in February, 1948 and is not now recognized by said Government as existing. The chief representative in this country of that organization has advised the members thereof that they are entitled to demand extra pay for opening and closing hatches, contrary to the regulations of the Greek Ministry of Merchant Marine.

The judge also noted that, though "the work of opening and closing the hatches required the services of the 8 seamen of the deck, the carpenter, and the boatswain," on the Syros "the demands for extra pay for that work were made by men of the other departments of the ship and sometimes the entire crew" who "joined in these and other requests as an indication that they were united in the purpose of serving the welfare of their fellow workers." The four seamen who refused to leave the Syros were not only discharged because of their demand for extra payment for opening and closing the hatches. Two were accused of unlawful activity in December 1947 when they demanded payment of a continuous service bonus while serving on another Greek ship. Despite this, the Master (or captain) of the Syros did not discharge them until after the crew engaged in a 4-hour work stoppage in Philadelphia to protest against the verdict in the Greek trial of the maritime union leaders in early November 1948. The four seamen were accused by the consul of being a ship committee influencing the crew to protest against the Greek government and to demand that the ship master pay the four seamen an indemnity (severance) for being discharged without sufficient cause. All four of the seamen were accused by the consul of taking up "illegal collections…for the news organ of OENO." The judge found it significant that the crew's protest and collections "were not of sufficient importance to induce the Master to impose disciplinary measures." "Nor are they deemed sufficient to change the character of this dispute from one involving claims for compensation,

to one involving mutiny or other disorder on the vessel for which this Court might provide an aid to punishment," the judge decided.[667]

Though the judge ruled for the sailors—that the dispute was about wages and that the consul could not call on the court for forcible aid to arrest them—his decision hinted that the seamen's victory was tenuous.

> Approximately 600 seamen serving on 400 Greek vessels who have persisted in making demands for bonuses and wages contrary to the Athens Agreement have been denounced to the Greek Ministry of Merchant Marine and charged with offenses of disobedience and mutiny. The names of seamen so charged have been collected and distributed by the Ministry to the Greek Consular Officers, including the petitioner, directing the seizure of the seamen's books of the men so listed, their removal from Greek vessels upon which they were employed, and their repatriation to Greece to stand trial on the charges. The lists of seamen so charged have been duplicated by the petitioner and transmitted to Greek ship owners and Masters with directions to discharge all seamen named in the lists, to seize their seamen's books for transmittal to Greece, and not to engage any of them who might apply for shipment. Within the past year disputes involving claims for bonuses and compensation for extra services in opening and closing hatches have occurred on approximately 20 to 25 Greek vessels in United States ports, involving about 40 seamen, which seamen have been denounced to the Ministry of Merchant Marine as violators of the Penal and Disciplinary Code.[668]

By early 1949, just after the judge issued this ruling in the Syros case, the Greek consul in New York had passed a "confidential list" of seamen's names onto the INS. In February, inspectors in Baltimore refused shore leave to seamen on the SS Santorini whose names were on the list or who admitted—when asked during inspection—that they were members of the FGMU. The seamen were not given the reason for their detention. The INS District Director in Baltimore forwarded to the Commissioner General the confidential investigative report on the FGMU's communist affiliations and activities, suggested that the FGMU be listed as a

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[667] *Petition of Georgakopoulos,* No. 421, United States District Court for the Eastern District of Pennsylvania, 85 F. Supp. 37, January 28, 1949.

[668] Ibid.

proscribed organization, and recommended that the detained Santorini seamen be excluded without further hearing. Since two of the seamen filed writs of habeas corpus in federal court, the INS asked the Attorney General and the State Department for a letter claiming they had reason to believe the seamen sought to enter the U.S. for the purpose of engaging in activities that would endanger the public safety. This letter was promptly issued and became the basis of the INS's summary exclusion of the seamen on the same basis as it excluded Van Laeken, i.e. there was confidential information indicating that their admission would be prejudicial to the interests of the United States.[669] In March 1949 in the Baltimore District alone, the FGMU estimated that 100 seamen were deprived of shore leave by order of the immigration officials. The FGMU also claimed that INS inspectors were asking seamen about their relatives in Greece and were worried about reprisals against their families if this information was shared with Greek officials. The blacklist was circulated beyond East Coast ports; by April 1949, inspectors in San Francisco were directed to detain on board those "whose names appear on our [the INS's] list of Greek seamen alleged to be members of OENO."[670] The blacklist used by the INS grew longer in the years to come: the names provided by Greek consular officials were supplemented by those culled from a Coast Guard list and "many" submitted by informants or steamship captains.[671] There is evidence from the Syros case and others that

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[669] Letter of Albert Del Guercio, Baltimore District Director, to Commissioner General, Feb. 23, 1949; Letter from John Boyd, Acting INS Commissioner, to Secretary of State, Feb. 24, 1949; Letter from John Peurifoy, Assistant Secretary of State, to Tom Clark, Attorney General, Feb. 24, 1949, enclosing an order for exclusion under provision of the Presidential Proclamation of Nov. 14, 1941, all in 150.6871/2-2449, Box 44, Department of State, Office of Controls/Visa Division, Correspondence Regarding Immigration, 1945-1949, RG 59, NARA.

[670] Letter from Bruce Barber, District Director in San Francisco, to Commissioner Mackey, June 18, 1951, referring to the April 1949 directive, INS file 56316/719.

[671] Letter from F.G. Eastman, of Coast Guard, Intelligence Division, to the Secretary of State, July 2 1952, enclosing the blacklist from the Greek government, Visa Circular 422, RG 59, Records Relating to Visas 1949-1954, Box 8, NARAII; William King to Albert Del Guercio, Nov. 2, 1955 and Memo from Joe F. Staley, re: OENO, Dec. 9,1955, INS file 56364/85.4; In 1951, Captain V.G. Zanarias of the Livanos Steamship Company advised an INS

some Greek ship captains felt caught in the middle of a dispute between the Greek government and the FGMU and tried to diffuse or settle conflicts—give seamen the extra pay they asked for or request that the INS allow shore leave to those denied it—in order to keep their ships moving. Like the lawyers who took up Greek seamen's cases, these captains were then suspected and subjected to questioning by the INS regarding their political beliefs.

In the wake of the Syros and Santorini cases (of late 1948 and early 1949), Kaloudis sent press releases to all American maritime unions outlining the FGMU's perspective and asking for their support. Kaloudis insisted, in the statement quoted as an epigraph to this section, that the political "persecution" of the FGMU was motivated by the Greek government's desire to cut the operating costs of Greek shipowners, threatening not only Greek seamen but also American seamen, since American shipowners employing union labor could not compete on equal terms. "We are confronted with a situation wherein the Greek government and shipowners, using funds derived from American aid, are operating on American soil, employing every anti-labor device condemned by American labor traditions, to beat down working and living standards."[672] The undercutting of shipping standards, Kaloudis claimed, contributed to mounting unemployment among U.S. seamen. He also pointed that Greek shipowners "pay no taxes to this country (where so many of them reside and hold

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investigator in Baltimore that two seamen were "dangerous Communists." The investigator also spoke to an informant—a former crewmember who was a "reliable" anticommunist—who confirmed this and added additional names to the list. (Letter from John Dunphy to District Enforcement Officer, Baltimore, October 3, 1951, INS file 56364/85.4A). In late 1955, the New York INS office wanted to seek out a "current list of of OENO members" from the Greek government since many of the names on the existing list—about 3,000 names long –"were submitted as a result of action by the steamship companies and there was no evidence of OENO membership." (Memo re: OENO by Joe Staley, Dec. 9, 1955, and William King to Albert Del Guercio, Nov. 2, 1955, re: Use of Index of Members of Federation of Greek Maritime Unions (OENO) now in New York, INS file 56364/85.4).

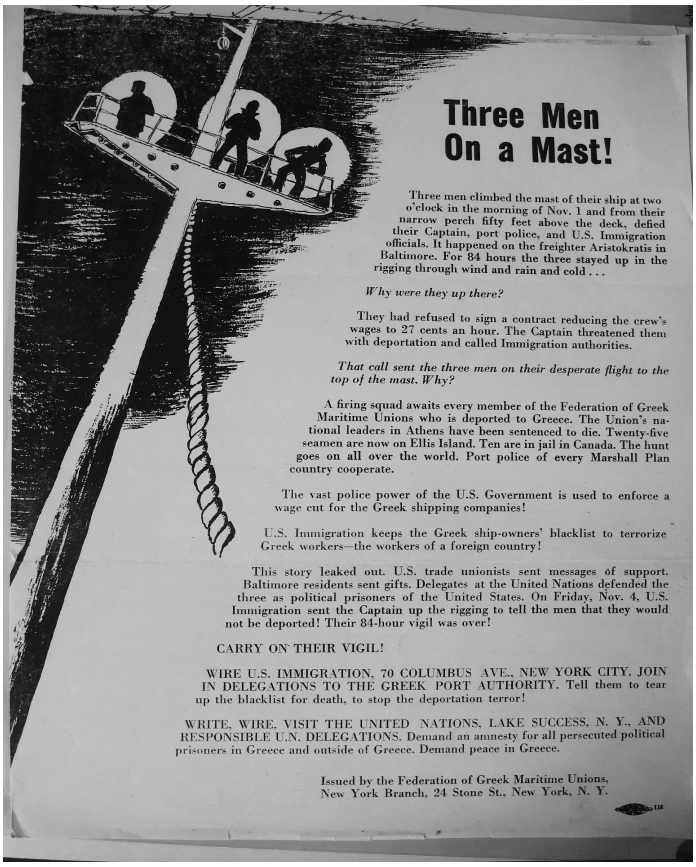
[672] Statement issued by the New York Branch of the Federation of Greek Maritime Unions, December 15, 1948, Trade Unions—Greece—Federation of Greek Maritime Unions, Box 16, International Longshoremen's and Warehousemen's Union, Bancroft Library.

tremendous interests in property and corporations); they purchase American ships, their purchases are underwritten by the Greek government with American [aid] money; it is common practice for them to switch the flags of their ships and sail under the flags of countries like Panama and Honduras and to pay even lower wages and taxes." In addition, Kaloudis made a special appeal to Bridges, asking ILWU longshoremen to boycott Greek owned ships (just as Australian stevedores had done.) "This action could serve to expose to the American workers their government's use of a trade union blacklist to terrorize Greek seamen sailing in and out of American ports and aiding the Greek shipowners attempts to break the FGMU. Such exposure could be the beginning of our campaign to arouse them to the danger to themselves inherent in this attack, and prevent the possible extension of blacklisting to American workers."[673]

These arguments made sense to many American seamen and the support in the Syros case (article about Philadelphia maritime committee in Paschalides) and others. Seamen's unions also were supportive when, in Baltimore in the fall of 1949, three FGMU members, who had been active in protesting pay cuts, climbed to the mast of a Greek ship (under Panamanian charter) and refused to come down after their captain called the INS. [674]

[673] Kaloudis to Bridges, April 22, 1949, Trade Unions—Greece—Federation of Greek Maritime Unions, Box 16, International Longshoremen's and Warehousemen's Union, Bancroft Library.

[674] As noted, the flyer is from the Norma Hanan Spector papers. Hanan handled PR for the FGMU in the late 1940s.



Three Men On a Mast!

Three men climbed the mast of their ship at two o'clock in the morning of Nov. 1 and from their narrow perch fifty feet above the deck, defied their Captain, port police, and U.S. Immigration officials. It happened on the freighter Aristokratis in Baltimore. For 84 hours the three stayed up in the rigging through wind and rain and cold . . .

Why were they up there?

They had refused to sign a contract reducing the crew's wages to 27 cents an hour. The Captain threatened them with deportation and called Immigration authorities.

That call sent the three men on their desperate flight to the top of the mast. Why?

A firing squad awaits every member of the Federation of Greek Maritime Unions who is deported to Greece. The Union's national leaders in Athens have been sentenced to die. Twenty-five seamen are now on Ellis Island. Ten are in jail in Canada. The hunt goes on all over the world. Port police of every Marshall Plan country cooperate.

The vast police power of the U.S. Government is used to enforce a wage cut for the Greek shipping companies!

U.S. Immigration keeps the Greek ship-owners' blacklist to terrorize Greek workers—the workers of a foreign country!

This story leaked out. U.S. trade unionists sent messages of support. Baltimore residents sent gifts. Delegates at the United Nations defended the three as political prisoners of the United States. On Friday, Nov. 4, U.S. Immigration sent the Captain up the rigging to tell the men that they would not be deported! Their 84-hour vigil was over!

CARRY ON THEIR VIGIL!

WIRE U.S. IMMIGRATION, 70 COLUMBUS AVE., NEW YORK CITY. JOIN IN DELEGATIONS TO THE GREEK PORT AUTHORITY. Tell them to tear up the blacklist for death, to stop the deportation terror!

WRITE, WIRE, VISIT THE UNITED NATIONS, LAKE SUCCESS, N. Y., AND RESPONSIBLE U.N. DELEGATIONS. Demand an amnesty for all persecuted political prisoners in Greece and outside of Greece. Demand peace in Greece.

Issued by the Federation of Greek Maritime Unions,
New York Branch, 24 Stone St., New York, N. Y.

Figure 4.17, "Three Men on a Mast," Norma Hanan Spector papers, Box 1, Folder 43, Rare Books and Special Collections, Princeton University.

To try to tamper protests, the INS told the *New York Times* that the seamen were denied entry because they were not deemed "bona fide" by the inspector, who thought they were trying to enter illegally by jumping ship, and mentioned nothing about the FGMU.[675] But, in a show of solidarity, members of the NMU, the MCS and other unions formed a sympathy picket line around the immigration office in Baltimore and the FGMU seamen were allowed to sail off with the ship (which was bound for Asia.) In the coming years, though, it was not the labor unions that provided most support for Greek seamen facing the black list and problems with

[675] "Greek Seamen Resist Deportation from the United States," New York Times, Nov. 2, 1949: 55.

the INS; it was rather the ACPFB and its lawyers (like Blanch Freedman and Ira Gollobin), or Morewitz and Lebovici."[676]

Beginning in the spring of 1949, the INS was not only barring FGMU seamen from entering, but also arresting those already in the U.S. so that they could not ship out or leave the country. This represented a departure from policy adopted by the INS when handling seamen generally. The INS usually arrested seamen who overstayed but, if they were making an effort to reship, released them on their own recognizance, requiring them to report in periodically; unless it could be shown by affirmative evidence that a seaman had abandoned his status and was unwilling to reship, the Board of Immigration Appeals generally declined to issue a warrant of deportation. In contrast, in June 1949, several FGMU members were arrested by the INS for overstaying when they went to the office of the port agent of the Greek consulate in New York to protest the blacklist and demand work on Greek ships. After the INS ordered them deported, they appealed to the Board of Immigration Appeals for voluntary departure and were denied. The FGMU press secretary and Lebovici sent information about these arrests, along with accounts of other arrests and the favorable decision in the Syros case, to the ACLU and asked for help. The ACLU was initially receptive, especially because the FGMU insisted that it was "not a Communist organization" and its members had never been given a hearing where they could contest the charge that they were a danger to public safety. In a June 29, 1949 letter to the INS and the Attorney General, Edward Ennis, chair of the ACLU's alien civil rights committee, and ACLU general counsel Arthur Garfield Hays criticized "the use of

[676] As one article lamented, "In Marseille the French people have protested the hounding of Greek seamen in French ports. In India and in Belgium there have been similar protests. American labor has yet to be effectively heard from. "U.S. Officials Help Terrorize Greek Seamen," undated clipping, Folder: Ethnic Groups—Greek—Federation of Greek Maritime Unions, 1949-1950, Box 18, ACPFB papers.

deportation procedures in a discriminatory way to aid the Greek government and Greek shipping interests in a strikebreaking movement…which is directly contrary to American traditions." The letter complained that the men arrested had no opportunity to reship and requested that they be given a chance to depart voluntarily rather than be deported to Greece where "they would be subject to sever punishment and possibly be executed as traitors to the Greek Government." Thus deporting the seamen was an "unconscionable violation of elementary human rights." Attorney General Tom Clark responded on July 20th that nine of the seamen were subject to deportation for overstaying their allotted 29 days ashore and that voluntary departure was matter of discretion that would not be allowed in this case. Clark wrote that, "The [Justice] Department is in the possession of satisfactory evidence, of a nature that it would not be in the public interest to disclose, concerning the character and objectives of the FGMU [which are] …plainly contrary to the public interest of the United States…It is the general policy to effect a formal deportation of alien members of such organizations who have rendered themselves subject to deportation in order that they may be barred from reentering the United States." Clark added, "No information has come to my attention which would lead me to believe that members of the FGMU would be executed if they were returned to Greece. Because of the information concerning the nature and character of this organization, I cannot agree with you that members of the organization should be given asylum in the United States as political refugees." Immediately upon receiving this letter, Alan Reitman of the ACLU wrote to Allan Swim of the CIO, asking for information about the FGMU. In August, the ACLU seemed less receptive to taking up the cases of FGMU members who were arrested when they were about to leave on the Batory.[677] It was the ACPFB that took up the

[677] Re: Maltreatment of Greek Seamen in U.S. and Case Histories, with enclosed documents (sent by Norma Hanan

cases of these seamen (and other FGMU members arrested in Baltimore, San Francisco, and New Orleans), filing habeas corpus petitions and publicizing them. In the fall of 1949 the INS agreed to their going "voluntarily under deportation" to Poland, meaning they had to pay their way and were not allowed to come back, as seamen or in any other status. (The leftist *Daily Compass* pointed out that this made it difficult to work as seamen "because American ports are the be-all and end-all of world sea trade.") Sixteen Greek seamen departed on the Batory on November 8, 1949. Many of them had sailed for the allies during the war. Arrests of FGMU members continued into early 1950, with the INS trying to limit seamen's access to lawyers and transferring them to Ellis Island avoid court rulings. The ACPFB and Morewitz were hoping that the Supreme Court's decision in the Ellen Knauff case might help the seamen; the decision, which ruled that security concerns during a time of national emergency were sufficient to justify exclusion without a hearing, certainly did not have the desired effect. [678]

The ACLU did not help seamen gain what the ACPFB called "asylum" in Communist Poland, but Arthur Gordon Hays did agree to take on the case of Kaloudis because he wanted to fight to remain in the United States with his American family. At an immigration hearing in May 1949, an immigration inspector ruled that Kaloudis was eligible for suspension of deportation—

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and Herbert Lebovici in the spring of 1949); Letter from Edward Ennis and Arthur Hays to A.G. Tom Clark and INS Commissioner Watson Miller, June 29, 1930; Letter from Tom Clark to ACLU's Ed Ennis and Arthur Hays, July 20, 1949; Alan Reitman (ACLU publicity director) to Allan Swim (Editor, CIO News), July 22, 1949; Letter from Herbert Monte Levy to Arthur Hays, August 16, 1949, all in folder 43, Box 824, MC001, ACLU records.
The ACLU also refused Morewitz's request that it participate as amici curiae in a 1950 libel case on behalf of two Greek seamen wrongfully detained on board the steamship Samos. (Herbert Monte Levy to J.L. Morewitz, November 14, 1950, in the case of Papagianakis et. al. v. S.S. Samos et al., folder 22, Box 574, ACLU records.

[678] ACPFB press release, Sept. 29, 1949; ACPFB press release October 21, 1949; ACPFB press release November 14, 1949; "U.S. bars lawyer for Greek Seamen," Dec. 6, 1949; Richard Carter, "Greek Seamen Hide in Fear," *The Daily Compass*, Dec. 20, 1949; "Greek Sailors Wait Court Ruling," Dec. 29, 1949; "Justice Department Kidnaps 2 Greek Seamen" (undated clipping), but case referred to in letter from Blanch Freedman to A.R. Mackey, January 9, 1950; all in Box 18, Folder: Ethnic Groups—Greek—Federation of Greek Maritime Unions, 1949-1950, ACPFB papers.

given that his family needed his support—but recommended his deportation as a matter of discretion. Kaloudis was arrested in July and taken to Ellis Island for deportation to Greece, where a warrant was outstanding for his court martial on the charges of high treason. Radical trade unionists (seamen, furriers, furniture workers, electrical workers, many from unions later ousted by the CIO) picketed the INS in New York and sent the INS telegrams protesting his detention.[679] The Board of Immigration Appeals soon denied his appeal for suspension because Kaloudis admitted membership from 1944-1946 in the International Workers Order, an organization proscribed as communist by the Attorney General in 1947. The Board also pointed out that his wife knew at the time of his marriage that he was a seaman on extended leave, thus tarnishing her dependency as a reason for suspension. Hays filed a writ of habeas corpus and managed to get Kaloudis out on administrative bail in October while the dismissal of the writ was appealed and a private bill was pending in Congress.

Aside from the way they handled seamen suspected of subversion, beginning in late 1948, the INS began to scrutinize more closely all seamen upon arrival and to limit the relief available to overstaying seamen to voluntary departure.[680] (Discretionary relief for seamen became even more limited after the passage of the 1952 Immigration and Nationality Act, but the trend began earlier). For example, immigration inspectors refused shore leave to a Greek seaman who was married and owned a home in the United States on the assumption that he would overstay. But, if

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[679] Clippings and telegrams in Box 18, Folder: Ethnic Groups—Greek—Federation of Greek Maritime Unions, 1949-1950, ACPFB papers.

[680] See "Voluntary Departures—Recent Arrivals," *Immigration Bar Bulletin*, Sept.-Dec. 1949, 13. This is a digest of several cases in which recently arrived seamen appealed their deportation orders and the Board of Immigration Appeals granted them voluntary departure. The INS opposed even this, arguing that "such action seriously impairs the effective enforcement of immigration law as it applies to this type of case." By 1951, INS ispectors were denying voluntary departure to seamen who did not have "promises of employment." (Matter of M, 4 I&N Dec. 626, 1952).

a seaman who overstayed married after the issuance of a deportation order, he could be disqualified for suspension of deportation. [681] The idea was that "last-minute" marriages should not be used to prevent the deportation of seamen. This led an inspector to reject an application for suspension by a Sobieski deserter, though he was granted a chance to do pre-examination. [682] (Robert Alexander, assistant head of the visa division at the State department, was generally opposed to granting preexamination to overstaying seamen, assuming they were criminals who could not qualify for visas using the regular route at consulates abroad.[683] In fact, the INS limited grants of preexamination: a seaman who qualified for it would not be granted it if, for example, he did not file quickly.[684]) Limits on grants of suspension of deportation particularly affected Asian seamen. Awan Soenario, an Indonesian sailor who had lived in New York since 1941 but shipped in and out on foreign merchant vessels during the war, and was then arrested for deportation in 1948 for overstaying since his last entry as a seaman a year and a half earlier. The INS turned down Soenario's application for suspension of deportation because it refused to consider him resident during the war years so that he had not been in the United States long

[681] *U.S. ex rel. U.S. Lines etc. v. Watkins*, (Second Circuit, 170 F. 2d 998, 1948); *Matter of S* Dec 13, 1948, A 6943635 (reported in *Immigration Bar Bulletin*, II. 1 (Feb.-March 1949), 6-7).

[682] This was the case of Leon Glowacki, who deserted the ship with approximately 70 others. While on conditional parole (to PAIRC), pending expulsion proceedings and pending his application for Displaced Persons status (which was subsequently denied), he was married. He applied for suspension of deportation on the ground that his wife, who was pregnant, needed his support. The hearing officer denied him suspension and granted voluntary departure. (In re: Leon Glowacki, A-9825048, Aug. 20, 1952, in Box 3, PAIRC papers.)

[683] Testimony of Mr. Alexander, Hearing Before the Staff of the Subcommittee on Immigration and Naturalization, Committee on the Judiciary, United States Senate, July 22, 1948, 604 .

[684] Karol Dankowski entered as a seaman in November 1946 and left his ship, getting a job as a "lumber handler" and marrying an American citizen the following year. A warrant was issued for his deportation in the spring of 1950. A hearing officer denied him preexamination because he had not previously –in the "ample time" he had to do so— taken any steps to apply for it. (In re: Karol Dankowski, A9825271, Sept. 18, 1952, in Box 3, PAIRC papers).

enough to qualify.[685] But it is clear that it wasn't particularly Asians who were denied suspension, but any *seaman* who did not have family in the United States. This was true even of white seamen from Communist countries. As one immigration inspector noted regarding a Polish deserter who claimed he would be subject to persecution if deported to Poland: "This case represents another alien who has chosen the seaman route to effect entry and attempt to remain permanently in this country. Both the Commissioner of Immigration and Naturalization and the Board of Immigration Appeals have consistently denied applications for discretionary relief made by aliens of this type."[686] Indeed, by 1949, in the case of an Italian seaman, the Board of Immigration Appeals announced its "policy" of denying discretionary relief in such cases: "unless there is some penalty attached to the overstaying of leave on the part of a seaman, it would be impossible for the Immigration Service to enforce regulations governing seamen," the Board wrote.[687] Allowing for suspension in such cases would, the Board of Immigration Appeals ruled, "encourage aliens to enter or remain in the country illegally." Rather than see seamen as a class needing special handling—for their war service or for the difficulty they have acquiring residence—the INS began singling them out for particularly harsh administrative treatment. In one case, a Chinese seaman presented thirty-five discharges showing continuous service on *American ships* between 1944 and 1950, and maintenance of living quarters in the United States since 1942, so that Board conceded he had "established statutory eligibility for suspension" based upon long residence "accumulated while sailing foreign from United States ports aboard United States vessels." But the Board dismissed the seaman's appeal of the Assistant

[685] In re: Raden Awan Soenario, File A-9541826, Jan. 9, 1949, Box 1, Folder 49, Leo Gallagher papers.

[686] Hearing Examiner's Recommended Decision In re: Janusz Stanislaw Ambroziewicz, August 9, 1950, Box 3, PAIRC papers.

[687] *In the Matter of M-,* 3 I & N Dec. 869, June 21, 1949.

Commissioner's denial of suspension. "No deportable alien can claim suspension of deportation as a matter of right. Whether or not remedial relief shall be granted rested entirely within the discretion" of the INS. "The statute relating to suspension of deportation of an alien by use of the word 'may' confers discretionary power on the Attorney General."[688]

Carol Weiss King had noticed a change in the Board of Immigration Appeals—under pressure from the Attorney General—as early as January 1947. The Board, an administrative tribunal within the justice department that reviewed decisions by INS officers, had a quasi-judicial character and, as King noted, "has been the only break on the anti-alien policy of the Central Office" of the INS. King continued, the Attorney General recently "made a large number of decisions reversing favorable opinions [towards the alien] of his Board of Immigration Appeals, which has served to influence the Board into not making favorable decisions." King also pointed out that "one of the best members of the Board was recently transferred to another division of the Department of Justice, and another favorable member of the Board has left."[689] The latter was Jack Wasserman, the Board member so critical of the Seamen's Program, who left the Justice Department to work as an immigration attorney. In July 1947, the changes King perceived regarding the Board were made more definitive when new regulations provided that adverse decisions of the Commissioner were not automatically reviewed by the Board. Also, the Commissioner's decisions regarding stays of deportation were final and could not be appealed.[690]

In early 1950, in a case involving a Chinese seaman who had overstayed his shore leave, Wasserman convinced the Supreme Court that deportation hearings should be subject to the 1946

[688] File A-9542540, In re: L.A.Y., Jan. 31, 1952, reported in *Immigration Bar Bulletin*, 5.1 (Jan-March 1952), 9.

[689] Carol Weiss King to Wendel Lurie, Jan. 16, 1947, Box 2, Correspondence, ACPFB papers.

[690] "Important Changes in Appeal Procedure Before the Board of Immigration Appeals," Interpreter Releases, 24.34, Aug. 4, 1947.

Administrative Procedures Act [APA], which required higher standards of due process for adjudicatory tribunals. (In particular the Court agreed with Wasserman's argument that it was unconstitutional for the inspector who presided over Wong Yang Sung's hearing to both interrogate him and recommend his deportation, i.e. be both prosecutor and judge.)[691] Congress effectively nullified this ruling in the fall of 1950 by adopting a rider to the Justice Department's supplemental appropriation that exempted exclusion and deportation proceedings from APA requirements.[692] But before the Congressional nullifications, the *Wong Yang Sung* decision forced the INS was to grant de novo hearings in hundreds of cases (that involved deportation hearings since the APA went into effect in June 1947), including, King noted, "numerous cases throughout the country involving alien seamen who jumped ship" and more than 70 of the ACPFB's left-wing leader "political" deportation cases, included that of Nicolas Kaloudis.[693]

In 1949 Wasserman, as head of the Washington office of the Association of Immigration and Nationality Lawyers, also vocally opposed a bill, H.R. 10, proposed by Representative Sam Hobbs (D, AL) and pushed by the Justice Department. The ACPFB referred to H.R. 10 as a "concentration camp bill," since it gave the Attorney General the power to indefinitely detain without bail any non-citizen ordered deported but whose deportation could not be carried out. (The Justice Department pointed to Eisler's jumping bail and absconding as justification for the bill.) The bill also provided that the Attorney General could deport any non-citizen to any

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[691] *Wong Yang Sung v. McGrath* 339 U.S. 33 (Feb. 20, 1950)

[692] 64 Stat. 1044, 1048 (September 27, 1950). The argument ran that "creating a corps of independent decision makers would be too costly and that immigration was too closely linked to political functions and foreign affairs to be subject to the APA's more scrupulous procedures. (Peter Schuck, "The Transformation of Immigration Law " *Columbia Law Review* 84.1 (Jan 1984) 32.) With the 1952 Immigration and Nationality Act, Congress established a system of hearing officers ("special inquiry officers") who performed only adjudicatory duties but worked under the administrative aegis of enforcement-oriented INS district directors.

[693] "Deportation Hearings Suspended; Communists Gain by Court Ruling," New York Times, Feb. 22, 1950, 1.

country that would agree to take him. Testifying in opposition to the bill before Congress, Abner Green of the ACPFB suggested that the latter provision would mean that "noncitizens could be sent to countries where they could be put to death for their political views."[694] H.R. 10 passed the House in July 1950 (amidst the increase in anti-Communism that accompanied the outbreak of the Korean war) and was sent to the Senate. The Senate amended it and then put some of these amended provisions into what became the Internal Security Act of 1950, which expanded the ability of the Attorney General to detain and deport suspected radicals. (The International Longshoremen and Warehousemen Union opposed the bill: "Anyone who fights against speed-up, for unemployment insurance, for jobs, and for civil rights may be labeled a 'Red'…Members of the ILWU and the MCS are concerned today about the growing unemployment which is hitting the martime industry…They want no part of any legislation…which will put alien merchant seamen…behind bars without bail for asserting their rights to a hob at a living wage."[695]) While the language of the legislation was being amended, Wasserman met with members of the Senate Judiciary Committee and provided them with an exception that was incorporated into the Internal Security Act providing that "no alien shall be deported…to any country in which the Attorney General shall find that such alien would be subjected to physical persecution."[696]

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[694] *Deportation and Detention of Aliens*, Hearings Before Subcommittee No. 1 of the Committee on the Judiciary of the House of Representatives, 81st Congress, First Session, May 25, 1949, 18.

[695] Statement by William Glazier, Washington Representative of ILWU, ibid, 31.

[696] Jack Wasserman met with members of the Senate Judiciary Committee about the provision right before it was added to the bill. "Senator Graham…reported to the Committee members what had transpired at the conference conducted on August 1…at which time…Mr. Wasserman…stated [his] views on the legislation…[committee staff member] Mr. Arens…related certain amendments which had been proposed as a result of the conference. Senator Graham moved that the first amendment, not to send aliens back to the country where they would be persecuted, be adopted. By a voice vote, the 'Yeas" having prevailed, the amendment was adopted." (Executive Minutes, Committee of the Judiciary, Aug. 2, 1950, page 4, RG 46, Records of the U.S. Senate, 81st Congress).
Read Lewis of the Common Council of American Unity also suggested an exception, though the wording was different. "The Attorney General's authority to deport to any country should, we believe, be limited…by the

But, the Internal Security Act, which became law in September 1950, seemed to take away with one hand the asylum it gave with the other. In a report on the legislation, the Senate Committee mentioned the persecution exception, but gave no rationale for it. Instead the report emphasized the necessity of giving the Attorney General the power to deport aliens to any country by citing a federal court decision upholding deportation of a Greek seaman to England during the Seaman Program.[697] (Here is yet another example of the impact of the wartime Alien Seamen's Program on asylum policy. In fact, in citing the court decision, the Senate report misrepresents the Judge's criticism of the Seamen's Program as approval for it. The report quotes the judge's affirmation of the legality of the Program's deportations under the then current immigration law. The report does not quote the judge's suggestion that Congress change American policy and enact legislation that would address "the tragedy of the peoples who are the victims of war" and should not be deported. [698]) Another problem interpreting the persecution

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following proviso: 'Provided the Attorney General has no reason to believe such country is willing to accept such alien for purpose of slave or enforced labor, or will otherwise unreasonably restrict his freedom." (Letter from Read Lewis to Pat McCarran, July 27, 1950, Folder: H.R. 10, Box 86, RG 46, Committee on the Judiciary, 81st Congress).

[697] According to the Committee report, the legislation "is broad enough to allow the Attorney General to deport an alien to practically any country in which the alien may have ties through birth, nationality, or previous places of residence. Finally, if these efforts fail, the alien may be deported to any country which is willing to accept him. In short, the bill attempts to do that which Judge Fried, in *Glikas v. Tomlinson* (49 F.S. 104 (1943)) stated he thought the existing section 20 [of the Immigration Law] was intended to do, namely: '…it was never intended that the Attorney General, if he failed to find a haven of refuge for a deportable alien in the country to which he was to be deported, should provide a safe asylum for him in the United States.' The language of the bill, as amended by the committee, provides, however, that no alien shall be deported to a country in which the Attorney Genera finds that such alien would be subjected to physical persecution." [Senate Report No. 2239, from the Committee on the Judiciary, Facilitating Deportation of Aliens, 81st Congress, Second Session, Aug. 3, 1950, page 4].
The government's brief in the Glikas case claimed that his deportation was necessary because: "Today the United States is face with a struggle for survival. Aliens who enter illegally into the territorial boundaries of the United States cannot be immediately deported to the countries from which they came (the land of their birth or domicile). The Court is familiar with the fact that over eight thousand alien seamen have deserted their ships in American ports within the past year and have refused to re-ship foreign, or only to re-ship on American vessels. The Immigration and Naturalization service has a great problem in this war crisis, not only to protect the internal security of the nation, but also to protect American shipping." [Reply Brief, by Assistant U.S. Attorney Roy Scott, Jan. 16, 1943, in *Panagiotis Glikas v. V.W. Tomlinson*, No. 21585, Northern District of Ohio, Eastern Division, RG 21, NARA Chicago.]

[698] *Glikas v. Tomlinson* (49 F. Supp. 104, Northern District of Ohio, Eastern Division, 1943).

provision of the 1950 Internal Security Act arose because the INS deliberately did not issue regulations guiding determinations under the provision. As of the spring of 1951, there was disagreement within the INS about whether persecution claims should be considered by hearing officers and appealable to the Board of Immigration Appeals, or if they should be considered more summarily by deportation officers in each district. In May 1951 the INS resolved *not* to issue any regulations and to allow the enforcement side of the Service handle persecution claims, without provision for appeal. "If the courts should rule against us, we will reconsider the question and the advisability of whether regulations should be amended."[699]

In the meantime, as soon as the Internal Security Act came into force, the INS began detaining suspect seamen on board (the INS "lookout" list of OENO members coming in very handy[700]) band rounding up those with Communist ties for deportation. The Department of Justice conducted a series of "lightning raids" from October through December 1950, when it arrested Ferdinand Smith, the Jamaican NMU leader, and many Chinese seamen (discussed further below). [701] Kaloudis, who was out on bail while his de novo deportation hearing was

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[699] Notes on Staff conference, 5/29/51, INS file 56336/243h, pt. 1
Until challenged, the INS treated findings regarding persecution as separate from and subsequent to deportation proceedings, as an issue to be determined by an enforcement officer who interviewed the claimant. The officer reported on the interview and made a recommendation to the Commissioner General; the Commissioner General reviewed the case and then made a ruling from which there was no appeal

[700] INS file 56316/719. Also, in 1951, the Mercantile Marine Department of the Greek Consulate General requested that INS officers "supply our office with copies of the list of the crews of those [Panamanian, Liberian, and Honduran] ships [owned by Greek nationals] whenever the vessels reach the ports of the USA." The Consulate had "information" that, on these crews, were many "communist Greek seamen" about whom "the Greek Ministry of Merchant Marine has a keen interest." "You are certainly aware," the Greek official added, "that according to international law we have no jurisdiction on those ships. Consequently, we ate in no position to trace and check the activities of these Greek communists who serve on those ships." The Assistant Commissioner of the INS responded that the INS would supply the Greek Consulate with these crew lists if the Greek Consulate would "in turn furnish this Service with any information you may have or secure indicating that the seamen are members of or affiliated with the Communist Party or any subsidiaries or affiliates." (Letter from A. Kurzis, Royal Consulate General of Greece to INS, April 12, 1951; Letter from W.F. Kelly, Assistant INS Commissioner, Enforcement Division, to Kurzis, April 17, 1951, INS file 55854/370Z).

[701] INS roundups and quick deportations of seamen continued into 1951 and 1952. "101 Seized in Area For Illegal Entry: INS Continues Round-up—Most are Seamen," *New York Times,* July 18, 1951, 15; "Aliens are Deported:

underway, was taken into custody as well. By the following year, the hearing examiner (for the new hearing) had rejected Kaloudis's application for suspension of deportation and this decision had been affirmed by the Commissioner of the INS; in early 1952, the Board of Immigration Appeals affirmed the order of deportation and a warrant was issued for his deportation to Greece in February. Kaloudis appealed to federal court to prevent his deportation on the grounds that he would be subject to persecution if returned to Greece. Kaloudis's attorney pointed out that no regulations had been issued clarifying how persecution claims would be handled under the 1950 law. On the one hand, the INS Commissioner had argued that, given that Kaloudis's persecution claim was based upon a warrant issued by the Greek government because of Kaloudis's activities in the FGMU, "an organization deemed by the Government of Greece to be Communistic," Kaloudis did not "fall within the purview of [the exception to the Immigration Act] as amended by the Internal Security Act of 1950." On the other hand, the Board of immigration Appeals explicitly refused to address the issue of persecution, claiming that it needed to be determined separately from the question of whether Kaloudis qualified for suspension of deportation (19c).[702] Judge McGohey (SDNY) granted a temporary injunction restraining the INS from deporting Kaloudis to Greece until the finding required by law had been made with respect to the question of persecution. (McGohey was dismissive of the INS's verbal "assurance" that it would never deport a person to a country where he would be persecuted.) Rather than make a clear determination regarding whether Kaloudis—a man whose life was arguably at risk because of his

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Seamen, Stowaways and Others Aboard Liner Vulcania," *New York Times*, Feb. 24, 1952, 15; "Fast Deportation Drive of 268 Begin Here—Week's Total, Largest in 3 or 4 Years, Is Made Up Chiefly of Ship-Jumping Seamen," *New York Times*, May 1, 1952, 14.

[702] In another 1951 case involving an FGMU member, the Board of Immigration Appeals similarly ruled that the issue of persecution if deported to Greece needed to be taken up separately from an appeal denying voluntary departure. But the BIA did rule that "with respect to voluntary departure…[the FGMU] has been included in the Attorney General's list of subversive organizations, and it is not in the practice in such cases to grant administrative relief from deportation." *Matter of E*, A-9539248, 4 I &N Dec. 433 (1951).

Communist ties—should come within the protection of the persecution exception, the INS continued to detain him and then told him that the Polish government has issued him a visa and that he would be deported to Poland.[703]

The story of Otto Richter shows how past ties with radical organizations made seamen ineligible for all forms of relief (pre-examination, suspension, private bills), especially after the passage of the Internal Security Act. Richter was the German seaman who "voluntarily departed" for Mexico in 1936 after the huge asylum campaign on his behalf (discussed previously in this chapter). Richter stayed in Mexico for three years. Despite several appeals, the immigration authorities refused him a re-entry visa to the United States. Eager to return to his wife, Richter crossed the Mexican border illegally in 1939 and went to live with his wife in New York. He had two children and served in the U.S. Navy from 1943 to 1945, when he was honorably discharged as a 100 percent disabled veteran. He asked the immigration authorities to legalize his status. Instead, in December 1946, the immigration authorities granted him, once again, voluntary departure and the privilege to apply for readmission. The American consulate in Canada let him know, however, that his record of past radicalism would make him inadmissible to the United States. So he never left, instead applying for suspension of deportation and for naturalization (as a veteran). In 1949, with the help of ACLU-affiliated attorneys, Richter won a victory in the Second Circuit Court of Appeals, which ruled that an alien could not be deported pending the outcome of naturalization proceedings.[704] In response to this decision, a provision of the 1950 Internal Security Act mandated that "no person shall be naturalized against whom there

[703] Lebovici &Safir, Relator's Memorandum of Law, United States ex. rel. Nicholas Stefanos Kaloudis v. Edward Shaughnessy, Civ 74-262, SDNY, RG 21, NARA NY.

[704] *United States ex. rel. Walther v. District Director of Immigration and Naturalization* (Second Circuit, 175 F.2d 693, 1949).

is outstanding a final finding of deportability." It is important to note that this provision affected Polish seamen represented by PAIRC as well, though, as we shall see, unlike Richter, these seamen had alternative modes of adjustment. In mid-1951 Ed Ennis of the ACLU felt that that there was "no point" in appealing Richter's case to the Supreme Court, even just for the purpose of delaying deportation, which could be done by the introduction of a private bill to Congress on his behalf.[705] The private bill died in the House Judiciary Committee, which received a damaging report from the INS that emphasized Richter's youthful involvement with organizations affiliated with the Communist Party.[706]

But the persecution exception in the 1950 Act did lead to some successful court challenges on behalf of seamen. Some of the first targets of the INS's lighting raids were the members of the Kang Jai Association, a benevolent organization for seamen from Hainan Island off the Guangdong coast.[707] In late 1950, the Association refused to sign the anticommunist

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[705] Herbert Monte Levy to Edward Dubroff, June 15, 1951, Folder 4, Box 827, ACLU Papers.

[706] HR 1467, RG 233, Records of the House Committee on the Judiciary, 83rd Congress, I&N, Private Bills, Box no. 1265, NARA.
Another sign of the times was the fate of Taras Bojarchuk. Bojarchuk first entered the United States as a sailor in 1935. He spent most of the next fifteen years on ships of the United Fruit Company. During the war he applied for citizenship and was told his application would be considered after the war; he applied again for citizenship in 1947 and was expecting to receive his naturalization papers in 1948. In September of that year, when his ship docked in New Orleans, two FBI men searched his room on board. Every time his ship docked in U.S. ports from then until 1950, he was denied shore leave. In September 1950, the port commissioner in New York would not let him ship out. He was detained as "alien whose entry to the United States would be prejudicial to the public safety" and denied access to counsel, visitors, or a hearing because the information on which his exclusion was predicated was confidential. In March 1951, INS tried to deport him on a Polish ship, but the Polish consul refused to accept him, contending he was no longer a Polish citizen, having left at age 13 and never gone back. After seven months in detention, he wrote to William Standard, who passed his case on to Carol King. The ACPFB took it up, but could not win him release through habeas corpus. Being in detention hindered his ability to qualify for visas to other countries and for jobs on foreign flag ships. When finally granted a hearing in 1953, two members of the National Maritime Union who had become informers for the INS (John H. Beadles and Richard J. Sullivan) testified that Bojarchuk was a communist. Bojarchuk adamantly denied this (and claimed he had never spoken to either informant) and was finally allowed to reship in 1956. (Case files for Taras Bojarchuk, Box 23 and 24, ACPFB papers.)

[707] Him Mark Lai cites an interview with Professor Han-sheng Lin (who was Hainanese and on the East Coast at the time) noting that 127 members of the Association were deported in the 1950s. (*Becoming Chinese American,* 257).

manifesto that the Chinese Consolidated Benevolent Association was imposing on the voluntary organizations in Chinatown. At 1 a.m. on January 31st (just before Chinese New Year), seventy-four INS officers and policemen raided the Association's buildings in Brooklyn, seized alleged Communist literature, and took 83 seamen to Ellis Island for interrogation.[708] Twenty-seven of the seamen were detained for months because they were deemed to have "communist tendencies" but could not be deported to the mainland because of British refusal of transit through Hong Kong. The rest of the seamen were found deportable but released on bond until deportation could be carried out. By the fall, a group of seamen from Hainan who "voluntarily" agreed to leave were flown to the mainland via Hong Kong on Philippine Airlines.[709] Several seamen remained in detention though the INS had no definite evidence that they were Communists.[710] By this time, the American President Lines began shipping deported seamen to Hong Kong for transit to the mainland, though the procedure was still complicated.[711] Despite this, the INS began calling in many Chinese seamen they had previously arrested and released on bond; these seamen were detained for deportation. When the seamen claimed they would be persecuted if returned to China, the INS deliberately dismissed these claims summarily in order to provoke a test case in federal court on the procedures and standards for the handling of such claims under the 1950 act. In the litigation that followed, consolidated as *United States ex rel. Chen Ping Zee et al. v. Shaughnessy,* attorneys for the seamen argued that the persecution provision in the 1950

[708] "83 Chinese Aliens Arrested in Raids," *New York Times*, Feb. 1, 1951, 4.

[709] S.A, Diana Chief of the detention and deportation section, to Commissioner A.R. Mackey, Aug. 13, 1951; George S. German, Dec. 3, 1951, re: Chinese Deportation Party;

[710] Memorandum (of telephone call from Shaughnessy), Feb. 29, 1952, INS file 56204/20.

[711] The APL was, in fact, only able to secure travel documents for deportees by telling the British that they were in fact students and visitors desirous of returning to China. The APL "'sneaked' them in" under the theory that they were willing returnees. T.E. Flenniken, deportation and parole officer, to Stan Olsen, June 19, 1953 and Memo for the file, June 22, 1953, INS file 56204/81.

act was humanitarian, like the Displaced Persons Act; one of the seamen, represented by Ira Gollobin, was in fact in the process of applying for adjustment of status as a displaced person. The U.S. Attorney for the INS argued that the 1950 Act was "entirely different" from the DP Act. One of the seamen, in making his claim, told the INS that he knew he would be persecuted because his brother was forced to work on a farm as a slave laborer. But, the U.S. Attorney said, "it was on his farm. In other words, what he objected to was the basic communist economic system, which controls the economy of the country. Of course that is hardly persecution." The U.S. Attorney also claimed that the provision in the 1950 Act, by asking the INS to determine physical persecution after deportation, turned the agency into a "fortune teller" regarding occurrences in the future. "How can anyone submit evidence? The best someone can submit is argument…reports…newspaper articles." Moreover, he argued that the INS was not obligated to disclose the basis of its decisions regarding persecution claims. "It would be a very impracticable thing if we were called upon in every case to set forth detailed discussions and confidential conferences of various high officials in the Government…there may be thousands of pages of information on conditions in China…which may have been considered or may have been in the minds of the persons who discussed this question before the decision was actually made."[712] The judge did not believe the latter argument. In March 1952, he ruled that instead of providing the seamen with hearings, conducting investigations, and making reasoned determinations and findings of fact regarding the seamen's persecution in China, the INS had arbitrarily dismissed their persecution claims, denying them procedural due process. "In the present state of affairs in

[712] Stenographer's minutes of proceedings on Dec. 21, 1951 in United States ex. re. Chen Ping Zee, Tong Ah Shu, Chang Chie Mon, Wong Ah Weh, Lee Chou Shek, Wong You Fong v. Edward Shaughnessy, INS New York District Director, Dec. 21, 1951, 76, 58, 91, RG 21, 70 Civ. 155, Box 568662 (38234), NARA NY.

the world," the judge wrote, "it does not seem to me that a person's testimony that he would be subject to persecution in a Communist country can be dismissed so lightly."[713]

Soon afterward, the Workers Defense League, the International Rescue Committee, and the ACPFB invoked this ruling in the case of a seaman, Francisco Pau Molina, threated with deportation to Spain. "We submit," Rowland Watts of the Workers Defense League wrote in his brief, citing the decision in the Chinese seamen case, "that a claim that a person would be subjected to physical persecution in a Fascist country likewise cannot be dismissed lightly."[714] Pau Molina had been active in anti-Franco organizations and recognized as a Spanish refugee by the International Refugee Organization. Regarding Pau Molina's imprisonment in Spain for two months in 1947 on suspicion of being a Loyalist, the INS investigator claimed he had "overcome this condition, in that he became a member of the Franco Youth Group when it served his convenience." In rejecting his persecution claim, the INS investigator also claimed that Pau Molina could not be considered anti-Franco since, in early 1952, he asked the Spanish consulate in California for a passport. The judge in this case went beyond ruling that Molina was entitled to procedural due process and came very close to ruling on the merits of his claim. The judge refuted the INS investigator's dismissals by pointing to Molina's testimony that he was compelled to join the youth organization and to get the passport in order to be eligible for employment. (He had, in fact, joined the youth movement before he was arrested and had

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[713] *United States ex rel. Chen Ping Zee et al. v. Shaughnessy, District Director, New York District, Immigration & Naturalization Service*, 107 F. Supp. 607, SDNY, 1952.
Interestingly, when the Judge asked the U.S. attorney, during the course of the proceedings, "How do you transport people to Red China?," the attorney said he did not know and refused to provide specifics. In fact, the American President Lines requested in early 1952 that its arrangements regarding "repatriated seamen" be kept confidential. (M. H. Miltzlaff, Central Passenger Agent, American President Lines, to Edward Shaughnessy, Feb. 19, 1952, INS file 56356/605.)

[714] Traverse, September 18, 1952, United States ex rel. Rowland Watts, next friend of Francisco Pau Molina v. Edward Shaughnessy, New York INS District Director, RG 21, Civ. 78-17, Box 568831 (38403), NARA NY. See also the case file for Molina in Box 42, ACPFB papers.

applied for the passport under pressure from the INS to ship out). "The 'convenience' the investigator suggests might more accurately have been called 'hunger,'" the judge wrote. The investigator's "recommendation…that the alien would not be subjected to physical persecution if deported to Spain is so contrary to a fair evaluation of the testimony at the hearing…as to indicate an arbitrary an capricious appraisal of the testimony," the judge found. [715]

The fact that Molina had been recognized as a refugee by the International Refugee Organization did not matter to the Immigration Service. Similarly, in their handling of a Spanish stowaway (who had fought for the Loyalists and had been arrested and imprisoned by the Spanish police in 1950), the INS engaged in expulsion or refoulement, sending him back to Spain without inquiry to determine the possibility of his facing persecution. In 1952, a federal court judge upheld this policy by ruling that the persecution provision of the 1950 did not apply in exclusion (rather than deportation) proceedings."[716] In fact, rather than make U.S. immigration law accord with the non-refoulement article of the 1951 United Nations Convention Relating to the Status of Refugees ("no contracting state shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion"), the 1952 Immigration and Nationality Act moved the law farther away from it. The judge in the Spanish sailor case pointed out that the language of the persecution provision in the 1950 Internal Security Act—"No alien shall be deported under any provisions of this Act to any country in which the Attorney General shall find that such alien would be subjected to physical

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[715] *United States ex rel. Watts v. Shaughenessy, District Director of Immigration & Naturalization Service* 107 F. Supp. 613 (SDNY, 1952)

[716] *United States ex rel. Camezon v. District Director of Immigration and Naturalization at the Port of NY*, 105 F. Supp. 32 (SDNY1952).

persecution"—"does not expressly confer discretion on the Attorney General" and that "a precondition of deportation cases such as this is a finding that there will not be persecution of the alien." (In another case, a judge ruled that, under the 1950 Act, the Attorney General "must find" that the alien would not be subjected to physical persecution in the country to which he was to be sent (*U.S. ex rel. Harisiades v. Shaughnessy,* 187 F. 2d, 137)). INS attorneys read the language of the 243(h) provision in the 1952 Immigration and Nationality Act as giving the agency more discretion; the provision reads, "the Attorney General is authorized to withhold deportation of any alien within the United States to any country in which *in his opinion* the alien would be subject to physical persecution." Congressional reports shed minimal light on this issue, since they claim the 243(h) provision in the 1952 Act "continues" the provision in existing law and include the phrase "in his discretion" to the proposed 243(h) provision in the 1952 law, though this phrase was not included in the final language.[717] INS attorneys consistently argued that the "opinion" called for in the 1952 legislation was somehow less judicially reviewable than the "finding" called for in the 1950 Act.

Soon after the passage of the 1952 Act, the Second Circuit Court of Appeals upheld the INS decision to deport seaman Nereo Dolenz, who claimed he would be physically persecuted in Yugoslavia. Though Dolenz had been given a chance to testify as to his fear of persecution, and present testimony of two supporting witnesses (who were experts on the situation in Yugoslavia), the INS investigator that presided at this "interrogation" or "interview" (the INS did not call it a hearing[718]) presented no opposing evidence or findings and conclusions of law that could be

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[717] Compare H. Rept. 1365, pg. 59 and 191**;** S. Rept. 1137, page 32; H. Rept 2096, page 55 (82nd Congress, Second Session).

[718] A July 11, 1952 letter from the Assistant Commissioner General instructed the INS District Director in New York to handle persecution claims as follows: "A question-and-answer statement should be taken concerning this claim…interrogation of the alien should include questions concerning his political activities; whether he was a

appealed administratively. Dolenz did not feel as if the investigator was an "impartial trier of the facts." The majority of the court ruled that, under the 243(h) provision, the INS could use whatever procedure it thought fit, and ruled that Dolenz was in an analogous position to Kaloudis; neither had a claim for "denial of procedural due process" nor "a right to remain in the United States." One judge dissented passionately however:

> The construction claimed by the government makes a cruel hoax of the announced relief. The Attorney General or his representatives may sit back and do nothing; they need not give even the consideration necessary to say, 'We are not convinced'—and the statutory provision becomes nugatory. In argument to us, that contention was actually made; it was said that this provision was in no way for the benefit of the deportee, but was only protection to the government officer in his performance of merely administrative and ministerial functions. But so restrictive a function seems quite inconsistent with the structure of the section (which also gives a choice to the alien if he can get a country to recognize it). And to say that such an interpretation is inhumane is an understatement… I suggest that reading this record—containing nothing to challenge the alien's contention—hardly any of us would doubt the fate awaiting this renegade Communist if returned to the Communist country where he had joined the party as a boy… I recognize that the area in which an alien can seek judicial relief and does not remain subject to the unreviewable and uncontrollable doom of a governmental official is being steadily narrowed by Congress, which has the responsibility, and that judges must obey the declarations of governmental policy made by the legislative body. But I think we ought not to rush ahead of Congressional intent. I am impressed by the wisdom of a distinguished American lawyer, who finds that courts (as well as other bodies governmental and lay) have not been thus hesitant--in this among other crucial areas--and who gives this measured conclusion: 'May it not well be that the greatest danger to our institutions lies not in the threats of foreigners but in our own weakness in yielding to emotion and our increasing readiness to minimize and disregard the fundamental rights of individual?" [719]

In April 1953, the Supreme Court refused to grant certiorari in this case, with Justices Black and Douglas dissenting. A further appeal to the Second Circuit provoked a unanimous ruling in June 1953 that the modified language of the persecution exemption in the 1952 Act "shows

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member of any organization; and the reasons why he fears physical persecution if deported." INS operations instructions issued on March 4, 1953 regarding "procedure to be followed when claim is made that an alien would be subject to physical persecution" specified that the "question and answer" interview with the alien on the subject was "*not* a formal hearing" before a Special Inquiry officer, nor was the decision that followed appealable to the Board of Immigration Appeals. (INS file 56336/243h, pt. 1).

[719] *United States ex rel. Dolenz v. Shaughnessy*, No. 119, Docket 22530, 200 F.2d 288 (Second Circuit, 1952), Judge Clark dissenting.

clearly…that the withholding of deportation…rests wholly in the administrative judgment and 'opinion' of the Attorney General or his delegate" and that nothing in the statue suggested "that the courts may insist that the Attorney General's opinion be based solely on evidence which is disclosed to the alien." "In his official capacity the Attorney General has access to confidential information derived from the State Department or other intelligence services of the Government which may be of great assistance to him in making his decision as to the likelihood of physical persecution of the alien in the country to which he is to be deported. We believe Congress intended the Attorney General to use whatever information he has. To preclude his use of confidential information unless he is willing to disclose it to the alien would defeat this purpose. Moreover, the very nature of the decision he must make concerning what the foreign country is likely to do is a political issue into which the courts should not intrude."[720] The Dolenz case became a key precedent for 243(h) cases involving seamen for the next ten years.

Given its significance, the case merits further discussion. Dolenz was first questioned by the INS during an investigation into Yugoslav seamen inspired by the Internal Security Act. The INS was particularly concerned that some of these seamen were active Communists who were circulating propaganda. (The propaganda pamphlets distributed by crewmembers were printed in the Croatian, rather than the Serbian, alphabet because the majority of Yugoslav sailors were Dalmatians and Croats.) Between 1949-1952, the three important Yugoslav trading vessels to stop in U.S. ports were the MV Srbija, the SS Hrvatska, and MK Makedonija, and their seamen, if deemed bona, even if nominal members of the Communist party, were not detained on board but granted shore leave. The INS in different port cities was instructed to maintain "a discreet

[720] *United States ex rel. Dolenz v. Shaughnessy*, No. 289, Docket 22758, 206 F.2d 392 (Second Circuit, 1953). The court also ruled that "Whether a diplomatic inquiry should be addressed to a foreign government [as to persecution of the alien if deported] is a purely discretionary matter, and…the contention that the Attorney General acted arbitrarily in not making such an inquiry of Yugoslavia merits no discussion."

surveillance" over their activities and "develop a confidential local Yugoslav informant" who could provide insight into their propaganda efforts.[721] Dolenz was an ideal informant because he had inside information about Yugoslav Communist Party activity among seamen; when interviewed by the INS in March 1951, he was "fully cooperative," telling not only his own story, but identifying dedicated Communist Party seamen on the SS Hrvatska, which he deserted. He also told the INS that the crewmen on the ship were told to socialize with people in the United States who had emigrated from Yugoslavia and urge them to return.

Dolenz was from Fiume and, in 1944, at the age of 15, he fought against the Germans in an Italian battalion in Tito's Yugoslav Army (Partisans). In 1945, he was an officer in the battalion and all officers were made Communist Party members. Though he "didn't want to be a member," he was scared to say so and "kept quiet." As he explained it:

> Two months after I was in the [Partisan] army, a friend was killed. I was fifteen years old. We were up in the mountains between Trieste and Fiume and we had to go down near Pola parading…They lined us up in four rows and they shot an officer…who tried to desert…he was killed right in front of all the members of the battalion. This remained with me always. I was always afraid…I was afraid to say anything [the following year, when inducted into the Party] because I remember seeing this man killed. When they said this was a meeting of the Communist Party, I just kept quiet. I was sixteen years old.[722]

In 1946 he resolved to leave Yugoslavia so he began attending the Merchant Marine Academy in Fiume. He stayed in the Party, he said, because he was asked to act as secretary for the Communist Organization of Yugoslav Youth [the SKOJ, in Croatian], because it provided him with a part-time clerical job to support himself and his mother while he was in school, and in order to get good references for jobs after he finished school. The ships, he said, tried to employ

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[721] A.R. Mackey to Karl Zimmerman, Sept. 21, 1950, INS file 56305/978.

[722] Dolenz's invocation of this memory of murder by Yugoslav Partisans and its effect on him (his submerged anti-Communism and desire to leave) resembles that of Italian exiles from Istria as described by Pamela Ballinger in *History in Exile: Memory and Identity at the Borders of the Balkans* (Princeton: Princeton University Press, 2003), especially chapters 5 and 6.

"only members of the Communist Party" and those "who had wives and children and a family in Yugoslavia" to ensure they would not desert. He got his first job on a Yugoslav ship in the fall of 1948. He sailed to South America and Australia, and, on his third voyage, he deserted in the U.S. He told the INS that he left the Hrvatska at the end of 1949, only after he received word from his mother telling him that she and his brother had "escaped" Yugoslavia to Trieste.[723]

In April 1951, Dolenz was called in by the INS for another hearing on the question of his deportability and, despite his full cooperation and testimony just a few weeks before, the hearing officer ordered his deportation on the ground that he had overstayed and that he had been a member of the Communist Party; the Commissioner General of the INS sustained this decision. In July, the Board of immigration dismissed his appeal. In October, after eight months of detention (he had been detained since the February deportation hearing) and still unrepresented by a lawyer, he sued to be released on bond and was denied. Learning that he was about to be deported to Yugoslavia in December 1951, he got the well-known firm Feingold and Fallusy to represent him, and the attorneys sued out a writ of habeas corpus claiming that Dolenz's deportation violated the 8th amendment to the Constitution (in that it imposed upon him cruel and inhuman punishment) and violated the provision of persecution exemption provision of the 1950 Act. Dolenz's lawyers agreed to withdraw the writ when the INS granted Dolenz an administrative stay to present evidence of his claim that he would be subject to physical persecution if deported to Yugoslavia. Dolenz had his "interview" with an INS investigator in February 1952. He told the investigator that he had been beaten by the Communists in 1948 and 1949; he also said that his mother and brother were in a Displaced Persons camp in Trieste and had applied to come to the U.S. as DPs. The investigator sent a record of the interview and a

[723] Interviews with Dolenz done by Investigator Mitchell S. Solomon, March 5 and 16, 1951, INS file 56305/978.

report about it to the Commissioner General, who denied Dolenz a stay of deportation. The appeals to the courts, discussed above, followed.

The attorney for the INS did not accept the idea that Dolenz's desertion was an "escape"—which was referred to in skeptical sneer quotes in the government's court documents. In response to Dolenz's claim that he repudiated Communism when he deserted his ship, the INS attorney wrote, "this act of desertion has been expanded out of all proportion to its true significance."[724] In their brief to the Supreme Court, Dolenz's attorneys stressed, as quoted in the epigraph to this chapter section (page 616), that the ruling in this case would affect many "little men," especially seamen, who voted with their feet, should be considered defectors, and be granted asylum. And, indeed, at the time of this case, Dolenz was not alone; the INS granted not one of the 36 physical persecution claims by seamen from between 1950 and 1953.[725] Most of these cases involved seamen from China, Yugoslavia, and Poland who claimed fear of Communists. But other seamen made 243(h) claims as well. ACPFB attorneys were unable to get the courts to rule on the issue of persecution against FGMU members in Greece or against loyalists by Franco, and were forced to settle for voluntary departure for Spanish and Greek seamen clients. [726]

Attorneys for seamen from China, Yugoslavia and Poland pointed to economic persecution as key issues in their cases. If the courts were somewhat willing to consider economic persecution as a factor, the INS was not, as is clear from the U.S. attorney's dismissive

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[724] Respondent-Appellee's Brief, page 17, in Case file 22530, *US ex rel. Dolenz v. Shaughnessy,* NARA NY.

[725] Memo on persecution claims, February 18, 1953, INS case file 56336/243h.

[726] For instance, the seaman Manuel Cuevas Diaz, a former-Loyalist facing deportation to Spain who the ACPFB helped get to Guatemala in January 1954 (Box 29, ACPFB papers). ACPFB's representation of Greek seamen is discussed later in this chapter.

response, in the *Chen Ping Zee* case, to the seamen's description of his brother's plight during the land reform program in China. (Abraham Lebenkoff, who represented one of the seamen in that case, pointed to another example of economic persecution; during the trial proceedings Lebenkoff read a letter from China that warned a seaman not return because " 'they arrest people everywhere, especially the people just returned from America. Since you have some money, they will make trouble for you and try to get hold of your money, which you worked so hard for.'"[727]) Also, the assumption of economic manipulation and control in Communist countries actually made it more difficult for seamen from there to gain asylum since it was assumed that only communist insiders were able to secure merchant marine positions; Dolenz told the INS as much in his description of employment on Yugoslav vessels. When, in 1952, Congressman Anfuso appealed to the House Subcommittee on Immigration to grant permanent residence to Polish seaman Victor Bienkowski, Congressman Walter, chair of the subcommittee, claimed that "he did not think it possible…to obtain employment on Polish ships without expressing allegiance to the regime" and asked Anfuso to get more details. The Polish American Immigration and Relief Committee wrote Anfuso that Bienkowski claimed he had been discharged from a ship by a communist officer with whom he quarreled, questioned by the police in Poland, and been banned by the security police from further employment on Polish ships; he was only able to get a job on the boat over to the United States because he was friends with its purser. One of the reasons Bienkowski left his ship, the Polish Committee claimed, was because he was afraid of his forbidden employment being discovered. If it was discovered, PAIRC claimed, Bienkowski would be persecuted, presumably suffering at the hands of the security police.[728] Ultimately, in

[727] Stenographer's minutes of proceedings on Dec. 21, 1951 in United States ex. re. Chen Ping Zee, Tong Ah Shu, Chang Chie Mon, Wong Ah Weh, Lee Chou Shek, Wong You Fong v. Edward Shaughnessy, INS New York District Director, Dec. 21, 1951, page 74, RG 21, 70 Civ. 155, Box 568662 (38234), NARA NY
[728] Correspondence between Anfuso and Burant, May 12 and May 19 1952, Bienkowski case, box 3, PAIRC papers.

243(h) cases in the 1950s, attorneys for seamen argued that their goal was always defection, that their desertion *itself* was a political act that would be punished as such by Communist regimes. This is what Dolenz claimed, and this—whether punishment for defection was severe enough to constitute persecution—was what legal cases involving seamen from Yugoslavia revolved around through the 1960s.

The 1952 Immigration and Nationality Act [INA] tried to minimize persecution claims by seamen by putting in place an entirely different set of procedures for the handling of them. The INA became law in June 1952 but its provisions did not go into effect until the end of the year. In the interim, during the hearings before the President's Commission on Immigration and Naturalization, seamen's unions predicted many problems with the law's procedures and advocates complained that the new law would exacerbate existing problems with the INS's handling of seamen's persecution claims. At the hearings, both those who were strongly anti-Communist and those who defended communists attacked the INA. On October 1, 1952, Father Felix Burant of PAIRC complained to the President's Commission that, as regards Polish seamen in deportation proceedings, "according to the new law, the hearing officer has power over the alien's life and death." "Knowing the situation behind the iron curtain," Burant continued, "we should rather accept a definite rule whereby no one except the Communists or fellow travelers be deported to their original countries. All others, however, from these unfortunate lands, should be granted an asylum regardless of the way they have reached our shores. This ought to be one of the guiding principles in our policy instead of leaving a decision of deportation to individual immigration officers. [729] On the same day, a representative of the International Rescue

[729] Statement of Rt. Rev. Msgr. Feliks F. Burant, *Hearings before the President's Commission on Immigration and Naturalization*, Committee on the Judiciary, House of Representatives, 82nd Congress, Second Session, Oct. 1, 1952 267-8.

Committee [IRC] told the President's Commission that the 243(h) provision in the INA "watered down" the language of the provision in the Internal Security Act and would make it more difficult for the courts to intervene to prevent deportations. The IRC representative presented a memo regarding the INS's summary handling of persecution claims, including details in the case of Spanish sailor Francisco Pau Molina.[730]

Two weeks later, a representative of National Union of Marine Cooks and Stewards [MCS] told the President's Commission that several sections of the INA "distinguish between alien seamen and other aliens in a way which we think is wrong." According to these provisions, he said,

> Alien seamen…may be admitted by an immigration officer for a period not to exceed 29 days, but this permission to remain in the United States may be revoked at any time by the immigration officer, and the alien may be imprisoned without a warrant…He may be deported without any hearing, without any of the process that is provided with regard to deportation hearings for other aliens. He may be required to remain aboard the ship or he may be taken to the detention quarters of the Immigration Service by any immigration officer who wants to examine him about his right to be here or about anything material to the implementation of this Act or the conduct of the Service. He may not be paid off in the United States without the permission of the Attorney General. Now there are a great many alien seamen who have been sailing on American vessels for years…and these seamen, under the new provisions of this act, would not be able to be paid off at the end of a voyage and then take another ship out unless the Attorney General approved. This is a departure from the way in which this statute has been operating and which the Immigration Service has been operating in the past. It means virtually the end of shipping for alien seamen who have been shipping on American ships since they began doing that during the war."[731]

An attorney for the MCS (Lloyd McMurray, of the firm of Gladstein, Andersen, & Leonard, who had represented Benoit Van Laeken) prepared a detailed statement on the problems with the provisions of the INA relating to seamen. He focused specifically on the criminal penalty

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[730] Statement of Leo Cherne, member of the Board of Directors, International Rescue Committee; Memorandum on the Administration of the "Claim of Physical Persecution" Clause of Section 23 of the Internal Security Act, ibid. 161 and 164.

[731] Hearings Before the President's Commission on Immigration and Naturalization, October 14, 1952, 993.

imposed on a seaman who overstayed, pointing to the many reasons it was difficult for seamen to quickly find new berths: maritime industry slumps and strikes, restrictions on the percentage of the crews on American flag ships who may be aliens, blacklists because of suspected affiliations with organizations censured by the Attorney General or Coast Guard.

> Alien seamen may have to remain on the beach for many days in excess of the number of days allowed. Under the former law this ordinarily resulted in no penalty to the seaman. Even if he was picked up and ordered deported for overstaying his leave, it was ordinarily possible for seamen to obtain voluntary departure in lieu of deportation. The practice of the Service was to allow him to chose his vessel and sail aboard her. Now, however, in cases in which the Service desires to press for a further penalty, as it may do in the case of alien seamen who do not cooperate with the Immigration Service in its various anti-union endeavors, the seaman may find himself convicted of a crime and fined $500 or imprisoned up to 6 months. After he gets out of jail he then, of course, would be immediately deported and he would be in no position to request any discretionary relief, such as voluntary departure in lieu of deportation.[732]

These seamen would have a hard time ever finding a ship willing to hire if it stopped in US ports since, having once been deported, the seamen would be ineligible to land and would have to be guarded when detained on board. The MCS statement also explained why the requirement of the Attorney General's approval to pay off would end the ability of alien seamen to sail on American vessels: "if seamen are unable to pay off a vessel in an American port, rest and reship…they must envisage a period of continuous sailing without any relief...because it is ordinarily impossible for them to leave the vessel in a foreign port after signing on in an American port [i.e., they sign up for round trips]. If they do pay off in a foreign port, they then cannot sign on an American vessel again."[733]

In general, the MCS and the International Longshoremen's and Warehousemen's Union worried that the increased power given the INS under the INA would hurt union activity because

[732] Statement of National Union of Marine Cooks and Stewards, Hearings before the President's Commission on Immigration and Naturalization, 1004.

[733] Ibid., 1005

of the INS's past record of arresting union members during disputes with employers and intimidating members to testify against others. The unions were particularly worried that the new law would lead to long detentions for extensive questioning of seamen about their political beliefs and affiliations upon arrival. "Any seamen arriving on a vessel may be required to state under oath his purpose in coming to the United States and required to state under oath any information he may possess regarding other seamen." "The pressures that could be brought upon aliens seeking to enter the United States, who would be unable to obtain their release by any other means until they satisfied their captors and jailors may well be imagined." "It requires no stretch of the imagination whatever to envision the use of the new power given the Immigration Service to examine into the conduct of strikes, lockouts, stop-work meetings, and other union actions which interfere with the operations of vessels. Such investigations under the guise of seeking aliens who are deportable because subversive, may extend to any member of a maritime union." There were some indications that this was already happening: in the summer of 1952, according to the FGMU, Greek seamen who refused to ship out on a Liberian vessel with poor working conditions were arrested by the INS in Portland, Oregon. The FGMU also accused the INS of detaining Greek seamen at Ellis Island "to compel them to sign statements denouncing the FGMU and then sign on ships with degrading wage conditions."[734] In 1950 and 1951, INS "detain and deport" orders regarding Chinese crewmen arriving in New York and Philadelphia,

[734] Communication Received from the Federation of Greek Maritime Unions by the Economic and Social Council of the United Nations (Allegations Regarding Infringements of Trade Union Rights), Dec. 17, 1952, INS file 55854/370Z

led to demands by the seamen to be let off British and Norwegian ships upon which they claimed they were maltreated by ship officers.[735]

The statements of the MCS and the ILWU complained that the 1952 act delegated "almost unlimited discretionary power to the Attorney General" to exclude and deport based upon confidential information. "The possibility exists that seamen who are bona fide…may be arbitrarily ruled out, excluded, and subjected to harassment."[736] Also, a statement from Ernest Besig, Director of the American Civil Liberties Union of Northern California, mentioned the case of "Alexander Lobanov, an alien seamen, who was a refugee from the Soviet Union, [and] was detained without a hearing for more than 7 months on the ground that his entry would be prejudicial to the interests of the United States, and even then a hearing was accorded him…only when the case was brought to public notice…there was no question in this case of foregoing a hearing in order to protect the Government's confidential sourced of information since the issue revolved around the alien's admitted former membership in the Komsomols. Nevertheless, the local Immigration Service denied him a hearing…until the case gained considerable

[735] Samuel Auerbach, investigation of SS Saint Bernard, alleged illegal landing of Chinese seamen (in March 1950), INS file 56298/672; Report of the Chief of the Investigation and Deportation Section, Philadelphia, re: Chinese Crewmen from the MV Fernmanor, April 25, 1951, INS file 56204/81.

[736] Hearings before the President's Commission on Immigration and Naturalization,1006-7, 1003. The statement added that the INA "places alien seamen who are allowed to land in the United States as seamen completely in the power of immigration officials. When the history of the Immigration Service is recalled, when the use of perjured stoolpigeon witnesses in the various deportation actions against Harry Bridges is recalled, it is apparent that this grant of power to immigration officers is fraught with grave dangers to all seamen. And if there is any prejudice to a nation which permits such departures from its normal modes of operation and its normal legal procedures, then this is dangerous to the United States as a whole." Moreover, the statement complained, "these new provisions of the immigration law may well form the basis for an attempt to delve into the books and records of unions and similar organizations, particularly of maritime unions, for the purpose of conducting illegal investigations under the guide of enforcement if the immigration law. In the case of a union or other group or organization which may be in the disfavor of the Immigration Service or of the administration generally, the attack that may be expected from this direction have no bearing whatever on he lawfulness of the union's activities or of the deportability of its members" (1005-6).

notoriety…it will be a sore temptation for the Immigration Service to dispose of an exclusion case having political overtones in a summary fashion."[737]

The MCS statement pointed out that one remedial provision of the INA allowed seamen who had never been admitted for permanent residence and had sailed on American vessels for 5 years or more prior to September 23, 1950 (the date of the Internal Security Act) to use such service as satisfying the residence qualification for naturalization. But alien seamen "sailing *now* aboard American vessels" could not count that time towards citizenship if they had not been admitted for permanent residence [italics mine]. "In view of the drastic restrictions of quotas and the fact that seamen particularly are ordinarily in very poor position to obtain quota visas [because they lack family in the United States or education/skill that would give them a preference], this means that for all practical purposes seamen who serve aboard American ships today may not become naturalized citizens." [738] (A statement from the American Committee for the Protection of the Foreign Born noted that "many of our seamen…are of Oriental, Filipino, or West Indian extraction," areas with such small quotas under the INA that they were essentially excluded. The statement added: "For alien seamen the practice and the policy here is to arrest without a warrant and deport as speedily as possible. Literally, the foreign born are treated as persons who have no civil rights whatsoever."[739]) "The overwhelming authority which this act [the INA] gives to the Attorney General and to the Immigration Service is one of the reasons why its provisions regarding alien crewmen must be regarded with alarm," the MCS statement

[737] Statement by Ernest Besig, ibid., 1090.

[738] Ibid., 1007.

[739] Statement in Behalf of the Northern California Committee of the American Committee for the Protection of the Foreign Born, ibid., 1131-2.

concluded.[740] Reinforcing this was a statement to the President's Commission by a representative of the International Longshoremen's and Warehousemen's Union.

> The district director of immigration and naturalization at San Francisco, Mr. Bruce Barber, has stated that it is the policy and practice of the Service to hold seamen, suspected of having overstayed their leave, without bail or bond until their deportation can be effected. This is done even where such detention means months of delay…Recently, in one such case while this policy was being followed, it required the filing of a petition for habeas corpus…to obtain the administrative release of the alien on bond. (In re Nikolas Guikas, No 31342, United States District Court, Northern District of California, Southern Division.) This was a case where the alien had been in the United States for a number of years, married to an American citizen, and where he had been casually asked at this place of business to drop into the immigration office at his convenience to check on the status of his papers.[741]

Finally, an attorney for the National Federation of American Shipping, Inc., told the President's Commission that steamship owners objected to the INA's placement of responsibility for seamen detention and deportation onto their shoulders. This is something that the shipping companies had been complaining about a great deal since the INS had begun denying shore leave and ordering increasing numbers of seamen detained on board after the passage of the Internal Security Act of 1950. (One American shipping company claimed that this practice was not only costly, since it required paying for board and a guard, but also made it impossible for alien seamen who signed on in US ports to ever get off their ships without incurring fines for the companies. The INS suggested dropping the seamen off in foreign ports—regardless of how long they had lived in the United States or their service in the United State merchant marine. When the Association of American Ship Owners complained to the INS that member companies were getting increasing numbers of "detain and deport" orders, the INS suggested that companies either only hire seamen who had been admitted for permanent residence or carefully screen all

[740] Statement of National Union of Marine Cooks and Stewards, ibid., 1003

[741] Statement of International Longshoremen's and Warehousemen's Union, ibid., 996.

potential hires. The latter suggestion the ship owners deemed impractical given that potential hires would conceal past trouble with the INS and that thorough investigations of seamen would hold of ships.[742]). Anticipating similar problems under the new law, the steamships wanted permission to transfer to immigration stations ashore or to other vessels those seamen who the INS ordered detained on board. Steamship owners did not want to foot the cost for deportation of any seamen who the INS gave permission to land temporarily, even if afterwards that permission was reneged or the seamen overstayed. "In general, " the shipping attorney said, "the grounds for the detention and deportation…of alien crewmen have been greatly broadened under the act to include such additional aliens as those who are, or at any time have been, Communists or members of the Communist party. The steamship lines are…greatly concerned as to the extent of their responsibility for the detention and deportation of such aliens."[743] Last, the steamships protested that the INA's requirement that the Attorney General or his delegates approve all discharges of alien crewmen "would seriously interfere with the normal operation of vessels." "Tankers, which are usually in port for very short periods of time, would be particularly effected. Many of these vessels are obliged to employ alien seamen as replacements while engaged in the foreign trade. Upon their return to the United States, the vessels are often immediately transferred to the coastwise trade, and the alien seamen must be promptly discharged as required by law…Immigration officers would not in all probability be available after normal business hours…for the purpose of giving their consent to the discharge of alien crewmen." The

[742] Letter from C. Brooks Morris, Waterman Steamship Company, to Attorney General Tom Clark, May 10, 1951, Assistant INS Commissioner W.F. Kelly to Morris, June 11, 1951; Joseph Bell, Association of American Ship Ownersm to Assistant Commissioner W.F. Kelly, Nov 19, 1953, Kelly to Ball, Dec. 10, 1951, Ball to Kelly, Dec. 20, 1951. All in INS file 55854/370Z.

[743] Statement of Alfred U. Krebs, Counsel for the National Federation of American Shipping Inc., Hearings before the President's Commission on Immigration and Naturalization, 1692.

steamship industry representative added, "similar retaliatory laws and regulations might be imposed by foreign nations on American seamen employed on the vessels of such nations."[744]

When the law went into effect it was the latter problems—shipping delays and opposition from other nations—that garnered the most attention. Large numbers of French sailors refused to submit to questions about their political affiliations and were detained on board; the French Assembly considered "reprisals by French immigration authorities" for this treatment of French sailors. France, Great Britain, Holland, Sweden, Norway and Italy lodged protests with the State Department about the new crew examination requirements.[745] In early 1953, the INS slightly modified its procedures in response to complaints that the law hampered ship turnaround time. Under the new procedure, a seaman screened on a previous arrival only needed to produce valid documents and answer a few questions to satisfy an inspector of his intent to ship out.[746] Injured or sick seamen were given the ability to apply for extensions of shore leave.[747] Still, seamen complained that individual inspectors were opting to grant seamen only short leaves.[748] Although the INS delayed implementing the law's requirement that each seaman have a passport and individual visa (rather than just have shipping papers and be listed on the captain's visa'd crewlist), screenings did include heightened scrutiny of documents and left unable to land some

[744] Ibid., 1690.

[745] "6 Nations Protest Visas for Seamen," *New York Times* Dec. 12, 1952 59; "Alien Law Bars 269 of Liberte's Crew," *New York Times*, Dec. 14, 1952, 1; "Leave Denied 185 on Ile De France," *New York Times*, Jan 20 1953; "M'Carran Act Irks Seafarers Abroad," *New York Times* Feb 3 1953, 49; "Paris Defers Debate on Reprisals Against US Screening of Seamen," *New York Times*, Feb. 4, 1953, 55.

[746] "Speedy Clearance of Alien Seamen Started by Immigration Servce," *New York Times*, March 5, 1953; "Seamen's Screening Eased by Formula," *New York Times*, March 24, 1953, 63

[747] "Alien Shore Leave Eased for Illness," March 14, 1953, *New York Times*, 31.

[748] "M'Carran Act Irks Seafarers Abroad," *New York Times* Feb 3 1953, 49

longtime sailors on American ships who were technically stateless.[749] One Polish sailor who arrived in Norfolk, VA on an American ship in early May 1953 was refused permission to land because he held a passport issued by the Polish Government in Exile.[750] Besides the screenings, roundups of seamen for detention and deportation increased. The INS seemed, in particular, to target for arrest those discharged from the United States army; this happened to Greek and Finnish sailors in New York and to a Polish sailor in California.[751] Though legislation passed to allow for the naturalization of seamen who were Korean War veterans, for others it was almost impossible to get discretionary relief and adjust status under the new law. "The underlying tenor of the legislation is to grant greater power to the Attorney General to exclude and deport in his discretion, while removing discretion to adjust the status of aliens to that of permanent residents…Discretion should be a two way street," Jack Wasserman wrote in the bulletin of the American Immigration and Nationality Lawyers [AILA] Association when the law was first proposed. "We feel that the new law will not give any substantial benefits to persons who should receive discretionary relief," a later editorial in the bulletin put it.

> "If a person without family ties has established long residence in the United States…and has shown by his action that he has adopted the American way of life he should be permitted to remain here… the Board of Immigration Appeals should have the full authority…to review all decisions of the preliminary officers and to grant discretionary relief of adjustment of status, preexamination, voluntary departure and suspension of deportation, without limiting such relief to the stereotypes cases now included in the law…for twelve years prior to the enactment of the new Act the policy was to grant such

[749] "Free Pole Wandering World for a Country," *New York Times,* March 16, 1953, 13; "Vessel is 'Prison' for Alien Seaman: Norwegian Who Came to Boston in 1920 Has Been Banned by Immigration Service," *New York Times*, Oct. 29, 1953, 19

[750] Letter from Burant of PAIRC to W.F. Kelly, INS Assistant Commissioner, May 22, 1953, INS file 56336/243h (regarding Joseph Miziolek, employed on M/T Julian of the Kerr Line.

[751] "Ex GI told to Leave: Greek who Jumped Ship, Served in Korea, Faces Ouster," March 14, 1953, *New York Times*, 17; "New Act Saves Finn from Deportation," *New York Times*, July 3, 1953, 9; Letter from Felix Burant of PAIRC to INS Commissioner Argyle Mackey (in the case of Ronald Semkow), April 21, 1953, Case file on Semkow, Box 4, PAIRC papers.

> relief [suspension of deportation] to persons…whose character and actions we had an opportunity to observe. The Senate Committee Report [on the new law] contains the clear statement that our philosophy has changed from generosity to cruelness in that it says that the relief should only be granted where its denial would be unconscionable...to secure relief alien must satisfy the Attorney General that his deportation would result in 'exception and extremely unusual hardship.' What such a phrase requires is beyond my ken or understanding.[752]

Edward Hong of the Chinese Consolidated Benevolent Association in New York complained that limits on suspension would greatly affect Chinese seamen, though his concern was mostly for Chinatown businesses. The seamen who would be affected, he said, had been sailing "most of their lives. After 10 or 15 years of service at sea, they have chosen a place to stay…the Chinese who were here before have established businesses which require the help of these seamen…There is no replenishment of this supply of help. I think for the benefit of the Chinese citizens who are here, who operate legitimate businesses, these immigrants who are here illegally should be given suspension of deportation to help out the economic need. I think there is at present time a shortage of help, especially in the restaurant business."[753]

But others tried to keep the focus on the seamen's anti-Communism and spotlight the persecution claim problem. A group of attorneys in San Francisco called the planned deportation of anti-Communist Chinese seamen to China "flatly inconsistent with our national policy on prisoners of war in Korea and the President's publicly expressed concern for the safety of persons who fled from Communist tyranny."[754] (The attorneys also noted that, so far, the INS

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[752] "Washington Notes" by Jack Wasserman, *Immigration Bar Bulletin* IV.2 (July-December 1951), 16; From the Editor's Desk, *Immigration Bar Bulletin,* V.3 (July-September 1952), 11 and VI.1 (January-March 1953), 1.

[753] Statement by Edward Hong, *Hearings before the President's Commission on Immigration and Naturalization*, Committee on the Judiciary, House of Representatives, 82nd Congress, Second Session, Oct. 1, 1952, 271

[754] Lawrence Davies, "Attorneys Battle Ouster of Chinese," *New York Times*, Feb. 26, 1954, 2. An *New York Times* editorial took up the seamen's cause. "If we can allow convicted spies and traitors such as the Rosenbergs to use all the machinery of our system of justice to fend off a justifiable execution for some two years—as we did, and should have done—we can certainly afford to use that same system of justice to prevent the execution of persons against

had rejected their clients' applications for refugee status under the Refugee Relief Act). This Korea issue was also brought up on the Supreme Court brief on behalf of Dolenz. "And finally we urge a reason why certiorari should be granted the anomaly which is created between the existing decision in this case (the result of what we believe to be policy making by the Immigration Service) and the policy of the State Department in dealing woth prisoners of war in the Korean struggle."[755] When the Supreme Court didn't take the bait and turned down the request for certiorari in April 1953, Dolenz's attorneys threw down the gauntlet in a final appeal to the lower courts. "In view of the fact that it now appears that the Government in seeking the deportation of the relator [Dolenz] upon confidential information, upon advice of petition [Dolenz's attorney, Arthur Feingold], the relator has caused a cablegram to be addressed to Marshal Joseph Broz Tito, Belgrade, Yugoslavia, which was forwarded on April 14, 1953, and which reads as follows:

> At the age of 15, I fought with your forces, was inducted into the Yugoslavian Communist Party and was employed by your secret police. At the age of 20 I planned my escape from Yugoslavia and sought refuge in the United States. I have publicly renounced your philosophies of government and everything dealing with communism. I have again embraced my religious faith and the Roman Catholic Church has taken me back into its fold. The United States Government has ordered me returned to Yugoslavia. I know that this means my death. To you and to Yugoslavia, I am a traitor and a renegade and no doubt in your opinion deserve this fate. Has the United States, to your knowledge, ever received an assurance from the Yugoslavian Government that I would not be persecuted were I returned to Yugoslavia? I appeal to you to answer this cable by answering the one question which will decide my fate—Will I be persecuted if I am

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whom, in most cases, no complaint more serious than illegal entry or overstaying leave has been charged. We gave some good American lives to defend the righteous principle that declared anti-Communists should not be delivered into the hands of the enemy. We can afford to give some thought and effort so that others are not so delivered through either stupidity or the blind workshop of a few yards of red tape." ("Deportation Outrage," *New York Times,* Feb. 27, 1954, 12)

[755] Petition for Writ of Certiorari, *US ex rel. Nereo Dolenz v. Shaughnessy*, 345 U.S. 928 (1953). File Date: 1/29/1953, page 11, *U.S. Supreme Court Records and Briefs, 1832-1978*. Gale, Cengage Learning. 19 July 2014

returned to Yugoslavia? This is a desperate plea. I beg you to reply to my attorneys JAFEFAL NY. [756]

Feingold's petition concluded: "It is respectfully submitted that if all other reasons for sustaining this writ should fail (which your petitioner cannot believe under the circumstances), that the decision on this application should be held in abeyance until such time as word is received from the Yugoslavian government or until such time elapses as will convince the Court that the Yugoslavian Government refuses to assume a position as to the safety of this relator, thus tacitly admitting that harm will come to him if he be deported to that country."

But no seamen's advocate was more adept—and more successful—at anti-Communist strategy than PAIRC. In April and May of 1953, Burant, President of PAIRC, wrote scathing letters to the Attorney General and the INS. Burant was particularly angry that Polish seamen, "in spite of their strong anti-communist convictions," were being served with applications for Polish passports to facilitate their deportation. "This seems to be especially cruel…for even if they are not deported the data secured by consular representatives of the Communist Warsaw government may serve as a basis for retaliation against the nearest of kin…in Poland."[757] Burant claimed that Polish seamen arrested and detained on the West Coast (Los Angeles, San Francisco, and Seattle) were being coerced and deceived by immigration officials into signing the forms and accepting deportation to Communist Poland. He mentioned the case of seaman Jerzy Charaszkiewicz who deserted from the Polish army in 1946 and stowed away to Venezuela. From there he began working as a seaman on various ships, and then overstayed his leave in New Orleans in 1949. He was arrested and detained by the immigration authorities in 1951 and

[756] Petition, US ex rel. Nereo Dolenz v. Shaughnessy, April 27, 1953, Folder: Civ. 76-180, Box: 568795 (38367), SDNY, NARA NY.

[757] Letter from Burant to Herbert Brownell, Jr., April 21, 1953, INS file 56336/243h.

released on parole in 1952. Then, on Feb. 26, 1953 he was arrested by the immigration authorities in San Francisco and sent by plane on March 5 to New York for deportation to Poland. He was provided with a Polish passport (that he never applied for) on the deportation flight to Copenhagen on March 7. "And only because the Danish authorities, on learning that it was not his free will to go to Poland, refused to admit him, he was spared the misery of deportation to Poland. He was taken to Ellis Island and then, for the first time, was afforded an opportunity to testify pursuant to the provisions of Section 243(h) of the Immigration and Nationality Act of 1952, that his deportation to Poland will subject him to physical persecution.[758] PAIRC helped him with this 243(h) application.[759]

Burant also highlighted the case of Tadeusz Ostrowski, a Polish seaman who was arrested in California. Ostrowksi, born in Warsaw in late 1926, had spent 1944 in a German concentration camp, and, upon return to Poland in 1946, was drafted into the Polish army. The following year he deserted to Sweden and then went to France, where he started working as a mechanic on Panamanian and British ships. He jumped ship in the US in early 1951 and reported to the Philadelphia (where his aunt lived) Immigration Service, which released him on bond. After his arrest by the immigration authorities in Los Angeles in March 1952, he spent 10 months at Terminal Island. Burant claimed Ostrowski was told that if he filled out the passport application, he would be released. Instead, he was flown to Ellis Island for deportation. [760] Once there, with the help of PAIRC, Ostrowski (and a Polish stowaway named Ronald Jendrossy, also threatened

[758] Letter from Burant to W.F. Kelly, (Assistant Commissioner), May 22, 1953, INS file 56336/243h.

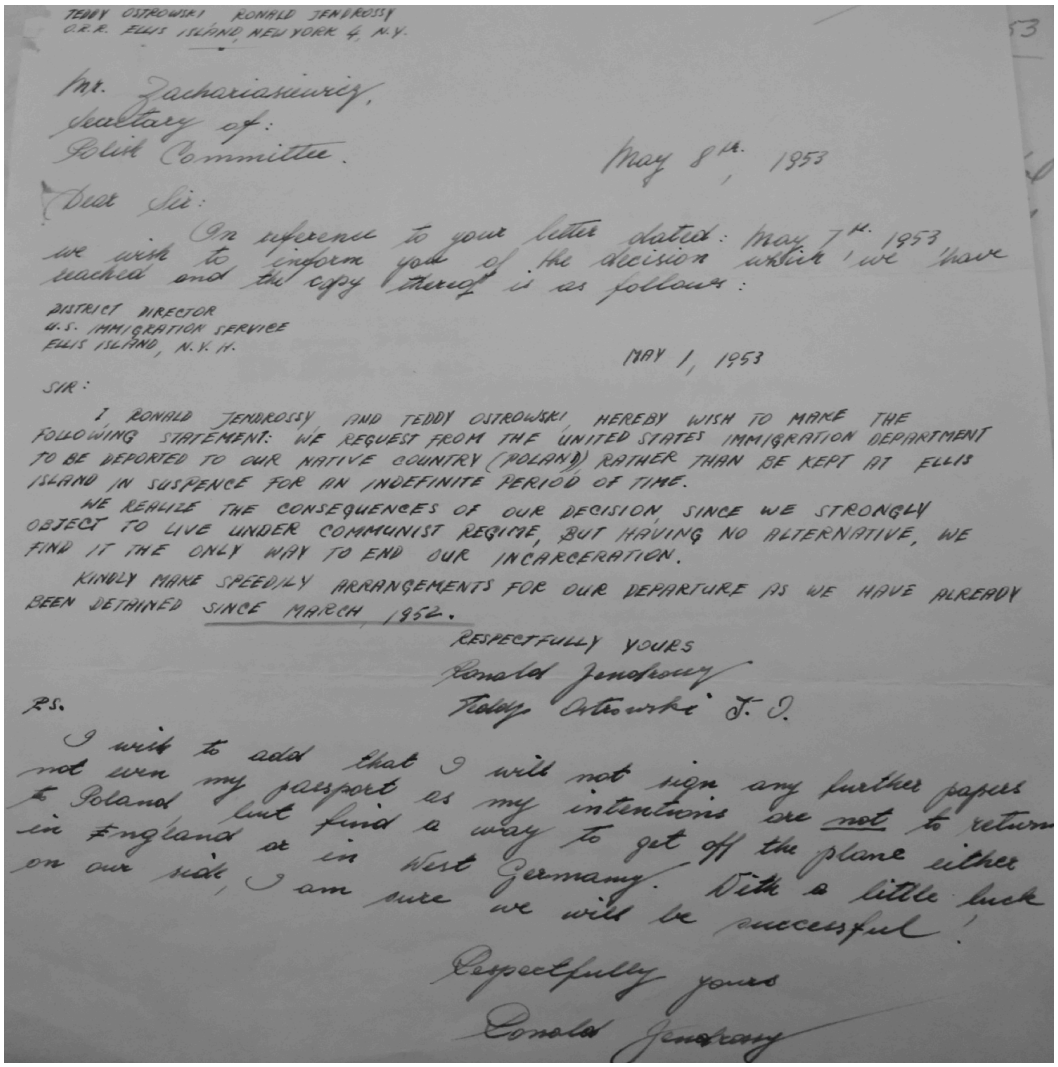
[759] There are materials on his case in Box 12, PAIRC papers.

[760] Letter from Burant to Herbert Brownell, Jr., April 21, 1953, INS file 56336/243h.

with deportation[761]) filed applications for withholding of deportation on the grounds that they would be subject to persecution. But rather than wait for decisions by the INS on their persecution claims, the men, coordinating with PAIRC, upped the ante by writing the letter below. This strategy made good sense since, in early 1953, the INS did not handle 243(h) claims at hearings but through "sworn question-and-answer statements" before an enforcement, officer, whose decision, after being approved by the Commissioner General, could not be appealed. The INS also interpreted the discretionary language of the 243(h) provision as "not require[ing] that the deportation be withheld even if it should be found that the alien would be subject to physical persecution."[762]

[761] After he arrived as a stowaway, Jendrossy joined the US Navy (using someone else's birth certificate); he was arrested by the INS after he was discharged. Papers on Jendrossy case, Box 12, PAIRC papers.

[762] G.S. German to S. A. Diana, Feb. 13, 1953, re: Proceedings That Are Followed When Allegations of Physical Persecution Is Made Under The Law; Commissioner of Immigration to Attorney General, Feb. 19, 1953, both in INS file 56336/243h.



TEDDY OSTROWSKI RONALD JENDROSSY
O.R.R. ELLIS ISLAND NEW YORK 4, N.Y.

Mr. Zachariasiewicz,
Secretary of:
Polish Committee.

May 8th, 1953

Dear Sir:

On reference to your letter dated: May 7th. 1953 we wish to inform you of the decision which we have reached and the copy thereof is as follows:

DISTRICT DIRECTOR
U.S. IMMIGRATION SERVICE
ELLIS ISLAND, N.Y.H.

MAY 1, 1953

SIR:

I RONALD JENDROSSY AND TEDDY OSTROWSKI HEREBY WISH TO MAKE THE FOLLOWING STATEMENT: WE REQUEST FROM THE UNITED STATES IMMIGRATION DEPARTMENT TO BE DEPORTED TO OUR NATIVE COUNTRY (POLAND) RATHER THAN BE KEPT AT ELLIS ISLAND IN SUSPENCE FOR AN INDEFINITE PERIOD OF TIME.

WE REALIZE THE CONSEQUENCES OF OUR DECISION SINCE WE STRONGLY OBJECT TO LIVE UNDER COMMUNIST REGIME, BUT HAVING NO ALTERNATIVE, WE FIND IT THE ONLY WAY TO END OUR INCARCERATION.

KINDLY MAKE SPEEDILY ARRANGEMENTS FOR OUR DEPARTURE AS WE HAVE ALREADY BEEN DETAINED SINCE MARCH, 1952.

RESPECTFULLY YOURS
Ronald Jendrossy
Teddy Ostrowski T. O.

P.S.

I wish to add that I will not sign any further papers not even my passport as my intentions are not to return to Poland but find a way to get off the plane either in England or in West Germany. With a little luck on our part, I am sure we will be successful!

Respectfully yours
Ronald Jendrossy

Figure 4.18, Letter from Tadeusz Ostrowski and Ronald Jendrossy, Case file for Ostrowski, Box 3, PAIRC papers, IHRC.

Assistant Commissioner William Kelly promptly paroled Ostrowksi, Jendrossy, and Charaszkiewicz to PAIRC on condition that they voluntary depart.[763] The latter two men found employment on ships, while Ostrowski married an American citizen and PAIRC helped him apply for preexamination.

Perhaps PAIRC's biggest coup came when Jan Cwiklinski, the captain of the Polish vessel Batory, left that ship in England in June 1953, and then came to the United States six

[763] W.F. Kelly to Burant, May 29, 1953, Box 11, PAIRC papers.

months later to write a book about his experiences. Cwiklinski's book pointed to ways in which the already difficult, mind-reading task of immigration inspectors as to the intent of seamen was further complicated by the "fog of communism." Fearful of informers, Cwiklinski claimed he hid his anticommunism while on board; thus, he "could not see how the American agents could assure themselves" of the intentions of his ship's crew.[764]

Interlude: Peeking through a Crack: Polish Sailor 'Defection' to the U.S. in the Early Cold War

On March 8, 1955, "Silent Mutiny" aired as an episode of CBS's TV series "Danger." Adapted from Cwiklinski's recently published memoir, the program depicted the defection of the captain from the Polish merchant vessel *Batory*. The visuals focused on surveillance on board—with many shots of a political officer's eye looking through the crack of Cwiklinski's cabin door—and the voice over narration emphasized Cwiklinksi's principled defiance, rather than his fear or pragmatism, in abandoning his ship.[765] The emphasis is the same in the memoir; Cwiklinski asserts that he "never deserted" the Batory but "merely refused to continue to serve under the domination and the treachery of those who violated the freedom" of his ship and his homeland.[766] Examples of such treachery include the revelation of a bug in Cwiklinski's stateroom (a microphone hidden in the wall and connected to a recording device) and a ship doctor's attempt to poison him.

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[764] *The Captain Leaves His Ship*: The Story of the Captain of the S.S. Batory by Jan Cwiklinski, as told to Hawthorne Daniel (Garden City, NY: Doubleday & Company, Inc. 1953), 183, 223.

[765] The playscript of the episode, by George Bellak, is available in box 84, folder 14, Steven H. Scheuer Collection of Television Program Scripts, Yale Collection of American Literature, Beinecke Rare Book and Manuscript Library.

[766] Cwiklinski wrote of the seamen who left the Batory: "All of us, I deeply felt, had merely refused to continue to serve under the domination and the treachery of those who have violated the freedom of our land. They, not we, are the deserters, for by imposing their indecent system and their foul will on a once great nation they have deserted all that is good in the land they now control." *The Captain Leaves His Ship*: The Story of the Captain of the S.S. Batory by Jan Cwiklinski, as told to Hawthorne Daniel (Garden City, NY: Doubleday & Company, Inc. 1953) 305.

In the television program, Cwiklinski leaves his ship immediately following the escape of Gerhart Eisler, the German Communist party leader who skipped bail in the U.S. and sailed to Europe on the Batory.[767] In fact, the Eisler incident, as previously mentioned, occurred in 1949 and Cwiklinski did not defect until 1953. This tunneling of time forefronts a simple Cold War migration calculus.[768] The score via the Batory was tied—one Communist had used the ship to go East and one anti-Communist had used the ship to go West. Lost in the focus on these individual escapes are the much more complicated mutinies that occurred in their wake but before the airing of the TV show.

As discussed earlier, when the Batory sailed in and out of New York between 1949 and 1951, it was under strict surveillance by both the FBI and the Immigration and Naturalization Service [INS], which suspected that members of its crew, like Eisler and the political officer who watched Cwiklinski, were communists spies and so denied them shore leave.[769] But many of the sailors, like Cwiklinksi, opted to leave the ship and ask for asylum, deserting en mass. The anti-communist Polish American Immigration and Relief Committee took interest in them, encouraging them to remain in the United States and interceding on their behalf with the immigration service, vouching for them and trying to overcome a general resistance to allowing deserting seamen (who were perceived as illegal immigrants and security risks) to gain residency in the United States. The INS turned down most of the sailors' applications for refugee status

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[767] By the time "Silent Mutiny" aired, Eisler had also famously appeared as a character in the film *I Was a Communist for the FBI*. Eisler's escape proved useful to the anticommunist cause in that it "seemed to show that the Kremlin's American boss was a thoroughly unscrupulous character, who, like all Communists, believed himself above the law. The image of Gerhardt Eisler as a devious, conspiratorial figure was thus complete." [Ellen Schrecker, *Many are the Crimes: McCarthyism in America* (Princeton: Princeton University Press, 1998) 129.] This is precisely the image of Eisler conveyed in *Silent Mutiny*.

[768] For the promotion of this calculus see Susan L. Carruthers, *Cold War Captives: Imprisonment, Escape, and Brainwashing* (Berkeley: University of California Press, 2009).

[769] INS file 55270/510, RG 85, Entry 9, NARA.

despite their WWII experiences in the allied merchant marines, in the Polish underground, or in concentration camps and prisons.[770] As a result, most of the men lived in limbo in New York in the early 1950s, unable to go back to sea as merchant mariners. The INS sent some of them passport applications so that they could return to Poland, a practice decried by Burant in his letters spring 1953 letters to the Attorney General and INS. "It is inconceivable that those brave men be told now to sign application for passports of that same regime from tyranny of which they escaped."[771] Burant's letters framed asylum as a moral issue: the cruelty and inhumanity of deporting anticommunists to Poland. But by this time, deserting Polish sailors were also proving valuable intelligence assets, providing American consular officials in Western European ports with information about the Polish merchant marine, especially its partnership and trade with Communist China.[772]

The "Silent Mutiny" episode did not cover Cwiklinksi's mission to Taiwan, in the summer of 1954, to convince the crews of two Polish ships, the *Praca* and the *Gottwald*, to join him in America. The ships, which were carrying jet fuel and machinery toward China, had been seized in the South China Sea by Chiang Kai-shek's Navy and their Polish crews were detained on Taiwan. U.S. military involvement in the ships' seizure was an open secret[773]; the Polish

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[770] Case files in boxes 3 and 4, Polish American Immigration and Relief Committee Records, Immigration History Research Center and Archives, University of Minnesota.
[771] Burant to Brownell, April 21, 1953, INS file 56336/243h and Box 11, PAIRC papers.

[772] Confidential U.S. State Department Central Files, Poland internal and foreign affairs, 1950-1954, 948.53, reel 14; John Harbon, *Communist Ships and Shipping* (New York: Frederick A Praeger,1963) 59-64; Michael Roe, "Chinese-Polish Co-operation in Liner Shipping," in *Shipping in China*, ed. Tae Woo Lee (Burlington, VT: Ashgate, 2002), 100-115.

[773] The U.S. Navy dispatched air patrols over the strait and routinely passed information on all ship sightings, including Communist-bloc vessels, to Nationalist authorities on Taiwan. As Secretary of State Dulles explained to Eisenhower on June 16, 1954:
"It isn't the kind of thing we would do openly. We're not sending American boat[s] or plane[s] to round up & stop this traffic. We do encourage the Chinese Nationalists who are theoretically in [a] state of civil war. They do it in exercise of their own belligerent rights & prevent their enemy from getting necessary materials…we have [helped

government protested the violation of freedom of the seas at the United Nations while the Americans deflected responsibility, claiming it lay entirely with the Chinese Nationalists. The Polish government tried to put the plight of the crewmen to good propaganda use: the official press reported on mass protest rallies and the Party organized a letter-writing campaign by Polish seamen, worker groups, and school children expressing sympathy for the sailors and demanding their release.[774] The Eisenhower administration was in the uncomfortable position of not being able to respond directly, since it disavowed involvement, but it threw its support behind an indirect propaganda campaign called "Letters from America," which encouraged immigrants to write to their loved ones abroad about their positive experiences in the United States. As Secretary of State John Foster Dulles put it: "Letters translate such abstract ideas as democracy, freedom, and brotherhood into the homely activities of everyday life. In that way they can contribute much to a true understanding of America beyond its shores."[775] Behind the scenes, the State Department scrambled to investigate those seamen on Taiwan who claimed they wanted to emigrate to the United States,[776] some out of conviction and some in response to "pressures" and

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the Nationalists] in case of Polish ships…We make the decision to extent of reconnaissance to enable them to pick these boats up. Our plane flies high, spots these boats, tells Chiang where they are, & he picks them up. He himself has insufficient reconnaissance, & can't have effective blockade…This is just a case of our giving them private help, & tipping off Chinese…They treat our notification to them as being acquiescence, or invitation to action… it's a little illegal, but no one so far has picked it up….We would be in position to make a straightforward statement in event anything turns up… 'we has no part in the action itself, which related to detention of these ships.'" (FRUS, 1952-1954, 14: 472-474).

[774] 948.53/11-1053; 948.53/12-954, Records of the Department of State Relating to the Internal Affairs of Poland, RG 59, NARA.

[775] Material on this campaign can be found on reel 117, Immigration and Refugees Services of American records.

[776] Dulles to American Embassy, Taipei, June 4, 1954, 948.53/5-2454, and July 29, 1954, 948.53/7-2954, Records of the Department of State Relating to the Internal Affairs of Poland, RG 59, NARA.

"arm twisting" by the Chinese nationalists[777]; this sometimes backfired, prompting hunger strikes and increasingly vehement demands for repatriation to Poland by some of the sailors. U.S. officials could not interact directly with the sailors in Taiwan; Cwiklinski was sent there with William Zachariasiewicz of PAIRC to help arrange sponsors and job and housing assurances for seamen so that they could emigrate to the United States.[778] Whether or how Cwiklinski was able to convince reluctant sailors to chose America we cannot know. One seaman who chose not to come to America told a Polish writer in 2001(long after the Cold War ended) that the example of Cwiklinski actually worked the other way: "We knew of the harassment that families of people who stayed abroad were subject to. This is exactly what happened to the family of Captain Jan Cwiklinski who left the Batory: [his family] was forcibly resettled from their residence on the Baltic coast to one near the Carpathian mountains."[779] "The alleged measures used to get the Polish seamen" to come to America was part of the Cold War propaganda war[780]; the Polish press published accounts, given by repatriated sailors, of carrots and sticks: lures of prostitutes, alcohol, and money; poor living conditions and interrogation; lies about the political status quo (i.e., WWIII had broken out), and political blackmail (i.e. planting articles in the press regarding sailors alleged criticism of the Polish regime and collusion with the Nationalists in seizing the ship so that they would fear returning to Poland). What is absolutely certain is that the seamen

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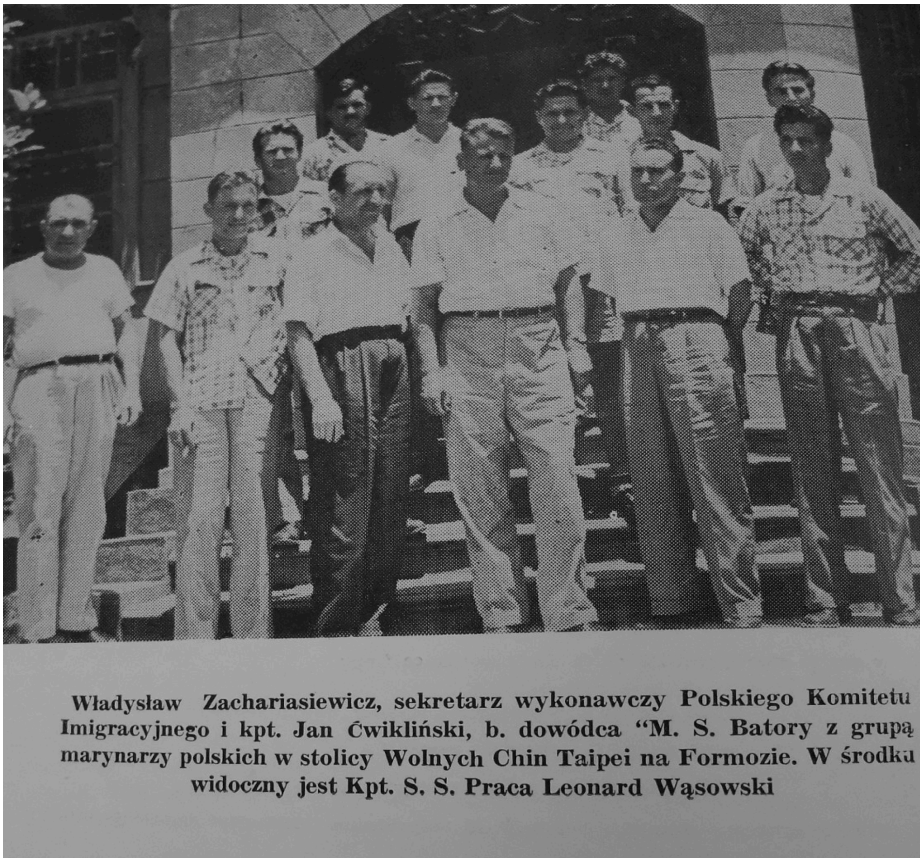
[777] Letter from William Cochran, Jr. (counselor of the Embassy in Taipai) to Walter McConaughy, Office of Chinese Affairs, Feb. 21, 1955, 570.13 Vessels Intercepted By Chinese Nationalists (1955). Records of the Office of Chinese Affairs, 1945-1955 Collection. U.S. National Archives. Archives Unbound. Gale Document Number: SC5001283704

[778] Walter Zachariasiewicz, *Etos niepodległościowy Polonii amerykańskiej* (Warszawa : RYTM, 2005), 187-90

[779] Ryszard Leszczyński, *Ginące frachtowce* (Gdańsk : Fundacja Promocji Przemysłu Okrętowego i Gospodarki Morskiej, 2007) 117.

[780] Press Release No. 2082, Statement by C. D. Jackson to the General Assembly, Dec. 13, 1954, Box 107, Folder: UN Misc.—94th General Assembly, C. D. Jackson Papers, Dwight Eisenhower Library.

were detained for several months without any sense of when they would be released. It is also clear that because some sailors did agree to defect (in the spring of 1954), the Nationalists held out for more defections, prolonging the detention, even as the government controlled press, "for local propaganda purposes," claimed their imminent departure for the United States. [781] When Cwiklinski and Zachariasiewicz returned to the US at the end of July, 1954, they reported to the State Department (via a US Naval attache) that the "prospect of inducing additional defections limited due to poor handling of situation from Chinese from beginning." They recommended sending the seamen who had decided to defect to the United States as soon as possible.[782]



Władysław Zachariasiewicz, sekretarz wykonawczy Polskiego Komitetu Imigracyjnego i kpt. Jan Ćwikliński, b. dowódca "M. S. Batory z grupą marynarzy polskich w stolicy Wolnych Chin Taipei na Formozie. W środku widoczny jest Kpt. S. S. Praca Leonard Wąsowski

Figure 4.19, Picture of Polish seamen on Formosa visited by Zachariasiewicz and Cwiklinski, from the Polish Immigration Committee 1954 Charity Ball pamphlet, Box 23, PAIRC papers, IHRC.

[781] Naval Message from ALUSNA, Taipai to State Department, No. 1175, July 29, 1954, 570.13 Vessels Intercepted By Chinese Nationalists (1954). 1954. Records of the Office of Chinese Affairs, 1945-1955 Collection. U.S. National Archives. Archives Unbound.

[782] Ibid., No. 1176.

That did not happen. 22 Polish sailors from the crews of the *Praca* and *Gottwald* were supposed to leave Taiwan for the United States in late September 1954 but, at the last minute, an INS officer refused to sign the visas already issued them by the State Department because almost all of them had been members of the Communist Party or the affiliated Polish Labor Union of Seamen and therefore could not qualify for security clearance under the 1952 Immigration and Nationality Act. A priest who had been attending to the sailors in Taiwan on behalf of the National Catholic Welfare Conference, which had chartered the plane to bring the sailors to the United States, protested that the immigration laws "should not be invoked" in these cases as "you cannot defect from something to which you never adhered"; he also insisted that the INS handling of the situation "lost the greater percentage of the propaganda value inherent in the defection of these seamen."[783] The State Department was furious. C.D. Jackson, American representative to the United Nations, had his hopes dashed that the sailors would arrive in the US just in time to "take the wind out of the sails" of the Russian delegate's planned speech condemning "Formosan high seas piracy." Jackson wrote Allen Dulles of the CIA that he used connections to prevent leaks to the press, but "agreement to keep quiet is contingent on action on our part."[784] Ambassador Rankin in Taiwan urged that the seamen immediately be given asylum "in the national interest from the point of view of the conduct of foreign affairs." "In support of their claim that memberships in the Communist organizations were involuntary," Rankin noted, the seamen "claim, and it is generally accepted, that free labor, organized or unorganized, does not exist in Poland…the same kind of evidence that has been repeated again and again by

[783] Letter of Rev. F.J. O'Neill to Cardinal Spellman, Sept. 29, 1954 and O'Neill memo to Francis Turner, Oct. 14, 1954, both in 570.13 Vessels Intercepted By Chinese Nationalists (1954). 1954. Records of the Office of Chinese Affairs, 1945-1955 Collection. U.S. National Archives. Archives Unbound. Gale Document Number: SC5001281837.

[784] Letter from C.D. Jackson to Allen Dulles, Box 48, Folder: Dulles, Allen (4), C.D. Jackson Papers.

escapees who have appeared before Congressional committees probing Communist aggression."[785] For his part, Zachariasiewicz believed that party membership was mandatory for ship crews and "only nominal."[786] Allen Dulles pushed Attorney General Herbert Brownell to admit the men into the United States; Brownell granted them temporary parole and they arrived in late October 1954.[787] But their saga continued.

In fact, a few weeks after "Silent Mutiny," Polish officials in the United States (apparently agents associated with the Polish Embassy in Washington) successfully persuaded three Gottwald crewmembers to return to Poland. Alarmed Congressmen called for an investigation. One sailor told an executive session of the Senate Judiciary Committee that the crew was vulnerable to appeals to redefect because they lacked residency status in the U.S. that would allow them to follow their calling as merchant mariners. Another sailor, Ignacy Bak, testified that a Polish official visited his Connecticut apartment and showed him a letter from his wife urging him to return.[788] Bak turned this letter over to the INS, which was engaged in monitoring the sailors as part of an anti-redefection campaign. Here is the translation of the letter (rendered by the INS).[789]

Gdansk, October 31, 1955

Dearest Husband,

Ignas, this letter I am writing with somewhat unusual feeling because I know I will see you soon. Dearest, I know about everything in what circumstances is your health and your feelings. Ignas, you did wrong when you did not tell me about your circumstances. Maybe I

[785] Rankin to Secretary of State, Oct. 5, 1954, 948.53/10-554, RG 59, NARA.

[786] Walter Zachariasiewicz , *Etos niepodległościowy Polonii amerykańskiej* (Warszawa : RYTM, 2005) 189.

[787] Brownell to Hoover, Oct. 19, 1954, 948.55/10-1954, RG 59, NARA.

[788] Executive Session Transcript, May 18, 1956, Subcommittee to Investigate the Administration of the Internal Security Act, Scope of Soviet Activity in the United States—Soviet Redefection Campaign, Box 39, RG 46, NARA.

[789] Enclosed in INS file 56364/80.9, Box 397, RG 85, NARA.

did something unpleasant in my letters. However, I didn't know it was so bad. Dearest, don't think that now I am denying you something. Ignas, I only appeal to your inner self so that you would get enough energy and return immediately. I know that it is a mental sickness and they can cure you here. Over there dearest, there is no help for you. Without my care you will destroy yourself miserably if you don't get enough nerve to return. I on my part cannot help you although everything I can I will do for you. I beg you above all that is holy and that has joined us together let nothing keep us apart any longer and return home. In plain words as your wife I command you to return immediately. I demand that of you. And so you are alone and you are not free and are endangering your health. I have a big sorrow because we lived together and you have lost confidence in me and did not believe me and still don't to this day believe me. That is my one sorrow towards you. Do you think I would be able to write if it caused you or myself any danger. Never. You should have been first and not the last. Utodrin came to see me and at his sight I thought him lucky for returning and he got a furlough. Utodrin came Sunday and complained that you are not here, and you are needed here badly and we are waiting for you every day. Ignas, I am not well myself. I don't need anything but if you can send me penicillin, 'krystelione,' and streptomycin. I would very much like to have some at home. Outside of that we need nothing. We want you, and I will write no more letters. Goodby dearest.

Yours,

Helcia

What is the story behind this letter? Figuring this out seems important because it gets at the heart of the way the Cold War affected the most intimate relationships. This was of course true in 1955. But it was true, as well, for years afterwards.

In Poland enormous media attention was given to seizure of the ships and to the sailors who returned. These returning sailors were feted as heroes to the homeland and gave long interviews to the press about their maltreatment in Taiwan. In 1955-56 thousands of Poles visited an exhibit on a barge traveling on the Vistula River (from southern Poland to the Baltic Coast) that displayed models of the Praca and the Gottwald and featured a guide dressed as a sailor describing the ordeals that the crews of the boats had to undergo in Taiwan.[790] In contrast,

[790] Thank you to Janusz Stygares for sharing his childhood memory of a visit to this exhibit.

though there were some reports about their defection[791], very little was published in the American press about how the seamen who came to the United States fared in Taiwan. The experience was silenced—though it was key to the migration decisions of the sailors and the fates of their families.

The use of letters—particularly those of Polish immigrants—to study international migration has been a staple in historiography since William Thomas and Florian Znaniecki published *The Polish Peasant in Europe and America* almost a century ago. More recently immigration historians have, on the one hand, mined the language and networks revealed in private letters to better understand how intimate and family ties fared during separation; they have also analyzed correspondence between immigrants and agents of the state. A recent collection of essays shows how both forms of letters actually "transgress the neat dichotomization of the public and the private spheres."[792] But how are we to interpret a letter that quite *literally* does this: a very private letter that is made public during a propaganda war over migration? Oral history seems the best way to try to capture what this letter meant, especially if it helps "interrogate the binary east-west conceptualization" of Cold War migration.[793] What emerges is a complicated migration history that belies dichotomies between freedom and coercion, opportunity and hardship. The television program "Silent Mutiny" tried to make audiences feel like they were getting the inside story—full of intrigue and drama –but

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[791] Richard Shepard, "22 Polish Seamen Arrive as Exiles," *New York Times*, Oct. 30, 1954 6; "Poles Retaliated, Skipper Relates: Capt. Wasowksi [of the Praca] Tells How Family Was Evicted After He Escaped Red Yoke," *New York Times,* Dec. 15, 1954 2.

[792] *Letters Across Borders: The Epistolary Practices of International Migrants* ed. Bruce Elliott, David Gerber, and Suzanne Sinke (New York: Palgrave Macmillan, 2006) 16.

[793] Becky Taylor and Martyna Sliwa, "Polish Migration: Moving Beyond the Iron Curtain," *History Workshop Journal,* 71 (2011) 130.

actually provided only a narrow view of the decision to migrate, and one overwhelmed by a geopolitical frame.

That most sailors who came to the United States did not talk about what happened to them is not surprising given that they were being bothered by Polish officials and monitored by the INS. After their arrival, the sailors had to report to the immigration office for an interview every two weeks.[794] Bak told Zachariasiewicz that he did not tell PAIRC about the Polish official's visit to his apartment because he was afraid the organization might suspect he had contacts with the regime. One of the other seamen advised Bak, who was sick for several days after the Polish official's visit, "to keep quiet" about it until questioned by the INS. (Bak was right to heed this advice: in 1949, a Washington meeting between a Soviet agent and a Russian pilot-defector ended, upon the tip of a fellow pilot-defector, with arrest and deportation).[795] Zachariasiewicz attributed Bak's reticence to "working and living conditions in Poland," which he believed "left a mark" on the sailors. Communism in Poland, Zachariasiewicz believed, had made the sailors wary and reticent. "People prefer not to talk about their affairs, sometimes even to their closest circle. There is a certain fear and partly lack of confidence in their attitude…a panicky fright of all kind of investigations."[796] This is how the effect of Communist surveillance is portrayed in "Silent Mutiny." As mentioned, Cwiklinski described the effect in his memoir using the simile of a fog that isolated him and made him wary of his own crew, so that he did not talk with even those he trusted. It did not occur to Zachariasiewicz that, in the case of Bak and

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[794] The Episode of the Russian Seamen, Report of the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security laws to the Committee on the Judiciary, United State Senate, 84tj Congress, 2nd Session, May 24, 1956, 20

[795] The case of Anatoly Barsov is described in Carruthers, 63.

[796] Report on the Polish Seamen from Formosa by W. Zachariasiewicz, Nov. 12, 1955, 5-6, 948.75/1-1256, Records of the Department of State Internal Affairs of Poland 1955-1959, RG 59, NARA.

other Praca and Gottwald crewmembers, this mark might have been left, or certainly been exacerbated, by detention in Taiwan. Zachariasiewicz did say, however, that Bak and the other sailors he spoke to in November 1955, complained distinctly about the fact that their immigration status in the US was up in the air a year after their arrival. "They said that they were informed on their departure from Formosa that they would be given the right of permanent residence and that, following this right, they would be able to continue to serve as seamen. Many of them would like to continue their profession" [underlined in the original].[797] When Cwiklinski, in 1956, became the captain of a tramp steamer named Wolna Polska [Free Poland] chartered by a new Philadelphia firm, he shipped in a crew of Polish seamen who defected in England rather than recruit from among those in the United States.[798]

How did Bak feel about the choice he had made to immigrate to America? He could not return to sea, but, like several other former sailors, secured work as a machinist. The PAIRC and a priest in Connecticut known for his connections with the business community helped former crewmembers of the Praca and the Gottwald get jobs at Atlantic Machine, a company owned by a well-established Polish-American family.[799] The sailors then wanted to begin the process of trying to bring their families to the US. But, in early 1956, they were still without any definite status; a group bill on their behalf introduced by Congressman Alfred Sieminski (D, NJ) was adversely reported by the House Immigration Subcommittee in April 1956 and tabled by the

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[797] Ibid.

[798] "New Jobs Reward Poles for Jumping Red Ships," *Hartford Courant,* Jan. 3, 1956, 1.

[799] *New Britain City Journal*, Feb 3, 2012: Atlantic Machine "provided employment, housing, and transportation for thousands of Polish immigrants. It was, in itself, a microcosmic Polish community with in house Polish-speaking medical staff, housing, and transportation assistance. Atlantic Machine had a personnel recruiter working in conjunction with the Polish Immigration Committee of New York who traveled several times each week to New York City to assist the arriving Polish immigrants in their search of employment, a home, and a future. By the 1960's, Atlantic Machine, as it was commonly known, employed 2,600 predominantly Polish skilled engineers, machinists, toolmakers, and inspectors.

House Committee on the Judiciary. Though PAIRC and Siemeinski believed that the redefection of the three sailors attested to the need to regularize the immigration status of the rest of the Polish seamen who came with them from Taiwan, other Congressmen and the INS believed the redefection proved that seamen defectors like them were unreliable. The INS has, after all, wanted to bar them from admission from Taiwan in the first place because of their communist affiliations.[800] The Praca and Gottwald sailors were not alone in their long-time limbo status. In 1955 and 1956 bills finally passed allowing Polish sailors who deserted the Batory and Sobieski in 1949 to apply for adjustment under the Refugee Relief Act. (As House legislative aid William Besterman, a Polish-American and a PAIRC ally, explained to the New York INS District Director about one such bill, "We have been faced with a situation in the case of Polish seamen who deserted the Batory…who were refugees in fact but not eligible to apply under section 6 of the Refugee Relief Act… not wanting to break our traditional policy of not granting permanent residence outright to people who, after all, were 'deserting seamen,' we resorted to a device under which we confer upon the Attorney General the power to consider [their] applications under section 6, notwithstanding the fact that there was at the time of entry a status acquired which made the applicants ineligible for such relief…We made them eligible to apply…by a legislative fiat."[801]) Still, even after private group bills passed and the INS found the earlier deserters eligible for adjustment, their adjustment under the RRA had to be sent back to

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[800] Harrison Salisbury, "Refugees in US Shun Red Appeals," *NYT*, May 13, 1956, 1; Note from Emanuel Celler to Alfred Sieminski, April 26, 1956, file on HR 3981, Records of the Committee on the Judiciary, House of Representatives, 84th Congress, Box 333, RG 233, NARA.

[801] Letter from Besterman to Shaughnessy, July 1, 1955, in folder about H. J. Res 211, Committee on the Judiciary, 84th Congress, Records of the U.S. House of Representatives, Box 367, RG 233, NARA. For Besterman's close relationship with PAIRC, see Walter Zachariasiewicz, *Etos niepodległościowy Polonii amerykańskiej* (Warszawa : RYTM, 2005), 181-2. There's a May 13, 1954 letter from Burant to Besterman *in Polish* in a folder on HJ Res. 476, Committee on the Judiciary, 83rd Congress, Records of the U.S. House of Representatives, Box 1517, RG 233, NARA.

Congress for approval, which took several months. In fact, the wife of one Sobieski deserter managed to get a passport from the Polish authorities allowing her to go abroad in 1957 but was held up in coming to the United States because unable to qualify for a preference visa since her husband's permanent residency had not yet been approved by Congress.[802] Partly for this reason, and also because the sailors from Formosa nominally had been members of the Communist Party or its affiliates, PAIRC suggested that the bill grant them permanent residency outright, without reference to applications under the RRA.[803] The Polish regime allowed some permanent emigration to the United States for family unification in the late 1950s, though the process of applying for permission from the regime to emigrate was difficult and opaque; families of defectors were denied passports but "'the 'socialist rule of law' remained sufficiently flexible to allow for far reaching changes in policies and arbitrary decision."[804] According to one, almost certainly mythic story, the first relatives of a *Gottwald* sailor to get permission to leave in the late 1950s pled directly with the Polish president. [This same sailor had applied for a visa to the United States in 1947 but was refused exit by the Polish government the following year.]

The man who supposedly wrote that begging letter to the Polish president when he was a boy now lives in Connecticut, in a town that still has a very large Polish American community. When I inquired about the letter, his father's experience, and his immigration to America, he said

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[802] Letter from Zachariasiewicz to Walter Besterman (Legislative Assistant, House of Representatives), Feb. 21, 1957 and reply from Besterman to Zachariasiewicz, Feb. 25, 1957, case file of Pawel Bonk, Box 3, PAIRC papers. In a more dramatic case, a seaman who deserted the Sobieski in Italy made his way to England, from where he shipped out and then deserted in the United States in late 1950. He sought out PAIRC as soon as he arrived and was later released on bond for conditional parole. He remained in that status until he returned to Poland in February 1959. Case of Jan Plaszczak, Box 3, PAIRC papers.

[803] Zachariasiewicz to John Murphy, executive secretary to Congressman Siemanski, Feb. 21, 1955

[804] Dariusz Stola, *Kraj bez wyjscia? Migracje z Polski 1949-1989* [A Country without an Exit? Migrations from Poland, 1949-1989] (Warszawa : Instytut Pamięci Narodowej, Komisja Ścigania Zbrodni przeciwko Narodowi Polskiemu: Instytut Studiów Politycznych PAN, 2010.) 474.

his father did not speak to him about what happened and he did not want to speak to me about his emigration. I had more luck with Helen Bak, or Helcia, the woman who wrote the letter (transcribed above) to her husband Ignacy Bak, although she too said that what happened on Taiwan was taboo and was vague about how and why she able to join her husband in America in 1960.

> What happened to the ship was just like a dream. None of the sailors talked a lot about that… Ignacy made all the papers here and I made my papers in Poland. I went to Warsaw a few times to ask them if they would let me go…to explain to them that I am not an enemy, I just want to go to be with my husband…The policy was dictated by the Russians…When Khrushchev came to power there was some relief…and they put families together. Some kind of relief was done, I don't know, I think Nixon was involved in it too, because there was some kind of [diplomatic] talks and then it was possible for us to go.[805]

This account resonates with a recent description of Cold War era Polish emigration by historian Anna Jaroszynska-Kirchmann: "we in Poland never really knew why things were happening and on what scale, and who 'stood behind' the changes in migration laws and how long they would last. Witnessing or even participating in the different migration streams never meant understanding the patterns (or lack thereof) because both decision making and factual information were a domain of Communist authorities, which shrouded migration in secrecy."[806]

When I showed Helen a copy of the letter to Ignacy, she began to cry. She told me that it was written under duress.

> That's my writing. They came at night. 3 or 4 people. They woke me up, our son was crying at that time. They told me to write a letter. They were standing over me with a weapon. I know I wrote for him to come back. They told me what to write. We were not allowed to talk about this so I'm not sure if the same happened to the others.

[805] Author interview with Helen Gorski Bak, May 25, 2012, New Britain, CT.
[806] Review by Anna D. Jaroszynska-Kirchmann of *Kraj bez wyjscia? Migracje z Polski 1949-1989*, *Polish Review*, 57.2 (2012) 118-19.

There is much in Helen's letter that does seem dictated. Helen's appeal, especially to Ignacy's "inner self," resonates with official Polish press portrayals of Polish Americans at the time. "Deep down, it was argued, they remained loyal to Poland, regardless of the regime." The letter also includes typical criticisms of the isolation and drudgery in the lives of Polish immigrants in America. "These people were often ridiculed for losing their dignity…in an attempt to earn a living in America by taking…jobs incompatible with their education or aspirations… backbreaking work…to the detriment of immigrants' health…On top of that were psychological problems: loneliness, feeling lost, nervous breakdowns, loosening of one's contacts with one's family, severance of marital ties."[807]

But Helen insisted that despite being forced to write this letter, she did not feel trapped in early 1950s Poland.

> At that time in certain ways everybody was in surveillance. When you live with it, you don't think about that. And you more or less felt free. I felt free. I was not scared of anyone. Nobody bothered me ever until my husband left… I didn't have any problem during the Communist time until my husband left. Then, for a year and a half, they watched me and questioned me, they insisted I knew something I was not telling them about my husband...but it let go later on and was ok. But after the ship was taken on Taiwan, my life never was the same.

When asked to elaborate, Helen explained that she had been a registered nurse in Poland, and missed her job terribly when she came to the United States. When Ignacy was in the Polish merchant marine in 1951 and 1952, Helen was also allotted a large portion of his salary. Ignacy had opted to leave the Navy and work for the Polish merchant marine because it provided better pay and was less "political."[808] He liked the job and brought Helen gifts of oranges and

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[807] Joanna Wojdon, "Polish Americans in the Press of the People's Republic of Poland," *Polish American Studies*, 59.2 (Autumn 2002) 32-33, 35, 45.

[808] Precisely, Helen said: "Ignacy was in the Polish navy when we got married [in 1948]; he was a staff sergeant. He was supposed to go to [officer] school and rise higher in the ranks—but he didn't want to because of the politics; he would have had to learn Russian. That had a political overtone. Communists were difficult at the time." A PAIRC

pantyhose from his trips. They had a young son. "We were on our way to a good life in Poland," Helen said. Significantly, although I asked, Helen did not tell me if she or Ignacy was a member of the Communist Party. She wanted to talk about what happened when he did not come home. When Ignacy's ship was captured, she recounted, she was "angry at the Americans" for it. "My son didn't see his father from the time he was seven months to the time he was seven years old." She blamed the time on Taiwan for Ignacy's drinking habits and resented that he sent her so little money during his early years in America. "My husband was not the same man afterwards, he was more cruel and more difficult," Helen said. When Helen arrived in the US, Ignacy had a small, barely furnished apartment and no money saved. She did not know how Ignacy spent his earnings and sometimes he would not come home for days. Her son needed an operation shortly after she arrived in America; if not for this, and for a lack of money, she said she would have considered returning to Poland. When she left for the United States, her nephew, who worked on a submarine in the Polish navy, lost his position, which she felt guilty about. Eventually, by the late 1960s, Ignacy and Helen had saved, bought a home, and established themselves. But more than 50 years after her arrival in the US, Helen choked back tears remembering the loneliness she felt upon arrival. The last thing Helen said to me was:

> The people who made the Cold War… hurt a lot of people…I had to leave everything because they wanted a ship and its cargo, captured the crew like a bunch of animals, and pushed them here and there.

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file on another seaman notes that, in 1949, there was a big political purge in the Naval School in Szczecin involving dismissals and arrests of those that did not take an active part in the political life at the school and had not impressed the political officers with their initiative. (Case file on Roman Semkow, Box 4, PAIRC papers).

Contestation Over Asylum-Seeking Seamen: 1955-1968

It is important to note that about half of the crewmembers of the Praca and the Gottwald were made up of Chinese seamen from the mainland, none of whom were considered potential defectors and all of whom the Chinese Nationalists tried before a court martial.[809] In the United States in 1953-1954, the INS was zealously investigating all tips—no matter how flimsy—and following all leads regarding the presence of Chinese communist seamen on arriving foreign flag ships.[810] The communist Hong Kong Seamen's union had a reputation with the INS not unlike that of the FGMU.[811] In general, investigations into desertion of Greek and Chinese crews tended to combine concerns with smuggling, illegal immigration, and communist subversion. The INS tended to assume, for example, that the Hong Kong agencies that supplied crewmen to various shipping companies were communist dominated or that "the Seaman's Union of Hong Kong could expedite the illegal entry of a seaman into the United States for a fee of $2000, the entry being made by jumping ship at an American port." (The $2000 was presumably partly payment to the recruiter for the job and partly to cover the ship's fee for desertion). When the INS district director in San Francisco received reports of a smuggling "racket" in Hong Kong, he suspected that Chinese organizations in the U.S. were involved and that the deserters were Communist

[809] The US position was that, though Polish sailors needed to be released, the crewmen from the Chinese mainland could "be detained and subjected to Chinese law" (i.e., the law of the Chinese Nationalist government since the United States did not recognize the Chinese communist regime). "Position Paper: Violation of Freedom of Navigation in the Area of the China Seas," Nov. 5, 1954, 570.13 Vessels Intercepted By Chinese Nationalists (1954). 1954. Records of the Office of Chinese Affairs, 1945-1955 Collection. U.S. National Archives. Archives Unbound.

[810] Report of an Investigation, British MV Pontfield—Chinese Detainees--Seamen—Possible Subversive, June 23, 1953, by investigator John Owens, New Orleans, LA, INS file 56325/218; Raymond Atwood to Chief of the New York Investigations Section, Desertions of Chinese from British SS Greystoke Castle, April 16, 1952, 56045/356

[811] An early 1956 memo from the Boston made explicit the connection between the two unions, and the connection between the two unions and desertions of Greek and Chinese seamen. Carl Burrows, Boston District Chief of Investigations to L. W. Williams, Deputy Regional Commissioner, Northeast Regional Office, Burlington, VT, Feb. 8, 1956, INS file 56364/85.4

agents.[812] A Greek "racket," supposedly out of Chios and Piraeus, involved recruiters who sent immigrants over to the United States as seamen (for the price of several months wages) and captains hiring needed experienced officer-class seamen who lacked seamen's papers.[813] The INS believed the latter could certainly be a way of 'protecting' FGMU members, who could not use their real seamen's papers.[814] An official INS statement on the FGMU closely associated fraudulent entry with Communist subversion: "The leaders and members of this union are actively engaged in subversive activities in the United States. They have gone so far as to issue fraudulent Immigration documents, counterfeiting the official stamp of this service and forging the signatures of our officers thereto. This organization is one of the most militant of the Communist organizations attempting to further the Communist conspiracy in the United States."[815] The INS asserted that FGMU members also "claimed illness…to secure additional time ashore" and failed to reship after release from the hospital.[816] The INS believed

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[812] J. Austin Murphy to James P. Greene, November 16, 1956, re: Hong Kong Seamen's Union, 56364/51.6; Bruce Barber to Commissioner General, Sept. 18, 1953, re: Deserters MV Golden Cape, INS file 56345/572; Raymond Farrell to District Directors in New York and San Francisco, September 24, 1953, re: illegal entry of Chinese seamen into the United States, INS file 56345/572; James Greene to Raymond Farrell, Dec. 23, 1953, re: Federal Bureau of Investigation Inquiry re: Seamen Control, re: desertion of 15 Chinese seamen from British tug "Golden Cape" at San Francisco in May 1953, INS file 56045/356. See also, "From Hong Kong, Passports for Sale, An Old Chinese Racket Bothers US," *U.S. News & World Report*, April 20, 1956, 104-5.

[813] Speed Phelps, investigator, to Acting Chief, Investigations Branch, Detroit, Sept. 6, 1956, re: Alleged conspiracy to land Greek seamen in the United States illegally, INS file 56364/85.4

[814] The INS not only had a list of the names of FGMU members but also kept a record of some of their alternative papers, such as Emmanuel Pitharoulis's false Honduran passport (under the name Cristoforo Garcia), INS file 56364/85.4

[815] William King, Acting Assistant Commissioner, Field Inspections and Security, to Joseph Wehler, March 30, 1956, re: Communication of Federation of Greek Maritime Unions, INS file 56364/85.4A. The INS continued to make the connection between desertion and Communism despite an investigation that revealed that a man who was facilitating desertion (by recruiting Greek seamen for jobs as painters in the United States) was a former FGMU member who denounced the organization and served as an informant to the FBI on communist Greek seamen. (Investigation into Peter Halaskas by John McKeon, Aug. 24, 1956 INS file 56364/52.2).

[816] R.O. Douglas, Jr. Supervisory Immigrant Inspector, Newport News, VA to Duncan Barnes, Investigator, Norfolk, Feb. 20, 1956, re: OENO activities, Hampton Roads Area, INS file 56364/85.4

Polychronous Paschalides, an FGMU leader, furnished seamen with false landing permits.[817] When a Greek seaman was arrested who had a fraudulent landing permit, INS officers interrogated him about his connections to the FGMU, which he adamantly denied.[818] Despite Ira Gollobin's submission of huge file of reports about political trials of FGMU members in Athens and the notorious Greek prisons where they were sent, the INS refused to accept Paschalides's 243(h) claim. In fact, when seamen from "non Iron-curtain countries" requested stays of deportation under section 243(h), the INS district director in New York typically did not accord them even a question and answer interview, "since it would appear that the claims are frivolous." In response to this policy, the Assistant Commissioner General noted in early 1954, that "such claims will increase considerably when we start deporting Chinese."[819]

The situation with Chinese seamen was more complicated because, after all, they *were* from a Communist country. When the Commissioner received 243(h) claims from Chinese seamen in 1953, he turned to the State Department for assessments of the possibility of persecution. State gave INS the go ahead to deport seamen to mainland China. "Seamen who have jumped ship in the United States conceivably might be regarded by the Chinese Communist authorities as fugitives who are unsympathetic to the Communist regime…liable to some measure of disciplinary action…But obviously we cannot allow the deportation provision of our immigration law to be set at naught by this circumstance. We should not allow the regrettable state of affairs on the Chinese mainland to be used as a convenient device by the many thousands

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[817] Report of an Investigation on Polychronis Paschalides, Dec. 20, 1955, by investigator John McKeon, INS file 56364/52.2

[818] Affidavit of Vasilios Hadziraklis, Jan. 24, 1956, in the Hadziraklis case file, ACPFB papers.

[819] Memo from Shaughnessy to Commissioner General, February 9, 1954, and from Assistant Commissioner Kelly to Shaughnessy, 56336/243h.

of Chinese who, regardless of the type of administration which is in power in China, would like to obtain permanent domicile in this country outside the provisions of our immigration law…Generally speaking, obscure Chinese without property or standing are not the object of unusual suspicion by the Chinese Communists."[820] The State Department also released a "public information statement" in case deported seamen "resist[ed]" being transferred to the mainland once they arrived in Hong Kong, which would "produce a storm of criticism against the United States for 'forcing anti-communist Chinese into the hands of the Chinese Communists'…Indeed the reputation of the United States as a haven for oppressed people might be at stake." "To counteract unfavorable publicity," the memo suggested emphasizing that "illegal entry into the US…tends to reflect adversely upon the national traits of other aliens seeking legal admission" and that the deportees were given "full and fair hearings" and had "competent legal counsel." [821] But the lawyers for Chinese seamen, especially in the San Francisco area, where none of the INS officers who heard persecution claims were attorneys, did not feel that their clients had received a chance to present all relevant facts relating to the issue of physical persecution or that the INS had proven that they would not be persecuted. To the dismay of the INS, the San Francisco-based newspaper *The Chinese World* hired an attorney to "investigate the legal situation" after receiving a letter from six detained Chinese seamen who asked for help in securing a stay of deportation; the newspaper wanted to be sure that the were not deported without "having the issue of physical persecution determined." Some Chinese groups also asked the consul of the Chinese Nationalist government to "intercede with the Service to see what could be done to prevent the deportation… not with any requests that he use his office to urge that the Nationalist

[820] Walter F. McConaughy, Director for Chinese Affairs, Department of State to INS Commissioner A.R. Mackey, July 3, 1953, INS file 56336/243h.

[821] Policy Information Statement for USIA, June 29, 1954, ibid.

government in Formosa receive deports…[but] because of the opportunity it would afford the Red Chinese to spread adverse propaganda." "Of course," the INS District Director in San Francisco wrote, "they [the Chinese seamen] are unwilling to go to any country. They want to remain in the United States indefinitely."[822] In 1954, Jack Wasserman filed a motion in federal court in Washington D.C. for a declaratory judgment that the deportation orders against several Chinese seamen in California were null and void, since the INS arbitrarily "determined that claims of persecution made by Chinese aliens…shall not be honored," and for a preliminary injunction to restrain their apprehension and deportation. The district court denied the motion, but the Appeals court granted it.[823] The INS was angry about this decision, especially because it legitimized alternatives other than habeas corpus suits for the review of deportation orders. The agency believed that suits for declaratory judgment meant "long calendar delays and opportunities for dilatory action." [824] The INS was even more frustrated because the Nationalist government denied applications for admission of those seamen who claimed they would be physically persecuted on the mainland. "All of them have no relatives or close friends in Taiwan who will be in a position to serve as their guarantor or who will be in a position to find employment for them," the Nationalist Government claimed. "In view of the special position of Taiwan, the Chinese Government has to take special precaution in granting persons of doubtful character or origin to go there. Also the Island is overpopulated and it will be difficult for strangers to find employment or to make a living there."[825]

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[822] Bruce Barber, San Francisco District Director to Commissioner General, July 7 and 10, 1953, INS file 56201/81.

[823] *Lim Fong et al. v. Brownell Jr.,* 215 F2d 683, 94 US App. DC 323, 1954.

[824] INS General Counsel to Assistant Attorney General, Aug. 20, 1954, INS file 56336/243h.

[825] T.L. Tsui, Counselor of the Chinese Embassy, to Frank Partridge, special assistant to the INS Commissioner, Dec. 23, 1954, ibid.

By 1955, the INS was coming under scrutiny from many quarters for the way it handled 243(h) claims. The House Committee on the Judiciary published a "Report on the Administration of the Immigration and Nationality Act" that was particularly critical; Besterman was in charge of the section on 243(h) claims (among others). The report stated:

> There seems to be no set policy covering the exercise of discretionary power vested by the law in the Attorney General, yet delegated by him to lower grade officers of the Immigration and Naturalization Service, who do not appear to be properly educated and trained to judge the difficult and involved elements entering into the cases before them…Apparently well justified claims of fear of persecution in at least three countries now dominated by international communism have been flatly rejected without the presentation of anything even remotely resembling factual rebuttal of the claims made by the deportee.[826]

The countries were likely Poland, Yugoslavia, and China. Another criticism of INS policy came in the form of a court decision. In his ruling in *US ex. rel. Fong Foo v. Edward Shaughnessy*, Judge Jerome Frank of the U.S. Court of Appeals for the Second Circuit wrote "I think we can and should take judicial notice of the notorious and virtually indisputable fact of the ruthless behavior of the Communist government in China so that almost surely a Chinese, known to have allied himself with the Formosa Government, will be tortured and exterminated if found on the mainland of China."

In the face of this criticism, the INS made some changes, but these were short-lived. All 243(h) claims were to be handled by special inquiry officers who were attorneys. To deal with Wasserman's DC court challenges, the INS agreed to provide new administrative hearings on 243h claims. Though some of these hearings led to stays, few were for seamen. Instead, the INS "deferred" decisions on seamen 243h claims, avoiding further litigation and leaving the seamen

[826] Report on the Administration of the Immigration and Nationality Act, Feb. 28, 1955, 69.

in limbo.[827] Behind the scenes, the INS circulated a guide to field officers on how to handle 243(h) claims that included model cases. In the guide, the case involving a Chinese seaman was denied. The Yugoslav model case involved a seaman but one who was a former Chetnik (a Serbian serving under General Mihailovich and primarily fighting Tito's Partisans rather than the occupying Axis during WWII), unlike most of the Yugoslav seamen who filed claims. The INS also asked the State Department for updated general opinions regarding the likelihood of persecution; according to State, in 1955, "Although Yugoslavia is still ruled in dictatorial fashion by its Communist party, there has been a substantial degree of relaxation in the strictness with which the Party and the secret police interfere in the daily lives of the people…it is no longer particularly dangerous for Yugoslavs to have Western associations...ordinary citizens…can return to from Western countries to reside in Yugoslavia without incurring physical persecution."[828] As for China, the State Department asserted that the only people who would be more likely to suffer physical persecution were those "who have been officials of the Government of the Republic of China, who have belonged to the Kuomintang party, or who have actively and openly engaged in anti-communist activities."[829] The INS also asked the State Department and consuls to help them track down seamen whose 243(h) claims had been denied, who had been deported, and suffered no persecution upon return. The Yugoslav they chose was Josip Feretic, a seaman who had unsuccessfully challenged his 243(h) denial in court, was deported to Yugoslavia, and subsequently visited the American consulate in Zagreb "in good condition and spirits" to apply for a visa to return to the United States. He was granted a visa and,

[827] In re: Lee Sung, June 14, 1957, INS file CO243.31P (Via FOIA). Lee Sung was a deserting crewman whose 243h was deferred until "more information" was obtained regarding conditions in China.
[828] Robert Murphy, Deputy Under Secretary of State, to Joseph Swing, INS Commissioner, May 19, 1955, INS file 56336/243h.

[829] William Sebald, Acting Assistant Secretary for Far Eastern Affairs, to Frank Partridge, Assistant Commissioner Enforcement Division INS, May 1, 1956, INS file CO243.31P (Via FOIA).

upon arrival in the United States, was interviewed by the INS. "I was treated all right because I had money, but I do not know how I would be treated if I did not have money," he said. He also testified that nobody threatened to jail him for going to church and that the police, after interrogating him upon arrival, told him to keep his mouth shut. The INS concluded that "freedom of thought" did not exist in Yugoslavia, but that "freedom to work" and "freedom of religion" did, though there is no way of knowing if Feretic would have had a hard time finding employment since he did not try to do so while there.[830] The Chinese seaman they chose was Han We Yan, who was deported to the mainland the from the U.S. in the spring of 1956 and a few weeks later visited the U.S. consulate in Hong Kong to collect a refund for the $500 bond he had posted with the U.S. immigration service in San Francisco. Han We Yan described the initial treatment he received when he was turned over to the Chinese Communist authorities as "polite" though monitored and including a propaganda meeting and several interrogations. After spending a month in his home village in Hainan, where he also received "good" treatment by the Communist Chinese authorities but could not find work as a seaman, he went back to Canton and applied for and was granted an exit permit to Hong Kong in order to obtain the refund on the bond.[831] The INS pointed to these cases as evidence that seamen would no encounter persecution upon return to Yugoslavia or China and that 243(h) claims by seamen were dilatory, "had no basis in fact," and were just attempts to remain in the United States.[832]

This was a partial view. Some Yugoslav and Chinese seamen had already qualified for relief under the DP Act and the RRA, in proceedings handled by the examinations division

[830] American Consulate, Zagreb to Secretary of State, March 8, 1957; Statement by Josip Feretic, April 22, 1957, INS file CO243.35P (via FOIA).

[831] Affidavit of Han We Yuan before to Vice Consul Thomas W. Davis Jr. September 20, 1956, in INS file CO243.31P (via FOIA).

[832] Frank Partridge to Commissioner General, May 7, 1957, re: Physical Persecution, ibid.

(rather than the deportation division) of the INS and through appeals to the Board of Immigration Appeals and the federal courts.[833] Though desertion by Chinese seamen steadily declined from the war years through the late 1950s, INS remained particularly averse to granting 243(h) stays to Chinese seamen.[834] This is true despite the fact that testimony from Chinese seamen 243(h) applicants pointed to hardship. Although Chinese seamen may not have been politically active, their lives—especially their employment—were impacted a great deal by the conflict between the Nationalists and the Communists. Almost all Chinese seamen interviewed by the INS in the mid to late 1950s stressed difficulties finding employment because of the political situation. One deserter told the INS that he had to join the Communist dominated Hong Kong Seaman's Union in order to get a job; seamen on Nationalist owned vessels (and holding passports issued by the Nationalist government) said no seamen were hired on these vessels unless they left the mainland before the Communist takeover.[835] In order get a job in Hong Kong, a seaman needed personal connections (family, clan, or association ties to a crew supplier) and membership in a union, and the situation was tense. "In December 1956," one Chinese seaman explained, "I became a seaman working on British ships. I was in a difficult position because there were opposing unions, both communists and anticommunists, and despite pressures, I resisted joining the anti-

[833] In re: Cheng, Sun Tong, Proceedings Under Section 6 of the Refugee Relief Act, INS file 56336/243; *Ching Lan Foo v. Brownell*, 148 F. Supp. 420, District Court for the District of Columbia, 1957; Deputy Regional Commissioner Burlington to Assistant Commissioner, Examinations Division, In re: Approval Section 6 Refugee Relief Act case in which stay of deportation under Section 243(h) denied, Giuseppe Vidulich (Pola, Yugoslavia), May 9, 1955, INS file 55336/243h; Assistant Commissioner, Examinations Division to Deputy Regional Commissioner, Burlington Vermont, re: Section 6 application for Yugoslav national Milan Matura, March 27, 1956, INS file 55336/481 (2);

[834] In fiscal year 1952, there 193 Chinese desertions; 1953, 186; 1954, 136; 1955, 100; 1956, 130: 1957, 67; 1958, 91; 1959, 96. (S.W. Kung, *Chinese in American Life* (Seattle: University of Washington Press, 1962) 126. Kung compiled these numbers from INS Annual Reports. Kung believed that "It seems almost sure that when crewmen state that their decision to remain her is caused by fear of physical persecution, they are speaking the truth." (163-64)).

[835] Investigation of deserting seamen, Tan Siew Pack and 7 others. Nov. 26, 1956; Investigation of crew of "Atlantic Triumph," April 27, 1956, both in INS file 56364/52.2.

communist union because of the danger to its members from those of the communists' union. On the other hand, both unions had influence with the shipping lines and I found it increasingly difficult to get jobs on the ships."[836] That 243(h) claims were not baseless seems also clear from the fact that many seamen who believed they could return to the mainland safely did so voluntarily. When the INS interviewed these "redefectors," the agency found that most were eager to return to their families on the mainland, agreeing to pay their own way to get there. When those who deserted Nationalist ships were asked if they would go to Formosa if their families were there, they said they would (even with the difficulty of finding work and prosecution for desertion there).[837] Of course there was some strategic use of 243(h), though not necessarily because the seaman had no fear of persecution. For example, seaman Chung Lam Fook, on the advice of fellow seamen in New York, concealed the fact that he held a British passport and then applied for a stay of deportation under 243(h), claiming fear of persecution if deported to the mainland. When interviewed at the American consulate in Hong Kong, he explained that he grew up in a village of the New Territories, Hong Kong on the border with China, that he had gone to school and worked on the Chinese side of the border, that most of both his and his wife's family lived in China, and that his wife had gone back there to farm. Chung Lam Fook claimed he feared that if he returned to the mainland he would be molested and suspected of spying by the Communists for having served in the British Army and been in the United States. He also feared the Communists would force him to engage in farming, which Hakka men did not do. He insisted that his fraud was in concealing his passport in order to delay deportation, but that his fear of persecution was genuine. He also claimed that he "never intended to jump ship," but he was mistreated on the British ship, where working conditions were bad.

[836] Affidavit of Wong Hin Ting, July 31, 1967, in 67 Civ 2933 SDNY *Tin v. Esperdy*, Box 142, RG 21, NARA NY.

[837] Interviews with Quo Heng Miu, Li Yung Chang, and Wo Pa Pao, June 6, 1956, INS file 56364/80.9.1

He hoped to continue working as a seamen. As he still had his British seamen's identity card, the consulate in Hong Kong advised the INS to be on the lookout if he trued to enter the United States as a seaman. [838]

It is clear that the handling of 243(h) claims filed by seamen was influenced by the INS's overall policies towards seamen in the mid 1950s, a policy that can only be described as alarmist. While there were always a few district directors who pointed out that desertions were decreasing and that statistics on desertions were not reliable—since a good portion of deserters shipped out again—Commissioner General Swing remained steadfast in his belief that it was a major problem and emphasized, in testimony to Congress, the importance of cracking down on seamen. (This was despite the fact that less than .5% of admitted crewmen deserted each year in the early 1950s, hovering around 3,000 per year[839]). Swing busied himself looking into the crewmen sections of the immigration law and gathering statistics about desertion in 1956 and 1957. The INS urged U.S. Attorneys to "vigorously" criminally prosecute seamen for overstaying, regardless of whether they were granted voluntary departure or pre-examination; the INS believed forcing them to pay a fine or go to jail before they left "would act as a deterrent to others so inclined" to desert.[840] Mobile search teams of groups of additional immigration

[838] Report from F.J. Noble, immigration officer Hong Kong, January 24, 1958, enclosing sworn statement by Chung Lam Fook, INS file CO243.31P.

[839] James Greene, Chief, General Investigations Branch, Memorandum re: Deserting Alien Crewmen, Jan. 29, 1957, INS file 56364/52.2.

[840] Edward Duggan, Regional Chief of Investigations, to PA Esperdy, Acting Regional Commissioner, Aug. 28, 1956 and Memo from Donald Williams, District Director, Baltimore, re: Stamatios Stavrou –Prosecution for Violation of Section 252c I&N Act, Feb. 1, 1957, ibid.; Section 252c provides a penalty of imprisonment for not more than six months or a fine of not more than $500, or both, for any alien crewmen willfully remaining in the United States longer that the time allowed.

inspectors were established at major seaports to prevent desertions from suspect vessels and to make sure that seamen ordered detained on board were not permitted to land.[841]

Increased enforcement capacity was in some cases justified in the name of national security. Chinese seamen and their associations were targeted by the INS during a 1956-1957 investigation of fraud, allegedly tied to Communist subversion. At the American Consulate in Hong Kong, a Special Consular Services unit visa'd all crew lists and evaluated whether seamen would be eligible for shore leave landing permits. The office recorded fingerprints, photographs, and extensive biographical data on all seamen who applied for landing permits.[842] When several Chinese seamen deserted from the ship Silverbeam in San Francisco in the fall of 1956, reproductions of their identity documents and permits were sent to different districts and to mobile investigation units. The seamen were from Fukien and investigators targeted seamen's clubs frequented by Fukien seamen. "Reliable sources among the Fukienese in San Francisco assisted investigators in apprehending one of the seamen." Investigators were especially interested in the fact that one of the caught deserters was a member of the Communist dominated Hong Kong Seamen's Union; the seaman was "interrogated rigorously."[843] (A year later, a deserting Chinese seaman filed a 243(h) application alleging that he would be persecuted if deported because he had previously worked as an agent at the American consulate in Hong Kong

[841] "These teams are to be made up of officers who are highly skilled in anti-smuggling work and investigative search operations. One team will operate on the West Coast and the other on the East Coast…The establishment of Service mobile search teams is significant. It gives recognition to the presence of an increasing problem with which this Service is being confronted in connection with deserting crewmen…and it indicates that the Service is exploring everyy possible avenue in order to solve such problem." P.A. Esperdy, Acting Regional Commissioner, Richmond, VA to all District Directors, Southeast Region, January 7, 1957, INS file 56364/52.2.

[842] F.J. Noble, office in charge, Hong Kong to Deputy Associate Commissioner, Travel Control, Feb. 23, 1963, INS file CO714P (via FOIA).

[843] Report of an Investigation by William Moore, November 26, 1956, 56364/52.2.

"compiling information on voyages from Hong Kong to Shanghai."[844]) When 7 Chinese seamen deserted from the Hong Kong Breeze in San Francisco, the INS District Director promptly published photographs of the seamen in a local Chinese paper and publicized the help seamen received from the Yook Ying Association. "Associations which were not involved urged upon the Yook Ting Association early disposition of the whole matter." The Association soon turned the seamen over to the INS. Bruce Barber, the district director of the INS in San Francisco, exultingly wrote about the teamwork of the 42 investigators on the case and the deterrent effect on desertion the rapid arrest, criminal prosecution, and deportation of the seamen would have. "For the first time," Barber boasted, "our investigators have completely exposed the influence and participation of a Chinese Association in Chinese crewmen desertions."[845]

With the new enforcement and security policies came limits on the discretionary relief accorded seamen, including not only refugee status under the RRA but also voluntary departure. Several Chinese seamen left for the mainland after their applications for adjustment of status under the Refugee Relief Act were not approved by Congress in 1956.[846] In affirming the rejection of adjustment of status under the Refugee Relief Act to Josip Feretic (mentioned above), the Court of Appeals for the Second Circuit argued that by entering as a seaman when he intended to stay, Feretic "perpetrated a fraud upon the immigration authorities" that "no amount of sympathy for an alien who wishes to disassociate himself from a communistic regime in the country of his birth can furnish justification or excuse for."[847] Around the same time, Lowenstein had a difficult time convincing the INS merely to extend the time allotted to a

[844] L.C. Martindale to Assistant Commissioner, Sept. 11, 1959, re: Cheng Sze Fook, INS file CO243.31P.
[845] Bruce Barber to Paul Posz, May 27, 1959, INS file CO714 (via FOIA).

[846] See cases of Tsai Mei Wong and Goi Ding Tong, INS file 56364/80.9.1

[847] *United States ex rel. Josip Feretic v. Edward Shaughnessy*, 221 F.2d 262 (Second Circuit, 1955).

stateless Yugoslav seaman—who "served two sentences in jail in Yugoslavia for his political convictions"—to voluntarily depart so that he could go pick up a Refugee Relief Act visa in Germany.[848] By 1957, the INS was denying suspension of deportation to Polish and Chinese seamen as a matter of discretion, believing they did not deserve relief even if technically eligible as long-time residents and even though they claimed fear of persecution if deported.[849] In 1958, the INS issued a regulation that seamen were not eligible for "refugee escapee" visas under the 1957 Immigration Act.[850] Then the Fair Share Law of 1960 made seamen statutorily ineligible for adjustment of status. This law provoked immigration reform advocates to protest: "The fact that a person entered as a crewman rather than a visitor does not change the human problems which may arise in his individual case…There are circumstances under which alien crewmen should be permitted to change their status…for example, refugee crewmen who abhor Communist ideology or are unable to return to any but communist dominated countries…[and] alien crewmen who have contracted bona fide marriages in the United States and who have American wives and possibly children."[851] Some married seamen were still able to adjust through pre-examination, but this avenue was closed as well because Commissioner General

[848] Lowenstein to Edward Shaughnessy, August 7, 1956, Re: Ignacio Ravkin, INS file 56336/242.4.

[849] Decision of the Special Inquiry Officer In re: Frank Folta, A-10 107 188, New York District, April 12, 1957, Folta case file, Box 3, PAIRC papers; *Kam Ng v. Pilliod*, 279 F.2d 207 (Seventh Circuit, 1960).

[850] The regulation was 8 CFR (1959 pocket part) § 245.1: "a special non-quota visa shall not be held to be available under section 15 of the Act of September 11, 1957, unless the alien, having been admitted as a non-immigrant visitor or student prior to April 18, 1958 has been allocated such a visa but the Director, Office of Refugee and Migration Affairs, Department of State." When crewmen applied for the visas, the INS relied on this regulation, did not transmit applications to the State Department, and told crewmen they were ineligible.

[851] "Statement on H.R. 9385 with Reference to Alien Crewmen, Box 7, American Immigration & Citizenship Conference Records, Social Welfare History Archives, University of Minnesota.

Swing complained to Congress in 1960 that many deserters were marrying American girls to remain in the United States.[852]

Cutting off all of these modes of adjustment led seamen to file more applications for stays of deportation on persecution grounds just at a time when policies around 243(h) were tightening. In 1958, to the dismay of PAIRC and the American Immigration and Citizenship Conference, the INS decided to review, and possibly revoke, 243(h) stays of deportation because of changed conditions in Poland and Yugoslavia. In one Polish seaman's case being thus reviewed, an appeal from Congressman Francis Walter to Commissioner General Swing emphasized that there were factors (including hospitalization and certified unfitness to work as a seaman upon discharge) that "seems to place him in a category somewhat different from what we usually refer to as 'deserting seamen,'" implying that deserting seamen deserved no sympathetic consideration.[853] The INS decided that Yugoslav seamen were to be handled according to a precedent decision *Matter of Kale;* Rudolph Kale was a Yugoslav seaman who had been sailing in and out of the United States for almost twenty years, at one point had his deportation stayed because of "the need for fishermen in New Jersey," and remained in the U.S. after leaving his ship in Baltimore in 1955. The decision deemed punishment for desertion upon return to Yugoslavia not physical persecution; further: "economic sanctions applied against those not members of the controlling clique in a country whose economic system is completely and rigidly state-controlled is not physical persecution." The Kale decision ended thus:

> In passing, it is proper to note that this application has achieved a purpose common to many of the applications for discretionary relief recently and cynically filed with the Service – it has delayed for over a year a well merited deportation. This abuse of the administrative processes, which have been set up to guarantee the most careful and

[852] "Recent Developments with Regard to Crewmen," *Interpreter Releases*, 39. 18 May 7, 1962, 133.

[853] Francis Walter to General Swing, Feb. 6, 1959, INS file CO243.33 (via FOIA).

> sympathetic consideration of legitimate, well-founded claims on this Government's liberality, is becoming notorious.[854]

When representing several Yugoslav seamen denied relief under the 1957 Immigration Act and under 243(h), Lowenstein pointed to the Kale decision, as well as to many statements by Commissioner General Swing, to show that the INS's general anti-crewmen, desertion-deterrent policies led to unfair handling of seamen persecution claims. Lowenstein asserted that the sole basis of denials of stays of deportation to her clients was "their status as seamen and the policy of the Immigration and Naturalization Service…to force all seamen to remain with their ships by refusing them the statutory relief available to other nonimmigrants who enter the United States."[855] The court rejected Lowenstein's argument that the INS was discriminating against seamen as a class and denying them equal protection under the Fifth Amendment.[856]

In the wake of this defeat, Lowenstein lobbied to get private bills passed on behalf of her clients in the case, hoping that Congress would consider each individual case on its own merit. The seamen had different kinds of claims. Nikolo Grancaric was single and his parents still lived in Yugoslavia. While working on Yugoslav vessels, he was invited to join the Communist Party and refused, as a result losing his seaman's permit. He later lost a longshoreman job in Yugoslavia because of his opposition to Communism. He paid a recruiter to get him a passport and a job on a Swedish boat, which he left in the United States. Another of Lowenstein's clients, seaman Mate Josip Konti, had been shipping in and out of the United States since 1939 and his children were lawful U.S. residents, his son having arrived in the U.S. on a non-quota refugee

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[854] In re: Rudolph Kale, April 23, 1958, INS file CO243.35P (via FOIA).

[855] Affidavit in Support of Plaintiff's Motion For Leave to File An Amended Complaint, June 8, 1959, *Dombrovskis et al. v. Esperdy,* Civ. No. 139-299, file 2690708, RG 21 NARA NY.

[856] *Dombrovskis et. al. v. Esperdy*, 321 F. 2d. 463 (Second Circuit, 1963)

visa. Konti considered his home port to be in New York and submitted affidavits from his pastor and a co-worker to show his integration into the American community.[857]

Chinese seamen were affected by the general crackdown on seamen.[858] But they were also targeted for more intense investigation. In 1963 and 1964, the American consulate in Hong Kong reported that a crew supplier, the Hoi Cheong Company, was responsible for providing crewmen who subsequently deserted en mass in the United States. The Company also had ties to the Hong Kong Seamen's Union and, through this connection, pro-Communist seamen were reputedly getting into the United States.[859] The Consulate also reported that, partly in response to the malevolent work of recruiters, the British authorities in Hong Kong were establishing a central recruiting agency and registry under government auspices that would weed out and refuse documentation to "undesirable crewmen." "There may be an increase in desertions in the US during the ensuing months because of fear on the part of those planning to desert that the establishment of this government sponsored bureau would curtail their chances of a successful desertion," the INS concluded.[860]

But, desertion rates among Chinese seamen in the mid 1960s did not increase very much, certainly not in comparison to the rise in Greek seamen desertions. (The number of Greek deserters were triple that of Chinese).[861] The rise in Greek desertions was attributed to new laws

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[857] See Lowenstein's reports on these seamen in RG 46, Records of the United States Senate, 88th Congress, Committee on the Judiciary, Bill Files (SEN 88A-E12), S.J. Res. 132 (Box 46).

[858] See, especially, *Kam Ng v. Pilliod*, 279 F. 2d 207 (Seventh Circuit, 1960).

[859] J.V. Prendergast, Honk Kong Police, to William Moss, INS officer in charge, US consulate in Hong Kong, Jan. 26, 1964; William Moss to Deputy Associate Commissioner, Travel Control, Jan. 30, 1964; Supplement to Marine Intelligence Summary for January 1964 by Ben Lambert, Acting Assistant District Director, Investigation, all in INS file CO714P, via FOIA.

[860] Deputy Associate Commissioner to Regional Commissioners, October 14 1963, INS file CO714P, via FOIA..

[861] Marine Intelligence Summary for September 1965, ibid.

in Greece, especially the tightening of military draft laws and the increasing severity of desertion penalties (prison, loss of wages, two year suspension of seamen's book) upon return to Greece. Though many Greek seamen were deserting in Canada and making their way into the United States, the INS seemed less enthused about collaboration with the Canadian authorities to catch deserters than in collaborating with the consulate in Hong Kong—much farther away! [862] Greek informants who helped to catch deserters on the West Coast were rewarded with permanent residency.[863] In contrast, when there was a moratorium on deportations to the Far East because of President Kennedy's parole program, the INS made connections with the Netherlands authorities to facilitate deportation of Chinese seamen there.[864] In late 1964, the New York INS office embarked on an investigation of seamen's associations believed to be facilitating desertion. Before the results were in, the INS District Director in New York "didn't doubt" that the associations were culpable; "the clannish behavior of the Chinese and their attitude towards our immigration laws is well known," he wrote.[865] All Chinese crewmen located in New York by the INS over the next few months were "thoroughly interrogated" about any help they received in effecting desertion, finding employment and shelter, and avoiding apprehension and departure. With the moratorium lifted in 1965, the INS began "an accelerated program for the removal of

[862] Marine Intelligence Summary for July and August 1964 by F.W. Wroblewski, ibid.

[863] James Greene to Deputy Associate Commissioner, Travel Control, Sept. 3, 1963, re: immigration visa for Nikolaos Afentakis, ibid.

[864] James Greene to Deputy Associate Commissioner, Travel Control, July 16, 1963, re: Documents Permitting Chinese Crewmen Serving on Dutch Vessels to Return to the Netherlands, ibid.

[865] P.A. Esperdy to Associate Deputy Regional Commissioner, Dec. 15, 1964, re: Chinese Crewmen Deserters, Ibid.

crewmen." "The resumption of deportation of Chinese crewmen followed an orderly pattern by selecting the most recently arrived for 1965 and working back to the years of 1964 and 1963."[866]

In December 1965, Chinese American leaders and representatives of New York Chinese organizations went to Washington DC to complain to INS officials about the practices inspectors were using in the "accelerated deportation" program. The inspectors, according to the delegation, "swooped down on Chinese business establishments, such as restaurants and laundries, and without warrant or probable cause would force all Chinese present, employees and customers alike, to line up against the wall and search them for evidence of identity." This was not happening, they asserted, at "business establishments of other racial groups," like Greek restaurants. Stanley Chin, counsel for the Chinese Consolidated Benevolent Association, noted that INS agents used fraud, pretending to be patrons to enter restaurants and then dashing off into the kitchen. A representative of a Chinese seamen's association argued that deportations to Hong Kong should be slowed since most of the crewmen were refugees from Communism. "He compared them with the Cuban refugees whom we are welcoming and asked why the Chinese should not get the same chance." William Chang, editor of the *Chinese Times,* added that many of the crewmen had served on allied merchant vessels during WWII. Edward Hong, an attorney who recently ran unsuccessfully as a Republican candidate for the New York State Assembly, pointed out that many of the crewmen certainly had been in the United States for many years and should be eligible for suspension of deportation since the 1965 Immigration Act removed the bar against suspension for seamen who arrived before July 1, 1964. Mr. Noto, Associate INS Commissioner for Operations, explained that suspension was discretionary, "depended on how the residence was acquired," and had to be approved by Congress. "The Judiciary Committee,"

[866] P.A. Esperdy to Associate Deputy Regional Commissioner, Burlington, November 4, 1965, Iiid.

Noto said, "had indicated disapproval of cases in which a crewman had succeeded in staving off deportation for years only by resorting to dilatory tactics." Though implying that 243(h) claims were one of these tactics, Mr. Noto pointed to 243(h) applications as the only avenue open to seamen who claimed to be refugees from Communism. Mr. Noto added that the INS investigative tactics were justified because "apprehended crewmen have sworn statements that they had been assisted by various Chinese organizations in obtaining entry and employment ashore and in escaping detection." Although the INS did not interrogate Greek deserters about their employment, Mr. Noto was sure that "Chinese are clannish and cooperate with each other to a greater degree than most other groups, an admirable quality in most ways but one which points to a higher incidence of crewmen illegally employed ashore." (Chinese "clannishness" might have had more to do with the inability of Chinese seamen to get jobs, and Chinese employers to find employees, beyond the ethnic community.) The fact that "desertions were in inverse ratio to deportations" proved to Noto that deportation was the key to solving the desertion problem. That Chinese desertions rose at some points during the moratorium Noto attributed not to the refugee crisis in Hong Kong but to the fact that word of the moratorium encouraged ship jumping. Maurice Roberts, head of the Justice Department's Immigration Unit and later chairman of the Board of Immigration Appeals, wrote up the account of the meeting. "I have reported in such detail," Roberts concluded, "because I feel there is a good possibility that the matter will not end to everybody's satisfaction at this point." [867]

Roberts was right as, over the next two years, Chinese seamen facing deportation repeatedly and unsuccessfully appealed denials of their 243(h) claims in the New York federal

[867] Maurice Roberts to Harold Shapiro, December 14, 1965, "Conference with Representatives of Chinese Community, New York City, Concerning Allegedly Improper Practices of INS in Enforcing Immigration Laws," Box 1 of 4, Maurice Roberts Papers, IHRC.

courts, pointing out that the refugee crisis in Hong Kong was getting worse.[868] In one such case, a seaman named Cheng Kai Fu claimed that he had escaped from the mainland of China in 1957 and that deporting him to Hong Kong would subject him to hardship and deprivation. The court ruled that his status as an exile from the mainland of China in Hong Kong would not distinguish him "from thousands of others, and the physical hardship or economic difficulties he claims he will face will be shared by many others. Those difficulties do not amount to the kind of particularized persecution that justifies a stay of deportation." The court also ruled that:

> Under Section 243(h) of the Act the Attorney General is given discretion to stay deportation in circumstances where the alien "would be subject to persecution on account of race, religion, or political opinion" in the country to which he is being deported. Only where there is a clear probability of persecution to the particular alien is this discretion to be favorably exercised[869]

This standard was long lasting. Long after the passage of the 1980 Refugee Act, *all* applicants (not just seamen) for withholding of deportation had to prove that they were more likely than not to be persecuted.[870]

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[868] Lam Leung Kam, Wong Kam Cheung and Tung Shing Ho, Chim Ping and Ip Fui v. Esperdy, Nos. 67 Civ. 2833, 2820, 2934, SDNY, 274 F. Supp. 485, 1967; *Yui Ting Sang and Hui Mau Cheuk, Chen Kai Fu, v. Esperdy*. Nos. 67 Civ. 3990, 4054, SDNY, 278 F. Supp. 184, 1967.

[869] *Cheng Kai Fu, Yui Ting Sang and Hui Mau Cheuk v. Esperdy*, 386 F.2d 750 (Second Circuit 1967)

[870] *INS v. Stevic* 467 US 407 (1984).

Coda: Changes and Continuities

"It is still very hard for sailors to apply for asylum. Right now, they aren't entitled to a hearing; they go through administrative deportation."[871]

The problem of "dilatory" 243(h) claims by crewmen persisted because of the limited relief available to them. Once on the Board of Immigration Appeals, Roberts was not sympathetic to seamen 243(h) claims based on economic hardship. He was much more interested in giving voluntary departure to seamen who wanted to continue shipping in and out of the United States or to return to his family in the United States. Roberts was concerned about economic hardship—he just did not think that it merited asylum; it needed to be taken care of with other remedies.[872]

The 1969 case *Djordje Kovac v. INS*, mentioned in the introductory chapter of this dissertation, moved crewmen 243(h) cases away from the perspective of the Kale decision. The Kale decision emphasized Yugoslavia's relative openness in its provision of asylum to anti-Communist Hungarians. Kovac was a Yugoslav citizen of Hungarian extraction and was asked by the Yugoslav Secret Police to spy on the Hungarian refugees Yugoslavia had apparently welcomed; when Kovac refused, he could not get work in his occupation. Kovac claimed that he feared not just being punished criminally for violating a politically motivated prohibition against defection from a police state. He also feared that, if returned to Yugoslavia, "they would make it

[871] Attorney Jules Coven to author, March 22 2013 (phone interview).

[872] This analysis is based on Roberts's decisions in:
1)Wong Chuen Wong, A15 999 396, Dec. 19, 1972: "There is not the slightest intimation that the economic hardship respondent fears in HK would be the result if persecution by the authorities there on account of respondent's race, religion or political opinion."
2) Wong Chung Pui, A15970 577, Aug 21, 1969:
Alien crewmen are treated specially under the immigration laws, for they present problems peculiar to their calling…voluntary departure is the only form of discretionary relief administratively available…voluntary departure is the means of causing as little disruption as possible in the family.

impossible for the rest of my life to earn a decent living to support my family." It was precisely to recognize this "substantial economic disadvantage" as persecution, the judge in the Kovac case argued, that Congress had changed the wording of the 243(h) provision in the 1965 Act. One of the things which distinguished this court decision was its attention to the details of Kovac's background and persecution claim. (In *Stanisic,* decided just a few weeks later and discussed in the first section of this chapter, the court refused to analyze this. That Stanisic was a radio operator, claimed he was well known to be an anti-communist among his shipmates and villagers in Yugoslavia, and had aided another seaman to escape was not brought up). The Judge in Kovac cited the BIA's decision in *Matter of Janus and Janek*; in that decision, Maurice Roberts wrote for the Board, "under section 243(h) cases must be decided individually, on all of their facts."[873]

There were other broadenings of asylum for seamen in the early 1970s. The public outcry in the wake of the incident involving Simas Kudirka—the Lithuanian seaman-defector returned to the Soviets—led the State Department not only to issue guidelines regarding asylum applications,[874] but also to try to prevent similar incidents from happening by insuring that the INS gave seamen from Iron Curtain countries a chance to apply for asylum and, more rarely, by actually approving asylum applications of seamen from Poland. To get State approval, it helped if the seamen had the backing of PAIRC. (In the immediate wake of the Kudirka incident, when a Polish seaman who was admitted on a temporary landing permit said he wanted asylum, the INS, on the advice of the State Department, paroled the seaman to PAIRC and extended the

[873] *Djordje Kovac v. INS*, 407 F2d 102, 9th Circuit, 1969; *Matter of Janus and Janek*, Interim Decision 1900, July 25, 1968 (12 I&N Dec. 866 1965-1968).

[874] General Policy for Dealing with Requests for Asylum by Foreign Nationals" - Department of State. January 4, 1972. Public Notice No. 351; Current Laws; Title 8, Code of Federal Regulations 108.2 "Operations Instructions and Interpretations: Aliens within the United States". Issued July 26 1972.

seaman's stay temporarily. Then PAIRC helped the seaman apply for asylum following the State Department's guidelines, which mandated filing an application with the INS, which then asked the State Department for its opinion). [875]

The State Department's concern did not extend to those seamen who requested asylum from non-Communist countries like Greece.[876] But, by the early 1970s, human rights groups began focusing on the plight of left- leaning and Communist activists, including seamen, from Greece. In 1972, Amnesty International called for the release of 336 political prisoners in Greece, one of whom was Nicolas Kaloudis, the FGMU organizer.[877] Kaloudis had been sentenced, in June 1970 by a Special Court Martial in Athens, to life imprisonment at Korydallos in Pireaus for his communist activities. In 1974, a local group of Amnesty International supporters in California adopted FGMU leader Tony Ambatielos, also imprisoned in Greece, as their prisoner of conscience.[878] This represented a real change since thirteen years earlier Tony Ambatielos

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[875] In November 1973, Wladyslaw Jagiello jumped off his Polish fishing vessel in New Jersey and asked for asylum. When the INS asked if they could have New Jersey state police return Jagiello to a Polish shipping vessel, the State Department said no: "there were Kudirka similarities here which we wished to avoid at all costs." State also suggested that the INS call PAIRC "which would take Jagiello off their hands." (Chris Pappas to A. Brainard, Nov. 21, 1973, RG 59, Records Relating to Poland, 1959-1975, Box 4, Folder Pol 30, NARA.)
Just a few weeks earlier, PAIRC had appealed to the State Department on behalf of Antoni Rydzynski. "We believe that his request for asylum is legitimate…and ask you to reconsider your decision and permit him to remain in the United States." Rydzynski, the letter explained, was outspoken in his anti-communism and left his ship in the United States after he was told by a representative of the Party that he would be banned from future sailing. On the official asylum application form that he filled out with the help of PAIRC, Rydzynski wrote, in the box asking for "any other information relative to your case not covered in the above questions,": "I don't want to be another Kudirka." (Rydzynski case file, Box 4, PAIRC papers).

[876] Orson Trueworthy, Acting Director, Office of Refugee and Migration Affairs, to R.W. Ahern, INS District Director, Cleveland, in the case of crewman Georgios Ioannis Krambousanos, April 5, 1973; Raymond Laugel, Director, Office of Refugee and Migration Affairs, to Bertram Bernard, INS District Director, Philadelphia, in the case of crewman Ilias Tsakalis, June 4, 1973 both in RG 59, Records Relating to Greece, 1963-1974, Box 24, Folder Pol 30-1, NARA.

[877] RGII, Series 5, Box 9, Folder: Europe—Greece, 1972, Amnesty International of the USA, Inc., National Office Records, Columbia University Rare Book and Manuscript Library.

[878] Letter from Sarah Foote, National Office of Amnesty International of the USA, to Ms. Paidoussi, June 26, 1974, Norma Spector Papers, Box 1, Folder 14; Manuscripts Division, Department of Rare Books and Special Collections, Princeton University Library.

had been dropped from Amnesty founder Peter Benenson's book *Persecution 1961* in order to give more space to non-leftist political prisoners.[879] By the early 1970s, not only was the ILWU, but also Amnesty and others, were pushing for freedom for Ambatielos and Kaloudis.[880]

But limits on seamen's ability to gain asylum persisted, even after the passage of the 1980 Refugee Act. The fact that seamen were now able to apply for asylum did not change their status as disfavored aliens. By the mid 1980s, the Kudirka incident had faded to distant memory. In 1985, a Ukrainian seaman named Miroslav Medvid said he wanted to request asylum and was summarily returned to his Russian ship, the INS agents in New Orleans ignoring existing procedures for handling asylum requests. As INS Commissioner Alan Nelson explained, the agents in New Orleans were "used to dealing with a lot of routine ship-jumpers" and believed that "there just was no issue of asylum."[881] Four years later, not much had changed. In 1989, INS agents proactively refused admission and detained without parole two Polish seamen they suspected were going to ask for asylum. The INS justified its decision by arguing that the seamen's asylum claims would likely "not prove meritorious" and there was too great a risk that they would abscond.[882] Short stories by Anthony Bukoski about Polish seamen asylum seekers in the late 1980s, one of which provides an epigraph to this chapter, show the effects of the INS's strict policies and low asylum grants. In one story, a seamen who knows how to seek asylum and to frame his desertion as a political act ends up absconding into a Polish American

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[879] Tom Buchanan, " 'The Truth Will Set You Free': The Making of Amnesty International," *Journal of Contemporary History*, 37.4 (October 2002) 586.

[880] "Longshoremen's Representative Applauds Boycott of Greek Shipping," June 28, 1974, folder 35, Norma Spector Papers.

[881] Hearings Before the Subcommittee on Immigration and Refugee Policy, Committee on the Judiciary, 99th Congress, 1st Session, Nov. 5, 1985, 35-36.

[882] *Marczak and Kowalczyk v. Greene* 971 F2d 510 (10th Circuit, 1992).

community.[883] In another story, a more simple seaman doesn't feel safe after giving a statement to officials as to why he left his ship. He returns to his ship before his case comes up for review.[884]

Like previous favorable decisions, *Kovac* did not actually prove helpful to future seamen asylum-seekers. Kovac himself never wanted to be a seaman—he trained as a professional cook—and the Yugoslav police singled him out because of his Hungarian background and prevented his working in his profession. The kind of economic harm ("deliberate imposition of substantial economic disadvantage," in the words of the court) Kovac faced would not apply to most unskilled sailors. If anything, in the wake of the Kovac decision, it became harder for "little men"—as the attorney for Dolenz referred to sailors who were not well known anti-Communists—to gain asylum through desertion. The Kovac economic harm standard has been cited in many cases since the end of the Cold War, but not primarily those involving seamen.[885] In the mid 1990s, Hu Hang Huang, a Chinese seaman who trained at the Guangdong Seaman School, asked for asylum, claiming that, since he participated in the pro-Democracy movement (including the Tiananmen Square uprising), he had been arrested, kept under surveillance, denied job opportunities, and was beaten and forced to work long hours on the PRC ship he deserted. He also claimed that, if forced to return to China, he would be fined, imprisoned at hard labor, and his whole family would suffer. The Ninth Circuit Court of Appeals, the same court that handed down the Kovac decision ten years earlier, upheld the denial of his 243(h) claim, arguing

[883] "If I waited until [the ship] *Pomorze Zachodnie* sailed, then I thought Immigration not so much problem for me…I stay in seaman's hotel before reporting to Immigration office. The workers of the shipyard, the transit workers, and miner have been organizing strike in Poland. To leave ship in America is strike against Communistic government of Poland."("North of the Port,"152)

[884] "Chance of Snow" in *Children of Strangers* (Dallas: Southern Methodist University Press, 1993).

[885] Fatma Marouf and Deborah Anker. "Socioeconomic Rights and Refugee Status: Deepening the Dialogue Between Human Rights and Refugee Law," 103 *American Journal of International Law* 784 (2009).

that the persecution he suffered in the context of his employment—particularly discrimination and mistreatment—did not amount to substantial persecution. The court also claimed that Hu Hang Huang did not provide evidence that his mistreatment on the ship was on account of his political beliefs. "The treatment he received at work," the court wrote, "appears to be the result of grueling work conditions rather than persecution."[886] Here, then, the court affirmed the separation between the economic and the political, a separation advocates for seamen asylum seekers had been fighting against since the 1930s.

[886] *Hu Hang Huang v. INS,* No. 97-70311 (Ninth Circuit, 1998).

Chapter 5: Foreign Students and the "Right" of Non-Return

"We are living at the end of an epoch in history – but to cry crisis is not enough. American students must participate in the task of salvaging the live of their colleagues of the world university community, fellow students exiled from their native land because of race or political belief. But salvage is not enough; students must help create a new world structure for society through the universities.[1]

"To me it is ironical that some, such as those from Formosa, who ought to return, are being allowed to stay here, while others from the mainland who want to return are being held here!"[2]

"All of you represent a sacrifice not only on behalf of yourselves but on behalf of your country…You are our guests, and you benefit us—and you are welcome among us."[3]

"Ikeanna and I could not have had the same experience as students overseas; he is an Oxford man, while I was one of those who got the United Negro College Fund scholarship to study in America…I came back to Nsukka [in Eastern Nigeria] right after the [Biafran] war ended in 1970…It was too much…books were in a charred pile in the front garden…my *Mathematical Annals*, used as toilet paper, crusted smears blurring the formulas I had studied…[I] left for America [for a teaching appointment] and did not come back until 1976…I wonder what would have happened if we had won the war…Perhaps we would not be looking overseas for those opportunities…Perhaps nothing would have been different even if we had won."[4]

"Foreign students…should not be permitted to violate the immigration system…Many foreign students are using their status to gain entry and prolong their stay in the United States rather than pursue courses of study…the inequity of this practice could be eliminated or at least discouraged by imposing a mandatory waiting period before allowing foreign students to acquire immigrant status." [5]

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[1] "Crisis," 1934 International Student Service pamphlet, Box 166, Folder: 16, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records, Manuscripts and Archives Division, The New York Public Library.

[2] Congressman Walter Judd, 1955, Box 97, Folder 1, Walter Judd Papers, Hoover Institution Archives.

[3] Remarks by President John F. Kennedy at a reception for foreign students at the White House, May 10, 1961; http://www.jfklibrary.org/Asset-Viewer/Archives/JFKWHA-030-002.aspx (accessed January 10 2015)

[4] "Ghosts" by Chimamanda Ngozi Adiche in *The Thing Around Your Neck* (New York: Knopf, 2009) 63, 67, 68.

[5] *Report to Congress: Better Controls Needed to Prevent Foreign Students from Violating the Conditions of Their Entry And Stay While In the United States* (GAO, 1975).

Introduction

During the twentieth century, students have been the most privileged of temporary migrants and preeminent migrant pawns of foreign policy. If foreign seamen were what one immigration official called a "necessary evil," foreign students were considered a positive good. Government officials and organizations devoted to international education heralded foreign students as cultural ambassadors and spreaders of the American way. They received fellowships, part-time jobs, and extended stays for further study. In exchange, upon completion of their studies, they were supposed to go back to their home countries, bringing acquired skills, connections, and good will with them. To the extent that historians have analyzed problems with this scheme or its unintended consequences, they have focused on those students who took home the wrong message—whether criticisms of American racism or its foreign policies—and promoted opposition to the United States.[6] Less has been written about those students who tried to stay in the United States, and when written about, staying is mostly assumed to be a recent phenomenon connected with the privatization and commercialization of education and the

[6] Paul Kramer, "Is the World Our Campus? International Students and U.S. Global Power in the Long 20th Century," *Diplomatic History,* 33.5 (November 2009), 775-806.
Most recently, Ann Paget has shown how many of the foreign African students tapped for CIA largesse in the late 1950s and early 1960s either defected or lost out to more militant revolutionaries. (*Patriotic Betrayal: The Inside Story of the CIA's Secret Campaign to Enroll American Students in the Crusade Against Communism* (New Haven: Yale University Press, 2015)).
Odd Arne Westad manages to capture the tenor of a generation of returning postcolonial students without reducing their study abroad experience to an ideological script: "The postcolonial countries went through an education revolution in which the rate of secondary school enrollment more than quadrupled…from 1960 to 1990…the poorest countries sent thousands of students to study abroad…But in many cases investment in education seemed not to pay off in terms of economic development, and often highly qualified students returned to low-paid government jobs or to unemployment. While there is no clear direction in terms of the political ideas that this postcolonial generation picked up while abroad—some who trained in Western Europe or the United States returned as Marxists, while quite a few of those who went to the Soviet Union became critical of Soviet Communism—there is a clear connection between radicalization and the return to un-or under-employment at home. Many of the radical regimes of the late 1960s and 1970s, especially in Africa, were fuelled by the visions of disgruntled intellectuals with too much time on their hands." (Westad, *The Global Cold War* (New York: Cambridge University Press, 2007, 93).

ascendency of neoliberal migration policies in the 21st century "knowledge economy."[7] Without discounting the significant impact of these more recent developments, this chapter argues that asylum-seeking students and their advocates have called into question the "dichotomies of temporary versus permanent and legal versus illegal" immigration to the United States for the better part of a century.[8] Beginning in the interwar era, this chapter focuses on asylum-seeking students (pursuing undergraduate and graduate degrees at American colleges and universities), implicitly comparing them to both foreign students who opted to return home and to students who entered from overseas as part of official refugee programs. It also focuses on the arguments and motives of politicians, college educators and administrators, student groups, and lawyers who advocated on behalf of the student-asylees.

Confusion as to how to define foreign students was evident in a respected organization's attempt to tally them more than sixty years ago: "The numbers recorded here do not include students…who have taken out naturalization papers, or are registered as displaced persons…Those students are included, however, who are at present exiles from their own countries, but have not applied for citizenship here, awaiting some turn of events which would make it possible for them to return or else would make it seem wisest to acquire citizenship in this or some other country not their native land."[9] This chapter shows that not all such students in limbo were treated like the "stranded" Chinese, who could receive financial grants from the

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[7] Margaret O'Mara, "The Uses of the Foreign Student," *Social Science History* 36:4 (Winter 2012), 583-615. O'Mara argues that foreign students "went from short-termers to permanent residents" beginning in the 1970s (600). In *Transnational Student-Migrants and the State: The Education-Migration Nexus* (Palgrave MacMillan, 2013), Shanthi Robertson writes that "the connection of the experience of overseas study with longer term migration…was the direct result of…international education and skilled migration policies in… OECD nations from the end of the 1990s onwards"(3).

[8] Ibid.,11.

[9] *The Unofficial Ambassadors* (New York: The Committee on Friendly Relations Among Foreign Students, 1953).

federal government and could regularize their status from within the United States and outside the quota via provisions of the Refugee Relief Act of 1953 and PL 85-316 (1957); the former recognized them as fearful of persecution and the latter as highly skilled and educated "first preference" immigrants.[10] If some of these relatively privileged Chinese students faced challenges in a highly charged Cold War context, challenges were much greater for earlier and later groups of refuge-seeking students. In the 1930s, students whose education had been disrupted by political events in Europe sought refuge in the United States at a time of economic crisis and student radicalism. Students who arrived in the 1960s and 1970s faced a similar domestic context. The end of this chapter focuses in particular on such students from Nigeria and Iran—countries that were important American allies, that were marked by internal conflict, opposition and repression, and, that, by the Carter era, sent the most students to the United States.[11] Many scholars have pointed out that, especially in our contemporary political economy, foreign students and educated elites have been accorded a "freedom to move" denied to their unskilled countrymen. Less has been written about the right to remain, which has not been accorded to some of the students who most desperately claimed it.

Asylum-seekers have comprised an important segment of student migrants to the United States since the interwar period. Just when the United States passed its most restrictive immigration laws in the 1920s, foreign students came to the United States in increasing

[10] As this chapter shows, the "side door" to America used by stranded Chinese students—and that Madeline Hsu analyzes in *The Good Immigrants: How the Yellow Peril Became the Model Minority* (Princeton: Princeton University Press, 2015)–was not open nearly as wide for student-asylees from other countries.

[11] According to the Institute of International Education's survey of foreign students in the United States in 1978, Iranians and Nigerians were the top sending countries, with 45,340 and 16,220 students respectively. *Open Doors* (1978/79), 15, table 2.8.

numbers[12]; one of the main tasks of the newly founded Institute of International Education [IIE] was to mediate between the immigration service, foreign students, and American schools. The International Student Service [ISS]—an organization devoted to student exchange, with headquarters in Geneva and chapters in many countries—started out as a Christian relief organization for refugee students, particularly Russians. The following decade, American policies regarding visas and work eligibility for foreign students were diametrically opposed to the needs of students fleeing fascism. Given the amount of attention that has been paid to international travel among youth in the interwar era and the intellectual impact of prominent European scholars who immigrated to America in the years leading up to World War II, there has been surprisingly little analysis of the migration to the United States of students fleeing fascist Europe and their galvanizing effect on American students.[13] Student and refugee relief organizations, with the help of foundations like the Carnegie and Rockefeller, devised programs and other routes to help fleeing students come to the United States and pay for their education. In doing so, they articulated a strong defense of academic freedom worldwide and an internationalist ideal of shared world knowledge, but also an exceptionalist vision of America as the refuge for the best and brightest, a vision that dovetailed with the institutionalization of international education as an instrument of national policy by the 1940s.[14] Though appeals by

[12] Before WWI, more students went from America to study abroad than came to the United States. After WWI, the tide reversed.

[13] A great exception, Walter Laqueur's *Generation Exodus: The Fate of Young Jewish Refugees From Nazi Germany* (Hanover, NH: Brandeis University Press/University Press of New England, 2001), is a valuable collective biography of students and their dispersal, but does not dwell on the logistics of student migration or delve deeply into the American context. The same is true of Marc Raeff's *Russia Abroad: A Cultural History of The Russian Emigration, 1919-1939* (New York: Oxford University Press, 1990), which devotes considerable attention to exiles students and academics.

[14] For the history of the Department of State's newly established student programs see Frank Ninkovich, *U.S. Foreign Policy and Cultural Relations, 1938-1950* (Cambridge University Press, 1981).

advocates for foreign students varied, from the 1920s through mid-century most were humanitarian, utilitarian, or both: students needed help and would help make the United States great. After World War II, the federal government was more involved in the selection and funding of student migrants. The Smith-Mundt/U.S. Information and Educational Exchange Act of 1948 authorized exchange programs financed by Congressional appropriation. Still, about half of foreign students paid their own way and schools or private organizations provided more funding to the rest than the government.[15] Private organizations also continued to administer programs for almost all foreign students.

During the Cold War, two priorities contended within foreign student policy: winning allies and attracting talent. Since the State Department believed the student exchange programs existed to give foreign students "greater understanding into our foreign policy objectives and the degree to which these goals coincide with their own national aspirations," or, more bluntly, "as a weapon to combat Communism" in their own countries, it was adamant that students return home.[16] As such, exchange visitor policy was strict: these students, who came to the United States on "J" visas, were not eligible for suspension of deportation so as to remain permanently. But, in part to better compete with the Soviets for the highly skilled, the 1952 Immigration and Nationality Act provided a way for those who entered as students (usually on H visas) to adjust their status to permanent resident and shifted towards quota preferences for those with "high education, technical training, specialized experience" who would be "substantially beneficial to

[15] For statistics on funding sources, "Who Participates in Education Exchange?" *Annals of the American Academy of Political and Social Science*, 424 (March 1976) 6-15.

[16] Comment on S.461, Folder 18, Box 176, Bureau of Educational and Cultural Affairs collection, University of Arkansas Special Collections.

the national economy, cultural interests, or welfare of the United States."[17] Not surprisingly, seeing other foreign students adjusting their status and unable to administratively do so, many exchange students (who made up a small percentage of the overall foreign student population) wrote to Congressmen to request that private bills be introduced on their behalf. So many private bills were introduced on behalf of exchange students who wanted to adjust their status and remain permanently in the United States that President Eisenhower, in a veto of one of these bills, called for legislation to prevent "evasion of the return rule."[18] In 1956 Congress passed Public Law 555 requiring that, upon completion of their courses of study, exchange visitors depart and establish foreign residency for at least two years before applying to live in the United States permanently. Many went to Canada and then applied to return.

Refugee programs made the vying tendencies in American policies towards foreign students more glaring. The National Association of Foreign Student Advisors [NAFSA], established in 1948, helped students navigate immigration matters and, though it supported return in principle, argued in 1951, when Displaced Persons were being resettled in the United States, that those "displaced from their former homes" should not be precluded from entering as students and that "nonimmigrant students who have obtained a specialized education in this country…form one of the best sources from which this country can draw its citizens."[19] In 1956,

[17] For a good general discussion of the shift towards privileging the highly skilled in postwar immigration policy see chapter 4 of Philip Eric Wolgin, "Beyond National Origins: The Development of Modern Immigration Policymaking, 1948-1968" (Ph.D. dissertation, University of California, Berkeley, 2011).

[18] Letter from President Dwight Eisenhower to the Senate (regarding S. 143, for the relief of Kurt Glaser), *Congressional Record*, 101 (June 6, 1955), 7605.

[19] Statement of Celestine Mott (on behalf of NAFSA), March 12, 1951, Hearings on the Revision of Immigration, Naturalization, and Nationality Laws, Subcommittees on the Committee of the Judiciary, House of Representatives, 227, 229. NAFSA continually published updated immigration law manuals for foreign student advisors. The flavor of one of the earlier ones, written by Donald Kerr, foreign student advisor at Cornell, is captured in some of its last lines: "Sometimes foreign students are baffled by and resent the requirements of the Immigration Service. You, yourself, may on occasion blow your top over the provision or lack of provision of the regulations. Nevertheless, you should explain to your students that the United States gives greater freedom to aliens within its boundaries than

the Eisenhower administration helped IIE establish a special program for Hungarian students who came to the United States as part of the official refugee resettlement project. In administering this program, IIE was anxious that high academic standards be maintained and that funds not be diverted from existing foreign student programs. It insisted on the difference between temporary visiting students and permanently resettled students, though the line was blurrier than conceded. All of the programs for foreign students, after all, were geared towards providing educational opportunities to *select* "talented persons."[20] (So they were not akin to programs for veterans that provided federal funding for higher education regardless of "talent.") Moreover, to the Hungarian Reformed Federation of America the students were emissaries, a "chosen generation" that would take the story of their country's struggle to "every center of American cultural life"; though they were refugees, it was the hope of the National Catholic Welfare Conference, that "in the not too distant future" they would return to Hungary "to re-establish freedom." The Hungarian student Association of America insisted that its members were a "connecting link"; "our knowledge will serve the interest of the United States as well as our native land's development."[21]

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any other country." [The FSA and the USA: Pitfalls and Red Tape Affecting Foreign Students, 1952, Folder 1, Box 182, NAFSA Records, University of Arkansas Special Collections (Fayetteville).] In the 1950s, NAFSA focused its attention on the "adjustment" of foreign students to the United States. Adjustment studies, popular among NAFSA members and featured at the organization's conferences, typically included evaluations of personal interactions and political attitudes. They focused on perceptions of America by foreign students and their overall confidence and sense of security. One of the frequently referred to impediments to good adjustment was over-involvement with the home country /fellow nationals and not enough contact with Americans. [Cora DuBois, *Foreign Students and Higher Education in the United States* (Washington, D.C.: Carnegie Endowment for International Peace, 1956); Richard Morris, *The Two Way Mirror: National Status in Foreign Students' Adjustmen*t (Minneapolis: University of Minnesota Press, 1960)].

[20] "Hungarian Refugee Students and United States Colleges and Universities," (New York: Committee on Educational Interchange Policy, 1957) 13

[21] All quotations from *The Hungarian Student* (Association of Hungarian Students in the United States), I.4, Special Congress Issue, June 12-14, 1957.

In 1961—a year that saw increased interest in, and appropriations for, international education through passage of the Mutual Education and Cultural Exchanges Act (for the Fulbright program) and the Foreign Assistance Act (for Agency of International Development programs) – the government tried to reinforce the distinction between exchange student and refugee even as it got murkier. When asked about "an exchange visitor's claim that he is a refugee and cannot return to the country of his origin or last residence for fear of persecution," a Department of State representative told a Congressional investigator that such a claim would not merit a waiver of the foreign residency requirement, though the Department hoped the visitor could gain entry to some other country, and if not, might reconsider granting a waiver.[22] The same year, the Kennedy administration established a scholarship program for "refugee students" from southern Africa (mostly from Angola, Mozambique, South Africa, Rhodesia, and Namibia). Most of the students involved had been politicized by the lack of educational opportunity in their home countries and inspired by the successful independence movements in northern Africa; some were members of national liberation movements and had fled to escape arrest (after the Sharpeville massacre in South Africa, for instance), or military conscription in their countries. The State Department justified the program to Congress as "an attractive alternative to study in Communist countries" that would redirect liberation movement exiles towards training in America to "prepare them to make responsible, constructive contribution to the development of Africa and to provide intelligent and democratic leadership to their people."[23] The students—

[22] Testimony of George Skora (Office of Cultural Exchange), "Immigration Aspects of the International Educational Exchange Program," House Report 721, 87th Congress, First Session, 83.

[23] Statement of G. Mennen Williams, Assistant Secretary of State for African Affairs, African Refugee Problems, Hearing Before the Subcommittee to Investigate Problems Connected with Refugees and Escapees of the Committee on the Judiciary, United States Senate, 89th Congress, First Session, January 1, 1965, 9. See also Evelyn Jones Rich, "United States Government Sponsored Higher Educational Programs for Africans: 1957-1970" (Ph.D. dissertation, Columbia University, 1978).

approximately 450 over the course of the decade—came to the United States on *exchange visitor* visas, though most lacked documents to enable their return. Whether giving the students exchange visas reflected optimism about the imminence of political change in their homelands or restrictionist concerns about their immigration to the United States, the result was that, a few years later, many who had finished their studies were living in the U.S. in fear of deportation or, if allowed to remain in "indefinite voluntary departure status," found it difficult to find work and faced housing discrimination.[24]

By the early 1960s, advocates for foreign students at American universities became more vocal in their focus on student needs and opportunities. As early as 1958, IIE asserted that:

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[24] Interviews with State Department officials administering the program reveal mixed motives. Here is a 1968 account of the program's beginnings by Lucius Battle, who had been head of the State Department's Bureau of Educational and Cultural Affairs. "Ed [Murrow, head of the United States Information Agency] wanted to, as he in his phrase put it, 'Empty Lumumba University' and to give them [the African students] all grants to come here. I said, 'over my dead body.' In the main, they were people who were not well qualified; they were not selected…we already had more African students in this country than we were managing well, and I was not going to bring thousands of others in here with no assurance of being able to finance them on a continuing basis and with no chance that they would fit into our society. Well, everybody disagreed with me. Eugenie Anderson [a diplomat concerned with refugees and development] sent in numerous hot telegrams. Ed Murrow and I and others had real arguments. The President called me about it…I compromised to the extent that I agreed to send over an individual who could analyze their backgrounds, and any of them who met the same criteria that we had set up for fitting into our educational structure here would be permitted to come [on an exchange visa]…But in the main, these people—some of them had no passports; they were out of their own countries illegally; they were in bad grace with their own countries; it would have created political problems in a few instances with the country of origin. Most of them should have gone home. Moreover, the European countries, rightly or wrongly, were absorbing the problem—Germany particularly. And I saw no reason for us to walk in and try to take responsibility for those students when we couldn't possibly have done it well." [Lucius Battle, recorded interview by Larry Hackman, August 27, 1968, page 72, John F. Kennedy Library Oral History Program].
When interviewed a few years later (in 1973), the State Department officers who had gone overseas to administer the program expressed more positive attitudes, albeit self-exonerating. Robert Stevens, who did the initial student interviews, said: "I found much to my disgust that colonialists purposely denied Africans the opportunity to go overseas for educational experiences…The [U.S.] program gave its students the opportunity to get outside their parochial circumstances where they had been controlled, watched, and prohibited from making contact with the world. I am a great advocate for exchange programs…My colleagues and I did not overlook the specific manpower needs of Africa…I developed…a series of summer programs…to help focus on the development needs of Africa…There was no alternative choice on what type of aid to give to southern Africans and what we did was the best at the time." John Blacken, the official who authorized the exchange visas, said: "It was a gamble, definitely not an oversight. Those people who opposed the program argued from the beginning that we should not take the refugees because they could go nowhere afterward. There was and is no way around the J-1 (exchange) visas. The law requires J-1 visas for all recipients of the US government scholarships." [Interviews quoted in Forbes Martin Madzongwe, "The Southern African Student Program 1961-1971: An Analysis of A Program to Train Leaders for Southern Africa" (Ph.D. dissertation, Clark University, 1973), 140, 142, 127].

> A student's decision to seek his fortune abroad involves his future life and happiness, and should in the main be left up to the individual… Valuable objectives are achieved by the foreign student who does not return home…He may follow scholarly and scientific pursuits which will eventually benefit many countries. Examples of the fruitful cross-fertilization of ideas across national boundaries are too numerous to cite. To the extent that exchange programs are dedicated to furthering a world reservoir of knowledge, it is irrelevant whether the exchange student returns to his country of origin. Knowledge knows no nationality."[25]

The same year, the tenth anniversary *NAFSA Newsletter* distinguished between its own and the State Department's commitments in educational exchange. The Department of State "is charged with carrying out a program which is essentially political. Its first loyalty is to the [government] policy…The college advisor, on the other hand, is oriented to an educational program. His first loyalty is to his college, the educational principles it follows, and the students he has been charged with assisting."[26] James Davis, director of the international center at the University of Michigan and president of NAFSA, insisted in his 1961 testimony before Congress that return should not be enforced across the board: "we train some people to the point at which they are very useful to us and relatively useless in an underdeveloped country…They can be frustrated and miserably unhappy if they go home."[27] In 1963, the executive vice president of IIE editorialized about the limits of conceiving of education for foreign students from "underprivileged nations" in terms of "human resource development" in their home countries. "Is it necessary to establish government controls over the choices and movement of students so that something of critical value is lost both to the ideas of education and political democracy?... It is not the particular manpower requirements of Afghanistan or Somalia or any other nation

[25] "The Foreign Student: Exchange or Immigrant?" (New York: Committee on Educational Interchange Policy, 1958) 14- 15.

[26] P. Chalmers, "NAFSA and the Government Agencies," *NAFSA Newsletter*, 9.8 (April 1958), 6, Folder 1, Box 183, NAFSA Records.

[27] Statement of James Davis, *Mutual Educational and Cultural Exchange Act of 1961*, Hearings before the Committee of Foreign Affairs, House of Representatives, 87th Congress, 1st Session, June 6, 1961, 194.

which will be paramount; but it is the need, and indeed the asserted right, of all men everywhere to have access to the light of education."[28] A 1964 report prepared by a committee of university and foundation administrators called for more coordinated planning with foreign governments in the handling of foreign students but cautioned that "such cooperation… should not be allowed to result in denying admission or fellowships to qualified applicants from ethnic, religious, or political minorities of a foreign country." It also blamed the "so-called non-returnee problem" on conditions in home countries that spell "closed opportunity structure[s]" for students.[29] In 1965 the State Department observed, "college and university personnel…are either in tacit or active disagreement with the concept that students should return home."[30]

But this disagreement did not lead to an organized opposition. Educators awkwardly invoked the language of student rights and then insisted that the decision to remain in the United States was a political one beyond the mandate of academic institutions. Worried about impeding "a talented foreigner's *sense of his right* to personal mobility, or to limit his inclination to choose his permanent residence," the American Council on Education opposed pushing foreign students to leave and instead proposed engaging in "academic birth control," limiting admissions to reduce the pool of potential immigrants [italics mine].[31] Like the college administrators and

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[28] Albert G. Sims, "Editorial—Development, Education and Manpower Planning," *Overseas: The Magazine of Educational Exchange,* 2.6 (Feb .1963) 3.

[29] *The Foreign Student: Whom Shall We Welcome?* (Education and World Affairs, New York, 1964).

[30] Recommendations of Subgroup on Stimulating Better Public Understanding of Objectives of Fulbright, A.I.D., and Other Exchange Visitor Programs, Interagency Task Force on Non-Returning Exchange Visitors, April 13, 1965, Folder 13, Box 245, Bureau of Educational and Cultural Affairs Collection, University of Arkansas Special Collections.

[31] "International Migration of Intellectual Talent: The American Academic Community and the Brain Drain," *Bulletin on International Education*, IV.10 (November 17, 1966), 10.
Some administrators and academics took a more forthright and challenging stance, though still not quite asserting a student's right to migrate freely or arguing for open borders when it came to intellectual migrants. David Henry, director of Harvard's international office, asked Congress, **"**Are we to close our gates to foreign scholars who may

advisors, civil liberties organizations did not take up the right to remain issue in the mid-1960s. When complaints regarding the insecure status of African students reached the ACLU, they opted not to take up the problem; "short of a wholesale attack on the federal immigration law, we could not do much from a civil liberties standpoint to improve their chances of remaining in the United States," Lawrence Speiser, director of the ACLU's Washington DC office wrote.[32] Even politicians interested in immigration reform did not push too hard on this issue. In 1968, Senator Edward Kennedy stressed a balanced approach, emphasizing that encouraging the return of foreign students should not entail coercion or deprivation. "Through our governmental and private facilities we must encourage visitors to our shores to return to their homelands and utilize their acquired knowledge in the interest of their country's development. But nothing we do should obviate the *opportunity* of free movement"[Italics in the original].[33]

In the same speech, Kennedy also underscored new tensions in foreign student policy in the late 1960s. "Since the enactment of the Immigration Act of 1965, which abolished the national origin quotas system [that had effectively excluded Asians and Africans]…there has been a growing interest in the brain drain issue within the Congress."[34] Development-oriented policymakers deemed a "brain drain" those students whose studies were paid for by government

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not be in the good graces of the government in power in their own country?...Should we join in limiting freedom of movement…These questions have implications...They concern our concepts of social justice and human rights. In my judgment we cannot afford to jeopardize these larger values in our concern over the migration of talent from less developed to more developed countries." Testimony of Davis Henry, *International Migration of Talent and Skills*, Hearings before the Committee on the Judiciary of the United States Senate, 90th Congress, 1st Session, March 10, 1967, 128.

[32] Speiser to Melvin Wulf, Jan. 5, 1970, Box 843, Folder 6, MC001, American Civil Liberties Union Records, Mudd Library, Princeton.

[33] Foreword to *The Home of the Leaned Man: A Symposium on the Immigrant Scholar in America*, ed. John Kosa (New Haven: College and University Press, 1968) 16-17.

[34] The 1965 law reserved 20 percent of each country's annual quota to skilled and professional immigrants. It also, like the 1952 law, provided avenues for adjustment of the skilled already in the United States.

funds and who did not return to their home countries in Africa, Asia, and Latin America.[35] The brain drain seemed to threaten the credibility of American aid programs and relations with governments in developing countries. Kennedy's solution was providing more aid directed towards "manpower policy and planning" in the developing countries. Worried about foreign relations, he did not push for political reform there. "The basic responsibility for ameliorating the situation lies with the developing countries themselves…the greatest growth and progress will occur under conditions of freedom and in those nations where social justice and individual opportunity are actively pursued by responsible leaders."[36] But, the exchange student/refugees who had come to the United States from southern Africa were disappointed with the United States' general support of the political status quo in their home countries. [37] Though many could not safely return to their home countries, when they considered returning to Africa, they found that independent countries (like Nigeria) preferred to offer jobs to their own American-educated nationals or fill them with American expatriates paid by the Agency for International Development [AID]. The resentment of the students increased when they learned that the

[35] A 1967 study by a House of Representatives subcommittee found that students who remained contributed a great deal to the brain drain from developing countries. "Contrary to a widely held impression that scientific immigration largely comes from countries like Britain and Canada, a high and increasing proportion of the immigration is coming from the less-developed countries, many less-developed countries, indeed, which had been the object of our foreign aid effort…Today, the less developed countries account for mpre than half of the total scientific immigration in the United States…[T]he immigration from less developed countries is different in one important respect from the immigration originating in developed counrties: namely, more than 40 percent of the developing countries' immigration is due to student non-return compared to a mere 4 percent in the case of developed countries." (*Brain Drain of Scientists, Engineers, and Physicians From the Developing Countries into the United States*, Hearings Before a Subcommittee of the Committee on Government Operations, House of Representatives, 90th Congress, second Session, January 23, 1968, 1-2).

[36] Edward Kennedy, Foreword to *The Home of the Leaned Man: A Symposium on the Immigrant Scholar in America*, ed. John Kosa (New Haven: College and University Press, 1968) 16.

[37]By 1968, it was clear that resistance to majority rule in southern Africa had diminished the possibility of immediate independence, and the State Department cut funding for the program. Many of its alumni were stranded in the U.S. On the students' situation in the United States around 1970, see Mary McAnally, "The Plight of Student Exiles in the USA," *Africa Today*, 17. 3 (May-June, 1970)1-6, 8-10; Barnett Baron, "Southern African Student Exiles in the United States," *Journal of Modern African Studies*, 10.1 (May 1972).

organization administering their exchange program had been funded, at least initially, by the CIA. *Ramparts* magazine's famous 1967 expose of CIA funding—not only for the organization that administered the African student program, but also for many international student and education organizations like American Friends of the Middle East and the National Student Association—underscores the alliance of the left-wing American student movement of the 1960s and foreign students who were critical of American foreign policy, like Iranian students studying in the United States who opposed to the American-backed Shah.[38] In New York, Chicago, Washington D.C., San Francisco, and Los Angeles demonstrations against the Vietnam War led to the arrest of foreign students and the initiation of deportation proceedings for visa violations. The State Department could revoke the grant, and thus prompt the deportation, of any sponsored exchange student involved in political activities and protests.[39] It was the crackdown on protesters and the threat of deportation that brought lawyers with various connections and expertise—to civil liberties, to human rights, to immigration—in touch with foreign students. If seamen seeking refuge challenged the boundary between political and economic persecution in the 1950s and 1960s, student claims in the 1960s and the 1970s tended to push beyond the physical towards mental persecution, including limits on thought and expression.

In the 1970s, liberals who took up the cause of foreign students were ashamed of American policies (both abroad and at home) and were seeking an antidote in human rights

[38] For a good discussion of this alliance, see Matthew Shannon, " 'Contacts with the opposition': American foreign relations, the Iranian student movement, and the global sixties," *Sixties: A Journal of History, Politics & Culture*. 4. 1 (June 2011), 1-29.

[39] Francis Colligan, Interagency Policy Statement on Possible Protest Activities of U.S. Government Sponsored Foreign Students, July 3, 1969, Folder 11, Box 5, Bureau of Educational and Cultural Affairs Collection, University of Arkansas Special Collections.

politics,[40] but their approach had clear limitations. "Thomas Paine said during the American Revolution that the cause of America was the cause of mankind," Senator Kennedy said at an April 1972 forum on "Biafra, Bengal, and Beyond." "I submit tonight that when millions of people are faced with suffering and famine and death, the cause of mankind is the cause of America." But what, concretely, could be done? The least the United States could do—in the wake of the suffering of the Nigerian Civil War—was let some Igbo students from the former secessionist region of Biafra remain in the United States. For the most part, however, arguments about past suffering and future discrimination were not sufficient to gain Igbo students refuge when the State Department supported the Nigerian government's policy of reintegration and reconstruction, "appreciating that Nigeria's needs for the services of its trained young people are pressing and urgent."[41] As the international lawyer Louis Henkin pointed out at the forum, "civil war is not illegal under international law…neither is the suppression of secession...Solutions, even palliatives, are not easy to come by… international politics…[make it impossible] to isolate and act only upon genocide and other human rights violations."[42] Congressmen interested in curbing arms sales to brutal dictators were initially effective in their support for Iranian students, who submitted a brief on the violation of human rights in Iran to Representative Donald Fraser's 1976 investigative committee. Iranian students also testified about harassment and surveillance in the U.S. by agents of the Shah's SAVAK security service—spies who worked on campuses

[40] Barbara Keys, *Reclaiming American Virtue: The Human Rights Revolution of the 1970s* (Cambridge: Harvard University Press, 2014) 154.

[41] John Davison (Nigeria Desk, State Department), Letter to the Nigerian Embassy, 8/20/1970, Folder: PPV 1970, Box 5, Records Relating to Nigeria, 1967-1975, Bureau of African Affairs, RG59, National Archives and Records Administration.

[42] Edward Kennedy, Gideon Gottlieb, Louis Henkin, Neil Sheehan, Carl Taylor, and Beverly May Carl, "Biafra, Bengal and Beyond: International Responsibility and Genocidal Conflict, *American Journal of International Law*, 66.4 (September 1972) 89-108.

and off, and had the help of student informants and city police forces.[43] NAFSA came out against the intimidation of students by agents of their home governments, calling this an infringement on political and academic freedom. But, as described at the end of this chapter, this general statement belied differences among institutions where there was more or less tolerance for student protest; at some schools, administrators refused to let INS agents onto campus, whereas at others, administrators called INS when there was a demonstration.

NAFSA was comprised of a diverse group of educators who held a variety of opinions on immigration and foreign policy and the organization was generally anxious to maintain good relations with government officials and agencies. But, it resented policies that foisted the responsibility of monitoring foreign students onto the higher education community or of handling foreign students in ways that were detrimental to American colleges and universities. Since the 1950s, universities looked at foreign students as pools of teaching assistants with needed technical and language skills. By the 1970s, increasing numbers of students were coming to the United States from oil-rich but college-poor nations and they provided American institutions with needed enrollments and funds in light of reduced support from private and public sectors. Despite the fact that the estimated percentage of foreign students who left school or transferred without informing the INS remained constant throughout the postwar period, by the mid-1970s there was a growing sense that the system was out of control.[44] (From the mid-

[43] Human Rights In Iran, Hearings Before the House Subcommittee on International Organizations of the Committee on International Relations, 94th Congress, 2nd session, August 3 and September 8, 1976.

[44] Though the absolute numbers were going up because of the increasing foreign student population, evidence suggests that the number of students attending smaller schools that did not adequately report to the INS was at most 20 percent in 1955 and in 1975. [James Riley to Assistant Commissioner, April 6, 1955, INS File 56336/214f; Thomas Diener, "Profile of Foreign Students in United States Community and Junior Colleges," in The Foreign Student in United States Community and Junior College, a Colloquium Held at Wingspread, Racine, Wisconsin, October 19-20, 1977 (College Entrance Examination Board, NY, 1978), 18, 20, 29-30.] Beginning in 1975, the Government Accounting Office issued the first of several reports (others were released in 1980 and 1982) on the need for increased monitoring of foreign students.

1960s onward, American consuls in Tehran complained about "I-20 merchants" who did a brisk business selling forms attesting to admission to American schools that facilitated the issuance of student visas. They got these forms from obscure schools hoping for fees and from foreign student recruiters—a 1970s bogey bemoaned by NAFSA.[45] A very few of these colleges and recruiters were criminally prosecuted.[46] To try to deal with this problem, American consuls in Tehran blacklisted some notorious schools, capped the number of visas issued to any school to 2% of its total enrollment, and asked students to make tuition deposits as proof of their intention to attend.[47]) Whether more or less control over foreign students was needed, the lack of a centralized or coordinated national policy on international education in the United States meant that various college administrators and advisors, private organizations administering programs, student groups, state governments and local communities, attorneys, recruiters and other advocates and middle-men played an important role in shaping the experiences of foreign students in the United States. [48] In the 1970s concern about terrorism, student protests, and the

[45] Frederick Lockyear, "Current Practices in the Recruitment of Foreign Students," in *Foreign Student Recruitment: Realities and Recommendations,* ed. High Jenkins (College Entrance Examination Board, NY, 1980).

[46] Controls Over Foreign Students in US Post Secondary Institutions Are Still Ineffective, GAO Report 1982.

[47] Edward Springer, American Consul in Tehran to Jack Miklos, Department of State, June 22, 1971, Folder V Visas Gen. Iran 1971, Box 6, Records Relating to Iran, 1965-1975, Bureau of Near Eastern and South Asian Affairs, RG 59, NARA.

[48] This was seen by many as an inevitable product of the U.S. federal system, its public and private education traditions, and the independence insisted upon by U.S. schools. As many commentators noted, it was in sharp contrast to more centralized policies in other receiving countries. One of the most remarked upon differences between the U.S. and European countries was the relative ease with which foreign students were permitted to work in America. On the other hand, France provided foreign students with access to more "welfare" services, like housing. The British government strictly controlled where its colonial subjects could study and then, from the late 1960s onward, imposed higher fees on foreign students, and from the late 1970s on, imposed quotas on foreign student enrollments. Still, in 1980, though there were many more foreign students studying in the U.S. than in Britain, the British government supported twice as many exchange students as the U.S. federal government. In Germany, special laws and guidelines regulated admissions of foreign students, such as those giving students of certain nationalities more spaces or limiting medical school spaces available to foreign students generally. The German government allotted a much larger percentage of its federal education budget to educational and cultural exchange than the United States. See *Higher Education Reform: Implications for Foreign Students*, ed. Barbara Burn (Institute of International Education, 1978); Richard Berendzen, *Foreign Students and Institutional Policies*

economic downturn led to the advent of a program monitoring Arab students, INS restrictions on foreign student employment, and a new form, to be filled out by foreign student advisors, guaranteeing that students did not engage in "any activity deemed inconsistent" with student status. NAFSA generally opposed these efforts. Advisors were reluctant to release information about foreign students in the wake of the passage of the Family Educational Rights and Privacy Act (1974). They argued that any small negative impact foreign student employment had on the labor market was far outweighed by the economic contribution of foreign students to the American economy.

While few students were actually deported for minor infractions (like not registering for enough courses, not paying a fee, applying late for an extension of stay, or working or transferring without permission) and many were able to adjust their status so as to remain, the rights of foreign students were ill-defined and subject to the discretion of regional INS officers and the vagaries of economic and employment trends. Though legislation in 1970 made it easier for certain exchange visitors to remain permanently in the United States—particularly those exchange visitors who made up a large portion of hospital workforces of nurses, interns and residents—this did not apply to those from countries the Secretary of State designated as clearly requiring the services of the exchange visitor. Exchange visitors from these countries had to return *home* for at least two years before applying for permanent residence. The legislation also provided that exchange students could apply for discretionary waivers of this requirement, including one in which the State Department determined they could not return to the country of

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(American Council on Education, 1982); Craufurd Goodwin and Michael Nacht, *Absence of Decision: Foreign Students in American Colleges and Universities, a report on policy formation and the lack thereof* (Intertite of International Education, 1983); *Bridges to Knowledge: Foreign Students in Comparative Perspective*, ed. E.G. Barber, P.G. Atlbach, and R.G. Myers, (Chicago: University of Chicago Press, 1984).

their nationality because they would be subject to persecution.[49] Litigation over the granting of such waivers to exchange visitors, and of 243(h) stays of deportation to foreign students, reveals that foreign policy priorities trumped students' "right to remain" in the 1970s. Analysis of the handling of foreign students in a time of political crisis contributes to debates over the Carter administration's human rights policy and the relationship of human rights norms to immigration policy and advocacy in the United States.[50]

Refuge-Seeking Students and Strained Internationalism in the Interwar era

That the status of student asylees has always been tenuous is surprising given its significance at the founding in 1919 of the organization that developed and administered most student exchange on behalf of foundations and the federal government through the end of the twentieth century, the Institute of International Education [IIE]. Though its purpose was to handle exchange programs, it early had to face the problem of Russian students who fled the Bolsheviks and would not return home from the United States.[51] Stephen Duggan, director of the IIE and a proponent of "cultural internationalism" and "intellectual cooperation" as a way of

[49] PL91-225, April 7, 1970.

[50] On the limits of Carter's human rights policy, see Bradley Simpson, "Denying the 'First Right': The United States, Indonesia, and the Ranking of Human Rights by the Carter Administration, 1976-1980," *International History Review,* 31.4 (2009) 798-826; Luca Trenta, "The Champion of Human Rights Meets the King of Kings: Jimmy Carter, The Shah, and Iranian Illusions and Rage," *Diplomacy and Statecraft* 24:3 (2013) 476-498. On human rights and immigration, see Hiroshi Motomura, "Federalism, International Human Rights. and Immigration Exceptionalism," *UCLA Journal of International Law and Foreign Affairs*, 3.2 (Fall/Winter, 1998-1999). 497-526; Laura Adams, "Divergence and the Dynamic Relationship Between Domestic Immigration Law and International Human Rights," *Emory Law Journal* 51.3 (Summer 2002) 983-1002; Victor Romero, "United States Immigration Policy: Contract or Human Rights Law," *Nova Law Review* 32.2 (Spring 2008) 309-326; J. Brians Johns, "Filling the Void: Incorporating International Human Rights Protections into United States Immigration Policy," *Rutgers Law Journal* 43.3 (Fall/Winter 2013), 541-572; Robert Pauw, Rebecca Sharpless, Judith Wood, "Using a Human Rights Approach in Immigration Advocacy: A Introduction," *Clearinghouse Review*, 47.3-4 (July-Aug. 2013) 88-96.

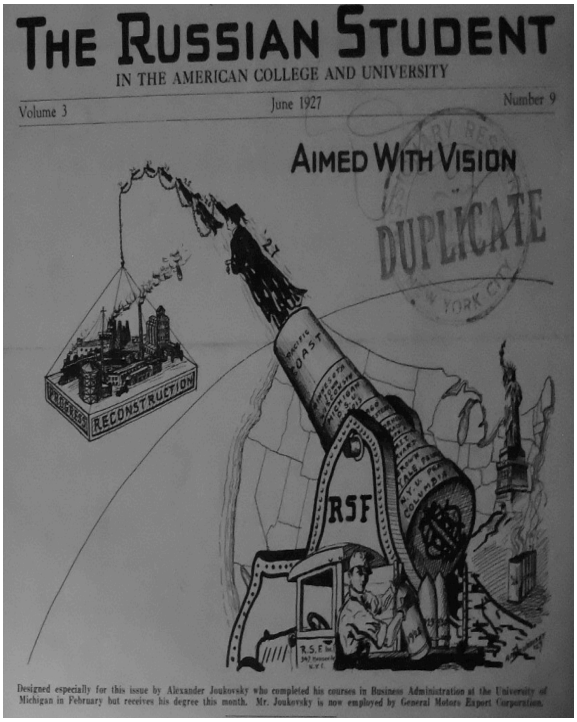
[51] According to the its third annual report, the Institute's "attention in the field of fellowships has been directed during the past year primarily to Russian students." Institute of International Education, *Third Annual Report of the Director*, New York, Feb. 15, 1922, Page 8.

promoting peace and understanding in the 1920s, selected the students to receive loans from a Russian Student Fund and helped find placement and scholarships for them at American colleges and universities.[52] American businessmen with commercial interests in Russia, the provisional Russian Embassy in the U.S., and the Y.M.C.A. and Rockefeller Foundation donated money to the Fund. Fund-supported students mostly completed degrees in engineering, agriculture, business, education and medicine; the goal was the acquisition of skills by those who planned to return to Russia and reconstruct their country once Bolshevism collapsed.[53] Though in 1927 the Fund's newsletter supported student return, four years later it recognized that this was not part its program and began advocating their permanent settlement and naturalization in the United States. Ironically, as the United States moved towards recognition of the U.S.S.R, the Fund newsletter heralded its students as the country's representatives.[54] Within a few short years, the students went from representing Russia's potential future to Russia's lost past; this was evident in the evolving cover art of the Fund's newsletter.

[52] Duggan and others involved with the IIE believed that "internationalism must be built upon the education of more cosmopolitan, less narrowly nationalistic, individuals in all countries." If exchange programs or "educational travel was systematically organized, it could help abate prejudices and…contribute to the appreciation and understanding of other societies and peoples." [Akira Iriye, *Cultural Internationalism and World Order* (Baltimore: Johns Hopkins University Press, 1997) 72; Liping Bu, *Making the World Like Us: Education, Cultural Expansion, and the American Century* (Westport, CT: Praeger 2003) 55.] For Duggan's involvement with the Russian Student Fund, see Stephen Duggan and Alexis Wiren "Ten Years Work with the Russian Student Fund," January 30 1931, Box 14, Records of YMCA international work in Russia and the Soviet Union and with Russians, Y.USA.9-2-1, Kautz Family YMCA Archives, University of Minnesota.

[53] Ethan T. Colton, *Forty Years with Russians* (New York: Association Press, 1940), 117-118

[54] "Unofficial Ambassadors," *The Russian Student* VI. 1 (September 1929) 1.



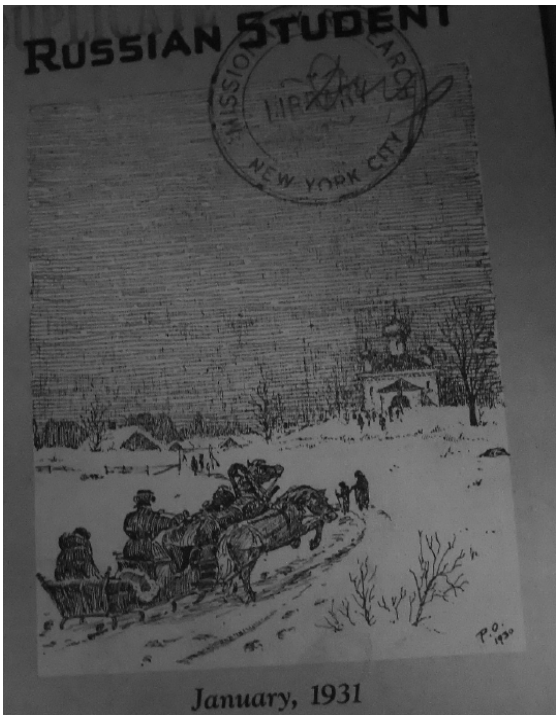


Figure 5.1 Covers of *The Russian Student*, 1927 and 1931.

Not surprisingly, much newsletter ink was devoted to defining Russian and American character—in relationship to progress, idealism, and "the brotherhood of man"—and arguing about whether they should be predominantly either, or identify as students or individuals.[55] There was a tension in the aims of the Fund's originator, Alexis Wiren, a member of the Kerensky government's Naval Aviation Commission who studied at the Massachusetts Institute of Technology in 1918-1919. Wiren wanted his fellow students to help foster "better understanding between the American and Russian peoples" but did not want them to reconsider any of their "basic ethical, social and political principles and beliefs." For Wiren, as for many

[55] "Expanding Loyalties," *The Russian Student* 1.5 (March 1925); "Peasant's Son Pays Tribute to His Father Because of American Character," *The Russian Student* 2.3 (November 1925) "Psychology of Russians Explained," *The Russian Student*, 2.3 (November 1926), 1. "Too Much Russian," *The Russian Student*, 3.8 (May 1927), 4; "Many Reply to Too Much Russian," *The Russian Student* 3.9. (June 1927), 3; Nikita Roodkowsky, "Tendencies in Russian and American Thought," *The Russian Student* (February 1928), 15; Nicholas Kozlinsky, "I Confess," and Michael Chichkan, "Phantom of Contribution," *The Russian Student* 5.3 (November 1928); Mstislaw Loukomsky, "Behind the Mask," *The Russian Student* 5.6 (February 1929) 4; "Smatter: What do you mean—he's really very Russian," 7.5 (Jan. 1931), 20.

future foreign students, the sine qua non of return in student exchange "required some compromise with conscience."[56] To a certain extent this kind of problem was partly a product of ideals of intellectual cooperation that aspired to be above politics while very much embroiled in it. When they received money from the Fund, students were expected to sign a pledge not to get involved with émigré politics; they were told to use their own judgment and consider their own character before accepting employment with firms affiliated with the Soviet Union.[57]

Confusion regarding the aims of the Russian students was exacerbated by the 1921 immigration law, which did not include a non-quota category for students. Early Fund students arrived in groups in 1922-1923—via Constantinople to Ellis Island and via Harbin to Angel Island—and had been pre-screened by American relief organizations and consuls for evidence of their ethnic "purity" and anti-Bolshevism[58]; the Fund's newsletter referred to them as crusading knights and Argonauts.[59] In late 1922 Arthur Ringland of the American Relief Administration argued that the United States government should follow the Czech example of admitting Russian students for training; "no one can predict when Russia will be opened," Ringland wrote, "But

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[56] Alexis R. Wiren, "The Russian Student Fund, 1920-1945 *Russian Review* 5.1 (Autumn 1945) 113.

[57] Donald Davis, "Americanizing Ivan: The Case of the Russian Student Fund," *Historian* 43. 2 (February 1981) 196 and 203.

[58] Navy Admiral Bristol and Arthur Ringland of the American Relief Administration, who screened Russian students in Constantinople, and R.J. Caldwell, who welcomed them when they arrived at Ellis Island, all worried that Jews from Russia, especially those with relatives in the United States, were monopolizing quota numbers that should go to their handpicked "real Russians" or "Slav Russian refugees" whose politics were more reliable. [Report of Arthur Ringland to Lyman Brown, March 24, 1923, American Relief Administration. Russian Operations Records, Box 439, folder 5, Hoover Institution Archives; Allen Dulles to Admiral Bristol, June 18, 1923, American Relief Administration. Russian Operations Records, Box 440, folder 2, Hoover Institution Archives; Memo from Ernest Bicknell to Judge Payne, April 4, 1923, Box 874, Folder: Russia, Turkey, refugees in evacuated to the U.S., Records of the American National Red Cross, 1917–1934. RG200, National Archives, College Park; R.J. Caldwell to Robe Carl White, April 11, 1923, INS File 55166/451, NARAI.] For the screening process by the consul, Y.M.C.A., and Committee Rendering Aid to Russian Students in Harbin see Dispatch 992 from Consul G.C ,Hanson to Secretary of State, March 7, 1923 in INS file 55605/130.

[59] "The White Hoofer," *The Russian Student*, V.2 (October 1928) and "Argonauts of the Century," *The Russian Student*, III.5 (February 1927).

when the time comes America should be prepared to take every proper advantage of the credits which may be advanced for Russian reconstruction." [60] The Consul General in Harbin believed admitted Russian students would return to Russia, taking with them "a favorable impression of American institutions and American methods" and would "favor American trade."[61] But the immigration authorities saw matters differently. They did not see these students as temporary visitors and were less interested in their future human capital than with their present economic needs. The policy was that, after a national quota was filled, those who could prove they had sufficient funds to support their education and would depart upon completion were admitted temporarily as visitors under bond to ensure departure; these conditions, the immigration authorities insisted, did not apply to the Russian students.[62] The Russian students were in a bind: the only way "to show that they were not emigrants" was to work to earn money to support their studies, the very thing that made them seem like immigrants "under the guise of students" in the eyes of the Department of Labor.[63] Moreover, as Wiren discovered, some potential donors to the Russian Student Fund expressed a belief that the Russian students should work their own way through college just like Americans did.[64] Threatened with exclusion for arriving after the Russian quota was filled, Russian students appealed to the immigration authorities: "Please don't

[60] "Memorandum on the Education of Russians in America, enclosed in letter from Arthur Ringland to Walter Lyman Brown, September 1, 1922, American Relief Administration. Russian Operations Records, Box 440, folder 1, Hoover Institution Archives.

[61] Letter from the Secretary of State to the Secretary of Labor, January 13, 1923, INS file

[62] Letter of Robe Carl White to Secretary of State, May 17, 1923, 55240/18.

[63] "Are Students Emigrants?" The Students' Gazette (Harbin, China), March 18, 1923, translated from the Russian in INS file 55605/130; Letter from Commissioner General to Livingston Farrand, September 17, 1923, INS file 55224/52.

[64] International Harvester president Alex Legge raised this concern with Wiren as quoted in Norman Saul, *Friends or Foes? The United States and Soviet Russia, 1921-1941* (Lawrence, Kansas: University Press of Kansas, 2006) 182.

mix us up with the common immigrants…We ask you to consider us only as students."[65] Most of these students were let in but kept in limbo status until the passage of the Palmisano "Russian Refugee" bill in 1933, and discussed in Chapter 1. The possibility that Russian students might be excluded led Stephen Duggan to pressure the immigration authorities to let them study in the United States under the watchful eye of the IIE.[66]

Duggan, who passionately condemned the "betrayal of Armenia" by "Christian America whose schools and colleges did more than any other single factor to rouse the desire for liberty and independence among Armenians," also appealed to the immigration service "particularly" on behalf of Armenian students who "fled in large numbers after the Turkish victories in Asia Minor."[67] In January 1923, an American missionary arrived in the United States with 17 Armenian students, formerly of the American College in Smyrna, and insisted that they be admitted, even in excess of the quota, as refugees "fleeing from bitter religious persecution." Faculty at the College and the YMCA had paid for the students' passage. Letters on their behalf by missionaries betrayed a typical mixture of internationalism and exceptionalism. S. Ralph Harlow, secretary of the student volunteer movement, felt as betrayed as Duggan did by the American government's policy in the Near East and insisted that "ministers, college professors…are longing for more effective moral influence backed by a willingness to participate in and share some of the larger world problems." Harlow added that the refugee students "come

[65] Letter from "all the students" to the Commissioner of Immigration Station at Angel Island, July 27, 1923, quoted in Erika Lee and Judy Ying, *Angel Island: Gateway to America* (New York: Oxford University Press, 2010) 234.

[66] Bu, *Making the World Like Us,* 61-2. Letter of Stephen Duggan to W.W. Husband, Aug. 21, 1923" "You will remember perhaps that our arrangement…was to the effect that when a bona fide student was duly admitted to an American institution before his arrival here …he would be admitted, paroled to our charge, were he to come in excess of the quota. This agreement…had been approved by you last October; for some administration reason it was suspended in late March [of 1923]." A copy of this agreement specified that "the Institute will be responsible for keeping track of such students." See INS file 55224/52B.

[67] Stephen Duggan, "The Betrayal of Armenia," *New Armenia*, XIV.5 (September-October 1922), 1; Stephen Duggan, Institute of International Education, Fourth Annual Report of the Director, New York, Feb. 10, 1923, 3.

to a land whose greatest glory has been its religious freedom and to which our forefathers came seeking refuge where they might worship God according to their conscience." Another missionary emphasized humanitarianism, nationalism, and the fitness of the students. "Is there no law greater than the law of man? The law of Him Who said 'I was a stranger and ye took me in?'" But, she quickly added, "the boys are the finest material of Asia Minor, the kind of material America will be proud to own." [68]

The immigration service admitted the students temporarily on bond, but the Commissioner General resented that "peoples of the Near East" used admission as students "as a stepping stone toward permanent residence."[69] In the fall of 1923 the immigration service issued a new regulation, General Order 17, mandating that students would be admitted temporarily above the quota only upon proof of admission to an institution of higher learning "affording advanced or technical training."[70] When the immigration authorities then tried to exclude Armenians by claiming they did not intend to return home and that Worcester Business College was not a true institution of higher learning, a federal appeals court ruled the Armenians admissible as "good faith" students of a "legitimate" school.[71] This decision, and Congressional joint resolution 283 of 1924 (discussed in chapter 3) allowing "those admitted temporarily under bond to relieve cases of extreme hardship, notwithstanding the exhaustion of the quotas" to remain in the United States, made it possible for many Armenian refugee students to adjust their status to permanent residents.

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[68] Harlow to President Harding, November 15, 1922 and Anna Birge to Commissioner James Davis, Nov. 8, 1922, INS file 55275/908.

[69] William Husband to C.S. McGowan (American International College), Oct 12, 1923, 55224/52B

[70] General Order No. 17, September 25, 1923, INS file 55224/52B.

[71] *U.S. ex rel. Simonian et al. v. Tod, Commissioner of Immigration*, No. 199, Circuit Court of Appeals, Second Circuit, 297 F. 172, Feb. 4, 1924.

Missionaries also supported students from Asia and Africa, who were admissible in the interwar period despite Chinese exclusion laws, the prohibition on immigration from the "Asiatic Barred Zone," and the lack of immigration quotas for Africa. Many Korean students considered themselves "without a country"[72] or refugees for political and religious reasons.[73] Indeed religious organizations such as the Y and the World Student Christian Federation, that devoted attention and resources to refugee students in the 1920s, were supportive of a Christianity-inflected diasporic nationalism. As is clear from Duggan's comment on betrayed Armenia, the IIE's ostensibly secular internationalism had this flavor; almost all of the student organizations mentioned in the IIE's early guides for foreign students were Christian in orientation (i.e., National Russian Students' Christian Association and the Indian Students' Christian Union). But missionary support for nationalism among Indian and African students was tentative and betrayed a fear of radicalism. A Y-sponsored survey of foreign students noted "It were a hazardous question to ask an Indian student" 'What do you think of the connection of India with Britain and the West? But it will be a question at once searching and uplifting to ask any and

[72] Many Korean students made their way to America via Shanghai. The consul general there wrote the Secretary of State that "I have no doubt but that the Japanese are very persistent in detecting the movements of all Korean students who leave their homes and I very much fear that where American missionaries endeavor to assist those who see a higher education in the United States…they are liable to arouse the suspicion, if not the resentment, of the Japanese authorities." For this report and other evidence of missionary support—in opposition to the Japanese authorities--of Korean student travel to the United States, see INS file 53620/91. The file also contains a letter from Li Chang Soo to the consul professing, "I am a member of the Free Presbyterian Church in Korea. In order to avoid the tyrannical government of Japan, I have come to Shanghai without a passport." The consul also received other letters from pastors at the Presbyterian and Baptist churches in Lincoln, Nebraska attesting to Li's desire to study in America and the support of his uncle, who lived in Lincoln. In another letter in the file, Frank Ainsworth, lawyer for the Korean National Association of North America referred to Korean students as "without a country."

[73] For a good discussion of "the close working relationship" between Protestant missionaries and Korean nationalists and the framing of Korean independence as an issue of religious freedom in the immediate post-WWI era, see Richard S. Kim, "Inaugurating the American Century: The 1919 Philadelphia Korean Congress, Korean Diasporic Nationalism, and Protestant Missionaries," *Journal of American Ethnic History*, Fall 2006, 50-76 . Kim concludes: "missionary support for Korean struggles against the Japanese was consonant wuth the crusading zeal of Wilsonian internationalism that emphasized self-determination, pacifism, and opposition to the exploitation of the weak by stronger nations. Although both ideological models were rooted in universalistic rhetoric and principles, they were nonetheless imbued with a strong sense of an exceptionalist American nationalism that sought to propagate American political and cultural values at home and abroad" (70).

every Indian student in this country: 'How are you planning to use the education which you have acquired abroad for the uplift of your motherland?'"[74] The British authorities were especially anxious about the political activities of Indian students in America; in Detroit, the British consul spent much of his time in the 1920s trying to keep Indian students away from the radical influence of ex-lascar members of the Independence League of India and from associating with American blacks.[75] American advocates for Indian students were similarly concerned about race and radicalism. Club woman Maud Ralston emphasized that the object of the India Society of Detroit is "*strictly educational*" [italics in the original] and suggested that "high caste" Indian students wear their turbans so as to "make a definite place for themselves in this country where the Negro is a common factor."[76] Speaking at the 1925 convention of the Hindusthan Association of America, Charles Hurrey, secretary of the Y.M.C.A.'s Committee on Friendly Relations Among Foreign Students, said he "admired Mahatma Gandhi's attitude of nonviolence, but frankly disapproved of the students going to jail just for the sake of going there. Instead, they should…engage in gainful and constructive occupations." He added that support for Indian students in America was impeded by the impression that "they were engaged in propaganda."[77] There is other evidence that colonial students in the United States were shifting towards a new kind of nationalism.[78] Nnamdi Azikiwe, who arrived as a student in the United States in 1925

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[74] *The Foreign Student in America*, ed. W. R. Wheeler, H. H. King and A.B. Davidson (New York: Association Press, 1925), 59

[75] Bald, "Desertion and Sedition," 94-96.

[76] Maud Ralston, "The India Society of Detroit," *Modern Review*, 1911, 236.

[77] *The Hindusthanee Student*, New Series Vol. 1, No. 1, January 1925, 3.

[78] In the 1920s, black colleges in the U.S. saw "slowly rising numbers of non-'missionary' foreign students" who were explicitly political in their anticolonial activism. Jason Parker, " 'Made-in-America Revolutions?' The 'Black University' and American Role in the Decolonization of the Black Atlantic," *Journal of American History,* December 2009, 731.

and would later become the chancellor of the first postcolonial West African university to award diplomas and then the president of Nigeria, proved to be such a challenge to the administration at Lincoln University—which opposed his proposal to establish an African history course and resented his criticism of the conventional uplift ambitions of the institution—that it refused to recommend a renewal of his student visa. [79] Not surprisingly, this father of West African nationalism left out of his autobiography that he had been *forced* back Africa.[80]

The 1924 immigration law provided for admission of students outside of the quota and required that applicants for student visas from *quota countries* provide evidence of admission to an American school approved by the immigration service. Ambiguity remained, however, because section 4-E of the 1924 law designated students as "non-quota immigrants" rather than as non-immigrants and because "it is a comparatively simple matter for false admissions to be perpetuated by using university stationary."[81] In practice, by the mid 1920s, most consuls in countries with small quotas denied student visas to those without competent knowledge of

[79] Gene Ulansky, "Nnamdi Azikiwe and the Myth of America," Ph.D. dissertation, University of California, Berkeley, 1980, 50-51.

[80] In the autobiography, Azikiwe describes his decision to return to Africa as a personal sacrifice to give up an academic position in the U.S. and "do for Africa what the continent needed for a renaissance in thought and action." Before leaving the U.S., Azikiwe told fellow African students at Lincoln that "they had a rendezvous with Africa" and they pledged to "give up their lives as a sacrifice for the ransom of the many who were ensconced in intellectual darkness." Nmandi Azikiwe, *My Odyssey* (New York: Praeger, 1970) 160, 188.

[81] Section 4e of the 1924 law designated as non-quota "an immigrant who is a bona fide student at least 15 years of age and who seeks to enter the United States solely for the purpose of study at an accredited school, college, academy, seminary, or university, particularly designated by him and approved by the Secretary of Labor." The quote regarding fraudulent use of university stationary comes from Ruth Crawford Mitchell, *Foreign Students and the Immigration Laws of the United States* (New York, Institute of International Education, 1930) 16. The immigration authorities contended that "a considerable number of aliens arrive after the quotas have been exhausted and claim the privileges of students, but are in reality bootblacks, manual laborers, skilled laborers or clerks of various kinds, and present carefully prepared evidence in support if their alleged student status for the sole purpose of evading the application of the law, " I.F. Wixon, Assistant Commissioner General, to E.B. Wilson, Massachusetts Institute of Technology, July 5, 1922, file INS 55224/52. To George Vincent, President of the Rockefeller Foundation, Wixon wrote similarly on July 20, 1922: "there have been not a few instances where aliens arrived in excess of quota, stating that they were bona fide students and producing papers to that effect, when investigation revealed that they were, in reality, laborers, clerks, and business men. INS file 55224/52.

English or sufficient funds to defray expenses while studying. The issue of relatives was tricky: consuls wanted assurance that students had relatives in the United States who could help fund their studies but were suspicious that those with very close relatives in the United States were not truly students but immigrating to join family. In the fall of 1925, an a 19-year old Italian boy arrived in New York with a 4-E visa, a certificate of enrollment for Columbia University, and 12 dollars. He told the immigration inspectors that his father and brother in the U.S would support him through school and that he would like to remain after graduation if possible, otherwise he would return to Italy. The immigration inspectors excluded him when they learned that his father and brother were deserting seamen. His first appeal to the courts failed, the judge ruling that a student must have the means necessary for his tuition and support. An appellate court let him in, the majority ruling that "the earnest student can work his way through college" and that "the hope and the intention, if it be realized, to remain here, does not evidence that he came with the purpose to stay." Judge Learned Hand dissented, claiming that "his arrival was a step, not only in his education, but in another plan…he had a double purpose."[82] As this chapter and the previous one show, in general, having a "double purpose" has been allowed to foreign students, but not to seamen or other temporary foreign workers.[83]

Section 4E required that schools report "termination of attendance" to immigration authorities, who would then require that former students leave the country. Perhaps most significant for refugee students was the inability of those who entered as 4E students to adjust their status to permanent resident while in the United States; "Nothing is emphasized to such a

[82] *United States ex rel. Antonini v. Curran,* No. 25, Circuit Court of Appeals, Second Circuit, 15 F. 2d 266, Nov. 3, 1926.

[83] This distinction was formalized in 1990, when those granted H1-B visas—temporary work visas for the highly skilled—many of whom were foreign students just completing their training in the United States, were permitted to simultaneously file for green cards. This "dual intent" was not available to other temporary workers.

degree in the immigration regulations as the fact that no one may change his status within the United States," Stephen Duggan explained.[84] Filing a declaration of intention to naturalize was considered a breach of good faith and could lead to deportation. This is precisely what happened in the case Subhi Sadi, a student from Beirut whose case Max Kohler appealed to the Supreme Court without success. Kohler was particularly incensed at the restrictionist inferences drawn from a sloppy immigration record that did not clearly specify his status upon admission.[85] In a case involving an Armenian named Diran Yegian, the immigration authorities "exercised leniency" in granting extensions of stay and voluntary departure after he completed his studies in veterinary medicine and accepted employment as a research scientist in small animal diseases. As "a man without a country" and unable to secure a passport to return to Turkey, Yegian was eventually able to adjust his status under the Palmisano act.[86]

In the 1920s, supervision of *all* foreign student cases—European students from quota countries, Asian students from countries barred for immigration, and students from non-quota countries in Latin America—was centralized in Washington so that they could be handled along the same lines. The lack of consistency in the handling of students was the result of the Immigration Service's limited resources and reliance on colleges for enforcement. Advocates for students with claims to be refugees took advantage of this situation and students who kept a low profile managed to stay. Antioch College, for example, kept a student enrolled through he stopped taking classes after losing contact with his parents in the wake of the devastating

[84] Letter of Duggan to William Dor, July 29, 1933, INS case file 55832/510.

[85] Brief for Writ of Certiorari, *Subhi Mustafa Sadi vs. United States of America*, Supreme Court of the United States, October Term, 1930, No. 247. See also INS file 55484/877 .

[86] Letter from Yegian to Commissioner General D. W. MacCormack July 3, 1933; Letter from MacCormack to Yegian, July 25, 1933, INS file 55832/510.

September 1, 1923 Japanese earthquake.[87] The University of Pittsburgh allowed a Chinese student to continue his courses while his government stipend was cut off during the political upheaval in China in the late 1920s.[88] As Ruth Mitchell, lecturer in economics and chairman of the foreign student committee at the University of Pittsburgh, wrote in 1928, "the University is a fairly protected environment and the Student Bureau [within the immigration service] in Washington is so undermanned that there is very little follow up."[89]

When the Bureau did follow up on students who failed to maintain their status because of outside employment, outcomes varied based upon official assessments of student worth and morality. Azikiwe describes his arrest in Pittsburgh in 1927 when he was working full time to raise money to continue his studies. Azikiwe showed the immigration official a bank book attesting to several hundred dollars he had saved and the official told him to go back to work but to be sure to register the following term. "From all indications," Azikiwe writes, "the immigration officer knew I was trying to save my skin. But…he preferred to apply the spirit, instead of the letter, of the law."[90] An Indian student named Mehar Singh Rait, who was also arrested for working full time in Pittsburgh that year, was given a chance to return to school for different reasons. The immigration authorities did not believe that Rait was "sincere in diligently pursuing his studies since entry," but, because he converted to Christianity and married an American born woman, he was given until the end of the 1927-1928 academic year to finish

[87] Arthur Morgan to W.W. Husband, Oct. 24, 1923, INS file 55224/52B

[88] Committee on Foreign Students Minutes, February 20, 1928 and Oct. 4, 1928, File Folders 130-132, Ruth Crawford Mitchell Papers (UA.90.F12), University of Pittsburgh Archives.

[89] Letter of Mitchell to Florence Cassidy, March 16, 1928, folder 221, Mitchell papers.

[90] Azikiwe, *My Odyssey*, 113. Like Armando Borghi, Azikiwe looked back with gratitude on his time in the United States. "I can honestly confess that the United States of America impressed me as a haven of refuge…a free environment which will give that individual full scope to develop his personality to the full, in spite of the vagaries of human life" (*My Odyssey*, 196).

accounting courses so that he could support himself and his wife upon his return to India. When the authorities learned, in fall 1927, that Rait was only taking night classes in philosophy and journalism, was spending time writing a book and giving "radical" lectures on India, and that his wife was "supposed to be a woman of loose morals," they decided he was "an imposter" and ordered him deported. Rait acknowledged defeat "as far as the law goes," but appealed to Assistant Secretary of Labor William Husband "on moral and humanitarian grounds," claiming he deserved protection as a political and religious refugee. "How can I leave these [relations and friends] here and go to the people who are strange to me [since my conversion]? From such country [as America], how could you deport me to a country ["British India"] which is not free?" His letter then quoted from speeches by Presidents Lincoln and Wilson, from the Declaration of Independence, and from the Sermon on the Mount. After he was deported, Rait wrote to complain that he had been singled out unfairly. "There is a Hindu student…at Carnegie Tech…taking only one or two evening courses…[working] a foreman's job… The only difference between his case and mine was…that he was unknown."[91]

In the mid 1920s, the status of students, especially from Asia, was unclear to many professors and college administrators, who sometimes arranged work for them or registered them for night classes, which later got them into trouble.[92] In general, foreign students were considered to be "bona fide" so long as their work did not interfere with their maintaining a full, daytime course load.[93] But, Chinese students were prohibited altogether from working[94] and it

[91] INS file 55611/846. Rait's letters to husband were dated Feb. 25, 1928 and June 4, 1928.

[92] Mitchell to Cassidy, Mitchell papers.

[93] "Foreign Students in the United States," *Interpreter Releases*, Vol. 5, No. 35, October 15, 1928, 224.

[94] As the Assistant Commissioner General wrote on April 26, 1923 to Mr. Haberman of the China Club of Seattle: "Serious consideration has been given by the Bureau to many requests which have been made for the working-out of some arrangement whereby so-called students might be able to perform work here [apparently as a means of

was not clear to many if Japanese students were to be treated like Chinese or like European students.[95] By the late 1920s, the immigration bureau was receiving letters requesting that Chinese students be permitted the chance to get "practical training" at American factories and firms after finishing their coursework; the bureau agreed to allow this on a case by case basis.[96]

Muddying the waters further regarding work eligibility was another student status available under the 1924 law—that of "student worker" –under section 3(2). In the 1920s, these students entered as visitors under the supervision of an organization or firm. The immigration bureau and the German Student Cooperative Association, for example, agreed that German "student laborers," most of whom had completed studies in engineering, could work, for regular wages, at American industrial plants or farms for a year or two in order to learn American methods.[97] The take-away was, according to a *New York Time*s article, an appreciation for welfare capitalism or paternalism, particularly the supposedly better relationships between employer and employee in America (—a corollary to the common refrain that professors were more accessible to students at American universities.)[98] This pleased German manufacturers,

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defraying, partially at least, some of their expenses], but the conclusion has always been reached that requests along this line should not be allowed." INS file 54735/90.

[95] On September 22, 1925, Raymond Wilbur, President of Stanford University, wrote to James Davis, Secretary of Labor, "the classification of the Japanese [students] with the Chinese as Orientals and the handling of them as the Chinese have been handled together with the sudden change in the immigration law have brought a great deal of criticism." INS file 54549/126.

[96] Letter of George J. Harris, Acting Commissioner General, to Harry Glaenzer, Baldwin Locomotive Works, June 3, 1927, INS file 54549/126-B; D. W. MacCormack, Commissioner General, to E.P. Thomas, National Foreign Trade Council, August 25, 1935, INS file 55488/21C.

[97] Herbert Krippendorff to the U.S. Department of Labor, January 10, 1927, INS file 55488/21.

[98] The article can be summed up in a quotation from one of the German work students: "The cooperation between employer and employee has made a very deep impression on me. For three years before coming to America I had been working in German factories and I can readily appreciate the importance of this spirit of camaraderie. The evidence of interest in the individual workers' problems and the absence of reserve on the part of the employer tend to increase the confidence and contentment of the workers both during and afyer working hours." "German Students' View of America," *New York Times*, July 22, 1928, 100. For just one example of an article that speaks of "the friendly spirit and degree of cooperation that exist between professors and students [in America] in comparison with

who "appointed a special committee…to place returning work-students from America in strategic positions where they can most quickly put into practice what they have learned in America."[99] Though most American companies found the students suitable workers, many believed they were inefficient to train.

With the rise of unemployment in 1930, the Bureau of immigration scaled back and then terminated its agreement with the German Cooperative Association, arguing that many students were changing employment to better their wages rather than focusing on training and also were filling positions which would be available to American draftsmen, engineers, statisticians and chemists.[100] [Thereafter work students were to be admitted only upon the petition of employers interested in training employees to work for them abroad; throughout the 1930s, large manufacturing companies like Ford, General Electric, Westinghouse, and General Motors continued to receive permission to train students, including Chinese and Indian students, to be representatives, dealers and service men for their products in foreign markets.[101]] In the context of the Depression, the immigration service had little patience for champions of the "work student movement" in the name of international understanding and good will. Francis Henson of the YMCA had so much faith in the impact of foreign student programs on international relations that when the immigration service mandated that the remaining work students leave the country by January 1932, he protested that "their deportation at this time would cause a great deal of

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the aloofness that characterizes the average professor in a European university," see Stephen Duggan, "When Aliens Study Here," *New York Times*, October 2, 1932, 25.

[99] Letter from Conrad Hoffman to Charles Hurrey, June 20, 1928, 55488/21A

[100] W.W. Husband to Stephen Duggan, September 9, 1930; Robe Carl White's memorandum for the Secretary of Labor on student laborers, April 3, 1930, and A.R. Archibald's report to the Commissioner of Immigration, March 5, 1930, INS file 55488/21-C

[101] Letter from Harry Hull to Phillip Nyren, April 23, 1926, INS file 54735/90; Letter from Henry Hazard to Lee Warran, March 13, 1936, INS file 55875/ 697.

misunderstanding and might easily be the last straw that will help bring about revolution in Germany."[102] This over valuation of the impact of exchange extended into a mid-1930s "naïve hope" that continuing relations with German universities "might reverse Nazification."[103] This led some internationalist educators and administrators to provide more support for exchange programs with Germany than for rescue efforts on behalf of anti-fascist academics.

The advent of the Depression also provoked the immigration service (contra the court ruling) to prohibit students on regular 4E student visas from even part time or vacation employment as a means of paying their way through college—a policy change that provoked the first real organized protest against the immigration service by an unusually broad range of organizations concerned with "the right of an alien student to earn a living."[104] Pressure from the ACLU, peace groups, student groups, the Progressive Education Association, the American Council on Education, American Association of University Women, and several college presidents led to modification of the order and then a lack of enforcement. Typical of the protests was that of Arthur Howe, president of Hampton University, who claimed the immigration service was establishing a "tariff wall on good will," and that of James Magee, professor of economics at N.Y.U., who argued the ruling, which was estimated to effect only 1,500-2,500 4E students, many of whom worked at translating and language coaching, would little benefit the

[102] Letter of Henson to Edward Shaughnessy, November 9, 1931, INS file 55488/29C.

[103] Robert Cohen, "Big Man on Campus? Hitler and the American University," *Reviews in American History*, 39.1 (March 2011) [Review of Stephen Norwood, *The Third Reich in the Ivory Tower: Complicity and Conflict on American Campuses* (Cambridge: Cambridge University Press, 2009).]

[104] Letter and Memorandum by Arthur Hays, October 25, 1932, folder 529, reel 89, ACLU papers. Carol Weiss King suggested bringing a test case and Hays volunteered to offer his services pro bono. Baldwin and Lucille Milner of the ACLU wrote to several colleges looking for a student engaged in work who would be willing to challenge the immigration rule in court. See, for example, letters to the registrar at Columbia University Sept. 29, 1932, and to Mildred Thompson, Dean of Vassar College, Nov. 3, 1932, Edwin Corwin at Princeton University, November 4, 1932, and Walter Williams, president of the University of Missouri, Nov. 4, 1932, ibid. On November 15 1932, Baldwin wrote to Secretary of Labor William Doak warning him that "a court test is likely to be institutes in the near future unless some adjustment can be made," ibid.

U.S. labor market or even the campus labor market but would serve as "a pretext to shut out" foreign students without means.[105] [The ruling did not apply to students from Canada, Mexico and other non-quota countries in the Western Hemisphere, nor to students from American territories like the Philippines]. "As a member of the board of governors at International House, where many foreign students live," wrote Chauncey Belknap in a letter to the *New York Times*, "I have observed the passionate earnestness of these young men and women…It would be a tragedy to send them home embittered with the thought of America as a country where, for the foreign student, education has become a privilege of the rich, and the poor are denied even the right to work their way through college."[106] F.D Kelly, in charge of the division of colleges and professional schools in the U.S. Office of Education (in the Department of the Interior), protested that "American students would never demand or desire such protection" from working foreign students, the Department of Labor conceded that no American students had requested it.[107] In fact, students at Columbia University threatened to strike unless the University authorities took a strong stance against the ruling.[108] The editor at the *Daily Cornelian* solicited aid of the editors of five of the largest college papers to combat the ruling.[109] Many protests focused on the fact that students who had made significant progress towards degrees would have to return home before finishing. Some were less critical of the idea of restrictions, and more concerned with their timing and enforceability. "I believe that our Committee [on Friendly Relations Among

[105] "NYU Adds Protest on Doak Job Ruling," *NYT* Sept. 29, 1932, 23 "Ruling is Modified on Alien Students," *NYT*, Oct. 1, 1932, 18.

[106] Letter to the Editor, September 29, 1932, 20.

[107] Foreign Students Barred from Jobs, *New York Times*, Sept. 27, 1932, 23.

[108] *Interpreter Releases,* Vol. IX, No. 29, October 4, 1932. This was a threat that needed to be taken seriously given that Columbia students had, just the previous semester, gone on a strike when administration expelled the editor of the campus newspaper. [Robert Cohen, *When the Old Left was Young: Student Radicals and America's First Mass Student Movement, 1929-1941* (New York: Oxford University Press, 1993) 55-]

[109] "Protests Mount Against Alien Student Ruling, *Christian Science Monitor*, Oct. 1, 1932, 1.

Foreign Students] is in sympathy with the motive back of this new order," said Charles Hurrey, "but we object very much to the suddenness of the action."[110] Hurrey said this despite the fact that the Committee newsletter acknowledged that "the discussion, on nearly every campus, of the rights and claims of the foreign student, revealed clearly a majority opinion favorable to granting the foreign students the same self-help opportunities as are available to American students."[111] Though almost all college administrators involved in the protest pledged support for a foreign student willing to test the work rule in court, many hoped that this would not be necessary because of lax enforcement or revocation of the rule when the new [Roosevelt] administration assumed control.[112] Perhaps the most wide-ranging criticism of the foreign student ruling was that of the IIE's Stephen Duggan, who wrote several editorials on the subject. Duggan was so incensed by the Department of Labor's treatment of the foreign student "as an object of suspicion and distrust" that he suggested transferring the supervision of foreign students to the Office of Education. He added that State department officials could be just as much a problem: "instead of expressing his pleasure when a foreign student applies for a visa, the American consul puts him through a quiz about himself, his family, his finances, his purposes in going to the United States, which in some instances is little less than scandalous."[113]

President Roosevelt's immigration commissioner, Daniel MacCormack, revoked the work ruling in 1933, but left in place several other restrictions on the admission of foreign students that were put in place in 1932 and that, later in the decade, served as paper walls for

[110] "Ruling is Modified on Alien Students," *NYT*, Oct. 1, 1932, 18.

[111] *Unofficial Ambassadors,* January 1933, 1.

[112] Letter from John MacCracken to Lucille Milner, Nov. 21, 1932, folder 529, reel 89, ACLU papers.

[113] "Says we Humiliate Foreign Students," *New York Times*, Nov. 20, 1932, 20.

refuge seeking students.[114] Left in place was the 1932 rule that those applying for 4E visas or extensions of these were still required to have a passport valid for return to their home or another foreign country. Prior to 1932, the length of a 4E student's stay in the United States was not conditional on his passport; he could remain in the U.S. as long as he was registered as a full time student.

During the protests over the work ban, assistant secretary of labor W.W. Husband had claimed the ban was necessary in part because "refugees from Russia and territories lost by Turkey at the close of the World War have been using privileges accorded foreign students as a means of entering the United States."[115] It was precisely these student refugees—244 of them by fall 1935—who were able to regularize their status under the Palmisano bill.[116] To qualify for that bill, students would have had to enter the United States before July 1, 1933. Just a few weeks before this cut-off, approximately 8000 students were expelled from German universities for their religion or political views; if these students made their way to the United States they were ineligible for relief under the Palmisano bill. In a fall 1933 report, Cecilia Razovksy of the National Council of Jewish Women [NCJW] reported on the status of some of these students, explaining that the organization had helped them appeal for extensions of stay, though these would run out in 1934.[117]

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[114] The original foreign student rule, including the work order and several other restrictions, was issued as General Order 195, July 22, 1932; the changed ruling, which revoked the work ruling but left others in place, was issued as Second Amendment of General Order 195, June 20, 1933.

[115] Husband is quoted in "Labor Department to Listen to Educators on Doak Rule," *Christian Science Monitor*, Oct. 14, 1932, 1.

[116] Letter of Daniel MacCormack to Dean F.K. Richtmyer, Cornell University, November 4, 1935, 55488/29C

[117] "Field Service Committee Report on German Jewish Situation," October 9, 1933, Box 2, Folder 8, Papers of Cecilia Razovsky, P-290, American Jewish Historical Society at the Center for Jewish History, NY.

Those German Jewish students trying to come to the United States in late 1933 and 1934 were eligible for 4E visas; Edith Lowenstein was issued one such visa at the Berlin consulate in the fall of 1933. Because of the strict enforcement of the "likely to become a public charge" exclusion for those applying to immigrate, at this early stage, it was easier for students to enter on non-quota 4E visas than on quota immigrant visas, especially if they lacked family in the United States who could provide them with affidavits of support. For example, in late summer 1933, the American consul in London granted a 4E student visa to Salmon Bochner, a German scholar who had an appointment as a research associate at Princeton University, but refused an immigration visa to Karl Niebyl, a German scholar who had a fellowship at the University of Wisconsin; though both men lacked economic resources beyond their academic appointments, only Niebyl's were deemed insufficient.[118] But a year later Bochner had trouble extending his visa because he lacked assurance he could get the proper documents to return home.[119]

Especially after the Nuremberg laws deemed passports held by Jews unusable for re-entry into Germany, American consuls refused student visas to many Jewish students because they lacked documents that would allow them to leave the United States upon completion of their studies.[120] Consuls recognized that many of those applying for temporary visits would not return

[118] Synopsis of cases of 'refugees' from Germany refused immigration visas at London from Jan. 1, 1933 to April 11, 1934, Enclosure to dispatch No. 1150 of Robert Frazer, American Consul General at London, to Secretary of State, April 17, 1934, 150.626 J/86, Box 148, Visa Division: Correspondence Regarding Immigration, 1910-1939, RG 59, National Archives, College Park.

[119] Bochner case, Folder 10: International Migration Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records, Manuscripts and Archives Division, The New York Public Library.

[120] Bat-Ami Zucker, *In Search of Refuge: Jews and US Consuls in Nazi Germany, 1933-1941* (Portland, OR: Vallentine Mitchell, 2001) 119-121 and 56-161.

and used "increased diligence" in deciding who should get a visa.[121] By then aid organizations, student groups, and universities tried to ensure that German Jewish students entered the U.S. on permanent visas. According to a dispatch from the American consul in Berlin, if forced to return to Germany, students would be sent directly to concentration camps and "subjected to hard discipline."[122] And NCJW women social workers knew that *continuing to study* in the United States sometimes required students have *permanent* visas. NCJW client Werner Weinberg, a medical student from Hamburg, managed to enter the United States on a visitor's visa in 1936 but could not start school for another year because NYU medical school insisted he present his "first citizenship papers" before registering. But visitors could not petition for naturalization and Weinberg could not adjust to a permanent visa from within the United States. So, instead of starting school, Weinberg traveled from New York to Cuba, waited several months there for a quota visa, and then returned to New York, where he petitioned for naturalization.[123] On a late 1937 NCJW fundraising pamphlet on behalf of "nineteen urgent scholarship cases" of German Jewish students in the United States, only two were on student visas.[124]

To understand how students seeking refuge in the United States fared in the mid 1930s, it is crucial to contextualize the orientations and methods of the organizations interested in them, especially the International Student Service [ISS], which vetted students and provided

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[121] Report No. 682 on Increased in Demand for Visitors' Visas in Germany by A. Dana Hodgson, November 25, 1936, 150.626 J/241, Visa Division: Correspondence Regarding Immigration, 1910-1939, RG 59, National Archives, College Park.

[122] Dispatch #932, Raymond Geist to the Secretary of State, May 9, 1936, 150.626J/199, Box 149, Visa Division: Correspondence Regarding Immigration, 1910-1939, RG 59, National Archives, College Park.

[123] Weinberg NCJW case file, Box 5, Series II: New York Immigration files, 1920-1938, National Council for Jewish Women, Department of Service for the Foreign Born Records, Yeshiva University Special Collections.

[124] "German Refugee Students—Nineteen Urgent Cases," enclosed in a letter from Mrs. Julius Wolff, chairman of German-Jewish Refugee Projects, Dec. 23, 1937, Box 2, Folder 8, Papers of Cecilia Razovsky, P-290, American Jewish Historical Society at the Center for Jewish History, NY.

biographical dossiers about them to universities and to interested Jewish and student-run organizations including fraternities and sororities and the National Student Federation of America. This is all the more important because the students these organizations helped did not write about these issues at the time. In his autobiographical novel, *If I Forget Thee,* Josef Dunner describes being a politically engaged Jewish student in Germany and his escape from the Nazis while in the midst of working on his doctoral thesis. The novel gives a detailed and historically accurate accounting of the clashes between Nazi and left-leaning university students in Frankfurt and Dunner's escape to France and Holland, where he was unable to continue his studies because universities in both countries only conferred advanced degrees on students who had received bachelor degrees there. In Switzerland, in late 1934, the novel explains how he was able to complete his doctorate in economics and get a German passport, but was unable to get an appointment at any university. In a final, hurried chapter, an offer seemingly magically arrives from America, "this country which generously offers hospitality"; the novel ends with Dunner making plans for a new life in the United States where, unlike in Palestine, he would not have to give up his profession.[125] *If I Forget Thee* perpetuates a very partial memory of America as exceptionally welcoming to students and young postdoctoral scholars fleeing Hitler in the 1930s.[126] In fact, the Emergency Committee for Displaced Foreign Scholars, the best-known organization handling intellectual refugees, aided exclusively a select number of older, well-

[125] Josef Dunner, *If I Forget Thee* (Washington, D.C.: Dulaun Press, 1937) 273.

[126] As Walter Laqueur writes, "Where could a Jewish student turn to conclude his studies?...if his parents had the means to support him, he could apply for a place at a German university in Austria, Switzerland, or Prague. There were few openings though, and the transfer of money was rarely permitted…he could continue his studies in an English- or French-speaking country, but there was, all other difficulties aside, the problem of language. There were also very few stipends for students from abroad." (*Generation Exodus*, 15).

known scholars and did not help students or young academics. [127] Dunner was rejected by the Emergency Committee and referred to the ISS (discussed further below). Moreover, despite the recommendations of prominent professors in exile, it took the ISS several months to secure Dunner a university placement.[128] And the eventual placement of Dunner and students like him at universities in the United States was deliberately kept out of the news for fear of nativist opposition. When the Jewish fraternity Phi Sigma Delta offered in 1934 to provide room and board to a handful of German refugee students that ISS would select and secure university acceptances and tuition scholarships for —Dunner was to be one of these students—Cecelia Razovsky of the National Council of Jewish Women warned the ISS not to publicize the plan. "Already there have been attacks made on the Department of Labor for permitting children to come in [for elementary and high school education]," Rasovsky wrote in December 1934. "I am afraid we would borrow trouble if we furnished figures about students who have been placed here. There certainly should be nothing said about the Phi Sigma Delta and I am wondering how much we ought to say about what the American foundations are doing financially" to support ISS.[129] Concern by Rasovsky and others over Congressional backlash in 1935 led the ISS to ask

[127] The files of the Emergency Committee are filled with rejection letters explaining their policy. To quote two of these letters: "The Emergency committee has been in the habit of reserving limited funds for the support of older men and women who because of their maturity and scholarly preeminence will not compete with younger American scholars who have their way to make." "The committee was organized to assist those scholars who were being dismissed because of racial or political reasons from university posts where they held the rank of professor or Privatdozent." (Letter from Stephen Duggan to Saratoga Springs Commission, April 23, 1940; Letter from Betty Drury to Oskar Baudisch, Jan 3 1940, Box 50, folder 28, Series I.B., Non-Grantees, Emergency Committee in Aid of Displaced Foreign Scholars Records, Manuscripts and Archives Division, The New York Public Library.

[128] Folder 6: Josef Dunner, Box 53, Series I.B., Non-Grantees, Emergency Committee in Aid of Displaced Foreign Scholars Records, Manuscripts and Archives Division, The New York Public Library.

[129] Rasovsky to Olive Sawyer, Dec 19, 1934, Folder 16: International Student Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records, Manuscripts and Archives Division, The New York Public Library. Rasovsky was referring to a public letter sent out by John Trevor, of the Allied Patriotic Association of America, in late 1934 opposing a plan to place 250 German Jewish children (under 15) in American homes for schooling and urging a Congressional inquiry into the legality of their admission. The various Jewish and government agencies involved in coordinating the children's program were zealous about

other Jewish fraternities to put off arrangements for student placements until September 1936. This was the case even though some of the schools had already asked for refugee dossiers and some, like Yale, implied a preference for non-Jews, specifying that "the student be interested in the Christian religion and at the same time international affairs."[130]

Later in the decade, *If I Forget Thee*'s exceptionalist message of welcome was reinforced in the iconography of publicity material by a national coalition of student organizations trying to raise awareness and support for students fleeing fascism. Below, figure 5.2, is the cover of Dunner's 1937 novel—an image of the protagonist and his girlfriend, also a student, facing a stigmatizing and exclusive Europe.[131] To the right of that, figure 5.3, is an image from a 1939 Intercollegiate Committee to Aid Student Refugees pamphlet; it quotes Emma Lazarus's famous poem and replaces the radiance of the Statue of Liberty's torch with the light of learning emanating from an American university.[132] It is significant that the pamphlet features a lone male, ethnically indeterminate student. Still wary of anti-Semitism, advocates for refugee students downplayed the dominance of Jews among them. Also, though refugee organizations pushed

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keeping arrangements out of the press. "We have had meetings of representatives of the Jewish press and have taken up the question with the [New York] Times and other papers here and with the United and Associated [Press agencies]. It has not been an easy task…Every time a notice has appeared, Mrs. Rasovsky has tried to get in touch with the responsible editor in order to prevent a repetition." Letter from Joseph Chamberlain to Harold Fields, December 10, 1934, Folder 16, Papers of Joseph Chamberlain, RG 278, YIVO Institute for Jewish Research, Center for Jewish History.

[130] Letter from Francis Henson to Max Schneebeli, Jan. 3, 1935, Folder 17: International Student Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records.

[131] The image of the cover is from the Wiener library: http://www.wienerlibrary.co.uk/Adopt-a-Book?item=3

[132] Folder 6: Intercollegiate Committee to Aid Student Refugees, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records, Manuscripts and Archives Division, The New York Public Library.

many students towards more practical vocational tracks rather than university study, they did so disproportionately for women.[133]

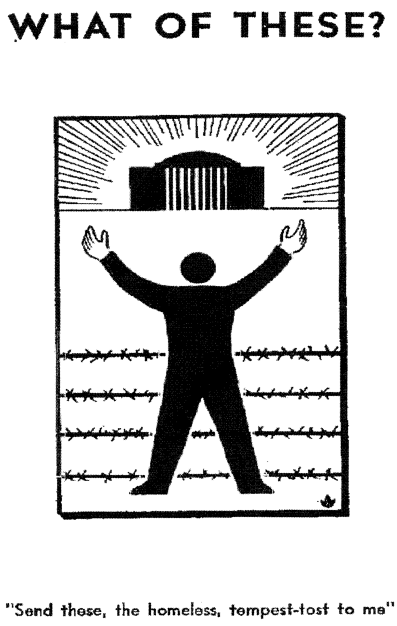

Figure 5.2, Cover of *If I Forget Thee*, http://www.wienerlibrary.co.uk/Adopt-a-Book?item=3
Figure 5.3, Cover of "What of These" pamphlet, Intercollegiate Committee to Aid Student Refugees, Folder 6, Box 166, Emergency Committee in Aid of Displaced Foreign Scholars Records, NYPL.

International Student Service was founded by the World Student Christian Federation in 1920 to cater to the relief needs of students after WWI. Then called European Student Relief [ESR], it mostly arranged for housing, medical care, food, clothes, books, paper, and laboratory instruments for students in central and southeastern Europe and only rarely coordinated resettlement of refugees; it was the secretary of ESR in Greece that helped arrange the transportation of the above mentioned 17 Armenian students from Smyrna. Despite clashes between Jewish and Christian Austrian student groups in an ESR dining hall in Vienna and the

[133] The NCJW pushed most women holding or in the midst of completing doctorates when they arrived in the United States towards housework, librarianships, or high school teaching. [see the cases of Greta Bertsei, Anna Berger, and Vera Lowitch in Boxes 2 and 3 of Series II: New York Immigration files, 1920-1938, National Council for Jewish Women, Department of Service for the Foreign Born Records, Yeshiva University Special Collections.]

reluctance of Hungarian students to attend an ESR student conference in Czechoslovakia, the organization was committed to overcoming these obstacles in the early 1920s in the name of raising "conscious[ness] of the international solidarity of student life."[134] Students (including many Americans) raised money for needy students in other countries; self-help programs, in which students established cooperatives, or "work camps," where they spent part of their time at manual work projects in poor communities, helped break down barriers of class. (In the midst fluctuating and crashing currencies, producing their own food and getting donations from the U.S. helped protect and stabilize the universities).

In the mid-1920s the organization changed its name to International Student Service to signify a shift to "an ideal of international comradeship and mutual responsibility of students in their cultural tasks which it has previously expressed in material relief." Its focus on cultural cooperation was in the service of "bringing into the realm of consciousness the deeper values common to all people." The ISS's magazine, *Vox Studentium*, featured student testimonials on the transformative or inspirational experience of traveling to other countries and meeting students there. A particularly good example of this is the publication of a poem by an American student inspired by a meeting with a Russian refugee student in Berlin, the response to the poem by the Russian student, and a detailed accounting of the experience by a German student who served as guide to the American. In the words of the German student "So bonds are knit from country to country by the sheer human element, and cannot fail ultimately to affect in practical ways our economic and political life." [135] This exemplifies the "premium placed on personal relations" that, according to one recent historian, featured prominently in much postwar

[134] Ruth Rouse, *Rebuilding Europe: The Student Chapter in Post-War* Reconstruction (London: Student Christian Movement, 1925) 55.

[135] "In the Refugee Barracks," *Vox Studentium*, Vol. III, No. 7 (May 1926) 19.

internationalism.[136] The motto on *Vox Studentium*, which featured articles in English, German, and French, was "religion, politics, race or nationality shall not bias our reporting of facts, nor our search for the truth." Issues featured articles on "Books as Ambassadors" by an Englishman, "The Holy Grail of Knowledge" by a German, universities as the locus of internationalism by a Frenchman, and, inadvertently exposing the western and Christian focus of this common search for the truth, an article—in French by a Turk—on the need for a universal language.[137] An editorial in the same issue which ran the latter argued that despite recognizing the need for a common medium of communication, "the more we love our own language …the more we appreciate others and enter into the feelings of those people who have made it…and realize the manifold, rainbow-hued splendor of the soul of our race."[138] Mary McGeachy, who edited *Vox Studentium* the following year, wrote a piece arguing that higher education was the key to internationalism. "Its purpose," she wrote, "is to help the individual to become creative and appreciative."[139] At university, students were to learn about their own cultures and to appreciate the cultures of others. In his article on universities and internationalism, Professor Alfred Zimmern argues that "universities exist for two ends." First, "Universities are…where the literature and art that is finest in the culture of the nation reaches its fullest blossom; in other

[136] Daniel Gorman, *The Emergence of International Society in the 1920s* (Cambridge: Cambridge University Press, 2012) 16.

[137] It is worth quoting from some of these articles. "To the Holy Grail [of truth and knowledge] there are as many roads as there are seekers. Here variety becomes unity, a unity of aims, a Uni-Versitas," writes Dr. C H. Becker of Berlin (March 1925, 4-5). "Any book which, without exciting partisanship, hatred, or contempt, familiarizes us with what lies outside our normal experience, will add to the pool of human unity by binding mind to mind with cement of knowledge," writes John Galsworthy (Jan.-Feb. 1925, 4).

[138] *Vox Studentium*, Vol. III, No. 5 (Marh 1926), "A Universal Language," 4, and Mehmed Chukri, "The Necessity for a Universal Language, 11.

[139] On McGeachy's time as editor of *Vox Studentium*, see Mary Kinnear*, Woman of the World: Mary McGeachy and International Cooperation* (Toronto: University of Toronto Press, 2004) 44-49.

words, they are the homes of nationality." The second work of the universities, he argues, "is the common search for truth in all realms."[140]

By the late 1920s and early 1930s, ISS devoted conferences and magazine issues to impediments to this form of internationalism: the "Jewish Question" and numerus clausus, imperialism and "the color line," the economic depression and the advent of fascism. At this time ISS formally broke its ties to the World Christian Federation, in part in response to Jews, Catholics, and non-religious people associated with the organization; this meant that some major Protestant organizations, like the Y's, no longer contributed significantly to the ISS coffer. In May 1933, the international executive committee of ISS, headquartered in Geneva and made up of faculty members and representatives of student organizations, voted, despite opposition from German delegates, to establish a relief fund for German students who had left the country because unable to continue their studies there. Later that year, ISS was recognized by the League of Nations as the official body to handle aid for all student refugees from Germany. For the next three years, people involved with ISS in the United States debated the best way to handle this crisis. "American students must participate in the task of salvaging the lives of their colleagues of the world university community, fellow students exiled from their native land because of race or political belief," an ISS pamphlet entitled "Crisis" explained. "But salvage is not enough; students must help create a new world structure for society through the universities."[141]

Walter Kotschnig, a young leader in the Austrian student Christian movement and general secretary of ISS in Geneva, was the key figure in gaining support for ISS in the United States in the early 1930s, when it became the largest contributor of money and manpower to the

[140] *Vox Studentium*, Volume 4, November 1926, 4-5.
[141] "Crises," Folder: 16: International Student Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records.

ISS through support from colleges and foundations.[142] In March 1934, Kotschnig released a special "open letter to the American public on behalf of German refugee students." In it he wrote:

> I am not simply writing this letter as the official of a relief organization. I was myself a student in Austria during the terrible years after the war [WWI], and I know what it means to look death in the face and to see all one's hopes thwarted. It was then that the ISS made it possible for me to find refuge in a family in Holland. This family harbored me until my strength was restored and then enabled me to continue my studies. It saved my life physically, morally, and intellectually. This experience has been with me ever since and, if I am striking a personal note here, it is because I want it understood why, beyond all organizational ties and responsibilities, I am determined to leave no stone unturned in our endeavor to help those students from Germany who find themselves in a position similar to the one I had to face thirteen years ago.

Thus far, the letter explained, ISS offices in Geneva, London, and Paris had given out 111 academic scholarships and 28 grants to students towards retraining for work in practical trades. ISS had raised much of its money in England and now Kotschnig was appealing to Americans for funds. He wrote:

> We are not encouraging…emigrant students to come to this country…This means that only very few of the emigrant students will be an additional burden on the American labor market. On the other hand we cannot expect countries like France, which have opened wide their frontiers to the German emigrants, to finance all those who are in need and who have taken refuge in their territory…. At a time which is singularly lacking in leadership, America will not allow great talent to be wasted. Nor can I imagine that we will fail to carry through our re-orientation program for lack of funds, for it tackles in a constructive way the most important problems raised by the emigration. Many protests have been launched in recent months against suppression of primitive human rights in Germany. Would it not be the most effective way of protest to help in a constructive way those who are suffering from the situation in Germany?[143]

Kotschnig's advocacy of migration to the United States remained restrained even as his criticism of human rights violations in Germany grew more strident in coming months. In the summer and

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[142] "I.S.S. in the United States," *Vox Studentium*, Vol VII (April-June 1930), 83-4; "The University in the Changing World" (an account of the 10th annual ISS conference, held at Mount Holyoke College), *Vox Studentium*, Vol. 8 (October-December 1931) 171-189.

[143] Water Kotschnig, open letter on emigrant students, March 27, 1934, Folder 14, International Student Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records.

fall of 1934 Kotschnig became aware of the obstacles to migration when, on behalf the High Commissioner for Refugees from Germany, he talked to U.S. State department officials, college administrators, philanthropists, and organizations regarding the placement of scholars.[144] But unlike some Americans involved with ISS, like Edward Murrow of the National Student Federation of America (and soon of CBS) and Stephen Duggan of IIE, as early as the summer of 1934—after the murder of Munich student leader Fritz Beck during the Night of the Long Knives (June 30-July 2, 1934)—Kotschnig was adamantly against continued conferences and student exchange programs with Nazi Germany. "Last year…there was still a chance of working within Germany and of influencing the more decent people. This chance has now gone," Kotschnig insisted in a letter to Murrow on July 11, 1934. "We have no desire to meet people who identify themselves with those who are responsible for the death of our collaborators. Nor do we want to endanger any more of our friends… the Berlin office will only be able to send you such [exchange] students who are 100 percent behind the present regime. I cannot help feeling that no one in America will want that type of man or woman…we shall speed up its [the Nazi regime's] demise by making it clear that all self-respecting people and organizations abroad will not have anything to do with them." Murrow wrote back a few days later that he thought severing relations with Germany "a very serious mistake." "I am as much opposed to the educational and cultural isolation of Germany as I am to the economic and political," Murrow wrote.[145] The crux of the debate was whether exchange could keep up communication with those German students still open or convertible to liberal ideas or whether exchange expressed

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[144] Diary Entry for October 26, *1934, Advocate for the Doomed: The Diaries and Papers of James G. McDonald, 1932-1935,* ed. R. Breitman, B. McDonald Stewart, and S. Hochberg (Bloomington: Indiana University Press, 2007) 529.

[145] Kotschnig to Murrow, July 11, 1934; Murrow to Kotschnig July 16, 1934, folder 15: International Student Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records.

approval of Nazi policies and propaganda. Duggan remained firm in his belief that "the oftener…students of other systems reside in our institutions of higher learning, the more they will be favorably affected by the best elements in our democratic life."[146]

In the spring of 1935, ISS's American section formally joined forces with the National Student Federation of America [NSFA], an organization representing the student governments of 150 American accredited colleges and universities.[147] The NSFA, which already operated a travel office, published a magazine, and a radio program, wanted to increase social and "public consciousness" among American students and raise their interest in international affairs.[148] ISS wanted to forge a closer connection to students on American college campuses, many of whom were beginning to organize around campus and non-campus issues –like tuition and free speech. Edward Murrow, who had served as president of the NSFA and then as secretary for IIE, helped link the two organizations. The time was ripe, Murrow believed, to shake off "American student's inertia." "All over the country there is perceptible the coming of a new student attitude…They are coming to realize more and more that the United States is tied up in a world society of nations…[economic] adversity here, if conditions continue as they are, may do what it did to European students, and drum into our undergraduates a sense of social responsibility."[149]

At the time of the merger, ISS's American executive committee voted to reorient its program to focus on "the defense of the right of students and professors to study freely all

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[146] Twentieth Annual Report of the Director of the International Institute of Education, Sept. 1, 1939, 3.

[147] Letter from Murrow to Tissington Tatlow (ISS London), Feb 27, 1935, Folder 17, International Student Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records.

[148] National Student Federation of America*, Annual Report—1933-1934, Projected Program—1935*, 3.

[149] Edward Murrow, "New Trends in American Student Thought," *I.S.S. Annals*, No. 1 (January-March, 1932), 14-22.

aspects of all questions without restraint by political and economic authorities."[150] This was an expansion of the contemporary notion of academic freedom as the privilege of professors to do research in their specialized areas and to present findings that grew out of their research. Basing a campaign for refuge on the concept of *student* academic freedom meant the possibility of turning off college administrators: Nicholas Butler, president of Columbia University and a famed supporter of international education, believed academic freedom had "no meaning whatsoever" for undergraduates and he expelled those who spoke out in ways he felt distasteful, insubordinate, or damaging to the university's reputation; the ACLU took up the cases of these students, some of whom were expelled for protesting Butler's refusal to condemn fascism.[151] The NFSA magazine took an expansive view of academic freedom: it published the ACLU's Oswald Garrison Villard on how "every brave and independent spirit which refused to accept the Hitler doctrines was immediately expelled" from German universities and, two months later, Joseph Cadden, the magazine's editor, "suggest[ed] the resignation of all [American] college administrative officers who…think that there are any topics too dangerous for discussion by the men and women they have designated as fit to attend their schools."[152] Edward Murrow and Francis Henson believed ISS support for a broadened concept of academic freedom was imperative given nativist articles in newspapers and educational journals opposing foreign

[150] At the time of the merger, NFSA was in the midst of a successful campaign against a bill introduced by New York State legislators to impose a loyalty oath upon college students. Anne Wiggins of the World Christian Federation was the only member of the ISS executive committee opposed to the merger and the new focus, arguing that "ISS was originally organized to promote international goodwill…this ideal platform was deserted last July when relationships were broken off with Germany…a mistake." Wiggins believed ISS "should return to its old position and allow NSFA to carry on its own program." Folder 17, International Student Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records.

[151] Cohen, *When The Old Left was Young*, 59, 62, 66; Michael Rosenthal, *Nicholas Miraculous: The Amazing Career of the Redoubtable Dr. Nicholas Murray Butler* (New York: Farrar, Straus and Giroux, 2006), 393.

[152] Oswald Garrison Villard, "The German Student Plight," *National Student Mirror*, II.1 (October 1934) 10; Editorial*, National Student Mirror*, II.3 (December 1934) 1.

scholars at American universities and because the ISS refugee fund had to compete for support with the fund for underground anti-fascist activity in Europe collected by the left-leaning Student League for Industrial Democracy.[153] Kotschnig, who met frequently with members of the German underground in his work for the League of Nations High Commission for Refugees, seemed nonetheless wary of ISS's new focus.[154] "We must not …chuck all the cultural cooperation work…[and] become another propaganda organization of the kind which the world is sick," he wrote Murrow.[155] Though the Carnegie Endowment, which was presided over by Butler, had contributed a small grant to ISS for refugee students in the spring of 1934, it turned down additional requests for funding in the fall of 1934. With Butler already reluctant to have the endowment express any censure of the German government,[156] was pushing the focus of ISS towards academic freedom, broadly conceived, the best strategy? Alfred Cohn of the Rockefeller Institute argued in early 1935 that close ties to student organizations in the U.S. would not help ISS raise money for student refugees. "Much too little is known about student activity in the U.S. to form a subject for popular interest. Unless I am mistaken, students have never been taken seriously here in the sense in which this has occurred in Europe so that without

[153] Murrow to Kotschnig, March 1, 1935 and March 12, 1935; Henson to Max Schneebeli, April 17, 1935; Murrow and Henson telegrammed the Geneva office of ISS on March 28, 1935 that "growing sentiment necessitates broad student organization to fight increasingly influential Hearst Coughlin tendencies in universities." Folders 17 and 18: International Student Service folders, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records.

[154] Kostchnig describes this work with the underground in his unpublished memoir, "Quest for Survival: Personal Reflections," February 1978, page 13, Box 1, Folder 6, Walter Maria Kotschnig Papers, Ger-053**,** M. E. Grenander Department of Special Collections & Archives, University at Albany / State University of New York. [Hereafter, Kotschnig papers].

[155] Kotschnig to Murrow, April 1, 1935, Folder 18: International Student Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records

[156] Rosenthal, *Nicholas Miraculous*, 363.

preparation of the public mind the matter of securing funds is likely to present difficulties."[157]

Kotschnig replied to Cohn ruefully a few weeks later:

> "after fifteen years of work…[ISS faces a] disastrous prospect…due to our apparent inability to make any impression on the American mind. To some people the disappearance of ISS will mean little. To me it would mean a very severe shock…I hardly need to talk about the value and the necessity of the refugee work…Perhaps even more important that the actual help given to the refugee students, is the fact that by keeping the refugee student problem before the universities in Europe ISS has done a great deal to counteract "totalitarian tendencies" in the universities of the western world. It has helped to keep alive 'un gout de liberte' which is a treasure we are in danger of losing.[158]

Given the suppression of student campus protests, including anti-fascist ones, by American college administrators like Butler, and James Conant's invocation of academic freedom to explain Harvard's rejection of a scholarship from Nazi official Ernst Hanfstaengl while continuing general student exchanges with universities in Germany, Kotschnig suggested that the next international ISS conference "put the problem of academic freedom very much in the center" of discussion.[159] Debate at the conference was heated. A delegate from England complained that a student there recently lost her scholarship because university administrators believed her to be spreading "communist propaganda." A Swiss delegate mentioned that some in his country proposed to "check the propaganda of fascism by University professors, claiming academic

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[157] Cohn to Kotschnig, January 25, 1935, Folder 17, International Student Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records.

[158] Kotschnig to Murrow and Kotschnig to Cohn, April 1, 1935, Folder 18: International Student Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records.

[159] Kotschning to Cohn, ibid. On October 11, 1934 James Conant wrote Francis Henson, "Throughout the country there is a strong feeling that universities have a common interest which transcends national and political lines and that we must be steadfast in keeping inviolate the principle of academic freedom." Folder 16, International Student Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records. For background on these issues see Robert Cohen, *When the Old Left was Young: Student Radicals and America's First Mass Student Movement, 1929-1941* (New York: Oxford University Press, 1993) chapter 5 and Stephen Norwood, *The Third Reich and the Ivory Tower: Complicity and Conflict on American Campuses* (New York: Cambridge University Press, 2009) chapters 2 and 3.

freedom should not be allowed to benefit those who on the day when they come to power, will hasten to destroy that very freedom."[160]

By the time of the 1935 conference, Kotschnig was in the midst of a world-wide survey of unemployment among college graduates; in it Kotschnig claimed that this problem contributed to Hitler's ascendency. Quoting the observations of Karl Mannheim, Kotschnig argued that not only did unemployment among graduates lead to disillusionment and resentment but also to the diminishment of the prestige of intellectual work and rejection of the value of the life of the mind. Kotschnig found that this sentiment was spreading to Austria and Romania, and even to France, where unemployed graduates "are not strangers to the at times violent propaganda against foreign students and professionals," and to Holland, where "Nazi tendencies are particularly strong amongst students and recent graduates in search of work."[161] While Kotschnig asserted that protectionist exclusions of foreigners from universities and professional work in individual countries would not solve the international problem of unemployment among graduates, he also accepted that "as long as nationalism in its present extreme forms govern the world, emigration must of necessity remain confined to very narrow limits."[162]

Indeed, Kotschnig seemed deeply torn about how to handle emigration. When he visited Smith College in 1935, President William Neilson told him that ten percent of the faculty were foreigners, including refugees, and that he could not take any more, which Kotschnig felt was " a point that was well taken."[163] When Neilson nonetheless offered Kotschnig a position in the department of education at Smith, Kotschnig hesitated, not wanting to abandon his work in

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[160] "I.S.S. and Academic Freedom," *ISS More Facts* (Bulletin), November 1935, 2-3.
[161] Walter Kotschnig, *Unemployment in the Learned Professions: An International Study of Occupational and Educational Planning* (London: Oxford University Press, 1937), 175-177.

[162] Ibid., 228, 275.

[163] Kotschnig, "Quest for Survival: Personal Reflections," page 19, Kotschnig papers.

Geneva.[164] Neilson helped to convince Kotschnig to join the faculty by insisting that he was not being hired as a "run of the mill" trainer of teachers, but as a unique innovator of new courses on comparative education.[165] Kotschnig did not believe that refugee students and scholars were the underlying cause of unemployment in the learned professions but that ISS had to be very selective and careful in its resettlement policies. An early ISS release explained "ISS is carrying on the work with a view to relieving the congestion in certain university centers. As the majority of the refugees are Jews, this has tended to create a feeling of anti-Semitism in countries where it had hitherto not existed…It is to be considered a primary task to arrive at a more even distribution…and promote reorientation… given tightness of intellectual labor market."[166] Kotschnig definitely saw the diverting and retraining of refugee students as one way of meliorating an overcrowding in the learned professions worldwide. The ISS staff in NY

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[164] James McDonald of the League's High Commission for Refugees recorded in his diary of November 14, 1935: "Long conference with Kotschnig…it became evident that Kotschnig is flirting—indeed he said so definitely—with the possibility of remaining in Geneva either as the German refugee person in the Nansen enlarged office, or as the head of the proposed Christian committee….I urged as strongly as I could that from Kotschnig's own point of view he ought not give up the idea of settling in the States…But I am not sure I convinced him." *Refugees and Rescue: The Diaries and Papers of James G. McDonald, 1935-1945,* ed. R. Breitman, B. McDonald Stewart and S. Hochberg (Bloomington: Indian University Press, 2009), 76-77.

[165] Kotschnig, "Quest for Survival: Personal Reflections," page 19. Twenty years later Kotschnig insisted that he "had never been a refugee" and had ample "private means" upon settling permanently in the U.S. in 1936; his immigration, he said, "was not a question of need; it was a question of choice." "Investigative Interview. In the Matter of: Walter Kotschnig." Dept. of State, Office of Security, April 13, 1953, page 6, Box 1, folder 22, Kotschnig papers.
Neilson himself seemed uncertain about how to respond to respond to Hitler's policies. His hiring of Kotschnig may have reflected awareness of student interest on campus. Just a few weeks before offering a job to Kotschnig, Smith students had responded very critically to a speech by Hans Orth, a former exchange student from Germany, who claimed Jews had pushed Germans out of jobs and used their positions to promote Communism. On the other hand, when Kotschnig started at Smith, Neilson was a member of the executive council that ran a junior year abroad program at the University of Munich; the liaison between the executive council and the Nazi government's foreign academic bureau was Smith professor Matthias Schmitz. (When asked about Schmitz, Kotschnig said "He was a Nazi…Not my type." ["Investigative Interview," 38]). There is some evidence that Kotschnig pushed Neilson towards more committed anti-fascist activism and involvement with refugee matters; in 1940 Neilson joined the ISS's executive committee. [For Kotschnig's influence on Neilson see Letter of Joseph Cadden to Kotschnig, November 12, 1937, Box 2, Folder 12, and Kotschnig to Neilson, December 17, 1938, Box 2, folder 86, Kotschnig papers]

[166] March 1934, folder 14, International Student Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records.

explicitly asked the Geneva office for dossiers of students not specializing in medicine or law who the staff thought would have few opportunities in the U.S.[167]

ISS resolved to use the refugee problem as a way to help solve the unemployment problem. ISS arranged for universities to provide academic scholarships for "outstanding" refuge-seeking students who were closest to finishing their studies and with the best prospects for academic appointments; all others were considered too expensive to educate and too far from gainful employment. Many German students made their way to the United States on their own and sought out help from ISS's New York office; these students were advised how to best "reorient" themselves to the job market and given grants or loans for training courses to fill particular jobs.[168] By the end of 1936, about 60 students had been given funds towards scholarship or reorientation at the New York office.[169] In 1937, the ISS's American committee separated from the NSFA, while still collaborating with it to reach American students. Kotschnig wrote Cohn that "it is expected particularly that it will want to strengthen the old element in the committee in order to prepare for a fuller cooperation with faculty circles."[170] ISS remained wary of student autonomy and committed to a top-down approach, especially to gaining backing from campus bigwigs and prominent educators and philanthropists.

Identity, social problems, and ideology also preoccupied Jewish and student organizations in the mid-1930s and influenced their handling of student refuge seekers. In terms

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[167] Max Schneebeli to Murrow, July 5 1934, folder 15, International Student Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records.

[168] Henson to Murrow, Jan. 7 1935; ISS Report on the Carnegie Foundation grant, Feb. 14, 1935, folder 17, International Student Service, Box 166, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records.

[169] Memorandum for Dr. Kotschnig (concerning the work done by ISS during the years 1933 to 1936 on behalf of students unable to continue their studies in Germany), December 1, 1936, Box 9, Folder 24, Kotschnig papers.

[170] Kotschnig to Cohn, May 2, 1937, Box 2, folder 14, Kotschnig papers.

of Jewish fraternities, Phi Sigma Delta, under the helm of Joseph Kruger, asked ISS for dossiers as early as 1934; others, like Phi Epsilon Pi, were slower to commit, despite the suggestion of Abram Sachar, head of B'nai Brith Hillel and future president of Brandeis University.[171] The Phi Eps were pre-occupied with social events and keeping up the elite status of membership (they were wary of working class and New York Jews, who were believed to be radical and conspicuous). But local chapters and concerned alumni wanted to help refugees.[172] Samuel Sherman, a Phi Ep officer who was also a supporter of Sachar, was ordered by the fraternity's grand superior to make sure that Max Katz, a chemistry student from Frankfurt who had contacted the Pittsburgh chapter for room and board, did not have relatives in New York who were trying to pass the buck to the fraternity.[173] Herbert Fried, a lawyer involved with the fraternity's refugee committee, came to the rescue of a student who needed help adjusting to a permanent visa despite protestations from the grand superior that Phi Ep's reputation might be

[171] For an article on Kruger's efforts, see http://www.jta.org/1934/11/14/archive/fraternity-will-finance-study-of-fifteen-reich-youths-here [accessed January 3, 2014]. Joseph Kruger, president of Phi Sigma Delta, made the placement of German refugee students a top priority. He served on the executive committee of ISS's American branch through the late 1930s. Sachar was an honorary member of Phi Ep, but became increasingly disenchanted with the fraternity's superficiality and broke contact with the fraternity. Fraternities were officially barred altogether from Brandeis while Sachar was president.

[172] The Phi Epsilon Pi grand council voted down the idea of refugee sponsorship in 1934. On March 15, 1935, executive secretary Maurice Jacobs wrote Herbert Fried, a Phi Ep who pushed for the establishment of a refugee committee, that "if we could make them all realize that the Fraternity can be just as fine a social organization and participate in philanthropic endeavors, then you would have less trouble." With the help of Arnold Shure of Phi Sigma Delta, the Phi Ep refugee committee began functioning in 1935 without the confirmation of the fraternity's grand council, which later recognized it, though tried to limit its activities to helping German students already in the United States (rather than bringing in students from abroad, which chapters at Michigan and Pitt were already doing). A March 12, 1936 letter outlining refugee committee policies explained that sponsored students were not meant to be members of the fraternity. "In fact, the sole basis upon which the universities have been induced to grant scholarships or fellowships to this type of student has been that they will not become members." Sam Sherman, a Chicago lawyer committed to the work of the refugee committee, fretted about "requests coming from New York," especially from German students interested in support to study dentistry or law —"our 2 most crowded professions." As of November 10, 1937, the fraternity had helped four refugee students. Papers of Phi Epsilon Pi, I-76, Box 12, Refugee Committee, folder 6, American Jewish Historical Society, Center for Jewish History.

[173] In fall 1936, after the Katz investigation, Maurice Jacobs instructed Sherman that "our plan should be to assist only those German refugee students…unable to complete their education without out assistance and who, upon investigation, are found to be of acceptable scholarship ability and of good and worthy character." Papers of Phi Epsilon Pi, I-76, Box 12, Refugee Committee, folder 6, American Jewish Historical Society, Center for Jewish History.

damaged by such efforts, which he assumed involved messy "international complications" and "subterfuge."[174] Even those fraternity men who wanted to support refugees were very particular; Phi Sigma Delta did not want students from Germany of Polish or Russian background and the Phi Epsilon Pi's Tufts chapter would not accept a student they perceived to be "too" Jewish (his father was a rabbi and interested in Zionism). After a Jewish welfare organization helped the family of one refugee student resettle in Dayton so that they could qualify for the in-state tuition rate and be near University of Ohio, the fraternity house there decided that the student was not outgoing enough and refused to ask him to return to the house for another term.[175] Phi Epsilon Pi executive secretary Maurice Jacobs also worried about publicizing a fraternity dance to raise money for refugee students at the University of Minnesota.[176] One of these students, Ernest Kroner, had been forbidden to continue his studies in pharmacy at the University of Breslau, left for New York, got a job as a shipping clerk, and turned to the NCJW for help. He had been brought to Minnesota by Fanny Fligelman Brin, a Minneapolis resident and president of the NCJW, who had raised money among Minneapolis businessmen for a two-year scholarship. For Phi Ep, support for refugee students was a departure from their typical response to the shadow of Hitler: good behavior to deflect anti-Jewish prejudice; as the Grand Superior replied to a comment about the worsening situation in Europe at the 1937 convention, "There are sufficient bigots in this country to take any excuse at all to carry on such a campaign [here]…Let's go back

[174] Louis Fushan to Herbert Fried, Aug. 2, 1937 and Maurice Jacobs to Fried, Aug. 2 1937, ibid.

[175] Letter from Jane Fisher (Jewish Federation of Social Service) to Abram Sachar, Aug. 4, 1941 and Sam Sherman to Sylvan Cohen, July 30, 1941, Abram L. Sachar Hillel Papers, Box 23, Refugee Students, Brandeis University Archives and Special Collections.

[176] Jacobs felt it was wrong to boast of charity and publicize the troubles of others. Though he liked the idea that "other fraternities are carefully watching what we are doing on this and… we [may] be able to eclipse the record of Phi Sigma Delta," he still insisted the "less crowing on our work with the refugees, the better off we'll be." Letters to Sherman from Maurice Jacobs May 1, 1936 and May 23, 1936, ibid.

to our various chapters and see that we keep own houses in order…See that all the men in your chapter always conduct themselves as gentlemen at all times."[177] For Brin, support for refugees served as a bridge between pacifist agitation and support for war in the name of victory over fascism and world reorganization afterwards.[178]

In 1936, there was still a sense among many committed and outspoken activists like Brin that promoting pacifism was a good way to combat anti-Semitism, especially since they believed Jews traditionally suffered disproportionately during wars in Europe and because Hitlerism represented the opposite of peace. The NCJW's campaign for German refugee students argued that, "Our answer to Hitler and his allies is not war. Our answer is not to send troops and spies and cause dissension and chaos. Our answer is to grasp from the clutches of the Nazi dictatorship those minds, those fine souls which they aim to destroy."[179] At mid-decade, various strains of activism co-existed, albeit awkwardly.[180] Indeed in 1937 and early 1938, Josef Dunner, the above-mentioned author of *If I Forget Thee,* spoke on fascism in Europe and aid for its Jewish

[177] Quotation from Marianne Sanua, *Going Greek: Jewish College Fraternities in the United States* (Detroit: Wayne State University Press, 2003) 261-262. When fraternity men pushed for social action and national service, they got pushback from some alumni who thought Jewish lawyers, social workers, and rabbis had no right to demand that college boys "worry about what Hitler is doing." [Sanua, 244]

[178] Brin had spent the late 1920s pushing the NCJW towards a focus on peace advocacy and disarmament. From the mid 1930s, Brin headed Minneapolis's coordinating committee for aid to refugee and emigrants and she also worked with a university faculty chapter of the Committee in Aid of Displaced German Scholars. The same year she raised money for Kroner's schooling, she told the NCJW's national convention that "disputes cannot be settled by sacrificing young men on the battlefield" and "that a nation which spends four-fifths of its income on war and preparation for war cannot advance the civilized arts of life." After completing her second term as NCJW president in 1938, Brin served as chairman of its committee on peace, which now urged lifting neutrality restrictions to provide assistance to the Spanish Republican government. It was painful for Brin to ask, in 1940, not to be reappointed to the committee's chairmanship. She was persuaded to continue as chair and focused her attention on postwar planning to avoid a "cycle of isolation and intervention." "Fanny Brin: Woman of Peace," in *Women of Minnesota*, ed. Barbara Stuhler and Gretchen Kreuter (Minnesota Historical Society, 1998), 299-303.

[179] Enclosed in a letter from Mrs. Julius Wolff, chairman of German-Jewish Refugee Projects, Dec. 23, 1937, Box 2, Folder 8, Papers of Cecilia Razovsky, P-290, American Jewish Historical Society at the Center for Jewish History, NY

[180] For a good discussion of the impact of the rise of Hitler on Jewish women's peace activism see Melissa R. Klapper, *Ballots, Babies and Banners of Peace: American Jewish Women's Activism, 1890-1940* (New York: NYU Press, 2013) chapter 184-203.

victims at various Jewish American forums devoted to promoting neutrality, emigration of refugees to Palestine, and the Kellogg-Briand pact.[181] By this time, too, the attention of many left-leaning or Communist student leaders like Joseph Cadden of the NFSA, who had worked diligently to help refugee students and served as a link between Jewish organizations and the ISS, were focused on anti-fascist resistance in Spain.[182]

Several events in Ohio in 1937 highlighted the need for a more united response to Hitler among those interested in students. In the spring of that year, the arrival of a group of students from Germany, who were slated to spend six weeks at local high schools, was marked by their singing of "Horst Wessel" while saluting a Swastika at Cleveland's Public Hall. Razovsky wrote a letter to the Immigration Service reporting on the incident and adding her voice to several others (like Rabbi Abba Hillel Silver, several "non-Jewish social workers from Cleveland," and Dr. Peter Odegard of Ohio State University) who condemned the exchange program as propaganda.[183] Around the same time, Rasovsky learned that German Jewish refugee children she had helped place in the homes of Columbus families had been dismissed from public schools there for failure to pay tuition. Opinion was split among Jewish leaders about whether to fight the Board of Education in court or settle the matter out of court to avoid potential defeat and

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[181] "Jewish Women Plead for Peace at Utica Parley," *New York Herald Tribune*, April 14, 1937, 17; "Peace Policy Given to Jewish Women: National Council Is Asked to Back World Cooperation Rather than Isolation," *New York Times,* January 25, 1938, 13; "Nazi Persecutions Describes to Jewish Campaign Workers," *Boston Globe*, April 2, 1938, 2.

[182] Joseph Cadden was editor of the NFSA's *Student Mirror*, served on the executive committee of the American branch of the ISS, and corresponded with Phi Epsilon Pi and NCJW regarding the aforementioned refugee students Max Katz and Werner Weinberg, among others. In 1937 Cadden went to Spain on behalf of ISS to investigate educational needs during the war. His experience there, which he spoke extensively about to student groups upon his return, pushed him towards a more firm Communist affiliation. This affiliation, which influenced his anti-war stance while serving as a leader of the American Youth Congress in 1940, led him to break off his close affiliation with the ISS that year.

[183] Letter from Rasovsky to J.H. Wagner (with attached clippings and letter from Silver), June 7, 1937, INS file 55488/21C.

publicity damaging to the cause of refugees.[184] In Ohio, and in other states, college students affiliated with the NSFA lobbied for federally funded part-time jobs through Federal Emergency Relief Administration and the National Youth Administration (which was part of the WPA).[185] Like admission and housing at city and State universities, federal relief was not always available to foreign students.[186] But Jewish advocates were again divided about whether even eligible refugees should accept federal relief, with social workers like Rasovsky leaning towards acceptance; a WPA job, Rasovsky believed, could help a refugee student adjust to American academic life.[187] But concern about restrictionism in Ohio, the appeal of fascism among its youth, and anti-Semitism on its campuses were not unfounded. Ohio's was only one of few National Youth Administration state directors to express great interest in establishing vocational education residential centers for rural youth who otherwise might fall prey to fascism.[188] In the

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[184] Letter from E.J. Schanfarber (attorney and head of United Jewish Fund of Columbus) to Cecilia Razovsky (in her capacity as executive director of German-Jewish Children's Aid, Inc.) May 20, 1937 and Letter from Rasovsky to Schanfarber May 20, 1937, folder 18, Papers of Joseph Chamberlain, RG 278, YIVO Institute for Jewish Research, Center for Jewish History.

[185] Kevin Bower, "'A Favored Child of the State': Federal Student Aid at Ohio Colleges and Universities, 1934-1943, *History of Education Quarterly*, 44.3 (Autumn 2004) 364-387.

[186] Some city and state universities—like Hunter College in New York or state colleges in Connecticut—would only admit those students with legal *residency*, which refugees on student visas did not have. Others, like Penn State, did not have such restrictions. Iowa State allowed refugees to compete for scholarships on the same basis as American students. In 1934, the Federal Emergency Relief Administration ruled that foreign students on temporary visas *were not* eligible for emergency relief work; in 1935, the NYA ruled that they *were* eligible. In 1937 and 1938, only those who came over on *permanent visas* and filed their first papers were legally eligible for WPA jobs. [For the FERA, NYA, and WPA eligibility see Letter from C.F. Klinefelter to Edward Shaughnessy, Aug. 2, 1934 and L.R. Alderman to Charles White, November 13, 1935, Letter from J.H. Wagner to Mrs. Frank Haras, April 23, 1938, INS file 55853/732.. See also Mary Anne Thatcher, *Immigrants and the 1930s* (New York: Garland, 1990) 175-181, "Concerning Aliens on WPA Projects, *Interpreter Releases*, XIV, 39 July 27, 1937, 265.)

[187] The NCJW sent Vera Lowitch, who had a doctorate in law, to study library science at the University of Wisconsin in 1935, where she got a WPA job working on a state crime survey. The job helped her "loose many of her mannerisms" and "martyr attitude" and "much of her antagonism to American ways and institutions." Case file of Vera Lowitch, Box 3 of Series II: New York Immigration files, 1920-1938, National Council for Jewish Women, Department of Service for the Foreign Born Records, Yeshiva University Special Collections.

[188] Richard A. Reiman, *The New Deal and American Youth* (Athens: University of Georgia Press, 1992) 131 and 139 and, more generally, chapter 6, "Facing Failure and Fascism."

fall of 1937, Robert Spivack, a Dayton native, a recent graduate of the University of Cincinnati, and new secretary of the ISS's American branch, found a good deal of organizing by well-financed and connected fascist students at Western Reserve University and Ohio State and noted that his alma-mater was host to several pro-Nazi exchange students.[189]

There is other evidence of increasing concern about the stakes of student exchange with Germany by this time. A newspaper report on exchange students inspired Kathrine Taylor's ominous 1938 story "Address Unknown," which takes the form of an exchange of letters between a businessman in Germany and his Jewish partner in the United States, the last of which is returned to the U.S. stamped with the story's title. Taylor had read an article about American students in Germany who wrote home detailing the truth about the Nazi atrocities. Fraternity brothers in the U.S. thought it would be funny to respond with letters that made fun of Hitler. The visiting students wrote back from Germany that such letters could get a person killed. This gave Taylor the idea of "a letter as a weapon."[190] [Taylor's story was particularly poignant for refugee student Stephen Frishauf, born of a Jewish mother who converted to marry his Protestant father. Frishauf never received answers to letters he sent to his father, who had by then become a Nazi, in late 1938.[191]] Duggan also had some sense that student exchange could be used as a weapon, writing the immigration service a confidential letter expressing concern over the German and Japanese government's work student movement with Chile. "We are frankly losing

[189] Robert G. Spivack, "Heil Alma Mater—Student Fascists Organize," *The Student Advocate*, II.2 (October 1937) 19, 20, 29, 30.

[190] Forward by Charles Taylor to Kathrine Kressman Taylor, *Address Unknown* (New York: WSP Pocket Books, 2001) .

[191] Frisauf tells his story and refers to Kressman Taylor's in his 2008 interview with Klaus Fiala, AHC 3773, Leo Baeck Institute, Center for Jewish History, New York.

out in the competition with these totalitarian states," Duggan wrote.[192] In terms of German exchange students coming to the United States under IIE auspices, Duggan met each one personally upon arrival; "if any one of them does engage in propaganda," he wrote, "it is not tolerated" by the IIE and a complaint to the German embassy "usually suffices to stop it." Duggan remained steadfast in his belief that the Nazi students visiting the U.S. would more likely "be influenced in favor of our way of life" than undermine the faith of American students in their own national institutions. "A policy of isolation is not the way of facilitating understanding, and one of the most important things for us to do now is to try to understand why dictatorship has captured the imagination of the youth of great nations."[193] Duggan sent a questionnaire to 60 American colleges that hosted the majority of the German students. "Out of the 55 institutions that answered, 47 stated that the German students behaved as did the foreign students generally, that is, endeavoring to learn as much as possible in the fields of their study."[194] So the exchange programs continued despite criticism from some quarters about the caliber of education received by American students in Germany; Harry Hemmendinger, a Jewish academic affiliated with the University Observatory at Princeton wrote President William Neilson that Smith's granting credit for courses taken at German universities made a mockery of the college's academic standards.[195] Some college presidents seemed genuinely worried that ending exchanges or criticizing Germany more generally might actually impede efforts to provide refuge to students fleeing fascism. In the immediate wake of Kristallnacht, Ada Comstock, president of Radcliffe college, telegrammed the State Department: "Radcliffe College

[192] Stephen Duggan to J. H. Wagner, December 10, 1937, INS file 554888/21c

[193] Duggan to Professor Walter Wilcox, September 24, 1937, Box 84, Folder: Institute for International Education, American Council of Education Records, Hoover Institution Library, Stanford.

[194] Institute of International Education, 19th Annual Report of the Director, October 15, 1938, 28-29.

[195] Norwood, *Third Reich in the Ivory Tower*, 128.

students eager to help in alleviating distress among German refugees. Are raising money to bring over one or more students immediately. Would appreciate your help in assisting them to leave Germany and to enter the US. Do you think there is danger that any public condemnation by the college of Nazi policies might militate against this plan?"[196]

The campaign at Radcliffe was just one of many energetic student led efforts to raise money to bring refugee students to universities across the country during the academic year 1938-1939. By the winter break, students formed the Intercollegiate Committee to Aid Student Refugees [ICASR] to coordinate campaigns on different campuses; students who could not persuade their particular campus administration to provide tuition scholarships could send the money they raised to another college that would cover tuition but lacked the funds for living expenses. Ingrid Warburg funded the office of the ICASR committee in New York, helped forge a merger between the committee and the ISS, and raised money for scholarships.[197] All the important Jewish refugee organizations and student groups collaborated with the ICASR; the Hillel Foundation was especially helpful connecting students who appealed to ISS to Hillel houses, fraternities, and sororities on campuses. By this time, too, Pi Epsilon Pi had established a special national fund for student refugees that, like the ICASR fund, aided chapters who could not otherwise afford to house refugees.[198] The language of ICASR appeals resonated with idealism. The pamphlet pictured above ["What of These?"] explained that the challenge of Nazi

[196] Ada Comstack to Francis Sayre, November 19 1938, RG 59 General Records of the Department of State, Visa Division, Correspondene regarding immigration, 1910-1939, 150.626 J, Box. No. 147

[197] On Warburg's role as the "godmother of the Intercollegiate Committee," see letter from Kotschnig to Bradby, June 2, 1939, Box 2, folder 9 and Letter from Kotschnig to Warburg, September 14, 1940, Box 3, folder, Kotschnig papers. On the "amalgamation" of ICARS and ISS's refugee department see "Proposals Regarding the Closer Coordination of the Intercollegiate Committee and the ISS," (which is signed by both Roger Lane of the ICARS and Ingrid Warburg), Box 2, folder 59, Kotschnig papers.

[198] Letter from Milton Harris to Abram Sachar, October 14, 1938, Box 12, Folder: Phi Epsilon Pi, Abram L. Sachar Hillel Papers, Brandeis University Archives and Special Collections.

Germany was not so much an attack of one nation against others but "a challenge of a form of government which imprisons." It called on Americans to help "Young students with skills of which they are as yet only dimly aware and whose lives stretch before them with little hope of fulfillment." By helping them, American colleges were "not only carrying out a greatly needed humanitarian enterprise…but in addition we are demonstrating our determination to keep strong the liberal and democratic tradition of the United States." Students at Fisk wrote the committee that "Being an underprivileged class ourselves, we wish to do all we can to assist others who are likewise under pressure." Students at the College of William and Mary wrote "your committee makes it possible for small colleges like ours to act on a problem as big as this."[199] In March 1939, Frederick Eby Jr. of ISS toured colleges across the South; $40,000 was raised at the University of Texas by persuading movie theaters throughout the state to donate a percentage of their income to refugee students. Students on the East Coast held dances, tag sales, and rallies; Orson Welles helped raise money at a rally at Simmons College.[200] The coalition managed to secure over 200 scholarships by the spring of 1939.

But many students awarded scholarships had trouble getting to the United States. In the mid 1930s, when Germany's immigration quota was undersubscribed, it was feasible to bring students over on permanent visas when appropriate affidavits could be secured, especially because consuls were instructed in 1936 to ease their LPC policy; by the end of the decade, when refugees quickly filled the recently combined German and Austrian quotas, students turned to temporary visitor and student visas. But consuls issuing student visas were stricter than ever in

[199] Intercollegiate Committee to Aid Student Refugees, Summary of Progress, January to June 1939, Box 9, folder 21, Kotschnig papers.

[200] Intercollegiate Committee to Aid Student Refugees, Progress Report, April 1939, Box 9, folder 21, Kotschnig papers.

requiring that students have valid travel documents for return.[201] The State Department instructed consuls to do this knowing full well that Germany's refusal to issue valid passports was "a phase of that government's discriminatory policy with respect to its own nationals of the Jewish race" and that the American passport rule effectively perpetuated this discrimination by preventing "non-aryans" from obtaining student visas to the United States.[202] The State Department upheld this requirement despite an executive order giving it the discretion to waive the passport and visa requirements for nonimmigrant aliens in emergency cases.[203] Immigration officials adamantly insisted that passport-valid-for-return requirement was not a rule or regulation—*which they very well knew it was*—that could be administratively altered. Rather than using discretion to change the rule it put in place in 1932 (see page 37, above), the INS insisted the only remedy was legislative amendment. Allowing in students without passports valid for return would, according to the Immigration Commissioner's reasoning, "for all practical purposes" give the students "permanent residence without being charged to the quotas" and "be in effect an executive repeal of the quota statute."[204] Robert Alexander of the State Department's Visa Division even developed a circular and abstract theory to support the passport rule that made German policy and student intent to remain completely irrelevant: "failure to establish temporary non-quota status [because lacking return travel documents]…leaves an alien student

[201] Letter from George Messersmith to Jerome Greene (Harvard), December 27, 1938, 811.111 Refugees/14, RG 59, General Records of the Department of State, Visa Division, General Visa Correspondence, 1914-1940; Robert Alexander, "Does the President Have the Authority to Abolish or Waive the Requirement of Passports and Visas in the Vases of German Religious, Racial or Political Refugees,?" October 24, 1938, 811.111 Regulations/2176, ibid.; Telegram from A.M. Warren of the Visa Division to Robert Spivack of ISS, November 26, 1938, 150.626 J/552, RG 59, General Records of the Dept. of State, Visa Division, Correspondence Regarding Immigration, 1910-39.

[202] 811.111Colleges/1887, Box 12, RG 59 Visa Division, General Visa Correspondence, 1914-40.

[203] Executive Order No. 7865, April 12, 1938.

[204] Letter from James Houghtelling to Robert Hutchins (University of Chicago), May 12, 1939, INS file 55853/732.

in the quota immigrant class…even when coming into the United States for one day."[205] When the secretary of the ICASR and Clarence Pickett of the Friends Service Committee suggested that consuls issue student visas to those refugees who could show that they would go to another country after completing their studies, consuls agreed to do this, though warned that obtaining this evidence was "often insurmountable."[206] For a while it seemed possible to rescue some Czech students because, Kotschnig wrote in December 1938, "the Czech government is still civilized enough to issue two-way passports."[207] But things changed quickly especially after war broke out in Europe. By the time one such student, Michael Flack, got notice of his ISS scholarship at Iowa State, he wasn't allowed to leave Czechoslovakia and was sent to a concentration camp.[208]

Those who did manage to escape on temporary visas faced problems upon arrival. As mentioned in the introductory chapter of this dissertation, a German student named Hilmar Wolff jumped off the *S.S. Quanza* when it was docked in the waters off Norfolk. Wolff, who was not Jewish, had been a student at the University of Zurich and, after he dropped out of the German Student Association there because he objected to its Nazi propaganda, the German consul demanded he return to Germany immediately and enlist in the army. He managed to get transit

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[205] Robert Alexander to Mr. Warren, May 28, 1938, 811.111Colleges/1900, Box 12, RG 59 Visa Division, General Visa Correspondence, 1914-40.

[206] Catherine Deeny to Cordell Hull, March 23, 1939 811.111Colleges/1957, ibid.; A.M. Warren, Chief of the Visa Division, to Clarence Pickett, Executive Secretary of the American Friends Service Committee, April 3, 1939, 150.626J/617, RG 59, General Records of the Dept. of State, Visa Division, Correspondence Regarding Immigration, 1910-39.
When the ICASR and Bryn Mawr president Marion Edwards Park appealed to Harvard president James Conant to use his influence to persuade the State Department and the INS to encourage consulates to exercise more flexibility. (Norwood, *Third Reich in the Ivory Tower*, 237-8).

[207] Kotschnig to Neilson, December 17, 1938.

[208] Flack's case is in Folder: 1945-1950, Box 12, Pi Epsilon Phi papers. Flack managed to escape from the concentration camp, go into hiding, and, after the war, joined the U.S. army as an interpreter. He finally got to Iowa State in 1946.

visas for France and Lisbon, where he boarded the *Quanza*. Patrick Malin determined that he, like the Quanza's other passengers, qualified as a political refugee.[209] One Jewish woman from Vienna, who had made her way to France and there procured a student visa to the United States through the use of a false Christian identity and Chilean passport, had difficulty getting help from refugee agencies in the U.S. when she wanted to adjust her status partly because nobody trusted she was who she claimed to be. A lawyer eventually helped her re-immigrate through Canada.[210] German Jewish student refugees bound for the University of Michigan and Tufts were detained at Ellis Island. They avoided being sent back to Europe only because several fraternities petitioned the State Department on their behalf.[211]

Once in the United States, those students on visitor visas faced the same challenges as earlier. Since they could not qualify for legal residence, they could not enroll in city colleges or pay in-state tuition.[212] If they enrolled in private colleges, they usually had a hard time getting money to support their fees and maintenance, and if they neglected to register for a term, they risked falling out of student status and deportation.[213] Even their sponsors hoped that they would limit their political speech; Joseph Cadden worried "that there might be criticism of ISS if foreign students coming to the United States should discuss the role of this country in world

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[209] Cecelia Razovsky describes Wolff's history in Re: S.S. Quanza, Sept. 16, 1940, Box 5, folder 1, Papers of Cecilia Razovsky, P-290, American Jewish Historical Society at the Center for Jewish History, NY.

[210] Oral History Interview with Juana Merino Kalfel (AHC 2308), Leo Baeck Institute, Center for Jewish History, New York.

[211] Sanua, *Going Greek*, 236.

[212] Letter of Isaiah Minkoff to Abram Sachar, Sept 24, 1940: Julia Aisenstandt came to the US in late 1940. "The authorities at Hunter College are ready to accept her, but since her status in the United States is still that of a visitor, they are not permitted to do so." Abram L. Sachar Hillel Papers, Box 23, Refugee Students, Brandeis University Archives and Special Collections.

[213] Letter from Josephine Lee to A.L. Sachar, January 20, 1941, regarding Samuel Moscovic, a student from Czechoslovakia studying at NYU, Folder: Refugee Students M, Box 23, Sachar Hillel papers.

affairs."[214] By 1939, too, nativist Congressmen had managed to pass, and Roosevelt signed, legislation excluding all non-citizens from WPA jobs. Perhaps this is one of the reasons Roosevelt kept his New Deal placement and job training program for refugee youth small and secret.[215] In 1939 the National Youth Administration collaborated with Razovsky to resettle 85 refugee students who had reached New York to residential centers in the interior for rural education and vocational training. Twenty-four year old Leon Erber was grateful but also a bit unnerved by all the farm work rather than industrial apprenticeship, "worried" he would not get the "experience in the trade" he would need for "further advance."[216] Another student named Charles Polk was placed at an NYA center to learn radio servicing; he instead sought a scholarship from ISS because he was "most anxious to go on with his academic studies in physics and math."[217]

Though refugee scholarships were supposed to go to students abroad needing rescue, many of them ended up supporting students who had made their way to the United States on their own or with their families on permanent visas but could not afford to go to college. Placements were more selective for these students because of the recognition that there were many poor American-born students who were just as unable to afford college; the Jewish sorority Alpha Epsilon Pi "decided that they would no longer sponsor foreign students but would give fellowship opportunities to American girls."[218] To deal with the demand for refugee scholarships,

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[214] Minutes—ISS Committee Meeting, folder 24, Box 9, Kostchnig papers.

[215] According to Reiman, the original plan was to place hundreds of refugee students but the President turned it into a "token action" and asked that all publicity was to be avoided. (*The New Deal and American Youth,* 169).

[216] Ibid., 172.

[217] Letter of Josephine Lee of ISS to Abram Sachar, June 27, 1941, Folder: Refugee Students, Box 23, Sachar Hillel papers.

[218] Abram Sachar to Margaret Brown of ISS, July 22, 1941, Box 23, Sachar Hillel papers.

the ISS executive committee decided that students who had been in the United States longer than three years would not be considered refugees eligible for assistance, though exceptions could be made.[219] It was easier to get a coveted scholarship if you had a connection to academia. Ernst Beier, for example, was able to get an ISS scholarship to attend Amherst through his relationship with Howard Mumford Jones at Harvard. (Jones's wife Bessie learned of Beier's background while shopping at a drug store where Beier worked as a clerk. She invited Beier to stay in the Jones apartment for several weeks before he began at Amherst.[220]) The ISS worked especially closely with the Hillel Foundation, which provided grants to students and helped find placement at fraternity and sorority houses. Abram Sachar, head of Hillel and a professor at the University of Illinois, personally intervened when students had problems and made the University of Illinois an especially hospitable place for refugees.[221] Lore Rasmussen, who arrived in New York in 1938, was put off that Columbia University had done "things to court the Germans under Hitler" and so one of her professors there sent her to the University of Illinois where Sachar, she recounted, "took me on like a daughter." [222]

Sachar justified providing special help to those refugee students who had already made it to the U.S. by reserving it for "young people of superb talent" and seeing their college

[219] ISS Refugee Committee Meeting, February 21, 1941, Box 9, folder 29, Kotschnig papers.

[220] Ernest Beier, *A Question of Belonging: The Memoir s of a Psychologist* (Woodlands, TX: New Century Books, 2002) 25-43.

[221] Sachar also provided a personal affidavit for a Czech student at the University of Illinois on a student visa so that she could re-immigrate to regularize her status and offered a German student a place at the University of Illinois when his scholarship at the University of Texas was in jeopardy. Memo from A.L. Sachar to Evelyn Flesch regarding Ruth Schorsch, August 11, 1941, Folder: Foreign Students, O, S, T, W, Z, Box 23 and A.L. Sachar to Abram Goodman, August 14, 1941, Folder: Refugee students, G, K, Box 23.

[222] See Lore's account here: http://1440walnut.net/frameset.1EarlyLife.htm (accessed December 3, 2013).

opportunities "as a means of rehabilitating them psychologically."[223] Hillel tried to place students in public colleges because of the lower tuition, but also away from New York and large clusters of refugees so that they could be better "Americanized."[224] The ISS, Hillel, and the fraternities and sororities gave students tuition scholarships and room and board for a year or two, hoping that the universities and colleges would provide scholarships or tuition waivers thereafter and the students would find other means of support. "Our student refugee fund," Sachar explained, "is intended primarily to readjust young people who have suffered a great deal from European tyranny. After they have received a year on a college campus it is felt that a psychological readjustment has taken place. The opportunity must then pass to some fine new people."[225]

That said, sometimes, if a student was making a good adjustment but could not get the money to continue his studies, the ISS and Hillel might arrange to transfer him to another school to get another one or two year scholarship and stay.[226] This was harder after U.S. entry into the war "decimated" the membership at fraternities and made it hard for students who were technically enemy aliens to gain admission to universities.[227] Hillel temporarily suspended its refugee student fund in 1942. In late 1941 the ISS refugee committee reported that "eliminating those graduate students over twenty-five years old whose studies are the concern of no other organization; eliminating the technical, the medical, the specialized students whom we seem

[223] Letter from Sachar to Mrs. Morris Steinhorn, Feb. 17, 1942, Folder: Refugee Committee, 1942-1946**,** Sachar papers.

[224] Letter from Abram Sachar to H.J. Ettlinger (University of Texas), September 25, 1941, Folder: Refugee Students, G,K, Box 23, Sachar papers.

[225] Letter from Sachar to Hans Hirschberg, May 11 1942, Box 23**,** Sachar papers.

[226] Letter from Josephine Lee of ISS to Robert Dolins of the National Refugee Service, May 5, 1942 Folder: Foreign Students, O, S, T, W, Z, Box 23, Sachar papers.

[227] Letter from Josephine Lee (of ISS) to Sachar, June 16, 1942 and letter rom Sachar to Lee, July 13, 1942, ibid.

unable to help; eliminating all who have been in this country long enough to gain a foothold in our academic world—eliminating all these, there still remain in our active file over two-hundred well-qualified refugee students whom we have been unable to help because of lack of funds."[228] Some of these refugees, however, could enlist in the army and then later qualified for the G.I. bill. This, as the historian Walter Laqueur points out, made a huge difference when one compares the experiences of refugees who came to America to those who went to Britain, for example, who had a much harder time acquiring a higher education and academic positions. It also exacerbated the gender divide in the prospect of a postwar professional career.[229]

By 1941 the makeup and orientation of ISS's American branch had changed. As a coalition of radicals and liberals, ISS, like many organizations and the student movement as a whole, was torn apart by the Hitler-Stalin pact. In 1940, several Communist staff members of the ISS executive committee insisted that certain money raised for refugees be sent exclusively to Spanish students in France and then resigned under pressure when others on the committee refused to agree.[230] After this, new members joined the ISS committee (Max Lerner, Archibald MacLeish, William Neilson, Eleanor Roosevelt, Reinhold Niebuhr, and James Shotwell) and it devoted itself to a focus on effective citizenship (and insuring the American student movement remained free of Communist influence). At the September 1940 ISS conference on "Students and the Future of Democracy," Eleanor Roosevelt said that "everything we do for refugee students to help them adjust is of infinite value to us in this country…Citizens of our US will perhaps learn

[228] Memo to the Executive Committee from the Refugee Committee, October 8, 1941, folder 27, Box 9, Kotschnig papers.

[229] *Generation Exodus*, 322, 138-140.

[230] Letter of Clyde Eagleton to members and sponsors of ISS, May 7 1940; Letter of Kotschnig to Andre de Blonay, May 8, 1940, box 2, folder 25, Kotschnig papers. For a description of the generally shattering effect of the pact on the student movement see Cohen, *When the Old Left was Young*, chapter 9.

better from these students of their own age who have suffered elsewhere what are the values to be preserved in their own Democracy."[231]

Before the United States entered the war, though almost all those who advocated for student refugees made the claim that they were a select group that would be an asset to the United States, the emphasis of their appeals was on saving the students and providing for their needs. A 1936 Phi Epsilon Pi refugee committee letter asserted, "The cream of Jewish scholarship is being destroyed. It is up to us as Jewish fraternity men to take the lead in aiding these unfortunate victims in the completion of the education for which they hunger."[232] The NCJW appealed for "'lost generation' among the refugees" whose "bright futures" had been smashed, noting secondarily that "what they can bring to America in the way of scientific achievement, social development, literature and art cannot be measured in money" and that "they *may* some day return to their own people to reeducate them in the tradition of freedom and progress" [italics mine].[233] ISS wrote "we believe student refugees are a class having special problems and deserving special attention. Students are highly specialized individuals; each one has his particular need and is at the same time a potential asset to some community if he can be permitted to reach it." [234]

Harkening back to ISS's idealism of a world united in its search for truth, some appeals for refugee students were made in the name of saving world knowledge. This was the kind of

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[231] Folder 1, Box 167, Series III: Refugee Organizations, Emergency Committee in Aid of Displaced Foreign Scholars Records, NYPL.

[232] Appeal of March 12, 1936, Refugee Committee, Box 12, Papers of Phi Epsilon Pi, American Jewish Historical Society at the Center for Jewish History, NY.

[233] "German Refugee Students." enclosed in a letter from Mrs. Julius Wolff, chairman of German-Jewish Refugee Projects, Dec. 23, 1937, Box 2, Folder 8, Papers of Cecilia Razovsky, P-290, American Jewish Historical Society at the Center for Jewish History, NY.

[234] Letter from Edward Bradby to George Rublee, August 1938, Box 2, folder 8, Kotschnig papers.

appeal made by Alvin Johnson, who had established the University in Exile within the New School for Social Research and became chairman of ISS's American branch in 1941. When he learned that visas were being denied because students had no proof that they could return to Germany, Johnson wrote the State Department that "the world is wide for persons who have been properly equipped with an American education." [235] But there is a hint in Johnson's advocacy of a theme that would gain increasing prominence—the possibility that, with the migration of these students, the United States would surpass other nations as an intellectual center and gain cultural supremacy over Europe. This—"The Rise of American Cultural Leadership"—was the theme of Johnson's 1941 Dropsie College Founder's Day Address.

When the United States entered the war, perhaps inevitably, a more nationalist strain dominated advocacy on behalf of refugee students. These students were the best and the brightest of the old world and were potential assets in the war effort; many were recruited into the new intelligence agency, the Office of Strategic Services [OSS].[236] Those interested in international education grasped on to the idea that refugee students would become Americans and then help reconstruct their home countries in America's image after the war. Kotschnig became an advisor to the State Department on postwar exchange programs.

The argument that student refugees were to be contributors to the war effort dovetailed with the argument put forth during the war about refugees in general: they were a very selective

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[235] Johnson to Messersmith, December 14, 1938, 150.626 J/582. Visa Division: Correspondence Regarding Immigration, 1910-1939, RG 59, National Archives, College Park.
Felix Frankfurter wrote Johnson on April 22, 1941: "Man is without dignity unless he has freedom,..And there cannot be freedom without the unfettered right to pursue the truth. Universities are instruments for the unflagging and loyal pursuit of truth." [Box 2, Alvin Johnson Papers, Yale University Manuscripts and Archives].

[236] Arnold Wolfers, a Swiss émigré and Yale professor of international relations, served as a link between the U.S. ISS committee and the OSS. After the war he worked as a campus recruitor for the CIA. (Paget, *Patriotic Betrayal*, 19).

group and an economic asset.[237] To help them make this argument, Jewish organizations and Alvin Johnson chose Yale professor Maurice Davie, a student of William Graham Sumner and a long time advocate of selective immigration, to write a book on the refugee problem.[238] Davie's study so emphasized the superior human capital—what Johnson referred to as their "special equipment"— and successful economic adjustment of refugees that some relief workers thought it smacked of "rugged individualism philosophy," depicted universities as more welcoming than they were in the years before the war, and made earlier waves of Jewish immigrants seem too negative in comparison.[239] Indeed Duggan's 1941 essay "Economic Darwinism versus Equality of Opportunity," which insisted that the former had no place in American policy, rings false given the selectivity of student programs.[240] Cornell's foreign student advisor and a pioneer of the National Association of Foreign Student Advisors, was a supporter of the national origins quotas and opposed to "opening immigration to a great many more persons of certain types." "I feel very strongly," Donald Kerr wrote after the war, "that the United States is losing a great deal of its virility, and individualism, and willingness and ability for persons to stand on their own feet without a handout from the government, and that part of that is due to the type of people who have been coming to this country as immigrants during the past fifty years."[241] But even

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[237] See, for example, Sophia Robinson, *Refugees At Work*, with a prefatory note by Eleanor Roosevelt (New York, King's Crown Press, 1942).

[238] Maurice Davie, *Refugees in America: Report of the Committee for the Study of Recent Immigration from Europe* (New York; Harper & Brothers, 1947).

[239] Tate's Comments on Manuscript, Folder: Refugee Study, 1943-1946, Box 2; Betty Drury's comments on the sections on professors, Folder: Refugee Immigrant in the US: Public Affairs Pamphlet, Box 4; Letter of Alvin Johnson to Ralph Astrofsky, February 7, 1947, Box 4, all in the Maurice Davie Papers, Yale University Manuscripts and Archives.

[240] Stephen Duggan, "Economic Darwinism versus Equality of Opportunity," Institute of International Education *News Bulletin*, IV.5 (February 1, 1941), 3-5.

[241] Letter of Kerr to Forrest Moore, June 23, 1952, Folder 25: Committee on Liason with Government, 1952-1952, Box 23, NAFSA Records.

those foreign student advisors and university administrators who had more liberal ideas about immigration believed in the importance of student self support. Abram Sachar, who had a critical view of the quotas, was committed to the ideas that students should become self-supporting and pay back financial assistance they received.[242] The image of the refugee student as selected by circumstances and by character and obliged to pay back the money given him to facilitate study in the United States was a consistent theme from the early days of the Russian Student Fund to the post World War II program for Hungarians and Chinese. Many refugee student programs established revolving funds, using the money students paid back to help additional students. Refugee students were, this implied, good investments.

By the war years, despite continually asserting the spiritual value of education, Duggan seemed to become more committed to an instrumental view of exchange. Using exchange as a tool to advance national interest became steadily more pronounced; in 1939, the State Department established an official exchange program with Latin American countries (with Duggan in charge of selecting exchange scholars) and, in 1941, began providing travel and maintenance grants and fellowships to some Latin American students. These programs were, in effect, American counterparts to foreign student fellowships sponsored by the German, Italian, and Japanese governments. But the State Department insisted that the U.S. did not engage in propaganda and that it had no official culture to teach. It also insisted that the brunt of exchange would still be funded by the private sector and the goal of the program was reciprocal mutual understanding. The State Department, writes historian Frank Ninkovich, "went to extraordinary lengths in pledging its fidelity to the principles of cultural freedom."[243] This, like Duggan's repudiation of "Economic Darwinism," soon proved to be a case of protesting too much. By

[242] Letter of Sachar to H.J. Ettlinger, September 25, 1941, Folder: Refugee Students, G-K, Sachar Hillel papers.

[243] Nincovich, 31.

1942, emergency conditions in the Near East and China led to direct links between cultural policies and foreign policies.

The State Steps In: Strandedness, Adjustments, and Exchanges in the 1940s and 1950s

American student organizations paid attention to the plight of Chinese students in the 1930s and 1940s, but it was the federal government that stepped in to help those Chinese students stranded in the United States during and after WWII.

In the early 1930s, the Communist Party-affiliated National Student League called on students returning to China to "fight not only the imperialist marauders from Japan…but your own bourgeois capitalists," while the attempt of the Y.M.C.A. affiliated Chinese Students Christian Association to drum up American support for the defense of China included a call for the repeal of the Chinese exclusion law.[244] By later in the decade, secular liberals took a middle path; in 1937 and 1938 the U.S. committee of ISS collaborated with P.C. Chang, an American-educated Chinese academic, playwright, and diplomat, to raise money for displaced students in China who were trying to resume their studies in areas not yet overtaken by the Japanese.[245] But money raised in this campaign was not used for Chinese students outside of China.

By 1940, Chinese students in the United States were in difficult straights. Immigration official Marshall Dimock, while he professed concern and claimed he gave each case individual

[244] "An Open Letter to Seventeen Chinese Students," *Student Review*, 1.3 (March 1932) 7; "Missionaries Call on White House to Lift Asiatic Ban," *Chinese Christian Student* (March-April, 1934) 2

[245] For the ISS "Chinese University Relief" campaign see Minutes of the US Committee of ISS, Feb. 3 1938, folder 24, box 9, Kotschnig papers. Also, P.C. Chang, "Universities and National Reconstruction in China," in *Universities Outside Europe*, ed. E. Bradby (Oxford University Press, 1939). P.C. Chang had studied at Columbia under John Dewey and helped established Nankai University, from which he fled for his life when the Japanese attacked. He played an important part in the drafting of the U.N. Declaration of Human Rights. See Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001) and Ruth H.C. and Sze-Chuh Cheng, *Peng Chun Chang: Biography and Collected Works* (1995).

consideration, denied that Chinese students were "stranded" and believed they should be deported if they did not register for classes; H.T. Tsiang, the student featured in the introduction who was threatened with deportation in 1940, commented bitterly on Dimock's hollow liberalism.[246] The American Association of University Professors resolved at their annual meeting to "invite the attention of the Bureau of Immigration…to the injustice done to bona fide students…who are forcibly deported to countries where they will inevitably meet with imprisonment or other forms of persecution."[247] Donald Kerr, the foreign student advisor at Cornell University and later a key figure on immigration matters in the National Association of Foreign Student Advisors, requested that Chinese students be allowed to adjust their status without leaving the country or be permitted to leave school and work full-time during the war.[248] By mid-1941, students at Oregon State who wanted to return to China could not find transportation.[249] Fearing that the Japanese would gain access to Chinese funds in the United States, the Chinese government requested that the U.S. government freeze all Chinese assets. This left Chinese students with no access to financial support. Finally, in early 1942, the immigration service began granting students the ability to work full time after "thorough" investigations of their resources and "attitudes towards the principles of democracy and the government of the United States"; applications for full-time employment generally required a letter from the prospective employer and "the affidavits of two responsible citizens of the United

[246] For Dimock's view, see Dimock to Ernest Price (International House, Chicago), January 3, 1940, with accompanying memo, INS file 55853/732. Tsiang wrote to Vito Marcantonio on June 12, 1941: "There is a new rule that no deportees will be allowed to land at Hong Kong; but to send me to Shanghai or to Canton. Canton is controlled by Japanese and is as dangerous as Shanghai…What the gentleman from Department, by the name of Mr. Dimock has promised of everything to whomever that they made appeals on my case [sic], is not work the paper that has been written on." Box 46, Folder: American Committee for the Protection of the Foreign Born, Vito Marcantonio papers, MssCol 1871, Manuscripts and Archives Division, New York Public Library.

[247] Ralph Himstead to INS, INS file 55853/732.

[248] Kerr to Attorney General Robert Jackson, July 19, 1940, INS file 55853/732.

[249] E.B. Lemon to E.E. Salisbury, June 12, 1941, INS file 55853/732.

States who can vouch for the alien's loyalty."[250] Industries with classified positions could hire Chinese students who were cleared by the War Department. In the meantime, Chih Meng, head of the Chinese Institute of America, an organization established with Boxer indemnity funds to sponsor Chinese students studying in the United States in the interwar period, had raised money from the Rockefeller Foundation and other private sources to help Chinese students. International student centers at different universities raised money and used "good will" and trust funds to help students.[251] Then, in 1942, with the help of the IIE, the China Institute began administering State Department grants to select Chinese students.[252] The money came from the President's Emergency Fund and helped nearly 1000 students. The point of these scholarships was to train students to help China resist Japanese aggression and then to participate its postwar reconstruction. Though he helped students get deferrals if they specialized in subjects related to defense, Meng thought that drafting others into the U.S. military would be beneficial. [253] Also, in direct contrast to the experience of Chinese seamen, Chinese engineering and "technical trainees" (or interns selected by the Chinese government) worked at American industrial and commercial firms—including aircraft companies and machine works—throughout the war. Lend

[250] "Instructions concerning non-quota immigrant students who apply for permission to discontinue school for the duration of the war and accept full-time employment," January 10, 1942, INS file 55853/732; Letter from Lemuel Schofield to Chih Meng, Feb. 25, 1942, INS file 55853/732A.

[251] J. Raleigh Neilson (University of Michigan) to Attorney General, Sept. 16, 1940 and Ernest Price (International House, Chicago) to Senator Scott Lucas, January 14, 1942, both in INS file 55853/732.

[252] Chih Meng, *Chinese American Understanding: A Sixty Year Search* (New York: China Institute of America, 1981) 184-190

[253] Hsu, *Good Immigrants*, 87.

lease funds supported many of the trainees and their placements at American companies was facilitated by the Department of State and other US agencies. [254]

After the war ended, even more Chinese students came to the United States to acquire technical training and "an appreciation of the American way of life and…our democratic institutions" that would help in the reconstruction of China.[255] Out of a total of approximately 4,000 Chinese students, most were wealthy and self-supporting or supported by private funds from missionaries and American institutions, though many came on Chinese-government grants; the Chinese government was also the first to sign a bilateral agreement with the U.S under the Fulbright Act. The Immigration Service reverted to its older policy of prohibiting employment that would interfere with studies and of enforcing the departure of students who completed their studies or failed to register. It also mandated that the monitoring of foreign students be handled locally by officers in the districts where the students attended school, rather than from the distance of their ports of entry and the central office of the INS.[256] Though there were variations, in general, in 1947 and 1948 the INS district officials came to distrust foreign student advisors, now organized into the National Association of Foreign Student Advisors [NAFSA], for being too "sympathetic" to foreign students, too eager to help them find work (especially as much-needed university teaching assistants) and to certify their student status despite English language

[254] Ibid., 107-110. Hsu argues that "technical training programs shifted the agendas for international education from shaping the future leadership of other nations to providing skilled workers for domestic purposes." At least in this case, though, the trainees were all supposed to go home.

[255] "The United States Extends Warm Welcome to Industrial Trainees: Over One Thousand Have Arrived in Past Few Months," China Institute *Bulletin*, No. 27, October 1945; William H. Dennis, "The Chinese Student and the U.S. Cultural Cooperation Program," *National Reconstruction Journal*, III.3 (January 1947), 14.

[256] Adah Griffin, "The Revised Regulations for Nonquota Students" INS *Monthly Review*, V.3 (September 1947), 36-38.

deficiencies, and too internationalist in their orientations.[257] Foreign student advisors found immigration officials too intent on "hard and fast rules" that were not applicable to the diverse specialties and needs of foreign students.[258] NAFSA was more closely allied with the State Department; indeed, NAFSA's first conferences were held in conjunction with the State Department's Division of International Exchange of Persons and focused on promoting "the international flow of students for a united world." In the words of Monroe Deutsch, Provost of the University of California, Berkeley, at one of these conferences: "We have an obligation to try

[257] J. Raleigh Nelson, foreign student advisor at the University of Michigan, came to appreciate the problems faced by foreign students back when he was an undergraduate and befriended medical students from China. By the 1940s, Nelson had turned a section of the Michigan Union into an International Center and offered intensive courses in English for incoming foreign students. But it was Nelson's assistant who attracted particular scrutiny from the INS. "M. Robert Klinger, assistant counselor to foreign students at the University of Michigan…is advising students to accept employment while the student's application to accept employment is pending approval by this Service…Draft Boards of Washtenaw County attempted at one time to cause Mr. Klinger to be removed as counselor…in that he was a conscientious objector, and it was their opinion that as such he was not a fit person to be counseling students of other countries coming to the United States for advanced education. I have, therefore, verified through actual school records all claims of students and Mr. Klinger with reference to the number of credit hours of study they carry." John Clingan (immigrant inspector) to INS District Director, March 13 1947, INS file 55853/732C.
NAFSA's bylaws, adopted in 1948, outlined its threefold purpose: to promote professionalization and appointment of foreign student advisors, to serve the interests and needs of foreign students, and to promote and evaluate international student exchange programs. For general information on Nelson and NAFSA see *International Students in American Colleges and Universities: A History* (New York: Palgrave Macmillan, 2007) 120-123.
On the INS's general attitude towards foreign student advisors, see also memo from Mr. Hamaker to Mr. Devaney (Acting Assistant Commissioner), June 7, 1946, INS file 55853/732C: "I do not believe the authority to grant permission to accept employment can safely be delegated to the schools. They are largely sympathetic with the students…and are prone to reason that assignment of student to instructors' duties is sufficiently justified by their needs and by the fact that giving instruction is in itself educational." When officials objected to the use of foreign student as instructors and teaching assistants, foreign student advisors invariably argued that such assistants were in short supply because many Americans served in the army rather than attend university and veterans were now enrolling in large numbers.

[258] Letter of Laurence Duggan to Ugo Carusi, June 24, 1947, INS file 55853/732C.
As the foreign student advisor at the University of Pennsylvania wrote the State Department: "our immigration regulations often seem to impose unnecessary hardships, and restrictions on the amount of work that may be done or over-strict interpretations of the amount of scholastic work that must be carried in order to qualify as a full-time student, with consequent inability to make both ends meet and anxiety as to possible deportation working directly counter to the expressed governmental policy of attracting good foreign students, giving them adequate training, and sending them home life-long friends of the U.S. " Letter from W. Rex Crawford to Elinor Reams, Feb. 5, 1949, box 21, folder 44, NAFSA Records.

and take every possible qualified Chinese student…to do everything we humanly can to care for these foreign students."[259]

Both foreign student advisors and State department officials were aware of the difficult financial straits Chinese students were in because of post WWII inflation and the control of currency exchange in China; to offset this, in 1946 and 1947 self-supporting Chinese students were given a chance to purchase U.S. dollars at a special official rate of exchange. In contrast, immigration officials believed that, before issuing visas, consuls should "take steps to insure that students have a sufficient allowance to maintain themselves without it becoming necessary for them to take employment." Especially as more foreign students came to the US with family members, immigration officials became convinced they were "primarily concerned with obtaining employment and are only secondarily interested in education."[260] Even an immigration official who professed to appreciate "the value to this country of the training of selected students from abroad," that "their relationship with this Service may affect…their future attitude toward the US…when they have reached positions of importance in their own countries," and that "we should avoid…actions which would lead the student to believe he is being discriminated against…because he is foreign," resolved that his first duty was to "protect the residents of the United States…from the encroachments of aliens temporarily in this country."[261] "Encouraging-sweetened statements notwithstanding," the Institute for International Education noted in 1948, "a check of the record will show that the Immigration Service is getting worse and

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[259] *Report of the Conference of College and University Administrators and Foreign Student Advisors,* Called by the Institute of International Education in cooperation with the Department of State, April 29, 30th and May 1, 1946, Chicago, Illinois, 21. A foreign student advisor from Indiana University brought up the fact that occasionally a student wanted to adjust to permanent status in the United States for the "feasible" reason that he "thinks it would not be politically wise to return" (103).

[260] E.E. Adcock, INS District Director to Commissioner, September 19, 1947, INS file 55853/732C.

[261] Henry Nicholls, District Director, Massachusetts to Commissioner, November 3, 1947, INS file 55853/732C.

not better in their attitude toward student exchange…there is practically no enlightened enforcement at present."[262] Donald Kerr felt that this was mostly the fault of "individuals on the lower level of the district offices who cause trouble by ridiculous interpretation or application of regulations."[263] In July 1948, Kerr, on behalf of NAFSA, asked the Senate Judiciary Committee to give foreign student advisors the authority to grant foreign students permission to work and to generally insure that foreign students were "treated more as welcome guests than as objects of suspicion and restriction." One of Kerr's advisees at Cornell, an agriculture student, was threatened with deportation for doing work that was required for his degree and that he had requested permission from INS to do.[264] The INS insisted that its determinations about whether to allow foreign students to work in the summer be determined by assessments of labor market conditions by the U.S. Department of Labor. In the fall of 1948, with the Communists gaining ground in China, the Chinese embassy in Washington issued a letter urging students to return to China immediately. Many had trouble finding return passage (because of the cost and the shipping strike on the West Coast) or hesitated to return, determined to finish their studies and hoping for future stability. Meanwhile, Chinese students applying for visas to come study in the United States faced the same problem German Jewish students faced ten years earlier: American consuls turned down applications of those who could not show they could return home.[265]

It was only in the spring of 1949, after the State Department confirmed the inability of many Chinese students in the United States to receive money from home and asked the INS to

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[262] Memorandum, November 18, 1948, Box 21, Folder 14 : Current Problems if Foreign Students, NAFSA papers.

[263] Donald Kerr to Clarence Lifton (Teacher's College, Columbia University), November 18, 1948, ibid.

[264] Letter from Donald Kerr to Joseph Savoretti, July 29, 1948, enclosing Congressional testimony, INS file 66853/732C

[265] Letter from Walter Judd to Orvis Hanson regarding a student visa for John Hsu, June 9, 1948, Folder 4, Box 136, Judd papers.

change its policy to accommodate them, that the immigration commissioner sent instructions to all districts to expedite the handling of applications for employment by Chinese students.[266] By this time, the China Institute of America, the Institute of International Education, NAFSA, the American Council on Education, the Y, some sororities and fraternities, and the National Student Association were fund-raising and lobbying Congress to help an estimated 2,000 stranded Chinese students in acute financial need. The vice president of the international commission of the National Student Association [USNSA], which was the organizational descendant of the National Student Federation of America and represented the student governments of over 300 colleges and universities, requested that USNSA committees at several schools report on the needs of Chinese students. "It has become increasingly obvious that American students must come to the immediate aid of our Chinese friends," Robert West of USNSA wrote the different campuses. "It is up to us to search out the most pressing cases and do everything we can."[267] This appeal went out *before* the agenda of USNSA's international commission got tied to that of the CIA and disconnected from student activities on campuses; West's appeal was earnestly heeded by USNSA members at Oberlin, Washington University, the University of Michigan, Berkeley, Smith, Wellesley, MIT, NYU and the University of Illinois, who sought out Chinese students on their campuses and tried to help them.[268] Beyond expressing concern for the students,

[266] Letter from William Johnstone, Jr., Director of the Office of Educational Exchange, Department of State to INS Commissioner Watson Miller, April 5, 1949; Memo of Assistant Commissioner Joseph Savoretti to all Districts regarding remunerative employment by 4(e) Students in Financial Need, April 13, 1949, IND file 55853/732E.

[267] Letter of Robert West, vice-president of USNSA's international commission, to USNA Committees at 18 schools, Feb. 12, 1949, folder: Chinese Student Relief, Box 91, United States National Student Association, International Commission Records, Hoover Institution Archives.

[268] For the timing of the CIA's penetration of USNSA, see Paget, *Patriotic Betrayal*, chapter 4. According to Paget, the "self-possessed" West "fought to preserve USNSA autonomy" and "placed democratic process and self-determination over compliance with U.S. government objectives." (70) For another recent history of USNSA—that emphasizes the disconnect between USNSA's agenda and campus activism—see, J. Angus Johnston, "The United States National Student Association: Democracy, Activism, and the Idea of the Student, 1947-1978 (Ph.D., NYU, 2009), 130-131.)

many appeals assumed they would eventually be able to leave and were a good investment. "I could see some good political sense in earmarking part of the funds for aid to the Chinese national government for students in this country; it might insure better leadership in the next generation for that country and better friends for us," wrote a YWCA representative; the students should receive aid and be allowed to briefly extend their stay in the United States or else "our country, and all democracies, will lose this small but valuable group of 'shock troops,' training to help teach our way of life to their 400,000,00 countrymen who are falling under communistic control," wrote one sorority representative.[269] But NAFSA coupled its appeal for funds with a call for the government "to provide asylum for any students who feel that they can not return to China because of fear of persecution."[270]

In the fall of 1949, Congress appropriated $4,000,000 for the tuition and living expenses of Chinese students to be given out by the Department of State and via foreign student advisors. Official justifications for the appropriation echoed those who had stressed the students' utility and future departure; the aid was "something of an investment" in "strengthening and encouraging democracy in China" to which the students would eventually return.[271] Through 1950, all students who received U.S. government aid signed a pledge to return to China upon completion of their studies and the State Department paid for their transportation either through Hong Kong or directly to northern ports of China (thereby avoiding tensions with British

[269] Margaret Fisher, southwest regional director, YWCA to Senator Lyndon Johnson, April 19, 1949; Marjorie Hartman, Alpha Eta representative, Florida State University, Tallahassee to Senator Spessard Holland, April 20, 1949, INS file 56269/534.

[270] Clarence Lifton (President of NAFSA), Summary of Actions Taken and Proposed Solution of Problem of Emergency Financial Aid for Chinese Students, Box 21, folder 7: Chinese Student Memo, NAFSA.

[271] *Congressional Record*, 81st Congress, 1st Session, 1949, 95, pt. 8:10051.

authorities).[272] The idea was that Communism had not yet become "a permanent picture in China" and that these students would exert a quiet influence on the mainland to help turn things around.[273] How to deal with students who, by late 1949, wanted to stay in the United States was left unresolved at meetings of the Advisory Committee on Emergency Aid to Chinese Students, which included Chih Meng of the Chinese Institute of America, J. Benjamin Schmoker of NAFSA, Thomas Fisher, head of the Chinese Assistance program of the Department of State, among others. In late November 1949, Fisher recognized the kind of bind that Chinese students were in. "A great majority of Chinese students are opposed to both the Nationalist government and the Communist…They know that they must go back to China…we are making that clear to them now. They know that to go back to Communist dominated China, a product of an American-capitalist educational system, will subject them to at least suspicion and unemployment."[274] A Chinese-American advisor at Bradley University (Illinois) told Schmoker that Chinese students had become "hesitant to avail themselves of the services of the China Institute," fearing its close relationship to the Nationalist government "might reflect on the safety

[272] Letter from Assistant Commissioner, Enforcement Division, W.F. Kelley to District Director in Kansas City, May 25, 1950. "Passenger transportation is obtained on freight boats of a number of different lines which go to various ports…When these boats arrive at one of the northern ports in China, it is necessary to get the students to arrange with the local authorities for admission into China…200 of these Chinese students have returned to China in this manner and reservations have been made for about 70 more." On November 25, 1952, Glenn Weymueller, general passenger agent of the American President Lines, wrote W.F. Kelley to explain the process of student group transit through Hong Kong. "In advance of his transportation, each prospective passenger was required to fill out an application…These papers were then forwarded to our Chinese office in San Francisco, who sent them to Hong Kong for the approval of the Hong Kong authorities."(Both letters in INS file 56204/81).

[273] Letter from Thomas Fischer, Special Projects Section, Division of Exchange of Persons, to Dean Gertrude Peabody, Temple University, December 5, 1950, RG 59, Bureau of Public Affairs, International Educational Exchange Service, Correspondence, Memorandums, and Report on the Chinese and Korean Assistance Branch, 1948-1955, Box 4, NARA.

[274] Thomas Fisher to Oliver Caldwell, November 29, 1949, Folder: China Student Christian Movement, Box 2, RG 59, Bureau of Public Affairs, International Educational Exchange Service, Correspondence, Memorandums, and Reports of the Chinese and Korean Assistance Branch, 1948-1955, NARA.

and security of their families still in China." [275] The President of the University of Illinois at Urbana-Champaign wrote Senator Scott Lucas in October 1949, "it seems to us here at the University of Illinois extremely silly to send the…Chinese students now studying in the United States back to Communist China when they could so easily be absorbed into our economic plan."[276]

Communist victory in China provoked, simultaneously, suspicion of and sympathy for Chinese students in the United States. The INS, with the help of the FBI, investigated several Chinese student groups suspected of Communist sympathies; for example, the Chinese Students Association of Columbia University was deemed pro-Communist and the INS denied extensions of visas to anyone associated with it.[277] Certain district directors (in New York and Seattle) insisted on asking "impossible questions" to the Chinese students they called in for mandatory immigration interviews under oath. [278] In June 1950, just before the Korean War began, Congress passed P.L. 535, a bill authored by Walter Judd, Republican Congressman from Minnesota. The law increased financial assistance to Chinese students and requested that the Attorney General promulgate regulations that would allow the INS to approve applications for employment by Chinese students while they were in school and after they graduated. The Attorney General put off issuing these regulations for a year even as security investigations of students who received aid through the Emergency Program increased; qualifications for aid were

[275] Report of an interview with Lawrence Lew, Folder 4: J. Benjamin Schmoker reports, Box 23, NAFSA papers.

[276] Quoted in Carol Huang, "The Soft Power of U.S. Education and the Formation of a Chinese-American Intellectual Community in Urbana-Champaign,1905-1954," (Ph.D. dissertation, University of Illinois, 2001), 241.

[277] INS file 56324/950.

[278] Letter from J. Benjamin Schmoker, NAFSA, to Joe Neal, University of Texas, Austin, September 26, 1950, INS file 55953/732f.

"good character, good scholastic record, genuine financial need, non-communist."[279] Some district directors seemed to think that students needed to be approved for financial aid before they could be approved for employment. In some districts, applications for extensions of stay and for employment remained unanswered, and students who remained or were later found to be working were arrested and paroled to their foreign student advisor, or, if not maintaining student status because finished with their studies, denied permission to work and told to depart. Thomas Fisher at State sent numerous apologetic letters to concerned advisors, but could not offer much in the way of help beyond vague reassurance that "we are not going to push Chinese students back to Communist China…a student elects when he wishes to return."[280]

The Attorney General's regulations regarding employment, which were finally issued in the spring of 1951, still required that district directors approve employment applications, so the scrutiny continued. Once suspected by the INS, students would not be approved for employment or extensions of stay and could lose their grants under PL 535. The foreign student advisor at the University of Washington, Seattle complained that Ph.D. students in economics were "doubtless better equipped to discuss economic theory than were their [INS] interviewers," who held up decisions on their visas based on answers to questions on this topic.[281] In Hartford, immigration investigators asked Chinese students who wanted extensions of their student visas such questions as "do you believe the present conflict in Korea is strictly a United Nations-North Korean affair or do you believe the USSR is supporting North Korea?" and "have you ever been associated

[279] Judd to Arthur Young, June 16 1950, folder 2, Box 99, Papers of Walter Judd, Hoover Institution Archives, Stanford.

[280] Thomas Fisher to Dean Peabody, Temple University, December 5, 1950, Folder: Employment Problems, Box 4, RG 59, Bureau of Public Affairs, International Educational Exchange Service, Correspondence, Memorandums, and Reports of the Chinese and Korean Assistance Branch, 1948-1955, NARA.

[281] Letter of James Davis, advisor to foreign students, University of Washington, to Arthur Adams, March 26, 1951, ibid.

with the American Association of Chinese Scientific Workers?"[282] The latter was an organization that Chih Meng, who was certainly not soft on Communism or "Red organizations," claimed should not be on the Attorney General's subversive list for being a recruiting agency of the Chinese Communist government and was "not really an organization…just a voluntary meeting, a nationwide network."[283] Students affiliated with the organization at Georgia Institute of Technology were questioned by officials of the Atlanta INS office "for at least three hours."[284] When a student was arrested for deportation who had joined that organization when he first arrived in the United States but never attended a meeting, J. Benjamin Schmoker of NAFSA wrote to the INS to complain of "guilt by association."[285] Students at the University of Chicago had their extensions of stay denied because they were members of the organization and because of their "evasive answers" to immigration inspectors about their political opinions; the University's Dean of Students came to the defense of these students by writing the INS that the students joined the organization under the impression it was non-political and that, thinking that they would eventually return to their families on the Chinese mainland and seek employment there, most Chinese students were understandably evasive about their political opinions and attitude to the new regime.[286] [Several of the University of Chicago students denied extensions

[282] Case 0205/19366 (Kay Kok Lim), Box 571, Chinese Exclusion Case Files, 1911-1955, Hartford, RG 85, Boston NARA.

[283] Transcript of Proceedings, Advisory Committee on Emergency Aid to Chinese Students and Scholars, March 20, 1951, 10:20 a,.m.-12:15 p.m, page 11. RG 59, Bureau of Public Affairs, International Educational Exchange Service, Correspondence, Memorandums and Reports of the Chinese and Korean Assistance Branch, 1948-1955, Box 11.

[284] Interview with Chu Rin by L.H. Haus, Honolulu, Sept. 28, 1951, 7, INS file 56319/674, NARA.

[285] Schmoker to Alan Devaney, Assistant Commissioner of Immigration January 25, 1953, folder 18, box 25, NAFSA Records.

[286] Letter of A.W. Skardon, Jr., advisor to foreign students at the University of Chicago, to Arthur K. Adams of the American Council on Education, March 26, 1951, Folder 16, Box 197, American Council on Education Records, Hoover Institution Archives, Stanford.

were graduate students in physics, prompting Albert Einstein and J. Robert Oppenheimer, among others, to write in an editorial in the Bulletin of Atomic Scientists that the immigration service was depriving American science and providing the Communists with gifted manpower.] Extensions were denied to other students in Illinois because, although they did not voice support or preference for the Communist regime during their INS interviews, they criticized Nationalist corruption and believed that the U.S. should recognize China at the UN.

The most notorious incidents occurred at the University of Illinois, Urbana, where, since some communist students tried to influence the local branch of the Chinese Student Christian Association, the Chicago-based INS office took steps to deport all students affiliated with it whose answers to security questions seemed at all evasive. American-born Chinese students and several University administrators protested this action, voicing concerns about academic freedom and university responsibility towards its students. Local churches protested as well, given that the Chinese Student Christian Association had a long and reputable history and connection with the YMCA.[287] At its 1951 convention, NAFSA resolved to reach over the local INS, asking the President to insure that foreign student advisors or universities could appeal any of local immigration decisions regarding Chinese students to an executive or interdepartmental review board in Washington. Even though journalist James Reston publicized the Chicago INS's handling of Chinese students and the seeming disconnect between Justice and State Department positions on Chinese students, neither Department supported the idea of a review board and nothing came of the proposal.[288] Thomas Fischer, who ran State's Chinese program and

[287] Letter from Dean Arthur Hamilton, University of Illinois, to Arthur Adams, March 23, 1951, ibid.; On the history of the Chinese Student Christian Association, see Timothy Tseng, "Religious Liberalism, International Politics, and Diasporic Realities: The Chinese Students Christian Association of North America, 1909-1951," *Journal of American East-Asian Relations*, V. 3-4 (1996), 305-330.

[288] James Reston, "Chinese Students in Country Stir Fight of United States Agencies," *New York Times*, March 9, 1951, 3; Letter from NAFSA President Clarence Linton to John Steelmen, assistant to the President, April 17, 1951,

generally believed that local decisions should be reviewed, felt media publicity only created additional tension with INS. Those at State more concerned about security and public relations insisted that, given the Korean War situation, "the Government has acted with extreme moderation" in the handling of Chinese students and that the danger was in negative publicity getting into the hands of Communists.[289] As Dean Arthur Hamilton of the University of Illinois told the *Sun Times* on March 27, 1951, "I should think the Chinese Communists would give their highest medal to the Immigration Department for sending back these students to Peking."

Partly because it was so difficult to get extensions of student visas and permission to work, some Chinese students opted either to return to China[290] or to try to adjust their status to permanent resident. In the latter case, Chinese students applied for refugee status under the Displaced Persons Act, which allowed the attorney general to adjust to permanent residency status those present in the U.S. as lawful non-immigrants who proved they could not return to China for fear of persecution. In applying for adjustment this way, Chinese students sometimes ran into stumbling blocks. In order to prove fear of persecution, they had to answer the same "impossible questions" attesting to their opposition to Communism and did not know what kind of evidence was required. One graduate student in political science "hesitated to use what he considered 'hearsay information' to bolster his case, which from his point of view seemed to be

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Letter from Thomas Fisher to William Johnstone, April 24, 1951; and Letter from Brad Patterson, Assistant Secretary of State, to Thomas Fisher, April 30, 1951, Folder: NAFSA, Box 2, RG 59, Bureau of Public Affairs, International Educational Exchange Service, Correspondence, Memorandums, and Reports of the Chinese and Korean Assistance Branch, 1948-1955, NARA

[289] Comments by Cadwell and Beeley, Transcript of Proceedings, Advisory Committee on Emergency Aid to Chinese Students and Scholars, March 20, 1951, 10:20 a.m.-12:15 p.m, pages 35 and 50, Box 11, Bureau of Public Affairs, International Educational Exchange Service, Correspondence, Memorandums and Reports of the Chinese and Korean Assistance Branch, 1948-1955, RG 59, NARA.

[290] According to State Department Statistics, approximately 1,300 students returned to China between 1949 and 1954. (Department of State Bulletin, 21 June 1954, 30:949.) See also, Yelong Han, "An Untold Story: American Policy Towards Chinese Students in the United States, 1949-1955," *Journal of American East-Asian Relations*, 2.1 1993) 77-99.

self-evident."[291] Students generally felt that just applying for refugee status signified their opposition to the Communist regime.[292] INS examiners felt otherwise. One student was asked, "So that if you were willing to be subservient to accept Communist domination would you not be persecuted if you were returned to the mainland?" and "Would you consider the overthrow of the Nationalist Government by Mao-Tse-Tung an act of self-defense on his part?"[293] Edith Lowenstein, who helped several students by filing appeals "going into the historical background of the Chinese conflict" and clarifying the students' philosophies with additional statements and affidavits, found that inspectors interpreted events in China and the testimony of students—especially those who did not speak English well, who held somewhat "unorthodox" views, or against whom their existed some "confidential information"—in ways that led to denials.[294] Lowenstein pointed out, however, that students were generally treated more leniently by the INS than seamen: students were assumed to have intended to go home but been stranded by events whereas seamen were assumed to have concealed their intention to stay permanently when they initially arrived.[295] The same distinction applied in the handling of student and sailor 243(h) claims.[296] The INS believed that the "majority of Section 243(h) applications filed" by Chinese

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[291] Mentioned in Lowenstein, *Alien and the Immigration Law, 136*

[292] One student asked her examiner (in poor English) "Don't you think it is a point if I agree with the Chinese government that I try to apply for the refugee act?" (ibid.,137)

[293] Ibid, 133.

[294] Lowenstein, *Alien and the Immigration Law,* 132, 135. For a good example of students who were denied adjustment because of confidential information, see the cases of Yi-Wen Shen and Rosaline Hsu Sun Bien Shen in INS file 56356/605. The confidential information against them was an FBI report indicating that the couple might be security threats because they had been members of the Chinese Student Association at Columbia University, which were allegedly pro-Communist.

[295] Lowenstein, *Alien and the Immigration Law*, 182.

[296] Compare the decisions in fall 1955 to grant 243h withholding to the student Chang Chien Tung and to deny it to the sailor Lee Sung, INS file 56336/243h.

seamen were "for the sole purpose of avoiding or delaying departure from the United States rather than being based upon a valid fear" of persecution.[297] This is ironic because the State Department recognized that the Chinese Communist government "welcomed" returning students as an asset and conceded that seamen who jumped ship might be regarded as fugitives liable to "some measure of disciplinary action" if returned.[298] Despite this, *only the exceptional sailor was deemed worthy of refuge whereas only the exceptional student deemed unworthy*. In the case of one such student, who spent time in jail for lying about his employment when he applied for extension of stay and to get State Department funds, several Congressmen and clergymen supported his application to remain. Lowenstein represented this student at his 243(h) hearing and claimed his former perjury was "no reason to send him to a Communist controlled country against his will."[299]

In the early 1950s, making student cases the models for 243(h) grants reflected an overall desire by INS to restrict eligibility for this status, since it provided relief for those that the INS would not deport anyway.[300] In the fall of 1951 the INS began preventing Chinese students with technical and scientific degrees (in chemistry, physics, engineering, mathematics, or medicine) from returning to mainland China to insure that their skills could not be of use to the Chinese

[297] Letter from Frank Partridge to F.J. Noble in the case of Lee Yae Bin, February 15, 1957, INS file 56336/243h.

[298] Walter McConnoughy, Director for Chinese Affairs, Department of State to A.R. Mackey Commissioner of Immigration, July 5, 1953, INS file 56336/243h.

[299] Lowenstein's brief, In re Application of Hua-Tung Lee (June 14, 1955), and letters on Lee's behalf are in folder 3: Immigration Cases/Lee, box 140, Walter Judd Papers, Hoover Institution Archives. See also Senate Report No. 1622, to accompany S.2399, 84th Congress, 2nd Session.

[300] For evidence that *student* cases were made the *precedents*: "In connection with my efforts to secure a few typical Chinese deportation cases in which withholding of deportation has been granted…a desirable case would be one involving a Chinese student," Memo by Louis Cates, re: grants of withholding of deportation in precedent Chinese cases, Aug. 24, 1956, INS file 56336/243h.

Communist government in a war effort.[301] A proposal by the State Department and NAFSA to have faculty at the universities that trained the Chinese students determine whether they should be allowed to depart—taking "into consideration whether the particular individual was a mediocre or outstanding student as well as the question of the scientific knowledge he had obtained"—was nixed by the INS as "not answering our purpose."[302] Neither was the State Department's proposal to deny departure only on a selective basis to alien students (not exclusively Chinese) working on classified projects. Anything more would "impair the free exchange of scientific knowledge."[303] (The INS actually required that even those without technical training be checked before they could be cleared to go home.[304]) Thomas Fisher was opposed to turning his scholarship program into a welfare program for Chinese who could not leave: "These people need more than bread and water. These people, fundamentally, are scholars."[305] Some at State believed that, since no provision had been made for welfare of Chinese prohibited from departing, it was "quite probable that Chinese communist representatives in this country have their hands on these Chinese thus undoing much of the good to the United States obtained from study under our grants."[306] What is certain is that preventing

[301]Central Office Circular, June 28, 1951, INS file 56319/674. See also memo of Maurice Roberts, September 27, 1951 in the same file.

[302] M. Bell, Memo on Prevention of Departure of Certain Chinese Nationals with Scientific Training, October 19, 1951, INS file 56319/674.

[303] Memo to Undersecretary of State Humulsene from Mr. Perkins of Cultural Affairs on "categories of alien Chinese to be restricted from departing," Sept. 28, 1951, 4, *450.2 Security Problems Involving Chinese (1951).* 1951. Records of the Office of Chinese Affairs, 1945-1955 Collection. U.S. National Archives. *Archives Unbound.* Gale Document Number: SC5001278624. Accessed online through the UConn library, April 4, 2014.

[304] INS file 56324/395 contains information about such students and the INS Central Office's "ok" for each of their departures.

[305] Minutes of the Afternoon session of the Advisory Committee on Emergency Aid to Chinese Students, November 20, 1951, 100, Box 197, Folder 13, American Council on Education Records, Hoover Institution Archives.

[306] Attached Position Paper on Chinese Immigration Matters, January 23, 1952, *210.1 Detention Of Chinese In America (1952).* 1952. Records of the Office of Chinese Affairs, 1945-1955 Collection. U.S. National Archives.

technical students from leaving upon completion of their studies had the perverse effect of making them seem subversive to potential employers. As it was, it was hard for them to get jobs in their specialties, since this would require security clearances and citizenship. In most states, without citizenship, doctors could not get a license to go into private practice, for example.

Family separation was another major issue—and one that the Communist Chinese government manipulated. Joe Neal, foreign student advisor at the University of Texas at Austin, believed those Chinese students not allowed to depart should be enabled bring their family members to the United States; Neal cited a case of a Ph.D. student who tried to leave "because the Communists told his father to bring him back or else" but was stopped at San Francisco.[307] Chih Meng of the China Institute explained that students were pressured into giving information to the Communists in order to save family members in China from prison. These students, Meng insisted, should not be assumed to be Communists, "because they are compelled" to act this way.[308] What Meng did not mention was that there was also a great deal of Communist name-calling within the Chinese student community; the foreign student advisor at the University of Illinois had to deal with "poison pen letters" written by a Chinese student falsely accusing other students of subversion.[309] Other Chinatown events increased student unease: there were rumors about how "blackmail letters"—letters from relatives in China demanding money-– "disappeared" from the desk of S.T. Liang, president of the Chinese Consolidated Benevolent Association, and

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Archives Unbound. Gale Document Number:SC5001256321. Accessed on the web through the University of Connecticut library, April 4, 2014.

[307] Minutes of the Afternoon session of the Advisory Committee on Emergency Aid to Chinese Students, November 20, 1951, 96, Box 197, Folder 13, American Council on Education Records, Hoover Institution Archives.

[308] Ibid., 113.

[309] Carol Huang, "The Soft Power of U.S. Education and the Formation of a Chinese-American Intellectual Community in Urbana-Champaign, 1905-1954," 245-247.

that their writers in China were killed by the PRC soon afterwards.[310] Chinese Communists pushed the writing of letters requesting remittances but then persecuted those 'landlords' who received remittances from abroad.[311]

Then, beginning in 1954, the Chinese government shifted gears, removed the 'landlord' class designation from most of those with relatives abroad, restored their appropriated homes, and gave them benefits unavailable to others (in terms of access to food rations and consumer goods). The government encouraged letter writing to relatives overseas and publicized those letters that commented on good treatment by the Party. Students were encouraged to return and contribute to the development of the PRC. When they got there, students went through ideological training and rural work assignments; the Americans claimed that this was "brainwashing" and forced labor. The propaganda war between the United States and the PRC over this was intense.

In 1954 a group of Chinese students in the United States wrote to President Eisenhower to request permission to return to the mainland: "in the seeking of knowledge and wisdom, some of the undersigned have had to leave behind their beloved wives and children…We would respectfully point out that the technical training we have received here involves no codes of secrecy; indeed the spreading of scientific knowledge and technical know-how has been the very

[310] This supposedly happened in 1952 or 1953 and was recounted to INS investigator R.D. Hurwitz (INS investigator) in June 1956. See Miscellaneous Redefector Activity (Chinese), Aug. 6, 1956, INS file 56364/80.9.1, part 2.

[311] "By the [Chinese] state's own admission [in 1954]…40 percent of Guangdong's 6.4 million Qiaojuan [those with relatives overseas] had suffered 'unfairly' during land reform. Many families lost their ancestral lands, family houses, personal possessions and grain reserves. An unspecified number were dead as a result of the officially sanctioned mass violence that had accompanied land reform. At least 320,000 Qiaojuan (more than 30,000 households) has been branded 'landlords' in Guangdong alone, while across the country more than a fifth of all Qiaojuan had had their class status raised arbitrarily by land reform officials because they received remittances from abroad…in political terms landlords were a despised pariah class. Relegated to a kind of twilight world of social and political non-personhood, landlords possessed virtually no civil or political rights." Glen Peterson, *Overseas Chinese in the People's Republic of China* (New York: Routledge, 2012) 57.

spirit of a great tradition of this country." One of the students also wrote to the ACLU asking for help on the issue.[312] The ACLU had been getting letters for some time, but had yet to come up with a policy. The national office supported the right of students to a hearing on whether they could leave but did not challenge the discretion of the INS to block departures in the name of national security. Herbert Monte Levy claimed he was disturbed by the situation of Chinese students but took comfort in the fact that few Americans seemed to protest the policy. Indeed, the ACLU's response remained muted and conventional. When one lawyer criticized this, complaining that the organization's "concern for the maintenance of our foreign policy" corresponded with a "narrowing of the human concepts" behind its definition of civil liberties, Levy seemed to unwittingly concede the point. "We have not spoken out about the US refusal to let Chinese students leave this country," he said, adding that "we…decided that probably the problem could better be solved through diplomatic negotiations without our interference in light of the imprisonment of our own airmen by Communist China."[313] The departure ban on Chinese students was lifted in the spring of 1955 when the U.S. began negotiations with the Chinese for the release of airmen and other Americans imprisoned in China.

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[312] Cheng Sen Lin to Herbert Monte Levy, August 17, 1954 (enclosing letter of August 5th to Eisenhower), all in box 832, folder 24, ACLU papers, Mudd Library, Princeton.

[313] Letter of Herbert Monte Levy to Commissioner of Immigration December 19, 1951, INS file 56319/674; Letter of Hebert Monte Levy to Ernest Bessig (ACLU Northern California), Feb. 19, 1952, Letter of Levy to Spencer Coxe (ACLU Philadelphia), Aug. 13, 1954, Letter from Levy to F. Raymond Marks ACLU Illinois), September 13, 1953, and Letter of Levy to William Bross Lloyd, Jr., Esq. Jan 24, 1955 all in box 832, folder 25, subseries , ACLU papers, Mudd Library, Princeton. Levy's letter to Coxe noted that: "we never determined policy on the broader issue of under what standards could a person with technical training which might be of advantage to a potential enemy be prevented from returning to his homeland…I do not think that any substantial segment of the population would take a position whose end result, even though it meant justice to the individual, might build up the striking potential of a potential enemy."
The letter to Lloyd conceded This response just seemed to confirm Bross's complaint regarding "the ACLU's concern for the maintenance of our foreign policy" and "the narrowing of the human concepts" behind its definition of civil liberties.[Lloyd to Patrick Malin, Dec. 15, 1954, ibid]

But the competition for students continued. The American consulate general in Hong Kong was excited when, in the summer of 1955, it "received an introduction to Lin Haing-yu, a former Chinese student in the United States who returned to the mainland in early 1952 and who later fled to Hong Kong after undergoing a complete revulsion of attitude against the Chinese Communists." "His flight is the first and only one of its kind that has come to the Consulate General's attention," a 1955 dispatch to the State Department continued, "and it is believed that his motivations for leaving the mainland provide a valuable insight into the reactions of better-educated Chinese, particularly those with Western training, to Chinese Communist controls." Lin had come to the US in 1945 on a grant from the Chinese National government to do postgraduate work in international economics at NYU. In 1950 and 1951 he received letters from friends in China urging him to return and, as a student of economics, rather than a technical field, Lin was allowed to go by the American authorities. Lin claimed that he was treated very well when he first returned to China in 1952, though he was closely supervised and given lectures on the accomplishments of the regime. Given a chance to visit his hometown, Lin found that his family home and most of their land had been appropriated; because he had dinner with an old acquaintance who was considered politically questionable during the visit, Lin was subjected to eight days of interrogation afterwards. He was then assigned to a job (at a state-owned import-export corporation) that he disliked, was beneath his skill level, and did not pay enough to support a wife, but his requests to transfer jobs were denied. Caught trying to cross into Hong Kong without permission, he was subsequently denied several applications for an exit visa; Lin managed to cross illegally in March 1955. Lin insisted, the American Consulate General in Hong Kong reported, that "the American military personnel held prisoner during his stay on the mainland actually received better treatment than did the unusual Chinese prisoner in a

Chinese Communist jail." Lin also explained that it was less difficulty for him to leave the mainland than it would be for other discontented returned students who were married and had children and were not Cantonese (so would have difficulty making their way south and to Hong Kong).[314]

Aware of the Communist Chinese government's campaign to attract overseas students with jobs and amenities, in 1956 the INS interviewed students who booked return passage to the mainland, considering them potential "redefectors."[315] Most of those interviewed said they were returning to take care of family, particularly aged parents, though some complained of discrimination and an inability to find good jobs in the United States; several were leaving despite having applied for adjustment under the Refugee Relief Act. One of the goals of the interviews was to convey that the students did not have to leave. Primarily interviewers wanted to learn if the students had contact with anyone—particularly foreign agents—who had tried to pressure them to leave. Through the interviews, the INS was trying to find evidence of Communist Youth League infiltrators sent "to induce students to return to communist china, to create antagonism between Chinese students and the American authorities, and to denounce as communist agents those students who desire to remain in America in an attempt to effect their deportation."[316] INS investigators also looked for evidence of coercion in letters sent to Chinese students in the United States by family members in China. As has been the case with the Polish seamen, for Chinese students, family letters became a Cold War battleground over "defection"

[314] Dispatch 291, American Consulate General, Hong Kong to Department of State, Refugee Relief Program, Aug. 24, 1955, "Returned Student From America Flees Mainland," Bureau of Security and Consular Affairs, Office of Refugee and Migration Affairs, Records Pertaining to the Refugee Relief Program at Foreign Service Posts, 1953-1958, Hong Kong 12/1/55-11/30/55, Box 16, RG 59, NARA.

[315] The INS or the FBI checked the records of the American President Lines for those books for mainland China.

[316] E. Tomlin Bailey, Director, Office of Security, to Raymond Farrell, Assistant Commissioner, Investigations Division, with enclosed memo of August 28, 1956, INS file 56364/80.9.1 part 2.

and "return." A friend of one PhD student in mechanical engineering gave to the INS several letters sent to the student from his family in China that the friend believed were "the result of an outside agency's influence." One of the letters was from the student's brother and sister. It said that many overseas Chinese had recently returned and that they had been extended a "warm welcome." "Magnificent and large scale economic construction is going on in China. Brother, it would be very nice if you could come back to China and personally participate in the construction of the nation which is flourishing in exuberance." The letter also mentioned that their aged mother missed the student, especially since the recent death of their father who, the siblings wrote the student, "uttered your name constantly in his dying hours." The siblings enclosed a letter that the father wrote to the student before his death. In a postscript the siblings noted "Brother, we believe you will feel sad upon perusal of father's hand written letter… To compensate the regret you may have with regard to father, you should render yourself to mother."[317] The letter from the dead parent is precisely what Tsiang mocked in *China Red*. Clearly, sentimentality and the manipulation of emotion was not a monopoly of the bourgeoisie!

In terms of preventing redefection, the biggest problems from the point of view of Americans, was the difficulty students were having finding satisfactory employment in the U.S. and their inability, as only temporary residents, to bring over family who had left China for Hong Kong. One of the ways the United States could combat redefection—and the propaganda use made of redefectors by the Chinese Communists—would be to facilitate adjustment of status of Chinese students. The ability to adjust did not prevent all students for opting for mainland China,

[317] Report on Redefector Activity by Supervisory Investigator R.D. Hurwitz, Jan. 7, 1957, INS file 56364/80.9.1, part 1. The letter from the siblings, part of exhibit T of the report, is dated August 18, 1956.

especially if their parents were trapped there. But it did for some.[318] As early as 1955, the State Department tried to influence the way that the story of Chinese students in the United States would be told, asking IIE to rewrite its pamphlet on the subject to emphasize the "unrestrictive features" of the aid given to Chinese students and omit any references to security screenings and detentions.[319] The Cold War propaganda imperative meant that recent history—what had *just* happened—needed to be whitewashed. But, as we have seen, the student program was full of complications. And it had various outcomes. Chinese students who came to the United States from different places (mainland China, Hong Kong, Taiwan) and under different statuses (4(e) student or exchange students) fared differently in the U.S. in the 1950s.

Chinese-American sociologists analyzing the student experience in the 1950s focused on the psychological and social problems and the estrangement of the students from the established Chinese-American community.[320] The estrangement theme—focused on "individual alienation from both Chinese roots and the American environment"– was echoed in Taiwanese fiction about the overseas student experience in America in the 1960s and 1970s by writers who themselves studied in the U.S.[321] More recently Chinese-American writer Gish Jen's novel *Typical American* opens with a depiction of the "non-life" of a Chinese student in New York

[318] Many of the reports in the INS's re-defector file reveal a great deal of wavering and hesitancy to return among those granted a chance at permanent residence who had elderly parents living in China. See the case of Mooson Kwauk and Kwei Hui Chun Kwauk, in ibid.

[319] Memorandum of Conversation (between Mr. Kline of IIE and Mr. Lindbrook, Far Eastern Public Affairs) on Institute of Education Draft Pamphlet "Chinese Students in U.S., 1949-1955," November 29, 1955, *620.1 US Aid To Chinese Academic Personnel (PL 327, 535, And 402) (1955).* 1955. Records of the Office of Chinese Affairs, 1945-1955 Collection. U.S. National Archives. *Archives Unbound.* Gale Document Number:SC5001283920. Accessed on the web through the University of Connecticut library, April 4, 2014.

[320]Samuel Shi-shin Kung, "Personal and Professional Problems of Chinese Students and Former Students in the New York Metropolitan Area" (Ph.D., Teachers College, Columbia University, 1955). Rose Hum Lee, "The Stranded Chinese in the United States," *Phylon Quarterly*, 19.2 (2nd Quarter 1958) 180-194.

[321] Sheng-mei Ma, "Immigrant Subjectivities and Desires in Overseas Student Literature: Chinese, Postcolonial, or Minority Text?" *positions* 4:3 (1996) 434.

whose visa expired in 1950; in his effort to hide from the immigration service and his foreign student advisor he moved several times, found it impossible to get a job in Chinatown restaurant because he spoke Mandarin not Cantonese, and spent his days working, as a butcher's assistant, in a basement full of dead animals. Then, like a "miracle," he goes back to university and resumes his doctoral studies in engineering without a hitch, his status mysteriously resolved.[322] How, precisely, did this work? Madeline Hsu's recent book, *The Good Immigrants,* explains the legislation providing for adjustment of status in the late 1950s,[323] but only points to some of the administrative and economic barriers students faced in the early 1950s.[324] Hsu does point out that "many refugee Chinese found their unexpected settlement in America to be a form of exile involving separation from family and friends, downward mobility, and an unresolved quest for social and cultural belonging."[325] "Student" was more than a visa status; it signified more than a "grapevine" passing along stories on immigration rules, security investigations, and State Department policies. It went beyond Chinese student organizations and societies. The sociologist Rose Hum Lee pointed out that people continued to refer to themselves as students long after they stopped studying partly because of the difficulty of finding employment that matched their training. "The term 'student'," Robin Annie Li notes in her dissertation on mid-century Chinese elite immigrants, "was used more as a delineation of shared background, values and aspirations

[322] Gish Jen, *Typical American* (Boston: Houghton Miflin, 1991) 34, 46.

[323] A 1957 (PL 85-316) law allowed the Attorney General to adjust the status of skilled aliens whose employers had sponsored their applications for permanent residency. A 1958 (PL 85-700) law provided non-quota status for these same "first preference" applicants. See Hsu, *Good Immigrants*, 211.

[324] For example, Hsu notes that the 1950 act directed the INS to promulgate rules permitting Chinese students to take employment, but does not mention the delay in their promulgation. Instead, Hsu emphasizes that the measure contrasted "sharply with exclusion era harassment." (*Good Immigrants*, 124).

[325] Ibid., 165.

rather than an actual occupation."[326] Interviews and oral histories hint that the process of "adjusting" varied tremendously depending on gender, personal family dynamics, location in the United States, professional specialty, and political beliefs.[327] Also, many students who completed their studies, found jobs, and started families lived in legal limbo for a decade; they were dependent on the discretion of INS officials and the help of advocates for stays, extensions, and private bills until the passage of legislation at the end of the 1950s.

The variability of Chinese "student" experience, then, was *partly* a product of the diverse commitments of their advocates. This is perhaps best captured in the correspondence of different students with Walter Judd, the aforementioned Republican Congressman from Minnesota, who had been a physician and missionary in China in the 1930s and was an adamant anticommunist and supporter of Chinese nationalists. Besides authoring PL 535 (giving emergency financial aid to Chinese students), Judd had pushed for the repeal of Asian exclusion laws, pressured the INS to allow Chinese students adjust under the DP Act,[328] and made sure that Chinese were allotted non-quota visas under the Refugee Relief Act of 1953. The latter act included a provision allowing those residing in the United States in legal temporary status to adjust to permanent residency if they could prove that they feared persecution in the country of last residence. Though the INS affirmed the RRA claims of many Chinese students, it ruled that students who had stopped in Hong Kong or Taiwan before coming to the United States were ineligible because

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[326] Robin Annie Li, " 'Being Good Chinese': Chinese Scholarly Elites and Immigration in Mid-century America," (Ph.D. dissertation, University of Michigan, 2006), 11.

[327] See Li's dissertation, which is based on oral histories with Chinese women, and also Him Mark Lai, "The Chinese Marxist Left, Chinese Students and Scholars in America, and the New China: Mid- 1940s to Mid-1950s," *Chinese America: History & Perspectives*, 1995, 7-25.

[328] "Within the last two weeks," Judd wrote on March 18, 1950, "I have gotten a ruling from the Commissioner of Immigration and Naturalization that he will consider Chinese refugees eligible under section 4B of the DP Act." Box 96, Folder: Justice Department, 1946-1950, Judd Papers.

they could be retuned to their *last residence* without fear of persecution. Judd introduced private bills to prevent the deportation of those students, especially Christians, he felt might be given over to the Chinese Communists and subject to persecution if deported to Hong Kong[329]; Judd saw Hong Kong as a seed-bed of Communist organizing (especially in schools) and was resentful of British policies.[330] Judd made a special effort to get refugee visas for Chinese students who studied in the U.S., returned to Communist China, and then crossed into Hong Kong and wanted to get back to America; these were, as he called them, "the most useful defectors."[331] To one such student Judd wrote:

> I was under the Communists for eight months in 1930 in South China. There is nothing basically new in the picture today, except that their march toward their world objectives is further advanced. As you can well testify, civilized people simply cannot believe what communism plans to do and does do to human beings—until they have experienced it first hand, as have you and I.[332]

Judd's priorities were Christianity, anti-Communism, and support for Chiang Kai-shek; Judd did not support a large increase in Chinese immigration, but only a small number of select

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[329] Judd to Reverend Harold Matthews regarding Dr. Ting, July 11, 1955, Box 137, folder 2, Judd papers.

[330]"It is my impression that the British, having learned nothing form similar attempts at appeasement with Hitler, are trying to coddle and wheedle the Communists with the idea that thereby they may save their precious Hong Kong…I am dead sure that is the attitude which will produce with them precisely the same sorry of results it produced with Hitler." (Judd to Clifford Pollock, April 6, 1950, Box 99, Folder 5, Judd papers.)

In the mid 1950s, the British in Hong Kong claimed most Chinese attempting to enter the colony were coming for economic reasons and shifted towards a policy of deportation. In response to this this shift—and especially a high profile incident involving six Chinese students who attempted to enter the colony, were caught by the Hong Kong police, and forced back to the mainland—the U.S. Senate resolved that it was time for America to accept more Chinese refugees. Senator Hart told the Judiciary committee that the British policy of turning back refugees made "the majority of Americans" realize that Chinese refugees were not just the responsibility of the Government of Hong Kong. Significantly, the same day the Senate passed the resolution, the House listened to testimony on China's "reeducation" and mandatory farm labor programs for Western educated intellectuals by a Chinese student who had studied in America, returned to Communist China, and recently defected.
These Congressional actions contributed to support for a parole program for 15,000 Chinese refugees in the early 1960s. (Sen. Res. 345 , 87th Congress, 2nd Session, May 24, 1962; "Intellectual Freedom—Red China Style, Testimony if Chi-Chou Huang Hearings Before the Committee on Un-American Affair, House of Representatives, May 24, 1962).

[331] Judd to Balch, box 137 folder 3, Judd papers**.**

[332] Judd to Dr. Ling, March 30, 1959, box 137, folder 3, Judd Papers.

immigrant admissions. Like Kotschnig before him, Judd's experience and ideology led him to help establish an organization to help such immigrants and publicize their stories. Aid to Refugee Chinese Intellectuals [ARCI] funded the "Free Chinese Literary Institute" which published, among other works, "March of Freedom, a drama of underground anticommunist activities by a group of students in Red China." ARCI tried to ensure that visas allotted to the Chinese under the Refugee Relief Act of 1953 were given those in Hong Kong who were "persons of superior quality" "who know communism first hand" and can be "depended upon to win the people of Asia back to a belief in a free way of life" rather than "alleged relatives of Chinese laundry and restaurant workers in this country brought here…because the restaurant and laundry owners need them for cheap labor."[333] ARCI processed application for visas "mainly on the basis of contribution that the applicant can be expected to make…keeping our so called compassionate cases to a minimum."[334] Judd's fiscal conservatism led him to encourage those who came to the United States under the Refuge Escapee Act with the help of ARCI to pay the organization back for their transportation despite the fact that ARCI received federal grants (not loans) to cover these costs. "The boon of being permitted to come to the U.S, and enjoy the freedom here is something that they [refugees] are happy to pay for…I certainly do not see how I could justify to Congress the appropriation of funds for grants which could just as well be loans," Judd wrote.[335] Not only were ARCI students the best and brightest defectors, but also the most "self-reliant." "Our problem…is to take care of those already defected in ways that will help them become

[333] Judd to Scott McLeod, Sept. 27, 1954, Box 137, folder 1.

[334] Travis Fletcher to Judd, July 14, 1958, Box 169.

[335] Judd to Robert McCollum, June 30, 1958, ibid.

stronger…rather than tend to pauperize them," Judd explained.[336] The ARCI case files reveal that this was a hardship, especially for those who remained underemployed in the U.S. throughout the decade.[337]

ARCI's priority was projecting a particular image—one focused on students who escaped the horrors of Communism on the Chinese mainland to find success in the United States.[338] Judd was much less keen on helping refugee students that did not fit this bill. He was reluctant to submit private bills on behalf of those students who came to the United States via Taiwan and did not qualify for relief under the 1953 Refugee Act. Instead, Judd appealed to the INS in particular cases where he felt these students should be given more time to complete their studies.[339] Once these students finished their studies Judd believed it was imperative for them to go to "Free China on Formosa" and help in its development. "I think they ought to go to Formosa and give the benefit of their training here to their own people as they struggle to remain free or regain their freedom."[340] Judd clearly meant "own people" in a very abstract sense. Judd knew full well that many students were "free from illusions about the Chinese communists…[but] remain[ed] antagonistic or at best skeptical" about the Chinese nationalists.[341] That a Chinese professional whose family was on the *mainland* would find it

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[336] Judd to Fletcher, June 19, 1958, ibid.

[337] Case files of Sk Au and Manfred Chang, Hunter Auyang, Box 30, Aid Refugee Chinese Intellectuals records, Hoover Institution Archives.

[338] When a CBS's television show producer asked for human interest stories, an ARCI staff member stressed the significance of one that tied together two plot elements: "a hair raising escape or torture story" and "a success story (Horatio Alger type) in the US." Le Clercq to Fletcher, Sept. 15, 1955 and Sept. 27, 1955, Box 19, ARCI records.

[339] See Judd's correspondence with Yu-tseng Hsi and Forrest Moore, foreign student advisor at the University of Minnesota, in the summer of 1955, box 139, Judd papers

[340] Judd to Harper Glezen, June 27, 1955, Box 137, folder 1, Judd papers.

[341] Emmett to John Jessup, April 23, 1952, Box 166, folder 1, Judd papers.

difficult to get a foothold in the economically-weak and security-focused Taiwan of 1955 did not dampen Judd's sense that it was important for just such a recent graduate to try to do so. He did not approve of those who tried to "prolong their student status far beyond reason" to avoid giving Taiwan "the benefit of their training here."[342] And Judd did not oppose the INS's policy, adopted in 1955, of offering those students whose 243(h) claims were denied (for lack of evidence that they would specifically be targeted for physical persecution in mainland China) the alternative option of deportation to Taiwan, even though students challenged the legality of this policy in court. They argued that the government should not be allowed to deport them to a place where they did not have family and had never lived—even if it was the only "China" the U.S. recognized.[343] The attitude of the Taiwanese government was well expressed by an official from the Chinese Nationalist Ministry of Education sent to the United States in the spring of 1956 to discourage students from returning to mainland. The official told an INS investigator that "the Nationalist Government of China would much prefer for the Chinese students and graduates to remain in the United States because Formosa at the present time had not as yet reached the stage of development necessary to absorb thousands of trained Chinese personnel. However," the official continued, "if the Chinese student is not permitted to remain in the United States…the Nationalist Government would much prefer for his return to be to Formosa rather than the Mainland of China." The official also suggested that "the United States government should, in the interest of the Free World, take some steps which would enable the Chinese student to remain in the United States."[344]

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[342] Letter of Judd to Hsi, July 29, 1955, box 139.

[343] There were several cases contesting deportation to Taiwan; two were Cheng Fu Sheng and Lin Fu Mei, v. Rogers, 177 F. Supp. 281 (DC District Court), Oct. 6, 1959; Chi Sheng Liu v. Holton, 297 F.2d 740 (Ninth Circuit) 1961.

[344] Flagg to Assistant Commissioner, June 13, 1956, INS file 56364/80.9.1 part 2.

By the end of the 1950s, most Chinese students who completed their studies could qualify for first preference immigration visas (for well-educated specialists with needed skills) and have their status automatically adjusted to permanent resident without leaving the country.[345] But exchange students from Taiwan could not qualify; if they wanted to settle permanently in the United States, they first had to leave and apply their training outside the United States for at least two years (i.e., to comply with the two year foreign residency requirement). That some of these exchange students were refugees from the mainland who had only lived briefly in Taiwan before coming to the United States was not the point anymore. In response to a letter from one such exchange student who wanted to adjust her status, Judd wrote:

> When American public funds are used to assist a student from another country to get training in this country, it is justifiable only if the individual goes back to his or her country to give the people of that country the benefit of the specialized training received in the United States…While you are an escapee from Communist China, you came to the US from Taiwan, and you could not show that you would be subject to persecution if you were to return to Taiwan. You say that you want 'the privilege if practicing one's freedom and human rights" in this country. That is quite understandable, but how long will it be possible to practice those in the United States unless there is a steady expansion of such privileges to other areas of the world? And how can those rights be expanded and extended in other areas unless people who came from them return to them to work for them in those areas? You say you have no one in Formosa. But there are literally thousands and thousands of Americans who have gone to China and other countries to give their lives in helping the people in those areas, although the Americans had no one—friend, relative, or even acquaintance in those areas. I hope you will regard yourself as an exceedingly fortunate person to have had the benefit of these three years of training in the United States which equip you so much better than millions of your fellow countrymen to return to the task of serving your people and your country in a time of great need. [346]

Judd's position was in line with that of the INS and the State Department, though it did not provide much recourse to those students who feared political persecution if returned to Taiwan.

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[345] PL85-316, passed in 1957, allowed the attorney general to adjust the status of skilled aliens present in the U.S. who possessed approved first-preference immigration visa petitions. Under the 1952 immigration law 50 percent of each nation's quota went to people with special skills needed in the United States. Employers of skilled Chinese could petition on their behalf for first preference classification. Further legislation in 1958 and 1962 adjusted the status of those with skills to non-quota immigrants.

[346] Letter to Philomena Li, June 28, 1958, Box 137, Folder 3, Judd papers.

(In one 243(h) case involving deportation of students to Taiwan that never made it to the Supreme Court, Justice William Douglas dissented that "Taiwan's intolerance of criticism is well known… Military trials of men expressing 'radical' ideas are common. The pressures to conform to Kuomintang orthodoxy are so great that no more than 5% of the students who go abroad to study return to Taiwan…Any person critical of the regime is called a 'defector.' The list of political victims of Taipei's intolerance is too long and the secret military trials of dissidents too notorious for me to acquiesce in denial of certiorari here."[347])

Judd's attitude toward exchange programs extended to students who considered themselves refugees from other countries allied with the United States. For example, William Lee's family was driven southward from Northern Korea before the Korean War; Lee served in the South Korean army and then came to the United States to study medicine as an exchange student. After he completed his training, he felt he had no prospects for work in South Korea, especially given his lack of "influence" and connections. Judd believed Lee needed to go to South Korea despite the difficulties he would face. As Judd well knew, during the Korean War, students from Korea who were in the United States could get emergency financial aid from the U.S. governent, though the program was much smaller and more selective than that for Chinese students; besides passing security, need, and character clearance, students needed to be considered "of benefit" to Korea to qualify. The South Korean government urged students to return as early as mid-1951 and, as the director of IIE told the State Department's advisory committee, "the letters which we have had from some of the students who have gone back indicate they are actually starving and destitute, although they were called back by their

[347] Dissent of Justice Douglas in *Cheng Fu Sheng et. al. v. INS*, 393 US 1054, Jan. 20, 1969.

government supposedly for national service." [348] Some Korean students returned their emergency fund checks when they understood they would be required to return to Korea upon completion of their studies; "an internal report that the INS sent to Dean Hamilton [of the University of Illinois, Urbana] in 1952 stated that 'there is a saying in the State Department that no Korean ever goes home."[349] This infuriated the South Korean government, which was much more zealous than the Chinese Nationalists about getting students back.[350] Insistence by the Rhee government in South Korea that students return made it difficult for even those not on exchange visas to adjust their status in the late 1950s. Edith Lowenstein represented one such student who arrived in the United States in 1954 and married a native-born American citizen in 1959.[351] The issue of non-return to South Korea remained extremely sensitive. When an American cultural affairs officer at the embassy in Korea wrote an editorial emphasizing the seeming conflict between the non-return of Korean students and the sending of American technical advisors to Korea, the State Department was quick to suppress it. The editorial pointed out that "the return of [Korean] students and graduates would greatly aid the long-term economic development of Korea for which several billions of American dollars have been spent." Publishing this, the State Department believed,

[348] Statement by Donald Shank (of IIE), Transcript of Proceedings, Advisory Committee on Emergency Aid, Nov. 20, 1951, 341.

[349] Quoted in Huang, "The Soft Power of U.S. Education," 238.

[350] American Embassy in Pusan to Department of State, Memorandum of a Conversation regarding Korean students abroad and immigration visas, November 25, 1952, INS file 56336/214f.

[351] Edith Lowenstein, In the Matter of Min Kyu Pai (brief for adjustment under section 245) Deportation of Min Kyu Pai, reel 99, folder 18, ACLU papers.

would "lead to embarrassing questions on the Hill and elsewhere." A better solution, the State Department argued, was to have AID "return Koreans who have remained here to their home."[352]

The INS was already trying to deport Korean students who actively opposed the Rhee regime in South Korea. After the INS summarily denied their 243(h) claims, frequently on the basis of confidential evidence, several of the students, with the help of the ACPFB, got federal courts to review, or order the INS to reconsider, their cases on the basis of the substantial evidence they presented that they would be physically persecuted if returned to South Korea. In response, the INS avoided acknowledging their persecution claims—and the problems with the Rhee regime—and prevented further challenges by granting Koreans administrative stays without reference to 243(h).[353] Ira Gollobin pointed out that if the United States could hail the Korean War as a vindication of the principle of political asylum for POWs who did not want to return to their homelands, it could allow his clients voluntary departure to the country of their choice. Then, after Gollobin secured transit visas through Prague to North Korea for Chungsoon and Choon Cha Kwak, the INS began permitting all Koreans who claimed they would be physically persecuted in South Korea the chance to leave in the same way, the U.S. government paying their way to Czechoslovakia. [354] The Kwaks had come to the United States as students and later worked for the U.S. government during WWII; both supported non-intervention during the Korean War and reunification afterwards. Diamond Kimm was initially arrested for

[352] Gregory Henderson, Letter to the Editor of the *Annals of the American Academy of Political and Social Sciences*, January 24, 1962; Memo from Donald Cook to Mr. Boerner, April 3, 1962, folder 37, Box 158, Bureau of Educational and Cultural Affairs Historical Collection, University of Arkansas Special Collections.

[353] This was true in the cases of Sang Ryup Park, David Hyun, David Kimm and Carl Chung Soon Kwak. See Instructions of S.A. Diana, July 24, 1954 and Memo to Mr. Rawitz on Kwak v. Brownell, Oct .6, 1955 both in INS file 56214/488B. The ACPFB file on the Kwaks is in box 37 of that organization's records in the Labadie collection. For a good discussion of the Hyun and Kimm cases see Cindy I-Fen Cheng, *Citizens of Asian America: Democracy and Race During the Cold War* (New York: New York University Press, 2013), chapter 4.

[354] Instructions to all regional commissioners, Jan. 30 1956

overstaying his student visa and then scrutinized for his writing in *Korean Independence*, a bilingual weekly known for its anti-Rhee stance. The ACPFB argued that Kimm's deportation was a suppression of free speech. By the time of his call to testify before HUAC, the fact that his birthplace was in the North Korea was enough fix him as a subversive, even though Kimm had been in the U.S. since 1928 and worked for the OSS during WWII. Kimm left for North Korea in 1962.

In the 1950s and early 1960s there were students from several other countries allied to the U.S. who were "stranded" for a time and then did not return home. In 1950, the immigration service deemed a Palestinian student eligible for adjustment of status under the Displaced Persons Act on the grounds that "he anticipates persecution inasmuch as, being an Arab, he is not in accord with the partition of his country, he disagrees with Zionism, he does not expect to believe in Zionism and he shall always believe in expressing himself because he advocates freedom of speech."[355] The INS also issued orders to consider appeals of Palestinians for suspension of deportation on the grounds they would be physically persecuted if they returned home, though very few such claims were granted. In the early 1950s, IIE administered a scholarship fund donated by the Arabian American Oil Company for Palestinian students "stranded" in the United States. The scholarship was later funded by American Friends of the Middle East [AFME], an organization established by pro-Arab academics, writers, clergy, and diplomats to foster exchange and understanding between people in the U.S. and the Middle East.[356]

[355] Interim Decision No. 209, August 31, 1950, reported in *Interpreter Releases*, 27.38 (Sept. 18, 1950), 320.

[356] "Meeting to Discuss the Needs of Palestine Refugee Students, August 18, 1953; Interagency Committee for Ad to Palestinian Refugee Students, January 25, 1955, Box 26, folder 9, NAFSA Records.

Iranian students were of particular interest to AFME, especially after 1954, when the United States usurped Britain's privileged standing in Iran and adopted a policy of supporting Iranian authoritarian statism and education-fueled modernization. In many ways, not least its covert funding from the CIA, AFME resembled ARCI. Helping Chinese refugees get to America was peripheral to ARCI's main mission of supporting the Chinese nationalists by resettling educated refugees in Taiwan. By late 1953 AFME established a center in Tehran to select advanced and specialized students for study at institutions in the United States offering programs suited for Iran's developmental needs.[357] The goal was to have these students return to Iran and provide "strong support" for Eisenhower's Middle East policy.[358] AFME and the Iranian embassy founded an Iranian student association in the United States and funded conferences and a newsletter to keep student attention on containing communism and promoting economic development in Iran.[359]

Already in 1954, the year after the Shah was put into power by a coup engineered by American and British intelligence, problems surfaced with the orientation and set-up of the international education program. Iranian exchange students studying in the U.S. were limited to certain majors; economics, philosophy, and political science were off limits. The students assumed that the restriction was imposed by the United States while NAFSA believed it was imposed by the Iranian government. One foreign student advisor expressed his frustration: "As believers in American democracy, they [the Iranian students] wonder who presumes to 'dictate'

[357] Ivan Putnum, "Observations in the Middle East" (circa 1956), box 29, folder 33, NAFSA records.

[358] AFME Annual Report, 1954-1955, 5.

[359] As Ann Paget documents, between 1952 and 1954, the CIA subsidized new associations of Middle Eastern, Asian, and African students in the United States. "At minimum, foreign students provided information on the political climate in their home countries and entree to promising leaders since many…were destined to become governing elites after they returned home…Identifying pro-West Iranian students served the [Central Intelligence] Agency's larger agenda of deepening ties between Iran and the United States." (*Patriotic Betrayal*, 120-121.)

to them the fields in which they may major…I find it difficult to explain the regulation."[360] At the 1954 AFME sponsored student association conference at Berkeley's International House, some of those gathered expressed frustration with the repression that accompanied the Shah's consolidation of power after the coup—which included restrictions on freedom of speech and assembly and silencing of nationalist, communist, and religious opposition leaders. The students at the Berkeley conference, AFME reported, "made it quite clear that the…development of their country could be achieved only in an atmosphere of stability and freedom, and pledged themselves to work towards these goals for Iran."[361] By the end of the decade, the United States had sent five hundred million dollars in military aid to the regime and the CIA had helped establish its National Intelligence and Security Organization, SAVAK. During Eisenhower's last year in office, almost 1000 Iranian servicemen received training at American military academies and SAVAK officers came to Virginia to learn better surveillance and interrogation techniques.[362] The Iranian government stationed student advisors at the consulates in the US to monitor its students and American State Department and immigration officials also insisted that students stick to their studies and return to Iran as soon as they were complete. In response, some Iranian students joined an oppositional student association—which also developed branches in European countries—and took their protests against the Shah off campus. As we shall see in the next section, the United States National Student Association, another CIA front, did its best to mediate.

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[360] Emery W. Balduf, Roosevelt College, Chicago, to J. Benjamin Schmoker, NAFSA, March 22, 1954, Folder 20, Box 25, NAFSA records.

[361] AFME Annual Report, 1954-1955, 21.

[362] Mark Gasiorowski, *U.S. Foreign Policy and the Shah: Building a Client State in Iran* (Ithaca: Cornell University Press, 1991) 112, 117. The United States trained hundreds of Iranian pilots in the 1960s and 1970s.

One historian of the Iranian student movement in the United States has pointed out that opposition elements gained ground as American universities emerged from a period of conservativism.[363] In the late 1950s and early 1960s, foreign student advisors were sympathetic to students who wanted to adjust their status and resented INS attempts to fingerprint students and strictly limit their employment.[364] Their attitudes towards exchange students—who could not adjust their status and were subject to deportation for "subversive" political activity—were more mixed.[365] In 1957, several foreign student advisors—at MIT, University of California, Columbia University, University of Minnesota, University of Florida, among others—were opposed to having to play "the policeman's role" in reporting to the State Department on the activities of exchange students from Poland. The advisors felt the surveillance requirement set forth in East-West exchange program regulations was "incompatible with the responsibilities of educational institutions" and with the "concept and tradition" of "academic freedom."[366] In 1962, Princeton University administrators were more eager to send home J.P. Clark, a Nigerian exchange visitor who they felt "showed disdain for everything Princetonian and American"; as his academic sponsor told him, " you are a disgrace to the College and your country." Clark, a poet and playright, was a recipient of a Parvin fellowship, the brainchild of Supreme Court Justice William Douglas, who hoped its "spirit of open communication" would impart to foreign students a true image of American democracy that guaranteed freedom of speech and expression

[363] Afshin Matin-asgari, *Iranian Student Opposition to the Shah* (Costa Mesa, CA: Mazda Publishers, 2002) 37.

[364] M. Robert Klinger to Naomi Garrett February 4, 1958; M. Robert Klinger to Forrest Moore, March 4, 1958; Ivan Putnum Jr. to James Kline March 17, 1958; James Kline to Ivan Putnum Jr., March 11, 1958, Folders 5 and 34, Box 31, NAFSA Records.

[365] Under the Smith-Mundt Act, any exchange student who engaged in subversive activities was to be "promptly deported…under summary proceedings in which the findings of fact of the Attorney General shall be conclusive."
[366] Chalmers to Frederick Merrill, November 13, 1957; Ivan Putnum to Paul Chalmers, November 26, 1957; Kenneth Holland to William Lacy, November 28, 1957, folder 5, box 31, NAFSA records.

to all. Douglas, who was an internationalist and a First Amendment absolutist, probably would have been disappointed that Clark did not get that impression of America, but not with Clark's response to the rebuke of his academic sponsor: "I made it clear," Clark wrote, "that at no time did I regard myself as representing anybody or any country…[but] as a free and willing agent of myself alone."[367]

By the time Clark made this rebuke, students in the United States were getting more assertive and engaged in politics. In Greensboro, N.C., black students sat-in at lunch counters, sparking widespread civil disobedience to protest racial segregation and discrimination. Liberal students at Berkeley defied campus and local government bans and demonstrated against the House Committee on Un-American Activities and federal loyalty oaths. Foreign students in the United States were involved in these protests and others. Three British students who participated in the picketing of a HUAC hearing at San Francisco's City Hall subsequently had trouble with the INS and with getting their student visas extended. In response, the United States National Student Association asked for a clearer definition of the status of foreign students, condemning "capricious or vindictive" action by the INS. "If any officer of the Immigration Service can arbitrarily act to force non-immigrants to leave the country without giving reason for such action and without providing recourse to appeal of such action, then an unfortunate and intolerable note of fear and caution is injected into the academic community that serves only to stifle the free expression of thought." Plus, the letter added, "If this becomes a widespread practice on the part of the Immigration Service, then the image of the United States democracy abroad may well be seriously impaired."[368] Students at Berkeley compiled a position paper on "Freedom of

[367] J.P. Clark, *America, Their America* (New York: Africana Publishing Corporation, 1969). 29, 168, 209.

[368] Open Letter to the President of the United States by Richard Rettig, Nov. 19, 1960, Box 319, Folder 1: Students, National Student Association, 1960-1962, MC001, ACLU papers.

Expression for Foreign Students" that complained, "while the wide powers of discretion given to the Immigration Service give a desirable flexibility to the sometimes picayune immigration laws—the Service, for instance, does not generally hold foreign students to the requirement that they report their address every three months and every time in changes—it also leaves wide the possibility for arbitrary and subjective decisions in individual cases." The students pointed out that the law regarding exchange visitors specified only that visitors must not engage in political "activities detrimental to the United States," implying that other political activity was permissible. For the larger category of foreign student, there was no legal guideline whatsoever.[369]

A year later, the INS had not issued any official guide as to what activity was permissible for foreign students. NAFSA ethics committee chairman Josef Mestenhauser, a former refugee student from Czechoslovakia who worked in the Dean's Office at the University of Minnesota, sought out guidance regarding "the civil rights of foreign students in the United States."[370] Mestenhauser expressed frustration:

> The matter of participation in political activities has not been adequately defined and colleagues in the profession of foreign student advising are frequently at a loss as to how you, for example, interpret demonstrations against home government, participation of foreign students in various protest movements in this country on domestic American issues, or reactions of foreign students in the local press or in meetings about the general status of international relations. I am referring specifically to the case of the British student at San Francisco who participated in the hearing of the Committee on Un-

[369] Information on Freedom of Expression for Foreign Students, compiled by the Student Civil Liberties Union of the University of California, Berkeley, Folder 20, reel 99, ACLU papers.

[370] Josef Mestenhauser, who was just starting out what became a distinguished career as a foreign student advisor in 1961 and died in March 2015, has an interesting background that may have made him particularly concerned about politically engaged and refugee students. Mestenhauser was a law student in Czechoslovakia in 1948, when he was arrested and jailed for his anti-communist activities. He fled from prison and made it to a refugee camp in Germany. From there he went to Washington state, where he completed an undergraduate degree, and then to the University of Minnesota to get a masters degree and Ph.D., in political science. He was hired as a graduate assistant working for the foreign student advisor at the University of Minnesota and later helped found the University's International Center. http://www.cehd.umn.edu/Connect/2015/mestenhauser.html (accessed April 2015).

American Activities…and the protest meeting of African students in Detroit following the death of Lumumba."[371]

Student Rights as Human Rights in the 1960s and 1970s

Justice Douglas's vision of exchange was shared by the Kennedy administration, which showed a new level of interest and concern both for foreign students and for refugees, particularly from Asia, the Middle East, and Africa. The President met with contingents of foreign students at the White House, supported an airlift of students from Kenya, and started the program for refugee students from Southern Africa.[372] Attorney General Robert Kennedy met with students in the refugee camps of Hong Kong and at universities in Indonesia, at an Aspen Institute conference on "Foreign Youth and the American Image Abroad," and in his Justice Department office when Iranian students critical of the Shah feared deportation from the United States. These efforts were in no small measure designed to combat Communist influence or even non-alignment among students from Asia and Africa. [373] When talking to students from the

[371] Letter of Mestenhauser to Dorothy Bromley, Nov. 21, 1961, Box 318, Folder 21: Foreign Students, 1961-62, ACLU Papers. Bromley replied that the ACLU's recent pamphlet on "Academic Freedom and Civil Liberties of Students in Colleges and Universities" made no reference to foreign students.

[372] The Southern African Student Program, mentioned in the introduction to this chapter, began in 1961 when President Kennedy learned that, with the outbreak of revolt in Angola, Angolan students were leaving Portugal for other European countries and were considering study in the Soviet Union. Kennedy asked his security advisor to find ways that the U.S. could help these students instead. A State Department cultural affairs officer traveled to several European cities to talk with Angolan students; upon his return to the United States, the State Department started a pilot program for refugees from Portuguese Africa. The program eventually served students from several countries in southern Africa. Most of the approximately 500 students helped over the next decade were nominated to the State Department by the African liberation movements. After orientation at Lincoln University or the University of Rochester, the students studied at different colleges and universities. The program was administered by the African American Institute, which received money from the CIA.

[373] As Robert Kennedy described his visit to Indonesia in 1962, "I was most anxious to be able to have frank discussions with as many students and student groups as possible… Unless we understand these people [the students], which also involved understanding their attitude towards us, we cannot possibly develop programs which can maintain our position of leadership throughout the world…'Capitalism' is the dirty word of the Orient and we are the victims of our failure to correct the record with realistic presentation of how our economic and social systems work. And added to the misunderstandings are the problems in the United States for which we have still not found the complete solution…[especially] racial discrimination… that the Communists were beating us to the punch in

developing world, Robert Kennedy spoke about education as "not just a means to gain an economic advantage" but as a "responsibility"; graduates, he believed, were obliged to contribute to their communities and their governments. But, he also believed that it was crucial to make very clear to these students "the basic distinction between Communism and the Free World:…that the state exists for the individual and that the individual is not the servant of the state…that individual citizens will be protected from injustice and tyranny."[374] When foreign students asked to stay in the United States because they opposed the regime in a home country that was also an ally of the United States and feared the repercussions of returning there, Kennedy was faced with the conflict between student rights and the requirement of return inherent in international education programs.

A student who brought this conflict to a head was Ali Mohammed S. Fatemi, nephew of Hosein Fatemi, former foreign minister to the (coup-ousted) President Mohammed Mosaddeq and executed by the Shah in 1954. In 1960 Ali Fatemi was a doctoral student in economics at the New School for Social Research and assumed the presidency of a newly independent Iranian

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cultural exchange—came home with impact here in Indonesia… We are victims of a smart, articulate, well-organized minority which has kept us continuously on the defensive… in youth groups no one criticized Communism. No one defended the West. The students had been intimidated, and, as I subsequently learned, thus happens in many of the 'new' nations; which leaves the field wide open to the Communists. This is a fact that we must face…but it is a situation which we need not and cannot accept…There is much we can do... Fortunately, we still have the time to make the necessary steps to win the fight for the minds of these young people…in Indonesia there are approximately 75,000 [college students] where before the war there were only a few hundred. These are the people who will be making the decisions in the next decade…[T]hese students...have open minds….They are puzzled about many things in the United States and they want explanations…But what they have been searching for has not been made available by us. True, we have given generously of economic aid, but the ideas and philosophies for which they hunger have not been forthcoming. They need—and want—more; it must be made available…Their country's future and the choice between freedom or reversion to colonialism—this time imposed by the Communists—are in their hands. If Western democracy is to be understood in Indonesia, it will be because its students of today come to have some understanding of our way of life, our ideals, and our goals. (Robert F. Kennedy, *Just Friends and Brave Enemies* (New York: Harper & Row, 1962101, 123-4, 133, 137, 195-8).
A 1962 Commission on International and Cultural Affairs, created by the Fulbright-Hays Act of 1961, reported to Congress on the need for selecting foreign exchange students "considered 'radical,' 'left wing' or politically dissident" in their home countries in order to give them "the opportunity to learn that there is a democratic road to reform."(*Overseas*, April 1963, 24)

[374] *Just Friends and Brave Enemies*, 132, 205-6.

Student Association that vocally criticized the lack of representative democracy and civil liberties in Iran (and that both AFME and the Iranian government refused to fund). Then, in 1961, the Iranian embassy in Washington refused to renew his passport, hoping this would jeopardize his ability to get an extension of his student visa from the INS and lead to his deportation.[375] Iranian students in New York, San Francisco, London, Vienna, Paris, several German cities, and Tehran protested the passport policy; the students emphasized, too, their opposition to Kennedy administration support for the Iranian regime more generally.[376] The following year, the Iranian Student Association of the United State [ISAUS] formally merged with the European-based Confederation of Iranian Students to form the Confederation of Iranian Student National Union [CISNU], which remained the umbrella organization for the student diaspora for almost two decades.[377] CISNU coordinated a series of protests in various cities in response to the brutal repression by the Iranian military of a massive student demonstration at Tehran University on January 22, 1962. In the United States, students protested in front of the United Nations and sat-in at the Iranian Embassy. ISAUS prepared a White Paper on the Shah's repression of political opponents that Robert Kennedy read; Fatemi also wrote the Attorney General that ISAUS found "great similarities between goals and ideals expressed by the President and those which we are struggling for."[378] Robert Kennedy summoned Fatemi and other Iranian students to a meeting at his office. Fatemi spoke about the lack of free speech in Iran and the repression of students by security forces [SAVAK]. Fatemi suggested that, on his upcoming visit to Iran, Kennedy visit

[375] ISAUS White Paper on the Refusal of the Embassy of Iran in Washington DC to Renew the Passports of Mr. A.S. Fatemi and Mr. S. Ghotb, August 1, 1961, Box 282, United States National Student Association, International Commission Records [USNSA Records], Hoover Institution Archives.

[376] Memo by Emmerson about conversation with Fatemi, Sept. 10, 1961, ibid.

[377] Afshin Matin-asgari, 50-55.

[378] Letter from Ali Fatemi to Robert Kennedy, Jan. 19, 1962, box 282, USNSA records.

jailed students from the University of Tehran. When the State Department said that was impossible, Kennedy canceled his visit to Iran.[379] Then, when the Shah visited in April 1962, Iranian students charged his entourage as it left the Waldorf Astoria hotel in New York. The Shah encountered student protesters in Washington and in Los Angeles. A group of ISAUS members chanted "Mossadegh" as he and the Queen left from San Francisco.[380]

Upon his return to Iran, the Shah revoked the passports of Fatemi and several other students. The State Department was eager to deport Fatemi because of the damage he was causing U.S.-Iranian relations. But the INS opted not to start deportation proceedings, arguing that, since Fatemi was carrying a full course of study, no action would be taken to interrupt it; the INS commissioner also noted that Fatemi would bring a 243(h) persecution claim.[381] Though it conceded that Fatemi's passport had ben revoked for political reasons, the State Department denied the merits of a persecution claim since it has received assurance from the Iranian government that Fatemi would not be prosecuted if returned to Iran. Still, the Department of Justice continued to keep Fatemi's case in abeyance. State confronted Robert Kennedy, who, as Attorney General oversaw the INS. State claimed, somewhat contradictorily, that giving asylum to Fatemi would push the Shah towards rapprochement with the Soviets and also would allow

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[379] *Robert Kennedy in his Own Words: The Unpublished Recollections of the Kennedy Years*, eds. Edwin Guthman and Jeffrey Shulman (New York: Bantam, 1988) 317; Arthur Schlesinger, Jr., *Robert Kennedy and his Times* (Boston: Houghton Mifflin, 1978), 436.

[380] A picture of the last protest appeared in *San Francisco Chronicle,* April 30, 1962.

[381] Letter from Robert Robinson (Deputy Associate Commissioner, Travel Control, INS) to Donald K. Emmerson, June 25, 1962, box 282, USNSA records: "This service cannot grant him a formal extension of his stay in this country unless he can present a valid passport. However, because he has invested so much time and effort I obtaining an education in the United States, and is carrying a full course of study, he will be given [voluntary] departure dates that will allow him to remain in this country until he has completed his educational program." See also INS Commissioner Raymond Farrell to Michel Cieplinski, Acting Administrator of Bureau of Security and Consulate Affair, June 27, 1962, RG 59, NEA/IRAN, Records Relating to Iran, 1958-1963, Box 7, Folder: 13-A Students, Fatemi and Qotbzadeh, 1962 NARA.

Soviet agents in Iran to undermine the Shah by pointing to America's acknowledgement of the regime's political tyranny and denial of individual liberties. The State Department also claimed that treating Fatemi like a refugee would lead other foreign students to engage in propaganda campaigns against their home governments in order to stay in the US indefinitely.[382] When these arguments did not convince Kennedy, State claimed that Fatemi was a Communist. Kennedy reached out to Justice Douglas, who assured him that the Shah would execute Fatemi if he were deported and that the FBI would clear Fatemi, which it did. Fatemi's politics had been pretty clear from the get go: what got him in trouble with the Iranian authorities to begin with was a comment on Ed Murrow's TV show that the United States was wasting money by giving it to Iran because of the corrupt nature of the regime. Fatemi elaborated in a letter in the *New York Times* that American support for the Shah's regime was "short sighted as a deterrent to Communist expansion in Iran."[383] *Iran Nameh,* ISAUS's publication, likened Mossadeq to Jefferson and Lincoln and expressed outrage at the Shah for violation of the country's constitution.[384] In the summer of 1962, at Robert Kennedy's Aspen Institute conference, Fatemi argued that the United States had "some legitimate interests in Iran, but only to keep Iran out of the Communist world." But the United States, he argued, should not prop up a corrupt regime; it "should forget about short cuts and agree to work with the duly elected representatives of the

[382] Memorandum from NEA—Phillips Talbot to Justice, Mr. Ball, on Status of Iranian Student Leaders in the United States, August 10, 1962, RG 59, NEA/IRAN, Records Relating to Iran, 1958-1963, Box 7, Folder: 13-A Students, Fatemi and Qotbzadeh, 1962 NARA.

[383] "Iran's Regime Denounced: National Front Viewed as Only Deterrent to Communism," *New York Times*, June 17, 1961, 20.

[384] "In the same way that the American people revere the names Lincoln and Jefferson, and the Indian people the name of Gandhi, the Persian people revere and respect the name of Massadeq who is the living symbol of their honor and national independence." *Iran Nameh*, III.16. March-April 1962, box 282, USNSA records.

people." "Not every [place] outside the Communist world is free," he said. For Iran to be free, according to Fatemi, it needed "free elections and the existence of representative government."[385]

Still the State Department insisted that ISAUS publications were lurid and that Fatemi and a small group of "hard core" student allies had views that "were much more extreme" than those of the National Front [i.e.,the anti-Shah followers of Mossadeq].[386] In 1963, after the Shah tightly controlled a national referendum to launch his "White Revolution" reform program, Fatemi led a protest at the Iranian embassy in Washington calling for the Shah to open his program to public debate. ISAUS believed the Shah's socioeconomic reform program (calling for land reform and privatization of state owned factories) would not significantly improve the lot of most Iranians and would only consolidate monarchial authority. The police arrested some of the student protesters and they were convicted of disorderly conduct. When, in September, the Shah held elections, Fatemi and ISAUS claimed they were not actually free (as they took place under martial law and much of the opposition was in jail) and organized a sit-in at the office of Iran's delegate to the United Nations. Secretary of State Dean Rusk wrote Robert Kennedy to request Fatemi's deportation. Though Rusk conceded many of the protests of Fatemi were legal, they were "not in conformity with the general practice of expecting political refugees to refrain from political activity in this country." This echoed the point of view of the Iranian foreign minister who told a State Department official that the Iranian government would not object to the "hard core" students seeking political asylum so long as "they were prevented from taking political action." (The Iranians, by refusing to renew Fatemi's passport, were ostensibly not interfering with American immigration policy, but in reality were demanding that the United

[385] "Foreign Youth and the American Image Abroad," August 1962, RG 59 NEA, Records Relating to Iran, 1958-1963, Box 7, Folder: 13-A Students, Fatemi and Qotbzadeh, 1962 – 1962, NARA.

[386] Phillip Talbot (State Department, Near Eastern Affairs) to Secretary of State (Rusk), October 5, 1963, RG 59, Central Foreign Policy Files,1963, Box 3260, Folder EDX Iran.

States either deport Fatemi or deny him any rights). Rusk's letter and the State Department's position also echoed the Iranian official line in referring to picketing the White House, calling for an end to US aid to Iran, publishing an anti-regime periodical, and engaging in sit down and hunger strikes at the Iranian Embassy and consulates as "violent." There was also an irony in the fact that State opposed Justice's treatment of the Iranian students in "the same manner as refugees from Communist Cuba," refugees who were indeed recruited by the United States government to engage in political activity against Castro. Rusk closed his letter by claiming he was "not raising the normal rights of free speech or free assembly," but the letter clearly did. [387]

Kennedy still was opposed to the deportation, but was also supportive of the Shah's reform efforts. He told INS commissioner Raymond Farrell to meet with Fatemi and warn him to cease his protests. Farrell told Fatemi that any student without a valid passport had to control his behavior or face legal action; Farrell particularly mentioned "troublesome" activities such as insulting visiting dignitaries and disturbances at Iranian diplomatic premises. The "hospitality" that the US extended to Fatemi depended on his future behavior. When Fatemi asked about "the rights of the Iranian students to political expression," a State Department representative at the meeting responded that the students were in the United States "on sufferance," implying they had no "rights" (sneer quotes in original).[388] The State Department no longer seemed concerned with "avoiding a…clash over civil liberties policy with the Attorney General."[389] After Robert

[387] Letter from Rusk to Kennedy, October 11, 1963; Phillip Talbot (State Department, Near Eastern Affairs) to Secretary of State (Rusk), October 5, 1963; Memo of a Conversation between Foreign Minister Abbas Aram and John Jernegan, October 6, 1963, all in RG 59, Central Foreign Policy Files,1963, Box 3260, Folder: EDX Iran. See also Memorandum of a Conversation (Abbas Aram, Mahmud Foroughi (Ambassador of Iran), Philips Talbot and Katherine Bracken (State Department), October 7, 1963, RG 59, Central Foreign Policy File, 1963, Box 3943, Folder: Pol Iran-US.

[388] Memorandum of Conversation, Dec. 24, 1963, RG 59,Central Foreign Policy Files, 1963, box 3942, Folder: Pol 22 Iran.

[389] Gordon Christenson to John Bowling, August 13, 1962, RG 59, NEA, Records Relating to Iran, 1958-1963, 13-

Kennedy stepped down as head of the Justice Department in September 1964, the INS denied Fatemi's request to adjust to permanent resident and ordered him to leave the county. According to a letter from the Newark INS District Director to Fatemi's lawyer:

> The Department of State has reported that it believes adjustment of status to permanent resident for Mr. Fatemi would have adverse effects on the relations of the United States and Iran…Notwithstanding the warning [from the Commissioner of the INS to cease protesting]…Mr. Fatemi was identified as among a group of Iranian students who on June 9, 1964 assembled at the entrance of the New York University premises and demonstrated with obstreperous behavior against the Shah and Empress of Iran during a temporary visit of the royalty to the United States. Under the circumstances, in the exercise of discretion, favorable consideration of Mr. Fatemi's application for permanent residence would not be warranted. [390]

Fatemi was eventually able to remain in the country because, in his later appeals to the INS, he had the backing of the United States National Student Association, which considered Fatemi one of its "most reliable foreign allies," and approved of his "strict constitutionality and strong anti-communism."[391] Fatemi was precisely the kind of leader USNSA supported in its effort to appear independent from U.S. foreign policy while being controlled by the CIA. USNSA helped Fatemi pay for his lawyer and also contacted Edith Lowenstein on behalf of Fatemi and his cousin, another ISAUS member who was having passport troubles.[392] USNSA's support for Fatemi was all part of a larger effort. USNSA formed ties with groups of "pro-West moderate militant" foreign students in the United States; in 1962-1963, for instance, USNSA

A Students, Fatemi and Qotbzadeh, 1962.

[390] Letter from W.J. Wyrsch (Acting District Director) to Lawrence Moore, September 10, 1964, box 282, USNSA records.

[391] Paget, *Patriotic Betrayal*, 279; Ron Story, Memo on Student Revolutionary Preparedness Committee (Iran), Jan. 10, 1964, from conversations with Ali Fatemi, box 282, USNSA records.

[392] Donald Emmerson (USNSA International Affairs Vice-President) to Edith Lowenstein, December 15, 1961.("Is there anything you can do to see that these students are permitted to remain in the United States?), box 282, USNSA records.

financed trips to Africa for students in the Southern Africa Refugee Program so that they could attend conferences with liberation movement leaders. When they came back, the refugee students would report to USNSA about those liberation movements.[393] Fatemi seemed to understand what USNSA was after; he told a USNSA staffer that "Iranian students who had studied in the United States would naturally defend the institutions of the United States [to students in Iran]…If they were deported by the U.S., however, their defense would be no good at all."[394] Still, though Fatemi, during his anti-deportation campaign, had asked USNSA to rally support from American students on college campuses, USNSA did not pursue that and instead got letters from other unions of foreign students (Algerian and South African) that USNSA supported.[395] USNSA generally rejected particular requests for funds and publicity for ISAUS-conceived projects and gave help only in limited ways that fit into USNSA's agenda to insure that CISNU would not defect to affiliating with communist student organizations.[396] Still, it is clear that, in the early 1960s, ISAUS was receiving travel money from the CIA via USNSA. But, given the CIA's ties, there was a real risk that reports filed by USNSA staff about Iranian students could get to SAVAK.[397] Leaders of ISAUS were suspicious of USNSA's financing in 1964—three years before the CIA connection was exposed.[398]

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[393] Evelyn Jones Rich, "United States Government Sponsored Higher Educational Programs for Africans: 1957-1970" (Ph.D. dissertation, Columbia University, 1978), 129.

[394] Memorandum: Conversation with Ali Fatimi [sic], box 282, USNSA records.

[395] Fatemi to Emmerson, October 19, 1961, box 282, USNSA records.

[396] USNSA explained their interest in ISAUS this way: "Our own policy…has been motivated by very concrete political goals—to shore up national front elements among Iranian students and convince them that they have friends in the West and thereby help to insure that if the Shah is ever overthrown his place will be taken by democratic rather than Communist revolutionaries" (Gregory Galo and Alexander Korns to Chancellor Frank Murphy, May 14, 1964, box 282, USNSA records).

[397] ISAUS complained to USNSA about SAVAK spying on Iranian students in the United States as early as 1962. Students met in Washington DC late that year and when, shortly afterwards, one of them returned to Iran, the police

USNSA gave travel grants for leaders of ISAUS to travel to the CISNU conference in London in late 1963. But, as Fatemi was no longer president and his passport and visa problems kept him from traveling, USNSA engaged in "considerable maneuvering," none of which succeeded, to avoid funding a student with "alleged Marxist leanings."[399] By the mid-1960s, ISAUS was moving towards support for more violent opposition and for more radical movements internationally. USNSA leaders were particularly upset by they called "irresponsible" ISAUS protests at UCLA in opposition to the university's granting of an honorary degree to the Shah in the spring of 1964.[400] When a representative from the State Department's Bureau of Educational and Cultural Affairs asked USNSA to clarify its position regarding the UCLA protest and ISAUS, the president of USNSA said that the organization's "protocol does not urge anyone here to protest, merely defends that right, which Iranians don't have in Iran."[401] Afterwards, USNSA claimed it would be difficult to come up with funds to support ISAUS's English section to its *Daneshjoo* journal; the new ISAUS president hoped the newsletter would reach a larger audience and connect the Iranian student opposition to other student movements. "I hope that we can give better coverage to the American students' struggle for peace and racial equality…in this way we hope to foster not only a better understanding of their American socio-

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picked him up and interrogated him on specific details of the meeting which only someone present could have known. (Ronald Story, Conversation with Faraj Ardalan, November 15, 1963). Fatemi said about USNSA reports: "Every one of us could have been killed." (Paget, *Patriotic Betrayal*, 292).

[398] Julius Glickman, report on dinner with Hassan Labastchi, November 40, 1964, box 282, USNSA records.
[399] Robert Witherspoon, Conversation with Majid Tehranian, December 3, 1964, box 282, USNSA records.

[400] Julius Glickman, report on dinner with Hassan Labastchi, November 40, 1964. At commencement ceremonies, ISAUS gave out a letter accusing the Shah of involvement with heroine smuggling and a small plane circled above the crowd towing a banner that said, "Need a fix? See the Shah!"

[401] Memo on Martin McLaughlin of CU's telephone conversation with Gregory Gallow of USNSA, June 1964, RG 59, Records Relating to Iran 1964-1966, POL 13-2-b, Iran 1964.

political environment for the Persian students in this country but also to encourage them to participate actively in the common struggle waged on this front."[402]

ISAUS's protest against granting the Shah an honorary degree at UCLA was supported by the senate of the Associated Students of the University of California as well as foreign student associations such as the Organization of Arab Students and the African Students Association. In the coming years, ISAUS support would come directly from American student activists affiliated with SDS, Black Muslims, the Young Socialist Alliance, the Revolutionary Student Brigade (Maoist), and other radical groups. By the mid 1960s, ISAUS was sending messages of solidarity to students in Spain, Algeria, Greece, Ghana, Mexico, Vietnam and the Dominican Republic, admiring "the resolute struggle" of the latter two "against American aggression."[403] In 1964, the INS issued warnings to Iranian students in several cities regarding their protests—only "peaceful non-insulting demonstrations" were permissible—and in 1965, released a policy statement that Iranian students were to be treated like all other student (i.e., not in the special way Cubans were treated.) Henceforth, Iranian students would not be given extensions of stay if they lacked valid passports. [404] The State Department also kept on hand a "lookout book," compiled partly by the SAVAK and other Iranian government officials and partly by the State Department's Visa Office, Office of Security, the INS, and the FBI, containing a long list and personal information on

[402] Majid Tehranian to Ron Story, March 8, 1964, box 282, USNSA records.

[403] Message of Solidarity, CISNU, May 1966, box 282, USNSA records.

[404] John Jernegan Jr. to Governor Harriman, May 28, 1964, RG 59, Records Relating to Iran, 1964-1966, Box 6, Pol 13-2-b; Franklin Crawford to Bracken, October 20, 1965, re: Iranian Students, RG 59, Records Relating to Iran, 1964-1966, Box 11, Pol 13-2-b, Students, Youth Groups, 1965.

leading student dissidents. After demonstrations, State queried INS for the updated immigration status on the students involved. [405]

Between 1965 and 1968, students affiliated with the increasingly New Leftward-moving ISAUS continued to protest when the Shah visited the United States and his policies in Iran. ISAUS was most critical of the Johnson administration's support for the Shah's military build-up, repeatedly asking if Iran was to be the new Vietnam.[406] ISAUS's documentation of particular events in Iran—especially the prosecution in a military court of students who returned from abroad (England) and were accused of planning to assassinate the Shah in 1965 —and of the mistreatment of political prisoners connected it to Amnesty International and other human rights groups. Amnesty affiliated lawyers monitored the trial of the assassination conspirators and wrote critical reports.[407] Similarly, ISAUS leaders wrote letters to editors and telegrammed President Johnson to complain about the lack of due process in the investigation of the

[405] Enclosure of the list with a memo from Keith Brown to Theodore Eliot, Aug. 9, 1967, RG 59, Records Relating to Iran, 1965-1975, Box 1, Pol 13-2, Iran 1967. An earlier spring 1964 "lookout" list is in RG 59, Records Relating to Iran, 1964-1966, Box 6, Pol 13-2-b. These names seem to have come from Iranians. On April 27, a Near Eastern Affairs State Department official met with the head of the Savak and the Iranian Foreign Minister about foreign students. "We are passing on to our security people all information and material bearing on this problem which the Iranians furnish us. [The State Department Security Division] is in in turn passing this on to the FBI…We have suggested that Ambassador Foroughi supply us with a list of potential troublemakers with a notation, in each case, of the persons passport and visa status….We have asked INS Washington to ensure…that the US government is not offering any special consideration to Iranian students who do not hold valid passports." Bracken to Talbot, April 27, 1964, ibid.

[406] "A Message from the Iranian Student Association in the United States to the American People: Is Iran Potentially Another Vietnam," October 1965, Folder: Iran Student Association of America I, Box 46, Tamiment Library and Robert F. Wagner Labor Archives Printed Ephemera Collection on Organizations.

[407] Amnesty International Annual Report, June 1, 1965-May 31, 1966, 9, accessed July 10, 2014 https://www.amnesty.org/en/documents/pol10/001/1966/en/
ISAUS's 1971 pamphlet *Political Repression in Iran* contains excerpts from the lawyers' reports, including details about the torture used on the defendants (electric shock, hanging upside down, breaking of teeth, whippings while naked, cigarette burns, bottles and hot rods inserted into anus) and the lack of solid evidence against them presented in the courtroom.

assassination conspirators and suggested that their confessions were elicited by torture.[408] That David Carliner, an attorney who specialized in 243(h) claims, became ISAUS's attorney highlights the connection between anti-deportation campaigns and anti-Shah activism. By 1968, Carliner, with the backing of Amnesty, traveled to Iran to collect evidence that oppositionist Iranian students in the United States would be subjected to persecution if deported.[409] Carliner's scathing report about his experience in Iran in May 1968 belied the Shah's contemporaneous portrayal of himself as a champion of human rights at a Tehran conference celebrating the twentieth anniversary of the Universal Declaration of Human Rights.

Beginning in 1965, the State Department wanted the INS to begin deportation proceedings against students who were involved in protests and were out of status, but it was wary of their persecution claims. "We have just made a carefully worded statement distinguishing between physical persecution and any legitimate penalties one might be subjected to because of activities endangering the security of the State," Frank Crawford at the State Department's Iran desk wrote in August 1965.[410] The carefully worded statement specified that "opposition to the regime per se does not subject an individual to physical persecution. If such opposition takes the form of violation of criminal statutes, local legal procedures would then

[408] Gordon Tiger to Martin Herz, May 21, 1965, RG 59, Records Relating to Iran, 1964-1966, Box 11, Pol 13-2-b, Students, Youth Groups, 1965; "Trial in Iran," Letter from Majid Tehranian for the Executive Committee of ISAUS, *Christian Science Monitor*, Nov. 16, 1965, 22.

[409] David Carliner flies to Iran on Amnesty Mission, April 29, 1968, Box 10, Folder: Iran, Amnesty International of the USA, Inc.: National Office Records, RGII: Executive Director Files, 1967-1997, Series 5: National Section Memos.

[410] Frank J. Crawford, Officer in Charge, Iranian Affairs to Martin F. Herz, Charge D'Affairs ad interim, American Embassy, Tehran, Aug. 18 1965, RG 59, Records Relating to Iran, 1964-1966, Box 11, Pol 13-2-b, Students, Youth Groups, 1965.

become operative and might result in prosecution and imprisonment."[411] Both ISAUS and the American Embassy in Tehran were incredulous. "Of course what you have told the INS about there being no physical persecution because of a record of opposition to the regime is just not true," Martin Herz at the Embassy wrote Crawford. "We hear all the time about people who have violated no criminal statute being arrested for political activity; arrests or harassment of political oppositionists are very frequent here; and although 'opposition to the regime per se' is not legally prohibited, in practice anyone who even looks as though he might be preparing to make trouble could be arrested at any time and held in jail for an indeterminate period." Still, Herz wrote, "the Ambassador feels that the deportation of a few students should have a very salutary effect on the whole situation, and he feels the risk is worth taking that we might be held up for criticism if they do get into trouble here after their return."[412] Crawford replied that "for our purposes, surveillance, being picked up for questioning, or the usual SAVAK harassment would not necessarily be physical persecution, however unpleasant or unjust they might be…Torture and arbitrary arrest and imprisonment, on the other hand, would be…I should think that even in these cases the Iranian government must operate under some law or decree which provides at least a fig leaf of legality for its actions." Crawford conceded, "if the Iranian Government handles one of these returnees with a meat axe, we can't successfully make out points to the INS, and, in the end, to Congress and the public. Time will tell."[413] ISAUS was not willing to wait and see. It found the form letter from the State Department reassuring the INS that ISAUS

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[411] Crawford to Bracken, re: Your Discussions with Ambassador Khosrovani about the Iranian Student Problem, Sept. 17, 1965, RG 59, Records Relating to Iran, 1964-1966, Box 11, Pol 13-2-b, Students, Youth Groups, 1965.

[412] Martin Herz to Frank Crawford, October 4, 1965, RG 59, Records Relating to Iran, 1964-1966, Box 11, Pol 13-2-b, Students, Youth Groups, 1965.

[413] Crawford to Hertz, October 19, 1965, ibid.

member Hossein Hosseinmardi, who had been actively involved in the UCLA protest[414], would not be subjected to physical persecution if deported to be "distorting the facts of the political situation in Iran." ISAUS pointed to reports of persecution of the Iranian opposition in the *Economist* and the *Washington Post*. ISAUS found particularly "insulting to Iranian students" a statement in the State Department's letter regarding Hosseinmardi that "Iranian nationals are conniving to remain in the United States by deliberately engaging in actions which they can subsequently claim will expose then to 'persecution' if returned to Iran." ISAUS asserted "the interest we actively take in the struggle for freedom in our country" actually attested to the desire of Iranian students to return home upon completion of their studies. "If some politically active Iranian students are obliged at the present time to postpone their return because of the persecution they will face, it is the present dictatorship in Iran which should be principally blamed." The ISAUS letter gave the last word to the military prosecutor in the trial against the alleged assassination conspirators: " 'If you are punished, the Iranian youth [now studying at universities] will naturally follow the course selected for them by our government and leaders…If one studies in the pursuit of a goal which is not in accordance with the truth as defined by the Government, then indeed the study itself is a crime.' "[415]

ISAUS sent a copy of its protest letter to David Carliner. Carliner had stopped by at the State Department a few weeks earlier to talk with Crawford about deportation proceedings involving Iranian students. Crawford found Carliner "very cordial." "Mr. Carliner was very interested in the procedures by which the State Department informs the Immigration Service of

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[414] Arthur Berman, "Plot to Kill Shah Here Feared," *Los Angeles Times*, June 6, 1964.

[415] Majid Tehranian, President of ISAUS, to Secretary of State Dean Rusk, July 28, 1966. In this folder, too, is the letter sent by State to the INS regarding Hosseinmardi and identical letters sent to the INS regarding several other Iranian students who made claims that they would be physically persecuted if returned to Iran. RG 59, Records Relating to Iran, 1964-66, Box 13, V-21, Iran 1966.

its views…Mr. Carliner inferred…that judgments in these cases were made on an individual basis, and I agreed that it was so."[416] Carliner soon began to suspect that it was not so, having seen several similar letters—like the one regarding Hosseinmardi—denying persecution claims. In June 1966, he wrote Herz at the embassy in Tehran. Carliner explained that he was representing a student who was a member of the National Front and helped organized demonstrations in Washington and New York to protest the trials of political opponents of the Shah.[417] Carliner wanted Herz to give him information regarding the likelihood that the student would be subject to persecution by Iranian authorities if deported. "Although 'persecution' is not defined by the statute," Carliner wrote, "it has been interpreted to include economic discrimination in obtaining employment, being placed under surveillance, being restricted in travel, as well as prosecution for political, as distinguished from criminal, charges." When Herz wrote Carliner to get in touch with Crawford, Carliner accused Herz of giving him the run-around. "Inasmuch as the fate of a number of Iranian students may turn upon the State Department's position on this question, it, of course, does not do to dispose of my inquiry to term the question 'interesting' and to fend it off to other officers of the Department, who, in turn, are dependent upon officers in Iran such as yourself, for first hand information. As Mr. Crawford knows, I have previously been in communication with him…My inquiry to you was for the purpose of getting direct knowledge of current political conditions in Iran as they might affect persons who have conducted activates abroad against the Iranian government and those who

[416] Memorandum for the Record, 3/1/66. RG 59, Records Relating to Iran, 1964-66, Box 17, Pol 13-2 1966

[417] Carliner was representing Ali Shams, whose student visa, issued in May 1963, had expired. "Iranian Fights US On Ouster," *Washington Post*, May 3, 1966, C15; "Iranian Asks U.S. Asylum Fearing Dangers at Home," *Baltimore Sun*, May 4, 1966, C30.

would continue to conduct such activities upon their return to Iran." Carliner, Herz wrote Crawford, was "getting a little aggressive."[418]

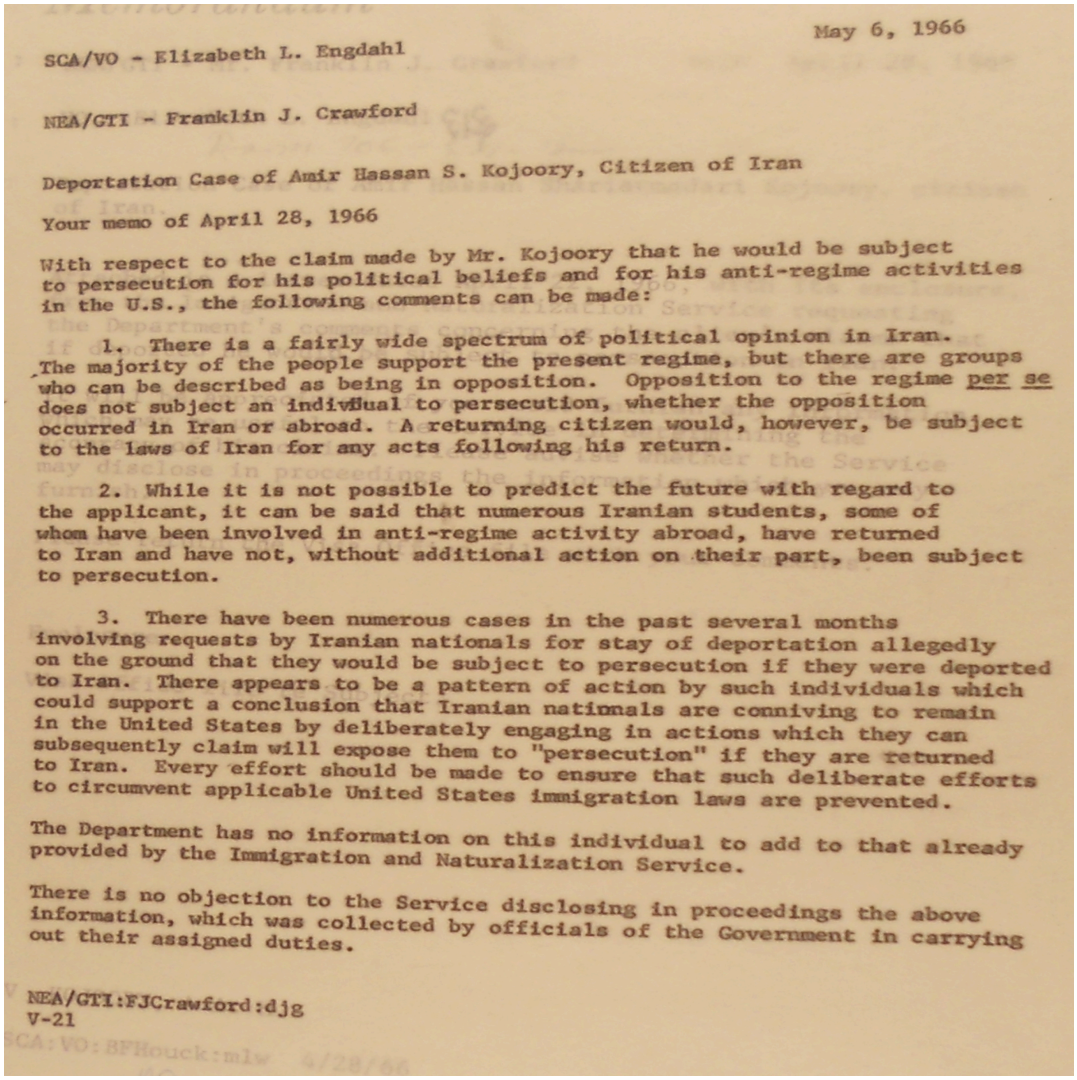
In early August, Carliner tried another route, writing to Phillip Heymann at the Bureau of Security and Consular Affairs (which was in charge of refugee matters at the State Department). Carliner particularly pointed to the statement in the letter from the State Department to the INS (regarding Hosseinmardi and in other cases) accusing Iranian students of "conniving to remain in the United States by deliberately engaging in actions which they can subsequently claim will expose them to persecution." The letter referred to these actions as "deliberate efforts to circumvent applicable immigration laws." Carliner argued that "It is particularly inappropriate for an official of the Department of State to offer gratuitous advice to the INS regarding the grant of stays to aliens in the US inasmuch as those determinations are made…in administrative proceedings upon a hearing record by a special inquiry officer whose determinations are not subject to the control of the enforcement officers of the INS." More significantly, Carliner argued that the "actions" engaged in by Iranian students included lawful picketing of the White House, the Iranian Embassy, and other public buildings and demonstrations and handbill distributions at gatherings where Iranian officials appeared. "It is, of course, not the function of the INS to prevent such conduct, even were it permissible," wrote Carliner. "Just as certain, it is not appropriate for any official of the Department of State to appear to censor Iranian nationals within the United States for exercising the right of freedom of speech and assembly, which the First Amendment afford to all persons who are within the United States, whether citizen or alien,

[418] Letter from Carliner to Herz, June 2, 1966 and June 15, 1966; Letter from Herz to Crawford, June 22, 1966, RG 59, Records Relating to Iran, 1964-66, Box 17, Pol 13-2 1966

immigrant or non-immigrant."[419] Heymann at the Bureau of Security and Consular Affairs referred Carliner's letter to Crawford at the Iran desk, who told Heymann to make no reply.

Matters came to a head the following year. First Carliner appealed the INS's rejection of a 243(h) claim by Amir Kojoory, president of the Southern California branch of ISAUS, to the Board of Immigration Appeals. Despite his leadership position in ISAUS, his publicized participation in the 1964 protests, and his critical caricature drawings of the Shah, all of which the Board believed made it "likely that he is known" to the government of Iran, as well as supporting testimony regarding political repression in Iran by an American economist who worked there in the early 1960s, the Board rejected Kojoory's appeal. The Board pointed to the State Department's letter confirming that opposition to the Shah's regime "without more" does not subject an individual to persecution. [The State Department's letter in Kojoory's case, figure 5.4 below, is the identical form letter that was sent to Hosseinmardi].

[419] Carliner to Phillip Heymann, August 4, 1966, ibid.



May 6, 1966

SCA/VO - Elizabeth L. Engdahl

NEA/GTI - Franklin J. Crawford

Deportation Case of Amir Hassan S. Kojoory, Citizen of Iran

Your memo of April 28, 1966

With respect to the claim made by Mr. Kojoory that he would be subject to persecution for his political beliefs and for his anti-regime activities in the U.S., the following comments can be made:

1. There is a fairly wide spectrum of political opinion in Iran. The majority of the people support the present regime, but there are groups who can be described as being in opposition. Opposition to the regime per se does not subject an individual to persecution, whether the opposition occurred in Iran or abroad. A returning citizen would, however, be subject to the laws of Iran for any acts following his return.

2. While it is not possible to predict the future with regard to the applicant, it can be said that numerous Iranian students, some of whom have been involved in anti-regime activity abroad, have returned to Iran and have not, without additional action on their part, been subject to persecution.

3. There have been numerous cases in the past several months involving requests by Iranian nationals for stay of deportation allegedly on the ground that they would be subject to persecution if they were deported to Iran. There appears to be a pattern of action by such individuals which could support a conclusion that Iranian nationals are conniving to remain in the United States by deliberately engaging in actions which they can subsequently claim will expose them to "persecution" if they are returned to Iran. Every effort should be made to ensure that such deliberate efforts to circumvent applicable United States immigration laws are prevented.

The Department has no information on this individual to add to that already provided by the Immigration and Naturalization Service.

There is no objection to the Service disclosing in proceedings the above information, which was collected by officials of the Government in carrying out their assigned duties.

NEA/GTI:FJCrawford:djg
V-21

Figure 5.4, State Department letter regarding Kojoory, May 6, 1966, RG 59, Records Relating to Iran, 1964-66, Box 13, V-21, Iran 1966, NARA.

"The material in the file is in conflict," wrote the Board, "respondent [Kojoory] and his witness testifying that respondent would be so persecuted, although the witness has no first hand knowledge of present day conditions in Iran, and the letter from the State Department claiming that unless respondent were active after his return he would not be persecuted for his activities here…On the record before us we do not believe respondent has borne the burden of establishing

that he will be persecuted." [420] Then, in August, Khosrow Kalantari, national president of ISAUS and a graduate student at San Francisco State, was arrested (for disorderly conduct) during one of several protests in Washington while the Shah was visiting[421]; Kalantari was threatened with deportation because his passport had expired. Carliner realized that in order to substantiate Kalantari's claim that the Iranian government would persecute him because of his political activities, Carliner needed "first hand knowledge of present day conditions in Iran"; he felt he needed to go to Iran himself to take testimony directly from Iranian citizens there.

Before Carliner left, his Iranian host, an attorney who was to help arrange interviews with prospective witnesses, was arrested and beaten by police intelligence. Carliner asked the Iranian Ambassador to the US for assurances that witnesses and attorneys for Kalantari would not be molested. The Ambassador denied that the Iranian attorney had been beaten and claimed that it was contrary to Iranian law for people to give the depositions Carliner was hoping to get. Not surprisingly, when Carliner got to Iran, he was not able to convince any of the fifteen people he interviewed (retired officers of the Iranian army, university professors, foreign newspaper reporters assigned to Iran, and others) to give a sworn statement before a notary public. The Iranian attorney confirmed he had been picked up by the police and beaten and, fearing further harassment, he would not arrange meetings with witnesses for Carliner. When Carliner returned to the United States, he prepared a deposition that detailed the information related to him by the interviewees, emphasizing their descriptions of arrests, without charges or trial, of protesters and members of the National Front; surveillance of students at universities by informants paid by

[420] Matter of Kojoory, A-10474028, Interim Decision #1731, Decided by the Board May 11, 1967.

[421] "Four Iranian Students Arrested in a Protest," *Washington Post,* Aug. 24, 1967, A15. For other protests that Kalantari was involved in during the Shah's visit, see: James Yenckel, "Iran Students Picket CIA's Headquarters," *Washington Post,* Aug. 21, 1967; "CIA Picketed by Iranians Against the Shah: 60 Students Refre to Alleged 1953 Actions," *Baltimore Sun*, Aug. 21 1967, A3; "Shah Visits President as Protesters Scuffle: Police Block Students Demonstrating Against Conference with Iranian Chief," *Los Angeles Times*, Aug. 23, 1967, 9.

SAVAK; and laws penalizing criticism of the Shah or Iranian government by Iranians both in Iran and in foreign countries. Carliner also mentioned two students who were recently arrested and still in jail for their oppositionist activity upon return from Austria; one American student who had participated in the opposition was detained without trial for three months upon return to Iran in 1966 and was released when he agreed to desist in his political activity. Carliner's informants believed either that it was certain that Kalantari would be arrested upon return or that his detention would depend on whether "it served the purpose of the Iranian government to appeal to 'favor' him and thus destroy any confidence which Mr. Kalantari may have among other critics of the Government." The informants requested anonymity for fear that Iranian officials in the US would get access to the INS proceedings, but Carliner offered to provide their names for a sealed record. Before leaving Iran, Carliner spoke to a political officer at the US Embassy in Tehran who confirmed that the State Department had not requested any information as to Kalantari's claim that he would be subject to persecution or any similar claims by Iranian students. The Embassy also stated that, if asked to provide such information by the State Department, it would obtain it from Iranian Ministry of Foreign Affairs.[422]

All of this made it clear that foreign policy concerns and the State Department were influencing immigration decisions. And it wasn't just 243(h) claims. The Iranian government and the State Department also requested that the INS not approve adjustment of status to permanent residence of particular politically active Iranian students, even if the students had married Americans and were privately funded (as the vast majority of Iranian students in the United

[422] Text of the Report of Mr. David Carliner Concerning His Investigation in Iran, In the Matter of Khosro Kalantari, A 12 573 328, August 1968, in Iranian Political Opposition Literature collection, Box 48, Folder 11, Hoover Institution Archives.

States were).[423] One of the lookout lists of Iranian students in the State Department files indicates that many such students did manage to adjust their status.[424] The INS seemed most likely to abide by the State Department's recommendation against adjustment in cases like the one involving a student (married to an American citizen) who was considered "troublesome" by the Iranian government and who also received funding for his education from the Iranian government. Besides criticizing this student's agitation against the Shah, the State Department argued that the US should not assist the Iranian students "to evade an obligation to his home government."[425] The Board of Immigration Appeals made the same argument in cases involving students from Iran who were not involved with protest activities and in cases involving students from other countries who received funding from their home governments. The argument was

[423] Daniel Newberry to Engdahl, Oct. 19, 1966: "On the basis of the Iranian Embassy's specific request in its letter of August 12, 1966 to INS, we have no doubt that the granting of the adjustment of status requested by Mr. [Ali Akhbar] Beihaghi would clearly result in adverse relations between the government of the United States and Iran." (RG 59, Records Relating to Iran, 1964-1966, Box 13, V-11 Eligibility/Ineligibility, 1966). Beihaghi was a student involved in anti-Shah activity in San Francisco; he is listed on the 1967 State Department "blacklist" as "Ali Akbar Bihaqi."(Enclosure of the list with a memo from Keith Brown to Theodore Eliot, Aug. 9, 1967, RG 59, Records Relating to Iran, 1965-1975, Box 1, Pol 13-2, Iran 1967).
In 1963, 1927 of the 2824 Iranian students in the US were "self-supporting"; "193 were brought by the Iranian government" and "60 had some help from one of the US government programs." Lucius Battle, head of the State Department's Division of Cultural Affairs, wrote to Congressman John Rooney on Feb. 20, 1964, that "we in the Department …would not…do anything to encourage foreign students to stay in this county. This applies specifically…to Iranians; in fact we have had several conversations on the subject with official representatives of the Iranian Government stationed in Washington." RG 59, Central Foreign Policy Files, 1964-66, Box 397, Folder EDX Iran, NARA.

[424] Note to files, with attached list, 7/23/68**,** Records Relating to Iran, compiled 1965 – 1975, EDX 1, Iran 1968, Box 3, NARA. The list refers to the adjustment to permanent residence of Mehrdad Ayromlou, Bijan Savadkhoi, Djahansooz Gharib, Hooshang Salem, Ali Shalforoosh, and Iradj Ameria all students who were involved in anti-Shah protests or sits-ins and had married and/or had children in the United States.

[425] Gordon Tiger to John Diggins Jr., Sept. 30, 1964 and Crawford to Engdahl, Jan. 6, 1966, in the case of Iranian student Mohsen Pazirandeh, RG 59, Records Relating to Iran, 1964-66, Box 13, V-21, Iran 1966. See, also, Charles Somner to John W. Bowling, May 23, 1962, re: Case of Kaveh Showrai, RG 59, Records Relating to Iran, 1958-1963, Box 7, Folder 13-A 1962.

that the students needed to show good faith in dealing with their home governments and that adjustments would have adverse affects on US relations with their home governments.[426]

These rulings were discretionary because the students involved were on regular student visas and were legally eligible for adjustment of status. Exchange students were not eligible until they fulfilled their two-year foreign residency requirement. There was a provision in the law for the granting of a waiver of the 2-year requirement in cases of "exceptional hardship." Procedurally, the exchange visitor would apply for a waiver to the INS, which would assess eligibility and then get a recommendation from the State Department. Hardship claims were typically based on the difficulties American wives and children would face if made to live in the exchange student's home country where living conditions were poor and medical care lacking. But sometimes other issues came up. For example, a man of Indian ancestry but a native of Zanzibar, who resided in Kenya prior to entering the U.S. on an exchange visa to study medicine from 1957 to 1962, was denied a waiver, though he claimed conditions in Tanzaniya and Kenya in 1963 would make it unwise for him, as an Asian, to return to either country with his American wife and child. [427] The same year, Representative Thomas Curtis (R, MO), concerned about Cuban students, introduced a bill to exempt from the 2-year requirement those who "due to a change in their home country, it would be dangerous or impossible for them to return."[428] In late 1964, Congressmen, representatives from the State Department, and the INS met to consider waiver policies and proposals for handling and reducing the increasing numbers of waiver

[426] See the BIA decisions in Matter of Wolfe, A-11149323, Interim Decision #1368, June 23, 1964, in Matter of Youssef, A-12640176, Interim Decision 1465, May 3, 1965, and in Matter of Tayeb, A-12937196, Interim Decision 1865, May 21, 1968

[427] Case of K, Despatch from the American consul in Saint John, Canada, to Department of State, January 8, 1965, INS file CO212.43.

[428] *Congressional Record,* June 25, 1963, 11501.

applications. Proposals included: switching privately funded students from exchange visas to regular student visas, requiring that a sponsoring institution (universities and hospitals) or a more disinterested non-governmental organization screen waiver applications, encouraging international American firms and AID to hire returning exchange visitors in their home countries, asking home country governments to implement more stringent controls over exit and return of student nationals, and fostering collaboration between embassies of home governments and American universities and foreign student advisors. [429] The consensus was that as the general immigration law made it easier for skilled foreigners to immigrate, it was all the more important to maintain the exchange visitor-immigrant distinction. Also, since the INS was not qualified to evaluate "foreign policy dimensions" of waiver requests, the State Department should have the last word on requests that raised these issues.[430]

Concern about the non-return of exchange visitors figured into the mid 1960s discussion of brain drain. A 1965 report on Iranian students for the Shah noted with alarm that "about 40 percent of government students and those who in some way receive financial aid from the government do not return to Iran."[431] A report from the State Department Visa Office found that, in the last six months of 1965, over half of the former exchange students who received immigration visas to the U.S. after fulfilling the two year residency requirement came from

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[429] Norbert Schlei, Assistant Attorney General, to Senator Jacob Javits, Sept. 2 1964, INS file CO212.43-P; The Problem of the Non-Returning Exchange Visitor, Report of the Interagency Task Force of the Council on International Education and Cultural Affairs, April 23, 1965, Folder 13, Box 245, Bureau of Educational and Cultural Affairs collection, University of Arkansas Special Collections; Memoranda of the subcommittees of the Working Group on Waiver Criteria, Interagency Task Force on Non-Returning Exchange Visitors, Folders 11 and 13, Box 246, Bureau of Educational and Cultural Affairs collection, University of Arkansas Special Collections.

[430] Report of the Subcommittee on Criteria, June 14, 1968, folder 13, Box 246, ibid.

[431] Report by Mohandes Habib Nafisi for the Shah, enclosed in E. Thomas Greene to Frank Crawford, Sept. 22, 1965, RG 59, Records Relating to Iran, 1964-1966, Box 11, Pol 13-2-b, Naficy's Report on Students to the Shah, 1965.

either the Philippines or Iran.[432] When the State Department surveyed countries receiving AID funds to assess whether non-return was a problem, they got positive replies from Korea, Taiwan, Kenya, Turkey, and Iran.[433] Iran's resentment of student failure to return was particularly noted by Americans officials stationed in Tehran. [434] An official Iranian student supervisor in the U.S. blamed the non-return of *many* students on the "anti-government propaganda" of a small group of "rebels who have secured asylum in the US. "[435] This was certainly scapegoating given the huge numbers of Iranian students studying abroad (because they could not be accommodated at Iranian universities), the fact that many of these students had married, and the lack of employment opportunities available to those who returned.[436] But throughout the 1960s the Iranian Ministry of Foreign Affairs' concern about brain drain intersected in different ways with its concern about student political opposition. On the one hand, Iranian officials concerned most with security used the language of economic growth and national development to justify cutting oppositionist students off from funds from Iran and demanding their return. The Iranian government's refusal to renew Fatemi's passport "coincide[d] with orders given by the [Prime Minister] Amini Government to its Embassies abroad to refuse to renew the passports of all Iranian students…who…by word or action indicated their intention not to return eventually to Iran to apply their knowledge…The Embassy claimed that its failure to renew [Fatemi's]

[432] Report on Former Exchange Visitors Who Emigrated to the United States from Abroad After Fulfilling Their Two-Year Foreign Residence Requirement, March 15, 1966, Folder 24, Box 246, Bureau of Educational and Cultural Affairs collection, University of Arkansas Special Collections.

[433] Francis Collins, Analysis of Replies form Overseas Posts Concerning the "Brain Drain" Issue, Feb. 26, 1968, Folder 18, Box 241, ibid.

[434] Armin Meyer, US Embassy, Tehran, to Department of State, April 12, 1967, A-545, Folder 19, Box 244, ibid.

[435] Report by Ehsan Naraqi, 1966, 12-13, Folder 19, Box 244, Bureau of Educational and Cultural Affairs collection, University of Arkansas Special Collections.

[436] Report by Ted Wertime on Iranian Student Problems, Nov. 1, 1962 ("roughly 15,000 students are studying abroad…of which nearly 7,000 are in the US," "unemployment of university graduates is at a record level"), RG 59, Records Relating to Iran, 1958-1963, Box 7, Folder 13-A 1962.

passport was based on this ruling."[437] On the other hand, Iranian officials most interested in modernization and economic development found the surveillance of student political attitudes disruptive. Khodadad Farmanfarmaian, an US-educated economist who ran Iran's Central Bank, traveled to the United States in April 1968 (just as Carliner was about to leave for Iran). The Prime Minister had sent Farmanfarmaian on an official "brain drain reversal" mission; he was to survey students in the United States, figure out who in the United States was needed in Iran, and then find jobs in Iran to recruit them back. On the Farmanfarmaian mission came, along with Dr. Parviz Sanei, a former student of Walter Rostow, a SAVAK agent from the Student Advisor's office named Hossein Tavakoli, also a former student in United States. Another SAVAK agent from the Iranian Embassy accompanied the mission as it traveled around the United States. The "dark cloud" of SAVAK presence led one State Department official to speculate that students would be cautious about filling out Farmanfarmaian's questionnaires.[438] Farmanfarmaian himself recounted how Hossein Mahdavi, an old friend and fellow economist who had become active in ISAUS in the United States, absolutely refused to meet with him. Further, when some students did return to Iran, Farmanfarmaian said, "we had our run-in with Savak all the time…Bright young individuals with student federation backgrounds coming from the United States, you know, and Savak would oppose their appointments. Often I had to write back to Savak and

[437] Memo from Phillips Talbot to Mr. Ball, August 10, 1962, RG 59, Records Relating to Iran, 1958-1963, Box 7, 13-A Students Activities 1962.

[438] Theodore Eliot Jr. to Nicholas Thacher, April 29, 1968, and Theodore Eliot Jr. Briefing Memo, April 22, 1968, in RG 59, Records Relating to Iran, compiled 1965 – 1975, Box 3, Folder: EDX 1 General Policy. Plans. Brain Drain Iran, 1968.

accept full responsibility for the behavior of individuals I personally had investigated and knew well. I had such occasions many times."[439]

In April 1965, as discussions on "brain drain" and waiver policy were ongoing, the INS reopened the files of Vietnamese exchange students and enforced the departure of those who the Department of State recommended.[440] The State Department was trying to bolster its commitment to exchange "to the benefit" of the GVN at time when many exchange students did not want to return to a war zone; several students returned to France rather than Vietnam at the end of their exchanges.[441] In 1966 the Board of Immigration appeals denied a Vietnamese exchange student's 243(h) claim, avoiding real discussion of potential persecution on return to South Vietnam and focusing on AID's claim that the student had to keep a "contract" he made six years earlier to work for the Vietnamese government. Though a war had begun in the interim, the student had engaged in protests against it, and he worried about the resentment of his countrymen for having been away so many years, the Board believed that no "unforeseeable" hardship was involved in the case. Significantly, the Board argued, in language like that of the State Department's form letter to Iranian students, that "For the most part the Board has not considered that joining protest groups and making public statements after entering the United States supports a withholding of deportation under section 243(h). Many aliens have attempted to

[439] Khodadad Farmanfarmaian, in an interview recorded by Habib Ladjevardi, November1982-January 1983, Cambridge, MA, Iranian Oral History Collection, Harvard University. http://www.fas.harvard.edu/~iohp/farmanfarmaian.html (accessed June 2014).

[440] Enforcement of departure of Vietnamese Exchange aliens, April 5, 1965, INS file CO212.43-P.

[441] American Embassy Saigon to Department of State, Educational and Cultural Exchange, Annual Report, November 20, 1964, and Annual Report, September 14, 1966, Folder 28, Box 320, Bureau of Educational and Cultural Affairs collection, University of Arkansas Special Collections.

build up a 243(h) case by this sort of activity."[442] (A year later the Board cited this Vietnamese exchange student case in its rejection of Amir Kojoory's appeal, arguing that Kajoory's application was weakened by the fact that he participated in absolutely no political activity of any sort prior to coming to the United States.) But going back to Vietnam was risky. In 1968 a Vietnamese exchange visitor who returned lost a promised position because, in a talk he gave at Stanford, he suggested working towards peace through talks with the Viet Cong.[443] By 1968, too, the South Vietnamese government let few eligible exchange students—who were of draft age—leave the country.

The Nigerian government, which nominated exchange students and insisted on approving all of them before they left for the United States, tightened its controls during its Civil War between July 1967 and January 1970.[444] Even before the war, many exchange students did not want to return home after completing their undergraduate degrees—which were not as well respected as British degrees in the years immediately after independence. The Nigerian government itself provided some exchange students in the U.S. with graduate fellowships in 1964 to continue their studies. Nigeria's political instability of the mid- 1960s also made increasing numbers of students hesitate to return home. A large number of Nigerian exchange students were of Igbo ethnic origin and, in May and September 1966, Igbos fled violent attacks

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[442] Interim Decision 1569, Matter of Nghiem, A-10392808, April 6, 1966.
For a good discussion of Vietnamese "intellectual refugees" who sought asylum in the U.S. during the war see, Vu Hong Pham, "Beyond and Before Boat People: Vietnamese American History Before 1975" (Ph.D. dissertation, Cornell University, 2002) chapter 2.

[443] American Embassy Saigon to Department of State, Educational and Cultural Exchange: Annual Report, July 16, 1968, Folder 28, Box 320, Bureau of Educational and Cultural Affairs collection, University of Arkansas Special Collections.

[444] American Embassy, Lagos to Department of State, Annual Report on the Educational and Cultural Exchange Program, October 7, 1964, Folder 22, Box 319, Bureau of Educational and Cultural Affairs collection, University of Arkansas Special Collections.

in northern Nigeria; by the end of the year, almost a million Igbo refugees flocked into the southeastern region. Included among them were Igbo lecturers and students from Ahmadu Bello university (in northern Nigeria), as well many of those at Ibadan university and the fewer at Lagos (in the west); "1,036 students had been re-registered at [the University of Nigeria] at Nsukka [in the southeast] by mid-October 1966."[445] Those Igbo students who completed their studies in the U.S. and had lost touch with their families had no good choices. One exchange visitor who returned to Nigeria was jailed for political activities.[446] In early 1967, William Brown of the African Studies Center at Boston University wrote of an exchange student reluctant to return to his home in eastern Nigeria: "officially, of course, he is not a refugee, but he rather feels like one."[447] After the military governor and political leaders in the eastern region declared the secession of Biafra in mid-1967, the Nigerian government in Lagos [referred to as the Federal Military Government or FMG] required all students on exchange visas in the United States to sign a loyalty oath. Many students from the secessionist eastern region refused to sign, but the Nigerian government canceled the government scholarships of even those Igbos that did sign the oath.[448] Students from the eastern region broke away from the Nigerian Student Association and formed their own student group to protest the blockade of Biafra and urge

[445] Nduka Okafor, *The Development of Universities in Nigeria* (London: Longman Group Ltd., 1971) 197.

[446] American Embassy, Lagos to Department of State, Annual Report on the Educational and Cultural Exchange Program, July 20, 1966, Folder 22, Box 319, Bureau of Educational and Cultural Affairs collection, University of Arkansas Special Collections

[447] William Brown to Wayne Fredericks, Feb. 16, 1967, RG 59, Bureau of African Affairs, Office of West African Affairs [hereafter BAA/OWAA], Record Relating to Nigeria, 1967-1975, Box 1, folder: PPT1, NARA

[448] Letter from David Williams, director of the foreign student office at Cornell University, to Albert Sims, Vice President of the College Entrance Examinations Boar/President of NAFSA, November 14, 1967, Box 2, Folder: Student Youth Groups, Nigeria 1967, ibid.

American humanitarian intervention.[449] In its campaign for relief funds, the Biafran Student Association emphasized ethnic conflict and genocide.

> Over 35,000 Eastern Nigerians were massacred by Northern Nigerians during the period May to October 1966, in a pogrom which in its brutality and inhumanity rivals the fate of the Armenian Christians in the Ottoman Empire or of the Jews in Nazi Germany…A number of student-survivors from institutions of learning in Northern Nigeria were captured and all the fingers of their right hand chopped off before they were released. That would help in curtailing, they were told, the educational lead of Eastern Nigeria over the North…After Biafra proclaimed her independence, the Muslin Northern-Nigeria-dominated 'federal' government of Nigeria vowed to crush Biafra; accordingly, they militarily invaded our homeland on July 6 1967, creating thousands of Biafra war victims, homeless and displaced. In their efforts, the federal Nigerian government is asking the outside world to steer clear, or shut their eyes…If they can successfully turn away world attention, then they can have a free hand, unnoticed, to complete their genocide…Please contribute to save a progressive and forward-looking people from extermination and extinction…We also appeal to your government through you, to grant Biafra diplomatic recognition so as to halt prompt this pogrom against our people. It is better for the world to prevent yet another genocide while it has time to do so, rather than come later to mourn that it has been a great tragedy.[450]

[The United States government never gave serious consideration to a recognition of Biafra. It imposed an arms embargo on both sides and US intervention in the conflict was restricted to sending government supplies and financial support for relief through AID, the International Committee of the Red Cross, UNICEF, and American voluntary agencies like Catholic Relief Services and the World Council of Churches.] New Left student organizations did not take up the cause of Biafra; black radicals and nationalists were conflicted, but mostly took a pro-federal or pro-Nigerian government stance; USNSA was more supportive of Biafra.[451] Most foreign

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[449] "Biafra's Resistance," Letter to the Editor by T. Obinkaram Echewa, Assistant Secretary, Biafra Students Association in the Americas, Inc. New York Times, July 4, 1967; Letter from the Biafran Student Association of Northern California to President Johnson, July 13, 1967, Box 1, Folder: Admin1, Nigeria 1967 [2 of 2], ibid.

[450] Appeal from the Biafra Students Association in the Americas (Massachusetts Branch), August 10, 1967, included Appendix on the Background to the Nigeria Biafra War, RG 59, BAA/OWAA, Record Relating to Nigeria, 1967-1975, Box 1, Folder: Admin1, Nigeria 1967 [2 of 2], NARA.

[451] Konrad Kuhn argues that "The Biafra cause [with its focus on ethnic conflict rather than neo-colonial support of Great Britain for the Nigerian government and the involvement of multinational oil corporations in the Biafran delta] was…never supported by the more political student movement organizations of the 1960s… because Biafra

student advisors sympathized with their Biafran students. When the Nigerian consulate wanted information about students "who parade themselves as Biafran," foreign student advisors were reluctant to cooperate. David Williams of Cornell, who felt very strongly, argued that since the federal government was not renewing passports or providing scholarships to Biafrans, he would not provide their names—"if the federal government will treat these students from the East Central state with impunity we may feel more obliged to cooperate."[452] As Furman Bridgers, the foreign student advisor at the University of Maryland and the head of NAFSA's liaison with the State Department and private agencies attempting to raise funds for East Nigerian students, the Nigerian "Embassy in Washington and the Consulate General in New York do not exactly inspire confidence with regard to their intentions."[453]

Financial aid for Biafran students was not forthcoming, despite the calls of advocates. As early as the summer of 1967, NAFSA called on the State Department to provide funds for Biafran students, but to no avail.[454] Most exchange students from Nigeria had received maintenance grants (i.e. living expenses, rather than tuition) from AID; in late 1967, AID

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did not match the suggested leftist and socialist concept of power." Konrad J. Kuhn, Liberation Struggle and Humanitarian Aid: International Solidarity Movements and the 'Third World' in the 1960s," in *The Third World in the Global 1960s*, ed. Samantha Christiansen and Zachary A. Scarlett (New York: Berghahn Books, 2013) 74. USNSA sponsored a trip of five Biafran students to the United States to solicit aid from American students. The students flew out on planes that had delivered aid to Biafra and then, because they held Biafran passports, had some trouble getting visitors visas from the American embassy in Lisbon. (Steven Roberts, "5 Biafrans Seek Aid of US Students," *New York Times*, Dec. 19, 1969, 4.) On conflicting opinions within the black activist community, see "Biafra Drawing Attention," *New York Amsterdam News*, Aug 17, 1968, 24; Mary Harden Umolu and Shirley Washington, "Nigeria vs. Biafra: Why This War Must End," *New York Amsterdam News*, Aug. 2, 1969, 1.

[452] P.A. Afolabi, Consul General of Nigeria, to all foreign student advisors, December 5, 1968, and David Williams to Hugh Jenkins, Dec. 30, 1968, Box 52, folder: Government Liaison Committee, 1968-1968, NAFSA papers.

[453] Furman Bridgers to Clark Coan, Jan. 29, 1969, ibid.

[454] Albert Sims, President of NAFSA, to Charles Frankel, Assistant Secretary of State, June 26, 1967 and Frankel to Sims, July 28, 1967, Box 52, Folder: Nigeria Student Crisis, 1967-69, NAFSA papers, University of Arkansas Special Collections.

decided to terminate these grants when students finished their courses of study, even though they could not return home.[455] Many students on regular student visas were cut off from all funds from their families; Eastern Nigeria was closed completely to all mail.[456] There were 90 Biafran students at Howard University alone who were in "critical financial circumstances" in 1967.[457] When media attention to the famine in Biafra was at its height and the humanitarian airlifts underway, politicians also recommended funding for Biafran students. Congressman Albert Quie, a Republican from Minnesota, suggested adding an appropriation for the approximately 1000-1200 stranded Biafran students into a revision of the Mutual Education and Cultural Exchange Act. Quie made arguments similar to the ones made stranded students in the past. "When the Nigerian Civil War is ended, a tremendous job of rebuilding the country will be necessary…It appears to me," Quie wrote the chair of the Senate appropriations committee, "that a relatively small investment in these students would bring great returns to the US in the future."[458] The Senator solicited the advice of the State Department. State opposed the appropriation on the grounds that it would be regarded as an "unfriendly" act by the Nigerian government and

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[455] W. Haven North to Daly Lavergne, November 27, 1967, RG 59 BAA/OWAA, Record Relating to Nigeria, 1967-1975, Box 1, Folder: AID Projects, Education, NARA.

[456] Minnie Miller, professor of foreign languages, Kansas State Teacher's College to Forman Bridgers, Oct. 23, 1967 (regarding Celestine Osuala); Brother Fabius Dunn, foreign student advisor at St. Edward's University, to Furman Bridges, Oct. 30, 1967 (regarding Gregory Ohaji) , Lercy Sterling, foreign student advisor at Texas Southern University, to Furman Bridgers, Nov. 20, 1967 (regarding Emmanuel Nwunol); Sam Legg, foreign student advisor at Morgan State College, to Furman Bridgers, Nov. 22, 1967 (regarding Hope Joe Okeka); James Chigbundu to Furman Bridgers, Nov. 24, 1967; Letter from Dorothy Brickman, foreign student advisor at the Western College for Women, to Hugh Jenkins, NAFSA, Jan. 22, 1968; Joel Wiebe, foreign student advisor at Tabor College to NAFSA, Jan. 18, 1968 all in Box 52, Folder: Nigeria Student Crisis, 1967-69, NAFSA papers, University of Arkansas Special Collections. These letters were from the smaller colleges; bigger universities with many Biafran students were already surveyed by NAFSA and reported a great many of needy students.

[457] Albert Sims to Marita Houlihan, State Department Bureau of Educational and Cultural Affairs, Oct. 12, 1967, ibid.

[458] Albert Quie to John McClellan, September 23, 1969, RG 59, BAA/OWAA, Record Relating to Nigeria, 1967-1975, Box 6, Folder EDX10, NARA.

because "it would be inappropriate to build preferential treatment" into legislation aimed at promoting netter educational and cultural relationships throughout the world and not at assisting certain categories of people, victims of foreign political developments." State suggested seeking private funds.[459] Robert Klinger, longtime director of the international center at University of Michigan and leader in NAFSA, "could not accept the current Department of State view." "Those of us who served in the 1950s know that the China Aid program did not discriminate which kind of Chinese was suffering. We need now the same kind of compassion for all Nigerians. The program could, on the pattern of China Aid, be for Nigerians who have suffered financial loss because of civil war. That most will be Biafrans should not prevent aid to any Nigerian even though Biafran."[460] In terms of private funds, World University Service, the same organization that had successfully raised funds for Hungarian students from private foundations, was unable to get the foundations to sponsor the Biafrans.[461] There was some concern that funds raised for students be used only for the purpose of supporting education in the United States—and not sent to Biafra, as student groups were raising relief funds. "It is impossible to establish a genuine case of need if the students who are applying for relief are, at the same time themselves raising funds for some other purpose, no matter how worthy the cause may be."[462]

Private foundation support for foreign students dramatically declined in the late 1960s. Funds allocated for higher education in Nigeria by the Ford Foundation went almost exclusively

[459] David Newsom to John Richardson, Jr., October 1, 1969, ibid.

[460] M. Robert B. Klinger to Albert Sims, April 17, 1968, Box 52, Folder: Nigeria Student Crisis, 1967-69, NAFSA papers, University of Arkansas Special Collections.

[461] Leon Marion, acting executive secretary, World University Service to Foreign Student Advisors of Biafran students, re: Biafran Student Needs, May 6, 1968, ibid.

[462] Notes on a meeting with Marita Houlian (Bureau of Educational and Cultural Affairs, State Department), Furman Bridgers, and Hugh Jenkins (of NAFSA), Jan. 3, 1968, re: Current situation regarding students from Eastern Nigeria. ibid.

to the university at Ibadan, which was identified with the goals of the Nigerian federal government. [463] The University of Nigeria at Nsukka—established by Azikiwe in 1960 as an alternative to the university at Ibadan (established by the British in 1948)—was shelled, evacuated, and willfully destroyed by federal Nigerian troops during the war. In line with the State Department's policy of maintaining "full and friendly" relations with the government of Nigeria, the American embassy in Lagos did its best to keep up the exchange program, though it was limited to students from the North and required some damage control. US officials saw the exchange program as a way to convince the FGM that it was a good ally. "Influential Nigerian government officials and private citizens are…skeptical of United States 'humanitarian' motivations in providing supplies, aircraft…in the international relief effort…the sincerity of the United States in in serious doubt."[464]

The one thing the Department of State agreed to do was to not insist on the return of students from eastern Nigeria through Lagos; it asked the INS to grant them extensions of stay to continue studying or, if finished with their studies, permission to remain in the United States indefinitely and to work full time. These students, like the students in the Southern African Refugee Program, were given "voluntary departure" status by the INS.[465] They faced the same problems finding employment and housing as the students in the Southern African program.

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[463] Inderjeet Parmar, *Foundations of the American Century: The Ford, Carnegie, and Rockefeller Foundations in the Rise of American Power* (New York: Columbia University Press, 2012) 172.

[464] American Embassy, Lagos to Department of State, Annual Report on the Educational and Cultural Exchange Program, August 20, 1969, Folder 22, Box 319, Bureau of Educational and Cultural Affairs collection, University of Arkansas Special Collections

[465]Birney Stokes to W.H. Brubeck, Dec. 2, 1969, , RG 59 BAA/OWAA, Record Relating to Nigeria, 1967-1975, Box 6 Folder EDX10, NARA.

In February 1969, Congressman Emmanuel Celler introduced a State Department approved amendment to the Immigration and Nationality Act, which became law in 1970, providing that the 2-year foreign residency requirement could be waived when an exchange student proved he would be subject to persecution on account of race, religion, or political opinion upon return to his home country. [466] The language of the waiver provision did not reflect that of the UN refugee convention to which the United States had recently acceded (and which defined a refugee as a person with a "well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion") but rather the revised 243(h) provision in the 1965 immigration act (providing that the attorney general could withhold deportation of a person who proved persecution on account of race, religion, or political opinion, rather than the previous requirement of physical persecution). An applicant first had to prove his persecution claim to an INS hearing examiner. If the INS accepted the persecution claim, it passed on the waiver application to the State Department, which issued a report approving or denying the waiver, taking into account foreign policy considerations and exchange program goals. If the Department of State's recommendation was negative, the INS did not issue the waiver. The immediate cause of this policy change seems to have been the presence of Czech and Cuban exchange students in the United States who did not want to return home.[467] But it soon became clear that many students would not benefit from the Czech and Cuban precedents.

[466] Act of April 7, 1970 (84 Stat. 116). The law also provided that the two year foreign residency requirement was applicable only if the exchange visitor participated in a program financed by the United States or his/her home government or if the Secretary of State designated the exchange visitor's country of origin as clearly requiring the services of the exchange visitor at the time the visitor acquired his/her exchange status.
For a discussion of the influence of this law in facilitating the adjustment of status of Filipino nurses, see Catherine Ceniza Choy, *Empire of Care: Nurses and Migration in Filipino American History* (Durham: Duke University Press, 2003) chapter 4.

[467] John M. Lehmann, Deputy Associate Commissioner, Travel Control to John A. Anderegg, Facilitative Services Division, Bureau of Educational and Cultural Affairs, Department of State, Aug. 1, 1969, INS file CO212.43P (via FOIA).

In early 1972, the INS emphatically rejected an Iranian student's attempt to adjust to refugee status based on the INS's grant of such adjustment to a Czech student. The distinction drawn was that Taheri claimed fear of persecution based upon his "willful and deliberate" involvement in ISAUS demonstrations and protests against the Iranian government while in the United States, whereas the Czech student was in the United States when the Soviet Union invaded Czechoslovakia—a "communist upheaval" "over which the alien had no control"—and she was advised by her "anticommunist parents" that she might be persecuted if she returned.[468] This case is discussed further below.

Soon after the war in Nigeria ended in 1970, the Nigerian government requested that the State Department send home exchange students from the former secessionist region. It was time, Lagos wrote, to stop these students from "perpetuating the conditions of the period of the civil war" and "encouraging them in their intransigence and reluctance to assume their responsibility of contributing effectively to the general goal of rehabilitation and development in their country."[469] The State Department agreed that it would review exchange visitor cases, emphasizing that it would give similar treatment to all Nigerians regardless of ethnic origin and take "into account the policy of reconciliation and reintegration announced by the Federal Military Government."[470] Some at the State Department suggested that the U.S. government avoid "blanket or "drastic action towards coercive repatriation" because "voluntary agencies are not convinced that some of these Ibos would not be endangered if they returned to Nigeria." The last thing the State department wanted, the State Department's Clement Sobotka noted in early

[468] Matter of Taheri, Interim Decision #2124, Jan. 14, 1972, citing Matter of Zedkova, 13 I&N Dec. 626, 1970.

[469] Aide Memoir, 220/334/6, May 7, 1970, RG 59, BAA/OWAA, Record Relating to Nigeria, 1967-1975, Box 5, Folder: PPV, 1970.

[470] Aide Memoir, July 7, 1970, ibid.

May 1970, was the UN High Commissioner for Refugees or the [Edward] Kennedy Subcommittee on Refugees to take notice of an attempted deportation of a student. "Deportation proceedings would almost certainly occasion adverse publicity...and should appeals be entered against deportation decisons, such cases could be tied up in for a very long time."[471] Just a few weeks earlier, Kennedy had told his subcommittee that "the civil war in Nigeria has ended and the moral imperative to act in behalf of a suffering people can no longer be questioned. It is good to be assured that the general Nigerian government is being magnanimous in victory…But…there is good reason to believe that the full dimension of relief needs is not being recognized by all concerned…one can only wonder about the fate of a people whose condition was described in ominous terms just a short time ago in an official report to our government. What has happened to these people? Who is caring for them? Can't something more be done to find out their condition and to salvage the lives of those who remain? An adequate relief program is undoubtedly being hampered…[by] a simple lack of candor in recognizing the dimension of human need brought on by the civil war." Senator Goodell (R,NY), who had visited Biafra in 1969, expressed concern that Nigerian government would not give relief a high enough priority in its post-war agenda. A State Department representative testified about the commitment of the US government to working with the Nigerian government on postwar relief and "at the same time" putting "our longer term relations" with Nigeria on a "positive basis." On the question of genocide, the State Department representative said, "it is my impression that the Nigerian government has moved in its…treatment of the Ibo people, in its reappointment of many of the officials of what was formerly Biafra into the Nigerian service, to demonstrate that their intentions are honorable and humane." He conceded that there had been reports of looting and

[471] Clement Sobotka to Ambassador John Moore and John Richardson Jr., May 6, 1970, ibid.

rape by federal troops that was interfering with postwar relief work; these were "inevitable incidents" that the Nigerian government was not "complacent about."[472]

The Senate hearings also reprinted a *New York Times Magazine* article by Anthony Lewis, who was one of the first newspaper reporters allowed, unescorted, into the former secessionist region after its surrender. "The single most powerful impression of life in fallen Biafra," Lewis writes, is "the sense of chaos, of random cruelty with no recourse, of disorder so pervasive that no person can feel secure." Lewis noted that "the most terrifying predictions about the fate of the Ibos have not come true…in fact, the official position is compassionate…The question is…how Nigeria will find the machinery to carry out even the best of intentions." Lewis mentions meeting with Anthony Asika, an Igbo and former UCLA student who returned to Nigeria in late 1965 to teach at the University of Ibadan and was appointed by the Federal Government to be the civilian administrator in Enugu, the former Biafran capital, after it was recaptured by the federal troops. Asika's postwar task, as Administrator of the East Central State, was to find positions—"though not necessarily their old jobs"—for former Federal civil servants who had worked for Biafra. He told Lewis: "People seem to be genuinely delighted to see their [Igbo] friends back…I think there is a reconciliation."[473] It is hard to know what to make of this considering that Asika had been reviled as a "quisling" by supporters of Biafra a year earlier.[474] One Igbo historian has criticized Asika's initial postwar efforts. "He made radio broadcasts urging civil

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[472] "Relief Problems in Nigeria-Biafra," Hearings Before the Subcommittee to Investigate Problems Connected with Refugees and Escapees of the Senate Committee on the Judiciary, 91st Congress, 2nd Session, Part 2, Jan. 21-22, 1970.

[473] "Relief Problems in Nigeria-Biafra," Hearings Before the Subcommittee to Investigate Problems Connected with Refugees and Escapees of the Senate Committee on the Judiciary, 91st Congress, 2nd Session, Part 2, Jan. 21-22, 1970.

[474] Stanley Meisler, "Biafrans Call Nigeria's Asika Their 1st Quisling: Political Scientist and Former UCLA Student Refused to Secede with Ibos," *Los Angeles Times*, June 9, 1968, 14.

servants to report to work in Enugu. But he made no provisions for their transportation nor did he take steps to cause the innumerable road blocks mounted by the Federal troops on all roads leading to Enugu to be removed" But, later, after making another radio broadcast calling for all university professors to come to Enugu, Asika made gasoline available to those needing it. "The initial skepticism about the government's true intentions gave way to greater willingness of some Igbo people to participate in Asika's East Central State Government." The Federal Government provided funds for the reconstruction of the University at Nsukka but, in 1970, the buildings that existed were inadequate—the laboratories and libraries had been looted, burnt, and bombed and lecture halls lacked furniture— and most Igbo students did not have money to pay tuition.[475]

Despite the uncertain conditions on the ground in Nigeria, Sobotka's warning, and a professed commitment to a case by case review process, State Department officials almost immediately began issuing a standard denial letter in response to persecution claims by Igbo exchange students who applied for waivers of the foreign residency requirement.[476] After soliciting reports from AID and the embassy at Lagos but *not* the Office of Refugee and Migration Affairs, the Nigeria desk at the State department added minor individualized details to the denial letter. The letter emphasized that prominent Biafran activists had returned safely and that Igbos had important government posts. That unemployment in the east was high as a result of "the huge influx of population during the war and the economic dislocation remaining from the conflict" did not, to the State Department, attest to a continuation of wartime problems. "The war is simply not a live issue in present-day Nigeria." And, in a reversal of former AID

[475] Paul Obi-Ani, *Post-Civil War Social And Economic Reconstruction of Igboland, 1970-1983* (Enugu: Mikon Press, 1998), 11-12, 34-36.

[476] John Foley Jr. to David Newsom, October 13, 1970, RG 59, BAA/OWAA, Record Relating to Nigeria, 1967-1975, Box 6, Folder: Memos to Assistant Secretary.

arguments on the need for middle level manpower in Nigeria rather than highly educated personnel, State argued that highly educated former Biafrans would have an easier time than less skilled individuals finding employment upon return.[477]

The State Department did not take into account the significance of a Nigerian federal government decree empowering federal, state, and public corporations to dismiss employees who had actively supported the secession of Biafra, a decree one recent historian has called "an avenue for witch hunting." [478] The Department of State was also unmoved by evidence of selected (rather than mass) arrests of returned Biafrans and employment discrimination against them. In his claim for a waiver, Alfred Echezona, a mechanical engineer, made the case that he would have no chance of getting a job he was trained for in Port Harcourt in the Rivers State. At the time, the Rivers State government required that firms obtain security clearances for each Igbo it hired; multinational companies in Port Harcourt like Shell and Michelin had yet to get clearances to re-employ the majority of their pre-war workforce. Rather than address this issue, AID stressed that, as a government funded exchange student, Echezona "has in effect incurred an expenditure of several thousand dollars by avoiding or otherwise not fulfilling his obligation to return."[479]

Both State department and INS officials were insensitive to applications based on claims of past persecution or the suffering of family members. The State Department denied the waiver

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[477] John Foley Jr. to Paul Cook on the waiver request of Emmanuel Anakwenze and on the waiver request of Ngwu Okoro, December 16, 1971. Okoro was president of the Biafra Association at South Dakota State University and at the University of Minnesota. RG 59, BAA/OWAA, Record Relating to Nigeria, 1967-1975, Box 6, Folder: Pol 30, NARA.

[478] John Foley to Mr. Jay on the application filed by Fidelis Ogo-Egbunam Obikwu, Oct. 5, 1971, Box 7, Folder: PS 7-4, Ibid. Olukunle Ojeleye, *The Politics of Post-War Demobilisation and Reintegration in Nigeria* (Burlington, VT: Ashgate, 2010) 95.

[479] Lagos to AID, regarding Alfred Echezona, February 4, 1971, RG 59, BAA/OWAA, Record Relating to Nigeria, 1967-1975, Box 7, Folder V 11-B, Misc. Corres. on Waivers, NARA.

application of Gabriel Chikwendu Chiddlue, who, after completing his exchange program in the US, had returned to Nigeria in the summer of 1966 only to flee for his life to England two months later. To no avail, Chiddlue included with his waiver application a detailed letter describing what happened to him.

> I left New York City on board Pan American Airline for Lagos, Nigeria on July 29, 1966. A few hours later it was disclosed to us passengers for Nigeria that a military coup had talen place in Nigeria and our plane would not be permitted to land…We had to disembark at Accra where we remained for days before we could continue the journey to Lagos on [a] Ghana Airways plane. Out of the four Nigerian engineers who returned o Nigeria from the Exchange Visit Program, two of us were of Ibo tribe…violence, looting, arson and isolated killings largely committed by some Nigerian soldiers against some civilians of Ibo origin [took place] in Lagos where we were working for the Electicity Corporation of Nigeria…In September 1966…the other Ibo engineer on the exchange visitor program was driving to work…when he was intercepted, seized and killed by an isolated group of Nigerian soldiers…Later in September the chaos escalated and the crisis developed into large sale killing of people of Ibo tribe…This time the attacks and persecution of Ibos became supported by both soldiers and some civilians of the other Nigerian tribes…I became convinced that I was going to be the next victim…my fears became intensified when the wave of destruction to human life and sometimes property swept through the site of the Kainji Dam Project and many Ibo engineers working on the construction were reported killed…The Kainji Hydro-Power project was the main project which induced Electricity Corporation of Nigeria to send us to the USA for additional training….I quickly requested Nigeria to permit me to travel to Britain…They agreed and I left Nigeria on Oct. 1, 1966. [480]

When one waiver applicant presented letters attesting to the privations of her family in Nigeria, the Board of Immigration Appeals attributed them to a civil war it described in passive terms so as to avoid assigning responsibility or distinguishing victors and losers. Echoing the view of the State Department, the Board wrote:

> There is no evidence that the hardships and sufferings of the applicants' family and the Ibo people are the result of a deliberate Nigerian government policy. They are rather the consequence of the secession, blockade, and the military conflict that moved across much of the southeastern part of Nigeria during the Biafran revolt. The suffering caused by the

[480] Gabriel Chikwendu Chiddlue to INS, March 9, 1970; Birney Stokes to Barbara Brown, June 15, 1971 on waiver application for Gabriel Chikwendu Chiddlue, RG 59, BAA/OWAA, Record Relating to Nigeria, 1967-1975,Box 7, Folder V 11-B, Misc. Corres. on Waivers.

> civil war is not limited to the Ibos. Ethnic groups from both sides, Nigerian and Biafran, were caught up in the strife and suffered deprivation, financial ruin, and various degrees of starvation.[481]

In 1971 and 1972, none of the 26 waivers granted on persecution grounds went to Nigerians.[482]

The most significant Ibo waiver case was that of Sonde Ndubeze Nwankpa. In 1963, Nwankpa came to the United States to study mathematics, bringing his wife and two children with him. His third child was born in the U.S. the following year. After getting his masters at the University of Wisconsin and his Ph.D. at Michigan State, Nwankpa was hired to teach at Tuskegee. In 1971 he applied for a waiver of the foreign residency requirement on the grounds of exceptional hardship for his American daughter (who had both physical and mental ailments) and fear that he would be persecuted for his political support for Biafra. The State Department provided an admittedly "routine" denial, arguing that granting the waiver *might* give the impression that the US government did not take seriously the Nigerian government's desire to secure the return of ex-Biafrans for the skills they possess and as proof of reconciliation. Memoranda from the America Embassy in Lagos referenced the fact that the Nigerian government was not aware of Nwankpa's particular case. The State Department ignored Nwankpa's claim that his relatives were killed during the Civil War, that the Nigerian government had confiscated his assets, and that he would have difficulty finding a university position. The latter seems especially relevant given persistent, "enveloping suspicion" of Igbos in Nigerian academic circles.[483] Nwankpa appealed the denial of his waiver to the federal court in

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[481] Interim Decision #2108, Matter of Iregbulem, A-14658134, Dec.1, 1971.

[482] Paul Cook to William Hitchcok, March 20, 1973, Box 158, folder 37 (EDX 33-4 Visa Issuance,Waivers), Bureau of Educational and Cultural Affairs collection, University of Arkansas Special Collections.

[483] Olukunle Ojeleye, *The Politics of Post-War Demobilisation and Reintegration in Nigeria* (Burlington, VT: Ashgate, 2010) 96. Analysts of Nigerian education have also pointed to the fact that there was no autonomy or academic freedom at universities in Nigeria under military rule in the 1970s, perhaps best exemplified by Major

Alabama. His lawyer argued that the denial was arbitrary and speculative, its factual basis left unstated. The Court affirmed the denial of the waiver, accepting the US Attorney's position that it was based on "particular expertise" and "sound consideration of foreign policy," adding that "matters of international relationships are and must be highly confidential."[484]

In making the case of a waiver, Nwankpa included evaluations from psychologists that his American born daughter was "highly nervous and insecure" and that forced travel to Africa would probably have "serious consequences for her future emotional stability." Specifically, Nwankpa argued that "the television reports on the Biafran-Nigerian Civil War had a most devastating effect" on his daughter, who asked repeatedly whether she would have to go to Nigeria and suffer like the children she saw on TV.[485] Autobiographical writing suggests that this was not an uncommon experience among Igbo children in the United States, where Biafra heralded the age of televised disaster and the media focused on crying and starving children.[486] Faith Adiele's father had been a student in the United States and left her there when he returned to Nigeria during the war. Adiele recalls: "I was now six years old [in 1969], which must have made it harder for my mother to shield me from the words whispered after dark in the living room and the haunting photographs of Biafra…[on] television…I could see black children who

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Yokubo Gowon's televised announcement on April 19, 1973 of the closure of the Universities of Ibadan and Lagos during a teacher's strike. (Azubike Kalu-Nwiwu and Thomas J. Davis, Accountability. Autonomy, and Academic Freedom in the African Univeristy: The Case of Nigeria, 1966-1985, *Journal of Asian and African Affairs,* 1.1 (1989) 73-89; Takena Tamuno, *Nigerian Universities: Their Students and Their Society* (Lagos: Federal Government Printer, 1989).

[484] Case file of Sonde Nwankpa v. Henry Kissinger et. al., Civ. A. No. 74-10-E, United States District Court for the Middle District of Alabama, Eastern Division, 376 F. Supp. 122, National Archives at Atlanta.

[485] Brief in Support of Appeal to Southeast Regional Commissioner (by Daniel Markstein III, attorney for Nwankpa), ibid.

[486] Lasse Heerten, " 'A' as in Auschwitz, 'B' as in Biafra: The Nigerian Civil War, Visual Narratives of Genocide, and the Fragmented Universalization of the Holocaust," in *Humanitarian Photography: A History*, ed. Heide Fehrenbach and Davide Rodogno (New York: Cambridge University Press, 2015) 255.

looked like me but for their ribs jutting through their skin. I absorbed each of these images into my bloodstream, and at night, any one of them could have flashed into my dreams and triggered the occasional nightmare, the strange feelings of shame."[487] Adiele also claims a letter from her father describing "horrible" wartime experiences and immediate postwar problems was confiscated by the Nigerian government, thereby suppressing these issues. Fiction about Igbo academics, including the story by Chimamanda Ngozi Adiche quoted as an epigraph to this chapter, emphasizes this silencing of memory, this effort to move forward and leave the war behind, though its ghosts linger in spite, or indeed because, of this effort.

At least until this point, it was mostly the State Department that was preventing students from remaining in the US. The INS generally approved adjustment of status for all students on regular student or "F" visas who were married to American citizens. For exchange students, waivers on the grounds of hardship to family were typically granted if a good case was made. In Nwankpa's case, the INS initially recommended approval of the hardship waiver for his daughter's sake; it was the State Department that insisted on return. The sticking point for Fatimi (on an F visa) in the early 1960s was the State Department too.[488] It was letters from the State Department that frequently determined the decisions of the Board of Immigration Appeals. But

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[487] Faith Adiele, "Locating Biafra: The Words We Wouldn't Say," in Becky Thompson and Sangeeta Yagi, eds. *Names We Call Home: Autobiography on Racial Identity* (New York: Routedge, 1996) 80.

[488] "The particular tragedy of this situation," an USNSA official wrote in 1964, "is that Mr. Fatemi has lived in the United States for ten years and is now only months away from receiving his Ph.D. degree…His wife and two of this three children have resident status, and his third child is an American citizen. He was offered to different teaching positions, one as an associate professor, to start this fall if he could receive resident status, and it was for this reason that he applied for a change of status…what is most curious is that he has passed all other qualifications to receiving the resident status, and an INS official had told him that a favorable letter had already been sent as a result of their investigation, when a negative recommendation from the State Department reversed the whole case." (Norman Uphoff, USNSA International Affairs Vice-President, to Congressman Donald Fraser, September 25, 1964, USNSA papers

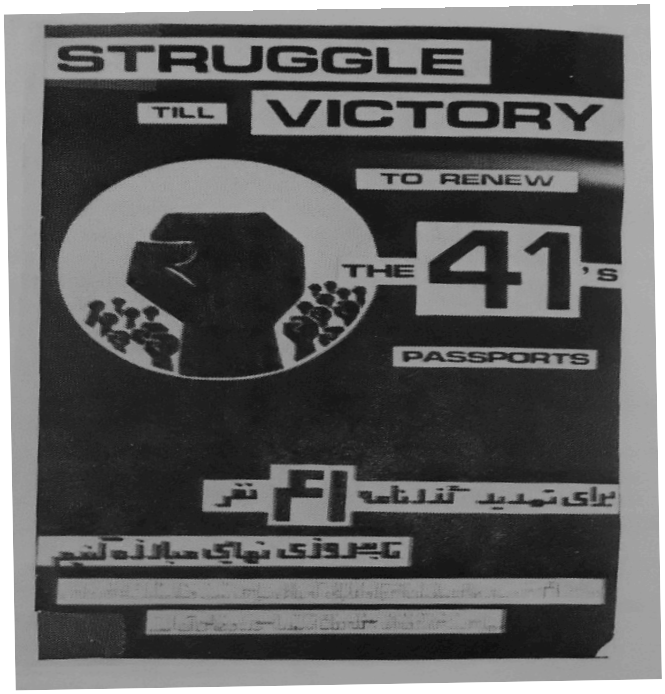
this changed by the early 1970s, at which point the Justice Department and the INS began its own crackdown on foreign students.

This was in part in response to increasingly radical and violent protests by foreign students. By 1970, ISAUS had formed alliances with several minority and Third World student groups and connected its attacks on the Iranian regime with criticism of American imperialism and militarism. A few days after Nixon announced that he had ordered the invasion of Cambodia, ISAUS pit out a press release claiming "We stand shoulder to shoulder with the progressive American youths and ideals in order to declare enough is enough of atrocities in the name of freedom; it is enough of napalming in the name of democracy."[489] ISAUS in San Francisco and New York were especially involved in strikes and demonstrations supportive of the Black Panther Party and the Palestinian cause; ISAUS also became avowedly Maoist. (ISAUS iconography, clear in the pictures below, reflect these connections). But the ISAUS protest that garnered the most attention from authorities occurred on June 26, 1970, when a group of Iranian students stormed the Consulate building in San Francisco after the Consul refused to accept a list of questions they had prepared regarding political prisoners in Iran directed to the Shah's twin's sister, Ashraf, who was visiting San Francisco as the chairwoman of the UN Human Rights Commission.[490] Forty-one students were arrested, charged with unlawful imprisonment (for holding employees of the Consulate hostage), and threatened with deportation if they were out of status. Since the Iranian government refused to renew the passports of the students involved, the fight to "Save the 41" became a rallying cry for ISAUS for the next three years and linked

[489] "To All Peace Loving People of America," ISAUS May 9, 1970, Folder: Iran Student Association of America I, Box 46, Tamiment Library and Robert F. Wagner Labor Archives Printed Ephemera Collection on Organizations

[490] Memo for the file by William Hallman, June 29, 1970, re: Events following the raid by Iranian students against the Consulate General in San Francisco, RG 59, Records Relating to Iran, 1965-1975, Box 9, Chron-Memoranda of Conversation, Iran 1970.

repression of students in Iran with those in the United States. This campaign had traction because the mid 1970s marked the apex of the Shah's repression of political opponents and the INS's crackdown on foreign students.



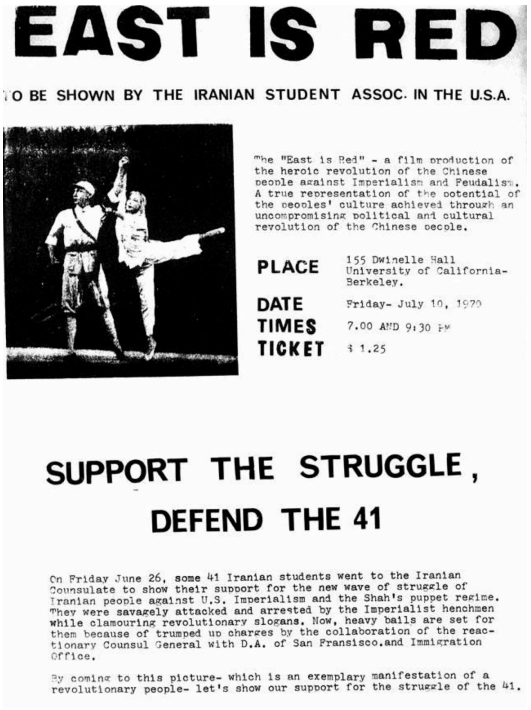


Figure 5.5, "Struggle Till Victory to Renew the 41's Passports," *Resistance: Quarterly English Defense Publication of the Iranian Students Association in the United States*, vol. 1, no. 1(Sept. 1972) 14, Labadie Collection.
Figure 5.6, " 'East is Red' To be Shown by ISAUS. Support The Struggle, Defend the 41," Iranian Student Association, 1970-1976, carton 27, folder 10, Social Protest Collection, Bancroft Library.

Taheri, the aforementioned Iranian student whose appeal for refugee status (by analogy to the Czech student) was rejected by the INS, had been one of those arrested at the San Francisco Consulate. Taheri appealed the INS's decision to the federal court and the court ordered the INS reconsider its ruling since Taheri and the Czech student "were in virtually identical positions." It seemed to the court that the INS had not considered the fact that, as Taheri claimed, the Iranian government had outlawed the Confederation of Iranian Students in January 1971, ensuring politically motivated punishment for Taheri upon his return to Iran. This action by the Iranian government was not within the control of Taheri, just as the "communist upheaval" in

Czechoslovakia was not in the Czech student's control. When the INS reconsidered the case in mid-1973, it again rejected Taheri's refugee application. The INS asked for an advisory opinion from the Office of Refugee and Migration Affairs [ORMA] at the State Department; the opinion ORMA provided was irrelevant to Taheri's case since it did not address his persecution claim and focused on the obligation of government supported students (which Taheri wasn't) to return home. The INS ended up arguing that Taheri "along with other members of the Confederation [of Iranian Students] have been involved in criminal acts in violation of the laws of the United States. This militates against the favorable exercise of…discretionary authority and is a rational basis for the denial." Taheri, the INS regional commissioner wrote, "should not benefit directly or indirectly from willful and deliberate illegal actions." Further: if he found Taheri eligible for classification as a refugee, "it could establish a precedent enabling an individual alien or group of foreign students from any country having a strict policy or attitude against political dissent to demonstrate in the US against their government…thus putting them in disfavor with their government and qualify such alien or group of foreign students for classification of refugees."[491]

By this time, the INS had instituted a policy of monitoring Arab students in New York and Los Angeles in its effort to insure that foreign students "did not use student status to accomplish illegal immigration." In fact, the "monitoring" amounted to harassment and an attempt to insure the students would be forced out of the country in spite of the fact that the investigator in charge of the program in Los Angeles said that the number of Arab students found out of status "was considerably lower than most other nationalities, especially Asians."[492] A Board of Immigration Appeals case involving a Lebanese student reveals how the INS program worked. The student's

[491] Matter of Taheri, July 10, 1973, included as Appendix to Interim Decision 2124.

[492] Report to Congress by the Comptroller General, "Better Controls Needed To Prevent Foreign Students from Violating The Conditions of Their Entry and Stay While in the United States," Feb. 4, 1975, 10.

visa permitted him to stay in the United States until January 26, 1973. On November 29, 1972, the INS issued an "order to show cause" charging him with being deportable for not complying with his student status. His hearing was not held until February 9, 1973, at which point he was charged with having remained in the United States longer than permitted. An immigration judge found him deportable and the Board of Immigration Appeals agreed. In a dissenting opinion, BIA chairman Maurice Roberts wrote: "By holding the hearing after January 26, 1973 and then lodging a 'remained longer' charge, the Service was able to avoid proving its original accusation and to confront the respondent with one to which there could be no defense. This 'heads I win—tails you lose' procedure was prejudicial to the respondent."[493] In a similar case involving a Jordanian student, the Board again approved of the INS procedure, with Roberts dissenting.

A month after the Nwankpa decision, Edith Lowenstein spoke about the predicament of Nigerian students in her address to the AILA annual convention. Lowenstein framed their challenges as part of a larger problem.

> "Discretion can be beneficent or malicious, but it is always insecure…[For example,] the so-called compassionate delayed departure. This legal configuration is a credit to the humanitarian attitudes of the INS, but to the beneficiary of this bounty it is a somewhat dubious gift…During the period of the Nigerian Civil War students who belonged to the persecuted Ibo group were granted indefinite voluntary departure status…Many just assumed that they were permitted to remain in the United States and were caught by surprise when at the end of the hostilities in Nigeria, they were told to return to Nigeria because, while life in Nigeria was admittedly one of hardship, the Nigerian government desired their return. "[494]

Lowenstein also pointed out that:

> In student cases, the discretion of an immigrant inspector may decide whether a foreign student can continue his education or whether such student has to return to his home country with an incomplete education…Just recently foreign students were advised that

[493] Matter of Halabi, BIA Interim Decision 2322, Oct. 8, 1974.

[494] Edith Lowenstein, "Rights of the Alien," *Interpreter Releases*, 51. 32 (Sept. 23, 1974) 246-252.

> they were not permitted to work during their summer vacation because they would be taking summer jobs from Vietnam veterans. Whether the decision was justified remains an open question, but that it was made informally and struck the university community without warning or means to find appropriate solutions for many foreign students is an established fact.

In fact what Lowenstein called "a new wave of anti-alien feeling" during the economic downturn included several provisions directed against foreign students besides the ban on summer employment. Since students were supposed to be granted visas only if they could afford to devote their time to study, the INS limited approval of application for employment to cases when the student's economic need arose as a result of unforeseen circumstances. The INS also began exacting higher bonds from students upon arrival. Finally, the INS revoked exemption of labor certification for those students wanting to adjust to permanent status. (Labor certification was assurance that they were to be employed at jobs for which qualified workers were unavailable in the United States).[495] Universities complained that this made it difficult for them to hire or retain foreign scholars, researchers, and faculty. NAFSA believed there was little evidence that foreign student employment interfered with that of veterans or American youth. In an echo of protests voiced by university officials and educators in the early 1930s, NAFSA protested that:

> The present problem of increasingly strict regulations and more rigid attitudes toward their enforcement derives from the fact that these regulations were never designed for international educational development but for alien control. The Immigration and Nationality Act and its attendant regulations, including those governing foreign students, are being interpreted in the context of the problems of unemployment and the large number of aliens illegally in this country rather than in the context of encouraging international educational interchange…The increasingly strict interpretation of the Immigration and Nationality Act currently being applied is resulting in a most un-

[495] Robert Lindsey, Assistant Commissioner, Inspections, "The Rights of Foreign Students in the United States," *Interpreter Releases* 51. 22 (June 24, 1974), 163.

> American activity, the restriction of educational interchange in this country to the privileged classes of foreign countries." [496]

The NAFSA position paper pointed out that foreign students were also being squeezed by reductions in scholarships and tuition hikes at universities. As in the 1930s, campus protests about tuition—protests that both foreign and American students participated in—frequently blended with protests about foreign policy and concern with student free speech rights. One Iranian student told a San Jose student paper:

> The tuition increase is not an isolated issue...Foreign students studying in the imperialist countries have seen the struggles of the oppressed masses throughout the world, they have seen the struggles of the Blacks and Chicanos, and they no longer are willing to become partners with the imperialists in exploiting the oppressed masses. The tuition increase, etc., will not affect those who are wealthy or those on scholarships. Those students either have an interest in allying with the imperialists or in the case of the scholarship students, are forced to accept what is taught without protest or else lose their scholarships. They don't want to get rid of the rich students and students on scholarships. They want to kick out those students who depend on work to finance their studies. They only want to kick out those students who want to serve the oppressed people and not the imperialists.[497]

When campus protests picked up, several federal agencies (including the INS, the State Department's Office of Cultural Affairs, and AID) distributed a "Policy Statement on Student Campus Unrest," reminding students that government sponsored grants would be revoked for "activities which, at the discretion of the Government agency concerned, are inconsistent with the purposes and best interest of the program."[498] Advocates and attorneys waged defense campaigns on behalf on foreign student protesters who claimed they were being silenced and

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[496] NAFSA Position Paper on Laws and Regulations Governing Internation Educational Interchange, Dec. 4, 1973, Box 167, NAFSA Records.

[497] Robertson E. Obot, "Foreign Student Tuition Increase - More Imperialism?" In *Peace Now*, Vol. 1 no. 6. (San Jose, CA: Spartan Daily, 1970).

[498] Policy Statement on Student Campus Unrest, Sept. 26 1969, Folder 11, Bureau of Educational and Cultural Affairs Collection, University of Arkansas Special Collections.

would face persecution if deported. At the University of Washington, an Iranian student named Babak Zahraie was a leader in student protest campaigns against tuition hikes, as well as against the Vietnam War and America's support for the Shah. Soon after he delivered a highly publicized speech against a tuition increase at a 1972 campus rally, the INS began deportation proceedings against him. A large coalition of leftist student organizations, academics, activists (like Angela Davis), and politicians (like Eugene McCarthy), plus an attorney from the National Lawyers Guild, took up Zahraie's case. Zahraie was eventually able to adjust his status because he was married to an American citizen. But, before he did, he went on a nationwide tour, speaking at various campuses about the rights of foreign students to protest.[499] The ACLU took an interest in Zahraie's case and, contemporaneously, was busy getting overturned a conviction against an ISAUS leader named Siamack Zaimi for violating the provision of the DC code making it unlawful to "bring into public disrepute" representatives of foreign governments "without a permit" and "within 500 feet of their official residence." At a small protest across the street from where the Shah was staying while visiting Washington in June 1968, Zaimi had made a speech about "the 600 million dollars the Shah came to borrow in the United States. And…that the arms that he bought were going to be used to suppress the people of Iran, as he has done several times before." While the ACLU could not get the court to rule the provision of the DC code an unconstitutional violation of the First Amendment, it did convince the court that Zaimi's speech did not violate the code and thus prevented his potential deportation.[500] Another defense

[499] Materials in Zahraie's case, including the decision by the Board of Immigration Appeals and original INS hearing officer and a defense campaign letter soliciting support for his application for residency from those "concerned with the struggle for free expression" and because "return to Iran could mean years in the Shah's prisons." ACLU Records, MC001, Box 218, Folder 1.

[500] Siamack Zaimi, appellant v. US, No. 20, 933, United States Court of Appeals for the District of Columbia Circuit, 476 F 2d 511, 1973; Brief for Appellant, U.S. v. Zaimi, ACLU Records, MC001, Box 1798.

committee, including Ira Gollobin of the ACPFB, Frank Pestana of the National Lawyers Guild, and activists Jane Fonda and Noam Chomsky, took up the cases of Vietnamese students who were active in anti-war protests and lost their AID fellowships upon GVN request.[501] Enforcing their return to South Vietnam meant media and Congressional attention so the State Department was glad when some of the students left for Canada. But Nguyen Tang Huyen, a student at Berkeley, had a good lawyer, Donald Ungar, a specialist in 243(h) claims, to help him fight deportation on the grounds that he would be persecuted if returned to Vietnam. The State Department worried about the precedent it would set if it recommended asylum or if its rejection were challenged in court; so it decided to leave the case in limbo—to delay its recommendation to the INS as long as possible.[502]

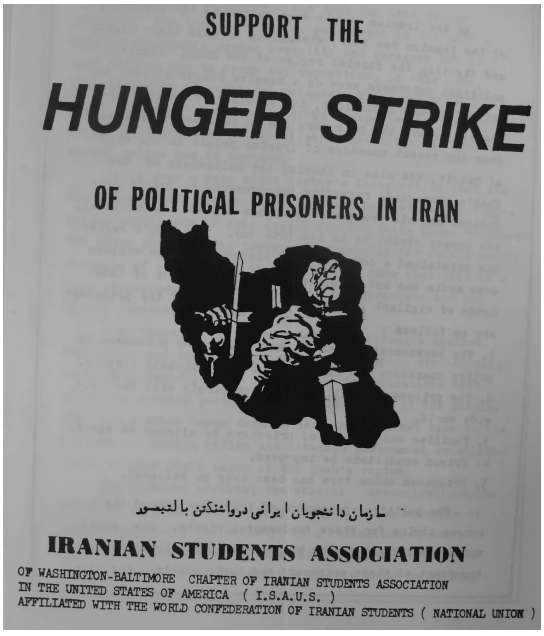
The coalition in support of the right of foreign students to protest, and of Iranian student protest in particular, grew larger and stronger in the mid 1970s with exposure of SAVAK collaboration with local police to spy on and undermine anti-Shah activism.[503] As far back as the early 1960s, Iranian officials had asked the police for help repressing student demonstrations at consulates and embassies and had organized pro-Shah supporters to attend and disrupt ISAUS protests. But, in the mid 1970s, the crack down on protests in particular cities was intense. In Chicago, the police "Red Squad" monitored ISAUS and many other community and activist

[501] '3 Vietnamese Students Demand U.S. Pull Out," *Los Angeles Times*, May 17, 1972, C8; Benjamin Welles, "7 South Vietnamese Students in U.S., Fearful, Refuse to Go Home," *New York Times*, June 23, 1972.

[502] See Visa And Deportation and Asylum Cases, 1973, Box 19, Subject Files of the Office of Vietnam Affairs, 1964-74, RG 59, National Archives (College Park).

[503] Gregory Rose, "The Shah's Secret Police Are Here*," New York Magazine*, Sept. 18, 1978, 45-51.; "Savak Exposed," *Resistance*: Quarterly English Defense Publication of the Iranian Student Association in the United States, 5.2 (Jan. 1977).

groups[504]; a major legal case (*Alliance to End Repression v. City of Chicago*) against the Squad's actions further linked Iranian students to the National Lawyers Guild and the ACLU. The ACLU fought an LA ban on masks worn at protests by ISAUS members fearful of being recognized by SAVAK agents. During the Shah's November 1977 visit, masked protesters clashed with Shah supporters around the White House. By the late 1970s, the same graphic that ISAUS had used to depict the treatment of political prisoners in Iran was being used to to depict repression of Iranian students in the United States.



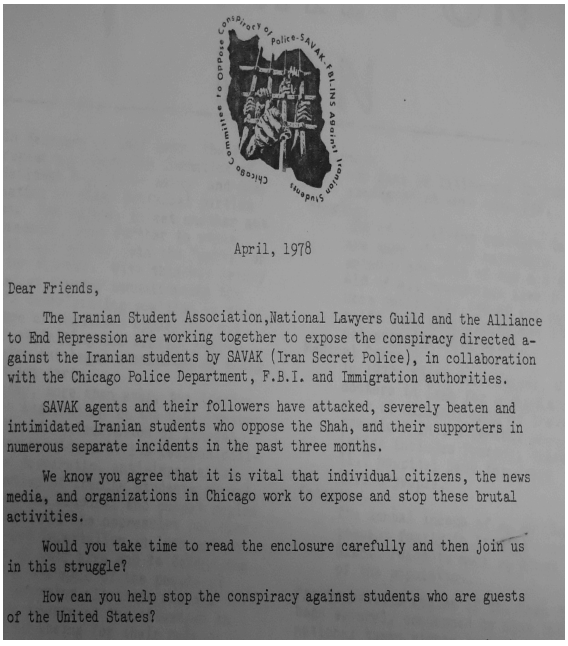


Figure 5.7, "Support the Hunger Strike of Political Prisoners in Iran," Washington-Baltimore chapter of ISAUS, March 25, 1978, Iran-Iranian Student Association/United States, Subject Vertical File, Labadie Collection. Figure 5.8, Letter from the Chicago Committee to Oppose Conspiracy of Police, SAVAK, FBI, INS Against Iranian Students, April 1978, folder: Chapter Materials—Chicago, Iranian Student Association, Box 253, National Lawyers Guild Collection, Tamiment Library.

In response to publicity regarding spying on campuses, NAFSA issued a statement opposing the intimidation of students by agents of their home governments, calling this an

[504] The squad ran surveillance using informants, got information from INS and FBI about the Iranian students, and tracked links between ISAUS and SDS and other groups.

infringement on political and academic freedom. But this general, non-commital statement belied differences among institutions. The director of admissions at Cal Tech wrote that "in spite of the fact that many Iranian students are a pain in the neck to the foreign student advisors on the campuses where they reside, these same foreign student advisors feel an obligation to protect these students from their own government." There were other student advisors –at Michigan State, at Miami University, and at the University of Houston—who believed that politically active Iranian students were the aggressors and their foreign student programs the victims.[505] By mid 1978, an international student advisor at the University of Houston told the *Chronicle* that "Texans are really angry that the Iranians don't appreciate being here."[506] In Texas, a Guild lawyer named Nancy Hormachea, who later became an important asylum attorney and activist for human rights in Iran, took up the cases of Iranian students rounded up by their junior college principal and delivered to the police and INS after the principal received complaints from the local community about their participation in protests and affiliation with the ISA.[507] It is no surprise that the *Mashi* case—cited in the introductory chapter to this dissertation and emblematic of the way INS attempted to use technical immigration infractions as pretexts to deport foreign students who engaged in political protest—flowed from an arrest at a Houston anti-Shah demonstration and detention by the INS for twelve days without a hearing or due process of any kind.

[505] Homer Higby to Marshall Berg June 6 1977 and Striling Huntley to John Bruce, July 14 1977 Folder: Iranian Students, 1977-78, Box 82, NAFSA Records, University of Arkansas, Fayetteville, Special Collections.

[506] Lorenzo Middleton, "Welcome Cools for Iranians on Many Campuses," *Chronicle of Higher Education*, July 24, 1978.

[507] Case file for Khodada Adibi-Sadeh v. Bee County College, US District Court for the Southern District of Texas, Corpus Christi, C-78-35, RG 21, National Archives Fort Worth.

As the revolution in Iran got underway, the Justice Department allowed Iranian students, many of whom were cut off from funds, to work to support their studies and deferred enforcement of their departure to Iran because of instability there. But after a violent encounter between police and students at the Beverly Hills home of the mother of the deposed Shah, the Attorney General ordered the INS to refuse to extend the student status of those who engaged in activity "deemed inconsistent with it." In practice this meant INS was directed to check the immigration status of any student arrested during demonstrations. NAFSA representatives believed the order –which let the actions of the few protesters dictate the handling of the many students—began a dragnet operation to catch Iranians—and this was *before* the seizure of the embassy in Tehran.

A week after seizure of the embassy in Tehran, President Carter ordered the Attorney General to identify and deport Iranian nationals who lacked proper immigration status. On November 13, 1979, the Attorney General issued a rule that Iranians admitted as non-immigrant students report to the INS with their documents within a month. NAFSA issued a general statement opposing the singling out of Iranians but claimed that, "for the sake of the Iranian students themselves," the best response was compliance with the Attorney General's order "so that those students who are properly enrolled and engaged in their studies could be exonerated and then left in peace."[508] Some universities allowed INS officers onto campus to do interviews with Iranian students; some universities refused to provide the INS with lists of Iranian students enrolled. Several state legislatures moved to bar Iranian enrollment in state colleges and universities or impose special fees on Iranians. On the other hand, Jean Mayer, president of Tufts, wrote to the *New York Times* to complain about insults, attacks, and suspensions of Iranian

[508] NAFSAgram, November 26, 1979.

students, "many of whom fear for the safety of their parents, many of whom have financial problems." "This letter really is an urgent appeal to my fellow presidents and fellow faculty members to make sure our Iranian students receive the support (including legal aid) they need…It is an appeal to all American students to cease and desist from actions which in any way discriminate." "We have the opportunity," Mayer added, "to impress upon [Iranian students] what this country stands for."[509] Indiana University answered the call, its international services office protecting Iranian graduate students—who were carrying one less credit than the INS mandated to be status compliant—by designating them full time students and then sending lawyers from the office of student legal services along with them to their immigration hearings.[510] Carliner was unhappy with how the organized immigration bar responded; he wrote to Jonathan Avirom, president of the Association of Immigration and Nationality Lawyers [AILA] to protest its recommendation against bringing law suits to contest the Nov. 13 1979 regulation in order to avoid giving Iran the impression that Americans are divided on the issue. "I believe this action is inexcusable," Carliner wrote Avirom. "The Association has abdicated its responsibility to defend the rights of Iranian non-immigrant students. As you must know, the actions taken by the President and by the Attorney General are unprecedented in the administration of the INS and has its only parallel in the treatment given to the Japanese during WWII."[511]

Despite the efforts of lawyers like David Carliner—who approached the political activism and immigration status of Iranian students from a human rights perspective—the courts

[509] Letter to the Editor, *New York Times*, Dec. 11, 1979, A22.

[510] Hossein Letafat, "Two Years and Four Days: Iranian Students in the United States in a Time of Crisis" (Ed.D., Indiana University, 1982) 79-80.

[511] Carliner to Jonathan Avirom, president of AILA, November 28, 1979, Papers of David Carliner (private collection)

ruled that foreign policy priorities trumped student rights in 1979. During the hostage crisis, the federal court of appeals in Washington, D.C. upheld a ban on Iran-related protests around the White House since, as the State Department claimed, the hostage-takers were closely monitoring events in the United States and would react negatively to any street violence between students, police, and counter-demonstrators. The court also upheld President Carter's order that the INS identify and deport Iranian students who in any way violated their student status. *Narenji v. Civiletti* (No. 79-2460, DC Circuit, Dec. 27, 1979) affirmed the notion that the targeting of 60,000 Iranian students in the U.S. was a rational response to the lawless seizure of the embassy by 400 students in Tehran; technically, it affirmed the legality of the selective enforcement of the immigration laws, dismissing equal protection challenges that the policy was discriminatory. Citing Louis Henkin's *Foreign Affairs and the Constitution* (1972), the majority wrote that "Distinctions on the basis of nationality may be drawn in the immigration field," adding that "controversy involving Iranian students in the U.S. lies in the field of our country's foreign affairs." A concurring opinion went even further. It disavowed all responsibility to recognize the Iranian students in the U.S. as rights-bearing individuals, who may or may not have supported the seizure of the embassy but certainly were not involved in that act. "The status of Iranian aliens cannot be disassociated from their connection with their mother country...expulsion after long residence is a…weapon of defense and reprisal confirmed by international law as a power inherent in every sovereign state," Justice MacKinnon wrote.[512] Just six weeks before President Carter signed the 1980 Refugee Act that established the asylum system, the right of refuge for foreign students was distinctly denied. Some immigration rights advocates claimed that Carter's

[512] *Narenji v. Civiletti; Confederation of Iranian Students v. Civiletti*, (No. 79-2460; No. 79-2461), 199 U.S. App. D.C. 163, December 27, 1979.

order was less to enforce departure of the students than to silence them, pointing out that students demonstrating against the deposed Shah would be less likely to make credible asylum claims.[513]

Henkin's book is less clear than the Court implied; while it states that "discriminations among aliens of different nationality apparently raise no constitutional difficulties…when designed to implement general United States policy towards the alien's government," it also states that "the United States could not abridge basic alien rights in retaliation for mistreatment or to promote better treatment of Americans abroad."[514] In the wake of the Court's ruling in *Narenji*, Henkin and several of his Columbia University colleagues (including Ruth Bader Ginsburg, Walter Gellhorn, and Telford Taylor) released a statement urging the President to withdraw his order regarding Iranian students, calling it "an improper form of imputing guilt by association" and disrespectful of "basic freedoms."[515] The order stayed on the books, and, in the coming months, Carter had others orders directed at Iranian students that related directly to his strategy regarding the hostages.

Beginning in January 1980, wary of the possible drawbacks of extreme anti-Iranian sentiment in the US, the Attorney General directed the INS to treat Iranian requests for reinstatement to student status just as it would students of other nationalities. Then, in April, after negotiations over the transfer of the hostages from the embassy to the Iranian government broke down, the Attorney General directed that requests for extensions of stay or adjustment of status be prohibited. In May and June 1980, after the failure of the hostage rescue mission and in response to the protests of College administrators and NAFSA, earlier orders were altered,

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[513] Jonathan Winer, "Litigation Truce in Iran Crisis," *National Law Journal* 2.12, Dec. 3, 1979, 1.

[514] Louis Henkin, *Foreign Affairs and the Constitution* (Foundation Press, 1972), 258, 254.

[515] Ruth Bader Ginsburg to David Carliner (enclosing Statement), January 16, 1980 (In possession of the author, courtesy of the firm Carliner and Remes, P.C.).

directing INS to consider applications for work authorization, transfer of school, and extensions of stay. Most importantly, in July 1980, INS district directors were allowed to grant retroactive extensions of stay to those formerly denied them. What this meant was that after Carliner's suit was over, the litigation that followed in the 1980s revolved around the discretionary decisions of the INS to grant extensions and reinstatements as per the later orders by the Attorney General. Many colleges reported on how arbitrary the decisions of INS examiners seemed to be. The director of international students at the University of Bridgeport (which had 180 Iranian students) described not only irrelevant questioning about political views at INS interviews with Iranian students but also the "randomness" with which students with technical violations were granted either reinstatement of their student status or sent to a deportation hearing. "One student cried to me as he left a hearing, 'I cannot help it if I am Iranian. I can't apply for political asylum because I have a family in Iran. I do not want to go home but was late sending in papers [the application for extension of student status.] I don't have money. I can't get money from home [without the passport that the INS took from him]. I need a lawyer but I cannot pay a lawyer. Why doesn't the judge understand?"[516] The advisor to foreign students at Berkeley wrote the INS district director in San Francisco "I cannot believe that it was anyone's intention when the new regulation was issued…to take any punitive action against Iranian students with minor technical violations."[517]

[That the whole Iranian program was a harmful diversion was apparent immediately. The GAO reported in mid-1980 that "INS' efforts to comply with the President's November 1979 order…demonstrated the enormous resources required to track approximately 20 percent of the

[516] Letter, with enclosure, from Daniela Stracka to John Reichard, January 8, 1980, Folder: Iranian students, Box 171, NAFSA records.

[517] Marvin Baron to David Ilchart, December 13, 1979, ibid.

total foreign student population. About 1,200 INS employees were assigned almost exclusively for two months to interview and process 56,700 Iranians…The decentralized and often incomplete record keeping system required additional manual sorting efforts to determine which Iranian students did not report. Initially about 16,900 out of status Iranians were identified…As of July 4, 1980 INS had completed its investigation of 6,988 of these students. The results showed that 2,599 of the students had been incorrectly identified by the district office as Iranian. Of those reported as being out of status, 2,265 had registered…and were in status. Only 819 of the Iranians investigated had actually violated the conditions of their stay and were considered to be deportable. INS verified departure in 460 instances, 552 had become legal residents, and 293 had an application or a petition pending."[518]]

In the early 1980s, some Iranian students who were subject to deportation for these technical violations turned to the federal courts. But, beginning in 1982, the courts consistently ruled they did not have the jurisdiction to review decisions by the INS, even if it was clear that it was the foreign student advisor that was responsible for the technical violation. The effect of refusal to review could be perverse. In one case, *Salshi v. INS (*575 F.Supp 1237, D. Colorado, 1983) the court ruled that it had no jurisdiction to hear a constitutional challenge to deportation procedure, though since 6 months had elapsed from the time the order was issued, neither did the Circuit Court of Appeals.

Some students did request asylum, and, in those cases, the courts typically ordered that the cases be reopened to consider the claims. An internal INS report from June 1982 explained that "a decision was made by the state department…not to forward to INS advisory opinions for Iranian claims until the hostage crisis ended." This was ostensibly because information could not

[518] Controls Over Nonimmigrant Aliens Remain Ineffective, GAO Report, Sept. 11, 1980.

be had on conditions in Iran and to protect relatives in Iran from possible persecution if asylum was granted. After the crisis, proving persecution was difficult. " 'The claimant said his father was murdered,'" an INS examiner is quoted in the internal report as saying. " 'He had a newspaper article showing a picture of someone he said was his father and two other men in Iran being lynched. But I don't know if it's his father. He's also got an affidavit from a friend who was present describing the executions. But the friend could be lying.' The claim was denied. The Bureau of Human Rights was not asked to verify the alleged public execution. 'I didn't think they would have the time or the interest,' said the examiner."[519] Most Iranians granted asylum through 1983 were members of religious minorities, not students who had arrived before the revolution.[520] In the end, persisting in appeals or keeping a low profile paid off.[521] By 1985, more "political" Iranian asylum claims were being granted. And IRCA enabled students who had been in the US since before 1982 and violated their visa status (by transferring to a different school without permission, say) to adjust to permanent status.

[519] Asylum Adjudications: An Evolving Concept and Responsibility for the Immigration and Naturalization Service (INS, June 1982), 21, 54-55. A similar real example to this is Shoaee v. INS (9th Circuit, 1983). Shoaee came to the US to study aeronautics at Stanford in 1973. When all Iranian students had to report for an interview after the embassy was seized, Shoaee reported and asked for extension till 1980 to finish thesis. The request was denied and he was found deportable. He appealed to Board of Immigration Appeals [BIA] and, pending appeal, applied for reinstatement as a student. That application was denied in November 1980. After release of the hostages in January 1981, he applied to the BIA to reopen the case, which the Board denied and affirmed deportation. He then applied for asylum. The BIA denied him asylum on April 29 1982, finding he failed to establish a well-founded fear of persecution. The 9th Circuit affirmed the BIA's denial despite that Shoaee's father lost his pension, Shoaee's brother was fired and not allowed to leave Iran, and Shoaee's public opposition to Khomeini and his work for American defense establishment. The Court found "He has only established that it is likely his family's political fortunes have declined. This is not enough."

[520] "A few years ago when the first post-revolution Iranian asylum cases began to be processed, government officials tended to follow a strict interpretation of the law with the result that some applicants with *Muhajedin* or leftist affiliations did not receive favorable consideration." Allen K. Jones, "Iranian Refugees: The Many Faces of Persecution" (American Council for Nationalities Service, 1984) 18.

[521] This is quite comparable to what happened to Iranian asylum claimants in the Netherlands around the same time. See Tycho Walaardt, "Patience and Perseverance: The Asylum Procedure of Tamils and Iranians in the Netherlands in the mid-1980s," *Tijdschrift voor Sociale en Economische Geschiedenis* 8: 3 (2011) pp. 2-31.

The crisis had important lasting effects on long-term policies towards Muslim students during wars on terrorism and on the Iranian student experience in the United States in the early 1980s.[522] There were important unintended consequences of the policies during the crisis as well. While attesting to the limits of human rights in the immigration field, policy towards foreign students during the crisis also widened the potential circle of asylum advocates. The heads of NAFSA, IIE, the College Board, the American Council on Education, among others, wrote Carter protesting policies concerning Iranian students, particularly an order to deny extensions of student visas to those successfully pursuing degrees. They wrote: "We strongly believe our role should be to assist the Iranian students to remain members of our academic communities and to continue their personal educational advancement" both in the name of "human rights…compassion…American freedom" and because "these students and many who have returned constitute an important influence towards moderation in Iranian affair and might eventually be an important force for reconciliation between our two nations."[523] During the crisis many state legislatures introduced punitive measures against Iranian students, including barring their enrollment and increasing their tuition at public institutions; many laws did not pass or were vetoed and those that did pass were successfully challenged by the Justice Department

[522] Susan Akram and Kevin Johnson, "The Demonization of Persons of Arab and Muslim Ancestry in Historical Perspective," in *International Migration and Human Rights: The Global Repercussions of US Policy*, ed. Samuel Martinez (Berkeley: University of California Press, 2009); the *Narenji* decision had important implications for the handling of students from "Muslim-majority" countries after 9/11. See Rajah v. Mukasey, 544 F.3d 427 (Second Circuit, Sept. 24, 2008).
For ethnographic accounts that take into account the wide diversity of Iranian students in the U.S. and the varied immediate impacts of the crisis, see Mahmood Shafieyan, "Psychosocial, Educational, and Economic Problems of Iranian Students in the United States and the Effect of the Iran-America Crisis on Selected Problems" (Ph.D dissertation, University of Pennsylvania, 1983); Farzaneh Khayat-Mofid, "A Comparison of the Adjustment Problems of Four Groups of Iranian Students After the 1978 Revolution" (Ph.D dissertation, American University, 1985).

[523] Letter to President Carter, April 25, 1980, Box 1655, America Council on Education Records, Hoover Institution Archives, Stanford.

and the ACLU.[524] The INS's difficulty in carrying out Carter's order to identify and interview Iranian students led to tremendous criticism of the immigration agency, which later proved amendable to working with NAFSA to revise foreign student regulations. In perhaps a supreme irony, one of the most significant early administrative asylum decisions to incorporate a human rights perspective also attested to the diversity of Iranian students in the United States. *Matter of Mogharrabi* involved an Iranian student who came to the United States in 1978, overstayed his visa, and claimed he would be persecuted if forced home based upon an argument he had in New York in February 1981 with a fellow Iranian student who was pro-Khomeini. The Board of Immigration Appeals granted Mogharrabi asylum, relying primarily on his own testimony as to his subjective fear.[525] This decision was in many ways a culmination of years of asylum-seeking by students.

[524] *Tayarri v. New Mexico State University*, 495 F. Supp. 1665 (D.N.M. 1980); Memo from Jack Novik to Bruce Ennis on the Barring of Iranians from State Universities, June 4, 1980, Folder: Iranian Students, 1980, Box 2186, Subgroup 3, Series 1, Organizational Matters, ACLU Records, Mudd Library, Princeton University.

[525] Board of Immigration Appeals Interim Decision #3028, June 12, 1987, 19 I.&N. Dec. 447 1983-1989.

Epilogue: Back to the Future

In 1982, the INS prepared two instructional reports: a manual on how to process refugees oversees and a memo evaluating the handling of asylees. Though "by law refugees and asylees must both meet the same statutory definition, in many instances the standard appears to be less strict for refugees oversees," the asylum memo noted. "This double standard…results in anomalies…among members of the same nationality depending upon physical location…At the beginning of FY 1982, INS accepted 99% of the Ethiopians presented overseas for admission to the US as refugees while rejecting more than 45% of Ethiopian claims for political asylum in the US. Similarly, before the imposition of martial law [in Poland in December 1981], acceptance rates for Polish refugees oversees was about 75-80% while denial rates for Polish asylum claimants topped 50% in some months."[1] The biggest difference apparent in the publications appears regarding the issue of credibility and fraud. If an applicant for refugee status oversees admitted that he made up a story of mistreatment to an interviewing officer, the officer was instructed to determine whether a separate basis for refugee status existed before rejecting the applicant.[2] In contrast, asylum examiners in the United States believed their primary responsibility was to assess credibility and to determine if the applicant was lying.[3] It was clear from these reports that asylum was an afterthought and a low priority while overseas processing was considered the main event. The reports make very clear that much more resources were available for oversees processing.

[1] *Asylum Adjudications: An Evolving Concept and Responsibility for the Immigration and Naturalization Service* (INS, Washington DC, 1982) 80.

[2] *Worldwide Guidelines for Overseas Refugee Processing* (INS, Feb 1982, revised July 1983), 46.

[3] *Asylum Adjudications,* 41, 53.

The situation looked very different 20 years later, when refugee admissions dramatically decreased while asylum grants were rising. As the compilers of the chart below note, "since these are the two paths through which individuals can escape persecution and seek to gain legal protection within the United States, it is reasonable to find that trends across the two potential routes to safety in the United States interact." But this connection needs explication.[4]

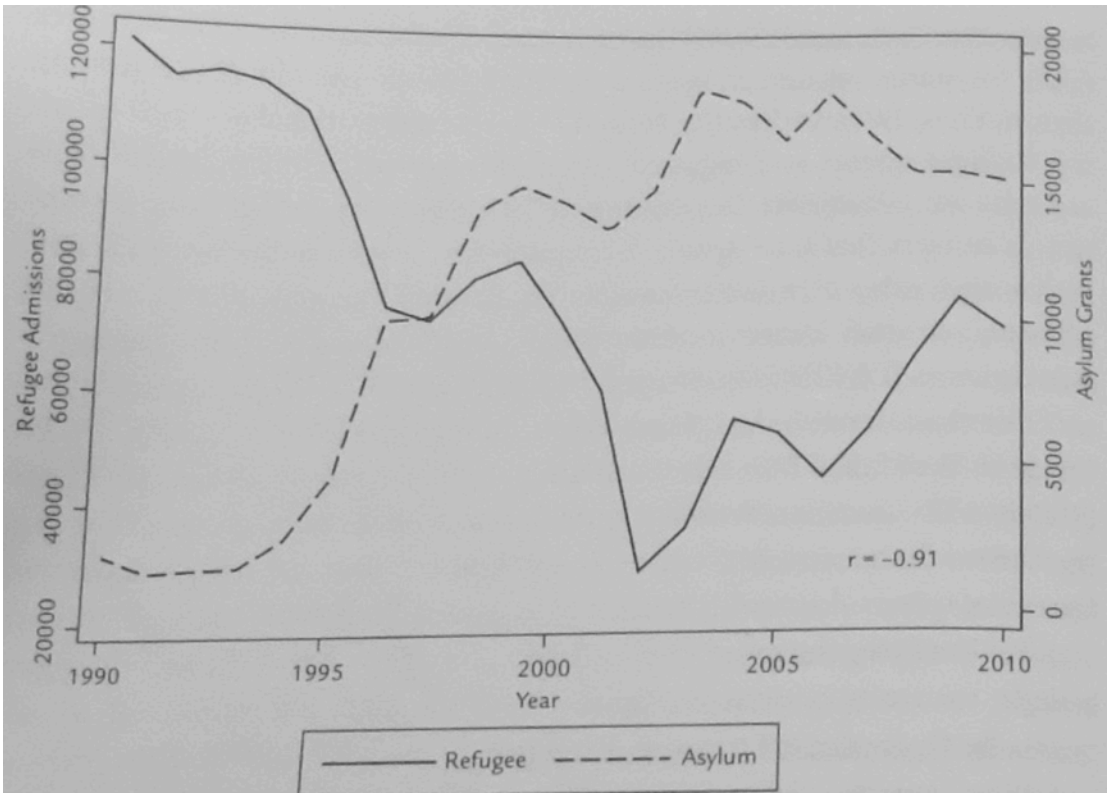

Figure E.1, Asylum Grants and Refugee Admissions, 1990-2010, from *Immigration Judges and U.S. Asylum Policy* (Philadelphia: University of Pennsylvania Press, 2015) 8.

Some critics see this as a zero sum game: the more money and attention is given to asylum, the less given to refugees overseas and to addressing the human rights abuses in their

[4] Banks Miller, Linda Camp Keith, and Jennifer Holmes, *Immigration Judges and U.S. Asylum Policy* (Philadelphia: University of Pennsylvania Press, 2015) 7. The chart is on page 8.

countries of origin.[5] Others argue that the presence of asylum seekers "play an important role in bringing home the reality of the conflicts and persecution in their states of origin to the public" in the United States.[6]

What we know for sure is that, in the 1990s, asylum broadened the ethnic composition of refugee allocations; admitted asylum seekers came from a more diverse range of countries than did refugees admitted through overseas refugee programs. In 1998, more than one third of asylum seekers came from Africa, while only 8.4% of worldwide refugee admissions slots were reserved for Africans (7000 out of 83,000). Asylum litigation in the 1990s helped expand the definition of persecution to include gender based violence and abuse. As security concerns have slowed and limited the approval of refugee applications overseas, the use of asylum by Central American children gained attention to both human rights problems in their home countries and to the problems with immigration detention in the United States.

Understanding the long history of exceptions to exclusion has never been more important than it is today. Advocates in favor of President Obama's 2014 executive order to defer the deportation of unauthorized migrants point to historical comparisons like deferred action or extended voluntary departure for asylum seekers.[7] As with so many of the policies described in this dissertation, advocates argue that these exceptions not only prove the rule. They are the rule.

But it is worth remembering Edith Lowenstein's insistence on the need—still lacking today—for a *right* to asylum rather than the "dubious gift" of grants of discretionary refuge. This

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[5] This is the argument that asylum in infused with a "proximity bias" that privileges those who make it to the US. (Matthew Price, *Rethinking Asylum: History, Purpose, and Limits* (New York: Cambridge University Press, 2009) 183-189.)

[6] Deborah Anker, Joan Fitzpatrick & Andrew Shaknove. "Crisis and Cure: A Reply to Hathaway, Neve and Schuck," *Harvard Human Rights Journal* 11 (1998) 295.

[7] http://www.americanimmigrationcouncil.org/newsroom/release/136-leading-experts-immigration-law-agree-president-has-legal-authority-expand-reli (accessed June 2015)

dissertation has shown how, historically, discretionary policies have filled the gap between the myth of America as an asylum for mankind and the reality of exclusion for many refuge seekers. Discretionary policies have put refuge seekers in catch-22 situations. An Armenian immigrant could bring family to the United States if he became a citizen but could not become a citizen if his family was not already in the United States. A sailor who deserted was thought of in terms of impeding commerce and delaying the sailing of ships, so that any action that delayed sailing—particularly protests about unfair treatment—was deemed desertion. Refugee status was denied seamen on the grounds of unlawful entry and the merits of seamen's applications for refuge were not examined by the INS.

By focusing on migrants who made their way to the United States in various social and legal statuses—as political fugitives in 1905, as war widows and orphans in 1921, and as sailors and students at midcentury—and then asked for asylum, my dissertation analyzes the construction of the refugee category and its relationship to, for instance, gender norms or to race or class standing. Some asylum seekers were excluded or deported (i.e., were treated as illegal aliens), some spent years in limbo (in revocable, temporary statuses), some gained permanent status. My dissertation shifts the focus away from considering as refugees only those designated by the U.S. federal government as such in advance; instead it examines the reasons for forced migration, the paths (frequently protracted) taken by migrants, the reception they received upon arrival, and the arguments of advocates on their behalf. For over a century, asylum seeking and asylum advocacy have both challenged and affirmed state power and American exceptionalism.

Abbreviations

ACLU American Civil Liberties Union
ACPFB American Committee for the Protection of the Foreign Born
AILA American Immigration Lawyers Association
AJC American Jewish Committee
DP Displaced Person
IHRC Immigration History Research Center
IIE Institute of International Education
ILD International Labor Defense
INA Immigration and Nationality Act
INS Immigration and Naturalization Service
ISAUS Iranian Student Association of the United States
ISS International Student Service
NARA National Archives and Records Administration
NCJW National Council for Jewish Women
NER Near East Relief
NMU National Maritime Union
PAIRC Polish American Immigration and Relief Committee
PRDL Political Refugee Defense League
NAFSA National Association of Foreign Student Advisors
USNSA United States National Student Association
YWCA Young Women's Christian Association

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[RG85 files via FOIA from US Citizenship and Immigration Service, as noted]
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National Archives at Boston
RG 85 Sub-port (Gloucester and Springfield, MA; Hartford, CT; and Providence, RI) Chinese Deportation Files, 1947-1955.

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General Correspondence
Louis Marshall Correspondence

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