

# “Police Authority is Necessary”: The Canadian Origins of the Legal Powers to Detain and Deport, 1893-1902

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*When and why did Canada develop the legal powers to detain and deport immigrants? At the beginning of the twentieth century, Canada did have legal powers authorizing deportations, but the laws lay as inactive dead letters. After a significant American diplomatic effort to establish a continental immigration exclusion program, initially resisted by Canadian corporate and state actors, Canada activated immigration police powers in the summer of 1900. After extensive archival research, this legal history shows that the government endorsed immigration police powers when it appeared that Canada was the destination for thousands of Jewish Roumanian refugees and that the Americans planned to set up extensive border controls along the Canadian-American frontier. From there, Canada quickly developed and enhanced its immigration policing powers and laws to forestall American economic sanctions. This article considers how government, corporate interests, international law, and American interest combined to eventually lead to the passage of a 1902 law that firmly established Canada’s right to arrest, detain, and deport undesirable immigrants.*

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## Introduction

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# Introduction

In February 1902, an American immigration commissioner in New Brunswick ordered the deportation of fifteen Jewish immigrants. But when the ship that was supposed to take them back to Europe arrived in St. John, the migrants refused to board and took refuge in a local synagogue. The local Canadian immigration official sent a telegram to Ottawa seeking advice. Describing the Jews as “diseased and destitute”, he explained that “[i]f you want them deported I will have to get a policeman to handcuff them and cart them to [the] ship” but, he warned, “the Jews have retained counsel and will put up a big fight”. The next day, a senior immigration official telegraphed back advising there is no legal “authority to arrest[,] but if possible you should persuade these people to return [to] ship”.<sup>1</sup>

To the contemporary reader, this vignette is surprising. Why was an American ordering deportations from Canada? Did Canadian officials truly not have the authority to arrest, detain, and remove unauthorized immigrants? While today it is axiomatic that, in the words of the Supreme Court of Canada, “the Government has the right and duty to keep out and to expel aliens from this country if it considers it advisable to do so,”<sup>2</sup> these sorts of legal powers are surprisingly new. For most of the nineteenth century, deportations and immigration detentions in Canada were rare and were almost never conceived of as such. While international legal scholars and jurists assumed that states could, at least in some circumstances, expel aliens, nineteenth century Canadian immigration officials did not believe that deporting migrants was part of their job description. It was not until the summer of 1900 that Canada activated, developed, and began to use police powers that look like those used by today’s border and immigration officers.

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1. Correspondence between James Latham, Frank Pedley, and Elder Dempster (corporation) (13–15 February 1902), Ottawa, Library and Archives Canada (RG 76, file 3247).

2. *Kindler v Canada (Minister of Justice)*, [1991] 2 SCR 779 at 834, 84 DLR (4th) 438.

This story is a local history of a global phenomenon.<sup>3</sup> While we often assume that border controls are a constitutive and necessary component of the modern state, they are actually “a fairly late development”.<sup>4</sup> This paper examines how one immigration control power—the legal right to arrest and deport an unauthorized migrant—came to Canada. To help tell that story, this paper connects research on three overlapping periods and places. First, after the United States of America banned Chinese migration outright in 1882, the British Columbia Legislature attempted to follow suit. Worried that denying employers access to cheap labour would unduly harm Canadian development and industry, the federal Cabinet disallowed the laws. But Prime Minister MacDonald determined that something had to be done to mollify racist sentiment on the Pacific Coast. In 1885, Parliament passed *The Chinese Immigration Act*.<sup>5</sup> The main feature of this legislation required each Chinese immigrant to pay a fifty-dollar head tax before arriving in Canada. This law did not usher in a formal deportation power, but historians agree that the law’s passage marked the beginning of a new exclusionary era of immigration policy in Canada.<sup>6</sup> In contrast to the laissez-faire approach of the previous decades, it was at this moment that “new controls started to emerge . . . to restrict the mobility of Asians to White settler nations”.<sup>7</sup>

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3. See Eytan Meyers, “The Causes of Convergence in Western Immigration Control” (2002) 28:1 *Rev Intl Studies* 123.

4. Adam McKeown, *Melancholy Order: Asian Migration and the Globalization of Borders* (New York: Colombia University Press, 2011) at 2.

5. See *An Act to Restrict and Regulate Chinese Immigration Into Canada*, SC 1885, c 71 (also referred to as *The Chinese Immigration Act*).

6. See generally Peter Ward, *White Canada Forever: Popular Attitudes and Public Policy Towards Orientals in British Columbia*, 3rd ed (Kingston & Montreal: Queens-McGill Press, 1978); Vic Satzewich, “Racisms: The Reactions to Chinese Migrants in Canada at the Turn of the Century” (1989) 4:3 *Int Soc* 311; Patricia Roy, *A White Man’s Province: British Columbia Politicians and Chinese and Japanese Immigrants, 1858-1914* (Vancouver: UBC Press, 1989); Bruce Ryder, “Racism and the Constitution: The Constitutional Fate of British Columbia Anti-Asian Immigration Legislation, 1884–1909” (1991) 29 *Osgoode Hall LJ* 619; David Gouter, *Guarding the Gates: The Canadian Labour Movement and Immigration, 1872–1934* (Vancouver: UBC Press, 2007); Christopher Anderson, *Canadian Liberalism and the Politics of Border Control, 1867–1967* (Vancouver: UBC Press, 2012); Triadafilos Triadafilopoulos, *Becoming Multicultural: Immigration and the Politics of Membership in Canada and Germany* (Vancouver: UBC Press, 2013).

7. McKeown, *supra* note 4 at 7.

Second, scholars have extensively examined pre-First World War deportations and immigration detentions. If the 1880s brought explicit exclusionary impulses to Canadian migration law, those dynamics matured into robust and well-used powers in the early twentieth century. By 1905, Canada routinely detained and expelled paupers,<sup>8</sup> “diseased” migrants,<sup>9</sup> political and labour activists,<sup>10</sup> and—as best illustrated by the Komagata Maru incident—racialized migrants from Asia and British India.<sup>11</sup> How, this article asks, did these coercive immigration police legal powers develop between the passage of *The Chinese Immigration Act* and the pre-First World War moment?

At least part of the answer draws, third, on American literature about Atlantic Coast border controls in the 1890s and early 1900s. As the number of migrants from Europe swelled, the United States set up a network of inspection sites where each potential immigrant was screened. It was during this time that the immigrant experience “began to be increasingly mediated through the

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8. See Henry Drystek, “‘The Simplest and Cheapest Mode of Dealing with them’: Deportation from Canada before World War II” (1982) 15:30 *Histoire Social/Social History* 407.

9. See Alan Sears, “Immigration Controls as Social Policy: The Case of Canadian Medical Inspection 1900–1920” (1990) 33 *Studies in Political Economy* at 91; Robert Menzies, “Governing Mentalities: The Deportation of ‘Insane’ and ‘Feebleminded’ Immigrants out of British Columbia from Confederation to World War II” (1998) 13:2 *CJLS* 135. See also Renisa Mawani, “‘The Island of the Unclean’: Race, Colonialism and ‘Chinese Leprosy’ in British Columbia, 1891–1924” (2003) 1 *L, Soc Justice & Global Development J* 1; Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885–1925* (Toronto: University of Toronto Press, 2008).

10. See Donald Avery, “Continental European immigrant workers in Canada 1896–1919: from ‘stalwart peasants’ to radical proletariat” (1975) 12:1 *Can Rev Sociologie/Rev Can Sociologie* 53; Donald Avery, *Dangerous Foreigners: European Immigrant Workers and Labour Radicalism in Canada, 1896–1932* (Toronto: McLelland & Stewart, 1979); Barbara Roberts, “Shovelling Out the ‘Mutinous’: Political Deportation from Canada Before 1936” (1986) 18 *Labour/Le Travail* 77; Barbara Roberts, *Whence They Came: Deportation from Canada 1900–1935* (Ottawa: University of Ottawa Press, 1988).

11. See Hugh JM Johnston, *The Voyage of the Komagata Maru: The Sikh Challenge to Canada’s Colour Bar* (Vancouver: UBC Press, 2014); Renisa Mawani, *Across Oceans of Law: The Komagata Maru and Jurisdiction in the Time of Empire* (Durham: Duke University Press, 2018); Radhika Mongia, *Indian Migration and Empire: A Colonial Genealogy of the Modern State* (Durham: Duke University Press, 2018); Rita Dhamoon et al, eds, *Unmooring the Komagata Maru: Charting Colonial Trajectories* (Vancouver: UBC Press, 2019).

language and practice of public health”<sup>12</sup> and that American immigration officials became preoccupied with identifying and excluding problematic migrants out of the many who arrived each day. This wave of immigration was intrinsically tied to progressive-era scientific racism, social regulation, and saw an expansion of inspections, detentions, and deportations.<sup>13</sup>

This article shows that in the 1890s and early 1900s, the United States government waged an intense diplomatic effort to convince Canada to harmonize its immigration law with American priorities. This was because American officials believed that undesirable immigrants were evading rigorous American inspection by entering Canada and, from there, crossing into the United States along the unguarded and unmonitored border. Canadian officials and Canadian transportation companies initially resisted, ignored, or tried to mollify American interests, but eventually continued avoidance became untenable. At the same time, events intervened. Faced with a sudden movement of refugees in the summer of 1900, anti-Semitic elements in the Canadian government decided that the time had come to activate immigration police powers.

Referring to the West Coast Borderlands, Kornel Chang argues that “it was the struggle over Asian migration across the northern boundary that gave rise to the first sustained emphasis on border policing and surveillance in the Americas”.<sup>14</sup> The story told here shows how a similar and roughly contemporaneous contest on the East Coast helped produce the legal infrastructure for border policing that would eventually feed back into Pacific bordering practices. We can observe a circular dynamic in the way these police powers spread. Once the American federal government assumed control over immigration policing, ideas developed on the West Coast moved east easily. As mass migration from Europe increased,

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12. Howard Markel & Alexandra Stern, “Which Face? Whose Nation? Immigration, Public Health, and the Construction of Disease at America’s Ports and Borders, 1891–1928” (1999) 42:9 *American Behavioral Scientist* 1314 at 1315.

13. See Howard Markel, “‘The eyes have it’: trachoma, the perception of disease, the United States Public Health Service, and the American Jewish immigration experience, 1897–1924” (2000) 74:3 *Bull History Medicine* 525; Krista Maglen, “Importing trachoma: The Introduction into Britain of American Ideas of an ‘Immigrant Disease’, 1892–1906” (2005) 23:1 *Immigrants & Minorities* 80; Daniel Kanstroom, *Deportation Nation: Outsiders in American History* (Cambridge: Harvard University Press, 2007); Stephanie Silverman, “Immigration Detention in America: A History of Its Expansion and a Study of Its Significance” (2010) COMPAS Working Paper No 80; Patrick Ettinger, *Imaginary Lines: Border Enforcement and the Origins of Undocumented Immigration, 1882–1930*, 1st ed (Austin: University of Texas, 2009).

14. Kornel Chang, *Pacific Connections: The Making of the U.S.-Canadian Borderlands* (Berkeley: University of California Press, 2012) at 3.

American officials thought that the porous Canadian border undermined their efforts to deter unwanted immigrants. To make America more secure, officials pressured Canadians to embrace stringent immigration laws and expand immigrant inspections in Canadian ports. Once finally embraced by the Canadian federal government, migration police powers transited back west to supplement border-making practices.

This article comes in four parts. Part I sets the scene and orients the reader to the literature in the field by describing the state of Canadian immigrant exclusion law from Confederation to the beginning of the twentieth century. This section shows that during this period Canada did not have operationalized legal powers to remove unwanted immigrants or a section of government responsible for policing and deporting migrants. The next sections report on extensive original archival research. Part II explores a concerted late nineteenth century effort by the American state to conscript Canada into a continental immigration control regime and shows how this American strategy initially floundered. Part III identifies the first legal immigration detentions and the first legal deportation in Canadian history. After a volcanic eruption caused a crop failure in Roumania, thousands of Jews tried to flee to Canada to escape surging anti-Semitism. To stem this migration, the Canadian state enabled a long-dormant law that by implication let it detain and exclude “paupers”. Canada developed new powers to police and exclude immigrants to ensure that the Americans did not close border points between Canada and the United States. Ultimately this led to the subject of Part IV, the passage of a 1902 law that finally gave the Canadian state explicit arrest, detention, and deportation powers.

## **I. The “Considerable Timidity” of Exclusion Laws (1867–1900)**

Between Confederation and the beginning of the twentieth century, there were no active legal powers that allowed Canadian officials to detain and deport unauthorized migrants because they were unauthorized migrants. This is not to say that Canadian governments, pre- or post-Confederation, did not expel people from Canadian territory. Rather, the argument is that the Canadian state had not yet developed specific deportation and detention powers that targeted people who breached immigration laws. Indeed, in 1899, Clifford Sifton, the Minister of the Interior in charge of immigration matters, rose to tell Parliament that “there is no Exclusion Act in the Dominion of Canada at the present time, and there never has been, so far as I am aware.”<sup>15</sup> As this

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15. *House of Commons Debates*, 8-4, vol 3 (6 July 1899) at 8567–68 (Sifton).

section will show, in a doctrinal sense Sifton may have been overstating the case, but at least from the perspective of Canadian state actors, a modern deportation power was not part of Canada's policing repertoire until the early twentieth century.

To be sure, as histories of banishment, extraditions, transportation, and slavery show, empires and nations have involved themselves in and caused all manner of human migrations.<sup>16</sup> Often, the use of these tools turned on understandings of social membership. By the seventeenth century, "a relatively clear line in English law had emerged between insiders, or 'subjects,' and outsiders, or 'aliens.'"<sup>17</sup> Rights began to develop that protected some people from forced movement based on their statuses. For example, the English *Habeas Corpus Act* 1679 forbade the sovereign from sending subjects to jails overseas, suggesting that the King could forcibly remove aliens from the realm.<sup>18</sup> But international law scholars of the time agreed any right to expel was qualified. Vittoria, for example, said that Spaniards could freely travel to and reside in the New World so long as they "do no harm to the natives".<sup>19</sup> Vattel held that the "the Lord of the territory may, whenever he thinks it proper, forbid its being entered" but also detailed a list of exceptions to the sovereign's power to exclude.<sup>20</sup>

In the common law tradition, sometimes the power to deport was conceived as a statutory power, not a sovereign one. In 1793, on the verge of war with France, the British Parliament passed the *Aliens Act*,<sup>21</sup> a measure that required non-nationals to register with customs officials and secure permits before travelling inland, suggesting that the regulation of migration was a matter for statute and not executive action.<sup>22</sup> In Lower Canada, where British officials worried about the loyalty of the Francophone majority, even more robust laws were passed. The 1794 *Aliens Act*, for example, allowed the governor to

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16. See William Walters, "Deportation, Expulsion, and the International Police of Aliens" (2002) 6:3 Citizenship Studies 265; Matthew Gibney, "Banishment and the pre-history of legitimate expulsion power" (2020) 24:3 Citizenship Studies 277.

17. Kanstroom, *supra* note 13 at 23.

18. See *Habeas Corpus Act 1679* (UK), 31 c 2.

19. For context and quotations see James AR Nafziger "The General Admission of Aliens under International Law" (1983) 77:4 AJIL 804 at 811.

20. *Ibid.*

21. See *An Act for regulating immigration into Great Britain, 1793* (UK), 33 Geo III, c 4 (referred to as the *Aliens Act*).

22. See Thomas C Jones, "Establishing a constitutional 'right of asylum' in early nineteenth-century Britain" (2020) 46:5 History of European Ideas 545 at 547.

summarily deport any foreigner. Likewise, in 1804, the Legislative Assembly of Upper Canadian passed the *Sedition Act*,<sup>23</sup> allowing for the potential removal of aliens and non-resident subjects (i.e. recently arrived Irish).<sup>24</sup> As late as 1890, a major English liberal jurist argued that “there seems to be no prerogative of the Crown either to exclude or expel aliens”, explaining that “their right to land and remain on British soil depends not upon the will of the Crown but the voice of the Legislature”.<sup>25</sup> In truth, as Bradley Miller writes about the law of extradition during the same time period, legal regimes regarding the forced movement of people “were enduringly fragile and amorphous”.<sup>26</sup>

This is borne out by Canadian officials’ understanding of their powers. From Confederation to the turn of the century, Canadian immigration officials generally neither thought they had, nor needed, powers to deport immigrants. After an upsurge in interest in border regulation at the end of the eighteenth and through to the middle of the nineteenth centuries, “the second half of the nineteenth century was an era of limited border controls.”<sup>27</sup> When Parliament passed Canada’s first comprehensive immigration law in 1869, its primary purpose was to enable a federal-provincial immigration agreement designed to promote “a liberal policy for the settlement and colonization of the uncultivated lands”.<sup>28</sup> Focused on attracting and protecting migrants, not repelling them, the new law “addressed how people arrived more than who was arriving”.<sup>29</sup> It regulated the number of passengers allowed aboard a ship,<sup>30</sup> it required Masters

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23. *Alien and Sedition Act*, 1804 (Upper Canada), 44 Geo III, cap 1.

24. See Barry Wright, “Migration, Radicalism, and State Security: Legislative Initiatives in the Canadas and the United States c. 1794–1804” (2002) 16 *Studies in American Political Development* 48 at 51.

25. WF Craies, “Right of Aliens to Enter British Territory” (1890) 6 *Law Q Rev* 27 at 29.

26. Bradley Miller, *Borderline Crime: Fugitive Criminals and the Challenge of the Border, 1819–1914* (Toronto: University of Toronto Press, 2016) at 6.

27. McKeown, *supra* note 4 at 42.

28. House of Commons, “Report of the Minister of Agriculture,” *Sessional Papers*, 1-2, No 76 (1869) at 4.

29. Anderson, *supra* note 6 at 39. See also Ninette Kelley & Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy*, 2nd ed, (Toronto: University of Toronto Press, 2010) at 84–87 on how the government worked to improve trans-Atlantic travel and protect immigrants.

30. See *An Act Respecting Immigrants and Immigration*, SC 1869, c 10, s 3.



of Ships to let immigrants stay aboard for forty-eight hours after arriving in a Canadian port,<sup>31</sup> it prohibited steamships from charging passengers luggage unloading fees,<sup>32</sup> it criminalized the unlicensed solicitation of recently arrived immigrants on behalf of lodging and rail corporations,<sup>33</sup> and it required keepers of inns, boarding houses, and taverns to display “a list of rates of prices” in a conspicuous place.<sup>34</sup> The law’s purpose was to make the perilous voyage across the Atlantic safer and eliminate major impediments to migration.<sup>35</sup>

Of course, the law was not agnostic about who came, and its preferences manifested in the methods it envisioned could be used to attract and incentive migration. The very first provision of the law, for example, required the government to establish an emigration agency in London and authorized, if and when the government thought it prudent, to establish additional agencies “on the Continent”.<sup>36</sup> When the law was introduced in Parliament, the Minister in charge explained that it also let the government “make certain provisions with respect to pauper immigrants”.<sup>37</sup> Here, he was referring to provisions that let officials deny a “Lunatic, Idiotic, Deaf and Dumb, Blind or Infirm Person” entry to Canada if they were likely to become a public charge.<sup>38</sup> There was an additional provision that allowed the Governor-in-Council to issue specific proclamations banning “[P]auper or destitute Immigrants”, unless “such sums of money as may be found necessary are provided and paid into the hands of one of the Canadian Immigration Agents . . . for their temporary support and transport to their place of destination”.<sup>39</sup> In 1872, Parliament enacted a new power that allowed the Governor-in-Council to issue proclamations banning “criminal, or other vicious class of immigrants”.<sup>40</sup> Overall, however, this provision

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31. See *ibid*, s 17.

32. See *ibid*, s 18.

33. See *ibid*, s 22.

34. *Ibid*, s 23.

35. See House of Commons, “Report of the Minister of Agriculture for the Calendar Year 1869” *Sessional Papers*, No 76 (1870) at 7. In 1869, 83 passengers died aboard a ship and “by far the greatest number of these deaths having happened amongst infants and young children, debilitated by improper diet, added to the discomfort of the passage”.

36. *An Act Respecting Immigrants and Immigration*, SC 1869, c 10, s 1.

37. “An Act respecting immigrants and immigration,” 1st reading, *House of Commons Debates*, 1–2, No 1 (May 26, 1869) at 460 (Hon Francis Anglin).

38. *An Act Respecting Immigrants and Immigrations*, *supra* note 36, s 16.

39. *Ibid* at s 11.

40. *Ibid*, s 10. This law allowed for people to be transported back to the “port in Europe whence they came.” In 1887, the law was amended to allow for deportation to the place “from

was passed as part of a larger package of laws designed to incentivize immigration by eliminating migration head taxes. As one parliamentarian explained, the overall purpose of the amendments was to eliminate impediments to migration for the “poorer class of labourers from the United Kingdom”.<sup>41</sup>

Each of these exclusionary powers lay, however, as dead letters throughout the nineteenth century. For example, the provisions banning disabled migrants were functionally unenforced. Canadian quarantine and medical officials did not start to regularly inspect incoming ships until 1887, and when they did, they were interested in detecting serious contagious disease.<sup>42</sup> Indeed, Canadian officials at this moment did not believe that the migration of disabled immigrants was a problem that needed their attention. This is illustrated by an 1877 communication with the Imperial Foreign Office. That year France sought to deport a British national held in an asylum back to the United Kingdom. The Foreign Office, seeking feedback from the Government of Canada, wanted to know if agreeing to the repatriation would have an undesirable impact on Canada. Writing back, Canadian officials offered no comment explaining that “there have been no arrivals of such persons in Canada for some years past.”<sup>43</sup>

Likewise, the power to ban pauper migrants was never relied on. The government did issue a proclamation once in January 1880 to pauper immigrants from the Port of Halifax,<sup>44</sup> but the order lapsed at the end of winter

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whence they came or elsewhere” after rumours circulated that convicts from New Caledonia were destined for an American or Canadian port on the Pacific coast. This marked an early recognition that immigration legislation would be relevant, not just on the Atlantic coast, but on the Pacific coast as well. See Senate Debates, 6-1, vol 1 (14 June 1887) at 378; *An Act to Amend the Immigration Act*, SC 1887, c 34.

41. House of Commons, “Report of the Minister of Agriculture of the Calendar Year 1872”, *Sessional Papers*, 2-1, vol 6 (1873) at 26-1. For the amending law, see *An Act to amend the Immigration Act of 1869*, *supra* note 36, s 1. For the debate, see *House of Commons Debates*, 1-5, vol 5 (10 May 1872) at 186 (Hon John Henry Pope). The one-dollar head-tax was introduced in the early nineteenth century to deter Irish immigration. See Kelley & Trebilcock, *supra* note 29 at 52.

42. See Kelley & Trebilcock, *supra* note 29 at 85. See e.g. the report of the “General Superintendent of Canadian Quarantines” in House of Commons, *Report of the Minister of Agriculture for 1896* (1897) at 3-27 for that year’s reports. The entire focus of the reports is on infectious disease.

43. Pauper lunatics (30 May 1877), Ottawa, Library and Archives Canada, (RG 2, Privy Council Office, Series A-1-a, No 1877-0831).

44. See Pauper immigrants (15 January 1880), Ottawa, Library and Archives Canada, (RG 2, Privy Council Office, Series A-1-a, No 1880-0074).

after members of parliament protested (“it has always been the policy, or at least the professed policy of those at the head of the Emigration department to aid and assist the poor immigrant when he came to our shores”).<sup>45</sup> And even though the governments in the last quarter of the nineteenth century could have issued proclamations banning criminal and vicious immigrants, no government did.

Even the most notorious nineteenth century anti-Chinese laws were not organized around the powers to detain and deport. When the trans-Pacific rail line neared completion in 1885 and Canada lost some of its appetite for cheap and available labour, Parliament acquiesced to racist demands from British Columbia to limit Chinese immigration. The 1885 *Chinese Immigration Act* levied a fifty-dollar head tax against all Chinese immigrants, capped the number of Chinese people allowed aboard a ship to a ratio of one per every fifty tonnes of ship weight (as opposed to one person per every two tonnes for ships bound from Europe), and made the ship’s master personally liable for any unpaid tax.<sup>46</sup> All Chinese migrants who were admitted to Canada were issued a certificate proving that they had a right to enter Canada and that use of a fraudulent certificate was a criminal offence, but the law did not make people liable for deportation.<sup>47</sup> Indeed, Adam McKeown argues, Canadian officials knew that they did not have the authority, nor the conviction, to do other than let Chinese migrants who came in breach of the law stay.<sup>48</sup> This contrasted with the circumstance in the United States where officials actively worked to prevent some migrants from landing. Significantly, the first immigration medical inspector in Vancouver wrote to an Ottawa official in 1904 to explain that people “originally from the Orient, having been refused entrance at San Francisco . . . were shipped to this port, as there has been no restriction to them coming in here”.<sup>49</sup>

The first Canadian federal law that explicitly authorized deportations passed in 1897, but this law, passed as a political gesture, was also barely used. In 1885, the United States banned migrants who came to the country under an employment contract to both protect the domestic labour market and prevent the importation of strike-breakers. In or around 1887, American officials started

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45. “Prohibition of the Landing of Immigrants”, *House of Commons Debates*, 4-2, No 1 (25 February 1880) at 199.

46. See *The Chinese Immigration Act*, RSC 1886, c 67, ss 4–8.

47. See *ibid.* In 1900, the law was amended to authorize some deportations. See *The Chinese Immigration Act*, SC 1900, c 32, s 12.

48. See McKeown, *supra* note 4 at 142.

49. Dr. Milne to Dr. Bryce (10 October 1904), Ottawa, Library and Archives Canada (RG 76, vol 331, File 330483).

to enforce the law against some workers who lived in Canada but worked in the United States. In retaliation, and after years of pressure from labour movements, Parliament passed the *Act to Restrict the Importation and Employment of Aliens*.<sup>50</sup> This law voided the employment contracts of American workers in Canada and allowed for their deportation.<sup>51</sup> Parliamentarians were not enthusiastic about the law. Even the Member who introduced it was apparently embarrassed by it:

Mr. Speaker, it is with considerable timidity that I rise to move the Bill which I am going to ask the House to adopt. I quite readily understand that it is entirely contrary to the trend of modern legislation and to the ideas of the Canadian people to place any restriction upon labourers from any Country entering the Dominion of Canada.<sup>52</sup>

While the law did leverage economic incentives and disincentives to shape the flow of migration, at least in terms of how immigration officials thought of their job, Canada did not have the legal powers to exclude and deport. Of course, removals did happen in the nineteenth century, but these deportations were rare and generally more consensual than coercive. In 1876, the government spent five thousand dollars to help repatriate French nationals who were sick or destitute. The Secretary of the Department of Agriculture explained:

The rule of the Department is that immigrants who have not been over one year in the country, are, in some measure, under the care of the Department; and if it has been found, after they have come to the country, that from illness or bodily infirmity, they have been unable to get their living, they have been sent back, as the simplest and cheapest mode of dealing with them.<sup>53</sup>

At a certain point, the Secretary explained, “a tendency to abuse . . . manifested itself . . . [and] the aid was stopped”.<sup>54</sup> Deportation was not forcible, in other words, but charitable. Henry Drystek estimated that in the 1890s, the

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50. *Act to restrict the importation and employment of aliens*, SC 1897, c 5.

51. See *ibid*.

52. *House of Commons Debates*, 8-2, vol 1 (7 April 1897) at 621 (Cowan).

53. House of Commons, “Report of the Select Committee on Immigration and Colonization,” *Journals of the House of Commons*, 3-4 (1877), Appendix, No 6 at 16.

54. *Ibid* at 16-17.

government helped forty people leave Canada, usually on their own request.<sup>55</sup> In cases where destitute immigrants were discovered, immigration officials would try to get steamship companies to return them to Europe for free or at a charitable rate.<sup>56</sup> Steamships sometimes resisted these requests. In 1895, for example, an official from the Canada Pacific company complained that “many towns in Canada have their poor that they want to send to other places and we have in the past been repeatedly asked to assist but we declined feeling that municipalities should take care of their own poor.”<sup>57</sup>

On rare occasions, extralegal coercive measures were used to force an immigrant from the country. In 1896, for example, four “Chinese” were denied landing and forced back to England after they failed to pay the head tax, even though the law made the Master of the Vessel liable for their unpaid levies.<sup>58</sup> Similarly, that same year, a Danish immigrant named Christian Stendrup was escorted by a government officer from Winnipeg to an Atlantic port, where he was sent back to Europe. This was Stendrup’s second exclusion. In January, an American police officer deported Stendrup from North Dakota into Canada and directed him to go to Winnipeg. Once he arrived, the local immigration official reported to Ottawa that the Dane was “undoubtedly demented, unable to support himself, and therefore not a proper person to send to this country”.<sup>59</sup> Because he was “of weak mind, and hardly able to look after himself”,<sup>60</sup> Ottawa arranged for him to be accompanied to Halifax so he could be sent to Copenhagen. The officer who took him to the latter reported that Stendrup “regretted that he had to be returned to the Old Country”.<sup>61</sup> Cases like these were rare at the end of the nineteenth century but, as we shall see, that would change within the decade.

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55. See Drystek, *supra* note 8 at 409–10.

56. See generally Arrangement with the steamship companies for the reconveyance of undesirable immigrants to the port from which they sailed (1896–1901), Ottawa, Library and Archives Canada, (RG 76, file 837).

57. CP Rail to Secretary of the Department of the Interior (March 9, 1895), Ottawa, Library and Archives Canada, (RG 76, file 837).

58. Correspondence between J Hoolihan and AM Burgess (September 29–October 3, 1896), Ottawa, Library and Archives Canada, (RG 76, file 837). This arrival and exclusion were reported in the *New York Times*, “Chinamen to be Deported,” *New York Times* (25 November 1895).

59. John Wendelbo to Department of the Interior (January 22, 1896), Ottawa, Library and Archives Canada, (RG 76, file 837).

60. Secretary of Immigration (Winnipeg) to Secretary of the Department of the Interior (February 10, 1896), Ottawa, Library and Archives Canada, (RG 76, file 837).

61. General correspondence regarding Stendrup (January 22–February 20, 1896), Ottawa, Library and Archives Canada, (RG 76, file 837).

## II. Preventing a “Grievous and Irritating Detention and Disturbance”: American Immigration Inspection in Canadian Ports

In contrast to the Canadian experience, the United States of America developed comprehensive immigration policing tools in the late nineteenth century.<sup>62</sup> The 1882 *Chinese Exclusion Act*<sup>63</sup> enabled the first substantive inland deportation power. By 1891, the government developed a regular immigration policing and inspection service within the Treasury Department (it assumed responsibility for enforcing Chinese exclusion laws in 1897).<sup>64</sup> During this time, officers posted to Ellis Island would “thoroughly, effectively, and expeditiously” inspect each immigrant as they arrived in port, sending undesirable migrants back to Europe.<sup>65</sup>

But American port-based border inspections, the Americans believed, only partially screened out undesirable immigrants. Marian Smith shows that in the 1890s there were functionally no border posts or inspection points along the America-Canada border. Migrants who wanted to enter the United States could land in a Canadian port, enter without being inspected, travel west, and then drop into the United States without notice.<sup>66</sup> Even where there were border institutions charged with guarding the line between Canada and the United States, the government’s power to stop, screen, and manage people crossing the line was limited. As Benjamin Hoy argues, “Ottawa and Washington bankrolled the agencies that guarded the international line, but never controlled what happened day to day.”<sup>67</sup>

In his first report on immigration matters, the American Secretary of the Treasury warned that “an increasing proportion of immigrants is coming to us . . . are least adapted to, and least prepared for, citizenship in a free republic,

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62. For a description of how immigration restriction became “hotter” during the 1890s in the United States, see Ettinger, *supra* note 13 at 69–73.

63. 22 Stat 58, ch 126.

64. For an account of how American immigration law and doctrine developed during this period, see Adam Cox & Cristina M Rodriguez, *The President and Immigration Law*, (New York: Oxford University Press, 2020) at 1735.

65. US, House of Representatives, *Annual Report of the Secretary of the Treasury* (Washington, DC: US Government Printing Office, 1891) at LXIII [House of Representatives].

66. See Marian Smith, “The Immigration and Naturalization Service (INS) at the U.S.-Canadian Border, 1893–1993: An Overview of Issues and Topics” (2000) 26:2 Michigan Historical Rev 127.

67. Benjamin Hoy, *A Line of Blood and Dirt: Creating the Canada-United States Border across Indigenous Lands* (Oxford: Oxford University Press, 2021) at 166–67.

and are least inclined to assimilate with the general body of American citizens”.<sup>68</sup> While “the increasing efficiency of inspection at our several seaports” winnowed the “incoming tide of immigration”, the Secretary complained that the unpatrolled Canadian border let America-bound immigrants enter the United States of America untaxed and unexamined.<sup>69</sup> Immigrants who worried about rejection at Ellis Island could, the Secretary explained, enter North America at a Canadian port before crossing into the United States at a time and place of their choosing. For this reason, the Americans hoped to reach “an international agreement for a uniform system of foreign or seaport inspection”.<sup>70</sup>

While the Secretary addressed his complaints to Congress, the American diplomatic apparatus began to lobby Canadian officials. In January 1892, the American Consul-General in Canada wrote to Ottawa to formally ask the government to join a continental immigrant exclusion program. Acknowledging that it would be impracticable to set up an inspection regime at the American-Canadian border because such an endeavour would “require a large force of inspectors distributed at many points along the frontier”, he proposed that Canada establish jointly administered Ellis Island-like immigration inspection stations at Canadian ports.<sup>71</sup> This proposal went unanswered because of a bureaucratic shuffle. Responsibility for Canadian immigration affairs transferred from the Minister of Agriculture to the Minister of the Interior in March 1892 and the correspondence was lost during the transition.<sup>72</sup>

American interest in continental exclusion did not dissipate. In May 1893, Alexander Burgess, the Canadian Deputy Minister responsible for immigration matters, attended bilateral meetings in New York to review American immigration inspection operations with Colonel Herman Stump, the American Commissioner of Immigration. He returned impressed by the effectiveness of the American project. In September, Burgess was invited to a second meeting. The Vice President of the Canadian Pacific Railway asked Burgess and Stump told Burgess that: “[T]he chief object of his visit was really not so much to observe our arrangements at Quebec as to endeavour if possible to effect some amicable and satisfactory arrangement for the inspection, accordance practically with the requirements of the United States laws, of immigrants . . . who are

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68. House of Representatives, *supra* note 65 at LXI–LXII.

69. *Ibid.*

70. *Ibid.*

71. Letter and attachments from Richard Lay (6 January 1892), Ottawa, Library and Archives Canada, (RG 76, file 3247).

72. See Immigration and Emigration control trans [transferred] from Agriculture to Interior (14 March 1892), Ottawa, Library and Archives Canada, (RG2, Privy Council Office, Series A-1-a, 1892–0680). See also Memorandums (June 1893), Ottawa, Library and Archives Canada, (RG 76, file 3247), explaining that the package of letters was just found and transferred to the Immigration Branch.

ticketed for United States points.”<sup>73</sup> Stump was convinced that Canadian steamships were inducing immigrants, especially undesirable immigrants who wanted to circumvent American border controls, to travel to the United States via Canada. More than that, Stump was upset because migrating through Canada allowed immigrants to evade the fifty-cent head tax all people who arrived at American ports had to pay.

Stump issued an ultimatum, saying that he either would close Canadian-American border crossings and force all trains to a few pinch points for inspection, or the Canadians could harmonize their policies with American objectives and set up extensive immigration inspection stations at Canadian ports. Lest Burgess think that his threat was idle, Stump showed him draft regulations authorizing a border closure that, he said, only needed the President’s signature to go into effect. The entire meeting was a setup. Here, the Vice President of the Canada Pacific Railway chimed in, telling Burgess that a tighter border between Canada and the United States would “simply paralyze the passenger carrying trade”.<sup>74</sup>

Burgess believed the threat was real. He asked representatives of the Canadian steamship companies to meet him the next day in Montreal to tell them about the American plans. All the companies were equally afraid of how a change in border policy would impact their business. Burgess wrote to the acting Minister of the Interior and explained that the companies “were all agreed in the opinion that in their own interests it would be desirable to comply substantially with his suggestions” to prevent an American-initiated “grievous and irritating detention and disturbance” to their businesses.<sup>75</sup> Burgess started negotiating with the Americans and quickly drew up an agreement that gave the Americans buildings and space in Canada to inspect immigrants bound for the United States. The steamships agreed to pay the fifty-cent head tax for each America-bound immigrant. And the two countries agreed to an early systematic passport system (perhaps the largest created in the world to that date) to facilitate migrant travel to American cities: every immigrant cleared by the American inspectors would be issued a passport that they had to present before a Canadian ticket agent would sell them a ticket to an American destination.<sup>76</sup>

On September 7, the agreement was executed. On September 9, the Secretary of the Treasury formally approved it.<sup>77</sup> On September 9, the Canadian

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73. Memo from Burgess to Hon Haggert, Acting Minister of the Interior (2 September 1893), Ottawa, Library and Archives Canada, (RG 76, file 3247).

74. *Ibid.*

75. *Ibid.*

76. See Agreement (7 September 1893), Ottawa, Library and Archives Canada, (RG 76, file 3247).

77. See Telegram from H Stump to AM Burgess (9 September 1893), Ottawa, Library and Archives Canada, (RG 76, file 3247).



cabinet, after finally reviewing the terms and considering the Canadian public's potential reaction to it, backed out.<sup>78</sup> Burgess later explained that "it would be entirely against the policy of the government to recognize or provide facilities to the Agents of a foreign government".<sup>79</sup> Stump responded abruptly, warning that Canada could expect a serious diplomatic response imminently.<sup>80</sup>

The transportation companies worked to manage the fallout. Sending their own delegation to the United States, they tried to salvage the agreement.<sup>81</sup> The companies also met with the government officials, who agreed that the Ministry would not interfere with any private deal reached between the Americans and the steamship companies.<sup>82</sup> On October 7, 1893, the companies and the Americans signed a new agreement that was almost identical to the previous one, but that cut out the Canadian government. Now, instead of the Canadian government providing space to the Americans, the transportation companies agreed to house American inspectors.<sup>83</sup>

At the end of October, the American inspectors moved into their new facilities and started inspecting immigrants in Halifax and Quebec City. Behind the scenes, the Canadian immigration officials were instructed to be courteous but not to assist the Americans. Burgess told his agent in Quebec to "protect all immigrants . . . and see that they are not in any way interfered with by the Agents of the United States government."<sup>84</sup> Explaining that he did not want undesirable immigrants to become "a burden upon the people of Canada", he told his agents to prevent the Americans from stopping immigrants at Canadian ports: "The Government does not desire that people who have taken passage by Canadian steamship lines via Canadian railways to the United States should

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78. See Letter from AM Burgess to Allan Company (9 September 1893), Ottawa, Library and Archives Canada, (RG 76, file 3247). The Americans thought that the Canadians resiled from the agreement because of popular protests about the abdication of Canadian sovereignty. See Ettinger, *supra* note 13 at 88.

79. Letter from AM Burgess to P Doyle (28 October 1893), Ottawa, Library and Archives Canada, (RG 76, file 3247).

80. See Letter from H Stump to AM Burgess (16 September 1893), Ottawa, Library and Archives Canada, (RG 76, file 3247).

81. See Allan Company to AM Burgess (14 September 1893), Ottawa, Library and Archives Canada, (RG 76, file 3247).

82. See Memorandum for Clifford Sifton (20 November 1902), Ottawa, Library and Archives Canada, (RG 76, file 3247).

83. See CP Rail to AM Burgess (23 October 1893), Ottawa, Library and Archives Canada, (RG 76, File 3247).

84. AM Burgess to P Doyle (28 October 1900), Ottawa, Library and Archives Canada, (RG 76, File 3247).

wrote a similar letter to his agent in Halifax: "The Minister of course looks to you to protect all immigrants landing at the port, and to see that they are not in any way interfered with by the Agents of the United States Government."<sup>86</sup> In the first few months of the in-Canada inspection regime, it appears no immigrants were prevented from continuing on to the United States. In Ottawa, this news was received "with great satisfaction".<sup>87</sup>

Rejections, however, began in the spring of 1894. The Quebec agent wrote to Ottawa that "this season the American inspectors are more particular."<sup>88</sup> In March and the first part of April, ten immigrants who landed at Halifax were denied access to the United States because of their poverty or because they were contract labourers.<sup>89</sup> These rejections, and most of the ones that followed that year, did not bother Canadian officials. After watching the American inspectors at work rejecting immigrants, one Canadian official thought that exacting American standards ended up serving the Canadian national interest because that day "Canada gained three good settlers".<sup>90</sup> The transportation companies agreed. A representative from the Canadian Pacific Railway wrote to Burgess and told him that it was "advisable to take no notice of the matter" of American rejections.<sup>91</sup> When a traveller was denied access to the United States, the official said, the train company just sold them a ticket to a destination in Canada.<sup>92</sup>

But this was not a durable arrangement. On April 10, 1894, Henry Shadick, a sixty-four-year-old Englishman, disembarked in Halifax. He was bound for Minnesota, where his brother lived, so he was inspected by American officials who denied him access to the United States. The inspectors cited four reasons for the rejection: he was a contract labourer, deaf, liable to become a public charge, and "a criminal, convicted of shooting his brother in the neck".<sup>93</sup> The

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85. *Ibid.*

86. AM Burgess to E Clay (14 November 1893), Ottawa, Library and Archives Canada, (RG 76, file 3247).

87. Letters between E Clay and AM Burgess (4 December & 14 December 1893), Ottawa, Library and Archives Canada, (RG 76, file 3247).

88. P Doyle to AM Burgess (31 May 1894), Ottawa, Library and Archives Canada, (RG 76, file 3247).

89. See Memorandum for AM Burgess (10 April 1894), Ottawa, Library and Archives Canada, (RG 76, file 3247).

90. Memorandum dated (11 May 1894), Ottawa, Library and Archives Canada, (RG 76, file 3247).

91. See Letter from CPR to AM Burgess (4 May 1894), Ottawa, Library and Archives Canada (RG 76, file 3247).

92. *Ibid.*

93. Memorandum for AM Burgess (21 June 1894), Ottawa, Library and Archives Canada (RG 76, file 837).

American inspectors reported that Shadick was granted early parole against a twenty-year sentence on the condition that he leave England for North America. Afraid that Canada might be forced to receive criminal elements that neither England nor the United States wanted, the local Canadian immigration agent, Henry Clay, told the steamship company to take Shadick back to England. The company agreed but said that it could not act upon the request right away and that Shadick would need to wait until the ship that brought him returned to Halifax from a short spur journey to Portland, Maine. But on the appointed day, when Clay went to make sure that Shadick boarded the vessel, he found that “the man’s clothes are in the immigration building”, but “the man himself is not to be found at present.”<sup>94</sup> Clay blamed the company for Shadick’s disappearance, saying that it was the private company’s responsibility to secure people pending their removal from Canada. The company disagreed:

We do not see however what we could do in this matter, this man paid his fare and landed at Halifax, and as you are not supposed to recognize the U.S. Officials at ports of Halifax and Quebec, we do not think you should take any notice of the statement of passengers, made to them, or if you desire to do so, and find that this man is not a proper immigrant to Canada you could have detained him if the law would and delivered him up to us on the “Sarnia’s” return . . . but we certainly have no authority, that we know of, to detain this man and take him back . . . Such matters will have to be done within the letter of the law, so that this company will not be liable for a suit for damages.<sup>95</sup>

The company’s response exposed the enforcement problem at the heart of the new, private arrangement between the steamships and the Americans: no one had the legal authority to force a rejected migrant from Canada. Because of this, migrants rejected by the Americans just stayed in Canada (or later crossed furtively into the United States along the unguarded border). It appears that as of May 1894, despite dozens of refusals in the Port of Halifax, only one immigrant, a Pole, was actually “sent back home”.<sup>96</sup>

But if the enforcement problem was real, it was not one that seriously bothered the Canadians and the problem of deportation lay—officials later

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94. *Ibid.*

95. For a summary of the Shadick affair and summaries of the correspondence see *ibid.*

96. Letter and chart prepared by E Clay (May 1894), Ottawa, Library and Archives Canada, (RG 76, file 3247).

admitted—unaddressed for several years.<sup>97</sup> This changed in 1898 when two developments re-energized American interest in border exclusion. First, the Treasury Department sent Robert Watchorn, a former factory inspector, to Europe to investigate the reasons for Italian immigration and to determine the “causes which have incited and diverted the flow of immigration from our ports to those of the Dominion of Canada”.<sup>98</sup> In the end, he did not investigate Italian immigration because he became preoccupied with the organized immigration of Jews from Europe, particularly East London, to North America. Watchorn reported three major findings from his mission:

- i. American immigration law’s strictness was well known amongst booking agents who, economically incentivized by the bonuses they received for each ticket sold, advised doubtful immigrants to misrepresent their final destination as Canada to avoid all inspection;
- ii. While the passage of new restrictive laws the world over was leading to a drop in immigration levels for most destinations, they remained steady regarding Canada (implying that many intended to carry on to the United States); and
- iii. The large Jewish population in East London was largely supported by organized Jewish charity who facilitated and encouraged the immigration of Jews to the United States: thousands are “sent by the charity of others, but so thoroughly tutored by their benefactors that their state of destitution and dependence is to a great extent concealed”.<sup>99</sup>

The Secretary of the Treasury included Watchorn’s findings in his report to Congress, reminding lawmakers that immigrants refused in Canada “cannot be returned to their own countries and may remain in Canada, and subsequently enter the United States at any point on the border”.<sup>100</sup>

Beyond concerns regarding an organized migration of Jewish paupers, the Americans were becoming increasingly concerned with immigration and public health matters. In a “virtually new departure in the work of the Bureau”, the American immigration service started rejecting a new category of immigrants:

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97. See Memorandum for Clifford Sifton (20 November 1902), Ottawa, Library and Archives Canada, (RG 76, file 3247).

98. Report of Robert Watchorn (12 September 1898), Ottawa, Library and Archives Canada, (RG 76, file 3247).

99. *Ibid.*

100. United States of America, *Annual Report of the Commissioner-General of Immigration to the Secretary of the Treasury for the Fiscal Year Ended June 30, 1898* (Washington, Government Printing Office, 1898) at 37.

those infected with “loathsome or dangerous contagious” diseases.<sup>101</sup> These sorts of diseases, American officials conceded, were not “general[ly] recognized and easily detected forms of contagion”, nor scheduled under general quarantine laws.<sup>102</sup> These diseases did have, however, obvious racial valences. When the Surgeon General certified trachoma—an eye disease—as loathsome, he explained that it was found “among recent immigrants from the eastern end of the Mediterranean, Polish and Russian Jews, Armenians, and others from that locality”.<sup>103</sup> In 1899, the Commissioner-General of Immigration complained that “there are practically no rejections of diseased persons at Canadian ports” and urged his own government to withdraw American agents from Canada and locate them “at certain designated points on our northern border, through which alone should aliens be admitted”.<sup>104</sup>

These two developments combined to further intensify the American campaign to force Canada to step up its migration exclusion efforts. In December 1899, the American ambassador in London formally complained that the “organized charities in Europe” (specifically the London Jewish Board of Guardians) were systematically “taking advantage of Canadian ports in order to secure admission into the United States of undesirable immigrants”.<sup>105</sup>

In January 1900, Ottawa learned of the first medical rejection made by an American officer at a Canadian port. A family of German Jews in Halifax was denied access to the United States because of trachoma infections. The Canadian immigration agent, unsure about what to do, asked Ottawa for “instructions about what to do with such cases in the future should they come to my notice”.<sup>106</sup> Two weeks later, the new Canadian Superintendent of Immigration, Frank Pedley, wrote back and outlined a new policy: “people not allowed entry to the United States, should be returned to Europe” and “this rule should be generally applied”.<sup>107</sup> But, signalling that the government was not immediately prepared to simply defer to American decisions, “it will be just as well to report to the Department on each case as it arises.”<sup>108</sup> In February the

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101. *Ibid* at 30–32.

102. *Ibid*.

103. *Ibid*.

104. *Ibid* at 32.

105. Mr. Chamberlain to Lord Minto (10 January 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247).

106. F Annand to Department of Interior (8 January 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247).

107. F Pedley to F Annand (26 January 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247).

108. F Pedley to F Annand (26 January 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247).

Americans rejected two women because one was a “keeper of a house of ill fame” and the other was coming to the United States for “immoral purposes”.<sup>109</sup> Both wanted to stay in Canada, but Pedley told his agent to deport them. The deportations did not happen. Pedley’s own agent wrote back and asked him to specifically identify the statutory provision that authorized deportation because the “women talk legal proceedings”. Pedley backed down: “if women out of custody of steamship and not willing to return doubtful if can be deported.”<sup>110</sup>

At the same time, Pedley worked to address a similar problem developing in New Brunswick. In early 1900, the Americans posted a doctor to St. John to lead immigrant inspections. On January 26, the steamship *Lake Ontario* arrived, and six Jews were barred by the Americans because of favus infections. The steamship agreed to take them back aboard for Europe but said that the deportees would have to wait in port while the ship completed its voyage down the St. Lawrence River. To make sure that they were available to be deported, the steamship arranged to detain the immigrants on railway cars. To assist the migrants, the local Jewish community arranged for second medical inspections for each of the migrants and privately promised the Canadian government that the organization would ensure that the six detained immigrants ended up in New York. Arrangements were made for the group’s release from the steamship’s custody and the detainees relocated to a house in the city.

The move elicited a local reaction and when public health officials in St. John learned that the migrants were now in the city, they issued quarantine orders against the house and the migrants. Making matters more difficult for Canadian officials, a second ship arrived on February 6 and nine additional Jews were rejected by the American inspectors for medical reasons. This meant that when, on February 10, the *Lake Ontario* arrived back in St. John ready to take the deportees back to Europe, fifteen people were detained in rail cars or a house subject to a quarantine order.

But the migrants refused to board the ship, and no one was prepared to force them. When the captain ordered his crew to apprehend all the rejected immigrants, his sailors refused the order and both the local police and local board of health also refused to forcibly put the Jews on the ship. The local immigration official sent a telegram to Pedley: “Minister better wire the atty general of the Province to force these 15 on board at once.”<sup>111</sup> Two days later, and almost certainly after the ship departed for Europe, Pedley telegraphed back: “Impossible to ask the Provincial Attorney General to act. Department

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109. Letters and telegrams between F Pedley and F Annand (6–8 February 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247).

110. *Ibid.*

111. Letters, telegrams, and clippings (February–March 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247).

looking to you to have these people deported.”<sup>112</sup> One month later, after the St. John police once again refused to force a rejected immigrant onto a ship, Pedley acknowledged to his officer that “no action can be taken by the Department in this case.”<sup>113</sup> The Americans might refuse a migrant admission, but their refusal and order practically meant very little because the Canadian government could not and would not get people back on boats destined for Europe.

The American inspectors in St. John experimented with a workaround. Because the Canadians could not get immigrants back aboard ships, the Americans determined that migrants should not be allowed off boats in Canadian ports until after the American inspectors issued a clearance. In March, a secret agreement between the American inspectors and at least one steamship required the company to hire officers to make sure that no one disembarked before the medical inspectors completed assessments of each immigrant. Neither the Americans nor the company advised Canadian officials of this agreement and its existence was discovered when a Canadian immigration official tried to board a vessel. He wrote back that an officer placed “hands upon us and refused to allow us to go on board while the United States Immigration Agent and his staff passed us by as if owning the whole post, Immigrants and all”.<sup>114</sup> To the agent, this was an obvious and embarrassing intrusion upon Canadian sovereignty:

Now on all these steamers going to St. John are more or less passengers for Canada and on this particular boat there were 30, and we would have to stand back and see them detained and otherwise left uncredited for through the request or command of foreign officials, for from six to ten hours, according to the length of time taken for their inspection.<sup>115</sup>

The company apologized and assured the government that Canadian officials would not be prevented again from boarding ships in Canadian harbours.<sup>116</sup>

Regardless, Canadian officials understood that they needed to do something to satisfy the Americans and looked to other Canadian agencies to provide a solution. In June, thirteen Jews rejected by American inspectors for favus were sent by the Canadian immigration authorities to the Grosse Isle quarantine station to be detained pending their ship’s return voyage back along the St.

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112. *Ibid.*

113. *Ibid.*

114. Letter of complaint from F Pedley to Elder Dempster (24 March 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247).

115. *Ibid.*

116. See Letter from Elder Dempster Company to F Pedley (27 March 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247).

Lawrence to Europe. But Immigration Branch officials did not seek permission from quarantine officials in advance. When the Jews arrived the station's doctor immediately asked the Department to "please send me authorization to keep those immigrant jews".<sup>117</sup> Pedley telegraphed back that he was "arranging for authority as requested", but it never came.<sup>118</sup> Here, Pedley was likely referring that month between the transportation companies and Prime Minister Laurier. It appears that the companies asked Laurier to add favus, trachoma, and syphilis to the list of quarantinable diseases so that migrants rejected by the Americans could be detained in Canadian quarantine facilities.<sup>119</sup> That plan, however, was apparently scuttled by the Director General of Public Health who forbade the Immigration Branch from using quarantine stations.<sup>120</sup> This all meant that the immigrants sent to Grosse Isle returned to Montreal, where eleven were re-inspected and eventually allowed into the United States, and the remaining two were sent to Canadian hospitals for treatment and, presumably, eventual travel to America.<sup>121</sup>

With quarantine law now firmly off limits, Pedley wrote to each transportation company and asked them

to be good enough to impress on your booking agents the necessity of taking care that no immigrants are booked to the United States by way of Canada who are or who shows signs of being afflicted with any disease, such as trachoma or favus, which may lead to their being refused passports by the United States Examiners at Canadian ports of landing.<sup>122</sup>

Any person brought in breach of this direction, "must be taken back immediately by the steamship bringing them".<sup>123</sup> The responses from the transportation

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117. Letters and telegrams (27–28 June 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247).

118. *Ibid.*

119. There does not appear to be an official record of this meeting but for a reference to it, see Letter from Allan Line, Dominion Line, Elder Dempster Co, Canadian Pacific Rail, and Grand Truck Rail to Sir Wilfred Laurier (26 December 1901), Ottawa, Library and Archives Canada, (MG 26 G, vols 217–21).

120. See Letter from Dr. Montizambert to JA Smart (28 June 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247).

121. See Letter from P Doyle to F Pedley (30 June 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247).

122. Letter from Secretary of the Immigration Branch to the steamships (27 June 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247).

123. *Ibid.*



companies were mixed. One company, the Dominion Line, wrote that they would only comply with the new direction “provided we have the authority of the Canadian government in so doing, as without it, we would be unable to do this”.<sup>124</sup> This put the Canadian Immigration Branch in an untenable situation. Canada’s public health officials, its immigration officials, its municipal police forces, and Canadian corporate interests all declined to enforce American rejections, citing the absence of legislative authority. Meanwhile, the American demands for Canadian action only increased. Unexpectedly, climate, geology, and anti-Semitism combined that summer to catalyze a resolution.

### III. The First Legal Immigration Detentions and Deportation

Sitting just north of the boundary between the Eurasian and African tectonic plates, there are three active volcanoes in Italy: Stromboli, Mount Vesuvius, and Mount Etna. Where plates collide or draw apart, one plate can be pushed beneath the other. As it melts, water and impurities bubble up through the planet’s crust, forming volcanoes.<sup>125</sup> Sometimes, these volcanoes burst into human affairs. Mount Vesuvius began a four-year-long eruption in July 1895 and then, in July 1899, Mount Etna burst spectacularly. The combined soot and ash from these geological events immediately clouded the skies over the Balkans. Over a century later, scientists studying tree rings concluded that the summer of 1899 was one of the six darkest summers since 1691 and that each dark summer aligned with some volcanic event.<sup>126</sup>

In Roumania,<sup>127</sup> the crops failed and devastated an economy where cereals accounted for seventy-five percent of the nation’s exports.<sup>128</sup> In

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124. Letter from Dominion Line to Secretary of the Immigration Branch (29 June 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247).

125. See C Doglioni, F Innocenti, & G Mariotti, “Why Mt Etna?” (2001) 13:1 *Terra Nova* 25; Valerio Acocella et al, “Link between major flank slip and 2002–2003 eruption at Mt. Etna (Italy)” (2003) 30:24 *Geophysical Research Letters* 2286.

126. See S Poljanšek, A Ceglar, & T Levanič, “Long-term summer sunshine/moisture stress reconstruction from tree-ring widths from Bosnia and Herzegovina” (2013) 9:1 *Climates Past* 27.

127. In the early twentieth century, the country now known as Romania was referred to as Roumania. For consistency, all references to this country use the spelling of the time.

128. See John Jensen & Gerhard Rosegger, “Xenophobia or Nationalism? The Demands of the Romanian Engineering Profession for Preference in Government Contracts, 1898–1905” (1985) 19:1 *East European Q* 1 at 1.

1900, after the climate normalized, Roumania produced 65,262 bushels of wheat. By comparison, in the summer during Mount Etna's eruption, the country only produced 19,683 bushels.<sup>129</sup> While the recession impacted all aspects of Roumanian society, the country's Jews suffered disproportionately.

By 1899, anti-Semitic laws had essentially disenfranchised and denationalized the country's entire Jewish population. For liberals, this was a major setback in a country that was once celebrated for its political modernity. Roumania obtained its independence when Europe's great powers negotiated an end to the Russo-Turkish War in 1878 and 1879. One aspect of the settlement required the new state to grant all citizens, ethnic Roumanians and Jews alike, full civil and political rights. While celebrated in cosmopolitan European capitals for the country's new conservative rulers, the treaty "signalled a defeat of historic proportions".<sup>130</sup> Lara Rabinovitch explains that "[f]or a country mired by a long history of foreign intrusion and built on a new foundation of exclusionary nationalism, the capitulation to foreign demands, and particularly over the issue of Jewish emancipation, represented a disaster."<sup>131</sup> Over the next three decades, the state passed over fifty anti-Semitic laws excluding Jews from civil, economic, and political life. The exclusion was total, with one Roumanian Jew writing: "If the air is not turned into a monopoly, and bottled for the exclusive use of the Roumanians and Christians, it is because Roumanian statesmen, in spite of their ingenuity, have not yet invented the means of doing it."<sup>132</sup>

In this environment, the most acute effects of the 1899 recession were borne by Roumanian Jews, driving people to look for lives elsewhere:

It took the bread out of the mouths of those left unaffected by the exceptional laws and the persecution. The fever of emigration transformed itself into a delirium. All the Jews wanted to leave, leave the hellish country in which life had become intolerable. Groups of tattered demagogues and starvelings, stripped of all means, formed themselves, and left the country afoot, to beg their way to the seaports.<sup>133</sup>

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129. See "The World's Grain Crops Of 1900," (3 September 1900) at 10, online (pdf): *The Times Digital Archives* <[link.gale.com/apps/doc/CS168486691/TTDA?u=yorku\\_main&sid=bookmark-TTDA](http://link.gale.com/apps/doc/CS168486691/TTDA?u=yorku_main&sid=bookmark-TTDA)>.

130. Lara Rabinovitch, "*The Gravest Question*": *Romanian Jewish Migration to North America, 1900–1903*, (PhD Thesis, New York University, 2012) at 59 [unpublished].

131. *Ibid.*

132. E. Schwarzfeld, "The Situation of the Jews in Roumania Since the Treaty of Berlin (1878)" (1901) 3 *American Jewish YB* 63 at 70.

133. *Ibid* at 86.

Known as the *fugayer* (the foot walkers), the refugees organized themselves into groups to leave the country. Many dreamed of a common destination: Canada. The names of the groups, Rabinovitch shows, demonstrate as much: “‘*Spre Canada*,’ (‘Towards Canada’) ‘*grupul i plecăt din Vaslui la Montreal*,’ (‘The group departing from Vaslui heading to Montreal’) or ‘*Tikvas Kanada*’ (‘Canada’s Hope’ or ‘Hoping for Canada’).”<sup>134</sup>

Jewish interest in Canadian settlement at this scale was novel. The 1890 Canadian census shows that out of a total population of 4,833,239 people, only about 6,414 people identified as Jewish.<sup>135</sup> Most Jews who immigrated at the end of the nineteenth century went to the United States, but as discussed above, the United States was becoming less welcoming for Jews, especially for poor Jews. Perhaps for this reason, the Baron de Hirsch Institute, a Jewish charitable organization with a branch in Montreal, explained in its 1899 annual report that agents from the Paris-based Jewish Colonization Society had just toured Canada to see if the country could receive Jewish migrants.<sup>136</sup> This might partly explain why some of the *fugayer* wanted to come to the country. A more likely explanation, however, is the fact of Canadian immigration propaganda. In 1900, as part of Clifford Sifton’s plan to step up settlement in the West, Canada flooded Europe with immigration advertising.<sup>137</sup> This means that in the winter after Mount Etna’s eruption, just when many Roumanian Jews were organizing to leave, Canada paid to distribute a massive number of leaflets promoting Canada as a welcoming destination for migrants.

That this campaign was well received by Jewish refugees in Roumania did not immediately register in Canada. Immigration officials were at best only peripherally aware of the building Roumanian movement. In April 1899, the Canadian High Commission in London forwarded a package of letters to Ottawa concerning a proposal regarding Roumanian Jewish immigration to Canada, but Canadian officials paid it little attention.

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134. See Rabinovitch, *supra* note 130 at 79.

135. See Canada, Department of Agriculture, *Census of Canada* (1890–1891), vol 1, (Ottawa, 1893) at 225.

136. See House of Commons, Department of the Interior, “Report of the Baron de Hirsch Institute”, (1899) 8–2, No 13.

137. See Kelley & Trebilcock, *supra* note 29 at 121–23. See also Jaroslav Petryshyn, “Canadian Immigration and the North Atlantic Trading Company 1899–1906: A Controversy Revisited” (1997) 32:3 *J Can Studies* 55 at 60; The campaign is described in Vivienne Hall, “Coming to Canada: land of promise and cold reality” (1997) 104:3 *Queen’s Q* 414 at 418: “The great advertising promotions instigated during Sifton’s tenure included the printing of millions of elegant pamphlets in several languages. In full colour, the pamphlets extravagantly extolled the virtues of the Canadian prairies.”

A cover letter from a Canadian official advised against supporting the endeavour because “in my opinion these are not suitable immigrants for Canada because they will not work but only do chaffer in the city”.<sup>138</sup>

Regardless of Canadian disinterest, by the summer of 1900, people were on the move. On June 29, 1900, the London *Times* reported that as many as 16,000 Roumanian Jews were passing through Austria in “batches of 40 to 80” and that the immigrants “intend to settle in Canada as labourers”.<sup>139</sup> In July, the *Norwich Eastern Day Press* relayed that “preparations are being made by English Jews to receive their brethren from Roumania, not ostentatiously, for it is not desired to attract others, and yet in such a manner to minimize their risk of becoming a burden in England; while great numbers of them will at once pass onto a permanent home in Canada.”<sup>140</sup> In July, an Italian steamship company wired immigration officers in Liverpool to ask whether Canada would pay bonuses on Roumanian Jews because, the company thought, it could immediately arrange for the transportation of 1,000 people by direct steamer from Galantz.<sup>141</sup>

The Minister in charge of Canadian immigration, Clifford Sifton, happened to be in London that summer while these news reports were circulating. On July 16, shortly after returning to Canada, he told Members of Parliament that: “The instructions to the agents are not to encourage people of that class. When I was in England the question of a movement of Jews was discussed . . . and I specifically instructed him that no encouragement should be given to this particular movement”.<sup>142</sup> But, as Canadian officials now knew, people were already on boats halfway across the Atlantic. Six days before Sifton rose in Parliament, a representative of the Elder Dempster steamship company wrote to Canadian immigration officials advising that 200 Roumanian Jews were due to arrive in the country shortly. The reason for the correspondence was humanitarian. A donor was willing to pay to help the Jews establish themselves in Canada. The steamship hoped to formalize an arrangement with the government because “There will be a large number of these people coming out by our line. The Society that are sending them are most anxious that employment should be obtained

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138. Letter and attachments from J Colmer to F Pedley, (27 April 1899), Ottawa, Library and Archives Canada, (RG 76, file 81519).

139. “Exodus of Rumanian Jews” (23 June 1900) at 8, online (pdf): *The Times Digital Archive* <[link.gale.com/apps/doc/CS135194338/TTDA?u=queensulaw&sid=bookmark-TTDA&xid=b3057bd3](http://link.gale.com/apps/doc/CS135194338/TTDA?u=queensulaw&sid=bookmark-TTDA&xid=b3057bd3)>.

140. Untitled, *Norwich Eastern Day Press* (7 July 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519, pt 1).

141. See Letter from Preston to F Pedley (7 July 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519, pt 1).

142. *House of Commons Debates*, 8–5, vol 3 (16 July 1900) at 10349–350.

for them and that they should be well looked after on arrival at Winnipeg.”<sup>143</sup> Events, however, cascaded too quickly for the proposal to be seriously considered.

On July 14, 1900, the immigration agent in Halifax sent a telegram to Ottawa describing a recent arrival: “90 single men chiefly mechanics and traders Roumanian Jews no tickets or money Baron Hirsch officials from Montreal met them there gave them provisions and tickets, 47 Winnipeg, 9 Toronto, 5 Ottawa, 23 Montreal, 6 Hamilton, will be met by Hirsch agent at each station.”<sup>144</sup> These migrants were not well received and wherever the Jews went, official complaints followed. The Mayor of Hamilton wrote to Ottawa on July 17 (only three days after the migrants arrived in Canada) that “yesterday morning there arrived in this City six Roumanian Jews . . . They are paupers and cannot speak a word of English”.<sup>145</sup> He added, “I cannot understand why such people should be admitted into this country, and I would suggest that the sooner the rigid regulations of the United States regarding pauper emigrants are put into force in this Country the better.”<sup>146</sup> On July 19, the Roumanians sent further west arrived just outside Winnipeg. The local immigration agent wired Ottawa that “47 destitute Roumanian Jews all mechanics of poor physique arrived yesterday at Hast Selkirk clamouring to get into Winnipeg and will not leave coach.”<sup>147</sup>

In Ottawa, evidence accumulated that this was the beginning of a larger migration, not its end. In July, Alfred Cohen, a wealthy Jewish London-based businessman, wrote to Ottawa with a new immigration scheme to support the further migration of Roumanian Jews. Explaining that English Jews were worried that the influx of Roumanians into East London was adding to the city’s congestion, he argued that Canada should be an outlet for the new Jewish arrivals in the United Kingdom. While recognizing that Canada did not want immigrants to “infiltrate into Canadian towns”, he pointed out that Canada bore at least some responsibility for the refugees’ desire to come to the country on account of its “rather profuse propaganda”.<sup>148</sup> Moreover, increased American enforcement meant that “the portals of the U.S. are in great measure closed to

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143. See Letter from Elder Dempster Company to JA Smart (9 July 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519).

144. See Letter from P Doyle to F Pedley (14 July 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519).

145. See Letter from Mayor of Hamilton to Secretary of State (17 July 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519).

146. *Ibid.*

147. See Letter from W McCreary to F Pedley (19 July 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519).

148. It is not clear when the Immigration Branch received this correspondence. On August 13, 1900, Sir Wilfred Laurier forwarded all correspondence to the Branch, but it may have been sent before then. See (RG 76, file 81519, pt 1).

them.”<sup>149</sup> To help facilitate an orderly migration, Cohen told Ottawa that the Jewish Colonization Society and the Baron von Hirsch Society were prepared to fund the immigration of Roumanians and pay the salary of someone to supervise their settlement on farms because “these men have been engaged in urban pursuits and have little experience in agriculture”.<sup>150</sup> This proposal no doubt horrified anti-Semitic politicians who already only wanted farmers to come to Canada. Sifton later wrote to Laurier that

Jewish people do not become agriculturalists . . . and such additions do not in any way whatever contribute to the object which is constantly kept in view by the Government of Canada in encouraging immigration for the development of natural resources and the increase of the production of wealth from those resources.<sup>151</sup>

James Smart, who replaced Burgess as Deputy Minister for the Ministry of the Interior, resolved to end the migration. He sent telegrams to London (“Minister objects to emigration of Roumanian Jews”<sup>152</sup> and “inadvisable to encourage immigration of Roumanian Jews not agriculturalists”<sup>153</sup>). Pedley, who remained in charge of the Immigrant Branch, wrote to the Secretary of the Baron von Hirsch society instructing that “something should be done by your Society to prevent their coming to Canada. Otherwise, the Government may be compelled to take action to restrict this movement.”<sup>154</sup> Smart sent his own telegram to the same society one day after Pedley’s to reiterate the point: “Understand numbers of Roumanian Jews being sent to Canada. This Department protests against this class of immigration and will take steps to prevent any further number arriving.”<sup>155</sup> On July 21, he told Canadian officials in London to get the word out that Roumanian Jews were simply not welcome in Canada: “Notify

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149. *Ibid.*

150. *Ibid.*

151. Memorandum from C Sifton to Wilfred Laurier (15 April 1901), Ottawa, Library and Archives Canada, (MG 26 G, vols 178–82).

152. See W Preston to JA Smart (30 July 1900), Ottawa, Library and Archives Canada, LAC (RG 76, file 81539) where the telegrams are referenced.

153. See Letter from JA Smart to W Preston (18 July 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519).

154. See Letter from F Pedley to W Baker (20 July 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519).

155. See Letter from JA Smart to W Baker (21 July 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519).

Steamship Agents that Roumanian Jews will not be permitted to land in Canada.”<sup>156</sup>

This time, and for the first time, Canada looked to back up its rhetoric with a legal basis. On July 20, 1900, Clifford Sifton recommended that the government activate the long-dormant immigration law power, discussed in Part I, to ban pauper immigrants. Cabinet agreed. On July 23, 1900, the Governor-in-Council issued an indefinite proclamation that prohibited paupers from landing, “Until such sums of money as are found necessary are provided and paid into the hands of the Canadian Immigration Agent having jurisdiction at the port of landing by the master of the vessel carrying such immigrants for their temporary support and transportation to their place of destination”.<sup>157</sup> Even though the proclamation was drafted in general terms, in private correspondence Canadian officials told the steamship companies that they were targeting Jewish immigrants. On July 25, Pedley wrote to the steamship companies and explained that

the Department has decided to allow no more Roumanian Jews to Land at Canadian Ports, as the class which arrived here the last few weeks is such that this Department cannot encourage, and would, if permitted to enter, be of very little use to the country, as far as can be gathered, and at the same time cause a great deal of dissatisfaction.<sup>158</sup>

Elder Dempster, the same company that earlier in the month advised that it intended to transport a great number of Roumanian Jews to Canada, instantly protested. The proclamation was “a great injustice” because the Roumanians only came after the Department “circulated millions of pamphlets throughout the length and breadth of Europe, encouraging immigration to this country”.<sup>159</sup> Saying that it was wrong to “discriminate against any given people”, the company warned that it would hold the government liable for any damages it incurred.<sup>160</sup> On July 31, the company tested the law. An Elder Dempster ship, the *Montfort*, arrived with 315 Roumanian Jews aboard. The vessel’s passage

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156. See Letter from JA Smart to London (21 July 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519).

157. Pauper Immigrants Proclamation (23 July 1900), Ottawa, Library and Archives Canada, (RG2, Privy Council Office, Series A-1-a, 1900–1851).

158. See Letter from F Pedley to Steamship Companies (25 July 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519).

159. See Letter from Elder Dempster Co to F Pedley (26 July 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519).

160. *Ibid.*

to Canada was fraught. With 900 people aboard, the ship was overcrowded, and its passengers were undernourished. The ship had not been stocked with enough food, let alone kosher food, for the voyage. Midway across the Atlantic, some passengers made a protest about the conditions of their voyage. They were, however, met with force when the captain ordered his crew to turn “the hose on the steerage people who swarmed on to the upper deck . . . The firemen were then ordered to protect the others and the result was that broken heads were received.”<sup>161</sup> A second-class passenger later told a reporter “that it was indescribable the manner in which the unfortunate steerage passengers suffered during the voyage. It was an experience which he hoped never to be an eyewitness to again, as the sufferings and condition of that class of passengers were such as would have drawn pity from the heart of a stone.”<sup>162</sup>

Of the 315 Jews aboard, fifty declared that they were headed for the United States, but after all fifty were refused entry by the American inspectors, each of the refugees re-elected and advised that they planned to settle in Canada. On average, each Roumanian immigrant had seven dollars in their possession, but once the \$2,000 donated by a European Jewish charity was factored across the group, this figure rose fifteen dollars. The proclamation banned people without sufficient funds to immigrate but did not set a specific minimum amount each immigrant needed. After Pedley asked whether the government had settled on a dollar amount to require of each immigrant, Smart replied: “Do not think each person should have less than twenty-five dollars. Government strongly opposed to this class of immigrants and they must be discouraged.”<sup>163</sup> As a result, all of the Roumanian travellers were denied access to Canada, although a review of the ship’s manifest shows that many other, presumably non-Jewish passengers, were allowed to disembark even though they arrived with less than twenty-five dollars.<sup>164</sup>

Suddenly, and for the first time, Canada was using legal powers to detain people (in this case aboard a ship) because they were unauthorized migrants. From the perspective of the Elder Dempster, this new situation was untenable: “These people are now housed at Quebec in anything but desirable quarters. Sickness might break out among them and in consequence make it very serious for your department and the government on whom all responsibility must

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161 “The SS Montfort”, *Montreal Daily Witness* (2 August 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519).

162. *Ibid.*

163. See Letter from JA Smart to F Pedley (31 July 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519).

164. See Montfort Manifest (July–August 1900), Ottawa, Library and Archives Canada, (RG 76, Item 3862, Passenger list database).



rest.”<sup>165</sup> Later that day, the company sent a second communication and argued that it was unfair to bar the immigrants because “no such stipulation has been mentioned in your advertising matter throughout Europe”.<sup>166</sup> Nonetheless, to end the impasse and let the migrants enter Canada, the company made the government an offer and said that it would assume “all responsibility that these people do not become a burden on the country”.<sup>167</sup> Smart relented and ordered the agent to allow the Jews to pass on the understanding that “no more of this class of immigrant are on their way”.<sup>168</sup> Canada’s first legal immigration detention, therefore, ended when a transportation company made a guarantee for each detainee.

Despite Smart’s instruction, more Roumanians did come. On August 4, the *Lake Champlain* arrived with 347 Jews aboard. These refugees were detained for several days while Ottawa decided whether to again accept guarantees or whether the government would insist upon the minimum twenty-five-dollar threshold. This delay accentuated the humanitarian problems that came with using ships as mass detention facilities. Elder Dempster angrily wrote over multiple telegrams that:

it is an outrage on these poor people as they have been exposed to the inclemency of the weather since they arrived here as it has been impossible for us to give them proper accommodation owing to our having to discharge + load the steamer—serious consequences will arise. Fever and other sickness is certain to break out as the sanitary condition of an ocean steamer in port with a large number of people aboard in hot weather is different altogether than when at sea . . . It is impossible for us to provide food for these people in port they have had nothing to eat since yesterday noon.<sup>169</sup>

On August 5th, this detention ended when the Elder Dempster company and the Baron von Hirsch society respectively agreed to return to Europe—at no cost to the government—any immigrants who became public charges and to

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165. See Letter from Elder Dempster Co to JA Smart (2 August 1900), Ottawa, Library and Archives Canada, LAC (RG 76, file 81539).

166. *Ibid.*

167. *Ibid.*

168. JA Smart telegrams to P Doyle and Elder Dempster Co (2 August 1900), Ottawa, Library and Archives Canada, (RG 76, file 81539).

169. See Letter from Elder Dempster to JA Smart (7 August 1900), Ottawa, Library and Archives Canada, (RG 76, file 81539).

provide upkeep costs for destitute immigrants. The company and the society also agreed not to send Jews west of Ontario.<sup>170</sup> On August 16, 1900, Elder Dempster wrote to Smart advising that another ship with Jews aboard was bound to arrive soon but that “this is the last of the lot of these immigrants and they were on the way from Budha Pest [sic] before they could be stopped, and we had to bring them forward.”<sup>171</sup> They, along with a few other Roumanians who arrived in August, September, and October were allowed to pass “upon usual guarantees”.<sup>172</sup>

Ultimately, while hundreds of Roumanian Jews were detained in the Summer of 1900, these detentions were brief and did not end in mass deportations. In 1902, Pedley told a Parliamentary committee that as far as the government knew, none of the Roumanian Jews became a charge on the government.<sup>173</sup> Regardless, Canadian officials did end the migration of Jewish refugees to Canada. Faced with new Canadian legal impediments and a sterner governmental resolve, the shipping companies and organized charities in Europe stopped Roumanian refugees to Canada. After a Canadian immigration official approached the Jewish Colonization Association and told it of the “intelligence being received here that a large number of Roumanian Jews, without means, were being sent by some organization to Canada”, the Association agreed “not to encourage, or rather to discourage, any further emigration to Canada at present.”<sup>174</sup> Roumanian immigration did not entirely end—Montreal Jewish relief agencies reportedly assisted thousands of Roumanians in the early 1900s<sup>175</sup>—but reports of mass arrivals did cease.

Against the failures of enforcement in the spring and early summer of 1900, this success proved to the Immigration Branch that police powers could slow and shape migrations. In mid-August, a group of Syrians (likely Assyrian Christians) were briefly detained aboard the *SS Louisiana* before being released. By the end of the summer,<sup>176</sup> Canada successfully enforced its first legal

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170. See *ibid.*

171. Letter from Elder Dempster Co to JA Smart (16 August 1900), Ottawa, Library and Archives Canada, (RG 76, file 81539).

172. Letter from Pedley to Hoolihan (1 October 1900), Ottawa, Library and Archives Canada, (RG 76, file 81539).

173. See House of Commons, *Report Select Standing Committee on Agriculture and Colonization* (1902) at 314–15 (testimony of Frank Pedley on 27 February 1902) (Chair: Legris).

174. Letter from W Preston to Lord Strathcona (27 July 1900), Ottawa, Library and Archives Canada, (RG 76, file 81519).

175. See Rabinovitch, *supra* note 130 at 124–33.

176. It appears that after the steamship company advises that it would not post guarantees for the passengers that the immigration department allowed the passengers to land anyway. See generally Letter from W Preston to Lord Strathcona, *supra* note 174.

deportation. Twenty-four days after Canada passed the Order banning pauper immigration, the Canadian High Commission in London sent a coded telegram to the Immigration Branch:

Am informed Johan M. Hannu, a Swede, sentenced life imprisonment for murder but released after twelve years penal servitude, sent by Police Authorities at Stockholm to Winnipeg, sailed Allan steamer Assyrian Saturday last Halifax via Newfoundland. Stated Hannu one of three murderers who, while in prison, declared intention commit murders wholesale on regaining freedom. First released about six months ago and immediately fulfilled vow by murdering nine in Stockholm district, and since imprisonment has seriously injured three warders. Third will be released few days and may be assisted emigrants. Please take any action considered necessary and advisable. Do not think Hannu should be allowed to land. Have made protest to Swedish Government through Foreign Office.<sup>177</sup>

While London filed a formal protest with the Swedes, Smart wired his agents in Halifax and ordered them not to let Hannu off the ship. Again, legality quickly reared its head: one of Smarts' Halifax officials wrote back to ask "what cause and under what statute am I to act in preventing Hannu landing, [because] I have no instructions on these points and cannot act without."<sup>178</sup> Smart asked Canada's legal department to investigate whether Canada could legally do something to prevent Hannu's landing but the Deputy Minister of Justice advised that "[t]his man cannot be lawfully prevented from landing upon the arrival of the steamship unless there is statutory authority for such action."<sup>179</sup> Quickly, authority was made. On August 23, the Governor in Council activated the long dormant provision regarding criminal and vicious immigrants by finally, over twenty years after the law's passage, issuing the necessary proclamation.<sup>180</sup>

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177. Telegram from the Canadian High Commission to the Department of the Interior (17 August 1900), Ottawa, Library and Archives Canada, (RG 76, file 69222) and the letter of the same day.

178. Letter from E Clay to F Pedley (23 August 1900), Ottawa, Library and Archives Canada, (RG 76, file 69222).

179. Letter from Deputy Minister of Justice to JA Smart (22 August 1900), Ottawa, Library and Archives Canada, (RG 76, file 69222).

180. See *Prohibition criminal or vicious immigrants from European or Asiatic Ports* (23 August 1900), (RG 2, Privy Council Office, Series A-1-a, 1900–2062).

Hannu arrived at Halifax the day after the proclamation came into force. He was met by a police officer who reported that: "I boarded the *Assyrian* on her arrival here ten o'clock. Had the Swede murderer secured and placed in a strong room on board the ship. The Captain placed an officer on the room to watch him. He will not be allowed to leave the vessel or the room until the ship arrives back in Glasgow."<sup>181</sup> Weeks later, the Swedish authorities responded to London's protest. Hannu was not a murderer but an arsonist. The reports about him were likely inflated because anxiety about crime in Sweden was particularly acute because that summer a released prisoner "committed several murders aboard a steamer" outside of Stockholm.<sup>182</sup> Finally, Hannu was not sent to Canada by the police, but saved his own money to fund the voyage to "Canada where, unknown, he hoped to earn his living honestly".<sup>183</sup>

Regardless of what was the truth, Hannu was successfully and lawfully repelled as an undesirable immigrant. The history of Canadian immigration law pivots around his deportation and the detentions of the Roumanian Jewish refugees. Before, immigration law was not a matter organized around police powers; after, it progressively accumulated coercive powers to manage the movement of immigrants. But the immediate problem was American. Would they be satisfied now that Canada enacted these two new powers, or would they want more?

#### **IV. "Our Reason for Introducing the Legislation is Largely in Connection with the American Immigration."**

In August 1900, just after the Canadian ban on pauper migration came into force, the American Assistant Secretary of the Treasury announced the beginning of "a general campaign by the Government to stop the importation into the United States from Canada of undesirable immigrants".<sup>184</sup> A few days later he visited Montreal where Canadian officials assured him that the Canadian regulations "with regard to the admission of immigrants were quite

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181. Memorandum for JA Smart (24 August, 1900), Ottawa, Library and Archives Canada, (RG 76, file 69222).

182. Letter from M Ramel to the Marquis of Salisbury (18 September 1900), Ottawa, Library and Archives Canada, (RG 76, file 69222).

183. *Ibid.*

184. "Immigration from Canada: Charge that Undesirable Foreigners Enter By Our Door American Immigration Authorities Are Taking Steps to Prevent the Practice—Steamship Companies Oppose", *The Globe* (August 4, 1900) at 17.

as stringent and as strictly enforced as those of the United States” and that “no person likely to become a burden upon the State is allowed to land”.<sup>185</sup> He also met with representatives from some of the Canadian transportation companies who, the *New York Times* reported, said they were prepared to “adopt the system of examination” used in the United States.<sup>186</sup>

In September, the companies approached the Canadian immigration authorities with a proposal. Because of American ambition to “have a better system of examination of passengers inaugurated so as to prevent undesirable immigrants filtering through Canada to the United States”, the companies decided that an American physician should inspect immigrants in Liverpool before the ship departed.<sup>187</sup> The companies asked that Canada appoint its own doctor to work with the American doctor. Pedley understood that the company’s proposal was designed to make the Americans happy and head off the imposition of more robust border controls between Canada and the United States because controls would “have a very detrimental effect upon the passenger traffic now enjoyed by the Steamship and Railway Companies”.<sup>188</sup> While Pedley saw no independent Canadian need for an overseas medical inspection, he appreciated agreeing to some sort of inspection program could prevent “a great deal of trouble” from the Americans.<sup>189</sup>

This proposal, however, came to naught and the Americans and the transportation companies proceeded without the participation of the Canadian government. In January 1901, an American medical inspector started screening immigrants in England. Quickly, the Americans realized the plan was destined to fail. The doctor was unattached to the American embassy and his decisions regarding admissibility were legally unenforceable. He complained to Washington that the transportation companies regularly ignored his directions and boarded people in contravention of his assessments.<sup>190</sup> Meanwhile, the

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185. “DESTITUTE SYRIANS: Still on Board the S.S. Louisiana at Montreal Messrs, Powderly and Taylor Discuss Immigration Matters—Death of Mr. Geo. Martin.”, *The Globe* (10 August 1900) at 2.

186. “TO IMPROVE IMMIGRATION: Washington Officials in Canada Attempting to Effect Joint Methods of Examination”, *New York Times* (10 August 1900) at 1.

187. (31 October 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247). There is correspondence regarding this matter throughout September 1900. The most comprehensive summary is found in a memorandum drafted by Pedley for JA Smart.

188. *Ibid.*

189. *Ibid.*

190. See US, *Public Health Service, Annual Report of the Supervising Surgeon General of the Marine Hospital Service of the United States for the Fiscal Year 1901* (Doc No 2322) (Washington, DC: US Government Printing Office, 1901) at 461-63.

Americans sent Watchorn back to Europe to investigate the causes of Roumanian Jewish migration. In his report, he acknowledged the serious anti-Semitism of Roumanian society but blamed organized Jewish charity for the fact of significant outbound migration.<sup>191</sup> Once he returned, he was posted to Montreal to take charge of all American-Canadian immigration matters.<sup>192</sup>

In May 1901, Smart was invited, just like Burgess had been almost a decade earlier, by a Vice President of the Canada Pacific Railroad to a meeting with Watchorn and a representative of the steamships to discuss “United States immigration matters”.<sup>193</sup> At the meeting Watchorn complained that American inspections in Canada were “practically a farce” because rejected immigrants got to stay in Canada and cross into the United States on their own initiative at some later point. Smart accepted that Watchorn’s grievance warranted a Canadian response and committed to enforcing American deportation orders. “We will”, he explained to his officials, “have to go on the principle that any settlers who are not good enough for the United States are not good enough for Canada”.<sup>194</sup> Going forward, when the Americans rejected an immigrant, “the companies will simply be notified and will have to take charge of these people so far as their maintenance is concerned and also their return to the country from which they came”.<sup>195</sup>

Around the same time, the Americans stepped up their exclusionary activities. On May 20, 1901, a new American doctor started examining immigrants in Quebec. In that year’s report to Congress, he said that he inspected 3,626 immigrants during his first forty days on the job, detained fifty-one people, and ordered the deportations of twenty-seven. But his inspections were largely futile: only six people were deported because the rest of the detainees “disappeared”.<sup>196</sup> The absence of legality remained the problem. In June 1901, for example, six passengers ordered deported refused to board a ship for return to Europe. The

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191. The report was partially published as “An American in Roumania”, *The American Hebrew* (19 October & 26 October 1900).

192. His term in Montreal officially began on September 1, 1900. However, he was involved with immigration work in Canada for a period before that. In June 1900, he is described as the “Supervising Special Immigrant Inspector” based in Washington State, see “More Japanese Immigrants”, *New York Times* (2 June 1900) at 6.

193. D McNicoll to JA Smart (17 May 1901), Ottawa, Library and Archives Canada, (RG 76, file 3247).

194. JA Smart to P Doyle (3 June 1901), Ottawa, Library and Archives Canada, (RG 76, file 3247).

195. *Ibid.*

196. Annual Report of the Supervising Surgeon General of the Marine Hospital Service of the United States for the Fiscal Year 1901, *supra* note 190 at 459-60.

steamship asked Ottawa to ask its officials to “oblige these passengers to go aboard”,<sup>197</sup> but, as Smart conceded in private correspondence, there was still no legal provision enabling Canadian officers to force passengers on a ship on the strength of an American order. He told the company that he was “advising Agent to persuade them”.<sup>198</sup>

In November, Pedley worked up a comprehensive memorandum for Smart regarding the issue of American exclusionary efforts and Canadian law. He concluded that “the question now appears to have reached a point where, if the wishes of the American Commissioners are to be carried out by detaining or deporting passengers, police authority is necessary.”<sup>199</sup> Because the new proclamations only banned paupers and criminals, and were not nearly as restrictive as American immigration law, he recommended that Canadian law change so it could harmonize with American law.<sup>200</sup> Around the same time, the transportation companies petitioned the Prime Minister to support an amended immigration law. They suggested four new provisions:

1. Immigrants infected with favus, trachoma, or syphilis should be banned, unless the person could be cured of the affliction while detained at a Canadian hospital;
2. Children with infections should be exempted from the ban if accompanied by family members who would care for them;
3. Specific legal authority should be provided to detain immigrants pending treatment or deportation; and
4. The law should forbid the use of ships as detention facilities and ships should not be held in port pending the finalization of inspections. In short, they proposed an authorization for inland immigration detention.<sup>201</sup>

This initiative, and Pedley’s memo, was too little too late. In January 1902, after a decade of making threats, the Americans implemented immigration controls on the Canadian-United States frontier. Under Watchorn’s authority, a force of sixty-four officers, doctors, and interpreters attempted to inspect every “train or

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197. Elder Dempster Co to JA Smart (15 June 1901), Ottawa, Library and Archives Canada, (RG 76, file 3247).

198. Letter and telegram from JA Smart to Elder Dempster Co (20 June 1901), Ottawa, Library and Archives Canada, (RG 76 file 3247).

199. Memorandum from F Pedley for JA Smart (30 November 1900), Ottawa, Library and Archives Canada, (RG 76, file 3247).

200. *Ibid.*

201. Letter from Allan Line, Dominion Line, Elder Dempster Co, Canadian Pacific Rail, and Grand Trunk Rail to Sir Wilfred Laurier (26 December 1901), Ottawa, Library and Archives Canada, (MG 26 G, vols 217–21).

boat on any railroad or regularly chartered boat route”.<sup>202</sup> Some of the steamship companies, believing further restrictive action would only make a bad situation worse, tried to backtrack and keep Canadian immigration law liberal. In January 1902, one company wrote to Laurier explaining that the steamships only approached him because of “pressure brought to bear on us by the Commissioner General of Immigration of the United States” and to prevent the Americans from “imposing obstructions in the way of passenger traffic”.<sup>203</sup> Now, with border controls installed, the company reasoned that its previously proposed restrictive law would not be “in the interest of immigration”.<sup>204</sup>

Not all the transportation companies agreed. The Canada Pacific Railway, which had the most to lose if border inspection measures intensified further, pressed ahead. A company lawyer, Robert Kerr, prepared a new draft Canadian immigration bill. He circulated his proposed new law in March amongst the transportation companies for their consideration. This new law was a scaled-back version of what the companies originally proposed to Laurier and would only institute a ban on immigrants infected with “loathsome, dangerous, or infectious disease” and grant immigration agents new police powers to arrest immigrants without a warrant if they failed to board a ship for deportation.<sup>205</sup> While there was ambivalence amongst the companies about the wisdom of this proposal, Smart reminded the companies that the Americans could still take more draconian action and simply require all America-bound immigrants to land at American ports, entirely robbing Canadian companies of this lucrative part of their business. “Our reason for introducing the legislation”, he reminded, “is largely in connection with the American immigration”.<sup>206</sup>

The Americans publicly supported the new legislative initiative. Newspapers across the country, but particularly the *Montreal Star*, ran reports (often quoting Watchorn) alleging that Canada was becoming a dumping ground for American’s unwanted immigrants.<sup>207</sup> The campaign worked. One Member of Parliament rose to discuss the proclamation banning paupers and said that “from what I have seen in the papers since, that the proclamation is practically a dead letter.”<sup>208</sup>

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202. US, *Annual Report of the Commissioner-General of Immigration for the Final Year Ended June 30, 1902*, (Washington, DC: US Government Printing Office, 1903) at 40.

203. Letter from Allan Line to Sir Wilfred Laurier (10 January 1902), Ottawa, Library and Archives Canada, (MG 26 G, vols 217–21).

204. *Ibid.*

205. See package of letters under cover letter from Robert Kerr to JA Smart (31 March 1902), Ottawa, Library and Archives Canada, (RG 76, file 3247).

206. *Ibid.*

207. See Memorandum from F Pedley for Clifford Sifton (20 November 1902), Ottawa, Library and Archives Canada, (RG 76, file 3247).

208. *House of Commons Debates*, 90–2, vol 2 (29 April 1902) at 3743 (Clarke).





In April, Clifford Sifton presented the amended law to Parliament. He explained that it was “urgently requested” by the “transportation companies” and that it would “enable the government to deport immigrants from foreign countries” who suffered from dangerous or infectious disease.<sup>209</sup> At second reading, he explained the defect that the law was designed to address: “I am advised by the law officers of the government that we have not the power to prevent people of this particular class [diseased migrants] from landing or to compel them to leave Canada once they have landed.”<sup>210</sup> Members of Parliament either supported the new law or argued that it ought to go further. William McCreary, the Member for Winnipeg, and the government’s Commissioner of Immigration in that city, thought that government should deport some people, even if they were lawfully admitted if they later fell ill. He cited “four or five cases” where people went insane after arriving in Canada and “we were able to get the railway companies to take them out without compulsion.”<sup>211</sup> Here, he was certainly thinking of Stendrup, discussed in Part I, because he referred to one occasion when “we had to send a man sea-board with the insane” person.<sup>212</sup>

Sifton was not prepared to go so far. Other than the diseased, the infirm, and paupers, the government ought not to “discriminate against people not in those classes”.<sup>213</sup> “The actual fact,” he told Parliament, “is that this whole thing is a tempest in a tea pot”.<sup>214</sup> Contrary to what the Americans might say in the press, there were not thousands of rejected immigrants in Canadian cities. At most, Sifton said, thirty-three or thirty-four people stayed in Canada after an American rejection.<sup>215</sup>

Bureaucrats, too, were cynical about the law. The Director of Public Health (the same individual who refused to let the immigration branch use quarantine stations to detain the Jews ordered deported in June 1900) wrote a memorandum explaining that neither favus nor trachoma—the two diseases that most concerned the Americans—could “rightly be regarded as of any grave menace to public health”.<sup>216</sup> For his part, Pedley thought that medical exclusions

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209. *House of Commons Debates*, 90–2, vol 2 (16 April 1902) at 2850 (Hon Clifford Sifton).

210. *House of Commons Debates*, 90–2, vol 2 (29 April 1902) at 3734, 3749 (Hon Clifford Sifton).

211. *Ibid* at 3735–36 (William McCreary).

212. *Ibid*.

213. *Ibid* at 3753 (Hon Clifford Sifton).

214. *Ibid* at 3762 (Hon Clifford Sifton).

215. *Ibid*.

216. Dr. Montizambert to F Pedley (31 May 1901), Ottawa, Library and Archives Canada, (RG 76, file 3247).

“were an adjunct to the alien labour law utilized for the purpose of excluding for the admission of when no other grounds of refusal can be discovered”.<sup>217</sup>

Watchorn, for his part, was pleased with the new law but wondered whether Canada would set aside the resources to enable meaningful enforcement:

To what extent it will effect a change in relation to cases of disease we must bide our time and judge from results, rather than offer predictions . . . However, the main thing is that this law makes certain deportations not only lawful but compulsory, whereas heretofore not a vestige of authority for forcible deportation has existed.<sup>218</sup>

This question—would Canada establish a police force to use these new police powers—would become the next major question for Canadian immigration authorities.

## V. Conclusion

How did borders and migration control strategies spread across the world, particularly the industrialized West? As this history shows, the idea that an immigrant could be arrested, detained, and deported because they were an immigrant developed fitfully and unevenly. This highlights the significance of events, chance, and contingency in this story of historical change. But for a volcanic eruption, but for Roumanian anti-Semitism, and but for Watchorn’s persistence, the summer of 1900 would not loom so large in the Canadian story of police powers and migration control. And timing does matter. In the decade after Sifton worked to deter Jewish refugee movements, a large part of the Canadian immigration story is about the use and development of these new police powers. Over the next decade, trade unions, radicals, Chinese and Japanese workers, and the Komagata Maru would confront a state prepared to meet unauthorized migrants with handcuffs and jail cells.

But a larger point lurks. Events can be “an irreducible and decisive moment in historical processes”<sup>219</sup> and here one of those processes is evident: the

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217. Memorandum for Clifford Sifton (14 May 1901), Ottawa, Library and Archives Canada, (RG 76, file 3247).

218. US, *Annual Report of the Commissioner-General of Immigration for the Fiscal Year Ended June 30, 1902* (Washington, DC: US Government Printing Office, 1902) at 44.

219. Theo Jung & Anna Karla, “Times of the Event: An Introduction,” (2001) 60:1 *History & Theory* 75 at 76.

ambitions of an emerging global hegemon. There are certainly many reasons the immigration control policies and strategies of countries the world over converged; but at the turn of the century on the Canadian-American frontier, the primary driver of a more assertive exclusion policy was American. Canadian elites did not independently seek out the powers to detain and arrest. Rather, they accepted them to protect Canadian economic interests and to maintain an open border with the United States. This history, perhaps, may reveal a larger secret about border control expansion: borders multiply and cascade. America asked Canada to adopt stricter immigration controls, not to secure Canada, but to secure the United States. As American officials worked to control who could or could not come, they ended up not just building up their own perimeter but conscripting international actors the world over—Canadian immigration officials, doctors in Liverpool, Jewish charities in Paris—to the idea that people ought not move towards North America. Borders may look like the purest expression of national concern and interest, but they are more: an international system that, at least for a little while, was built primarily to serve American concern.