

Louis Marshall and Immigration Restriction, 1906–1924*

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As the tide of emigration from Southern and Eastern Europe to the United States surged late in the nineteenth century and early in the twentieth, the nation's immigration policy became a fiercely debated public issue. Prominent among those who favored a continuation of America's traditionally liberal admission policies were many leading and wealthy German American Jews. Rejecting the suspiciousness and fear of the newcomers, especially of their own East European coreligionists, that was widespread in the German American Jewish community at the time, they believed that their religious ideals, their shared humanity, and their own self-interest demanded strong opposition to the rising sentiment in favor of restriction.¹

Spearheading this fight was the American Jewish Committee. Founded in 1906 by, among others, Cyrus Adler, Mayer Sulzberger, Nathan Bijur, Julian W. Mack, Jacob H. Schiff, Oscar S. Straus, Judah L. Magnes, and Louis Marshall, all of whom were deeply disturbed by the rising tide of anti-Semitism, and represent-

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* The author is very much indebted to James and George Marshall for permission to use their father's papers, an extensive and revealing body of material at the American Jewish Archives in Cincinnati, Ohio.

¹ For nativism and racism, see John Higham, *Strangers in the Land; Patterns of American Nativism, 1860–1925* (Atheneum edition, New York, 1963); Barbara M. Solomon, *Ancestors and Immigrants, A Changing New England Tradition* (Cambridge, 1956); and Thomas F. Gossett, *Race; The History of an Idea in America* (Dallas, 1963). For the antagonism between German American and East European Jews, see Esther L. Panitz, "The Polarity of American Jewish Attitudes Towards Immigration (1870–1891)," *American Jewish Historical Quarterly*, LIII (1963), 99–130; Zosa Szajkowski, "The Attitude of American Jews to East European Jewish Immigration (1881–1893)," *Publications of the American Jewish Historical Society*, XL (1951), 221–80; Moses Rischin, *The Promised City, New York's Jews, 1870–1914* (Cambridge, 1962), pp. 95–111, 237–41.

ing, on the whole, the viewpoint of upper-class Jews of German background, the Committee sought "to prevent the infraction of the civil and religious rights of Jews, in any part of the world . . . to secure for Jews equality of economic, social and educational opportunity [and to] alleviate the consequences of persecution. . . ."² The Committee's leaders immediately turned their attention to the defeat of impending restrictive immigration legislation because, first, they believed they had a special obligation to keep America open as an asylum for their persecuted brethren, and, second, because they realized that, since anti-Semitism failed to differentiate between East European and German Jews and since both racially based nativism and anti-Semitism shared common assumptions of inferiority, restrictive sentiment threatened their own hard-earned position in American life. In addition, since many members of the Committee were either immigrants themselves or the children of immigrants, they believed deeply in the principle of a liberal admission policy.

MEN ARE ESSENTIALLY ALIKE

The Committee's most indefatigable spokesman against further restriction was Louis Marshall. The son of German Jewish immigrants, Marshall was born in Syracuse in 1856. After attending Columbia Law School, he practiced law in Syracuse until he moved to New York City in 1894 to become a partner in the prestigious firm of Guggenheimer, Untermyer and Marshall. In addition to being an influential lawyer, specializing in corporate and constitutional law, he was very prominent in the civic affairs of the state and city of New York and was a leader of the city's Jewish community, being particularly active in innumerable philanthropies, especially in those succoring East European Jewish immigrants.³

Much of his work was devoted to the American Jewish Committee. A founder of the organization, he was its president from 1912 until his death in 1929. Deeply involved in protecting Jewish rights

² Nathan Schachner, *The Price of Liberty; A History of the American Jewish Committee* (New York, 1948), pp. 1-28, 217.

³ Morton Rosenstock, *Louis Marshall, Defender of Jewish Rights* (Detroit, 1965), pp. 24-31; *Dictionary of American Biography* (New York, 1927-1936), VI, 326-28.

both in the United States and abroad, he led the Committee's well-organized and tenacious campaign against the numerous bills proposed in Congress between 1906 and 1924 to curtail immigration sharply or even to suspend it entirely. In the process of the struggle, Marshall usually reflected the attitudes of the Committee's leadership toward immigration and its assessment of the proper techniques for assuring victory to its cause.

Marshall defended free immigration on many grounds. America's economy, particularly the construction, mining, and manufacturing sectors, needed a continuous infusion of unskilled aliens, he argued, because "the native American shrinks from hard manual labor [and] . . . the elder immigrant, who begins as a laborer, gradually moves into the higher ranks of industry."⁴ More important, however, was the foreigners' enrichment of American society and culture. Far from being a cause for alarm, ethnic neighborhoods, institutions, newspapers, and even ideals were manifestations of European civilization to be drawn upon for the nation's cultural and spiritual sustenance. The American way of life itself and its worldwide mission, in fact, depended partly upon free immigration because it was the asylum concept that had made the United States "the intellectual, the civilizing influence that we now are." To restrict immigration would be cruel to aliens and contrary to "the genius of our institutions." It would destroy "one of the fundamentals of our national spirit," endanger the ethical foundations of the nation, and break the hearts of the world's oppressed who saw the United States as a beacon of light.⁵ Since restriction would endanger both the nation's physical growth and spiritual health, Marshall concluded, it "would be much more injurious to our country than the most liberal immigration policy that could be imagined."⁶

⁴ "Memorandum in Opposition to Senate Bill 3175, Entitled 'An Act to Regulate the Immigration of Aliens to and the Residence of Aliens in the United States'" (dated 2/6/1913), p. 3, Louis Marshall Papers, American Jewish Historical Society, Waltham, Massachusetts [LM-AJHS].

⁵ Copy of an address delivered before the New York University Forum on February 20, 1914, pp. 6, 8, 22-23, LM-AJHS; Marshall to Carroll S. Page, 1/28/1907, *ibid.*

⁶ Marshall to Henry Cabot Lodge, 1/26/1912, *ibid.*

His confidence in the worth of the foreign-born applied to all European aliens. Denying the increasingly popular racial theories, he asserted that "men are essentially alike" and that southeastern Europeans, though poor and often illiterate, were of "practically the same stock as were the ancestors of the great majority of our present American citizenship." The nation's strength lay, in fact, in its "composite" population.⁷ As a Jew, Marshall was especially interested in countering the arguments of anti-Semites who claimed that Jews comprised a particularly inferior and dangerous race, and he constantly sought through liberalizing amendments to soften the possible impact on persecuted Jews of proposed immigration legislation. Nevertheless, even when he succeeded, he still sought the defeat of even these less dangerous measures because severe restriction of any European immigration, and the racial assumptions lurking behind it, violated his principles.

Despite his championing of free European immigration, Marshall did not believe in a completely open door. Like Americans generally, he would exclude the physically, morally, and mentally unfit, such as criminals, paupers, prostitutes, the chronically ill, and the insane. He objected only to restriction that was severe and that was based on the assumption that all immigration was bad or that particular ethnic or religious groups were inferior and therefore especially dangerous and undesirable.

Marshall also frankly admitted that the continued arrival of hundreds of thousands of immigrants, unfamiliar with American urban and industrial living, presented a host of difficult problems. He was confident, however, that solutions other than restriction must and would be found. To relieve urban overcrowding, he encouraged the programs of the Industrial Removal Office and its Jewish Immigrants Information Bureau, and urged the Federal Division of Information and the New York State Bureau of Industries and Immigration to become more active in distributing aliens to rural areas or

⁷ New York University Forum address, pp. 12-13, *ibid.*; "Memorandum in Opposition to Senate Bill 3175," p. 2, *ibid.*; Marshall to John L. Burnett, 5/28/1912, reprinted in Charles Reznikoff, *Louis Marshall, Champion of Liberty* (Philadelphia, 1957), I, 118.

to small towns and cities.⁸ He devoted much more attention, however, to programs for the protection and assimilation of the bewildered newcomers. He was a trustee of the Educational Alliance, which offered New York Jews courses in English, American history, literature, and vocational subjects; he was on the advisory board of the Hebrew Sheltering and Immigrant Aid Society; he supported the efforts of Jacob H. Schiff and others to direct the Jewish Theological Seminary to the religious adjustment of Orthodox East European Jews; he was involved in the Hebrew Free Loan Society; and he supported the Yiddish press as an important Americanizing agency.⁹ Believing that government should assume a far more active role, Marshall was chairman of the New York State Commission of Immigration which, in 1909, recommended far-reaching public programs for aliens. As a member of the New York Bureau of Industries and Immigration subsequently established in 1910, he, together with Jacob H. Schiff and Felix M. Warburg, personally financed some of its programs when the state failed to appropriate sufficient funds.¹⁰

Marshall supported these schemes not only to solve real problems, but also with the hope that they might be sufficiently effective to convince fearful Americans that restriction was unnecessary. Yet they failed to turn back the tide of nativism, and Marshall and his associates were forced to pay constant attention to defeating innumerable Congressional proposals for severe restriction. The most important of these were two—first, the literacy test, brought up for final Congressional approval in 1907, 1913, and 1915, and finally

⁸ United States Immigration Commission, *Reports* (42 vols., Washington, 1911), XLI, 153–54; Marshall to Cyrus L. Sulzberger, 2/9/1907, Louis Marshall Papers, American Jewish Archives, Cincinnati, Ohio [LM-AJA], Personal Correspondence [Pers. Corres.], box 1578. Marshall to Reuben Arkush, 12/6/1913 Immigration Letter File, American Jewish Committee Archives, American Jewish Committee, New York City [AJCA].

⁹ Oscar Handlin's Introduction in Reznikoff, I, xxi–xxii; Rosenstock, pp. 47–50.

¹⁰ Marshall to Herbert Friedenwald, 10/27/1910, LM-AJA, Pers. Corres., box 1581; Marshall to Frances Kellor, 11/19/1909, 1/14/1910, 1/15/1910, 3/2/1910, 8/31/1911, *ibid.*, boxes 1580–1581; *Report of the Commission of Immigration of the State of New York* (New York, 1909), pp. 140–44.

passed in 1917, which required that for admission each alien above a certain age be able to read in a recognized language or dialect, and, second, quotas which would regulate immigration on the basis of ethnic origins and which were hotly debated in Congress after the First World War until a permanent, far-reaching quota law was enacted in 1924.¹¹

The defeat of such measures was possible, Marshall believed, only if the campaign was conducted with great care and delicacy by moderate, knowledgeable men who relied primarily upon the application of private, quiet pressure upon important people, especially politicians and administrators at the Federal level. Utilizing the contacts of prominent Jews with Congressmen and eventually employing their own lobbyist in Washington, Marshall and the Committee constantly kept their finger on the legislative pulse, seeking to have their allies in Congress secure either the outright defeat of restrictive legislation or at least the weakening of its exclusion provisions.

SURVIVAL OF THE FITTEST

Although Marshall earnestly sought cooperation from others, he always wanted it on his own terms. Many of his supporters, though well-meaning, he complained, were too emotional and ill-informed. They too often sought newspaper headlines, made intemperate statements, and called mass public protest meetings, all of which Marshall believed were self-defeating because they only stirred up a hornets' nest of restrictionists.

He was especially distressed when Jews pursued such immoderate tactics because, first, they thereby challenged those whom he believed to be the most knowledgeable and astute leaders of the anti-restriction effort, and, second, because they risked the labeling of the campaign as a "Jewish issue," a circumstance which Marshall believed to be both incorrect and also tactically disastrous in a period of rising anti-Semitism. He attempted, therefore, to persuade Jewish groups, including the American Jewish Committee, to "take a back seat" and, in appearing before Congressional committees,

¹¹ Higham, pp. 128-30, 189-93, 202-4, 308-30.

"to enlist other creeds to the fullest extent."¹² He complained that his own labors were made "inconsistent and ridiculous" by the appearance before Congress of every "Tom, Dick and Harry," of "every little [Jewish] lodge and society" which lacked the facts and which "think that a matter of this kind can be dealt with by the usual methods of ward politics. . . ." A public protest meeting planned by Jewish groups in Chicago in 1905 he labeled "an extremely unfortunate step."¹³

Especially exasperating to Marshall was the National Liberal Immigration League, whose programs he regarded as a personal insult to himself as well as a direct challenge to the American Jewish Committee. Founded in 1906 as a nonsectarian society to protest restriction and to further assimilation and distribution, it soon became known primarily as a Jewish organization because of its close identification with its founder, Nissim Behar, a Jew who had come to the United States in 1901 as a representative of the Alliance Israélite Universelle, a European Jewish defense society. Marshall distrusted Behar and argued that his reliance upon propaganda leaflets and his "resorts to a blare of trumpets and to mass meetings" were counterproductive. Behar's decision in 1913 to organize a public banquet to honor Congressmen opposed to the literacy test struck Marshall as "imprudent" and undignified, and he asked wearily, "Why must we always make ourselves conspicuous?"¹⁴ Although an agreement was reached in 1907 by which the League would take no important action without consulting the American Jewish Commit-

¹² Marshall to Adolf Kraus, 1/6/1912, LM-AJHS; Marshall to Friedenwald, 1/29/1912, LM-AJA, Pers. Corres., box 144; American Jewish Committee [AJC], *Minute Books*, II, 12/25/1911, AJCA.

¹³ Marshall to Adolph J. Sabath, 1/11/1917, LM-AJHS; Marshall to Abraham Cahan, 1/11/1923, LM-AJA, Jewish Matters, box 132; Marshall to E. M. Baker, 1/13/1915, Immigration Letter File, AJCA; Marshall to Joseph Stolz, 12/15/1905, in Reznikoff, I, 111-12.

¹⁴ Marshall to Lillian D. Wald, 1/18/1911, LM-AJA, Pers. Corres., box 142; Marshall to Edward Lauterbach, 2/21/1913, *ibid.*, box 1584. For the changing relations between the Committee and the League, see the correspondence between Herbert Friedenwald and Cyrus Adler in 1906-1907 in the Cyrus Adler Papers, AJCA.

tee, it was never effective, and Marshall always regarded it as a very troublesome example of immoderate Jewish meddling.¹⁵

Marshall was so fearful of Jewish prominence in the fight against restriction that, humanitarian though he was, he rejected for tactical reasons pleas that attempts be made to secure the admission of special Jewish hardship cases despite the immigration laws. To Judge Leon Sanders, president of the Hebrew Sheltering and Immigrant Aid Society, who sought the entry of normally excludable minor children, he wrote that success would mean the admission "of a few helpless, and probably useless, individuals" and the exclusion of "thousands upon thousands of worthy men and women. . . . The greatest good to the greatest number must constitute the determining factor. The survival of the fittest is a principle which cannot be ignored." The price of humanitarianism, that "we . . . lay ourselves open to the attack that we favor indiscriminate immigration, without regard to the welfare of our country," was unfortunately too high.¹⁶

The first test of Marshall's leadership occurred in 1906, when Congress considered numerous restrictive proposals, including a literacy test. Although he rejected the whole range of suggestions, such as a higher head tax, Marshall objected in particular to the literacy provision because it would penalize with special severity Southern and Eastern Europeans, most of whom were "mentally and morally unblemished, men and women capable of earning a livelihood, and of becoming useful additions to our industrial population," but who had not been able to obtain schooling. Yet, it would admit such dangerous aliens as socialists and anarchists, who were often highly educated. A gauge of opportunity rather than of quality, it would be inhumanely unfair to persecuted Jews whose illiteracy arose from the restrictions placed on their educational opportunities by the Russian government.¹⁷ Equally harmful to Jews

¹⁵ AJC, *Minute Books*, I, 11/9/1907.

¹⁶ Marshall to Friedenwald, 10/27-1910, Max J. Kohler Papers, AJHS; Marshall to Sanders, 4/18/1913, in Reznikoff, I, 126.

¹⁷ Marshall to Page, 1/28/1907, LM-AJHS; "Memorandum in Opposition to Senate Bill 3175," pp. 4-10, *ibid.*; Marshall to Jacob Ruppert, 1/21/1907, LM-AJA. Pers. Corres., box 1578.

was the proposed exclusion of aliens of "low vitality or poor physique" that would incapacitate them from earning a living. Having been subjected to "the most inhuman persecution," they were often in a state of mental depression, and, deeply religious, they had abstained in transit from eating prohibited food, which often made them appear "gaunt and emaciated." To apply such a vague requirement would result in "untold mischief."¹⁸

Through extensive lobbying, Marshall and the American Jewish Committee attempted to prevent any action on immigration by keeping the bills bottled up in the Congressional Conference Committee. Marshall told Representative Jacob Ruppert, of New York, a conferee whom some feared to be weakening, that he would be performing "a great public service" if he would "sit on" the legislation a while longer. Although he did not know Representative Benjamin F. Howell, of New Jersey, also a conferee, he wrote Jacob Wertheim who did, and asked him to persuade Howell to stand with Ruppert. For their part, Representatives Ruppert, William S. Bennett, of New York, and even the Speaker of the House, Joseph G. Cannon, kept Marshall and his associates advised of the Conference Committee's business.¹⁹

Suddenly, early in February, 1907, Marshall heard that Representative Augustus Gardner, of Massachusetts, a leading restrictionist, was attempting to have the Conference Committee discharged and, with the help of the Rules Committee, to ram a bill through the House.²⁰ Marshall himself immediately contacted many members of the Rules Committee, and he wired Max Senior in Cincinnati to appeal to Representative Charles H. Grosvenor, of Ohio.²¹ Anxious to reach Representative D. A. DeArmond, of Missouri, Marshall not only was in touch with several influential Missourians but also, at

¹⁸ Marshall to Page, 1/28/1907, LM-AJHS.

¹⁹ Marshall to Ruppert, 1/21/1907; Marshall to Wertheim, 2/2/1907; Marshall to Mayer Sulzberger, 1/29/1907, LM-AJA, Pers. Corres., box 1578; Marshall to Page, 1/28/1907, LM-AJHS; Adler to Friedenwald, 1/23/1907; Friedenwald to Adler, 1/29/1907, Adler Papers, AJCA.

²⁰ Marshall to M. Warley Platzek, 2/4/1907, LM-AJA, Pers. Corres., box 1578.

²¹ Marshall to Senior, 2/4/1907; Marshall to Isidor Newman, 2/4/1907; Marshall to Mayer Sulzberger, 2/6/1907, *ibid.*

the suggestion of others, concluded that he would probably be influenced effectively by John Fox, president of the National Democratic Club. Since Marshall did not know Fox, he asked one of his associates who did, M. Warley Platzek, to request Fox to telegraph DeArmond in opposition to Gardner's efforts and to sign his wire as president of the National Democratic Club.²² But Marshall was always circumspect. When Platzek suggested that the Club's Board of Governors officially opposed restriction, Marshall objected that this was too partisan and would only offend such influential Republicans as Speaker Cannon.²³

Gardner's ploy was defeated, and, although a bill was subsequently reported out and passed by Congress, "all of the provisions against which we fought have been eliminated," exulted Marshall, partly as a result of his intensive lobbying. "I think that we may all feel satisfied with the final phase of the immigration legislation. . . ."²⁴ The head tax was raised, but the literacy test and the low vitality clause were left out, and a Congressional commission was established to investigate the entire immigration question and to recommend legislative action.²⁵

A VERY CLOSE SQUEEZE

Marshall had supported the Commission idea as a compromise to restriction and in the hope that it would be staffed with individuals sympathetic to his own viewpoint or would at least be susceptible to his pro-immigration arguments. Unfortunately, neither was the case. Despite personal appearances before the Commission and the presentation of extensive written briefs by Marshall and other members

²² Marshall to Platzek, 2/4/1907, *ibid.*

²³ Marshall to Platzek, 2/5/1907, *ibid.*

²⁴ Marshall to Mayer Sulzberger, 2/18/1907, *ibid.*

²⁵ Marshall to Friedenwald, 1/17/1907, *ibid.* Naturally, Marshall and his associates were not entirely responsible for the 1907 outcome. For the especially important roles of Speaker Cannon and the Japanese school crisis in San Francisco, see Higham, pp. 128-30, and Blair Bolles, *Tyrant from Illinois: Uncle Joe Cannon's Experiment with Personal Power* (New York, 1951), pp. 71-77.

of the American Jewish Committee, the Commission's massive report, issued in December, 1910, "very much disappointed" Marshall because it concluded that Southern and Eastern Europeans endangered the nation and that a literacy test was the most practical way of blocking the flood of undesirables.²⁶

The Commission's findings naturally resulted in the introduction in Congress in 1911 of numerous restrictive proposals, including the literacy test. To secure their defeat, Marshall and his associates pursued many courses of action. Acutely aware of the damage done by the Dillingham Commission, Marshall sought to counter its report at every opportunity, including financial contributions to the publication of Isaac A. Hourwich's *Immigration and Labor*, which the American Jewish Committee privately sponsored.²⁷ When it became known that Dr. Hourwich disagreed with the Commission's conclusions about the economic effects of immigration and would publish his objections if he received financial support, Marshall, Jacob H. Schiff, Julius Rosenwald, and Mayer Sulzberger, among others, contributed several thousand dollars. Marshall was so convinced that the volume would "inure largely to the advantage of our Russian brethren" that he persuaded Schiff to loan two thousand dollars from the Russian Massacre Fund. Schiff, believing that the resources of philanthropy should always be used productively, extended the credit at four percent interest! Although the Committee supported the publication of the book, Marshall, ever careful, insisted that only Hourwich's name be placed on the title page "so that there may be nothing to indicate that the Committee has anything to do with the publication of the book, and that it may be regarded as a scientific contribution, as I have no doubt it is, to the subject."²⁸

²⁶ Marshall to Friedenwald, 1/17/1907, LM-AJA, Pers. Corres., box 1578; Marshall to Henry M. Goldfogle, 12/9/1910, *ibid.*, box 1581; United States Immigration Commission, *Reports*, XLI, pp. 140-57, 206-21. For summaries of the Commission's findings, and its conclusions and recommendations, see its *Reports*, I and II, most of which are severely criticized by Oscar Handlin, *Race and Nationality in American Life* (Boston, 1948), pp. 93-138.

²⁷ Isaac A. Hourwich, *Immigration and Labor* (New York, 1912), a study which contends that, far from harming the American economy and its workers, Southern and Eastern European immigration helped both.

²⁸ Friedenwald to Jacob H. Schiff (?), 3/29/1911, LM-AJA, Jewish Matters, box 127; Marshall to Morris Loeb, 5/31/1911, *ibid.*, Pers. Corres., box 143; Marshall

The attack on the Commission's findings, however, was only part of Marshall's broader effort to defeat the restrictive legislation before Congress. Although he continually reiterated his firm opposition to all restrictive bills no matter what their final form, he realized that since the surging currents of nativism seriously endangered his chances of success, his duty to achieve at least "a result favorable to our brethren" demanded that he seek to soften any legislation's impact on persecuted Jews.²⁹ He suggested, for example, an amendment to exempt from the literacy test anyone migrating "from any country wherein persecution is directed against the religious denomination to which he belongs by means of laws, customs, regulations, orders or otherwise" and any person "seeking to avoid persecution because of political beliefs or activities."³⁰ Although an exemption clause had already been added, Marshall believed it to be entirely inadequate because it covered only those fleeing "solely" to escape religious persecution, a fact which he argued would be almost impossible to prove, and because it failed to aid political refugees. He also objected to the proposed exclusion of "citizens or subjects of any country that issues penal certificates or certificates of character" who did not present them to the immigration inspectors. Persecuted Jews, Marshall contended, would be especially endangered because they would undoubtedly have to bribe anti-Semitic Russian officials for the proper documents.³¹

To defeat or at least to alter the proposals in Congress, Marshall and his associates lobbied extensively on Capitol Hill, appearing before Congressional committees, distributing copies of Hourwich's book, and contacting Congressmen. Marshall received detailed information about the legislative situation from his Congressional al-

to Hourwich, 5/21/1912, *ibid.*, box 144; Marshall to Schiff, 9/5/1912 and 9/17/1912, *ibid.*, box 1583; AJC, *Minute Books*, I, 3/19/1911 and 4/23/1911.

²⁹ Marshall to Goldfogle, 1/24/1912, LM-AJHS.

³⁰ Marshall to William Sulzer, 12/4/1912, LM-AJA, Pers. Corres., box 1583; Marshall to Sabath, 1/1/1913; Marshall to William P. Dillingham, 1/1/1913, LM-AJHS.

³¹ Marshall to Lodge, 1/1/1913, LM-AJA, Pers. Corres., box 1584; Marshall to Francis E. Warren, 1/23/1913, Immigration Letter File, AJCA; United States Immigration Commission, *Reports*, XLI, pp. 220-21; *Congressional Record* (62 Congress, 3 Session), p. 1763.

lies, especially Representatives William Bennet, Adolph J. Sabath, and Henry M. Goldfogle, and, with the able assistance of Fulton Brylawski, who had been hired in 1910 as the American Jewish Committee's Washington lobbyist to keep close tabs on immigration matters, he used his own powers of persuasion to convert wavering Congressmen to his position.³²

The results of this often frantic activity, however, were meager. Although the requirement concerning police certificates was deleted, the bill as passed in its final form on January 30, and February 1, 1913, still contained the literacy test, without Marshall's exemption provision.³³ The only hope was a Presidential veto. Marshall wrote or wired many prominent Jews urging them to send President William Howard Taft telegrams opposing the measure, and he himself attended a meeting which the Chief Executive held on the immigration bill, reporting afterward that "everything looks very favorable."³⁴ After the bill was vetoed on February 14, Marshall mounted a nationwide campaign among Jews to pressure Congress to sustain the President.³⁵ Marshall himself aptly summed up the outcome—"We had a very close squeeze. . . ." Although the Senate overrode Taft, the House refused, but only by a few votes.³⁶

There was no respite for the weary. A new literacy test measure was immediately introduced, and Marshall, increasingly pessimistic but trying "to save something from the wreck" for "our Jewish brethren," sought the acceptance of his amendment which, as re-

³² Marshall to Sulzer, 12/4/1912 and 12/13/1912; Marshall to William Bennet, 12/4/1912, LM-AJA, Pers. Corres., box 1583; Marshall to Goldfogle, 1/24/1913; Marshall to Sabath, 1/1/1913; Marshall to Dillingham, 1/1/1913; Marshall to Lodge, 1/1/1913, LM-AJHS; Herman Bernstein to Felix M. Warburg, 12/16/1913, Felix M. Warburg Papers, AJA; AJC, *Minute Books*, I, 12/28/1909 and 1/1/1913.

³³ *Congressional Record* (62 Congress, 3 Session), pp. 2311, 2428.

³⁴ Marshall to Adler, 12/23/1912, LM-AJA, Pers. Corres., box 1583; Marshall to Simon Wolf, 2/4/1913; Marshall to Harry Cutler, 2/4/1913; Marshall to Victor Rosewater, 2/7/1913; Marshall to Adolph Lewisohn, 2/7/1913, *ibid.*, box 1584.

³⁵ Marshall to Bernard Bienenfeld, 2/14/1913; Marshall to Samuel H. Borofsky, 2/15/1913, *ibid.*, box 1584.

³⁶ Marshall to Isaac M. Ullman, 2/20/1913, *ibid.*



Courtesy, American Jewish Committee, New York

Louis Marshall

worded, would exempt from the test those "seeking admission to the United States to avoid religious or political persecution, whether such persecution be evidenced by overt acts, or by discriminatory laws or regulations."³⁷ But the application of the usual pressure by Marshall, others members of the American Jewish Committee, and Brylawski failed to prevent the enactment of a literacy test bill without adequate protection for persecuted aliens, a bill which reached President Woodrow Wilson's desk late in January, 1915.³⁸ Marshall again requested a veto, and, when that was secured, "moving heaven and earth" to have it sustained, he even tracked down the electoral districts of his Congressional opponents and wired their prominent Jewish constituents to exert pressure. Julian W. Mack in Chicago, Victor Rosewater in Omaha, and Isador Sobel in Erie, among others, received such requests. Discovering that a few New York Republicans had either supported the literacy test or had failed to vote, he asked an acquaintance in Albany to contact them. "Do not consider any expense so far as telegraphing is concerned, and do not fail to send me the bill," pled Marshall.³⁹ His efforts paid off, but again the House supported the veto by an uncomfortably thin margin.⁴⁰

Even that margin disappeared in 1917, when the struggle over the literacy test reached a climax. As the emotions created by America's increasing involvement in the First World War fed the flames of nativism, the demands for immigration restriction became irresistible.⁴¹ Marshall, nevertheless, was able to have the most onerous

³⁷ "Memorandum in Support of Amendment to Section 3 of H.R. 6060" (undated), LM-AJHS; Marshall to Montague Triest, 1/7/1914, Immigration Letter File, AJCA.

³⁸ See, for example, Marshall's considerable correspondence with Fulton Brylawski and many Senators and Representatives late in 1914 and early in 1915, LM-AJA, Pers. Corres., box 145.

³⁹ Marshall to H. Pereira Mendes, 1/30/1915; Marshall to Sobel, 1/30/1915; Marshall to Rosewater, 1/30/1915; Marshall to Mack, 1/30/1915; Marshall to Elon Brown, 2/1/1915; Marshall to Brylawski, 2/2/1915, *ibid.*, box 146; Marshall to William Barnes, Jr., 2/1/1915, LM-AJHS.

⁴⁰ *Congressional Record* (63 Congress, 3 Session), pp. 3077-78.

⁴¹ Higham, pp. 194-204.

provisions eliminated from the legislation in 1917 and, what was especially important, persuaded Congress to accept his amendment exempting from the literacy test those aliens fleeing from religious persecution. This was accomplished, however, only after intensive lobbying and after assurances that the exemption would also assist persecuted non-Jews, such as Protestant Finns and Letts in Russia and Armenians in Turkey.⁴²

Despite this success, Marshall still sought the defeat of the legislation when it was presented to President Wilson because its restrictive features violated his principles.⁴³ Although the President vetoed the measure, Marshall's best efforts to persuade Congress to sustain him failed, and the literacy test was finally enacted on February 5, 1917.⁴⁴ Marshall could nevertheless feel satisfied that his amendment had at least put the bill "in such form as to do the least possible injury to those whose interests we have sought to safeguard"—a considerable achievement, given the intensity of restrictive sentiment.⁴⁵

Unfortunately for Marshall, America's involvement in the European conflict, and especially the aftermath of the War, only brought nativism to a fever pitch. When immigration began to increase in 1919, the result was widespread and at times hysterical demands either for its complete suspension or for its regulation according to quotas intended particularly to limit the entry of Southern and Eastern Europeans.⁴⁶ Both of these proposals Marshall rejected as entirely unnecessary, economically dangerous, and morally reprehensible.

⁴² Marshall to Isaac Siegel, 12/14/1916, LM-AJA, Pers. Corres., box 148; Brylawski to Marshall, 12/16/1916; James A. Reed to Marshall, 12/17/1916; Marshall to Bennet, 12/16/1916; Bennet to Marshall, 12/18/1916; Siegel to Marshall, 12/18/1916, LM-AJHS; Marshall to John L. Burnett, 12/19/1916, in Reznikoff, I, 157-58.

⁴³ Marshall to Harry Friedenwald, 1/20/1917, LM-AJA, Pers. Corres., box 149.

⁴⁴ *Congressional Record* (64 Congress, 2 Session), pp. 2456-57, 2629; Marshall to Adler, 1/20/1917, LM-AJA, Pers. Corres., box 149; Marshall to Schiff, 1/10/1917, Jacob H. Schiff Papers, AJA.

⁴⁵ Marshall to Sabath, 1/9/1917, LM-AJHS.

⁴⁶ Higham, pp. 234-99.

sible. Suspension, he argued, was “an arbitrary restrictive policy” which would make the United States “chauvinistic” and “insular” because it assumed that “no alien, however industrious, intelligent, and free from physical or moral taint he may be, shall be admitted . . . simply because he is an alien.”⁴⁷ Especially dangerous were the racial assumptions which lurked behind suspension and, Marshall believed, behind the quota proposals in particular. The use of national origins as a criterion for selection was both biased and useless, he argued, because, as American history had demonstrated, blood was of no importance in determining the quality of immigrants. Ridiculing the racial theories of Lothrop Stoddard and Madison Grant as the evil imaginings of charlatans, he defended the recent arrivals, and especially Jews, as the equals of Northwestern Europeans.⁴⁸ The pseudo-scientific quota principle was cruel, and, as “class legislation,” it would stimulate anti-Semitism and racial, national, and religious hatreds and jealousies in a period in which, as Marshall wrote Representative Nicholas Longworth, “We must cultivate the idea of unity, and not create artificial barriers to the existence of national harmony.”⁴⁹

CONGRESS WOULD NOT LISTEN

Marshall attempted to defeat both suspension and the quota plan by his usual tactics of appearances before Congressional committees, quiet lobbying, and the rejection of what he considered to be the impolitic schemes of his allies. The plan for the founding of a Jewish-supported steamship line to carry Jewish immigrants to

⁴⁷ Marshall to Siegel, 1/9/1919, LM-AJHS; United States House of Representatives, Committee on Immigration and Naturalization, 65 Congress, 3 Session, *Prohibition of Immigration* (Washington, 1919), pp. 3–5.

⁴⁸ United States Senate, Committee on Immigration, 68 Congress, 1 Session, *Selective Immigration Legislation* (Washington, 1924), pp. 287–93; Marshall to the Committee on Immigration and Naturalization of the House of Representatives, 1/25/1919, in Reznikoff, I, 162–63; Marshall to Charles E. Hughes, 4/27/1921, in *ibid.*, pp. 174–82.

⁴⁹ Marshall to Longworth, 3/18/1924, in *ibid.*, pp. 206–8; Marshall to Calvin Coolidge, 5/22/1924, in *ibid.*, pp. 208–14.

America, for example, he termed a "death-blow" which would only convince Americans that the battle against restriction was a plot by an international Jewish conspiracy.⁵⁰ Marshall failed to turn back the tide, however. Although immigration was never suspended and although President Wilson pocket-vetoed a quota bill in 1921, President Warren G. Harding, despite Marshall's appeals, signed into law in the Spring of 1921 a measure that limited immigration to 2 percent of each nationality in the United States according to the Census of 1910. This quota act, to be in effect for one year, was renewed for two years in the Spring of 1922, again despite Marshall's efforts.⁵¹

Marshall's use of his familiar tactics, however, belied the fact that important changes had occurred in his campaign. Although he fought on, his correspondence reflected a pessimism and a desperation almost always absent before 1917, a sense of despair which at times approached *ennui*. Although he kept in touch with Congressmen, his activities lacked that earlier sense of constant motion, optimistic urgency and even intrigue, which sought to take advantage of every opportunity. No matter what the odds, Marshall continued, but more out of a sense of obligation and habit than out of a conviction that any degree of real success was attainable.

Marshall's deep anxiety arose from his assessment of the strength and the virulence of his opposition and, especially, from his realization that even some of his Jewish allies were abandoning their support of free immigration. Max J. Kohler, for example, decided in 1921 that a brief temporary legislative curtailment of immigration, with suitable exceptions, might be in order, and Cyrus Adler, always a Marshall supporter, apparently stated that Jews themselves must assume some responsibility for the success of restriction because of their failure to assimilate rapidly.⁵² Marshall wrote despair-

⁵⁰ Marshall to George H. Lubarsky, 2/7/1920; Marshall to Harry Schneiderman, 2/17/1920, LM-AJA, Pers. Corres., box 1588; Marshall to Morris Schlesinger, 7/15/1923, *ibid.*, box 1591

⁵¹ Marshall to Woodrow Wilson, 2/26/1921, in Reznikoff, I, 166-69; Marshall to Warren G. Harding, 5/17/1921, in *ibid.*, pp. 182-90.

⁵² Marshall to Felix M. Warburg, 1/22/1921, LM-AJA, Pers. Corres., box 156; Rosenstock, p. 232.

ingly to Israel Zangwill that “a very large percentage of the Jewish citizens have permitted their prejudices to get the better of their judgement and of their hearts and have favored this restrictionist policy,” a fact partially confirmed by Marshall’s receipt of a letter from Rabbi Morris S. Lazaron, of Baltimore, who contended that unrestricted immigration was dangerous.⁵³

All of these changed circumstances affected both the final outcome and Marshall himself when new quota legislation was introduced in 1923 to replace the expiring act of 1922. As passed in May, 1924, the law, by reducing to 2 percent the number of each nationality to be admitted and by using the 1890 Census, both cut back the total influx of aliens and limited especially the entry of Southern and Eastern Europeans.⁵⁴ Marshall hoped for the complete defeat of the new quota proposal, but he realized that rampant “chauvinistic nationalism” and the obsessive “hatred of everything foreign” made it a virtual impossibility.⁵⁵ He therefore proposed as a compromise the extension of the 1922 quota law for two or three years, with administrative changes to humanize its enforcement, and the appointment of a commission, similar to the one established in 1907, to make a study of immigration upon which subsequent legislation could be based.⁵⁶

Congress would not listen, however, and even Marshall himself seemed sapped by the power of his opposition. His campaign was neither so active nor so supple as those before 1917. Admitting that “from the beginning” it had been “almost a hopeless situation,” he confessed to Cyrus Adler, in tones that revealed his own despair, that perhaps not enough had been done—“I am sorry that we did not have a number of meetings of the American Jewish Committee in order to consider various phases of the immigration legislation. I had in mind particularly a campaign of publicity. I do not think it

⁵³ Marshall to Zangwill, 6/24/1921, in Reznikoff, I, 191; Marshall to Morris S. Lazaron, 4/26/1921, LM-AJA, Pers. Corres., box 156.

⁵⁴ Higham, pp. 316–24.

⁵⁵ Marshall to Lucien Wolf, 8/15/1922, in Reznikoff, I, 204.

⁵⁶ Marshall to Fiorello H. LaGuardia, 2/11/1924, LM-AJA, Pers. Corres., box 1591.

would have made any difference, but perhaps some of the members of Congress might have been made to recognize the fact that they were riding for a fall and may have been stricken with madness." Despite an urgent appeal to President Calvin Coolidge, the quota act based on the 1890 Census became law, ending a long American tradition.⁵⁷

Although ultimately unsuccessful, Marshall's campaign was nevertheless a wide-ranging effort to safeguard some of the nation's finer principles at a time when they were increasingly under attack. With the support and assistance of many concerned Americans, especially Jews of German extraction, Marshall at least delayed the passage of the literacy test until the First World War made his task virtually impossible. During the 1920's, when even some of his supporters either joined the ranks of the restrictionists or concluded that free immigration was no longer an important principle, Marshall himself did not succumb to the nativist hysteria. The moral victory lay with the vanquished rather than with the victors.

Whether Marshall and his associates must bear some of the responsibility for their own final defeat because of their tactics—their reliance upon quiet persuasion conducted by a small group and their rejection of public demonstrations—is essentially an unanswerable question. As Marshall himself realized, constant clamor by immigrants and Jews risked a serious backlash. Since, according to nativists, immigrants and Jews seriously endangered America, what could be more threatening and impudent, they cried, than demands that millions more of their "inferior" brethren be permitted entry? Marshall's failure arose not so much from weaknesses in his techniques as from the circumstances and tensions in America which breathed life into nativism and over which he could exercise little control. Unfortunately, the times conspired against the principles and the ideals which he advocated.

⁵⁷ Marshall to Sabath, 4/25/1924; Marshall to Adler, 4/29/1924, *ibid.*