

AMERICAN IMMIGRATION POLICY IN HISTORICAL PERSPECTIVE

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For three-quarters of a century now, the United States has been trying to fix a satisfactory immigration policy. Over that period, a vast, chaotic, tremendously intricate mass of legislation has accumulated. Interest in the subject has sometimes risen very high and at other times declined almost to the vanishing point; yet, for only very brief periods has there been any general belief that the problem has successfully and durably been resolved. Every major movement in recent American history has affected the course of debate; for, immigration impinges on all aspects of American civilization. Partly for that reason, every congressional action has involved a welter of popular passions and special pressures. Amid all the wrangling and rancor, very little intelligent planning has entered into legislative decisions.

Apart from the sheer complexity of a problem enmeshed in so many different strands in American life, there is another, more basic reason for the confusion and discord in policy-making. Restriction of immigration inevitably conflicts with some of the deepest American values. The belief that this is a land of opportunity for everyone, the conviction that American freedom has a universal relevance—these ideas are hard to square with general restrictions. Any restrictive policy, moreover, inevitably entails discriminations; and a system of discrimination that does not offend the democratic conscience is exceedingly difficult to define. Yet, while America's official values are hard to reconcile with immigration restriction, the conditions of the modern world have created imperative demands for defensive and regulatory action to preserve the existent goods of American life. In this situation, the restrictionists have claimed to be the hard-boiled realists, though their "realism" has seldom been free of hysteria. Antirestrictionists, on the other hand, tend to gloss over the dilemmas that immigration poses. Reluctant to confess that a problem exists, they fling the ancient ideals in their opponents' faces. Neither side has had the will or vision to bring our traditional principles into a creative relation with the facts of the modern world.

During the first century of United States history, facts and ideals happily coincided. The ideals were anchored fast during the era of the American Revolution. When a nation of immigrants shook off British rule, the very heterogeneity of the American people gave them their claim to having a distinctive national character. "Europe, and not England, is the parent country of America," wrote Tom Paine

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in 1776,¹ and generations of patriotic orators after him declaimed the glory of a people who owed their greatness to their diverse and multitudinous origins. This conception of the Americans as a universal nationality carried two corollaries. One corollary proposed for the United States the mission of providing an asylum, wherein the blessings of liberty would await all men. The other corollary, first enunciated by Jefferson, insisted on²

. . . the natural right which all men have of relinquishing the country in which birth or other accident may have thrown them, and seeking subsistence and happiness where-soever they may be able, or may hope to find them.

In denying the old doctrine of perpetual allegiance, in affirming a mission to humanity, and in celebrating a diversity of origins, the Americans were giving substance to the cosmopolitan principles of the Enlightenment on which their nation was founded.

These libertarian principles formed a harmonious part of the social and economic system. An underpopulated country, confronting immeasurable natural resources and energized by a Protestant ethic, hungered for all the manpower it could get. Farmers pushing westward needed immigrants to take over their half-cleared acres. Merchants needed immigrants to man their ships, to provide return cargoes for crops sent to Europe, to dig the canals, and to lay the railroad tracks. Mining enterprises and factory masters needed immigrants for the hard, dirty labor that native workmen scorned. Whole territories needed immigrants to qualify for statehood.

Periodically, the hectic pace of economic and geographical expansion broke down in severe depressions, but even as late as the Panic of 1873, these economic collapses did not seriously threaten the immigrants' general reception. Behind the continuing confidence in their economic desirability was an almost universal assurance of the resilience and homogeneity of American society. In other words, an implicit faith in assimilation prevailed. All immigrant groups, despite their different backgrounds and (in some cases) their persistent separateness, were expected, in due course, to fuse with the older population automatically.

Several conditions sustained the American confidence in an effortless process of ethnic integration. Above all, the country did not suffer from deep class cleavages which immigration might aggravate. The American social structure combined an underlying cohesion with a remarkable degree of individual mobility. As native Americans climbed upward in a fluid society that did not sharply distinguish employer from employee, immigrants occupied the stations that others were vacating and then followed in their wake. Even the Protestant-Catholic division of the mid-nineteenth century, which created the Know-Nothing Party and aroused demands for checking the political power of the immigrants, did not upset confidence in their

¹ HOWARD FAST (ED.), *THE SELECTED WORK OF TOM PAINE AND CITIZEN TOM PAINE* 20 (1943). Throughout this article, the writer has drawn heavily on the fuller account of European immigration and its restriction contained in his book, *Strangers in the Land: Patterns of American Nativism 1860-1925* (1955).

² I-MIEN TSIANG, *THE QUESTION OF EXPATRIATION IN AMERICA PRIOR TO 1907*, at 26 (1942).

social assimilation. The melting pot might take a while to do its work, but that was all right too. The American people did not really demand a high level of national solidarity; they had enough already for their individualistic purposes. Moreover, this loose-knit, flexible society seemed quite safe from external dangers. After 1815, isolation was a fact more than a theory; and a deep sense of military security permitted the United States to work out its own group relations in a relaxed and tolerant way.

Although tariffs established some control over the importation of goods, in the field of immigration, the federal government abided by the prevailing spirit of *laissez-faire*. Before the 1880's, immigration was neither hindered nor promoted by national action, except in two cases. Early in the nineteenth century, the coerced immigration represented by the African slave trade was prohibited;³ then, for a short time, from 1864 to 1868, Congress tried to stimulate immigration by a statute authorizing employers to pay the passage and bind the services of prospective migrants.⁴ Otherwise, the only federal enactments called for an official count of the number of entrants and decreed certain minimum living conditions aboard ship.⁵

Individual states, however, did try to exercise some influence over immigration. Their intervention took two forms. Western and southern states in the mid-nineteenth century developed programs to lure new settlers from overseas. By the early 1870's, when this competition was at its height, a large majority of states employed promotional agents or offered other inducements. On the other hand, the seaboard states of the Northeast sought to protect themselves from the heaviest burdens of immigration. Their goals were modest, and their administration lax. Aiming only to provide an orderly reception, to help those in temporary difficulty, and to discourage the entry of the permanently incapacitated, the states of entry set up boards of immigration commissioners. Their members were charity leaders who served without pay. New York, whose experience provided the basis for later federal administration, established a central immigrant depot at the foot of Manhattan, maintained an immigrant welfare fund by collecting small fees from ship-owners, and required the posting of a bond for any immigrant who seemed likely to become a permanent charity case.⁶

A change in public temper and policy began in the 1870's, but at the time, the change seemed to apply only to one small and remote immigrant group. In California, the state with the most heterogeneous population in the Union, a movement directed solely against the Chinese rose to a pitch of violence unsurpassed in American immigration controversies. The Chinese had appeared during the Gold Rush, and from 1860 to 1880, they comprised about nine per cent of the state's pop-

³ Act of March 2, 1807, c. 22, 2 STAT. 426.

⁴ An Act to Encourage Immigration, c. 246, 13 STAT. 385 (1864).

⁵ Act of March 2, 1819, c. 46, 3 STAT. 488; Act of Feb. 22, 1847, c. 16, 9 STAT. 127; Act of May 17, 1848, c. 41, 9 STAT. 220; Act of March 3, 1855, c. 213, 10 STAT. 715.

⁶ See Leach, *The Impact of Immigration upon New York, 1840-60*, 31 N. Y. HIST. 15 (1950). See also CHARLES P. HOWLAND (ED.), *SURVEY OF AMERICAN FOREIGN RELATIONS 427-30* (1929).

ulation.⁷ White workers began grumbling at their low standard of living and their racial qualities in the early 1850's.⁸ The complaints became hysterical after 1869, when the completion of the Union Pacific Railroad marked the emergence of both great corporate wealth and a large floating labor supply. Mass demonstrations and mob attacks on the Chinese accompanied the growth of an agitation against the railroad and land monopolies that found the Chinese useful. European-born workers took the lead in the anti-Chinese movement;⁹ when a general depression descended in the mid-seventies, an Irish demagogue, Denis Kearney, sparked the state-wide triumph of a new Workingmen's Party pledged to humble the rich and get rid of the Chinese.

Chinophobia had far more than an economic appeal. Politicians of both major parties, newspapers, and most of the respectable middle-class public throughout the Far West soon succumbed to the hysteria because the primitive race-feelings ingrained in white America in the course of mastering the Negro and the Indian readily extended to the Chinese. Here was the critical difference between European and Asiatic immigration. Transatlantic migration had not put to any very severe test the cosmopolitan ideals of American nationality. Until the Chinese appeared in some numbers—the inflow slackened in the mid-sixties but increased markedly in the seventies—immigration had brought the United States only people of northern European background. The Chinese, however, bore the stigma of color. As soon as their presence caused discomfort, no elaborate rationale was necessary to rouse against them the imperatives of white supremacy. The westerner saw proof of their absolute unassimilability in their strange, tightly organized culture, with all its mysterious overtones of Oriental vice and disease. Furthermore, race-feelings acquired a special urgency from the westerner's militant sense of a pioneering destiny. Californians envisaged themselves as guardians of the imperiled frontier of white civilization.¹⁰

While the toll of riots and community expulsions mounted through the 1880's,¹¹ Democratic and Republican leaders in Washington vied with each other to appease the California electorate. The principal stumbling block was the Burlingame Treaty of 1868,¹² which pledged to China the right of unrestricted immigration and

⁷ U. S. DEP'T OF THE INTERIOR, REPORT ON POPULATION OF THE UNITED STATES AT THE ELEVENTH CENSUS, 1890, pt. 1, at 2, 401 (1895). The standard study is MARY ROBERTS COOLIDGE, CHINESE IMMIGRATION (1909).

⁸ See Paul, *The Origin of the Chinese Issue in California*, 25 MISS. VALLEY HIST. REV. 181 (1938).

⁹ See, e.g., San Francisco Argonaut, Jan. 9, 1886, p. 2. See also Joint Special Committee to Investigate Chinese Immigration, Report, S. REP. NO. 689, 44th Cong., 2d Sess. 56 (1877). On the general tempo and character of the agitation, see ELMER CLARENCE SANDMEYER, THE ANTI-CHINESE MOVEMENT IN CALIFORNIA (1939).

¹⁰ See 2 PUBLIC OPINION 285 (1887); Rowell, *Chinese and Japanese Immigrants—A Comparison*, 34 ANNALS 230 (1909).

¹¹ See, e.g., Karlin, *The Anti-Chinese Outbreaks in Seattle, 1885-1886*, 39 PAC. NW. Q. 103 (1948).

¹² Treaty of Trade, Consuls, and Emigration, July 28, 1868, 16 STAT. 739, 1 WILLIAM M. MALLOY, TREATIES, CONVENTIONS 234 (1910). This treaty was drafted by Secretary of State William H. Seward, who had once joyfully predicted an influx of a million Asiatics per year into the trans-Mississippi West. See HENRY NASH SMITH, VIRGIN LAND 166-67 (1950).

secured commercial privileges for the United States. The treaty permitted passage in 1875 of a law forbidding the importation of Chinese contract labor;¹³ but four years later, a sense of honor impelled President Rutherford B. Hayes to veto a devious bill that would have negated the treaty. He tried, instead, to renegotiate it. Thereupon, a new treaty, applying only to Chinese laborers, permitted the United States to "regulate, limit, or suspend" their coming but "not absolutely prohibit it."¹⁴ The result was the act of 1882, "suspending" the entry of Chinese labor for ten years.¹⁵ Harsher laws, draconically administered, soon went well beyond treaty limits. A statute prohibiting the return of Chinese residents who happened to be out of the country precluded the election of 1888;¹⁶ and in 1892, the Geary law not only continued suspension for ten years more, but also required every Chinese in the United States to prove through white men's testimony his legal right to be here.¹⁷ At the turn of the century, suspension became permanent exclusion.¹⁸ Even Chinese immigration from our own island possessions, Hawaii and the Philippines, was prohibited. By then, the Chinese-American population was declining, and the problem seemed comfortably solved.¹⁹

Throughout, the Chinese issue was treated as quite separate and distinct from the question of European immigration. However, the social-economic situation that triggered the anti-Chinese movement in the seventies persisted, with widening implications. What troubled the Californians, apart from the race factor, was the onset of social stratification—the danger, as one of them put it, of the rise of a "caste system of lords and serfs."²⁰ The boasted fluidity of a frontier culture was giving way to an industrial system that separated workers from their boss and created sharp class contrasts between rich and poor. In the 1880's, the whole nation was beginning to worry about the same thing. The homogeneity and mobility that had long upheld the American faith in assimilation was threatened. As a result, a general movement to restrict immigration gathered strength through the eighties and early nineties, building up to a climax in 1896.

In the flush times of the early eighties, immigration reached its highest point in the nineteenth century, and though the general reception was still enthusiastic, another point of view could now be heard. While conservatives clung to complacency, a growing company of reformers sounded alarms at the polarization of American society. Protestant advocates of a Social Gospel, a new generation of German-trained economists, and a host of municipal reformers charged immigration with increasing the rift of classes, complicating the slum problem, causing boss-rule,

¹³ Act of March 3, 1875, c. 141, 18 STAT. 477.

¹⁴ Treaty between the United States and China Concerning Immigration, Nov. 17, 1880, 22 STAT. 886, 1 MALLOY, *op. cit. supra* note 12, at 237, 238.

¹⁵ Act of May 6, 1882, c. 126, 22 STAT. 58.

¹⁶ Act of Oct. 1, 1888, c. 1064, 25 STAT. 504.

¹⁷ Act of May 5, 1892, c. 60, 27 STAT. 25.

¹⁸ Act of April 27, 1904, c. 1630, §5, 33 STAT. 428.

¹⁹ See HOWLAND, *op. cit. supra* note 6, at 494-500; 5 ELLIS PAXSON OBERHOLTZER, A HISTORY OF THE UNITED STATES SINCE THE CIVIL WAR 57, 165-68, 323-25 (1937).

²⁰ SANDMEYER, *op. cit. supra* note 9, at 32-33.

and straining the old moralities. These difficulties, like the immigrants themselves, centered in the recklessly expanding cities; but critics of land monopoly, such as Henry George, also argued that the supply of good vacant land in the West was giving out, thereby adding to the population pressure in the cities.²¹ Realization was dawning that America's natural resources were limited. Thus, with the apparent passing of the frontier, a sense of "closed space" aggravated fears of a closed society. Many of the reformers who raised these issues were questioning the hal-
lowed principles of *laissez-faire*. Immigration restriction, therefore, appealed to them as a simple way of using the power of the state to combat many interlocking social problems.

In 1882, when this criticism was just beginning, one special group of reformers prodded the federal government into establishing the first national controls over immigration. The directors of urban charities had long been concerned over the strain that immigration imposed on their own resources and on the community. Charity leaders were aghast when the Supreme Court, in 1875, declared that the existing regulations maintained by the seaboard states infringed on Congress's exclusive power over foreign commerce.²² To escape the added burdens that now fell upon private philanthropy, welfare agencies begged the federal government to assume responsibility. For seven years unmoved, Congress finally passed the immigration law of 1882.²³ This gave the Secretary of the Treasury executive authority over immigration but cautiously left the actual inspection of immigrants in the hands of the old state agencies. The United States was to accumulate an immigrant welfare fund by collecting fifty cents from each immigrant. Also, convicts, lunatics, idiots, and persons likely to become a public charge were denied admission. Thus, in building upon state precedents, the federal government took a limited, hesitant, but decisive step away from *laissez-faire*.²⁴

This preliminary action had hardly been taken when the depression of 1883-86 aroused a wider and more insistent demand for regulating the incoming stream. Great strikes broke out, and—as if to demonstrate how deep the social chasm was becoming—the first mass movement of American workingmen, the Knights of Labor, spread through the industrial world. The Knights did not propose general restrictions on immigration as yet; they and the other labor unionists of the late nineteenth century were too close to their own immigrant past. But they resented fiercely the way that coal operators in Pennsylvania were bringing in carloads of foreigners to break strikes and hold down wages. In 1885, therefore, the Knights lobbied through Congress a contract labor law forbidding anyone to prepay the transportation of an immigrant to the United States in return for a promise of his services.²⁵ Hence-

²¹ HENRY GEORGE, *SOCIAL PROBLEMS* 40-46, 161-62 (1886). See also Benson, *The Historical Background of Turner's Frontier Essay*, 25 *AGRICULTURAL HIST.* 72 (1951).

²² *Henderson v. Mayor of the City of New York*, 92 U. S. 259 (1875).

²³ Act of Aug. 3, 1882, c. 376, 22 *STAT.* 214.

²⁴ All immigration legislation to 1907 is chronologically compiled in 39 *IMMIGRATION COMM'N, REPORTS* (1911).

²⁵ Act of Feb. 26, 1885, c. 164, 23 *STAT.* 332.

forth, every newcomer would have to convince immigration inspectors that he had no specific prospect of a job, yet was not likely to become a public charge.

While the unions attacked only a special kind of immigration, the labor upheaval frightened a large part of the urban middle class into a more general anti-foreign reaction. Businessmen, seeing how prominently the immigrants figured in the new labor movement, concluded that the control of unrest depended on controlling immigration. Nonunionized workers and white collar people began to suspect that the whole wave of industrial discontent was somehow foreign-inspired. A catastrophe in Chicago in 1886 catalyzed these fears. At a time when thousands of workers throughout the country were out on strike, a bomb exploded in the face of the police at a German anarchist meeting in Haymarket Square. An anti-radical panic ensued, giving immigration restriction its first major impetus in public opinion.

The strife and tumult of the late nineteenth century came to a head in the 1890's in the midst of another, more severe depression. Now the restrictionist clamor, which had been confined largely to urban areas in the Northeast and Midwest during the eighties, spread into every part of the country. A new aggressive nationalism (itself a product of the social crisis) exacerbated the demand; for, restriction became a kind of defensive counterpart of the jingoist outbursts against England, Spain, and other countries during that troubled decade. Thus, the most serious outbreak of antiforeign violence in the nineties was a partly jingoist, partly nativist episode. In 1891, the leading citizens of New Orleans led a lynching party into the parish prison and systematically slaughtered eleven Italians who had just been found not guilty of a murder charge. When the Italian Government reacted indignantly, there was feverish talk in the United States of a war with Italy. The incident proved second only to the Haymarket Affair in stimulating restrictionist sentiment.

The emergence of Italians as an ethnic target calls attention to another aggravating factor in the 1890's. More and more of the people who crossed the Atlantic were coming from southern and eastern Europe. This "new immigration" seemed even more disturbing than the older immigrant groups. Italian, Slavic, and other peasants from beyond the Alps lived much closer to serfdom than did the folk of northwestern Europe; and the Jews from Russia and Rumania were seeing a world outside of the ghetto for the first time. By western European standards, the new immigrant masses were socially backward and bizarre in appearance. The old immigration still exceeded the new, and most restrictionist sentiment in the 1890's remained diffuse, reflecting a general concern over the whole foreign influx. But in the urban and industrial areas, where the new groups piled up in squalid slums, they became vivid symbols of the problems of the time. Moreover, a number of eastern intellectuals began to argue that the southern and eastern Europeans were not only socially dangerous, but also racially unassimilable.

All in all, restrictionist pressure became so strong in the nineties that the real question is why it accomplished so little. Several circumstances seem to be involved. First, a good deal of the old confidence in assimilation persisted beneath the stormy surface of the age. Free immigration and the ideals that validated it were cornerstones of American society; they could not be dislodged easily. Second, Republican votes proved insufficient to pass a truly restrictionist measure, and the Democratic party remained, at most, lukewarm toward the idea. Republican leaders offered restriction to American workingmen as a supplement to tariff protection. The Democrats, on the other hand, had an antitariff tradition and, more important, got much of their support from groups that were either intensely opposed to restriction or undecided. In the Northeast, the Democrats had always depended primarily on the votes of immigrant minorities; the other great source of Democratic strength, the South, hankered for a larger white population and had not yet quite made up its mind about the immigrants.²⁶ Finally, the restrictionists were severely handicapped by their own confusion. They disliked so many immigrants for such a variety of reasons that they had difficulty in agreeing on a plan of action.

Congress did pass one important law, but the act of 1891²⁷ did not attempt to reduce the number of immigrants in any way. Instead, it greatly strengthened the loose controls established in the preceding decade. The law of 1882 had left a conflicting division of authority between the states and the federal government. Now, the whole job of inspection and regulation was vested in federal officials. Also, the act added further excluded categories to those of 1882 and 1885. Polygamists (*i.e.*, unrepentant Mormons) and "persons suffering from a loathsome or dangerous contagious disease" were declared inadmissible; and the contract labor law was broadened to prohibit employers from advertising for help abroad and to exclude immigrants encouraged by such solicitations. Finally, the act prescribed practical means of enforcing existing regulations. It compelled steamship companies to carry back to Europe all passengers rejected by the United States inspectors, and it made the first effective provision for deporting aliens already in the United States. Aliens who entered illegally or became public charges might be deported within one year of entry. This statute provided a framework for administration for many years.

Yet, it left the central issue of quantity untouched, and here the proposals were various. Some wanted a temporary suspension of all immigration. Some proposed a stiff head tax of \$20 or more on each arrival. One of the most popular schemes would require a certificate from an American consul overseas attesting to the good character of each emigrant from his area. A consular inspection bill passed the House of Representatives in 1894 but ran into opposition in the Democratic Senate.

Ultimately, restrictionists rallied around a plan to exclude all male adults unable to read and write their own language. The literacy-test idea originated among the northeastern intellectuals who were particularly concerned about the new immigra-

²⁶ Even at the climax of the restrictionist fever in 1896, more congressmen from the South voted against restriction than from all other sections combined. See 29 CONG. REC. 2946-47 (1897).

²⁷ Act of March 3, 1891, c. 551, 26 STAT. 1084.

tion. They argued that such a test would cut in half the influx from southern and eastern Europe, without seriously interfering with the older immigration from the more literate areas of Europe. Yet, the intended ethnic discrimination would be accomplished by applying to every individual a single standard that reflected the premium American culture put upon education.

The ascendancy of the literacy test over other restrictive proposals was due to the pertinacity of Henry Cabot Lodge, its first and most influential congressional advocate, and to the supporting propaganda of the Immigration Restriction League. Organized by a group of Boston bluebloods in 1894, the League launched a whirlwind campaign to alert the country to the social and economic dangers of the new immigration. Since the congressional elections of 1894 installed Republican majorities in both houses, the hour of victory seemed at hand. A literacy bill sponsored by the League passed Congress in the winter of 1896-97 by topheavy margins. As one of his last acts, however, President Grover Cleveland vetoed the bill.

His successor, William McKinley, was ready to sign; and the bill would undoubtedly have been re-enacted speedily if the *fin-de-siecle* spirit of crisis and depression had not begun to dissipate as soon as the new administration took office. The first sign of a change had come already with McKinley's victory in 1896, which brought vast relief in conservative quarters and, incidentally, demonstrated that many of the immigrants supported the status quo. Then, a dazzling resurgence of prosperity inaugurated a long period of good times and quieted the fierce industrial unrest of the preceding years. Even the jingoist impulse purged itself in the Spanish-American War. America seemed once again a land of opportunity for all. Consequently, some of the old confidence in assimilation came flooding back along with the whole revival of confidence in American society. Once again, patriotic spokesmen boasted of the cosmopolitan makeup of the national character. Despite a phenomenal increase in the new immigration at this very time, restriction ceased to be a political possibility.

While politicians became apathetic toward restriction, two groups especially fell away from the movement. Businessmen now waxed enthusiastic about the enriching influx. A great expansion and simplification of factory processes increased the need for unskilled immigrant labor, and industrial leaders acquired a new assurance in their own ability to keep the foreign worker tractable and unorganized. Henceforth, organizations like the Chamber of Commerce and the National Association of Manufacturers lobbied vigorously against restriction. Meanwhile, urban reformers began to see the immigrant less as a cause and more as a victim of social evils. Although this shift in the reform outlook was far from complete, the general temper of early-twentieth-century progressives disposed them to attack environmental conditions rather than people.

It should also be said, however, that most progressives had little in common with the conservative, boss-ridden, immigrant masses. The progressive spirit tended to weaken the late nineteenth-century connection between restriction and reform but

did not generate an adequate, countervailing philosophy of ethnic democracy. Consequently, the revival of a tolerant attitude toward immigration in the early twentieth century delayed the coming of restriction without revising its purpose and direction. The opportunity to think out a policy that might be both realistic and democratic was lost; and when antiforeign agitation again picked up, restrictionists simply carried on from the point at which they had paused.

The early-twentieth-century lull could not, in the nature of things, last for very long. The anguish and unrest of the preceding years might be temporarily relieved, but the social and economic problems then thrust forward were certainly far from solved. The age of Theodore Roosevelt and Woodrow Wilson made a modest start at solving them; but henceforth, confidence in the future of American society would have to rest increasingly on the use of organized intelligence to preserve and fulfill what fortune initially provided. The eighteenth- and early-nineteenth-century faith that the American people could trust the laws of nature to operate automatically in their behalf would inevitably diminish in a complex industrial society. And with the extension of centralized direction over the national life, immigration would surely come under purposeful control.

Then too, the restriction issue could hardly remain quiescent indefinitely in view of the size and character of the transatlantic migration. The biggest inrush in American history was gathering force year by year; in the decade from 1905 to 1914, an average of more than a million people annually crowded past the immigration inspectors. After 1896, the great majority derived from southern and eastern Europe. Thereafter, the outflow from the more highly developed countries of northwestern Europe declined as the movement from distant lands increased. More and more remote cultures were drawn into the current; the first considerable number of Russian peasants, Greeks, Syrians, and Armenians appeared in the twentieth century. The bulk of southern and eastern European immigrants settled in the industrial area east of the Mississippi and north of the Ohio and Potomac Rivers, where they were heavily concentrated in the mining and manufacturing centers. But a good many of them also spread throughout the Far West, and even the South had some 200,000 by 1910.²⁸ Whereas nativists in the nineties had very generally disliked the foreigner as such, the new immigration now stood out sharply as the heart of the problem. All of the regressive and antisocial qualities once imputed to the immigrants in general could now be fixed upon this more specific category. In fact, the major theoretical effort of restrictionists in the twentieth century consisted precisely in this: the transformation of relative cultural differences into an absolute line of cleavage, which would redeem the northwestern Europeans from the charges once levelled at them and explain the present danger of immigration in terms of the change in its sources.

The proponents of a literacy test had begun the elaboration of this distinction in the 1890's. No one, of course, either restrictionist or antirestrictionist, confessed that

²⁸ See U. S. DEP'T OF COMMERCE AND LABOR, UNITED STATES CENSUS, 1910, abstract 197 (1913).

the special dislike of the new immigration arose basically from a human preference for homogeneity, which the unfamiliar customs and low standard of living of the new groups offended. Such an admission would have embarrassed the antirestrictionists and discredited the restrictionists' motives. Antirestrictionists concentrated on the economic need for foreign labor and on America's moral commitment to humanity.²⁹ Their opponents replied that such traditional considerations were out of date in the wholly new situation created by the new immigration. Thus, the restrictionists, by exaggerating the distinctiveness of the new immigration, could explain the rise of a problem by reference to external changes, evading the uncomfortable truth that the initial impetus for restriction came from internal difficulties within the American social-economic framework.

Accordingly, the most astute restrictionists applied themselves energetically to proving that the new nationalities endangered America as their predecessors had not. The earliest attacks stressed a social and economic peril. Pennsylvania coal miners denounced the Italian, Hungarian, and Polish labor arriving among them as a degraded, servile class whose presence frustrated efforts to improve wages and conditions. Economists and a growing number of labor leaders generalized the argument into a plea for saving "the American standard of living,"³⁰ forgetting that immigrants had always worked cheaply while adding to abundance. The economic case was systematized by the United States Immigration Commission of 1907-1911, whose forty-two volume report comprised the most massive investigation of immigration ever made.³¹ The Commission worked out, in vast detail, an unfavorable contrast between the northwestern and southeastern Europeans in the United States *at that time*. The latter were more highly concentrated in cities and in unskilled jobs and were more inclined to return to Europe. These figures obscured significant differences between particular nationalities and did not take account of a marked improvement in the social-economic calibre of northwestern European immigration since the time when it had led the way.³² Other critics, beginning with the Immigration Restriction League, produced even more misleading figures, correlating the new immigration with the growth of slums and with a high incidence of crime, disease, and insanity.³³

A second line of argument concerned a racial menace. Here, the case against the new nationalities was harder to build. In popular parlance, race meant color. Since no very clear-cut difference of complexion was apparent between native Americans and any European group, the old instincts of white supremacy did not automatically apply to the new immigration as they did to the Chinese. To a large extent, race lines would have to be manufactured. Their construction was a grad-

²⁹ See, e.g., 28 CONG. REC. 5434-36 (1896); 31 *id.* 427-30 (1898); THOMAS WENTWORTH HIGGINSON, *BOOK AND HEART* 163-64 (1897); Parkhuist, *Value of Immigration*, 73 *METHODIST REV.* 709 (1891).

³⁰ See, e.g., RICHMOND MAYO-SMITH, *EMIGRATION AND IMMIGRATION* (1890); 15 U. S. INDUSTRIAL COMM'N, *REPORT ON IMMIGRATION* (1901).

³¹ U. S. IMMIGRATION COMM'N, *REPORTS* (1911).

³² Cf. BRINLEY THOMAS, *MIGRATION AND ECONOMIC GROWTH* 65-66, 153 (1954).

³³ See Publications of the Immigration Restriction League (1895-97).

ual process, long impeded by the democratic tradition. But ultimately, the racial attack on the new immigration emerged as the most powerful ideological weapon of the restriction movement. When completed, it became a racist philosophy that openly repudiated the official American Creed.

For a starting point, restrictionist intellectuals had an old concept of race that was different from the popular spirit of white supremacy. Throughout the nineteenth century, patrician writers often acclaimed the American people as the finest branch of the Anglo-Saxon race. The Anglo-Saxon myth was somewhat inconsistent with the cosmopolitan ideal of nationality; but originally, no challenge was intended to faith in assimilation. No race-feelings (in the sense of biological taboos) were involved. In the Anglo-Saxon sense, "race" meant essentially the persistence of national character. The idea expressed a kind of cultural nationalism. In time, however, Anglo-Saxonism expanded and sharpened. It became permeated with race-feelings. Increasingly, Anglo-Saxon culture seemed to depend on the persistence of a physical type; nationalism was naturalized; and "race" in every sense came to imply a biological determinism.

Darwinism was a preliminary influence in the confusion of natural history with national history. By suggesting that a biological struggle underlies all of life, Darwinism encouraged Anglo-Saxon theorists to think of nations as species engaged in a desperate battle for survival. Toward the end of the nineteenth century, a number of patrician intellectuals turned the Anglo-Saxon tradition into a defensive attack on immigrants and an aggressive doctrine in foreign policy. They summoned Anglo-Saxon America to protect herself at home and to demonstrate her mastery abroad. Consequently, the victory of imperialism in 1898 gave racial nationalism an unprecedented vogue. Ideas that had been the property of an intellectual elite permeated public opinion.

Yet, race-thinking still did not clearly define the danger of the new immigration. Why wouldn't its racial qualities be transformed by the American environment, as leading progressives contended? Indeed, what were the racial differences between southeastern Europeans and old-stock Americans? Darwinism was little help in answering these questions. But answers did come in the early twentieth century through new scientific and pseudo-scientific ideas imported from Europe. The dazzling development of modern genetics around 1900 revealed principles of heredity that seemed entirely independent of environmental influences. Genetics inspired many scientists, led by Sir Francis Galton in England and Charles B. Davenport in the United States, to hope for the improvement of society by preventing the inheritance of bad traits. Under the banner of "eugenics," these biological reformers gave a presumably scientific validation to immigration restriction; for how could a nation protect and improve its genes without keeping out "degenerate breeding stock"?

Simultaneously, a new school of anthropology was re-educating Anglo-Saxon nationalists on the racial composition of European man. William Z. Ripley's *The*

Races of Europe (1899) conveyed to American readers a tripartite classification of white men recently developed by European scholars. Here the race lines conformed not to national groups, but to physical types: the Nordics of northern Europe, the Alpines of central Europe, and the Mediterraneans of southern Europe. The latter two corresponded roughly to the new immigration.

The climax came in Madison Grant's *The Passing of the Great Race* (1916). A wealthy, conservative New Yorker, Grant wove eugenics and the new anthropology into a racist philosophy of history. Nordic greatness depended on Nordic purity; and now, both were passing through the invasion of Alpines, Mediterraneans, and Jewish hybrids. No idealistic compunctions restrained the sweep of the argument. Maintaining that democracy and Christianity tend to undermine racial pride, Grant defied the whole American Creed.

Well before racism reached its flowering in Grant's book, the immigration restriction movement had begun to revive from the torpor into which it fell at the turn of the century. It made headway slowly. An effort to pass the literacy test failed in 1906. No further attempt was made until six years later. Not until 1914 did the movement regain the momentum it had had in the mid-nineties. The main reason for this slow recovery was the generally confident spirit of the age—a confidence reflected in the progressives' absorption with internal reform and the industrialists' unconcern with foreign radicalism. Another reason lay in the emergence of the new immigrants as a political force. By the early twentieth century, their voting power in northeastern industrial areas was enough to give pause to Republican as well as Democratic politicians. Republicans sought to offset Democratic strength in the big cities by appealing to Jews, Slavs, and Italians. Consequently, the G. O. P. could not afford to identify itself with restriction, as it had in the nineties. Henceforth, the movement depended on bipartisan coalitions. Moreover, the immigrants made use of their growing influence by putting pressure on Congress whenever restriction bills came up. No legislative issue was closer to their hearts, and congressional committees had to face troops of immigrant representatives whenever hearings opened. Jews generally took the lead; a National Liberal Immigration League under Jewish auspices did much to rally the opposition to the literacy bill in 1906 and in succeeding years.

Against this opposition, the restrictionist forces relied upon three centers of strength. Patrician race-thinkers supplied intellectual leadership. A stream of books and articles urged the eugenic implications of immigration policy and the danger of "race suicide."³⁴ Meanwhile, a second group, the trade unions, lobbied energetically against the business apologists for immigration. The American Federation of Labor had moved far enough from its immigrant past by the early twentieth century to adopt an uncompromisingly restrictionist position. But its agitation did not count for much in actuality. The congressmen who might have done labor's bidding were swayed by the stronger pressure of the immigrants; the

³⁴ E.g., *id.* (1908-10); EDWARD ALSWORTH ROSS, *THE OLD WORLD IN THE NEW* (1914).

big cities and industrial centers voted regularly and overwhelmingly against restriction.

A third group provided most of the support for restriction in Congress. From the 1900's to the 1940's, the common people of the South and West formed a massive phalanx in favor of rigid legislation. This regional grouping represented a major shift in the alignment of forces. Initially, restriction sentiment had congealed in the Northeast, where immigration was a real problem; in the 1890's, the South and West had responded to the issue slowly and uncertainly. But in the twentieth century, while industrial and immigrant opposition thwarted northeastern restrictionists, the South and West emerged into the forefront of the movement. Appropriately, the political leadership passed from Henry Cabot Lodge, of Massachusetts (who retired into the background after 1906), to more demagogic men like "Cotton Ed" Smith, of South Carolina, Albert Johnson, of Washington, and Pat McCarran, of Nevada.

The essential explanation is to be found in the race issue. The Deep South and the Far West, where the new regional lineup started, had long been the areas of most intense race-feelings. The instincts of white supremacy had not seemed widely relevant to European immigration, however, until after the imperial adventures of 1898. Imperialism popularized the Anglo-Saxon idea of nationality and linked it with primitive race-feelings. Even without the sophisticated rationale of the new racial science, southerners and westerners could now regard the unfamiliar nationalities of southeastern Europe as somewhat less than completely white. From Seattle to Savannah, community leaders protested that already they had race problems enough; and they raged at the great alien cities of the East and Midwest for subverting the racial vigor of Anglo-Saxon America.

The first operative demonstration of the fusion of Anglo-Saxon nationalism with race-feelings came in 1906 with the revival of the literacy test agitation. What precipitated the new restrictionist campaign was the outbreak of an anti-Japanese movement on the West Coast. Restrictionist leaders sensed that the Japanese issue might enable them to get the kind of general legislation they wanted. As matters turned out, the immigration law enacted in 1907 began the process of Japanese exclusion but otherwise contained only administrative reforms.³⁵ Nevertheless, it was highly significant that Asiatic and European immigration were now, and would henceforth be, treated as different phases of a single question, not as entirely separate from one another.

Anti-Japanese sentiment had grown steadily on the West Coast for several years before it exploded in frenzy. It inherited all of the attributes of the old anti-Chinese movement except mob violence. Before the 1890's, Japanese immigration to America was almost nonexistent, largely because Japan did not legalize emigration until 1885. During the nineties, the shrinkage of the Chinese-American population produced a demand for Japanese workers in large-scale agricultural enterprises and in

³⁵ Act of Feb. 20, 1907, c. 1134, 34 STAT. 898.

construction work. Thousands of Japanese came in, many of them arriving indirectly via Hawaii.³⁶ Again, as in the 1870's, a demagogic labor movement in San Francisco, the Union Labor Party, mobilized the forces of hate.³⁷

Yet, if history repeated itself, it also added a complicating factor not present in the earlier Oriental issue. Unlike helpless China, Japan became a formidable international rival. Her stunning victory over Russia in 1905 made her a world power, capable of menacing America's new stakes in the Far East. This, in one sense, aggravated the anti-Japanese movement and, in another sense, restrained it. Californians felt not only a horror of Japanese blood, but also an intensely nationalistic fear of Japanese power. Every representative of the "Yellow Peril" was counted a potential spy or saboteur. Significantly, the agitation against the Japanese in California came to a head in 1905 when the new situation in the Pacific first became apparent. On the other hand, these international ramifications exercised a brake on legislation. Responsible federal officials realized that Japan could not be dishonored with impunity, as China had been. Offensive treatment of Japanese immigrants might damage America's far eastern policy.

The whole problem introduced a new motif in immigration policy. In the Far East, America's historic isolation from world politics was passing. The sense of military security that had sustained the public's acceptance and the federal government's indifference toward immigration was diminishing. Considerations of national security and international relations were intruding upon what had been a purely domestic question. In time, the power struggles of the twentieth century would have a shaping effect on the whole of immigration policy.

Realizing that a proud and sensitive Japan threatened America's far eastern empire, President Theodore Roosevelt tried to temper the anti-Japanese hysteria.³⁸ On the one hand, he maneuvered to check discrimination by state and local governments; on the other, he undertook to secure through diplomacy the exclusion that Californians wanted to compel by law. As a result, San Francisco rescinded a provocative school ordinance segregating Japanese pupils, and in return, Congress, in the immigration law of 1907, authorized the President to deal with Japanese immigration. He then arranged the informal Gentlemen's Agreement with Japan, by which the latter promised to issue no more passports to laborers coming to the United States.³⁹ This ended the possibility of a substantial Japanese invasion. But the agreement left the West Coast acutely dissatisfied because it permitted the entry of several thousand Japanese per year, notably "picture brides" who added to the labor force and produced a growing Japanese population. After Roosevelt, the Wilson and Harding administrations continued to withstand pressure

³⁶ See HOWLAND, *op. cit. supra* note 6, at 501-02.

³⁷ See CAREY McWILLIAMS, *PREJUDICE* 21 (1944).

³⁸ See THOMAS A. BAILEY, *THEODORE ROOSEVELT AND THE JAPANESE-AMERICAN CRISES* (1934).

³⁹ For the full text, see 2 U. S. DEP'T OF STATE, *PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES*, 1924, at 337-71 (1939).

for a Japanese exclusion law, though they failed to prevent new discriminatory legislation in the western states.

Since America still seemed safely isolated from Europe before World War I, the campaign to restrict the new immigration went forward without international inhibitions or incentives. From 1911 (when the United States Immigration Commission made its report) to 1917, a general bill that included a watered-down literacy test was continually before an increasingly race-conscious Congress. Despite vociferous support from the South and West, the bill did not become law until the eve of America's entry into the war. In even years, Congress stalled for fear of antagonizing the foreign vote in the November elections. In odd years, the bill passed by large majorities but succumbed to a presidential veto. Taft, in 1913, argued that America needed the immigrants' labor and could supply the literacy. Wilson, in 1915 and 1917, appealed to the cosmopolitan ideal of America as a haven for the oppressed.⁴⁰

Enacted finally over Wilson's second veto, the immigration law of 1917⁴¹ was the first general and sweeping victory for the restrictionists in their thirty-five-year crusade. In addition to tightening administration in many ways, the act set three key precedents. First, it excluded adults unable to read some language. When immigration revived after the war, this barrier proved of little value in reducing the size of the influx; for, too many southeastern Europeans had by then learned how to read. Nevertheless, the adoption of the literacy test had great symbolic significance. Second, the law mapped out an "Asiatic barred zone" which completely excluded practically all Asiatic peoples except Chinese and Japanese. Since the Chinese were already shut out, Japan alone remained outside the rigid pattern of Oriental exclusion. Third, the act implemented the old distrust of foreign radicalism by excluding members of revolutionary organizations and by directing the deportation of aliens who preached revolution or sabotage at any time after entry. This was a crucial step forward in a trend, extending down to the present day, which has progressively curtailed the civil liberties of aliens.⁴²

Though the whole law grew out of prewar trends, the World War created the extra margin of support that carried it past a veto. And before long, the war generated a climate of opinion that made these restrictions seem perilously inadequate. Although the war temporarily deferred further action by interrupting migration automatically, the European holocaust unleashed the forces that brought immigration restriction to its historic culmination.

The struggle with Germany stirred public opinion like a cyclone. America's isolation from European affairs, taken for granted in 1914, dissolved; and though statesmen tried to restore it after the war, henceforth, it would have to be a deliberate contrivance rather than a natural condition. No longer could the American

⁴⁰ 2 HENRY STEELE COMMAGER (ED.), *DOCUMENTS OF AMERICAN HISTORY* 257-58, 281-82 (1946).

⁴¹ Act of Feb. 5, 1917, c. 29, 39 STAT. 874; ROY L. GARIS, *IMMIGRATION RESTRICTION* 123-38 (1927).

⁴² See Maslow, *Recasting Our Deportation Law: Proposals for Reform*, 56 COLUM. L. REV. 309 (1956).

people feel providentially exempted from any international crisis. The new sense of danger came with such devastating force that it produced very little of the caution and restraint that had marked Roosevelt's Japanese policy. Instead, in every section of the country, men reacted toward all ethnic minorities as Californians had reacted toward the Japanese. Suddenly conscious of the presence of millions of unassimilated people in their midst, Americans quaked with fear of their potential disloyalty. Roosevelt himself signalized the change; for, now, he led the clamor for repressing any kind of divided loyalty.

The chief victims during the war years, the German-Americans, were soon thereafter restored to public favor, but the new emotional climate was not a passing phenomenon. Other minorities inherited the hysteria because it arose from a structural change in American nationalism. Known at the time as 100-per-cent Americanism, the new spirit demanded an unprecedented degree of national solidarity; loyalty and social conformity became virtually synonymous. The slack and gradual processes of assimilation characteristic of the past no longer seemed tolerable. Thus, the war destroyed most of what remained of the old faith in America's capacity to fuse all men into a "nation of nations." The development of social stratification had weakened that faith; race-consciousness had narrowed it; and international stresses dealt it a final blow.

During the war and the immediate postwar period, interest focused on internal dissidence, but once immigration revived in 1920, stringent restrictions seemed instantly imperative. Outside of immigrant groups and a few sympathetic social workers, the question no longer concerned the desirability of restriction, but simply the proper degree and kind. Even big business conceded the value of a "selective" policy. Furthermore, the 100-per-cent-American impulse created by the war greatly intensified the racial attitudes evolved in earlier years. For the first time, the demand for Japanese exclusion met a general sympathy in eastern opinion; and everywhere, a large sector of both the public and the intelligentsia echoed Madison Grant's pleas for preserving Nordic America from the mongrel hordes of south-eastern Europe.

Two laws resulted. The first of them, though frankly a makeshift designed to hold the gate while a permanent plan was worked out, established the underlying principle of national quotas based on the pre-existing composition of the American population. The law of 1921⁴³ limited European immigration to three per cent of the number of foreign-born of each nationality present in the United States at the time of the last available census, that of 1910. This would hold the transatlantic current to a maximum of 350,000 and assign most of that total to north-western Europe. Henceforth, ethnic affiliation would be the main determinant for admission to the United States.

Restrictionists remained dissatisfied, partly because of administrative snarls in the law, but chiefly because it was not sufficiently restrictive. In fact, a good many

⁴³ Act of May 19, 1921, c. 8, 42 STAT. 5, amended, *id.* at 540 (1922).

people were pressing for complete suspension of immigration. After three years of bickering, a permanent law⁴⁴ passed on a landslide of southern, western, and rural votes. The only opposition came from industrial areas in the Northeast and Midwest.⁴⁵ Owing to considerations of Pan-American goodwill and to the southwestern desire for Mexican "stoop-labor," the act of 1924 left immigration from the western hemisphere unrestricted; but it perfected the structure of Oriental exclusion and drastically tightened the quota system for the rest of the world.

What excited most interest at the moment was the exclusion of aliens ineligible for citizenship (*i.e.*, Orientals), a provision that summarily abrogated the Gentlemen's Agreement. Secretary of State Charles Evans Hughes protested against this affront to Japan when the bill came up, but its congressional sponsors replied that there was no discrimination in treating the Japanese like the rest of their race. Above all, an intensely nationalistic Congress was determined to take immigration out of the realm of diplomatic negotiation and deal with it by a sovereign assertion of American law. When the Japanese ambassador forcefully endorsed Hughes's protest, Congress exploded in wrath at the "insolent" demand that "we surrender our very independence of action as an independent nation."⁴⁶ The Japanese public reacted still more violently, and the cordial relations recently developed between the two countries were largely undone.

In revising the quota system for European immigration, Congress debated two plans and adopted both. The first plan based national quotas on the foreign-born population of the United States in 1890 instead of 1910 and cut the quotas from three to two per cent of that base population. By moving back the census base to 1890, the law allotted about eighty-five per cent of the total quota immigration to northwestern Europe.⁴⁷ Although this scheme accomplished the practical purpose of reducing the new immigration to very small proportions, some of the shrewdest racists saw its theoretical drawbacks. There was a certain crassness about shifting to an old census in order to achieve a desired discrimination; and was it not artificial to apportion quotas according to the distribution of the foreign-born when one wanted to protect the old native stock? Accordingly, a Pennsylvania senator, David A. Reed, and John B. Trevor, a patrician New Yorker who belonged to the circle of Madison Grant, proposed assigning the quotas in accordance with the contribution of each national stock to the present American population. Practically, this "national origins" scheme would yield about the same ratio between northwestern and southeastern Europe as would the 1890 census. The new principle had the advantage, however, of being geared directly to the preservation of America's racial status quo, an object which the other plan served only crudely and indirectly. Moreover, by counting everybody's ancestors (instead of the number of foreign-born

⁴⁴ Act of May 26, 1924, c. 190, 43 STAT. 153.

⁴⁵ See Philadelphia Public Ledger, April 13, 1924, p. 14.

⁴⁶ See RODMAN PAUL, THE ABRIGATION OF THE GENTLEMEN'S AGREEMENT 58-81 (1936).

⁴⁷ See JOHN B. TREVOR, AN ANALYSIS OF THE AMERICAN IMMIGRATION ACT OF 1924, at 62 (1924).

at some arbitrarily chosen census date), one could claim to offer exact justice to every ethnic strain in the white population.

The national-origins idea came up at the last moment. Since even its sponsors admitted the difficulty of formulating precise statistics on the origins of America's polyglot people, the completed law provided for using 1890-based quotas until 1927. Thereafter, a total quota of 150,000 would be parceled out in ratio to the distribution of national origins in the white population of the United States in 1920.

Few people understood the national-origins proviso very clearly, for it slipped into the law at the time when public interest was fixed on the imbroglio with Japan over Oriental exclusion. Only afterward did significant differences between the 1890 quotas and the prospective national-origins quotas become apparent. Both schemes would yield about the same quotas for southeastern European nationalities, but they differed sharply in the distribution of quotas among northwestern European countries. Under national origins, according to Trevor's preliminary estimates, Great Britain would receive fifty-seven per cent of the total quota immigration, whereas on the 1890 basis, she received twenty-one per cent. The final computations of a board of statistical experts cut down the British quota somewhat but still left her with more than all the rest of northwestern Europe combined.⁴⁸ A howl went up from German, Irish, and Scandinavian groups in the United States, who charged that the national origins principle discriminated against other Nordic peoples in the interest of the Anglo-Saxons. This pressure, which was strongest in the Midwest, threatened for a time to bring about the repeal of the national-origins clause. But Reed and Trevor lashed back at the "alien blocs" for trying to break down the immigration laws, and after two postponements, their plan came into effect in 1929.⁴⁹

With the end of this unseemly squabble, the main architecture of American immigration policy was complete. Already, the passage of time was giving a system born in passion and strife the status of a national institution. It would probably prove as difficult to alter in any fundamental way as it had been to create.

Some unfinished business remained on the restrictionist agenda, but the few modifications in policy during the ensuing decade were minor or temporary. Immediately upon the passage of the law of 1924, restrictionists began a campaign to extend the quota system to the western hemisphere.⁵⁰ Mexican immigration, so far as it was recorded, reached a high point of 89,000 in 1924. Small farmers in the Southwest cried out against the advantage this cheap labor supply gave to the big cotton planters; and race zealots throughout the country determined to stop the inflow of "colored blood," whatever the cost in Pan-American good will. The

⁴⁸ See 77 CURRENT OPINION 623-24 (1924); HOWLAND, *op. cit. supra* note 6, at 461-67.

⁴⁹ 42 STAT. 540 (1929). See ROBERT A. DIVINE, AMERICAN IMMIGRATION POLICY 1924-1952, at 49-89 (unpublished Ph.D. thesis in Yale University Library 1954), to which excellent, detailed study the writer is very greatly indebted.

⁵⁰ See, e.g., Letter from James J. Davis to Calvin Coolidge, May 29, 1924 (Coolidge Papers, Library of Congress); Grant, *America for the Americans*, 74 FORUM 355 (1925).

State Department, which feared Mexican retaliation against American business interests, opposed the restrictionists forthrightly. In 1929, when congressional action seemed imminent, the Department forestalled it by adopting a system of administrative restriction with Mexico's cooperation. Merely by a rigid enforcement of old regulations, such as the public charge proviso of 1882 and the contract labor ban of 1885, the consuls who issued visas to prospective Mexican immigrants drastically reduced their number. While this policy increased immigration restriction, it avoided provocation and preserved some flexibility. During the manpower crisis of World War II, the government was able to stimulate and assist the temporary migration of Mexican labor.

The Mexican experience furnished a precedent for tightening up restriction generally when the Great Depression struck. Fearful of any addition to the appalling army of unemployed, President Herbert Hoover, in September 1930, applied a similar policy to European immigration. Consuls were instructed to deny visas to anyone who might sooner or later become a candidate for relief. This very strict interpretation of the public-charge proviso, although somewhat modified in the mid-thirties, continued throughout the depression. It caused some criticism in liberal circles but never became a real political issue. The precipitous drop in immigration that occurred under this policy (though partly a natural result of the depression) provided an effective answer to the congressional restrictionists who tried unsuccessfully to impose a statutory reduction of ninety per cent on all immigration.

Certainly, these moves indicated no slackening of America's purpose to maintain its human blockade. Even the most harrowing of the immigration problems of the thirties, the plight of refugees fleeing from Hitler, evoked a minimal response. President Roosevelt instructed consuls to show special consideration to refugees, but they still had to pass all the hurdles in existing laws. Roosevelt called an international conference on the subject, but he did not raise a hand when a bill to admit 20,000 refugee children as nonquota immigrants died in committee. An America preoccupied with its own internal salvation had little sympathy for or interest in immigration.⁵¹

Yet, again, as in the breathing spell of the early twentieth century, the forces that had created the nation's immigration policy were shifting far more than the surface of affairs revealed. As yet, the changes have not reached deeply enough to have more than a moderate effect on policy. But a partial revision of attitudes can be observed throughout the 1930's, and in the late forties, the rigid legislative mold showed signs of cracking.

As early as the late 1920's, a decline of racism in intellectual circles set in. The eugenics movement waned; the Nordic cult lost its vogue. The change reflected a general emancipation of American thought from biological determinism. The belief that iron laws of heredity control the course of history gave way to an increasing tendency to see human problems in distinctively human terms. The New

⁵¹ See DIVINE, *op. cit. supra* note 49, at 92-121, 138-92.

Deal not only revived, but redoubled the old progressive emphasis on environment, while Hitler's demonstration of the fruits of racism inflicted a moral shock on every sensitive mind. Ruth Benedict popularized the relativity of culture, social psychologists elaborated the scapegoat theory of "prejudice," and it became intellectually fashionable to discount the very existence of persistent ethnic differences.⁵² The whole reaction deprived popular race-feelings of a powerful ideological sanction.

All the while, the processes of assimilation were at work. The cleavage between the peoples of the new immigration and the older American population gradually diminished. Familiarity increased, and social differences became less pronounced. The expansion of unionism that came with the rise of the C.I.O. opened one avenue of ethnic integration; the flight to the suburbs created another; education built a third. Still minorities, the new nationalities became more active and articulate, both politically and intellectually. Some of them tended to develop their own political leadership as the city machines deteriorated.⁵³ Thus, partial assimilation eased earlier tensions without destroying a sense of group identity. Resentment at the quota system still rankled, and a more liberal immigration policy retained a strong ethnic appeal.

These trends were reinforced by two others in the 1940's and 1950's. A renewed expansion took place throughout the social structure. Along with great prosperity and a birthrate revolution came a lessening of class differences. All these phenomena indicated a revival of faith in the resilience of American society. Perhaps the country still contained enough mobility and opportunity so that it could absorb a sizable immigration. This upswing of confidence in assimilation has not yet progressed very far, however, probably because a mounting urge for conformity has accompanied the relaxation of social barriers.

The other recent factor affecting attitudes toward immigration has been the international struggle with the Communist world. Considerations of national security and international relations are more widely perceived than ever before. With the complete collapse of isolation, immigration no longer seems in any respect a purely domestic question; every point of view now takes the global crisis into account. But the present world struggle, like the rivalry between the United States and Japan early in the century, has had conflicting effects on immigration policy. Some people emphasize the bearing of immigration on foreign policy, others its relation to internal security. A realization that existing restrictions may encumber America's prestige as a leader of the free world has spurred efforts to liberalize the immigration laws; at the same time, fear of international Communism has checked the liberal trend. Although the wholesale antialien hysteria that followed World War I has not revived, alien ideologies seem more subversive than ever. Consequently, a tendency to admit a greater number of immigrants has collided with a counter-movement to gird against disloyalty.

⁵² See RUTH BENEDICT, *PATTERNS OF CULTURE* (1934). There is a suggestive critique of this trend in Petersen, *The "Scientific" Basis of Our Immigration Policy*, 20 COMMENTARY 84 (1955).

⁵³ See SAMUEL LUBELL, *THE FUTURE OF AMERICAN POLITICS* 62-80 (1952).

When the first legislative changes began in the early 1940's, both phases of the international problem were in evidence. In the Smith Act of 1940,⁵⁴ a security-conscious Congress strengthened deportation procedures and required all of the 4,000,000 people who were not citizens to register. Three years later, a desire to invigorate the wartime alliance with China caused the first break in the wall of Oriental exclusion; the Chinese got a token immigration quota of 105.⁵⁵ After the war, both the promptings of international leadership and the fear of disloyalty increased greatly. The former predominated in the Displaced Persons Act;⁵⁶ the latter culminated in the McCarran Acts.⁵⁷

When the war ended, pressure for revamping the quota system developed, notably among the ethnic groups who suffered from it. Revision also appealed to liberals generally, since internationalism and antiracism became hallmarks of postwar liberalism. But the immediately urgent problem was the fate of a million half-starving eastern Europeans who feared to return to their homes in Communist lands and were dependent upon Allied authorities in central Europe. Since the national-origins law hindered American cooperation in a joint international effort to resettle these people, President Truman, in 1947, recommended admitting displaced persons outside the quotas.

The shrieks of the restrictionists against this "alien torrent" forestalled any action until the following year. Then, an act to admit 202,000 DP's was hedged by numerous restrictive provisos. But the conservatives were fighting a losing battle. In the election of 1948, Truman and other northern Democrats capitalized on ethnic and liberal indignation at the restrictions in the law, and finally, in 1950, a generously amended act passed.⁵⁸

Despite this temporary modification—the DP program expired in 1952—the restrictionist tradition remained very strong. Having worked for thirty years, the quota system had the sanction of age; Congress even required that the displaced persons be charged against the future annual quotas for their respective nationalities instead of being admitted separately as Truman recommended. Behind the defense of tradition, there were deep reservoirs of race-feelings and 100-per-cent Americanism. Furthermore, the restrictionists enjoyed the advantage of a remarkable leader, Senator Pat McCarran. A wily, determined legislative in-fighter and an ardent nationalist, McCarran, through seniority, wielded great power over appointments and appropriations; and he cherished an intensely personal hostility toward Truman.⁵⁹

Conscious of the growing pressure for reform, McCarran boldly seized the initia-

⁵⁴ 54 STAT. 670, 18 U. S. C. § 2385 (1952).

⁵⁵ 58 STAT. 1125 (1944). For greater detail, see FRED W. RIGGS, *PRESSURES ON CONGRESS* (1950).

⁵⁶ 62 STAT. 1009 (1948), as amended, 50 App. U. S. C. §§ 1951-63 (1952).

⁵⁷ Internal Security Act of 1950, 64 STAT. 987, 50 U. S. C. §§ 781-826 (1952); Immigration and Nationality Act of 1952, 66 STAT. 163, 8 U. S. C. §§ 1101-503 (1952).

⁵⁸ See DIVINE, *op. cit. supra* note 49, at 204-78. For background, see Kulischer, *Displaced Persons in the Modern World*, 262 ANNALS 166 (1949).

⁵⁹ See Shelton, *Powerful Pat McCarran*, *The Progressive*, May 1952, p. 23; Marquis Childs in the *Los Angeles Daily News*, June 18, 1952, p. 34.

tive. First, he drove past a presidential veto the Internal Security Act of 1950,⁶⁰ which ordered all aliens who had ever been Communists or members of front organizations excluded and deported. Meanwhile, McCarran's Judiciary Subcommittee worked out an omnibus bill, recasting into a single matrix the entire immigration code. It made hundreds of changes, but none of them major. Congressmen from immigrant districts raged against the bill not because it would admit fewer newcomers, but because it seemed unlikely to admit more. In 1952, the McCarran-Walter Act passed over a stinging veto.⁶¹ Again, the South cast the most solid restrictionist vote, and the West was not far behind.⁶²

Part of the mystifying political genius of the 300-page law was that it offered something for every taste. It repealed the ban on contract labor, but added other qualitative exclusions. It relaxed slightly the ban on ex-Communists imposed in 1950, but expanded the government's deportation powers and intensified its surveillance of aliens. The law showed more sympathy for divided families than previous acts had done, but not as much as reformers wanted. It terminated Oriental exclusion by assigning token quotas to all Asian countries, but set up new racial restrictions by putting all immigrants of Oriental ancestry under those quotas. Above all, the McCarran-Walter Act retained the old principle of national-origins quotas for Europe, based on the census of 1920 and totaling 150,000.⁶³ And that, to both supporters and opponents, was the crux of the matter.

The fight went on. In the campaign of 1952, both Stevenson and Eisenhower denounced the act and promised to overhaul it. The next year, the administration extracted from Congress a temporary law to admit 209,000 refugees outside the regular quotas on the understanding that no effort would be made to revise the McCarran-Walter Act for the time being.⁶⁴ This Refugee Relief Act contained so many self-defeating strictures and was so jealously administered, however, that it proved incapable of fulfilling its own modest goals; and Eisenhower waited until another presidential election year rolled around before submitting recommendations for liberalizing the basic immigration law.⁶⁵ While Congress looked the other way, the forces of change persisted. But their strength was modest, and they moved at a snail's pace.

⁶⁰ 64 STAT. 987, 50 U. S. C. §§ 781-826 (1952).

⁶¹ 66 STAT. 163, 8 U. S. C. §§ 1101-503 (1952).

⁶² See DIVINE, *op. cit. supra* note 49, at 316-57.

⁶³ For more extended discussion of these provisions, see DONALD R. TAFT AND RICHARD ROBBINS, INTERNATIONAL MIGRATIONS 412-14, 421-24, 431-38 (1955); SCHWARTZ, *Immigration Policies: 1955*, 29 CURRENT HISTORY 268 (1955).

⁶⁴ Refugee Relief Act, 67 STAT. 400 (1953), as amended, 50 App. U. S. C. A. § 1971 (1955 Supp.). See PHILLIPS, *That Phony Refugee Law*, Harper's Magazine, April 1955, p. 70; N. Y. Times, Sept. 27, 1953, § 4, p. 10.

⁶⁵ N. Y. Times, Feb. 9, 1956, pp. 1, 14.