# THE ISLAND OF DUTY: THE PRACTICE OF IMMIGRATION LAW ON ELLIS ISLAND

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"The gist of the thing was put clearly in President Roosevelt's message in the reference to a certain economic standard of fitness for citizenship that must govern, and does govern, the keepers of the gate. Into it enter not only the man's years and his pocketbook, but the whole man, and he himself virtually decides the case." JACOB RIIS (1903)

## I. INTRODUCTION

When Nina Ashoff landed in New York City on November 21, 1898, she was not expecting to find herself represented in a federal courtroom two weeks later.[1] Before leaving Europe, she must have been assured by her wealthy father, who was Superintendent of the largest hospital in Strasburg, Germany, that her transatlantic voyage would end safely in the familial comforts provided by her uncle, Ignatz Bobb. Unfortunately, the transatlantic crossing proved far less difficult than the short trip between New York's inspection station and Ignatz's home on Lexington Avenue.

The story of Nina Ashoff's journey reveals a great deal about the workings of United States immigration law at the turn of the century. Indeed, her story helps to reveal the explicit rules and implicit ways of thinking that immigrants faced in their inspection ordeal. Like thousands of other European immigrants who arrived in the United States, Nina Ashoff was immediately greeted by inspectors who questioned her about her means, her health, and her marital status. If she had spoken with other

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1. The following story is reconstructed and, in some sense, reimagined from a single newspaper account. *Would Not Set Woman Free*, N.Y. TIMES, Dec. 4, 1898, at 13. Ashoff landed at Manhattan's Barge Office, which had been set up as a temporary inspection station during the rebuilding of Ellis Island in the years between 1897 and 1900.

immigrants while aboard her ship, they might have shared rumors with her about how appearing defenseless would be helpful at inspection. Relying on such rumors, she could have prepared herself, dissembling when necessary. But Nina Ashoff was wealthy, youthfully naive and likely isolated from most other immigrants. Given the paucity of evidence, we can only speculate that she seemed guarded, perhaps indignant, answering the questions put to her. For whatever reasons, her inspectors detained her, until the Board of Special Inquiry could convene to determine whether she should be excluded as someone "likely to become a public charge." At her board hearing, she lost her case.

Her uncle, however, refused to defer to an administrative process that rewarded deference, and he hired an attorney, Henry Gottlieb, who tried to secure a writ of habeas corpus — a judicial order requiring authorities to bring a prisoner into the jurisdiction of a court of law — by arguing in federal district court that the Ashoff family was too wealthy for any of its members to become a public charge as a matter of law. The federal government moved to have the writ dismissed, and in the legal atmosphere of the time, Nina Ashoff and her lawyer faced an uphill battle. In recently decided cases, the United States Supreme Court had confirmed the autonomy of the administrative state in matters dealing with immigrants, and particularly Chinese immigrants.[2] "To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation," the Supreme Court had announced in *Chan Ping v. United States*,[3] which upheld the constitutionality of the Chinese Exclusion Act of 1882,[4] a law manifesting — in the words of Theodore Roosevelt — "the

2. The history of administrative law in matters dealing with immigration has been told in a number of different places. The best history of the administration of immigration law on Ellis Island specifically is THOMAS M. PITKIN, KEEPERS OF THE GATE: A HISTORY OF ELLIS ISLAND (1975). For histories of the administration of immigration law generally, see WILLIAM C. VANVLECK, THE ADMINISTRATIVE CONTROL OF ALIENS: A STUDY IN ADMINISTRATIVE LAW AND PROCEDURE (1932); Patricia Russell Evans, "Likely to Become a Public Charge": Immigration in the Backwaters of Administrative Law, 1882-1933 (May 1987) (unpublished Ph.D. dissertation on file with *The Review of Law and Social Change*). An invaluable book regarding this topic is LUCY E. SALYER, LAWS HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW (1995). On the rise of the administrative state generally, see STEPHEN SKOWRONEK, BUILDING A NEW AMERICAN STATE: THE EXPANSION OF NATIONAL ADMINISTRATIVE CAPACITIES, 1877-1920 (1982); BARRY D. KARL, THE UNEASY STATE: THE UNITED STATES FROM 1915 TO 1945 (1983); THEDA SKOCPOL, PROTECTING SOLDIERS AND MOTHERS: THE POLITICAL ORIGINS OF SOCIAL POLICY IN THE UNITED STATES (1992). For a discussion of the social and intellectual history of bureaucratic government leading up to this period, see WILLIAM E. NELSON, THE ROOTS OF AMERICAN BUREAUCRACY, 1830-1900 (1982). For discussion on the history of administrative law development in its transatlantic contexts, see JAMES T. KLOPPENBERG, UNCERTAIN VICTORY: SOCIAL DEMOCRACY AND PROGRESSIVISM IN EUROPEAN AND AMERICAN THOUGHT, 1870-1920 (1986); DANIEL T. RODGERS, ATLANTIC CROSSINGS: SOCIAL POLITICS IN A PROGRESSIVE AGE (1998).

3. 130 U.S. 581, 606 (1889).

4. Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882).

clear instinct of race selfishness."[5] Two years later in *Nishimura Ekiu v. United States*,[6] the Court allowed Congress to delegate this "highest duty" to subordinate officials whose orders satisfied due process of law in most immigration matters.

Following such clear precedent, Judge Emile Henry Lacombe shamelessly told Henry Gottlieb in court: "If the Commissioners wish to order an alien drawn, quartered, and chucked overboard they could do so without interference." After granting the Immigration Commissioner his victory, Judge Lacombe mocked Gottlieb's claim that the rich are inherently incapable of becoming a public charge. "If Baron Rothschild came over here in steerage as an immigrant," he explained, perhaps in reference to Ashoff's Jewish identity, "and the Commissioners decided that it was likely that he would become a public charge they could deport him." The Judge then told Gottlieb and his client to appeal the Commissioner's decision to the Treasury Secretary, whose agency was responsible for immigration.[7]

Judge Lacombe could utter such statements because immigration law seemed centrally important to American sovereignty at the end of the nineteenth century. As federal law increasingly forced ships carrying immigrants to arrive at sites isolated from the nation's cities, Ellis Island in New York and Angel Island in San Francisco constituted key structural elements in the nation's boundaries. There, federal inspectors exercised new kinds of legal powers, as immigrants like Nina Ashoff discovered that federal judges restricted their own review powers, while administrators applied federal laws to concrete cases.[8]

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5. 13 THEODORE ROOSEVELT, *National Life and Character*, *in* THE WORKS OF THEODORE ROOSEVELT 200, 200-22 (Hermann Hagedorn ed., 1926). On the history of Chinese exclusion, see ANDREW GYORY, CLOSING THE GATE: RACE, POLITICS, AND THE CHINESE EXCLUSION ACT (1998). For a well-researched, subtle history of the implementation of the Act, see SALYER, *supra* note 2. *See also* RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 79-131 (1989).

6. 142 U.S. 651 (1891). For a useful overview of the idea of citizenship in American history, see ROGERS M. SMITH, CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY (1997). For a basic legislative history of immigration law, see E.P. HUTCHINSON, LEGISLATIVE HISTORY OF AMERICAN IMMIGRATION POLICY, 1798-1965 (1981). For histories of immigration written mainly for judges, lawyers and legal academics, see Peter H. Schuck, *The Transformation of Immigration Law*, 84 COLUM. L. REV. 1 (1984); PETER H. SCHUCK & ROGERS M. SMITH, CITIZENSHIP WITHOUT CONSENT: ILLEGAL ALIENS IN THE AMERICAN POLITY (1985); GERALD L. NEUMAN, STRANGERS TO THE CONSTITUTION: IMMIGRANTS, BORDERS AND FUNDAMENTAL LAW (1997). For more critically-oriented histories of immigration law, see KITTY CALAVITA, U.S. IMMIGRATION LAW AND THE CONTROL OF LABOR: 1820-1924 (1984); IAN F. HANEY LÓPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE (1996).

7. *Would Not Set Woman Free*, *supra* note 1.

8. *See generally* SALYER, *supra* note 2. To this day, many areas of immigration law remain insulated from vigorous judicial scrutiny as required by statute and Supreme Court jurisprudence. Specifically, statutory changes made in 1996 have rendered judicial review in immigration matters even more infrequent. *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (amended 1996, 1997)

One might say that judges like Lacombe imagined inspection stations as places free of lawyers like Henry Gottlieb, since judges severely restrained lawyers from bringing administrators' decisions into courts of law. For an immigrant to pass through Ellis Island, then, she could not rely on an adversarial legal process. Instead, as one journalist suggested in 1902, "To the alien who comes to America the surest defense is defenselessness; his greatest protection is his weakness."[9] Europeans migrating to the United States discovered that inspectors expected them to participate in the American administrative process by willfully submitting to their full discretion.

Only one year after Ellis Island opened, Columbia University political scientist Frank Goodnow had noted the main characteristic of this kind of administrative law regime in which lawyers were marginal: "while constitutional law treats the relations of the government with the individual from the standpoint of the rights of the individual, . . . administrative law emphasizes duties."[10] Thus, in contrast to late twentieth-century discussions of immigration law focusing on immigrants' legal rights, late nineteenth-century discussions privileged what may seem to us as an unfamiliar language — that of immigrants' defenselessness and duties.

This note explores the practice of immigration law on Ellis Island when that language was current.[11] Following this introduction, I begin with a short account of the consolidation of federal regulatory power after the Civil War. Then, by consulting published personal accounts of Ellis Island, I examine how immigrants presented themselves for inspection. Next, I investigate how immigrants consulted legal counsel to appeal inspectors' exclusion orders. To recover the administrative appeals process on Ellis Island, I have analyzed records preserved at the National Archives in

[hereinafter IIRIRA]. The Supreme Court has recently upheld restrictions on judicial review of immigration matters. *See* Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471 (1999) (restricting judicial review of administrative orders removing aliens as provided for by IIRIRA). For a critical analysis of the 1996 Act, see Lenni B. Benson, *Back to the Future: Congress Attacks the Right to Judicial Review of Immigration Proceedings*, 29 CONN. L. REV. 1411 (1997).

9. Ernest Hamlin Abbott, *America's Welcome to the Immigrant*, 72 OUTLOOK 257, 264 (1902).

10. 1 FRANK J. GOODNOW, COMPARATIVE ADMINISTRATIVE LAW 8 (New York, G.P. Putnam's Sons 1893).

11. The best comprehensive history of Ellis Island remains PITKIN, *supra* note 2. A history of Ellis Island integrating social and legal perspectives has yet to be written. There are studies which examine the line inspection at Ellis Island. *See, e.g.*, Elizabeth Yew, *Medical Inspection of the Immigrant at Ellis Island, 1891-1924*, 56 BULL. N.Y. ACAD. MED. 488 (1980). *See also* ALAN M. KRAUT, SILENT TRAVELERS: GERMS, GENES, AND THE "IMMIGRANT MENACE" (1994). For a rather thorough government study of the history of the island, see HARLAN D. UNRAU, U.S. DEP'T OF THE INTERIOR, HISTORICAL RESOURCE STUDY: STATUE OF LIBERTY/ELLIS ISLAND, 3 vols. (1984). For a moving collection of oral histories about the island, see DAVID M. BROWNSTONE ET AL., ISLAND OF HOPE, ISLAND OF TEARS (1979).

Washington, D.C.[12] I divided those records into two kinds: one group of letters, memoranda, cases of deportation, and cases of immigrants securing a bond to land, and another group of cases of Board of Special Inquiry appeals. I have only examined the latter group, which represents 424 cases of Board of Special Inquiry appeals on Ellis Island from the summer of 1893 to the summer of 1897.[13]

By analyzing personal accounts and Board of Special Inquiry records, I show how the practice of immigration law disposed immigrants and their lawyers to mimic officials' expectations. I want to emphasize at the outset that institutional power was not absolute. In accordance to the claim that official lawmaking must be analyzed in terms of social practice,[14] I recognize that immigrants constantly challenged inspectors' identifications.[15] Indeed, as I show, immigrants were rather sophisticated at discerning and manipulating inspectors' determinations, including those about race and health.[16] In the present day, when immigrants' rights are being increasingly

12. The records are from Record Group 85, Entry 7, "Letters Received," in the National Archives in Washington, D.C. (hereinafter, "Letters Received"). These records comprise thousands of letters, memoranda, and cases sent from all local immigration inspection stations throughout the United States to Washington. Most records from the 1890s, not surprisingly, are from Ellis Island, and it was these that were solely selected for this study.

13. The year 1893 is significant because it is the first year immigration officials used a new administrative device — the Boards of Special Inquiry, as provided for by the Immigration Act of 1893, ch. 206, 27 Stat. 569 (1893). The year 1897 is significant because it was in June of that year that a fire completely razed Ellis Island, forcing federal authorities to relocate to Manhattan for three years until a new fire-proof station was reopened in 1900. It is important to note that the fire destroyed many records. The actual number of Board of Special Inquiry appeals on Ellis Island during these four years must have been greater than 424, because, for immigrants who successfully appealed, their records would have been retained on Ellis Island and so destroyed by the fire of June 1897.

14. *See generally* PIERRE BOURDIEU, LOGIC OF PRACTICE (Richard Nice, trans., Stanford Univ. Press 1990) (1980). *Cf.* Rosemary J. Coombe, *Room for Manoeuver: Toward a Theory of Practice in Critical Legal Studies*, 14 L. & SOC. INQUIRY 69 (1989). Bourdieu's sociology is useful here because he explores how social practices are culturally structured but are also structuring of culture itself, and therefore, are always in a dynamic, unstable state of conflict and negotiation. His method resembles that of sociologist Anthony Giddens, who seeks to overcome the opposition between the individual and society by proposing a theory of "structuration." According to structuration, the social sciences should analyze "neither the experience of the individual actor, nor the existence of any form of societal totality, but social practices across space and time." ANTHONY GIDDENS, THE CONSTITUTION OF SOCIETY: OUTLINE OF THE THEORY OF STRUCTURATION 1-14 (1984). For further discussion of the work of Bourdieu, see DAVID SWARTZ, CULTURE AND POWER: THE SOCIOLOGY OF PIERRE BOURDIEU (1997); BOURDIEU: CRITICAL PERSPECTIVES (Craig Calhoun et al., eds., 1993).

15. I have taken theoretical cues from scholarship focusing on people's agency in the structures of everyday life. *See generally* JAMES C. SCOTT, WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANT RESISTANCE (1985); JOAN WALLACH SCOTT, GENDER AND THE POLITICS OF HISTORY (1988); Walter Johnson, *Inconsistency, Contradiction, and Complete Confusion: The Everyday Life of the Law of Slavery*, 22 L. & SOC. INQUIRY 405 (1997); Hendrik Hartog, *Abigail Bailey's Coverture: Law in a Married Woman's Consciousness*, *in* LAW IN EVERYDAY LIFE 353-374 (Austin Sarat & Thomas R. Kearns eds., 1993).

16. For studies which examine this question, see YEW, *supra* note 11; KRAUT, *supra* note 11; HANEY LÓPEZ, *supra* note 6. According to Haney López, "the racial composition

curtailed,[17] immigration lawyers may find it worthwhile to consider how, in another time and place, people negotiated legal institutions without recourse to rights discourses.[18]

Nonetheless, an exclusive focus on immigrants' agency obscures a clear historical understanding of the limits immigrants faced at Ellis Island. These limits can be discerned only as a matter of practice, in the specific social relationships made at the interstices between explicit law, implicit assumptions, and immigrants' strategies. An analysis of such practices reveals that few intervening agents, such as lawyers, could effectively assist immigrants by contesting the inspection process. The need for administrative control in an environment where it was relentlessly contested pushed inspectors to narrow the legal strategies available to immigrants. In other words, one might say that Ellis Island's rules had less significance than its everyday, practical operation.

In an epilogue following my analysis, I offer some observations about the broader cultural significance of the practice of immigration law on Ellis Island. Specifically, I discuss the efforts of Theodore Roosevelt to reform New York's inspection station. My concluding treatment of Roosevelt is less concerned with recovering the history of the practice of law on Ellis Island during his presidency that it is with recovering the history of how institutions like Ellis Island can be situated in their broader cultural context. Throughout the 1890s, Roosevelt had written about the distinct racial character of Anglo-Americans, and he extolled their strengths by explaining how institutions instilled in them a sense of duty. When Roosevelt assumed the presidency in 1901, he aimed to reform Ellis Island and appointed officials who emphasized that the process of racial assimilation

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of the U.S. citizenry . . . reflects the conscious design of U.S. immigration and naturalization laws." *Id.* at 37. Haney López has made a significant contribution towards our understanding of the racial animus behind United States immigration regulations, but his emphasis on "conscious design" overlooks how "racially restrictive judicial decisions are inextricable from legal ideas [and practices] having no immediately apparent connection to racial issues." Mark Weiner, *"Naturalization" and Naturalization Law: Some Empirical Observations*, 10 YALE J.L. & HUMAN. 657 (1998) (reviewing IAN F. HANEY LÓPEZ, WHITE BY LAW (1996)).

17. Benson, *supra* note 8.

18. The claim advanced here resonates with legal scholarship critically examining the importance of narrative in legal disputes. *See* Anthony Amsterdam, *Thurgood Marshall's Image of the Blue-Eyed Child in Brown*, 68 N.Y.U. L. REV. 226, 229 (1993) ("Convincing the judge that one's client has suffered grievous wrong is almost always a necessary but insufficient condition of victory for the plaintiff's lawyer. [One must also] convince the judge that something can be done to correct the wrong without too much risk of making things worse.") *See also* Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Ms. G*, 38 BUFF. L. REV. 1, 4 (1990) (White tells the story of one woman's confrontation with administrative law as about "enforced silence, rhetorical survival, and chance, as a poor woman engages in an administrative hearing at a welfare office.")

could be begun there.[19] The practice of immigration inspection on Ellis Island was well-suited to the Rooseveltian project of producing an ideal American citizenry, in part because legal practice identified the figure of the immigrant's attorney as a disruptive presence in the machinery of assimilation. Thus, this note critically examines the history of American citizenship by situating the practice of immigration law in an emerging ideological opposition between adversarial lawyering and administrative authority at the turn of the twentieth century.

## II.
## THE CONSOLIDATION OF FEDERAL REGULATORY POWER

Before the Civil War, the states were largely responsible for regulating immigration to the United States.[20] In the early republic, Congress passed minor laws mandating improved steerage conditions for passengers and requiring more detailed passenger lists from ship captains. It also vainly tried passing comprehensive national regulations. Not until 1864 did Congress enact a comprehensive immigration law. That law, however, was merely designed to encourage immigration amidst wartime labor shortages; it was repealed four years later once the emergency had ended.[21] After the War, the federal government gradually assumed control for regulating immigration, until by 1892, it assumed full responsibility for regulating all immigration to the United States. In addition to enforcing the Chinese Exclusion Law of 1882, inspection facilities like Angel Island and Ellis Island enforced two federal laws, namely, the Public Charge Law of 1882[22] and the Anti-Contract Labor Law of 1885.[23] The following short summary of the

19. At the turn of the century, immigrants from southern and eastern Europe had racial identities allegedly distinct from Anglo-Saxons and their descendents. In other words, these European immigrants did not arrive with an identity of "whiteness." *See generally* MATHEW FRYE JACOBSON, WHITENESS OF A DIFFERENT COLOR: EUROPEAN IMMIGRANTS AND THE ALCHEMY OF RACE (1998). *See also* HANEY LÓPEZ, *supra* note 6. *Cf.* DAVID ROEDIGER, THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS (1991); NOEL IGNATIEF, HOW THE IRISH BECAME WHITE (1995).

20. According to Gerald Neuman, "Too often, legal discussions of immigration regulation in the United States rest upon a myth, the assertion that the borders of the United States were legally open until the enactment of federal immigration legislation in the 1870s and 1880s." NEUMAN, *supra* note 6, at 19. Neuman suggests that we look to the states for regulation of immigration, and in particular, that we look to five areas of state law: criminal laws, public health laws, poverty laws, the law of slavery, and other policies of racial subordination. *Id.* at 19-43. Perhaps the most notorious exception to state primacy in immigration regulation during this period was the federally enacted Alien and Sedition Act, ch. 54, 1 Stat. 566 (1798); ch. 66, 1 Stat 577 (1798); ch. 58, 1 Stat. 570 (1798). The Alien and Sedition Act, however, expired two years following its enactment.

21. For the act which established the first federal agency to regulate immigration, see Act of July 4, 1864, ch. 246, 13 Stat. 385 (1864) (repealed by Act of Mar. 30, 1868, ch. 38, 15 Stat. 56 (1868)).

22. Public Charge Law of 1882, ch. 376, 22 Stat. 214 (1882).

23. Anti-Contract Labor Law of 1885, ch. 164, 23 Stat. 332 (1885) (amended 1891, 1903, 1907, 1917).

origins of these two laws provides a necessary context for exploring the roots of the legal confusion that reigned on Ellis Island in the 1890s.

### *A. The Public Charge Law of 1882*

State immigration regulations in the ante-bellum period owed their origins to a provincial, agrarian society. Such regulations reflected a fear of strangers and harked back to the Elizabethan codes.[24] Cities like New York, however, were the sites of unrelenting mass migration. In 1870, the State of New York reported that the ratio of foreign paupers to native paupers receiving public support was about four-to-three for a total expense in excess of two-and-a-half million dollars — an amount of money that would have been much greater if benevolent institutions had not assisted in the care of immigrants.[25] Facing such numbers, New York State administered public aid through local political machines. With revenue generated from a kind of head tax placed on each immigrant, the state operated an inspection station on the southern tip of Manhattan called Castle Garden, which it had leased from New York City every year since 1855, to determine who could and could not work.[26] City and state government thus regulated mass immigration by taxing all immigrants and spending the money on smaller numbers of unemployed immigrants.

Local politicians' unfettered reign on Castle Garden ended, however, when the United States Supreme Court weakened New York's regulatory powers by ruling in the case of *Henderson v. Mayor of New York*[27] that New York's head tax was unconstitutional. On paper, New York's law required a ship captain simply to post a bond to protect the state from pauperism, and so the law arguably emanated from the state's police powers, but on the docks ship captains regularly avoided the cost of posting the bond by collecting a small fee from each passenger before embarking.[28] According to the Court, the New York law represented a tax on "the labor which we need to till our soil, build our railroads, and develop the latent resources of the country."[29] It burdened the interstate trade in workers and so allegedly violated the United States Constitution, which the Court

24. *See generally* JOHN HIGHAM, STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860-1925, 1-67 (1955) (discussing the movement for restrictions in the years from the 1860s through the 1880s). *See also* DAVID J. ROTHMAN, THE DISCOVERY OF THE ASYLUM: SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC, 20-23 (1971) (discussing the tradition of "warning out").

25. Evans, *supra* note 2, at 62-78.

26. *See generally* GEORGE J. SVEJDA, CASTLE GARDEN AS AN IMMIGRANT DEPOT, 1855-1890 (1968).

27. *Henderson*, 92 U.S. 259 (1875).

28. *See* Evans, *supra* note 2, at 89-90 (discussing the specific effects of the *Henderson* decision).

29. *Henderson*, 92 U.S. at 270.

interpreted as giving Congress exclusive power over the regulation of interstate markets.[30] Four months after *Henderson*, the New York Congressional delegation tried to force the federal government to pay for its own policy, by introducing federal legislation to regulate immigration.[31] When their bill failed, the state instituted a new head tax which was quickly declared unconstitutional.[32] Finally, in 1882, the same year the Chinese Exclusion Act became law, Congress effectively passed the first general immigration restrictions, the Public Charge Law, which excluded "any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge."[33]

The Public Charge Law aimed to exclude immigrants who seemed likely to become socially dependent. On its face, it favored the admission of persons who seemed able-bodied, hard-working, and self-reliant. Thus, by excluding the weak, it sought to admit the strong. Indeed, the law opposed these two ideas: immigrants were weak, but Americans were supposed to be strong.

With the passing of the Public Charge Law, the federal government ostensibly transformed provincial immigration controls into national law as Congress assumed the responsibility for excluding paupers. In fact though, these laws retained their localist taint, because the federal government refused to enforce such laws itself and instead delegated the administration of the Public Charge Law to cities and states.[34] And so, as the federal government entered into contracts with the states after 1882, New York's Castle Garden continued to operate under local control for the next decade. Despite statutory transfer to the federal government, inspection power effectively remained with the states through the 1880s.[35]

30. *Id.* at 274 ("We are of the opinion that this whole subject has been confided to Congress by the Constitution."). For more on the constitutional history of the 1870s, see DAVID P. CURRIE, THE CONSTITUTION IN THE SUPREME COURT: THE FIRST HUNDRED YEARS, 1789-1888, 403-428 (1985). At a more visceral level, the Court reacted to how the state law smelled of political favoritism, which, at the time, seemed to be ruining President Grant and giving rise to Boss Tweed. As the opinion's author, Justice Samuel F. Miller, explained: "No just rule can make the citizen of France landing from an English vessel on our shore liable for the support of an English or Irish pauper . . . ." *Henderson*, 92 U.S. at 269. On post-Reconstruction judicial activism and the fear over political corruption, see WILLIAM E. NELSON, THE FOURTEENTH AMENDMENT: FROM POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE (1988).

31. Evans, *supra* note 2, at 87.

32. *Id.* at. 90.

33. *Id. See also* Public Charge Law of 1882.

34. Evans, *supra* note 2, at 91-92.

35. In 1882, delegating federal administrative power to the states was new but not untried. In the Reconstruction South, Congress had allowed the Freedmen's Bureau Commissioners in each military district significant discretion to make policies regulating applicants seeking public aid. *See* ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877, 124-175 (1988). Although people negotiated administrators' delegated powers in practice, the Freedmen's Bureau operated practically enough to later serve as a model for the administration of federal immigration laws. *See* Evans, *supra* note 2, at 91-97.

### B. *The Anti-Contract Labor Law of 1885*

Meanwhile, political agitation over immigration focused on the issue of labor, since the market demand for low-paid European workers was high in the decade following Reconstruction.[36] As Justice Miller had argued in *Henderson*, the country needed railroad workers, farmhands and miners.[37] In *Triumphant Democracy* (1886), Andrew Carnegie celebrated European immigration as a "golden stream," and he calculated its economic value in both dollars and pounds — perhaps as a courtesy to the transatlantic investor — by comparing immigrants to slaves: "These adults were surely worth $1,500 (£300) each — for in former days an efficient slave sold for this sum. . . ."[38] Though Justice Miller and Andrew Carnegie celebrated the value of low-paid immigrant labor (others valued immigrants as strike-breakers), American-born workers complained about the intensity of competition. In an effort to thwart competition from foreign workers, labor organizers pressured Congress to positively regulate immigration rather than delegate its responsibilities to the states. In 1883 for instance, an independent Labor Party from New York City petitioned Congress, requesting that it place a head tax of $100 on each landing immigrant. Although that federal tax would have circumvented the "commerce clause" problem identified in the *Henderson* decision, passing it was not politically feasible, because it directly challenged the interests of employers who were well-represented in Congress.[39] Congress acted only after the Knights of Labor, a powerful labor union, forced a national debate on the regulation of immigration in 1884.[40] A year later, it passed the Anti-Contract Labor Law, which made it unlawful for any immigrant to enter the United States under a contract or a promise of a contract for work.[41]

In contrast to the Public Charge Law, the Anti-Contract Labor Law sought to exclude immigrants who seemed too aggressive in securing labor contracts before reaching America. Instead, foreign workers were required to compete with American workers on American soil. From this perspective, unregulated foreign labor posed a "threat" to American labor, and the oppositional terms of the Public Charge Law were reversed in the Anti-Contract Labor Law: immigrants were strong and aggressive, instead of weak; native workers seemed unable to resist foreigners. During inspection each immigrant was caught in the contradiction of these two laws. Inspection necessarily required seeming neither too strong, nor too weak.

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36. *See* HIGHAM, *supra* note 24, at 35-67.

37. Henderson v. Mayor of New York, 92 U.S. 259, 270 (1875).

38. ANDREW CARNEGIE, TRIUMPHANT DEMOCRACY, OR FIFTY YEARS' MARCH OF THE REPUBLIC, 34, 35 (New York, Scribner's Sons 1886).

39. On the efforts of New York City's independent Labor Party, see CALAVITA, *supra* note 6, at 50.

40. *Id.* at 51-59.

41. *Id.*

But, like the Public Charge Law, the Anti-Contract Labor Law was of limited effect, due to a lack of organized federal enforcement. As Castle Garden's superintendent complained in 1888: "The [Federal Immigration] Commissioners do not feel obliged to look out for and detect the importation of contract labor. They had been asked to co-operate with the other officials in putting a stop to it, but had no funds to do so."[42] By 1890, the House of Representatives formed a committee to investigate the matter, and it reported that the management of Castle Garden was haphazardly divided among clerks, superintendents, and federal Customs officers.[43] Without an integrated administrative apparatus, officials rarely rendered final decisions, and immigrants often circumvented immigration laws.[44]

Finally, the federal government ended its contractual arrangement with Castle Garden in 1890 and looked to create a new immigration station at Ellis Island.[45] To reinforce the new locus of administrative duties, Congress passed the Immigration Act of 1891 which enlarged the categories of exclusion, extended the power to deport aliens already in America, and mandated reporting requirements for ships' captains that facilitated medical inspection of immigrants in transit.[46] Most significant, the new law provided that all inspection would be carried out by federal officers and not local authorities. Armed, on the one hand, with the Public Charge Law of 1882, which excluded those who seemed like invalids or paupers and, on the other hand, with the Anti-Contract Labor Law of 1885, which excluded those who seemed like they came with a promise of work, federal administrators quickly assumed the task of erecting an elaborate inspection apparatus for individuals seeking to enter the United States. These two contradictory laws, developed in different historical circumstances, operated with equal legal force on Ellis Island, as inspectors selectively admitted immigrants who seemed able-bodied and defenseless.

### *C. Between Contract Labor and Public Charges*

From its inception until the immigration restriction laws of the 1920s, Ellis Island guided millions of immigrants, mostly Italians and eastern European Jews, through its gates. During those years, Congress modified existing inspection laws, the buildings on the island were razed by fire and

42. *Reforms at Castle Garden*, WORLD, Aug. 18, 1888, at 1.

43. *See* Evans, *supra* note 2, at 105-07 (quoting REPORT OF THE SELECT COMMITTEE ON IMMIGRATION AND NATURALIZATION, H.R. REP. No. 3472 (1891)).

44. *See id.* at 105-108.

45. *See id.* at 108.

46. *See* Immigration Act of 1891, ch. 551, 26 Stat. 1084 (1891).

rebuilt, and administrators came and went.[47] The basic legal regime, consisting of the Public Charge Law and the Anti-Contract Labor Law, operated on the island through World War I.[48]

Those who knew Ellis Island first-hand frequently observed that the two laws contradicted each other. Looking back to when he worked at Ellis Island as an interpreter, Fiorello LaGuardia observed, "It is a puzzling fact that one provision of the Immigration Law excludes any immigrant who has no job and classifies him as likely to become a public charge, while another provision excludes an immigrant if he has a job!"[49] For LaGuardia, immigrants "had to be very careful" in getting past the inspection process mandated by these laws: "if their expectations [seemed] too enthusiastic, they might be held as coming in violation of the contract labor provision," but at the same time, "if they . . . knew nobody, had no idea where they were going to get jobs, they might be excluded as likely to become a public charge."[50]

Peter Roberts, who published a study on immigrants and immigration in 1912,[51] confirmed LaGuardia's observations by recounting a case in which one inspector asked an immigrant, "Do you have any work in view," to which the immigrant replied, "Yes, my friend said I could get a job." Unfortunately, the reply cost him a week in the detention room because it

47. *See generally* PITKIN, *supra* note 2.

48. Notably, later changes to the law that categorized immigrants in explicitly medico-juridical terms were, in effect, consistent with the public charge regime that was set up in 1882 and fully nationalized ten years later. Nonetheless, certain legislative highlights should be noted. In 1893, Congress passed an act to prevent the introduction of disease. *See* Act of Feb. 15, 1893, ch. 114, 27 Stat. 449 (1893). In 1903, Congress effectively codified existing laws and expanded provisions dealing with criminal offenses. *See* Act of March 3, 1903, ch. 1012, 32 Stat. 1213 (1903). In 1907, Congress further codified laws and again added new classes of exclusion that focused on the mentally ill. *See* Act of Feb. 20, 1907, ch. 1134, 34 Stat. 898 (1907). In 1910, Congress extended excludable classes to "persons who are supported by or receive in whole or in part the proceeds of prostitution." *See* Act of Mar. 26, 1910, ch. 128, 36 Stat. 263 (1910). Finally, the last major act passed before the outbreak of world war concerned the handing over of immigration and naturalization matters to the newly-created Department of Labor. *See* Act of Mar. 4, 1913, ch. 141, 37 Stat. 736 (1913).

49. FIORELLO H. LAGUARDIA, THE MAKING OF AN INSURGENT, AN AUTOBIOGRAPHY, 1882-1919, 66 (1948). LaGuardia attempted to assert himself despite the legal indeterminacy resulting from the operation of this opaque legal regime by getting "the translators together" and bringing "about some uniformity in the translation" of certain charges. Perhaps he was anxious to act out a role as a lawyer on Ellis Island since he was working as a law student. Whatever his motives, he felt that by cooperating with his fellow translators they "prevented a lot of injustice." *Id.* at 62-75.

50. *Id. See also* ANN NOVOTNY, STRANGERS AT THE DOOR: ELLIS ISLAND, CASTLE GARDEN, AND THE GREAT MIGRATION TO AMERICA 10-23 (Chatham Press, 1971) (1907). Novotny described the inspection process in the following way: "Immigrants had to show that they were strong and clever enough to find work easily, but it was against the law for them to have agreed before they left home to take a specific job in exchange for their passage." *Id.* at 21.

51. PETER ROBERTS, THE NEW IMMIGRATION: A STUDY OF THE INDUSTRIAL AND SOCIAL LIFE OF SOUTHEASTERN EUROPEANS IN AMERICA (1912).

suggested that he had arrived with the promise of a labor contract.[52] As a consequence, the case found its way to a "Board of Special Inquiry" — a quasi-judicial body comprised of several persons who, in consultation with the Commissioner, reviewed preliminary inspections in a special room at the federal facility. Roberts claimed that, during the whole proceeding, the immigrant "must stand alone; he cannot get an advocate, and the examination is conducted behind closed doors."[53] However, as I discuss more fully below, immigrants did not truly stand alone since the law allowed them to consult witnesses and present affidavits and depositions with legal assistance.[54]

Such evidence suggests that black-letter law made sense only in the context of how it was practiced, since the efficient administration of contradictory laws required that inspectors attend to subtle cues of how immigrants presented themselves.[55] Rather than consulting formal rules therefore, we must focus on immigrants' self-representations, as officials themselves did at the facility. For example, Victor Safford, hired as a health official on Ellis Island in 1895, later recounted his personal experiences working on the island.[56] Safford knew that, "to lessen the chances of being excluded on arrival," transportation agents — eager to sell boat tickets to as many passengers as possible — told immigrants that they should be provided with "the addresses of near relatives" in the United States or "of some one to whom the alien should appear on the passenger manifest to be destined."[57] By giving this information to an inspector, an immigrant would appear to be under the care of relatives, who would usefully keep their guest off the public dole and on somebody's payroll. Of course, presenting such information in and of itself was insufficient. Safford also

52. *See id.* at 28.

53. *Id.*

54. *See* TREASURY DEPARTMENT, DOC. NO. 1391, IMMIGRATION LAWS AND REGULATIONS, art. 6 (March 11, 1893) ("The regular examination of immigration under the special inquiry required by statute will be separate from the public, but any immigrant who is refused permission to land, or pending an appeal in his case, will be permitted to confer with friends or counsel in such manner as the commissioner may deem proper.") *See also* TREASURY DEPARTMENT, DOC. NO. 1600, IMMIGRATION LAWS AND REGULATIONS 4 (Apr. 25, 1893) (same); TREASURY DEPARTMENT, DOC. NO. 1774, IMMIGRATION LAWS AND REGULATIONS 4 (May 22, 1895) (same).

55. Inspectors' attention to immigrants' self-presentation should be interpreted in a broader context of the history of manners in nineteenth-century America because it helps to reveal how Ellis Island was a site at which inspectors tried to inscribe class and racial boundaries. For a study of how manners "attempted to mediate between the competing claims of social authority and democratic mobility" for the emerging American middle-class, see JOHN F. KASSON, RUDENESS & CIVILITY: MANNERS IN NINETEENTH-CENTURY URBAN AMERICA (1990). For discussion on how the appearance of the "stranger" in the nineteenth-century provoked members of the middle-class to seek out "hypocrites," see KAREN HALTTUNEN, CONFIDENCE MEN AND PAINTED WOMEN: A STUDY OF MIDDLE-CLASS CULTURE IN AMERICA, 1830-1870 (1982).

56. *See* VICTOR SAFFORD, IMMIGRATION PROBLEMS: PERSONAL EXPERIENCES OF AN OFFICIAL (1925).

57. *Id.* at 36.

observed that "occasionally an alien will overdo instructions," and in particular he emphasized that "admission by an immigrant that some one else paid his passage tends to do even more than to suggest a question of the immigrant's self-reliance. It is also likely to lead to tangling him up with the administration of [the Anti-Contract Labor Law]."[58]

## III.
## THE DRAMA OF INSPECTION

As Safford observed, Ellis Island must be examined in terms of the practical operation of indeterminate laws, since an immigrant's identity was located within her own power to dissemble as well as within legal categories deployed by inspectors.[59] To understand what one journey through Ellis Island was like, it is useful to examine the story of an American journalist, Broughton Brandenburg, who with his wife published *Imported Americans: The Story of the Experiences of a Disguised American and His Wife Studying the Immigration Question.*[60] "To get the fullest grasp," Brandenburg explained in his book, "we must become immigrants ourselves and re-enter our own country as strangers and aliens."[61] Eager to publish his story, the journalist knew he and his wife had to get past inspectors as acceptable "Italians" to avoid the dreaded Board of Special Inquiry, where they would have had to reveal their ruse to extricate themselves from the situation. Disguised as "Italian," then, this peculiarly self-reflexive journalist convincingly documented aspects of passing through Ellis Island.

Much of the legal work of Ellis Island occurred aboard the ships that took immigrants across the Atlantic. On board, Brandenburg recounted how federal law required ships' manifests to match precisely the name of every immigrant who appeared before inspection or the United States authorities would "exact a fine of $200."[62] Likewise, immigrants began rehearsing the federal inspection process on the ships. Not only did those

58. *Id.* Edward Corsi recalls his experiences as a child coming with his family to Ellis Island in 1907, when his father realized, *on the boat* approaching the island, that he had spent some extra money to place his mother in a cabin and, as a result, grew concerned that he did not have enough to impress the inspectors. *See* EDWARD CORSI, IN THE SHADOW OF LIBERTY: THE CHRONICLE OF ELLIS ISLAND 6 (1935).

59. For a classic theoretical treatment of the politics of self-presentation, see ERVING GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE (1959). For more recent discussions, see CLIFFORD GEERTZ, LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETIVE ANTHROPOLOGY (1983); JAMES CLIFFORD, THE PREDICAMENT OF CULTURE: TWENTIETH-CENTURY ETHNOGRAPHY, LITERATURE AND ART (1988); PERFORMANCE AND CULTURAL POLITICS (Elin Diamond ed., 1996). For analysis regarding the politics of performance and law, see CONTESTED STATES: LAW, HEGEMONY AND RESISTANCE (Mindie Lazarus-Black & Susan F. Hirsch eds., 1994).

60. BROUGHTON BRANDENBURG, IMPORTED AMERICANS: THE STORY OF THE EXPERIENCES OF A DISGUISED AMERICAN AND HIS WIFE STUDYING THE IMMIGRATION QUESTION (1904).

61. *Id.* at 3.

62. *See id.* at 187.

who had already been to the United States tell stories about inspection to others on board, but prior to sailing some had prepared written rehearsals that they consulted in transit: "I saw more than one man with a little slip of notes in his hand carefully rehearsing his group in all that they were to say when they came up for examination."[63] Concerned that the slightest deviation from a carefully prepared script would be spotted, many immigrants thus developed a keen awareness of the need for seeming worthy of admission. Some immigrants also prepared in advance for the looming physical examination on Ellis Island. Brandenburg observed one woman who worried that her baby had an eye disease.[64] This mother "gorged the child" with plenty of food "in an effort to get it asleep and keep it asleep, so that the doctor should pass it without examining it, as she was prepared to protest against its being waked up."[65] By coaxing her child to sleep, this mother hoped to hide her child's medical condition underneath its eyelids and, perhaps, to persuade her inspectors that her sleeping infant should not be disturbed.

Brandenburg himself had occasion to dissemble, for instance when he came before a preliminary medical inspection on his ship anchored in New York harbor. While walking past a doctor-inspector, he "caught a glimpse of steerage stewards . . . hurrying the emigrants down the companion-way, and the next instance received a heavy raking blow on the bridge of my nose and up my forehead."[66] The doctor-inspector apparently became angry with Brandenburg's rubber-necking and struck him to keep the inspection line moving. In a moment of indignation, Brandenburg turned towards the inspector to protest his treatment. But he stopped himself, refusing to take advantage of the protections afforded by having American citizenship, because otherwise it would have "spoil[ed] my investigations." So, "with lamb-like meekness" he forced himself to proceed but was hit again by the same man for having turned around after the first blow.[67] As Brandenburg personally experienced, appearing sturdy and dutiful proved to be the surest, and safest, strategy to pass inspection.

The couple's ruse was not perfect, and in one instance, on board the barges which ferried immigrants from their ocean liners to Ellis Island, inspectors spotted them as "queer."[68] At first, inspectors thought the two "were dagoes all right," but they grew suspicious at Brandenburg's wife who, as one inspector claimed, was "the first woman I have ever seen in the steerage with such well-kept finger-nails."[69] Clean finger-nails drew attention, because they upset the inspector's expectations of Italians as dirty

63. *Id.* at 200.
64. *See id.* at 200-01.
65. *Id.*
66. *Id.* at 203-04.
67. *See id.*
68. *See id.* at 212.
69. *Id.*

people, and so her fingers suggested that she was perhaps trying to attract attention — the kind of attention allegedly sought by prostitutes.

The inspectors, however, allowed the couple to pass.[70] They did so, because the husband and wife likely asserted their American citizenship. So, even though Brandenburg was unwilling to claim American citizenship to protect himself from physical blows during inspection, he probably felt that he could not ask his wife to continue to join in his journalistic charade. Perhaps he felt that her "honor" was at stake or that further inspection risked a violation of her privacy. In either case, his actions drew upon the racial power of American identity: he and his wife claimed to have clean fingernails because they were not "dagoes;" they were "really" Americans. Brandenburg's actions simultaneously reveal, though, that immigrants whose manners were racially fixable by inspectors probably passed Ellis Island most easily.

On Ellis Island itself, the couple experienced little trouble passing through immigration controls: "Our papers were all straight, we were correctly entered on the manifest, and had abundant money, had been passed by the doctors, and were properly destined to New York, and so were passed in less than one minute."[71] Others, though, were not as fortunate as they faced the ordeal of the inspection process, as represented in Brandenburg's illustration, here reproduced as *Figure 1. The Immigrants' Track Through Ellis Island.* Many immigrants were immediately detained at Ellis Island by health inspectors who examined their health tickets from the Sandy Hook inspection or who examined them at the registry floor. For those who failed inspection, they were detained and waited for their hearing before the Board of Special Inquiry. Only persons who passed all examinations could proceed directly to the "New York pen" for those bound for Manhattan or to the "railroad pen" for those traveling elsewhere.[72] Notably, the word "pen" portrayed immigrants as farm animals to be corralled, evaluated, and then sent on their way to work.

Brandenburg concluded his narrative by advocating federal inspection of immigrants overseas where immigrants' lies could be more readily uncovered.[73] But by focusing on how immigrants' lying to inspectors produced inefficiencies, his recommendation overstated the impotence of

70. *See id.*

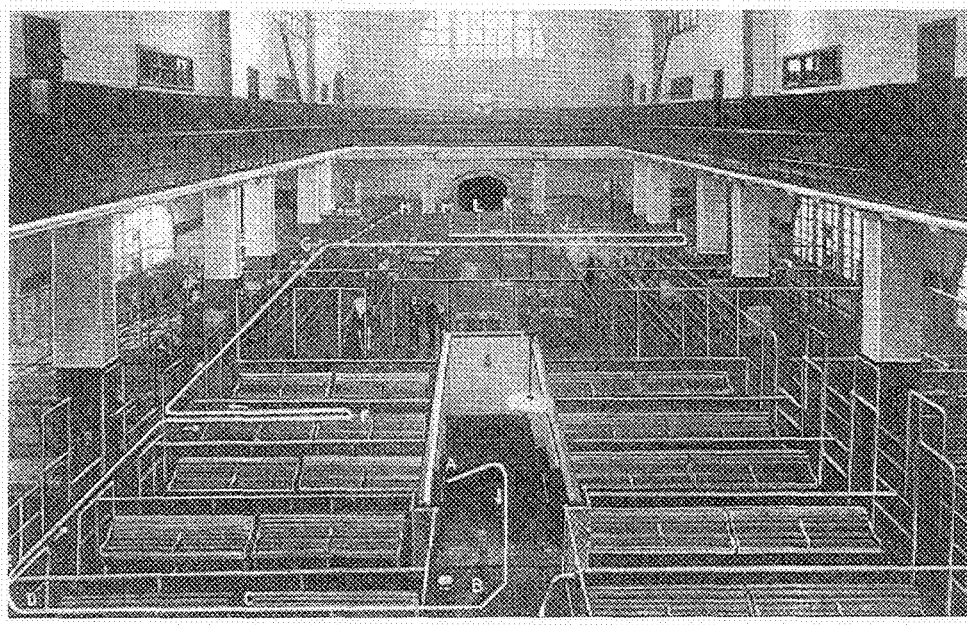
71. *Id.* at 219. For another description of the inspection process from this period, *see* Edward Lowry, *Americans in the Raw*, 4 WORLD'S WORK, Oct. 1902, at 2644-55 (1902). For a description from the 1890s, see *The Detained Immigrant*, 37 HARPER'S WKLY., Aug. 26, 1983, at 821-22.

72. *See id.* at 219-20.

73. "If undesirable immigrants are pouring into the United States through Ellis Island," Brandenburg argued, "it is not because the laws are not strict enough .... The whole trouble is that the undesirable immigrant comes up before the honest, intelligent official with a lie so carefully prepared that the official is helpless when he has nothing on which to rely but the testimony of the immigrant and his friends [already in the United States]." *Id.* at 222.

FIGURE 1. THE IMMIGRANTS' TRACK THROUGH ELLIS ISLAND

Broughton Brandenburg, *Imported Americans: The Story of the Experiences of a Disguised American and His Wife Studying the Immigration Question* (New York, 1903), facing page 227.



As seen in the photograph above, Brandenburg coded the various stopping points for immigrants proceeding through inspection at Ellis Island after it had been rebuilt following the fire of 1897. The following is his interpretation of his code:

A. Immigrants landed from barges enter by these stairs.
B. Surgeon examines health tickets.
C. Surgeon examines head and body.
D. Surgeon examines eyes. Suspects go to left for further examination.
E. Female inspector looking for prostitutes.
F. Group enters and sits in pen corresponding to ticket letter or number.
G. Inspector examines on twenty-two questions.
H. Into special inquiry court [the "Board of Special Inquiry"].
I. Stamping railroad ticket orders.
J. Money exchange and telegraph office.
K. To railroad pen.
L. To New York pen.
M. To the ferry and New York.
N. Telegraph office.

federal law enforcement. Despite his own conclusions, Brandenburg's account reveals how inspection effectively encouraged each immigrant to appear meek, yet able-bodied in front of inspectors enforcing contradictory laws. In other words, inspection favored those who appeared defenseless and duty-minded. Even if many immigrants strategically manipulated the inspection process to their benefit, they had to reproduce these particular expectations of inspectors.

## IV.
## THE LAWYER'S CAMEO

Most immigrants successfully negotiated the inspection process, but a relatively small number of people failed and were detained pending an exclusion hearing before the Board of Special Inquiry. A hearing before the Board was not an empty formality. The key to understanding it is that the evidence collected by inspectors on the registry floor was not dispositive.[74] Immigrants were allowed to appeal any exclusion decision to the Commissioner of Ellis Island, who from 1893 to 1897 was Joseph Senner,[75] until he was satisfied that the Board had considered all existing evidence. An immigrant could then contest a Board of Special Inquiry decision by appealing to the Superintendent of Immigration, later Commissioner General, in Washington, D.C., who at this time was Herman Stump.[76] The Treasury Department was the final authority, since, as Nina Ashoff and her uncle had discovered, the federal judiciary refused to review particular Board of inquiry decisions. In practice, Senner's decisions were final, even though Stump or the Secretary of the Treasury could theoretically overrule him.[77] The deference Senner received was probably owing to the federal policy of letting local commissioners develop precedent in cooperation with local boards of special inquiry. As Senner explained in one case, "it is my belief that it is the intention of the law to allow the Board of Special Inquiry to hear cases as fully as possible, quite independent of any action of the executive branch of this service."[78]

In the context of this procedural arrangement, evidence gathered on the inspection floor merely created a presumption against an immigrant, who could challenge it by revising previous testimony or evidence. In the process, new layers of testimony were added on to old layers, and evidentiary confusion reigned. Immigrants often contradicted their previous testimony, as did their relatives living in the United States, charity representatives working on Ellis Island, and attorneys whom immigrants

74. *See* TREASURY DEPARTMENT, *supra* note 54, DOC. NO. 1391, at art. 7 ("Any immigrant claiming to be aggrieved by the decision of the inspection officers may appeal therefrom, and such appeal shall stay his deportation until decision shall be had thereon. Such appeal shall be in writing, and shall specify the grounds of thereof, and shall be presented to the commissioner within twenty-four hours after notice of such decision, who shall at once forward such appeal to the Department with all the evidence in the case and his views thereon."). It should be noted that not only immigrants appealed Board of Special Inquiry rulings. According to the Treasury Department regulations, "Any examining inspector dissenting from a decision to admit an immigrant may appeal therefrom." *Id.*

75. PITKIN, *supra* note 2, at 21-27.

76. *Id.* at 21. In 1896, Stump was replaced by Terence Powderly, former head of the Knights of Labor. *Id.* at 27.

77. I can find no case of Stump overruling Senner's recommendations, except where Senner explicitly asked for guidance. *See, e.g., In re* Chaje Klein, Letter No. 4947 (June 20, 1993), Letters Received, *supra* note 12.

78. *See In re* Pasquale Santagata, Letter No. 9084 (May 29, 1895), Letters Received, *supra* note 12.

hired. In one case, Ellis Island Commissioner Senner ruled: "it will be observed that the immigrant's brother, apparently without the presence of counsel, has flatly contradicted the more or less damaging statements made by the appellant, and I am of the opinion that the existence of any real [labor] contract in the case is far too vague to warrant the immigrant's exclusion as a contract laborer."[79] Since an immigrant's original testimony led to the board hearing in the first place, the entire appeal process made sense only because it permitted the telling of a new version of an old story, even if the reinvention relied on contradiction and inconsistency. As they did in the registry floor inspections, immigrants used their limited knowledge of legal procedures and often succeeded in representing themselves.

In comparison to the registry floor inspections, the board hearings had a more formal, trial-like quality. Lawyers were allowed to play a role, even though they could hardly appeal an adverse ruling in a court of law by securing a writ of habeas corpus.[80] In one contract labor appeal, an immigrant hired an attorney who filed for a writ of habeas corpus in federal court in New York City. The writ was dismissed, and the "presiding judge chid[ed] the attorney for wasting the time of the Court and Immigration authorities in a matter in which, according to well known principles and practices he had no standing."[81] In these circumstances, the lawyer was prevented from pitting legal authorities against another and was bound to the narrower legal jurisdiction of the Board of Special Inquiry. A close analysis of the lawyer's work in this jurisdiction explains how the process of individualized inspections mirrored the process of inspecting immigrants' relationships with lawyers.

In general, the performance the lawyer was expected to give on Ellis Island was the cameo: his appearance was to be dramatic but brief. Practically powerless to file an appeal with a judge, lawyers were background actors expected to conform to the administrative goals of instilling in immigrants habits of obedience and hard work by finding and deposing caring relatives. Appropriately, the language of duty occasionally appeared in

79. *In re* Gaetano Forchie, Letter No. 11562 (June 20, 1896), Letters Received, *supra* note 12. *See also In re* Andras Billik, Letter No. 10782 (Mar. 4, 1896), Letters Received, *supra* note 12 (Senner stating he was "unwilling to recommend the immigrant's exclusion solely on the ground of his own uncorroborated testimony"); *In re* Thomas Buckley, Letter No. 11572 (June 22, 1896), Letters Received, *supra* note 12 (Senner noting that once an immigrant has shown that he has paid his way, then the burden is on the government to prove he violated the contract labor laws); *In re* Gregoria Gregori (July 14, 1896), Letter No. 11724, Letters Received, *supra* note 12 (ruling that an immigrant found to have been convicted of a crime in Europe could not be excluded because Ellis Island authorities only learned of that fact from the immigrant himself and so the immigrant had been a "witness against himself").

80. It is impossible to explain the precise legal position lawyers occupied, because administrative decisions were continuously brought before courts of law through the 1890s and early 1900s. *See* SALYER, *supra* note 2, at 202-07.

81. *In re* Isaak Cohn, Letter No. 5689 (Oct. 28, 1893), Letters Received, *supra* note 12.

lawyers' briefs. Attorney Henry Heyman, for example, persuaded one immigrant's brother living in New York to testify that he came to work as a "menial servant about his brother's premises." The attorney's strategy worked. Commissioner Senner ruled that the immigrant's case did not "fall within the spirit of the Alien Contract Labor Law" and added that it is a "well known fact that it is practically impossible to get persons of American birth . . . to perform such menial duties."[82] Since having good familial connections was so important for immigrants—a sign of their ability to assume "menial duties"—securing affidavits, witness, and depositions was often handled by charities.[83] Thus, the hiring of a lawyer often seemed important because it revealed the work ethic of the immigrant's family. In one public charge case, Commissioner Senner admitted the immigrant, noting that his relatives had "gone to the trouble and expense of securing the services of attorneys thereby proving the genuineness of [their] interest in the immigrant's behalf." Though formal rules prescribed the manner in which immigrants were to be excluded, the Board of Special Inquiry fixated upon how immigrants and their families displayed a sense of duty. Even hiring a lawyer could be treated as relevant evidence in this regard.[84]

Of course, lawyers improvised outside their expected role. In one case, an attorney complained in his brief to the Commissioner that "the proceedings before the Board were not in due process of law," a complaint that Senner dismissed as "quite irrelevant to the case."[85] In another case, an attorney complained that Ellis Island interpreters had misrepresented an immigrant's testimony, and again Senner dismissed the argument, describing it as "an endeavor to belittle the work of interpreters at this station."[86] More commonly, though, lawyers drew upon their working knowledge of the administrative process and coached clients and witnesses. Senner frequently complained that particular immigrants were "carefully coached by the attorney in the case"[87] or that testimony was "made by the said brother-in-law under guidance of the attorney interested in the case,

82. *In re* Rosario Cancro, Letter No. 5940 6 (Dec. 9, 1893), Letters Received, *supra* note 12.

83. The work of Captain Michael DiSimone, agent of the Italian Home charity, is notable in this regard. He handled over 34 cases, by collecting affidavits, witnesses, and depositions. He won 20 of his cases. As Senner's assistant complained, DiSimone was "known to be desirous of securing the admission of his race, at any risk." *See In re* Antonio Romolo, Letter No. 11900 (Aug. 6, 1896), Letters Received, *supra* note 12.

84. *In re* Jankel Fuchs, Letter No. 10461 (Jan. 28, 1896), Letters Received, *supra* note 12. *See also In re* Domenico Bianculli, Letter No. 11555 (June 19, 1896), Letters Received, *supra* note 12; *In re* Moses Rosendorn, Letter No. 11276 (May 16, 1896), Letters Received, *supra* note 12.

85. *In re* Ber Weiner, Letter No. 9157 (June 8, 1895), Letters Received, *supra* note 12.

86. *In re* Ischiel Mindlin, Letter No. 9123 (June 3, 1895), Letters Received, *supra* note 12.

87. *In re* Michele Raucci, Letter No. 11378 (May 30, 1896), Letters Received, *supra* note 12.

who doubtless took occasion to 'coach' his witness in advance"[88] or that "subsequent statements were made after he had opportunity to confer with counsel and after he had become aware of the effect of his previous admission."[89] Eager to act in their capacity as legal counsel, lawyers on Ellis Island were usually rebuffed, though that did not stop them from trying.

FIGURE 2. ANALYSIS OF APPEALS AT ELLIS ISLAND

| | No. of Cases | Win | Loss | % Won |
|---|---|---|---|---|
| Total | 424 | 200 | 224 | 47.2% |
| With Attorney | 277 | 110 | 167 | 39.7% |
| No Attorney | 147 | 90 | 57 | 61.2% |
| Contract Labor Cases | 167 | 82 | 85 | 49.0% |
| With Attorney | 124 | 50 | 74 | 41.7% |
| No Attorney | 43 | 32 | 11 | 74.4% |
| Public Charge | 251 | 117 | 134 | 46.6% |
| With Attorney | 150 | 59 | 91 | 39.3% |
| No Attorney | 101 | 58 | 43 | 57.4% |
| Other | 6 | 1 | 5 | 20.0% |

Immigrants' attorneys defended their clients not out of heroic disinterestedness but most likely out of the pecuniary interest of collecting a modest fee and, perhaps, acquiring a reputation as an immigrant's attorney who won cases. This explains a curious pattern of lawyering on Ellis Island in the 1890s, as I have represented in *Figure 2. Analysis of Appeals on Ellis Island.* Of the 424 cases that I examined, nearly two-thirds involved lawyers, but lawyers won only two-fifths of their cases. Unrepresented immigrants, about one-third of all cases, won about three-fifths of their cases. Considered in light of Senner's written comments, these statistics support the view that immigrants and their relatives vainly hoped vigorous lawyering could make a difference in the Board hearing. Many lawyers probably shared these erroneous expectations. More than half of the identified attorneys appeared in only one appeal: of the eighty attorneys who represented immigrants in the appeals process, forty-eight appeared just once, and thirty-five lost. Only five lawyers appeared in five or more appeals, as I have represented in *Figure 3. Analysis of Attorneys with More than Five Cases* (see below). The most frequently hired attorney, Henry Gottlieb from the firm MacKinley & Gottlieb, had established a track record of winning cases. In all examined cases, he represented immigrants eighty-five

88. *In re* Giuseppe Mariorenzi, Letter No. 11503 (June 12, 1896), Letters Received, *supra* note 12.

89. *In re* Mihal Baris, Letter No. 10708 (Mar. 3, 1896), Letters Received, *supra* note 12.

times, winning fifty-three cases — more than half of all cases won by attorneys on Ellis Island. If any lawyer might have been known as an immigrant's attorney, he came closest to having that reputation. Perhaps this is why Ashoff and her uncle hired him to risk taking her case to federal court. But generally, lawyers like Gottlieb were exceptional; hiring a lawyer on Ellis Island was typically not decisive. To understand why, it is necessary to explore more deeply concrete cases illustrating how lawyers were hired and how they were scrutinized.

## V.
## THREE CASES BEFORE THE BOARD OF SPECIAL INQUIRY

Hiring a lawyer was problematic because only a few lawyers, like Gottlieb, understood how the inspection process was ill-defined, contradictory, and ultimately based on officials' practical sense of who should be admitted. Effective legal representation thus depended upon the degree to which a particular lawyer was sensitive to administrators' expectations. The following examination of three individual cases illustrates different strategies of legal representation. The first case presents one lawyer's flawed strategy to maneuver his client through the snares of the Public Charge Law. The next case illustrates the expertise of Henry Gottlieb in representing a client charged with violating the Anti-Contract Labor Law. The final case documents how one attorney openly contested the constraints that administrators imposed upon lawyers. These three cases help clarify the strategies of lawyering that were most successful on Ellis Island: generally, Senner and the Board of Special Inquiry ruled in favor of immigrants' lawyers whose strategies hardly challenged the administrative procedures and whose briefs emphasized the client's social dependency and capacity for hard work.

### *A. In re Gaetano Cammarata*

Like many immigrants excluded as likely to become a public charge, Gaetano Cammarata failed to make his way to New York City from Ellis Island because he arrived with little money and seemed to be "an undersized person" incapable of handling the work that a more imposing immigrant could endure.[90] A forty-six year-old shoemaker with a wife and five children living in Italy, Cammarata came to America in June 1896 with five lire hoping to join his brother-in-law who worked in Pennsylvania. He was prudent enough to tell inspectors that he had a pre-paid train ticket waiting for him at a New York bank to take him west. Even so, he was detained as

90. *In re* Gaetano Cammarata, Letter No. 11554 3 (June 18, 1896), Letters Received, *supra* note 12.

likely to become a public charge, and that same day, he repeated his testimony before the Board of Special Inquiry, which sustained the exclusion decision.

Despite their stated grounds for excluding Cammarata, inspectors probably believed initially that he had violated the Anti-Contract Labor Law. It would have seemed suspicious to them that his ocean liner and railroad tickets were paid for by his brother-in-law who worked as a miner in Pennsylvania. Immigration officials knew, however, that it would have been difficult to show that he came with a promise of work without supporting evidence, especially since the law stated explicitly that "nothing in this act shall be construed as prohibiting any individual from assisting any member of his family . . . to migrate from any foreign country to the United States, for the purpose of settlement here."[91] So without being able to demonstrate that Cammarata had done anything other than "settle" in the United States with the assistance of family, board members voted to exclude the poor, "undersized" Italian as likely to become a pauper.

Two days later, Cammarata attended a rehearing at which his brother-in-law appeared to testify. His brother-in-law hoped to help by claiming that he had saved $250 in America, but this argument failed. So, he hired an attorney, William Rockwell, who was familiar with Ellis Island and won a number of cases he handled there.[92] After hiring Rockwell, Cammarata and his relative produced a more cogent story. In a second rehearing, Cammarata's brother-in-law produced letters and affidavits showing that he had invited his relative to work as a shoemaker, and he claimed that he had accumulated $600 in savings to help him. The reference to savings, much like the hiring of a lawyer, appeared to show that an Italian miner could tackle any familial duties that might arise and would not let his relative become a pauper.

In addition, Rockwell submitted a legal brief that summarized the facts and law in support of his client. "There is in this case the most incontrovertible proof that the immigrant cannot become a public charge," he began. Polemical in tone, Rockwell's brief focused on two points. First, Rockwell criticized board members for being ill-informed of the merits of the case. He noted that one board member had complained that Italians were living on wages that "no American would accept" and that they were "driving the Americans out" of the mines. Rockwell characterized this line of questioning as irrelevant to a case about a shoemaker: "It would be illegal to exclude [Cammarata] because of his brother-in-law's occupation." Rockwell also complained that another board member had voted to exclude after he "had heard only about half the testimony." In short, the

91. Act of Feb. 26, 1885, ch. 165, § 5, 23 Stat. 333 (1885).

92. William Rockwell's name appeared in sixteen appeal cases. He had more success in winning contract labor cases (60% won) than public charge cases (27.3% won). *See Figure 3. Analysis of Attorneys with More Than Five Cases.*

asking of irrelevant questions and the truancy of board members meant procedures had not been dutifully followed. In a second strategy, Rockwell argued that the federal government had a policy of encouraging immigrants to settle with supportive relatives. "It has been almost an unwritten law," he claimed, "to deliver an immigrant to a brother or sister whenever they have called for them."

The attorney's "unwritten law" argument was inapposite, and Senner easily dismissed it, noting that the immigrant's relatives were "in no way legally bound to provide for him, [were] but laborers themselves and [had] immediate families of their own to support." In contrast, the procedural argument should have posed more of a problem to Senner, because Rockwell was urging him to review the relevancy of officials' questions and to review whether board members had been entirely present during the hearings. His brief attacked the professionalism of board members. But, Senner dismissed this argument: "the Board, who had the immigrant personally before them and were therefore in position to intelligently pass on the merits of the case, three times unanimously excluded the man." Senner may have reached this conclusion easily enough, but it essentially ignored the lawyer's argument. For Senner, Rockwell was criticizing the decision-making process, and so his lawyering counted for little. Here, Rockwell had been too assertive, too adversarial in confronting officials' assumptions about defenseless immigrants.

Senner duly forwarded Cammarata's final appeal to Washington, recommending that the Treasury Department sustain the immigrant's exclusion. There exists no record of a final disposition, but it is unlikely that Treasury officials overruled Senner, because the facts of the case were distant from their vantage point and because Senner raised no issue that was precedent-setting. Losing their final appeal, Cammarata and his brother-in-law may have tried to purchase a bond as insurance against his becoming a public charge to allow him to land, but there is no evidence they did so, perhaps because they could not afford the requisite sum of money. Therefore, Gaetano Cammarata probably remained on Ellis Island until officials found it convenient to place him on a ship bound for Italy.

If Rockwell had had the opportunity to appeal the Board of Special Inquiry's ruling before a court of law, he may or may not have won his client's case. Rockwell may not have been a careful lawyer, as suggested by his vague appeal to "unwritten law" in his brief. As for his arguments about board procedures, however, a judge in a court of law might have been persuaded to reproach federal administrators, order a rehearing, and establish stricter inspection guidelines. Senner, however, operated outside the shadow of appellate review. Lawyers hoping to succeed on Ellis Island, then, had to learn how to construct stories that minimally challenged the board's power but that also challenged official interpretations of a particular immigrant's case.

### B. *In re Roberto Profito*

In May 1897, Roberto Profito arrived from Naples, Italy.[93] Like many Italians who migrated according to the ebb and flow of the transatlantic trade in labor,[94] Profito claimed to have worked in America previously, returning from Italy after spending a few years there. Having been already in America, having traveled back to Italy, and having no immediate family in America, Profito probably had saved money while working in America, delivered it to his family in Naples, and returned to earn more. Although Profito's lawyer later denied that the immigrant returned to America with the promise of work, it is likely he had. In fact upon his day of arrival, Profito voluntarily signed an affidavit indicating that an acquaintance, Vincenzo DeSepio, had "secured work for him as a railroad laborer at $1.25 per day." Before the Board of Special Inquiry that same day, Profito corroborated these statements, leading the board to conclude that indeed he had come to America with the promise of work in violation of the contract labor law.

If Profito had passed inspection on Ellis Island years before, it seems curious that in his second visit he would admit to coming with a promise of work. There seem to exist two likely explanations for this discrepancy. One is that he lied about his initial visit to appear like someone who had worked reliably in America before. A more likely explanation is that Profito in fact had been to America before, encountering the Public Charge Law on Ellis Island. Though admitted, he may not have encountered the mysteries of Anti-Contract Labor Law and so believed that a prearranged job could help him avoid the Public Charge Law in the future. But he was mistaken, in no small part because immigration law was so vexing. And, no amount of story-sharing aboard an ocean liner could have prepared an immigrant for all inspection contingencies. In other words, Profito simply misunderstood that seeming hard-working meant working hard to secure an American job while in Italy.

Entangled in the contradictions of immigration law, Profito's efforts at self-fashioning eventually became self-defeating, only inviting further scrutiny from immigration officials. He sought help and contacted a nephew to reach DeSepio, the man who allegedly had promised Profito railroad work. Appearing at Profito's rehearing two days following his initial hearing, DeSepio testified he had "not worked on a railroad for two months," was "employed at shoveling sand in Astoria" and had not "written [Profito] at

93. *In re* Roberto Profito, Letter No. 13658 (May 27, 1897), Letters Received, *supra* note 12.

94. Historians have noted that Italian migration was peculiar because the number of Italians who left the United States and returned to Italy was quite high, estimated at between a third to half of the nearly four million Italians that entered the United States in the years between 1880 and 1920. *See* ROGER DANIELS, COMING TO AMERICA: A HISTORY OF IMMIGRATION AND ETHNICITY IN AMERICAN LIFE 189 (Visual Educ. Corp. 1990).

all during his residence in this country." DeSepio's testimony was calculated to show that he was hardly in any position to promise work, and therefore, lacking motive, it was unlikely that he in fact had written any letter promising work on American railroads. Of course, DeSepio had an incentive to provide such testimony, for if he had promised work, then he too might have violated the Anti-Contract Labor Law.[95] Notwithstanding DeSepio's testimony, the Board of Special Inquiry sustained its decision of exclusion.

Still hoping to succeed, DeSepio and Profito hired Henry Gottlieb, who did two things for them. First, he persuaded Captain Michael DiSimone, who operated a charity for Italians on Ellis Island, to submit an affidavit in which he swore that "he has resided in Astoria for the past two years and knows that no work is to be had on any railroad there, since the place is in a bankrupt condition." DiSimone's affidavit corroborated DeSepio's testimony about his own lack of railroad employment, and it would have edified Senner, who was amicable towards charities. Second, Gottlieb filed a legal brief summarizing the facts and law for his client. In comparison to William Rockwell's polemical brief, Gottlieb's had a matter-of-fact tone, simply contradicting his client's initial affidavit: "[DeSepio's letter] if any such was ever written, received by, or read to the Immigrant was a delusion." By arguing that Profito had had a "delusion" about the existence of a letter promising a job, Gottlieb altogether ignored his client's initial efforts to appear anxious to find work. Thus, the lawyer saved his client by portraying him as a defenseless, delusional immigrant rather than a self-starter who arranged transatlantic contracts. To emphasize his client's weakness, his unavoidable reliance on others, Gottlieb went so far as to characterize as ludicrous the notion that an old man like Profito could find work on any railroad: "Is it to be believed that there cannot be found enough workingmen in this country, that a man like this Immigrant, 52 years old, must be imported under contract to do the work on the railroad." DiSimone's interest in the case itself demonstrated that a charitable institution could best assist a man "52 years old" like Profito. Unable to arrange any contract himself, but having the help of friends and charity, Profito could be released legally, Gottlieb argued, because any immigrant under the care of a dutiful family would eventually assimilate into American society.

Senner sided with Gottlieb and against the Board. "From the above record in the case," the Commissioner argued, "it appears that the statements made by the immigrant, who testified that he paid his own passage to this country, are in no way corroborated, but, on the contrary, denied by

95. The law stated that "it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners into the United States." Anti-Contract Labor Law of 1885, ch. 164, § 1, 23 Stat. 332 (1885) (amended 1891, 1903, 1907, 1917).

the supposed contractor's agent before the Board." Given the existence of conflicting testimony, the Board's exclusion decision should be overruled, Senner advised. Again, there is no record of Washington's ultimate disposition of the case, but it is likely that Profito won his appeal, owing to the power that Senner wielded to decide the final outcome of routine immigration cases.

Senner may have sided with Gottlieb, in part, because he had acquired a sense of respect for the lawyer's work. In another case, Senner recognized Gottlieb's "lengthy and eloquent appeal" on behalf of his immigrant client. He also characterized the lawyer's efforts to account for his client's contradictory behavior as "ingenious," even though he did not recommend a reversal of the board's decision to exclude.[96] And in another Gottlieb case, Senner discounted one witness's testimony by recognizing that it was given "under the guidance of attorneys skilled in such matters."[97] Even when siding against Gottlieb, Senner treated the lawyer with professional deference, often describing his work as ingenious, skilled, and eloquent.

This relationship between the two men may help explain why Gottlieb was effective as an attorney on Ellis Island. Through routine interaction, a sense of deference and trust between the two may have developed, resting on their shared awareness of what acceptable immigrants were supposed to be like. Although it is uncertain that Gottlieb himself truly believed Profito had a delusion, he portrayed him as such to Senner, and this may have confirmed Senner's expectations of immigrants generally. So, their relationship demonstrated that "networks of reciprocal deference and obligation develop that simultaneously bind [legal agents] together. . . . In this setting the [client], paradoxically, is the odd man out."[98] Profito was not the odd man out in the sense that he lost his case; he did not. Rather,

96. *In re* Andras Molesan, Letter No. 13278, (Mar. 27, 1897) Letters Received, *supra* note 12. Although, it should be pointed out that Senner's use of the word "ingenious" could also be used sarcastically to characterize Gottlieb's work. In one case, Senner concluded that "I feel the testimony presented before the Board is far more readily to be believed than the ingenious explanation subsequently submitted." *In re* Thomas James, Letter No. 11701, (Feb. 24, 1897), Letters Received, *supra* note 12.

97. *In re* Mihaly Ripko, Letter No. 13088, (Feb. 24, 1897), Letters Received, *supra* note 12. Senner's mention of "attorneys" refers to the firm, MacKinley and Gottlieb, in which Gottlieb was a partner.

98. Austin Sarat & Thomas R. Kearns, *Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life*, *in* LAW IN EVERYDAY LIFE, *supra* note 15, at 48. Sarat and Kearns make this point based on their reading of Abraham Blumberg, *The Practice of Law as a Confidence Game*, 1 L. & SOC'Y REV. 15 (1967). Professor Stanley Katz of Princeton University has suggested to me that it is possible that Gottlieb's success was owing to his bribing Senner. But, if Senner was on the take, then I am puzzled as to why Gottlieb only won three-fifths of the total number of his cases. *See Figure 3. Analysis of Attorneys with More Than Five Cases.*

Profito's single victory pointed to Gottlieb's long-term success as a recognized attorney who understood how an immigrant had to appear (even disappear, in a sense) in order to pass Ellis Island's opaque administrative regime.

FIGURE 3. ANALYSIS OF ATTORNEYS WITH MORE THAN FIVE CASES

| | Total | Contract Labor | | Public Charge | | Other |
|---|---|---|---|---|---|---|
| | | No. | % Won | No. | % Won | |
| Henry Gottlieb | 85 | 44 | 61.4% | 40 | 65.0% | 1 |
| John Palmieri | 37 | 12 | 25.0% | 24 | 25.0% | 1 |
| William Rockwell | 16 | 5 | 60.0% | 11 | 27.3% | 0 |
| David Humphreys | 10 | 4 | 0.0% | 6 | 50.0% | 0 |
| W. Lane O'Neill | 6 | 2 | 0.0% | 4 | 25.0% | 0 |

Lawyers working on Ellis Island seemed to follow two strategies. The more common strategy, followed by William Rockwell, represented his clients' interests by criticizing the procedures of the appeals system. The more exceptional strategy, followed by Henry Gottlieb, understood that developing a rewarding reputation meant accepting the legal regime that Ellis Island embodied. This explains why Gottlieb's case record was particularly outstanding, as I have represented in *Figure 3. Analysis of Attorneys with More Than Five Cases.* However, there existed a third type as rare as Gottlieb and even more critical than Rockwell. Attorney Jas P. Keenan, who appeared in only one appeal, transformed his cameo on Ellis Island into a main part, and in the process, brought the attorney's role to the foreground of administrative attention. Keenan's exceptional lawyering helps elucidate the usually veiled assumptions of officials concerning the place of lawyers on Ellis Island.

### C. *In re Cerillo Lesbinto*

Cerillo Lesbinto landed on Ellis Island in May 1897.[99] Aged fifty-eight, he supported a family in Italy, and like Roberto Profito, he testified that he had worked in the United States before. Hoping to find work, he came to stay with a friend working in Providence, Rhode Island, and although he had no railroad ticket to his destination, he possessed $30. In proceeding through inspection, Lesbinto failed a medical test. Dr. J.H. White, the surgeon in charge of Ellis Island's medical department, submitted a certificate to the effect that Lesbinto "is blind in left eye, has defective right eye, and is unable to earn a living at ordinary work." Consequently, the Board of Special Inquiry concluded that Lesbinto was likely to become a public charge, and they voted to exclude him.

99. *In re* Cerillo Lesbinto, Letter No. 13583, (May 15, 1897), Letters Received.

Lesbinto took the necessary steps to locate and hire an attorney. Keenan agreed to represent the immigrant, and in the process of developing his strategy, the lawyer asked the Board of Special Inquiry if he could cross-examine Dr. White. The request was unusual. In most cases, lawyers contacted and interviewed witnesses who voluntarily agreed to help immigrants. And in all records of appeals, there exist no references to attorneys' subpoena powers. Since Keenan's purpose in examining White's medical testimony was to refute it, he accepted a great risk by asking a potentially hostile witness to submit voluntarily to improvised proceedings.

Keenan's unusual request was politely fulfilled, and an informal cross-examination took place. The proceeding began without any reference to professional boundaries, as if all the participants understood their roles and knew how to play the game. Testing Dr. White's conclusion that Lesbinto's blindness prevented the immigrant from working, Keenan's fourth question was, "Have you given [Lesbinto] any test that would lead you to believe that he is unable to do that work?" to which Dr. White replied, "No." With that answer, Keenan confirmed his suspicion that the doctor's conclusion was hardly scientific, so he continued to interrogate the doctor. Keenan asked, "Could the man do ordinary work — would you say, from your examination of him — could he do ordinary work — such as paving?" Growing impatient, Dr. White answered, "I have told you that in my opinion the man would not be able to earn a living at ordinary work." Then, Keenan forthrightly attacked White's conclusions: "On what do you base that?" Surprised, perhaps feeling angry, the doctor gruffly responded, "I do not care to submit to a cross-examination."

Keenan's line of questioning led the chairman of the Board of Special Inquiry to remind the attorney of the ground rules to the proceeding: "Mr. Keenan, we have no jurisdiction over Dr. White; you asked for him, and we sent for him as a matter of courtesy." Lacking "jurisdiction" over anyone at the informal meeting, the chairman employed the word "courtesy" to locate the entire cross-examination in a field of genteel, professional relationships that encompassed board members, the surgeon, and even Mr. Keenan. By locating their social relations in terms of professional duties, the chairman sought to insulate Dr. White from critical questions and to restrain Keenan from acting too adversarial. Of course, "courtesy" also did the work of "jurisdiction," since the chairman was trying to assert the board's position of authority in instrumental, juridical terms. In this informal setting, where "due process of law" exerted little force, usually invisible boundaries of acceptable practices of lawyering could only appear once an attorney like Keenan grossly transgressed them.

Notwithstanding the chairman's polite admonition, Keenan's flouting of the veil of courtesy meant that it was only a matter of time before his rigorous cross-examining would end in disaster for his client. In a half-

hearted attempt to justify his behavior, the lawyer tried to explain his questioning: "I want to show that the man is able under ordinary circumstances to earn his living." Dr. White retorted, "In other words you want to show that I do not know what I am talking about." The doctor was extending to Keenan the opportunity to mend matters by assuming a position of deference in relation to his medical expertise. But, like any attorney accustomed to the habits of the courtroom, where judges and juries rewarded an adversarial manner, Keenan understandably refused Dr. White's invitation and responded, "If I can show that, I want to do it."

With that utterance, Keenan exposed underlying assumptions about the meeting, the inspection process, and habits of lawyering on Ellis Island generally. The two professionals silently faced each other with little sense of how to proceed. Robert McSweeney, the station's Assistant Commissioner who often attended board hearings like Lesbinto's, attempted to rescue the state's expert witness from Keenan's cross-examination. McSweeney solicited from Dr. White further testimony emphasizing that Lesbinto's medical inspection had been routine, unexceptional. White explained, "this man was carefully examined in the course of our usual custom; we have a certificate that this man, having lost one eye entirely, and partly lost the other eye, was in our opinion unable to earn a living at ordinary labor." If the decision excluding Lesbinto was improper because of the doctor's reasoning, McSweeney and White were suggesting, so were hundreds of other similar cases.

In a move to upstage Ellis Island's expert medical witness and its Assistant Commissioner, Keenan tried to argue once more that the doctor's medical diagnosis did not necessarily lead to the conclusion that his subject was incapable of working. Asked again if he had tested Lesbinto to demonstrate he could not work, Dr. White unintentionally revealed the status of his authoritative knowledge, "How can I put a man to a test as to whether he is able to go out and get employment and make a living." Finally, Keenan had solicited what he wanted. "Don't you understand," he asked, impugning the doctor's logic, "that it is merely upon your examination that it is said that he could not perform ordinary manual labor?" Dr. White knew, however, that McSweeney would continue to protect him and his reputation, so he dismissed Keenan's devastating question by responding, "That is my opinion."

Frustrated by the lawyer's criticism of Dr. White's testimony, one board member retreated to a common-sense defense of "scientific" evidence. He asked Keenan, "In general, how could a man in the condition of this immigrant get along — who would give him the preference over able-bodied men?" This question was met with an answer that took account of the unspoken assumptions about immigration regulations. Keenan responded, "I will answer that by saying that this man being in the country before, has friends, who will see that he is properly cared for, who will care

for him, and, if necessary, will give bonds for him." Keenan's defense of Cerillo Lesbinto, like Henry Gottlieb's defense of Roberto Profito, thus relied upon situating him in a web of social relations based in dependency. The lawyer's savvy argument, however, failed to persuade the board chairman who, at this point, was probably upset that the proceeding had been conducted in an adversarial manner. "I don't think," the chairman interjected, "that this man could earn a living at ordinary labor; common sense teaches me that a man 58 years of age, and in this physical condition, could not make a living." Keenan tried to weaken that argument by stating he knew "a man totally blind and I have employed him for two or three years." But his efforts at soliciting the chairman's sympathy contrasted with his aggressive lawyerly manner, and he moved neither the chairman nor other board members to overturn the exclusion decision.

At the end of the hearing, one board member suggested that Lesbinto apply for a bond as insurance against his becoming a public charge. Of course, he would have to apply with the Commissioner rather than the Board of Special Inquiry, and then the Commissioner would have to submit his recommendation, if forthcoming, to Washington for final consideration. Keenan refused to end the hearing on a flat note. He responded to the invitation to apply for a bond with a non-sequitur: "You see I am excluded to a considerable extent, because I cannot cross examine the doctor, and that is what keeps the man out." Although the chairman expressed his disagreement, Keenan reiterated, "cross examination may bring out a great deal; I have had the pleasure of running up against Dr. Flint, and have known him to change his opinion three times." Tired of Keenan's lawyering, his "pleasure of running up against" medical experts, the chairman closed the hearing by simply generalizing whom Ellis Island excluded: "Old men like this always have difficulty in getting in unless they have sons or daughters able and willing to take care of they [sic]." Lesbinto simply posed too much of a threat to the American public by not proving to immigration officials that he would inhabit a position of familial dependency appropriate for his advanced years and manifest physical condition.

Lesbinto and his lawyer exited the hearing and applied for a bond. In his recommendation to Washington, Senner summarized the facts of the case and stated that "Cerillo Lesbinto would not be a desirable addition to our population, and [I] am not willing to recommend the acceptance of the proposed bond." To justify his conclusion, Senner enclosed a copy of the board's minutes which documented Dr. White's examination, Keenan's cross-examination, as well as the board's defense of Ellis Island's medical expert. In all likelihood, Washington rejected Lesbinto's application for a bond, and he was returned to Italy.

Keenan and Rockwell were lawyers who challenged the role they were expected to perform on Ellis Island. By contrast, Gottlieb often performed his expected role well. When considered in relationship to one another,

and in the context of the analysis preceding the discussion of these three cases, the work of these attorneys helps reveal an underlying pattern among all lawyers' strategies. In so far as attorneys like Henry Gottlieb successfully guided their clients through the administrative system, they tended to reproduce immigration officials' expectations. Meanwhile, attorneys like Jas Keenan or William Rockwell, who appeared only a few times on Ellis Island, took an active role in fighting administrative procedures. Their clients tended to lose, taking that lesson back to Europe. Without regard to the form of legal representation, immigrants rarely escaped Ellis Island's catechism.

Most immigrants who made it to the "pen" probably discerned two truths about Ellis Island. First, they took with them their inspectors' ideas about modern America: that immigrants were not supposed to appear like paupers, invalids, or overly-ambitious workers, rather they were expected to become hard-working, industrious members of the community. In one case that reveals as much about the ordinary expectations of inspectors as about a group of "extraordinary" immigrants, Senner allowed Rebecca Leiba and her eight children to land because, though her husband was only a small shop owner in New York City, he truly was the "type of man who seldom or never becomes a burden upon a community; of an extremely industrious temperament possessed of the attributes of temperance, economy, self control and common sense to an unusual degree."[100] In addition to being told to value "temperance, economy, self control" while working in America, immigrants also left Ellis Island having heard a second message that their inspectors tried to squelch. Many of them learned that lawyers could help them — coach them, find and coach witnesses, recast testimony in a favorable light, collect money to post a bond, or even challenge the legal system itself.[101]

These two messages operated in tension with one another. Passing required discerning the expectations of inspectors. At the same time, hiring a lawyer to challenge Ellis Island's legal procedures tended to disrupt officials' expectations, causing many clients to lose their case. Again, as

100. *In re* Rebecca Leiba et al., Letter No. 6087, (Jan. 10, 1894), Letters Received, *supra* note 12. The display of family values and hard work, then, counted for much. This is confirmed in another case of a husband and wife coming from Italy with their two children in which Senner ruled: "I find the husband and wife young and active appearing persons with two bright and attractive children. The man in particular seems intelligent and able-bodied. . . . It is but rarely that people of this class come as a family and I feel that this fact should be considered as a point in their favor." *In re* Antonio Anabile et al., Letter No. 13336, (Apr. 7, 1897), Letters Received, *supra* note 12.

101. Because of the state of the records, it is impossible to determine the approximate number of cases brought before the Board of Special Inquiry. *Supra* note 13. If the number was much larger than the 424 cases I have examined, then the number of immigrants who hired lawyers on Ellis Island may have been small, but significant. Ultimately, though, the fact that few immigrants saw lawyers also says a great deal about the general expectations of administrators and legislators regarding legal representation.

lawyer Jas Keenan complained to immigration officials: "You see I am excluded to a considerable extent . . . and that is what keeps the man out." For federal officials, immigrants had a particular kind of status in the law, which was not revealed by statutes, cases, regulations. As officials tried to make practical sense of the legal regime they were charged with administrating, they made sure that hiring a lawyer was of limited effect and that strategies of legal representation were in line with officials' expectations.

## VI.
## EPILOGUE

Although the limited space afforded by this note prevents me from fully elaborating, I conclude by offering some observations about the relevance of the political career of Theodore Roosevelt to the early history of Ellis Island.[102] The relationship between Roosevelt's politics and Ellis Island was not directly causal. Instead, the practice of federal immigration law became affiliated with Roosevelt's ideas due to historical circumstances. Concluding my note with a discussion of his political career and ideology permits me to offer an additional interpretive layer to the evidence presented and to show how by way of Roosevelt, the practice of immigration law resonated with a broader contemporary discourse about American citizenship that he promulgated.

Roosevelt acquired his early political reputation by fashioning himself as a zealous imperialist and a spirited reformer embodying the Anglo-American idealism of his day.[103] He was also the Gilded Age's master publicist of law and government, as revealed most clearly in his published reviews of other writers' work. At the end of the nineteenth century, it was common for many writers to emphasize "cultural decay" while writing about modern Western society.[104] All through the 1890s, Roosevelt criticized these observations in published essays by celebrating America's long-standing and thriving chauvinisms. For example, in his review of Charles

102. For a biographical discussion, see H.W. BRANDS, T.R.: THE LAST ROMANTIC (1997); EDMUND MORRIS, THE RISE OF THEODORE ROOSEVELT (1979); HOWARD BEALE, THEODORE ROOSEVELT AND THE RISE OF AMERICA TO WORLD POWER (1956); and of course, THEODORE ROOSEVELT, AN AUTOBIOGRAPHY (Da Capo Press, Inc., 1985) (1913).

103. *See* Amy Kaplan, *Black and Blue on San Juan Hill, in* CULTURES OF UNITED STATES IMPERIALISM 219-236 (Amy Kaplan & Donald Pease eds., 1993); GAIL BEDERMAN, MANLINESS AND CIVILIZATION: A CULTURAL HISTORY OF GENDER AND RACE IN THE UNITED STATES, 1880-1917, 170-215 (1995). For a general treatment of Roosevelt's racial thought, see THOMAS DYER, THEODORE ROOSEVELT AND THE IDEA OF RACE (1980).

104. For discussion about the theme of "cultural decline" in late nineteenth century social thought, see T. JACKSON LEARS, NO PLACE OF GRACE: ANTI-MODERNISM AND THE TRANSFORMATION OF AMERICAN CULTURE, 1880-1920 (1981); RICHARD HOFSTADTER, SOCIAL DARWINISM IN AMERICAN THOUGHT (1944); ALAN TRACHTENBERG, THE INCORPORATION OF AMERICA: CULTURE AND SOCIETY IN THE GILDED AGE (1982).

Pearson's *National Life and Character*,[105] he dismissed the idea that immigration posed a threat to America, and expressed his confidence that "nineteenth century democracy" possessed "the clear instinct of race selfishness" by pointing to the legal exclusion of Chinese from America.[106] Moreover, in his review of Brooks Adams' *Law of Civilization and Decay*,[107] he defended the vigor of modern American civilization by celebrating the organizational aspects of its work ethic: "There are great branches of industry which call forth in those that follow them more hardihood, manliness, and courage than any industry of ancient times."[108] In Roosevelt's estimation, whiteness and manliness were bulwarks of modernity produced by the nation's factories.

Roosevelt's most thorough criticism of the "cultural decay" thesis appeared in his review of Benjamin Kidd's *Social Evolution*.[109] As a true social Darwinist, Kidd feared that the "leading races," from England and Germany, were failing to embrace social struggle and believed in time they would eventually lose out to other races. Roosevelt disagreed and, just as he pointed to the example of the Chinese in his review of Pearson's book, he alluded to America's immigrants to draw racial hierarchies: "If . . . progress was most marked where the struggle for life was keenest, the European peoples standing highest in the scale would be South Italians, the Polish Jews, and the people who live in the congested districts of Ireland. As a matter of fact, however, these are precisely the peoples who have made least progress when compared with the dominant strains among, for instance, the English or Germans."[110]

Roosevelt mentioned these racial distinctions in an essay extolling modern American civilization. To illustrate, he pointed to "the life of a regiment or the organization of a police department or fire department." He analyzed social relations in such institutions in terms of duties: "the first duty of a regiment is to fight." This duty was "entirely independent of any religious considerations," and so it is clear that Roosevelt-as-moralist was not speaking. Why, then, did the soldier fight? Because, "subordination is greatest . . . in those regiments where the individual feels that high, stern pride in his own endurance and suffering." In other words, a soldier's actions were meaningful strictly in reference to his sentiment of duty, not his self-interest or faith in God. And just as there was no "rational sanction

105. CHARLES PEARSON, NATIONAL LIFE AND CHARACTER (London, Macmillan & Co. 1893).

106. ROOSEVELT, *supra* note 5, at 213.

107. BROOKS ADAMS, LAW OF CIVILIZATION AND DECAY (London, The Macmillan Co. 1896).

108. 13 THEODORE ROOSEVELT, *The Law of Civilization and Decay*, *in* THE WORKS OF THEODORE ROOSEVELT, *supra* note 5, at 242-260 (book review).

109. BENJAMIN KIDD, SOCIAL EVOLUTION (London, Macmillan & Co. 1895).

110. 13 THEODORE ROOSEVELT, *Social Evolution*, *in* THE WORKS OF THEODORE ROOSEVELT *supra* note 5, at 223-241 (book review).

for a soldier flinching from the enemy," there was also "no rational sanction for progress" or civilization. Whether serving in the nation's battles or in the cities' factories, the modern "soldier or citizen" acted not out of rational self-interest but out of "shame and misery from neglect of duty." Thus, civilization had inscribed itself in the instincts of the psyche, becoming perhaps what we call "guilt" but certainly what Roosevelt named the "habit of useful self-sacrifice" — a phrase that elegantly described the institutionalization of heroism in what he regarded as modern, Anglo-Saxon civilization.[111]

Roosevelt's political vision for modern America was rooted in his idea of "duty" and the "habit of useful self-sacrifice." He oriented action towards the systematic organization of public life. Habitually idealizing social existence in terms of dramatis personae such as "soldiers" and "policemen," he believed that law must be institutionally practiced to train men to make useful self-sacrifices, to be duty-minded. Of course, his intellectual stance reflected his social position, so it is misleading simply to say that his idea of duty caused the development of certain institutions. More than anything, Roosevelt's "duty talk" internalized his own status by heroically organizing the social world around him through law.[112] But, it also helped perpetuate his status by giving him a language through which his own actions seemed natural to himself and his cohort.

Roosevelt's ideal of "duty" merged with the history of Ellis Island, once he assumed the presidency in 1901. Early in his administration, he

111. *See* 13 THEODORE ROOSEVELT, *Administering the New York Police Force*, *in* THE WORKS OF THEODORE ROOSEVELT, *supra* note 5, at 119. In his review of SOCIAL EVOLUTION, Roosevelt examined "the life of a regiment or the organization of a police department" not purely for intellectual reasons. In the same year his review was published, Roosevelt was made commissioner of New York City's newly created police board, "whose duty it was to cut out the chief source of civic corruption in [the city] by cleansing the police department." For Roosevelt, reform fundamentally meant adhering to the rule of law. Citizens owed a duty to follow the law not because they held to some religious ideal or political theory, but because the logic of civilization instilled in them the useful instinct of obedience. For a full account of Roosevelt's experiences as New York's police commissioner, see JAY BERMAN, POLICE ADMINISTRATION AND PROGRESSIVE REFORM: THEODORE ROOSEVELT AS POLICE COMMISSIONER OF NEW YORK (1987); PAUL JEFFERS, COMMISSIONER ROOSEVELT: THE STORY OF THEODORE ROOSEVELT AND THE NEW YORK CITY POLICE, 1895-1897 (1994).

112. For example, Roosevelt was a key figure in organizing clubs that aimed to challenge New York's political machines in the 1880s and 1890s. One of the most striking examples of how Roosevelt was socially connected to reform-minded lawyers was the City Reform Club, which he founded in 1882. One member described the Club to a cousin in the following way: "you ought to join the City Reform club [sic], which is a club of about a dozen young college graduates, nearly all lawyers, who are the only people in town who have the guts to stand up and fight Tammany." Robert Muccigrosso, *The City Reform Club*, 52 N. Y. HIST. SOC'Y Q. 235, 244 (1968) (quoting Memoirs of William Jay Schieffelin, 10-11 (on file with Oral History Collection at Columbia University)). It was the City Reform Club that was responsible for stirring public outrage over police corruption in 1892, eventually leading to Roosevelt's appointment as New York's police commissioner in 1895. *Id.* at 245-46.

sought to reform Ellis Island by forcing officials there to resign and installing his own Commissioner, New York attorney William Williams.[113] For Commissioner of Immigration at Ellis Island, Williams was an appropriately Rooseveltian choice. Not only was Williams a Wall Street lawyer, but he also had a record of government service and a good record as a soldier in the recent war with Spain, in which Roosevelt himself had participated.[114] Williams represented the elite of New York's lawyers in 1900 and supported their vision of institutionally-oriented, reform-minded professionalism mobilized in government service.[115] His appointment as Commissioner represented the culmination of on-going efforts of lawyers, reformers, and politicians who had sustained a political reform movement in New York City in the decades following Reconstruction. Notably, Theodore Roosevelt was both Williams' patron and a key figure in that movement.[116]

Not surprisingly, Roosevelt's appointee made every effort to reform the federal facility, give it a new look, and emphasize its function as the first institution of American citizenship. Former administrators of the facility, Williams complained, had not "calculated to make upon [immigrants] a favorable impression at the time of their first contact with the institutions of this country."[117] His vision of reform led to several improvements of the secondary operations attendant to maintaining the inspection station. A new dining-room was planned, dormitories were improved, and officials renamed immigrant waiting rooms, formerly called "pens," as "detention rooms."[118] In 1903, Jacob Riis noted, "The law of kindness rules on Ellis Island; a note posted conspicuously invites every employee who cannot fall in with it to get out as speedily as he may."[119] One observer boasted, "It is doubtful if the guests of any hotel in the country have their meals served

113. Thomas Pitkin, *High Tide at Ellis Island*, 52 NEW YORK HISTORICAL SOCIETY QUARTERLY 311, 314 (1968).

114. *Id.* at 315.

115. For the leading history of the American legal profession at the turn of the century, see JEROLD AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA (1976). For a discussion concerning the relationship between lawyers and American corporate culture, see WAYNE HOBSON, THE AMERICAN LEGAL PROFESSION AND THE ORGANIZATIONAL SOCIETY, 1890-1930 (1986). *See also* Robert Gordon, *Legal Thought and Legal Practice in the Age of American Enterprise, 1870-1920*, *in* PROFESSIONS AND PROFESSIONAL IDEOLOGIES IN AMERICA 70-110 (Gerald L. Geison ed., 1983). For the history of the New York City bar in this same period, *see* GEORGE MARTIN, CAUSES AND CONFLICTS: THE CENTENNIAL HISTORY OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, 1870-1970 (1970); Robert W. Gordon, *"The Ideal and the Actual in the Law": Fantasies and Practices of New York City Lawyers, 1870-1910*, *in* THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA 51-74 (Gerard W. Gawalt ed., 1984); MICHAEL POWELL, FROM PATRICIAN TO PROFESSIONAL ELITE: THE TRANSFORMATION OF THE NEW YORK CITY BAR ASSOCIATION (1988).

116. *See* discussion, *supra* note 102.

117. Pitkin, *supra* note 113, at 317 (quoting ANNUAL REPORT OF THE COMMISSIONER-GENERAL OF IMMIGRATION 55-57 (1902)).

118. Jacob Riis, *In The Gateway of Nations*, 65 CENTURY MAG. 674-82, 678 (1903).

119. *Id.*

under more satisfactory conditions of cleanliness, healthfulness, and good cheer."[120] Thus, middle-class ideals of "cleanliness" and "healthfulness" became an essential part of the reform effort to prepare immigrants for Americanization.

If Roosevelt had imagined factories, armies, and police departments as saving the nation from "cultural decay," then under Williams' tenure, Ellis Island assumed a similar status, representing a kind of first line of cultural defense. This defensive posture was not simply what might be regarded as "us versus them," in the way federal judges protected administrators' powers in the 1890s. Although that judicial posture persisted into the twentieth century, Ellis Island was explicitly re-imagined as a preparatory institution to inculcate the duties of modern Anglo-American citizenship. According to one journalist who endorsed the new administration of immigration regulations: "the aliens are now treated in the main quite as considerately as would be crowds of like size and character at the heart of the city."[121] In 1892, New York's inspection station had been created to practically administer two contradictory laws; by 1902, Ellis Island, and the laws its inspectors tried to enforce, symbolized efficient government and urban order.

With the articulation of Roosevelt's racial ideology, the bureaucratic and nonadversarial legal culture of Ellis Island could be claimed in the name of civic virtue, good government, and Americanism. The criteria of immigration inspectors coping with the contradictory mandates of the Public Charge and Anti-Contract Labor Laws happened to resonate with Roosevelt's "duty talk." In the period discussed above, 1893-1897, federal inspectors had favored admitting immigrants whose manners evinced defenselessness and deference. Through rumors and shared stories, many European immigrants had learned of inspectors' expectations and had tried to negotiate immigration inspection. Yet, some had still failed, and had appealed their exclusion. Of those who had appealed, most hired lawyers to assist them. On the whole though, lawyering was ineffective. It was the uncommon advocate, like Henry Gottlieb, who had succeeded. Success had required re-emphasizing the client's defenselessness, minimally challenging the administrative process, and narrowing one's professional presence. In this way, adversarial lawyering had been marginalized on Ellis Island in the 1890s. Under Roosevelt's presidency, this bureaucratic legal culture came to stand as a symbol of good government in the service of Americanizing immigrants.

Of course, immigration officials exerted little influence over people (with some important exceptions) if they passed inspection. Once they left, many likely discovered that places like Manhattan were not the same as Ellis Island's registry floor or Board of Special Inquiry. Cities like New

120. *Humanity and Efficiency*, 88 OUTLOOK 672 (1908).

121. T. Williams, *All Immigration Records Broken*, 95 LESLIE'S WKLY. 126 (Aug. 7, 1902).

York were chaotic places in which rules were often prescribed but were hardly supervised by government-appointed inspectors. Ellis Island may have represented how Anglo-Saxon government tried to prevent "cultural decline" and assimilate hosts of aliens. Nonetheless, we should remain deeply skeptical that the people who successfully passed through its gates acquiesced in that on-going racial, legal, and cultural project.