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Anti-Anarchist Legislation and the Road to the 1919 Red Hysteria

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This thesis is intended to fulfill the requirements for College Honors, History Honors, and the Capstone Project.
Abstract

In my thesis, I connect anti-anarchist legislation from the early 1900s with the excesses of the 1919 Red Scare. I tie the actions of anarchist leaders Emma Goldman and Alexander Berkman to legislative responses, which were then weaponized after the hysteria of the Russian Revolution culminating in the deportations of 249 Russian “radicals” on the Soviet Ark. I find that the Supreme Court’s legal interpretation of the 1903 Immigration Act’s anti-anarchist provision in *Turner v. Williams* (1904), and the 1902 Criminal Anarchy Act in *Gitlow v. New York* (1925) were rational—understandable—within their legal and social context.

My legal history bridges this gap from the intersection of respective immigration, radical, and free speech histories. Connecting anti-anarchism to the Red Hysteria and anti-communism, this thesis provides a dynamic look at how American society changed in its perception of immigrants, radicalism, and its connection to Europe from 1892 to 1920, adding to the complexity of the Red Hysteria. How Americans viewed the connection between anarchism and communism and how they defined anarchism changed significantly from 1892 to 1920. A broadened definition of anarchism, despite its effective narrowing in the United States to the movement of Emma Goldman and Alexander Berkman, led to a door open for nearly any radical to be charged with anarchism, and thus criminally culpable for inciting violence.
Introduction

Benjamin Gitlow, an American citizen and leader of the American Communist movement was convicted in 1920 under New York State’s 1902 Criminal Anarchy Act, perhaps the most famous of the anti-radical cases to emerge from the 1919 Red Scare.¹ Gitlow’s 1919 Left Wing Manifesto called for revolution in the United States, inspired by the Bolshevik takeover of Russia and the belief that communism would permeate throughout a war-torn world. A New York State criminal court found his doctrine so harmful to the public interest as to convict Gitlow and to sentence him 5 to 10 years in prison. The case demands consideration because it relates to how we may conceptualize radical and marginalized speech. The 1919 Red Hysteria is remembered as tyranny of the majority, and its nominal leader Attorney General A. Mitchell Palmer never recovered politically. Yet a similar anti-radical witch hunt emerged after World War II on the back of Senator Joseph McCarthy, and the association of immigrants, radicalism, and “degenerative” dissent against American institutions continues to play a role in the American political narrative. Therefore, while Gitlow v. New York (1925) has been overturned as “bad law,” the sociopolitical environment—which the case evidences—has its unyielding place in history.

The judicial opinions against Benjamin Gitlow from 1920 to 1925 are the beginning of a larger story. Gitlow’s case had two distinct considerations that may be evaluated on a historical evidence-based approach; this thesis seeks to examine the context and foundations of the legal decision. The judicial considerations were the roots and legitimacy of the law that convicted Gitlow; second was the international political context that inflamed American anti-radicalism

¹ In this thesis, I refer to the 1919 Red Scare as the “Red Hysteria,” mimicking what contemporaries called it. (See for example “The Red Hysteria,” The New Republic, January 28, 1920, 249–52). It is alternatively referred to as the “First Red Scare,” paired with the nation’s Second Red Scare after World War I. However, I favor the argument of 20th-century historians that the nation’s first “red scare” came after the Haymarket Square riots in 1886. Others have even declared a red scare after President McKinley’s assassination in 1901. (See James Green, Death in the Haymarket: A Story of Chicago, the First Labor Movement, and the Bombing That Divided Gilded Age America (New York: Random House, 2007), 303.) I therefore view categorizing numerically a slippery slope.
and led seven of nine Supreme Court Justices to consider Gitlow’s ideas a preventable and proximate danger to American society. The ensuing legal history focuses on how anti-anarchism intersects with the *Gitlow* Court’s interpretation of the statutory intent of the Criminal Anarchy Act and its applicability to their contemporary plight.

In my thesis, I connect anti-anarchist legislation from the early 1900s with the excesses of the 1919 Red Scare. I tie the actions of anarchist leaders Emma Goldman and Alexander Berkman to legislative responses, which were then weaponized after the hysteria of the Russian Revolution culminating in the deportations of 249 Russian “radicals” on the Soviet Ark. I find that the Supreme Court’s legal interpretation of the 1903 Immigration Act’s anti-anarchist provision in *Turner v. Williams* (1904), and the 1902 Criminal Anarchy Act in *Gitlow v. New York* (1925) were rational—understandable—within their legal and social context. The Red Hysteria was far more than a moment of isolated rashness, the nativism and anti-radicalism that had built against anarchism was transferred towards perceived communists on the premise that both shared revolutionary ideals. Fear and a perceived threat to American society from largely immigrant radicals had dictated previous legislation, which then could be mobilized should bona fide momentum for radicalism or revolution appear domestically.

As stated, at issue in *Gitlow* was if his speech presented a danger to society that was significant enough for the state to restrict it. World War I pressed the First Amendment into crisis, where speech subversive to the state was repressed under the Espionage Act of 1917. Ensuing cases resulted in a new construction of First Amendment speech to American jurisprudence: the “clear and present danger” test that came to be in *Schenck v. United States* (1919). *Schenck* convicted the General Secretary of the American Socialist Party for obstructing conscription and for violating the Espionage Act of 1917. For a unanimous court, Justice Oliver
Wendell Holmes established restrictions of speech as reliant on “proximity and degree.”2 The court agreed that “when a nation is at war, many things that might be said in a time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight.”

Utilizing a common metaphor for radical and incendiary speech, Holmes wrote “the most stringent protection of free speech would not protect a man in falsely shouting ‘fire’ in a theatre and causing a panic.”3 Unanswered in the jurisprudence of Justice Holmes was what constituted “peacetime.” Could Gitlow’s manifesto incite unwanted panic? Further, while a crowded theater provided a convenient metaphor, the distance between culpable speech and insidious action was yet unestablished.

Six years later, the Supreme Court ruled in *Gitlow v. New York* (1925), and the court disagreed on the test of proximate danger. For the dissenting minority, Holmes himself wrote “there was no present danger of an attempt to overthrow the government by force,” cavalier in that only a minority in America shared the defendant’s views. In contrast, the lower courts had convicted Gitlow by endorsing that although radical, communist speech was unlikely to have an effect, the “final goal” of Communist Socialism was sufficiently dangerous as to necessitate its early repression, before it had its full opportunity in the common rhetorical arena.4 The Supreme Court’s majority also endorsed this, writing that the State “seeks to extinguish the spark without waiting until it has enkindled the flame or blazed into the conflagration.”5 Rather than diving into a discussion of the danger of a communist revolution in the United States, the 7–2 majority appreciated that Gitlow had been convicted not under a legal justification of “clear and present danger,” but instead found the test need not be applied “where the legislative body itself has

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previously determined the danger of substantive evil,” as the court believed New York State did in the Criminal Anarchy Act of 1902.

The Criminal Anarchy Act sought to give the government a stabilizing mechanism in the face of radicalism. In Benjamin Gitlow’s second appeal, the New York State Appellate Court wrote: “After the assassination of President McKinley by an anarchist [...in 1901], it was deemed that our laws were inadequate for the protection of organized government.”6 The Appellate Court quoted the legislative body in defining the specific menace of “anarchist” doctrine. The law should prevent “the spreading of doctrines hostile to the safety of our government and of all government, which inevitably lead those who profess them to commit crimes….”7 The Supreme Court recognized this; the state could perceive and extinguish incendiary speech, “fires.”

A century later, questions still arise from a reading of the cases. Gitlow was convicted on the basis that the legislature had spoken for the people in allowing for the suppression of radicalism. Was the Red Hysteria the will of the people? What was inevitable about radical doctrine leading to violence? How was an anti-anarchist law applied to a Communist? Was Justice Holmes correct in his judgment that Gitlow presented no danger to the United States, despite Gitlow’s arrest during the 1919 Red Hysteria via the Department of Justice’s “Palmer Raids”?

A dissent in New York’s highest court believed Benjamin Gitlow’s conviction was wrong on the grounds that an anarchist was “one who seeks to overturn by violence,” and Gitlow’s “advocacy of revolution...was not the evil contemplated.”8 How could a court disagree over

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7 People v. Gitlow, 195 App. Div. at 785.
8 People v. Gitlow, 234 N.Y. at 158 (Pound, J, dissenting).
what “anarchist” meant—a ubiquitous term—particularly when a legislature had already defined it, a judgment already clarified by the court in 1904?9

My research is focused on two guiding questions: How did the Red Hysteria happen? and What informed the court in *Gitlow*? In answering those questions, key themes and tensions which tie the Red Hysteria to anti-anarchism. The Red Hysteria was legitimized by the courts, which found their basis in existing anti-revolutionary legislation. To trace anti-anarchism from 1892 to 1920 is to explain conditions for the “First” Red Scare. Immigrants and radicalism were correlated, but was this accurate? Was radicalism most easily dealt with through immigration? At what point were fears of anarchism and violent, unconstitutional revolution sufficient enough to act with sweeping brushstrokes against radicals? Were all radicals the same before the law? Were Communists anarchists, or at least chargeable under their provisions?

My legal history bridges this gap from the intersection of respective immigration, radical, and free speech histories. Connecting anti-anarchism to the Red Hysteria and anti-communism, this thesis provides a dynamic look at how American society changed in its perception of immigrants, radicalism, and its connection to Europe from 1892 to 1920, adding to the complexity of the Red Hysteria.

The thesis holds the position that in order to understand the Red Hysteria, particularly in cultivating a legal history, studying American anti-anarchism is essential. This thesis follows Emma Goldman and Alexander Berkman while focusing on reactions to their presence and role in Gilded-Progessive Age American society, resistance to which would bloom into a wider practical fear of immigrant radicalism. In respected research such as Paul Avrich’s *Sasha and Emma: The Anarchist Odyssey of Alexander Berkman and Emma Goldman*, historian Paul Avrich misses the direct impact of Berkman and Goldman on the Red Hysteria and more broadly,

American anti-radicalism. On the other hand, legal histories such as Marc Lendler’s *Gitlow v. New York: Every Idea an Incitement* do not give attention to wider social momentums against radicals and immigrants, nor to the roots of the 1919 Red Hysteria. There is a gap between legal history and radical history as both try to understand and rationalize the Red Hysteria.

My argument connects anti-anarchism and the Red Hysteria by examining and connecting three distinct moments. In the first chapter, I examine Alexander Berkman’s assassination attempt against industrial titan Henry Clay Frick. In the second, I look at reactions to the assassination of President McKinley in 1901 by professed anarchist Leon Czolgosz. In the third chapter, I examine how anti-anarchist themes permeated the Red Hysteria, drawing in the first two chapters to understand the court in *Gitlow v. New York*. This distinctly crafted narrative arc is supported by original primary source research and examines mainly weekly periodicals to understand public opinion.

One criticism to be broadly doled out of the recent literature on American anarchism at the beginning of the 20th century is that many authors rely primarily—even solely—on *The New York Times* as their source base, and then write a history from this common ground.¹° Here, my analysis of unique primary sources will first give more depth to conclusions on the legitimacy of the “radicals as immigrants” claim, and explore the public’s perception of both philosophical anarchism and anarchism “by deed” (terrorism).

I look at the series of decisions in Benjamin Gitlow’s legal saga as an event, as an illuminating moment in history. While a strict legal history would look at precedent-setting cases

and the legal trends of a *Gitlow* court, my research instead seeks to use a popular source base to contextualize and understand the considerations in the 7–2 decision against the first-generation American.

The majority of the sources utilized in this thesis are weekly or monthly magazines. One benefit to modern research is that a vast archive of sources are available online, which go beyond traditional archives collected by the publishing newspaper.\(^\text{11}\) Periodicals and magazines are a significant source base to the late 19th century and early 20th century. In the Gilded Age, weekly journals of opinion had been developing as sophisticated sources, but were hindered by their price tag and subsequently narrow audience. By the mid 1880s, a drastic increase in accessible but high-quality periodicals such as *Mclure’s Monthly* brought magazines in direct competition with newspapers.\(^\text{12}\) “Ten-cent magazines” offered reduced prices and supported their bottom line through increased advertising. The popularity of this genre was based on high-quality illustrations attached to the “lively” yet serious treatment of contemporary problems. Equally important for my study, the magazines shied away from sensationalism.\(^\text{13}\) The boom in less expensive magazines affected the entrenched titans such as *Harper’s Weekly*, *Century*, and *Scribner’s*, which demanded more bona fide journalism. Henry Loomis Wilson, editor of *Harper’s* in the 1890s, reflected that his burden was to take an “intelligent interest in the larger affairs of life.”\(^\text{14}\) Historian Frank Mott’s study of 1885 to 1905 argues the period’s “magazines came to represent as never before the complex currents of thought and feeling.” Whereas

\(^{11}\) Although certain restrictions due to the Coronavirus pandemic hindered this thesis—particularly the lack of availability to conduct archival research—the boom in digitized historical sources allowed me to browse through a very large number of periodicals, offering a unique depth to my conclusions.


newspapers had the advantage of multiple daily editions, periodicals could eschew timeliness and focus on excelling in quality.

I find the periodicals from the late 1880s through the 1900s, specifically *Harper’s Weekly, The Nation, Atlantic Monthly,* and *The North American Review* of great historical value. They are effective and practical snapshots of public opinion, which consciously took longer, wider, and more distanced views of recent events than newspapers constrained by daily publication.¹⁵ One vulnerability in relying on these sources is that they are relatively upper-middle class and, despite lowering their prices, were relatively high-minded. However, this is counterbalanced by the fact that much political activity and change at the turn of the century was carried out at the elite level; it was the opinions of these sources that would shape anti-anarchist legislation far more than what was said around a Lower East Side dinner table, for instance. Research that opens and relies upon such sources is needed; this thesis provides that.

Before moving on, background information is needed on anarchism in the United States and how to conceptualize it. Benjamin Gitlow’s postwar conviction rested on the following definition: “All will agree, however, that anarchy, by which we mean the doctrine that organized government…should be overthrown by force, is a criminal doctrine, the teaching and spreading of which should be prevented by penal legislation.”¹⁶ As interpreted by the *Gitlow* court, the operative and identifiable aspect of anarchism was its revolutionary means.

Yet, “anarchism” was a distinct historical term tied to the Russian movement led by Mikhail Bakunin, with a distinct libertarian end envisioned. Bakunin’s 1866 *Revolutionary Catechism* wrote that in order for Europe to overthrow monarchy (in the wake of the failed movement of 1848), revolutionaries must abide by “absolute rejection of every authority” and

¹⁶*People v. Gitlow,* 234 N.Y. at 136.
consider that “order in society must result from the greatest possible realization of individual liberty.” In defining the uniquely and absolute rejection of all authority by anarchists, Bakunin wrote “Every state power, every government, by its very nature places itself outside and over the people and inevitably subordinates them…we declare ourselves the enemies of every government and every state power, and of governmental organization in general.” In rejecting the “statist principle,” he counters the idea Karl Marx presents of a proletarian dictatorship: “If there is a State, there must be domination of one class by another.”

Although anarchism and communism would certainly be conflated in the United States in the 20th century, Bakunin’s rift with Marxism explains the differences between the two ideologies. Anarchists prioritized individual liberty over all. No temporary economic restitutions could overcome the belief that government was bound to oppress. In this light, anarchist libertarianism and Marxist communism were on opposite sides of the spectrum, given that Marx trusted the workers in governing.

It was easier to persecute forceful revolutionaries as anarchists by considering the writings and influence of Peter Kropotkin, another titan of Russian anarchism. Alexander Berkman would cite Kropotkin as “the ideal revolutionist and Anarchist.” In referencing the 1789 French Revolution, Kropotkin evaluates that between “pacific arguing and insurrection or revolt there is a wide abyss.” To bridge the gap, Kropotkin’s solution is action:

19 In rejecting Marxism, Bakunin nearly exactly predicts what the Russian Revolution would result in: “On the day following the revolution the new social orders [according to Marxists] should not be organized…in accordance with the demands and instincts of the people, but only by the dictatorial power of [a] learned minority, which presumes to express the will of the people…. The Marxists say that this minority will consist of workers. Yes, possibly of former workers, who, as soon as they become rulers…will no longer represent the people, but only themselves and their claims to rulership over the people.” in Dolgoff, Statism and Anarchy, 330-31.
20 Alexander Berkman, The Bolshevik Myth, (United Kingdom: Boni and Liveright, 1925), 73.
21 Peter Kropotkin, “The Spirit of Revolt,” Le Révolté, 1880. Republished online by the Anarchy Archives: http://dwardmac.pitzer.edu/Anarchist_Archives/kropotkin/spiritofrevolt.html
When a revolutionary situation arises in a country, before the spirit of revolt is sufficiently awakened in the masses...it is through action that minorities succeed in awakening that feeling of independence and that spirit of audacity without which no revolution can come to a head.... In the midst of discontent, talk, theoretical discussions, an individual or collective act of revolt supervenes, symbolizing the dominant aspirations. It is possible that at the beginning the masses will remain indifferent. It is possible that while admiring the courage of the individual or the group which takes the initiative, the masses will at first follow those who are prudent and cautious, who will immediately describe this act as “insanity” and say that “those madmen, those fanatics will endanger everything.

These words, a call for “one courageous act,” called Alexander Berkman and the revolutionary terrorists of Europe in the late 19th century to the usefulness of an *Attentat* to give malcontents hope that “the established order [was] not the force one had supposed.” In doing so, Kropotkin ties philosophical anarchism to acts of terror. This is of great consequence as the state would learn to connect the two.

The most significant development of anarchism in the United States came after the Haymarket Square bombing in Chicago on May 4, 1886. A Chicago gathering of predominantly German pro-labor activists escalated into a skirmish with police that killed seven officers. In reaction, an incensed nativist cried “Let us whip these slavic wolves back to the European dens from which they issue, or in some way exterminate them.” As xenophobia and sensationalism mounted, eight anarchists were found guilty that August despite little evidence specifically linking them to the crime—they were culpable as mere leaders. On November 11, 1887, the dubiously founded executions of four anarchist leaders rallied other immigrants to the anarchist cause.

In evaluating the state of American anarchism in 1901, the draconian Robert A. Pinkerton recognized the paradox that the Haymarket resolution created. Heir to his father’s Pinkerton

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22 Here: “theoretical,” elsewhere “oratorical,” as Emma Goldman was considered.

Detective Agency—the detested forces used prominently in labor strikes—Pinkerton saw that anarchists were buoyed by the results of the trial, which hung four defendants and imprisoned the other four. Pinkerton’s repressive and cynical nature makes his logic difficult to follow. He argues that all should have been hung (a missed “lesson”), yet bemoans that the harsh justice against the Haymarket Four “revive[d] the spirits of the anarchists.” His argument seeks to establish that “a perfect system of police control” be designed to repress anarchy and once again dissuade “the dangerous fanatics who were driven out of Europe.”

A fascinating and troubling source, Pinkerton openly envisions the 1919 Red Hysteria. He considers defenders of free speech misguided by “sentimentalism,” while continuing “Instead of having any squeamish scruples, we should attack the evil [of anarchism] in a rough-handed, common sense way.” His perspective is grounded in the belief that—with Haymarket as an example—half-measures served to make anarchists, not extinguish them.

The Haymarket incident undoubtedly caused a massive shift in American anarchism. It further radicalized the movement through the perception of the absolute injustice that martyred their four comrades. The stimulating—rather than dissuading—effect of Haymarket also would create a fear throughout subsequent treatment of anarchist affairs that government injustice could create anarchists rather than inhibit them. This is not universally agreed on, but is shown by my sources in this thesis.

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25 Pinkerton, “Detective Surveillance of Anarchists,” 613–4. Most humorously, one of his proposed solutions is “the establishment of an anarchist colony” on an island of the Philippines, “and let them work it out among themselves.” At risk of anyone taking it as a joke, however, he would ensure they “remain[ed] there by establishing a system of patrol boats around it.” Such were some voices “defending” American freedoms in 1901.
26 Historian William Preston Jr. purported the belief that the anarchist movement “died” after the Haymarket Square bombing and subsequent witch hunt. (William Preston Jr., *Aliens and Dissenters: Federal Suppression of Radicals, 1903–1933*, 2nd ed (Urbana, IL: University of Illinois Press, 1994, first published 1966), 21). That the event stifled the anarchist movement is both incongruous with the primary sources and some of his own arguments. The contrasting point is made by Paul Avrich in his 2012 *Sasha and Emma*: “By giving the anarchists their first martyrs, the Haymarket executions stimulated the growth of the movement, especially among recently arrived immigrants who were finding their new country indifferent and the authorities undependable.” Paul Avrich and Karen Avrich,
image of America as a just society. This is seen in the testimonies of both Alexander Berkman and Emma Goldman.

Berkman and Goldman were both born in Russia and emigrated to the United States due to a wave of anti-Semitism after Tsar Alexander II’s assassination in 1881. They represented an immigrant class who arrived at the height of the Gilded Age’s social inequality and were quickly disillusioned about their perception of an American utopia. Berkman wrote that the martyrdom of the Chicago anarchists was a “potent and vital inspiration,” showing that despotism existed in America, not just Russia. Berkman wrote that the martyrdom of the Chicago anarchists was a “potent and vital inspiration,” showing that despotism existed in America, not just Russia. Goldman wrote in her autobiography that she “walked home in a dream” from a speech on the Haymarket affair; she was “crushed” by their execution and her mind was thus “made up” to join the anarchists of New York City. Present historiography supports that anti-anarchist tactics “backfired…. Instead they succeeded in uniting and galvanizing anarchists and others in a common recognition that such suppression threatened freedom of speech.” As was a continuing theme in American anarchism, a distinct libertarian bent was inseparable from the movement.

In a powerful statement to the effect the Haymarket affair had on Alexander Berkman and Emma Goldman, both sought to be buried in Chicago’s Waldheim Cemetery, where the Haymarket martyrs lay. It was Berkman’s “lifelong wish,” although Berkman was interred in France due to logistical challenges. In a sad, perhaps indicative twist of her wider acceptance

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30 See Berkman, “The Causes of the Chicago Martyrdom.”

and success, Goldman was successful in securing Waldheim as her own final resting place. Berkman and Goldman were representatives of an anarchist movement affected by Haymarket.

In New York, the journal *Der Anarchist* was founded by a young German immigrant as “a defender of the principles of our Chicago martyrs.” This journal represented a violent faction of the anarchist movement called the Autonomists, whom Berkman would associate with at the time of his attempted execution of Henry Clay Frick. Both motivating Berkman and proving to be his lone supporters after the *Attentat*, the Autonomist movement was a militant outcropping of immigrants infuriated by the injustice of Haymarket; the event bred supporters to fight “the bloody barbarism of capital.”

Internally, anarchists were consumed by fomenting revolution. Public displays of anarchists as revolutionaries led to anarchism becoming a nebulous catch-all term for those who were disillusioned and radical; the Russo-European origins of “anarchism” as an ideology made it easily foreignized. Sporadic terrorist attacks were placed under the nefarious umbrella of anarchism (a wider plot), but generally unconnected to the “movement” of American anarchism that Goldman and Berkman would embody. To those disillusioned with American government as it stood, anarchism’s appeal was in its revolutionary *principles*, not the terrorism of the European continent. The appeal of anarchism was through its “philosophical” vein. Yet, anarchist leaders recognized Kropotkin’s belief that the movement would result in forceful *Attentats*, which are violent attacks intended to spread a political message and incite (which, not so incidentally, overlaps with our modern definition of terrorism).

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32 Avrich and Avrich, *Sasha and Emma*, 400.
33 *Der Anarchist*, August 1, 1889, ed. Claus Timmermann.
Recent historians of anarchism have considered nearly all the terrorism striking the international community in the “Decade of Regicide” from 1894 to 1901 as anarchism, but this reduces the nuance of Berkman and Goldman’s brand of anarchism to mere discontented violence. Professor Richard Bach Jensen examines international response to the “War against Anarchist Terrorism”; Jensen sees anarchist terrorism as the product of the conflation of “theoretical anarchist to a practicing terrorist.” Yet, his research seems to confuse all terrorism of the period 1878 to 1914 as anarchism, based on the fact that anarchist violence was terror. For example, “The 1890s also became the era of the terrorist bloodbath” as anarchists “resorted” to bomb-throwing. Jensen is not necessarily wrong; he uses a different definition of anarchism, considering those who “assault powerful symbols of authority and stability” anarchists. Fair enough; but it opens up “anarchism” to such a broad scope that it would seem necessary to qualify every mention of the anarchism of Emma Goldman and (post-prison) Alexander Berkman in a long-winded way. Perhaps Jensen’s terrorism is more accurately “nihilism,” an absolute disapproval of the social order tinged with the fatalism necessary to carry out self-sacrificial attacks.

From a theoretical perspective, it is difficult to characterize the European “anarchism” as a movement; it lacked coordination and a defined purpose beyond order-upsetting violence. Invoking their definition shows, in one way, the factionalism that anarchism in American underwent after Alexander Berkman’s *Attentat*. Diverging after his effort of “propaganda by the deed,” “philosophical anarchism” became an oxymoron, especially when considering Peter Kropotkin’s foundational writings.

How Americans viewed the connection between anarchism and communism and how they defined anarchism changed significantly from 1892 to 1920. A broadened definition of anarchism, despite its effective narrowing in the United States to the movement of Emma Goldman and Alexander Berkman, led to a door open for nearly any radical to be charged with anarchism, and thus criminally culpable for inciting violence. Defining anarchism related closely to how the American legal system treated radicals. This change over time is a compelling aspect of the thesis; indeed by examining and tracing this shift, the true legal history of *Gitlow v. New York* is established.
Chapter One: Russian Solutions, American Problems: Alexander Berkman and the Homestead Strike of 1892

“We are no better, no safer, no securer than the people residing in France, or Germany, or Russia. Our lax laws have given these Anarchists a foothold here… it is no wonder that a class springs up… to find a remedy, at least a vengeance, on their oppressions.”

Introduction

Anarchist, assailant, and radical intellectual Alexander Berkman was born in the Russian Empire in 1870. Coming of age in the revolutionary hub that was St. Petersburg, Berkman was shaped by a society in a time of great transition, in a country not yet stabilized after the 1861 Emancipation Reforms of Tsar Alexander II that freed the serfs. A specter of an “insurrection” swept in the teenage Berkman and his Jewish family. Through politically active family members, Berkman became accustomed to seeing society as unjust—and to resisting law and order. Looking back, he wrote, “But my Uncle Max was a rebel. No doubt he got it from some distant ancestor, as I also got it from the same source, no doubt.”

The backlash of the Tsar’s death affected Alexander Berkman and his family. Jewish scholar and rabbi Abraham J. Karp writes, “No event had greater influence on the course of American Jewish history” than the assassination and resulting pogroms. The persecution and repression Berkman saw firsthand likely contributed to his absolute rejection of reform as a means to restore a society. To Berkman biographer Paul Avrich, Berkman’s formative time in autocratic Russia showed “dissent was possible only through rebellion, thus fuelling “lethal impulses.”

38“A Warning,” Pittsburgh Catholic, July 28, 1892.
40 Berkman to Emma Goldman, November 23, 1931, Goldman Archive, International Institute of Social History, quoted in Avrich and Avrich, Sasha and Emma, 15.
42 Avrich and Avrich, Sasha and Emma, 4.
Orphaned and expelled from school at 17, Berkman sought out the United States, “a glorious free country, where men walked erect…” Avrich asserts that upon the “militant” Berkman’s arrival to the United States in 1888 he “regarded gradual reform as the equivalent of surrender.” This was formed in part by the assassination of Tsar Alexander II in 1881, who—in the ruler’s own words—was hunted “like a wild beast” despite his generally liberal, reformative rule. Berkman wrote when jailed in 1895 “the sentence passed upon Alexander II by Young-Russia had for its object the punishment and removal of a tyrant…” To Berkman, this was a prime, defining example of propaganda by deed—an often violent act to inspire revolt—that he would carry to the United States.

Upon emigration, the enticing land of hope—an apparently higher, more evolved civilization—would only serve to disappoint. Alexander Berkman’s disenchantment with the United States began with the “sordid” life Gilded-Age immigrants with few connections experienced. Berkman later reflected: “The worship of the [American] republic could inspire me as little as monarchical idolatry. The “sanctity of parliamentary forms” left me as cold as the popish doctrine of the Immaculate Conception—the one a political, the other a theological fable.” Although the Russian emigre was not inspired by the extolled American republic (Berkman’s conflation of the terms and metaphors of worship is no accident), the working class of America was God-fearing and substantially more committed to a national purpose.

The American society young Alexander Berkman stepped into was awakened to the “labor question,” but was uncertain about the means to address it. Some like Henry George, the

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influential candidate for New York City mayor in 1886, believed that the government was “rotten to the core.” Yet he lost the election, which historian Michael Kazin considers a “turning point that did not turn.” The growing momentum for change in the Gilded Age—based on an increasingly low standard of living was not effected in 1886 due to poor governance unable to respond to massive wealth inequality. Nor did it turn based on anarchist violence, like that in the Haymarket Square bombing in Chicago that preceded George’s campaign in 1886. Berkman arrived in New York City 18 months later unaware of—at the very least ignorant to—the more traditional efforts by Americans to institute reform.

In Michael Kazin’s 2011 study *American Dreamers: How the Left Changed a Nation*, he considers a “pragmatic Christian credo” guided the Gilded-Progressive American way of thought, shaping and moderating the desire of labor and their advocates to reject society as it was. In practice, violent revolution was not seen as the American way; the preachings of the Sermon on the Mount were heeded so as not to “soil the purity of [the American] spirit.” This built and fueled an American exceptionalism which sees the United States as a nation defined by a unique mission and character. American foreign policy historian Stephen Kinzer notes, however, the exact nature of the purpose remains elusive. “Americans chose both” of the interpretations of John Winthrop’s 1630 “city on a hill” speech that envisioned the New World as an individual, unique, and exemplary society with the duty to “redeem the surrounding world.” Consciously or not, this heavily imbued Henry George’s 1886 campaign speech, which read, “We are building a movement for the abolition of industrial slavery, and what we do on this side

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of the water will send its impulse across the land and over the sea, and give courage to all men to think and act.”54 Violence was to play no part in the “Social Gospel” of the reformative left, which instead revered “cooperation and brotherhood.”55

Anxious in American society, Alexander Berkman found his niche in radical underground thought. His radical inclinations and America’s unfulfilled promises led him to conclude “Anarchism alone can save the world.”56 Meandering through Russian and German radical circles, in 1888, he joined “Pioneers of Liberty,” a Jewish Anarchist club, which was founded the day after the Haymarket verdict in October 1886. Berkman was motivated, instinctual, and militant, he found purpose in the group. As only a teenager, his prodigious knowledge of language and doctrine contributed to his swift ascension to the group’s leadership.57

Upon uniting with Emma Goldman in New York, Berkman and Goldman coalesced a faction of anarchists known as the “Autonomists.” The Autonomists split from the movement of German immigrant Johann Most—the face of anarchism in America. Just as the core anarchist doctrine of Mikhail Bakunin feared authority and any leadership structure, regardless of who was leading, the cult following building around Johann Most was troublesome.58 Thus, the Autonomists sought a loose network of those who could begin a revolution through isolated, violent acts in emulation of Peter Kropotkin’s calls to action. These radicals were advocates of Attentats against the rich, sheer terrorism which would undermine the elite and wealthy as imagined by Kropotkin.

Alexander Berkman brought the idea of assassinating an enemy of the working man to Homestead, Pennsylvania, in 1892; exhibiting a disconnect that missed the reticence of the

52 Quote by Henry George in Speech on October 5, 1886. Cited in Kazin, American Dreamers, 68-69.
55 Kazin, American Dreamers, 78.
56 Berkman, Prison Memoirs, 67.
57 See Avrich and Avrich, Sasha and Emma, 24-26.
58 Avrich and Avrich, Sasha and Emma, 44.
American left to resort to bloodshed. In contrast Johann Most had come to realize in his experience of the anarchist movement that to transform American society was not to destroy through violence. In his own words, “To have a propagandist effect, every deed needs to be popular.” Most denounced Berkman’s attack, and wrote that propaganda by deed would not succeed in the United States; this was proven by Berkman’s attack and near-universal denunciation. Yet even after Berkman was imprisoned for taking aim at the executor of the Carnegie Steel Company, Henry C. Frick, the young anarchist defined himself as “a revolutionist, a terrorist by conviction, an instrument for furthering the cause of humanity; in short, a Rahkmetov.” Not only to Berkman, Russian philosopher Nikolai Chernyshevsky’s character “Rahkmetov” came to inspire Russian revolutionaries and to define the fanatic asceticism required of one to devote themselves to “the cause.” Berkman’s emulation of Rakhmetov explains much, and in fact defines his “Russian” approach to American problems.

The politically-motivated assassination was seen not just as a foreign act, but Berkman’s motivations and Russian identity fit into an American narrative of Russia as an inferior, barbarous civilization—exactly the peoples that

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59 In fairness, as Avrich notes on p. 89, Most was “weary” from his cyclical arrests, therefore his change of heart was as practical as it could be genuine.
60 Johann Most, April 23, 1892, as cited and translated on Avrich and Avrich, *Sasha and Emma*, 88.
63 For the beginnings of Rahkmetov’s influence on Berkman, see Avrich and Avrich, *Sasha and Emma*, 12–13.

Figure 1.1. Thomas Nast, “The Remedy is Worse Than the Evil,” *Harper’s Weekly*, April 11, 1881.
would use violence to enact change. Just as the 1881 assassination of Tsar Alexander II was on Berkman’s mind, it was fresh in American memory as well. Attached is a 1881 *Harper’s Weekly* cartoon encapsulating American attitudes toward political violence and disgust toward Russian methods, captioned: “The Remedy is Worse Than the Evil.” The headstone reads “Assassination advances no cause,” the barbarous-looking figures in the background are labeled “anarchy” and “chaos.” The *Daily Picayune* (New Orleans) defended the Tsar and processes of reform in an 1881 editorial, commenting:

Reform and progress... are not accelerated by regicide...the masses of the population are uneducated and withdrawn from the direct influence of the civilizing tendencies of the age. The processes of reform must be carried on slowly. To a nation unfitted for self-government by the circumstances of their condition, and the state of their mental and moral development, great privileges may be granted with caution, and gradually.64

This source falls directly in line with the argument of historian David Foglesong’s 2007 *The American Mission* and “Evil Empire: The Crusade for a “Free Russia” since 1881. His thesis argues “Russia came to be seen as both an object of the American mission and the opposite of American virtues.”65 In the United States, Foglesong sees the period leading up to the attempted 1905 revolution in Russia as a period of great debate over whether Russians were capable and worthy of self-government. Leading this charge was journalist George Kennan, who told sympathetic tales of Russian thirst for liberty in an effort to refute arguments—like that of the *Daily Picayune*—that it was a society and people not sufficiently developed mentally and morally.66

Much like American reaction would be after the February 1917 Russian Revolution, Americans hoped that the death of the Tsar could be turned into a positive, providing an

opportunity for the nation to become “civilized” and democratic. Foglesong describes crusaders who depicted “Russia as a dark land that could be enlightened”; the possible “object of an American civilizing mission.” Yet, this sentiment was “driven less by realistic analysis...[than] by a desire to demonstrate America’s high idealism.” Within Foglesong’s argument of a debate over an American approach to Russia, the fundamental point is clear: Russia and Slavs were seen as “have-nots” in a world fascinated by Darwinism: uncivilized, but possibly worth “saving.” He supplements this point with a cartoon’s opinion of Russia as a “blot upon civilization.”

This is the context—of American impressions of Russia racialized, but in the balance—to which Alexander Berkman imported “Russian tactics” to the United States. Reaction to Berkman’s Attentat shows that Americans began to see a danger of Russia influence; rather than the idealized missionary-benefactor relationship envisioned by those such as George Kennan. As reaction developed, calls for legal change and resistance to anarchism and immigrant radicalism emerged, envisioning what the 1919 Red Hysteria would become.

**Figure 1.2.** “Not a Beauty Spot,” *Life*, May 8, 1890.
The Deed

In 1892, a well-known clash between labor and industry saw Andrew Carnegie’s eponymous Carnegie Steel Co., under the firm hand of Chairman Henry C. Frick, fend off a well-organized Amalgamated Association of Iron and Steel Workers (AAISW) in Homestead, Pennsylvania. In the heat of the deadlock, after a bloody shootout had already occurred, the immigrant Alexander Berkman entered the fray. On July 23, 1892, he entered Frick’s office and shot him three times, although the wounds from the handgun proved tolerable. To Frick biographer Samuel Schreiner Jr., “Berkman’s Attentat would turn into one of the most counterproductive acts of political martyrdom in history.”69

The conflict between union and company had brewed since the 1880s; the powerful AAISW had successfully struck in 1882 and 1889, “withholding the forces that were crushing labor” all throughout the Gilded Age.70 In 1892 the resolute team of Frick and Carnegie held a firm line as the agreement brokered in 1889 expired, and a mounting conflict was imminent. The AAISW, a craft union, represented skilled workers as negotiations in 1892 began. The conflict itself was a flash point for the struggles between capital and labor that industrialization augmented. From Carnegie’s perspective, his Homestead workers were paid more than the industry standard, including in his non-union mills, but produced less per worker over time thanks to improvements in technology. The central issue became the wage rates, which used the steel market to determine worker compensation.71 Despite the booming market, Carnegie Steel sought to decrease the wage minimums of the sliding scale basis, while the union normally sought increased wages. At the heart of the Frick/Carnegie hardline stance was a desire to rid

Homestead of the thorn in its side that was the very existence of the AAISW. Indeed, Frick intentionally presented terms unacceptable to the union, and the strike was on.\textsuperscript{72}

It was at this moment that Alexander Berkman left his ice cream shop in Worcester, Massachusetts along with his more well-known companion Emma Goldman who was also a Russian emigre. The pair sought to change the course of the strike by redirecting passions that had been set on returning to Russia and somehow enacting social change in their homeland. Appalled by Frick’s treatment toward his own workers; they realized “the great moment has come at last!”\textsuperscript{73} As Berkman and Goldman traveled south, the infamous July 6, 1892 clash between the strikers and Pinkerton National Detective Agency resulted in dozens of combatants wounded and killed serving to sensationalize the clash in the national consciousness.

As Berkman plotted, tensions were ratcheting up. With little help from the local sheriff and a premeditated impulse to employ the deplorable Pinkertons,\textsuperscript{74} Frick called the agents in under the cloak of darkness, but the strikers were ready and a battle ensued to prevent the outside agents from docking and getting to the Steelworks—their assignment was to defend the Homestead plant, dubbed “Fort Frick.”\textsuperscript{75} Who fired the first shot is both unknown yet naturally debated, but the stirring victory of the strikers in resisting the Pinkertons backfired—the mercenaries became sympathetic. A July 7 \textit{Pittsburgh Post} headline read “Like Lambs Led to Slaughter,” before continuing “Compelled to Run a Gauntlet...Kept Prisoners...[a] Determined Attack on the Boats.”\textsuperscript{76} This reaction was evidently missed or overlooked by Berkman as it provided an early clue to the public’s aversion to violence. Use of force to keep the owners and

\textsuperscript{72} Schreiner Jr., \textit{Gospel of Greed}, 69-71.
\textsuperscript{73} Excerpt from Goldman, \textit{Living My Life}, Volume 1, in Demarest and Weingartner, \textit{The River Ran Red}, 163.
\textsuperscript{74} For contemporary opinion on the Pinkertons, see William C. Oates, “The Homestead Strike: A Congressional View.” \textit{The North American Review} (September 1892), 355–75.
\textsuperscript{75} Similar narratives abound; perhaps the best is Chapter 2 “6 July 1892: A Carnival of Revenge,” in Krause, \textit{The Battle for Homestead}.
\textsuperscript{76} “Full Surrender,” \textit{The Pittsburgh Post}, July 7, 1892, in Demarest and Weingartner, \textit{The River Ran Red}. 85.
newfound employees from the factory became intolerable in the public eye. “Only” seven workers and Pinkertons were killed in the July 6 battle,77 but the imprint of violence on the conflict stratified public opinion.

Late to the party, Berkman arrived gun in hand on July 23, convinced that the “innocent blood spilled” in the battle signalled it was time for drastic action on behalf of the workers. By Goldman’s account, Berkman deemed: “[Frick] must be made to stand the consequences.” With the country “aroused,” the moment of Attentat (violent propaganda to stir public opinion) was upon the two radicals. Berkman imported his understanding of the Russian “tradition” and overestimated that “everyone was considering Frick the perpetrator of a cold-blooded murder.”78 The failed assassination attempt on the indominable Frick by Russian emigre and anarchist Alexander Berkman garnered sympathy for Frick and provided grand opportunity for cynics to dub the striking workers as violent, unlawful, and foreign.

**Historiography and Methodology**

As Paul Krause notes in his 1992 *The Battle for Homestead 1880–1892: Politics, Culture, and Steel*, a curious historiography surrounds the strike, specifically the battle. The same constant deception of the violence—perhaps only with idiosyncratic differences between historians and eras—has pervaded since contemporary accounts including contributions from Myron Stowell (1893),79 Edward Bemis (1894),80 and Arthur Burgoyne (1894)81 laid out the facts, absent shrewd or determined analysis. Historians Leon Wolff (1965) and Paul Avrich (2006) wrote on the event through different approaches and scopes, but came to the same conclusion that Berkman was auxiliary to the causes that wrecked the labor strike, but the attack

77 The number is debated, but best researched by Krause, *The Battle for Homestead*, 2, continued in notes on 409.
still did little good for Carnegie’s Homestead Steel Workers. Alternately, Krause excludes Berkman from his *Battle for Homestead* as part of an argument that the July 11 onset of the Pennsylvania National Guard brought “the beginning of the end,” not only for the strike but for the widespread “insurrectionary potential” of the standoff. Berkman’s wishful thinking of a provoking *Attentat* was therefore tangential. Frick’s continuing refusal to negotiate, as well as the use of the Pennsylvania State Militia, doomed the strikers. The defeat “crushed” the union and launched the company toward vast profits, a result of Chairman Henry Frick’s successful replacement of skilled laborers with strikebreakers—a success that would undermine the future of the skilled steelworker in American industry.

Wolff’s *Lockout: The Story of the Homestead Strike of 1892* shares conservative conclusions that have gone largely unchallenged. Despite a foreword that projects a different conclusion than a “plague on both your houses,” Wolff’s account is damning of Frick and Carnegie, and critical of the Amalgamated Association, proving to be a synthesis of early opinions rather than a fresh perspective itself. Leon Wolff’s work emphasizes the violence of the strikers, both against the Pinkertons and more generally in defense of the factory grounds. Wolff’s proclivity to resort to old tropes means his opinions fall much closer to Berkman’s contemporaries. Wolff’s frequently voices inclination against bloodthirsty “Slav” workers, Berkman’s own Eastern descent falls into this narrative. A modern reader is also unsettled by Wolff’s introduction of the two anarchists. He writes the two were regrettably “living together in
“sin” with a business that “considering their ideology...was doing disturbingly well.” Physical descriptions pervade: Goldman is merely a “girl...somewhat plump but not unattractive,” Berkman “thin, dark.” Particularly evidenced by his face-value judgements, Wolff does not take Berkman and Goldman seriously. Wolff considers Berkman’s act “moronic” and “irrelevant.”

Paul Avrich’s study from an inverse perspective: the 2012 dual biography Sasha and Emma: The Anarchist Odyssey of Alexander Berkman and Emma Goldman rejects the shallowness of writing Berkman off as a foreign element desperate for martyrdom. Avrich’s prologue is sensitive to Berkman’s commitment of his life to a cause. He invokes the eulogy given by Berkman’s friend Henry Alsberg, which saw a man who “spent his whole life in active rebellion...without even counting the cost to himself.” Avrich gives weighty examination to the motives and forces that drove Berkman to insert himself into the conflict, an appropriate counterbalance given that to the perpetrator, the likely dedication of his own life was anything but “moronic.” Avrich mirrors Berkman’s own opinion of the event, seeing it as a failure as an Attentat to would “galvanize” a nation to revolt, rather than focusing on direct impact on the strikers. Special attention is given to the strikers themselves rejecting Berkman, particularly in one example of jailed Advisory Committee member Jack Clifford refuting Berkman’s deed to his face.

Avrich’s narrative finds Berkman applied “Russian tactics to American problems” and “badly misread” the Homestead strikers and larger American disdain for radicalism. As to the effect of Berkman’s efforts, Avrich considers Berkman utterly inconsequential to the strike’s

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87 Wolff, Lockout, 72.
88 Wolff, Lockout, 175, 229.
89 As done by Wolff’s introduction of the people and the act on Wolff, Lockout, 72, 139-40.
90 Henry Alsber quoted in Avrich and Avrich, Sasha and Emma, 3.
91 Avrich and Avrich, Sasha and Emma, 58.
92 Avrich and Avrich, Sasha and Emma, 75.
outcome.\textsuperscript{93} Wolff agrees, leading to their mutual rejection of strike leader Hugh O’Donnell’s well-known lament “The bullet from Berkman’s pistol…went straight through the heart of the Homestead Strike.”\textsuperscript{94} The two disparate sources resolve the Berkman episode in the same manner—other factors doomed the strike before Alexander Berkman arrived in Frick’s office. Wolff reasons that “only the militiamen were breaking the striker’s hearts,” the same vein continued in Krause’s later omission of Berkman from his chronicle.\textsuperscript{95} That Wolff’s dated perspective and Avrich’s sympathetic—at the least, curious—view line up, is powerful. These books are representative of a historiography that has shut the door on immediate implications of the assassination attempt on Henry C. Frick.

A specific study on the incident should therefore focus more on Berkman’s impact on the public and popular opinion than on a tangible impact at the Homestead Steel Works. Two framing strategies emerge from the sources. Some sought to demonize Alexander Berkman as a foreign element, including anti-Semitic descriptions. Berkman was depicted as un-American, matching his method to enact change; a marginal action outside the actual, American discussions surrounding social reform needed in the post-industrialization Gilded Age. These views often were born from American exceptionalism, which saw the United States as a society more distinguished than Europe—refined and mature in enacting democratic change rather than through radical methods. The second, more general framework was an evaluation of Berkman’s mental state and the impact of social conditions and other factors on his drive to attack Frick.

\textsuperscript{93}Avrich and Avrich, \textit{Sasha and Emma}, 77–78.
\textsuperscript{94} Hugh O’Donnell, quoted in Bemis, “The Homestead Strike.”
\textsuperscript{95} Wolff, \textit{Lockout}, 188.
Berkman as a Foreign Element

Sources align with society’s larger debate, which questioned how an imagination could be so “diseased” as to not only believe in the overthrow of society, but to act on that impulse with violence as Berkman did. From the source base, an underlying debate emerged between the roles of nature (an impressionable mind) and nurture (the product of one’s environment) in imbuing anarchists with their ideology. Popular impressions of the Berkman Attentat represent a variety of perspectives concerning the ultimate issues of Gilded Age America: immigration, labor conditions, and the accumulation of wealth by the elite.

For many in 1892, the Haymarket Square bombing and riot in 1886 shaped the understanding of violence and radical means in labor movements. Fair or not, the incident was formative not only in shaping how Americans perceived anarchism, but in awakening to it as a threat carried across the ocean by immigrants. In his 2002 Death in the Haymarket, labor historian James Green writes “the Haymarket affair marked a juncture in our history when many Americans came to fear radicals and reformers as dangerous subversives…” Green further argues it was a “tragedy” for immigrants:

At a time when immigrants seemed to be overwhelming cities like Chicago, the Haymarket events provoked a new kind of paranoia among millions of native-born citizens, who grew much more fearful of aliens in their midst. The memory of Haymarket haunted the national consciousness for decades, because nativists painted a terrifying picture of the alien anarchist as “a ragged, unwashed, long-haired, wild-eyed fiend, armed with a smoking revolver…” The immigrant was a dangerous, menacing figure. Although this was not sparked entirely by Haymarket, Green is certainly proven correct in its lasting effect: Alexander Berkman and his act were applied to this backdrop, with exact precision. Popular sources directly appealed to nativism in their depictions of Alexander Berkman.

97 Green, Death in the Haymarket, 11–12.
On the day after the assault—July 24, 1892—sensational coverage by *The Daily Picayune* (the same paper referenced on page 22 which condemned the Tsar’s assassination) emphasized the foreignness of Berkman, thus implying the crime was attributable to his nature. Berkman went unnamed in the paper’s headlines, which called the crime “A Coward’s Act” committed “Without a Word of Warning.” Berkman was introduced as “a Russian Jew,” and first described as “a dark complexioned man, with a Jewish cast of countenance…” It should not be lost on the reader that Berkman was exceedingly pale by every image and likeness published and that the southern newspaper took an easy first step toward demonizing Berkman through race. Perhaps applying the label of Jewish countenance was acceptable in the 19th century, but the point remains that emphasizing this fact came with a negative connotation—as well as being a likely appeal to anti-Semitism.

Berkman was effectively dehumanized by the paper, which for example bore only one mention of his name in the first column and a half, while also declining to speculate on his motive. Chairman Frick was lauded for his efforts, a headline proclaiming “Mr. Frick Hurls Assassin to Floor, then Spares His Life” and showing Frick’s noble intention to not seek revenge and his trust in the law and reliance on institutions—the very opposite of the anarchist intention.98 The contrast is clear: Frick embodied the republican ideal of self-reliance as well as showing honor and courage; while Berkman was presented as foreign, cowardly, and alien. The article not only represented the common narrative of the two men in 1892, it epitomized the hyper-racialized terms on which Americans (and any nation crowing about their “civilized” existence) saw the world.

While the *Daily Picayune* took one approach in withholding Berkman’s name, more mainstream newspapers also succumbed to the temptation to foreignize the Russian-born

assassin. The anarchist movement was mainly considered German, thanks to Johann Most’s role as the face of anarchism and tropes from the Haymarket incident. The press capitalized on this to give Berkman a more fitting German name. Despite widespread knowledge of Berkman’s name (consider that the Picayune was accurate from New Orleans), the New York Times spelled the name as “Berkmann” for a week in an obtuse effort to depict a foreign element.99 His introduction to New York City readers began “Berkmann, or as the Pittsburg police call him, Bachmann, the Russian Jew…” before noting that he was “rabid.”100 In another variation, the Boston Daily Globe reverted to “Bergman” on July 31.101 Hammering the point home, the assailant was called “Bergman” 17 times in one article, despite having successfully spelled it Berkman for the preceding week.102 Far from regional, the July 24 headline of The Milwaukee Sentinel carried the simple, effective headline: “Shot by a Crank: A Russian Jew Printer Does the Deed.”103

Berkman’s foreign character was also emphasized through visual means. The Irish World and American Industrial Liberator supplemented a complete narrative of the attack with an illustration (at right). It shows a well-dressed Berkman with pointed, exaggerated features. It is a caricature of Jewish stereotypes: long chin, pointed nose, defined eyebrows, bushy hair. At the very least, it also foreignizes Berkman, and may well have taken a cue from the depictions of French anarchists in Harper’s Weekly.104 This drawing of Berkman is most notable because it looks nothing like him, even though it was published six days after the attack when his image was known and distributed. In contrast, Frick is shown as broad-shouldered and regal, with his

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100 “Berkmann an Anarchist: Too Radical to Get Along with His Fellows Here.” New York Times, July 24, 1892.
101 “Herr Most’s Name: It Was Signed to a Letter Addressed to Bergman,” Boston Daily Globe, July 31, 1892.
102 See, for example: “From Berkman’s Pen,” Boston Daily Globe, July 25, 1892.
103 “Shot by a Crank: A Russian Jew Printer Does the Deed,” Milwaukee Sentinel, July 24, 1892.
back turned to the gun. The illustrator’s perspective shows a gun to Frick’s head with smoke trailing up. The angle is reminiscent of the Lincoln assassination.\textsuperscript{105} (See Harper’s Weekly from April 1865). The sketch shows how unsuspecting and vulnerable Frick and his colleague was by showing them with backs turned, looking out the window. The viewer’s eyes are drawn to the decisiveness of Berkman, who purposefully has stepped forward and has the illusion of his arm reaching across the room with the gun. These points indicate a goal to impress upon the audience Berkman’s foreignness and malicious intent.

The press also closely tied Berkman and Goldman duo to the “nefarious” immigrant proclivity toward gathering in beer halls. The culture of “Red Saloons” were central to the story of the Chicago labor movement and Haymarket square incident.\textsuperscript{106} For better or worse, insular beer halls were excellent meeting places and culture centers for outsiders—especially to freely talk politics. The parallels of immigrants, immorality, and intoxication were all intertwined, particularly as the temperance movement grew in the 1880s and 1890s. By July 28, 1892, Goldman and Berkman were tied to this way of life. A New York World interview with Goldman

\textsuperscript{106} See Green, Death in the Haymarket: 138–39 on “Red Saloons,” 182-89 on Beer Halls as a gathering place before the Haymarket demonstration.
brought the reader inside the “Anarchist drinking den.” Consider the connotation den had—that of where wild animals hide out—before remembering Green’s assertion that anarchist would be portrayed as “ragged, unwashed, long-haired, wild-eyed.” As the reporter relayed an increasingly agitated Goldman, their careful narrative structure brought the reader within, to fear “swarthy, half-clad, and grimy... red-bearded Anarchists.” Apparently at Goldman’s prodding, the story goes “half a dozen Anarchists closed about the reporter, waving their fists in the air and hurling objurgations in German and Russian... face aflame with beer, heat, and anger...” Goldman “smile[d] amid smoke and beer fumes.” The article lives up to its title: it depicts a dimly lit den of caricatured and wildly drunk figures.

![Image](image_url)

**Figure 1.4.** “Among the Anarchists of New York: In “Tough Mike’s Saloon.” Harper’s Weekly, August 20, 1892, 812.

Although the ensuing August 20 Harper’s Weekly article “Anarchists of New York” was a more respectable portrayal of the socialist culture within beer halls, the images attached to the

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108 Green, Death in the Haymarket: 11–12.
article may well have been derived right from the “Anarchy’s Den” article. “Pictured” above are swarthy, bearded, perhaps Jewish men. The dimly lit room, beer steins, and billiards game give the impression of immorality. In the magazine’s full page spread, Goldman is drawn with the description “Miss Goldman, the high priestess of anarchy!”109 At risk of stating the obvious, it was taboo and character-damning for a woman in the time period to be in a saloon environment. A similar image published in Frank Leslie’s Illustrated Weekly is captioned “John Most’s Daily Inspiration” as he sips from a pitcher. The accompanying text is openly anti-Semitic: “Here is the typical Jew, as generally understood, with his long nose and beard and his repulsive cast of face.”110

The demonization of foreigners and hateful descriptions are indeed unscrupulous, but the conflation of Jews, drinking, and radicalism is somewhat cogent (for the period). The association of Jews and Europeans with socialism and its variants during the time is not an unforgivable stereotype: those who left Europe were unsatisfied for one reason or another. Immigrants were self-selective; an example being the influx of Jews from Russia during the violently anti-Semitic 1880s and ’90s. Beyond the legitimate impact of saloon culture on Chicago in 1886, the Berkman incident reanimated drinking and intoxication as a factor in the radical thought process, as evidenced by the illustrations and flurry of “tell-all” journalism. The tongue-in-cheek comment that alcohol was the “daily inspiration” of Johann Most relates a perceived short-term cause to radicalism and anarchist preachings. That alcoholism was at best a disease and at worst immoral—to many, it was both—made it easily affixed to the socialist and anarchist scenes.111

111 For instance, see Andrew Carnegie, “How to Succeed in Life” in The Pittsburg Bulletin, December 19, 1903, in which his first “commandment” states: “I suggest to you that it is low and common to enter a bar-room, unworthy of any self-respecting man, and sure to fasten upon you a taint which will operate to your disadvantage in life, whether you ever become a drunkard or not.”
Additionally, the tavern in America history has been an arena for subversive and underground revolution.\(^{112}\)

**Berkman and External Forces**

More refined sources (often periodicals) focused on systemic and intrinsic long-term causes of Berkman’s attack. Outside of Alexander Berkman and Emma Goldman’s specific bubble of “Autonomist” anarchists (they had split with Most and the traditional New York scene\(^{113}\)), the attack was universally denounced and ridiculed. To contemporaries it was so irrational that discerning analysis was expected from the popular press.\(^{114}\) Indeed, a vocal minority emerged directly calling for legislative action against immigrants and radical free speech.

The respective frameworks to be employed by the *Irish World and American Industrial Liberator* and *Harper's Weekly* are evident in the illustrations furnished alongside their articles. *The Irish World and American Industrial Liberator’s* first publication after the assassination was critical of anarchy’s “Bloodthirsty Principles” and focused on the assault’s condemnation by union workers and that it was “worse than dishonest” to correlate unions and the assassination attempt. After presenting the predictable “distancing” narrative, the *Industrial Liberator’s* cartoon posits a heavily foreign, racialized character (shown and analyzed on page 15).\(^{115}\) This is

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\(^{114}\) This emulated the perceptions of Peter Kropotkin’s “The Spirit of Revolt,” which wrote: “It is possible that while admiring the courage of the individual or the group which takes the initiative, the masses will at first follow those who are prudent and cautious, who will immediately describe this act as “insanity” and say that “those madmen, those fanatics will endanger everything.”

not the focus of the *Harper’s Weekly* analysis, and their illustration parallels this. The journal published a generally well-substantiated account of “The Assault on Mr. Frick.”

The image drawn by W.P. Synder on August 6, 1892 (at right) has consequential differences in Berkman’s representation from the *Industrial Liberator*. A separate *Harper’s Weekly* drawing correctly shows Berkman’s profile, which was translated to the scene below, where he accurately has no facial hair. This depiction does matter, because defaulting to racial cliches and anti-semitism is not only morally objectionable, but also distracts from more substantial aspects of the attack.

Perhaps only a marginally better charge, the *Harper’s Weekly* drawing is consistent with an attempt to portray Berkman as deranged. His clear facial expression shows wide eyes and a twisted, awkward, and unstable body. This corresponds to the article’s description of his “unintelligent… evil face.” In contrast, Frick is depicted by Snyder as casual and approachable, with his head cocked to the side listening to his partner, a leg strewn over the side of the chair in a relaxed manner, and an arm on the chair’s back. Frick looks like a rich man who knows he is being watched: he is casual, down to earth, and approachable. The Frick of *Harper’s Weekly* is drawn handsomely and appears considerate and innocent, therefore impressing upon

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the viewer that he is trusting and without fear; this is a desirable American countenance unlike Berkman’s doltish depiction.

The Harper’s Weekly analysis of August 13, 1892 categorizes Berkman in the class of anarchists who are “young men...carried away by the ambition to distinguish themselves.” They are portrayed as being easily susceptible to radical ideology. The editorial argues that this is no excuse however, due to the implicitly violent “character of their dementia.” Here, mental illness is tied to the young anarchist. Elsewhere the article defines anarchy as a “curious psychological phenomenon.” Although the author entertains the possibility of anarchism’s roots as “the product of the present vicious organization of society,” it is ultimately for the argument’s effect—the example is quickly given that a thief and an “honest” laborer are produced by the “same society.”

The article concludes that given the identical environment in the example, social conditions could not be responsible for one-off, bad outcomes such as Berkman’s Attentat. Everyone had seen what was happening in Homestead; it must have been something unique to Berkman that drove him to Frick’s office. This is an exact demonstration of the “nature versus nurture” debate: the author entertains that the surrounding environment was Berkman’s principle motivation (“nurture”), before concluding he must be demented; the action was the cause of his mentally deficient “nature.”

The mental health of anarchists and assassins was indeed topical—in the years preceding, psychologists had defended the insanity plea of President Garfield’s assassin Charles Guiteau, and in the years following, McKinley assassin Leon Czolgosz was inspected for his own defects on the basis that an ordinary life—as the example was given by Harper’s Weekly—could not

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solely inspire crime.\textsuperscript{119} The \textit{Galveston Daily News} (Texas) brought strong charges against those in “high places” as they compared Berkman to Guiteau. A July 25, 1892 editorial called on politicians to “propose by open, systemic, and peaceful processes to arrive, without delay and worry, at the Bellamy ideal of nationalism.”\textsuperscript{120} The paper alleged that politicians propagated the myth that a workman’s tenure earned “a right to perpetual employment on terms of his own,” thus inflaming the conflict and inciting those on the side of labor into action. “Guiteau was somewhat similarly incited to the removal of Garfield…. Men in high political positions can not escape responsibility for their words.” The author cites such inflammatory platforms as “tirades against corporate wealth,” and advocacy on behalf of an income tax. So the argument goes—as also purported by the \textit{Harper’s Weekly} analysis—those mentally weak and susceptible to radical action could be spurred on by the rhetoric of politicians.

The weekly periodical \textit{The Nation} considered the Homestead strikers themselves “morally responsible” for Berkman’s act, conflating that their asserted justness in killing the Pinkertons had the “right and logical” escalation of killing their employer, too. The author admits no “direct connection” between the laborers and Berkman, but still finds his \textit{Attentat} a “natural result” of the striker’s attitudes.\textsuperscript{121} The publication’s early vociferous defense of the Pinkertons in the July 6 clash falls in line with the anti-labor position.\textsuperscript{122} Once again, Berkman’s apparent “mental weakness” made him “easy prey” for radical dialogue allegedly aroused by the cause of labor against their boss.

\textsuperscript{121} “The Week,” \textit{The Nation}, (July 28, 1892), 60.
\textsuperscript{122} “The Merits of the Homestead Trouble,” \textit{The Nation}, July 14, 1892, 22.
It was thus incumbent on the other side of the Homestead conflict to answer and showcase Berkman’s motive as driven by the actions of Frick. This is exemplified by the very intelligently written article “As to Anarchy” in the *National Labor Tribune* (Pittsburgh) two days later, on July 30. The article fundamentally sets the line that the crime should be repudiated promptly and emphatically, and that its harm is against both capital and workmen.\(^\text{123}\) The *Labor Tribune* does consider Berkman’s motive—and uses it in the buildup to the editorial’s argument. The author notes the possibility of Berkman’s inspiration to kill Frick as from the “great moral sin” of calling on the Pinkertons and thus being the principal factor in the bloodshed on July 6. Yet, reflecting the “Social Gospel” ideal of the time, the article condemns the “individualistic” crime which “forestall[ed] judgment of the Almighty,” showing the American religion-based temperament which entrusted God to deal with perceived evils of the day. It is possible the *Labor Tribune* was directly responding to the widely read *Nation* article that cited violence against Pinkertons, not violence by Pinkertons, as agitating such action. As such, the article condemns both Frick’s stance and Berkman’s action, writing:

> This assassination episode is in the direction of general Anarchy in this country, a stride in advance of the Pinkerton episode at Homestead. Both of these notable events are in the line of that bloody revolution which nineteenth century civilization should use its best brains to avoid by peaceful reform… both these events are part of such revolution, hence that it is incumbent now upon statesmanship, upon every person having thinking powers, to address themselves.

There is no mention of mental illness or anything diseased about Berkman resorting to his murderous inclination. This is because the author seeks to establish the imprint of the surrounding conditions on Berkman: the poor treatment of the working class by Frick and the elite. Indeed, contrasting the point of the *Galveston Daily* that politicians were the root cause, it was “incumbent” upon politicians to resolve social unrest. Homestead is largely remembered for

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the use of Pinkertons and the armed clashes between strikers and mercenaries, violence argued as one effect of the conflict between labor and capital. The article wisely distances Berkman from the responsibility of the laborers, but utilizes his attack as evidence that radical elements will continue to respond to the moral sins of employers such as Frick should responsible action not be undertaken. The *National Labor Tribune’s* argument for peaceful reform and a productive solution called upon the two negative events at Homestead.

“A Warning” was published at the same time by the *Pittsburgh Catholic*. It checks nearly every box of reactions against Berkman’s assassination attempt and serves as an excellent source with which to conclude. It is openly anti-immigrant, explicitly calling for measures to prevent America from falling to perceived European barbarism. By allowing European immigrants and their ideology into the country, the author argued “we are not better, no safer, no securer” than those in Europe. The assault on Frick should be an “eye opener” that it is not enough to “[look] upon the down trodden races of Europe,” because “our lax laws” have given them “a foothold here.” It exactly defines the perspective of American Exceptionalism: “We read…[of] foul and murderous blots [which] dim every page of European history…[in] America such things cannot be. But are we not finding ourselves mistaken?” The author’s clear point is that freedom of speech and the influx of those fleeing Europe’s “barbarities” threaten America’s “superior civilization.” He notes allowing those such as Johann Most a platform, “the seeds which germinate” are sown and blossom “blood red.” The article calls on legislative and social action against the doctrine of anarchism and violent radicalism, charging capital and labor alike. It cites Berkman’s “diseased imagination” as provoked by the foregoing allowances. To the author, as things stood, the laws of the United States were not positioned strong enough to prevent the “murderous methods of continental conspirators.”

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Two weeks later, Harper’s Weekly continued in this same vein, albeit more tempered. The periodical’s front page read that Berkman’s “outrage” had “called forth a demand… for the suppression of anarchist papers in this country.” The “very objectionable” doctrines—as implicitly evidenced by Berkman—had the outcome of “excercis[ing] an exciting influence upon diseased minds.” Yet, the article noted austere implications of peacetime “suppression” of newspapers and free speech. Foreseeing what the post-Bolshevik Revolution Red Hysteria would look like, the author adds that such measures would “open the way to abuses of power far more dangerous than any abuse of the freedom of the press.” From this balanced consideration, it is resolved “a law may be made holding the writer or editor of a newspaper personally responsible for any actual incitement to crime….We punish the libeller.”125 As previously discussed, the author views anarchism as a belief of the susceptible, condition of the weak. Berkman falls into this category.

**Conclusion**

Constructions of what American “free speech” should entail were impacted by anarchism. Berkman gave additional attention to the movement; his manner being so violent and public so as to inspire some to consider how to restrict freedom of speech. As will be discussed later, New York State’s 1902 Criminal Anarchy Act was inspired by the desire to prosecute Berkman’s comrade Emma Berkman, after her alleged role in inciting Leon Czolgosz to assassinate President McKinley in 1901. Landmark Supreme Court case Gitlow v. New York (1925) upheld Gitlow’s 1919 arrest for his distribution of the Left Wing Manifesto under the “bad tendency” principle, which—as expressed by the Harper’s Weekly author—finds distinction between generally articulated doctrine and specific provocations as guides for how to limit speech. Anti-radical legislative history is defined by the principle of outlawing speech with a

clear malicious or degenerative intent (bad tendency). As this thesis will argue, this “bad tendency” principle provided a foundation for the desire to protect the United States from a vocal minority of violent radicals. As has been shown, popular press reaction to the Berkman *Atentat* showed nascent momentum toward acting on this impulse.

As shown by the sources, Alexander Berkman’s assassination attempt was politicized and tied to the issues of his era. Berkman was racialized, alienated, and othered, as was the violence and smoking gun he brought to Pittsburgh. Violence and radicalism was further proven as an unwanted, un-American solution. American ideals and self-confidence relied on a premise of superiority to European peoples and methods. As shown in the *Pittsburgh Catholic* article, some began to see this as “false security.” Berkman’s *Atentat* was no moment of mass political inspiration; it instead had the effect of allowing foreigners to be further demonized and harming the cause of labor. While to some, such as the *National Labor Tribune*, this was evidence that positive and productive social reform was needed, it was more widely considered that the goals and proclamations of social reformers were drawing in those vulnerable and deranged to violence, perhaps threatening the fabric of American society.

In a way unique from the Homestead Strike itself, the entanglement of Berkman and Frick was a representative aspect of the Gilded Age; at the least for its reminder that social change was not on the near horizon. It was no moment of *Atentat*. Certainly it illustrated that radical and terrorist-like attacks would not be the solution to the conflict between the working class and the elite that marked the end of the 19th century—an authentic American solution was required for this American problem.

In eulogizing the anarchist movement of the 1880s, Michael Kazin writes: “[Anarchist] eloquence persuaded few Americans…Anarchists’ defiance of the dominant order and threats of
violence against it scared far more people than they cheered.”126 This is evidenced in how the press framed and represented Alexander Berkman in 1892, itself a reaction supported and continued by popular sentiment. Both pro-labor and anti-labor factions called for legislative action in the wake of Berkman’s assault on Frick. As would be seen, the 1901 assassination of President McKinley by anarchist Leon Czolgosz gave rise, directly or indirectly, to Theodore Roosevelt and the Progressive platform. This was a victory for those who considered radicalism a product of the stifling American environment of the Gilded Age. In an earlier time, Alexander Berkman had no such success. Indeed, the repressive and negative inclinations of nativists would be stirred once again in legislation following the McKinley assassination, and advance all the way to the Red Hysteria of 1919.

Chapter Two: The Post-McKinley Legislative Solution: a Dangerous Path

“Let New York lead and march toward anarchist suppression and show the way to other states in crushing this dreadful evil.”

Introduction

Alexander Berkman’s attack on Henry Clay Frick in 1892 was a low-stakes moment, far from any moment of revolution or mass awakening. The reactive inclinations of the American newspaper presses prove a glimmering moment of anti-radicalism that was heightened and invigorated just short of ten years later, when Leon Czolgosz slayed American President William McKinley in September 1901. Czolgosz, a professed anarchist, had a murky motive; which made him all the more terrifying. He sought to strike American society, the esteemed office of the president, rather than the steadfast upholder of the status quo that McKinley’s political career embodied. Of Polish descent but American born, Czolgosz’s ideology was little more than a brief foray into the American anarchist movement. Yet the reality that McKinley’s assassin loudly professed adherence to the nebulous international network drew great attention and borderline hysteria to the American anarchist movement.

That Czolgosz cited Berkman associate Emma Goldman as his motivation understandably fanned these flames. Goldman embraced general social issues; her lecture tours that made her famous in the 1890s spoke on labor rights, freedom of speech, economic inequalities, women’s rights, and LGBT tolerance. While surely bona fide in her beliefs, her criticisms of mainstream Gilded Age issues and anti-capitalist laments endeared her to a broad audience of disenchanted souls on American soil. This provided Goldman a popular following that Alexander Berkman could only dream of. Although Goldman was critical of European despotism and sympathetic towards the assailants of the Decade of Regicide, she tuned her own

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128 Avrich and Avrich, Sasha and Emma, 142.
voice to a different, principle-based tone. It was this increasingly known voice that Leon Czolgosz was drawn to.

Leon Czolgosz’s act was what Berkman’s failed to be, a stamp on history that stirred up the masses. Like Berkman though, the current of popular opinion proved damning rather than uplifting. The act was a low criminal making a point, a common “foreigner” walking the streets like everyone else—who vanquished the office of the presidency. It showed the vulnerability of American institutions. If Czolgosz was ordinary, then many others could be on the brink of radicalism and just needed to be pushed over the edge by anarchist ideology. Despite Czolgosz professing his ties to the anarchist network of Goldman and Berkman there is convincing evidence that Leon Czolgosz was a true lone wolf, connected to Emma Goldman and her following only insofar as he cited her as his inspiration. Czolgosz and his family “had bought into the American dream…. If he had not drunk so deeply of its promise he never could have fallen so far into disillusionment.”

Certainly that was indicative of how many felt during the Gilded Age (the late 19th century), a time of massive wealth inequality and few labor rights.

Although social conditions did not improve as the 1800s concluded, Alexander Berkman’s attack and the negative response of the masses led to a paradigm shift in the anarchist movement, which accepted the newfound pacifism of Johann Most. Prior to Berkman’s 1892 attack, Most had denounced the use of violence, writing “To have a propagandist effect, every deed needs to be popular… if that is not the case, anarchism makes itself unpopular and hated.” Elsewhere, he decried that “irrational acts of terror” would only hurt the anarchist

\[129\] Avrich and Avrich, Sasha and Emma, 142.
\[130\] See introduction of Rauchway, Murdering McKinley also note that Czolgosz was US-born.
\[131\] On the “lone wolf” conclusion, see Rauchway, Murdering McKinley, 108.
\[132\] Rauchway, Murdering McKinley, 166.
\[133\] Johann Most, April 23, 1892. Cited and translated on Avrich and Avrich, Sasha and Emma, 88.
cause.\textsuperscript{134} Although Goldman recoiled at Most’s denouncement of Berkman,\textsuperscript{135} she also came around to advocate the philosophy of anarchism, rather than violent ends. While Goldman staunchly defended her partner Berkman, she too shifted from militancy to activism, making a powerful name for herself as a lecturer.\textsuperscript{136} Indeed, the movement led by Goldman was transforming itself in the 1890s, not embracing the “Decade of Regicide” across the ocean, but instead “moving into new rhetorical territory.”\textsuperscript{137}

The shifting definition of anarchism and legal ambiguity of the term is the focus of this chapter. Yes, some legislative action was demanded against anarchists after the Czolgosz assassination, but who exactly, and on what basis. The Immigration Act of 1903 delineated “classes of aliens” to be excluded from the United States, including “anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States or of all governments or of all forms of law.”\textsuperscript{138} In short, was the 1903 Immigration Act intended to exclude all anarchists, and subject alien anarchists in the United States to deportation, even if they were “philosophical?”

This internal shift in the anarchist movement created many grey areas and contradictions in how anarchism could be understood. Adding into this equation that the President was killed by an anarchist, the rhetorical approach anarchists began to promote was damaged. To most, it became evident that there were two kinds of anarchists—philosophical and violent—but that all should be punished. The deed’s professed ties to the movement fostered by Emma Goldman

\textsuperscript{134} Johann Most, “Reflections on \textit{Attentats},” \textit{Freiheit}, August 27, 1892. Cited and translated on Avrich and Avrich, \textit{Sasha and Emma}, 88.
\textsuperscript{135} The infamous clash between the two resulted in Goldman lashing Most with a whip at an event in December 1892. See “Struck by Emma Goldman: John Most Made Fun of Her and She Resented It,” \textit{New York Times}, December 20, 1892.
\textsuperscript{137} Avrich and Avrich, \textit{Sasha and Emma}, 139.
\textsuperscript{138} Immigration Act of Mar. 3, 1903, ch. 1012, 32 Stat 1213.
demanded that any legal definition of “anarchism” indict philosophical speech in its relation to violent acts; the two appeared to be in concert.

The McKinley assassination does fit rather neatly into Richard Bach Jensen’s “terrorism” or “European” interpretation of anarchism; it lacked coordination and a defined purpose beyond order-upsetting violence. The 1890s in Europe were the “Decade of Regicide,” where an extreme mode of dissent was to attack the rulers and elite. “The era of dynamite,” historian Paul Avrich writes, “almost invariably [was] the work of isolated individuals on the fringe…. Yet they fostered the image of an international conspiracy bent on undermining civilized society.”

Czolgosz’s act slid into the mold. In this way, Emma Goldman and her American anarchist movement were doomed; just as ideological radicals were to be generally condemned in popular opinion and ensuing legislation. While the anarchist movement in the United States shared commonality with European terror in name only, the name was enough.

By clinging to the same designation as the European incendiaries who stoked global fear, anarchists allowed the conflation of their movement with plainly unpalatable European terror. As seen in Chapter One’s epigraph, fear of becoming Europe was deep-rooted in American nativism. Most and Goldman internally led American anarchists away from violence means, heeding the lesson of Berkman’s spectacular failure. A 1904 Supreme Court case, *Turner v. Williams*, highlighted the paradox that Emma Goldman and her associates in America faced by sharing the label of their American anarchist movement with European terrorists.

The facts of the case are simple, to the extent that it is within reason that it was a test case from the anarchists residing in America, who faced deportation under the Immigration Act of 1903 (the road to which is laid out in this chapter). John Turner was British lecturer and anarchist who traveled to the United States and gave a lecture in New York City which advocated for a

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139 Avrich and Avrich, *Sasha and Emma*, 142.
general strike of industrial workers around the world, an opportunity for workers to assert their power. This trip in October 1903 led to his arrest for being an anarchist and for spreading inciteful anarchist doctrine. Emma Goldman hosted Turner and organized the event which he spoke at. The placid reaction of Goldman and Turner to his arrest—as well as his carefully non-violent speech and more broad anarchist literature seized off his person have led some historians to believe that it was an “anarchist propaganda tool” to publicize his case. At the very least, it is reasonable to conclude that Goldman had orchestrated the event as a test of the new anti-anarchist provision. Could she be next to be deported, merely based on her anarchist identity?

On most grounds, the case had a low chance of success, at least in allowing for Turner to stay in the United States. In challenging the arrest and deportation of Turner the constitutionality of the Immigration Act of 1903, under which Turner was charged, was never in doubt. Although the appellant’s attorney Clarence Darrow made an argument based on the speech safeguards of the First Amendment, it was well established that a sovereign nation had the power to regulate and exclude aliens without Constitutional protections: “if an alien is not permitted to enter this country…he does not become one of the people to whom these [rights] are secured by our Constitution….” In short, the state has an unchecked power to deport anyone, the Immigration Act of 1903 was guidance to an end of shaping who was entering the United States, as well as a warning shot to anarchist leaders like Emma Goldman. Turner’s temporary housing provided by Goldman indicates that lawful residence was not the true objective.

The court’s irritation at a radical foreigner appealing to the American Constitution presents as foreshadowing of Red Hysteria–era decisions, but the question remains: why then,

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140 See Avrich and Avrich, Sasha and Emma, 171-74.
141 Turner v. Williams 194 U.S. at 286.
142 Turner v. Williams 194 U.S. at 289–90; 92.
would the court hear Turner’s appeal? The court likely heard Turner’s case for the same reason Goldman funded his legal challenge—the government and defendants both sought clarification on the anti-anarchist statute.

The court recognized that the prevailing contention was that Turner was not an anarchist under the law’s provision, where Darrow and Goldman hoped to splinter philosophical anarchism from the “force or violence” and to insulate the liminal zone that was the exchange of radical and potentially revolutionary ideas. Yet the court chose a much simpler angle to determine if Turner was an “anarchist” in accordance with the statute. Writing for the court, Chief Justice Fuller wrote: “When an alien arrives in this county, who avows himself to be an anarchist, without more, he accepts the definition.” Consider that despite all varying conceptions of what anarchism truly entailed, an embrace of the umbrella term beat the movement in their own game.

The convincing 9–0 decision supported Chief Justice Fuller when he further wrote that, if in the general parlance anarchism included philosophical anarchism, that Congress used the general term on the “opinion that the tendency of the general exploitation of such views is so dangerous to the public weal that aliens who hold and advocate them would be undesirable additions to our population…. The opinion is an important institutional confirmation that, at large, the punishment and expelling of nonviolent radicals was in the state’s interest, according to the intent of Congress. It is noteworthy that Fuller was confined to specifying “aliens” as the dangerous holders of the anarchist ideology. Certainly, the ideology was not limited to foreigners, but the opportunity was limited to targeting foreigners who enjoyed no Constitutional protections.

143 Turner v. Williams 194 U.S. at 293.
144 Turner v. Williams 194 U.S. at 294.
As such, anarchism as generally discussed in this thesis refers to not blind violence, but a curated and insular movement surrounding Emma Goldman and Alexander Berkman in the United States that fomented (mainly) radicalized immigrants and overlapped with nascent socialist and communist movements in the United States. Yet its definition is a moving target, and Justice Fuller’s opinion in 1904 provides reasonable evidence that terroristic anarchism and more vague ideological radicalism were inextricably bound. Eric Rauchway’s *Murdering McKinley* sums the contradiction of the philosophy; it was at once “abstract theories about an earthly utopia” while occasionally aiming to denigrate society by waging war. The operative part of anarchism as it stood at the turn of the century was its *unpredictability*. This led to a distinct unease over the radical—anything leading to a terroristic attack could be culpable. All told, it was American fear of *philosophical* anarchism after the 1901 assassination of President McKinley that demanded a legislative response. The broad interpretation of responsible ideology shown in *Turner v. Williams* led to the weaponization of anti-radical legislation during the Red Hysteria.

Even with Alexander Berkman in prison after his *Attentat* and Emma Goldman laying low as she studied, perception of an anarchist threat to the United States had only increased during the 1890s. Although some historians have argued Berkman and Goldman were the sole backbone of anarchism in America, the term’s wide-ranging definition led to ongoing contemporary fear of the seeming endless international network. Across the ocean, a resurgent wave of violence in Europe under the flag of anarchism appeared. Public bomb-throwing was often the vice of choice, but the assassinations of heads of state such as President Carnot of France (1894), Spanish Prime Minister Antonio Cánovas del Castillo (1897), Empress Elizabeth

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145 Rauchway, *Murdering McKinley*, x.

of Austria (1898), and Italian King Umberto I (1900) put Europe on high alert. By extension, this had a dual effect on the United States. Principally, it kept the fear of anarchists and their menacing intent in the news cycle. Perhaps most terrifying, such anarchists were not policy or reform-based but instead motivated by carnage: picking off heads of state seemingly at random and living up to the most extreme definitions of anarchism that could be comprehended.

Further fears over an international anarchist ring—ignorant to national boundaries or the policy objectives of their targets—made the continental problem of anarchist violence that of the United States, especially as migrants flooded in from Europe. Xenophobia was not at the crux of the stereotype; the 1890s served as prime evidence that radicalism was literally trickling in from Europe. Widespread perceptions were more logical than nativist, but the two are not mutually exclusive. By 1900, 10.4 million of those in the United States were foreign-born (13.6% of the population); about 86 percent of those incomers were European born. As Emily Pope-Obeda shows, the historiography varies on the potentially nefarious targeting of immigrants in the Red Hysteria. Erika Lee clearly explains the explicitly racist movements that claimed the voice of true Americans, for example, the Immigration Restriction League. She shows that the obvious casual relationship between immigrants and radicalism served to be easy fodder for xenophobes. Yet, racism and nativism were not necessary prerequisites to appreciate the correlation. The history of American nativism and even its relationship to the 1919 Red Hysteria has been well covered. This chapter’s focus is on a second effect of the wave of European violence—a plethora of sources saw not just the virility of the anarchist movement in Europe, but

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150 The bibliography of Pope-Obeda’s 2019 “Expelling the Foreign-Born Menace” has an excellent aggregation of this historiography, see pages 51-52.
also the corresponding crackdown by the continent’s governments. The fear became that restrictions in Europe would drive radicals to the United States unless the legislation was matched domestically.

General disdain for separating Europe and her conditions was long-prevailing. A fear was expressed in the passionately nativist Chicago Daily Tribune: “Looking into the future…when Europe has emptied her discontents…in sufficient numbers along our shores, there may be an explosion similar to that of the Communists in Paris.” The article’s words from 1881 were prescient indeed; not for the bona fide advance of Communism, but indicative of mounting hysteria against it. In 1894, the Senate Committee on Immigration referred the “Hill Bill” to deport and exclude anarchists on the grounds that they made a “menace” to “society in general.” A single representative’s concern over the bill’s deficiency in defining anarchism halted the bill’s passing. It is an irony of this historical tale that this hurdle was not cleared in 1894, yet 1903’s greater moment of agitation saw functionally equivalent legislation. The basis of both policies is simple, and it was played out in the Turner v. Williams decision: anarchism could be legally punished through deportation without criminalizing its belief.

The two legislative offerings produce some semblance of change over time; the earlier Hill Bill was proactive while the 1903 legislation found widespread support. Alexander Noonan argues that the latter law’s leapfrog of the issue of defining anarchism “disregarded years of discussion on the merits and adverse consequences of exclusion based on ideological beliefs.” The popular support for the 1903 Immigration Act could have merely justified relatively rough “emergency” terms—a broad definition to be later refined. That the Supreme Court almost

151 Green, Death in the Haymarket, 5-8; 15-17.
153 Sen. David Hill, August 6, 1894, 53rd Cong., 2nd sess., Congressional Record 26, p. 8231.
154 Noonan, ”What Must be the Answer?” 370.
immediately—and unnecessarily—upheld a catch-all radical term as grounds for exclusion and deportation from the United States was a powerful step toward the later Red Hysteria. This chapter questions the interpretation as it reviews the statutory intent of the 1903 Immigration Act. It concludes that indeed, philosophical and violent anarchists were willfully conflated under the umbrella term. More widely, my thesis attempts to separate anti-radicalism and nativism, but the contemporary path of least resistance was to take a nativist approach to dealing with the radical threat on American soil.

**Historiography and Methodology**

Existing research provides an excellent backdrop in establishing that in the wake of Czolgosz’s assassination, nativism reared its ugly head, anti-immigrant sentiment became more virulent, and legislative action was demanded. A wealth of historiography, most of it recent, surrounds the treatment of anarchism after the assassination of President McKinley in 1901. This makes sense for several reasons. Primarily the assassination of an American president demands the attention of historians. In close relation, the McKinley assassination drew an especially concerned response from contemporaries because, as newfound president Theodore Roosevelt decried, he was the third of the last seven elected presidents to be slain.\(^{156}\) Despite the prominence of anarchist violence in Europe, the threat was seen as confined to the squaid continent. The McKinley assassination was a shock. Therefore, the response—perhaps embarrassment—in the aftermath itself demands a good deal of attention.

In the aftermath of McCarthyism, another “Red Hysteria” era in the wake of World War II (the period roughly concluded in the late 1950s) scholars began to look at the Red Hysteria through a historical lens. This first wave of anti-radical historiography is anchored by William

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\(^{156}\) White House, *The Annual Message Of The President Transmitted To Congress December 3, 1901*, Papers Relating To The Foreign Relations Of The United States (FRUS).
Preston Jr., a professor of history and expert on civil liberties and protector of those with nonconforming ideology. His 1966 *Aliens and Dissenters: Federal Suppression of Radicals, 1903–1933* remains a touchpoint for scholars of radicalism, federal infringement of civil liberties, immigration policy, and nativism—all of which are touched on in this thesis.

Preston could more effectively support his assertion that “a fateful and erroneous” conflation of alien and radical was established by the 1890s. While a valid point—these ideas were evident—his argument takes for granted that it was universally established. Preston contended that the majority of Americans were nativist by the time President McKinley was shot in 1901, in large part evidenced by the establishment in 1881 of exclusionary legislation against Chinese migrant-workers in reaction to the economic depressions. It follows logically that the Chinese Exclusion Act demonstrates the manifestation of a desire to cultivate and establish who was to comprise the “American community” in the face of globalization and mass immigration. In an ensuing debate, those such as Sen. George Hoar (R-MA) took a similar stance in opposing anti-Chinese immigration policies and similar anti-radical policies. Yet Preston was too simplistic in his association of the two movements; it has since been effectively argued that anti-Chinese opinion was economic-driven.

Anti-anarchism had much different roots. While proponents were often one and the same under the umbrella of nativism (see the development of formal movements such as the Immigration Restriction League), a criticism remains that if this vision of immigrant as

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158 Sen. William Hoar, March 1, 1882, 47th Cong., 2nd sess., Congressional Record 13, p. 1515. Hoar argues that to forbid entry to the United States based on ethnicity is to violate “the doctrine that the pursuit of happiness is an inalienable right.” In debate leading up to the Alien Immigration Act of 1903, Hoar also feared repression based on revolutionary ideology; see Sen. William Hoar, December 9, 1902, 57th Cong., 2nd sess., Congressional Record 36, part 1, 144.
subversive radicals was truly widespread, a more swift, punishing, and forceful response would have followed the assassination of President McKinley in 1901.

The scope of Preston’s study centers on the 1919 Red Hysteria, but incorporates and supports his idea that the 1919 Red Hysteria was evidence of attitudes many years in the making by beginning the study in 1903. Preston contends that prior to his study, the 1919 Red Hysteria was seen as a short-term product of World War I and the Russian Revolution. *Aliens and Dissenters* argues the “mass attack” was the product of a country oriented against outsiders, beginning in the 1870s when policy makers conflated radicalism and aliens. Concerns over internal security were intertwined with nativist sentiments. While isolated events such as the Haymarket Bombing stirred up desire for restrictive legislation, the effort was lacking political capital and a broad coalition. To modern historiography, this is an entirely legitimate premise from which many arguments are built. Indeed, the preceding chapter on Alexander Berkman’s 1892 *Attentat* serves as a glimpse of those professed themes: a range of sources and actors were quick to jump to nativist positions, but not sufficiently alarmed to act with exclusion or targeted repression.

Alexander Noonan’s 2016 article “What Must be the Answer of the United States to such a Proposition? Anarchist Exclusion and National Security in the United States, 1887–1903 counters and expands William Preston Jr.’s 1966 study. Preston’s perception of “nativism lying latent…. respond[ing] quickly to fears awakened” by the McKinley assassination was perhaps part of the story, but an explanation of the simple scapegoating of immigrants for radicalism does not tell all. Noonan emphasizes the 1903 Immigration Act was connected to national security, relating that the anarchist threat was addressed via “undercover agents, expanding federal

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161 As cited in Noonan, ”What Must be the Answer?” 349.
power…[and] restricting press freedoms—all hallmarks of modern national security policies….”

Certainly, it was the expression of a sovereign state professing to protect itself. Noonan’s argument looks at the futile legislative efforts in the 1890s not as drawing the inevitable path to the Immigration Act of 1903, but as a base from which something had to change in order to have an agreeable law. He writes, “Anarchist exclusion was far more than an example of a rising nativist tide raising all boats and excluding a widening spectrum of undesirable aliens.” Noonan continues that, in the wake of the McKinley assassination, sufficient alarm was sounded that the nation’s security was threatened not by immigrants at large, but specifically by anarchists.

Noonan brings to issue that anti-immigrant sentiment and anti-radical sentiment were two different things. His article, while excellent, is limited to a legislative history—the vast majority of his citations are from the Congressional Record. While this provides an excellent framework for his article, his conclusions should be evaluated against a wide and complex popular source base. The first conclusion to be evaluated is that the mood had shifted so as to make Congressman George Ray’s (R-NY) 1903 conclusion “better make no law than an ineffective one…” unwelcome. In 1890, the question was phrased on the Senate floor as “whether the anarchists or the socialists...make it necessary for us to frame laws that would be an annoyance to 99 out of 100 people who come here.” As Noonan argues, appetite by 1903 favored an imperfect law rather than nothing, a crucial aspect in the road to the Red Hysteria. Second, Noonan argues that “those voices trying to distinguish between philosophical and violent anarchists were overwhelmed…”

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162 Noonan, “What Must be the Answer?” 352.
163 Noonan, “What Must be the Answer?” 372.
166 Noonan, “What Must be the Answer?” 374.
were to be conflated, but that was no certainty. It is initially most relevant to begin with the issue of the establishment of anarchists as a separate class from immigrants at large, however.

**Conceptualizing Anarchists**

A telling piece of evidence that supports the notion of anarchists as fundamentally different from immigrants at large is seen below, on the October 5, 1901 cover of influential journal *Harper’s Weekly*. Rather than showing nativist or isolationist ideals, it instead depicts the United States as the quintessential melting pot. On board the packed vessel is not only Uncle Sam, but also a diverse populace. Relying on stereotypes, it appears the illustrator (from left to right) depicts people from Mexico, Britain, Asia, Africa, Russia, Europe, and India. Above, find a Native American. The message is clear: all nationalities are welcome, but not all identities. The focal point of the image is obvious, the anarchist who is being thrown overboard. The docile inclusion of such a diverse group of ethnicities and nationalities on the boat makes their presence seem welcomed, and gives the author the benefit of the doubt that his depiction of the anarchist is not xenophobic, but rather brutally stereotypical.

Again epitomized is what Haymarket historian James Green calls “a terrifying picture of the alien anarchist as a ragged, unwashed, long-haired, wild-eyed fiend, armed with a smoking revolver.” A key distinction though, is that Green attributed this image as a 19th-century construction by nativists.\(^{167}\) Manifestly, by 1901, it is not a nativist embracing this stereotype but a routine source. Not just wild-eyed and ragged, the man has four pointed canine-like teeth, rather than a human mouth. His hair across his face carries the shape of flames, wisping up. His eyes are not only filled with hatred; he appears to be aflame. Twisted legs and claws for hands complete the dehumanization. He clutches at a dagger dripping blood, a gun, and a smoking bomb.

\(^{167}\) Green, *Death in the Haymarket*, 11–12.
Drawn a month after Leon Czolgosz took aim at William McKinley, the image keys at one issue in dealing with anarchists: what to do with them? Pointedly, there is a lifeboat in the top left of the image, but Uncle Sam has no designs on using it. The lifeboat is an important and conscious part of the scene; take for instance that many other details of the ship are disregarded. He is throwing the menace overboard, to be swallowed up by the ocean. In the spirit of comparing anarchists to pirates as some sources did, even a still-inhumane marooning on an island is not in the cards. He is to be drowned. It can be expected therefore that this image is in fact not advocating for deportation of anarchists, but for the elimination of the violent threat.

Figure 2.1. “W.A. Rodgers, “No Room on This Ship,” cartoon in Harper’s Weekly, October 5, 1901: 995.
The actual October 5, 1901 issue of *Harper’s Weekly* took a milder tone in the feature article “Anarchy and Its Suppression.” A premise is imported from the cover: “Government can and ought to protect itself,” but the actual article discusses how to treat philosophical anarchists, who when categorized as passive or latent, applies to the vast majority. Perhaps the cartoon is a remedy for dealing with those who have acted on their inclinations and should receive the death penalty. Indeed, it follows that by the October 5 publication date, substantive attention had moved on. Czologsz had been found guilty and was to be sentenced to death.168

“Anarchy and Its Suppression” deals not with immigration or nativism, but instead cries “it is impossible to punish mere opinion…[but] an attempt should be made” to discipline anarchists, somehow.169 Powerfully, the article extends the desire to punish so-called “regular anarchists” on the basis that “if he be active, he is always a potential murderer, at least a potential inspirer of murder.”170 The swift and broad stroke reveals an appetite for mass repression. The article argues to that date, anarchists were treated leniently based on the ideal of freedom of speech, “we have made a mistake…no anarchist speech should go unpunished.” The focus of the article was centered not on Leon Czolgosz, but on Emma Goldman.

Indeed, this reaction to suppress anarchy was entirely focused on so-called philosophical anarchy, rather than the violent actions of a select few. This was the lesson developed from domestic anarchist incidents such as Alexander Berkman’s 1892 attack on Henry Clay Frick. As illustrated in Chapter one, most public outcry sought harsh punishment for Berkman, not just vengeance-seeking, but as a deterrent to those with similar inclinations. It was only a select few who examined the root causes of his ideological act. With the fear of an imported danger after Europe’s “Decade of Regicide,” and punishment for Czolgosz a straightforward execution, the

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168 He was killed by electrocution on October 29, 1901.
170 “Anarchy and Its Suppression.”
nation had emotional capital to examine who had influenced Czolgosz and why. Naturally, any society may have unhinged and deranged assailants, willing to use violent means for a variety of motives. As again explained by Eric Rauchway, it was the commonality of Leon Czolgosz that struck fear, contrasting with Berkman’s obvious depiction as a deranged outsider.

Unabashed advocacy for restriction of speech was no longer taboo, instead perhaps popular. The Harper’s Weekly article makes a convincing case: “How can [anarchists] be treated as criminals? … Words that incite crime are, however, a criminal act.” This is rationalized by the conclusion that the murderous anarchist “is going to the logical extreme of the [oratorical anarchist’s] utterance. Therefore the utterance is a crime…” The argument seeks to identify and call out person A for affecting person B, even if a wide, mainstream audience is unconvinced and unaffected by person A.

It may seem tangential, but the Harper’s Weekly October 5, 1901 feature is an excellent starting point. It supports one of Noonan’s arguments, counters one, and gives important background toward the legislative intent that the Supreme Court of the 1919 Red Hysteria era perceived. It upholds his article’s resolution that anarchists “gradually transformed from being foreigners to being inhuman creatures or demons, and consequently became easier to exclude.”

Although Noonan never cites anything from Harper’s Weekly, the cover illustration shown previously could not buttress this sentence more. As shown with Alexander Berkman, he was an outsider first. The demonization of radical anarchists was a step toward legislative solutions.

Noonan sought to differentiate between anti-immigrant sentiment and anti-radical sentiment. The article and cartoon are anti-anarchist, but not xenophobic or nativist. The cartoon

171 Rauchway, Murdering McKinley, 116.
172 “Anarchy and Its Suppression.” The author’s citation of “logic” is certainly relative. The conception of anarchists as mentally ill, insane, or deranged were still prevalent. This article elsewhere frequently uses the terms “lunatics” and “insane” before alternatively advocating anarchists simply be placed in an asylum if they cannot be legally imprisoned.
173 Noonan,”What Must be the Answer?” 374.
employs stereotypes to be expected of the period, and it is still disconcerting that the anarchist is
dehumanized in the manner W.A. Rodgers chooses, but he *embraces* America’s identity as
composed of immigrants. The anarchist is a class and a depiction of his own, tied to no nation or
ethnicity. The corresponding article makes no mention of immigration restrictions, quotas,
literacy tests, or even deportations. It instead is concerned with radicalism already breeding on
the domestic front. It proposes internal solutions—criminalizing speech with the intent or
possibility of inciting others to crime. Neither despotic nor racist, not searching for a scapegoat,
the article makes a strong anti-radical legislative argument representative of the reasoned
contemporary opinions. In doing so, it supports Noonan’s central argument that “anarchist
exclusion was far more than an example of rising nativist tide.”174 Bona fide anti-radicalism, born
from an intent to protect the body politic from violent anarchism, is shown in both the image and
the article.

As also mentioned, Noonan sees that those distinguishing between philosophical and
violent anarchists were “overwhelmed” by opinions such as “all anarchists are guilty of
treason.”175 While certainly the broad vilification of anarchists blurred the line between thinkers
and doers, the conscious and logical thought chain presented by the *Harper’s* editors that
“oratorical” anarchy should be punished because it impacts the “murders” invites a different
interpretation. It is more evident, from this source and others to be examined, that the two types
of anarchists were lumped together because of a growing perception that they were connected; it
was together that they presented a unified threat, and in that way became one and the same for
future legislative purposes. While this conflict and tension between how the two anarchist camps
could and should be perceived and dealt with is much more complex in this time period, it is

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175 “Letter from Charles S. Smich to Jas. M. Beck, 8 Sept 1901,” DJ Central Files, 1901-McKinley Assassination
(Vault), as quoted by Noonan, “What Must be the Answer?” 374.
important to actively counter Noonan’s imposition of an academic emphasis on types of anarchists, when evidence suggests that a delineation was perceived but ignored by contemporaries.

The perspective elucidated in Harper’s Weekly on October 5, 1901 was generally typical of the immediate period after President McKinley was shot. That is not to say, however, that violence was never sought and potential for a true mob mentality—as would be supported in 1919 and 1920—did not appear. Infamously, the immigrant community in Paterson, New Jersey was targeted in the days following the McKinley shooting.176 Perhaps more dangerous than any mob that actually manifested itself was the coverage from the New York Times. A September 7, 1901 article was headlined “Paterson Anarchists Rejoice at the Shooting.” The dubiously accurate contents of the report are a sketch of what most believed and feared anarchists to be. It depicts a group at an Italian-named beer hall: “their spirits are very high and every few minutes one present toasts Czolgosz.” Ominously, the Times seems to incite the reader to violence: the anarchists “are afraid. They fear that the vengeance of the Nation will be turned against them…. The respectable citizens are tired of the supineness of the authorities and will demand that this blot be wiped out…. “177 Elsewhere, the page relays the story of the formation of a mob by one such “respectable” New Yorker—who was emphatically presented as sober in contrast to the intoxicated anarchists—who rallied a crowd of 100 men to cross the river into Paterson, and “wipe out 10,000 anarchists.” Beyond approvingly recounting the ringleader, the combined impression of the page is undoubtedly a call to action against such “supine” authorities.178

176 Hahamovitch, “Toward the Jewish Revolution,” 56.
To be fair, the newspaper walked back most of their instigations in an article on September 9, but their placid reporting matched indications that the anarchists of Paterson had “taken warning from the unmistakable note of anger.”\(^\text{179}\) Within that same article was a more troubling quote from a police sergeant in charge of the radical quarter who was quoted as saying police should “go to their meetings armed with a sawed-off gun and shoot the speakers when they begin to rant.”\(^\text{180}\) Well versed in beer hall culture, it is not difficult to imagine the officer watching the meetings with clenched fists—angry just as much as the oratorical, philosophical anarchists embodied by Emma Goldman and Leon Czolgosz. While two days earlier, the *New York Times* had indicated that it was time for citizens to take up vigilante justice, an article was attached below this officer’s pronounced solution instead calling for a legislative solution. The published statements of Senator George McBride (R-OR) called for Emma Goldman and those of her creed to be deported to “where they breed anarchy”—Russia.\(^\text{181}\) Far from a conciliatory position, McBride advocated an oft-repeated anti-immigrant maxim: “If there are people here who are not satisfied with our form of government let them go elsewhere.”\(^\text{182}\)

The Paterson incident indicates several important aspects of anti-radicalism and anti-immigrant sentiment in late 1901. First, Preston’s understanding of the linkage between radicals and immigrants is supported. The article emphasizes the area as an Italian stronghold, appealing to conceptions that anarchism was bred virulent in the confined spaces of a beer hall or meeting room. Second, the rallying cry to storm Paterson shows at least some *pre-McKinley* awareness of an anarchist threat and where to locate it. This infers that perhaps radicalism was allowed to lay dormant. Third, mob anger was not exclusive to the violent anarchists or executor

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\(^{180}\) “Paterson Police Aroused,“


\(^{182}\) “Ex-Senator McBride’s View.”
of the president. Any division of “philosophical” anarchists was self-imposed or academic; in practice, the act of one was condemned as the act of all—not necessarily anarchists, but immigrants.

The front page of the September 14, 1901 Harper’s Weekly stewed “Astonishment is expressed that the Pole [Czolgosz], coming from a country where people are oppressed, should extend the hostility which he has felt for emperors to the President of a republic….” It is worth remembering that while Leon Czolgosz was American-born, his clearly foreign name (and his German pseudonym “Nieman”) fostered nativist responses. Although initial anti-immigrant and anti-radical sentiments could have exploded from the dog whistles of the New York Times, as shown it went relatively unheeded, and cooler heads prevailed. In part, anarchists recognized that the mobilization in support of the mortally wounded president could quickly swing to a crusade against radicals.

Most popular sources mourned the loss of McKinley’s leadership; at the least, the respected institution of the presidency had fallen once again. Harper’s Weekly wrote “The personal virtues of Mr. McKinley are those dear to the American people.” As was mirrored in the Berkman attack on Henry Clay

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187 “The Shooting of the President.”
Frick, the victim was renowned for his *American* attributes, thus reflecting that the spirit of the nation was under attack as much as any one individual. The minority who advocated for a legislative and reasoned solution in 1892 after the attack on Frick proved prescient,\textsuperscript{188} by the end of 1901 a majority of popular sources sought an “American” legislative solution.

In searching for a scapegoat for the McKinley assassination, Emma Goldman became a popular target.\textsuperscript{189} This is representative of a general understanding that as potentially feckless as any “philosophical” anarchist was, they were still the beginning of a chain of violence and terror. *Harper’s Weekly* proclaimed that “It was the causes of the tragedy, not the means, that were discussed” in the wake of the Czolgosz attack.\textsuperscript{190} The oft-outspoken security mongerer Robert Pinkerton summed up what many Americans came to believe by December 1901: “I do not believe that the man Czolgosz carried out a plot...he was simply an impressionable creature who was carried off his mental balance by the teachings of the rabid anarchists of the Goldman, Lucy Parsons, Most school.”\textsuperscript{191} Just as Alexander Berkman was not seen as a particular menace in 1892, this view was extended to identify the real threat to American society: the anarchist influencer. Elsewhere, it is evident that fear was felt against all anarchists. Senator J.C. Burrows (R-MI) wrote “the anarchists” (as a collective, rather than their violent splinterings) “are the most dangerous criminals we have...if one can rise out of the earth, then it is not unreasonable or at least not impossible, to suppose that the other fanatics might at the same time, by concert of action, strike...”\textsuperscript{192}

Ostensibly, any nuance between action-minded and philosophical anarchists was ill-considered by Emma Goldman’s contemporaries in 1901. She herself was a target due to her

\textsuperscript{188}“A Warning,” *Pittsburgh Catholic*, July 28, 1892.
\textsuperscript{189} Articles citing Goldman include; “Ex-Senator McBride’s View;” “The Office of President,;” “The Week,”; “The Need of Legislation against Anarchism.”
\textsuperscript{190}“How New York Received the News.”
\textsuperscript{191} Pinkerton, “Detective Surveillance of Anarchists,” 612.
rhetoric. With this established, on what grounds and how did the nation seek to control speech and collectively repress radicalism? Such a variety of solutions were proposed that no national legislation was enacted other than the Anarchist Exclusion Act in 1903. Still, states relied on the popular arguments and logic to craft their own penal codes.

**Crafting a Legislative Solution**

Noting the near impossibility of establishing uniform state laws, or an amendment to the constitution, lawyer S.C.T. Dodd argued that executive power was alone sufficient to “deal practically” with anarchists. Believing what would later be argued by the government against radicals and upheld by the Supreme Court, Dodd wrote “It is inherent in the executive department of any Government to protect itself.” While not advocating specific measures to deal with anarchism, the legal basis to “abridge” freedom of speech and to expand definitions and punishments of treason resided in the executive power. A sound argument, it provided latitude for the federal government to expand its power (a generally unpalatable premise in 1901) and protect itself—which would certainly be done in 1919 and 1920.

John R. Dos Passos wrote “Anarchy and How to Repress It” for the *New York Times* in September 1901. A successful lawyer with Portugese blood, he proposed numerous plausible solutions. To first consider his approach to the ideology and assassination, he writes, “Czolgosz is the representative of an organized band” led by cunning leaders who “make a business of preying on the weak and ignorant.” As such, the thinkers of the movement are considered the enemy more so than the lone wolf actors. Dos Passos’ first approach to “attack” the movement and its leaders is to pursue anarchists as if a pirate: an enemy of all nations, an “international

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193 Dodd was a brilliant—if flawed—lawyer who represented John Rockerfeller and organized Standard Oil Company; his view that only the most unreasonable business practices should be restricted was posthumously recognized by the Supreme Court in *Standard Oil Co. of New Jersey v. United States* (1911), though it was held his own creation ironically broke the threshold. See bio at beginning of article. S.C.T. Dodd, “Congress and Anarchy: A Suggestion,” *The North American Review*, October 1901, 433–36.

crime.” This authority is indeed founded in the Constitution, as Dos Passos cites, Article I Section 8 provides Congress with the authority “To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations.” By conceptualizing anarchism (at its core, advocacy for the overthrow of government) as a crime against all government, legislative and administrative authority could be established to “pursue these wretches into every hole and corner of the earth.”195 Once again, a legal premise on which to punish and repress on the grounds of ideology was established.196

Dos Passos also alludes to another plausible solution that could be “instantly applied.” Primarily, he considers that not only are anarchists foreign-born, but they remain “aliens” on American soil, and thus eligible for baseless deportation. He writes that anarchists are “happily not made up from the Anglo-Saxon race...before this last assassination I would have boldly affirmed that there was not a single American among them. Alas! To our shame and sorrow the statement cannot now be made.”197 This opinion supports—but does not confirm—Preston’s point that a rise in radicalism and immigration were “fatefully and erroneously” conflated by 1901.198 The premise that effectively all anarchists are aliens leads him to the conclusion that anarchists can be expelled as a matter of course.

As was affirmed in Wong Wing v. United States (1896), Dos Passos argues in 1901 that the recognized power of sovereign states to exclude and banish aliens “without assigning any cause” provides a constitutional way for the federal government to exercise broad repressive

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195 Dos Passos, “Anarchy and How to Repress It.”
197 Dos Passos, “Anarchy and How to Repress It.”
198 Preston, Aliens and Dissenters, 4.
power.\(^{199}\) Within an already slanted administrative process, Dos Passos considers “Perhaps an Anarchist cannot be compelled to testify against himself...[but] refusal can be considered as tantamount to a confession....” Although this would violate the Fifth Amendment, evidently Dos Passos considered that such protections did not apply to aliens. In *Turner v. Williams*, it was held that Dos Passos was correct.

As mentioned previously, the notion that alien radicals could and should be monitored and tracked was advanced by Robert Pinkerton and his article “Detective Surveillance of Anarchists.”\(^{200}\) In the case of Pinkerton and the security force with which he shared a name, ideology followed economic opportunity; he was thus inclined toward heavy security measures and excessive surveillance. He wrote, “police should be given practically unlimited powers” to deal with anarchism, while pointing to “relentless warfare” against the “Reds” in breaking up anarchist meetings without warrant. Although the measures were evidently unpopular, Pinkerton argued the plague of anarchism was a condition “that cannot be dealt with from the ordinary point of view,” alluding to defenders of “social and political rights.”\(^{201}\) As was to be seen, public fury at one action would prove insufficient in 1901, but the groundwork was being laid for the post-World War I era.

Other opinions called for caution on such repressive measures. A primary concern was the paradox that the legacy of Haymarket Square left. The same Pinkerton article, as additionally discussed earlier, found that the rallying cry in the wake of the Haymarket executions was an example—half-measures served to *make* anarchists, not extinguish them. Pinkerton’s solution to go all the way to draconian limits was relatively overshadowed by those afraid of making more

\(^{199}\) *Wong Wing v. United States*, 162 U.S. 228 (1896); earlier asserted in *Nishimura Ekiu v. United States*, 142 U.S. 659 (1892).

\(^{200}\) See generally, Pinkerton, “Detective Surveillance of Anarchists.”

\(^{201}\) Pinkerton, “Detective Surveillance of Anarchists,” 613; 615.
radicals in efforts to punish existing “Reds.” In the previous October issue of *The North American Review* (a publication that had a variety of ideology in its component articles), Charles Johnston agreed with the premise that the surge of anarchism was an issue, but instead considered that the factors contributing to its rise should be addressed through a different conception of an “American” response: Christian love.

The Johnston article compares the Russian nihilist movement of 20 years prior to the conditions of the United States at his present, seeking to learn from the Russian past and to contrast it in the American future. He noted, “the causes which make for anarchy are waxing rather than waning.”

To the author, the global anarchist surge was no product of pure mental illness or evil, it was instead “the visible signs of conditions...of terrible hardship and oppression, even of grinding, heartbreaking suffering.” Not unkindly, he notes that the seeds were “sown” in Europe, noting that from the miserable “spectacle” of immigrants, one can “infer the misery of those who are left behind.”

Johnston himself was an immigrant. Born in Ireland and a reputable economist, he was naturalized in the United States in 1896. While not favorable to radicalism or anarchy (considering it “a growth transplanted from the Old World”), he sees its roots in the “dreadfully burdensome conditions of life” with ideology “not through any diabolical malice of their own.” He brings in the ethnicity of the “haunted” immigrants not due to racial inferiority, but considering that they are “the sons and daughters of races who have most heavily suffered, ground down under injustice and oppression.” Taking the American identity and believing in the exemplary capabilities of the nation, he figured that “this inherited virus will wear itself out…

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205 See Johnston bio at beginning of article, “The Anarchists and the President,” 433.
new race will feel] cherished by the spirit of humane and generous liberty which is the deep inspiration of the New World.”\textsuperscript{207} Grandiose and idealistic, undoubtedly, but Johnston is appealing to the founding principles of the United States, the overblown “city on a hill” image that has been frequently romanticized by American exceptionalism.

Johnston’s professed purpose is to “take the better way, the way of generous sympathy...eminence consists not in wealth but in the service of others.”\textsuperscript{208} His true point, however, is to establish that vengeance and anger are not in the identity the self-proclaimed eminent Christian nation sees for itself. He likely is responding to popular reports of truly fire-breathing sermons given in the wake of President McKinley’s death. In the previous month *The Nation* cited sermons calling for the death of Czolgosz and anarchists; one reverend in particular echoed the sentiment of the Paterson police sergeant quoted on page 19, saying, “Until a better way is found, lynch him on the spot. When an anarchist makes red-flag speeches, then, and not when he has killed a President, be done with him.”\textsuperscript{209} In contrast, Johnston preaches that “unworthy of our twenty centuries of Christian faith, is the almost universal cry for vengeance.”

He relates that it was “just this spirit of panic cowardice” that “drove the Russian Nihilists into frenzies of crime...hate will sow the seeds of hate.” Instead, “hatred ceases only by love.”\textsuperscript{210}

The contributor's motivations and exhortations seem genuine, and indeed, it is possible that his attitude, although in the relative vocal minority, contributed to or was indicative of the sputtering out of a national quest for vengeance. *The Nation* itself endorsed similar beliefs, asserting that “the remedy for anarchy is not counter-anarchy, but law.”\textsuperscript{211} What possibly could

\textsuperscript{207} Johnston, “The Anarchists and the President,” 441.
\textsuperscript{208} Johnston, “The Anarchists and the President,” 442.
\textsuperscript{209} “The Week,” *The Nation*, September 12, 1901, 197. Also quoted on Czolgosz was Rev. R.H. Naylor: “I would have blown the scoundrel to atoms,” and Rev. T. De Witt, who wished that the arresting officer “dashed his life out.” Also reported by “The Death of the President,” *The Atlantic Monthly*.
\textsuperscript{210} Johnston, “The Anarchists and the President,” 442–43.
\textsuperscript{211} “The Week,” *The Nation*, September 12, 1901.
“counter-anarchy” entail? The Nation article denounced the chaotic sermons of vengeful reverends described above. In responding to the call to lynch anyone making a “red-flag speech,” the article considers “If such frantic talk be not anarchism, worthy of Emma Goldman herself, nothing is.”

Beyond denouncing such retributive thirst, the editor provides us with an intriguing conception of what anarchism is: senseless violence. In this manner, he reflects the “European” anarchism that historian Richard Bach Jensen imports to America, rather than the actual American anarchist movement.

This popular source base produces an important analysis on which to understand the political results from the McKinley assassination and a resurged motivation—violent or nonviolent—to deal with anarchists, regardless of their profession of peaceful or violent intent. For a legislative purpose, what was agreed on was that anarchist “principles” should be made a “disqualification for citizenship.”

This minimal legislative response, as John Dos Passos pointed out, was a justifiable and appropriate penalty. Elsewhere, an appetite to reconsider the Hill Bill of 1894 that sought to exclude anarchists was shown.

**Legislative Outcomes**

Such was the political environment that President Theodore Roosevelt, an unelected and relatively unprepared 42-year-old, stepped into. Without the capital for drastic action, but the pressure to deal with the pestilence of anarchism, his December 3, 1901 State of the Union address proves a valuable and culminating source; in his attempts to win favor, he professes and

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212 “The Week,” The Nation, September 12, 1901.
213 “The Week,” The Nation, September 12, 1901, relays the report of the Philadelphia North American that each collected Congressional opinion universally agreed that yes, anarchists should be excluded from the body politic.
214 Dos Passos, “Anarchy and How to Repress It.”
216 Kinzer, The True Flag, 212.
approves of a variety of positions on the issue, thus seeming to aggregate public opinion on the
issues of the time, including radicalism.

Roosevelt’s first address to Congress was highly anticipated, as it served to inform the
nation of his policy goals for his unexpected presidency. He opened the address by demanding
action against all anarchists, lumping together philosophical anarchists as equally culpable:
“[Czolgosz was] inflamed by the teachings of professed anarchists...and they cannot escape their
share of responsibility for the whirlwind that is reaped.”217 Adding that “no matter calls more
urgently,” Roosevelt advocated for legislation to exclude and deport anarchists.218 Roosevelt also
endorsed the comparison to piracy in anarchy’s status as a “crime against the whole human
race.”219 Combining exclusion with a wider immigration policy, the newfound president
advocated for an educational test, a benefit of which would be to “decrease the sum of
ignorance...out of which anarchistic sentiment inevitably springs.”220

Seeing himself as the vehicle for Progressive change,221 in the same address Roosevelt
gave credence to the discontent that so many Americans felt, and that anarchists and their
following acted on. The state was plagued by “very serious social problems,” which Roosevelt
principally blamed on large corporations ”working to the public injury.”222 Eric Rauchway
describes Roosevelt’s absolute denunciation of anarchism and any social causes then “inoculated
himself against criticism,” allowing his pivot to progressive liberalism.223 This tells part of the
story. Given Roosevelt’s return to an immigration policy that would “protect and elevate the
general body politic,”224 it appears more accurate to say that Roosevelt willfully conflated issues

217 Message Of The President Transmitted To Congress December 3, 1901, 11.
218 Message Of The President Transmitted To Congress December 3, 1901, 12.
219 Message Of The President Transmitted To Congress December 3, 1901, 13.
220 Message Of The President Transmitted To Congress December 3, 1901, 21.
221 Rauchway, Murdering McKinley, 93.
222 Roosevelt, “Message of the President,” 7.
223 Rauchway, Murdering McKinley, 96.
of radicalism and immigration, while addressing economic and social inequality in an effort to reach the domestic population, perhaps as an insulator against the further proliferation of radicalism into the very same population.

The Immigration Act of 1903 was a wider codification of immigration restrictions to be applied in the United States. It listed anarchism as an undesirable menace. It dealt with the anti-radical sentiment by locating it within a wider and more palatable desire for immigration restriction.\textsuperscript{225} In this way, the new law was a half-measure to restrict radicalism, by capitalizing on the perceived reality that many radicals in the United States were foreign-born or of recent foreign descent. At issue still remained how to restrict radical speech in domestic citizens. Deportation was a restrictive punishment, but to criminalize anarchist speech was to facilitate an entirely focus on administrative latitude—constitutional protections would apply.

As was typical of the incomplete, republican United States, most legislation was enacted by the states. New York State, President McKinley’s host on September 6, 1901, took matters into its own hands. While immigration restriction is the duty of the federal government, the policing of crimes was largely up to the locality. As seen in the epigraph, John Dos Passos cried in the \textit{New York Times}: “Let New York lead and march toward anarchist suppression and show the way to other states in crushing this dreadful evil.”\textsuperscript{226} Lead they did.

New York passed the Criminal Anarchy Act of 1902, which punished advocacy of “the doctrine that organized government should be overthrown by force or violence…or any illegal means.”\textsuperscript{227} It is accepted by the scholarship that the law was motivated by the inability to charge Emma Goldman’s alleged incitement of Leon Czolgosz.\textsuperscript{228} An open and broad restriction on free

\begin{footnotesize}
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\item \textsuperscript{226} Dos Passos, “Anarchy and How to Repress It.”
\item \textsuperscript{227} Criminal Anarchy Act of 1902, N.Y. Penal Law §§ 160, 161.
\item \textsuperscript{228} Marc Lendler, \textit{Gitlow v. New York: Every Idea an Incitement} (Lawrence, KS.: Univ. Press of Kansas, 2012), 1.
\end{itemize}
\end{footnotesize}
speech, it lay relatively unused and unchallenged until the Russian Revolution and ensuing Red Hysteria in the United States from 1919 to 1920. Well-known Supreme Court case *Gitlow v. New York* (1925) upheld a peacetime conviction under this law, and is studied for its (unnecessary) incorporation of the Bill of Rights, meaning that the Constitution and its protections could be applied to invasion by the state, not just at the federal level.

**Conclusion**

It is evident that the statutory intent of the Immigration Act of 1903 was to include all anarchists. This was seen by the court in *Turner v. Williams*. The case was an important assertion that the state feared and would prosecute all radicals on the basis that subversive speech led to violence against the state and its citizens. The *Turner* Court reinforced the contemporary view that radicalism was a foreign issue being brought to American soil. This consideration was secondary in 1904, because opportunity was limited to targeting foreigners who enjoyed no Constitutional protections.

Unanswered was the applicability and legitimacy of New York’s Criminal Anarchy Act against Constitutionally protected American citizens. How far would anti-radicalism in the United States go? Sentiment against radicalism was increasingly mobilized and institutionalized, but needed further angst over its effect on American society in order to widely enforce legislation.

The logical chain that sees philosophical anarchists as equally dangerous as violent anarchists, and thus worthy of criminal punishment, was upheld in numerous Red Hysteria–era court decisions evaluating the extension of these laws to punish opinions, and “state[s] of mind.”

Although to be covered in more detail in Chapter three, judicial rhetoric would mirror

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229 Indictment of Chief City Magistrate William McAdoo at 2, People v. Benjamin Gitlow and James Larkin, City Magistrates' Court, City of New York (1919), 2.
this social perspective, lending credence to its relevance in establishing statutory intent. Post-World War I courts would uphold repression of incendiary speech. It has been shown that each era in history revisits the “bad tendency” principle of the Alien and Sedition Act (1789), which jurists have interpreted to allow legislatures to define the different dangers of their era.

1919 saw the New York City Court press charges against American Communist Benjamin Gitlow under the 1902 Criminal Anarchy Act, stating, “It is intended to put out a fire with a bucket of water which might later on not yield to the contents of the reservoir.”

Supreme Court Justice Edward Sanford’s opinion in *Gitlow v. New York* (1925) reveals a similar fear, seeing that “A single, revolutionary spark…may burst into a sweeping and destructive conflagration.” This was also clarified in *Schenck v. United States* (1919): “The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.”

Even in the famous dissent of Justice Oliver Wendell Holmes, referring to the functionally equivalent case *Abrams v. United States* (1919), he defends the First Amendment while conceding “the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger.”

Holmes further notes: “Persecution for the expression of opinions seems to me perfectly logical.”

That sentence rings loudly. Consider that eighteen years earlier in the *Harper’s Weekly* article of October 5, 1901—which actively advocated for repression of incendiary anarchist speech—conceded that “it is impossible to punish mere opinions, and the effort to punish…their expression is attended with the danger that the opportunity for despotism and oppression will be


230 *Indictment, People v. Benjamin Gitlow and James Larkin*, at 4.
234 *Abrams v. United States*, at 630.
presented by any law which may be enacted.” The phrase “expression of opinion” is not synonymous with “speech,” but it is powerful that Holmes conjured a broad persecution of opinion, thus leaving room for a presumably more negative reception. Although not necessarily a bad thing, the thesis shows three different moments in the death of the mass veneration of absolute “freedom”—inculpability—of expression.
Chapter Three: The Red Hysteria and its Legal Foundations

Petrograd, Russia, January 19, 1918. The Ambassador in Russia (David Francis) to the Secretary of State, a telegram:

To-day’s issue of anarchist organ contains following: “[Citizen Ambassador:] The governments that sent you to Russia in their own countries are everywhere the foes of the laboring classes…. The Government of the United States has also put into prison our comrades Alexander Berkman, Emma Goldman and others. Russian workmen, peasants, soldiers and sailors have expressed their energetic protest regarding atrocities perpetrated [sic] by your Government towards honest revolutionists and demanded their immediate liberation. In numerous resolutions regarding this the Russian soldiers, workmen and sailors pointed out that to violence they will reply by violence, to death by death…we shall consider you personally responsible for their lives and liberty.²³⁵

This message sent to Ambassador Francis and relayed back to the United States sets an appropriate tone. First, the Bolsheviks were clearly established as malignant actors who had no desire to bargain through typical diplomatic means, as the personal safety of Ambassador Francis was suddenly jeopardized due to American persecution of domestic radicals. Soviet aims of global revolution connected the anarchist efforts of Emma Goldman and Alexander Berkman in the United States to the chaos found in the streets of Petrograd. Francis himself propagates the connection between the “anarchist organ” (read: revolutionary pamphlet), the Bolshevik usurpers, and radical activity in the United States.

1919 was a year of massive uncertainty, as the Allies of Western Europe faced the task of rehabilitating a continent and a world that had torn itself apart in World War I. The victors shared the same circumstance as the losers: the cost of the battle was human lives. The toll of the conflict was absolute. The monumental task of building an international order from the common ordeal was heightened by the urgency of active suffering in the war’s wake. Undermining the Paris Peace Conference in 1919 was Bolshevism “seeping” out of Russia, which “threatened…

²³⁵The Ambassador in Russia (Francis) to the Secretary of State [Telegram], Petrograd, January 19, 1918,” in Papers Relating to the Foreign Relations of the United States, 1918, Russia, Volume I. File No. 701.7161/4.
every tie that held their societies together.” Margaret MacMillan comments in her seminal *Paris 1919: Six Months That Changed the World* that mounting global labor unrest in the face of a precarious, if not vacant, world order led societies to question: “Were these isolated outbreaks, or flames from a vast underground fire?” A wildly perceived notion, radicals themselves questioned if the postwar era was a moment of great revolution. Although critical of World War I as fought for the rich, by the poor, Alexander Berkman appreciated that the war has “shaken” the world, perceiving that “The old branches are falling off” in line with his general disillusionment with “diseased” society.

The specter of global revolution, particularly driven by the Bolshevik Revolution, hung over the Peace of Paris. The political cartoon shown in Figure 3.1 reflects these fears in America, where a cloud labeled “Anarchism and Bolshevism” is casting a long shadow over the United States—emanating from Europe. The figure in the cloud is, as always, the classic anarchist. He is shaggy-haired, unclean, and bearded. One hand holds a bomb, the other a dagger. He brings lightning bolts—quick strike and blind attacks—of murder, arson, and plunder. The world is dark as the sun appears to have exploded, perhaps representing the natural order. The danger to the United States is palpable.

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The ensuing Red Hysteria that swept the United States in 1919 and 1920 was a complicated moment of crisis, and a severe moment that saw the weaponization of post-McKinley legislation against foreigner and radical alike. Most simply, fears of a radical threat to the American way of life were augmented after the Bolshevik Revolution in November 1917. American intervention in the ensuing Russian Civil War continued to make the struggle against a Communist foothold topical. As the United States grappled with an unsuccessful and unpopular campaign in Russia, it became evident that the two states sought to subvert each other and was perceivable that the Bolshevik Revolution sought to spread communism throughout the globe.

The United States and President Woodrow Wilson sent 5,000 American troops in the late summer of 1918 to support the White forces in Russia, a coalition fighting the Bolsheviks after the October Revolution. This served to foment more widespread fear and agitation against radicalism in the United States. Just weeks after the November 11 armistice ended World War I, *The Washington Post* cried “The liberty of the world has just been won at an awful sacrifice…. Shall that liberty be tainted and polluted by the anarchy of bolshevism?”239 It was clearly evident that although the war had ended, peace was far from stabilized.240 To this end, the same article demanded “The activities of crack-brained radicals...must be suppressed.”241

Newspapers served up sensational headlines that constantly cultivated discussion over the impending Bolshevik menace. Not exclusive to *The Washington Post*, but clearly exemplified by them, headlines through 1919 and 1920 read: “World Rule Red Aim: Unchecked Bolshevism Leads to War, Says Bernstein” (January 27, 1919); “‘Reds’ Beyond Reach: Bolshevik Revolution

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241 “Down with the Red Flag.”
Now Being Organized in America” (February 15, 1919); “Reds Aim at America: Dr. McKin Urges Army of 200,000 to Stamp Out Bolshevism” (April 7, 1919); “Reds to Be Deported: Palmer Speeds Cases to Drive out 391 Caught in Raids” (November 11, 1919); “Warfare on “Reds”: Palmer Declares There Will Be No Let-Up in Coming Year: Are Mostly All Criminal” (January 1, 1920); “Anti-‘Red’ Laws Weak: Palmer Asks Better Means of Combatting Extremists: Grave Menace to Nation” (February 28, 1920); “Warns of Red Peril: Fall of Poland Means a Soviet World, Says Ludendorff: Sees Civilization’s End: Former German Chief Thinks Peoples and Governments Asleep” (July 28, 1920). Such was the inciting rhetoric of the Red Hysteria.

Conversely, the Allied intervention in the Russian Civil War would prove to the nascent Bolshevik regime that a degree of tolerant relations with the outside world were needed, imbuing the theoretical ideology with founded international relations realism. This simultaneously validated the Marxist-Leninist premise that the capitalist world was a tangible, existential threat to the bastion of Communist revolution. “Foreign policy and international relations have been the main questions facing us,” Lenin articulated in November 1918, further asserting “The complete victory of the socialist revolution in one country alone is inconceivable and demands the most active cooperation of at least several advanced countries.” That the first Allied intervention manifested as impotent did not disprove fears of capitalist encirclement, given Lenin’s view that “Neither [imperialist] group could muster large forces against us, which they would have done had they been in a position to do so.”

Although rumors and misinformation dominated the American impression of Russian influence in the United States, the Bolsheviks did make conscious efforts to wedge themselves

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into the American sociopolitical sphere. The United States refused to recognize the Bolshevik government, not only due to the perception that the revolution violated Woodrow Wilson’s (variegated) policy of self-determination, but also fear that allowing the Bolsheviks a foothold in the United States would lead to Communist subversion. The Colby Note, a communication from the U.S. Secretary of State Bainbridge Colby in 1920 outlining the logic behind American refusal to recognize Soviet Russia, said, “They have made it quite plain that they intend to use every means, including, of course, diplomatic agencies, to promote such revolutionary movements in other countries.”

Todd Pfannestiel expands on the institution that may have affected Secretary Colby in his 2003 article “The Soviet Bureau: A Bolshevik Strategy to Secure U.S. Diplomatic Recognition through Economic Trade.” Pfannestiel admires the “ingenuity” of the Bureau’s leadership, which shortly after its January 1919 unofficial establishment as a Soviet outpost in New York City, adopted a strategy of mobilizing American business in the face of an “obstinate” U.S. government. Through Bureau leader Ludwig C.A.K. Martens, Pfannestiel relates the Soviets actively propagated the myth of Russia as a trade partner with a “readiness to purchase” and “ability to export numerous [raw] goods.” Pfannestiel notes that “Had it not been for the anti-radical hysteria fomented by [the Red Hysteria], the economic approach may have succeeded…”; however, the prominence of fears of Bolshevism and its influence were part and parcel to that hysteria.

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Another significant factor in the Red Hysteria was the recent world war. Pressures during America’s first foray into European affairs emphasized the need for patriotism and loyalty to the nation. Culling support for the war quickly extended to “instill[ing] a hatred of all things German.” Vigilantes reported disloyalty to the Department of Justice and fought those who lacked patriotism. More concerning, the Department of Justice established itself in the private spheres of all suspected of subverting the war effort. The opposition to the war (President Woodrow Wilson had famously been re-elected on the slogan “He Kept Us Out Of War!” in 1916) meant the government’s war effort began on the homefront. “Such creatures of passion, disloyalty, and anarchy must be crushed out,” cried the president to Congress. The legislative body responded with the Espionage and Sedition Acts in 1917-18. Combined with an extended war effort in the Russian Civil War, against the new Russian revolutionaries, radicals and Russians were targeted in what is now the infamous Red Hysteria.

A series of bombing attempts via the mail in April and June 1919 further advanced fears of Bolshevik conspiracy in the United States. The bombing plot hit a nerve against blind anarchist violence that harkened back to Europe’s Decade of Regicide, in both the general public and the government, all stoked by the newspapers. To the front pages, the bombs were the lightning bolts of the radical cloud. The task of activating the Immigration Act of 1903 and the more recent functionally equivalent for anti-radical purposes Immigration Act of 1917, fell to Commissioner General of Immigration Anthony Caminetti. In July 1919, before the House Committee on Appropriations, he pleaded for “dragnet” operations that would target “suspected anarchists and radicals of all kinds.” This group was more typically referred to as “Reds.”

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250 Stone, “The Origins of the Bad Tendency Test,” 413.
251 White House, Third Annual Message Of The President Transmitted To Congress December 7, 1915, FRUS.
252 Preston, Aliens and Dissenters, 211.
When funds were withheld, the Immigration Bureau joined forces with the increasingly rapacious Department of Justice, and the Red Hysteria was launched.

Reflecting on his Department of Justice–led raids in February 1920 (and defending himself from mounting criticism), A. Mitchell Palmer wrote the article “The Case against the ‘Reds.’” In relaying the American Communist Party Manifesto, Palmer writes that it “embraces” those “obsessed with discontent...the I.W.W.’s, the most radical socialists, the misguided anarchists” before also implicating “moral perverts and the hysterical neurasthenic women who abound in communism.” This exhibits a key to the Red Hysteria. It targeted not just those expounding Communism, but those susceptible to it, interpreted to be immigrants. In justifying his mission of mass deportation, he argues that to deport those “bound to such a theory is a very mild sentence.” He goes on to write that an ambiguous “they” have “stirred discontent in our midst...[and] infected our social ideas with the disease of their own minds and their unclean morals” but the easy solution remains “we can get rid of them!”

**Methodology**

This chapter will examine two separate prongs of the Red Hysteria, nativism and anti-radicalism. Both are culminations in their own way of the legal and statutory history laid out in the first two chapters. The first area to be explored is how immigration law and *Turner v. Williams* encouraged the Red Hysteria. The “Soviet Ark” which deported 249 “anarchists” under the Immigration Acts of 1903 and 1917 converges an anti-immigrant approach to anti-radicalism, as well as resolves the stay of Emma Goldman and Alexander Berkman in America—they were the headline passengers. An examination of this prong concludes that the Supreme Court’s broad interpretation of the anti-anarchist provisions in *Turner v. Williams* was the true extreme measure.

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The Palmer Raids of 1919 to 1920 targeted immigrants and were aimed at removing “undesirable foreigners” who were thought to provide an audience for the true disrupters.\textsuperscript{254} Alex Goodall persuasively argues that this was a product of immigration laws that provided the easy targeting of alien radicals. In doing so, “the implementation of laws that selectively targeted foreigners helped to cement the xenophobic presumptions that had underpinned their creation in the first place.”\textsuperscript{255} As was noted in Chapter Two, the Court seamlessly extended institutional anti-anarchism to anti-radical, thus allowing a greater number of those on American soil to be persecuted. The \textit{Turner} opinion established that the deportation of nonviolent radicals was in the state’s interest.\textsuperscript{256} Therefore, the expectation became that given the need and opportunity, the government had the power to “flatten…political diversity,”\textsuperscript{257} with ease by targeting immigrants.

The second prong focuses on the American judiciary’s interpretation of charges against Benjamin Gitlow, the American-born Communist leader whose revolutionary manifesto landed him a prison sentence of five to ten years. The prosecuting district attorney argued that the Criminal Anarchy Act of 1902 was focused on the means of revolution, not its end, writing “He comes within the statute no matter what kind of government he intended should be set up in place….\textsuperscript{258} In 1925, the Supreme Court upheld the conviction’s constitutionality; legal historian Marc Lendler reads the decision as appreciating “a legislative judgement in the interest of the people [which] carried a strong presumption of validity.”\textsuperscript{259}

\textsuperscript{255} Alex Goodall, \textit{Loyalty and Liberty: American Countersubversion from World War I to the McCarthy Era} (Urbana: University of Illinois Press, 2013), 74.
\textsuperscript{256} United States ex rel. John Turner v. Williams, 194 U.S. 279 (1904), at 294.
\textsuperscript{258} As quoted in Lendler, \textit{Every Idea an Incitement}, at 80.
\textsuperscript{259} Lendler, \textit{Every Idea an Incitement}, 116.
World War I saw the Constitution in a time of crisis. Civil liberties scholar Paul Murphy argued “the various rights and liberties of the first ten amendments existed largely in theory and symbol prior to World War I,” thus the examination of a specific class of free speech cases was necessary. *Gitlow v. New York* was a significantly different set of circumstances than the other free-speech cases of the World War I era, *Schenck, Abrams*, and *Frohwerk*. Yet still, the convictions shared in common that the logic of persecuting speech against the state led to an uneasy Constitutional dilemma. The Criminal Anarchy Act criminalized the “essence” of an ideology, focused not on the extremes of speech limitation, but on institutionalizing the danger of a revolutionary doctrine in exceptional times. Gitlow’s doctrine was seen and held to be a legitimate national security risk, and thus pitted the state’s entitlement to self-protection against its guarantee of the basic rights to citizens, a premise on which the state was conceived.

The subversive nature of Communism as it presented during the Russian Civil War provides a unique justification snuffing out the ideology when it is public and prominent. More importantly, the conflation of anarchism and communism and Gitlow’s prosecution under the Criminal Anarchy Act alludes to the original purpose of the statute: to eliminate doctrine that leads to terroristic violence. Anarchism provided a proximate “clear and present” danger to society through its terroristic means, the legislature had decided that radical speech with the potential to incite those means.

In considering how the “bad tendency” doctrine was applied in *Gitlow v. New York*, it is evident that the judiciary was justified in upholding his conviction. The court was correct in finding that potential danger of Gitlow’s speech violated the intent of the broader New York State Criminal Anarchy Act of 1902.

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The Deportation Delirium, or “A Cargo of Sedition”

As the sun rose over New York City on December 21, 1919, a crowd stood on the dock that had launched the S.S. Buford just a few hours prior. Crying families faced not only the blustery winds stiffening the harbor, but the prospect that they had missed the moment to say goodbye to their loved ones. It would be the last time on American soil for many of the 249 “Reds” who had been sent away by J. Edgar Hoover of the Justice Department and Commissioner General of Immigration Anthony Caminetti. The Buford, or “Soviet Ark,” had slipped away under the cover of darkness, bound for Russia.

Stowed away at Ellis Island for the month of December, with their soon-to-be fellow passengers, Alexander Berkman and Emma Goldman wrote the pamphlet “Deportation—Its Meaning and Menace: Last Message to the People of America.” That the deportation was looming over his clients did not assuage their lawyer, Harvey Weinberger, whose knowledge of the voyage ended with information that they had been photographed and fingerprinted the preceding day. The pamphlet’s foreword emphasized the “refined cruelty” of the operation that denied the “right of farewell” (and potential appeals from more of the deportees; as recent as the previous day, a writ of habeas corpus had recused the 250th passenger, Alexis Gregorious).262 Unknowingly to mimic his own departure, Berkman concluded his portion of the pamphlet by writing “It is darkest before dawn, in history as in nature. But the dawn has begun in Russia. Its light is a promise and the hope of the world.”263 At dawn on December 21, 1919, Berkman and Goldman were eager to head to the light, their homeland.

Although the ship’s most prominent passengers had rationalized the marauding justice that sent them on their way, their fellow “political” prisoners had fewer designs on their glum fate. As Berkman notes, treated as dangerous felons but guilty of at worst quietly radical views, those whose families wept for them on the dock had suffered a harsh outcome in America.264

The Soviet Ark was the convergence of two phenomena. It was the conclusion to the protracted tale of Emma Goldman and Alexander Berkman’s agitation in the United States. Neither were naturalized citizens, but had been in the United States for more than 30 years. Each had drawn a considerable share of contempt: Berkman was infamous for his *attentat* on Henry Clay Frick, Goldman a public enemy for her connection to Leon Czolgosz in the assassination of President McKinley. With such publicity came their widespread association with American radicalism, indeed across the ocean in Russia, it was their persecution that headlined the Bolshevik threatening of Ambassador Francis. The two knew the risks and challenges of their incessant protests.

That Alexander Berkman lasted so long in the United States—after 14 years served in prison for taking aim at a titan of American capitalism—is significant in itself. In many ways, it overlaps with more general inaction against radical immigrants in the wake of the 1903 Immigration Act. As Berkman was a public figure, so too did police know where to find anarchists and upset their meetings. A facile conclusion is to recognize that the capital was lacking for actual deportations, both emotional, political, and financial.265 *Why* the capital was lacking is outside the scope of this research. Regardless, the unexpected targeting of the societies like the Union of Russian Workers—whose members enjoyed the social and communal benefits offered— disrupted the lives of the *Buford’s* 247 other deportees, who were no revolutionaries.

265 Preston, *Aliens and Dissenters*, 11 references the limited resources and mission of the Immigration Bureau as the fundamental inhibitor of a radical crackdown.
To deport those passengers was a perversion of justice with long term causes and short-term momentum.

As has been established in this thesis to date, and has been argued by the recent scholarship, the Red Hysteria was far more than a detached episode. Endorsed is Emily Pope-Obeda’s framework that “the Red Hysteria marks a critical point in a much longer saga.”

It has been sufficiently discussed and proven that immigrants and radicalism were linked prior to World War I, and that there was a desire to secure the nation against “anarchism,” but the crisis had not yet peaked. Beyond the direct threat of the “reds,” the postwar era in the United States was a time of uncertainty. Hysteria had already amassed against German-Americans during the war as a consequence of extensive and virulent nationalism; free speech against the government was greatly restricted with the passing and enforcement of the Espionage Act of 1917 and the Sedition Act of 1918.

It was this moment when the time for action against Alexander Berkman and Emma Goldman had come. The arrest leading to the deportation of the pair was not directly related to their radical identity; it came under the Espionage Act. However, their trial was heavily colored by their anarchist identity. Seamlessly associating anarchism with sedition, the charges against Berkman and Goldman for interfering with the draft were defended by the U.S. attorney, whose closing address to the jury pronounced:

“Those [two] are the people who are plotting from day to day against the peace and security of the United States and who impose their personalities upon the weak minds of ignorant foreigners who come to this country, come from persecution in Russia, and instead of being taught that they should give credit to this country for freedom of worship, freedom of education, they are taught that they ought to bring about a rebellion against this country.”

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After the jury deliberated for a token 39 minutes, the guilty verdict was returned, and the presiding judge imposed the maximum sentence, two years, and recommended deportation to Russia afterward.\footnote{268}

The pair’s sentence had the unfortunate timing of ending in October 1919, right as the Department of Justice was gearing up for their November raids, in which they swept up those who were transported on the Buford just a few months later. The general flow of public opinion was, as always, against Berkman and Goldman. Columnists supported deportation efforts. For instance, *The Daily Northwestern* wrote that public interest would benefit if the “precious pair can be bundled off to some other land where they will find more congenial company.”\footnote{269} This land would prove to be Russia, which was evidently associated with radicalism of any breed. Although Emma Goldman was also enchanted by “the Revolution,” she considered the United States her home and bemoaned her love for America, comparable to “the man who loves a woman with open eyes. He is enchanted by her beauty, yet he sees her faults.”\footnote{270} The government’s focus on deportation went far beyond Goldman and Berkman, and it was convenient to headline the Soviet Ark with two notorious Russians.

Emily Pope-Obeda’s article interprets the Red Hysteria as a “Red opportunity,” building on William Preston Jr.’s classical argument that radicalism and immigration were linked, wherein the administrative apparatus lacked license and resources for widespread deportation and suppression prior to World War I.\footnote{271} The wartime atmosphere gave the Department of Justice a

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https://www.lib.berkeley.edu/goldman/pdfs/PublishedEssaysandPamphlets_TheTrialandSpeechesofEmmaGoldmanandAlexanderBerkman-AddressofHaroldAContenttotheJury.pdf
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\footnote{268}{“Convict Berkman and Miss Goldman; Both off to Prison,” *New York Times*, July 10, 1917.}
\footnote{270}{“Emma Goldman’s Address to the Jury,” *Trial and Speech of Alexander Berkman and Emma Goldman in the United States District Court, in the City of New York*, July 9, 1917. As quoted in Avrich and Avrich, *Sasha and Emma*, 277.}
\footnote{271}{Pope-Obeda, “Expelling the Foreign-Born Menace,” 35; also see generally Preston, *Aliens and Dissenters* 63–87.}
rapidly expanding foray into American spheres both public and private. Their loosely defined mission in the name of national security—in the wake of the bomb threats and Russian Revolution—could only be checked by the corresponding Department of Labor, which oversaw immigration and deportations pursuant to the Immigration Act of 1903.

A key aspect of legitimizing the clear and present danger of Bolshevik-Anarchist influence and presence was a series of package bombings in 1919. Two waves in April and June targeted prominent members of American society, including John D. Rockefeller, Supreme Court Justice Oliver Wendell Holmes (who would become a defender of radical speech), federal attorneys who prosecuted a July 1916 suitcase bombing that killed ten people in San Francisco, and Attorney General A. Mitchell Palmer, who would carry out the infamous Department of Justice Raids that served as the climax of the Red Hysteria. The culprits were Italians known as Galleanists, and their mission of randomly bombing the privileged and powerful was core anarchist doctrine, reminiscent of the Decade of Regicide. Just days after the second wave of bombings, the Chicago Tribune published a cartoon depicting the world as living a nightmare. Perhaps asleep due to the intoxication or overpowering effects of five years at war (see the

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bottles on the nightstand), now the world was being roughly confronted with, and awoken to, a gleeful frenzy of Bolshevism and terrorism.

![Figure 3.2. John T. McCutcheon, “A Nervous Wreck,” Cartoon in The Chicago Tribune, June 5, 1919.](image1)

![Figure 3.3. Carey Orr, “Close the Gate.” Cartoon in The Chicago Tribune, Reproduced from The Literary Digest (July 5, 1919), p. 29.](image2)

In large part according (and thanks) to the same factors that led to the federal government grappling with anarchism through immigration restrictions, Red Hysteria assaults were largely dealt through the lens of immigration. As Americans understood it, the clearest way the cloud of Anarchism and Bolshevism would darken the United States was through the importation of the ideology through European immigration. This was not new, as has been shown in the previous chapters of this thesis. A month later in July 1919, the Chicago Tribune published the cartoon at top right, calling for the United States to “Close the Gate” via immigration restrictions. The cartoonist shows the ghastly sight of an immigrant with a bomb for a head (belittling or dehumanizing, viewer’s choice) and “undesirable” ideology in hand walking freely into the United States. The point is unmissable: the United States is at significant risk if immigration restrictions were not enforced.
Those holding the anti-immigrant baton also feared that those with foreign backgrounds who were already in the United States would be susceptible to the alleged influx of radical ideology, and “Bolshevik agitators.” The Soviet Bureau amounted to tangible proof of Russian attempts at influence and subversion in the United States, and Vladimir Lenin became a bogeyman of sorts. The cartoon at top right expresses this position, derisively referring to the United States as a “Melting Pot,” with flames stoked by a caricatured Lenin. An emaciated “Uncle Sam” is suffering and, as the caption indicates, the point is that the United States is boiling over at the hands of Russia (note that Lenin sits on the Asian-facing coast of the United States, rather than on the European coast, as in Gregg’s “The Cloud!” cartoon, Figure 3.1).

It was this anti-immigrant sentiment that drove the glorification of deportation as a solution to the Bolshevik frenzy that was sweeping the United States. Even before the anarchist bombing plot, the idea of an ark was put forth. The cartoon above, left, from February 1919
shows a shipping crate packed with deranged, rabid anarchists, fitting the predetermined artistic molds used to show radicals and anarchists since the Haymarket days. The box is dropped off at the dock by an American laborer, with the tag “not called for: return to sender.” The message is once again pointed—the crazed radicals who came over from Europe should be returned there, with no right to be on American soil. As such, A. Mitchell Palmer’s raids were founded in a nativist desire to release the political pressure in the United States and to prevent the “melting pot” from boiling over by excluding those deemed ignorant and susceptible.


Upon its launch, the Soviet Ark was hailed as a tongue-in-cheek Christmas present to Russia. The cartoon above shows a similar shipping container, labeled “Merry Christmas, Mssrs. Lenin and Trotsky.” The first arm wrapping around the container is labeled “anarchists.” The caption “do your Christmas shipping early” is not only a clever pun, but emphasizes that it is radicals who have the potential of future danger; deporting them is a proactive measure. The New York Times was similarly aloof, noting that with the Buford’s departure, “249 persons who didn’t like America left it.”

It is appreciable how weak the charges that the Department of Justice brought against the slew of immigrants swept up in the Palmer Raids were thanks to Assistant Secretary of Labor Louis Post, who found a vast number of deportation orders on his desk, many of them baseless. Post refuted almost 3,000 of the 6,328 deportation warrants that the Department of Justice referred to him. Post refused to be an expected rubber stamp, instead laboriously poring over the facts of each respective case. He evaluated the cases with an eye for evidence that the aliens had professed themselves to be anarchists. That they were deportable based on the mere statement and acquiescence to the term was directly in part to the decision of Turner. The duty-bound Post bemoaned that “All differences between the widely divergent varieties of anarchism, from terroristic to pacific, had been ignored by the Acts of Congress by which I was bound.”

It was the pen of Louis Post that deported Alexander Berkman and Emma Goldman on the so-called Soviet Ark. His evaluation process (once he determined Goldman was not a citizen) was simple: “The sole question before me was whether or not she believed that no government


\[275\] Post, The Deportations Delirium, 162.

\[276\] Post, The Deportations Delirium, 16.
would be better for human society than any kind of government. If she did, she was an anarchist” and thus her deportation “mandatorily required.”

Shaking off the legislative handcuffs and refuting the norms of the time, Louis Post argued that even if deportation cases were related to immigrants who were not entitled to Constitutional protections, it was still incumbent upon the Department of Justice to “conduct…with a reasonable regard for the safeguards which the American Constitution and the principles of American liberty are designed to throw around every resident of this country (whether alien or citizen).” This judgment held up before a Senate impeachment trial and his reading of the Constitution’s spirit of furnishing persons of rights—rather than only citizens—proved a noble effort to protect those on American soil from injustice. The committee agreed the Department of Justice abused its power. On his impeachment trial, The Nation commented: “some day, when the history of American liberty comes to be written, the name of Louis F. Post will be given a high place, because he dared in a trying time to defy the forces of madness and hatred and greed that now threaten to overwhelm us.” Post was constrained by legislative mandate to deport many aliens on dubious grounds, but his pointed resistance brought attention to the clear injustice that was being enacted by the United States government.

The immigration-based approach of institutional resistance to radicalism leapfrogged the judiciary (after Turner) and left the administrative state as the sole adjudicator. Fortunately for justice, Louis Post held firm. As subsequently shown in the World War I free speech cases and

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279 For Constitutional interpretations, see Post, The Deportations Delirium, 218–9; 265. For impeachment proceedings and acceptance of his policies, see 223–75.
Red Hysteria deportations, the ambiguous definition of what harmful speech constitutes a proximate abuse of the first amendment proved detrimental in itself.

As made explicit by Post’s memoir, in the context of the Red Hysteria, the definition of anarchism shifts dramatically, not based on mere chance, but due to the Supreme Court’s wide interpretation in *Turner v. Williams* (1904). “Anarchist” became synonymous with “revolutionary”; the Immigration Act of 1903 reads “Anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States….” were excludable. Nowhere in the definition is the utopian society that the philosophical anarchists dreamed of; the statute was entirely constructed to protect the American government.

**Gitlow: A Clear and Present Danger**

A government’s ability to protect itself and society from harmful speech is founded in what’s known as the “bad tendency” doctrine. The doctrine’s roots are in English Common Law; William Blackstone’s 1765 *Commentaries on the Laws of England* enunciated that it was appropriate for the state to restrict categories of speech that put forth a “pernicious tendency” and harm the state’s interest in preserving “peace and good order.” He was heavily cited in the late 19th and early 20th centuries and his ideas became entrenched in American jurisprudence. The judiciary applied the doctrine with a view to “whether the natural and probable tendency and effect of the words…are such calculated as to produce the result condemned by the state.”

The appeal of the government to actively evaluate the danger of a given First Amendment expression is that it allows for the state to evaluate the present harm done by speech, rather than

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281 *Turner v. Williams* 194 U.S. at 293.  
282 Rauchway, *Murdering McKinley*, x.  
283 *Turner v. Williams* 194 U.S. at 294.  
285 On Blackstone’s longtime relevance to Justice Oliver Wendell Holmes, see for example his op. in Commonwealth v. Kennedy, 170 Mass. 18 (1897).  
286 For example, see op. in Shaffer v. United States 255 F 886 (9th Cir. 1919).
relying on proactive legislation and therefore expecting malignant speech to be predefined. However, the latitude given to the government to interpret the threat is too great. In practice, the two statutes evaluated in this chapter both rely on the administrative executive branch and the judiciary to enforce and interpret who is punishable under their anti-anarchist legislation. However, the two diverged in statutory intent.

The Immigration Act of 1903 was an intentionally narrow bill with a carefully constructed definition of anarchism. It was not expected to be anti-revolutionary. Reviewing the congressional record, the language was changed in a last-gasp effort by Senator William Hoar. Whereas the statute originally read that deportable anarchists “believe in or advocate the overthrow by force or violence of any government, of the Government of the United States, or all government,” Senator Hoar removed the “any government” stipulation on the premise that “there are governments in the world that ought to be overthrown by force or violence.” Therefore, being revolutionary was not condemned on blunt premise.

Consider that the additional language of the New York law was explicit that the desire to overthrow “organized government” was a crime through “unlawful means.” Unlawful means was correctly interpreted in Gitlow v. New York (1925) as a reference to non-legislative and constitutional processes. In contrast, the drafter of the Immigration Act of 1903’s anti-anarchist provision, Senator Louis McComas, said it was a “definition [against] the propagandist of anarchy by violence.” Yet, the judicial activism of the Turner decision expanded the immigration law to punish any radical speech.

Brandenburg v. Ohio (1969) would overturn the First Amendment cases of World War I and Gitlow, which relied on the bad tendency doctrine. The dissent of Justice Holmes in Gitlow

287 Sen. William Hoar, December 9, 1902, 57th Cong., 2nd sess., Congressional Record 36, part 1, 143-44.
289 Sen. Hoar, (December 9, 1902), S 144. (Emphasis added).
contributed to what would eventually become the prevailing American opinion, of upholding the ideal that acceptable speech in society was defined by a theoretical marketplace, rather than by government.df Holmes first offered this in Abrams v. United States, 250 U.S., at 630, see later Gitlow v. New York, 268 U.S., at 672 (Holmes, J. dissenting).

But as legal historian Thomas Mackey writes, Holmes was in a minority of far more than his peers on the Supreme Court. Mackey holds the perspective that before the lessons of the Red Hysteria, a majority of Americans believed speech was repressible and that dangerous ideas could be censured.291 As has been shown in the first two chapters, anarchist speech and ideals certainly fell within what was perceived as too harmful to society.

Examining the persona behind the Gitlow case sheds more light on this issue. Benjamin Gitlow represented the second generation of American radicals who had Russian roots; he was a child of the first generation of Russian Jews who fled the virulent anti-Semitism in the wake of Tsar Alexander II’s assassination in 1881. This wave brought Emma Goldman and Alexander Berkman to the United States, just as their radical voice was emerging in the United States, Benjamin Gitlow was born in Elizabethport, New Jersey in 1891. His family soon moved to New York City’s Lower East Side, an immigrant community that was “fertile ground” for radicalism; Marc Lendler considers it “a match made in Marxist heaven—a combination of crowded and difficult living and working conditions and an immigrant community predisposed to dissident and leftist ideas.”292

From this environment, and with a disposition similar to Alexander Berkman’s (Gitlow’s mother would reflect that he was born kicking and never ceased protesting),293 came a founder of the Communist Party of America (later: Communist Party USA). Gitlow wrote about the

290 Holmes first offered this in Abrams v. United States, 250 U.S., at 630, see later Gitlow v. New York, 268 U.S., at 672 (Holmes, J. dissenting).
292 Lendler, Every Idea an Incitement, 5–6.
293 Lendler, Every Idea an Incitement, 92.
influence of his Russian heritage: “I thrilled at stories of the underground movement [in Russia], of the conspiring activities, how deeds of violence against the Tsarist oppressors were planned.”

He was similarly inspired by the Homestead Strike and “the heroism of the Anarchist martyrs,” presumably a reference to the Haymarket Eight. Unlike Berkman, Gitlow’s organic roots and membership within the East Side community lent his ideas legitimacy within the American immigrant struggle and an audience. As such, in the fall of 1917 Gitlow was elected as an assemblyman to the New York State legislature, one of ten who ascended from the Socialist ballot in New York City. The Socialist surge was due to their anti-war platform, although chronologically in line with the October Revolution.

Gitlow was defeated the following year, but his attention was focused on events in Russia. In his autobiography, he wrote, “Russia showed the way…. We accepted the Bolshevik Revolution as our revolution, the Bolshevik leaders as our leaders. We worshiped Lenin and Trotsky…their influence on us was tremendous.” Therefore, Gitlow and his caucus quickly split the Socialist movement and formed the Communist Labor Party. Shortly after this schism in July 1919, Gitlow’s radical *Revolutionary Age* published the “Left Wing Manifesto,” in which his words would later be examined by the United States Supreme Court.

The principal city of New York State held a distinct radical threat, as one can easily imagine from the combination of socioeconomic inequality, immigrants living in the squalid conditions of tenement housing (as exposed by journalist Jacob Riis), and little bona fide representation or hope of upward mobility. As Attorney General Palmer conducted his own raids

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in November 1919 and January 1920, the New York legislature’s “Lusk Committee” inspired similar raids in New York City at the same time.

At a November 8, 1919 meeting celebrating the Russian Revolution’s second anniversary, Benjamin Gitlow was arrested along with thousands of others and searched for membership cards.298 Gitlow recalled, “I had some confidential papers in my possession which involved Ludwig Martens, the official Soviet representative to the United States…. I dropped them behind the radiator.”299 Seizing such evidence of Soviet influence in the United States was surely a dream for the raiding police officers, but they unknowingly settled for mere membership cards.

Mirroring federal instruction in the Palmer Raids, immigrants arrested were to be turned over to the Bureau of Immigration, and local citizens to law enforcement. Many of Gitlow’s card-carrying audience were jammed into Ellis Island cells; some were deported on the Soviet Ark six weeks later. In contrast, Gitlow found himself formally charged as an American citizen, with a clear-cut case against the message of his July “Left Wing Manifesto.”

The specific language Gitlow employed in the article is relatively tangential to the case. Although some judges examined his speech more rigorously than others, at the heart of the case was his prominence in the American Communist movement. His message in the manifesto was that Socialism had to “destroy the parliamentary state” through mass action and mass strikes—“The Communist International calls the proletariat of the world to the final struggle!”300 As Gitlow himself understood it, his movement was no longer a legal one. The judiciary would seize upon the phrase “destroy the parliamentary state” as inherently undemocratic and with unconstitutional means. The Communist organizations of the United States were severely

298Gitlow, I Confess, 60.
299Gitlow, I Confess, 60.
300“The Left Wing Manifesto” in Revolutionary Age 2, no. 1 (July 5, 1919), pp. 6–8, 14–15. Republished online by www.marxisthistory.org. Quotes from pages 6 and 12 in online PDF.
“crippled” by the Red Hysteria raids, not only via mass arrests, but also for the clear message that a membership card to a radical organization was now grounds for deportation from the United States. It was so established that Gitlow’s Community Labor Party was illegal.  

His trial for the Revolutionary Age’s message was a manifestation of this reality.

Justice Oliver Wendell Holmes wrote his famous opinion in *Schenck v. United States* (1919): “The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.”  

*Schenck* upheld a conviction under the 1917 Espionage Act, denying the right to advocate World War I draft evasion. Although the Constitutional basis for the law was previously unchallenged, the facts of the case were clear enough that Charles Schenck had willfully violated the Espionage Act. The statutory intent of the New York Criminal Anarchy law that condemned Benjamin Gitlow was not action based, as Schenck was, but ideology based.

The ruling of *Turner v. Williams* greatly widened reasonable interpretation of the Immigration Act of 1903 and allowed for great administrative latitude in the persecution of radicals. In contrast, Benjamin Gitlow’s conviction is reasonable under the Criminal Anarchy Act. The act had an intentionally broad definition of anarchism, effectively criminalizing revolutionary activity and proactively exercising the government’s right to self-preservation. The intentional ambiguity of the state-based legislation was such that Gitlow’s appeals had enormous hurdles to overcome in arguments against charges under which the law was designed to favor the state. Unlike *Turner*, it is clear that the law was intended to punish Gitlow and similar revolutionary speech.

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This view is a straightforward reflection of Gitlow’s appeals record. Chief Magistrate of the City of New York courts William McAdoo chose to prosecute Gitlow under the logic that it was proactive legislation, *meant to lie latent*, from a legislature and people that could not foresee a powerful Communist movement in the United States. He wrote that before the Russian Revolution, it was difficult to conceive of the danger presented by “Nearly eighty recruiting barracks for this red army in the City of New York with thousands of members and apparently unlimited money, from at home or abroad.” In McAdoo’s eyes, “To fail to enforce this law under the circumstances, would be…a betrayal of the public trust.”

This pronounced responsibility must inform a reading of *Gitlow*. The Criminal Anarchy Act—which by no accident, went unused and forgotten during the early 20th century—was “break in case of emergency” legislation, which McAdoo recognized. This falls within a definition of a “bad tendency” interpretation of free speech which was accepted by American jurisprudence at the time.

William McAdoo was the first person to evaluate the legitimacy of the charges levied against Benjamin Gitlow. Neither a trained lawyer nor a policeman, McAdoo was an administrative representative whose role it was to decide if prosecution was right for the city. Although Gitlow’s case would eventually be evaluated on a national scale, the arguments and perspectives produced at the lower level would be reproduced as Gitlow’s appeals escalated up the judicial ladder.

With urgency, McAdoo tied the former elected Socialist to the anti-radical law, perceiving an imminent danger directly related to the recent Russian Revolution. The trial transcript notes he included the following string of statements against the defense:

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303 Indictment, *People v. Benjamin Gitlow and James Larkin*, at 4. Such “unlimited money” was a response to Soviet claims they could be a lucrative trade partner. See generally Pfannestiel, "The Soviet Bureau."

Our government is at war with Russia... [if not formally declared,] we do not recognize the government of Russia, and to the United States, Russia is nothing but a state of chaos and anarchy...who killed the 111 American soldiers whose bodies are being brought back from Russia?.... The Communist Party has declared a state of war against the United States...and the establishment of the Communist Party in the state of New York is the highest crime known to our law.305

Far from a one-off source, McAdoo claimed his view “spoke for the majority”306 as he launched what was to be Gitlow v. New York.

In fact, Chief Magistrate McAdoo reiterated much of the anti-immigrant and anti-radical sentiment already seen, perfectly encapsulating the statutory intent of the Criminal Anarchy Act. He wrote that the United States “up to the time of this enactment tolerant and charitable to the discontent begotten by old-world millennial feuds and injustices against those who came to our shores, admitted the greatest latitude to angry vaporings....”307 “Old-world” was a well-worn euphemism for Europe, and McAdoo’s criticism of untempered speech rights prior to McKinley’s assassination mirrored that of those who enacted the law. McAdoo effortlessly tied “anarchy” to Gitlow’s radicalism, writing that his manifesto’s call for a mass action strike “is a militant uprising of the red revolutionists. At this point the state is given the option that it must either suicide or be killed. Where does this differ from professed anarchy?”308 From this definition, anarchism is held as any attempt to subvert or overthrow the state.

Legal historian Thomas Mackey points out that McAdoo informally employed the bad tendency test, determining for himself the offense of Gitlow’s publication and doctrine.309 McAdoo himself emphasized the clear applicability of the law as written to Gitlow’s charges and, regardless of his own views, felt obligated to prosecute Gitlow. Although the courts

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305 As quoted from the hearing transcripts in Lendler, Every Idea an Incitement, at 18. Emphasis added.
306 Mackey, “They Are Positively Dangerous Men,” 428.
307 Indictment, People v. Benjamin Gitlow and James Larkin, at 1.
308 Indictment, People v. Benjamin Gitlow and James Larkin, at 4.
309 Mackey, “They Are Positively Dangerous Men,” 435.
reviewed the exact language of the Criminal Anarchy Act and if “unlawful means” held the condition of force or violence, McAdoo felt inaction would be “a betrayal of the public trust,” meaning the democratically elected legislature that defined Criminal Anarchy so broadly. McAdoo took it upon himself to lead the brigade and “put out a fire...which might later on not yield to the contents of a reservoir.”

Gitlow’s first appeal after his 3-hour conviction by a grand jury in February 1920 was heard that May by the New York Supreme Court. The concise 2-page opinion provides as hopeful of a counterargument as possible to Gitlow’s applicability under the anti-anarchist law, yet held Gitlow’s conviction on the grounds that the Criminal Anarchy Act was defined as explicitly broad. Noting that the split between philosophical anarchists with a utopia in mind, as compared to “Anarchists” who seek forceful revolution and the denigration of society, Justice John V. McAvoy tiptoes around whether Gitlow is inciting violence or using force. Instead, the justice merely finds that “when there is a specific, definite pronouncement by the legislative body as to what in its judgment shall be termed criminal anarchy, there is no necessity of resort to purely etymological construction” and thus “no reasonable doubt” could be cast on Gitlow’s guilt. Despite being nearly 20 years since the assassination of McKinley, the New York Supreme Court trusted the democratic process and its own state’s legislative body in the consciously broad statute, an excellent example of judicial restraint.

Gitlow’s next trial was in front of the Appellate Division of the New York Supreme Court and decided in April 1921. As the Red Hysteria had subsided and the United States no longer had

310 See People v. Gitlow, 195 App. Div. 773
311 Indictment, People v. Benjamin Gitlow and James Larkin, at 4.
312 Mackey, “They Are Positively Dangerous Men,” 431.
313 Though confusing, New York’s courts ascend as such: New York Supreme Court (N.Y.S.), New York Supreme Court Appellate Division (App. Div), and New York State Court of Appeals (N.Y). The lower courts are occupied by justices and the Court of Appeals by judges.
315 People v. Gitlow, 183 N.Y.S. at 849.
troops in Bolshevik Russia, the decision of this court was likely Gitlow’s best hope, as the threat of any clear and present danger resulting from his manifesto had subsided. In short, this was an opportunity for a somewhat removed from the crisis court to be generous in accepting Benjamin Gitlow’s perspective.

Instead, the Appellate Division unanimously concurred with a vociferous 15-page opinion by Justice Frank Laughlin. Particularly troubling to the court was Gitlow’s approval of (and connection to) the Soviet regime. Referring to Gitlow’s desire to see a proletarian revolution overthrow the government of the United States, Laughlin wrote:

Those advocating this doctrine are unwilling to await the practical working of their theories in Russia…owing to the fact that Russia is largely an agricultural country, the scheme may not be successful if confined to that country and, therefore, they deem it necessary at once to make the revolutionary struggle world wide…. Hence it is that we find these doctrines principally advocated by those who come from Russia and bordering countries and their descendants, as is the appellant.

There could be no greater indication of the court’s fear of subversion, and Laughlin’s perspective is clearly tinged with disgust for Bolshevism. He imports a considerable degree of geopolitical awareness into a legal decision. He is aware of Lenin’s pronounced need to spread the Communist revolution globally, so that Russia is not encircled by hostile capitalist powers. He finds that Communist doctrine is a threat coming from Russian immigrants and “their descendants,” as Gitlow was. As has been argued throughout this thesis, the correlation between radicalism and immigrants was not inherently nativist. Yet it is still rather shocking to see Gitlow’s status as a first-generation American used against him in a high court of law as evidence to the bad tendency of his speech.

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318 Vladimir Lenin, “Speech On The International Situation.”
Gitlow’s complicity in the unlawful revolutionary mindset was quickly established. Laughlin wrote that—again mirroring the unification of anarchist schools—that anarchist and radical speakers are “chargeable with knowledge that their aims and ends cannot be accomplished without force, violence and bloodshed…” The justice was forceful and far-reaching in his finding that all the listed means, including bloodshed, were necessary for a proletarian uprising. As he condemned the first-generation American Gitlow, he quickly moved on to the context of the Criminal Anarchy Act of 1902 and criticized that Leon Czolgosz—a native-born citizen—was in the United States. With a similar reading of events as argued in my second chapter, Laughlin wrote that President McKinley’s assassination:

aroused the people of the nation to the recognition of the fact which thoughtful observers had already appreciated some time before, namely, that immigration of recent years had made the United States the abiding place of numbers of foreigners who, without understanding of our institutions, had brought with them views and prejudices formerly unknown in our country, and doctrines which, if put into effect, would subvert not merely our or any particular form of government, but organized government everywhere.\textsuperscript{320}

A substantial rhetorical escalation. Laughlin now espoused theories that were, if not openly nativist, imbued with American Exceptionalism. Taking into account his disdain for Russian immigrants, it is clear Laughlin perceives his judicial responsibility to protect the United States from foreign influences. To the nativist, a foreigner could not appreciate the complexity and history of American republicanism. Justice Laughlin may well have been writing a column for The Nation or Harper’s Weekly in 1901. In this respect, he was credibly mirroring what the legislative purpose of the Criminal Anarchy Act was.

Further, the excerpt references earlier context of anti-anarchism and the early calls for anti-radical legislation. Reactions to the Haymarket bombing were fiercely anti-radical,\textsuperscript{321} and

\textsuperscript{319} People v. Gitlow, 195 App. Div, at 782.
\textsuperscript{320} People v. Gitlow, 195 App. Div, at 784-85. Emphasis added.
\textsuperscript{321} Preston, Aliens and Dissenters, 25-28.
Berkman’s assassination attempt kept momentum moving toward repression of radical speech, even before Europe’s decade of regicide.\(^{322}\) Justice Laughlin, appointed to the Appellate Court in 1901 and a prominent lawyer in the days before that, certainly understood the longer context from which the post-McKinley laws arose, and their revival in buttressing the Red Hysteria.

Laughlin goes on to interpret the statue as not an attempt to directly stop radical violence, but rather to stop the “doctrine” that incites such violence. To Laughlin, the legislation sought “the prevention of the spreading of doctrines hostile to the safety of our government and of all government, which inevitably tend to lead those who profess them to commit crimes….”\(^{323}\) Under his definition of anarchy’s doctrine that government should be overthrown by force, any revolutionary movement against the state was to be suppressed; the Communism of Gitlow was interpreted as *employing* anarchy. The perspective of the statute as inherently anti-revolution informs a larger conclusion in the opinion, which asserts that the legislature has the authority to engage the state’s “police power” in its own preservation.\(^{324}\) The New York Appellate Court cites *Turner v. Williams* in its finding that “As long as human governments endure, they cannot be denied the power of self-preservation.”\(^{325}\)

Perhaps at that point, six pages in, the point was made and the Court’s decision could have been rendered. Yet in what can be described only as a highly charged rant, the court goes out of its way to condemn foreigners in the road to the Criminal Anarchy Act, despite the fact that as described in this thesis, the Immigration Act of 1903 gave the federal government authority to deport aliens with radical ideology and the Criminal Anarchy Act was a separate

\(^{322}\) See “A Warning,” *Pittsburgh Catholic*, July 28, 1892.


\(^{324}\) *People v. Gitlow*, 195 App. Div, at 786.

exercise by New York to repress radical speech among citizens and aliens alike. Excessively reading into the statute’s origins, Laughlin writes:

I know of no right on the part of the aliens who are members of the Left Wing and here merely by sufferance of our government, to advocate the overthrow of our constitutional form of government...nor have native-born citizens of alien parentage, such as the appellant is, or any other citizen, such right, and they should not be heard to invoke the protection of the Constitution against their prosecution for acts...intended to overthrow and nullify it by unauthorized means.326

In disclosing such views, the Court displayed an especially pernicious level of judicial activism. In no way did Gitlow’s case involve considerations of immigration law, and the facts of the case were wholly insufficient to establish any foreign influence exerted over the New Jersey–born Gitlow. That Laughlin once again references Gitlow’s Russian heritage and first-generation status seems an attempt to undermine his right to the Constitution.

The 15-page opinion is a troublesome expression of judicial prejudice against Benjamin Gitlow that should have warned his counsel of the tremendous battle he would be fighting in future appeals. Laughlin’s additional ruminations about “god-fearing, liberty-loving” Americans and his advocacy that Americans “be on their guard to meet and combat” anarchist movements belonged in a politician’s stump speech, not the judgment of New York’s second-highest court.327 Such was the infiltration into state jurisdictions of widespread fear of radicalism and its foreign origins after World War I.

Gitlow’s conviction had one more audience before the Supreme Court. In July 1922, the Court of Appeals of New York saw Judges C.W. Pound and Benjamin Cardozo provide the first resistance to Gitlow’s conviction, dissenting in a 5–2 decision. The majority of New York’s highest court focused on the specific issue of the trial court’s consideration of what Gitlow’s

327People v. Gitlow, 195 App. Div, at 797-98.
advocated “mass strike” looked like in reality (the state had entered descriptions of a strike in Winnipeg), concluding that it was appropriate for the courts to take “judicial notice” of what Gitlow’s words looked like in practice, even if not directly applicable.\textsuperscript{328} In the dissenting opinion, Judge Pound took issue with the broad interpretation of anarchism, arguing that the law was a specific and narrow response to the terrorism of the Decade of Regicide and McKinley’s assassination. Pound argued that “revolution against organized governments…was not the evil contemplated” by the legislature.\textsuperscript{329} In finding the trial court prejudicial against the defendant, Pound believed Gitlow was “advocating, not anarchy, but something entirely different” before concluding that “the rights of the best of men are secure only as the rights of the vilest and most abhorrent are protected.”\textsuperscript{330}

Although C.W. Pound was eloquent in his reasoning that disapproval of Gitlow should not supercede properly applying the law to his actions, Justice Pound misconstrued the statute’s language by applying Gitlow to the common definition of an anarchist, rather than the Penal Code’s own construction.\textsuperscript{331} The code was explicit that “criminal anarchy” included “the doctrine that organized government should be overthrown by force or violence, or by assassination…or by any unlawful means.”\textsuperscript{332} It was an anti-revolution statute; a government’s attempt to protect itself and its citizens. As was held in the variety of decisions on Gitlow’s charges, “unlawful means” were taken to represent any revolutionary measure outside of the democratic and constitutional process.\textsuperscript{333} While Justice Pound was noble in his intent to protect Gitlow from unfounded persecution, the state legislature had democratically spoken in 1901 so as to handcuff future defendants of radical speech.

\textsuperscript{328} People v. Gitlow, 234 N.Y. 132, at 136.
\textsuperscript{329} People v. Gitlow, 234 N.Y. at 156 (Pound, J. dissenting).
\textsuperscript{330} People v. Gitlow, 234 N.Y. at 158 (Pound, J. dissenting).
\textsuperscript{331} People v. Gitlow, 234 N.Y. at 155–6 (Pound, J. dissenting).
\textsuperscript{332} Criminal Anarchy Act of 1902, N.Y. Penal Law §160.
\textsuperscript{333} People v. Gitlow, 195 App. Div 773.
The federal outcome of *Gitlow v. New York* is thoroughly studied for its constitutional implications. Although not necessary for the specific resolution of Gitlow’s conviction, the court asserted that First Amendment protections were assumed to be protected by the Fourteenth Amendment and its due process clause; thus exposing state laws to the federal standards laid out in the Bill of Rights.\(^{334}\) In legal terms, this “incorporation” of the Bill of Rights has immortalized *Gitlow*.\(^{335}\) For the present purposes, though, the majority’s 7–2 decision to uphold Gitlow’s conviction—despite their acknowledgement of his First Amendment rights—is not very captivating. The judicial review was focused on whether the statute was constitutional. In recognizing the defense’s argument that Gitlow’s expression was not a “clear and present danger” as outlined in *Schenck*,\(^{336}\) the opinion written by Justice Edward Sanford found that Gitlow’s manifesto did have a “present” application, “where the legislative body itself has previously determined the danger of substantive evil arising from utterances of a specified character.”\(^{337}\) Utilizing less charged language, the Court recognized the judgments of the preceding lower courts.

In his decision Justice Sanford threw his own creative metaphor into the ring, as he recognized the proactive resolve of the legislature and the state’s interest in “extinguish[ing] the spark without waiting until it has enkindled the flame or blazed into the conflagration.”\(^{338}\) Marc Lendler finds that “fire is the perfect metaphor” for the court’s interpretation of bad tendency doctrine, because it may take quick and unpredictable hold upon its environment.\(^{339}\)

The court looked favorably on the “break in case of emergency” legislation because “the


\(^{335}\) Lendler, *Every Idea an Incitement*, 112–3.

\(^{336}\) *Schenck v. United States*, at 52.


\(^{339}\) Lendler, *Every Idea an Incitement*, 117.
balance of a jeweler’s scale. I am inclined to agree with the court, because the legislature’s explicit and intentional description of speech against the state’s interest is far preferable to more arbitrary administrative implementation of what constitutes a “clear and present” danger to the state and its people. This distinction separates the guilt of those on the Soviet Ark from the guilt of Berkman, Goldman, and Gitlow.

As Lendler notes, this belief is not universally agreed upon. It seems a “sensible” doctrine of First Amendment rights to allow the legislature an open latitude in determining pernicious speech, rather than the administrative state, but does also leave the door open for “wider censorship” by the legislative body. However, the latter is an acceptable hazard because the legislature is a fluid body with indefinite resolutions and the power to continually effect statutory change. It is unfortunate that indeed, the opportunity is aroused for the tyranny of the majority, but a democracy is only as wise and judicious as the aggregated qualities of its population. In short, I see the legislature as a formal expression of “the marketplace,” of whose theoretical judgment Justice Oliver Wendell Holmes relies on in his dissent.

In the World War I civil liberties cases, Justice Holmes expressed the ideal of the marketplace as the ultimate democratic adjudicator of acceptable speech to society. In his dissent in Abrams v. United States, he articulated:

> To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care wholeheartedly for the result, or that you doubt either your power or your premises...the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market....

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341 Lendler, Every Idea an Incitement, 116.
342 Abrams v. United States, at 630 (Holmes, J. dissenting).
As such, Holmes finds that the persecution of opinions is “logical,” but not necessary. This informs his Gitlow dissent, in which he shares no fear with his contemporaries of a proletarian dictatorship: “It is said that this manifesto was more than a theory, it was an incitement. Every idea is an incitement. It offers itself for belief, and, if believed, it is acted on unless some other belief outweighs it.” The dissenting opinions of Holmes and his ideological ally Justice Louis Brandeis have since become staples of American jurisprudence, in which the marketplace ideal has been considered “essential to popular participation in government,” reimagining First Amendment protections with American free market ideals. This focuses on the aggregate benefit of the marketplace in its recognition of the state’s interest in progress, rather than in the individual’s betterment through self-expression.

The constructions of the state’s interest in the First Amendment provided by the postwar dissenting Holmes-Brandeis bloc have since been adopted. A 1974 opinion clearly reiterated: “However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.”

However, as described by legal scholar Stanley Ingber, “This theory assumes that a process of robust debate, if uninhibited by governmental interference, will lead to the discovery of truth....” Holmes can accept Gitlow’s subversive intent because a “properly functioning marketplace” will advance society as it is destined. Ingber, writing in 1984, critiques this perspective because a properly functioning marketplace is an ideal, not a reality. It is a “myth” due to the unreliable “assumptions of objective truth and the power of rationality.” In effect, the exalted freedom of expression produces “incremental change...reflective of the dominant

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culture."³⁴⁷ Ingber is convincing. Further, the United States in 1919-20 had the “truth,” what the country sought was national security and security against anarchist terrorism.

The bad tendency doctrine was overturned on the republican, laissez-faire ideal that it is not the state’s role to adjudicate acceptable speech in the marketplace. One can accept and favor the modern exaltation of the marketplace’s power while still recognizing the historical context of *Gitlow*, in which the state had not infringed upon Benjamin Gitlow through the exercise of prior restraint, but instead reflected and implemented a widespread and institutionalized fear of radicalism. As was shown in Chapters One and Two, the marketplace rejected anarchist and commune-like revolutionary behavior and sought a formal, legal way to restrict and repress such speech. Marc Lendler views *Gitlow* as revolving around the “essence” of the bad tendency doctrine, “not its excesses;”³⁴⁸ this holds true due to Gitlow’s prominence and unrepentant motive to overthrow the United States government. The case deserved unique attention because the speech at issue was more substantive than the infamously offhandedly prosecuted dissents during World War I and the Espionage Act.

The bad tendency doctrine and the marketplace ideal have a common flaw: opportunity for a tyrannical majority. Through the bad tendency doctrine, as applied in *Gitlow*, a majority can affect laws to persecute minority groups. In the marketplace, the instrumental value of free speech is limited to its ultimate influence on the dominant establishment. The difference is in liberty of expression—an unpopular idea has at least enjoyed the possibility of greater promotion. A civil libertarian perspective extolls this value, but its preeminence relative to bad tendency is applicable when prior restraint is enforced by the legislative body.

The danger in both doctrines is *tyranny* of the majority, rather than the inherent coercive power. Social marginalization of unpopular ideas is understood by Holmes to be the effect of the marketplace; indeed it presents as acceptable. The delineation between social forces as tyrannical or coercive is found in that tyranny relies on prior restraint. Prior restraint is only possible through institutional processes, thus the institutional marginalization of certain doctrines walks a fine line. The core principle of the First Amendment is that it denies the government prior restraint, but allows for that same power to punish the effect of speech or action.

The application of bad tendency through the Criminal Anarchy Act of 1902 is acceptable because it does not advocate or employ prior restraint. At worst its effect is a *chilling* restraint on the marketplace, wherein a citizen fears possession or advocacy of disavowed doctrine or literature, or a membership card to the wrong organization. It is likely that the inconspicuous nature of the statute induced no chilling restraint before the wider Red Hysteria. It was enforced largely *after* the Russian Revolution and allowed for *bona fide* hysteria and majority pressures to restrict and punish radical speech. Here, the restraint is comparable to an effect of the marketplace’s reticence to radical ideology. The coercive nature of the legislature and the marketplace are one and the same; therefore the bad tendency application in this case is favorable.

The marketplace had used an institution to attempt social marginalization. This is in the state’s interest, because as Justice Sanford wrote, the judiciary cannot be expected to measure the danger of every utterance.\(^\text{349}\) Later jurisprudence concurring with the marketplace ideal agreed that it was not incumbent upon “the conscience of judges and juries” to regulate speech.\(^\text{350}\) First Amendment scholar Zechariah Chafee wrote in his renowned *Free Speech* (1920) that judicial


interpretation of the Espionage Act convictions were flawed due to reliance on the bad tendency doctrine, which called on the state to “look into the heart” of the defendant and to determine his motives. However, the Gitlow conviction is of a different strain. The Criminal Anarchy Act of 1902 was clear that revolutionary speech was punishable. In defining a specific element of speech to restrict and repress, little was ambiguous for the jury and judiciary.

**Conclusion**

American jurisprudence has since advanced to an interpretation of speech rights that would condemn Gitlow’s conviction. What is key is that Gitlow’s conviction was in a time of crisis and emergency, when the people determined that radical revolutionary anarchist speech posed a proximate threat to the state and the well-being of its citizens, and thus his sanction was contextually justifiable. Commenting on the denial of Gitlow’s appeal by the Appellant Division of the New York Supreme Court, the *Yale Law Journal* mused “One may share the court’s aversion to the defendant’s views and yet doubt the corrective effect and social desirability of the means and repression adopted.” The editor’s concern was over how “similar policy” would be applied in the future, should bad tendency be continuously expanded in peacetime after Gitlow. But, Gitlow’s conviction did come in an unparalleled time of crisis, and it is unfair to the court to remember it as an unchecked peacetime conviction.

*Gitlow* was decided by an “environmental” court that did import contemporary views into whether speech had a harmful tendency. That the Court took judicial notice of a surge in Communist and radical threats is evident. A similarly composed court overturned the conviction in *Herndon v. Lowry* (1937), rejecting the state’s argument that “dangerous tendency” superseded the proximate necessitation of a “clear and present danger,” as was roughly determined in

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352 “Notes,” 861–2.
The majority wrote “the power of the state to abridge freedom of speech and assembly is the exception rather than the rule.” The narrow 5–4 majority thus limited Gitlow’s future application without explicitly declaring it bad law. The defense in *De Jonge v. Oregon* (1937) challenged Justice Sanford’s reliance on legislative predetermination of bad tendency, asserting “Many laws have been declared void despite express legislative declaration of their necessity.”

Relating to *Gitlow*, this argument does emphasize that in the fundamental separation of powers, the judiciary has the ability to undermine an injurious law, even if the legislature is actively in favor of it. This is a check on the aforementioned tyrannical potential of the majority through the legislative branch. However, in finding the *Gitlow* conviction reasonable, the danger of Gitlow’s speech was perceived by the Court to be relatively imminent. The court did not merely defer to the legislature, and the 8–0 *De Jong* denial of a similar criminal anarchy conviction in 1935 is evidence that as the Communist threat and Red Hysteria had subsided, so had the proximate threat of that radical speech.

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Conclusion

“One may share the court’s aversion to the defendant’s views and yet doubt the corrective effect and social desirability of the means and repression adopted.”

After the respective legal challenges, the causes and political martyrdom of Alexander Berkman, Emma Goldman, and Benjamin Gitlow led them to Soviet Russia. These radical leaders in America who had long emulated the Soviets and their revolution put aside ideological nuance and were joyed to arrive at the epicenter of the fight for the emancipation of the working class. Perhaps it was hubris, but all three thought they could influence the Bolsheviks and advance the cause globally.

Alexander Berkman was the first to step foot on Russian soil. Appointed by the crew of the U.S.S. Buford, Berkman trekked from the port in Finland to the Russia border, crying “tovarishch” (comrade) to the soldiers at the border before being welcomed with open arms. Goldman and Berkman were formally admitted to Bolshevik Russia on January 19, 1920. Two months later, they were invited to the Kremlin to meet with the Soviet Premier, Vladimir Lenin, where Berkman agreed to form a committee to encourage American support for the Soviet experiment.

However, the disenchantment with Marxism and communism had already worn away at the anarchist pair’s optimism. Anarchism—which from the fundamental texts of Mikhail Bakunin was libertarian and against any form of state authority—was incompatible with a dictatorship of a small circle of elite theological leaders. Goldman bemoaned that Bolshevism was even more oppressive than capitalism, before reflecting Mikhail Bakunin: “We always

356 “Notes.”
knew the Marxian theory was impossible, a breeder of tyranny. We blinded ourselves to the faults in America because we believed it might accomplish something.\(^{360}\) When the government turned its arms against rebelling anarchist sailors in the March 1921 Kronstadt Rebellion, that was the last straw. Berkman wrote on March 7: “My heart is numb with despair, something has died within me.”\(^{361}\) By September, in the wake of the Bolsheviks crushing ideological dissent, including that of anarchists, Berkman resolved “The Bolshevik myth must be destroyed. I have decided to leave Russia.”\(^{362}\) In December 1921, Emma Goldman orchestrated their escape to Berlin.

Concurrently in the United States, Benjamin Gitlow’s case was being pressed to the Supreme Court. He had a co-defendant in the first trials, Jim Larkin, but in January 1923, Larkin was given a pardon by New York Governor Al Smith, largely on the grounds that the Red Scare—and proximate danger of Larkin’s *Revolutionary Age*—had subsided. The nascent American Civil Liberties Union (ACLU) had their own designs on the matter, and they convinced Benjamin Gitlow to withdraw his pardon application and to take the case to the Supreme Court. To the ACLU, Gitlow’s case was consequential, his charges were “peacetime” and an opportunity for the government to show their “bad tendency” doctrine that convicted radical dissenters during World War I was responsibly limited to times of crisis. Further, the civil libertarians sought to extend the Bill of Rights to state laws, a legal concept known as “incorporation” of those federal protections.

Today, the ACLU’s website reads that *Gitlow v. New York* was a “significant victory” despite Gitlow’s conviction being upheld.\(^{363}\) The basis for the claim is clear: the Court interpreted

\(^{360}\) Anarchist Has Flag in Hotel Room,” *San Antonio Evening News*, June 18, 1920.
\(^{363}\) “Early Breakthroughs For Free Speech,” American Civil Liberties Union, https://www.aclu.org/other/aclu-history-early-breakthroughs-free-speech
that the Due Process Clause of the 14th Amendment incorporated the Bill of Rights into state laws. *Gitlow* remains a landmark Supreme Court case for this reason. Justice Sanford wrote: “For present purposes, we may and do assume that freedom of speech and of the press which are protected by the First Amendment from abridgment by Congress are among the fundamental personal rights and “liberties” protected by the due process clause of the Fourteenth Amendment from impairment by the States.”364 With this victory, the ACLU would go on to advance and represent communist defendants in *Herndon v. Lowry* (1937) and *De Jonge v. Oregon* (1937), which were the peacetime cases envisioned by the ACLU. With the American recognition of the Soviet Union, and Joseph Stalin’s platform of “socialism in one country,” anti-communist hysteria had subsided.

Benjamin Gitlow spent only a short period jailed in 1925; he was pardoned by the governor after only a few weeks in Sing Sing. Upon his release, he threw himself into Communist Party business once again. As part of a three-man Secretariat of the American Communist Party, Gitlow and his colleagues Charles Ruthenberg and Jay Lovestone closely associated themselves with Comintern chairman Nikolai Bukharin. As Stalin turned against Bukharin at the end of the 1920s, Gitlow and Lovestone went to Moscow, a daring expedition that brought them face-to-face with the General Secretary himself. Predictably, their confrontation with Stalin led to their power stripped in the American Communist Party. Expelled from the party, Gitlow watched in horror during the 1930s as the purges and show trials snowballed to coalesce power in Stalin’s hands. After the execution of his friend Bukharin in 1938, Gitlow wrote an autobiography mockingly titled *I Confess*, which asserted himself as an anti-communist who became more disillusioned with the Soviet experiment than even Emma Goldman.

Benjamin Gitlow would later rationalize his own conviction. He told his son, “Of course I was guilty with what they charged me—conspiring to overthrow the government.”\footnote{\(\text{As quoted by Marc Lendler in a Summer 2005 interview with Benjamin Gitlow Jr., Summer 2005, in Marc Lendler, “The Time to Kill a Snake: Gitlow v. New York and the Bad Tendency Doctrine.” Journal of Supreme Court History, April 2011, 29.}\)} The disgruntled Gitlow certainly reconceptualized his guilt and trial, but his logic mirrors that of the courts convicting him. Rough common sense would indicate that no right existed to impose a Bolshevik government upon America. Indeed, what is memorable about Gitlow’s trials is the repeated reference to a metaphor of stamping out subversive radicalism, which, if allowed to spread, could bring irreparable harm to the state. This theme is seen earlier, too, in the calls for anti-radical legislation.

In reaction to Alexander Berkman’s 1892 \textit{Attentat}, the call for legislation used the metaphor of seed planting, denouncing that it was allowed to “[Sow] the seeds which germinate, and bear the fruit, whose blossoms were blood red.”\footnote{\(\text{As quoted by Marc Lendler in a Summer 2005 interview with Benjamin Gitlow Jr., Summer 2005, in Marc Lendler, “The Time to Kill a Snake: Gitlow v. New York and the Bad Tendency Doctrine.” Journal of Supreme Court History, April 2011, 29.}\)\footnote{\(\text{“A Warning,” Pittsburgh Catholic, July 28, 1892.}\)} Looking back on the 1902 Criminal Anarchy Act, Commissioner McAdoo wrote “It is intended to put out a fire with a bucket of water which might later on not yield to the contents of the reservoir.”\footnote{\(\text{Indictment, People v. Benjamin Gitlow and James Larkin, at 4.}\)} Justice Edward Sanford’s opinion in \textit{Gitlow} mimics the metaphor: “A single, revolutionary spark…may burst into a sweeping and destructive conflagration.”\footnote{\(\text{Gitlow v. New York, 268 U.S. 652, at 669.}\)} What was troubling, terrifying, and provoking about Communism was its subversive, underground roots. When the seeds emerged for mass consumption, such as Gitlow’s “Left Wing Manifesto,” before the fruit could blossom, the people, their state, and their judiciary all sought to stamp out such an acceptance.

In 1918, A.C. Ratshesky wrote an editorial for the \textit{New York Times}: “Americanization is the Cure for Bolshevism.” Although Ratshesky’s first page was a reiteration of classic anti-radical and anti-immigrant themes (“this country has been allowed to become the stamping
ground of every species of disgruntled pessimist…”369), his call for Americanization is a suitable lasting impression of the Red Hysteria. His solution was to consider that “we are above [Bolshevism]...we have everything to be thankful for….” The author writes “Will the American workingman set down his dinner pail and listen…. I think not.” He adds “Help cannot come from the outside. If he becomes educated and informed, his mind will not receive anarchistic propaganda. It is a question of the individual knowing that Bolshevism is as dangerous as the plague.”

Does this not sound like Justice Oliver Wendall Holmes’ marketplace solution? The American ideal is a free market, in which “Every idea is an incitement. It offers itself for belief, and, if believed, it is acted on unless some other belief outweighs it.”370 The civil libertarians such as Justice Holmes who defended Benjamin Gitlow knew his subversive intentions, but envisioned a society in which it was incumbent upon the citizens to accept and advance the ideas they endorsed. Unfortunately, the tyranny of the majority has beset the United States as well, with various witch hunts such as McCarthyism forgetting our fundamental exhortation of uplifting competition.

Modern American jurisprudence has taken after the opinion of Gertz v. Welch (1974), which compelled the American people to consider that: “However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.”371 Human nature conflicts with this idea, however. Justice Holmes’ renowned Abrams dissent, advocating for his marketplace theory wrote: “To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle… [But] time has upset many fighting faiths… every year, if not every day we

have to wager our salvation upon some prophecy based on some imperfect knowledge.”372 He was in the minority because, well, it is uncomfortable to accept that ideas seemingly asinine, subversive, or immoral may have a right to truth, and space our marketplace of ideas. Opinions may well never be truths, only accepted on the basis of continual testing.

The Red Hysteria was more than a public and a government repressing an unpopular political ideology, nativism and self-identity were motivating factors behind fear’s virulent expression. Writing this thesis through and since January 2021, I was forced to grapple with the uncomfortable notion that speech I may consider subversive, dangerous, and asinine has a role in our marketplace and can be free from government persecution, even as radical protesters entertained an overthrow of our government on January 6, 2021. Who would defend their free speech? Who would want to? I can only rationalize that as sure as I may feel against such an event today, many executing that “First” Red Scare in 1919 and 1920 thought they would be lauded by history.

No “hysteria” has overwhelmed or ostracized a faction of those still questioning the election results of 2020. Instead, I am forced to accept that their minority opinion has not triggered a “sweeping conflagration,” to borrow from the Gitlow opinion. It is only through the test of time through which American democracy may remain a provisional truth.

372 Abrams v. United States, at 630 (Holmes, J. dissenting).
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