

CHAPTER 3

Whether to Exclude

From the founding of the United States through World War I, no numerical ceilings governed immigration to the United States. Immigrants were not recruited, but neither were they capped. States admitted and taxed new arrivals and reaped the benefits of new immigrants' votes. New arrivals could always head west, wrest land from the Indians, and keep it from the Europeans. The frontier made inattention possible. Indeed, not until 1876, well after the Civil War, did the U.S. Supreme Court decide that the federal government, rather than the separate states, should decide who became a citizen; this complemented the relatively recent Fourteenth Amendment, establishing citizenship by birth on American soil. The federal government after the Civil War consolidated the rights of sovereignty in Washington, DC, removing from the states any prerogatives associated with a national government. Uniform, centralized rules regarding entry to citizenship were at the core of this change.

The government had the right to exclude immigrants, but it had no basis for deciding whether it should exercise this right. The first debates on the topic covered the issue of whether exclusion of immigrants was even justifiable, that is, whether Americans had any right to refuse entry to someone willing to come to the United States and become a citizen. After this early period, when the right of the country to exclude immigrants had been settled, these arguments were ritually reprised, to reaffirm their central points, but subsequent philosophical debate did not add substantially to the points first raised. Later debates centered on the questions of how many and which immigrants to exclude, not on whether exclusion was itself justifiable. In this earliest period, however, that basic question had not been settled. Debate on what eventually resulted in the Chinese Exclusion Acts and the Quota Acts therefore developed in two conceptually distinct stages. The first, covered in this chapter, dealt with the question of exclusion's legitimacy. The second, discussed in the next, involved the desirability of excluding particular people. That chapter therefore parallels the subsequent ones, for all focus on whom and how and how many, not on whether, to exclude.

The question of whether banning someone from a community is

proper at all, or is proper for a democratic and liberal community, raises fundamental political and philosophical questions. Inescapably central is the problem of the extent and limits of social duties. Early arguments both against and in favor of capping immigration therefore drew directly on ethical arguments about individuals' and societies' duties to each other. This chapter first provides a brief overview of the historical context, outlining the history of immigration policy to the late nineteenth century when the topic of restriction found itself firmly on the congressional agenda. The following section discusses in basic terms the ideal-typical ethical positions that underlie the positions articulated in the debates. Following these is an examination of the arguments made for and against imposing a numerical ceiling on immigration to the United States.

Early American Immigration Policy

Immigration up to the turn of the twentieth century was open in fact and principle, in spite of almost two centuries of periodic xenophobia. Not until 1868, with the passage of the Fourteenth Amendment, did the federal government define American citizenship; not until 1876 did it even claim its constitutional right to override state policies and establish a uniform rule of naturalization. Prior to this time, colonies, then states, pursued whatever course they wished.¹ Some offered economic bonuses to settlers; others taxed them heavily to prompt them to move on. Some granted state citizenship instantly; others allowed it after a lengthy and rigorous trial. In spite of these variations, immigration remained numerically unrestricted for Europeans from the earliest colonial days in the 1600s through 1921.

Although the American government never recruited immigrants,² its stance toward immigration was neither accidental nor passive. Continued immigration served the government's foreign and domestic purposes. The Declaration of Independence accused King George of "endeavor[ing] to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners, refusing to pass others to encourage their migration hither, and the conditions for new appropriation of lands." Homesteading helped to establish infrastructure, to develop the local treasury, to quell slave revolts, and to fight American Indians;³ manifest destiny prevented European settlement. Since demand for immigration was high throughout many decades of this long period, the country had the luxury of getting what it wished without having to enact legislation.

During periods of devastation in Europe, immigration soared. The Irish famine and the German revolution (1845–55), the 1880–90 European depression, and the beginning of World War I in 1914 saw the number of

applications for admission rise dramatically, while during the American Civil War and economic depressions, immigration fell and was periodically exceeded by emigration. During these relatively rare fallow periods, the urban population on the East Coast pushed its way west. “Unregulated” westward expansion preempted the British, French, and Spanish and laid the groundwork for rebuffing militarily any future claim they might make. American policies favoring immigration were consistent with those of the other mercantile powers of the day: the more wealth and the more people the better.⁴

At the same time, restrictionist sentiment was rarely dormant. Benjamin Franklin was neither first nor last to argue that “those who come hither are generally the most stupid of their own nation. . . . Not being used to liberty, they know not how to make a modest use of it. . . . even our government will become precarious.”⁵ The Alien and Sedition Acts of 1798, the first federal efforts at central immigration control, sought to exclude both revolutionaries and royalists fleeing to the United States (and tilting the balance of the national political parties). At midcentury, the anti-immigrant Know-Nothing Party had gained enormous popular support, while nativist organizations rose to prominence with the waves of anti-Catholic and antiradical hysteria. By the late 1800s, they gave way to groups seeking to define in positive terms what it meant to be a “native American.”⁶ The Statue of Liberty, the country’s most famous symbol of its openness, was dedicated in 1886, ironically ending the long era of American consensus on immigration’s benefits.

America’s first codification of immigration policy—the Quota Acts—had its roots in the very late years of the nineteenth century. America had changed economically. Industrialism had altered its work-force requirements, and cycles of industrial depression and panic in 1870, 1907, and, later, in 1921 led many to conclude that the days of plenty had ended; immigrants could only displace Americans. New ideas also wielded a great deal of influence. Eugenics and vulgar Darwinism were in vogue, as were new ideas of hygiene and public health. Everywhere people saw scarcity and attendant conflict. Contemporary events, both domestic and foreign, also influenced how people viewed problems and strategies for change. Of most importance, the Chinese Exclusion Acts of 1882 and 1892, sponsored by California’s nativist representatives, brought categorical exclusion into policy for the first time, while the Spanish-American War, whose result included colonial possessions, prompted a debate over America’s role in the world and potential status as a great imperial power.⁷ Although the country was becoming isolationist, pan-Americanism infused U.S. policy toward the Western Hemisphere. Meanwhile, congressional jurisdictional fights with the executive branch led a large faction in Congress to assert

the fundamentally domestic nature of any topic that Congress (especially the House of Representatives, which lacked authority over treaties) wished to control.

In this setting, Congress established the Immigration Commission, usually known as the Dillingham Commission after its chair, to survey the status of laws relating to immigration and to recommend changes. Its forty-two-volume report had two impacts. First, it framed the debate. Its characterization of recent immigrants as poor, illiterate, and racially distinct, in contrast to the “old” immigrants who were entrepreneurs and educated, religious refugees, made exclusion politically possible by salvaging the country’s immigrant past. Second, it did all of the groundwork for a streamlined, comprehensive policy. The first immigration act, passed in 1917, codified existing law into a single, omnibus package. Its two significant innovations were its incorporation of a literacy test, designed to exclude those who were not substantially literate in any language, and its delineation of a single geographic zone, covering most of Asia, from which nonwhite immigration was barred. The literacy test and the Asian barred zone, like the old/new distinction earlier, signaled a massive change in the way people thought about immigration restriction. Debate on this provision foreshadowed that to come with the Quota Acts.

Early Debates

Previously, numerical restrictions on Europeans had been the side effect of policies designed to exclude individuals on the basis of their (presumed) lack of personal merit. Laws barred prostitutes, paupers, vagrants and vagabonds, criminals and polygamists from entry. Literacy, too, was an individual-level restriction and so could be said to be based on a person’s capabilities and acts rather than on his or her ascriptive characteristics. John Burnett argued that the literacy test would select the best people, while ceilings based on country of origin would only cull those “most loosely tied” to their homelands.⁸ The test’s real purpose, however, was clearly to exclude “undesirables” emigrating from southeast Europe; the test’s proponents did not bother to pretend otherwise. Restrictionists’ two goals were to reduce immigration’s volume and to redirect its sources to draw almost entirely from northwestern Europe wherein lived “Nordics.” Representative Dillingham stated bluntly:

We took the nations from which this immigration came so largely, the eastern and southern nations of Europe, and ascertained what the literacy percentage was among the people of those nations. We saw at once that if we adopted the educational test, it would substantially

decrease the volume of that stream 30 percent, which was just about what we wanted to accomplish. On the other hand, the educational test would in no way affect England or Scotland or Ireland or the Scandinavian countries or Germany or France.⁹

The literacy test's proponents, mainly members of Congress from everywhere but the East Coast and urban centers, were not committed to immigrant education; rather, they wanted the test as a covert means of numerical and racial restriction. Illiteracy, to them, stood as an administratively convenient way to mark racial undesirables. Fairness was not the issue. Social survival was. "No where else is there a better illustration of the axiom that the individual must often suffer that the community may benefit; that there must be temporary individual inconvenience in favor of the general permanent convenience."¹⁰

Its opposition, the executive branch, urban Democrats, and ethnic and religious societies, focused their objections not on the bill's real purpose, numerical restriction, but on its expressed content, a ban on illiterates. Their objections, therefore, centered on its unfairness to individuals and its damage to how others would see the country: the test did not capture what it claimed, it was unworthy of the country's past, and its effects would contradict foreign policy goals. Every president from Grover Cleveland to Woodrow Wilson who had a chance vetoed this bill on the grounds that illiteracy did not indicate lack of individual merit.¹¹ Cleveland pointed out that "violence and disorder do not originate with illiterate laborers. They are rather the victims of the educated agitator."¹² Wilson vetoed the measure repeatedly, denouncing it as a test of opportunity rather than of character:¹³ "A literacy test is not only undesirable, but is unfair, unreasonable, and un-American and violates our time-honored principles that this country shall be a refuge for the oppressed of other lands, an asylum where the persecuted may come and worship their God."¹⁴ "A literacy test," argued others, "provides for an aristocracy of immigrants, and is therefore discriminatory and un-American."¹⁵ Liberal principle could not stretch as far as the literacy test demanded.

Neither could anyone charged with handling the country's foreign affairs face the charge of hypocrisy. The bill "proposes to reverse the order of history and tradition, destroy the universal belief in America as a haven for the oppressed or those seeking relief from persecution of political or religious views by writing over the portals the inscription, 'all hope abandon, ye who cannot read.' (Applause)."¹⁶ George Kennan argued that the literacy test "will be even more effective than the existing extradition treaty in enabling the Russian Government to lay its hands on Russian revolutionists who come to us for protection from tyranny."¹⁷ Representatives pointed out that its results would contradict other American foreign poli-

cies. "The Armenians, amongst whom there has been a massacre in the last eight months unparalleled in civilization . . . are to a large extent illiterate, and the survivor of a butchered Armenian family attempting to come to this country, where he or she would be cared for, would be barred out of it, because under Turkish misrule education has been denied."¹⁸ While restrictionists used the language of competitive interest, drawing on images of self-preservation, and used the language of community instead of that of the individual, their opposition concentrated on principle, drawing on images of niceness. The sides talked past each other. Later debate largely echoed this dynamic.

Restrictionists and liberals on the question of Asian immigration did not talk past each other; instead, they fought a head-on war of attrition that the restrictionists won. Congress had renewed the Chinese Exclusion Acts, then had banned Hindus and "oriental coolie labor" in separate acts. The Japanese alone had the dubious privilege of restricting emigration themselves, so that the embarrassment of their exclusion could be avoided. By 1917, all that was required for a comprehensive ban on Asians was to extend the ban outright to the Japanese and to codify all of the laws into a single package.¹⁹ The Asian Barred Zone had history, efficiency, and popularity to recommend it. Its opponents concentrated on racial discrimination's inequity. It is probably fair to say that they convinced none but the already converted. The Barred Zone then became the precedent used to restrict other groups by outlining geographical regions and setting targets for each sector, accomplished later during the Quota Acts.

Restrictionist discussions such as these occupied, but did not dominate, the public agenda. Then came World War I. The prevailing image of the international environment as one of violent competition crystallized during World War I. Following the war, many claimed:

There has never been a time when we could so well afford to ignore the rest of the world and devote ourselves to building up our own character and independence. . . . The world is in turmoil, and no one can foresee the conditions which will follow the treaty of peace. . . . It will not be a safe or fruitful time to preach or practice world philanthropy when all other nations are battling vehemently for their own interests. Why should we not then study our own interests, set our house in order, raise our standards of civilization, and for a period admit no dilution and cultivate a devotion to our own country?²⁰

This world was cutthroat. "Nations and races have struggled for a place in which to exist and enlarge since before the years covered by human history. We are trying to maintain a place here for us and our children to

which the crowded-out, hungry, unhappy millions of the Old World are struggling to come.”²¹ It was also zero-sum. “I am convinced that what is for the best interest of the United States on this immigration question may be diametrically opposed to the selfish interest of other countries.”²² That war and its aftermath shaped America’s understanding of what sovereignty meant and what immigration restriction meant.²³ The country’s new perception of itself as a creature struggling actively for self-preservation in a hostile, competitive world was only reinforced by its experience during World War I.

Arguments about Immigrants

On the one hand, you will be told that the basic foundation of Government is practically lodged in four Hebrew words used by the Israelite in his Passover Services, meaning “all who are hungry may come and eat,” and that notwithstanding this ultra wide liberality, the country has grown from 4,000,000 to 110,000,000 population and has become the strongest Nation on the face of the globe. On the other hand, you will be told that all of this may have been true at one time, but now that we have more than 100,000,000 people of our own, we should keep our country to ourselves, for our own native population. Between these two extremes, you will find almost as many differences of opinion as Mr. Bok has found plans how to prevent war.

—Abe Spring²⁴

From 1890 to 1930, debate about immigration concentrated on four broad topics: restriction as a principle of policy, numerical restriction, the restriction of various subgroups, and, finally, the policy intended as a compromise between the “fors” and the “againsts,” the national origins quota system.²⁵ The following section traces arguments about immigration restriction in principle. At issue here are what reasons the policies’ proponents gave for championing them. The process of debating eventually created a consensus on how to describe immigration’s most important issues. This was not the result merely of one side dominating the other, nor was it a matter of compromise on negotiable points. Rather, the final consensus was new; it reflected a social interpretation of the country’s goals that was created by the debate.

Many in Congress, and many members of the public, saw the country’s recent involvement with Europe and its problems as an ominous sign

of troubles to come. Immigration from Europe had doubled in a decade, the consequence of changes in passenger shipping and the mail as well as industrial and national upheavals. Global markets' integration also posed a serious problem. "The time was when the Pacific Ocean was a barrier, in a sense a protection," mourned one. "It is now an avenue of approach."²⁶ Its solution was not easy. On one hand, the country had a history of immigration; on the other, it feared new immigrants. On one hand, a capitalist country supported trade; on the other hand, an independent country wanted to remain that way. Many believed that prosperity and survival might, tragically, be incompatible; money could only be made at the cost of autonomy—which is exactly what immigration signaled. If that were the choice, legislators declared, their decision was clear. "It is better to have a shortage of labor, if needs be, in our mines and manufactories rather than have that people come in who are not in accord with our ideas and ideals. As some one has said, 'Better smokeless chimneys than a degenerate people.'"²⁷ Free trade and unrestricted immigration meant giving up control over borders. If self-abnegation were the price, the country would forgo both prosperity and goodwill.

Certainly, as a general proposition, increased national production is of vital importance to the whole country, and increased production is of vital importance to your own district. But if increased production of goods could only be secured by reduction of Americanism, by lowering our standards of living, by replacing the English language with a medley of other tongues, by substituting for American communities polyglot colonies where our Constitution and laws are neither respected nor understood, by changing the character of our race—then production is bought at too great a cost. When the cost is in dollars and cents we feel it, but, after all, we can pay it. The other cost we could not pay, for in paying it the American Nation would lose its soul.²⁸

Immigration restriction, declared Samuel Shortridge, might interfere with trade, "but if it did interfere with trade, let it be so. I put man above trade. I put the men and women of America above coupons or bonds. I put the permanent welfare of my country above the temporary profits of commerce."²⁹ Added another, "I would rather see American citizenship refined to the last degree in all that makes America what we hope it will be than to develop the resources of America at the expenses of the citizenship of our country."³⁰

Interdependence not only was a threat to autonomy from other coun-

tries, but it also promised social upheaval. "The theory that America is a melting pot becomes absurd in a time when population rolls hither and thither about the globe like particles of quicksilver." Thomas Busby blamed lagging assimilation and "IWW-ism" on interdependence. Immigrants used to "burn bridges," he said, because they had no choice. Modern telegraph and radio, fast mails and steamship travel meant that they no longer had to.³¹ "Wealth has accumulated under the stimulus of oriental labor, but if you go out there now and look for American communities, you will see wasted homes and dismantled dwellings—Wealth accumulates and men decay."³² One asked, "Is it better to insure perpetuity of our institutions or to have laborers? Which is foremost in your mind—need for laborers, or to save the United States?"³³ Another representative answered (if an answer was needed): "By our tariff laws we could preserve and assure to ourselves our own markets, even if we had to surrender our other markets to cheap labor. It is more important to me to Americanize and spiritualize our own population than to extract wealth from other nations."³⁴ For this reason, the restrictive law "was considered by practically all as a primary step in our after-war reconstruction program."³⁵ International involvement of any sort would destroy the country.

Interdependence specifically threatened sovereignty. At the turn of the twentieth century, the American public viewed the international environment—which meant, in essence, Europe—as hostile but actively dangerous only if engaged on purpose as in the Spanish-American War.³⁶ The danger Europe threatened was that of territorial conquest; Americans did not simply fear competition, they feared conquest and the end of their civilization. What was at risk were the country's borders, its integrity. What was to be defended was, therefore, its sovereignty. And virtually every legislator speaking for immigration restrictions chose at some point to base his appeal explicitly on American sovereignty. These arguments focused on principle.

Sovereignty, in this view, was absolute and basic. If outsiders could claim anything at all, especially the right to enter, the country would no longer be sovereign. Exclusion was, therefore, a *sine qua non* of sovereignty. Declared legislators again, and again . . . and again: "I would not debate the right of our Nation to exclude immigration. That is the inherent right of every nation, even the weakest on this globe."³⁷ The U.S. Supreme Court first articulated this absolutist view of sovereignty in relation to immigrants, and it is this view that is most often quoted and paraphrased by the legislators. When they upheld the exclusion of a twenty-five-year-old Japanese woman married to a U.S. citizen, the justices did not argue for exclusion in terms of anything that she had herself done, nor

did they argue in terms of a public interest, such as wages or public health, or even a national interest, such as defense. Instead, they invoked “sovereignty,” the broadest possible principle.

It is an accepted maxim of International Law, that every sovereign nation has the power as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. In the United States, this power is vested in the government to which the Constitution has committed the entire control of international relations, in peace as well as in war. It belongs to the political department of the government, and may be exercised either through treaties made by the President and Senate or through statutes enacted by Congress.³⁸

That the right was inherent meant to the Court that the government’s authority was absolute; that the procedures involved were those of foreign policy meant that the executive and legislature, not the judiciary, controlled admission. The judiciary ruled that nothing Congress did in this entire area of law could ever be unconstitutional; it was unchallengeable.

Congress took the leeway that the Supreme Court granted it. Senators and representatives stressed that their right to exclude immigrants was basic and constitutive, and contended that all arguments in favor of allowing, through a standing law, any immigration signaled a willingness to betray the country. This they applied only to immigrants; that is, not to travelers (though to do so was their privilege) but to those who would become citizens.³⁹ Representatives echoed the Court time after time. “In the exercise of our inherent powers of sovereignty we have the undoubted right to prohibit the entrance of any or all immigrants or prescribe the conditions under which they may enter. We also have the undoubted right to expel and deport those who are found undesirable.”⁴⁰ Congressional discretion meant that “no foreigner or foreign nation has any right in this country except what we give him. It is a matter of privilege and not a matter of right.”⁴¹ John Miller of Washington elaborated this theme.

The first and highest exercise of the inherent power of a sovereign state is the right of determination of citizenship. Dependent upon this national attribute is the equal sovereign right of the independent State to say under what condition and in what manner and to what extent nationals of other countries may come and remain and their civil status. These principles are basic. They are powers exercised by nations since national organizations have been known and recognized among

the family of mankind. There are theorists, sensationalists, moralists, and romancers who argue patiently, sometimes persuasively, against this national prerogative, calling it by the mild and inoffensive name of 'policy,' but none can dispute the principle.

National right is one thing; it is fundamental, inherent, and permanent; national policy is quite another. In its broad sense it is the conduct or manner in which the national right is exercised.⁴²

Now, the dignity and honor and stability of our country demand that all other nations of the earth abide by our sovereignty as a Nation.⁴³

In this way, legislators served notice that compromise with the demands or wishes of foreigners, whether presented by a foreign government or by U.S. citizens, was simply impossible—and was impossible in principle, for it meant self-abnegation. Henry Cabot Lodge declared that the question of immigration “is perhaps the greater of fundamental sovereign rights. If a country can not say who shall come into the country, it has ceased to be a sovereign country; it has become a subject country.”⁴⁴

Sovereignty under siege required defense, and restrictionists viewed their efforts to exclude immigrants as one component of the national defense. “The struggle for self-preservation is not, as many appear to believe, confined to aliens seeking to enter the country, nor to aliens who, having gained lodgement by unfair means, resist all efforts to dislodge them, but is shared by Americans and aliens alike who have a right to be and remain here in unimpaired enjoyment of the blessings which this country has to offer.”⁴⁵ If immigration continued, the country would cease to be, for its borders would be meaningless and its identity no longer unique: “Our immigration laws are designed primarily for the welfare not only of our citizens but of those aliens who have lawfully taken up residence in our midst. Just as self-preservation is the first law of nature amongst individuals, so it is amongst nations. Our first concern, therefore, must be for those who are here; in short, for our own country.”⁴⁶ The Supreme Court found that

To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation; and to obtain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character (as in time of war) or from vast hordes of its people coming in upon us.⁴⁷

Representatives reiterated this year after year, and the theme never varied. “Self-preservation is the first law of nature, and if we are to be a distinctive nation, as we always have been, we must act today, now, and not in the years that are to come”;⁴⁸ “when it [a country] surrenders its will in this respect [immigration control] to the will of some other people or nation or any group of peoples or nations it surrenders its life”;⁴⁹ “indeed, the right of a nation to perpetuate its existence presupposes the right of that nation to say what foreign peoples shall come into its territory and what shall not.”⁵⁰ The struggle was the survival of the fittest; selective immigration meant that “the weaklings are weeded out abroad.”⁵¹ Each of these statements drew upon the idea that the country could not accomplish anything if immigrants continued to come because it would cease to be a country. The process of immigration was a process of erosion, against which defense was required.

Protection sometimes replaced “self-preservation,” although what threat policy was supposed to protect against was unclear. Generally, the implied threat was destruction in the web of foreign entanglements; protection, as a value, applied generally to the country, not only to immigration but to trade and defense as well. “I will say to you,” declared Representative Focht, “that I am a Republican protectionist, a real protectionist. I am not only for a tariff, but I am in favor of protecting American industry and American labor.”⁵² Europe, generally, was the threat’s source: “It is obligatory for every generation, and particularly upon this, in view of the tremendous conditions prevailing in Europe, to protect the citizenship of this country, to keep up the average standard of citizenship, that this great Republic of ours may rest in safety.”⁵³ Immigrants were like guns or goods. “We exclude defective seeds, defective cattle, and horses, and will not permit shrubbery and other inanimate life to be imported. Can it be that this and future generations of Americans are less important?”⁵⁴ Consequences of the failure to protect were no clearer than was the threat. “Either America is to be ruled by Americans, or it is to become the stamping ground of cheap labor, alienism, internationalism, and hyphenism.”⁵⁵ The extent, as well as the depth, of protective policies enacted during this Republican period mark it as isolationist. The country shunned alliances, rejected the League of Nations, restricted immigration, and imposed tariff walls. Congress saw these as mutually reinforcing.

Not only did the federal government have final say over immigration, in its view it had the only say: *sovereignty* meant authority not only complete and absolute, but indivisible and unquestioned as well. John Works denounced those who would restrict immigration rather than eliminate it altogether, arguing, “We boast lustily of our independence and American-

ism and then propose to surrender to another nation the right to determine who shall come to this country and make their homes here.”⁵⁶ All agreed that “control over immigration should not, must not, be dependent even in the slightest degree upon the wish or desire of another country.”⁵⁷ Setting into law annual quotas as maxima was, to many representatives, the same as giving countries minima, which was to surrender control. “I do not,” said Riley Wilson, “like to assent even temporarily to the proposition that any foreign nation shall be given the right and privilege of having admitted to this country any fixed number of its population during any prescribed period.”⁵⁸ To give up this right now was to undermine the country’s recent moves toward isolation. “It must be remembered that one of the most important reasons for the rejection of the Covenant of the League of Nations was the fear that the League would arrogate to itself a measure of control over immigration.”⁵⁹ If either refugee admissions or country quotas were established, “it would mean that any foreign country could force a minority group upon us that they did not happen to like by persecuting or mistreating them.”⁶⁰

Restrictionists additionally agreed that passports, opinions about American immigration policy expressed by any noncitizen, and foreign governments’ emigration controls also infringed on U.S. sovereignty; giving in to them would destroy it. Voices other than American legislators’, especially opposing voices, and particularly foreign voices in opposition, outraged legislators and the enforcement bureaucracy, who hoped that “the astonishing protests of other governments demanding the right that they may recuperate at the expense of the people of the United States . . . should result very soon in the passage of an immigration restriction bill that will really restrict.”⁶¹ In addition, “no Government and no group in or out of America has the right to question the exercise of America’s discretion in making such a [selective] choice (Applause).”⁶² Many argued that foreign government regulation of emigration violated U.S. sovereignty. “Foreign countries are to-day dictating the class of immigrants that the United States must accept.”⁶³ Passports themselves infringed on U.S. sovereignty because they were issued at the home government’s discretion; “foreign governments choose for us our immigrants in the first instance, because no citizen or subject of a country can become an immigrant unless he receives from his government a passport.”⁶⁴ Sovereignty was, of course, at stake: “It is not the province of those in foreign lands to say what quota each race or group shall have. To grant this privilege is to abandon our sovereignty.”⁶⁵ Or, “in other words,” as said Representative Mason, “the King of the other country determines for us who is allowed to come here.”⁶⁶

Any effort to bargain with foreign powers about foreign inspection and selection, if inaugurated, would at once place them in a position to claim a voice in the making of our immigration regulations. . . . The permanent loss of that right would be an irreparable calamity to America. . . . We will thereby become helpless to prevent their hungry and wretched millions from coming to America at will. Our complete and overwhelming ruin would follow inevitably and soon.⁶⁷

Still bothering legislators and, especially, the Commissioner-General of Immigration, was that fact that the United States could not go to Europe and pick the best to become citizens. Instead, it had to wait for people to choose it, which meant that other countries' sovereignty got in the way of the United States having a truly selective immigration policy.⁶⁸ As a compromise, though, the legislators notified the public not only that foreign interests would not be incorporated into policy, but that they would not even be heard.

Citizens expressing views that took foreign governments' interests into account or that even coincidentally agreed with them also sought to undermine the country's sovereignty. "It makes no difference whether an attempt is made to decide American questions for foreign reasons in mass meetings, in the press, or at the ballot box. The man who attempts to shape American questions to foreign standards and to settle them upon the basis of beneficial results to some foreign country can not be a good American citizen."⁶⁹

"America must be kept American," said Calvin Coolidge in a message to Congress.⁷⁰ Legislators who could not quite agree that the United States ought to be the sole object of their attention could at least agree that it came first. "We have got to keep what we have for ourselves and restrict that immigration that wishes to come to our borders."⁷¹ "He that provideth not for his own household is worse than an infidel, and what shall it profit America if she shall afford asylum to all the earth and lose her own soul (Applause)?"⁷² "America first" punctuated speeches against taking others' interests into account—even as a prudential measure—and proclaimed American independence, political maturity, and power. "I think, Mr. President, it is more important that this country should be relieved from having an onrush of immigration than it is for us to be so very careful in regard to whether or not we will offend other nations upon this question. . . . America first."⁷³ Refusing to hear others signaled power, the ability to exercise sovereign prerogatives. Weak powers kowtowed to others, but strong powers need not pay attention; therefore, the reasoning went, the country ought to refuse to take others into account as a way to

signal its strength. Listening to others showed weakness and invited attempts to violate one's sovereignty, to turn a country into a vassal state.

**Absolute Sovereignty and Foreign Governments:
The Example of Japan**

Congress defended this absolute authority against two foes, foreign governments and the executive branch. The two, to the congressional mind, were closely intertwined. The lightning rod in Congress's struggle to establish itself as the keeper of American sovereignty was the Gentlemen's Agreement between the United States and Japan, which consisted of an understanding between the two foreign secretaries, established through correspondence in 1908 but never formalized, that Japan would "voluntarily" limit emigration to the United States, keeping it below the point at which Charles Evans Hughes, the secretary of state, felt that American anti-Asian racism would become activated.⁷⁴ The voluntary and unwritten nature of this agreement was meant to save both countries the embarrassment of statutes banning Japanese immigration while allowing immigration from European countries. The two countries' executive branches were then attempting to accommodate each other diplomatically, to negotiate terms to regulate their common presence and rivalry in the Pacific. But both houses of Congress found outrageous the means by which this accommodation was achieved.

Japan objected not to its exclusion, but to what it rightly perceived to be racial discrimination. Even supporters of Japanese exclusion noted that "we all know what the purpose of this clause is, although not disclosed on its face. . . . I suppose it does not make any change in actual name whether you say Hindus and persons who cannot become citizens [but] to combine them takes away a lot of the bitterness."⁷⁵ In an effort to defeat the provision banning Japanese, the Japanese government subsidized English-language newspapers to be distributed in the United States, each containing testimonials from Japanese and American citizens. Ambassador Hanihara wrote to Secretary Hughes at Hughes's request, pointing out the "grave consequences" of damage to U.S.-Japanese relations should the anti-Japanese provision be incorporated into law. Congress interpreted this not only as a veiled threat, but as an effort to infringe American sovereignty, and erupted.

Our form of government is known to other nations. . . . They know that every independent nation has the right to admit or exclude

whomsoever it wishes to admit or exclude. These are universally acknowledged rights of independent sovereign nations. . . . Who comes forward here now to object to this Nation exercising its universally acknowledged sovereign right and power? Who is it that intrudes into our councils? Who is it that insolently and impertinently demands that we abdicate, that we surrender our very independence of action as an independent Nation? Who is it that does this thing? The Senate knows; the country knows; it is Japan, whom we have befriended.⁷⁶

William Borah was another among many constructing his argument from the same materials.

It is difficult for me to see how one nation can object to another nation determining who shall come to its borders to become citizens or inhabitants. It is one of the most fundamental things for which a nation contends; and the very fact that they assume to say that this Government shall not exercise the most fundamental right of sovereignty known to government itself is far more extraordinary than anything that we may do toward excluding them.⁷⁷

The U.S. government shunned Japan, making it a pariah. The relationship was so damaged that many predicted the rise of anti-American militarism in Japan.⁷⁸ In a similar vein, Italy protested, and Romania expressed its “painful surprise” and “disappointment” at the drastic reduction in the Romanian quota, noting in passing that halting remittances from workers back to Romania would slow the postwar economic recovery that America had pledged to assist.⁷⁹

Again, Congress treated the foreign objection with outrage. Albert Johnson, head of the Committee on Immigration and Naturalization, said that “these astonishing protests of other governments demanding the right that they may recuperate at the expense of the people of the United States, together with the impudent threat of alien blocs here, should result very soon in the passage of an immigration restriction bill that will really restrict (Applause).”⁸⁰ Once Italy, Romania, and Japan voiced objections, that fact alone became sufficient reason to exclude their nationals. The United States was not going to allow anyone to tell it what to do. John Phelan stated this position most bluntly when he argued, “A man who is able to enforce his will is much better entitled to a hearing in the court of nations than a man who is impotent and powerless, as the American people to a great extent believed themselves to be noncombatant before we demonstrated to the world our extraordinary ability in men and resources

to fight battles.”⁸¹ Later, when considering provisions that would give preference to British immigrants, German ethnics hit back using this same logic. They accused Congress of “trying to Anglicize America. You would finally turn this country over to be a colony of Great Britain.”⁸² Foreign interest in American immigration policy meant to Congress foreign usurpation of American autonomy.

Absolute Sovereignty and Domestic Politics: Congress and the Executive

Congress fought many of its battles closer to home, with the executive branch. The rights “to regulate commerce with foreign nations” and to establish “a uniform rule of naturalization,” the Supreme Court reasoned, together implied a congressional right to control immigration. On the other hand, immigration was a matter of foreign relations, involving sovereignty, and so might belong to the executive branch. This indeterminacy haunted immigration battles. Through treaties, the executive had sought to regularize relations with other countries. John Box, an opponent of the executive branch, noted that “The President’s constant contact with delicate and difficult questions of our foreign relations and the necessity of maintaining cordial diplomatic relations with other countries expose him and his advisors and agencies to the constant tendency toward too great liberality in immigration regulations.”⁸³ Treaties of friendship and cooperation often expressly protected commerce and outlined reciprocal privileges of nationals, such as the right of each to travel and to own property in the other’s territory.

Such had been true of the 1868 Burlingame Treaty between the United States and China, and such was true of the Gentlemen’s Agreement between the United States and Japan. But Congress abrogated the first in 1882, when it passed the first of the Chinese Exclusion Acts; it went on to abrogate the second in the Quota Acts. “Treaties . . . could only be made upon such conditions as were satisfactory to foreign Governments, so that the whole system of immigration control would pass to the treaty-making power. . . . Immigration regulation would pass to the President.”⁸⁴ Congress painted the executive branch either as merely unconnected with the people or as positively in service of foreign governments and internationalist business agents.

Just now there is a hidden, sinister plan to “dig under:” it is hoped, by a system of mining and sapping, to divert the control of this important question, this question of life and death, from the Halls of Con-

gress elected by the people, and place it in the secret chambers of the treaty-making power, over which the will of the people has much less direct and effective control, and with the Shipping Board and steamship companies, whose only interest is to make money by bringing millions from the Old World to America.⁸⁵

The executive branch was, to the congressional mind, in direct service of foreign governments as well as of black marketeers. In fact, legislators (even legislators of the same party as the executive) viewed the executive as representing foreign interests in the United States. “In the case of a treaty you have the Executive . . . meeting the chancelleries of the world and agreeing to let their surplus population come and stay here. Under such a system you, my colleagues, and your people at home are to be silent and helpless.”⁸⁶ Like foreign lobbyists or ambassadors, the executive staff sought primarily to promote foreign interests and to encourage foreign demands on the American people. Therefore, “if we allow our country’s diplomats to determine who shall come into our country, every other country will demand the same right later on.”⁸⁷ The executive branch not only acted in preference of foreign peoples, but ceded authority to them. For this reason, although “immigration may be regulated by treaty or by law, [legislators] prefer the latter, as the law may be altered at any time to suit the needs of this Nation without the consent of the other country.”⁸⁸ Its plenary status arose from the fact of sovereignty.

As a way to capture control and to highlight its differences with the executive branch, Congress chose to insist that immigration was not in fact foreign, but domestic, *domestic* meaning nonnegotiable and under congressional control, *foreign* meaning subject to the approval of other countries. “Immigration and naturalization are domestic questions, and no people can come to the United States except upon our own terms.”⁸⁹ Actually, the House of Representatives declared immigration policy domestic; the Senate believed it to be foreign—because the Senate had authority over foreign policy matters. Senators declared themselves “tired of Executive control not only of domestic questions but of foreign questions defining the foreign policy of America. America’s foreign policy is determined by treaties ratified by the Senate and not by mutual understandings of our Secretary of State and the secretary of foreign affairs of some other country.”⁹⁰ But whether the policy was called foreign or domestic, it was up to the Congress, not the executive, to shape. Congress had the national interest at heart. “The very fact that this country freed itself from foreign entanglements, declaring its independence, proves very clearly that the United States of America was from its very inception destined to be the one Nation in the world free from the dominating and contumacious

influences of the ever narrow and greedy European rulers or those who would seek to propagate their doctrines.”⁹¹

Which enemy was worse, foreign governments or the executive branch, is never clear in the record. Both wanted to curtail Congress’s right to exclude at whim. As it was, congressional authority was unchallengeable. “If we were inclined to be so arbitrary,” one legislator pointed out, “we would be well within our rights to decide that no immigrant should be admitted unless he was 6 feet 2 inches tall and had red hair.”⁹² Congress could recognize legislation as unfair but find it necessary: “If it takes arbitrary, discriminatory, or even despotic legislation to protect America and American institutions, in the name of God, let us have them! (Applause).”⁹³ This right was expressed most concisely by Raker: “If we have a right to write a law to exclude people, we can write any law we want.”⁹⁴

Conclusion

Recent involvement with Europe, both indirect through trade and direct through immigration and the war, prompted legislative action. Those who supported restriction in principle valued sovereign autonomy over all else. They advocated restrictive measures to preserve and protect the country’s very being against foreign governments and the executive branch, which served foreign governments. Those who opposed restriction often used the same reasons the restrictionists gave. Interdependence was one example of such dual usage.

International ties affected the liberals’ arguments as much as they did the restrictionists’ views. Whereas the restrictionists drew from recent increases in immigration and trade, and from the war experience, the lesson that Europe and Europeans were dangerous, liberals drew positive conclusions about human interdependence. Migration was natural. One representative observed, rather mystically, that “movement . . . is life.”⁹⁵ In debate, the presumption should be in favor of the immigrant; human ties transcend sovereign dictates. “You have a right to declare war against all immigrants; in fact, Congress has the right to do almost anything it desires. But is it fair, is it American, to exercise a power merely because you have it?”⁹⁶ Movement and the connections it created were also facts of the modern age. To reject migration was to reject modernity. Said Sidney Gulick, “It seems to me, in view of the world situation, in which oceans have become rivers and steamships have become bridges, we can not set up an absolute, flat policy of complete exclusion of any particular people.”⁹⁷ Progress, in fact, depended not on isolation but on openness and encour-

agement of innovation. Turning around the restrictionists' apocalyptic scenarios, James Gallivan remarked, "Let us not forget that history writes in large letters that the beginning of the decline and decadence of a nation starts when the bars are set against alien blood, and a doctrine of 'self-centered complacency' is established."⁹⁸ Whereas restrictionists learned from the war that ties among countries created avenues for harm, their opponents believed that borders created harm. Ties among people, if nurtured, could only lead to peace. This view rested on the notion of a fundamentally similar human race, arbitrarily divided into sovereign blocs. Sovereignty was not their friend.

Restrictionists' arguments centered on sovereign self-preservation. The arguments opposed, in principle, to restriction subtly challenged the assumption that borders defined the limits of people's obligations to each other. "I protest," declared Walter Chandler, "against this outrage upon the elementary rights of human beings to live somewhere upon the earth in liberty, peace, and happiness."⁹⁹ Their advocates tended to be universalists, believing in the essential oneness of the "family of man," or to adhere to what would later be known as a Rawlsian position. "I have always," said Representative Hardy, "felt sympathy for the underdog, and tried to look at things from his eyes, to put myself in his place, to weigh justice and right with his scales."¹⁰⁰ Most objected to the arbitrariness of the quotas' basis: birthplace. To the liberal mind, discrimination based on some chance circumstance not under any person's control was irrational and unfair, hence loathsome. "All of the intelligence and all of the culture and all of the patriotism of the world is not gathered within the puny temples of our brains."¹⁰¹ To underline their point, liberals (who, in this context, were those merely wishing to maintain the status quo) pointed to worthy heroes of Western history who had migrated and had certainly not been born in the United States. Representatives pointed out that "our ancestors came here from somewhere, and of course lots of good men are not born in this country. Jesus Christ, for instance."¹⁰² Romulus and Remus founded Rome; Abraham was called from Ur.¹⁰³ If the proposed restriction passed, "if a Moses attempted to come in, all his prescience and God-given prophecy would avail him nothing if there had already preceded him from the Nile to America 18 Egyptians."¹⁰⁴ Only one-third of the senators', not to mention the Supreme Court justices' and presidents', names could be found on Mayflower records.¹⁰⁵ Harkening back to the recent war, one congressman "thought what a travesty on American ideals it would be if in passing this bill we would prevent coming to America the unknown mother of our revered unknown soldier."¹⁰⁶ Louis Marshall, then representing a Jewish organization, summed up this ethical stance.

Nothing could be more arbitrary than such a regulation [as the quota law]. Our immigration laws would be based on a mere accident, not on the physical, moral, or intellectual qualities of him or her who now seeks admission but on the circumstance that others of the same nationality have in the past come in large or small numbers . . . whether such immigrants were individually good, bad, or indifferent.¹⁰⁷

The Declaration of Independence “deduced the right to equality before the law, the right to participate in civil government, not from the accident of birth or condition, nor yet from race or color, but from the fact of manhood alone (Applause).”¹⁰⁸ Acting against principle would poison the United States. “The person who attempts to raise religious and racial prejudice is unworthy of American citizenship. We are in grave danger of losing our sense of fair play and treating men according to their real worth.”¹⁰⁹ Birthplace was arbitrary; discrimination based on arbitrary features was anathema to enlightened people. Selection based on birthplace was, therefore, unenlightened, illiberal, and un-American.

Many saw in the restriction proposals a more nefarious discrimination than that based simply on birthplace. Birthplace was arbitrary, but it was also, in principle, random and applied equally to all non-Americans. But place of birth was chosen not only because it was administratively convenient but also because it stood for groups racially or politically distinctive. Sidney Gulick pointed out that if the legislators were sincerely concerned with reducing numbers while assuring a higher class of immigrant, they would have raised standards for individuals instead of excluded racial blocs; after all, he argued, this would have reduced the chance of Bolshevism and eliminated foreign policy problems. Race must, he reasoned, be the real focus of the legislators’ animosity.¹¹⁰ Quotas, in this view, were simple bigotry. “It is the narrowest policy that ever cursed the soul of man. It is the policy of the gentleman who says, ‘I am the elect of God. . . . This is a bill of proscription. . . . It belongs to the time of the rack and thumbscrew, when the argument was the scaffold and when philosophy found expression in the touch of persecution.”¹¹¹ Others continued. The bill was “a monstrosity, the result of ignorance, of prejudice, of sectionalism, of that narrow selfishness which robs one of his sympathy for his fellow man.”¹¹² Bigotry was an easy target for sarcasm. “Just now we hear nothing but hatred, nothing but the ravings of the exaggerated I—‘I am of the best stock; I do not want to be contaminated; I have produced the greatest literature; my intellect is the biggest; my heart is the noblest.’—and this is repeated in every parliament, in every country, by

every fool all over the world.”¹¹³ No person, let alone any country, should view others in this way.

Expounding racial criteria in immigration policy was expected to create practical problems as well as those of principle. Such rules would offend American citizens who were told that people of their type were undesirable.¹¹⁴ Recent immigrants were full of hope and beginning to assimilate when they would be told that the country needed far fewer of their type. Discriminatory laws would demoralize new immigrants.¹¹⁵ Discrimination would also encourage sectional bigotry, as it labeled in law different population subclasses. The law would destroy that which it was attempting to protect: American unity.

Some went further. Not only were birthplace quotas arbitrary and unfair, but they were hypocritical. “Once we get in we close the gates behind us and keep out the struggling immigrant who springs from the same ancestors as we do.”¹¹⁶ The legislator who stated this position most clearly ultimately rejected it, considering it (as did others in favor of restriction) emotional rather than rational.

If I were to follow the dictates of sentiment and of humanitarian considerations, I would vote for an open door, because our forefathers, yours and mine, came here and enjoyed all these blessings, material and political, such as no other nation on earth affords. Then after we have come in and enjoyed these things we shut the door and shut out all others, who in a moral and ethical way, it seems to me, have as much right as we have. Yet I know that we can not consult our hearts only, but that we must consult our reason as well, and that tells me that there must be a restriction.¹¹⁷

Because, the reasoning went, Americans had applied one standard to themselves, they could not apply another to those whom chance had settled differently.

If people could not be convinced that discrimination was always, or inherently, bad, perhaps they could be convinced that it was unnecessary or unworthy or imprudent. It was unnecessary because the United States could afford to bear the burdens that immigrants asked of it. “The Great War fell like a blight, like a curse upon the earth. Thrones were overturned, nations vanished, emperors and czars were executed and exiled. . . . Our casualties were few compared with the frightful losses of the combatants of other countries. We are to-day the wealthiest and happiest people of the world”; hence, refusing to help is “mean and sordid selfishness.”¹¹⁸ Discrimination was also unworthy of the United States. Without provision for refugees, “you will have the world reduced to this

condition, that however desperate might be the peril, however frightful the persecution to which people of another country might be subjected, a fugitive from those dreadful countries would be sent back by the hand of our officers to expiate in his own person our renunciation of the principles of civilization which we were supposed to embody in the highest degree during all our existence (Applause)."¹¹⁹ Because of the country's history as a proponent of freedom, it owed the world laws in support of its words. Yet "no provision has been made so that men escaping on account of oppression—that is, political—may be allowed to make this country their haven of refuge, as has been recommended not only by the commission, but which has been the policy of this government from the very day of its foundation."¹²⁰ Restriction's opponents objected to the language of the restrictive clauses, desiring instead something that would "accomplish what we are after with more credit to ourselves, and in such a way as is not contrary to our basic principles."¹²¹

Discrimination was, finally, imprudent. Jane Addams and others argued in terms of hypocrisy's practical consequences and America's new global role. "At this time when we are hoping that the United States may take a leading part in a new internationalism which will mean such a world reorganization as will guarantee respect for the rights of different nationalities, the passage of this law would be peculiarly unfortunate. How can we urge Russia, Austria, and Germany to recognize the claims of people against whom we are, at the same time, discriminating?"¹²² U. G. Murphy also focused on foreign policy problems. "The Chinese are saying what the Japanese are saying that apparently the white man proposes to have association for himself and by himself, if you are to have equality applying to the white man only. Apparently our legal attitude at the present time supports that contention; it places us in a very embarrassing position, that is those of us who stand for the liberal element."¹²³ Even the normally insular commissioner-general of immigration voiced this concern. "It is a question of serious importance," said the commissioner, "whether it is desirable to set aside the traditional policy of the Government concerning the admission of peoples from foreign countries at a time when world conditions are being reestablished on lines calculated to promote more friendly relations, and when the Government is endeavoring to increase its merchant marine and extend its foreign commerce."¹²⁴ And in a criticism that foreshadowed arguments after the next world war, one representative pointed out that the country was advocating a policy espoused by its recently defeated foe. "Probably it is one of the evil legacies of the late war. You know that during the struggle we had the fancy to denounce Germany for advancing the idea of the 'superman' and 'supernation.' Now that doctrine of superiority which was originally sponsored in this country by the Ku-Klux-Klan seems

to have found expression in this proposed legislation.”¹²⁵ Hypocrisy was not only wrong in itself but would hurt the country in its attempts to convince others to follow its lead internationally. “Have we come,” asked LeBaron Colt, “to that extreme view of isolation?”¹²⁶

Interaction with Europeans and with the international trading system did not motivate the antirestriction arguments as they did the arguments in its favor; rather, antirestrictionists assumed their stance in opposition to the principles the restrictionists espoused, then used examples, such as the country’s history and recent experience in the war, to illustrate their points. They valued individuals rather than states, and neutrality rather than preference.

Rejecting some immigrants was not new. What was new and emerged from this debate was the decision to protect sovereignty by controlling the border between citizen and noncitizen. Whom this sovereignty was supposed to protect became the topic of the ensuing, and partly simultaneous, debate on the nature of the threat that Americans faced. While arguments about limiting immigrant numbers were about having and protecting sovereignty, arguments about immigrant characteristics were about what was valuable about the inside and why it was worth protecting.