

THE DISPLACED PERSONS ACT OF 1948 AND HOME-GROWN ANTISEMITISM

by
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This Article examines the 1948 Displaced Persons Act which provided for the ability of certain European refugees to immigrate to the United States following World War II. The 1948 Act discriminated against Jewish survivors of the Holocaust and imprinted Nazi racial laws and ideology upon U.S. law. Moreover, in debates over passage of such a law, a vast amount of overt anti-semitism emerged, generated by politicians and ordinary citizens, which went well beyond the question of the admission of refugees to the United States. By examining the complex and transnational events leading up to the 1948 Displaced Persons Act, and drawing upon underutilized archival material, this Article helps to uncover and explain antisemitism in the immediate post-war period. This analysis has substantial implications for how we think about the history of antisemitism and its relationship to law in the United States.

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I. INTRODUCTION

The title of this symposium “Law vs. Antisemitism,” implies that law and antisemitism are dichotomies on opposite sides of the coin, that law protects Jews from antisemitism, functioning as a sword and a shield. This narrative fits well within a long Jewish history of believing in law and how law can be used to enact social change. Law also plays a significant role in the supposed contrast between the old world and the new world in the Jewish immigrant experience where the new world is a place of law and the old world lawless.¹ Perhaps it is the continual belief and hope in the protection that law offers Jews that instances where this is not the case have tended to be deemphasized or ignored in legal scholarship as not fitting into this larger narrative.

In the post-World War II period, historians have written about how Jews finally became white. That is how social constructions of race shifted in such a way that Jews were not seen or understood to be a separate race but simply an example of hyphenated Americans who were assimilated into American life.² In such narratives, post-war antisemitism largely functions as an aberration of the far right. Even the most famed historian of antisemitism in the United States writes that the decline of antisemitism after the war was “so swift that careful observers were at a loss to explain the changes. . . . [A]ntisemitism in America was downgraded from a problem to an irritant.”³

This Article interrogates these assumptions by examining how widespread antisemitism was embedded and baked into the United States’ first formal refugee act. Specifically, this Article examines the 1948 Displaced Persons Act which provided for the ability of certain European refugees to immigrate to the United States following World War II. The 1948 Act discriminated against Jewish survivors of the Holocaust and favored those refugees viewed as most Aryan.⁴ Thus, Nazi racial laws and ideology were imprinted upon U.S. law. Moreover, in debates over passage of such a law, a vast amount of overt antisemitism emerged, generated by politicians and ordinary citizens, which went well beyond the question of the admission of refugees to the United States. By examining the complex and transnational events leading up to the 1948 Displaced Persons Act, and drawing upon underutilized ar-

¹ For discussions of Jewish peoples’ relationship to law, see JEROLD S. AUERBACH, *JUSTICE WITHOUT LAW?* (1983); JEROLD S. AUERBACH, *RABBIS AND LAWYERS: THE JOURNEY FROM TORAH TO CONSTITUTION* (1990).

² MATTHEW FRYE JACOBSON, *WHITENESS OF A DIFFERENT COLOR: EUROPEAN IMMIGRANTS AND THE ALCHEMY OF RACE 187–88* (1998); KAREN BRODKIN, *HOW JEWS BECAME WHITE FOLKS AND WHAT THAT SAYS ABOUT RACE IN AMERICA* (1998).

³ LEONARD DINNERSTEIN, *ANTISEMITISM IN AMERICA* 150 (1994).

⁴ Statement by the President Upon Signing the Displaced Persons Act, 142 PUB. PAPERS 382, 383–84 (June 25, 1948) [hereinafter Truman Statement].

chival material, this Article helps to uncover and explain antisemitism in the immediate post-war period. This analysis has substantial implications for how we think about the history of antisemitism and its relationship to law in the United States.⁵

II. THE LAST REMNANT OF EUROPEAN JEWS

As Allied forces liberated Europe, they were confronted with millions of people who were dislocated from their home countries. Many were hungry, with few possessions and scant money, little or no transportation, and in need of shelter and food. At moments, to those who witnessed this, it seemed like all of Europe had taken to the roads, bedraggled, pushing or pulling the small possessions that they could. Some rode in wagons and some simply walked. Some were headed home; some were escaping from home; some were unaware of where they were going—but they were moving.⁶

Those who were part of this vast movement of bodies across charred landscapes and still fields included people who fled their home countries to escape German persecution during the war; a vast number of people whom the Third Reich had transferred to Germany as slave labor or prisoners of war; those who voluntarily entered Germany to work; those who survived concentration and internment camps; those who fled from the Soviets; and those who feared retribution for collaboration with Germany.⁷

Among such people were Jews, but nobody, including the Allied governments, Jewish organizations, and European Jews themselves, knew exactly how many Jews had survived the Reich's effort to annihilate them.⁸ Early estimates of surviving Jews put the number as somewhere between 50,000 and 100,000—a tiny percentage of

⁵ Although there is a thick literature on European Displaced Persons following World War II, this has primarily been written by historians of European or Jewish history and seems not to have pollinated legal scholarship. This absence has obscured the role of law in perpetuating antisemitism in the post-war period. In part, this Article attempts to close this gap and bring the existing historiography into legal scholarship.

⁶ For discussions of the millions of people moving and migrating immediately following the war and the chaos that ensued, see DAVID NASAW, *THE LAST MILLION: EUROPE'S DISPLACED PERSONS FROM WORLD WAR TO COLD WAR* (2020); RUTH BALINT, *DESTINATION ELSEWHERE: DISPLACED PERSONS AND THEIR QUEST TO LEAVE POSTWAR EUROPE* (2021); ATINA GROSSMANN, *JEWS, GERMANS, AND ALLIES: CLOSE ENCOUNTERS IN OCCUPIED GERMANY* 131 (2007); SUSAN T. PETTISS & LYNNE TAYLOR, *AFTER THE SHOOTING STOPPED: THE STORY OF AN UNRAA WELFARE WORKER IN GERMANY 1945–1947*, at 48–49 (2004); MARK WYMAN, *DPS: EUROPE'S DISPLACED PERSONS, 1945–1951* (Cornell Univ. Press 1998) (1989).

⁷ On the composition of DPs and some DPs' refusal to be repatriated fearing communism or charges of collaboration, see HAIM GENIZI, *AMERICA'S FAIR SHARE: THE ADMISSION AND RESETTLEMENT OF DISPLACED PERSONS, 1945–1952*, at 19–23 (1993).

⁸ See ABRAHAM S. HYMAN, *THE UNDEFEATED* 34 (1993).

the Jews who had lived in Europe prior to the Nazi onslaught.⁹ Such Jews were widely believed to be the last remnants of Jewish life left in Europe—the *She'erit Ha-pletah*.¹⁰ As the Allies liberated concentration camps, newspapers, radio broadcasts, and newsreels shown in movie theaters made U.S. audiences vividly aware of the horrors of death camps and the near extermination of much of Europe's Jewish population.¹¹

This mishmash of people found themselves lumped together under the new military administrative category of Displaced Persons (DPs).¹² In 1944, the Supreme Headquarters, Allied Expeditionary Force, commanded by Dwight D. Eisenhower, used this new classification to essentially sort people into those who were from European-allied nations (and thus deserving of help) and those who were not (such as Germans and Italians). The new category of Displaced Persons was defined to broadly include people who were temporarily outside their national boundary.¹³ To some extent, the Allied governments had anticipated that there would be large numbers of dislocated people and they had sought to avoid the aftermath of World War I in which there had been starvation in Europe.¹⁴ The United Nations had

⁹ Abraham Hyman, who eventually became the Acting Jewish Adviser to the U.S. Command in Germany and Austria, writes that initial estimates were somewhere between 75,000 to 90,000 Jewish survivors, but actual numbers were impossible to know in the chaotic aftermath of war. *Id.* at 35.

¹⁰ *She'erit Ha-pletah* is a term of biblical origin that refers to those Jews left after the calamities that befell the Jewish people, as discussed in Micah 2:12 and Jeremiah 23:3. Jonathan Fishburn, *Surviving Remnant: Jewish Publishing in the Immediate Aftermath of the Holocaust*, JEWISH Q., Summer 2003, at 25, 25. It translates to “surviving remnant.” It was the name that those who survived concentration camps and became Displaced Persons called themselves. Mark Edele, Sheila Fitzpatrick, John Goldlust & Atina Grossmann, *Introduction to SHELTER FROM THE HOLOCAUST: RETHINKING JEWISH SURVIVAL IN THE SOVIET UNION 1* (Mark Edele, Sheila Fitzpatrick & Atina Grossmann eds., 2017). There is some debate within the historiography as to whether the term applies to all European Jews who survived the Holocaust or only those direct survivors of the Nazi regime who had been in concentration or internment camps or survived in hiding. Judith Tydor Baumel, *DPs, Mothers and Pioneers: Women in the She'erit Hapletah*, JEWISH HIST., Fall 1997, at 99, 99–100.

¹¹ For a vast collection of U.S. newspapers articles regarding the liberation of concentration camps and the murder of Jews, see *Eisenhower Asks Congress and Press to Witness Nazi Horrors*, HIST. UNFOLDED <https://newspapers.ushmm.org/events/eisenhower-asks-congress-and-press-to-witness-nazi-horrors> (last visited Jan. 4, 2024). For a discussion of the Holocaust and newsreels, see Lawrence Baron, *The First Wave of American “Holocaust” Films, 1945–1959*, 115 AM. HIST. REV. 90, 92–94 (2010).

¹² ANNA HOLIAN, *BETWEEN NATIONAL SOCIALISM AND SOVIET COMMUNISM: DISPLACED PERSONS IN POSTWAR GERMANY* 42–43 (2011).

¹³ JAYNE PERSIAN, *BEAUTIFUL BALTS: FROM DISPLACED PERSONS TO NEW AUSTRALIANS* 15 (2017).

¹⁴ See G. Daniel Cohen, *Between Relief and Politics: Refugee Humanitarianism in Occupied Germany, 1945–1946*, 43 J. CONTEMP. HIST. 437, 437 (2008).

created the United Nations Relief and Rehabilitation Agency (UNRRA) to help manage, feed, and clothe Displaced Persons.¹⁵

The United States, Britain, and the Soviet Union quickly established their respective occupation zones in Germany and Austria.¹⁶ There, the United States and Britain created assembly centers to collect DPs, feed them, and repatriate them to their home countries as quickly as possible. From DP assembly centers, some DPs went to DP camps, which were generally organized by nationality.¹⁷ Vast numbers of DPs were from Poland, Latvia, Ukraine, and Lithuania.¹⁸ It was the Allies' intent—including that of the military, political leaders, and UNRRA—that DP camps would be temporary, and that DPs would be quickly repatriated. The Allies considered repatriation as essential to stabilizing Europe and governing occupied territory.¹⁹ No one imagined that over a million people would become long-term displaced people living in DP camps in the middle of Europe, nor that this refugee crisis would continue for years. Yet, about a million DPs refused to be repatriated. Many did not want to return to now-communist countries, others feared persecution for collaboration, and the vast majority of Jewish DPs wanted to leave Europe entirely, believing that Jewish life could not be reestablished in what was essentially a vast Jewish cemetery.²⁰

A. *Early Problems with Jewish Survivors*

This Section discusses what occurred to Jewish survivors in the immediate aftermath of the Allied occupation and how the U.S. military and others treated them. It continues by discussing the investigation of the condition of Jewish DPs by Earl Harrison, acting for the Truman administration, and the results and recommendations stemming from such investigation. Although numerous historians have discussed the Harrison Report, what must be emphasized here is that the Harrison Report put into motion a series of events, decisions, and structures that would have significant consequences for the passage of the 1948 Displaced Persons Act almost three years later and the antisemitism surrounding it.

The first large-scale problem with DPs that would garner significant negative publicity involved Jewish survivors in recently liberated concentration camps in the U.S. Zone. These survivors were often starving, barely clothed, and desperately ill;

¹⁵ For a concise overview of the work of UNRRA, see *id.*

¹⁶ For a discussion of the establishment of post-war Allied-occupied zones, see Philip E. Mosely, *The Occupation of Germany: New Light on How the Zones Were Drawn*, 28 FOREIGN AFFS. 580 (1950); PETTISS & TAYLOR, *supra* note 6, at v.

¹⁷ NASAW, *supra* note 6, at 1–5.

¹⁸ *Id.* at 8–9.

¹⁹ *Id.* at 6, 129–32.

²⁰ *Id.* at 8–12.

many teetered between life and death.²¹ American moviegoers saw in newsreels triumphant and horrifying images of the liberation of concentration camps by U.S. forces, and there could be no doubt that American soldiers were heroes. In fact, some Holocaust survivors, often on the verge of death, saw Americans as their saviors. There were moving moments of GIs not only providing food to the starving but giving their military jackets and other clothing to survivors.²² For the half-naked survivors, these mementos became prized possessions of not only warmth but of freedom, liberation, and the United States itself.

Although some concentration camp survivors liberated themselves and simply left camps, others were too sick to do so. Stripped of all possessions, they also did not have the means, strength, or stamina to leave.²³ In the U.S. Zone, they came under the control of the U.S. military where they remained in camps often without adequate food, clothing, and medical aid. They were also guarded by U.S. soldiers. Camp structures, including barbed wire, remained in place, along with military discipline.²⁴ Those Jewish survivors who made it to other DP camps found themselves living alongside their persecutors, including Nazi collaborators and people who had participated in the killing of Jewish men and women.²⁵ Many survivors believed that the world, including American Jewry, had forgotten them. Some were desperately afraid that the military would repatriate them to the countries from which they originally came.²⁶

Jewish soldiers and (especially) chaplains, horrified by the wretched state of Jewish survivors, wrote letters to their families, rabbis, and Jewish organizations that dramatically condemned the U.S. military for its treatment of surviving Jews.²⁷ Survivors too were outspoken about their treatment, their needs, and their sense of

²¹ LEONARD DINNERSTEIN, *AMERICA AND THE SURVIVORS OF THE HOLOCAUST* 28 (1982).

²² See SIMON SCHOCHET, *FELDAFING* 28 (1983); see also LARRY ORBACH & VIVIEN ORBACH-SMITH, *SOARING UNDERGROUND: A YOUNG FUGITIVE'S LIFE IN NAZI BERLIN* 329–30 (1996).

²³ See, e.g., ORBACH & ORBACH-SMITH, *supra* note 22, at 327–28.

²⁴ See *AMONG THE SURVIVORS OF THE HOLOCAUST – 1945: THE LANDSBERG DP CAMP LETTERS OF MAJOR IRVING HEYMONT*, UNITED STATES ARMY 8–9 (Jacob Rader Marcus & Abraham J. Peck eds., 1982) [hereinafter HEYMONT LETTERS].

²⁵ *Survivors and the Displaced Persons Era*, WIENER HOLOCAUST LIBR., <https://www.theholocaustexplained.org/survival-and-legacy/survivors-and-dp-era/dp-camps> (last visited Dec. 25, 2023).

²⁶ NASAW, *supra* note 6, at 80–82.

²⁷ See, e.g., Letter from Charles M. Newton, U.S. Army, to Henry Unterman, (June 18, 1945), in 10 *ARCHIVES OF THE HOLOCAUST: AN INTERNATIONAL COLLECTION OF SELECTED DOCUMENTS* 1120–21 (Sybil Milton & Frederick D. Bogin eds., 1995); Letter from Eric M. Lipman, U.S. Army, to Rabbi Silver, in 10 *ARCHIVES OF THE HOLOCAUST: AN INTERNATIONAL COLLECTION OF SELECTED DOCUMENTS*, *supra*, at 1123; GROSSMANN, *supra* note 6, at 142–43, 147; HYMAN, *supra* note 8, at 45.

being abandoned.²⁸ Having read such letters and reports, Jewish organizations, Jewish leaders, such as famed Rabbi Stephan Wise, and Jewish politicians, such as Congressman Emanuel Cellars from New York, began organizing to collectively pressure the military to provide for the special needs of Jewish survivors.²⁹ After hitting numerous roadblocks, such complaints eventually reached the upper echelons of the Truman administration.

In May 1945, Henry Morgenthau suggested to the State Department that a representative should be sent to Europe in order to investigate the disturbing reports regarding Jewish DPs.³⁰ Earl G. Harrison was selected to lead the mission.³¹ Harrison had been the U.S. Commissioner of Immigration and Naturalization, was a U.S. representative on an intergovernmental refugee committee, and was the current Dean of the University of Pennsylvania Law School.³² As the Commissioner of Immigration, Harrison led the process of alien registration during the war, as well as participated in the internment of Japanese and Germans in camps.³³ Historian Atina Grossmann remarks that Harrison was a strange choice to lead the investigation given his former roles.³⁴ But this actually made him the perfect person. He was an expert in camps and the collection of human beings. He was an objective, trustworthy professional who had demonstrated his patriotism, and importantly, he was the son of immigrants but was not Jewish.³⁵ The mission would investigate and determine the state of surviving Jews in the U.S. Zone and the military's treatment of them.³⁶

Jewish organizations quickly advocated the need for Harrison to be accompanied by a small team of experts on European Jewry and refugee work.³⁷ Dr. Joseph

²⁸ For a discussion of Jewish survivors' sense of abandonment, see Avinoam Patt & Kierra Crago-Schneider, *Years of Survival: JDC in Postwar Germany, 1945–1957*, in *THE JDC AT 100: A CENTURY OF HUMANITARIANISM* (Avinoam Patt, Atina Grossmann, Linda G. Levi & Maud S. Mandel eds., 2019).

²⁹ NASAW, *supra* note 6, at 89–93.

³⁰ *Id.* at 95–96.

³¹ *Id.* at 96–97.

³² *Id.*

³³ *Id.*; see also *Earl G. Harrison: Biography*, HOLOCAUST ENCYCLOPEDIA, <https://encyclopedia.usshmm.org/content/en/article/earl-g-harrison-biography> (last visited Dec. 25, 2023).

³⁴ GROSSMANN, *supra* note 6, at 138.

³⁵ For a very laudatory article on Harrison, see Lewis M. Stevens, *The Life and Character of Earl G. Harrison*, 104 U. PA. L. REV. 591 (1956). Harrison had grown up Presbyterian, but in his later life worshipped as a Quaker. *Id.* at 593–94. He was a distinguished lawyer in Philadelphia who served on the board of the ACLU and NAACP. *Id.* at 596.

³⁶ ZEEV W. MANKOWITZ, *LIFE BETWEEN MEMORY AND HOPE: THE SURVIVORS OF THE HOLOCAUST IN OCCUPIED GERMANY* 53–54 (2007).

³⁷ *Id.* at 54.

Schwartz, the Director of the Joint Distribution Committee (JDC) in Europe, accompanied Harrison.³⁸ The JDC had spent years trying to rescue Jews from Nazi persecution and had significant experience with the resettlement of Jewish immigrants.³⁹ They would soon come to play a major role in Jewish DP camps as well as with the resettlement of Jewish DPs.⁴⁰ Prior to Harrison's departure, Joseph Grew, Under Secretary of State, obtained a letter of support from President Truman for the mission, which gave substantial legitimacy to the team.⁴¹

With speed, Harrison and his team toured DP camps and produced a report, which was passionate and dramatic, blaming the U.S. Army for the present plight of many Jewish survivors in DP camps and making numerous recommendations regarding Jewish DP's further treatment.⁴² Famously, Harrison wrote, "As matters now stand, we appear to be treating the Jews as the Nazis treated them except we do not exterminate them."⁴³ He found that many Jews were being housed in former concentration and slave labor camps surrounded by barbed wire and under guard.⁴⁴ Housing, food, clothing, shoes, fuel, and medical supplies were inadequate.⁴⁵ The report pointed out that it was generally best practice to categorize people by their nationality, and not by religion, but that Jews needed to be classified as Jews as they had been so severely victimized due to their religion.⁴⁶ The report thus demanded that Jews' special needs—physical, material, emotional, and religious—be recognized.⁴⁷ Harrison also reported that most Jewish DPs would not repatriate and that a plan was needed for such survivors to leave Europe as soon as possible.⁴⁸ He recommended that the United States facilitate the speedy immigration of 100,000 Jewish DPs to Palestine (then under British rule), as well as allow survivors with family in the United States to immigrate there under existing immigration law.⁴⁹ Thus, there was a high-level report that emphasized that Jewish suffering and victimization

³⁸ *Id.*

³⁹ See YEHUDA BAUER, *OUT OF THE ASHES: THE IMPACT OF AMERICAN JEWS ON POST-HOLOCAUST EUROPEAN JEWRY* 115 (1989).

⁴⁰ For a comprehensive discussion of the JDC's work following the War, see *id.*

⁴¹ *The Harrison Report*, HOLOCAUST ENCYCLOPEDIA, <https://encyclopedia.ushmm.org/content/en/article/the-harrison-report> (last visited Jan. 4, 2024).

⁴² EARL G. HARRISON, U.S. REP., INTERGOVERNMENTAL COMM. FOR REFUGEES, REPORT TO U.S. PRESIDENT HARRY TRUMAN (1945) (on file with the Dwight D. Eisenhower Presidential Library) [hereinafter HARRISON REPORT].

⁴³ *Id.* at 7.

⁴⁴ HOLOCAUST ENCYCLOPEDIA, *supra* note 41.

⁴⁵ HARRISON REPORT, *supra* note 42, at 1–3.

⁴⁶ *Id.* at 3.

⁴⁷ MANKOWITZ, *supra* note 36, at 58–59.

⁴⁸ HARRISON REPORT, *supra* note 42, at 5.

⁴⁹ *Id.* at 5–6.

under the Nazis gave Jews a certain entitlement to be aided, cared for, and prioritized by the United States.

Truman took the report seriously, immediately communicating with General Eisenhower. Although top military leaders, including Eisenhower, believed that the report was unfair, it stung enormously.⁵⁰ General Patton was furious and infamously wrote in his diary that “Harrison and his ilk believe that the Displaced Person is a human being, which he is not, and this applies particularly to the Jews who are lower than animals.”⁵¹ Soon thereafter, Patton was removed from his post.⁵² As commanded by Eisenhower, the military created segregated DP camps for Jewish DPs in an effort to separate out Jewish victims from their persecutors. The largest of these camps in the U.S. Zone in Germany included Feldafing, Landsberg, and Föhrenwald.⁵³ Barbed wire was removed, calorie count increased, hospitals established, and the worse of the overcrowding relieved.⁵⁴ Moreover, the military was ordered to consider Jews “stateless and non-repatriable.”⁵⁵ Per the further negotiations of Jewish organizations, Judge Simon Rifkind was appointed to be Eisenhower’s adviser on Jewish affairs.⁵⁶ Likewise, the JDC was allowed into the DP camps in the U.S. Zone where they would act as a watchdog, policing the U.S. military on behalf of Jewish DPs, as well as act as a cultural broker between the military, UNRRA, and Jewish DPs. The JDC would also supply a vast number of material goods to Jewish DPs, including clothing and food.⁵⁷ The importance of the JDC’s work cannot be overstated in a land where virtually all goods were in short supply.

The Harrison Report, its various recommendations, and the remedies put into place framed and impacted both U.S. military policy as well as how Jewish survivors would be viewed and treated by multiple actors. Due to the report, the top echelon of military leaders in upcoming years attempted to avoid direct, potentially violent confrontations with Jewish DPs.⁵⁸ As we will see, this made it extremely difficult to prevent new Jewish refugees from entering the U.S. Zone. Moreover, Jews were essentially placed into their own category, separate from their nationality.⁵⁹ They were no longer Poles, Hungarians, Germans, or Austrians but stateless Jews, which

⁵⁰ WYMAN, *supra* note 6, at 136.

⁵¹ NASAW, *supra* note 6, at 116 (citing THE PATTON PAPERS, 1940–1945, at 751–52 (Martin Blumenson ed. 1974)).

⁵² See THE PATTON PAPERS, *supra* note 51, at 783, 786.

⁵³ See GROSSMANN, *supra* note 6, at 135.

⁵⁴ NASAW, *supra* note 6, at 119.

⁵⁵ *Id.* at 114.

⁵⁶ ARIEH J. KOCHAVI, POST-HOLOCAUST POLITICS: BRITAIN, THE UNITED STATES, & JEWISH REFUGEES, 1945–1948, at 42 (2001).

⁵⁷ See YEHUDA BAUER, AMERICAN JEWRY AND THE HOLOCAUST: THE AMERICAN JEWISH JOINT DISTRIBUTION COMMITTEE, 1939–1945, at 94–98.

⁵⁸ See KOCHAVI, *supra* note 56, at 93–96.

⁵⁹ *Id.* at 94.

is in fact how most Jewish survivors viewed themselves. It was quite clear to all on the ground that after the Harrison Report, Jewish DPs began receiving special (or at least different) treatment, including an increased calorie count, which would give rise to resentment.⁶⁰ The Harrison Report also clearly put on the table the crucial need for a large number of Jewish survivors to immigrate out of Europe.⁶¹

In contrast, the British refused to segregate Jews into designated DP camps, believing that identifying Jews as Jews gave legitimacy to categories of Nazi racial logic while simultaneously giving Jews preferential treatment. Probably of greater concern for the British was the fear that Jewish DP camps would become hotbeds of Zionism.⁶² Thus, the Harrison Report, without quite knowing it, created a crucial framework which would have unintentional effects. For instance, the U.S. Zone had the friendliest policies towards Jews of any of the Allies and thus served to attract Jewish survivors, even though virtually no one in the United States knew that they existed at that time.⁶³

Although many historians have written about the Harrison Report, unexamined questions remain. For example, why was Harrison so sympathetic to Jewish DPs and what led him to write such a dramatic report? What role did his legal background or his involvement with the internment of Japanese and Germans in the United States play in the report? Further, why was Truman so quick to act on the report? In part, Truman's actions were certainly the result of pressure from Jewish organizations, the press that the Harrison Report received, and his own humanitarianism. Moreover, his endorsement that 100,000 Jewish DPs be allowed into Palestine put pressure on the British and would have gone a long way, at least as believed in 1945, to solving the Jewish DP problem. But was there, in fact, more?

That Jews received different treatment from other Displaced Persons also provoked resentment. Some in the U.S. Army would blame Jews and their "Washington friends" for driving General Patton's redeployment.⁶⁴ As one soldier complained, "You will never get stable conditions in the American Zone until the Handbooks of Military Government are translated from Jewish to American fairness and justice."⁶⁵ Certainly, the Truman administration took Jewish concerns seriously and the military began to tread lightly when confronting Jewish survivors.⁶⁶ Moreover, the Harrison Report began a debate about whether Jews should be recognized as Jews and whether their persecution and resulting needs should be considered as

⁶⁰ *Id.* at 95.

⁶¹ HOLOCAUST ENCYCLOPEDIA, *supra* note 41.

⁶² KOCHAVI, *supra* note 56, at 32–36, 40.

⁶³ GROSSMANN, *supra* note 6, at 140–41.

⁶⁴ See, e.g., Letter from Kenneth Dumas to Ed Gossett, U.S. Rep., H.R. (Aug. 19, 1946), in ED LEE GOSSETT PAPERS, Box 3, Folder 11 (on file with W. R. Poage Legislative Library).

⁶⁵ *Id.*

⁶⁶ KOCHAVI, *supra* note 56, at 92–93, 97.

greater than others, or whether they should be treated as any other DP. These questions would feed into debates regarding the 1948 Displaced Persons Act. They would also fuel antisemitism as some came to believe that the Truman administration was swayed by Jewish interests.⁶⁷

B. *Increasing Jewish Numbers*

When Harrison made his report, the number of Jewish survivors was still unknown but approximated to be around 100,000.⁶⁸ As described in this Section, events on the ground were to change quickly. In late 1945, large numbers of Polish Jews began entering the U.S. Zone in Germany. This influx was a surprise to the U.S. military, aid workers, and Jewish organizations.⁶⁹ Where did these Jews come from? How did they suddenly appear as if from out of the ashes? Although unknown at the time, these questions would later have enormous ramifications in terms of Jewish DPs' ability to immigrate to the United States, as well as the provocation of antisemitism that such immigration generated. Thus, a short description of the movement of Polish Jews into the U.S. occupation zone is necessary to fully set the background.

Up until the late fall of 1945, the first groups of Polish Jews arrived in the American and British Occupation Zones. These were Jews who had survived concentration camps, lived in hiding, or acted as partisan fighters.⁷⁰ Upon the war's end, their primary objective was to search for family members; many returned to Poland hoping to find someone else who had survived.⁷¹ Such survivors often discovered that their entire families had been murdered. Moreover, all of their family's property had been confiscated.⁷² Faced with this reality, many went to DP camps.⁷³ For those who attempted to stay, they found that assimilation into Polish society was impossible due to continued virulent antisemitism and they quickly fled to DP camps.⁷⁴ Others, upon regaining their physical ability and strength to walk, directly

⁶⁷ See discussion *infra* Parts IV–V.

⁶⁸ HARRISON REPORT, *supra* note 42, at 3.

⁶⁹ For a firsthand description of the sudden appearance of new groups of Jewish survivors, see PETTISS & TAYLOR, *supra* note 6, at 156–62.

⁷⁰ HYMAN, *supra* note 8, at 105–07.

⁷¹ HYMAN, *supra* note 8, at 35; Atina Grossmann, *Victims, Villains, and Survivors: Gendered Perceptions and Self-Perceptions of Jewish Displaced Persons in Occupied Germany*, 11 J. HIST. SEXUALITY 291, 295.

⁷² See Magdalena Waligórska, Yechiel Weizman, Alexander Friedman & Ina Sorkina, *Holocaust Survivors Returning to Their Hometowns in the Polish-Belarusian-Ukrainian Borderlands, 1944–1948*, 37 J. HOLOCAUST RSCH. 191, 196–99 (2023).

⁷³ HYMAN, *supra* note 8, at 106–07.

⁷⁴ GROSSMANN, *supra* note 6, at 134.

sought out DP camps.⁷⁵ Thus, those who left Poland for the U.S. or British Zones up until late 1945 had been directly subjected to the horrors of the Holocaust, their families had likely been murdered, and they entered DP camps alone.⁷⁶ These are the classic Holocaust survivors that we generally think of when using the term.

To many people's shock, especially that of the U.S. and British government, in late 1945 and 1946, the composition of Jewish DPs began to change as Polish Jews who escaped the German onslaught by taking refuge in the Soviet Union were repatriated to Poland.⁷⁷ Although the Soviets sent many of these Jews to Siberia or Central Asia when they arrived in the Soviet Union and they faced serious deprivations, most remained alive.⁷⁸ These survivors, somewhere between 175,000 to 200,000 Jewish people, actually composed the largest group of surviving Jews in Europe.⁷⁹ The history of these Soviet survivors was quite different from those Jews who had directly experienced internment, concentration camps, torture, and mass murder. These newer DPs generally arrived as families, and some of them had a modicum of property.⁸⁰ Although facing privations and exhaustion, they were not the emaciated and deracinated survivors who had been originally liberated from concentration camps.⁸¹

Polish Jews, whether direct Holocaust survivors or upon return from the Soviet Union, adamantly did not want to remain in Poland.⁸² They felt threatened by a murderous wave of Polish antisemitism that stemmed in part from the demand of Jews to have their property returned, as well as the stereotype that Jews were communists.⁸³ Likewise, pre-war Polish antisemitism exacerbated by years of Nazi propaganda formed a complex brew of hatred and suspicion.⁸⁴ Repeatedly, Polish Jews, repatriated from the Soviet Union or liberated from concentration camps, who attempted to return to Poland told the same story of the extinction of Jewish communities and institutions and a hostile population who constantly queried why they were still alive.⁸⁵

⁷⁵ See NASAW, *supra* note 6, at 86–87.

⁷⁶ See generally HYMAN, *supra* note 8, at 105.

⁷⁷ GROSSMANN, *supra* note 6, at 160.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 160–61.

⁸² *Id.* at 120, 162, 172.

⁸³ *Id.* at 122, 162.

⁸⁴ *Id.* at 162; HYMAN, *supra* note 8, at 105–06.

⁸⁵ GROSSMANN, *supra* note 6, at 161–62; WYMAN, *supra* note 6, at 141; see also SCHOCHET, *supra* note 22, at 144–45.

In fact, Jews across Poland suffered fatal attacks and anti-Jewish riots in 1946 and 1947.⁸⁶ The zenith of post-war Polish antisemitism was reached with the Kielce pogrom in July 1946 when, following false rumors of the ritual murder of a Polish child, over 40 Jews were killed.⁸⁷ By the summer of 1947, the number of Jews murdered by Poles exceeded 1,500.⁸⁸ These factors pushed an increasing number of Jews, most who had been repatriated from the Soviet Union, to leave Poland and seek refuge in occupied Germany.⁸⁹ Sixteen thousand Jews left in July 1946 alone, and 23,000 left in August and September.⁹⁰ At the beginning of 1946, the JDC estimated that there were 50,000 Jewish DPs in the American Zone. By the end of 1946, there were 145,000.⁹¹ This migration from Poland, along with migration of Jews from Czechoslovakia and Romania, continued through 1947.⁹²

The emergence of this new, and to some people miraculous, group of Jewish survivors presented a multitude of complex questions. Would these Jewish refugees be allowed into the Occupied Zones in Germany? Would they qualify as Displaced Persons? How could they be kept out, and where would they ultimately go? President Truman, the U.S. State Department, and the military in a series of decisions allowed such Jews into the U.S. Zone, and at times helped in their transport across borders and then to DP assembly centers.⁹³ After the Harrison Report, the upper echelon of the U.S. military was unwilling to use large-scale force against Jewish survivors, which would have been necessary to prevent such migrants from entering the U.S. Zone.⁹⁴ Moreover, Truman was under substantial pressure from Jewish organizations.⁹⁵ The State Department issued an order that Jewish survivors coming from Poland were to be accommodated and viewed as displaced persons.⁹⁶ Likewise, UNRRA adopted a similar policy in which Jewish refugees coming into the Allied Zones were automatically deemed Displaced Persons by war, even though many of

⁸⁶ See GROSSMANN, *supra* note 6, at 92.

⁸⁷ HYMAN, *supra* note 8, at 181–82 (reporting “42 Jews were murdered in Kielce and 80 were wounded”); WYMAN, *supra* note 6, at 143–44 (reporting “[f]orty-one Jews were killed at Kielce”).

⁸⁸ JAN T. GROSS, FEAR: ANTISEMITISM IN POLAND AFTER AUSCHWITZ 35 (2006).

⁸⁹ See GROSSMANN, *supra* note 6, at 120; HYMAN, *supra* note 8, at 107.

⁹⁰ WYMAN, *supra* note 6, at 144.

⁹¹ See Patt & Crago-Schneider, *supra* note 28, at 373.

⁹² WYMAN, *supra* note 6, at 144.

⁹³ See Leo W. Schwarz, U.S. Zone Dir., Summary Analysis of AJDC Program in the U.S. Zone of Occupation, Germany (Jan. 13, 1947), in 10 ARCHIVES OF THE HOLOCAUST: AN INTERNATIONAL COLLECTION OF SELECTED DOCUMENTS, *supra* note 27, at 1355–56; HYMAN, *supra* note 8, at 186–88 (discussing complicated decisions made by the United States in keeping its borders open).

⁹⁴ HYMAN, *supra* note 8, at 187.

⁹⁵ BAUER, *supra* note 39, at 114–15.

⁹⁶ HYMAN, *supra* note 8, at 190.

the Jews who had returned to Poland following the war did not quite meet the definition of Displaced Person. Technically, they were not directly displaced due to war.⁹⁷ In other words, their initial repatriation to Poland disrupted the causative element. Representing their liminal status, such DPs were widely referred to as “infiltrates.” In contrast to the U.S. Zone, the British Zone initially remained closed to Jewish infiltrates.⁹⁸ Later in 1947, Romanian Jews were also permitted to enter the U.S. Zone.⁹⁹ Thus, over time, the Jewish DP population in the American Zone grew exponentially. This growing group of DPs directly contradicted the strategy and expectation that DP camps were temporary, that repatriation would occur quickly, and that the U.S. troops would be sent home.¹⁰⁰

As Jewish DP camps expanded and immigration outward was not possible because no country was willing to accept large numbers of Jewish DPs, such camps essentially became ever-expanding waiting rooms, and frustrations grew.¹⁰¹ Jacob Biber, one of the few survivors who wrote a memoir of his time as a DP in Föhrenwald, one of the largest Jewish DP camps in the U.S. Zone, recalls that:

For us, however, a general *malaise* was growing as we realized how indifferent the world was to our tragedy. Soon we began seeing men and women who had survived the worst tragedies imaginable during the war years suddenly killing themselves, often by hanging. . . . We felt like so much surplus junk, human garbage which the governments of the world wished would somehow go away.¹⁰²

Jewish DPs understood well that they were stuck, in a “desert,” with “nowhere to go.”¹⁰³ Biber spent two years and three months in Föhrenwald before immigrating to the United States.¹⁰⁴

With immigration outward at a trickle, what could not be denied is that by 1947, a large group of Jewish survivors (perhaps 200,000), which the United States had essentially taken responsibility for, were living in the heart of Germany and

⁹⁷ *Id.* at 194–95.

⁹⁸ Though well beyond the scope of this Article, the exodus of Jews from Poland, Romania, and Czechoslovakia after 1946 was part of a semi-organized movement led by the *Bricha* to bring Jews to Palestine, either illegally or with the hope that the growing number of Jews in the U.S. Zone would pressure the United States to convince Britain to allow for Jewish immigration into Palestine and the eventual creation of Israel as a state. *Id.* at 198–204.

⁹⁹ *Id.* at 229.

¹⁰⁰ *Id.* at 185–95.

¹⁰¹ For a discussion of Jewish DPs’ growing frustration, see Patt & Crago-Schneider, *supra* note 28, at 376–77.

¹⁰² JACOB BIBER, *RISEN FROM THE ASHES: A STORY OF THE JEWISH DISPLACED PERSONS IN THE AFTERMATH OF WORLD WAR II*, at 22 (Mary A. Burgess ed., 1990).

¹⁰³ *Id.* at 55.

¹⁰⁴ *Id.* at 103.

Austria.¹⁰⁵ These survivors were not going to return home.¹⁰⁶ As a high-ranking JDC official wrote, “Their painful remembrance of persecution and devastation has wiped out all hope of a future in Europe, and the disillusionment following liberation has intensified their desire to join families on other continents and to begin life anew elsewhere.”¹⁰⁷ He continued, “It is necessary to activate emigration programs immediately lest those people who were among the more unfortunate victims of Nazi brutality should remain a grotesque monument to the ineptitude of the liberating nations.”¹⁰⁸ No such immediate immigration programs were forthcoming.

C. *Imagining Displaced Persons*

As discussed in this Section, from almost the moment that the British and the United States created DP camps, residents were objectified, judged, and compared against one another using a supposed universal ruler of how civilized they were. There was a long list of those making such judgments, including military personnel, politicians of every stripe, UNRRA and UN personnel, charitable agencies, and hosts of other state and non-state actors.¹⁰⁹ Touring the circuit of certain DP camps occurred so often that it eventually became known as the “milk-route.”¹¹⁰ With empathy, Major Irving Heymont, a Jewish U.S. military officer responsible for the large Jewish DP camp in Landsberg, wrote of the constant stream of visitors and inspectors: “It must be intensely degrading and humiliating to them to have strangers barging into their miserable rooms and looking around with an obviously critical attitude. . . . Some visitors stalk into rooms unannounced and open lockers and closets as though the people did not exist.”¹¹¹

These inspectors and visitors were constantly judging DPs for traits that had long been used to gauge the worthiness of various nationalities and were now mapped onto groups of DPs, including cleanliness, physical health, domestic and gender order, respect for outside authority, and a Protestant work ethic.¹¹² A deep racial logic also prevailed that favored those who were viewed as most Aryan. Such a standard of who was civilized had long been used in U.S. immigration law and had also been part of Nazi racial ideology.¹¹³

¹⁰⁵ Leo W. Schwarz, Summary Analysis of AJDC Program in the U.S. Zone of Occupation, Germany, *supra* note 93, at 1357.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See HEYMONT LETTERS, *supra* note 24, at 103.

¹¹⁰ STAFF OF S. COMM. ON FOREIGN AFF., 80TH CONG., REP. ON DISPLACED PERSONS AND THE INT’L REFUGEE ORG. 1 (Comm. Print 1947).

¹¹¹ HEYMONT LETTERS, *supra* note 24, at 43.

¹¹² See Grossmann, *supra* note 71, at 297–301.

¹¹³ Jews made up approximately 20% of Displaced Persons. NASAW, *supra* note 6, at 303.

Jewish DPs were viewed as lacking many of the traits that would make them worthy of immigration to the United States or elsewhere. Especially in the immediate aftermath of liberation, Jewish DPs and their camps were considered filthy and their occupants unhygienic.¹¹⁴ They were largely seen by the military and aid workers to be ungovernable.¹¹⁵ Some still suffering from the effects of starvation and brutality had little ability to demonstrate physical strength or, for men, traditional masculinity. They had seen their families murdered, their possessions confiscated, their communities destroyed, and had spent years in concentration camps or in hiding. Although many commented on how resilient Jews were, they also suffered from what we would now recognize as trauma, survivor's guilt, and severe depression.¹¹⁶ Moreover, they, like others who had been conscripted as slave labor, had little desire to work for others. They were rightly exhausted.¹¹⁷ They also did not want to obey orders from the military, UNRRA personnel, German officials, or even the JDC. They asserted a right to dictate their own futures and possess autonomy based upon their sufferings as Jews.¹¹⁸ Part of the freedom that they sought included the right to immigrate—to leave Europe.¹¹⁹ Jewish DPs quickly organized and created political and Zionist organizations demanding rights to self-rule. They protested against what they saw as antisemitism in their treatment by the military and other authorities.¹²⁰ Crucially, Jewish DPs were not passive but sought to organize themselves, engage in resistance, and even strike when necessary.¹²¹ In other words, they sought political and legal agency.

Yet, even the most well-intentioned military personnel and UNRRA workers saw Jews as somewhere between degraded, ungrateful, and a nuisance—they were simultaneously too weak and too strong.¹²² Susan Pettiss, a sympathetic UNRRA worker in the U.S. Zone in Germany wrote the following about Jewish DPs:

They have been terribly difficult to help. They have been demanding, arrogant, have played upon their concentration camp experience to obtain ends. I saw rooms in our camp after they left—filthy, dirty, furniture broken, such

Other large groups of DPs included Poles, Ukrainians, Latvians, and Lithuanians. Many in these groups absolutely refused repatriation due to the communist takeover of such nations' governments. *Id.* at 8–9. Some Ukrainians, Latvians, and Lithuanians also feared charges that they had collaborated with the Nazis. The question of who had collaborated, who had been coerced by the Nazis to collaborate, and what collaboration consisted of, was thick in the air.

¹¹⁴ GROSSMANN, *supra* note 6, at 149.

¹¹⁵ *Id.* at 148–52.

¹¹⁶ *Id.* at 150–51.

¹¹⁷ HEYMONT LETTERS, *supra* note 24, at 20, 25–29.

¹¹⁸ See Patt & Crago-Schneider, *supra* note 28, at 361–62.

¹¹⁹ HEYMONT LETTERS, *supra* note 24, at 94.

¹²⁰ GROSSMANN, *supra* note 6, at 165–68, 172.

¹²¹ See, e.g., HEYMONT LETTERS, *supra* note 24, at 94.

¹²² GROSSMANN, *supra* note 6, at 148–52.

a mess as no other group ever left. . . . They refuse to do any work, have had to be forced by gun to go out and cut wood to heat their own camps. American soldiers have developed bitter attitudes in many cases.¹²³

Upon arriving at the Landsberg camp in 1945, Major Irving Heymont was horrified and wrote to his wife about DPs' utter lack of cleanliness, and the revolting state of excrement-smearred bathrooms, filthy garbage-strewn hallways, and grease-encrusted kitchens.¹²⁴ In another letter, he fumed: "Even after concentration camp life, it is not too much to expect people to flush toilets Is it too demanding to ask that they use the urinals in the latrines and not the floors? . . . It is dispiriting that we still can't stir the people out of their inertia."¹²⁵ He understood that both his managerial skills and Jewish DPs were going to be judged by cleanliness, willingness to work, and sanitation.¹²⁶ Simon Schochet, a DP and survivor of Dachau, explained that the unsanitary conditions were a result of survivors focusing on trying to merely eat and survive. Moreover, soap was in short supply and Jews refused to use German soap, believing that it was rendered from murdered Jews.¹²⁷ Even so, cleanliness was regarded as a crucial marker of whether Jewish DPs were even fully human. Likewise, the refusal to work as commanded by the military and UNRRA personnel was viewed as inherent laziness and idleness rather than acts of resistance.¹²⁸ Many simply came to the conclusion that Jewish DPs were "uncivilized."¹²⁹

Jewish DPs understood well the condescension and disgust directed at them. Schochet, trying to comprehend the attitude of UNRRA personnel and others wrote, "We are an unpleasant burden and constant reminder of the horrors of war and man's bestiality. As a result of having been forced to live grotesquely, we are a group that appears grotesque in dress and behavior."¹³⁰ Jacob Biber too recalls, "The crowded quarters were not as devastating as the dirty looks we got from UNRRA officials. They treated us like escaped criminals who had disobeyed Hitler's law to be exterminated."¹³¹

Jewish DPs were also widely and unfairly blamed for engaging in black market activity, which often led to clashes with the U.S. military when they raided camps.

¹²³ PETTISS & TAYLOR, *supra* note 6, at 126.

¹²⁴ HEYMONT LETTERS, *supra* note 24, at 9–11.

¹²⁵ *Id.* at 34–35.

¹²⁶ *Id.* at 27–28.

¹²⁷ SCHOCHET, *supra* note 22, at 33–34, 37.

¹²⁸ HEYMONT LETTERS, *supra* note 24, at 31, 34–35.

¹²⁹ Grossmann, *supra* note 71, at 297.

¹³⁰ SCHOCHET, *supra* note 22, at 166.

¹³¹ BIBER, *supra* note 102, at 80.

The reality was that the black market was virtually everywhere and soldiers, Germans, and UNRRA personnel all bartered for goods in an economy of scarcity.¹³² Yet, Jewish DPs were continually arrested for such activity and labeled as criminals.¹³³ In fact, the JDC was particularly concerned that the branding of Jews as black marketers would hurt their ability to immigrate.¹³⁴ All of these impressions of Jewish DPs were not limited to Europe and DP camps but percolated out—informing, and indeed confirming, long-held views about Jews.¹³⁵ In other words, Jewish DPs attracted a great deal of negative attention which itself was colored by antisemitism.¹³⁶ As we shall see, antisemitism begets antisemitism.

Many soldiers stationed in Germany would come to see Germans as clean, civilized, accommodating, and trustworthy people, in contrast to Jewish DPs. This was especially the case as U.S. servicemen began romantic and sexual relationships with German women.¹³⁷ This view of Jewish DPs would have ramifications for their ability to immigrate. Historian Atina Grossmann writes that Jewish DPs understood that they were constantly being viewed, diagnosed, exhibited, and judged. Immigration anywhere depended “not on sympathy for their suffering but on their ability to appear productive and nontraumatized.”¹³⁸

In contrast to Jews, Balts, including Latvians, Estonians, and Lithuanians, were at the top of the DP hierarchy.¹³⁹ These countries had been annexed by the Soviets, which elicited sympathy from the Western allies.¹⁴⁰ Balts (with the exception of Jews) had also been widely accepted into the German economy and thus tended to be physically healthy.¹⁴¹ Moreover, they were believed to be more educated, wealthier, cleaner, and stronger than other DPs. Some were blond and blue-eyed; thus, approaching an Aryan ideal.¹⁴² Indeed, a variety of publications emphasized that Balts were of Slavic Stock, with good teeth, hair, and complexions. In other words, they were racially white and not Jewish.¹⁴³ Yet, there were widespread accusations that many Balts had been collaborators with the Germans and had participated in

¹³² HEYMONT LETTERS, *supra* note 24, at 60, 63, 95.

¹³³ *See id.* at 60, 63.

¹³⁴ BAUER, *supra* note 39, at 268.

¹³⁵ *See* GROSSMANN, *supra* note 6, at 165.

¹³⁶ *See* Grossmann, *supra* note 71, at 297–99.

¹³⁷ *See* SCHOCHET, *supra* note 22, at 83–84. Schochet discusses the strong bonds between the German local population and American GIs and contrasts it with the inability of GIs to understand the suffering of Jewish DPs and DPs inability to communicate this suffering to GIs. *Id.*

¹³⁸ GROSSMANN, *supra* note 6, at 158.

¹³⁹ PERSIAN, *supra* note 13, at 61.

¹⁴⁰ *Id.* at 22, 37–39.

¹⁴¹ *Id.* at 45.

¹⁴² *Id.*

¹⁴³ *Id.* at 50–51.

the widespread murder of Jews. In fact, there were Baltic SS units raised by Germany. Even with such accusations, Balts held a favored status as model DPs and workers.¹⁴⁴ Likewise, as various countries began recruiting DPs for labor programs, the Balts were chosen first, whereas virtually no country was willing to bring in Jews as workers.¹⁴⁵

Moreover, we might see the origins of Holocaust deniers as emanating from DP camps and the presence of so many Jews in one place.¹⁴⁶ The large number of Jewish survivors who had spent the war in the Soviet Union also seemed to provide further evidence that Jews had not been particularly victimized.¹⁴⁷ These questions—which DPs were victims; who would make good workers; who could assimilate to the culture of various nation; and who was equipped for self-governance—would play an enormous role in debates regarding whether and which DPs should be permitted to immigrate to various countries. Such impressions and debates would come to shape the 1948 Displaced Persons Act.¹⁴⁸

III. A BRIEF HISTORY OF U.S. IMMIGRATION LAW

In order to understand how U.S. immigration law prevented DPs from immigrating to the United States, this Part provides a brief history of the development of such laws as well as their application. U.S. immigration law, as enacted by Congress and administered by the bureaucratic state, has long served to reinforce racism and white supremacy. In fact, much of its very purpose was to enact racism as national policy.¹⁴⁹ Immigration law prevented European Jewish refugees from entering the United States before the war, and it would be an enormous barrier for DPs trying to immigrate after the war.¹⁵⁰ U.S. immigration law would have to be amended, or a special law passed by Congress, if the United States was going to allow a large number of DPs to immigrate. When, whether, and how this would occur would provoke enormous debate. In order to fully appreciate this debate, it is crucial to have some understanding of the background laws and rules that regulated immigration.¹⁵¹

¹⁴⁴ *Id.* at 45.

¹⁴⁵ *See id.*

¹⁴⁶ GROSSMANN, *supra* note 6, at 171–72.

¹⁴⁷ *Id.* at 172.

¹⁴⁸ *See* discussion *infra* Parts IV–VII.

¹⁴⁹ *See generally* Kevin R. Johnson, *Systemic Racism in the U.S. Immigration Laws*, 97 IND. L.J. 1455 (2022).

¹⁵⁰ *United States Immigration and Refugee Law, 1921–1980*, HOLOCAUST ENCYCLOPEDIA, <https://encyclopedia.ushmm.org/content/en/article/united-states-immigration-and-refugee-law-1921-1980> (last visited Jan. 5, 2024).

¹⁵¹ The information presented over the next several pages, unless otherwise indicated, has been taken from the following cited materials. I have omitted quotation marks when citing myself,

Although we often imagine the United States as a refuge for immigrants, from the 1840s to the present day, nativist and anti-immigrant ideologies has resulted in laws intended to limit or prevent immigration. Many of these laws were blatantly racist, as well as directed at keeping the poor out of America.¹⁵² Such laws and their enforcement can be understood as a way of embedding white supremacy into law.¹⁵³ Until the 1880s, for the most part, individual states controlled immigration and their laws were primarily directed at preventing poverty-stricken people or those with contagious diseases from immigrating. For example, Massachusetts denied entry to and deported Irish migrants attempting to escape famine and poverty in the 1840s and 1850s.¹⁵⁴

Growing anti-immigration sentiment in the 1880s, and a series of U.S. Supreme Court decisions finding that states did not have the power to control immigration, resulted in the U.S. Congress passing the first large-scale general immigration law in 1882.¹⁵⁵ The framework of the law was based upon immigrants' fitness to live in the United States and potentially become citizens. Specifically, it excluded immigrants who were "likely to become public charges," meaning those immigrants who did not have the ability to financially support themselves.¹⁵⁶

That same year, responding to zealous anti-Chinese racism, particularly in the Western states, Congress passed the Chinese Exclusion Act, which prohibited the immigration of Chinese laborers.¹⁵⁷ Such law was a vast expansion of a more specific 1875 law that prohibited the importation of Asian laborers who were held in involuntary servitude, along with prostitutes.¹⁵⁸ The government particularly used the prohibition of prostitutes to prevent Chinese women from entering the country.¹⁵⁹

but please note that several sentences are taken verbatim from my prior work and should be cited accordingly. Felice Batlan, *Building a Regime of Restrictive Immigration Laws, 1840–1945*, BROADSIDES FOR TRUMP ERA, August 2018 (available at https://scholarship.kentlaw.iit.edu/fac_schol/944) [hereinafter Batlan, *Building a Regime*]; Felice Batlan, *Déjà Vu and the Gendered Origins of the Practice of Immigration Law: The Immigrants' Protective League, 1907–40*, 36 L. & HIST. REV. 713 (2018) [hereinafter Batlan, *Déjà Vu*].

¹⁵² Batlan, *Building a Regime*, *supra* note 151, at 1.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Chinese Exclusion Act, Pub. L. No. 47-126, 22 Stat. 58 (1882) (repealed 1943). For excellent discussions on the history of immigration law and the Chinese Exclusion Acts, see MAE M. NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA (2004); LUCY E. SALYER, LAWS HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW (1995).

¹⁵⁸ Batlan, *Building a Regime*, *supra* note 151, at 1–2.

¹⁵⁹ On Chinese wives and immigration, see Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641 (2005).

Chinese immigrants were accused of stealing jobs from Americans, smuggling and selling opium, and running prostitution rings.¹⁶⁰

The Immigration Act of 1891 expanded the grounds upon which potential immigrants could be excluded from entering the United States and created the federal Bureau of Immigration.¹⁶¹ Congress also enacted deportation laws beginning in 1891.¹⁶² Deportation was originally aimed at those immigrants who were “likely to become a public charge” within one year of entry, but Congress extended it to two, then three, and finally five years in 1917.¹⁶³

As Congress enacted a structure of restrictive immigration laws, it also engineered the apparatus of federal administrative control.¹⁶⁴ Federal immigration officials at ports of entry such as Ellis Island in New York and Angel Island in California inspected migrant bodies for indications of physical or mental illness and interrogated immigrants to determine their ability to support themselves.¹⁶⁵ Between the 1890s and 1917, most white immigrants who were denied permission to immigrate to the United States fell into the very broad and ambiguous “likely to become a public charge” provision.¹⁶⁶ Precisely what the provision meant was not defined by law, affording tremendous discretion to immigration officials; rather, it was a catchall provision. Immigrant rights advocates argued that immigration officials used it “to exclude anyone who seemed to them undesirable.”¹⁶⁷ The “likely to become a public charge” provision also was discriminatorily used against Eastern European Jews attempting to immigrate. Courts rarely intervened in overturning the decisions of immigration officials, and those excluded from the United States had few legal or constitutional rights.¹⁶⁸

World War I brought a heightened sense of patriotism and a new wave of conservatism, xenophobia, and fear of radicalism, especially Communism, after the Russian Revolution of 1917.¹⁶⁹ Congress passed the Immigration Act of 1917, which barred multiple categories of people, including those from a vast number of Asian countries, along with migrants espousing radical political views.¹⁷⁰ The elite Boston organization the Immigrant Restrictive League had long argued for the need

¹⁶⁰ Batlan, *Building a Regime*, *supra* note 151, at 2; Batlan, *Déjà Vu*, *supra* note 151, at 721.

¹⁶¹ Batlan, *Building a Regime*, *supra* note 151, at 2.

¹⁶² *Id.*

¹⁶³ *Id.*; Batlan, *Déjà Vu*, *supra* note 151, at 723.

¹⁶⁴ Batlan, *Déjà Vu*, *supra* note 151, at 722.

¹⁶⁵ *Id.* at 722–23.

¹⁶⁶ *Id.* at 724.

¹⁶⁷ *Id.* (quoting Edith Abbott, *Federal Immigration Policies, 1864–1924*, 2 U. J. BUS. 347, 351 (1924)); Batlan, *Building a Regime*, *supra* note 151, at 2.

¹⁶⁸ Batlan, *Déjà Vu*, *supra* note 151, at 723.

¹⁶⁹ Batlan, *Building a Regime*, *supra* note 151, at 2.

¹⁷⁰ *Id.*

for a literacy test to further restrict immigration, and it was enacted in the 1917 law.¹⁷¹ Such a test sought to exclude immigrants from Southern and Eastern Europe who were continually blamed for pauperism, crime, and now juvenile delinquency.¹⁷² Further, Jews, in the minds of many, became associated with communism. Some claimed that large numbers of even American Jews had themselves fermented the Russian Revolution.¹⁷³

Following World War I, there was widespread support for restricting all immigration.¹⁷⁴ Congress eventually passed the Emergency Immigration Act of 1921.¹⁷⁵ In part, it was driven by a fear that hundreds of thousands of Southern and Eastern Europeans (many Catholic and Jewish) intended to immigrate to the United States at the war's end.¹⁷⁶ The 1921 Act established a quota system based on nationality that severely restricted who could immigrate to the United States.¹⁷⁷ The Commissioner-General of Immigration described the law as "radical and far-reaching."¹⁷⁸ The law provided that the yearly number of migrants of any nationality who could be admitted to the United States was 3% of the number of foreign-born persons of such nationality residing in the United States, as recorded in the 1910 census.¹⁷⁹ The Act's purpose was not only to limit immigration but to restrict immigration from Eastern and Southern Europe. Pursuant to the law, nationality was based on where one was born, rather than on where one resided. The law made birth the essential determinant.¹⁸⁰ It also created a series of preferences. For example, The Act gave preferred quota status to children under 18, as well as spouses, parents, brothers, or sisters of a natural-born or naturalized U.S. citizen.¹⁸¹

Congress had intended that the 1921 Act would be temporary; the goal was to more fully revise immigration laws.¹⁸² The Immigration Act of 1924 (also referred

¹⁷¹ *Id.* at 2–3.

¹⁷² *Id.*; Batlan, *Déjà Vu*, *supra* note 151, at 720.

¹⁷³ DINNERSTEIN, *supra* note 3, at 80.

¹⁷⁴ LIBBY GARLAND, *AFTER THEY CLOSED THE GATES: JEWISH ILLEGAL IMMIGRATION TO THE UNITED STATES, 1921–1965*, at 38–39 (2014).

¹⁷⁵ Emergency Immigration Act, Pub. L. No. 67-5, 42 Stat. 5 (1921).

¹⁷⁶ Batlan, *Déjà Vu*, *supra* note 151, at 755.

¹⁷⁷ Emergency Immigration Act § 2(a).

¹⁷⁸ SALYER, *supra* note 157, at 134 (quoting 1921 COMM'R GEN. OF IMMIGR. ANN. REP. TO THE SEC. OF LAB., at 16).

¹⁷⁹ Emergency Immigration Act § 2(a). Given current fears of immigration from Mexico, Central America, and South America, it is important to understand that under the 1921 and 1924 Acts, immigrants from Canada and the Americas were exempt from quotas but were subject to other requirements. *See id.* § 2(a).

¹⁸⁰ Batlan, *Déjà Vu*, *supra* note 151, at 756; SALYER, *supra* note 157, at 134.

¹⁸¹ Emergency Immigration Act § 2(d).

¹⁸² Batlan, *Déjà Vu*, *supra* note 151, at 759.

to as the Johnson-Reed Immigration Act) made quotas a permanent part of immigration law and established that the total number of non-Western hemisphere immigrants would be limited to 165,000 annually.¹⁸³ It banned entry to anyone ineligible for citizenship, essentially meaning non-whites.¹⁸⁴ Historian Libby Garland writes that the 1924 Act “served as a victory for those committed to a racialist vision of the nation” as it was based on an individual’s blood.¹⁸⁵

The 1924 Act created categories of potential immigrants who would be permitted to immigrate outside the quota, those who would be given quota preferences, and those subject to the quota.¹⁸⁶ Specifically, only a U.S. citizen’s wife and unmarried children (under 18 years old) were non-quota.¹⁸⁷ Quota preferences were given to a U.S. citizen’s unmarried children under the age of 21, their mothers, fathers, and husbands.¹⁸⁸ Eligibility for non-quota status and quota preferences rested entirely on the sponsor being a U.S. citizen.¹⁸⁹ Moreover, the quota and inspection process was moved overseas to U.S. consular offices, where applicants presented their documents and underwent a series of interviews and examinations. This removed pressure from U.S. immigration inspectors at ports of entry and prevented migrants from arriving in the United States only to be rejected. It also created a great deal less transparency.¹⁹⁰

In 1931, during the Great Depression, President Hoover issued an executive order responding to concerns that immigrants were taking employment away from “Americans.”¹⁹¹ The order required the State Department to examine immigration laws, rules, regulations, and procedures to determine how to further reduce immigration.¹⁹² The State Department concluded that the best way to do so would be to

¹⁸³ Immigration Act of 1924, Pub. L. No. 68-139 § 11, 43 Stat. 153, 159–60 (repealed 1952). The original 1924 Act reduced the 1921 Act’s 3% national origins quota to 2% of the 1890 census, rather than using the 1910 census. The use of the 1890 census was a blatant attempt to reduce the number of non-Western European immigrants. Batlan, *Déjà Vu*, *supra* note 151, at 759 n.193. Pursuant to the 1924 Act, the new quota numbers for specific countries were supposed to take effect in 1927. It was so controversial that Congress delayed until 1929. *Id.* When the Act finally went into effect, the ratio for quotas was 2% of the 1920 census. Just as an example, the new quotas permitted 85,721 immigration visas for migrants originally from the United Kingdom; over 25,000 for Germans; 6,000 for Poles; 5,802 for Italians; 869 for Hungarians; and 100 for Armenians. *Id.*; Proclamation 1872, Limiting the Immigration of Aliens Into the United States on the Basis of National Origin, 1 PUB. PAPERS 36, 38–39 (Mar. 22, 1929).

¹⁸⁴ Immigration Act of 1924 § 13.

¹⁸⁵ GARLAND, *supra* note 174, at 40.

¹⁸⁶ Immigration Act of 1924 § 4.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* § 6.

¹⁸⁹ *See id.*; Batlan, *Déjà Vu*, *supra* note 151, at 760.

¹⁹⁰ GARLAND, *supra* note 174, at 71–72; Batlan, *Déjà Vu*, *supra* note 151, at 760.

¹⁹¹ Batlan, *Déjà Vu*, *supra* note 151, at 766.

¹⁹² Herbert Hoover, U.S. President, White House Statement on Government Policies to

enhance the meaning of “likely to become a public charge.”¹⁹³ Consular officials expanded this standard and scrutinized each applicant, employing a test of whether a potential immigrant could indefinitely support him or herself without employment—a test that very few could meet.¹⁹⁴ The State Department boasted that in five months, almost 100,000 migrants who ordinarily would have been admitted to the United States were denied visas.¹⁹⁵ This number soon rose to 135,000.¹⁹⁶ Consuls also began requiring increasingly elaborate documentation and certifications of a migrant’s admissibility to the United States.¹⁹⁷

It was this set of laws and rules, along with the vast discretion of consular officials, that prevented European refugees from immigrating before, during, and after World War II. As the Truman administration realized by early 1946, if the DP camps were to be closed, U.S. immigration law needed to be radically altered to allow the United States to take in precisely those people (Eastern Europeans) that quota laws keep out.¹⁹⁸ That Congress needed to act was clear; what Congress would do, and its timing was up in the air. In the meanwhile, DPs remained in a liminal state—stuck and waiting.

IV. THE TRUMAN ADMINISTRATION ACTS

As discussed in this Part, by the end of 1945, the Truman administration, along with other allied leaders, recognized that about a million displaced persons would not be voluntarily repatriated. The mission thus increasingly turned from repatriation to finding countries willing to accept DPs as immigrants. The Truman administration, under pressure from Jewish organizations, began pressing Congress to pass an immigration law admitting Displaced Persons into the United States but made virtually no headway. Instead, Truman exercised his executive power to increase the availability of U.S. immigration visas to DPs in the U.S. Zone. This was an enormous exercise of the president’s executive power over immigration and would have substantial blowback by painting the administration as too friendly to Jewish organizations.

Reduce Immigration (Mar. 26, 1931), <https://www.presidency.ucsb.edu/documents/white-house-statement-government-policies-reduce-immigration> [hereinafter Hoover White House Statement].

¹⁹³ Batlan, *Déjà Vu*, *supra* note 151, at 766.

¹⁹⁴ *Id.* at 766.

¹⁹⁵ *Id.*; Hoover White House Statement, *supra* note 192.

¹⁹⁶ Batlan, *Déjà Vu*, *supra* note 151, at 766.

¹⁹⁷ *Id.* at 766–67.

¹⁹⁸ Harry S. Truman, U.S. President, Statement and Directive by the President on Immigration to the United States of Certain Displaced Persons and Refugees in Europe (Dec. 22, 1945), <https://www.trumanlibrary.gov/sites/default/files/TrumanDirective.pdf> [hereinafter Truman Directive].

On December 22, 1945, Truman, frustrated by congressional inertia, issued an executive order providing that Displaced Persons in the U.S. Zone be given preferences for immigration visas.¹⁹⁹ In announcing the directive, Truman used a discourse of humanitarianism and the duty of the United States to provide homes for the homeless. Specifically, he spoke of human comradeship, the duty to “relieve the suffering” and “human misery,” and urged that the United States needed to be a model for other countries to follow.²⁰⁰ Truman, however, made clear that all visa applicants needed to meet and comply with existing immigration law.²⁰¹ The cost of sea passage would be borne by the applicant or a voluntary agency, thus reducing the burden on the U.S. taxpayer.²⁰² Further deflecting criticism, he gave first preference to war orphans and war brides.²⁰³ It was much more difficult to object to orphans than adult DPs. Truman thus directed the State Department, the Immigration and Naturalization Service, the War Department, and other executive agencies to immediately reopen consuls in the American Zone that had been closed during the war and to expeditiously process visas.²⁰⁴ Truman was explicit that visas be “distributed fairly among persons of all faiths, creeds, and nationality.”²⁰⁵ This Directive served two purposes: it was a message that warned that Jewish DPs should not be discriminated against in the visa selection process, as had long been the case in the pre-war period; and it was a statement that Jewish DPs should not be favored for fear of an antisemitic backlash.²⁰⁶

Representing a significant innovation in immigration law, the Directive provided for the use of a “corporate affidavit” from an approved welfare organization. These corporate affidavits allowed for voluntary organizations to guarantee that a visa applicant would not become a public charge.²⁰⁷ Previously a visa applicant had to demonstrate that they had personal funds or that there was an American citizen could provide for such an affidavit.²⁰⁸ The “likely to become a public charge” provision had long served as a barrier to people, including refugees, from immigrating to the United States. Thus, corporate affidavits allowed visas to be issued to people who would have previously been rejected as likely to become a public charge.²⁰⁹

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ Maurice R. Davie, *Refugee Aid*, 49 AM. JEWISH Y.B. 212, 213 (1947).

²⁰⁹ *Id.*

Jewish organizations involved in immigration had long pressed various administrations for the use of corporate affidavits. In this sense, the Truman Directive represented a substantial victory for such organizations.²¹⁰ Jewish organizations such as the JDC were well prepared to take immediate advantage of the use of corporate affidavits and had the funds to pay for sea passage for Jewish DPs.²¹¹ Moreover, there were now Jews in prominent positions within the State Department who, behind the scenes, were working closely with Jewish organizations.²¹²

With this new pathway to the United States, even some Jewish DPs who were ardent Zionists intending to immigrate to Israel, decided to immigrate to the United States.²¹³ Yet, obtaining a visa was difficult and the JDC continually complained that U.S. consular officials deliberately slowed down the process as they did not support the program.²¹⁴ One official called the lack of progress in procuring U.S. visas “shocking” and further claimed that so few Jewish DPs were receiving visas that the birthrate in Jewish DP camps was greater than the number of Jewish DPs immigrating to the U.S.²¹⁵

The Directive provoked legal controversy; some in Congress believed that it was unconstitutional as it exceeded the President’s authority by providing a preference for Displaced Persons, essentially altering the 1924 Act which set forth its own series of preferences.²¹⁶ Although it does not appear that this argument went further than grumblings, it did have some legal validity; the 1924 Act clearly spelled out the categories of migrants who had preferences for visas.²¹⁷ Under the Truman Directive, approximately 22,950 Displaced Persons from the American Zone received

²¹⁰ See, e.g., Zosa Szajkowski, *The Attitude of American Jews to Refugees from Germany in the 1930's*, 60 AM. JEWISH HIST. Q. 101, 112–13 (1971) (discussing the many barriers presented to hopeful immigrants prior to the allowance of corporate affidavits).

²¹¹ See *id.* at 116–17.

²¹² Specifically, Herbert A. Fierst of the U.S. State Department was in regular contact with the JDC and worked closely on DP issues. See *Herbert A. Fierst Papers*, U.S. HOLOCAUST MEM’L MUSEUM, <https://collections.ushmm.org/search/catalog/irn517811> (last visited Jan. 5, 2024).

²¹³ BIBER, *supra* note 102, at 98–99.

²¹⁴ See, e.g., Letter from Joseph J. Schwartz, Chairman, Eur. Exec. Council, AJDC, to Moses A. Leavitt, Sec’y, AJJDC (Nov. 9, 1946), in 10 ARCHIVES OF THE HOLOCAUST: AN INTERNATIONAL COLLECTION OF SELECTED DOCUMENTS, *supra* note 27, at 1333.

²¹⁵ *Id.*

²¹⁶ See, e.g., 95 CONG. REC. 7171 (1949) (statement of Rep. Ed Gossett); see also DINNERSTEIN, *supra* note 21, at 145.

²¹⁷ Immigration Act of 1924, Pub. L. No 68-139 § 6, 43 Stat. 153, 155–56 (repealed 1952).

visas to immigrate to the United States and approximately 19,965 ultimately immigrated.²¹⁸ Jewish DPs received approximately 66% of visas although they represented approximately 20% of DPs.²¹⁹ This fact would come back to haunt further efforts to allow for the entry of Jewish DPs into the United States as some would argue that Jews had been unfairly advantaged by the Directive or at least had unfairly taken advantage of it.

There is an ongoing debate regarding the effectiveness of the Truman Directive. The British Foreign Secretary commented at the time that the Truman Directive was more a gesture than a large-scale program.²²⁰ Historian David Nasaw goes even further, writing that the Directive was “a charade, a grand public relations gesture.”²²¹ Although such critiques might be accurate in terms of the possible number of visas available given the immigration quota laws, it was incorrect in a more subtle respect. Overlooked by Truman’s contemporaries as well as historians is the importance of the Truman Directive to rebuilding and restarting the administrative apparatus of immigration. Throughout Europe, U.S. consuls in Nazi-occupied territory had been closed.²²² The Truman Directive was explicit that consuls that could process visa applications be reopened “with utmost despatch” and adequately staffed.²²³ Moreover, new consular facilities were to be established in close proximity to DP camps.²²⁴ If necessary, the Secretary of State was to redirect funds to ensure that visas were processed quickly.²²⁵ This was clearly a rebuke to former Assistant Secretary of State Breckinridge Long and other State Department and consular officials who had intentionally slowed the process of issuing visas to Jewish refugees attempting to flee Germany and other Nazi-occupied countries.²²⁶

Moreover, although voluntary organizations were to pay for overseas transport, the Directive required the War Department to assist in transporting migrants to ports of embarkation and to provide for food, housing, and medical care.²²⁷ It was these details and logistics that were so crucial to reestablishing a functioning immigration apparatus and that would lay the groundwork for future endeavors. The

²¹⁸ STAFF OF S. COMM. ON FOREIGN AFF., 80TH CONG., REP. ON DISPLACED PERSONS AND THE INT’L REFUGEE ORG. 75 (Comm. Print 1947); NASAW, *supra* note 6, at 126 (“In the end, 22,951 visas would be issued as a result of Truman’s directive.”); *see also* HYMAN, *supra* note 8, at 373 (“A total of 19,930 DPs were admitted into the United States under this directive.”).

²¹⁹ HYMAN, *supra* note 8, at 373; *see also* NASAW, *supra* note 6, at 126.

²²⁰ DINNERSTEIN, *supra* note 21, at 114.

²²¹ NASAW, *supra* note 6, at 126.

²²² Truman Directive, *supra* note 198.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *See Breckinridge Long*, U.S. HOLOCAUST MEM’L MUSEUM, <https://exhibitions.ushmm.org/americans-and-the-holocaust/personal-story/breckinridge-long> (last visited Jan. 4, 2024).

²²⁷ Truman Directive, *supra* note 198.

Directive also recognized and provided volunteer organizations with an official role to play in the immigration and resettlement process, emboldening them and making them a partner with the U.S. government.

The Truman Directive as a whole immediately stirred Congressional objection, with some calling for greater restrictive immigration legislation.²²⁸ This reflected popular sentiment. A Gallup poll taken in December 1945, found that only 5% of those surveyed agreed with the statement that immigration should be increased; 37% stated that immigration should be further restricted and 14% believed that no immigration should be permitted.²²⁹ If the increased immigration of Jewish Displaced Persons was specifically mentioned, then 72% of people disapproved of any new legislation that would increase immigration.²³⁰ Antisemitism was bubbling to the surface.

Ongoing discussions among Jewish and other civic and religious organizations regarding a congressional act to provide for the immigration of DPs to the United States led to the creation of the important Citizen's Committee on Displaced Persons (CCDP).²³¹ Although primarily funded and organized by Jewish organizations and people, it acted as a nonsectarian group whose purpose was to lobby for legislation for the admission of European DPs into the United States. Fearing antisemitism, and trying to dispel the widespread and common belief that displaced persons were primarily Jewish, Jewish leaders wanted to ensure that the organization did not appear to be Jewish and sought non-Jews to lead it.²³² "Thirty-two prominent leaders, most of them non-Jewish, representing the churches, business, labor, and other relief agencies, participated in the [first] CCPD organizational meeting, held on December 20, 1946."²³³ Earl Harrison was elected as its chairman and it was decided that the organization would campaign for legislation admitting 400,000 DPs.²³⁴ Believing that it would be impossible to repeal the quota laws, they instead sought emergency legislation on the grounds of humanitarian concerns.²³⁵ The CCDP engaged in an enormous lobbying campaign to reach individuals, organizations, newspapers, and politicians. Functioning as a well-oiled machine, the CCDP sent fliers, petitions, and other material to vast numbers of people, organizations, radio stations, and newspapers.²³⁶ In virtually all of its material, with the

²²⁸ DINNERSTEIN, *supra* note 21, at 114.

²²⁹ 1 GEORGE H. GALLUP, *January 14, Immigration, in THE GALLUP POLL: PUBLIC OPINION 1935-1971*, at 555 (1972).

²³⁰ *See, e.g.*, DINNERSTEIN, *supra* note 21, at 115.

²³¹ *Id.* at 122-23.

²³² *Id.* at 123-26.

²³³ GENIZI, *supra* note 7, at 71.

²³⁴ DINNERSTEIN, *supra* note 21, at 123, 125-26.

²³⁵ *Id.* at 123.

²³⁶ *Id.* at 126-31.

exception of that which went to Jewish groups, the existence of Jewish DPs was made as insignificant as possible.²³⁷ Although the fear of antisemitism was very real, ultimately, the significant amount of Jewish funding that went into the organization would become an open secret and serve as a sort of amplifier of antisemitism and Zionist conspiracy theories.

In August 1946, Truman asked Congress to pass legislation that would allow for significant immigration of European DPs to the United States.²³⁸ Unlike the Truman Directive, such legislation would—in one way or another—have to either amend or circumvent the quota laws. Again, immigration opponents in Congress resisted any such attempt.²³⁹ Eleanor Roosevelt remarked that “every representative in Congress with whom I have talked has told me that the general feeling is that they wish to stop all immigration.”²⁴⁰ Democrat Richard Russell of Georgia, Chair of the Senate Committee on Immigration, called any alteration of the national origins quota a “dangerous precedent.”²⁴¹ Other congressmen argued that permitting the immigration of DPs would bring communism, atheism, and anarchy.²⁴² Democratic Senator Burnet R. Maybank of South Carolina wrote to a constituent, “We have too many foreigners here already and I think we should get rid of them rather than bring in additional ones.”²⁴³

The CCDP, other Jewish organizations, and the Truman administration knew well that the public associated DPs with Jews, and Jews with communism.²⁴⁴ Thus, if legislation admitting DPs into the United States was to pass, Jewish DPs needed to either be erased, made to appear as white as possible, or minimized in the public mind. Major publications that supported DP legislation participated in this process. *Look* published an article titled “Should We Allow More Immigrants in the U.S.?”²⁴⁵ Accompanying the article was a large photo spread on the arrival of a Ukrainian family. The photos included a young well-dressed blond son, who had sparkling “blue eyes,” and his handsome chiseled father. Other photos depicted smiling blond women.²⁴⁶ A long article with photos published in the *Survey Graphic* also featured a plump, very blond baby on the cover.²⁴⁷ Inside was an article, accompanied by

²³⁷ *See id.*

²³⁸ *Id.* at 114–15.

²³⁹ *Id.* at 115.

²⁴⁰ *Id.* at 132.

²⁴¹ *Id.* at 115.

²⁴² *Id.*

²⁴³ *Id.* at 132.

²⁴⁴ *Id.* at 141.

²⁴⁵ William B. Arthur, *Should We Allow More Immigrants in the U.S.?*, LOOK MAG., Apr. 13, 1948, at 21–25.

²⁴⁶ *Id.* at 22–23.

²⁴⁷ William S. Bernard, *Not Sympathy, but Action*, 36 SURVEY GRAPHIC 133 (1947) (on file

photo after photo of healthy, masculine-looking men from Estonia and Lithuania engaged in skilled mechanical work.²⁴⁸ Such articles attempted to demonstrate that DPs were not Jews in order to sway the public.²⁴⁹ But at the same time, they also reified a racial hierarchy.

As Congress dragged its heels in acting on Truman's message, other countries began to slowly allow groups of DPs to immigrate. Often these immigration plans rested upon labor needs rather than humanitarian principles.²⁵⁰ In some cases, government representatives would literally arrive at DP camps and individually select workers. Often strong, single young men were preferred for mining, construction, and agricultural work.²⁵¹ At times, women were recruited for nursing or domestic work.²⁵² Many of these plans had an element of settler colonialism to them. Countries such as Australia saw DPs as settlers who would live in areas unpopulated by whites and claim aboriginal lands.²⁵³ Few countries were willing to accept Jewish DPs in large numbers.

V. THE STRATTON BILL

As this Part discusses, more than two years after the end of the war, the first bill to provide for the immigration of DPs to the United States was introduced in Congress. Congressman William G. Stratton of Illinois introduced the bill in 1947.²⁵⁴ Stratton was a junior congressman with little political experience.²⁵⁵ He had been chosen by the CCDP to introduce the bill because he was Christian and from the Midwest, a place where substantial anti-immigration sentiment existed, but where there were large communities of Catholics from Poland and other Northern European countries potentially sympathetic to Catholic Displaced Persons.²⁵⁶ Before Stratton agreed to introduce the bill, the CCDP had invited several more senior congressmen and senators to do so, but they had refused, which probably made good political sense.²⁵⁷ What must be emphasized is that it had taken almost three years

with University of Illinois Chicago Library).

²⁴⁸ *Id.* at 132.

²⁴⁹ Arthur, *supra* note 245, at 21–25.

²⁵⁰ For a discussion of various countries allowing DPs to immigrate to satisfy labor needs, see WYMAN, *supra* note 6, at 189–91; NASAW, *supra* note 6, at 333–40.

²⁵¹ See WYMAN, *supra* note 6, at 190–93.

²⁵² *Id.* at 189.

²⁵³ For discussions regarding DPs admitted to Australia, see BALINT, *supra* note 6, at 115–34; PERSIAN, *supra* note 13.

²⁵⁴ Emergency Temporary Displaced Persons Admission Act, H.R. 2910, 80th Cong. (1947).

²⁵⁵ DINNERSTEIN, *supra* note 21, at 128, 131–32; NASAW, *supra* note 6, at 304.

²⁵⁶ See DINNERSTEIN, *supra* note 21, at 132; GENIZI, *supra* note 7, at 71.

²⁵⁷ NASAW, *supra* note 6, at 304.

for legislation addressing Displaced Persons to even be introduced. The bill would have allowed for 400,000 Displaced Persons to immigrate to the United States over the next four years.²⁵⁸ Through the work of the CCDP, as well as other religious and ethnic organizations, there was some support for the bill. Editorials sent to newspapers by the CCDP emphasized that it was temporary and emergency legislation for homeless refugees.²⁵⁹ Further, during the war, immigration had virtually ceased. Thus, advocates argued that the entry of these new immigrants would only amount to what immigration would have been without war. Repeatedly, material emphasized that 80% of DPs were Christian victims of either Hitler or Communism.²⁶⁰ The language of Jewish annihilation was not discussed, even in the most sympathetic articles and material.²⁶¹

With the introduction of the Stratton bill, a vast reservoir of antisemitism came to the fore, as if a volcano had erupted. Previous historians have seen such antisemitism as generated by a few powerful senators and conservative organizations such as the Veterans of Foreign Wars and the Daughters of the American Revolution.²⁶² Such an interpretation, however, misses the groundswell of popular antisemitism galvanized in part by Democratic Congressman Ed Gossett of Texas. To miss this role of the ordinary citizen is a serious omission as it underestimates the amount of popular, widespread antisemitism in the immediate post-war period. Such antisemitism was a great deal more than an aberration but was rather a renewed wave of the antisemitism present before and during World War II.

VI. CONGRESSMAN ED GOSSETT AND POPULAR ANTISEMITISM

This Part examines the role of Congressman Ed Lee Gossett in fueling the flames of antisemitism and leading an attack against the admission of DPs. It crucially examines the letters that Gossett received from ordinary citizens across the country in support of his position. Although this Article is not arguing that these letters represented how all (or even a majority of) Americans thought, they do provide a window into both antisemitism and how such antisemitism would later be reflected in the 1948 Displaced Persons Act. They further counter the argument that the defeat of the Stratton bill was primarily due to the particular eccentricities of a small number of congressmen, senators, or conservative organizations.²⁶³ This

²⁵⁸ DINNERSTEIN, *supra* note 21, at 132.

²⁵⁹ *See id.* at 128–29.

²⁶⁰ *See, e.g., id.* at 127; Bernard, *supra* note 247, at 133; Davie, *supra* note 208, at 215.

²⁶¹ *See, e.g.,* Bernard, *supra* note 247; DINNERSTEIN, *supra* note 21, at 127–31.

²⁶² *See* Davie, *supra* note 208, at 220.

²⁶³ David Nasaw, who has written a recent and extensively researched book on DPs, seems not to have used the Gossett letter archives but merely mentions that its “finding aid” is replete with references to antisemitism. NASAW, *supra* note 6, at 309. To access the full archive of Gossett letters, see ED LEE GOSSETT PAPERS (on file with Baylor University, W. R. Poage Legislative

Article takes the letters that Gossett received from supporters seriously, and asks what light they shed on antisemitism, immigration, race, and the law in the immediate post-war period.

Congressman Gossett, on July 2, 1947, gave a passionate speech in the House of Representatives against the Stratton bill and in favor of further restricting immigration.²⁶⁴ In part, the unremarkable, slightly populist-leaning Gossett, who was an adamant anti-New Dealer, seemed to recognize a good opportunity when he saw it.²⁶⁵ He quickly printed his speech as a pamphlet titled “A New Fifth Column or the Refugee Racket.”²⁶⁶ Claiming to speak for millions of Americans, he argued that the immigrant “blood” of DPs would weaken and pollute the strong blood of Americans whose immigrant roots were from Germany and Northern Europe.²⁶⁷ DPs still in camps, he claimed, were the “the refuse of Europe” consisting of “bums, criminals, black-marketeers, subversives, revolutionists, and crackpots . . .”²⁶⁸ Such people refused to work and lived on U.S. largess and charity. Moreover, Gossett essentially denied that Jews wanted to leave Europe due to antisemitism and refuted the existence of post-war European antisemitism or the occurrence of Polish pogroms.²⁶⁹ He further asserted that under the Truman Directive, Jews had been unfairly advantaged, and Catholics and Protestants had been discriminated against in receiving U.S. immigration visas.²⁷⁰ The very idea of letting in more Jewish DPs was an affront to the nation’s Christianity and very identity. He posited that the Stratton bill itself was the product of Jewish propoganda promulgated by Jewish organizations.²⁷¹

In a fascinating and strained racial logic, Gossett conceded that German fascism and the Nazi’s persecution of Jews was a low point in human history that “brought unspeakable sorrow to an entire world.”²⁷² But he argued that admitting more Jews to the United States would create “fertile soil” for producing antisemitism, which he argued currently did not exist in the United States.²⁷³ He strangely praised Felix Frankfurter as an example of a “good Jew” and evidence of his own

Library) (1935–1953) [hereinafter ED LEE GOSSETT PAPERS].

²⁶⁴ Ed Gossett, U.S. Rep., H.R., A New Fifth Column or the Refugee Racket, Speech Before the House of Representatives (July 2, 1947), *in* ED LEE GOSSETT PAPERS, *supra* note 263, at Box 4, Folder 4 [hereinafter Gossett, A New Fifth Column].

²⁶⁵ *See* NASAW, *supra* note 6, at 309.

²⁶⁶ Gossett, A New Fifth Column, *supra* note 264.

²⁶⁷ *Id.* at 2.

²⁶⁸ *Id.* at 4.

²⁶⁹ *See id.*

²⁷⁰ *Id.* at 6.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

admiration of Jews.²⁷⁴ Thus Jews, or at least the wrong type of Jews, would themselves beget antisemitism. In a slight of hand, Gossett was tilling the soil of antisemitism while simultaneously denying the existence of antisemitism in the United States.

Those who supported the Stratton bill, he asserted, had been fooled by Jewish propaganda and were driven by irrational sentimentality and misplaced humanitarianism.²⁷⁵ In contrast, Gossett insisted that his position was based upon logic and rationality.²⁷⁶ Gossett thus engaged in a sort of gendered trope in which humanitarianism was associated with the feminine, weak, and irrational. In contrast, his position was rational, strong, patriotic, and masculine.²⁷⁷ Supporters would understand this somewhat coded language.

Gossett's pamphlet struck a strong chord with some Americans and his particular strain of antisemitism is worth analyzing. For Gossett, both Jewishness and whiteness were characterized as biological, immutable, and in the blood. White Christians had pure blood that could be contaminated by the impure blood of Jews.²⁷⁸ Here white Christians included both Protestants and Catholics.²⁷⁹ Moreover, it would become a hallmark of American post-war antisemitism that its very existence had to be denied or at least justified. European antisemitism, culminating in Nazi racial policy, was irrational, anti-democratic, and overtly violent. In contrast, American antisemitism was based upon objective fact evidenced by Jewish behavior.²⁸⁰ In other words, it was empirical. According to Gossett's circular logic, more Jews would only create antisemitism in the United States; foreign Jewish bodies contained the germs of antisemitism that would then breed antisemitism. Thus, Jews needed to be barred for their own protection.

Gossett distributed his pamphlet widely and embarked upon a speaking tour which included numerous radio broadcasts.²⁸¹ His audience responded by flooding his office with correspondence not only supporting his view but asking for pamphlets of the speech so that they might distribute it to others.²⁸² An owner of an

²⁷⁴ *Id.* at 6–7.

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 7.

²⁷⁷ *Id.* at 8.

²⁷⁸ This idea that Jews constituted a separate and inferior race had gained popularity in the United States in the early 20th century and it corresponded with a new emphasis on racial science. Jews were widely believed to be an inferior race with distinctive physical and mental traits which literally ran in their blood. DINNERSTEIN, *supra* note 3, at 58–67.

²⁷⁹ Gossett, A New Fifth Column, *supra* note 264, at 6.

²⁸⁰ *Id.* at 6–7.

²⁸¹ *See, e.g.*, Letters from Constituents to Ed Lee Gossett, U.S. Rep., H.R. (January 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 3 [hereinafter Letters from Constituents].

²⁸² *See id.*

advertising firm in St. Louis asked for 200 copies of the “excellent” and patriotic speech and queried why Texans were “genuine men,” as opposed to “stupid so-called intellectual giants.”²⁸³ Thus, here we see the contrast between the patriotic Christian man from Texas protecting the country, as opposed to the more effete East Coast intellectual. The National Society of the Daughters of the American Revolution requested 500 copies to distribute to their members and urged Gossett to send any additional speeches.²⁸⁴ Hundreds of people sought Gossett’s speech and he was all too happy to oblige.²⁸⁵

Gossett gained national attention; hundreds of people wrote to him in hopes of defeating the Stratton bill, adding their own opinion of Jewish people, or more generally hoping to prevent the admission of DPs, whom they imagined to be entirely Jewish, to the United States. For instance, F.P. Donnelly from Oregon complimented Gossett on his “great speech” and criticized others in Congress as “too cowardly to say anything against Jews because of the influence of the rich Jews.”²⁸⁶ Donnelly, however, specifically objected to Gossett’s praise of Justice Frankfurter or any other Jewish person in office, claiming that they were “as bad or worse than other Jews.”²⁸⁷ Donnelly continued, “All Jews work all the time for one purpose and that is to enslave the world as they have enslaved Russia.”²⁸⁸ As we will see throughout the debates over the admission of Displaced Persons, Jews and communism were often viewed as synonymous.²⁸⁹ Other letter writers urged Gossett to take a stronger

²⁸³ Letter from E.Q. Johnson to Ed Gossett, U.S. Rep., H.R. (May 19, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 7.

²⁸⁴ Letter from the Nat’l Soc’y of the Daughters of the Am. Revolution to Ed Gossett, U.S. Rep., H.R. (Jan. 27, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 3.

²⁸⁵ See, e.g., Letter from Ed Gossett, U.S. Rep., H.R. to J. O. Gossett, Chairman, Republican Cnty. Cent. Comm. of San Joaquin Cnty. (Jan. 31, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 3.

²⁸⁶ Letter from F. P. Donnelly to Ed Gossett, U.S. Rep., H.R. (Jan. 10, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 3.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ The belief that Jews were communists became particularly strong after the Russian Revolution and was a staple of antisemites such as Father Charles Coughlin, The Christian Front, and the American Bund. Beginning in 1935, Father Coughlin spewed a steady stream of antisemitism through his radio broadcasts which attracted millions of listeners. *Charles E. Coughlin*, U.S. HOLOCAUST MEM’L MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/charles-e-coughlin> (last visited Jan. 3, 2024). Coughlin described Jews as international bankers engaged in a Jewish conspiracy that caused the Great Depression. *Id.* Following *Kristallnacht* in Germany, in a famous broadcast, Coughlin defended the Nazis, asserting that they were fighting Jewish communists who had stolen billions of dollars from Christians. *Id.* Coughlin was also one of the founders of the Christian Front, an antisemitic and fascist organization based on an ideology that the United States was founded by and for Christians and that Jews were fermenting a worldwide communist revolution. *Id.*; see also Gene Fein, *For Christ and Country: The Anti-Semitic*

stance by clearly stating that organizations were attempting to conceal the fact that all DPs were Jews cloaking themselves in other identities and that every branch of government was controlled by Jews who had “poisoned the bloodstream” of the nation.²⁹⁰

Numerous letters pointed to the number of Jewish men in positions of power in the federal government. This boosted their belief that Jews controlled the government and were part of a larger international Jewish conspiracy. Pearl Bussey Phinney from New York City agreed with many other writers that New York had become a “foreign city” and that the state and federal government were filled with “aliens.”²⁹¹ Opining upon the Stratton bill, she wrote that it was “Jew dominated” and “Jew pressured.”²⁹² She continued, “[T]hey should all be sent out of this country and NONE ever allowed to HOLD PUBLIC OFFICE, in this CHRISTIAN country. No one has ever done more damage to our country and its people than Mr. Felix Frankfurter, in my opinion.”²⁹³ For Phinney, Frankfurter symbolized the power of all Jews and there were no good Jews. Rather all Jewish people were dangerous foreigners who needed to be deported.²⁹⁴ The rant that Jews controlled the government had a number of roots. Some antisemites believed that the New Deal was a Jewish invention and further evidence of Jews’ intention to control the economy and destroy capitalism and democracy.²⁹⁵ The language of the “Jew Deal,” rather than the “New Deal,” had been a popular refrain and Roosevelt was accused of having Jewish ancestry.²⁹⁶

Veree McFadin Godfrey, as did many others, understood the debate over Jewish DPs to be about race and whiteness. McFadin explicitly linked civil rights for Black people, the admission of Hawaii as a state, and the immigration of Jewish DPs. “[S]oon real Americans will be so out numbered I fear to contemplate what will happen.”²⁹⁷ Likewise, a letter writer from Texas also equated Puerto Ricans migrating to New York with Displaced Persons. Clearly neither Blacks, Puerto Ricans, nor DPs qualified to be real Americans.²⁹⁸ H. L. Smith from Philadelphia was even

Anticommunism of Christian Front Street Meetings in New York City, U.S. CATH. HISTORIAN, Fall 2004, at 37–40; DINNERSTEIN, *supra* note 3, at 115–17.

²⁹⁰ Letter from Michael Carroll to Ed Gossett, U.S. Rep., H.R. (Jan. 13, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 3.

²⁹¹ Letter from Pearl Bussey Phinney to Ed Gossett, U.S. Rep., H.R. (Dec. 31, 1947), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 2.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ DINNERSTEIN, *supra* note 3, at 108–09.

²⁹⁶ *Id.*

²⁹⁷ Letter from J.B. Veree McFadin Godfrey to Ed Gossett, U.S. Rep., H.R. (May 4, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 7.

²⁹⁸ Letter from Jeannette B. Rayner to Ed Gossett, U.S. Rep., H.R. (June 24, 1949), in ED

more explicit, stating that they would support the immigration of white DPs but not that of Jews.²⁹⁹ A slightly later letter was adamant that white Displaced Persons should be able to enter the country, but that Jews were part of the African race.³⁰⁰ What is absolutely clear from these letters is that “American” to these writers meant white people; Jews were not white.

Mrs. Brosman from New York City praised Gossett as “fearless” and wrote of how more immigrants would cause the true America to disappear.³⁰¹ This trope of the disappearance of America was one that letter writers continually used and which reflected what we would now refer to as replacement theory—that white Christian America was being replaced by those who were neither. Such language was not innovative. At the turn of the century, elites such as Teddy Roosevelt spoke of this replacement as race suicide; such an argument had long been in the air used by a host of writers, eugenicists, as well as Father Coughlin, the Christian Front, and the Ku Klux Klan.³⁰² Mrs. Brosman continued by claiming that if DPs were admitted to the United States, they would be “largely Jewish, largely Communist and on our relief rolls in six months.” She claimed that, as a New Yorker, she spoke from experience. Foreigners had taken over the city, leaving “Gentile Americans . . . in the minority.”³⁰³ Another New Yorker wrote that due to vast numbers of Jews, “New York [was] no longer an American City.”³⁰⁴ As we shall see, numerous letter writers pointed to New York City as a disaster; the consequence of what happened when there were too many Jews.

John Myers from Oregon wrote, “The inferior are breeding away the superior.” He supported the immigration of Germans over that of DPs, believing Germans were a superior race.³⁰⁵ As previously discussed, this reflected the attitude of some

LEE GOSSETT PAPERS, *supra* note 263, at Box 6, Folder 2; Ed Gossett, A New Fifth Column, *supra* note 264.

²⁹⁹ Letter from H. L. Smith to Ed Gossett, U.S. Rep., H.R. (July 17, 1947), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 3, Folder 11.

³⁰⁰ Letter from Harold J. Shea to John [sic] Gossett, U.S. Rep., H.R. (May 8, 1949), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 14.

³⁰¹ Letter from Forrest E. Brosman to Ed Gossett, U.S. Rep., H.R. (Jan. 11, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 3.

³⁰² For recent discussions of replacement theory and its history, see Alexandra Minna Stern, *From “Race Suicide” to “White Extinction”: White Nationalism, Nativism, and Eugenics over the Past Century*, 109 J. AM HIST. 348 (2022); Jason Wilson & Aaron Flanagan, *The Racist ‘Great Replacement’ Conspiracy Theory Explained*, S. POVERTY L. CTR. (May 17, 2022), <https://www.splcenter.org/hatewatch/2022/05/17/racist-great-replacement-conspiracy-theory-explained>.

³⁰³ Letter from Forrest E. Brosman to Ed Gossett, *supra* note 301.

³⁰⁴ Letter from Chapin N. Stone to Ed Gossett, U.S. Rep., H.R. (May 11, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 7.

³⁰⁵ Letter from John Myers to Ed Gossett, U.S. Rep., H.R. (Jan. 25, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 3.

U.S. servicemen stationed in Germany.³⁰⁶ Some letter writers were very explicit that Germans should be allowed to immigrate to the United States because they could assimilate. As one writer put it, “The Jew never assimilates and his hands stretch eternally across the sea to his brethren in other lands . . . They keep the ‘Jewish Question’ alive in every country and then wonder why we have anti-Semitic activities.”³⁰⁷ These letters referred to deeply rooted ideas that Jews could not assimilate into America by their very nature; that Jews could not be loyal citizens; and that Jews themselves caused antisemitism. The fact that the United States had been at war with Germany did not seem to sway their opinions.

Strikingly, no letter recognized the plight and extermination of European Jews. Such people might be understood to be early Holocaust deniers. This was clearly the case with a man who simply signed his letter “Ex-GI.” He wrote that after the war:

We . . . hanged many prominent Germans because of the almost official statement that the Nazis had executed 6,000,0000 Jews, is not it about time that the country be told exactly how many Jews were executed and how many F.D.R. permitted to come under the immigration wire. According to the World Almanac figures, the Jews have not suffered any loss at all³⁰⁸

In a similar vein, George Pluskat from Brooklyn wrote that “the United States; fought on the wrong side. . . . [T]he Germans, never did hate the Jews. Why, Germany; was a haven for the Jews.”³⁰⁹ Thus, Holocaust denial began almost immediately following the war.

Numerous letters remarked that Jews were hated the world over and that such widespread hatred was evidence of Jewish malfeasance. Such letters blamed Jews for provoking antisemitism. Jews schemed, failed to honor American culture, and engaged in unfair trade. They asked for special treatment, and were criminals, too powerful, secretive, and subhuman.³¹⁰ In other words, widespread hatred of Jews

³⁰⁶ See *supra* note 137 and accompanying text.

³⁰⁷ Letter from D. H. Mackay to Ed Gossett, U.S. Rep., H.R. (Sept. 21, 1945), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 3, Folder 11 (ellipsis in original).

³⁰⁸ Letter from Ex-G.I. to Ed Gossett, U.S. Rep., H.R. (Dec. 24, 1949), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 3, Folder 11.

³⁰⁹ Letter from George J. Pluskat to Ed Gossett, U.S. Rep., H.R. (Sept. 9, 1946), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 3, Folder 11.

³¹⁰ See, e.g., Letter from (Name Illegible), Baker Hotel, to Ed Gossett, U.S. Rep., H.R. (Aug. 19, 1946), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 3, Folder 11; Letter from Wm. F. Sparling to Ed Gossett, U.S. Rep., H.R. (Aug. 19, 1946), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 3, Folder 11; Letter from D. H. Mackay to Ed Gossett, *supra* note 307; Letter from Michael Carroll to Ed Gossett, *supra* note 290; Letter from L. M. Henning to Ed Gossett, U.S. Rep., H.R. (Nov. 22, 1946), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 3, Folder 11.

was itself justification for hating Jews. Letter writer Henry Wendt, who had previously worked in the Chicago Fire Department, remarked, “They are a cancer among the people on this earth.”³¹¹ Like many, he queried why Jewish DPs should be allowed into the United States if no other country wanted them.³¹² Another writer referred to Jewish DPs as “anti-Christian invaders.”³¹³ Relocation to the United States would not solve the “Jewish Problem” as Jews brought problems wherever they went.³¹⁴

Writers often justified their beliefs by citing their own personal observations of Jews as evidence. This was especially true of letter writers from New York. L. M. Henning of Mount Vernon, New York expressed it succinctly, writing: “The Jew is NOT discriminated against because of his religion. We have lived among them for many years. If they lived decently[,] they would not be persecuted.”³¹⁵ As was typical, Camilla Booth from New York City, wrote: “They have only themselves to blame as they have ruined every country they ever entered including Germany, and are already ruining the U.S.A!”³¹⁶ In fact, Ms. Booth sought to demonstrate her support of other immigrants and ethnicities, citing that she was pro-British, pro-Arab, and pro-Italian.³¹⁷

Many letter writers claimed that Jewish business practices caused people to rightfully dislike them. One woman from Irwin, Pennsylvania wrote of her own town’s experience with Jews. She claimed that “Jewish merchants [were] pushing all the gentiles out of business.”³¹⁸ She asserted that many people in town were trying to form a committee to deal with the Jews and she was hoping for Gossett’s assistance. Ironically, she thought the name “America for All” would be appropriate for this organization.³¹⁹ She quickly cautioned, however, that she did not want to start a pogrom as she “wouldn’t hurt a fly.” Rather such an organization would lobby for legislation that would revoke business licenses from Jews beyond their “rightful quota.”³²⁰ In other words, this could be *Kristallnacht* light—done the American way through law rather than overt acts of physical violence.

³¹¹ Letter from Henry J. Wendt to Frank Gosset [sic], U.S. Rep., H.R. (Mar. 31, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 5.

³¹² *Id.*

³¹³ Letter from M.R. Haras (June 8, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 3, Folder 11.

³¹⁴ *See id.*

³¹⁵ Letter from L. M. Henning to Ed Gossett, *supra* note 310.

³¹⁶ Letter from Camilla G. Booth to Ed Gossett, U.S. Rep., H.R. (Aug. 19, 1946), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 3, Folder 11.

³¹⁷ *Id.*

³¹⁸ Letter from Mrs. Louis Thompson to Ed Gossett, U.S. Rep., H.R. (Jan. 28, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 3.

³¹⁹ *Id.*

³²⁰ *Id.*

Multiple letter writers spoke of the violence against Jews that would ensue if Jewish DPs were allowed to immigrate to the United States. Dr. Weldon Shofstall, a former college dean stationed in Germany with the U.S. military wrote that the occupation was being run by “Jewish money grabbers.” If Jewish DPs were allowed to go to America, “there will grow a wave of hatred that will know no bounds.”³²¹ Others such as D. H. Mackay claimed that they were not personally antisemitic but warned that more Jews in the United States would “incubate a ‘Little Hitler’” as there were already too many Jews in the country.³²² Another letter writer suggested that if more Jews were allowed into the country, “our present famous radio announcement, ‘Call for Phillip Morris,’ will be changed to: ‘Call for Adolph [sic] Hitler.’”³²³ Some letter writers sympathized with Hitler’s goals of eliminating Jews but would then quickly say that they personally did not support his methods.³²⁴ One writer warned that more Jews would logically lead to the expansion of the Ku Klux Klan.³²⁵ Another opined that more Jews would, in turn, spur a movement to “run [the Jews] out.”³²⁶ These letters thus subtly danced with violence while disclaiming any responsibility for it.³²⁷ Instead, Jews were cast as the agents of their own destruction. Their mere presence in any number created uncontrollable, potentially murderous, rage among the white population.

A letter writer supposedly representing the mothers of 200 GIs saw Jewish and other DPs as lazy, sitting around for years in DP camps rather than rebuilding Europe.³²⁸ At the same time, she complained that “aggressive” Jews “come over here and grab everything If they tried to be decent[,] people all over the world wouldn’t hate them.” She queried, “Why don’t we just hand America right over to them and we go to some desert island?”³²⁹ She too feared that violence would soon

³²¹ Letter from Weldon P. Shofstall to Ed Gossett, U.S. Rep., H.R. (Mar. 26, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 5.

³²² Letter from D. H. Mackay to Ed Gossett, *supra* note 307.

³²³ Letter from E. H. Hammond to Ed Gossett, U.S. Rep., H.R. (Aug. 20, 1946), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 4, Folder 16.

³²⁴ Letter from C.L. Delseamp to Ed Gossett, U.S. Rep., H.R. (Aug. 19, 1946), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 3, Folder 11.

³²⁵ Letter from Herwood Keaton to Ed Gossett, U.S. Rep., H.R. (Aug. 19, 1946), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 3, Folder 11.

³²⁶ Letter from Frank S. Brown to Ed Gossett, U.S. Rep., H.R. (Aug. 19, 1946), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 3, Folder 1.

³²⁷ In the 1940s, Jews in New York and Boston had been the victims of substantial violence often perpetrated by members of the Christian Front. Stephen H. Norwood, *Marauding Youth and the Christian Front: Antisemitic Violence in Boston and New York During World War II*, 91 AM. JEWISH HIST. 233, 233–37 (2003).

³²⁸ Letter from Mothers of Ex-GIs to Ed Gossett, U.S. Rep., H.R. (May 12, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 7.

³²⁹ *Id.*

ensue if more Jews came to the United States. Thus, in this letter writer's internally contradictory opinion, Jews were simultaneously lazy and too aggressive.³³⁰ Like so many letter writers, she easily elided displaced persons with all Jews, using the controversy over DPs to make generalizations about Jews in the United States and perhaps even globally.

Letter writers agreed with Gossett that Zionist Jews had co-opted the debate over Displaced Person's legislation. Such "Zionist[s]" not only spewed "propaganda," but "[controlled] [m]any of the big newspapers, radio chains, and picture shows."³³¹ Thus, according to many, media of all sorts could not be trusted. Moreover, Gossett and his supporters constructed a narrative in which Gossett's stance on DPs was one of virtue—lacking self-interest—while all others who supported DP admission were pandering to the electorate or had been duped by the vast Zionist conspiracy.³³² In contrast, they claimed Gossett was a true man of reason and fact who virtuously stood up for true Americans. Repeatedly, letters praised him for being "clear-thinking," basing his arguments on fact, and not being "so easily swayed by sentimentality and the clamor of vociferous minorities."³³³ Thus where all Jews by their very nature could not possess virtue but were only self-interested, Gossett and his supporters could see and represent an objective truth about what was best for the well-being of America and true Americans.

Of the hundreds of letters sent to Gossett, most letter writers had a high degree of literacy; letters were typically well-written and grammatically correct. Many were also typed, and some came on business or personal stationary.³³⁴ Writers did not seem to be poor or badly educated. They rarely complained about a lack of a job or income. They were also somewhat "educated" about issues involving Displaced Persons. They read newspapers, listened to the radio, and many had actually read the Stratton bill and followed Congressional debates.³³⁵ Often, letter writers enclosed articles about DPs or other issues which appeared in local newspapers and that they wanted to share them with Gossett. Many simply thanked Gossett for his strength

³³⁰ See *id.*

³³¹ Letter from Ed Gossett, U.S. Rep., H.R., to Hilda M. Lampman (Jan. 21, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 3.

³³² See, e.g., Letter from A. R. Brown to Ed Gazette [sic], U.S. Rep., H.R. (May 31, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 7.

³³³ See, e.g., Letter from Lenore & H.C. Barker to Ed Gossett, U.S. Rep., H.R. (May 31, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 7.

³³⁴ See, e.g., Letter from L. M. Henning to Ed Gossett, *supra* note 310; Letter from C. C. Moseley to Ed Gossett, U.S. Rep., H.R. (Nov. 22, 1946), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 3, Folder 11; Letter from Walter Campbell to Ed Gossett, U.S. Rep., H.R. (Nov. 25, 1946), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 3, Folder 11.

³³⁵ See generally Letters from Constituents, *supra* note 281.

of will and patriotism, telling him of the great support that he had in local communities and asking him to continue the fight.³³⁶ Often, writers stated that the pamphlets they requested were to help inform their friends, fellow workers, and acquaintances.³³⁷ Some undoubtedly saw themselves as community leaders who had the responsibility to educate neighbors, friends, and co-workers.

Given this, how do we begin to understand the vast amount of antisemitism expressed in these letters?³³⁸ On the one hand, none of these antisemitic ideas were original. They had long existed and were part of both American and European antisemitism. Many of these arguments were in fact part of Nazi ideology and white supremacy and had been expressed by the Ku Klux Klan, the Christian Front, Father Coughlin, and Henry Ford's newspaper, the *Dearborn Independent*, when it published a series based upon the Protocols of Zion.³³⁹ Missing from these letters to

³³⁶ See, e.g., Letter from Elmer E. Rogers to Ed Gossett, U.S. Rep., H.R. (Jan. 3, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 10 (enclosing a local newspaper article); Letter from Jack H. Martin to Ed Gossett, U.S. Rep., H.R. (Jan. 12, 1949), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 10 (thanking Gossett for his position on the "Displaced Persons Controversy").

³³⁷ See, e.g., Letter from J.T. Kelley, Jr. to Ed Gossett, U.S. Rep., H.R. (May 12, 1949), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 14; Letter from Luther A. Smith to Ed Gossett, U.S. Rep., H.R. (May 1, 1948), in ED LEE GOSSETT PAPERS, *supra* note 263, at Box 5, Folder 7.

³³⁸ The author has also studied letters received by Senator J. Howard McGrath regarding Displaced Persons. The great majority of these letters were against the Wiley-Revercomb Bill, especially its discriminatory provisions. These letters came from many progressive civic and religious organizations. In general, these letters did not mention Jewish Displaced Persons. They primarily argued for passage of DP legislation for humanitarian reasons. Many of these letters were short and followed a form. See *Displaced Persons Correspondence*, in J. HOWARD MCGRATH PAPERS, Box 12–13 (on file with Harry S. Truman Presidential Library). That DP legislation was highly contested does not negate the antisemitism that was present in these debates and ultimately the legislation itself.

³³⁹ One of the most notorious incidents of antisemitism involved *Dearborn Independent's* publication of a series of 19 articles based on the forged manuscript *The Elders of Zion*. This fake manuscript from 1903 originated in St. Petersburg, Russia. It described a worldwide conspiracy by Jews to take over the world and enslave others. The articles published by the *Dearborn Independent* warned of the dangers of this worldwide cabal of Jews, now associated with communism, the Russian Revolution, and the desire to control the world for the benefit of Jews. Copies of the articles were translated into numerous languages and Adolf Hitler may have used them when writing *Mein Kampf*. For discussion of Henry Ford and the *Dearborn Independent's* publication of these articles, see DINNERSTEIN, *supra* note 3, at 81–83. For a full discussion of the ensuing legal case against the newspaper for libel against the Jews, see VICTORIA SAKER WOESTE, *HENRY FORD'S WAR ON JEWS AND THE LEGAL BATTLE AGAINST HATE SPEECH* (2013). One of the greatest widespread embraces of antisemitism arose with the Second Ku Klux Klan in the 1920s and 1930s. The second Klan was a popular and mass-based social movement across the United States. It was not a fringe movement but attracted middle class men and women and was considered to be a respectable organization. It demonized Blacks, Jews, and Catholics while

Gossett, however, was the longstanding antisemitic trope that the Jews killed Jesus or that Jews engaged in blood rituals. Rather, the argument that these letters made was entirely secular, with an air of modernity.

We also must confront that at least some of these letters contained a kernel of truth that the letter writer then magnified and horribly distorted. As discussed, the Citizens Committee on Displaced Persons was a powerful lobbying organization and Jews had intentionally not been visible on its prominent board.³⁴⁰ Its internal leadership was, however, largely Jewish and it was primarily financed by Jewish people.³⁴¹ The organization had been structured this way to avoid antisemitism. Quickly, however, it became an open secret, lending fuel to the fire that a secret Zionist organization was behind lobbying for the bill and Jewish DPs.³⁴² Likewise, the JDC was an international organization funded by Jewish people, and it worked to help European Jews immigrate before, during, and after the war.³⁴³ Some of its financial support went to a semi-secret, semi-illegal Eastern European organization, *Bricha*, that sought to bring Jews from Europe to Palestine.³⁴⁴ Thus, people might imagine that this constituted an international Zionist organization. In addition, the JDC, which was extremely well-organized, had regular contact with the State Department, especially a number of Jewish people within the State Department working to bring DPs to the United States.³⁴⁵ Moreover, Roosevelt, and later Truman, had brought more Jewish people into the federal administration, whereas discrimination had previously kept them out of high-ranking federal positions.³⁴⁶ New York City also did, in fact, have a high population of Jewish people; because of the annihilation of most of European Jewry, it now had one of the largest population of Jews anywhere.³⁴⁷ Likewise, the majority of surviving Jews had sought refuge in the Soviet Union, which only bolstered the long-running connection between communism and Jews.³⁴⁸ In a sense, the proverbial well had also been poisoned by the

appealing to a broad base of Protestants across the nation. Although it was at a nadir in the 1940s, its message of racial hatred had taken firm roots. For a discussion of the Second KKK, see LINDA GORDON, *THE SECOND COMING OF THE KKK: THE KU KLUX KLAN OF THE 1920S AND THE AMERICAN POLITICAL TRADITION* (2018).

³⁴⁰ DINNERSTEIN, *supra* note 21, at 123–26.

³⁴¹ *Id.* at 126.

³⁴² *See id.* at 127–32.

³⁴³ *See* BAUER, *supra* note 57, at 94–103.

³⁴⁴ On *Bricha* and the role of the JDC, see BAUER, *supra* note 39.

³⁴⁵ *See* Patt & Crago-Schneider, *supra* note 28, at 181–83.

³⁴⁶ Leonard Dinnerstein, *Jews and the New Deal*, 72 AM. JEWISH HIST. 461, 463–65, 469, 472, 475 (1983).

³⁴⁷ Compare Ben B. Seligman & Harvey Swados, *Jewish Population Studies in the United States*, 50 AM. JEWISH Y.B. 651, 661, 667 (1949), with Leon Shapiro & Boris Sapir, *Jewish Population of the World*, 50 AM. JEWISH Y.B. 691, 692, 694 (1949).

³⁴⁸ *See supra* Section II.B.

large number of letters and reports from soldiers and UNRRA personnel criticizing Jewish DPs.³⁴⁹ Finally, as a proportion, more Jewish DPs had immigrated under the Truman Directive than Catholics or Protestants because of the finances and organizational acumen possessed by organizations such as the JDC.³⁵⁰

Antisemites could take these truths and dramatically twist and distort them, turning them into what we would now call disinformation—vastly exaggerated claims based upon kernels of truth, taken out of context and de-historicized. What was the keen desire of American Jews and Jewish organizations to help the last remnants of European Jewry to leave Europe became something deeply nefarious, as did any Jewish person in a position of power. This was an antisemitism that was both deeply rooted in the United States and that could adjust to new circumstances. Thus, the debates over DP legislation were simultaneously a continuation of pre-war antisemitism while also setting the stage for post-World War II antisemitism, which would ebb and flow over the next decades.

VII. PASSAGE OF THE 1948 DISPLACED PERSONS ACT AND LAW AS ANTISEMITISM

As Gossett led opposition in the House, Republican Senator William Chapman Revercomb from West Virginia led it in the Senate.³⁵¹ Revercomb chaired the Senate Judiciary Subcommittee on Immigration. He was a deep conservative and anti-New Dealer who had long opposed immigration and cherished the Immigration Act of 1924.³⁵² As early as 1946, Revercomb had spoken out against any change to immigration quotas that would allow for Displaced Persons to enter the United States.³⁵³ He asserted, “Many of those who seek entrance into this country have little concept of our form of government. Many of them come from lands where communism has had its first growth and dominates the political thought and philosophy of the people.”³⁵⁴ Displaced Persons, he argued, had made themselves homeless and undesirable and should remain in Europe.³⁵⁵ Again, the argument that Displaced Persons were communists would be an ongoing trope and is particularly hard to square with the fact that the majority of Displaced Persons were actually fleeing communism. Yet, such language had a great deal of power, tapping into a long-running fear that immigrants posed a threat to the heart of the nation and democracy and that they could never assimilate. Moreover, communism was code for Jews,

³⁴⁹ See *supra* Section II.C.

³⁵⁰ See *supra* Part IV.

³⁵¹ See DINNERSTEIN, *supra* note 21, at 140–45.

³⁵² NASAW, *supra* note 6, at 300.

³⁵³ DINNERSTEIN, *supra* note 21, at 141–42.

³⁵⁴ *Id.* at 140.

³⁵⁵ NASAW, *supra* note 6, at 301.

and as multiple legislators, including Revercomb and Gossett, pointed out, nobody wanted the Jews.³⁵⁶ As a Washington Post article queried, “But can Senator Revercomb mean that to be undesired by the Nazis makes them undesirable to the United States?”³⁵⁷ In large part, as we shall see, this was exactly what he and other opponents meant.

Neither the Stratton Bill nor a Senate bill on DPs came up for vote after extensive hearings.³⁵⁸ Instead of a vote, Revercomb called for a new investigation of the DP situation.³⁵⁹ Thus, off he and his delegation went to Europe.³⁶⁰ Not to be outdone, a number of senators and congressmen sympathetic to DPs, including Congressman Jacob Javits (Jewish and from New York) launched their own tour.³⁶¹ Once again, DP camps were a sort of tourist site—held up for measure, inspection, and judgment.

As Congress convened after recess, it was clear that the impediment to passage of a DP bill was a widespread fear that it would open the floodgate to Jewish DPs. The letters to Gossett were not aberrations but rather expressed widespread sentiment that would be reflected by Congress. Upon his return, Revercomb and his committee began preparing their own bill.³⁶² Congressional sentiment was strongly in favor of admitting Balts, limiting as much as possible the admission of Jews, and requiring immigrants to settle in non-urban areas.³⁶³ After much haggling and some amendments, the Wiley-Revercomb Bill was introduced.³⁶⁴ The bill provided for admitting 100,000 DPs over two years with a 50% preference for those from “annexed states,” and 50% for agricultural workers.³⁶⁵ Crucially, only those who were within Germany, Austria, or Italy as of December 22, 1945 were eligible.³⁶⁶ The Senate accepted an amendment raising the number of DPs to 200,000 but voted down an amendment that would have substituted a date of July 1, 1948.³⁶⁷ An additional amendment allowed for the *Volksdeutsche* who had arrived in Germany by July 1, 1948 to receive half of the German immigration quota.³⁶⁸ The *Volksdeutsche*

³⁵⁶ DINNERSTEIN, *supra* note 21, at 140–41.

³⁵⁷ *Id.* at 140.

³⁵⁸ *See id.* at 144–53.

³⁵⁹ *Id.* at 152.

³⁶⁰ *Id.* at 153.

³⁶¹ *Id.*

³⁶² *Id.* at 164.

³⁶³ *Id.* at 164–68 (detailing debates over the bill and its various amendments).

³⁶⁴ *See* GENIZI, *supra* note 7, at 78–79.

³⁶⁵ *Id.* at 78.

³⁶⁶ *Id.*

³⁶⁷ *Id.* at 79; HYMAN, *supra* note 8, at 417.

³⁶⁸ *Id.*

were ethnic Germans expelled by various countries such as Czechoslovakia due, in part, to a belief that they had been Nazi collaborators.³⁶⁹

In the House of Representatives, Congressman Frank Fellow had submitted his own DP bill which provided for a cutoff date of 1948.³⁷⁰ It further provided that 50% of visas would be mortgaged against future immigration.³⁷¹ With only a few days until recess, the bills were submitted to a Senate-House Conference Committee.³⁷² The compromise measure reduced the required percentage of DPs from annexed countries from 50% to 40% and reduced the requirement for agricultural workers to 30%.³⁷³ But for all important purposes, the bill retained the provisions of the Senate version. The bill was finally passed by both houses.³⁷⁴

As virtually everyone understood, the legislation was antisemitic and carefully drafted to drastically limit the number of Jews who could qualify for visas.³⁷⁵ The State Department and others objected that the 1945 date was arbitrary; it was simply the date of the Truman Directive.³⁷⁶ To adopt this date was mean and a comeuppance to the administration and Jewish organizations. Moreover, by choosing such a date, the Act drastically limited the eligibility of Jewish DPs to immigrate and perhaps was a response to the number of Jews who had received visas under the Truman Directive. Moreover, the date did not correspond to the 1947 date used by the military in accepting Jewish DPs into the U.S. Zone.³⁷⁷ As previously discussed, the vast majority of Jews who had returned to Poland from either camps or the Soviet Union were intentionally excluded, as were Romanian, Czech, and Hungarian Jews.³⁷⁸ Likewise, only a tiny number of Jews were agricultural workers—approximately 3.7% in the U.S. Zone and 6% in the British Zone.³⁷⁹ Finally, the

³⁶⁹ GENIZI, *supra* note 7, at 19; *see also* A COMPANION TO NAZI GERMANY 10–11 (Shelley Baranowski, Armin Nolzen & Claus-Christian W. Szejnmann eds., 2018).

³⁷⁰ H.R. 6163, 80th Cong. (1948).

³⁷¹ *Id.*

³⁷² Truman Statement, *supra* note 4, at 383.

³⁷³ 50 U.S.C. §§ 1952(a) & 1955(a) (1946 & Supp. II 1949).

³⁷⁴ *See id.*

³⁷⁵ DINNERSTEIN, *supra* note 21, at 171.

³⁷⁶ *See* Truman Directive, *supra* note 198.

³⁷⁷ Haim Genizi, *Philip S. Bernstein, Adviser on Jewish Affairs, May 1946–August 1947*, MUSEUM OF TOLERANCE, <https://www.museumoftolerance.com/education/archives-and-reference-library/online-resources/simon-wiesenthal-center-annual-volume-3/annual-3-chapter-6.html> (last visited Jan. 4, 2024).

³⁷⁸ *See supra* Section II.B.

³⁷⁹ NASAW, *supra* note 6, at 410.

great preference for Balts also limited visa eligibility for Jews, as the majority of surviving Jews were Polish.³⁸⁰ Lawmakers cloaked these provisions as necessary to protect America against communism.³⁸¹

The 1948 Act was antisemitism enacted into law. Not only were Jewish DPs discriminated against, but here was a major congressional act that fully embodied the antisemitism of the post-war period. The Act mapped on to Nazi racial logic and white supremacy by favoring those who were most Aryan. Suffering was not to be measured; the genocide of European Jewry was not recognized. Equally painful, Congress refused to acknowledge the widespread belief among Jews that they were unsafe in Europe due to antisemitism, and that they could not rebuild their lives among ashes.

Unlike the Truman administration's concept of Jews deserving some sort of prioritized protection, and which saw Jewish DPs as they saw themselves, as standing apart from their original nationality, Jewishness was simultaneously erased and detested in the 1948 Act. Jewish organizations and Jewish leaders as well as others were devastated.³⁸² Repeatedly, they described their response to passage of the Act as one of "shock" and "betrayal."³⁸³ Earl Harrison stated that the racist nature of the Act made all Americans hang their head in shame.³⁸⁴ This, of course, was extraordinary hyperbole as the Act reflected popular opinion. Further, Harrison correctly asserted that the *Volksdeutsche* provision gave preference to Nazi sympathizers and collaborators over the persecuted.³⁸⁵ Abraham Duker, who had worked for the Nuremberg Trials Commission, understood the Act's Baltic preference as favoring those who had closely collaborated with the SS in murdering Jews.³⁸⁶ That the Act preferred Nazi collaborators to Jews was a widespread sentiment among Jewish leaders.

Truman came close to vetoing the law. He characterized it as "flagrantly discriminatory" and as "mock[ing] the American tradition of fair play."³⁸⁷ He further opined that it created "a pattern of discrimination and intolerance wholly inconsistent with the American sense of justice."³⁸⁸ He specifically emphasized that "[t]he bill discriminates in callous fashion against displaced persons of the Jewish faith."³⁸⁹

³⁸⁰ *Id.*

³⁸¹ *See id.* at 410–12.

³⁸² *See id.* at 424–34.

³⁸³ *Id.* at 424.

³⁸⁴ DINNERSTEIN, *supra* note 21, at 172.

³⁸⁵ *Id.* at 175–76.

³⁸⁶ *Id.* at 177; NASAW, *supra* note 6, at 430–31.

³⁸⁷ Truman Statement, *supra* note 4, at 382.

³⁸⁸ *Id.* at 383.

³⁸⁹ *Id.*

He explained that the cutoff date would have the effect of making 90% of Jewish DPs, as well as many Catholics, ineligible.³⁹⁰ He concluded:

I know what a bitter disappointment this bill is—to the many displaced victims of persecution who looked to the United States for hope; to the millions of our citizens who wanted to help them in the finest American spirit . . . I hope that this bitter disappointment will not turn to despair.³⁹¹

Truman's message engaged in that part of the powerful American myth that U.S. immigration was fair and not discriminatory. A myth that while untrue carried (and still carries) a deeply aspirational belief that simultaneously elides the truth. What must be emphasized here is that although the Act did not specifically refer to Jews, virtually everyone understood that the Act was intended to drastically limit the eligibility of Jewish Displaced Persons to immigrate under the Act.

News of the 1948 Act quickly reached the DP camps. At least according to some accounts, Jewish DPs were not shocked. They already understood that the world did not want them.³⁹² Moreover, the fact that the Act was passed in 1948, the year that Israel became a state, was not a coincidence but crucial to the plan to close Jewish DP camps and normalize relations with West Germany.³⁹³ Israel was to siphon off Jewish DPs, sparing the United States of their presence. The Jewish Adviser to the Headquarter of the U.S. Military's Commander in Chief acknowledged that many Jewish DPs had hoped to immigrate to the United States, but the discriminatory effect of the 1948 Act had a profound effect.³⁹⁴ He wrote: "The U.S. Immigration bill convinced many people that their hope to migrate to the States was illusory, but it helped to crystalize the thinking of these people as to where they had to go."³⁹⁵ He continued, "They know that they must ultimately settle in Israel or go homeless for the rest of their days."³⁹⁶ Israel was intended to be the "final solution" to the Jewish problem.

Over the next couple of years, the 1948 Act would be amended multiple times, but it was not until 1957 that the last Jewish DP camp was finally emptied and closed.³⁹⁷ In the end, Jewish DPs either went to Israel, the United States, or scattered

³⁹⁰ *Id.*

³⁹¹ *Id.* at 384.

³⁹² NASAW, *supra* note 6, at 437–38.

³⁹³ *Id.* at 398–400.

³⁹⁴ Report from William Haber, Adviser on Jewish Affs., to World Jewish Cong. (Dec. 20, 1948), in 10 ARCHIVES OF THE HOLOCAUST: AN INTERNATIONAL COLLECTION OF SELECTED DOCUMENTS, *supra* note 27, at 1397–98.

³⁹⁵ *Id.* at 1397.

³⁹⁶ *Id.* at 1401.

³⁹⁷ *See, e.g.*, Pub. L. No. 81-555, 64 Stat. 219 (1950); Pub. L. No. 82-114, 66 Stat. 163 (1952); *see also* Foehrenwald *Displaced Persons Camp*, HOLOCAUST ENCYCLOPEDIA, <https://encyclopedia.ushmm.org/content/en/article/foehrenwald-displaced-persons-camp> (last visited Jan. 4, 2024).

into a vast Jewish diaspora.³⁹⁸ It was Israel that allowed many Jews who were ineligible to immigrate to other countries to finally leave DP camps.³⁹⁹ Thus, in some ways, perhaps the story of the Holocaust does not end in 1945 but rather much later.

VIII. CONCLUSION

That many Jewish survivors were ultimately successful immigrants does not negate the fact that the 1948 Act was seeped in antisemitism and that this antisemitism was formally enacted into law. Crucially, there has never been a full reckoning with this fact. Its invisibility in much of legal scholarship is difficult to understand. Perhaps it is much more comforting to focus on areas in which lawyers use law to seek some form of justice for Jewish people, such as the Nuremberg trials, reparations for Holocaust survivors, or the prosecution of former Nazis. Such topics coincide with our understanding that law can be used as a shield and a sword for the protection of Jews.

This Article's analysis of the debates surrounding the 1948 Act also uncomfortably points to the question of when Jews finally became white and the complex ways in which antisemites can use kernels of truth to create immensely distorted arguments and reality while claiming objectivity and patriotism. Finally, the 1948 Act and the events surrounding it can be understood as directly feeding the anti-communist witch hunts of the 1950s, the rise of Holocaust deniers, and later white supremacist groups. The groundwork had been stunningly laid. As seen throughout this Article, antisemitism has remarkable staying power and the ability to shapeshift to fit new circumstances.

³⁹⁸ Patt & Crago-Schneider, *supra* note 28, at 382.

³⁹⁹ *Id.*