"Evil of a Most Insidious Character:" Philosophical Anarchists, American Immigration Law, and National Identity in World War One

by

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To my parents, Frank and Elizabeth Taparata
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Introduction

“The civil liberties movement in this country,” observes free speech historian Christopher M. Finan, “was born in the outrage over the abuses committed during World War One and the Red Scare.” Indeed, the conviction of thousands of Americans for publishing criticism of the country’s war effort and the “nationwide raids that rounded up thousands of suspected Communists who were guilty of nothing more than belonging to the wrong political party”\(^1\) was not taken lightly. The question of unjust deportation—an issue with which this thesis is concerned—became a particularly thorny problem. By 1926, the American Civil Liberties Union recognized immigration and deportation as one of its top ten issues.\(^2\) But were Red Scare deportations—which were widely reported in the media of the time and have been the subject of much historical discussion—the only violation of the rights of immigrants during this early period in the emergence of civil liberties as a national concern? Was it only after Attorney General Mitchell Palmer initiated so many falsely grounded deportations that lawyers began to take notice of immigrants being targeted by the Bureau of Immigration for radical social and political ideas?

My original intent for this thesis was to write a history of detention at Ellis Island. The popular history and memory of Ellis Island is one that is indebted to the Island’s legacy of having been the busiest immigration center in the country. Inspired by the work of individuals such as the Center for Constitutional Rights’ Michael Ratner, who have

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been leading the charge against the former Bush administration’s post-9/11 detention policy, I felt that it was high time that the less romantic side of Ellis Island’s history be investigated in further detail. But there was a deeper curiosity at the heart of my interest in detention. I hoped to reach a better understanding of the specific reasons why immigrants were excluded by researching the case files of detainees. Identifying such patterns of exclusion, I thought, would contribute to a more complete grasp of American national identity in the beginning of the twentieth century. Individuals who had been detained were suspect of violating at least one of the immigration law’s exclusionary provisions detailing who could and could not enter the country. The Bureau of Immigration’s detainees, therefore, could provide an ample subject of study for thinking about American identity not by inclusion—those individuals who enter the country and are assimilated into the American body politic—but rather by exclusion—those who are somehow deemed undesirable additions to the nation’s population.

During my first trip to the National Archives in Washington DC, I noticed a number of individual case files of immigrants whom the Bureau of Immigration was attempting to deport during World War One. Conformity with the country’s break from isolationism and entry into the war was widely held as the utmost example of American patriotism at that time, and so it was not entirely surprising to learn that some aliens had been facing deportation for advocating “radical” political beliefs. Their testimony in hearings before the Bureau reveals that these individuals considered themselves “philosophical anarchists”—that is, that they believed in a society without government which could be attained not by violence, but by education. Having encountered little of this in my own reading of the period, the stories within these files immediately caught my
attention. Although the deportation of philosophical anarchists marked a departure from my interest in detention, the subject remained significant regarding exclusion and national identity. What does it mean, after all, when a settler nation that is often touted as a “nation of immigrants” restricts its foreign-born residents from expressing themselves freely? By focusing on these lesser known cases of philosophical anarchists, my work in this thesis marks the beginning of what I hope to turn into a prolonged inquiry about a group of radicals who have been overshadowed by the likes of Emma Goldman, Johann Most, and Alexander Berkman.

Who were these philosophical anarchists, and why was the government attempting to deport them? Alien anarchists, whose alleged disregard for government and the rule of law were cast into national consciousness after the infamous Haymarket Affair of 1886, had been an object of scrutiny among Americans for decades before World War One. The historian Henry David has written that once Americans heard the news that a bomb had been detonated at a rally in Chicago’s Haymarket Square, killing and wounding numerous civilians and police officers, “The term Anarchism became a verbal bludgeon with which anything disreputable or mad was attacked, and ‘anarchist’ became an epithet of defamation synonymous with ‘vermin,’ ‘rattlesnake,’ ‘cutthroat.’” It certainly did not help ease anyone’s suspicion of anarchy when France’s President Carnot, Prime Minister Canovas del Castillo of Spain, Empress Elizabeth of Austria, and Italy’s King Humbert were all killed by anarchists at the end of the nineteenth century. Above all, however, President McKinley’s assassination at the hands of a self-confessed

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(and native-born) anarchist further engraved the image of the knife wielding, bomb hurling anarchist into the minds of Americans. McKinley’s assassination directly contributed to the formation of the anti-anarchist provision in the Immigration Law of 1903—the first legislation barring the entrance and residence of immigrants for their political opinions since the Alien and Sedition Acts of 1798.5

Contrary to the stereotypical image of the alien radical, however, most self-proclaimed anarchists did not advocate the use of violence to overthrow the government, nor did they pose a threat to the country and its citizens. These individuals, typically referred to as philosophical or individualistic anarchists, were far removed from the violent revolutionaries that most people thought of upon hearing the word anarchy after the bombing. When a philosophical anarchist claimed that he didn’t believe in government, it was typically only because he believed that society could one day reach a sort of utopia where everyone would treat each other kindly and there simply would be no need for government. True to the name, this variation of anarchy was more of a philosophy than an incitement to sabotage, vandalism, or regicide.

Some historians argue that it may be complicated to pinpoint the origin of anarchist thought, but resistance to government and an emphasis on the protection of individual freedoms—two essential principles of anarchism—are clearly discernable themes in American history. As noted by the historian Charles A. Madison, the idea of anarchism in the early American frontier was a “practical necessity long before it was broached intellectually as a weapon against British tyranny.” The lifestyles of pioneers living in settlements scattered across the country and even those living in coastal towns

were, for a time, relatively devoid of government interference. When King George III began to implement restrictive policy on the colonies, then, he was met with the “determined rebellion” infamously led by Thomas Jefferson and the rest of his revolutionary peers who are often credited with founding the country.\(^6\) It was the American Revolution itself—which, as Gordon S. Wood writes, is more commonly (though perhaps falsely) remembered as a conservative defense of certain fundamental rights rather than a radical upheaval\(^7\)—and the political and social ideas that stemmed from it which influenced some of America’s own anarchist thinkers.

Benjamin R. Tucker, for example, who was one of the most influential individualist anarchists in nineteenth century America, once wrote that individualist anarchists were, essentially, “unterrified Jeffersonian democrats.” If Jefferson posited that that government was a “necessary evil” whose interference with individual lives could only be prevented by “profound distrust” and revolution among the people, Tucker observed, “then why not draw the inevitable conclusion that government ought to be gradually abolished and voluntary co-operation established in its place?”\(^8\) Inspired by Jefferson’s call for minimal government and an “eternal hostility to every form of tyranny over the mind of man,” some of America’s most lauded writers also contributed to developing anarchistic theory. Transcendentalist writers such as Ralph Waldo Emerson and Henry David Thoreau emphasized the importance of self-reliance and individual sovereignty. Thoreau in particular contributed much to the doctrine of passive resistance,

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a crucial element of philosophical anarchism’s nonviolent platform. Even though Thoreau didn’t go to the extreme of suggesting that all government ought to be abolished, his call for the elimination of the oppressive tendencies of government was well received by Tucker and his contemporaries. The anarchism hinted at by individuals such as Thoreau and expounded by Tucker may have been controversial, but nevertheless “remained in the groove of American democracy.”

Although the Bureau of Immigration targeted them for deportation for their “un-American” nature and purportedly dangerous political opinions, philosophical anarchists have largely been overlooked by historians. In his influential *Aliens and Dissenters: Federal Suppression of Radicals 1903-1933*, distinguished historian William Preston’s 1963 book refers to philosophical anarchists but once as a mere footnote to the government’s campaign of repression against members of the International Workers of the World. Another classic work on the origins and function of nativism in America, John Higham’s 1955 *Strangers in the Land*, spends little time discussing anarchists. David M. Rabban’s 1997 *Free Speech in Its Forgotten Years* acknowledges individualist anarchism as “the opposite end of the ideological spectrum from the judiciary” informing discussion, at least in some circles, of the free speech abuses during World War One. But Rabban’s work “uncover[ing] the extensive and diverse history of free speech between

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10 I have turned to scholarship on many topics in search of any discussion on the philosophical anarchists whose deportation hearings before the Bureau of Immigration encompass the later chapters of this thesis. For the sake of brevity I only mention a few texts here, though it can be assumed that the vast majority of the works in my bibliography discuss the deportation of anarchists during World War One minimally, if at all.
1870 and 1920” likewise overlooks the deportation of philosophical anarchists.\textsuperscript{12} Daniel Kanstroom’s \textit{Deportation Nation: Outsiders in American History}, published in 2007, is an excellent account in the consequences of deportation—interesting reading, indeed, for anyone interested in the Guantanamo quagmire. But Kanstroom’s discussion of World War One focuses, like many works, on labor and post-war Red Scare deportations.\textsuperscript{13} \textit{From the Palmer Raids to the Patriot Act}, by Christopher M. Finan and also published in 2007, looks toward the civil liberties movement as its frame for a discussion of deportation throughout the twentieth century yet also overlooks philosophical anarchists.\textsuperscript{14}

This lack of scholarship informs the overarching research question of this thesis: what role did these overlooked philosophical anarchists play in the intersecting histories of World War One, the proto-civil liberties movement, and the Red Scare? The problem of philosophical anarchists as a threat to the safety of the country is significant in all three of these critical moments in early-twentieth century American history. The First World War brought about a period of much anxiety regarding any threat that could potentially undermine victory for the United States and its allies. German enemy-aliens, pacifists, labor organizers, and others would face persecution from other Americans as well as prosecution under the Espionage Act of 1917 and the Sedition Act of 1918. The philosophical anarchists facing deportation during the War, as pacifist believers in a stateless society who entered the country as immigrants, might be considered an amalgamation of the groups of individuals who faced the forces of repression during the

\textsuperscript{13} Kanstroom, \textit{Deportation Nation}, 141-160.
\textsuperscript{14} Finan, \textit{From the Palmer Raids to the Patriot Act}, ix-xi.
war. It was this repression and fear of radicalism that contributed to the deportation raids that comprised the Red Scare that followed World War One. The attempted deportation of one philosophical anarchist, Schulim Melamed, caused much controversy in the Bureau of Immigration and directly influenced the broadening of the 1917 immigration law’s anarchist exclusion provisions in the Anarchist Act of 1918. This change in legislation served as the legal basis for the deportation of radicals by the hundreds after the war. Finally, the beginning of the twentieth century witnessed the establishment of organizations focused on protecting the civil liberties of both aliens and citizens. The Free Speech League—which secured legal counsel for a famous philosophical anarchist deported in 1904—and the National Civil Liberties Bureau—a group organized by Roger Baldwin during the war as an offshoot of the American Union Against Militarism that would eventually evolve into the American Civil Liberties Union—reflect the growing interest in and discussion of individual rights in American society at the turn of the century. Notable individuals such as Clarence Darrow—an attorney renowned for his tireless work on behalf of the downtrodden and infamous for his defenses of Leopold and Loeb in 1924 and John Scopes in 1925—and Louis F. Post—President Wilson’s Assistant Secretary of Labor—argued that the government did not have the authority to deport philosophical anarchists, placing this group of radicals—and those who defended them—in the middle of a larger debate regarding the right to dissent in America that was only just beginning.

Philosophical anarchists were thought to be dangerous, but not necessarily because they might turn to violence in order to reach their vision of a society without government. In a lengthy report explaining why Schulim Melamed—a Russian anarchist
whose deportation is examined in this thesis—should be deported, the Commissioner General of Immigration Anthony Caminetti referred to the report of a Congressional committee that first started discussing the new Immigration Law of 1917. Caminetti thought that Melamed, a peaceful anarchist who completely disavowed the use of violence for any reason, ought to be deported despite the fact that he only advocated his belief in a society without government in private conversation. The committee, Caminetti claimed, intended for the law to deport both the “teachers” and “disciples” of anarchy; these individuals, whose social and political beliefs were considered “evil of a most insidious character,” had to be kept out of the country.15 If the immigration law was meant to get at some hidden, evil intent at the root of the anarchism of aliens, it wouldn’t be unreasonable to suggest that similar logic could be used to broadly suppress all dissent. In fact, this is exactly the kind of logic that would be used to determine guilt in the cases of citizens and aliens implicated under the Espionage Act, passed two months after the Immigration Law of 1917. The “bad tendency test” crushed dissent by punishing individuals not for what they said, but for the chance that their words might influence others to commit illegal acts. Supreme Court decisions in World War One that resorted to this logic made it clear that “the government was free to suppress dissident speech during wartime.”16 This position, it is important to emphasize, was applicable not only to aliens, but citizens as well.

15 Supplemental memorandum from Anthony Caminetti to Louis Post, In re Schulim Melamed, alias Sam Miller, alien, charged with “advocating or teaching anarchy,” March 5, 1918, INS, RG 85, File number 54235/36, Box 2802, NARA, 12.
The stories of these philosophical anarchists uncover a significant chapter in the early history of civil liberties, the legal fight to protect them, and the connection of this fight to immigration and anti-foreign sentiment. Civil liberties and their relation to citizenship, as noted by Noah Pickus, became an increasingly important subject among Americans during the end of the nineteenth century and the beginning of the twentieth. “Radical changes in politics, the economy, and the culture,” writes Pickus, “gave new impetus to the question of whether American nationalism would support or undermine civil ideals, whether it would protect against illiberal, exclusionary policies or serve as the basis for them.” The exclusionary immigration policies that emerged at the beginning of the twentieth century were most definitely informed by political, economic, and cultural conditions of the day. But the relationship of individual rights—and particularly, the rights of immigrants—to the state had previously been a source of contention in discussions of the rights of Americans.

The First Amendment of the United States Constitution claims that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” If an alien could be deported merely for harboring a controversial political belief, or for talking about that belief in either public or in private, wouldn’t that be a violation of the essential democratic right to free speech that presumably belongs to citizens and aliens? Furthermore, if an individual could be deported for his or her political beliefs, isn’t the

government setting a standard that immigrants who adhere to dissident opinions are being cut off from participation in political discourse?

The deportation of radical aliens for contributing dissenting views to political discussion is incredibly significant for all Americans. Although citizens cannot be deported, what does it say about the constitution’s guarantee of free speech if dissent among immigrants—who presumably will one day become American citizens—is vastly discouraged and punished when suspected? The exclusion and deportation of alien anarchists for their political beliefs—and, really, the deportation of all immigrants—has at least some bearing on American national identity. For deportation is not just some arbitrary measure taken by the government to secure the country from dangerous aliens who are thought to be a threat to national security, the state, or its institutions. A person who is deported is being sent a clear message from the government: that they are undesirable and are not candidates for American citizenship. The ramifications of such a punishment—though, as we shall see, politicians and judges considered it a mere administrative measure than an actual punishment—are not limited to the immigrant and his banishment. Indeed, the implementation, or even the attempt, of deportation resides in the discourse of both description and performance. For when the Secretary of Labor declares, “I hereby deport you,” his language does not only define the deportee as un-American, somehow unfit for citizenship, but also condemns him to a punishment that bears significant consequences for the individual being deported while simultaneously reinforcing the preexisting prejudices and fears that allowed that deportation to occur in the first place. It is in this way that deportation is not merely a punishment, but also a statement which defines and affirms the qualities in immigrants which are considered un-
American, thereby defining what is “American” by distinguishing what and who is not.\textsuperscript{18} If aliens could be deported, then, for the chance that their dissenting opinions might influence others to break the law or otherwise put the state or its residents at risk, the overall value of free speech for everyone in the country is greatly compromised. The source of such unsettling implications for free speech as well as other individual rights might be traced to the First World War.

These questions about the rights of immigrants, of course, operate under the problematic assumption that aliens are protected by the Constitution. The apparent problem that arises when the rights of immigrants seem to be curtailed by the state is one that is the result of a foundational ambiguity in American jurisprudence and constitutional theory. As cited above, the First Amendment states that the “people” are granted the right of free speech and assembly. What it does not state, however, is who exactly are considered members of that “people.” The Constitution’s “necessary and proper” clause only complicates this matter further. Article Eight of Section One grants Congress the power “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” If the country were faced with a threat to its national security, did the “necessary and proper” clause mean that Congress could pass legislation suspending the right to free speech? In the event of such a crisis, the Constitution’s uncertain and, at the time of its writing, untested terminology would seem to put the very prospect of immigrants’ rights in

\textsuperscript{18} This analysis of deportation is informed by Terry Eagleton’s discussion of “constative” and “performative” language in relation to political ideology. See Eagleton, \emph{Ideology: an Introduction} (London: Verso, 1991), 19.
significant uncertainty. Though they might remain unclear, these elements of the Constitution would not stay untested for long. The French Revolution at the end of the eighteenth century and the resulting Alien and Sedition Acts of 1798 encompassed the first set of historical circumstances during which immigration, dissent, and state repression became the locus of controversy.

When the Alien and Sedition Acts were passed in 1798, Thomas Jefferson and other Republicans were embroiled in debate with the Federalists over their controversial claim that the government could suspend the right of citizens to free speech during the quasi-war with France—and, as shall be discussed later in this thesis, whether or not aliens were entitled to free speech and other constitutional guarantees at all. “The Sedition Act,” writes the historian Stephen L. Feldman, “was like the Big Bang.”\(^{19}\) Before 1798, the federal government never had the opportunity to define the limits of free speech. So when President Adams signed the Sedition Act, which curtailed criticism of the Federalist administration in the press and by word of mouth, the response was expectedly uproarious.

What is most significant about the passing of the Sedition Act (as well as the Alien Friends and Alien Enemies Acts that were passed along with it) is the line of defense that the Federalists turned to in support of the measure’s controversial function. According to the Federalists, the Sedition Act wasn’t a violation of free speech at all because the first amendment “did not deny the United States the power to defend itself

against false and malicious attacks.\textsuperscript{20} Because the government was an independent nation, the Federalists claimed, it had every right to defend itself against any threat to the stability of the state. This meant, therefore, that the individual right to free speech was subordinate to the rights of the state.

This is, clearly, a controversial idea. The abridgement of free speech that occurred during the passing of the Alien and Seditions Laws was not an isolated incident. These precedent setting debates about the country’s obligation to protect individual rights during crisis periods were the first of their kind in American history, and they would not be the last. Philosophical anarchists and the controversy surrounding their deportations should be recognized as part of the historical debate regarding these foundational uncertainties.

As I shall discuss throughout this thesis, an upsurge of radical violence at the end of the nineteenth century and the country’s 1917 entry into World War One amidst much diplomatic turmoil across Europe would provide ample conditions for the government to reevaluate the idea of free speech. What these periods of American history have in common with 1798 is that they were all times of crisis or national insecurity. When President McKinley was assassinated in 1901, for example, a resurgence of anti-radicalism and nativism began to take the country by storm, resulting in the anarchist exclusion provisions of the 1903 Immigration Law; the Russian Revolution, occurring concurrently with World War One, contributed to widespread fears of radicals and, ultimately, deportations by the hundreds during the Red Scare; the December 7, 1941 attack on Pearl Harbor initiated the mass internment of thousands of Japanese along the

Pacific coast. Without knowing why they were arrested or where they were being taken, 120,000 Japanese-Americans—two-thirds of them American citizens—were detained for years because “fears of possible Japanese sabotage and espionage were rampant.”\(^{21}\) The repression of aliens during times of crisis continues to this day. The United States government arrested thousands of Arab and Muslim men after the attacks on September 11, 2001 in an attempt protect the country from another terrorist attack.\(^{22}\) These deportations, as well as detentions at places such as Guantanamo Bay, have inspired many questions about whether or not these actions have violated the human and civil rights of those suspected of having links with terrorism. The issue of *habeas corpus*, for instance—a writ that brings a detained alien before a courtroom and is widely considered a basic human right—is directly related to the problems that arise when the state must balance national security concerns with individual rights. The germ of this conflict can be seen in the fight to protect dissident aliens from deportation in World War One.

In my discussion of the suppression of aliens and their political voices during World War One, I argue that the conception of anarchism was an inaccurate product of nationalist hysteria; that anti-alien and anti-anarchist sentiment peaks during periods of national crisis, particularly in wartime, directly contributing to the enactment of restrictive policy permitting the repression of immigrants; and that the attempted and actual deportation of philosophical anarchists deserve a place in the historiography of World War One, the Red Scare, and the national discourse on freedom of speech, the right to dissent, and civil liberties that emerged at that time. Because I am approaching

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\(^{21}\) Ibid., 287.

the anti-anarchist movement of the early twentieth century as part of a long series of events in American history (the Alien and Sedition Acts, the nativist movements of the 19th century, the Haymarket Affair, McKinley’s assassination, and the country’s entry into World War I) I suggest that the Red Scare and the Palmer Raids that began in 1919 were not an isolated event caused simply by a fear of “Red” radicalism and Bolshevik revolution stemming from anti-German sentiment during the war. Palmer’s incessant drive to expel the “Reds” should be understood as the culmination of a rising disdain for the anarchist, which was affirmed in part by the attempted deportation of a philosophical anarchist named Schulim Melamed and the rewriting of immigration law that resulted from it.

In Chapter One, I will review the Alien and Sedition Laws of 1798 as a precedent to all anti-immigrant sentiment and legislation that followed. Historians of deportation, civil liberties, and nativism traditionally turn to this moment as the first time when the constitution was challenged by historical events; a discussion of the Alien and Sedition Laws similarly functions as a necessary prelude to my own research. Enacted during the quasi-war of the 1790s with France and largely informed by fears of alien radicals conspiring to overthrow the government, the debate over the Alien and Sedition Laws was entrenched in party politics. The Republicans, under the leadership of a few key members of Congress, loudly objected to the Federalist’s agenda of providing the president with the discretionary power to deport any alien residing in the country during wartime. My discussion emphasizes how immigration policy and the concept of naturalization were far from firmly resolved by the Constitution, and instead were left
open to interpretation and debate when historical circumstances demanded that such ideological uncertainties be confronted.

Chapter Two continues with a brief survey of anti-alien, anti-radical, and nativist movements of the 19th century. Although anti-immigration policies tended to become most restrictive during times of crisis, anti-immigrant and anti-radical suspicion was never completely absent from political and social discussion. The true focus of my thesis begins in this chapter with the renewed attack on radical immigrants sparked by the Haymarket Affair and the assassination of President McKinley. I will also discuss the legislation that followed, paying particular attention to the deportation trial of John Turner, a philosophical anarchist whose case resulted in the Supreme Court’s decision that it would not be unconstitutional to deport non-violent anarchists. Rather than initiate a discussion of the Espionage Act of 1917 and the Sedition Act of 1918 during World War One, I opt to conclude the chapter with an overview of the congressional debates over the 1917 Immigration Law. The debates over the law—which, as legal historian E.P. Hutchinson notes, “represents a turning point in American immigration policy, a definite move from regulation to attempted restriction”23—may better reveal the restrictionist mood occurring alongside anti-radicalism that pervaded the country before its entry into World War One.

In Chapter Three I move to the focus of my primary research, the previously unexplored deportation case of Schulim Melamed, a self-described philosophical anarchist. This case was extremely controversial within the Bureau of Immigration and is a neglected moment in the historiography of the early history of American civil liberties.

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23 Hutchinson, Legislative History of American Immigration Policy, 167.
and alien deportation. Melamed’s case raised serious questions about the reach of the immigration law, specifically whether or not “philosophical” anarchists could be deported merely for believing in anarchy or for advocating non-violent anarchy. The influence of this case cannot be understated. The uncertainty among immigration officials as to whether or not Melamed could be deported under the law spurred the Bureau into drafting the 1918 Anarchist Exclusion act, the broad parameters of which served as the basis for hundreds of deportations during Palmer’s Red Scare of 1919 and 1920.

Melamed—whose charge of advocating relied on his confession that he participated in private conversations with others about social problems—was defended by Clarence Darrow, a lawyer whose passion for defending civil liberties would bring him national fame in his defense of the 1924 Leopold and Loeb trials and the Scopes trial of 1925. The relationship of lawyers like Darrow to the deportation cases of alien anarchists highlights the rising concern with civil liberties and free speech among America’s lawyers that occurred alongside the founding of organizations such as the American Civil Liberties Union.

In Chapter Four I will discuss a number of other cases in which immigrants were brought before immigration officials to be deported for philosophical anarchism. By presenting these cases I intend to provide a brief portrait of philosophical anarchists of this era. I also hope to emphasize the questionable evidence and paranoid suspicion that brought aliens into hearings with immigration inspectors, sometimes leading to their deportation. By considering other cases I hope to achieve a better understanding of these so-called anarchistic beliefs and the response with which the Bureau of Immigration met those beliefs. I then advance to an overview of the debate surrounding the 1918 Law in
which the anti-anarchist provision of the 1917 law was amended, making the Bureau’s ability to deport alien radicals for their political beliefs much more powerful than it ever had been before. Finally, I conclude with a brief discussion of the Red Scare and the rise of the civil liberties movement after the war.

Much attention has been paid to the Palmer Raids and the Red Scare that followed World War One as the representative moment of early twentieth century anti-radicalism in the United States. I don’t mean to undermine the significance of the post-war deportation raids. Indeed, as historian Charles Madison notes, anarchists were largely left alone during the war and it wasn’t until after the armistice was signed that hundreds were deported for their political beliefs and membership in “radical” organizations. But to ignore the Bureau of Immigration’s attempted deportation of philosophical anarchists during the war is to overlook a relevant chapter of a period in American history marked by government repression and an emerging discourse on civil liberties, particularly freedom of speech. I hope, then, that this thesis can serve as a starting point for further inquiries into a forgotten chapter in this period of American history. Philosophical anarchists and the Bureau of Immigration’s attempts to deport them may provide an understanding of the hysteria and anti-alien sentiment that have repeatedly emerged during times of crisis—attitudes that have driven Americans to scapegoat aliens and accuse them of treasonous actions not only during World War One but also today.

24 Madison, “Anarchism in the United States:” 64.
Chapter One

The Alien and Sedition Acts—Precedents for Prejudice

The primary concern of this thesis is the emergence of anti-radical and nativist sentiment at the end of the nineteenth century that culminated with the deportations of aliens during World War One and the Red Scare. It is crucial to recognize that the deportation of philosophical anarchists in the First World War is part of a trend of alien repression along with the Japanese internment of World War Two and the detention of Arabs and Muslims after September 11th. It is just as important, however, to locate those events in the context of America’s first encounter with a national threat. The results of that initial encounter—which consisted of an external threat of the French Revolution and an internal threat of a subversive French faction—were the Alien and Sedition Acts of 1798. As deportation historian Daniel Kanstroom suggests, it is through an investigation of the Congressional debates over the Alien and Sedition Acts that we can begin to understand “a major unresolved tension in U.S. constitutional history: between a robust rule-of-law version of the nation of immigrants ideal (with its attendant general values of openness, diversity, equality, and fundamental rights) and the categorical, status-based distinctions that legitimize government action against non-citizens that would be unacceptable if applied to citizens.”¹ It is this foundational tension that lies at the heart of the controversy surrounding the deportation of philosophical anarchists during World War One and other radicals throughout American history.

In his book Whiteness of a Different Color: European Immigration and the Alchemy of Race, Matthew Frye Jacobson notes that dualities had helped formulate

contemporary common thought and governmental policy well before the country’s first Naturalization Act of 1790: “From the early 1600s to the early 1800s, Euro-American policies of conquest, Indian removal, slave-trading, and disenfranchisement relied on a logic of ‘civilization’ versus ‘barbarism’ or ‘savagery,’ or of ‘Christianity’ versus ‘heathendom.’”² That such dichotomies would play a critical role in immigration and the incorporation of aliens into the American polity became immediately clear throughout the tenure of the Adams administration, the first new administration after the adoption of the U.S. Constitution in 1787. The differences underlying notions of desirable and undesirable aliens, citizen and non-citizen, patriotic nationalist and dangerous subversive, would be refined in the Congressional debates that accompanied the passing of the laws and established a precedent for all future revisions of immigration legislation. It is extremely important not only to recognize that these first federal immigration laws began a pattern of figuring aliens as dangerous “others” who threatened to obstruct American ideals and government, but also that the primary goal of the laws—to limit the ability of alien residents to participate in political discussion—attached a hierarchical sense of accessibility to free speech: certain individuals are entitled to varying degrees of free speech and political incorporation.

But such rigid dualities were not the only factor in determining the terms of the country’s first deportation laws. The “tension” referred to by Kanstroom above raises serious questions about the Constitution’s stand on matters of immigration, speech, and national security that remain central to the controversy over deportation today. Writing about the ambiguity of citizenship in the Constitution, political scientist Rogers Smith has

noted that “despite America’s receptivity to brilliant immigrants,” the “unsettled”
parameters for American citizenship and political membership “long permitted ascriptive
denials of rights not explicitly protected by its provisions.” In other words, the
Constitution’s lack of a clear stance on certain fundamental issues allowed for the
possibility that aliens might be repressed when the circumstances—whether they be
economic, social, or political—were not in their favor. As shall be discussed throughout
this thesis, that possibility has often been exploited during periods of crisis.

The divided interests of the Federalist and Republican parties were just as crucial
to debates over the Alien and Sedition Laws. The Federalists, led by John Adams and
Alexander Hamilton, “distrusted the ignorance, passions, and prejudices of the common
man” and “believed that a governing elite was necessary to lead the nation.” The
Republicans, on the other hand, led by Thomas Jefferson and James Madison, were
strong advocates of a limited federal government that was “directly responsive to the will
of the people.” As noted by free speech historian Geoffrey R. Stone, the Republicans
“envisioned a decentralized republic that would stand as a symbol to all the world of the
triumph of individual liberty.” The Federalists took notice of the fact that immigrants
regularly pledged their support to the Republicans, most likely because it would have
been harder for them to sympathize with the mercantile and financial elites that
comprised their ranks. As the Federalists and Republicans began to split further in their
views throughout the worrisome 1790s, Rogers Smith observes that the former
“increasingly came to believe that they could not afford to be so tolerant of disloyalty to

3 Rogers Smith, Civic Ideals: Conflicting Visions of Citizenship in U.S. History (New
4 Geoffrey R. Stone, Perilous Times: Free Speech in Wartime, from the Sedition Act of
1798 to the War on Terrorism (New York: W.W. Norton & Company, 2004), 25.
the national regime by citizens or so welcoming to potentially subversive immigrants.”

Since the Constitution had failed to clearly outline what a nation indebted to immigration should do to protect itself from a possible foreign threat, the country’s first laws permitting the deportation of dissident aliens and the suspension of free speech were left to be defined in light of these fundamental political differences. The reality that the government’s response to crisis periods in American history is influenced as much by attempts to resolve the Constitution’s foundational ambiguities and party politics as they are by the threat itself must be reckoned with in order to understand the problems raised by deportation. The Alien and Sedition Acts of 1798 are the essential starting point to reach that understanding.

Kanstroom notes that “underlying much of the fearmongering that was so characteristic of the 1790s were powerful cultural and racial currents.” With many Federalists already fearful of the French, the French Revolution only worsened the image of these immigrants in America. By the spring and summer of 1798, when the laws were first beginning to be drafted in Congress, France’s imperialist drive into the republics of Europe was well underway. Holland, Switzerland, and Venice had all been occupied and taken over by the “terrible Republic,” leaving many notable American politicians, such as Representative Harrison Gray Otis of Massachusetts and United States Minister to Great Britain Rufus King, to state that the United States itself may very well have been in the sights of the French Directory. Taking a cue from the British, the South Carolinian Federalist Representative Robert G. Harper claimed that England too

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5 Smith, *Civic Ideals*, 139.
6 See Daniel Kanstroom, *Deportation Nation*, 53.
would have been overthrown had it not been for the anti-alien laws they passed there in response to the “domineering spirit of France.” With Harper and other Federalists arguing that it was alien and sedition laws that saved Britain from succumbing to the same perilous fate as the other European republics, it is only a small shock that the acts, controversial though they had been, were signed into law.⁸

Although foreigners of French descent and French sympathizers were obviously a source of serious concern to the Federalists during the final years of the Adams administration, the incumbent party was quick to take issue with any group who rebuked their policies, particularly the Irish. Ireland had been “seething with revolt” throughout 1798, and many Irishmen who took part in the rebellion were ultimately faced with the decision of either leaving the country, a prison sentence, or perhaps even death. Identifying the Federalists with the British who oppressed them back home, the Irish tended to identify with the Republican Party upon their arrival in America. Even more vexing to the Federalists was that many of the Irish making their way to American shores were seasoned veterans in the politics of Great Britain and Ireland, leaving them ready and able to add their voices to existing Republican criticism of the Adams administration.⁹

So upset were the Federalists about the incoming Irish population and their tendency to ally themselves with the Republicans that in the Special Session of Congress in May, 1797, members of the party proposed that certificates of naturalization be made less accessible by levying them with a tax of twenty dollars. When the Republicans

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⁹ Ibid., 23.
opposed this movement, saying that this was a plan “not to raise revenue but to restrict immigration,” Harrison Gray Otis came to his party’s defense with a proclamation that the tax would deter the “Wild Irish” from coming to America and “disturbing our tranquility.” Although the tax failed to move beyond Otis’ unflattering remarks about Irish immigrants, other prominent Federalists such as Senator Uriah Tracy of Connecticut, Minister Rufus King, and William Smith Shaw echoed the concern that the Irish would somehow disrupt the security of the country. As noted by James Morton Smith, it was Shaw, President Adams’ nephew and private secretary, who “pushed the nativist argument to the limit.” In a letter to the first lady, Shaw insisted that “The grand cause of all our present difficulties may be traced…to so many hordes of Foreigners immigrating to America…Let us no longer pray that America may become an asylum to all nations.”

All nations, indeed. Although Federalist fear of the “wild” Irish influenced the proposition to raise the Naturalization tax, the raised cost of citizenship would affect immigrants from all countries.

Anti-alien attitudes among nativists who sought to limit the political power of the foreign born, tense diplomatic relations with France, national security concerns rising from the advancement of the French Revolution into an international affair, and growing apprehensions of the country’s foreign-born all contributed to the environment that led to the Alien and Sedition Acts. It was the XYZ Affair, however, that finally pushed bias against the French to unprecedented heights and paved the way for country’s first federal deportation laws. Having sent three American diplomats to France for discussions with

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10 Ibid., 23-25.
the leaders of the French Directory, President Adams had been hopeful that the two
governments could reach some sort of middle ground. Jay’s Treaty of 1794 had soured
relations between France and America considerably. Although the treaty primarily
“sought to resolve a series of long-standing disputes and to avoid a possible second war
with England,” some Frenchmen interpreted the agreement as a declaration of war
against their country.\footnote{Kanstroom, \textit{Deportation Nation}, 51.} With the French navy now seizing American ships in the Atlantic,
President Adams sent the envoys to France with the hope of avoiding an all-out war.
From October of 1797 to March of 1798, John Marshall, Elbridge Gerry, and Charles
Cotesworth Pinckney remained in France, attempting to work through these differences;
but when President Adams received word in the beginning of March that Talleyrand
denied his three diplomats access to the French Directory, the executive-in-chief ordered
that the negotiations be terminated immediately.\footnote{Smith, \textit{Freedom’s Fetters}, 6-7.}

The United States government published the XYZ correspondence, making it
known to the public that the French attempted to halt negotiations not only until the
American government agreed to provide the French with a loan to aid their war efforts,
but also to pay a preliminary bribe of $250,000. President Adams’ repudiation of the
French earned him the praise of the people as nationalism and anti-French feelings took
the country by storm. A popular slogan among supporters of the Federalists during these
days of anticipating war with France was “Adams and Liberty.” As the international
milieu grew tenser with France’s conquests of Europe’s republics, it seemed that the
United States would be dragged into a war with France at any moment. It is no wonder,
then, that the Federalists’ vehement opposition to all things French initially brought them
laurels from the people of the country. But this slogan, as noted by John C. Miller, was “soon to be given an ironic meaning by the passage of the Alien and Sedition Acts.”

The first of these precedent setting laws was the Naturalization Act of June 18th, 1798. The country’s first federal naturalization law, passed in 1790, made acquiring citizenship relatively accessible—though only for white males—with a minimum residency requirement of only two years. But by the middle of the century’s last decade, the French Revolution brought many French, German, English, and Irish individuals to American shores. With many Americans concerned that some of the new arrivals might have retained sympathies with the French, the Naturalization Law of 1795 increased the residency requirement to five years and was passed easily with the support of both Federalists and Republicans.

The 1798 version of the law germinated during the final month of the 5th Congresses’ first session with an attempt to fix naturalization papers with a tax of twenty dollars, making it much more difficult for most immigrants to afford citizenship. Representative Brooks of New York, however, moved beyond merely increasing the cost of acquiring citizenship. Believing that the five year residence period set by the Naturalization Law of 1795 was too brief, Representative Brooks resolved that a committee be appointed with the purpose of amending that law. When Representative Coit of Connecticut resumed Brooks’ call for an amendment to the Naturalization Law in the second session on April 17th, 1798, a resolution that the Committee for the Protection of Commerce and Defense of the Country address the need for such a change was passed unanimously only two days later. The committee reported that the new naturalization law

14 Miller, *Crisis in Freedom*, 4-10.

15 Smith, *Freedom’s Fetters*, 22-23.
should stipulate a minimum period of residency of at least ten years, for the 1790 and 1795 laws allowed foreigners to gain citizenship “when there was not sufficient evidence of their attachment to the laws and welfare of the United States to entitle them to such a privilege.” Representative Sewall of Massachusetts upped the ante with a movement increasing the residency requirement to fourteen years; this would be the agreed upon length of residency when President Adams signed the bill on June 18.

Two of the more extreme Federalist leaders, Representatives Robert Goodloe Harper and Harrison Gray Otis, objected to the fourteen-year residency requirement but not because of its length. Although he stated that he did not object to aliens residing in the United States, Harper asserted that only those individuals who are born in the United States may be citizens of the country. According to Harper, the interests of the foreign born were inherently different than those of native-born Americans, and it would thus be a violation of the “essential principle of civic society” for individuals with conflicting interests to be participants in the politics of the nation. Although this suggestion was viewed as going too far in its unconstitutionality, Otis proposed his own measure that would have likewise severely curtailed the extent to which immigrants could be involved in government. Referring to the law of Great Britain that barred naturalized citizens from holding political office, Otis recommended that similar measures should be taken in the United States. In lieu of suggesting that aliens be banned from citizenship, Otis proposed that two classes of citizenship be established—naturalized and native. While naturalized citizens would be allowed to vote, only native citizens would be permitted to seek public

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16 Ibid., 27.
office. This “second-class citizenship” was sharply attacked by the Republican representatives Abraham Venable of Virginia and Nathaniel Macon of North Carolina, who both argued that eligibility to hold public office was a right inherent to all citizens, regardless of birth, and that it would be impossible to forge a version of citizenship devoid of the right to be eligible for public office under the Constitution.  

If the Federalists had hoped to waylay the voices of naturalized aliens within the states, their efforts were anything but successful. Despite making it more difficult than ever before for the foreign born to attain citizenship and all of its rights, the Federalists lost any influence they may have had over foreigners who had already become citizens and were thus unaffected by the fourteen-year residency requirement of the new Naturalization Law, in effect strengthening one of the Republican bases of support. What is more, however, the Naturalization Law was not one that would have had much immediate influence on the current state of affairs in the union; more direct and drastic legislation would be necessary for this purpose. Indeed, “stamping out the menace of alien enemies” was the true priority in the eyes of the Federalists, and thus was the stage set for the entrance of the Alien Enemies Act.  

Representative Samuel Sitgreaves, a Federalist from Pennsylvania, proposed that along with making recommendations for how to amend the Naturalization Law of 1795, the Committee for the Protection of Commerce and Defence of the Country should “investigate the status of aliens in the United States.” Fearful of the possible war with France looming across the seas, Sitgreaves noted that the danger of French nationals

18 Smith, *Freedom’s Fetters*, 27-29. Otis was concerned that if enough citizens born in another country were elected to Congress, they would curtail the ability of the House and the Senate to pass exclusionary immigration law.  
19 Miller, *Crisis in Freedom*, 47, 51.
living in America couldn’t be ignored. The “extreme Federalists” Harrison Gray Otis of Massachusetts, Nathaniel Smith and John Allen of Connecticut agreed with Sitgreaves in his proposition that measures be taken against these aliens. Smith contemplated the hazards of not being able to deport aliens whose country of origin “might commit an act tantamount to war without a declaration of war.” Like Smith, Otis criticized further the apparent limitations of the government’s power to manage enemy aliens, proposing an amendment allowing for the deportation of any alien whose government “shall authorize hostilities against the United States.” According to Otis, placing safeguards on the government’s power to deport aliens was the equivalent of “undermining the whole system of national defense.”

John Rutledge of South Carolina furthered the argument, claiming that the United States could not bear the risk of waiting for the French to officially declare war before deporting “French agents and intriguing spies.” Of these men, however, John Allen of Connecticut may be considered the “most suspicious and the most extreme of the Federalists” in his suggestions for expanding government’s authority to deport. Noting that aliens could be naturalized, and thus could become participants in elections, Allen thought that it was not just enemy aliens who should be subject to deportation, but any alien living in the United States. Allen “proposed that the President should have the power to remove any alien at any time for any reason,” regardless of whether the nation be in a period of wartime or peace. Such cautionary measures, Allen argued, would protect “Federalist supremacy” from the potentially damaging political participation of aliens. Allen’s demand for a law granting the federal government the power to deport any

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alien whenever it was deemed necessary was rejected by Representative Sewall, a fellow member of the Federalist Party, but Allen’s hope was not yet lost; despite striking down his colleague’s proposition, Sewall claimed that if members of the House wanted a bill reaching beyond deportation of alien enemies, it should be presented as a separate measure from the law currently in question. This suggestion, of course, would be manifested in the form of the Alien Friends Law.\footnote{Ibid., 37-39.}

Senator Joseph McDowell of North Carolina brought forward the only Republican opposition to the extreme anti-alien sentiment of the Federalists. Unconvinced by the cries of the Federalists that the country needed to be secured against enemy aliens, McDowell demanded that Otis show him evidence of the “spies and seditious persons” infiltrating and threatening the country’s security. Contrary to the apparent beliefs of his peers, McDowell did not seem to think that aliens should be distrusted simply for being foreign born. McDowell feared that an amendment granting the government the authority to deport any alien whose country may demonstrate hostile action without officially declaring war would “distress the minds of foreigners who had been induced to come to America with a view of becoming citizens. They might be treated as enemy aliens even though no war existed.”\footnote{Ibid., 38.} The potential of such distress to discourage aliens from speaking out against the wrongdoings of the government would, he thought, cheapen the promise and the ideal of free speech. For even after these immigrants become naturalized, the fear of being persecuted for their ideas would most probably persist into citizenship, effectively limiting the political voices of naturalized immigrants.
Among the debates hindering the passage of the Alien Enemies Act was that of determining whether aliens were considered “enemies” during periods of foreign aggression or only in officially declared wartime. It was Otis’ opinion that the French aliens currently residing in the United States were enemies, despite the fact that neither France or the United States had not officially declared war. The implementation of such an opinion, as noted by James Morton Smith, would have redefined the term “alien enemy.” According to civil policy as it had been traditionally understood, the status of being an “enemy” was only conferred upon aliens when their native country declared war against America. By viewing the French as enemy aliens when the two countries were not officially at war with one another, the meaning of both alien “friends” and “enemies” would have been drastically altered. In an effort to meet Otis’ concern that the government should be permitted to deport those agents whom he considered “the root of all the evil” in the crisis with France, Representative Sitgreaves suggested that aliens native to any country that should “declare hostility against the United States” be vulnerable to deportation.23

But Republican Representatives Davis and Gallatin quickly responded in demanding that Sitgreaves’ recommendation be held off until Congress determined the constitutionality of such an amendment. Arguing that the words “hostility” and “war” had been distinguished in the Constitution, Gallatin maintained that “there was a difference in the relation between alien subjects of a nation with which the United States was at war and those of a nation with which there was a state of actual hostility.” Due to the vagueness of the term “actual hostility,” Gallatin’s expressed uncertainty at the question

23 Ibid., 37-39, 40.
of whether or not aliens still the citizens of a country engaged in such hostilities with the United States may be legally deported as enemy aliens. It was ultimately determined that “war, invasion, or predatory incursion against the United States” would be the offending acts by which the President would be granted the power to “apprehend, restrain, secure, and remove” any alien of the hostile nation.\textsuperscript{24}

The question of the President’s power in implementing the Alien Enemies law was of primary concern for members of the Republican Party. The language of the bill, in its draft form, would have permitted the President not only to determine the conditions of deportation for any male enemy alien whose country was officially at war with the United States; he also would have been able to “establish any other regulation which shall be found necessary in the premises, and for the public safety.” According to Smith’s analysis, “the bill was an enabling act, directing the president to frame, proclaim, and enforce American policy toward alien enemies in time of war.” Of particularly great concern to Republicans, however, was a provision in the third section of the law that would have implicated any individual—including American citizens—for “knowingly harboring or concealing an enemy alien” or otherwise obstructing the policies determined

\textsuperscript{24} Ibid., 40-41. One of Gallatin’s more intriguing objections to the draft of the bill was the president’s power to “restrain” aliens. In his claim that the term “was not defined, nor was it a legal phrase,” Gallatin strikes at the heart of one of the most troubling aspects of the anarchist clause in the Immigration Law of 1917. Officials within the Bureau of Immigration and the Department of Labor held contending interpretations of the definition of who, exactly, was an anarchist; this uncertainty probably gave the law more teeth than it was meant to have. On a more recent note, the presidential power to define his own terms for “restraining” aliens is troublingly similar to President George W. Bush’s abuse of executive power in indefinitely detaining “enemy combatants” after September 11, 2001. (Another issue raised by Gallatin, the differences between “hostility” and “war,” bears a resemblance to yet another aspect of the Bush administration’s national security policy, the distinction between enemy combatants and prisoners of war.) Both of these problems will be discussed at greater length at a later point in this paper.
by the President. That the punishment for such a crime would be left out of the Alien Enemies bill and left for future determination, either by Congress or the President himself, was particularly troubling. Republicans Bayard and Gallatin scoffed at this notion, claiming that since such a crime was not defined as either treason, misprision of treason, or a misdemeanor, an individual would be in the dark not only about his crime but also the punishment he could expect for having committed it. Ultimately, Gallatin suggested, the bill would make it possible for those suspected of committing a crime to be deprived of life, liberty, or property without both due process and being guilty of any actual crime. It wasn’t that Gallatin opposed a permanent enemy alien act; he simply thought that such legislation must be clearly defined not by the president at his will, but by the congress. Otis refuted Gallatin’s concern by describing a situation in which the French army invaded the country. Any number of French alien enemies may exhibit a “disposition that would warrant their imprisonment,” but members of Congress did not have the foresight to precisely describe what that disposition might be. It was therefore only logical that the President be granted the discretionary power to hold such potentially dangerous enemy aliens; judgment by any other means, such as a trial, would take far too much time and put the country at unnecessary risk.25

As noted by John C. Miller, the Federalists were well aware that a law allowing the government to dispose of alien enemies simply wasn’t enough to ensure the security of the country. Left out of the range of that law were the alien “friends” such as the Irish and English radicals residing in the States that the Federalists feared. Because there was no reason to suspect that the country would enter a war with Ireland, “it was held

25 Ibid., 41-44.
necessary to accompany the Alien Enemies Act with a law giving the Federal
government power to deport, in time of peace, all aliens, whether French, Irish or
English, suspected of being engaged in subversive activities." It was with this in mind
that the Alien Friends act was passed into law as a temporary, “emergency” measure that
permitting the president to deport aliens during peace or wartime. Although the act was
set to expire after two years, the significance of the Alien Friends Act cannot be
underestimated. According to Smith, the Alien Friends act was not only the most drastic
legislation against foreigners among the Alien and Sedition Acts, but was “an extension
of the antiforeignism which had motivated the Naturalization Law” and was created with
the intention of forging a “purity of national character.” Hutchinson has also
commented on the importance of the short lived law, stating it “is of some note in the
history of American immigration legislation for its direct antialien character and for its
initiation of two lasting elements of immigration policy: deportation and manifesting.”
Furthermore, the concern with “subversive activities” and the blatant anti-alienism
attached to the law may permit us to consider the Alien Friends Act as a direct ancestor to
the anarchist exclusion provisions first included in the Immigration Law of 1903.

As argued in the debates over the Alien Enemies Act, a fundamental difference
between the Federalists and the Republicans concerning the Alien Friends Act was
whether or not the government should have the authority to deport aliens merely on the

26 Miller, Crisis in Freedom, 51.
27 Smith, Freedom’s Fetters, 47, 50.
28 Hutchinson, Legislative History of American Immigration Policy, 15. The bill required
that the individual in charge of the ship report the name, birthplace, country of departure,
citizenship status, occupation, and appearance of every immigrant on his ship. For a
review of legislation passed with the aim of collecting information on immigrants, see
Hutchinson, 534-543.
chance that they might commit a crime against the interest of the country’s national security. The Federalists insisted that such authority was necessary, and that the “French system of espionage” would surely stir the country with revolution. In lieu of flatly rejecting these concerns, the Republicans simply asked that the Federalists provide proof of the imminent alien threat that the Federalists described. Gallatin promised that the Republicans would pledge their cooperation to the Federalists in the matter as long as they could produce sufficient evidence that such an alien bill was in fact necessary. The North Carolinian Republican McDowell added that “the stories about secret politics and conspiracies, the existence of a French press in the United States, and a dangerous correspondence between American citizens and the French Directory” were nothing but images conjured up by an administration desperate to see its will turned into law. Indeed, Representative Williams had reservations that the Federalists were merely “instituting an alarm of some sort of danger” so that they may be permitted to compromise the liberties granted to the people by the Constitution.29

The liberties granted to the people by the Constitution, however, were not necessarily guaranteed to all the people residing in the country, argued the Federalists. Otis flatly denied that aliens were entitled to any of the rights outlined in the Constitution. Otis took the words “We, the people of the United States” extremely literally, claiming that the Constitution was “not made for the benefit of aliens” but for American citizens alone. Because they were not considered party to the “people” of the Constitution, Representative Gordon added that any limits dictated by the document on the power of government were not relevant in the case of aliens. As noted by Smith, “this implied that

29 Smith, Freedom’s Fetters, 64.
the government of the United States and of the individual states possessed unlimited power over aliens.” The Federalists did concede, however, that aliens had “judicial guarantees in criminal proceedings,” a right of the Constitution extended to them “as a matter of courtesy.” Because the Federalists did not view deportation as a punishment, however, but as a “preventive measure” to protect the country from dangerous aliens, any alien who might be deported thus lost his claim to those extended rights—if treason was not a crime and deportation not a criminal punishment, then deported aliens wouldn’t need access to legal recourse. Livingston rejected the interpretation. Since treason was clearly criminal, Livingston pointed out that nowhere did the Constitution distinguish between aliens and citizens when it came to the right to legal recourse. Moreover, if aliens were expected to submit their allegiance to the United States if they hoped to become citizens, the United States must likewise pledge to them the right to defend themselves if charged with deportation. Furthermore, Livingston protested that deportation was not just a punishment, but a severe one. It didn’t seem right to the congressman that any man waiting to reach the end of his fourteen-year period of residency should ultimately be denied citizenship because of the suspicions of the president.30

The fundamental question for the Republicans was simply a matter of constitutionality. They wondered whether or not the federal government had the right to deport alien friends at all, and pointed to a number of reasons to support their rejection of that power, among them that only the states or the people had the right to deport alien friends. The Federalists viewed congressional authority to pass federal immigration

30 Ibid., 86-88.
legislation in a different light. If Congress had been granted the power to “provide for the common defense and general welfare” of the country as suggested by the Preamble to the Constitution, then it was indeed the responsibility of the federal government to protect the country from dangerous aliens. Not only were these powers constitutionally granted, but they were also “implied in various grants of power, ranging from the inherent right of every sovereign nation to preserve itself to the right to regulate commerce.” Once more coming to the aid of his party, Congressman Gallatin asserted that despite the fact that the Federalists claimed the heightened insecurity of the current situation granted them excessive power, the federal government was still restricted by clear, constitutional limits on any implied power. Gallatin pointed to the right to suspend habeas corpus as an example. According to the constitution, Congress could only suspend habeas corpus when the country was threatened by an actual rebellion or invasion. If Congress decided it were necessary to restrict habeas corpus despite no rebellion or invasion having taken place (much like the Federalists were currently attempting to do). Gallatin claimed that the Constitution forbade this.\textsuperscript{31}

Ultimately, however, the more severe version of the bill drafted by the Senate would be the one signed into law. The publication of a letter on June 16\textsuperscript{th} from Talleyrand to the State Department in the Democratic newspaper the Aurora convinced the Federalists all the more of a French faction residing in the country; this revelation, coupled with the publication of the XYZ dispatches on June 18\textsuperscript{th}, “spurred [the House] into speedy action against aliens.” Although debates persisted, the act was passed on June 21\textsuperscript{st} and signed into law by President Adams on June 25\textsuperscript{th}. The final form of the bill

\textsuperscript{31} Ibid., 68-72.
retained the provision opposed by the Republicans that granted the president the discretionary power “to order the deportation of aliens whom he suspected of being dangerous to the public safety or of being engaged in treasonable machinations against the government.” As long as the President had “reasonable grounds” to believe that the alien was interested in subverting the government, “he could condemn any alien without hearing any evidence in his behalf and without setting forth the reasons for his finding.”

One of the more striking elements of the final bill other than the President’s broad discretionay power was that an alien charged with deportation was left with the responsibility of providing evidence of his innocence, rather than a trial prove his guilt. In theory, then, an alien was assumed guilty until proven innocent.  

The threat of a faction opposing the government was front and center in the minds of the Federalist government. Defined by Livy, “Factions have been and ever will be with all Nations more fatal in their consequences than Foreign Wars, than Famine, or Pestilence, or any other Public Evils inflicted upon Mankind by the Wrath of Heaven.”

Miller notes that factions “stood for no principles;” that “[they were] held together by the pre-eminence of a leader and the hope of plunder and rapine…union[s] of the vicious, the base and the ignorant under the leadership of the unprincipled.” Viewing any opposition to the Federalist administration as opposition to the Constitution, Adams and his party believed that “there could be no organized political effort that was hostile to peace, good government and the national welfare.” It was thus that the Federalists recognized the Republican Party as the peer of an underground “French faction” underlying American

[32 Ibid., 58-59, 61, 421.]
government. According to the Federalists, they had reason to believe that such a faction could prove ruinous to the wellbeing of the American government. The ideological supremacy of the Divine Right of Kings had reigned supreme throughout France’s history; but once public opinion and the press lost faith in this ideal, the Ancient Regime soon fell to revolution. The Federalists saw this as a lesson to be learned and made it their prerogative to ensure favorable press and silence those who contributed anything else.

The connection of Federalist disdain for aliens and dissenting political opinion is an important one. An anti-immigrant sentiment is dangerous on its own accord, setting a precedent that it is acceptable to harbor feelings of animosity toward aliens until they prove themselves worthy of American citizenship. But to align immigrant populations so early in the country’s history with anarchism and political subversion would only establish a trend in popular American thought about the foreign born. While President Adams signed a number of warrants for deportation, no deportations were ever executed under the authority of the Alien Act. Despite this fact, the law nevertheless remains an important milestone in the history of immigration law for being the first statute to present a framework for a federal deportation policy.

Although it could target citizens instead of aliens, the enactment of the Sedition Act is still vastly important in the history of anti-radical, which often meant anti-alien, legislation. For as we have seen above in the early history of the American Republic, aliens had indeed been figured as agents of anarchistic or radical speech and actions; it is

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33 Miller, Crisis in Freedom, 10-11.
34 Ibid., 56-57, 59.
important, therefore, to view all of the Alien and Sedition Laws as an entire package of legislation aimed at curtailing the rights of aliens and limiting their access to free speech.

Yet another peace time measure, the Sedition Law was set to punish any citizen or alien for any “false, scandalous, and malicious’ statements against the president, either house of Congress, or the government, made with the intent to defame them, or to bring them into contempt or disrepute, or to excite against them the hatred of the good people of the United States.” The most grievous of offenses would land the perpetrator a two-year prison sentence and a fine of $2,000. These provisions, meant to be a “supplement” to the Federalists’ “measures against foreigners,” would mark the Sedition Law, as noted by Smith, as “the capstone of the internal security program of the Federalist Party.”

Congressman Harper led the charge for the Sedition Bill with the argument that it was not only seditious newspaper writers and other seditious individuals who needed to be punished for their words; Republican members of congress were themselves encouraging state subversion. Referring to a letter written by Representative McDowell of North Carolina that, according to Harper, held false accusations about some of the “abominable motives” of House members, the Federalist made the point that the language of such damaging libel must have been intended to incite radical behavior. Such was the intent of the Federalist’s Sedition Law; buried within the heart of any seditious speech against the President, his administration, or the government in general was the intent to bring not just disrepute to those parties, but actual harm or disruption.

36 Smith, Freedom’s Fetters, 94-95.
37 Ibid., 120-121.
Republican opposition to the Federalist position was similar to what it had been in debates over the other laws. Gallatin spoke once more, pointing out that the Federalists had yet to prove “the existence neither of any criminal combinations against the government nor of any new and alarming symptoms of a seditious disposition among the American people.” The only evidence they had was of oppositional opinion to the administration and their policies. A number of Republicans, including Congressmen Nicholas and Livingston, fought the Federalists by pointing out that differing opinions were essential in a “free republican government.” But the Federalists disagreed; sedition and libel, if gone unpunished, would completely debilitate the government’s ability to function. This reasoning allowed the party of Adams to fall back on their argument that it is an inherent right of the government to preserve itself above all else, and if this meant curbing seditious opinions, they had no other choice but to do so. The Republicans met the Federalists halfway on the power implied by the constitution to restrict freedom of speech; it could only be used in the case of an actual threat, not merely “arbitrarily created offenses against the government.”

That members of the Republican and Federalist parties disagreed on both the extent to which seditious speech had spread throughout the country and whether or not the First Amendment should protect such speech is clear. At the root of their disagreements, however, were fundamental differences concerning freedom of speech and the status of the government in relation to the people. According to the Federalists, freedom of speech and freedom of the press were “free” to the same extent as freedom of action. Any individual is free to assault someone else, for example. But after that action is

38 Ibid., 123-124, 132, 135.
committed the perpetrator may be ably punished by the law. Similarly, the Federalists thought, anyone had the right to say or print anything without their words being subjected to any type of censorship whatsoever. But if any statement should prove to be a “false, scandalous, or malicious libel” against the government or any officeholder thereof, they had committed a crime and ought to be punished. 39

This limited concept of “freedom” of speech was not original to the Federalists. In fact, the Federalists borrowed this position from the very government from which the United States sought its independence from only twenty years prior to the passing of the Alien and Sedition Laws. Drawing authority from the common law of seditious libel, the British government held that it “placed the judges of the King’s Bench in a position to condemn any writings which had a tendency to excite and move the people to change the existing order of things.” Since the Federalists deeply feared any speech or action that might disrupt their effectiveness as the rulers of the people, it is little wonder that they fell back on this principle of common law and sought to affirm its authority by turning it into concrete legislation. 40

The fact that the Federalists took their interpretation of free speech from the British government’s pre-Revolution conception of it further reveals how the Federalists saw their position in relation to the people whom they governed. Although the United States was founded on the principle that government must be ruled both “by the people and for the people,” the Federalists, through their agenda of limiting the liberties of the people and their disdain for the opposing Republican Party, showed that they were not in support of a democratic, people-centered government. By immediately considering any

39 Ibid., 136-137.
40 Ibid., 425, 139.
written or verbal opposition to the government, its policies, or its office holders as criminal behavior, the Federalists weren’t only silencing the voices of the people and crushing the philosophy behind which the Revolution was carried out; they were asserting their undeniable superiority as rulers of the masses. Though the Republicans conceded to the fallibility of elected officials and viewed free speech not only as a fundamental right but also as a means of holding the country’s political leaders accountable for their actions, the Federalists held that the people had essentially done their speaking when they elected an official into office. Once elected, such authority was conferred to the official and his peers that any criticism of their judgment was not only unwarranted, but also premature; the time for public criticism, contended the Federalists, was the next election, when inadequate officials could be voted out of office and replaced by someone who the public deemed more suitable.  

Since one of the aims of the American Revolution was to free the colonial press from prosecution under the British common law restricting the press from political discussion, it would be hard for the Federalist’s to justify their position. Smith reminds us that the First Amendment “was added by the people as a further bulwark guarding civil liberties in the United States from governmental interference.” In the concluding remarks of his book on the Alien and Sedition Laws, Smith ends on a strikingly optimistic note. Pointing to Jefferson’s victory over Adams in the election of 1800, he notes that the polarizing Alien and Sedition laws “incited the American people to legal ‘insurgency’ at the polls.” Smith argues that the uprising of American citizens at the polls against the repressive policies of the Federalist Party ushered in a “new political era” for the country,

41 Ibid., 418-421.
bringing the “Age of Federalism” and its assault on liberties to an abrupt halt.\textsuperscript{42} While the election of a new government was indeed important, and certainly reflects the grievances the American people had with the Adams administration, Smith’s exuberance at this rebuking of governmental power is itself exclusionary. By celebrating that the Alien and Sedition Laws “played a prominent role in shaping the American tradition of civil liberties” merely because the Federalists were voted out of office, Smith effectively ignores the long lasting effects of these laws; the Alien and Sedition Laws set a precedent that the rights of both citizens and aliens were liable to be limited even in a democratic government; that, from its inception, the American government viewed aliens as dangerous “others” who would be scapegoated in times of crisis; and, that in the end, criticisms of the government spoken by aliens were deemed unacceptable, silencing a large group of voices and curbing the immigrant population’s ability to contribute to political discourse.

The arguments espoused by the Federalists—the inherent right of federal government to deport “dangerous” aliens with purportedly subversive political beliefs, the limits of the constitutional right of free speech during a national security crisis, and extent of access of resident aliens to that right—did not simply disappear with the election of Jefferson and the shift to Republican government. In many ways, these debates are still very significant. As Daniel Kanstroom notes, “although the deportation parts of the Alien Acts were not directly enforced by the Adams administration, the assertion of federal deportation power—particularly highly discretionary executive power—and, as important, the responses to that assertion, have influenced debates over

\textsuperscript{42} Ibid., 426-427, 430-431.
It wouldn’t be until 1903 that Congress would again pass federal legislation aimed at groups of allegedly radical or anarchistic aliens. Although it may have taken an entire century before the government once more considered it necessary to control dissent for the protection of the country, the second wave of suppression had a resounding impact. Indeed, as Preston notes, “This [1903] law and others like it that followed had their tragic connotations, for however irrational the fears this legislation symbolized, they represented a real loss of nerve and of faith in the virtue of freedom.” The following chapter will begin to explore how this renouncement of freedom and abandonment of the ideal of free speech manifested itself in the exclusionary immigration laws of 1917, and what this meant within the broader scope of both citizenship and the incorporation of immigrants into the American populace.

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Chapter Two

“Insidious Interferences with Freedom of Opinion:” Nativism and Anti-radicalism in the Nineteenth and Twentieth Centuries

The crisis caused by the potential war with France had subsided by 1800 and Jefferson’s election quieted most of the anti-radical nativism that pervaded the country’s politics. John Higham notes that “for many decades confidence in the stability of American institutions and in their appeal to all mankind quieted nationalistic fears of revolution.”¹ This fear may not have been foremost on the minds of most Americans during the nineteenth century, but William Preston reminds us that “the seed of repression and the growth it might take lay buried in the American soil throughout the confident decades after 1798.”²

What spurred anti-alien sentiment to reemerge at the end of the 19th and 20th century? Scholars who have written about nativism and immigration during the 19th century and the early 20th find that concerns about immigrants and their inclusion into American society peaked during periods when the national security was imagined to be endangered. Was 1798 an aberration, or did it establish an accepted practice of prohibiting aliens from participating in contemporary debates about politics and society, and the country, generally? Had aliens been indelibly figured in such a way that radicalism would be marked characteristic among them?

Historian Roger Daniels notes that after the War of 1812, America entered an “Era of Good Feeling” during which European immigration was largely encouraged and

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met little restriction. A large number of states began granting aliens the right to vote, sometimes before they were even naturalized. The path to citizenship, though somewhat marred by fraud and a lack of oversight, was relatively unencumbered. The “good feeling” wouldn’t last for too long without interruption, however. Increased immigration after 1832 and a period of economic instability after the crisis of 1837 initiated a wave of anti-Catholic nativism. Anti-Catholic propaganda had been circulating throughout America since colonial times; now that Catholics were arriving from Europe in large numbers, Americans already embroiled in economic strife considered these new arrivals to be a threat to their own well-being and prosperity. Indeed, the larger numbers of Irish and German Catholics were “seen…as subversive not only of republican principles but of the republic itself.”

The so-called “natives” of the United States, predominantly Protestant in their religious orientation, clashed head-on with the Catholics throughout the 1830s. That this fear of an America despoiled by Catholic revolutionaries has been described as a “curious mixture of rational concern for the nation’s future and invention of wild conspiracy theories” is hardly surprising. The nativist rhetoric of the anti-Catholic movement is immediately noticeable in publications of the time such as Reverend Brownlee’s *American Protestant Vindicator and Defender of Civil Religious Liberty against the Inroads of Popery* (1836); as the title suggests, the anti-Catholic stance was framed as a battle between a self-righteous and defensive America against a staunchly dangerous

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5 Daniels, *Coming to America*, 267.
intruder. As historian David Bennett notes, “the dominant theme was that the ‘papists’ were aliens, immigrants with foreign accents or language, newcomers who subscribed to an ‘authoritarian’ church and came from lands in which democracy was nonexistent.” The anti-alienism at the root of this movement would contribute to the emergence of a second movement against immigration in the middle of the nineteenth century.\(^6\)

An unprecedented increase in immigration in 1854 and growing feeling among nativists that the two-party system was failing to deliver what they considered necessary limitations on immigration and naturalization inspired the creation of several secret societies such as the Order of United Americans and the Order of the Star Spangled Banner. The members of these fraternities—who Horace Greeley of the New York Tribune critically called “know-nothings” for their excessive secrecy—would ultimately coalesce into the American Party. The Party saw the controversy following 1854’s Kansas-Nebraska Act as a way to capture the support of native-born citizens polarized by their views of slavery to bolster their own agenda. Rather than remain entrenched in the debate over whether or not slavery should be permitted, the American Party sought to redirect those hostilities into a common opposition to “Catholics, immigrants, and other groups whose presumed foreign connections corrupted the nation.” Their efforts were initially extremely successful. The Know-Nothings won victories at the polls during the elections of 1854 and 1855 in nine states, adding a number of governors, senators, and representatives to their ranks. For the first time since the Alien and Sedition Laws it seemed possible that Congress could enact anti-immigrant legislation.\(^7\)

\(^6\) Ibid., 37-40.
The influence of the American Party, however, was short lived. The geographically spread Know-Nothings could not agree on which group of “foreigners” to target. With their northern members concerned with Catholics, their southern devotees concerned about blacks, and their western contingent focused on the Chinese, the Know-Nothings simply could not settle their differences and rally around the dangers of one particular group.\(^8\)

While the anti-Catholic movement and the Know-Nothings were making their contributions to nativism, Chicanos were beginning to meet the consequences of nativism in the southwest. Inspired by their “manifest destiny,” Americans had started migrating into Mexican territory in increasing numbers by the middle of the 1830s. While there were only four thousand Mexicans in modern-day Texas in 1835, by that year approximately twenty thousand Americans had settled there. By 1846, hundreds of Americans were living on Mexico’s most western coast. Once the dust settled after the Bear Flag rebellion, the Mexican-American War, and other episodes of violence during the 1830s and 1840s, America absorbed what are now the states of California, Texas, New Mexico, Nevada, parts of Colorado, Arizona, and Utah with the signing of the Treaty of Guadalupe Hidalgo in 1848. The reconfigured border meant that thousands of Mexicans instantly found themselves living in the United States. “Foreigners in their native land,” Mexicans were soon subjected to the harsh realities of the nativist American politics. Although they were guaranteed the rights of American citizens if they stayed in

the newly expanded country, Mexicans were largely cut off from land ownership, political participation, and citizenship.\textsuperscript{9}

The west coast saw continued manifestations of nativism when economic interests and racism led to the formalization of Chinese restriction with 1882’s infamous Chinese Exclusion Act. The act only suspended Chinese immigration for ten years, but was renewed in 1892 and 1902, establishing a standard for the restriction of Asian immigration for years to come. As we shall see shortly, the Chinese Exclusion Act led to a number of Supreme Court decisions whose rulings would influence all deportation cases thereafter.\textsuperscript{10}

John Higham attributes the work of the Know-Nothings and other “Native American” parties with establishing nativist ideology. Although shifting patterns of immigration, population differences among geographic regions, and varying economic, social, and political conditions resulted in different groups of “non-Americans” being targeted at different times, the common denominator was that “broader cultural antipathies and ethnocentric judgments” culminated in the nativist impulse to “destroy the enemies of a distinctively American way of life.” These sentiments never really disappear. As Higham observes, it is often in the context of some “other intense kind of national feeling” that nativism emerges and makes its way into popular opinion.\textsuperscript{11} The sort of “intense kind of national feeling” to which Higham refers as being the impetus for nativism is most fully realized when the country at large is able to identify a group of individuals that pose a formidable threat to Americans and their way of life. As Melvin

\textsuperscript{10} Daniels, \textit{Coming to America}, 271-272.
\textsuperscript{11} Higham, \textit{Strangers in the Land}, 4.
Cohen and David McGowan suggest, when radical, “foreign” ideas can be linked to the ideology of a particular group, such as anarchists, those ideas and those who believe in them are likely to be suppressed. The Haymarket Affair of 1886 provided the occasion for nativism and anti-radicalism to make their comeback. Aliens would once more be largely targeted, this time under the guise of their anarchist leanings.

The “cocksure faith” that Americans held in themselves in the early decades of the nineteenth century would be shaken bitterly by Chicago’s Haymarket Affair of May 4, 1886. What started out on that night in May as an organized, peaceful meeting among a group of Chicago anarchists supporting the eight-hour workday and protesting the shooting of fellow workmen by police officers the day before ended in complete chaos. The meeting was indeed peaceful until its end, when nearly two hundred Chicago policemen arrived on the scene and demanded that the crowd abandon the square. Seconds after the police arrived a bomb was thrown into the group of officers, who reacted by firing their weapons at the several hundred individuals still at the rally. Seven police officers and an unknown number of civilians were killed, and an indefinite number sustained injuries.

It remains unknown whether the anarchists who organized the meeting at Haymarket Square were actually responsible for the throwing of the bomb—indeed, the adverse response of one of the event’s organizers, August Spies, to a flyer promoting the meeting that declared “Workingmen arm yourselves and appear in full force!” and his

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demand that those words be removed is but one example that violence was not the aim of the gathering.\textsuperscript{15} In 1893, \textit{The New York Times} reported that Governor Altgeld of Illinois pardoned three of the alleged Haymarket anarchists serving sentences in prison, who “were practically railroaded to conviction without having a fair chance.” Although the Governor argued that both the judge and the jury were vindictive in their handling of the case, his decision was met with vehement opposition and cries for his impeachment.\textsuperscript{16}

Regardless of the intent or guilt of Haymarket’s organizers, the damage had been done and did not go unnoticed. The public reaction to the explosion of the bomb and the chaos that followed was a mix of alarm and vituperation. Quoting reports from \textit{Public Opinion} following the riot, Higham notes that immigrants were subjects of disdain, referred to as “an invasion of venomous reptiles,” “long-haired, wild-eyed, bad-smelling, atheistic, reckless foreign wretches,” and “Europe’s human and inhuman rubbish.”\textsuperscript{17} Haymarket contributed, Preston notes, to creating “the nativist stereotypes that lasted for many years and helped implant in the public mind the distorted image of the subversive foreigner.”\textsuperscript{18} That these characterizations of immigrants resulted immediately after the bombing, when it had not yet been determined to be a fact that any anarchist involved in organizing the Haymarket protest was responsible for that day’s violence, speaks volubly about the condemnatory and accusatory nature of public reactions to radical behavior involving aliens.

\textsuperscript{15} Henry David, \textit{The History of the Haymarket Affair: A Study in the American Social-Revolutionary and Labor Movements} (New York: Collier Books, 2\textsuperscript{nd} Ed., 1963), 168; see 420-435, passim.
\textsuperscript{17} Higham, \textit{Strangers in the Land}, 55.
\textsuperscript{18} Preston, \textit{Aliens and Dissenters}, 26.
The association of free speech with anarchy could be seen as a source of public concern even in this beginning of the renewed attack on anarchism and its adherents. An article published in the *New York Evangelist* heralded the events of the Haymarket Affair because it promised to finally stop anarchists from being permitted to spread their doctrine of “arson, robbery, universal plunder and murder” as “one of the recognized rights of free speech.” Another article paradoxically recognizes the fact that for most anarchists the belief is little more than “dissatisfaction with the existing social order” while going on to state that the advocating of anarchy “cannot be permitted in this republic while it has among its population creatures who can be incited to deeds of violence by such speech.” Yet another article in *The Chautauquan* adheres to a similar train of thought, stating that although “it is probably dangerous to innocent liberty to restrain licentious freedom of speech,” the “province of free speech” has to be disturbed lest the country “endure a great deal of bloody talk” that could end up, like the Haymarket affair, in “bloody work.” The country could tolerate anarchists if all they did was speak; for some Americans, however, Haymarket proved that they did more than preach.

The Haymarket Affair marked the beginning of a return to the attitude established in 1798 that the speech, ideas, and actions of immigrants who enter this country must not go unwatched. After Haymarket, editors, preachers, and politicians began to figure anarchism “as an alien doctrine which sought to destroy the fundamental American

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liberties”—a trend that would be intensified after President McKinley’s assassination in 1901 by a man with a foreign sounding last name. In an environment where it was not just violent actions that were condemned but also the language that supposedly incited those actions, to assume that alien radicals were dangerous because of their political ideals held dangerous implications for aliens’ rights. The federal government’s renewed interest in the nature of political discourse and its participants would ultimately lead to federal legislation further curtailing the alien’s voice in political and social discussion through federal legislation.

The popular image of the crazed anarchist came into clearer focus in 1892 when Alexander Berkman, a communist anarchist born in Russia and recognized as a peer of Emma Goldman, attempted to assassinate Henry Clay Frick in the name of downtrodden workingmen beleaguered by capitalism. It did not matter in the slightest that individualist anarchists disapproved of Berkman’s actions. Indeed, at the turn of the century many Americans believed that “the crazed adherents of anarchism, however few their number, would stop at nothing to achieve their revolutionary ends.”

The call for dangerous anarchists and undesirable aliens to be deported was heard shortly after Haymarket’s alleged perpetrators had been sentenced, thrown into prison, and hanged. Proposals to either prohibit the entrance of anarchists or deport those already on American soil were introduced in 1888, 1891, 1893, 1894, 1895, and 1897. The striking element about these proposals is the range of their reach, either incredibly broad or relatively specific. Chicago’s Congressman Adams’ measure of 1888, for example,

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suggested that any “dangerous alien” be deported from the country, while Representative Stone in 1894 suggested that deportable anarchists be defined as any member of an organization advocating any activity where “the taking of human life would be the probable result.” The most obvious difference lies in the fact that violence is not defined as a prerequisite to whether or not an alien may be considered “dangerous” in the former law. The latter bill, however, does not say that an individual must commit or participate in the planning of a violent act, only that he be involved in an organization whose campaigns might end in the loss of life.24

The 1894 bill came the closest out of any of these measures to becoming law. In the final hours of the session in which it was introduced, however, Representative John Dewitt Warner of New York voiced his opposition to the bill. The bill granted the government too much power, Warner thought, and reasoned that the law would probably create more anarchists than it would punish. The New York representative’s argument was so powerful that no consensus could be reached before the end of the session. The bill died on the floor.25 Even when taking Warner’s dissent into consideration, it is clear that the physical threats posed by anarchism caused the most fear. That very fear is what would eventually permit the federal government to punish anyone even slightly linked to anarchism. It would take the assassination of President McKinley at the onset of the twentieth century before a “flood of plans to free the nation from the anarchist menace”

resulted in the first federal legislation barring anarchists from entering or remaining in the country.\textsuperscript{26}

If the 1900 assassination of Italy’s King Umberto by an Italian member of an anarchist group hailing from Paterson, New Jersey caused Americans to remember their fear of dissenting aliens, the shooting of President William McKinley on September 6, 1901 turned those fears into acute distress. Although McKinley’s assassin, Leon F. Czolgosz, was a citizen born in the United States, his foreign sounding name and declaration that he considered himself an anarchist initiated a barrage of arrests and public vilification of anarchists. Czolgosz held no ties to any anarchist organization and two of the doctors who examined him thought that insanity might have been the cause of his actions. But anarchism’s association with Haymarket and Berkman’s attempted murder of Henry Frick, as historian Sidney Fine notes, led many “to hold anarchism itself responsible for the death of the President and to view Czolgosz as but the instrument of an alien and noxious doctrine that regarded assassination as a legitimate weapon to employ against government and constituted authority.”\textsuperscript{27}

After the attack on McKinley, newspapers published numerous stories about waves of anarchistic activity that would shortly overtake the nation. Although it was reported that anarchists were planning plots to derail the president’s funeral train, initiate an attack on the funeral ceremony, and assassinate New Jersey’s governor, none of these events came to pass.\textsuperscript{28} Theodore Roosevelt led the charge against anarchists further. In his first address to Congress, the new president claimed that Americans ought to wage

\begin{itemize}
  \item \textsuperscript{26} David, \textit{History of the Haymarket Affair}, 436-437.
  \item \textsuperscript{27} Fine, “Anarchism and the Assassination of McKinley:” 780-781.
  \item \textsuperscript{28} Hong, “The Origin of American Legislation to Exclude and Deport Aliens,” 9.
\end{itemize}
“war” against “all active and passive sympathizers with anarchists.”

All future restrictions placed against anarchists would be informed by Czoglosz’s image, “the anarchist stereotype of the mad bomber who had entered the cultural consciousness,” providing nativist sympathizers with a crutch upon which to support their exclusionary agenda.

Demands that the government fix a solution to the anarchist problem came swiftly from all corners of society. Days after the attack on McKinley, then Immigration Commissioner Thomas Fitchie noted that no law existed to keep anarchists out of the country and that some measure should be taken up to expel anyone whom the government might have some “reason to suspect of being an anarchist.”

Others argued that freedom of speech had to be limited, suggesting that the right had been made “the slave of base passions and vulgar ambitions.” If such misuse of this distinctly American right were to continue, then the demagogues and lecturers of anarchy and “all kinds of lawlessness” would surely result in further disaster.

A writer at The Watchman shared this concern, claiming that Americans have been “exceedingly jealous…of any infringement of the liberty of expressing opinion.” An overzealous defense of free speech practically permitted anarchists to establish their propaganda in cities such as New York, Chicago, and Cleveland, “the great centers of our immigrant population,” creating the preconditions for McKinley’s assassination in the process.

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29 Goldstein, Political Repression in Modern America, 66-67.
33 “A Duty to Civilization,” The Watchman, September 12, 1901.
The emphasis of anarchists thriving in cities with large immigrant populations was directly connected to the idea that anarchism itself was an idea indigenous to foreign soil. Some believed that it was simply impossible for anarchism to arise out of the conditions of American life. Countries such as Russia and Germany, rather, were breeding grounds for anarchy.\(^{34}\) While there was certainly a demand that foreign anarchists be banned from entering the country, Americans had other ideas for immigrants from these countries should they continue to immigrate to America. Surely they could be indoctrinated with an appreciation of their new country’s democratic, American government. Talk of immigrants being ignorant and ready to succumb to the pressures of anarchism was met with demands that nativist groups such as the Daughters of the American Revolution urge their members to give lectures in whatever language necessary “in the slums of the cities where anarchy reigns” so that they might begin to “gradually inculcate a spirit of reverence for government, the only ligament between man and his country.”\(^{35}\) As for the alien-radicals whose minds couldn’t be changed by education, some suggested that they be lynched.\(^{36}\)

The suggestion that anarchism was a doctrine of foreign invention was an inaccurate one, most likely informed by the sheer outrage of Americans at the slaying of their president. Anarchism, in fact, has a long social and literary history in America that dates back to the first quarter of the nineteenth century. Members of religious groups such as the Quakers, whose political leanings were influenced by a belief that organized religion was hampered by hypocrisy and social irresponsibility, disavowed the state for

\(^{34}\) “Can We Stamp Out Anarchy?” *Gunton's Magazine*, October 1901.


\(^{36}\) Sidney Fine, “Anarchism and the Assassination of President McKinley:” 789.
its “anti-libertarian nature.” Although they tended to avoid organizing among themselves, the Quakers quietly joined with like-minded, anti-government pacifists to establish organizations such as the American Peace Society, founded in 1828, and the New England Non-Resistance Society, founded in 1838. Referred to by historians as “native American anarchists,” these religious dissenters relied on the most basic tenets of Christianity as the foundation for their critiques of church and state, claiming that “the essence of Christian morality is the rejection of force, compromise, and the very institution of government.” Led by Adin Ballou, the “New Testament fundamentalist patriarch” of Massachusetts’ Hopedale Community,37 these early proponents of non-violence and minimal government interference with individual lives were among the first Americans to align individual pacifism with a radical social movement.38

The influence of pacifism and anarchist ideas in religious movements soon reached beyond the Quakers and into the press. Josiah Warren, known as the “first American anarchist,” began publishing America’s first anarchist periodical, the Peaceful Revolutionist, in 1833. Warren joined with a number of other individuals who sympathized with his opinion that social control ought to be enforced only by individual self-discipline, and by the 1860’s formed the New England Labor Reform League and the American Labor Reform League. “These two leagues,” William Reichert suggests, “were the source of radical vitality in America for several decades.” It wasn’t until Benjamin Tucker emerged on the scene of anarchists, however, that an American would produce a “definitive synthesis” of anarchist theory. Influenced by Warren and other American

37 James J. Martin, Men Against the State: The Expositers of Individualist Anarchism in America, 1827-1908 (Colorado Springs: Ralph Myles Publisher, Inc., 1970), 76.
anarchists such as Lysander Spooner, Ezra Haywood, and William B. Greene, Tucker merged the work of these native American anarchists with the writings of Pierre-Joseph Proudhon, the anarchist philosopher based in France and Belgium. The son of Quaker parents, Tucker’s natural inclination for pacifism was refined through the meetings and lectures he attended as a young man in Europe, where he first encountered Proudhon’s work.\textsuperscript{39} Through his translation of Proudhon’s \textit{What is Property?} and his work as the editor of both \textit{The Radical Review} and the widely read \textit{Liberty}—whose subscribers consisted of reputable lawyers, journalists, ministers, and Wall Street speculators—Tucker earned the title of “chief political theorist of philosophical anarchism in America.”\textsuperscript{40}

Teaching that the state was an inadequate nurturer of moral and social life and that government should be minimally involved with the lives of the people, Tucker was not only a “direct descendent” of Thomas Jefferson but also had much in common with notable writers such as Ralph Waldo Emerson, Henry David Thoreau, and Walt Whitman. Indeed, as Reichert observes in an article written in 1967, “those who argue that the anarchist idea has never had any appeal for Americans have not taken this aspect of American history into consideration.”\textsuperscript{41} As early as 1889—only three years after the explosion at Haymarket Square that reinvigorated widespread suspicion of radicals—the political scientist Herbert L. Osgood wrote that “Anarchism…is, like socialism, a natural product of our economic and political conditions. It is to be treated as such, both

\textsuperscript{40} Reichert, “Toward a New Understanding of Anarchism,” 858; Yarros, “Philosophical Anarchism: Its Rise, Decline, and Eclipse,” 479.
\textsuperscript{41} Reichert, “Toward a New Understanding of Anarch.” 860.
theoretically and practically. Anarchism is a product of democracy. It is as much at home on American soil as on European.” Despite the fact that at least one political scientist had reckoned with anarchism’s history in America, the numerous attacks that occurred at the end of the nineteenth century and the beginning of the twentieth made the threat of radicalism seem far too real for Americans to acknowledge its indigenous roots in their own country.

The Haymarket affair, Berkman’s attempt to kill Henry Frick, and the assassination of President McKinley were not the only reasons why anarchism, particularly among foreigners, became the target of ridicule at the turn of the century. Johann Most, who immigrated to the United States from Germany, was an active anarchist writer since 1882 and received much attention from the press for the speeches he gave around the country. Most’s audiences, typically other European immigrants, his publications in the German language journal Freiheit, and his Germanic mannerisms brought him much public suspicion and hostility. Although Most failed to have much influence over anarchist thought or theory, his image became synonymous with the European radicals and syndicalists who were rapidly being turned into the new representatives of a supposedly growing movement of violent anarchists—metaphors that not only reinforced mounting suspicions of aliens, but also obscured the contributions that Americans had made to anarchist thought less than a hundred years earlier.

Emma Goldman, perhaps the most famous anarchist of her time, was also largely misunderstood, a “victim of the ideological distortion which characterized the times.”

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43 Reichert, “Toward a New Understanding of Anarchy:” 860-861.
Despite the fact that she was an ardent pacifist and advocate of social justice, the press assailed Goldman as an unwavering proponent of revolutionary violence. Goldman believed that violence was a natural byproduct of a society hampered by the presence of an oppressive government resistant to progressive social change. If the state used force against the people, Goldman thought, it was probable that the people would likewise respond with force. Although she never suggested that the people resort to arms, her refusal to wholly condemn violence brought her much criticism and often put her in the sights of police officers and, ultimately, the Bureau of Immigration for deportation. As Oz Frankel notes, ever since the 1960s Goldman’s posthumous legacy has moved far from the scorn with which her actions were met in the years when she was active.\(^{44}\) Although hindsight has led many to excuse and even revere Goldman for her activism, the months following McKinley’s assassination saw further castigation of her controversial political ideas along with numerous arrests of lesser known individuals who were thought to have conspired in the president’s murder.\(^{45}\)

In the day’s after McKinley’s death twelve men and women were arrested in Chicago and charged with conspiracy, including Emma Goldman. Antonio Maggio, who had been accused of predicting that the president would be killed by the first day in October, was also arrested in New Mexico but was released shortly thereafter. The Buffalo police department requested that two known associates of Goldman, Carl Nold and Harry Gordon, be arrested in Pittsburgh. Like Maggio, they too were released for insufficient evidence. The anarchist who faced the most severe punishment for being


\(^{45}\) Reichert, “Toward a New Understanding of Anarchy,” 861-863.
suspected as an accomplice in McKinley’s assassination, however, was Johann Most. Just hours before the shooting Most published an issue of Freiheit that contained the writings of Karl Heinzen, a German revolutionary who promoted tyrannicide as a means of inciting social change. Most’s attorney argued that persecution under a New York law that “made it a misdemeanor to commit an act which “seriously” disturbed “the public peace” or “openly” outraged “public decency’” violated his client’s freedom of expression. It was ultimately decided that Most’s publication of the controversial material was a crime whether or not it had any connection to McKinley’s assassination, and the defendant was sentenced to imprisonment for one year.46

The hysteria following McKinley’s assassination brought more than potential incarceration to anarchists. On September 15th, about a week after the shooting, twenty-five anarchist families living in Guffey Hallow, Pennsylvania were forced out of their homes and driven out of town by thirty men armed with weapons. On the same night an angry mob ran the staff of the New York based Yiddish language anarchist paper Freie Arbeiter Stimme from their office. Two anarchists living in Union Hill, New Jersey were also driven out of their homes, perhaps a result of the close proximity to Paterson, which a colony of Italian-born anarchists called home. Henry Bool, an individualist anarchist living in Ithaca, New York, was never the victim of an attack. When he submitted articles to the Ithaca Journal and the Ithaca Daily News defending the nonviolent agenda of individualist anarchists, however, Bool was refused publication. “The public pulse, at the

46 Fine, “Anarchism and the Assassination of McKinley,” 781-784.
present time,” explained a business manager for the Daily News, “will not stand anything in the line of the doctrine of anarchy.”

There were some individuals, however, who recognized that the response demanding the exclusion or deportation of any alien anarchist might constitute a suspension of American rights. In an address delivered before the annual meeting of the New Hampshire Bar Association Baron B. Colt, the Presiding Justice of the United States Court of Appeals, called attention to the mass suspicions of anarchists that arose after McKinley’s death. Colt warned that legislation against anarchists alone would not limit further attempts on the lives of America’s leaders—instead, the government simply needed to increase the measures taken to secure the President’s safety when in public. While he continued to condemn the type of “revolutionary anarchist” who would kill the president himself or instigate others to do the same, Justice Colt noted that “very stringent laws respecting immigration and naturalization” would implicate too many innocent individuals, including philosophical anarchists. Philosophical anarchism—which Colt considered “beyond legislative control”—was merely an idealistic, utopian fantasy envisioning the type of society that civilization should strive to reach. According to Colt, even some of America’s greatest philosophical minds could be considered followers of this type of anarchism.

James Beck, the Assistant Attorney-General, echoed Colt’s concerns, defining philosophical anarchists as “a class of honest and law-abiding visionaries” who, though they believe that government should be abolished, completely disavow the use of

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47 Ibid., 785-787.
violence. By virtue of their disbelief in violence, then, these individuals did not fall within the popular definition of the term “anarchism” as it was most widely used. “To prevent any criticism or question of unconstitutionality,” Beck emphasized that any anti-anarchist legislation should define anarchy as a movement that condones violence in order to subvert organized government.\textsuperscript{49} Responding to the recently added exclusion of anarchists in the 1903 immigration law, \textit{The Outlook} expressed support for Americans to petition Congress for an immigration law that would separate philosophical anarchists from their violent half-brethren. Anything less would threaten to suppress freedom of thought for immigrants.\textsuperscript{50} While these individuals took care to transcend the stereotypical image of all anarchists as blood thirsty, no-good foreigners and note that anarchy was not necessarily violent, responses for the suppression of anarchists was by far more common. How, then, did these varied responses to the question of anarchy manifest themselves in the Immigration Law of 1903, the first federal law stipulating that anarchists could not enter or remain in the country?

Rather easily, in fact. The opinions of legislators and the general public regarding alien anarchists after the shocking attack on McKinley were relatively unified: anarchists needed to be kept from entering the country—an opinion which relied on the “erroneous but widely held assumption that anarchism was not indigenous to the United States and…the obvious fact that the President’s assassin was native born.”\textsuperscript{51} Approval of federal legislation against anarchists who were citizens of the country did not come so easily, however. Two bills were presented in the Fifty-seventh Congress that suggested

\textsuperscript{50} “The Special Session's Work,” \textit{The Outlook}, Dec 12, 1903.
\textsuperscript{51} Fine, “Anarchism and the Assassination of McKinley,” 788.
fines and imprisonment for everything from aiding anarchists to advocating the killing of public officials, but the two chambers failed to reach a consensus on which bill was the better one. The session ended without a statute placed in the books. Although Congress may not have been able to agree on a law to suppress domestic anarchists, the legislative bodies of New York, New Jersey, and Wisconsin successfully passed anarchist measures within eight months of the assassination. These laws, Fine notes, inspired legislation “which was to serve as a precedent for the criminal anarchy and criminal syndicalist laws of a later day.”

Despite their conflicting opinions regarding domestic anarchism, members of Congress quickly suggested amendments to the immigration law that would keep anarchists out of the country. It mattered little that the number of violent anarchists who posed an actual threat to the state or its office holders was, in all likelihood, decidedly few. When the grand jury was assembled to render judgment of the Haymarket anarchists less than twenty years before the attack on McKinley, it was reported that the total number of “dangerous” anarchists residing in the United States at that time was about one hundred, though probably between forty and fifty. Members of Congress nevertheless began to pursue broad measures against any alien who might be considered an anarchist.

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52 Ibid., 790-794.
53 The Industrial Commission issued a report three months after McKinley’s assassination recommending a wide range of provisions to restrict immigration. Among the recommendations were a two-dollar increase in the head tax for arriving immigrants, more stringent inspection standards on the land borders, forcing cabin class passengers into inspection by immigration officials, and strengthening the Chinese exclusion and contract labor laws. Although anti-alien sentiments focused on anarchists, legislators notably used McKinley’s assassination as an opportunity to broadly curb immigration. E.P. Hutchinson, Legislative History of American Immigration Policy 1798-1965 (Philadelphia: University of Pennsylvania Press, 1981), 128.
54 Fine, “Anarchism and the Assassination of McKinley,” 777n.
Senator Louis McComas from Maryland was among the first to speak, declaring the need to enact legislation that would both exclude and expel any anarchist from the United States. Other congressmen thought that the punishment for anarchism should be more severe than mere exclusion and deportation. Representative Hoar of Massachusetts suggested that the civilized nations of the earth agree upon some “tract of land somewhere on the earth’s surface, hemmed in from the outer world” where anarchists could be collectively banished. Such a solution, argued Representative Hoar, would be suitable for everyone—civilization granted a society without anarchists, and anarchists granted a society without government.55

Most of the bills proposed by Congress were along the lines of Senator McComa’s offering. Representative Dalzell of Pennsylvania made a motion for a bill that would exclude “persons who have been engaged in any plot against any government, or any of its officers, or who are Anarchists, polygamists, Nihilists, or members of any secret society whose constitution or compact is contrary to the Constitution of the United States.”56 The Senate Judiciary Committee issued a report claiming that immigration laws permitted an undesirable class of immigrants who know nothing about the United States government or its institutions to enter the country. In order to suppress the damage that could be done by these undesirables, the committee recommended that any meeting of anarchists should be made unlawful. In addition, the advocacy of anarchistic doctrine, written or spoken, ought to be outlawed. It was not enough, the committee argued, for these individuals to be dealt with by a federal immigration law; the wisest course of

action would be to establish each of these crimes as a criminal offense so that local and state police could assist the federal government in smothering anarchistic dissent.\textsuperscript{57}

Common to the actions proposed by Congress was an extremely vague notion of who could be deported under the new legislation. Such discrepancies in meaning were not unique to the debates over the 1903 law. When a Senate bill entitled “An Act to Provide for the Exclusion and Deportation of Alien Anarchists” was introduced in 1894, opponents of the measure claimed that one of its chief flaws was the lack of a definition of the word “anarchy.” Although Representative Boatner submitted a report claiming that the bill should not be used against offenders who were not anarchists, he failed to make any distinction between the individual who believes in violence to attain a society without government and the one who doesn’t. Such a lack of clarity would suggest that any person disbelieving in popular ideas of government could be excluded or deported. The bill did not pass.\textsuperscript{58}

William Preston has noted that the 1903 law excluding anarchists from the country and every other law that followed in its footsteps had “tragic connotations, for however irrational the fears this legislation symbolized, they represented a real loss of nerve and of faith in the virtue of freedom.”\textsuperscript{59} The paranoia that accompanied the anti-anarchist provision of the Immigration Law of 1903 would indeed lead to compromised rights, if not for the nation’s citizens then certainly for its immigrant population. If the exclusion of anarchists was meant only to secure the country against widespread

\textsuperscript{58} Boatner, \textit{Exclusion and Deportation of Alien Anarchists}, 53\textsuperscript{rd} Congress 2\textsuperscript{nd} Session, Report No. 1460 (Washington: Government Printing Office, August 20\textsuperscript{th} 1894), 1-3.
violence, attempts to take the president’s life, and real threats to the American people, it did not take long to see that the law would be used for other ends. Indeed, rather than only target alien anarchists for committing violent acts against the government and its people—which anarchists were rarely responsible for—attempts would be made to use the law against philosophical anarchists whose primary offense was an idealist hope for a society where government was unnecessary.

On October 23, 1903, a recently arrived English immigrant and philosophical anarchist by the name of John Turner stood at a podium in front of a crowd at New York’s Murray Hill Lyceum, preparing to give a speech on trade unionism. Turner was arrested, however, before he could get very far into his lecture. Having openly stated his disbelief in organized government at the meeting, Turner was charged with “inciting and promoting anarchy,” an accusation that rendered him deportable.60 Turner’s case was the first to be brought under the anarchist exclusion provision of the Immigration Law of March, 1903. Although the Englishman was ordered deported after a hearing before a board of special inquiry at Ellis Island, Turner was not immediately put onto a ship and sent back across the Atlantic. Because Turner was only a philosophical anarchist and failed to bear much resemblance to the popular conception of the anarchist as a violent destroyer of government, an inevitable question loomed over the case, a question that would bring Turner and his pending deportation before the United State Supreme Court: was it constitutional to deport philosophical anarchists?61

60 Article 3 -- No Title, Life, December 24, 1903; Mass Meeting Against Law Holding Turner,” New York Times, December 4, 1903.
61 Goldstein, Political Repression in Modern America, 68.
Turner was not without allies, at least outside the Bureau of Immigration. Shortly after Tuner’s first order of deportation, a group of men and women gathered in New York at Cooper Union to protest the decision and the 1903 Immigration Law that, apparently, granted the government the power to deport an alien for his political opinions. The speakers at the Cooper Union rally damned the government and Secretary Cortelyou of the Department of Commerce and Labor, whose position entitled him to the responsibility of settling matters of deportation. Their actions, they claimed, were more “un-American” than anything Turner had done, said, or believed in. How could the government expel a peaceful, law-abiding man for nothing more than an opinion? How could such a decision be made in a courtroom with no witnesses or jury present? How could such a “high-handed offense” be committed against the country’s Constitution and its ideals?

John De Witt Warner, the lone congressman who spoke out against the anarchist exclusion law presented in 1894, was one of the many speakers at the rally. Warner argued that the statute in question would incriminate any “high-minded” and “good-intentioned” man who didn’t believe in organized government just the same as it would “the dynamiter or the midnight assassin.” Turner was not alone in his convictions, Warner explained, as “some of the purest and noblest of our own race” had criticized government and argued for its abolition. Above all, however, Warner condemned the legislation permitting Turner’s deportation as “an attack upon every principle of free thought, let alone free speech, that our land has held sacred.” Indeed, the speakers at the Cooper Union meeting railed not only against the Immigration Law of 1903, but against
its unconstitutional interpretation that an alien could be excluded or deported merely for a belief.\footnote{\textit{Mass Meeting Against Law Holding Turner,} \textit{New York Times}, December 4, 1903.}

About two weeks after Warner and the Cooper Union protesters rallied in defense of Turner and the Constitution, the \textit{Independent} published a letter of protest written by John Turner himself while he was “locked in a cage nine by six feet, strong enough to hold an elephant” on Ellis Island. Recalling the moments after his arrest, Turner shares with readers how amused he was when police officers became visibly frustrated and made crass remarks after they found that the only “weapon” he had been carrying was a penknife. A “secret service man,” Turner remembered, “became vulgar on his inability to find even a pocket for a gun.” The authorities were convinced, so it seemed, that Turner’s link to the Trade Union movement somehow suggested that he was a violent and dangerous man. After relating his experiences after the arrest, however, Turner got right to the heart of the controversy of his pending deportation. In his letter, the detainee seems less concerned about his own fate than he was about Warner’s suggestion that the new immigration law curtailed freedom of speech: “Have Americans so little faith in the principles of liberty they profess to love? If so, her institutions have become rotten before they are ripe. Personally I cannot credit it, and tho [sic] I may be deported, I shall look for her return to more robust principles by abrogating this insidious interference with freedom of opinions.”\footnote{John Turner, “The Protest of an Anarchist,” \textit{The Independent}, December 24, 1903, 1-3.}

According to Turner, the provisions of the Immigration Law of 1903 set a “vicious precedent” that put the constitutional guarantees of the country at dire risk. “How long before other opinions will be placed on the list?” Turner asked, and warned
that, “one by one, all those who do not comply with the desires of the party in power will be denied admission.” Turner’s indignation of the law and the new direction that the American government seemed to be taking regarding dissent might have been considered a rational concern had the country not become so worried about radicalism after McKinley’s assassination. It is significant that Turner, the first person to be implicated under the new immigration act, was so outspoken not merely about his own deportation but also about the potential for future injustices that the bill would make possible should the court sustain his expulsion. “It is the beginning of a new political tyranny,” Turner claimed. Hyperbolic though the statement may seem, this conclusion was not such a stretch if the immigration law remained a tenable means by which to suppress the free expression of ideas.64

Three days after his deportation was ordered John Turner filed a petition with the United States Circuit Court for the Southern District of New York in which he challenged that the ruling for his deportation was unfounded. A peaceful man in the business of promoting the interests of organized labor, Turner argued that by way of his deportation and detention at Ellis Island he was being denied due process and “equal protection of the laws, contrary to the Constitution and laws of the United States.” Turner was not without help in his appeal. Philosophical anarchists were already becoming increasingly leery of the attempts to repress their political views after McKinley’s assassination. Like Turner, anarchists thought that the campaign of attacks on their opinions was a sign of “future efforts to suppress all unpopular views, all expressions of dissent,” and they urged Americans to resist further limitations on free speech. On November 14, 1903, supporters

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64 Ibid., 3.
of Turner banded together to establish the Free Speech League in order to help the deportee acquire legal defense. The attorney that the League secured for Turner was none other than Clarence Darrow.⁶⁵

By the end of his life, Clarence Darrow would achieve much fame as the impassioned defender in the high profile cases of “Big Bill” Haywood, Nathan Leopold and Richard Lobe, and John Scopes. Remembered most for being a “courtroom hero,” his biographers note that he was much more: a “folk hero, an American legend…a social philosopher, a debunker, an educator, a lecturer, an aroused gadfly, a writer penning his words as he addressed juries.” Most notably, however, Darrow was a constant advocate of free speech and thought for all individuals. His appreciation of the off-kilter and tendency to position himself against popular opinion is probably what attracted him to radical social and political ideas.⁶⁶

Indeed, Clarence Darrow was not unfamiliar with anarchism. Although he considered the anarchy of Tolstoy and Kropotkin to be “a far off dream,” he was nevertheless impressed with their teachings: “So, without having any specific radical faith, I always was friendly toward its ideals and aims, and could feel and see the injustice of the present system, and generally found myself in conflict with it.” Although he would largely disavow pacifism as ineffective during the war, Darrow wrote in his autobiography that he was “an ardent reader of Tolstoy” and “regarded [himself] as one of his disciples.”⁶⁷ Inspired by the writings of Tolstoy—who Darrow noted “was the first,

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and in fact the only, author of my acquaintance who ever seemed to me to place the doctrine of non-resistance upon a substantial basis”—he wrote a tribute to non-resistance in 1902, *Resist Not Evil*. It mattered little, Darrow claimed, that the theory of non-resistance probably could not be “enforced and lived” in the present time. What mattered above all was “whether it is the highest ideal of life that is given us to conceive.”

The only reason why non-resistance—and by proxy, philosophical anarchism and pacifism—was unrealistic, Darrow explained, was because “the idea of punishment, of violence, of force, is so interwoven with all our concepts of justice and social life that but few can conceive a society without force.” His musings on the matter deserve to be quoted at length:

> The thought never suggests itself to the common mind that nature, unaided by man’s laws, can evolve social order, or that a community might live in measurable peace and security moved only by those natural instincts which form the basis and render possible communal life. To be sure, the world is full of evidence that order and security do not depend on legal inventions. From the wild horses on the plains, the flocks of birds, the swarming bees, the human society an association in new countries amongst unexploited people, suggestions of order and symmetry regulated by natural instincts and common social needs are ample to show the possibility at least of order or a considerable measure of justice without penal law. It is only when the arrogance and the avarice of rulers and chiefs make it necessary to exploit men that these rulers must lay down laws and regulations to control the actions of their fellows.

The very existence of “radical” doctrine was a product of the repressive nature of the state, Darrow argued. There is little doubt that Darrow brought these ideals with him into the courtroom when he argued on Turner’s behalf—and, as we shall see in the following chapter, when he volunteered his efforts to a similar case that never made it out of the Bureau of Immigration and into the courts.

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69 Ibid., 48-49.
Along with his partner Edgar Lee Masters, Darrow argued that the 1903 law was “in contravention of the First, Fifth and Sixth articles of amendment of the Constitution, and of Section 1 of Article III of that instrument.” The Supreme Court justices failed to sympathize with Turner, claiming that the alien’s determination to give an address about the Haymarket Affair entitled “The Legal Murder of 1887” and his association with the anarchist Herr Most refuted any argument that Turner had not contemplated “the ultimate realization of his ideal by the use of force or that his speeches were incitements to that end.” The law clearly stated that no anarchist advocating the use of force or violence to overthrow the government could remain in the country, and the Supreme Court Justices claimed that Turner lacked the evidence necessary to prove that his speeches were not meant to overthrow the government by those means. Furthermore, even if Turner were one of those anarchists whose “views are professed as those of political philosophers, innocent of evil intent,” and Congress did mean for the word “anarchists” in the law to include these peaceful anarchists, such an interpretation could not be held as unconstitutional. Such an interpretation, if that were the intent of Congress, would only have been enacted if Congress was:

of the opinion that the tendency of the general exploitation of such views is so dangerous to the public weal that aliens who hold and advocate them would be undesirable additions to our population, whether permanently or temporarily, whether many or few… We are not to be understood as depreciating the vital importance of freedom of speech and of the press, or as suggesting limitations on the spirit of liberty, in itself, unconquerable, but this case does not involve those considerations. The flaming brand which guards the realm where no human government is needed still bars the entrance, and as long as human governments endure, they cannot be denied the power of self-preservation, as that question is presented here.
The Supreme Court’s opinion in this case seems to suggest that when it is necessary, Congress may enact legislation that prohibits an immigrant’s expression of opinions, making political conformity a prerequisite to naturalization. Turner himself fell victim to this interpretation—the Supreme Court affirmed Turner’s deportation on May 16, 1904.70 While the decision was met with protest, some lauded the change in direction of national policy, claiming that the decision affirmed the power of the United States to “exercise a rational control over the discourse of persons who come here from foreign parts to preach doctrines that, whatever may be the professed intent of the preacher, do demonstrably tend to put ideas about murder and assassination into the empty skulls of those who listen to them.”71 There is little doubt that the anarchist craze contributed to the belief that the political ideas of immigrants were an unwelcome addition to the polity.

The ruling to deport Turner was not without some precedent. The right of the federal government to deport aliens had been affirmed in a case that was, like Turner’s, also linked to widespread intolerance of another group of immigrants. Racism and economic insecurity influenced legislators to enact laws barring Chinese immigration and providing for the deportation of Chinese living in America in 1875 and 1882. In 1893, the Supreme Court officially granted the federal government the authority to deport any alien, at any time, and for any reason in the case Fong Yue Ting v. United States. While some might argue that aliens have the right to due process of the law, or to pursue life, liberty, and happiness without fear of being expelled for their political beliefs, the justices in this landmark case ruled that it was the “inherent and inalienable” right of any independent nation to deport immigrants from its borders. During a time when few were

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70 Turner v. Williams, 194 U.S. 279 (1904).
campaigning for the rights of Chinese immigrants in America, the court’s decision in *Fong Yue Ting* was devastating not only for Chinese immigration but also for any aliens in the future who might, for whatever reason, become the targets of scrutiny and repression. It was thus that the Federalist’s main argument for the passing of the Alien and Sedition Laws—that the state had a fundamental right to protect itself that preceded individual rights, citizen or alien—was supported by the Supreme Court.\(^\text{72}\)

Three justices did express their dissent of the ruling, however, complicating the majority conclusion that aliens were not subject to any of the rights laid out by the Constitution. Justices Brewer, Fuller, and Field contended that while an alien excluded from the country does not have the same rights as American citizens because they are never technically within the country, resident aliens ought to have the same Constitutional protections as citizens. Claiming that the decision to allow deportation granted the federal government “unlimited and arbitrary power” that was at odds not only with the Constitution but also with the very principles of justice that the country had been founded upon, Chief Justice Fuller declared the right to deport “absolutely void.”\(^\text{73}\) Fong Yue Ting’s case, which was more directly concerned with *habeas corpus* than freedom of speech, did more than establish a precedent that aliens could be deported. In light of the dissent offered by justices Brewer, Fuller, and Field, the decision of the case set a standard regarding aliens and their constitutional rights—arguably, that they didn’t have any.

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\(^\text{72}\) Hong, “The Origin of American Legislation to Exclude and Deport Aliens for Their Political Beliefs,” 5.
\(^\text{73}\) Ibid., 5-6.
In his defense of Turner, Darrow used the dissent of the justices to bolster his reasoning that the state’s right to defend itself was an inadequate argument to contravene the First Amendment. To allow the free discussion of ideas, Darrow argued, was actually in the state’s best interests. For if people were permitted to discuss ideas—even the radical ones—without worry of prosecution than those ideas would be validated as part of the public discourse, reducing the likelihood of violence. Professor Ernest Freund of the University of Chicago supported this reasoning:

It is of the essence of political liberty that [free discussion] may create disaffection or other inconvenience to the existing government, otherwise there would be no merit in tolerating it. This toleration, however, like all toleration, is based not upon generosity but on sound policy; on the consideration, namely, that ideas are not suppressed by suppressing their free and public discussion, and that such discussion alone can render them harmless and remove the cause for illegality by giving hope of their realization by lawful means.74

Freund’s contemporary Zechariah Chafee Jr. of Harvard University contributed a defense of free thought in his 1920 publication *Freedom of Speech*. Regarding anarchy—which the professor noted had “no necessary connection with violence”—and free speech, Chafee argued for the value of free speech not as an individual right but as a liberty that is of great social interest to the entire community. If an individual’s right to free speech were suspended, Chafee claimed, the society at large would be “denied the privilege” of listening to an idea that might be a valuable contribution to the public discourse. If we consider free speech not as an independent action but as one that is dialogic in nature,

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then, to deport a philosophical anarchist merely for his belief would constitute an 
abridgement of free speech.\textsuperscript{75}

If all persons residing in the country, including resident aliens, should be entitled 
to the rights of the constitution, as Justices Brewer, Fuller, and Field argued in \textit{Fong Yue Ting}, than it was unconstitutional to deport Turner for his philosophical anarchism. What 
was perhaps an even greater concern to Darrow than Turner’s deportation in particular 
was the fact that if the decision to deport him were sustained, the ruling would represent a 
change in direction in which “there was no logical limit to the class of aliens that could 
be affected by exclusion and deportation legislation.” As noted by historian Nathaniel 
Hong, this was an observation made with “remarkable foresight,” as it would be this type 
of reasoning that would permit the government to expand the anarchist exclusion 
provisions in 1918 and deport people by the hundreds during the Red Scare.\textsuperscript{76}

Interestingly, the record of Turner’s Supreme Court case shows that his attorney 
made reference to the Enemy Alien law of 1798. The court, however, was of the opinion 
that the controversy and declarations that the Enemy Alien law was unconstitutional had 
nothing to do with Turner’s case because the Alien and Sedition Laws were passed 
“during a period of great political excitement…it is entirely different than the act before 
us.”\textsuperscript{77} Such an assumption seems to deny the fact that the 1903 Immigration Law was 
influenced directly by McKinley’s assassination, surely a moment of great excitement in 
which suggestions for how to deal with alleged alien anarchists were influenced by

\textsuperscript{75} Zechariah Chafee Jr., \textit{Freedom of Speech} (New York: Harcourt, Brace and Company, 
1920), 273, 283-284. 
\textsuperscript{76} Hong, “The Origin of American Legislation to Exclude and Deport Aliens for Their 
Political Beliefs,” 15-16. 
\textsuperscript{77} Turner v. Williams, 194 U.S. 279 (1904).
frenzy. The proposed need to restrict the speech and political beliefs of aliens during World War I—undoubtedly a period of “great political excitement”—would present an environment far more similar to that which led to the Alien and Sedition Laws.

The years following McKinley’s assassination and Turner’s deportation saw a vast increase not only in suspicion of political radicals, but also of members of labor movements. Strikes and militant activity led by the Western Federation of Miners brought on their “brutal suppression” between 1903 and 1907. State militia in Colorado launched a crusade on the WFM between 1903 and 1904 that, according to historian Robert Justine Goldstein, “exceeded in ferocity and brutality anything in American labor history up to that time.”78 The depression of 1907 only increased worker agitation and fears of unrest among laborers, and New York, Connecticut, Nevada, and Philadelphia all bore witness to violent clashes between workers and police. When in 1908 a self-confessed Italian anarchist murdered a Catholic priest in Denver, Chicago’s police chief was injured in what was believed to be an assassination attempt by an anarchist, and a man killed himself and a bystander when he tried to throw a bomb at police officers in New York City, the anti-labor sentiment was joined by an anti-radical offensive and created a “nationwide scare” that lasted until 1909. The government attempted to take advantage of the scare with a “major campaign to deport alien anarchists,” but the effort failed to deport anyone. Although the anarchist scare itself didn’t last very long, suppression of the labor movement continued to increase. The United Mine Workers were shut down in Alabama after organizing more than half of the state’s coal miners. Although the International Ladies Garment Workers Union “won a major victory in the

78 Goldstein, Political Repression in Modern America, 72.
dress and waist industry in New York City during a 1909 strike,” police officers arrested over seven hundred strikers while cheering on “company-hired thugs” who “brutally beat” the strikers, many of them young girls. A 1909 strike by the International Workers of the World in McKees Rock, Pennsylvania resulted in the death of twelve strikers and police officers, with another forty strikers injured, as well as the arrest of the entire staff of Solidarity, an IWW publication.\textsuperscript{79}

Increased opposition to the labor movement and “the increasing appeal of radical doctrines to American workers” led to further repression between 1910 and 1913. A series of major strikes conducted by the IWW, the UMW, the American Federation of Labor, and the Brotherhood of Timber Workers were struck down with severe bouts of violence that left many dead and injured. The most infamous of these incidents was the Ludlow Massacre. When the United Mine Workers initiated a strike against the severely repressive conditions of the Colorado coal fields, “where the coal companies owned the school buildings, chose the teachers, censored books and movies, and controlled elections,” strikebreakers and “mine guards” were brought in to keep the disruption to a minimum. On April 20, 1914, state militia burned a tent colony setup by the UMW, killing eleven children and two women. After the miners struck back, seventy-four people were killed and three hundred miners were indicted “for murder and other crimes.”\textsuperscript{80}

From 1914 to 1916, amid a staggering economic depression, the country went through yet another anarchist scare. Violent acts committed by anarchists in New York City, San Francisco, and Chicago all contributed to further repression of anarchists, including the multiple arrests of Emma Goldman and the breaking up of meetings by

\textsuperscript{79} Ibid., 76-80.
\textsuperscript{80} Ibid., 84-93.
police officers who threatened to arrest any anarchist they could get their hands on. By 1914, nativism “had reached a level of hysteria and violence” that the country hadn’t seen since the 1890s. When President Wilson started preparing the country for possible entry into World War One, “the increasing fears being expressed about the patriotism and loyalty of labor, radicals, and anti-preparedness ethnic factions” increased substantially. Focused on instilling a feeling of proud nationalism within the country, Wilson took to the stump and made radicalism, disloyalty, and dissent synonymous with the foreign-born in America.\(^{81}\) Wilson’s pleas for unity among Americans were matched by the Americanization movement that took the country by storm in the second decade of the twentieth century. As a campaign really meant to unite the “native” and otherwise conforming individuals residing in the country, the Department of justice took advantage of radicalism’s association with immigrants in order to garner support for the war.\(^{82}\) This was the national mood as legislators once more considered revising the country’s immigration law.

The Immigration Law of 1917, passed only two months before the entry of the United States into World War I, was a product of the more overt anti-alien sentiment of the beginning of the 20\(^{th}\) century and the isolationist fervor created by the war abroad. For the first time in the country’s history Congress had successfully passed a literacy test into the law—over the veto of President Wilson—which required immigrants to show themselves proficient in a language of their choosing, ensuring that incoming waves of naturalized citizens would meet an educational standard befitting Americans. Another

\(^{81}\) Ibid., 93-100.

section of the law, the “Asiatic barred zone provision,” completely excluded immigrants from Asian countries within a set area marked by lines of latitude and longitude. The 1917 law also extended the list of excludable aliens, adding “vagrants, stowaways, persons suffering from tuberculosis in any form, and those who advocate or teach the unlawful destruction of property or are affiliated with or members of organizations that do so.”

Although the exclusion of aliens advocating the destruction of property was the only new amendment to the law’s anarchist exclusion provision, the changes made to the Immigration Law of 1917 demonstrates the extreme anti-immigrant attitude that pervaded the nation. The Espionage Act of 1917 and the Sedition Act of 1918 were passed in direct response to the war, but the increased restrictive measures of the new immigration act could very well be seen as an extension of the president’s espionage and sedition policies aimed at securing the country during a tenuous international crisis. That members of Congress positioned themselves so adamantly against immigration exhibits the general unease felt toward the country’s non-citizens—indeed, the concern to deter anything or anyone considered “un-American” from spoiling the country was paramount. The language of the Congressmen who were debating these provisions of the 1917 Immigration Act would encompass the subject of a fascinating study in nationalist ideology during wartime and national crisis periods in its own right. I merely hope to show that the suppression of political speech among immigrants by enforcement of the anti-anarchist law was part of a larger, more encompassing swell of restriction against the immigrant.

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83 Hutchinson, Legislative History of American Immigration Policy, 164-167.
The most recurring theme throughout the debates over the new Immigration Law was that American citizenship was a right permitted only to those who met some moral standard or satisfied some racial prerequisite. The country had long used race as a means of filtering would-be citizens of the country. The country’s first federal naturalization law mandated, for example, that only “free white males” could naturalize. But the extent to which legislators claimed, without reservation, that certain races were unwelcome additions to the American population is shocking. In his defense of barring Asian and African immigration to the country, Senator Reed prefaced his argument by declaring that he had “no prejudice…against any particular race of men.” He then continued to proclaim that “the time has come when we ought to keep our country from being filled up with people who are not capable of becoming first-class citizens of the United States; people who, by birth, by environment, by disposition, or by dense ignorance, are not qualified to perform the duties of citizenship.” Senator Vardaman confirmed Reed’s concern and summarized his understanding of both the literacy test and the Asiatic barred zone to their most essential elements: since race determined mental ability, the laws were meant to exclude based on race, not on intellect. “The best educated negro in the world,” Vardaman explained, “is not as capable of understanding the genius of American institutions as the average illiterate, sound-minded white man; it is not in the strain of blood.” The senator had no problem whatsoever with each race governing itself in whatever way it sought to; he simply wanted to ensure that those “darker races of the Orient or the degenerate races of Europe” did not “vitiate the pure Caucasian blood of America.”

Senator Smith of South Carolina objected to the inclusion of the Asiatic barred zone, but not because he thought there was something wrong with exclusions based on race. Concerned that the area within the boundaries of exclusion would unnecessarily keep out “men within that territory of the highest intellectual attainments, men of the pure white blood,” Smith proposed that the only way to truly protect American citizenship was to be “big enough” to exclude Mongolians, Africans, and members of the Tartar race. The right for the country to protect itself, to “secure our land against an invasion by those who are unfitted for American citizenship,” was one that every independent nation was entitled to and ought to use in order to preserve itself. Senator Reed once more addressed his fellow legislators, picking up where his colleague concluded. The greatness of the country—or the “temple of human liberty,” as he referred to it—was only as great as its citizens, Reed suggested. The real aim of the bill, Reed reminded the senate, was to protect America from “an influx of undesireables,” for as long as “the individual pillar is strong, so is the temple of liberty secure.”

Senators McCumber and Phelan echoed the undesirability of certain immigrants and America’s position as a nation that demanded a high standard of quality among its citizens. If the purpose of the law was to “defend the standard of American citizenship,” McCumber argued, the United States need not worry about the state of affairs in other countries and ought to enact the law in order to restrict individuals whose citizenship “would be detrimental to the interests of our own.” Turning to history as a means of explaining why America should restrict Asian immigration, Senator Phelan lectured the legislature about Europe’s success in “always fighting a horde of migratory Asiatics to

85 Ibid., 160-162.
protect and save our civilization.” Americans, Phelan declared, were “making that same fight on the Pacific coast today…saving this country from Asiatic contamination.”

The intensely ideological position among congressmen that the United States needed to protect itself from undesirable residents was indeed one that seemed to be felt about all incoming populations during this insecure time in world history. In an article written several months before Congressional debates regarding the immigration law, Professor Robert De C. Ward of Harvard University warned Americans that the decreased flow of immigration induced by the war would not last long. The country had to enact new legislation to secure the nation from undesirable populations, and it needed to do so immediately, Ward urged. Although the majority of immigrants arriving on American shores were from northern and western Europe, once the war ended the tide would turn and bring the “least fit” immigrants of Europe—namely, those from the southern and eastern parts of the continent. Those who knew the facts of immigration, according to Ward, were aware that the end of the war would inspire emigration of these “mentally and physically undesirable aliens” and those who were deemed “economically or racially unfit” to enter the country. These southern and eastern Europeans and persons from western Asia had to be restricted for the benefit of the country’s “mental and physical welfare…the most important of all our national responsibilities.”

As for those who defended immigration to America and lauded the country’s reputation as a refuge for the world’s oppressed, Ward declared that they were either insincere or naïve, that if the country were to be without further restriction than their

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86 Ibid., 266, 272.
beloved “asylum” would become an “insane asylum.” As much as the idealists claimed to support open immigration, Ward explained, they simply had no idea of the consequences the “incoming millions upon millions of Chinese, Japanese, and Hindus” would have on the country’s wellbeing. For Ward, Congress, and other restrictionists, both the problem and the solution were clear: the threat of undesirable immigration was very real and a stricter immigration law was the way to prevent it.88

Indeed, popular opinion toward immigration in general and all of the country’s foreign born was at an extreme low during the years leading up to and during World War One. With the passing of the Espionage and Sedition Acts in 1917 and 1918, the government’s attempt to safeguard the country against dissent would commingle with the patriotic nationalism taking the country by storm. The government, deadly serious about protecting the country’s national security, held little reservations about impinging the ideals of free speech and free expression in order to do so. In the following chapter we shall see how these ideas carried themselves out in a deportation case that would lead to the rewriting of the 1917 Immigration Law’s anarchist exclusion provisions in 1918 and help set the stage for the post-war Red Scare.

88 Ibid., 444-445.
Chapter Three

“To Reach the Underlying Thought:” The Deportation Hearing of Schulim Melamed

The assassination of President McKinley in 1901 and the country’s entrance into World War I in 1917 re-invigorated the anti-radical and anti-alien sentiment established with the Alien and Sedition Acts. Turner’s deportation, which critics have assailed in hindsight, set a precedent for defining the minimal offenses (if the term even applies) for which an alien could be punished. Although Turner’s case was carried out to deportation, the number of successful implementations of the law in the years following was minimal. Nevertheless, fear of political dissent among immigrants remained a concern of immigration officials. The case of Schulim Melamed, a harmless idealist enamored with the works of Leo Tolstoy, Thomas Payne, and Walt Whitman who was arrested for his belief in philosophical anarchism, would stir so much controversy inside the Bureau of Immigration that Congress ultimately changed the language of the immigration law in 1918 to definitively show that the term “anarchists” applied to any immigrant with radical political opinions—a move designed, so it seems, to act as a concealed arm of the Espionage and Sedition Acts.1

Section Three of the Immigration Act of February 5th, 1917 mandated that a number of classes of aliens would not be granted entry into the country. Among those

1 Kenneth D. Ackerman, Young J. Edgar: Hoover, the Red Scare, and the Assault on Civil Liberties (New York: Carroll & Graf Publishers, 2007), 145. In my research for this thesis over the last academic year, Ackerman’s is the only publication I have come across that mentions the Bureau of Immigration’s attempt to deport Melamed and the controversy it produced. Unfortunately, he discusses it only for a few paragraphs and incorrectly implies that Secretary of Labor Wilson approved Melamed’s deportation. I hope, then, that my overview of the proceedings presented in the following pages will serve as a suitable introduction to a case whose significance has thus far been overlooked in historical scholarship.
classes were “anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States, or of all forms of law, or who disbelieve in or are opposed to organized government, or who advocate the assassination of public officials, or who advocate or teach the unlawful destruction of property.” Section Nineteen of the same law held that “any alien who at any time after entry shall be found advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials” will be deported under the authority of a warrant signed by the Secretary of Labor.²

This version of the law’s anarchist clause would not be in effect for very long. On May 25th, 1918, the Secretary of Labor William B. Wilson wrote a letter to the chairman of the Committee on Immigration, Representative John Burnett, about “the problems that have arisen concerning aliens of the so-called anarchistic classes.” Wilson writes that the country’s entry into the war—the United States had officially declared war with Germany on April 6th, only two months and one day after the 1917 Act’s passing—was creating problems with the anarchy clauses which “probably would not have arisen or become prominent in times of peace.” Of particular concern to Wilson and the Bureau of Immigration was whether the phrases following the word “anarchist” in Section Three of the law should be interpreted as “merely definitive of said word or are intended to describe separate and distinct classes.” A careful reading of Section Three, cited above, reveals that the language can indeed be interpreted in two distinct ways. The conjunction “or” sits at the center of the disparity; it can be used as an introduction to the conditions

that define “anarchists”—a construction that would specify the meaning of the term and make the law less powerful—or it can be used to link separate, distinct classes of excludable aliens, making the reach of the law much broader and seemingly leaving the term “anarchists” without a definition as defined by the law. The opinion of the Bureau, as Wilson notes, is that the law should be interpreted in the broader sense.³

The new version of the law presented by Burnett at the request of Secretary Wilson clearly pointed out that the phrases following the word “anarchists” were meant to create separate, deportable classes; that is, it was now clear that one could be deported for “disbelieving in or opposing organized government” without being an anarchist.⁴ Wilson specifically points to the war being a reason for the apparent difficulties the Bureau had been experiencing with its implementation of the Immigration Law, and the significance of this indirect cause cannot be undermined. There must, however, have been a more direct cause for the amendment of the law. The cases of two Russian immigrants, Joe Krause and Sam Miller, seem to have been the catalyst that drove immigration officials to reconsider the law and ask the following questions: What characteristics were required of an individual to be considered an “anarchist”? What does it mean to “advocate” or “teach” anarchy and its tenets? Can an individual be an anarchist if he or she didn’t believe in the use of force or violence to bring an end to organized

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⁴ Ibid., p. 1. The new anarchist clause in Section Thirteen read: “anarchists, or persons who believe in or advocate the overthrow by force or violence of the government of the United States or all forms of law; or who disbelieve in or are opposed to organized government; or who advocate the assassination of public officials; or who advocate or teach the unlawful destruction of property.”
government? These questions and the responses given to them by office holders within the Bureau of Immigration and the Department of Labor are paramount in this thesis’ consideration of the extent to which aliens in the United States during periods of crisis, particularly in wartime, are able to engage in the free discussion of ideas.

Zys Korostyshevsky, or as he was known in the United States, Joseph Krause, was a twenty year old Russian immigrant who entered the country through the port of Boston, Massachusetts in 1913 when he was 17 years old. After he was arrested in Chicago for not having a registration card, Korostyshevsky, a Jewish garment cutter, later “openly admitted” to being an anarchist in a hearing before immigration inspectors.\(^5\) Korostyshevsky’s admission to being an anarchist, however, would turn out to be rather problematic for immigration officials whose responsibility it was to decide whether or not the man ought to be deported. In his hearing before two inspectors and a stenographer in Chicago, Krause confirmed that at the time of his arrest he confessed that he was an anarchist, that prior to arriving in America he was a “free thinker,” and that since then “life” had led him to become an anarchist. When asked whether or not he believed “in the United States government as it now exists,” Krause stated, “Well, I don’t believe in any government.”\(^6\)

This confession would seem to align Krause’ political beliefs with the type of anarchism the government was concerned with trying to quell. But when he was asked if he were an advocator of “the doctrine of anarchy,” Krause said that he wasn’t. Inspector

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\(^5\) Inspector in Charge at Chicago, Illinois, Application for Warrant of Arrest under sections 20 and 21 of the Act of February 20\(^{th}\), 1917, June 28\(^{th}\), 1918, Records of the Immigration and Naturalization Service [hereafter referred to as INS], Record Group [hereafter referred to as RG] 85, File number 54235/35, Box 2801, National Archives Building, Washington, DC [hereafter referred to as NARA].
Schubert replied with another, notably coercive question: “Anarchism as you understand it, you do, don’t you?” to which Krause replied, “Well, I don’t advocate it because I have not the ability to speak and by other reasons I don’t advocate.” In a follow up, Inspector Ebey continued the interrogation: “You mean you don’t teach it by public speech?” and Krause answered, “I don’t teach it at all, I study it myself.” Finally, Ebey pushed once more: “So far as you yourself are concerned you advocate it as your own belief?” and Krause replied, “For my own self, I studied it, yes, by books.” Admission to advocating anarchy would have clearly put Krause within the boundaries of deportation as stipulated by the immigration law of February 5, 1917, and it is clear from their questions that this was the aim of the inspectors. When asked if he believed “in anarchism as it is taught by Bergman and Emma Goldman,” however, Krause said “No, it is quite different,” that “I don’t know exactly their teaching, but it is quite different. I believe in anarchism as Tolstoi (sic) preached it.”

Inspector Schubert’s immediate findings at the conclusion of this hearing were that Krause was a confessed anarchist disbelieving in any form of government, including that of the United States, and that “although he does not advocate the overthrow of government by violence, he comes under the meaning of the statute as to being an anarchist” and ought to be ordered deported. In a letter to the Commissioner General of Immigration, the Inspector in Charge at Chicago pointed to a statement made by Krause off the record that “he would refuse to serve in the United States Army if drafted,” and

8 Ibid., 5.
that he agreed with the examining inspector that the alien ought to be deported (“the testimony clearly places the alien within the application of the Immigration Law relating to anarchists and those disbelieving in any form of government”). Although Inspector Schubert seemed fairly sure that Krause could be expelled from the country, the deportation charge of Krause, and other aliens believing in this peaceful, non-violent variation of anarchy would turn out to be more complicated than perhaps anyone anticipated.

In a memorandum written on August 14, 1917 by The Acting Solicitor for the Assistant Secretary of Labor Louis F. Post, questioned Krause’s deportation. The main issue, according to the solicitor, was that Krause claimed in his hearing that he did not advocate anarchy. Since there was no evidence presented in the testimony showing that Krause was being dishonest about not advocating, his statements had to be held as true. The solicitor went on to note that there existed further uncertainty regarding the extent to which the law could place Krause within its grasp: the deportability of different variations of anarchists. “It is understood,” wrote the solicitor, “that this particular class of anarchists is called by way of differentiation ‘philosophical anarchists,’ those who entertain and express the opinion that all governments are a mistake, and that society would be better off without any. This class has nothing to do with disorder or with crime.” Despite the fact that the solicitor notes that philosophical anarchists are not directly involved in criminal activity, he observed that the immigration law did not specifically “authorize the deportation of any type of anarchists, whether he be a political

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9 Inspector in Charge at Chicago, Illinois to Commissioner-General of Immigration, Washington D.C., July 11, 1917, INS, RG 85, File number 54235/35, Box 2801, NARA.
philosopher, or an anarchist in the commonly accepted sense of the term – one who urges and seeks the overthrow by force of all government, unless he is found ‘advocating or teaching’ anarchy, or that he was a member of that class at the time of entry.” The solicitor recognized that Krause could not be deported because he was not found advocating. His argument, however, suggests that since the law did not distinguish between different types of anarchism, there was no reason to assume that philosophical anarchists were somehow safe from deportation.10

As the solicitor notes, the definitions of both “advocating” and “anarchy” were central to the question of whether or not the government would be able to deport individuals such as Joe Krause. Turning to Webster’s New International Dictionary for a definition of the word, the solicitor writes that an advocate is defined as “one ‘who defends, vindicates, or espouses any cause by argument.’” Referring to the Standard Dictionary for his definition, the solicitor adds that “to advocate a thing does not mean it must be done publicly.” The implications of this statement are far reaching. If advocating were to be interpreted in this way, it would mean that an alien sharing his or her belief in a nonviolent form of anarchy could be deported, even if such “advocating” occurred in private conversation. Such a stringent interpretation would effectively silence the voices of aliens who held these beliefs, cutting them off from any involvement in political and social discourse for fear of deportation.11

The meaning of anarchy, however, was even more complicated. The solicitor notes that the term has both “proper” and “popular” definitions, the former being “the

10 In re deportation of Zusil Korestyschewsky, alias Joe Krause, and Schulim Melamed, alias Sam Miller, natives of Russia, alleged anarchists, August 14th 1917, INS, RG 85, File number 54235/35, Box 2801, NARA, 1-3.
11 Ibid.
absence or insufficiency of government; a state of society in which there is no capable supreme power, and in which the several functions of the state are performed badly or not at all; social and political confusion. A social theory which regards the union of order with the absence of all direct government of men by man as the political ideal; absolute individual liberty.” The proper definition of an “anarchist,” likewise, was “one who advocates the absence of government as a political ideal; a belief in an anarchic theory of society.” The popular use of the word, on the other hand, is defined as “those who seek to overthrow by violence all constituted forms of and institutions of society and government, all law and order, and all rights of property, or who promote disorder or excite revolt against an established rule, law or custom.” The difference between the proper and popular definitions of anarchy, of course, is in the use of violence. Whether the legislators and enforcers of the law thought that only violent anarchists should be deported or that all anarchists presumably endorsed and participated in violence is a distinction of particular importance.¹²

If immigration inspectors or the Secretary of Labor—whose signature was the final word on any pending deportation—should decide that a philosophical anarchist ought to be deported despite the fact that the law did not explicitly specify this to be the case, the solicitor argued, common law held that such an interpretation would not be unconstitutional. Indeed, the 1904 Supreme Court case *Turner v. Williams* concluded that “If the word ‘anarchists’ should be interpreted as including aliens whose anarchistic views are professed as those of political philosophers innocent of evil intent, it would follow that Congress was of opinion that the tendency of the general exploitation of such

¹² Ibid.
views is so dangerous to the public weal that aliens who hold and advocate them would be undesirable additions to our population.” Although Turner v. Williams did not make a final legal decision regarding whether or not philosophical anarchists could be deported under the jurisdiction of the law, it did note that, in theory, they could be. For “The salient feature in this case,” wrote the solicitor, “is that if an alien admits he is an anarchist and advocates the absence of all organized government a finding by the Secretary that such an alien is an anarchist will not be disturbed, regardless of the interpretation given the word ‘anarchist.’” The immigration official maintained that the broad definition of anarchy had to be maintained simply to ensure the effectiveness of the law; anything less would render it “practically meaningless, as the number of aliens who openly admit the belief in or publicly advocate the overthrow of government by force and the assassination of public officials are decidedly few.” Like the Federalists in their insistence that the Alien and Sedition Acts were justifiable despite the fact that they lacked any proof of a real radical threat against the state, and the admittedly low number of anarchists present in the country at the nineteenth century’s transition into the twentieth, the Bureau of Immigration’s reasoning for the deportation of anarchists seems to be undermined by a lack of real awareness regarding the extent to which anarchistic beliefs had pervaded the population.

Had it been determined that Krause was advocating or teaching his anarchistic beliefs, the solicitor’s insistence that belief even in a non-violent form of anarchism merited deportation probably would have landed the immigrant on a ship across the Atlantic. “A person may be possessed of a variety of opinions and beliefs which if

13 Ibid.
expressed or executed would subject him to severe penalties of law,” the solicitor claims, “but so long as they are confined to the thought, or if no attempt is made towards their execution, the penalties of law do not attach.” Although Krauses may not have been eligible for deportation, another immigrant with a similar case would have a much harder time with the immigration officials who sought to make sure that the immigration law was used with some force.\footnote{Ibid. As will be discussed in the following chapter, Krause would be deported for a second charge after the passing of the 1918 Immigration Law.}

Schulim Melamed, known as Sam Miller in the United States, was arrested on June 29, 1917 in Chicago, Illinois and charged with deportation for “advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law, or the assassination of public officials.” Born in Russia and a “Russian Hebrew,” as noted by the Chicago immigration inspector who submitted the application for a warrant of arrest to the Department of Labor, it was documented as a fact that Melamed “admits that he is an anarchist,” and that he “does not believe in any form of government and is opposed to all forms of government.” Most notably, however, is the charge that Melamed was advocating his anarchistic beliefs. Chicago’s inspector in charge noted that although Melamed “does not teach anarchism by public speeches,” he “endeavours to persuade people with whom he comes in contact to a belief in anarchism.”\footnote{Warrant—Arrest of Alien, June 29, 1917, United States of America Department of Labor, signed by Assistant Secretary of Labor, INS, RG 85, File number 54235/36, Box 2802, NARA; Application for Warrant of Arrest Under Section 19, Act of February 5, 1917, July 2, 1917, INS, RG 85, File number 54235/36, 2802, NARA. I employ the word “fact” here deliberately, as the application instructs the applicant to “state fully facts which show alien to be unlawfully in the United States,” emphasis mine.} Like Krause, the question of whether or not Melamed’s brand of anarchism was punishable by the law would be a cause of serious concern for immigration officials.
Melamed’s philosophical anarchism was not the only charge held against him, however, that would stir uncertainty in the circle of bureaucrats who held the power of deportation. The warrant for Melamed’s arrest claims that “advocating or teaching” was one of the causes for his detainment. Melamed’s testimony in his hearing at the immigration office in Chicago would trouble the conception of what lengths an individual must go to in order to be subject to deportation for “advocating.”

Melamed was brought before immigration inspectors shortly after his arrest to defend himself and refute the charges that were held against him. When questioned if he wished to hire an attorney for his case, Melamed, seemingly frustrated about his situation, replied, “I don’t know what for. I see no reason why I should have him. I am not for forceable (sic) overthrowing of government. I am not for assassinating of officials.” The first response of the testimony shows that Melamed’s beliefs contradict one of the most popular beliefs about anarchy: that violence is inherent to anarchy and anarchists are violent individuals. Indeed, the start of his testimony continues to indicate that Melamed’s case might stir some controversy. When Inspector Ebey ordered Melamed’s swearing in, Melamed said, “I don’t believe in God. I don’t believe in swearing. You may bring a charge against me that I swore false. You simply take my word for it.” Melamed continued to treat the inspector’s questions with what could be interpreted as a lack of respect for the processes of the hearing. When asked about his nationality, Melamed stated that he was “international,” and that he “doesn’t belong in any nationality.” Rather than question him further, the inspector moved on and asked Melamed if he was an “anarchist by belief.” Inspector Ebey rephrased his inquiry and asked Melamed, rather simply, what he meant when he said that he was an anarchist. “Well,” said Melamed, “I
mean individual freedom of thought, speech, and to act without interfering with somebody else’s private life.”

That Melamed included freedom of thought and freedom of speech as crucial components of his belief in anarchy is significant; Melamed’s disregard for violence and his belief in these individual rights suggest that his interpretation of anarchism, this philosophical anarchism, need not be focused on the government itself. When Inspector Ebey asks him whether or not he believes in organized government, Melamed responds, “No: of course organized government is used to force somebody to do something against his own will. I am opposed to organized government.”

It starts to become clear from the beginning of his testimony, then, that Melamed was ultimately more concerned about himself than he was about the government; rather, he simply wanted to act, speak, and think however he wished—desires that are seemingly inconsequential, particularly in the context of the government’s agenda to suppress anarchists. If one of the primary aims of the immigration law was to purge the country of dangerous anarchists who might encourage others to rally against the government, how did Melamed’s stance against the suppression of freewill include him in that company?

Throughout the rest of the hearing Inspector Ebey asked Melamed questions to try and corner him into one of the law’s excluding provisions. The exchange that follows makes it clear that Melamed’s deportation was, at best, questionable. One of the crucial aspects of an individual’s belief in anarchy is his opinion of organized government. As mentioned above, Melamed stated that he was opposed to organized government; but

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16 Record of hearing given the alien Schulim Melamed, alias Sam Miller (warrant #54235/36, dated June 29, 1917), in the office of Inspector in Charge, Immigration Service, Chicago, July 2, 1917, INS, RG 85, File number 54235/36, Box 2802, NARA.  
17 Ibid.
when Inspector Ebey asked him if he was in favor of “any form of government,”

Melamed complicated his first response by saying, “Why, of course, I am in favor of
some kind of organization.” Melamed elaborated, saying that he was not in favor of a
government in which “one shall rule,” but instead the kind of government in which “they
shall have associations.” Although he does not elaborate on what he means by
associations, the inspector assumed that Melamed was referring to something akin to a
commune, or “a voluntary association of individuals” that requires “each one to do as he
wishes and no one to have power to compel another to do anything he does not want to
do.” Inspector Ebey’s assumption presupposed that Melamed was in favor of a kind of
society whose members are free to do whatever they wish, including criminal behavior.

Melamed corrected the inspector, however, telling him that he did not mean to suggest
that society should be without any concept of what type of behavior is acceptable or
unacceptable. Asked if he believed in “the complete liberty of action on the part of each
individual,” Melamed clearly responded, “I don’t believe a man has a right to kill another
one. There must be some kind of limit to a man’s action; but if he doesn’t interfere with
my life he can do what he wants to.”

The inspector continues his line of questioning, this time bringing the government
of the United States directly into his sights:

EBEY: If you had your way would you overthrow the government of the United
States?
MELAMED: No.
EBEY: Do you believe that the government of the United States should continue
to exist?
MELAMED: Well, now, I oppose the kind of government that exists now.
EBEY: Well, then, if you had your way about it, you would cause the government
of the United States to cease to exist, would you?

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18 Ibid.
MELAMED: Well, I cannot understand that. I suppose if the people are not satisfied they will look at it different ways, or do different ways. I cannot understand what you mean by forcing the government to cease to exist.

It is important to note that the Inspector’s framing of the third question practically imposes a positive response from Melamed. When pushed further and asked if “according to [his] belief and [his] doctrine the government of the United States should no longer exist,” Melamed answered, “No: it may exist in different forms.” Melamed’s answer here seems to be at odds with one of the cornerstones of anarchism; that is, that there should be no government. Melamed’s responses suggest that one need not believe that the government should be eradicated—only that its authority may be questioned.

Indeed, Melamed went on to reiterate to Inspector Ebey that his ideal government was one that entitled individuals to “free thought…speech and to act without interfering with anybody else’s life,” and that this version of government was how “all the world should be, not only the United States.”19 Melamed’s concession that it was only the current example of American government that ought to be replaced, and not that government as a whole should not exist, is a political opinion. It is in this sense that the law suppressed not only anarchism, but also explicitly curbed the extent to which immigrants were able to express their political opinions. Furthermore, it could be argued that Melamed’s ideals of freedom of speech and expression do not stray that far from the American conception of a Republican government.

The responses that probably implicated Melamed the most are those having to do with law and the advocating of his beliefs. When Inspector Ebey asked Melamed specifically whether or not “Congress, or any law making body or power, should have the

19 Ibid.
right to make a law to compel you to do what you don’t want to do,” Melamed said no, and that he was against such a distribution of power because the “people are misrepresented and not represented.” Perhaps making matters worse for himself, Melamed later said that he did not believe in “any kind of government which would have the power to compel the people under it to obey its laws, or decrees.” It is still important to note, however, that although he claimed not to believe in law (though it can be assumed that he was not against all law, but only arbitrary ones that prohibit the liberties he believed in), Melamed emphasized further that he was not entirely against some form of a governing body “because it is impossible to accomplish anything without organization.”

The problem of crime in a society without government was one that anarchist theorists had considered to great extent in their writing. Like Melamed, the American anarchist Benjamin Tucker was also asked (rather frequently, in fact) if anarchism involved “the freedom to commit murder, burglary, arson, theft, and like offenses against person or property.” If it did, then anarchy would understandably deserve minimal consideration as a curative for society’s ills. According to Tucker, men and women should be completely free to ignore arbitrary laws set up by the state that compromised individual liberty, “provided [they do] not infringe upon the equal liberty of all other individuals.” Punishing people for violating the principle of equal freedom for all was not the same as governing, Tucker argued. If someone were to commit a crime, a jury of twelve adults within the community would be assembled to consider the facts of the case and administer a verdict. Although Tucker and other theorists had thought about these

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20 Ibid.
safeguards to protect society from criminal behavior, his more significant point was that in an anarchistic society “economic justice and equality of opportunity…would remove most of the causes of crime.” Although it is certainly debatable how effective Tucker’s ideas would be in application, it is at least clear that the school of thought Melamed subscribed to was one that the valued the protection of liberty above all else—a trait that would seemingly be welcomed in a country that pledges “life, liberty, and the pursuit of happiness” to its residents.²¹

Despite the fact that Melamed’s brand of anarchy was perhaps only loosely based on what the government was trying to suppress, the immigrant still confessed his belief in it. What is more, when Inspector Ebey asked him “Do you advocate a belief in anarchism? That is, in speaking of anarchism, do you uphold that line of thought?” Melamed replied “Well, I have never made public speeches, but if I am discussing with somebody—if we discuss a social problem, of course, I take the stand I am.” Melamed was quick to note that he never made public speeches about anarchy, but the inspector coercively asked him if he ever tried to “convert” other individuals to his own “way of thinking;” Melamed, perhaps unsure of how to respond because of the way that Ebey rephrased the question, returned once more to his answer that he only discussed his beliefs with people with whom he has conversations about social problems.²² The fact that an alien could possibly be deported for the remarks he might have made in a private conversation is staggering. If there were evidence to show that in a private discussion

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²² Record of hearing given the alien Schulim Melamed, July 2 1917, INS, RG 85, File number 54235/36, Box 2802, NARA.
Melamed suggested that his interlocutor should attempt to assassinate the president, or destroy someone’s private property, or hurl a bomb at the White House, and then followed through with one of those suggestions, then it would be easy to see that he fell within the boundaries of the immigration law expelling individuals who “teach or advocate” such actions. This is obviously not the case, however. There is no evidence of any conversation whatsoever to suggest what type of sentiments Melamed might have been expressing in these discussions, however numerous. Nor is it even clear that Melamed was the type of anarchist the law was aimed at curtailing.

The uncertainties that abound in the hearing—particularly concerning the type of government in which Melamed believed and the extent to which he advocated that belief—and Melamed’s often vague responses to the questions reflect the inadequacy of the law. For if Melamed could seriously be considered for deportation as a result of this hearing, it would suggest that the deportation of anarchists is not based on a proven breach of law supplemented by incriminating evidence or testimony, but instead relied on a) interrogations of questionable value administered by bureaucrats instead of lawyers and judges and b) legislative interpretation by inspectors at immigration stations across the country with relatively little oversight.

Immigration historian Jane Perry Clark has written extensively on the matter of administrative discretion in deportation cases. As Clark notes, Congress identified in the Immigration Law of 1917 numerous classes of deportable aliens, including anarchists. The law failed to explain, however, what characteristics an immigrant must exhibit in order to be considered a member of those classes. There was no legislative standard, for example, of what someone had to do in order to be considered “likely to become a public
charge,” or what was considered a crime of “moral turpitude;” and, as we have begun to see with Melamed’s case, what constituted advocacy and belief in anarchy. Such ambiguity in meaning unsurprisingly led to “considerable variation” in the interpretation of these terms between immigration districts. Ultimately, then, it may be concluded that the secretary of labor—who is charged with the responsibility of deciding whether or not an alien will be deported—was bestowed with “quasi-judicial” authority because of his power to decide whether or not an immigrant ought to be deported. Furthermore, because the immigration law permitted that the Commissioner General of Immigration may create rules and regulations elaborating on the details of the law, the Bureau of Immigration was also empowered by “quasi-legislative” authority that further distinguished deportation cases from anything remotely similar to an actual trial.23

Since the only way a deportation case could be brought before a court was by petition for a writ of habeas corpus, the vast majority of deportations never made it out of the Bureau and into the courts. Acquiring the funds to pay for the cost of litigation was no small feat for most aliens, so a hearing before immigration officials was typically the only opportunity a deportee had to prove his or her innocence. This administrative process consisted of multiple steps that took place entirely under the jurisdiction of the Bureau of Immigration and the Department of Labor. If an immigrant were arrested and it was thought by the police that he or she might fall under one of the Immigration Law’s deportable classes, a report of the suspected deportability was sent to a local immigration office. The alien would then take part in at least two hearings, the first of which was administered by an immigrant inspector who took a “preliminary statement” from the

alien who, at this point, was barred from legal representation. After the Secretary of Labor approved a warrant of arrest which, as Clark notes, was usually issued automatically, the process continued with a second hearing during which the deportee would be told he could postpone the hearing if he wished to acquire counsel. If she could not afford or did not desire legal representation, the hearing would continue and the deportee would be responsible with explaining why she should not be deported. The question of whether or not these hearings were fair was one that did not go unasked. Indeed, “lawyers and humanitarians alike joined in decrying the wide latitude allowed immigration officials” in deportation cases. The fact that Melamed’s case would ultimately give rise to so much controversy and uncertainty within the Bureau not only suggested the inadequacy of the law, then, but could also be considered as an example of the shortcomings in the administrative handling of deportation cases.\(^{24}\)

After the hearing Inspector Ebey wrote to Chicago’s inspector in charge. He stated that “the record sustains the charge in the warrant that the alien is an anarchist who has been found advocating or teaching anarchism” and that it was his recommendation that the inspector in charge secure a warrant for the alien’s deportation. Ebey did not shy away from noting that Melamed “does not make public speeches, but that he supports his doctrine of anarchism in discussions in which he becomes engaged.” Nowhere in his letter did he note that Melamed did not believe in the use of violence to overthrow the government or public officials—charges that were included on Melamed’s initial warrant of arrest.\(^{25}\) The Inspector in Charge must have agreed with him; shortly after receiving

\(^{24}\) Ibid., 210, 203-204.

\(^{25}\) Immigrant Inspector Howard Ebey to Inspector in Charge, Immigration Service, Chicago, Ill., July 10, 1917, INS, RG 85, File number 54235/36, Box 2802, NARA.
Ebey’s letter, he wrote to the Commissioner General of Immigration, stating that he was “firmly convinced” that Melamed is residing in the country in violation of the law and ought to be deported.26

No action would be taken on Melamed’s deportation until both his own case and Joe Krause’s case began to be noticed for the way that they stood out from other, perhaps more straight-forward cases. As Assistant Secretary Louis F. Post wrote in his memo to the secretary, the difference between the cases of Melamed and Krause—being that Melamed was advocating and deportable and Krause was not advocating and thus not deportable—“is simply a distinction of belief and of advocating belief. In both cases the aliens declare that they do not believe in violence and in neither is there any evidence to indicate that they do.” Most interesting, however, is Post’s conclusion that the Secretary of Labor “should not assume jurisdiction in any of this class of cases in which the anarchism of the confessed “anarchist” is of the kind known as “philosophical anarchism.”” Such anarchism, Post observed, is merely an “objection to coercive government on grounds that do not lend to violence against government but which on the contrary is based altogether upon principles of peace and good will.”27 He is, essentially, arguing that philosophical anarchism was not a deportable offense. As we have seen, however, the inspector who administered Melamed’s hearing, the inspector in charge of

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26 Inspector in Charge, Immigration Service, Chicago, Ill., to Commissioner General of Immigration, Washington, D.C., July 11, 1917, INS, RG 85, File number 54235/36, Box 2802, NARA.
27 In re Zusil Korestyschewsky, alias Joe Krause, and Schulim Melamed, alias Sam Miller, Memorandum to the Secretary, August 15, 1917, Department of Labor, Office of the Assistant Secretary, Washington, INS, RG 85, File number 54235/36, Box 2802, NARA, 1-2.
the Chicago office, and the acting solicitor of the Department of Labor all believed that Melamed should be deported.

The Commissioner General of Immigration himself, Anthony Caminetti, contributed his own opinion on the matter. According to his own reading of the case, Melamed—who Caminetti considered to be either “very stupid or somewhat erratic” by virtue of his “very poor” testimony—belonged to a class of aliens whose liberty, if it were granted to them, would be “inimical to the interests of this Government.” Despite the fact that Melamed repeatedly affirmed a disbelief in violence or overthrow of the government, Caminetti insisted that “At this particular time an alien of this character could work immeasurable harm and, coupled with the propaganda which is undoubtedly being spread throughout the country, might retard the projects for which the Government is working.”

It is through Caminetti’s statements that the overt paranoia felt by members of the American government during this strenuous period of war is apparent. It seems as if there is no middle ground whatsoever on the question of anarchy for individuals like Caminetti. Rather than recognize that there might be a fundamental difference between anarchists such as Melamed and the frightening image of a gun-wielding anarchist held within the minds of many Americans at this point in time, Caminetti assumed that there could be no degree of difference between such individuals—that there are only anarchists and everyone else.

Caminetti damned Melamed for his apparent stupidity and self-described anarchistic leanings, but at the end of August a number of Sam Melamed’s friends

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28 Anthony Caminetti, Commissioner General of Immigration, In re Schulim Melamed, alias Sam Miller, aged 22, native of Russia, Hebrew race, entered from Canada on or about January 15, 1914, Memorandum for The Assistant Secretary, August 2, 1917, INS, RG 85, File number 54235/36, Box 2802, NARA.
approached none other than Clarence Darrow and asked him if he could lend his efforts to Melamed’s deportation case. Since his defense of the philosophical anarchist John Turner before the Supreme Court in 1904, the attorney from Chicago had continued to make a name for himself. In 1907 when he defended William “Big Bill” Haywood, a member of the Western Federation of Miners and associated with the Industrial Workers of the World, the magazine *Current Literature* published a biographical piece on Darrow focusing on the significance of his “philosophical makeup” in the cases that he took on. The author of the article concluded that Darrow was not simply a hired attorney, but rather a man who argued just as much for his philosophy as he did for the innocence of his client.\(^\text{29}\)

Indeed, the same could be said for his representation of Schulim Melamed. Described by his biographers as a “philosophical anarchist all his life,” Darrow was influenced greatly by the work of both Peter Kropotkin and Leo Tolstoy. In philosophical anarchism Darrow saw “an ideal where people would live in harmony and mutual aid, without submission to man-made law.” Darrow realized, however, that in the reality of his modern world an anarchistic society was only a “distant dream.” When he described Melamed as a dreamer, then, he very well might have seen a bit of himself in the immigrant he was defending.\(^\text{30}\)

The “extent of [Melamed’s] offending,” according to Mr. Darrow, was simply that Melamed “is a disciple of Tolstoy and a vegetarian.” Darrow defended Melamed’s alleged anarchism, reducing the severity of his political beliefs by stating that he was


\(^{30}\) Ibid., 35.
simply “an idealistic dreamer and that is all.” Darrow pointed out that perhaps the only facts presented by Melamed’s testimony were that the detainee had done nothing wrong, or that there was no evidence to suggest that he would commit any criminal act in the future. Melamed’s attorney tellingly gets right to the heart of the debate surrounding the pending deportation, informing Secretary Post that he was “aware that statute is very broad and perhaps could be interpreted to cover what is known as a “philosophical anarchist.” Although he did not share in the belief that the law included philosophical anarchists, he claimed that even if the law were to be interpreted in this way it still would not apply to Melamed, who “does not know what an anarchist is and would not know whether he came under any such designation.” Darrow might have been pushing his case a bit when he claimed that Melamed was merely “one of the extreme sensitive, mild kind of fellows,” but he wasn’t exaggerating in his suggestion that he was “opposed to all kinds of force and he is not an anarchist in the meaning of the term.”

Mr. Darrow’s confidence in Melamed’s case was so strong that he suggested that Post review the files himself to see if he might reach a different conclusion. If he should find that Melamed ought to be deported, however, Darrow asked that Post wire the immigration office in Chicago and forward his request the case be reopened. In an appeal to Post’s conscience, Darrow wrote, “I know you well enough to know that you would not want this man deported…It is needless for me to say that I have absolutely not [sic] interest in it, except to help somebody whom I know will suffer great injustice…Although like you, I have taken a pronounced stand in favor of the war.”

31 Clarence Darrow to Louis F. Post, Assistant Secretary of Labor, Washington, D.C., August 30, 1917, INS, RG 85, File number 54235/36, Box 2802, NARA, 1-2.
32 Ibid., p. 2.
his final statement, Darrow recognized that the heightened tensions caused by the war had affected the spirit of many. Indeed, Darrow practically abandoned his ardent belief in pacifism and even took to the soapbox in his condemnation of the theory of non-resistance in such a critical moment of war and insecurity.\footnote{Arthur and Lila Weinberg, \textit{Clarence Darrow: A Sentimental Rebel} (New York: G.P. Putnam’s Sons, 1980), 282-283.} He refused, though, to let concerns about the country’s security or his own support of the war impede Melamed’s right to a fair hearing.

Just as Darrow had a history with philosophical anarchism, Louis Post was himself no stranger in the matter of defending the beliefs of anarchists. When Darrow was defending the philosophical anarchist John Turner before the Supreme Court, Post submitted a deposition on Turner’s behalf.\footnote{Nathaniel Hong, “The Origin of American Legislation to Exclude and Deport Aliens for Their Political Beliefs, and Its Initial Review by the Courts,” \textit{Journal of Ethnic Studies} 18, no. 2 (1990): 12.} Furthermore, when President McKinley was assassinated in 1901, the future Assistant Secretary of Labor used his journal, the \textit{Public}—a self-described “Journal of Fundamental Democracy” that enjoyed heavy circulation among politicians, progressives, labor leaders, journalists, lawyers, and academics\footnote{Ackerman, \textit{Young J. Edgar}, 144.}—to voice his disapproval of the hysteria that mistakenly identified philosophical anarchists with those who advocated violence.\footnote{Sidney Fine, “Anarchism and the Assassination of President McKinley,” \textit{The American Historical Review} 60, no. 4 (July 1955): 789n55.} Post’s so-called radical sympathies did not end there. Although he was ultimately acquitted, Post underwent arduous impeachment proceedings after Congressman Albert Johnson and the Committee on Immigration and Naturalization accused him of ignoring departmental orders to deport
hundreds of “Reds” after the war.\textsuperscript{37} Although Post’s impeachment primarily dealt with the resulting deportations of the Palmer raids, the Assistant Secretary’s correspondence with immigration officials regarding Melamed’s deportation provide a glimpse of the Bureau’s attitude toward alien radicals in this precursor to the Red Scare. As far as Post was concerned, the decisions reached by his peers in Melamed’s case were unfounded. Post received Darrow’s letter on the first day of September and immediately wrote to the Secretary, recommending he grant permission for a re-hearing of Melamed’s case.\textsuperscript{38}

With Attorney Darrow at his side, Melamed found himself before Chicago’s immigrant inspectors once more. He was first questioned by Darrow, and probably appreciated the less vigorous nature of his interrogation. Melamed noted numerous times that he spent much of his time reading, and his attorney thought this relevant; having asked the defendant to name the books he has read, Melamed highlighted the works of Leo Tolstoy, Peter Kropotkin, Thomas Payne, and Walt Whitman. The bulk of Darrow’s questioning aimed at figuring him as a sensitive, pacifist, self-trained intellectual, someone who may have heard about bombs in his readings, but never entertained the prospect of possessing one himself; an individual whose ideas may be contrary, but who was certainly no threat to society. Interestingly, when Darrow asked Melamed to identify


\textsuperscript{38} Louis F. Post to Secretary, Department of Labor, Office of the Assistant Secretary, Washington, In re Schulim Melamed, alias Sam Miller, Memorandum to the Secretary, September 1, 1917, INS, RG 85, File number 54235/36, Box 2802, NARA.
his most ideal government if some form of the state had to exist, the alleged anarchist claimed that he believed in the most liberal government, the Republican government.\textsuperscript{39}

Melamed was not alone in his affinity for the writings of Tolstoy and Whitman. Darrow himself had for many years defended Tolstoy’s “theory of non-resistance” and looked up to the writer as a mentor of social justice and philosophy.\textsuperscript{40} Benjamin Tucker, who celebrated Henry David Thoreau’s passive resistance and incorporated those ideals into his writings about philosophical anarchism, was a well-trusted employee at the \textit{Boston Globe} during the 1880s and 1890s when he was widely known as “the leader of the anarchistic movement in America.”\textsuperscript{41} Melamed’s belief that if some form of government had to exist than it ought to be a republican one which represented the desires of the people, he may not be that far off from Thoreau’s position on government. In his famous essay “Civil Disobedience,” Thoreau indicted the state for not fully recognizing the individual as the highest authority. Rather than calling for the state to be abolished, however, Thoreau simply wanted the government to recognize individual sovereignty as the most important element of society.\textsuperscript{42} Melamed’s opinions, though they became more controversial during the beginning of the twentieth century, had at least been deemed acceptable in earlier years. Why, then, should he have been punished for entertaining such beliefs?

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\textsuperscript{39} Record of examination given the alien Sam Miller,Alias, Schulim Melamid, at the U.S. Immigration Station, 845 So. Wabash Ave., this 5\textsuperscript{th} Day of October, 1917, Chicago, Ill., October 5, 1917, INS, RG 85, File number 54235/36, Box 2802, NARA, 2-3.

\textsuperscript{40} Kevin Tierney, \textit{Darrow: A Biography} (New York: Thomas Y. Crowell, Publishers, 1979), 287.

\textsuperscript{41} Yarros, “Philosophical Anarchism,” 471.

Having felt that he established a sound foundation for the rest of the case, Darrow handed over the questioning to Inspector Ebey. The inspector and Melamed quickly become engaged in a dialogue about the definition of anarchy. Mr. Melamed once more explained that he was an anarchist, which according to his interpretation of the word meant someone who believes “in individual freedom, freedom of press, thought and act, without interfering with somebody else’s private life.” Inspector Ebey repeatedly asked Melamed if he believed in the “complete absence of government,” and he said no, that individuals should obey the laws that restrict them from “interfering with some one else’s private life,” and that no one should be allowed to break into someone’s home, for example, without being punished. Indeed, Melamed’s conception of anarchy and his philosophy and politics (and life generally, it seems) was that all individuals should be entitled to freedom of thought and action, but that such freedom must have limits—those limits existing to ensure that these common liberties are not compromised.

Ebey, surprised or confused by Melamed’s answers, asked the deportee if he knew that “an anarchist is a person who believes in a complete absence of law or authority.” Melamed disagreed, and said that there are “four classes of anarchism and I believe that some classes believe that some kind of authority shall exist.” Among those classes are the following: “association and society, the anarchist communist, the anarchist mutualist, and the anarchist individualist,” to which Melamed himself belongs the “anarchist communist class”—a statement that is underlined in the transcript of the hearing. Unsure how to pursue this subdivision of anarchy, the inspector moved on with his prosecution. Moving swiftly to the point, Ebey asked, “Do you advocate or attempt to spread your ideas in regard to the government or lack of government?” and Melamed
responded, “I never try to teach anybody a word or anything about anarchy.” Ebey immediately recalled Melamed’s statement in the previous hearing that “while [he] did not make public speeches when [he was] discussing [his] views with any one [he] takes the same stand in regard to anarchy.” Melamed’s response is less of a defense of himself and his own implication than it is of intellectual freedom: “When a man discusses with me I tell him what I believe it is true; whether it is anarchy, socialism or whether it is republicanism. I express my view.”

An important element of Melamed’s philosophy was his explanation that violence was not the means through which anarchism should be reached. Rather, he told Inspector Ebey, “if people get civilized enough” they will realize the repressive tendency of the government and peacefully conclude that an anarchistic society was the most beneficial. The idea that education would play a crucial role in the downfall of the state was crucial for philosophical and individualistic anarchists. Peter Kropotkin, remembered as “one of the most cultured and likable of the anarchist leaders,” urged that it was education, not violence, that would persuade “mankind of the great benefits of communal anarchism.” Tucker seconded Kropotkin’s emphasis on enlightenment, claiming that a combination of “widespread education” and passive resistance would convince others of the benefits of individual liberty. Although it would admittedly take longer to reach anarchism through education than it might by resorting to violence, Tucker emphasized that “to help [the people] understand new ideas and perspectives [was] the most important weapon available to anarchists.” The arrival at consciousness, he argued, was a gradual process.

43 Record of examination given the alien Sam Miller, October 5, 1917, INS, RG 85, File number 54235/36, Box 2802, NARA, 3-5.
44 Ibid., 5.
that would arrive once individuals lost their confidence in political and economic institutions.\(^{46}\) To argue for violence would undermine this gradual process, making the possibility of a sudden revolution completely unrealistic.\(^{47}\) Ebey’s attempt to figure Melamed as a dangerous individual who would somehow single-handedly contribute to the demise of government, whether through force or advocacy, was somewhat of a moot point and a sign of Ebey’s ignorance of anarchism.

According to Darrow’s brief of the hearing, Melamed was in no way a “dangerous or undesirable person.” The accusation that he believed in the forceful overthrow of the government was clearly refuted by the testimony, Darrow claimed, suggesting that there was really only one charge that could be considered in the case: that he advocated or taught anarchy. Although he admitted to calling himself an anarchist, Darrow writes, and that he confessed to not believing in any government then in existence, Melamed was not one of those individuals whom the government legislated against because he was neither “an anarchist within the meaning of the term as used in the statute” nor did he oppose the concept of an organized government. In favor of organization and the essential freedoms that the United States themselves had at least partly been founded upon, Melamed’s prime concern was that he “does not believe in forcing people to do things they do not wish to do, so long as they do not wish to do evil, but that he does believe in restraining and preventing men from committing wrongful acts, or from interfering with equal rights of others.” Unsure that his insistence that his client was merely an immigrant concerned with the politics of his new country would convince immigrant inspectors of Melamed’s


\(^{47}\) Yarros, “Philosophical Anarchism,” 477.
innocence, Darrow relied on one final rejection of the charges waylaid against Melamed. There was simply “no evidence that he has ever publicly advocated or taught his views of government or society,” Darrow observed. “He merely expresses his views in private conversation.”

Mr. Darrow and Schulim Melamed failed to change Inspector Ebey’s mind. Ebey’s main argument for deporting Melamed and other immigrants like him was that it was not necessary for an alien to “belong to the most extreme type of anarchists in order to come within the statute.” Melamed may not have advocated the forceful overthrow of the government, nor the assassination of public officials, but he was a confessed anarchist and that was enough to warrant him a threat to the country’s security. Ebey’s reasoning, of course, implies that being an anarchist, even one who does not condone the use of violence, implies some inherent, increased potential to commit violent acts against the government. The inspector supported his case by relating a history of anarchism, tracing its origin to the 19th century French thinker Pierre Joseph Proudhon, whose theory was based on “an economic and social system where each person produces what he pleases and consumes as he pleases what he produces, free from any interference or regulation.” Since then various contributors, moving Proudhon’s theory in different directions, have advanced the basic principles of anarchism. The best of these variations, according to Ebey, was “a society made orderly by good manners rather than by law, in which each persons produces according to his powers and receives according to his needs;” the worst, contrarily, “stands for a terroristic resistance of all present government and social order—a phrase which originated with the Russian revolutionist Michael Bakunin.” Despite his

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48 Clarence Darrow, Brief in Case of Schulim Melamed, INS, RG 85, File number 54235/36, Box 2802, NARA.
apparent familiarity with the history of anarchism, however, the inspector nevertheless claimed that the fundamental “principals underlying anarchy” are “usually specifically the political and social theory that all government is evil.” Ebey’s main point, it seems, was that regardless of which variation of anarchy an individual may adhere to, such a belief or philosophy was both fundamentally against government and decidedly un-American, and thus had little reason to be permitted in the country.

The inspector conceded that Melamed himself may not have been dangerous; but it was not just Melamed, however, who the government had to be concerned about. Referring to Webster’s Unabridged Dictionary, Ebey reported that a proper definition of the verb “advocate” is “to plead in favor of; to defend by argument before a tribunal or the public; to support, vindicate or recommend publicly;” furthermore, an advocate may be defined as “one who defends, vindicates or espouses any cause by argument; a pleader; an intercessor; as, an advocate of free trade; an advocate of truth.” Although the definition of the verb relies on the public dissemination of information, to be an advocate one need only to defend or argue on the behalf of some doctrine. Since he admitted to participating in private conversations with others about social issues, Ebey confirmed his opinion that Melamed was indeed an advocator. “I cannot agree that one who entertains, particularly in these times, the beliefs that the alien champions, is a harmless member of society,” Ebey claimed. “It is his kind,” continued the inspector, “who have paralyzed the arm of Russia and brought the world to its present place of danger. I consider him a most dangerous member of the community and the result of the work of his kind is not lacking now in our own country. The harm he can do is limited only by his ability to reach others,
and his power to convert his fellows to his way of thinking.” 49 Ebey confirms, then, that it was not necessarily Melamed’s particular belief in anarchism that was just cause for his deportation, but rather the potential that he could influence others to take up a similar belief; and there was no telling what those individuals might do when indoctrinated with such a mindset.

Ebey certainly seemed to have convinced his boss of Melamed’s threat to society. On the same day that he received his subordinate’s report, Chicago’s inspector in charge wrote to Caminetti, reporting that Ebey’s “masterly analysis” of Melamed’s testimony convinced him that the decision to deport Melamed ought not to be cancelled. Furthermore, the head chief inspector warned, “I apprehend serious danger to the Republic if we allow ourselves to yield too much to technical deductions reached by a process of hair-splitting interpretations of the Immigration Law relating to anarchy. To my mind this alien has assumed an attitude that is absolutely dangerous to our country.” 50

The Immigration Law should operate in such a way, the Inspector in Charge argued, that gave these aliens no benefit of the doubt in their cases. Much like the provisions in the Alien and Sedition Laws of 1798 that required aliens to verify their innocence rather than obligate the prosecutors to verify the guilt of the alien, Melamed and other aliens presented with deportation charges were, ultimately, presumed guilty until proven innocent. Such a treatment of these cases could only have been employed to ensure that

50 Inspector in Charge, Chicago, Ill. To Commissioner-General of Immigration, Washington, D.C., November 5, 1917, INS, RG 85, File number 54235/36, Box 2802, NARA.
the law be used in a way that would allow for as many deportations as possible, eradicating any shred of anarchism in the country.

The Commissioner General, after reviewing the material that had been sent to him, seconded the opinion of the Chicago inspectors. Indeed, Caminetti insisted that the evidence culled from the entirety of Melamed’s testimonies proved Melamed should be deported, saying that “it is immaterial what particular type or brand of anarchy an alien may advocate or practice.” The Commissioner General went on to state that the current state of international affairs and the crisis at hand justified such general and unconscionable resistance to these aliens: “The Bureau believes that aliens of the stamp of this man are a grave menace to this country at this time, and that all such as may be apprehended and the facts established as substantially as they have been in this case, previous and present testimony considered, should be forthwith banished from the country.” The facts that Caminetti referred to, however, may not be considered facts so much as assumptions built from deeply seated feelings of paranoia that aliens such as Melamed posed a formidable threat to the country. The Commissioner General’s own words express this paranoia and concern:

In these strenuous times, the opinions of many aliens in our midst are none too stable, and may be readily molded. The doctrine of anarchism, that fancied realm where no human government is needed, spreads with electricity and facility among these aliens at this time and the Bureau does not consider that an alien found advocating the principles of anarchy should be given the benefit of any serious doubt, but should be deported to the country whence he came without reference to the existing restrictions which have been placed on deportations to points in Europe during the course of the war.51

51 Anthony Caminetti, In re Schulim Melamed alias Sam Miller, aged 21, landed presumably at St. Johns, N.B., Canada, on or about January 9, 1914, destined to Chicago, Illinois, to which latter point he immediately proceeded, Supplemental Memorandum for the Assistant Secretary, January 25, 1918, INS, RG 85, File number 54235/36, Box 2802, NARA, 1-2.
Caminetti’s remarks bear a striking resemblance to those of the Federalists in 1798, who insisted that the country was teeming with countless revolutionaries waiting to topple the government in its vulnerable state. Like the Federalists, however, Caminetti’s fears were justified by little evidence of actual danger, particularly in Melamed’s case.

Not everyone involved in the case, the Bureau of Immigration or the Department of Labor, however, shared Caminetti’s resolve that Melamed—and any other alien in a similar disposition—ought to be deported. Louis F. Post responded to Caminetti’s declaration that Melamed should be removed from the country and refuted that suggestion with a number of supporting arguments—the most important of which being the meaning of anarchy as it was represented in the statute. As alluded to above, the main question came down to the provisions that followed the word “anarchists” in the law: “anarchists, or persons who believe in or advocate the overthrow by force or violence of the government of the United States, or of all forms of law, or who disbelieve in or are opposed to organized government, or who advocate the assassination of public officials, or who advocate or teach the unlawful destruction of property.” If “anarchist” stands alone and is separate from the rest of these distinguishing terms, then “anarchist” is its own very broad, limitless and undefined class of deportable alien. If “anarchist” was meant to be coupled with the terms that follow it, however, “or” acting as a limiting conjunction, then an alien anarchist must believe in utilizing or advocating force in order to be deported. Post insisted upon the latter interpretation, arguing that “Congress could hardly have used so loose a term as ‘anarchist’ without definition.” The Assistant Secretary posed a question short on rhetoric and got right to the point: “Some members of Congress might have been willing to make a Tolstoyian anarchist inadmissible to this
country, but is it likely that the collective legislative mind would have agreed to such legislation?” Post noted that the word “anarchist” was “sandwiched in” between phrases that suggest violent actions. Why would Congress have written the law this way, then, if they didn’t intend for only anarchists advocating violence to be deported? This had to be the construction intended by Congress, for “the alternative,” as Post notes, “is to assume that Congress, in legislating against violence, intended to include philosophies that are distinctly opposed to violence.” Caminetti replied a few days later with a letter refuting this argument, stating that the intent of Congress was the exact opposite, and that the provisions following the word “anarchist” established distinct, separate classes.52

Post, recognizing that the decision reached in the case was a significant one, used the opportunity to question the Immigration Law at large:

To deport this alien is to decide (1) that aliens who believe that government need not and ought not to be coercive are excluded from this country, and not as a temporary expedient in war time but as a permanent policy; (2) it is to hold in effect (Immigration Law, Section 28) that a citizen who aids a philosophical anarchist, such as Tolstoy was, as Kurpotkin is, and as this alien claims to be, to come to this country to lecture on his philosophy commits a felony punishable by heavy fine and long imprisonment—an interpretation that a democratic government will of course be slow to place upon any statute it is called upon to execute.

Post does not say it outright, but the consequences he proposes if Melamed were to be deported are, essentially, concerns that the immigration law restricts the foreign born from participating in the American value of free speech. Why should anyone be deterred from expressing an opinion that the government is not fulfilling its responsibilities to the

52 Louis F. Post, Assistant Secretary, In re SCHLIM MELAMED, alias SAM MILLER, aged 21, landed presumably at St. Johns, N.B., Canada, on or about January 9, 1914, destined to Chicago, Illinois, to which latter point he immediately proceeded, Memorandum for the Secretary, January 29, 1918, INS, RG 85, File number 54235/36, Box 2802, NARA, 3-7.
people, after all, if they are expressing those opinions peacefully? It seems that only an exaggerated response to the notion that someone might be an “anarchist” would be enough to merit such a response. Post also noted the dangers that Melamed could have been exposed to if he were deported and the words “belief in force or violence” were not erased from the warrant. In a reminder that Melamed was found, in fact, not to advocate the use of violence, Post warned that this action must be taken to ensure that “such rights as he may have in the courts may not be prejudiced by any appearance of a Departmental decision sustaining those parts of the warrant of arrest which charge the alien with advocating force or violence.”

The “rights as he may have in the courts” that Post refers to are those of legal recourse. Through his objections, Post shows not only that the implications of the Immigration Law are far reaching, but also that the rights of aliens are directly related to the implementation of the law. Indeed, it is the violation of these rights that lies at the center of all other grievances stemming from the law.

What is more, however, was Post’s argument that Melamed could not be deported. Although he admitted to being an anarchist, he also stated that he was not an anarchist when he entered the country and only began to entertain those beliefs in America. The Immigration Law clearly stated, as referenced by Post, that only “any alien who at the time of entry was a member of one or more of the classes excluded by law” or “any alien who shall have entered the United States in violation of the law” could be deported; under these circumstances, Melamed could not be deported because a) he had not been advocating force or overthrow of the government, or assassination of public officials, and b) he was in violation of no laws upon his entry into the country. In this

53 Ibid., 6-7.
context it seems that Melamed’s deportation charge is even more questionable than it initially seemed.\textsuperscript{54}

Post made another important distinction in his response to the Bureau’s conclusion that Melamed’s deportation warrant should not be cancelled: “The new evidence does not seem essentially to alter the case in any respect.”\textsuperscript{55} The insistence that Melamed be deported was not about incriminating evidence, for the re-hearing with Darrow reveals nothing very new. The fact remains that Melamed did not believe in or advocate the use of force to overthrow the government, and that his idea of anarchy was more a belief “in individual freedom, freedom of press, thought and act without interfering with somebody else’s way of life” than the expulsion of government. It could be argued that his “anarchism” wasn’t really anarchism, at least in the popular sense of the word. In this light, it would seem that Bureau officials considered “anarchism” not at all in its lexicographical or theoretical sense, but rather as a metaphor for a philosophy about government that could be characterized, in any set of terms, as decidedly “un-American.”

Post’s observation about the lack of incriminating evidence demonstrates how the Bureau of Immigration attempted to use “anarchism” as a blanket term to deport any immigrant whose opinions might be characterized as radical. It mattered little, so it seems, that there was no factual basis to support the argument that Melamed’s personal opinions were somehow a threat. To deport aliens for these beliefs rejected the possibility that their objections could prove to be a valuable contribution to the discourse and debate about the effectiveness of American government. In Melamed’s case especially, it seems

\textsuperscript{54} Ibid., 3-7.
\textsuperscript{55} Ibid., 3.
that he was not so much suggesting that all government should be done away with but that the current manifestation of government in America was failing to put its ideals into practice

Secretary Wilson’s response after reading Post’s defense of Melamed and condemnation of the Immigration Law was to contact the Attorney General. It should be noted that Wilson simplified the issue to one of fact and force; for it was a “proposition of fact” that Melamed had “since his admission to the United States been found ‘advocating or teaching anarchy,’” but it did not appear factual that he had “been advocating ‘the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials.’”

But upon his review of the case, Attorney General Gregory conceded that “anarchy” should be interpreted with its broadest definition, as outlined in *Turner v. Williams*. He refused to entertain the problem of defining the scope of the word “anarchy” in Section 19 of the 1917 Immigration Law; if such a discrepancy in its interpretation existed, he argued, the Bureau should “seek legislation which shall make the language of Section 19 identical with Section 3.” Ultimately, however, it was not an interpretation of the word “anarchy,” “anarchist,” or “advocate” that brought the Attorney General to his conclusion of Melamed’s case, but the context of the case itself. The Attorney General pointed out that Melamed didn’t wholly condemn government, but thought that it was only because society was not yet “civilized enough,” that government must exist. Gregory also sympathized with Melamed for seeing that a Republican government—the form of government upon which America had been founded—was

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56 W.B. Wilson, Secretary of the Department of Labor to the Attorney General, February 1, 1918, INS, RG 85, File number 54235/36, Box 2802, NARA, 1-2.
ideal. “Moreover,” he added, “the alien appears to have been in this country for a period of four years, and to have conducted himself in full accordance with law…the entire result of his examination fails to disclose any evidence which would warrant his deportation under any of the definitions of anarchy set forth in the Turner case.”

There was no reasonable basis, according to the Attorney General, for deporting Sam Melamed, even if he admitted to philosophical anarchism. What is unique about the Attorney General’s opinion on the case is that he actually seems to have thought about the alien outside of the case itself. Melamed may have admitted to being an anarchist, but he had never been arrested previously, and he testified repeatedly that he did not believe in force; even if his ideals of philosophical anarchism may have been considered detrimental or dangerous to the country, he himself certainly wasn’t. Indeed, Gregory’s decision to look at the evidence of this case rather than simply focus on the word “anarchist” is only one of the few times throughout this barrage of testimony and bureaucracy that the prosecuted individual was thought of as a person, rather than simply an embodiment of the idea of the dangerous “anarchist.”

That Schulim Melamed’s case was more significant than a simple inquiry into the deportation of a single individual is clear from the attention it received from the various officials in the Bureau of Immigration and the Department of Labor who reviewed it. As Commissioner General Caminetti observes, “No case has ever received, or could possibly receive, more careful consideration, on the facts and law, than this one has.” Utterly bewildered by the Attorney General’s conclusion, Caminetti referred to the intent of Congress in making his final case for Melamed’s deportation; since the responsibility of

57 Thomas Watt Gregory, Attorney General to the Secretary of Labor, February 23, 1918, INS, RG 85, File number 54235/36, Box 2802, NARA,1-3.
the courts and the department is simply to “give the expressed – and if not clearly expressed, the reasonably ascertained – intent of Congress effective application to concrete cases,” this, according to Caminetti, was the only way to settle the anarchist question.58

Caminetti’s conclusions were certainly at odds with Post’s, whose interpretation of how the law should be constructed was that the provisions after “anarchist” limit that term only to apply to anarchists who support the use of force or violence. Caminetti readily conceded that “it could be argued with some force” that the words “anarchists” and “anarchy” were used in the legislation “simply and solely in the sense of the use of force and violence” to destroy the government. For it is a “well known historical fact,” claims Caminetti, “that Congress was immediately led to enact the law as the result of certain outrages perpetrated in this country by anarchists,” referring to McKinley’s assassination in 1901. While Caminetti observed that Congress, to be sure, had “intended to reach the active forms of the evil in their every ramification,” he insisted that it must have also been their intention to trap the “passive and insidious” forms of that evil as well. This broader definition of anarchy—one that encompasses philosophical anarchism in its breadth, that being a disbelief in government, but also a disbelief in violence to bring a forced end to government—held serious implications. “In other words,” argued Caminetti, the legislation “intended to reach the word as well as the deed, and in some respects, to reach the underlying thought as well” [Emphasis mine]. The law had to be interpreted in such a way that anarchists who did not believe in force would still be under

58 Anthony Caminetti, Commissioner General, “In re Schulim Melamed, alias Sam Miller, alien, charged with “advocating or teaching anarchy, Supplemental Memorandum for the Secretary (Through the Assistant Secretary), March 5, 1918, INS, RG 85, File number 54235/36, Box 2802 NARA, 2-11.
the law, argued the Commissioner General, because of the provisions following
“anarchists;” the provisions, after all, identify the “active” forms of anarchy that an alien
may be excluded for, so unless “anarchists” stands for the “passive” forms of anarchy, it
would be “left absolutely meaningless,” and without any “field of operation.” Caminetti
supposed that action is innate to anarchist belief; that anyone who might identify him or
herself as an anarchist is either going to act violently or convince someone else to act
violently, and if not, the very thought of violence in their mind was enough to be rid of
them. 59

Had it been Caminetti’s decision, Melamed would have been deported
immediately. This was not to be. On March 13th, Solicitor Abercrombie wrote that
because decisions on immigration cases were subordinate to the Attorney General, and
the Attorney General ruled that Melamed was not deportable “under any circumstances,”
the warrant for deportation had to be cancelled. The issue was far from resolved,
however, as Abercrombie opined in this memorandum that “the supplemental opinion of
the Bureau of Immigration appears very persuasive as to the intent of Congress to use the
terms “anarchy” and “anarchist” in their broadest signification and without limitation as
to scope.”60 Regardless of whichever interpretation they thought to be more relevant,
Secretary Wilson, on March 20, 1918, issued the final word on the case of Schulim
Melamed: “A proper interpretation of the points of law involved cannot be secured in a
case where the facts are disputed by the Attorney General. It is therefore directed that the

59 Ibid., 14-15.
60 John W. Abercrombie, Solicitor, to Secretary Wilson, “In re deportation of Schulim
Melamed, alias Sam Miller, alleged anarchist,” March 13, 1918, INS, RG 85, File
number 54235/36, Box 2802, NARA, 3.
warrant of deportation in the case of Schulim Melamed, alias Sam Melamed, be
cancelled.\textsuperscript{61}

The business of the Melamed case was not yet over, however. It is obvious that,
as noted by Caminetti in a memorandum written for Secretary Wilson, “there seems to
prevail some diversity of opinion on the question of whether or not an alien, by teaching
or advocating anarchy of a kind which does not contemplate the use of force or violence”
ought to be deported. If such differences in opinion could be seen by these administrators,
it would only seem likely that inspectors across the country could be similarly unsure as
to how they should interpret the law. In order to ensure continuity, Caminetti requested
that the department make a definitive decision on the matter.\textsuperscript{62}

In his response, Wilson lashed out at anarchy, stating, “the teaching of anarchy as
an ideal within the United States, even though not accompanied by the advocacy of
violence, would, insofar as such teaching found effect, be destructive of the Government
of the United States.” Wilson wrote further that “the lodgment of the idea in the mind of a
gentle submissive nature would not tend to such overthrow by force or violence, yet
when lodged in the minds of men less gentle, by the very nature of its revolutionary
character it would readily lead to the use of violence against the existing Government.” If
this were condoned, Wilson assured, “the result would be revolutionary interference with
our institutions and changes brought about by that process \textit{rather than by the orderly
process provided in the organic law in the land}” [Emphasis mine]. Wilson’s reference to

\textsuperscript{61} Secretary Wilson to Commissioner-General Caminetti, Memorandum for the
Commissioner-General (Through the Assistant Secretary), March 20, 1918, INS, RG 85,
File number 54235/36, Box 2802, NARA.
\textsuperscript{62} Caminetti to Wilson, Memorandum for the Secretary (Through the Acting Secretary),
March 27, 1918, INS, RG 85, File number 54235/36, Box 2802, NARA.
the process by which change can be affected in the government seems to suggest that the dissent of anarchists, then, is not necessarily immediately dismissible. If those changes happened to be argued persuasively by speech and debate that ended up influencing elected officials, the government could feasibly change and reflect some of the concerns of anarchists. Wilson is essentially saying that if anarchists advocate their beliefs, and they do not advocate the use of force, then belief alone is not a punishable offense. But if someone with a violent disposition uses force to achieve those ends even though violence wasn’t being advocated by the alien-anarchist, he or she would still be responsible; responsible for convincing someone to do something that they said they absolutely should not do.

Wilson also significantly commented on the rights of citizens versus those entitled to aliens. “It would seem to me that Congress intended that while American citizens might advocate any ideals they pleased, provided they did not advocate force or violence, any alien accepting the hospitality of our country must refrain from advocating or teaching such revolutionary principles…Sympathy for the individual would have to give way to the welfare of the country as expressed in the protective intent of Congress.” Such an observation recalls Congressman Livingston’s argument during the debate over the rights of aliens versus citizens when the Alien and Sedition laws were being passed: if an alien resides in this country and in doing so pledges his allegiance to it, shouldn’t he be protected by the liberties espoused by the country? Similarly, although Melamed and

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63 Wilson to Caminetti, Memorandum for the Commissioner-General (Through the Acting Secretary), April 6, 1918, INS, RG 85, File number 54235/36, Box 2802, NARA, 2.
64 Memorandum for the Commissioner-General (Through the Acting Secretary), from Secretary Wilson to Commissioner General Caminetti, April 6, 1918, INS, RG 85, File number 54235/36, Box 2802, NARA.
other aliens may have subscribed to a philosophy that could be considered far left of center, why should they be denied free speech if there was no evidence to show that they actually put the country in danger?

The administrative grappling that took place over Melamed’s case reveals the detached nature with which these deportation cases were often approached. Although Louis F. Post seems to have reviewed the case with a critical eye, suggesting that Melamed did not pose a threat to the country or anyone in it, most of the officials involved with the case failed to acknowledge that there might be a distinction between anarchists who are a threat and those who are not. One of the most troubling aspects of Melamed’s case, however, is the fact that this kind of debate was typically not granted to most deportation cases. This observation raises a significant question: How were confessions to anarchism handled in other deportation cases? Luckily for Melamed, Attorney General Gregory looked at the evidence of his case and concluded that there was no real reason for the man to be deported. If the case had not been sent to Gregory for his opinion, an entirely different and unjust conclusion could have been reached.

It would be an impossible task to review every single deportation case undertaken by the Bureau of Immigration during World War I in this thesis. In my concluding chapter, I will attempt to look at a number of other cases of aliens who identify themselves as “philosophical anarchists.” Such a focus will not only provide the opportunity to delve deeper into the way these cases were handled by immigration officials and the assumptions and biases experienced by these individuals toward them, but will also offer further insight into this variation of anarchism as it was defined by the individuals who espoused those beliefs.
Chapter Four

“I Am Not Guilty of Doing Anything, Only to Think with My Own Brain:” Philosophical Anarchists, the Anarchist Act of 1918, and the Path to Mass Deportation

John Turner, Joe Krause, and Schulim Melamed were not the only immigrants targeted by the government for their political beliefs. In fact, they were three among many. After Congress passed the Immigration Law of 1917 and before the end of the war, 687 aliens were arrested for deportation. Of those arrested, approximately sixty were deported under either the 1917 or 1918 law.¹ In the following chapter I intend to show further examples of the individuals who were suspected of anarchism under these laws, particularly those who were philosophical anarchists. In addition, I hope to show that attempts to prosecute philosophical anarchists were largely based on insufficient evidence, resulting in immigrants being implicated more often for their beliefs than for advocating or participating in the popular conception of anarchy.

In his 1920 tome on the nature of free speech, sedition, and deportation, the Harvard University law professor Zechariah Chafee Jr. wrote that the public was unaware of the fact that peaceful, law-abiding aliens who believed in philosophical anarchy were being deported from the country under the new immigration law. One of these individuals was Frank R. Lopez. Lopez immigrated to the United States from Spain and had lived here for seventeen years when the government ordered his deportation for believing in and advocating philosophical anarchism—a view that, according to Judge Rogers of New York’s Circuit Court of appeals, was “in no sense advocacy of a resort to force and revolution.” Despite the fact that Lopez was married, had a son born in America, was a

member of the American Federation of Labor and even owned his own home, his belief in what was considered a radical social doctrine figured him as an individual whose presence was a danger to the country.²

As Nathaniel Hong notes, the transcript of Lopez’s hearing before an immigration inspector is “enlightening as to how wide a net the new definition of ‘anarchist’ cast.”³ Lopez told the inspector that he didn’t believe in overthrowing government, whether it be that of the United States, Spain, or any other country, by force or violence. Rather, the ideals of “free thinking” and education would bring about social and political change on their own. Much like Schulim Melamed, Lopez explained that the anarchy he believed in was not the kind of violent anarchy that was being written about in the newspapers. The real goal of anarchy, Lopez said, was to improve everyone’s condition of life as suggested by the writings of Tolstoy, Marx, Ferrer, Zola, and Kropotkin. At the end of his hearing before the Bureau, Lopez expressed a sentiment similar to Turner and Melamed’s reactions to their own deportations: “I call it an injustice; if a man is going to be punished for his thoughts and his ideas, it is an injustice.”⁴

Lopez successfully filed a writ for habeas corpus, and brought his case into the Federal court. Judge Knox, however, ruled that there was no injustice whatsoever in Lopez’s deportation. According to Knox, Lopez had forfeited any right he had to remain in the United States when he decided to talk about his anarchistic ideas and influence

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others to take up those beliefs as their own. Although he merely spoke about anarchy and did not take to arms himself, Knox could not believe that the purpose of philosophical anarchism was rooted any less in the destruction of the government than the violent anarchist. “In a sense,” Knox concluded, “the insidious character of the teachings of the [philosophical anarchist] is more to be feared than are the teachings, and activities of the [advocate of violence].” Knox’s opinion was clear, and so Lopez’s 1919 appeal before the court was rejected and he was deported back to Spain.

Unlike Lopez, however, the majority of aliens who were tried for deportation under the 1917 or 1918 immigration laws never had the opportunity to challenge their cases before the court. Typically, every step of the deportation process—the report of arrest, the preliminary hearing without legal counsel, the second hearing during which an attorney could be present, and the Secretary of Labor’s decision—remained entirely within the Bureau of Immigration and the Department of Labor. It is not surprising, then, that the attempted deportations of philosophical anarchists during and after the war had largely gone unnoticed. If we are to better understand the attitude of the Bureau of Immigration regarding anarchism and the extent to which its officials sought to stifle radical thought among aliens, it will be necessary to take a closer look at similar cases that went through the Bureau.

On September 22, 1917, the Bureau of Investigation in the Department of Justice brought a group of five Italians allegedly belonging to the “Anarchist Party” and making propaganda against the war to the attention of Commissioner General Caminetti. The

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immigrants, all of whom had been living in the country for a little over ten years and had not once been convicted of a crime (although one had been imprisoned for two weeks when he displayed a sign that was deemed “obscene and immoral” during a local election), were brought from their homes in Spring Valley, Illinois to the Chicago station so that they could show cause as to why they should not be deported. Ultimately, none of these men were expelled. The testimony of these individuals, however, lends some valuable insight into the principles common to the philosophical anarchists who were detained by the Bureau of Immigration but were so infrequently deported.

Arnaldo Zaetta, a forty-two year old miner with a wife and two children, was the only one of the alleged anarchists who seems to diverge from the beliefs of his peers. Although he stated that he “sympathize[d] with the anarchist ideas,” Zaette did not define himself as an anarchist and believed in the American government. The individuals who he had been arrested with, however, were far more open in admitting their support of anarchy, which once again proves to be devoid of violent intent and is instead rooted in hope for a peaceful society and the interests of the working man. The two most common principles among them were a disapproval of the war and a belief that the people of the country could eventually reach a point where they would be able to conduct themselves

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6 Chief Bulaski of the Department of Justice to Commissioner General of Immigration Anthony Caminetti, September 22, 1917, Records of the Immigration and Naturalization Service [hereafter referred to as INS], Record Group 85 [hereafter referred to as RG], File number 54235/63, National Archives Building, Washington, DC [hereafter referred to as NARA]. Accessed via Records of the Immigration and Naturalization Service, Series A: Subject Correspondence Files, Part 6: Suppression of Aliens 1906-1930, edited by Alan Kraut (Bethesda, MD: University Publications of America) [hereafter referred to as Suppression of Aliens 1906-1930].

peacefully with one another and would then no longer need government to ensure peace and social order. Francesco Faoro, a thirty-five year old miner with a wife and one child in Spring Valley, described the war as an “unnecessary massacre and slaughter” and that the “human mind ought to develop some means or arrange these difficulties without war.” Arnaldo Canarino, a forty-four year old miner living with his wife, daughter, and mother and a resident of the United States since 1903, added that although he didn’t support America’s war efforts, this didn’t mean that his reasoning was rooted in a lack of support for America itself. Rather, Arnaldo thought that all the international powers involved in the war were wrong for being engaged in such an unnecessarily violent conflict. The same reasoning could be applied to Arnaldos’ sympathies with anarchy. He wasn’t necessarily against the United States of America—it was simply his opinion that “no form of government will give what anarchy will give to the working man.” When the rest of the people living in the country came to realize that, he claimed, an overthrow of the government would be unnecessary, for the people themselves will peacefully change the system.

The most voluble among the group of Italians was Arnaldo’s younger brother, Romano Canarino. Having heard reports in the press about anarchists “with bomb in one hand and a knife in the other”—perhaps due to his arrival in 1903, only two years following McKinley’s assassination when fears of foreign anarchists had reached a

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Romano had no interest in being involved in such a group of individuals. He changed his mind, though, when he heard a speaker in Spring Valley talking about anarchy in a much different way than what he had been reading in the newspapers. The speaker, Canarino said, defined anarchy as a “society where we would live in harmony, peace, and work together, live together, and be happy together without any struggle.” Romano thought that this type of society sounded much better than the one he was living in, so he took to reading a number of books about anarchy and was convinced that anarchy was a worthy goal. In response to the charge that he had been advocating the violent overthrow of the government, Romano told the immigrant inspectors that the assassination of public officials is not advocated in any “book or theory where anarchy is preached,” and that “anarchy has nothing to do with regicide.” Although Romano thought that, citing Thomas Jefferson, “when the people cannot stand the government the people have a right to overthrow it even with the force of arms,” it was clear from his testimony that he never advocated a forceful overthrow of the government or had any intention to do so.  

Once the Canarino brothers, Faoro, and Zaetta gave their testimony all of their charges were dropped immediately. Noting a trend in the Bureau’s unsuccessful attempts to enforce the anarchist exclusion section of the immigration law, the inspector who had been in charge of these cases wrote to Louis Post that the hearing produced “the usual unsatisfactory results.” Without “any evidence to refute their statements,” the inspector

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conceded that the charges in the warrants for these individuals should be dropped. While the Spring Valley anarchists faced relatively little scrutiny when admitting their political opinions, we have seen that Melamed, whose case produced very little accountable evidence that he should have been deported, came very close to being convicted and sent out of the country for his beliefs. The proceedings of other cases tend to follow a similar trend in which the evidence implicating the suspected anarchist is questionable, yet the process to deport them moved along until either an objection by a ranking member in the Bureau or some statement in the testimony made it clear that the immigrant was not deportable. Before the Department cancelled the charges against him, Romano claimed “I am not guilty of doing anything, only to think with my own brain.”

Romano and his friends escaped deportation, but the significance is not entirely in whether or not the deportation charge actually resulted in banishment. The fact is that most immigrants did escape detention and ultimately, like Romano, could only be found guilty of “thinking with their own brains.” This did not deter immigration officials from attempting to enforce the law, however, pursuing cases with little evidence of the immigration law having been infringed and suggesting further that free thought among immigrants was vastly discouraged.

Such a case was that of Wasyl Ptashmyk, a twenty-nine year old Russian immigrant who came to the United States in 1908. When police officers in Bristol,

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11 In re Romano Canarino, Canarino Arnaldo, Zaetta Arnaldo, and Faoro Francesco, natives and subjects of Italy, Italian race,” December 1, 1917, INS, RG 85, File number 54235/63, NARA. Accessed via Suppression of Aliens 1906-1930.

Connecticut arrested Wasyl for vagrancy, he had in his possession a “mass of literature and pictures, probably every article written on anarchy and socialism for the past ten years.” Having been suspected by the authorities of being an anarchist, the police asked Inspector Sullivan of the Providence, Rhode Island immigration office to interview Ptashmyk and determine if he fell under the expelling provisions of the immigration law. In rather dramatic fashion, during Inspector Sullivan’s questioning Wasyl claimed that he did not believe in the same god as the inspector but in the “God of man,” and shortly thereafter admitted to being an anarchist. Like other immigrants accused of being an anarchist or advocating the overthrow over the government by force or violence, Wasyl noted that he didn’t believe in the assassination of public officials because if everyone respected one another there would be no need for government or public leaders. The incriminating element in Ptashmyk’s case, however, was his admission that he gives lectures on anarchy when “given the chance” and has even accepted payment for such speeches. In addition to being sentenced to six months in prison for the initial vagrancy charge, Inspector Sullivan recommended to the Commissioner of Immigration in Boston that Wasyl Ptashmyk was “a perfect case for a Departmental warrant of arrest” in order to conduct a deportation hearing.13

The case, in fact, would not turn out to be such a perfect example of the type of immigrant who could be deported as an anarchist. Instead, the accusations held against Wasyl demonstrated the complexities of such cases as well as how the law’s implementation was largely left to the interpretation of immigration officials instead of

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being a simple question of guilt or innocence. Two months into his sentence, inspector W.M. Clark subjected Ptashmyk to a second round of questioning. The subject of Clark’s questions suggest that the inspector was more interested in finding out about the extent of Wasyl’s anarchistic sympathies than in getting him to admit that he had been advocating. Asking Wasyl if he knew Emma Goldman, if he belonged to the Industrial Workers of the World, or if he were a socialist, the inspector received negative answers all around. When Ptashmyk confessed to being a progressive, which was just the same as the Doukabors, the inspector pressed him to tell if that were his religion and if he believed in the marriage ceremony of the Doukabors in which no civil or religious ceremony recognized the union. None of these questions bear any direct relevance to the charges made against Ptashmyk except for the fact that an awareness of Goldman’s teaching or membership in the I.W.W. would have affirmed that he was an undesirable addition to the polity in the eyes of the Bureau. Despite asking no questions at all about his advocating the principles of anarchy in the lectures he had alluded to in the initial hearing, and despite producing no evidence that Ptashmyk had committed any punishable offence, Clark recommended that the alien be deported.\(^\text{14}\)

Clark’s recommendation for Wasyl’s deportation overlooks a crucial element of the hearing that conflicts with inspector Sullivan’s first investigation. Although he stated that he “believes the people should have the right to run the state” and that if this were the case there would be no need for presidents, kings, or government, Wasyl added that he really wasn’t an anarchist, and that he only made that confession in the first hearing because he was afraid that he would be beaten by the chief of police if he didn’t say what

the authorities wanted to hear. It’s very possible that inspector Clark dismissed Ptashmyk, assuming that he rejected his initial confession so that he would avoid punishment for being an anarchist. Louis Post intervened, however, recognizing the possibility that the authorities could have intimidated Ptashmyk into a confession that he didn’t mean. Post asserted that even if Wasyl believed in the type of anarchism excluded by the immigration law, his statement that he is not an anarchist should clear him of the charges against him. Furthermore, Post wrote that the alien’s opinion that an ideal form of government would be one entirely run by the people and his statement that the United States government is “alright” because its citizens have the right to vote cleared him of the charges against him. Anarchist or not, such views are “not at all discordant with the American theories of democratic government,” and merited that the warrant approving Wasyl’s deportation be cancelled.15

Salvatore Schille, a thirty-five year old laborer with a wife in Italy, was arrested by police in the last week of April, 1917. The local authorities explained that Schille had been running a night school for about twenty-five men whom he worked with, teaching them how to read and write Italian. When he was found distributing “anarchistic literature” near his home in Bristol, Connecticut, the police took him into custody and seized a “quantity of anarchistic literature” and other material “considered of an anarchistic nature” that Schille was in possession of. Although Schille stated that he was only distributing literature to prepare for a meeting to organize his co-workers into a union, the authorities thought that the meeting would be “against the peace of the community” and sought to keep it from happening. Convinced that Schille was a

15 Ibid., 2-3; Louis F. Post to Commissioner General, October 12, 1917, INS, RG 85, File number 54235/26, NARA. Accessed via Suppression of Aliens 1906-1930.
dangerous man and an anarchist but left without any authority to imprison the Italian because Connecticut state law lacked a statute against anarchy, a US attorney involved with the case contacted the immigration office in Providence, Rhode Island to see if the federal government could step in and charge the alien. Although Schille testified that he was no an anarchist, did not believe in anarchy, and had never published any writing on those subjects, the immigrant inspector reviewing the case noted that while Schille probably couldn’t have been implicated under previous laws, he could confidently be charged with being an anarchist under the new Immigration Law of 1917.¹⁶

Schille was not a philosophical anarchist, nor did he ever admit to being an anarchist when questioned by immigrant inspectors. He repeatedly claimed in every hearing that he was not an anarchist and did not believe in the overthrow of any form of organized government. When asked if he were a socialist by immigrant inspectors Schille said he wasn’t, but it is clear that he at least sympathized with socialism, having supported the election of a socialist candidate to public office before arriving in Bristol. Another note of contention that immigrant inspectors and individuals such as Anthony Caminetti had with Schille was the immigrant’s lack of a belief in God. Even though there is nothing in the immigration law to suggest that immigrants could be excluded for their religious beliefs, every inspector asked Schille if he believed in god and every report in favor of his deportation noted that he didn’t.¹⁷ Schille’s case is a striking example of

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the way that the anti-anarchist provision of the immigration law was used to stifle the undesirable and distinctly “un-American” characteristics of immigrants, political or otherwise.

The authorities in Bristol and immigration officers made repeated claims that Schille was dangerous and organizing some sort of anarchistic movement in Bristol. The case was thought to be so dire that David Nichols, the executive secretary in the city’s Chamber of Commerce wrote to his congressman, Representative Augustine Lonergan, requesting that he “impress upon the Department of Labor the necessity of getting aliens of this type out of the country.” The type of alien that the secretary is referring to, however, is not clear. He notes that Schille and a number of his peers are self-confessed anarchists, but nowhere in the record does the man claim he is an anarchist. If anything, it seems that the immigrant’s main offense could only be an attempt to organize fellow workers into a union. But others also decried his actions, or lack thereof. Boston immigrant inspector W.M Clark asserted that the possession of anarchistic books was proof enough of Schille’s harmful intentions and activity as a teacher of anarchy. Anthony Caminetti approved of the decision to deport him, for Schille’s alleged spreading of anarchistic and socialist doctrine was likely to “foment a spirit of unrest”

among the foreigners of Bristol at a time when such ideas were “particularly dangerous to
the country.”

The case made against Schille, like other cases implicating supposed anarchists of
the time, stretched the immigration law to include individuals who could not be proved to
pose a violent threat to the country or its citizens. Although Louis Post cancelled
Schille’s warrant for deportation because of insufficient evidence, he was arrested once
more a year later and turned over to the Bureau of Immigration when the woman he was
living with gave birth to their baby and had him arrested on a “bastardy charge.” In her
testimony, Schille’s estranged partner accused him of holding meetings with Italians in
his home during which he spoke about revolution and the International Workers of the
World “blowing up houses and factories with dynamite.” Despite the accusations of his
fiery language, the Bureau still had no evidence to suggest that any violent action was
being planned, and Schille himself had still done nothing but hold private meetings in his
home. The inspector questioning Schille surely must have known that the evidence was
once again lacking, for in addition to the charge that he had been advocating the
overthrow of the government by force or violence, a new charge that he was a “person
likely to become a public charge at the time of his entry” was to be added to the warrant.
Caminetti once more called for the deportation to be carried out, calling Schille’s a

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20 Anthony Caminetti to Assistant Secretary Post, “In re Salvatore Schillaci, aged 35,
native and subject of Italy, Italian race, entered at Providence, R.I., per SS “Madonna”
(Fabre line—French registry), on November 23, 1913,” August 2, 1917, INS, RG 85, File
“clear-cut case,” and that there was not the “slightest doubt that” that he should be sent back to Italy.\textsuperscript{21}

The Bureau would never have the opportunity to complete the action suggested by Caminetti. After falling ill with influenza, Salvatore Schille died on October 3\textsuperscript{rd} in detention awaiting the final decision of his deportation.\textsuperscript{22} Although there is no way to determine the Bureau’s final decision regarding Schille’s deportation, the similarities of his case to others further affirm how the immigration law was interpreted broadly enough so that the provisions prohibiting anarchy were misused as a tool to deport undesirable aliens even if they didn’t easily fit within the exclusionary parameters of the bill. When Schille was first arrested and charged with deportation, his attorney, Thomas G. Connolly of Boston noted that the basis of the accusations made against his client was the fact that the immigrant possessed books of an anarchistic variety. But nowhere in the Immigration Law of 1917, Connolly argued, was it forbidden for an alien to own or read any “printed matter generally bearing on anarchy, philosophical or violent.” Because Congress designed the law, according to Connolly, “not to let any undesirable act of any alien go unpunished by deportation,” they would have explicitly stated it in the law if they had wanted the possession of anarchistic literature to be grounds for deportation. In Connolly’s eyes, the attempt of the Bureau to deport an alien on such grounds was “an abridgement of the freedom of speech and free thought, even where only the rights of


\textsuperscript{22} John W. Abercrombie, Acting Secretary of the Bureau of Immigration to Commissioner of Immigration, Boston, Mass., November 23, 1918, INS, RG 85, File number 54235/20, NARA. Accessed via Suppression of Aliens 1906-1930.
aliens are concerned,” and “could hardly be tolerated in a nation that calls itself
democratic.” Connolly wondered if such an interpretation by anyone in the Department
of Labor was not “outside the law and in effect the practice of that very anarchy which
the Act discountenances.”

The Bureau and its inspectors that conducted Schille’s hearings completely
disregarded Connolly’s argument that such action was unjust and unconstitutional.
Furthermore, the Bureau ignored the six affidavits that Connolly collected from Schille’s
friends, acquaintances, and co-workers who all stated that the Italian was not an
anarchist, but a “quiet, sober, and industrious person” who considered enlisting in the
army to secure America’s victory in the war against Germany. What is perhaps most
troubling about the government’s arguments for Schille’s deportation, however, was an
affidavit given by one Vito Colapietro that the Bureau introduced as evidence in the case.
In the affidavit, Vito claims that in several conversations Schille attempted to persuade
him to join a society in which he could have anything he wanted for free, and if any
president or king tried to interfere, the members of the society would draw lots to
determine who would kill him. In a second affidavit secured by Mr. Connolly, however,
Colapietro says that he never said those things about Schille and swore that he never
heard the defendant say anything about anarchism at all. Connolly suggests the
possibility that Colapietro’s first statements were translated incorrectly by an interpreter,
“throwing all effort of the private agencies which have been apparently working against
Schillaci into suspicion.”

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23 “Brief of Salvatore Schillaci,” July 21, 1917, INS, RG 85, File number 54235/20,
24 Ibid., 4-5.
Questionable evidence, the reliance mostly on testimony in administrative hearings far too often without the presence of an attorney, the uncertainties about whether or not an alien could be deported simply for his belief in anarchism, even if only philosophical anarchism, the intradepartmental debate over the interpretation of the law; all of these elements found within the deportation cases of allegedly radical immigrants suggest that the only certainty in the enforcement of the anarchist exclusion provision of the 1917 Immigration Law is that there rarely was any certainty at all in these cases. Schulim Melamed’s case provided the final push for immigration officials to seek new legislation in congress that would make the anti-anarchist provisions more powerful and more explicitly defined. In a letter dated July 1, 1918 to Senator Thomas Hardwick, the chairman of the Senate’s Committee on Immigration, the Acting Secretary of Labor John Abercrombie wrote about the dire situation and urged Congress to act quickly in approving a new bill to exclude and deport anarchists. “There are now pending before the department a large number of cases of aliens,” Abercrombie urged, “who fall within the provisions of the bill with respect to the possibility of deporting whom under the terms of the existing law there is considerable doubt.” Reminding Congress that the Department considered this problem “as one of great importance,” the Acting Secretary closed his letter by encouraging the Senate and the House to pass a suitable law before taking their next recess.25

The bill referred to was not one that originated in the halls of Congress. Drafted within the Bureau of Immigration and meant to be forwarded to Representative Burnett, Chairman of the House Committee on Immigration, and to Senator Hardwick, the desired

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Bill would amend the 1917 law in three ways: “bringing section nineteen into exact conformity with section three of the existing statute, removing the five year limitation\(^{26}\) from all of the anarchistic classes and making it perfectly clear that the word anarchist as used in sections three and nineteen is not simply defined by the clauses following such word but that such clauses constitute separate and distinct classes.” The draft of the bill was also to be forwarded to the Attorney General’s special assistant; such a measure, the Bureau thought, would “advocate the passage of the measure and thereby further the desires of this Department in the process.”\(^{27}\) But like Post and Caminetti, as well as other actors in the deportation process, members of Congress had varying opinions on who the bill should designate as deportable.

In Senator Hardwick’s absence on July 1, Mr. Gore directed the Senate’s attention to the Bureau’s bill (which had been introduced by Representive Burnett as H.R. 12309). After asking for immediate consideration of the bill Senator Borah spoke out against voting for the bill without discussing it first. Although Borah agreed with the principle of the bill, he held reservations regarding how someone would be determined guilty of offending its provisions and how it would be proved that any alien facing deportation actually entertained the views for which he was being charged. Borah’s chief concern was that the decision for deportation would not be made in “an open hearing before a judicial body” but in an \textit{ex parte} hearing conducted by the Bureau of Immigration and the Department of Labor. This was, of course, the intention of the bill, as this is the way that

\(^{26}\) The lifting of the “five year limitation” refers to previous iterations of the immigration law which mandated that an alien could only be deported for anarchism if he or she were found in violation of anti-anarchist provisions within five years of his or her entry.  
\(^{27}\) Caminetti to Secretary W.B. Wilson, May 13, 1918, INS, RG 85, File number 54235/36B, Box 2802, NARA, 2.
deportation matters had been conducted under the 1917 law and those before it. “Even an anarchist,” Senator Borah argued, “is entitled to a trial in the orderly way provided by American jurisprudence before he is to be condemned and driven into exile. This system of ex parte, bureaucratic hearing is the way to make anarchists.” The senator’s point struck a nerve. Immediately following Borah’s objection, Senator Penrose took the floor and denounced the deportation measures of the bill during the present international conflict. Penrose readily conceded that “an immigrant may be excluded at the port of entry,” but he was unsure how any individual living in the country for a number of years could humanely be deported when a landing party of deportees would likely be captured or face other troubles when attempting to land in Germany, Austria, or even Russia. Realizing that the bill needed to be discussed before a vote could take place, the matter was put to the calendar. For now, the Bureau remained without its revised anarchist exclusion bill.28

Secretary W.B. Wilson heard about the concerns raised by Senators Borah and Penrose and immediately wrote to Gore in an effort to justify the bill’s parameters and plead the necessity of its passing. Wilson reminded Gore that, ever since the first immigration law was passed, deportation had always been carried out “on an administrative hearing and under administrative procedure.” Hoping to reduce Borah’s anger at the unjust nature of an ex parte trial, the Secretary pointed out that Congress had repeatedly passed immigration legislation upholding this standard, and that “its constitutionality and propriety have never been doubted by the courts.” Wilson’s main concern was the rewording of the statute to make it clear that the word “anarchists” was

not limited by the provisions that follow it, settling once and for all that the word
“anarchist” was to be used to exclude and deport the broadest range of anarchists
possible, including philosophical anarchists against the use of violence. Furthermore,
Wilson also argued that many anarchists were aware that the 1917 law only allowed for
the deportation of aliens who either entered the country as an anarchist or were found
advocating anarchy within five years of their entry. This unfortunate loophole allowed
many dangerous aliens to avoid deportation by claiming that they weren’t anarchists
when they entered and that they haven’t been advocating violent overthrow of the
government since their arrival. Once the advocators had been in the country for five
years, Wilson claimed, they couldn’t be deported even if they did admit to their
promotion of anarchy as long as they weren’t anarchists before entering the country.
Although Wilson suggests that the ineffectiveness of the law was due in large part to the
craftiness of aliens who knew how to get around the statute’s deporting provisions, it is
clear that most immigrants simply did not pose a real threat to the country and that the
desire to deport them was more a matter of paranoid precaution. Congress would
ultimately pass the Bureau’s bill, but not without further objection and debate.29

Discussion of HR 12309 resumed on July 10, and Senator Penrose wasted no time
echoing Borah’s concern about how aliens would be tried when faced with deportation.
Reiterating what Secretary Wilson had written to him, Senator Gore emphasized the fact
that it had always been the government’s policy to deport aliens under administrative
procedure. As Wilson had wished, the context suppressed Penrose’s objection. After this

29 Secretary Wilson to Hon. Thomas P. Gore, Member of Committee on Immigration,
United States Senate, July 3, 1918, INS, RG 85, File number 54235/36B, Box 2802,
NARA, 1-4.
matter was resolved Senator Reed proposed that the language of the new bill would keep revolutionary political refugees from being able to escape persecution and enter the country. There was a difference, Reed claimed, between revolutionaries who fought against oppressive governments with the use of force, sabotage, and other violent means and the common anarchist who simply had a disregard for the law; it was imperative to ensure that the former “disciples of liberty” could continue to look toward America as a place of refuge. Aside from Reed’s problematic, exceptionalist view of the kind of dissent that is considered patriotic and that which is, to use a more modern term, terrorism, it is striking that the senator fails to make what seems to be the more reasonable objection: that the bill would conclusively exclude any alien with a political opinion critical of the American government, as long as it could be described as anarchism. Senator Hitchcock noted the discrepancy in Reed’s reasoning and took to the floor.  

“Before the bill is laid aside,” Hitchcock began, “I should like to ask the Senator whether it is intended to send a man out of the country simply because he holds a belief?” Mr. Gore replied simply, that yes, “a certain description of belief” would result in deportation under the new law if there were evidence “either by spoken word or by act” to support the accusation. In this regard Senator Hitchcock suggested that line three of the law be changed from “Aliens who believe in or advocate the overthrow by force or violence—” to “Aliens who believe in and advocate the overthrow by force or violence—”. The simple change in conjunction would make it necessary for an alien to be found advocating before any inquiry could be made into his beliefs. If the bill were constructed

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any other way, Hitchcock contended, there would be no way for the government to deport someone for a belief in anarchy without setting up “some tribunal to inquire into a man’s belief;” such a measure would be unacceptable.\textsuperscript{31}

Despite these disagreements, however, any serious debate was short-lived. Perhaps concerned that they would be confused as anarchist sympathizers, congressmen prefaced even the smallest dissent to the bill with declaration that they did not mean to prevent the bill from passing and that they themselves were certainly not one of these dreaded anarchists.\textsuperscript{32} That most of Congress favored a measure to exclude any and all anarchists is evident from the way that the bill was discussed in the House. Representative Burnett echoed the concerns of the Departments of Labor and Justice that the new measure needed to explicitly express that the word “anarchists” was meant to be interpreted as broadly as possible, reaching not just those who believed in the violent overthrow of the government but also those who held that society would be better off without government only as a philosophical ideal.\textsuperscript{33} Congressman London contended that under this iteration of the bill, “in view of the excited state of mind that exists in time of war,” an innocent individual could be punished by the terms of the law. Because of these “abnormal conditions” of wartime, the representative was concerned that a person who might be accused of such a serious offense would have no opportunity to defend himself and protest his innocence. Burnett, however, overlooked London’s concern and suggested

\textsuperscript{31} Ibid., 8940.
\textsuperscript{32} See Ibid., 8562, 8938. See also Cong. Rec., 65\textsuperscript{th} Cong., 2d sess., 1918, 56, pt. 8: 8109-8111.
\textsuperscript{33} Ibid., 8109.
that the House move away from this matter so that his colleagues in the Committee on Immigration could make their statements in support of the bill.³⁴

The introduction to Representative Johnson’s speech about the merits of the new law suggests that the members of the House expected the anarchist exclusion law to accomplish more than ensure the country’s security during the tenuousness caused by wartime. The new measure, argued the representative from Washington, would bring the United States closer to “the cleaning up of its citizenship.” When he railed against the new arrivals to the country, the “Revolutionists of a new school” who sought revolution for no other reason than to see the government fall, Johnson’s comments were met with applause from his fellow congressmen. At the end of his statement, punctuated by cheers, Johnson lambasted aliens who take to “platforms, pulpits, or soapboxes” to speak derogatory words about the government, wondering not only why such individuals were not deported, but also how lawyers could deem the deportation law unfair and defend these outspoken immigrants.

Representative Robbins of Pennsylvania followed Johnson’s arguments in favor of the bill. According to Robbins, there was little difference between anarchists and German propagandists—they were both against America’s success in the war, and thus were against the country as a whole. The extremism of the congressman’s opinions lies in his support for the abolishment of any remotely “un-American” element of society. “Teach Americanism,” Robbins exclaimed, demanding that at this “critical period in our national history” the government had to do everything in its power to ensure that all of the people residing in the country were loyal and “in entire sympathy” with the United

³⁴ Ibid., 8110-8111.
States. In addition to the legislation in question, Robbins expressed hope that a bill he introduced himself would be passed alongside Burnett’s. The Pennsylvanian’s measure would have punished any alien who was found “guilty of disloyalty or utters any unpatriotic, disloyal, abusive, or seditious language, or who in an abusive and violent manner criticizes the president, the Army, or Navy or the flag” with the death penalty. This bill never passed, but its troubling implications remain: no non-citizen, according to the Robbins and his colleagues, could express any sign of discontent with the American government without being considered disloyal, a radical, or a German sympathizer. Even naturalized citizens accused of making such claims were liable to be punished for their alleged disloyalty. At the time of this debate, an immigrant in New Jersey who had been naturalized for “many years” was found to be pro-German by the state court. This conduct, the government argued, was proof that the man had attained a fraudulent naturalization and ordered that his citizenship be annulled. That war fever had struck and brought about an even greater desire to suppress aliens becomes even more apparent with the statements of congressmen supporting the bill.35

Missouri’s Representative Meeker argued for the bill in dire terms. If the “Nation is to continue as a nation,” Meeker explained, the supporters of American government and its constitution had no choice but to “bind themselves together as the representative government group” and “put down” the Bolsheviks threatening to tear the country apart. The “parlor socialist,” the “kind anarchist,” and the university professor were perhaps the most dangerous of all dissenters. For it was the teachings of men such as these, Meeker explained, that influenced the “lowbrow” to pick up the gun or the torch against the

35 Ibid., 8111-8113.
United States and its people. Indeed, Representative Meeker, along with Representative Raker of California, argued that the teachers of anarchy and socialism were even more dangerous than the individuals who committed violent acts. These anarchists, Raker pleaded, who were likely to say that they believe in anarchy but are opposed to violence or the destruction of property and defended these views by claiming that they have “individual rights” which protect them, had to be stopped before their teachings incited further interference with America’s carrying out of the war.

Representatives Slayden of Texas and Kelly of Pennsylvania did not defer to the threat of the anarchists as the reason for why Congress should pass the bill. Rather, Slayden suggested that “any sound American” would be in favor of deporting all anarchists, and expressed his expectation that no member of Congress would make any objections to the language of the law. In order to send a message to the country’s anarchists that their “tricks…to weaken our morale and cohesion” would not succeed, Representative Slayden hoped that the bill would pass “without a discordant vote, without amendments being offered, without any change whatever.” Slayden’s plea for unity among the “sound Americans” in Congress was met with applause. Kelly continued Slayden’s theme of Americans banding together against the army of anarchists, claiming that “No action is too drastic, no measure too severe for the protection of the American Government and American institutions against such destructive attacks from within our own breastworks.” As for those individuals who decried Congress for enacting “despotic measures…in defiance of real American principles,” measures that would have brought the framers of the Declaration of Independence behind bars if they roamed the streets in 1918, Kelly scoffed at them. In fact, the representative from Pennsylvania argued, the
Congressmen themselves were much like the Founding Fathers. Like the founders of America who interfered with free speech, press, and assembly when the “entire fate of the Nation hung in the balance,” Kelly argued that America was now embroiled in a war “in which her future existence is at stake,” and in which “every ideal of government which we have boasted as American is also in the balance.”

Kelly’s framing of the war as a “life-and-death fight of dynasty against democracy” and his criticism of anarchists, conscientious objectors, and pacifists reflects the “good vs. evil” ideology that seemed to pervade the country at the time. In his own re-imagining of the melting pot, Representative Kelly claimed that “After a year of war we find…sticks and stones and dangerous substances which will not fuse into that purpose of Americanism. There is only one thing to do. Skim off the dross and throw it on the slag heap where it belongs...That is exactly what this measure provides.” “These dangerous elements, impossible of fusing,” Kelly continued, “shall from this time on not be put into the American melting pot, or, if found there, shall be cast out.” Good versus evil, American versus non-American, anarchist versus patriot; the terms which can be used to describe the confrontational and defensive mindset of Congress at this time are many. What’s clear from the statements made by members of Congress is that the popular attitude among lawmakers was one of complete intolerance for any alien who might remotely express dissent, whether an anarchist or not. Indeed, any opposition to the bill would be quickly stifled.36

When the Anarchist Exclusion Act was brought up for the last time in Congress it was in the Senate on October 3, 1918. The discussion was over and all that remained was

36 Ibid., 8116-8119.
to pass the bill into law. The bill—which, as Geoffrey Stone notes, “was born of many of the same impulses as the Alien Acts of 1798”—made it much easier for the federal government to deport aliens believing in anarchism or belonging to organizations that were considered anarchistic. Indeed, the effectiveness of the new anarchist exclusion act can be seen in the case of Joe Krausee. Although the Bureau determined that he couldn’t be deported under the Immigration Law of 1917, the 1918 bill would prove a much more suitable weapon to deport him.

On January 23, 1919, only three months after Congress passed the Anarchist Act of 1918, the Department of Labor issued a second warrant of arrest for Joe Krausee. On this occasion, Krausee’s warrant notes that he was arrested on two charges under the newer act: “(1) That at the time of his entry into the United States he was (a) an alien anarchist, and (b) an alien who disbelieved in or was opposed to all organized government, and (2) That after his entry to the United States he has become (or continued to be) a member of certain of the classes of aliens enumerated in the first section of the said Act of Congress, to wit, (a) an alien anarchist, (b) an alien who disbelieves in or is opposed to all organized government.” What is notably different from Krausee’s first warrant is that this time there was no charge that he was advocating or teaching anarchy. The effectiveness of the new law is immediately apparent, for now an immigrant who

39 Telegram from Acting Secretary John W. Abercrombie to Immigration Service, Chicago Illinois, January 23, 1919, INS, RG 85, File number 54616/10, Box 3318, NARA.
40 Warrant—Arrest of Alien, January 23rd, 1919, Harry R. Landis, Inspector in Charge, Chicago, Illinois, or to any Immigrant Inspector in the service of the United States, INS, RG 85, File number 54616/10, Box 3318, NARA.
entered the country could be deported only for his or her political opinions. It is also curious that the warrant would include charges that Krausee was an anarchist both at the time of his entry and that he became one afterward. The warrant was set up in such a way that if Krausee had been an anarchist when he entered the country (which he wasn’t, according to his first run-in with the Bureau) but stopped believing in those principles, his past belief would incriminate him. It was this impossible scenario that Krauses found himself in when the Bureau tried to deport him once more.

Officers of the Chicago police department arrested Krausee on January 21 during a raid on the local headquarters of the International Workers of the World and turned him over to the Bureau “for whatever action it might deem appropriate.” Two days later the Bureau issued a warrant of arrest and shortly thereafter Krausee was in a hearing before immigration officials.  

Although it can’t be conclusively determined whether or not he was being honest or merely trying to avoid deportation, Krausee told Inspector Ebey that he now thought there had to be some form of government. After reading about anarchism and socialism, he concluded that he was a socialist, that the Russian government was acceptable, and that the government he believed in was “the working man’s government composed of working men.” Although it seemed that he was now more of a socialist than an anarchist, Inspector Ebey’s prosecution of Krausee pressed on.

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41 Caminetti to Acting Secretary Abercrombie, In re Zys Korostosheasky, alias Joe Krausee, aged 22, native and citizen of Russia, Hebrew race; entered at Boston, Mass., ex SS “Cleveland” (Ham.-Amer. Line), on October 10, 1913, March 13, 1919, INS, RG 85, File number 54616/10, Box 3318, NARA, 1.
42 Hearing given the alien Zys Korostosheasky, alias Joe Krausee on Department telegraphic warrant at the United States Immigration Office, 542 S. Dearborn St., Chicago, Illinois this 25th day of January, 1919, January 25th, 1919, INS, RG 85, File number 54616/10, Box 3318, NARA, 2-6.
Inspector Ebey allowed the hearing to adjourn for a few days so Krausee could secure an attorney and continue the investigation with the aid of legal counsel. The hearing that followed was one of the less common occurrences where the Bureau secured witnesses against the accused. Officers McDonough, Eagen, and Goles all offered their recollections of the day that Krausee was arrested, primarily for the sake of providing testimony in support of the alien’s claim that he was no longer an anarchist. One might think Krausee’s confession that he was no longer an anarchist would have helped him. But because in his first deportation hearing in 1917 he said that he believed in non-violent anarchy as Leo Tolstoy preached it, the Bureau assumed that Krausee’s change of heart meant that he now approved violence. The evidence that Krausee was now an advocate of violent anarchy is uncertain, at best. Aside from the fact that the suspected radical once again said that he didn’t believe in sabotage or the destruction of property, Officer McDonough asserted that he knew what kind of anarchist Krausee was “from observation of his associates.” Refering to the fact that Krausee had once belonged to an organization called the “International Propaganda Group,” McDonough assumed that his relationship with those individuals must have meant that Krausee himself was more than an anarchist in philosophy. Officer Eagen employed similar reasoning when he told Attorney Christensen that he saw Krausee having a conversation with the well-known anarchist Theodore Apple (who, according to the officers, was seen selling a book written by Lucy Parsons, whose husband was hanged for his participation in the Haymarket riot) at the raid on the I.W.W. office. Although he wasn’t close enough to hear the conversation they were having, Eagen was convinced that he “knew what their
conversation was by their looks.” They weren’t talking about peaceful anarchism, he insisted.\(^{43}\)

Clearly, making inferences based on the look of an individual or the appearance of someone’s face while in the midst of conversation is far from actual evidence. Furthermore, when it came down to what Krausee actually said to the officers, the testimonies of Eagen, McDonough, and Goles conflict with each other. At a private hearing in the police department after Krausee had been arrested, the three officers claimed that the alien said three different things: McDonough, that Krausee simply said yes, he was an anarchist; Eagen, that Krausee said he was a Tolstoian anarchist; and Goles, that Krausee claimed he was an anarchist but changed his ideas. The failure of the officers to reach common ground on their conversation with Krausee, the fact that Krausee seemed to no longer believe in anarchy despite still sympathizing with the Tolstoian principles of non-violence, and his opinion that any changes to an undesirable government should be made by education and not by force served as the basis for Christensen’s claim that his client’s warrant for deportation should be cancelled. Any other decision, Christensen wrote, would be a “mockery and a travesty of justice.”\(^{44}\)

Yet Inspector Ebey and Commissioner General Caminetti remained convinced that Krausee was within the bounds of the deportation law. When Inspector Ebey submitted his final report of the hearing, he wrote that the “case hinges upon the question

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\(^{43}\) Hearing resumed in the case of the alien Zys Korostosheasky, alias Joe Krause, at the U.S. Immigration Office, 542 S. Dearborn St., Chicago, Ill. this 29\(^{\text{th}}\) day of January, 1919, January 29, 1919, INS, RG 85, File number 54616/10, Box 3318, NARA, 1-23.

\(^{44}\) United States Department of Labor, Bureau of Naturalization vs. Zys Korostosheasky, alias Joe Krause, Statement and Argument, January 29, 1919, INS, RG 85, File number 54616/10, Box 3318, NARA, 1-6.
of whether the alien has in fact thrown over his anarchistic beliefs.” Had he truly separated himself from anarchism, Ebey claimed, Krausee surely would have “ceased to peruse or study anarchistic literature.” While Ebey at least entertained the possibility that Krausee might have no longer been an anarchist, Caminetti was sure that the twenty-two year old Russian was only trying to evade the new anarchist exclusion law. Citing the faulty testimony of the officers as proof that Krausee did not give up anarchism entirely but only quit believing in “Tolstoism,” the Commissioner General was sure that the immigrant’s loyalties were now with “the communistic form of anarchy, or that taught by Kropotkin.”

It did not make any difference to Caminetti that Krausee repeatedly said that he didn’t believe in violence to overthrow the government. If the testimony of the officers failed to show that Krausee was a dangerous anarchist, then the literature found on Krausee’s person when he was arrested was proof enough for Caminetti to recommend to Acting Secretary Abercrombie that the alien be deported. The literature consisted of three items, none of which, according to the translations offered by Officer Goles, prove that Krausee was involved in any sort of violent plot or even that he now advocated violence. Among the documents was a circular written by Russian anarchists protesting the violent actions of Bolsheviks who had turned on anarchists and accused them of “plundering and killing.” (It is interesting to note that one paragraph of the translated circular reads: “Order cannot be introduced into a foreign country by iron and blood, violence and oppression, or by prisons and hard labor,” suggesting that that these anarchists in fact did

46 Caminetti to Acting Secretary, March 13, 1919, INS, RG 85, File number 54616/10, Box 3318, NARA, 1-3.
not advocate the use of violence. The authors of the flyer later claim that they are ready to fight in order to defend themselves.\footnote{Translation of circular found on Joseph Krause (a Russian anarchist), translated by Officer Goles, presented in alien’s re-hearing, January 29, 1919, INS, RG 85, File number 54616/10, Box 3318, NARA, 1-2.}

The second document, perhaps the least consequential of the bunch, was merely an excerpt from a short story about an anarchist who “escapes from the hands of the authorities.” The most incriminating of the literature was an article Krausee wrote for the I.W.W. in which he criticized the government for attempting to deport aliens “whose crime consisted only in the fact that they were born in the foreign countries.”\footnote{Translation of Russian communication found on Joseph Krause (a Russian anarchist), translated by Officer Goles, presented in alien’s re-hearing, January 29, 1919, INS, RG 85, File number 54616/10, Box 3318, NARA.} Nowhere in the article, however, does Krausee refer to violence as a means of carrying out the I.W.W.’s goals, nor does he link the hated organization to anarchy. That Krausee was simply in possession of literature of this “nature” was enough. Caminetti recommended his deportation “on the grounds ‘that after his entry into the United States he has become a member of certain of the classes of aliens enumerated in the first section of the Act of Congress approved October 16, 1918, to wit, an alien anarchist.’” After being released on bond following his hearing, Zys Korostosheasky was taken into custody for deportation on March 22, 1921 under the Anarchist Law of 1918.\footnote{Caminetti to Acting Secretary, March 13, 1919, INS, RG 85, File number 54616/10, Box 3318, NARA, 1-3; Assistant Secretary to Inspector in Charge, Immigration Service, Chicago, Illinois, March 22, 1921, INS, RG 85, File number 54616/10, Box 3318, NARA.}

Just like Krausee was able to be deported under the revised anarchist exclusion provisions that Melamed’s case helped put on the books, the efficacy of the 1918 law would be demonstrated further during the Red Scare. As Sidney Fine notes, by 1920 the
fear of anarchists was transferred to communism.\textsuperscript{50} Shortly after the war had ended, the Senate committee that had been assigned the job of investigating propaganda in favor of a German victory now focused its efforts entirely on “Bolshevik activities.” If the discovery of thirty-six bombs addressed to politicians and other prominent members of the government by the United States Postal Service hadn’t been enough to spark the federal government into the spirit of a raid, one bomb in particular would be enough. Although Mitchell A. Palmer, the country’s new Attorney General, narrowly survived the explosive that was intended to take his life, the damage had been done. Palmer “declared war on the radicals,” and so the Red Scare began.\textsuperscript{51}

In his memoir of his experiences as the Assistant Secretary of Labor during the Red Scare that followed World War One, Louis F. Post wrote that the “great majority” of the approximately 250 “reds” that were infamously deported from the country on the “Soviet Ark” at the end of 1919 were “innocent of any hostility to the United States.”\textsuperscript{52} Post recognized that Palmer’s deportation raids after the war implicated thousands of alleged anarchists and radicals who were far from dangerous threats to the country. Although the government saw a national crisis that threatened to compromise the security of the nation, there existed, perhaps, only one actual threat. Just as it had with the Alien and Sedition Acts and, though on a smaller scale, with the deportation of philosophical anarchists, the state once more asserted its right to suspend basic liberties such as freedom of speech in order to protect the nation. Furthermore, as Post notes, the

\textsuperscript{50} Sidney Fine, “Anarchism and the Assassination of McKinley,” 799.
immediate reaction of the government to make an example of radicals once the Red Scare was in full swing came at the cost of deporting many individuals who were innocent of any wrongdoing. If this was the product of the state’s efforts to “protect” itself—to not only limit aliens from free expression and free discussion but also to expel them from the country when they constituted no threat to anyone’s safety—surely someone must have taken notice.

Originally a splinter group of the American Union Against Militarism, the National Civil Liberties Bureau was founded shortly after America’s entry into World War One as a response to the Wilson administration’s breach of free speech with the Espionage Act. With strong ties to the Socialist party and labor organizations, the National Civil Liberties Bureau—which Roger Baldwin would eventually evolve into the American Civil Liberties Union—was well aware of the 1917 and 1918 immigration laws that “institutionalized the attack on ‘foreign’ ideas.” After Palmer’s Red Scare had reached its zenith on the second day of 1920 when the Department of Justice arrested over four thousand people without warrants—ACLU historian Samuel Walker notes that “anyone who looked vaguely ‘foreign’ was likely to be arrested”—the National Civil Liberties Bureau joined forces with the National Popular Government League. Together they issued their response. The two organizations lambasted the state for allowing such abuses of free speech to occur in the United States in their “Report upon the Illegal Practices of the United States Department of Justice.” Shortly after the report’s publication, Palmer’s engine began to lose steam and the raids subsided.53

The members of the ACLU sensed that although the mass deportations were over, the fight to protect freedom of speech was only just beginning. The organization dedicated itself to defending free speech, regardless of how defamatory or radical. According to ACLU historian Samuel Walker, the NCLB and the ACLU recognized that the effort to maintain the standard of free speech in America was not the only issue for which they would be fighting: “If free speech was everywhere in retreat and under a cloud of suspicion, the war years had at least accomplished one important thing: It had dramatized the issue of civil liberties and placed it, for the first time, on the national political agenda.” What is more, they clearly recognized the relationship of state oppression with the suppression of free speech for aliens. Indeed, by 1926 the American Civil Liberties Union considered “immigration, deportation, and passports” one of the “ten pressing civil liberties issues” of the day: “No person should be refused admission to the United States on the ground of holding objectionable opinions. The present restrictions against radicals of various beliefs is wholly opposed to our tradition of political asylum…This is as un-American a practice as the prosecution of citizens for expressions of opinion.”

As civil liberties historian Paul L. Murray notes, the government’s development of “prescriptive guidelines for citizen behavior,” such as the Espionage and Sedition Acts, the one hundred percent Americanization movement, the increase of deportations of radicals, and the work of the American Protective League, “made civil liberties a public policy question…due to the dubious nature of the government’s own actions, a politics of

54 Ibid., 47.
When anti-radicalism and the lingering war-fever culminated with more than four thousand arrests, most of which were unwarranted—only about eight hundred of Palmer’s prisoners were deported—the new emphasis on civil liberties was beginning to be noticed on a larger scale. As the Red Scare proceeded, Supreme Court Justices Oliver Wendell Holmes read Zechariah Chafee’s 1919 article “Free Speech in Wartime” and sent letters to his colleagues about the importance of free speech. In Abrams v. U.S., which “upheld long prison terms for four immigrants who had printed and distributed a pamphlet calling on workers to strike in protest over the use of American troops in Siberia,” Holmes dissented in a profoundly significant way. The renowned justice revised the “clear and present danger” doctrine he established in Schenck v. U.S. and asserted that free speech could only be limited under the direst circumstances when danger was imminent. The distribution of pamphlets and radical political opinion, according to Holmes, was not to be considered an imminent threat. As noted by Christopher Finan, “Holmes had given the cause of free speech two things it badly needed: prestige and an eloquence that would inspire others to take up the fight.”

Indeed, the effort to secure free speech and other civil liberties had only just begun.

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Conclusion

The controversy over Schulum Melamed’s deportation case in the Bureau of Immigration played a distinct role in influencing the Department of Labor and Congress to revise the anarchist exclusion provisions of the 1917 immigration law. These revisions helped make it possible for Mitchell Palmer to carry out the mass raids and deportations that constituted the Red Scare in 1919 and 1920. The significance of these laws as precedents for restriction, however, reached much further than their implementation in World War One and the Red Scare. Immigration legislation discouraging “foreign” thought and ideology was revised in 1920, 1940, 1948, 1950, and 1952 with increasingly restrictive measures in each new act. The Alien Registration Act of 1940, for example, excluded aliens who had at any time belonged to an organization that advocated anarchy or the violent overthrow of the U.S. government—the 1918 act could only deport those who were presently involved in such organizations. The 1948 legislation added “aliens who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States”\(^1\) to the list of aliens who could be excluded and deported. Indeed, the Immigration Law of 1903, which began as an attempt to nullify anarchism, was gradually transformed over the years to match increasing concerns about radical thought among the nation’s immigrants.\(^2\)

Legal historians Melvin Cohen and David McGowan note that the Internal Security Act of 1950, which was passed as a response to the Cold War and growing fears


of Communist subversion, was “one of the most restrictive measures ever passed by Congress.” The Internal Security Act included anarchists in its excludable classes as well as any alien who had even the most inconsequential affiliation with the Communist Party. The Immigration and Naturalization Act of 1952, also known as the McCarran-Walter act, absorbed the expanded list of aliens who were to be excluded or deported. As Christopher Finan notes, the McCarran-Walter Act “clearly violated the First Amendment.”

Though I have only focused on a few moments of the country’s history, these moments are, as David Cole and James X. Dempsey describe them, examples of “the recurring nature of the government’s misguided response to ideological threats.” The McCarthyism of the 1950s, the Federal Bureau of Investigation’s COINTELPRO investigations of political activism during the 1960s and 1970s, and the FBI’s suspicions of the Committee in Solidarity with the People of El Salvador in the 1980s offer stark examples of the government’s repeatedly misguided suspicions and offenses against the people. Now more than ever, it is important to understand and question the policies that allow these aberrations to occur. The detentions following the terrorist attacks of September 11, which have garnered much international attention and controversy, are part of a recurring trend in American history in which it is deemed acceptable to dismiss the rights of individuals in the name of, we are told, national security. If we are to

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3 Ibid., 177-178.
continue to praise America as a place where liberty is valued above all else, it is the obligation of all Americans to recognize the darker side of American political traditions.

In the weeks and months following the events of September 11, the United States government rounded up thousands of Arab and Muslim men living in the country and charged them with deportation despite the fact that “almost none of them have been linked in any way to terrorism.” The internment of thousands of Japanese-Americans after the bombing of Pearl Harbor serves as yet another example of the way that individuals viewed as foreign “others”—despite the fact that many of those interned were American citizens—have been rallied against as contributors to a national crisis. Like the thousands arrested after 9/11, what is perhaps most striking about the abuse during this period is that their internment was conducted in vain. There was no reason whatsoever to assume that an individual with Japanese ancestry was involved in some radical plot or conspiracy to undermine the American government. As the historian Geoffrey R. Stone notes, “all this was done even though there was not a single documented act of espionage, sabotage, or treasonable activity committed by an American citizen of Japanese descent or by a Japanese national residing on the West Coast.”

The deportations of anarchists and radicals during World War One and the Red Scare, as noted above, were similarly unsuccessful and without any real, pressing justification. On November 19, 1919, Louis F. Post reported to Congress that under the Immigration Law of 1917, the Bureau issued only 453 warrants of arrest for deportation. In between the passage of the Anarchist Act of 1918 and Post’s writing of the letter, 244

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aliens had likewise been arrested for deportation. Of those 697 warrants a mere sixty resulted in deportation, with the vast majority of the cancellations due to insufficient evidence to prove that the alien was a member of the deportable classes.8

Many circumstances, to be sure, influenced each revision of the anarchist exclusion provisions of the immigration law. The Anarchist Act of 1918 is no exception. It is clear from the testimony of Schulim Melamed’s case and the correspondence of the Bureau of Immigration, though, that the uncertainty of whether or not Melamed could be deported for his brand of philosophical anarchism directly contributed to the revision of the law. Melamed’s case, then, is a crucial piece of the large and complex puzzle of the government’s legal attempts to suppress what were considered radical beliefs of aliens. Consequently, Melamed’s case and its role in creating the 1918 law, though never unearthed by historians, must also be considered alongside the increasingly voluble discourse defending free speech and civil liberties in World War One that remains a part of public discussion to this day.

As a case study in the deportation of aliens during a national crisis, the story of philosophical anarchists in the United States is in many ways a cross-section of multiple histories. Located in a historical moment when so many critical shifts in American society were occurring at the same time—the resurgence of anti-radicalism, increased restriction of immigration, the emergence of civil liberties as a national conversation, and so on—the misunderstanding of philosophical anarchism in the beginning of the twentieth century offers scholars and students numerous entryways for further inquiry.

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8 Louis F. Post, Statement Showing Number of Arrests and Causes Therefore; the Number of Deportations Effected and the Causes Therefore; the Number of Cases in which Deportation was Defeated; and the Causes or Grounds Upon which Deportation Proceedings were Undertaken, 66th Cong., 2d sess., 1919, H. Doc. 317.
into this period of American history. Given the lack of scholarship available on philosophical anarchists in World War One, the voluminous records of the Immigration and Naturalization Service used in this thesis can be more fully explored to better illuminate the extent to which these pacifist minded anarchists were arrested for deportation. Although I did not have the chance to discuss the case in this thesis, it is significant that Henry Weinberger, who defended Emma Goldman and Alexander Berkman when they were charged with convincing individuals not to register for the draft,\textsuperscript{9} also provided his services to two aliens named Louis Kramer Morris Becker who were ordered deported on a number of charges, including advocating anarchy.\textsuperscript{10} The correspondence of notable attorneys who were associated with philosophical anarchists, like Weinberger and Clarence Darrow, could provide a space for further research to see if philosophical anarchism was a specific concern of attorneys interested in free speech and civil rights. In light of Melamed’s significance in the history of legislation barring free discussion among immigrants, it is critical to further ascertain the place of philosophical anarchists in the history of the First World War, the emergence of civil liberties, and the Red Scare.

\textsuperscript{9} Paul L. Murray, \textit{World War One and the Origin of Civil Liberties} (New York: W.W. Norton & Company, 1979), 212.
\textsuperscript{10} See Records of the Immigration and Naturalization Service, Record Group 85, File number 54235/32, Box 2801, National Archives Building, Washington, DC.
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