

**PESTILENTIAL POLICY AND MIGRATORY MALADIES:  
THE AMERICAN STATE, EPIDEMIC DISEASE POLICY, AND  
MIGRATION, 1890–1915**

by

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submitted by Naomi Jane Linthwaite Louie in partial fulfilment of the requirements for

the degree of Master of Arts

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## ABSTRACT

This thesis examines the development of American public health institutions and public health policy during the Progressive Era through the interplay of the twin issues of anti-epidemic disease policy and immigration and rethinks the relationship between race, migration, policy, and public health. It investigates three disease epidemics that occurred during the late nineteenth and early twentieth centuries, in which migrants figured prominently: the 1892 cholera outbreak in New York City, the 1900 plague epidemic in San Francisco, and the typhoid fever outbreaks started by the woman who came to be known as Typhoid Mary. Through these three case studies, this thesis argues that though American public health institutions greatly expanded their reach in this period as the central state took on the primary responsibility for protecting the nation's health, these institutions remained shakier and more vulnerable to challenges than the secondary literature has appreciated. I demonstrate this trend by studying the perspectives of both the public health officials implementing anti-epidemic policies and the migrants caught up in these policies, highlighting the roles played by challengers to public health policy. These "resisters," as I term them, were a broad group of disparate individuals ranging from the political and racial elite, to racially and politically marginalized migrants; their resistance constrained public health officials' actions and the range of policy tools wielded by public health agencies. Finally, in light of this pattern, this thesis draws a comparison between public health in the Progressive era and the Covid-19 pandemic in twenty-first century America. I suggest that the vulnerabilities in the public health system exposed by the Covid-19 pandemic are part of a much longer history, and arose in part because America's system of public health sits atop institutional foundations that were never particularly sturdy even at the time they were built.

## LAY SUMMARY

This thesis examines the development of public health in late nineteenth and early twentieth century America through the intersection between immigration and public health policies aimed at combatting disease epidemics. It does so by investigating three case studies in which immigrants featured prominently: the 1892 cholera outbreak in New York City, the 1900 plague epidemic in San Francisco, and the typhoid fever outbreaks started by the woman who came to be known as Typhoid Mary. I argue that though American public health institutions came to play a greatly expanded role in protecting Americans from epidemic disease, these institutions remained more vulnerable to challenges than others have appreciated. Finally, this thesis compares the three case studies to the Covid-19 pandemic to suggest that the vulnerabilities in American public health exposed by the Covid-19 pandemic arose in part because the nation's public health system sits atop unsteady foundations.

## **PREFACE**

This thesis is the original, unpublished, independent work of the author, Naomi Jane Linthwaite Louie.

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To my second reader, Bradley Miller, I am also deeply grateful for so much: for his incisive feedback on my drafts, for always being willing to discuss random legal cases at short notice, and for our lively conversations about everything from the current state of American politics to TV shows. The questions about disease that guided my MA thesis originated in the discussions we had while I was writing my undergrad thesis in 2019, which Brad supervised; those discussions inspired me in large part to embark on this project in the first place.

Finally, I owe much to my third reader, Leslie Paris, for agreeing to serve on my committee at (very) short notice, and for guiding me through two years of pandemic-inflected TAing. Her mentorship was utterly invaluable when I was hurled into the depths of Zoom school as a fresh TA, and I have learned much about how to teach American history and how to handle Zoom fatigue with grace from her.

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## A NOTE ON THIS THESIS AND COVID-19

There was no singular, universal experience of the Covid-19 pandemic, but no one who lived through the pandemic went unaffected. I spent the first year researching this thesis under lockdown in my childhood bedroom, as mandated by the stay-at-home, shelter-in-place, and social distancing measures the British Columbian government put in place from March 2020 onwards to combat the virus's spread. I began my research in September 2020, when travel bans and closed borders were the indefinite status quo. I thus could not fly to the shuttered archives in America—the National Archives and Records Administration, the Library of Congress, and more—that I had originally proposed to visit when I envisioned my project in early 2020. Out of necessity, I shifted my proposed topic multiple times and amended my project to rely wholly on the digitized record collections available online that I knew I would be able to access, even if the Covid-19 pandemic dragged on for years. And indeed, it did. Global travel did not resume and the archives I initially planned to rely on did not reopen until long after I had completed the research portion of this thesis.

Nevertheless, even with the new constrained boundaries of my project, the impossibility of physical archival access meant that I had to forego using certain primary source bases that would have expanded or strengthened the dimensions of my research, like, for example, the collection of Mary Mallon's letters held at the New York City Municipal Archives. The collection held there represents the only extant documents written by Mallon in her own voice. Since the digitized collections made available by the Library of Congress and the National Archives are mostly comprised of records from government agencies, my source base was heavily tilted towards documents representing the perspectives of policymakers. Accordingly, that meant that my thesis focused more on the evolution of the government agencies that governed public health, and that I did not

have the source base to make a broader argument about the evolution of resistance towards public health agencies in the period I study.

Even after I had moved on to the actual writing of it, the Covid-19 pandemic still upended my plans. I wrote this thesis while under a stay-at-home order, once again trapped in my bedroom during the Omicron wave of the winter of 2021–2022; while sick with Covid-19 myself a few months later; while my elderly grandparents were ill with Covid-19, fearing for their lives. As I write this in December 2022, the Covid-19 pandemic, now endemic, still continues. I write this section to not only contextualize the final form of this project, but to also highlight the pandemic’s reach; for months, it affected every corner of my life. In researching this project, I could not transcend the disruptions that the disease wrought upon society; I could only work through Covid-19 as best I could. This thesis stands as testament to the fact that epidemic disease can upend the world in an instant. It is a work about disease that, to my chagrin, has been indelibly shaped by disease.

# INTRODUCTION

In the darkened basement of a hotel in San Francisco's Chinatown, an assistant city physician autopsies a dead Chinese man. His name is Wong Chut King, and his lymph nodes are swollen—a telltale symptom of plague.<sup>1</sup> The physician alerts the city bacteriologist, who examines the body. Under his microscope, the bacteriologist finds *Yersinia pestis*, the plague bacilli. The bacteriologist raises the alarm to the San Francisco Board of Health: he has uncovered the first case of bubonic plague, that dread terror, ever found in the continental United States.<sup>2</sup>

It is March 6, 1900, and San Francisco's public health corps are not entirely surprised by the bacteriologist's diagnosis. Throughout the last decade, bubonic plague, originating in Yunnan, China, has been circulating the globe, and San Francisco's public health officials have been watching the incoming ships from Asia with wary eyes.<sup>3</sup> After the diagnosis, the San Francisco Board of Health readily quarantines the whole of Chinatown.<sup>4</sup> The plague must not spread throughout the city.

What surprises the Board is the reaction. The Chinese are predictably furious about being confined to Chinatown.<sup>5</sup> But, to the Board's chagrin, the outrage extends beyond the borders of Chinatown. Many Californians, including Governor Henry Gage, San Francisco's press, local physicians, merchants, and more, insist that the diagnosis is wrong.<sup>6</sup> There is no plague in San

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<sup>1</sup> Simon Flexner, F. G. Novy, and L. F. Barker, *Report of the Commission Appointed by the Secretary of the Treasury for the Investigation of Plague in San Francisco* (Washington: Government Printing Office, 1901), 23.

<sup>2</sup> John M. Williamson, "Report of the Board of Health," in *Biennial Report of the Board of Health of the City and County of San Francisco for the Fiscal Years 1898–1899 and 1899–1900* (San Francisco: Hinton Printing Company, 1901), 12.

<sup>3</sup> Oliver L. Spaulding, "Haffkine Prophylactic and Antipest Serum," *Public Health Reports* 15, no. 35 (1900): 2135.

<sup>4</sup> Williamson, "Report of the Board of Health," *Biennial Report*, 12.

<sup>5</sup> Ho Yow, "Consul Utters Veiled Threat," reprinted in the *San Francisco Call*, 8 March 1900.

<sup>6</sup> "Plague Fake Part of Plot to Plunder," *San Francisco Call*, 8 March 1900; "Nothing But A Suspicion," *San Francisco Chronicle*, 8 March 1900; Henry Gage, "First Biennial Message of Governor Henry T. Gage to the Legislature of the State of California," California Legislature, *Journal of the Assembly During the Thirty-Fourth Session of the Legislature of the State of California*, 34th sess., 7 January 1901, 22.

Francisco. For a brief moment, the Chinese find themselves on the same side as California's political establishment—a strange alliance, since California's politicians have been so far determined to do whatever they can to push the Chinese out of the city.<sup>7</sup>

San Francisco's public health officials try various measures that name the Chinese, and the Chinese alone: another cordon, travel restrictions, an attempt at a vaccination mandate. But the ensuing controversy over these measures from those both within and beyond Chinatown, who insist that the bacteriologist is wrong—that the bacteriologist has not, in fact, discovered plague within the city—compels San Francisco's public health corps to back down from their anti-plague measures.<sup>8</sup> If they are to stop the plague, they will have to adopt new anti-plague measures.

This dynamic—resistance from unexpected quarters; the unforeseen limitations of public health officials; and the centrality of actors historians have more frequently seen as passive victims rather than as agents driving forward historical change—plays a formative role throughout the history of public health in this period.

## **I. THE SCENE**

This thesis explores the expansion of American public health in the late nineteenth and early twentieth centuries through the frequently entangled issues of immigration and anti-epidemic disease policy. The drama of the 1900 plague epidemic in San Francisco took place during a transitory moment for the American state. Historians term the period from roughly 1890 to the outbreak of World War I the Progressive Era, and view this era as the moment in which the central state accepted a greater responsibility for shielding Americans from the disruptions caused by rapid

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<sup>7</sup> Andrew Gyory, *Closing the Gate: Race, Politics, and the Chinese Exclusion Act* (Chapel Hill: University of North Carolina Press, 1998), 212–241.

<sup>8</sup> Williamson, "Report of the Board of Health," *Biennial Report*, 13.

industrialization and urbanization.<sup>9</sup> These trends, along with technological advancements, enabled trade, commerce, travel, and society to become more interconnected and codependent than ever before. In response to the shocks of industrial modernity, America's cities spawned a host of social reformers determined to mitigate problems ranging from epidemic disease, to labour abuses, to immigration, to social discord. They called themselves Progressives and became a central force reshaping labour, politics, governance, and science during this era, which took its moniker from them.

Epidemic disease is a perennial biological threat. This quality set it apart from many of the other struggles facing Progressive America, especially as the growing interdependence of American society enabled diseases to spread faster and more widely than in previous decades via their human hosts' ever more entangled networks. But conversely, in the same period, diseases, previously a regular, uncontrollable force of nature to which Americans had to resign themselves, became potentially manageable for the first time in history via germ theory.<sup>10</sup> Between 1870 and the end of the century, European bacteriologists discovered the various bacilli that caused many of the

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<sup>9</sup> Historians have traditionally seen the Progressive Era as distinct specifically due to the remaking of the relationship between the state and society at large that occurred from roughly 1890 to 1920. Though recent scholarship has challenged the extent of Progressive social and economic reformers, as well as the strength and true impact of reformers' commitments to improving the welfare of workers, immigrants, and other marginalized groups, historians broadly agree that in these decades, the American state accepted greater responsibilities for shielding Americans from the disruptions and ills caused by modern, industrial life. See, for example, Sven Beckert, *The Monied Metropolis: New York City and the Consolidation of the American Bourgeoisie, 1850–1896* (Cambridge: Cambridge University Press, 2001); Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge: Belknap Press, 1998); T. J. Jackson Lears, *No Place of Grace: Antimodernism and the Transformation of American Culture, 1880–1920* (Chicago: University of Chicago Press, 2021); William Devereell and Tom Sitton, eds., *California Progressivism Revisited* (Berkeley: University of California Press, 1994); David Huyssen, *Progressive Inequality: Rich and Poor in New York, 1890–1920* (Cambridge: Harvard University Press, 2014).

<sup>10</sup> As Cyrus Edson, New York City's Health Commissioner, put it in 1895, "it is owing to the discovery of the laws of hygiene, and their practical application, that we are enabled to check disease when it appears, to seize it and say it shall not spread." See Cyrus Edson, "The Microbe as a Social Leveller," *North American Review* 161, no. 467 (Oct. 1895): 424.

diseases that devastated humanity in previous centuries.<sup>11</sup> With germ theory, a new range of social interventions became available to health authorities waging war on the diseases that regularly ravaged the American public, with the potential to remake Americans' relationships to both disease and the state.

These scientific advancements had seismic ramifications for the field of public health. Largely an overlooked area of study until the last two decades of the twentieth century, the 1990s and 2000s brought a wave of scholarship examining the development of public health as a field and of public health institutions in America. The classic texts of public health scholarship, which mostly blend medical and political history, generally see the Progressive Era as a transformative moment for public health.<sup>12</sup> As medical historian Nancy Tomes characterized it, the “triumph” of germ theory as the preeminent method for understanding the spread of disease, over popular superstition and old wives' tales, spurred a remaking of public health conceptually, culturally, and politically.<sup>13</sup> In the early nineteenth century, the few American agencies tasked with guarding public health operated on a decentralized and predominantly local scale, if at all. But in the Progressive Era, federal institutions and agencies began to play a central role in guarding Americans' health for the first time as part of the concurrent expansion and centralization of the American state.<sup>14</sup> By

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<sup>11</sup> For example, the bacteriologist Robert Koch discovered the typhoid bacillus, in 1882 and the cholera bacillus in 1884, while the bacteriologist Alexandre Yersin discovered the bubonic plague bacillus in 1894. See Donatella Lippi and Eduardo Gotuzzo, “The Greatest Steps Towards the Discovery of *Vibrio Cholerae*,” *Clinical Microbiology and Infection* 20, no. 3 (2014): 191–193; Steve M. Blevins and Michael S. Bronze, “Robert Koch and the ‘Golden Age’ of Bacteriology,” *International Journal of Infectious Diseases* 14, no. 9 (2010): e744–e751; Myron Echenberg, *Plague Ports: The Global Urban Impact of Bubonic Plague, 1894–1901* (New York: NYU Press, 2007), 9–13.

<sup>12</sup> See, for example, John Duffy, *The Sanitarians: A History of American Public Health* (Urbana: University of Illinois Press, 1990); John W. Ward and Christian Warren, eds., *Silent Victories: The History and Practice of Public Health in Twentieth Century America* (New York: Oxford University Press, 2007); Daniel M. Fox, *Health Policies, Health Politics: The British and American Experience, 1911–1965* (Princeton: Princeton University Press, 1986); Philip J. Hiltz, *Protecting America's Health: The FDA, Business, and One Hundred Years of Regulation* (New York: Alfred A. Knopf, 2003); Werner Troesken, *The Pox of Liberty: How the Constitution Left Americans Rich, Free, and Prone to Infection* (Chicago: University of Chicago Press, 2015).

<sup>13</sup> Nancy Tomes, *The Gospel of Germs: Men, Women, and the Microbe in American Life* (Cambridge: Harvard University Press, 1998), 13.

<sup>14</sup> Duffy, 4–5.

the end of the Era, public health operated at the federal, state, and local levels, with a web of agencies at each level that managed health threats.<sup>15</sup>

This Progressive expansion of public health coincided with the expansion of federal regulation over immigration and the accompanying bureaucratic growth among federal, state, and municipal entities. Migrants, from both rural America and across the oceans, were drawn to urban centres on both coasts, and Americans increasingly saw the immigration of certain “undesirable” migrants as a problem in need of solving by the state.<sup>16</sup> In 1875, for the first time in the nation’s history, the federal government carved out an entire class of immigrants for exclusion on the basis of race: Chinese women.<sup>17</sup> Viewing the Chinese as racially undesirable and unassimilable, Congress extended the ban to most Chinese men in 1882, and these two acts came to serve as precedent for the federal governments’ *modus operandi* of policing immigration for the rest of the Progressive Era.<sup>18</sup> Throughout the next two decades, Congress defined more and more categories of

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<sup>15</sup> Duffy, 128.

<sup>16</sup> Though both the secondary scholarship and the public sphere have traditionally viewed nineteenth and early twentieth century mass migration as primarily a transatlantic phenomenon, intranational and transpacific migration were “similar in quantity and organization,” to transatlantic migration, as historian Adam McKeown put it, and had similarly transformative effects on America. Understanding the full scale of migration to America recontextualizes Americans’ fears of disease imported by immigrants from abroad. Even though Americans were frequently preoccupied with the supposed threat posed by specific classes or races of immigrant and scapegoated them accordingly, these fears of specific groups did not necessarily correlate to the largest numerical classes of migrants entering American ports during this era. See Adam M. McKeown, *Melancholy Order: Asian Migration and the Globalization of Borders* (New York: Columbia University Press, 2008), 43–44.

<sup>17</sup> Chinese immigrants were the first class of migrants federal immigration law defined as an excludable category on the basis of race. Congress first excluded Chinese women with the 1875 Page Act, which was followed by the 1882 Chinese Exclusion Act, which excluded virtually all Chinese men for ten years. Congress renewed the Exclusion Act for another decade in 1892, and made it permanent in 1902. See Page Act, Pub. L. No. 43–141, 18 *Stat.* 477 (1875); Chinese Exclusion Act, Pub. L. No. 47–126, 22 *Stat.* 58 (6 May 1882); Geary Act, Pub. L. No. 52–60, 27 *Stat.* 25 (1892). See also, Sucheng Chan, “The Exclusion of Chinese Women, 1870–1943,” in *Entry Denied: Exclusion and the Chinese Community in America, 1882–1943*, ed. Sucheng Chan (Philadelphia: Temple University Press, 1991), 94–146; Madeline Yuan-yin Hsu, *Dreaming of Gold, Dreaming of Home: Transnationalism and Migration Between the United States and South China, 1882–1943* (Stanford: Stanford University Press, 2000), 92–96; Dirk Hoerder, *Cultures in Contact: World Migrations in the Second Millennium* (Durham: Duke University Press, 2011), 400–401.

<sup>18</sup> Chinese Exclusion Act, Act of 6 May 1882, 22 *Stat.* 58; Erika Lee, “American Gatekeeping: Race and Immigration Law in the Twentieth Century,” in *Not Just Black and White: Historical and Contemporary Perspectives on Immigration, Race, and Ethnicity in the United States*, ed. Nancy Foner and George M. Fredrickson (New York: Russell Sage Foundation, 2004), 123–124.

migrants for exclusion.<sup>19</sup> In 1891, for the first time, Congress added migrants suffering from a “loathsome or a dangerous contagious disease” to the list of excluded classes.<sup>20</sup>

As evidenced by the 1891 Act, in which Congress used immigration restrictions as a tool for what the Act claimed was a public health purpose, immigration and public health were interwoven issues throughout this period. Americans from the ordinary public to policymakers at the highest levels of governance believed that foreigners were filthy disease-producers ignorant of proper hygiene, unlike native-born, racial and ethnic majoritarian American citizens, who led the rest of the world by example with their impeccable, advanced, American sanitary practices.<sup>21</sup> These beliefs were predicated upon xenophobia, racism, and white supremacy.

Scholars of race writing in the late twentieth century have argued that Americans viewed Southern, Eastern European, and Irish immigrants as non-white throughout the late nineteenth and early twentieth centuries until a mid-twentieth-century remaking of racial categories allowed these groups to ascend into whiteness.<sup>22</sup> However, investigating the history of public health alongside the history of race demonstrates that *all* European migrants reaped the benefits of whiteness in this

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<sup>19</sup> These categories included: those “likely to become a public charge,” paupers, those afflicted with a “loathsome or contagious disease,” “insane persons,” “idiots,” criminals, polygamists, anarchists, and more. See An Act in Amendment to the Various Acts Relative to Immigration and the Importation of Aliens Under Contract or Agreement to Perform Labor, Pub. L. No. 51–551, 26 *Stat* 1084 (3 March 1891); Anarchist Exclusion Act, Pub. L. No. 57–1012, 32 *Stat.* 1213 (3 March 1903); Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002), 3.

<sup>20</sup> “Loathsome” included disabling conditions and heavily stigmatized diseases such as leprosy, while “dangerous contagious” generally referred to highly infectious epidemic diseases. See Nayan Shah, *Contagious Divides: Epidemics and Race in San Francisco’s Chinatown* (Berkeley: University of California Press, 2001), 180.

<sup>21</sup> Nayan Shah has shown how closely hygiene cleaved to Americans’ national and racial identities, arguing that “At the turn of the century, “health” and “cleanliness” were embraced as integral aspects of American identity; and those who were perceived to be “unhealthy,” such as Chinese men and women, were considered dangerous and inadmissible to the American nation.” See Shah, *Contagious Divides*, 12.

<sup>22</sup> This argument grew out of whiteness studies in the 1990s. See, for example, Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge: Harvard University Press, 1999); David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (New York: Verso, 2007); Noel Ignatiev, *How the Irish Became White* (New York: Routledge, 2008). For critiques of this view and of whiteness studies in general, see, for example, Eric Arnesen, “Whiteness and the Historians’ Imagination,” *International Labor and Working-Class History* 60, no. 1 (2001): 3–32; Peter Kolchin, “Whiteness Studies: The New History of Race in America,” *Journal of American History* 89, no. 1 (2002): 154–173.

period. Americans mapped their turn-of-the-century conceptions of hygiene on to the nation's racial and ethnic hierarchy more broadly, which placed white, Anglo-Saxon Americans at the top, Eastern and Southern European-descended Americans below, and those racialized as non-white like Asians at the very bottom.<sup>23</sup> This racial logic undergirded the potency of public health officials' charge that even though Eastern and Southern European migrants represented a greater source of disease than other European migrants or native-born white Americans, non-white migrants and populations were not just a vector of disease but an existential health threat to the nation. As such, the history of both public health and immigration policy in this period highlights the material benefits that whiteness accorded to European immigrants.<sup>24</sup> Even though the public health officials implementing anti-epidemic measures treated Eastern and Southern Europeans with far more suspicion than native-born white Americans or Northern European migrants, they did not use public health measures as a tool to attempt to push these migrants out of society, as they did with non-white communities.

## II. THE ARGUMENT

To explore the transformation of public health and immigration policy that occurred during the Progressive Era, this thesis examines three case studies comprising of an epidemic, the anti-

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<sup>23</sup> Although Americans differentiated between European immigrants on the basis of ethnicity, viewing migrants of Northern European descent as superior to those of Eastern or Southern European descent, they still viewed European migrants as white. As Mae Ngai put it, "Euro-American identities turned both on ethnicity... and on a racial identity defined by whiteness," while "Asians' and Mexicans' ethnic and racial identities remained conjoined. The legal racialization of these ethnic groups' national origin cast them as permanently foreign and unassimilable." See Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 7–8.

<sup>24</sup> Twenty-first century scholarship, particularly in the 2010s and 2020s, has highlighted the pervasiveness of white supremacy as a binding mechanism that privileged European migrants, even those Americans perceived as being of an undesirable ethnic origin, above non-white migrants and Americans. See, for example, Nell Irvin Painter, *The History of White People* (New York: W. W. Norton, 2010); Erika Lee, *At America's Gates: Chinese Immigration During the Exclusion Era, 1882–1943* (Chapel Hill: University of North Carolina Press, 2003); Mae Ngai, *Impossible Subjects*; Anna Pegler-Gordon, "Debating the Racial Turn in U.S. Ethnic and Immigration History," *Journal of American Ethnic History* 36, no. 2 (2017): 40–53.

epidemic interventions public health official instituted in response, and the ensuing fallout. Migrants figured prominently in each episode, as both actors and as subjects of immense controversy. The case studies are the 1892 cholera epidemic in New York City (NYC); the 1900 plague epidemic in San Francisco; and the New York outbreaks of typhoid fever beginning in 1906 spread by the woman who became known as Typhoid Mary. While these three cases are by no means the only examples of the trends I study from the Progressive Era, each case addresses how broader national patterns in the exercise of public health played out and were influenced by temporal, regional, and local factors. Thus, these episodes are best able to explicate the paradigms of resistance, control, and legacy that I study.<sup>25</sup>

This thesis is divided into three thematic chapters: each chapter is divided into three subsections which follow the three case studies, and each subsection examines the case study from the perspective of one faction of actors caught within the epidemic. Chapter One covers the perspective of those who resisted public health measures, and investigates how they effected their challenges and limited the kinds of measures public health measures could implement. Chapter Two investigates public health officials' perspectives and describes how they attempted to reassert control after being thwarted by the resistance described in Chapter One, with mixed results. Chapter Three explores how the central state expanded its purview over public health and attempted to expand its authority over marginalized Americans in the aftermath of each epidemic.

In examining the perspectives of both public health officials and their resisters, I seek not to cast public health officials as either progressive administrators employing the best of modern science to guard the public's health, beset by uninformed know-nothings, or as racist, xenophobic

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<sup>25</sup> Episodes from the 1894 Milwaukee smallpox riots, to the Great Influenza (also known as the Spanish Flu) of 1918 to 1920, would, however, be ripe for further exploration along these lines, in examining the role that challenges to public health played in delineating the shape of anti-epidemic policy.

opportunists who trampled over Americans' individual liberties in their haste and prejudice; nor to cast these resisters as either anti-science ignoramuses or heroes of a resistance movement, fighting to preserve their fundamental rights. Though we may now understand the decision-making of these various factions to be based upon faulty information, improper understandings of the science, rank discrimination, or self-serving impulses rather than altruistic desires, I view each of these players as being guided by an internal logic. All were actors in their own right who reasoned their way into a position. To appreciate the full range of ways in which public health developed throughout this period, as an expanding state mechanism that nevertheless remained circumscribed at key moments, it is necessary not to dismiss any side of the argument.

Through this manner of examination, this thesis rethinks the broad history of the Progressive Era transformation of public health in three primary ways. Firstly, it highlights the impact of the groups and individuals who challenged public health officials' various anti-epidemic measures. I term these actors "resisters," and link them through their roles in influencing public health officials to change course; centering them emphasizes the limitations of authority and enforcement capacity that state and federal public health officials experienced during this period. Throughout the Progressive Era, the regulatory regimes that governed public health and immigration developed in tandem. As historian Nayan Shah put it, "public health served as one of the most agile and expansive regulatory mechanisms in nineteenth-century American cities," meaning that public health regulation often served as an accomplice to immigration regulation.<sup>26</sup> Alan Kraut, one of the foremost scholars of the intersection between immigration and public health, has demonstrated that both public health and immigration policy were shaped by the "medicalization of preexisting nativist prejudices," namely the belief that certain ethnic and racial classes "constitute[d] a health

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<sup>26</sup> Shah, *Contagious Divides*, 3.

menace.”<sup>27</sup> Shah, Kraut, and other public health and immigration scholars interpreted public health regulations as broadening governmental control over the lives of migrants, which enabled policymakers and enforcers to punish perceived deviance on the part of foreigners, ethnic minorities, and non-white people.<sup>28</sup>

The existing historical literature describes well the harmful things that public health authorities did to migrants in the name of preserving the public’s health.<sup>29</sup> What the literature is less effective at, however, is understanding the things that the opponents of public health measures did to public health officials in the name of securing their freedom from the tyranny of public health regulations. Such a framing minimizes both the roadblocks public health officials ran into, along with the agency exercised by challengers to public health.<sup>30</sup> Centering non-governmental challengers to public health interventions as historical agents of change demonstrates that these actors fundamentally shaped Progressive-era public health institutions and practices, as government actors had to alter the types of public health interventions and management strategies they meted out. My goal in doing so is not to conduct a sympathetic reading, to argue for a heightened sensitivity on

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<sup>27</sup> Alan M. Kraut, *Silent Travelers: Germs, Genes, and the “Immigrant Menace.”* (New York: Basic Books, 1994), 2.

<sup>28</sup> For example, Trevor Hoppe argued that “controlling the actions of individuals and communities believed to spread disease has been a core public health strategy,” and that the history of disease in the US has been defined by “coercive and punitive approaches to disease control.” See Trevor Hoppe, *Punishing Disease: HIV and the Criminalization of Sickness* (Oakland: University of California Press, 2018), 19.

<sup>29</sup> Shah, Kraut, Hoppe, and other historians who study the intersections between public health, immigration, and race, writing onwards from the 1990s to the present, frequently reproduce this framing. See, for example, Nayan Shah, *Contagious Divides*; Alan Kraut, *Silent Travelers*; Trevor Hoppe, *Punishing Disease*; Charles McClain, “Of Medicine, Race, and American Law: The Bubonic Plague Outbreak of 1900,” *Law & Social Inquiry* 13, no. 3 (1988): 447–513; Guenter B. Risse, *Plague, Fear, and Politics in San Francisco’s Chinatown* (Baltimore: John Hopkins University Press, 2012); Michael C. LeMay, *Doctors at the Borders: Immigration and the Rise of Public Health* (Santa Barbara: Praeger, 2015).

<sup>30</sup> There have been a small handful of works published in the past five years that attempt to revise the classic paradigm of public health scholarship that sees public health as a tool primarily used by the state or other powerful societal actors to target and punish the marginalized. See Samuel K. Cohn, Jr., *Epidemics: Hate and Compassion from the Plague of Athens to AIDS* (Oxford: Oxford University Press, 2018), which sets out to investigate the ways in which epidemics have functioned as unifying forces rather than as victimizing or dividing ones. However, few have attempted to revisit this paradigm from an American perspective that highlights challengers to public health institutions—for example, Cohn deliberately moves away from discussing American disease epidemics in his study.

the part of scholars towards these challengers of public health, but to conduct an *empathetic* one that illuminates the internal logic underlying their actions to understand why they resisted and what impacts their resistance had.

Secondly, partly as a consequence of this resistance, I argue that public health did not expand continuously and linearly throughout this period, which is a teleological assumption that many of the classic texts in public health history, such as John Duffy's 1990 study *The Sanitarians: A History of American Public Health*, frequently operate upon.<sup>31</sup> Rather, the Progressive Era was delineated by multiple moments in which it was never a given that public health would expand as a field to exert more regulatory control over Americans' health. Though public health had indeed become a greatly expanded institution by 1915, its architecture was often shakier than historians have appreciated, and these small moments of systematic structural shakiness have still occasionally influenced the exercise of public health in later eras.

Thirdly, I highlight 1905 as a turning point for the centralization of public health. Scholars such as Adam McKeown and Lucy Salyer have argued that 1905 represented a shift for immigration law and its enforcement as the federal government, the Bureau of Immigration (established in 1895), and the judiciary accorded immigration officials far more discretion post-1905 in comparison to the pre-1905 period, which significantly strengthened the enforcement of immigration restrictions.<sup>32</sup> I argue that a loosely similar trend played out for the exercise and authority of public health. Prior to 1905, public health was defined more by its confines than by its expansiveness, as it was a patchwork system spread between local, state, and federal agencies with ill-defined

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<sup>31</sup> See, for example, Duffy, 128–133.

<sup>32</sup> McKeown, 241–250; Lucy E. Salyer, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill: University of North Carolina Press, 1995), 100–102.

jurisdictions that made it vulnerable to challenges.<sup>33</sup> 1905 marked a turning point for the authority of public health, specifically through the landmark case *Jacobson v. Massachusetts*, which affirmed the constitutionality of public health measures that curtailed individual liberties to protect the health of the surrounding community.<sup>34</sup> Post-*Jacobson*, the kinds and intensity of resistance that beset public health officials prior to 1905 were far narrower.

The overall arc tying these three trends together demonstrates that American public health was always built upon foundations more precarious than either contemporary witnesses or the existing secondary scholarship has appreciated. These foundations are precarious in part due to the dynamics established during the period, between Americans who see public health as a frequent enemy of their individual liberties, seek to challenge public health upon these grounds, and who are able to manipulate foundational cracks to circumscribe the governance of public health; and the public health officials tasked with using the mechanisms of science and the state to protect Americans from the devastation of epidemic diseases. Though considerably stronger, with more authority and institutional mechanisms through which to implement policy, public health remained—and still remains—vulnerable to challenge.

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<sup>33</sup> Twentieth century immigration historiography, as exemplified by classics such as John Higham's *Strangers in the Land: Patterns of American Nativism 1860–1925*, mostly argued that American immigration policy was laissez-faire and open-door until the early twentieth century. But recent scholarship that highlights the enforcement mechanisms of American policy, along with the role of state and local officials in implementing nineteenth century immigration policy, has demonstrated that American immigration policy was never as open-door as previous generations of scholarship argued. See, for example, Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2006); Torrie Hester, *Deportation: The Origins of U.S. Policy* (Philadelphia: University of Pennsylvania, 2017); Hidetaka Hirota, *Expelling the Poor: Atlantic Seaboard States and the Nineteenth-Century Origins of American Immigration Policy* (New York: Oxford University Press, 2017); Anna Pegler-Gordon, *In Sight of America: Photography and the Development of U.S. Immigration Policy* (Berkeley: University of California Press, 2009).

<sup>34</sup> See, for example, John Fabian Witt, *American Contagions: Epidemics and the Law from Smallpox to COVID-19* (New Haven: Yale University Press, 2020), 57–58.

## CHAPTER ONE — RESISTANCE

In the Progressive Era, the disparate groups of Americans who resisted public health officials' anti-epidemic measures were among the central actors who reshaped public health in this period. Historians of the intersection between migration and public health have primarily viewed migrants in this period not as agents of historical change, who played no small part in developing public health, but as victims of overreaching, prejudiced public health officials who used the coercive power of state public health mechanisms to override the individual liberties of migrants, non-white peoples, and other marginalized Americans. Even histories sympathetic towards the plight of migrants, that are not wholly unattuned to the roles that migrants played in opposing public health measures—like Alan Kraut's classic *Silent Travelers*—largely replicate this paradigm, and either do not investigate challenges to public health that came from the socially privileged, political and racial elite, or view these as being of secondary importance.<sup>35</sup>

But examining the challenges brought by disparate groups of Americans shows that both the marginalized and the privileged circumscribed, stopped, and limited the kinds of measures that public health officials implemented throughout this period. These resisters, as I term them, are a loose grouping of people who came from many different walks of life, ranging from those at the bottom of America's racial and class hierarchy to the political and racial elite. I group them together to highlight the full range of their contributions to the transformation of public health, from a decentralized, haphazard system carried out mostly by local officials to an increasingly centralized system conducted on national and federal levels in addition to local levels. This chapter

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<sup>35</sup> For example, both Alan Kraut and Howard Markel, in their case studies of the 1900 San Francisco plague epidemic, do not examine the concurrent plague denial campaign promoted primarily by the city's political and mercantile elite. See Kraut, 78–103; Markel, *When Germs Travel*, 47–78. Though both Nayan Shah and Guenter Risse's studies devote some pages to investigating the plague denial campaign, both view the roles played by the socially privileged as having less of an impact on the downfall of public health officials' anti-plague measures. See Shah, 149; Risse, 2–5.

describes the forms that these challenges to public health measures took, explains why these resisters chose to challenge public health officials, and describes how they thwarted the anti-epidemic measures public health officials enacted against them. Secondly, it depicts how the avenues of protest available to potential resisters became more closed off throughout the Progressive Era, and especially post-1905, which limited both the intensity and the effectiveness of such challenges.

## **1. I. RESISTANCE: CHOLERA**

*New York City, August 1892 to September 1892*

Throughout the summer of 1892, cholera was spreading through Europe's sweltering, crowded cities, and New York's public health officers feared that their city would be next.<sup>36</sup> New York City (NYC) was America's busiest port, through which Lady Liberty welcomed millions of predominantly European immigrants in the waning years of the nineteenth century.<sup>37</sup> Their fears soon came true. This subsection investigates the elites who found themselves, to their great annoyance, stuck in quarantine during the outbreak, and whose protest would ultimately constrain the kinds of measures NYC's public health officials could implement during the epidemic.

In the dying days of August, ships carrying cholera entered NYC's harbour.<sup>38</sup> In response, President Benjamin Harrison issued a circular which "ordered that no vessel from any foreign port carrying immigrants shall be admitted to enter at any port of the United States until said vessel

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<sup>36</sup> The Fifth Cholera Pandemic originated in Asia in 1881 and spread westward across Europe. Unlike in previous cholera pandemics, these officers were armed with the new knowledge that cholera was transmitted by the bacteria *Vibrio cholerae*, first discovered by the bacteriologist Robert Koch eight years prior, and which thrived in filthy conditions and contaminated water. See Christopher Hamlin, *Cholera: The Biography* (New York: Oxford University Press, 2009), 7–13.

<sup>37</sup> Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants Since 1882* (New York: Hill and Wang, 2004), 5.

<sup>38</sup> "Cholera at the Gate," *New York Tribune*, 1 September 1892.

shall have undergone a quarantine detention of twenty days.”<sup>39</sup> On September 3, the *Normannia* sailed into NYC’s harbour with five dead passengers and four more active cases of cholera. Health Officer William Jenkins, NYC’s chief public health official, placed the *Normannia* in the 20-day quarantine mandated by Harrison’s circular, as the ship had sailed out of cholera-stricken Hamburg in Germany and was carrying immigrants.<sup>40</sup> The *Normannia* carried roughly equal numbers of steerage passengers, who travelled on the cheapest class of ticket, and cabin passengers, who travelled on more expensive tickets and paid for private cabins.<sup>41</sup> The class divide aboard the *Normannia* accompanied a citizenship divide: 86.6% of the ship’s steerage passengers held foreign citizenship and indicated to immigration officials that they intended to stay in America for an extended period, while 94.4% of the ship’s cabin passengers held American citizenship.<sup>42</sup>

The mostly white, mostly Anglo-Saxon, mostly Protestant, mostly American cabin passengers were incensed to find themselves trapped in quarantine, and blamed the immigrants in steerage for their plight. These passengers included several politically well-connected and culturally influential individuals, including Senator John McPherson, Democrat of New Jersey; Edwin Lawrence Godkin, the editor of *The Nation* and the *New York Evening Post*; New York theatre director Albert Marshman Palmer; and the British singer Lottie Collins.<sup>43</sup> In missives to the reporters circling the *Normannia* in tugs each morning, hungry for news of the unfolding drama, the cabin

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<sup>39</sup> U.S. Senate, Quarantine Restrictions Upon Immigration to Aid in the Prevention of the Introduction of Cholera into the United States, 52nd Congress, 2nd Session, 1 September 1892, (Serial Set 3056). Circulars were federal regulations issued under the Treasury Department’s authority, similar in scope to twenty-first century executive orders.

<sup>40</sup> William T. Jenkins, “Report of the Health Officer,” in *Annual Report of the Commissioners of Quarantine, 1887–1898* (Albany: James B. Lyon, State Printer, 1893), 48.

<sup>41</sup> The ship’s manifest listed the *Normannia* as carrying 555 steerage passengers, and 497 cabin passengers. See “SS Normannia—List of Passengers: District of the City of New York, Port of New York,” available at SS Normannia Passenger Manifest, 22 September 1892, frames 481–506, online by Statue of Liberty—Ellis Island Foundation, accessed 1 September 2022, <https://heritage.statueofliberty.org/>.

<sup>42</sup> “SS Normannia—List of Passengers,” frames 481–506. At the time, passengers who indicated upon arrival that they intended to stay in America for an extended period of time were seen by immigration officials as a proxy for an intention to immigrate.

<sup>43</sup> Jenkins, “Report of the Health Officer,” 48; “Detained at Quarantine,” *New York Times*, 4 September 1892.

passengers portrayed themselves as upstanding individuals of good American stock, a higher class of people who did not deserve to be quarantined alongside the lowly foreign masses in steerage.<sup>44</sup> A handful of prominent passengers, including Senator McPherson, Palmer, and Godkin, demanded to be transferred to better lodgings, asking in an open letter circulated throughout the press, “can it be possible that the National Government, the Governor, press, and people of New-York will permit their fellow-citizens... to be penned up?”<sup>45</sup> Palmer further complained that the “520 healthy people (American citizens)... feel in their enforced confinement that their health and lives even are committed... to the tender mercies of foreigners.”<sup>46</sup>

But contrary to Palmer’s portrayal, the American citizens aboard were not all healthy. Two of the *Normannia*’s dead were American-born citizens travelling in cabin class, and the *Normannia*’s own surgeon had admitted to the press that the two dead cabin passengers had displayed symptoms consistent with cholera.<sup>47</sup> But in the late nineteenth century, Americans strongly linked cholera to the foreign.<sup>48</sup> Medical professionals as well as the lay public knew the disease by the name of *Asiatic cholera*, and believed that cholera, a disease not endemic to America, could only reach their nation via unclean foreigners who supposedly lacked knowledge of modern, American, sanitary habits.<sup>49</sup> The reluctance of both the *Normannia*’s well-to-do and NYC’s public health officials to accept that the evidence strongly suggested both deaths in the cabin had occurred from

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<sup>44</sup> Sven Beckert has demonstrated that in the preceding decades, America’s previously fragmented Northeastern economic elite was beginning to solidify into a cohesive bourgeoisie that defined itself in opposition to workers and those who they saw as the under classes of industrial urban centres. See Beckert, *The Monied Metropolis*, 3–6.

<sup>45</sup> “A Veritable Pest Ship,” *New York Times*, 10 September 1892.

<sup>46</sup> Letter from Albert M. Palmer, printed in “A Complaint from A. M. Palmer,” *New York Tribune*, 9 September 1892.

<sup>47</sup> “Two More Cholera Ships,” *New York Times*, 4 September 1892; Jenkins, “Report of the Health Officer,” 48. The ship’s surgeon noted that the dead had both died from “diarrhoea,” which is the defining symptom of cholera.

<sup>48</sup> Hamlin, 13.

<sup>49</sup> See John C. Peters, “General History of the Disease and the Principal Epidemics up to 1885,” in *A Treatise on Asiatic Cholera*, ed. Edmund C. Wendt (New York: William Wood and Company, 1885), 3; and Nottidge Charles MacNamara, *A Treatise on Asiatic Cholera* (London: John Churchill and Sons, 1870), 2, for examples of how the medical profession reproduced the nomenclature of *Asiatic cholera*.

cholera, coupled with their quick acceptance that the deaths in steerage were from cholera, indicated the pervasiveness of the belief that cholera was a disease of the foreign.<sup>50</sup>

Insisting that staying aboard the *Normannia* put them at risk of contracting cholera, the cabin passengers, headed by Senator McPherson, Palmer, and Godkin, sent missives lobbying Jenkins and New York State Governor Roswell Flower to transfer them to a hotel on nearby Fire Island where they could wait out the 20-day quarantine.<sup>51</sup> Making good use of their contacts in New York high society and the federal government, via letters, the three further lobbied the New York Chamber of Commerce, the Academy of Medicine, and the Treasury Secretary, Charles Foster, to ameliorate their sufferings.<sup>52</sup> Caught off guard by the intensity of cabin passengers' protests as well as the behind-the-scenes pressure they were facing from the Chamber of Commerce, the Academy of Medicine, and the Treasury Secretary, Jenkins, Flower, and others scrambled to appease the cabin passengers while still obeying the letter of the quarantine order.<sup>53</sup> Flower, an ally of Tammany Hall, the Irish-American political machine that dominated New York state and municipal politics, brokered a deal through his Tammany contacts for New York State to purchase a Fire Island hotel for the cabin passengers' quarantine.<sup>54</sup> For his part, Jenkins, chartered a steamer to transfer the passengers.<sup>55</sup> The effort led by McPherson, Palmer, and Godkin had paid off.

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<sup>50</sup> During the epidemic, Jenkins told the press he was "convinced" both deaths occurred due to cholera, but after the epidemic, he claimed there was never any cholera present in the *Normannia's* cabin. Cf. his statements in "The Work at Quarantine," *New York Tribune*, 4 September 1892 with William T. Jenkins, "Quarantine at New York," *North American Review* 155, no. 432 (1892): 588; Jenkins, "Report of the Health Officer," 49.

<sup>51</sup> Jenkins, "Report of the Health Officer," 49–51; the text of one of the cabin passengers' letters is reprinted on Jenkins, "Report of the Health Officer," 49–50.

<sup>52</sup> "The Chamber of Commerce Will Aid," *New York Tribune*, 10 September 1892; "For the Cabin Passengers," *New York Times*, 9 September 1892; "Relief for the Quarantined," editorial, *New York Times*, 9 September 1892.

<sup>53</sup> The lobbying effort played out quietly in private, as well as in public: for example, Jenkins later noted in his report that the chairman of the Chamber of Commerce paid him a visit at his home the night before the passenger transfer to insist that he confer with the Academy of Medicine as well as the *Normannia* committee headed by McPherson, Palmer, and Godkin. See Jenkins, "Report of the Health Officer," 50.

<sup>54</sup> Markel, *Quarantine!* 115.

<sup>55</sup> "Not Yet on Dry Land," *New York Times*, 12 September 1892; Jenkins, "Report of the Health Officer," 50.

But the cabin passengers' woes were not yet over. Outside the city, the residents of the small towns on Long Island a few kilometers across the water from Fire Island, formed a quasi-militia to defend their communities from what they claimed were disease-ridden outsiders, insisting that landing passengers from a cholera-infected ship would contaminate the surrounding ocean with cholera germs.<sup>56</sup> On September 12, when the transfer steamer approached Fire Island, the cabin passengers were met by a crowd that reporters estimated to be 400 strong, armed with revolvers and clubs.<sup>57</sup> When the steamer tried to dock, the "mob" threw the steamer's mooring cables off the dock.<sup>58</sup> Jenkins and Governor Flower had to call in the National Guard to land the cabin passengers and transfer them to the hotel.<sup>59</sup>

Stuck aboard the transfer steamer, the furious cabin passengers demanded to be released from the quarantine altogether, insisting that the quarantine should never have been applied to them. Expressing the general sentiment among the cabin passengers, two cabin passengers shouted their demands to a handful of nearby reporters: "As American citizens, in perfect health, with American wives and daughters awaiting us, we demand to be released!"<sup>60</sup> The press took up their call, with the *Times* angrily editorializing that the *Normannia*'s cabin passengers "must some days ago have reached the conclusion that it was the intention of the City and the State of New York to kill them," since "no civilized and human people ever before treated their kind in quite this heartless fashion," accusing Jenkins of dereliction of duty.<sup>61</sup> To the press and the cabin passengers, the well-to-do Americans in cabin class should never have had to suffer a kind of treatment that should

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<sup>56</sup> "Excitement on Fire Island," *New York Times*, 12 September 1892.

<sup>57</sup> "Mob Rule at Fire Island," *New York Tribune*, 13 September 1892; "The Passengers Jeered At," *New York Tribune*, 13 September 1892.

<sup>58</sup> "Stopped by a Brutal Mob," *New York Times*, 13 September 1892.

<sup>59</sup> "They Will Land To-day," *Evening World*, 13 September 1892, last edition.

<sup>60</sup> As quoted in "Stopped by the Courts," *Evening World*, 12 September 1892, last edition.

<sup>61</sup> "The Victims of Quarantine," *New York Times*, editorial, 14 September 1892. See also "Illegal and Inhuman," *New York Tribune*, editorial, 14 September 1892.

only be reserved for those who they saw as foreigners. Their sufferings clearly demonstrated the flaws in the 20-day quarantine order. Lingering under the assumption that the passengers in the cabin were all American citizens while the passengers in steerage were all foreigners, the press and cabin passengers argued that Harrison's requirement that all vessels with immigrants aboard be quarantined unfairly ensnared Americans who shared the same ships as immigrants in the same quarantine.

This was, of course, an assumption easy to disprove. The cabin included a handful of prominent non-Americans, most notably the British singer Lottie Collins, while around 13% of the steerage passengers held American citizenship.<sup>62</sup> But as other scholars who have studied the 1892 epidemic have noted, Americans' deep-rooted image of cholera as a disease of the foreign-born outpaced the facts on the ground, and simply holding American citizenship was not necessarily enough to denote one as *American*.<sup>63</sup> The press and public health corps unquestioningly counted someone like Lottie Collins, who lacked American citizenship but occupied the same elite transatlantic social spheres and shared the same markers of racial, class, and ethnic identity as the well-to-do American citizens in the *Normannia*'s cabin, as part of the same American milieu.<sup>64</sup> In contrast, neither the press nor the public health bureaucrats like Jenkins displayed any concern for the Americans in steerage, or even much awareness of their existence; in official reports, Jenkins used "immigrant" and "steerage" synonymously.<sup>65</sup>

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<sup>62</sup> "Detained at Quarantine," *New York Times*, 4 September 1892; "SS Normannia—List of Passengers," frames 481–506.

<sup>63</sup> See David S. Barnes, "Cargo, 'Infection,' and the Logic of Quarantine in the Nineteenth Century," *Bulletin of the History of Medicine* 88, no. 1 (2014): 100–101; Jackson, 57–8.

<sup>64</sup> Throughout the late nineteenth and early twentieth centuries, Americans widely considered certain classes—most notably non-white Americans—as being racially, ethnically, culturally, and/or economically undesirable and thus unfit to be considered for national membership. See Noah M. Pickus, *True Faith and Allegiance: Immigration and American Civic Nationalism* (Princeton: Princeton University Press, 2009), 2–13; Ngai, *Impossible Subjects*, 11–12.

<sup>65</sup> For example, see the NYC Department of Health's recommendations for future quarantine regulations, contained in Jenkins, "Report of the Health Officer," 68–69, along with Jenkins, "Quarantine at New York," 585–591, both of which use these terms synonymously.

Under criticism from the press and still facing behind-the-scenes political pressure from federal officials and Tammany Hall, Jenkins had a doctor hastily examine the cabin passengers for signs of cholera. Three days later, the doctor cleared all the cabin passengers and Jenkins released them from quarantine.<sup>66</sup> Altogether, the *Normannia*'s cabin passengers were quarantined for 13 days, though that did not stop passengers like Godkin from continuing to complain loudly in the press about their "Month of Quarantine."<sup>67</sup> For Jenkins and Harrison, it was a tacit admittance that they had poorly constructed the 20-day quarantine order. After the *Normannia*, Jenkins and the NYC Department of Health stopped enforcing the order as it was written. Though Jenkins and his corps continued placing arriving ships in quarantine, removing steerage passengers to temporary quarantine camps so that the ships and the passengers' baggage could be disinfected, they allowed cabin passengers on other ships to exit quarantine after just a few days; no cabin passenger on any ship was quarantined for the mandated 20 days.<sup>68</sup>

In the end, it was both the *Normannia*'s cabin passengers' proximity to the policymakers in charge and their well-organized campaign that took the force out of the 20-day quarantine order. They were the crème de la crème of American high society in the urban northeast, who either routinely rubbed shoulders with the nation's governing authorities in America's corridors of power, or were, in fact, those authorities (as was Senator McPherson's case). Their concerted, well-organized effort to persuade key figures and institutions that they needed to be freed from quarantine not only released them from quarantine early, but also led to the downfall of Harrison's quarantine order.

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<sup>66</sup> Jenkins, "Report of the Health Officer," 51.

<sup>67</sup> E. L. Godkin, "A Month of Quarantine," *North American Review* 155, no. 433 (1892): 737–743.

<sup>68</sup> Jenkins, "Report of the Health Officer," 56.

## 1. II. RESISTANCE: PLAGUE

*San Francisco, March 1900 to June 1900*

A few years later during a plague epidemic in San Francisco, the city's public health officials would face steeper resistance than had those in NYC. This time, resistance came from not just one, but two main quarters: San Francisco's Chinese community, along with a loose coalition informally led by California Governor Henry Gage that included politicians, the press, and the city's mercantile class. Together, both camps played a starring role in influencing San Francisco and federal public health officials to back down from their initial anti-epidemic measures.

As in NYC, thousands of immigrants passed through San Francisco during the latter half of the nineteenth century. But unlike NYC, most of the immigrants who entered San Francisco came from Asia—and China, in particular—rather than Europe.<sup>69</sup> California's Chinese population was accustomed to being at odds with the state's political and commercial elites.<sup>70</sup> California's white political establishment generally considered Chinese migrants a menace to the state, had been among the earliest and most vociferous supporters of the 1882 Chinese Exclusion Act, and frequently enacted legislation aimed at pushing the Chinese out of white society.<sup>71</sup> As San Francisco mayor James Phelan claimed in an article written shortly after the initial outbreak, “the non-assimilative character of the Chinese and their undesirability as citizens” meant they needed to be removed from society by whatever means necessary.<sup>72</sup> But the discovery of plague had the temporary effect of placing the usually opposed camps on the same side; both battled the city's Board

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<sup>69</sup> Robert Barde, *Immigration at the Golden Gate: Passenger Ships, Exclusion, and Angel Island* (Westport, CT: Praeger, 2008), 10–11; Hsu, 29–31.

<sup>70</sup> Richard White, “*It's Your Misfortune and None of My Own.*” *A History of the American West* (Norman: University of Oklahoma Press, 1991), 320–322, 354–355.

<sup>71</sup> Immigration scholarship examining the pathway towards Chinese and later, Asian Exclusion have highlighted the central role that California politicians played in pushing for federal exclusion on Asian immigrants, along with other local and state ordinances aimed at driving Chinese migrants out of the region. See, for example, Sucheng Chan, *Asian Americans*, 45–52; Lee, *At America's Gates*, 32–36; Hsu, 59.

<sup>72</sup> James D. Phelan, “Why the Chinese Should Be Excluded,” *North American Review* 173, no. 540 (Nov. 1901): 663.

of Health and Joseph Kinyoun, the Federal Quarantine Officer stationed in San Francisco who worked under the Marine Hospital Service (MHS), the chief federal agency regulating public health. The combined force of these two camps of resisters forced Kinyoun and the Board to refrain from enacting racially targeted measures. Though the plague epidemic temporarily united both factions, their motivations and the shape of their resistance diverged. San Francisco's political establishment challenged the city's public health corps by denying the existence of plague, while Chinese San Franciscans challenged Kinyoun's racially targeted measures via the courts.

For both groups of resisters, the inciting incident that was the city Board of Health's cordon of Chinatown. After the bacteriologist who first discovered the plague bacilli within Wong Chut King's dead body raised the alarm to his superiors in the city Board on March 6, 1900, Kinyoun, working in tandem with the city Board, cordoned off Chinatown the next day.<sup>73</sup> He confined all Asians living within Chinatown to their residences and sent police to escort white San Franciscans out of Chinatown, hoping to ensure that the cordon would only apply to Asians.<sup>74</sup> As the city Board would later recount, "this action called forth a storm of protestation on the part of sundry newspapers, which declared that the entire proceeding was a political one."<sup>75</sup> The press found the bacteriologist's diagnosis and the motives behind it particularly suspicious. Local physicians testified in the papers against the diagnosis; in one notice that exemplified the outrage, E. S. Pillsbury, a bacteriology professor at the College of Physicians and Surgeons, insisted that "a careful post-mortem examination of the Chinaman by a COMPETENT man would have shown more than the foolish bacteriological tests," insisting that Wong Chut King had been known within Chinatown to have been sick for an extended period of time likely from "several bacilli closely resembling...

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<sup>73</sup> For a succinct chronicle of the first few days of the epidemic and the Board's initial response, see Risse, 113–116.

<sup>74</sup> "Plague Fake Part of Plot to Plunder," *San Francisco Call*, 8 March 1900; Williamson, "Report of the Board of Health," *Biennial Report*, 12–13.

<sup>75</sup> Williamson, "Report of the Board of Health," *Biennial Report*, 12–13.

bubonic plague.”<sup>76</sup> He further denigrated the cordon as a “claptrap political scheme from beginning to end,” run by power-mad bureaucrats ignorant of the actual science.<sup>77</sup> The press amplified these charges, with the *San Francisco Chronicle* claiming the plague diagnosis was based on “Nothing But a Suspicion.”<sup>78</sup> The Board and Kinyoun were political appointees, and the papers insisted that they had instituted the cordon on a spurious diagnosis so that they could redirect city funds to their own enterprises and accrue political capital for themselves, with the *San Francisco Call* alleging that there was “no bubonic plague in San Francisco” but a “plague of politics.”<sup>79</sup>

Even Governor Henry Gage joined the attacks, claiming that “a fearful shadow was cast upon our State through the recklessness of certain city officials of San Francisco, assisted by a Federal officer, one Doctor Kinyoun.”<sup>80</sup> In addition to statements he made publicly to the press, throughout the spring and summer of 1900 Gage promoted these denials to his allies in the federal government.<sup>81</sup> In response to an inquiry over whether or not a plague epidemic was raging throughout San Francisco from the Secretary of State, John Hay, Gage assembled physicians associated with the state Board of Health, which was mostly run by political appointees appointed by Gage himself, to attest that they had found no evidence of plague in San Francisco, contrary to Kinyoun’s city-affiliated physicians and bacteriologists.<sup>82</sup> Gage appended their testimony in a telegram to Hay, and Hay accepted Gage’s characterization of the situation.<sup>83</sup>

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<sup>76</sup> E. S. Pillsbury, “Physician Deplores Ridiculous Tactics,” *San Francisco Call*, 12 March 1900.

<sup>77</sup> Pillsbury, “Physician Deplores Ridiculous Tactics.”

<sup>78</sup> “Nothing But a Suspicion,” *San Francisco Chronicle*, 8 March 1900.

<sup>79</sup> “Plague Fake Part of Plot to Plunder,” *San Francisco Call*, 8 March 1900.

<sup>80</sup> Gage, “Biennial Message,” California Legislature, *Journal of the Assembly*, 34th sess., 22.

<sup>81</sup> Mark M. Skubnik, “Public Health Politics and the San Francisco Plague Epidemic of 1900–1904,” PhD Diss., (San Jose State University, 2002), 73–78.

<sup>82</sup> Telegram, John Hay to Henry Gage, 31 May 1900, reprinted in “Appendix,” California State Board of Health, *Report of the Special Health Commissioners Appointed by the Governor to Confer with the Federal Authorities at Washington Respecting the Alleged Existence of Bubonic Plague in California* (Sacramento: A. J. Johnston, Superintendent State Printing, 1901), 15; Telegram, Henry Gage to John Hay, 13 June 1900, reprinted in “Appendix,” *Report of the Special Health Commissioners*, 15–17.

<sup>83</sup> Telegram, Henry Gage to John Hay, 13 June 1900, reprinted in “Appendix,” *Report of the Special Health Commissioners*, 15–17; McClain, 501.

The ulterior motives underlying their plague denial campaign were evident. The “fearful shadow” Gage described was the economic harm that the denialists feared would befall California via measures intended to stop the spread of plague. For California’s merchants, Chinatown was commercially indivisible from their interests. Throughout the epidemic, California’s merchants were some of the loudest voices lobbying Kinyoun and the Board to refrain from implementing any measure, such as the cordon, that would target the city’s Chinese community.<sup>84</sup> At the time, it was common knowledge that many of California’s industries depended upon cheap Asian labour to function. As an executive of the Southern Pacific railroad company admitted, “the fruits are being handled by the Asiatics in the field, and hundreds more are employed in the canning industry.”<sup>85</sup> Consequently, he explained, if the state was to publicly acknowledge that plague had gained a foothold in San Francisco, “a declaration of that sort will paralyze the industries of this State” since “the taint of contagion will be upon every orchard product.”<sup>86</sup> Beyond the state’s industries, it was impossible to quarantine Chinese San Franciscans without affecting white San Franciscans, which would naturally anger the white San Franciscans who made up the majority of the city’s population.<sup>87</sup> One physician testifying to the State Board of Health explained that “he could not see how a quarantine could be placed on the Asiatics outside the city without including the white

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<sup>84</sup> “Merchants Appeal to the State Board of Health Not to Injure California by Unwarranted Action,” *San Francisco Call*, 29 May 1900.

<sup>85</sup> Statement of William Sproule, “Quarantine by the State Board,” *San Francisco Call*, 29 May 1900. See also Ronald Takaki, *Strangers from a Different Shore: A History of Asian Americans* (New York: Penguin Books, 1989), 90–91; as Takaki notes, by the 1880s and 1890s, even after the Exclusion Act, in California’s northern counties, agricultural labour represented the backbone of the state’s agricultural labour force. For example, in 1880, two years before the Exclusion Act was passed, the percentage of farm workers of Chinese descent reached as high as 86% in Sacramento County.

<sup>86</sup> Statement of William Sproule, “Quarantine by the State Board,” *San Francisco Call*, 29 May 1900.

<sup>87</sup> Takaki, *Strangers from a Different Shore*, 92–93; certain urban industries in California, most notably the laundry business, had also become reliant upon Chinese labour to function.

population,” since “we come in contact with them... on the streets and cars; they wash our clothes; they are in the houses as servants.”<sup>88</sup>

Facing such virulent criticism, the city Board scrambled to further investigate Chinatown, but their inspectors failed to find any further evidence of plague. Kinyoun and the Board ended the cordon after five days since they had “failed to discover any living cases of disease which would warrant the continuance of the embargo.”<sup>89</sup> The city Board inspectors found three more cases in late March and another in April, all among dead Chinese men, but took no further action until May, when they discovered a cluster of five cases among Chinese residents of Chinatown.<sup>90</sup> In response, on May 21, acting on the orders of Surgeon General Walter Wyman, the nation’s chief public health official, Kinyoun directed transportation companies to “refuse transportation to Asiatics” and “instruct[ed] border inspectors to inspect trains and prevent Asiatics leaving State,” unless they could prove they had been vaccinated against the plague via a certificate issued by the city Board of Health.<sup>91</sup> As Kinyoun saw it, the measure would ensure “no Chinese or Japanese” could “pass the borders of California unless absolutely free from the contagion of plague.”<sup>92</sup>

While the initial cordon in March had hurt the interests of the white San Franciscans who regularly conducted business in Chinatown and the state’s industries, the cordon and vaccination mandate put the livelihoods of the affected Chinese directly at risk. California’s Chinese population was mostly comprised of migrants who worked in low-paying, frequently precarious employment; confining them to their residences in Chinatown for an indefinite period would mean

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<sup>88</sup> Statement of Dr. Lane, “Quarantine by the State Board,” *San Francisco Call*, 29 May 1900.

<sup>89</sup> Williamson, “Report of the Board of Health,” *Biennial Report*, 13.

<sup>90</sup> Flexner, Novy, and Barker, *Report of the Commission for the Investigation of the Plague in San Francisco*, 23.

<sup>91</sup> Telegram, Walter Wyman to Joseph Kinyoun, 21 May 1900, reprinted in “Plague in San Francisco,” *Public Health Reports* 15, no. 21 (1900): 1260.

<sup>92</sup> Letter from Joseph J. Kinyoun to Preston Bailhache, 9 August 1900, 8, in Joseph J. Kinyoun Papers 1899–1939, National Library of Medicine, Bethesda, MD.

economic devastation for many.<sup>93</sup> For them, the stakes were much higher than for the white denials among the city's mercantile and political classes, and their opposition to the vaccination mandate and the Board's other measures took on a sharper urgency.

The Chinese challenge came most prominently in the form of two court challenges litigated in the Ninth Circuit Court of Appeals, the first of which will be covered in this subsection; both took on Kinyoun and the Board's choice to single out the Chinese by name in their campaign against the plague. In this period, Chinese plaintiffs in California frequently used the judiciary to challenge the enforcement of the Chinese Exclusion Acts along with other explicitly racially discriminatory state legislation, and often succeeded in court.<sup>94</sup> In her study of cases where Chinese plaintiffs challenged immigration officials seeking to deny them entry under the Chinese Exclusion Acts, historian Lucy Salyer demonstrated that federal judges frequently sided with individual Chinese litigants challenging the enforcement of Chinese Exclusion and other federal immigration laws.<sup>95</sup> She argued that between approximately 1890 to 1905, federal judges frequently did not accept that the government had adequately demonstrated it had the authority to deny Chinese

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<sup>93</sup> Risse, 119.

<sup>94</sup> At the turn of the century, America had no central system of immigration enforcement, and enforcement efforts were accordingly patchy. This haphazard system accorded Chinese immigrants opportunities to press their challenges both legally and extralegally. See McKeown, 218–224; Salyer, xv; McClain, 481–482; Lee, *At America's Gates*, 58.

<sup>95</sup> Lucy Salyer shows that this trend held until around 1905, when federal policymakers began to shift jurisdiction over immigration cases into the hands of the Bureau of Immigration and away from the court system and the states. This shift limited the ability of Chinese plaintiffs to have their cases reviewed, as the courts were supposed to defer heavily to the federal government in immigration matters. The plenary power doctrine, though formally introduced in *Chae Chan Ping v. United States* in 1889, was not consistently applied until after 1905. Additionally, in *United States v. Ju Toy* (1905), the Supreme Court ruled that it and other federal courts no longer had the right to review immigration cases, which prevented Chinese plaintiffs from continuing to press their challenges in the federal court system. See Salyer, 69–116 for an overview of *Ju Toy* and this process.

immigrants entry when the plaintiffs submitted evidence making a case as to why they should be allowed through one of the Exclusion Act's exemptions.<sup>96</sup>

I situate the court cases brought against the Board of Health by Chinese plaintiffs affected by the vaccination mandate and the cordon within the trend identified by Salyer, Adam McKeown, Charles McClain, and other historians of immigration law. With the help of a prominent San Francisco law firm, the Chinese Six Companies spearheaded the first court case on behalf of a Chinese merchant subjected to the vaccination order: *Wong Wai v. Williamson*.<sup>97</sup> The case challenged the Board's May 21 order on the grounds that the order was a "wrongful and oppressive interference with their personal liberty and their right to the pursuit of their lawful business."<sup>98</sup> Judge William Morrow issued an injunction on May 28 enjoining the Board and Kinyoun on May 28 from implementing the order, upholding the plaintiffs' characterization of the order as "oppressive."<sup>99</sup> He found that Kinyoun and the Board had violated the Equal Protection Clause of the Fourteenth Amendment since the mandate and travel restrictions were "directed against the Asiatic race exclusively, and by name," saving some of his harshest criticisms for what he saw as the "the discriminating character of the regulations."<sup>100</sup>

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<sup>96</sup> Salyer argued that "While sharing their contemporaries' negative, stereotypical views of Chinese, the federal judges were also constrained by their perception of their institutional obligations. In the immigration cases, the federal judges often felt bound by the rules and norms of the court that called for hearing and weighing the evidence in individual cases according to standard judicial practice, without regard to the fact that the litigants were Chinese." Though Chinese plaintiffs often submitted fraudulent evidence, the judges frequently had no way of proving that their evidence was faulty, and let the challenges go through. See Salyer, xvi.

<sup>97</sup> See McClain, 475. The Chinese Six Companies was the largest Chinese mutual aid organization that advocated for America's Chinese population.

<sup>98</sup> *Wong Wai v. Williamson*, 103 F. 1, 3 (9th Cir. 1900).

<sup>99</sup> *Wong Wai v. Williamson*, 103 F. 1, 3 (9th Cir. 1900).

<sup>100</sup> *Wong Wai v. Williamson*, 103 F. 1, 9 (9th Cir. 1900). Passed shortly after the Civil War, the Fourteenth Amendment states in part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The phrase "equal protection of the laws," though heavily contested in this period, was frequently invoked by courts striking down regulations that were explicitly directed against Chinese people. See U.S. Constitution, amend. 14, sec. 1.; McClain, 481–482.

Kinyoun's order derived its authority from a federal 1890 statute authorizing federal officials to enact anti-plague regulations whenever the president determined there was a plague epidemic occurring within the US, but Morrow ruled that "it does not appear that the president has found that the plague exists in San Francisco or in California."<sup>101</sup> Despite Wyman requesting that President McKinley declare that plague had made its way to San Francisco, McKinley never issued any such declaration after being convinced in part by Gage's telegram to Secretary of State John Hay, which meant that Kinyoun did not have the requisite authority to act under the 1890 statute.<sup>102</sup> Morrow's injunction thus turned in part on the plague denial campaign.

As the Ninth Circuit had previously struck down other local regulations aimed at the Chinese for violating the Equal Protection Clause, the injunction followed the court's previously established trendline in siding with the Chinese in cases that directly named them.<sup>103</sup> What was new was the convergence of the plague denial campaign, promoted by the state's elites, with the Chinese-led judicial challenge. Since the injunction doubly ruled against Kinyoun and the city Board on the grounds that they lacked the regulatory authority to act, and for violating the constitution via obvious racial discrimination, the injunction left Kinyoun and Wyman scrambling to find an alternate course of action.<sup>104</sup>

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<sup>101</sup> *Wong Wai v. Williamson*, 103 F. 1, 8 (9th Cir. 1900); An Act to Prevent the Introduction of Contagious Diseases from One State to Another and for the Punishment of Certain Offenses, Pub. L. No. 51–51, 26 *Stat* 31–32 (27 March 1890).

<sup>102</sup> Telegram, Walter Wyman to Lyman Gage, 21 May 1900, printed in "Plague in San Francisco (continued)," *Public Health Reports* 15, no. 22 (June 1900): 1331; McClain, 506.

<sup>103</sup> See, for example, *Ho Ah Kow v. Nunan*, 12 F. 252 (C.C.D. Cal. 1879), which struck down a regulation requiring all prisoners in San Francisco jails to have their hair sheared, which was targeted towards Chinese men; *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), which struck down an ordinance aimed at Chinese laundromats that banned laundries in wooden buildings unless granted a special permit; and *In re Lee Sing*, 43 F. 359 (9th Cir. 1890), which struck down a regulation banning Chinese people from residing in or carrying out business within the city limits.

<sup>104</sup> See the series of 28 May 1900 telegrams between Joseph Kinyoun and Walter Wyman, reprinted in "Plague in San Francisco (Continued)," 1337–1338.

### 1. III. RESISTANCE: TYPHOID FEVER

*New York City, 1905 to 1910*

The next resister that forced public health officials into retreat is a figure who achieved far more notoriety than any other resister examined by this thesis, and whose name is still widely known to Americans today: Typhoid Mary. The woman who became known as Typhoid Mary was Mary Mallon, the first asymptomatic carrier of typhoid fever discovered by public health officials within the continental US, and whose refusals to adhere to the measures the NYC Department of Health adopted to try to stop her from spreading typhoid fever made her infamous. Her run-ins with public health demonstrate how post-1905, the underlying mechanisms of public health were beginning to shift in a direction that limited individuals' ability to challenge public health officials. Her protests frustrated the public health officials assigned to her case and required them to clarify their sources of authority and amend their strategy for dealing with her. Unlike in the previous two case studies, however, the expansion of public health authority that occurred post-1905 meant that her resistance had a more limited impact upon public health officials' measures.

Mary Mallon was an ordinary person made extraordinary not just because she was a medical novelty, but through her singular determination to give no quarter to the health investigators who dealt with her. Mallon was born in Ireland in 1869 and immigrated to NYC as a teenager where she found employment as a cook working mostly in wealthy households.<sup>105</sup> She appears in the historical record almost wholly through the accounts of the health investigators who encountered her. In the eyes of George Soper, the NYC Department of Health sanitary investigator who first discovered her, Mallon was a figure without equal, set apart from the other typhoid carriers

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<sup>105</sup> For a comprehensive biography of Mary Mallon's life and her encounters with public health authorities, see Judith Walzer Leavitt, *Typhoid Mary: Captive to the Public's Health* (Boston: Beacon Press, 1996), 14–38. Leavitt's account of Mallon, published in 1996, provides an extensive account of Mallon's life and isolation, and scholars consider it to be the definitive treatment of Mallon.

he came across by the extremity of her resistance, which he saw as singularly unfeminine, and thus more aberrant. He claimed that “those who knew her best in the long years of her custody said Mary walked more like a man than a woman and that her mind had a distinctly masculine character,” since she was “an unusually intelligent woman.”<sup>106</sup>

Mallon first came to Soper’s attention through a typhoid fever outbreak among the family and servants of a wealthy NYC banker renting a house at Oyster Bay on Long Island for the summer of 1906.<sup>107</sup> Typhoid fever routinely plagued American cities in the early twentieth century, and this particular outbreak initially seemed to be nothing out of the ordinary, even though the house’s inhabitants could not determine the source of the outbreak.<sup>108</sup> To investigate, the house’s owner hired Soper, who was at the time a sanitary engineer with the NYC Department of Health. Soper’s suspicions fell upon the family’s cook, “an Irish woman about 40 years of age, tall, heavy, single,” who “seemed to be in perfect health,” whom the family had employed starting three weeks before the family’s first case of typhoid appeared.<sup>109</sup> Soper reconstructed her employment history and discovered that the cook’s previous places of employment had frequently experienced typhoid outbreaks shortly after she started working there.<sup>110</sup> The pattern was undeniably suspicious.

From the very beginning, Mallon challenged what she saw as the unfair suspicion with which the Department treated her. Soper first tracked her down in 1907 and insisted that she submit to a bacteriological examination, demanding “specimens of her urine, feces and blood.”<sup>111</sup> In

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<sup>106</sup> George A. Soper, “The Curious Career of Typhoid Mary,” *Bulletin of the New York Academy of Medicine* 15, no. 10 (Oct. 1939): 698; George A. Soper “Typhoid Mary,” *Military Surgeon* 45, no. 1 (Jul. 1919): 12.

<sup>107</sup> George A. Soper, “The Work of a Chronic Typhoid Germ Distributor,” *Journal of the American Medical Association* 48, no. 24 (15 June 1907): 2019–2021.

<sup>108</sup> L. L. Lumsden, “What the Local Health Officer Can Do in the Prevention of Typhoid Fever,” *Public Health Reports* 25, no. 5 (Feb. 1910): 111.

<sup>109</sup> Kraut, 98; Soper, “The Work of a Chronic Typhoid Germ Distributor,” 2021.

<sup>110</sup> Soper, “The Work of a Chronic Typhoid Germ Distributor,” 2019–2021; George A. Soper, “The Discovery of Typhoid Mary,” *British Medical Journal* 1 (7 January 1939): 37–38.

<sup>111</sup> Soper, “The Curious Career of Typhoid Mary,” 704.

response, Mallon “seized a carving fork and advanced in [Soper’s] direction.”<sup>112</sup> For this, Soper decided that “it was impossible to deal with her in a reasonable and peaceful way,” and that he had sufficient evidence proving that Mallon was “a competent cause of typhoid and a menace to public health.”<sup>113</sup> At his direction, policemen showed up midday at the Manhattan house where Mallon worked on March 11, 1907, and dragged her into a waiting ambulance “after a severe struggle in which she showed remarkable bodily strength and agility.”<sup>114</sup> The Department formally took her into custody on March 19 under the justification that Mallon posed a continual health threat to those around her, and took her urine and stool samples, the latter of which tested positive for the typhoid bacillus.<sup>115</sup>

The bacteriological tests were clear. The cook was, as Soper termed her, “a chronic typhoid germ distributor.”<sup>116</sup> Modern science would later characterize her as an asymptomatic carrier of typhoid who could transmit the bacteria to those around her without ever displaying symptoms of the disease.<sup>117</sup> Soper published his finding that Mallon was a carrier of the typhoid bacillus who displayed no symptoms of the disease in a November 1907 article for the *Journal of the American Medical Association*, announcing his discovery of a heretofore unknown phenomenon in the annals of disease transmission for all the medical world to see.<sup>118</sup>

During Mallon’s detention, her refusal to cooperate meant she found no allies among the physicians and attendants responsible for her daily care in quarantine. She resisted in whatever small way she could. When Soper attempted to explain to her the importance of washing her hands

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<sup>112</sup> Soper, “The Curious Career,” 704.

<sup>113</sup> Soper, “The Curious Career,” 705.

<sup>114</sup> Soper, “The Work of a Chronic Typhoid Germ Distributor,” 2022.

<sup>115</sup> Soper, “The Work of a Chronic Typhoid Germ Distributor,” 2021–2022.

<sup>116</sup> Soper, “The Work of a Chronic Typhoid Germ Distributor,” 2022.

<sup>117</sup> Janet Brooks, “The Sad and Tragic Life of Typhoid Mary,” *Canadian Medical Association Journal* 154 no. 6 (1996): 915.

<sup>118</sup> See Soper, “The Work of a Chronic Typhoid Germ Distributor,” 2019–2022.

after using the bathroom to avoid contaminating the food she cooked, she sat, stonily, in silence, without acknowledging him.<sup>119</sup> She refused to consent to examinations; the Department had to examine her involuntarily, and she never accepted the Department's charge that she was a healthy carrier of typhoid.<sup>120</sup> As she wrote later in a letter to a friend, "[sic] Im a little afraid of the people + I have a good right—for when I came to the Department the said they [the typhoid bacilli] were in my track later another said they were in the muscels of my bowels... I have been in fact a peep show for Evrey body [sic]."<sup>121</sup>

Mallon's most prominent act of resistance came in the form of the case that she brought against the Department in 1909, suing for her release under *habeas corpus* proceedings.<sup>122</sup> The Department of Health had the jurisdiction to quarantine infected individuals to prevent them from spreading illness until no longer contagious, and it was this authority under which the Department claimed the ability to quarantine Mallon; throughout the late nineteenth century, local and municipal health boards possessed the primary authority for issuing and maintaining quarantines.<sup>123</sup> But in 1909, bacteriological advances meant that it was an open question of whether the science had outpaced the letter of the law. The novel discovery of asymptomatic carriers made the question of what the Department was legally allowed to do in cases like Mallon's murky. Did the Department have the authority to quarantine indefinitely carriers who were asymptomatic but whose ability to transmit the bacilli had no clear end date?

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<sup>119</sup> Soper, "The Curious Career," 706–708.

<sup>120</sup> Soper, "Typhoid Mary," 9.

<sup>121</sup> Mary Mallon, private correspondence, file WR-M 258, "In the Matter of the Application for a Writ of Habeas Corpus for the Production of Mary Mallon" (1909), reprinted in Priscilla Wald, "Cultures and Carriers: 'Typhoid Mary' and the Science of Social Control," *Social Text* 52 (1997): 194.

<sup>122</sup> *Habeas corpus* proceedings are a standard legal procedure under which detained individuals can sue for their release and have their continued detention evaluated by a court. See also, Judith Walzer Leavitt, "'Typhoid Mary' Strikes Back: Bacteriological Theory and Practice in Early Twentieth Century Public Health," *Isis* 83, no. 4 (1992): 619.

<sup>123</sup> Leavitt, *Typhoid Mary*, 79–80; Duffy, 4.

The judge adjudicating Mallon's case thought so and dismissed her *habeas corpus* proceeding, holding that the Department had the authority to quarantine Mallon since she was a public health threat.<sup>124</sup> His decision was backgrounded by one of the most significant developments for the exercise of public health measures: the landmark February 1905 Supreme Court decision, *Jacobson v. Massachusetts*, which established the constitutionality of vaccine mandates.<sup>125</sup> In a broader sense, however, *Jacobson* marked the first time in history that the Court affirmed that regulations placing limits on individual liberty to preserve the health of a community were constitutional.<sup>126</sup> The case centered on a regulation instituted during a smallpox outbreak by the Cambridge, Massachusetts Board of Health, which required all adults to be vaccinated against smallpox. In the opinion of the majority written by Justice John Harlan, "...the liberty secured by the Constitution of the United States... does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint."<sup>127</sup> As he explained it, "there are manifold restraints to which every person is necessarily subject to for the common good... Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own [law]... regardless of the injury that may be done to others."<sup>128</sup> *Jacobson* heralded the direction in which public health was moving throughout this period, as every branch and level of the government became increasingly willing to allow public health officials to restrict individual freedoms when justified within the framework of public health, and it underscored Mallon's rejected *habeas corpus* petition.<sup>129</sup>

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<sup>124</sup> Soper, "Typhoid Mary," 10–11; Leavitt, 74–79.

<sup>125</sup> *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

<sup>126</sup> For this, the legal scholar John Fabian Witt has termed *Jacobson* "one of the most expansive authorizations of the state's coercive force in American history." See Witt, *American Contagions*, 58.

<sup>127</sup> *Jacobson v. Massachusetts*, 197 U.S. 26 (1905).

<sup>128</sup> *Jacobson v. Massachusetts*, 197 U.S. 26 (1905).

<sup>129</sup> For an extended discussion of how the concepts of individual liberty vs. the common good upheld in *Jacobson* influenced the legal counsel involved in Mallon's case, see Leavitt, *Typhoid Mary*, 77–79.

Even after *Jacobson*, it was far from a settled question whether the Department could further detain Mallon. Certain individuals involved with the case cast doubt upon the ruling. Soper, admittedly no legal expert, thought in a 1939 retrospective that “a strong argument was made on Mary’s behalf,” specifically the argument that “she had been imprisoned without due process of law.”<sup>130</sup> There is also evidence that the Department’s own corps quietly thought throughout the 1910s that the Department’s case rested on shaky legal footing. In 1921, the Department’s legal counsel developed a new set of regulations specifically laying out guidelines for the “control of typhoid fever carriers,” since “heretofore the Department attempted to exercise such control from time to time without any well formulated policy and **without legal sanction.**”<sup>131</sup>

Though the court rejected Mallon’s challenge, it was not wholly in vain. By the time of her court proceedings, the Department had held Mallon in quarantine for around two years, and despite her belligerence, Soper indicated in his retrospective reports that there were at least some members of the Department and the city’s medical establishment who had become more sympathetic towards her cause around the time of her court challenge.<sup>132</sup> In part due to the murky legal issues her case had shone light on, “there was a good deal of sympathy,” as Soper put it, for her among the Department’s administrative higher-ups.<sup>133</sup> In 1910, the Department appointed Ernest J. Lederle, who was personally sympathetic to Mallon’s plight, as Health Commissioner; he ordered her release soon after assuming the position.<sup>134</sup>

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<sup>130</sup> Soper, “The Curious Career,” 708.

<sup>131</sup> New York City Board of Health, *Annual Report of the Department of Health of the City of New York for the Calendar Year 1921* (New York City: Stillman Appellate Printing Co., 1922), 52. Emphasis mine.

<sup>132</sup> See, as well, W. P. Mason, “Typhoid Mary,” *Science* 30, no. 760 (23 July 1909): 117–118. Mason was a professor at the Rensselaer Polytechnic Institute, and he argued in an article published while Mallon’s court case was making headlines that it was “scarcely justice” for the Department to keep Mallon in an indefinite quarantine.

<sup>133</sup> Soper, “Typhoid Mary,” 11.

<sup>134</sup> Wald, 200.

The Department released Mallon after nearly three years of quarantine on the condition that she refrain from handling the food of others, adhere to basic standards for her personal hygiene through rigorous handwashing and routine bathing, and report periodically to the Department.<sup>135</sup> But contrary to her pledge, Mallon disappeared. She stopped reporting to the Department and stopped using the name of Mary Mallon.<sup>136</sup> With the pledge they had extracted from her in tatters, the Department lost sight of her.

Her methods of resistance, through her refusals to cooperate, the *habeas corpus* proceedings she brought, and her choice to go on the lam exposed the weaknesses in the Department's methods of dealing with her. Struggling to keep its policies apace with the novel bacteriological discovery that Mallon represented, the Department was left embarrassed once she slipped her parole conditions. More concerning for the Department was the fatal flaw she had exposed in their choice to let her go: her parole had mostly rested on whether or not Mallon would cooperate with the terms of her parole, and she had a proven track record of refusing to cooperate.

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<sup>135</sup> Soper, "The Curious Career," 708–709.

<sup>136</sup> Soper, "Typhoid Mary," 11; Soper, "The Curious Career," 709.

## CHAPTER TWO — CONTROL

The public health officials whose anti-epidemic policies and measures were limited by the acts of resistance described in Chapter One tried various methods of reasserting their authority and of ensuring that Americans would abide by their measures. Their tactics met with varying degrees of success. In the early years of the Progressive Era, resisters who challenged public health interventions were able to pressure public health officials into backtracking from enacting broad-based anti-epidemic measures. As the Progressive Era went on, however, public health officials developed new methods of ensuring that individual Americans would abide by these measures, especially as their constitutional and backing authority expanded through new legislation and cases like *Jacobson*.

### 2. I. CONTROL: CHOLERA

*New York City, September 1892 to November 1892*

Debates over the extent to which public health officials and policymakers should apply their anti-epidemic measures towards immigrants, rather than the entire population, featured prominently during the 1892 cholera epidemic in NYC. The 20-day quarantine order requiring all vessels from foreign ports carrying immigrants, in which the *Normannia*'s cabin passengers were so incensed to find themselves subjected to, originated in the political controversies over immigration playing out between public health officials, politicians, and the press. Late nineteenth-century germ science and the fledgling federal bureaucracy of public health became bogged down in petty politics, as President Benjamin Harrison attempted to reassert federal authority over the management of the cholera after the *Normannia* debacle. His efforts were ultimately doomed by the

perception among the press and other politicians that he was attempting to reinstitute a measure already proven to be fatally flawed, in order to bolster his own personal and electoral capital.

To understand Harrison's aborted attempt to reassert his authority, we must first turn back to a few days before the *Normannia* controversy erupted. After cholera reached Hamburg, one of the ports immigrants destined for NYC most frequently sailed out of, NYC Health Officer William Jenkins instituted a pre-emptive three-to-five-day quarantine order for "all vessels from cholera-infected ports" entering New York Harbour towards the end of August.<sup>137</sup> Five days later, before the *Normannia* had reached NYC, a small liner, the *Moravia*, sailed out of cholera-stricken Hamburg and into NYC's harbour. As a steerage liner, most of her passengers were immigrants.<sup>138</sup> 22 passengers were already dead from cholera, and two more active cases were still aboard. To the press, the *Moravia* cases validated Americans' suspicions that immigrants represented the most likely avenue through which cholera would enter the nation. The *New York Tribune* screamed that the *Moravia* was a "PLAGUE SHIP" carrying "the dread scourge" to threaten America with "death and pestilence."<sup>139</sup> The *Evening World* warned that the "immigrant ship[s]" already underway from Europe were undoubtedly infested with even more cholera.<sup>140</sup> Going a step further that the *World*, the *New York Times* launched a broadside against immigrants, insisting that the *Moravia* cases proved that incoming migrants were likely to be carrying cholera since unlike Americans, immigrants were "dirty" because of their "abject ignorance" of modern sanitation.<sup>141</sup>

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<sup>137</sup> Jenkins, "Report of the Health Officer," 41–44.

<sup>138</sup> Steerage was the lowest, cheapest tier of liner ticket, as steerage passengers were housed in dormitory style accommodations rather than in cabins. As such, steerage was the class of choice for most immigrants sailing on transatlantic liners.

<sup>139</sup> "Cholera at the Gate," *New York Tribune*, 1 September 1892.

<sup>140</sup> "Cholera is Here!" *Evening World*, 31 August 1892, last edition.

<sup>141</sup> "The Only Safe Course," *New York Times*, editorial, 1 September 1892; "The Cholera," *New York Times*, editorial, 4 September 1892.

Amid the press rhetoric, Harrison saw a political opportunity. One day after the *Moravia*'s arrival, he issued his circular instituting a 20-day quarantine for all vessels carrying immigrants that entered any American port, under the justification that such vessels were "a direct menace to the public health."<sup>142</sup> The order went much further than Jenkins's as it applied nationwide, rather than just to vessels entering NYC, and affected vessels from all foreign ports, not just ports afflicted with cholera. Harrison and contemporary observers all understood it to be not just a quarantine order, but to be a nationwide halt to immigration, as Harrison, a Republican, was up for reelection in three months' time, and he did not want to be accused by the press of letting diseased migrants run amok.<sup>143</sup> For steamship lines, the expense of letting their ships idle in quarantine, with their goods undelivered and contracts unfulfilled, would outweigh the profits they would make from continuing to carry immigrants across the oceans.<sup>144</sup> Harrison's gambit initially appeared to pay off. NYC's press corps, from the sensationalist tabloid *New York World*, to the Republican *New York Tribune*, to the staidly centrist *New York Times*, praised Harrison's leadership.<sup>145</sup> Beyond the press, Tammany Hall, the Irish-American political machine, heartily endorsed the 20-day order, and NYC's public health corps began forcing incoming ships to anchor in the harbour while waiting out the 20-day quarantine.<sup>146</sup>

From the perspective of Harrison and the federal public health officers of the Marine Hospital Service, the 20-day order was initially a success: not only did it garner Harrison glowing press coverage in the run-up to the election, but it also kept cholera from landing ashore. Steerage

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<sup>142</sup> U.S. Senate, Quarantine Restrictions Upon Immigration, 52nd Cong., 2nd sess., 1892, (Serial Set 3056).

<sup>143</sup> For an extended explanation of Harrison's thinking and his negotiations with Treasury Secretary Foster and Surgeon-General Walter Wyman, with whom he conceived the 20-day order, see Markel, *Quarantine!* 96–99.

<sup>144</sup> "Will Stop Immigration: What Steamship Men Say of the Twenty-day Quarantine," *New York Times*, 2 September 1892; "Immigration Suspended," *New York Times*, 2 September 1892.

<sup>145</sup> "Good Signs," editorial, *New York Evening World*, 3 September 1892; "The President's Decision," editorial, *New York Tribune*, 2 September 1892; "Immigration Suspended," *New York Times*, editorial, 2 September 1892.

<sup>146</sup> For an extended discussion of the reaction to Harrison's 20-day circular, see Markel, *Quarantine!* 91, 99–100.

passengers from incoming ships were either quarantined aboard the vessels they came on or sent to overcrowded quarantine camps on tiny islands within NYC's harbour where they and their baggage were sanitized and disinfected.<sup>147</sup> Due to the crowded, close quarters within both the steerage dormitories and the quarantine camps, cholera spread throughout the camps and the quarantined steerage vessels but found few avenues through which to reach the city, for the most part. That September, 132 died amid either the quarantined ships or the quarantine camps, while only 10 died in NYC.<sup>148</sup> By keeping steerage immigrants penned up in crowded conditions with inadequate sanitary facilities, as the camps were, public health officials enabled cholera to spread further than it might have had they placed the steerage immigrants into less crowded, more sanitary conditions.<sup>149</sup> Despite this, in their official reports and public statements, American government officials generally expressed that they had made an acceptable tradeoff, sacrificing the bodies of contagion-laden foreigners for the price of keeping Americans safe from the cholera.<sup>150</sup>

But once Jenkins and NYC's public health officials stopped enforcing Harrison's quarantine order as written by letting the *Normannia* cabin passengers out early in response to the cabin passengers' protests, the situation changed. With the *Normannia* cabin passengers continuing to complain about their treatment, and the press and other prominent, politically influential NYC

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<sup>147</sup> Geo W. Anderson, Chas F. Allen, and N. Muller, *Annual Report of the Commissioners of Quarantine for the Year 1892* (Albany: James B. Lyon, State Printer, 1893), 6–9.

<sup>148</sup> *Annual Report of the Board of Health of the Health Department of the City of New York for the Year Ending December 31, 1892*, (New York: Martin B. Brown, Printer and Stationer, 1894), 38–40.

<sup>149</sup> Even at the time, bacteriologists widely knew that cholera was spread predominantly through contaminated water facilities, so NYC and federal public health officials were equipped with the knowledge to understand that by leaving steerage passengers in such conditions, they were providing the cholera bacillus with conditions in which to flourish. This point was made by the New York Chamber of Commerce's Quarantine Committee, which reviewed the quarantine order a year after the epidemic, and criticized NYC's public health corps for placing steerage passengers into the quarantine camps. See Stephen Smith et al., "A Report of the Medical Advisory Committee of the Chamber of Commerce of New-York, on Certain Points Relating to Quarantine Detention of Passengers, and the Disinfection of Passengers' Baggage, Merchandise, and Infected Ships," in *Thirty-Fifth Annual Report of the Corporation of the Chamber of Commerce for the State of New-York for the Year 1892-'93*, comp. George Wilson (New York: Press of the Chamber of Commerce, 1893), 99–100.

<sup>150</sup> David S. Barnes, "Cargo, 'Infection,' and the Logic of Quarantine in the Nineteenth Century," *Bulletin of the History of Medicine* 88, no. 1 (2014): 100.

institutions like the Chamber of Commerce beginning to question the logic of the 20-day order, Harrison tried to reassert his authority over the situation.<sup>151</sup> At the beginning of November, just days before the election, Harrison ordered NYC's public health officials to re-enforce the nationwide 20-day quarantine order with no passenger, cabin or steerage or otherwise, exempt from the 20-day quarantine.<sup>152</sup>

His reasons for doing so were twofold: Harrison saw an opportunity for both his political fortunes and for the federalization of public health. Harrison had never stood on particularly firm political ground, and as he was in the midst of a tough re-election campaign, it was imperative that he appear an effective executive. Four years earlier, he had lost the popular vote to the former Democratic President, Grover Cleveland, but won the electoral college, and in fall 1892, he was facing another challenge from Cleveland.<sup>153</sup> In 1888, winning the support of New York, the most populous state, in the electoral college had helped push him to victory, and Harrison knew he needed New York's votes if he was to win the presidency again.<sup>154</sup> The reinforcement was an obvious play for New York's 36 electoral college votes.<sup>155</sup> New Yorkers would hopefully interpret the re-enforcement of the 20-day order as a sign that Harrison was an effective leader continuing to protect the health of the state and the city from the evils of both immigration and disease.

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<sup>151</sup> For example, see Godkin, "A Month of Quarantine;" "The Victims of Quarantine," editorial, *New York Times*, 14 September 1892; Stephen Smith et al., "Report of the Medical Advisory Committee," 98–100.

<sup>152</sup> "New Quarantine Circular," *New York Times*, 5 November 1892; U.S. Senate, Quarantine Restrictions Upon Immigration, 52nd Cong., 2nd sess., 1892, (Serial Set 3056).

<sup>153</sup> "1888 Presidential Election," 270toWin, accessed 16 September 2022, [https://www.270towin.com/1888\\_Election/](https://www.270towin.com/1888_Election/).

<sup>154</sup> Charles W. Calhoun, *Benjamin Harrison*, 3–5. Since he had campaigned in both 1888 and 1892 on vaguely worded promises to lower the numbers of immigrants allowed into the country each year, Harrison had an additional incentive to provide evidence via the 20-day order that he was living up to his campaign promises. See, for example, Harrison's 1888 speech accepting the Republican Party's nomination for the presidency in Benjamin Harrison, "General Harrison's Letter of Acceptance," in *Speeches of Benjamin Harrison: Twenty-third President of the United States*, comp. Charles Hedges (New York: United States Book Company, 1892), 111–112.

<sup>155</sup> "1892 Presidential Election," American Presidency Project, online by Gerhard Peters and John T. Woolley, accessed 16 November 2022, <https://www.presidency.ucsb.edu/statistics/elections/1892>; Calhoun, 144–145.

In addition, federal public health officials hoped to expand their purview over quarantine policy, arguing that this was made necessary by the increasing numbers of immigrants arriving on American shores each year along with the increasing volumes of travel and commerce flowing into America's growing ports. Harrison and federal public health officials promoted this line in public-facing appeals. Surgeon General Walter Wyman, whom Harrison had appointed to the position almost a year earlier, claimed in an article published shortly before Harrison's re-enforcement order that "it is gratifying to observe the public approval passed upon this quarantine circular ordered by the President" and that "a national maritime quarantine is the only logical safeguard against disease."<sup>156</sup> Wyman explained, "the history of all our epidemics of late years starts with an imported source of infection, and is an argument for the enactment of more clearly defined laws to furnish us with the means of protection against diseases."<sup>157</sup> In the nineteenth century, quarantine policy was traditionally handled by state and local health authorities. Even though the federal government had a limited ability to institute quarantines during epidemics, it was not fully evident which body had the ultimate authority over quarantine, since the federal government had gradually expanded its purview over quarantines in the years immediately leading up to 1892 without clarifying its role vis-à-vis state and local bodies.<sup>158</sup>

In the short term, Harrison's re-enforcement order backfired. The press fervently opposed the re-enforcement order. The *Times* criticized it for being pure "politics," and called it "a piece of pettifogging unworthy of the Government," as the danger posed by cholera had passed.<sup>159</sup> The

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<sup>156</sup> Walter Wyman, "Safeguards Against the Cholera," *North American Review* 155, no. 431 (Oct. 1892): 486.

<sup>157</sup> Wyman, "Safeguards Against the Cholera," 490–491.

<sup>158</sup> David Barnes argued that in the nineteenth century, Americans came to increasingly see human hosts, and foreign hosts in particular, as representing the most significant epidemiological threat whereas previously medical professionals had held that cargo and items posed a larger danger; as this belief gained steam, public health officials increasingly came to believe that quarantines, which were traditionally handled by local authorities, needed to be maintained by more powerful state and federal entities. See Barnes, 75–101.

<sup>159</sup> "The 'Emigrant' Proclamation," *New York Times*, editorial, 8 November 1892.

*World* was particularly angered by the order's impacts on the American citizens who shared the ship with immigrants, editorializing that "no ill-feeling towards immigrants can justify the Government making prisoners for twenty days... of citizens."<sup>160</sup> Steamship lines denounced the order and the "Administration that deliberately places such an inexcusable embarrassment on the commerce of the nation."<sup>161</sup> A few days later, Harrison and the Republicans lost the electoral college, the popular vote, and both houses of Congress to Cleveland and the Democrats.<sup>162</sup> With Harrison now a lame duck, it appeared as though the re-enforcement order had not just tarnished Harrison's political reputation, but had also hamstrung federal public health officials like Wyman in their quest to update the nation's quarantine laws by increasing federal authority over quarantine.

## **2. II. CONTROL: PLAGUE**

*San Francisco, March 1900 to June 1900*

After both California's political establishment and the Chinese San Franciscans successfully restrained Kinyoun and Wyman from enacting measures that named the Chinese, Kinyoun and Wyman tried various methods of reasserting their authority that they hoped would pass the court's muster, and that would not generate such vitriol from Gage and the other plague deniers. Their new methods, too similar to the measures the court had already enjoined, were struck down by Judge Morrow once more, but this time in an ignominious manner that left a temporary black mark upon San Francisco and California's public health institutions.

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<sup>160</sup> "Arbitrary Detentions," *New York World*, editorial, 14 December 1892, Brooklyn last edition.

<sup>161</sup> "A Barrier to Commerce," *New York Times*, 6 November 1892; Gustav H. Schwab, "A Practical Remedy for the Evils of Immigration," *Forum* 14, no. 6 (1893): 805.

<sup>162</sup> "1892 Electoral College Results," National Archives, 3 March 2020, accessed 16 September 2022, <https://www.archives.gov/electoral-college/1892>; Calhoun, 149.

Even though Judge Morrow had struck down the vaccination and travel mandate for violating the Equal Protection Clause of the Fourteenth Amendment due to clear racial discrimination, Kinyoun and Wyman continued to introduce similar measures along racial lines. In their eyes, the plague necessitated a racial cordon because the Chinese were “a very peculiar people” when it came to health, as Assistant Surgeon General J. H. White put it.<sup>163</sup> White explained in a later conference convened to assess the 1900 epidemic that “if you apply the same laws and regulations to the Chinaman that you do to the Anglo-Saxon, you will simply be thwarted,” for “they believe the white man is trying to deceive them all the time, and they try to deceive the white man.”<sup>164</sup> Beyond that, as a physician testified, “the habits of living and everything else with the Mongolians themselves defy all the rules of our Western civilization.”<sup>165</sup> They were wrong; bubonic plague is primarily transmitted by rats, but at the turn-of-the-century, bacteriology had not yet proved this link beyond doubt.<sup>166</sup> Instead, to justify their discriminatory measures, these physicians claimed that the only way they could keep the city safe was through singling out the Chinese.<sup>167</sup>

After the injunction in *Wong Wai* preventing them from enforcing the vaccination mandate, Kinyoun and the city Board went back to their original blueprint. They once again cordoned off Chinatown, but this time rooted their cordon in a different source of authority, instead of making the cordon less nakedly discriminatory. Immediately after Morrow’s decision, the city Board

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<sup>163</sup> Statement of Assistant Surgeon-General White, “Plague Conference—Full Proceedings,” *Public Health Reports* 18, no. 6 (6 February 1903): 17.

<sup>164</sup> Statement of Assistant Surgeon-General White, “Plague Conference—Full Proceedings,” 17–18.

<sup>165</sup> Statement of Dr. Fulton, “Plague Conference—Full Proceedings,” 32.

<sup>166</sup> Robert Barde, “Prelude to the Plague: Public Health and Politics at America’s Pacific Gateway, 1899,” *Journal of the History of Medicine and Allied Sciences* 58, no. 2 (2003): 159; see also W. C. Rucker, “Plague: Its Geographic Distribution and Its Menace to the United States,” *Public Health Reports* 30, no. 20 (14 May 1915): 1429–1430.

<sup>167</sup> Americans in the late nineteenth century widely associated Chinese immigrants with filth and rats, depicted both as rat eaters and as metaphorical rats feeding off the dregs of polite society bringing contagion and filth in return. This recurring motif scapegoated Chinese and other Asian migrants for many of the societal ills common to industrial, urban cities. See John Kuo Wei Tchen, *New York Before Chinatown: Orientalism and the Shaping of American Culture, 1776–1882* (Baltimore: John Hopkins University Press, 1999), 260–280.

issued its own declaration attesting to the danger of plague within San Francisco, and authorized itself to take whatever actions necessary to stop the plague from spreading.<sup>168</sup> Three days after the injunction, the Board again cordoned off Chinatown, using the same boundaries as the controversial cordon it had previously instituted in March.<sup>169</sup>

Once again, the Chinese Six Companies formulated another legal challenge on behalf of Jew Ho, a Chinatown resident trapped within the cordon, which made its way back to Morrow.<sup>170</sup> On June 15, Morrow ruled in *Jew Ho v. Williamson* that the cordon was “unreasonable, unjust, and oppressive, and therefore contrary to the laws limiting the police powers of the state and municipality in such matters,” since the Board had again violated the Equal Protection Clause of the Fourteenth Amendment.<sup>171</sup> He castigated the cordon’s “discriminating character,” and once again issued an injunction against the Board to prevent them from enforcing the cordon.<sup>172</sup> Even though the new cordon was on clearer legal footing than the previous cordon or vaccine mandate by virtue of the Board’s declaration, Morrow held that the order’s newfound authority was not enough to make the cordon constitutional.

Kinyoun made one last attempt. After the injunctions, Wyman informed Kinyoun that he “was still to carry out the quarantine measures,” meaning the vaccination and travel rules Kinyoun had issued on May 21, since they “had not been rendered nugatory by the Court’s decision.”<sup>173</sup> On June 15, this time without specifying race, Kinyoun ordered railway and steamship lines operating

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<sup>168</sup> 29 May 1900 San Francisco City Board of Health resolution, reprinted in *Jew Ho v. Williamson*, 103 F. 11–12 (9th Cir. 1900); summarized in Williamson, “Report of the Board of Health,” *Biennial Report*, 16.

<sup>169</sup> Williamson, “Report of the Board of Health,” *Biennial Report*, 15–16.

<sup>170</sup> In addition to their expanded order, Kinyoun and the Board’s lawyers also submitted a much more substantial defense than they had in *Wong Wai*, but the evidence they amassed did not change Morrow’s decision. See McClain, 496.

<sup>171</sup> *Jew Ho v. Williamson*, 103 F. 26 (9th Cir. 1900).

<sup>172</sup> *Jew Ho v. Williamson*, 103 F. 23 (9th Cir. 1900).

<sup>173</sup> Letter from Joseph J. Kinyoun to Aunt and Uncle, 29 June 1901, 14, in Joseph J. Kinyoun Papers 1899–1939, National Library of Medicine, Bethesda, MD.

out of San Francisco to stop selling tickets to any San Franciscan who could not produce a certificate issued by the MHS certifying that the possessor was free of plague.<sup>174</sup> Though the text of the order was ostensibly race-neutral, in his instructions to health officials over how to enforce the order, it was clear that Kinyoun intended the order to primarily apply to Asians; he “enjoined all inspectors to be particularly careful to note the movements of this class of persons [the Chinese and Japanese],” and directed the municipalities surrounding San Francisco “to keep the Chinese and Japanese population under a sanitary supervision.”<sup>175</sup>

The order was too similar to the previous orders enjoined by Morrow, and Governor Henry Gage decided to escalate in an attempt to stop Kinyoun and Wyman for good. Still refusing to admit that plague existed within the state, Governor Henry Gage telegraphed President McKinley to complain that by interfering with travel to and from California with his latest order, Kinyoun had “unreasonably and unnecessarily quarantined this State.”<sup>176</sup> Gage demanded “immediate relief for the people of this State, the traveling public, and the commercial interests of the coast.”<sup>177</sup> As Kinyoun later grumbled, “the efforts of the combined political interests of California were successful.”<sup>178</sup> On June 18, McKinley directed Wyman to rescind the regulations; Wyman then

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<sup>174</sup> Letter from Joseph J. Kinyoun to Aunt and Uncle, 14; Telegram, Joseph Kinyoun to Walter Wyman, 15 June 1900, printed in “Measures to Prevent the Spread of Plague—Interstate Inspection,” *Public Health Reports* 15, no. 24 (June 1900): 1476–1477.

<sup>175</sup> Telegram, Joseph Kinyoun to Walter Wyman, 15 June 1900, reprinted in “Measures to Prevent the Spread of Plague,” 1477.

<sup>176</sup> Telegram, Henry Gage to President William McKinley, 16 June 1900, reprinted in “Appendix,” *Report of the Special Health Commissioners*, 17.

<sup>177</sup> Telegram, Gage to McKinley, 16 June 1900, “Appendix,” 17. Gage further reached out to his allies in the Republican party, many of whom were currently attending the Republican National Convention. A delegation of Gage allies travelled from the RNC to Washington, DC, to personally lobby McKinley to intervene with Kinyoun and Wyman on behalf of Gage. See also Henry Gage, “Biennial Message,” California Legislature, *Journal of the Assembly*, 34th sess., 24; McClain, 506.

<sup>178</sup> Letter from Joseph J. Kinyoun to Aunt and Uncle, 15.

ordered Kinyoun to stop issuing further interventions unless otherwise directed by Wyman or other federal officials.<sup>179</sup>

Though both Wyman and the city Board of Health played a major role in crafting the enjoined cordon and vaccination mandate, Kinyoun took the fall for the orders in public. Gage continued to deny the existence of plague throughout 1900, even after a bacteriological commission established by Wyman attested to the existence of the plague in San Francisco.<sup>180</sup> Angered by Gage's continued denials, the relationship between McKinley and Gage devolved into mutual acrimony.<sup>181</sup> Federal officials were concerned if Gage and state health officials continued to interfere with the work of federal and municipal health ordinances, a "nidus of plague infection" would continue to persist within San Francisco.<sup>182</sup> McKinley and Gage eventually brokered a deal under which Gage would quietly let the MHS conduct its quarantine work without interfering, ceding some of the state's enforcement over quarantines to the MHS, while Wyman would remove Kinyoun from the MHS.<sup>183</sup> At the quiet behest of his superiors, Kinyoun resigned in May 1901.<sup>184</sup> His contemporaneous letters reveal his anger: "my transfer was in order to make place for those who have axes to grind where canting sycophants are esteemed... I of course did not ask for a change of Station."<sup>185</sup>

Kinyoun's downfall not only harmed his personal reputation, but left a black mark upon every level of public health, as their inability to formulate a coherent anti-plague policy cast doubt upon their ability to stop the plague still festering in San Francisco, as well as future epidemics. A

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<sup>179</sup> Telegram, Henry Gage to President William McKinley, 16 June 1900, reprinted in "Appendix," *Report of the Special Health Commissioners*, 17; Letter from Joseph J. Kinyoun to Aunt and Uncle, 15.

<sup>180</sup> See Flexner, Novy, and Barker, *Report of the Commission for the Investigation of the Plague in San Francisco*.

<sup>181</sup> David M. Morens, and Anthony S. Fauci, "The Forgotten Forefather: Joseph James Kinyoun and the Founding of the National Institutes of Health," *MBio* 3, no. 4 (26 June 2012): 4.

<sup>182</sup> "Plague Conference—Report," *Public Health Reports* 18, no. 4 (23 January 1903): 9.

<sup>183</sup> Morens and Fauci, 4.

<sup>184</sup> Risse, 177.

<sup>185</sup> Letter from Joseph Kinyoun to Aunt and Uncle, 34.

plague conference convened in 1903 among state boards of health and the MHS debated how best to enact “the restoration of popular confidence” in the public health agencies across the country, and recommended giving federal public health agencies more authority over public health policy and reducing the purview of state and municipal agencies.<sup>186</sup> As one conference-going physician testified, “we... have absolutely no confidence in the sanitary authorities of California and of San Francisco at the present time. We are dependent entirely for all that we have upon the Public Health and Marine-Hospital Service at present.”<sup>187</sup>

Scholars have determined that the plague gained a foothold among the city’s rodent populations, continuing to circulate at low levels from 1900 to 1904.<sup>188</sup> Most of its victims were Chinese, though in August 1900, the first white plague victim turned up in Chinatown, and the plague would claim a handful of white victims throughout the next few years.<sup>189</sup> After a changeover in administration at the top of the MHS in 1904, alarmed by the persistence of the plague four years after it first entered the city, federal, state, and local public health officials pursued an extended rodent killing campaign.<sup>190</sup> The campaign worked. By the end of 1904, the plague had stopped claiming victims.<sup>191</sup> The final death tally according to official reports was 119, though that was almost certainly an undercount given the internecine political fights that made it difficult for the city bacteriologists to diagnose and publish their findings.<sup>192</sup> The plague was officially over, but the damage it had done to public health’s image lingered.

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<sup>186</sup> “Plague Conference—Report,” 9.

<sup>187</sup> Statement of Dr. Bracken, “Plague Conference—Full Proceedings,” 31.

<sup>188</sup> McClain, 512–513.

<sup>189</sup> W. H. Kellogg, “Report of the Bacteriologist,” San Francisco Board of Health, *Annual Report of the Department of Public Health of San Francisco, Cal. for the Fiscal Year Ending June 30, 1901* (San Francisco: Hinton Printing Company, 1901), 95.

<sup>190</sup> LeMay, 80.

<sup>191</sup> Risse, 249–261.

<sup>192</sup> See Risse, 269, for further explanation of how Gage and other politicians interfered with the release of official plague statistics.

## 2. III. CONTROL: TYPHOID FEVER

*New York City, 1915*

Just a few years later, however, NYC public health officials' attempts to corral Mary Mallon and her long afterlife as a cultural motif would have the long-term effect of rehabilitating public health as a field. The road to get there was long. But with her reappearance and second quarantine, Mallon came to provide Americans with a clear example of the utility of public health in protecting Americans from threats to their health that were difficult to control without the hand of the state. After Mallon got away from them in 1910, the Department of Health was keen to keep Mallon within their grasp.

After slipping through the confines of her parole, Mallon adopted a variety of aliases and resumed her work as a cook, never staying in the same place for long in order to elude the Department's notice.<sup>193</sup> But five years after Mallon stopped reporting to the Department, another outbreak of typhoid in 1915 with no obvious source brought Mallon back to the Department's attention. This outbreak began in the Sloane Hospital for Women in Manhattan, NYC, with 25 cases, and Department of Health sent investigators to search for the locus of the outbreak.<sup>194</sup> The Hospital's leading gynecologist claimed that the outbreak had been started by "a woman whose hands became soiled with her excrement and who through careless and dirty habits infected the food of the inmates of the institution."<sup>195</sup> The woman was "Mary Brown," the hospital's cook, whom the hospital's servants had jokingly named "Typhoid Mary."<sup>196</sup> The Department tracked this Mary Brown

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<sup>193</sup> Soper, "The Curious Career," 709–710.

<sup>194</sup> Soper, "Typhoid Mary," 12.

<sup>195</sup> Soper, "Typhoid Mary," 12.

<sup>196</sup> Soper, "Typhoid Mary," 12. The Sloane outbreak marked the genesis of the nickname "Typhoid Mary," which the press popularized. Thereafter, Soper and other Department officials adopted the moniker in their reports on Mary's case.

down, and discovered that she was indeed the same Mary Mallon who had fled the department; they detained her once more, this time with no chance of parole.<sup>197</sup>

This time, it was comparatively easy for the Department to unilaterally keep Mallon detained, and her reaprehension garnered few complaints, if any at all. To Soper and the Department, after her rediscovery, Mallon was an undeniable threat with a long history to prove it. Soper explained, “whatever rights she once possessed as the innocent victim of an infected condition... were now lost... She was known wilfully [sic] and deliberately to have taken desperate chances with human life, and this against the specific instructions of the Health Department.”<sup>198</sup> In their eyes, she knew enough to know better. Whatever grace the Department had previously been inclined to afford during her first quarantine was gone. Soper explained, “in view of her actions when arrested, she was regarded as a dangerous and unreliable person who might try to escape if given a chance. So she was locked up.”<sup>199</sup> Even bacteriologists who opposed the indefinite quarantine of asymptomatic carriers believed that Mallon’s uncooperative nature made it necessary to forcibly restrain her from continuing to move throughout NYC society. Dr. William Park, one of the bacteriologists who examined her stool samples, fervently argued that “the more general methods of preventing infection,” such as perennially “safeguarding our food and water” were the best defense against “unsuspected typhoid bacilli carriers.”<sup>200</sup> But in “the case of the cook already described,” Mallon’s uncooperative nature “increase[d] the danger to such a point that an attempt at some direct prevention becomes an essential,” which justified her perpetual quarantine.<sup>201</sup>

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<sup>197</sup> Soper, “Typhoid Mary,” 12; Soper, “The Curious Career,” 710.

<sup>198</sup> Soper, “Typhoid Mary,” 13.

<sup>199</sup> Soper, “The Curious Career of Typhoid Mary,” 706–707.

<sup>200</sup> Park, 982.

<sup>201</sup> Park, 982.

By 1915, Mallon was no abstract threat, but a proven one. In total, Soper traced at least 51 documented cases of typhoid to her; when he helped apprehend her in 1906, he determined that Mallon alone was responsible for at least 26 documented cases of typhoid and one death, and attributed the 25 cases at the Sloane to her.<sup>202</sup> As Soper noted in his initial report, “in only one instance is it known that she has worked in a family where no typhoid has occurred.”<sup>203</sup> The Department henceforth detained Mallon for the rest of her life in an isolation facility on North Brother Island in NYC’s harbour until she died on November 11, 1938.<sup>204</sup>

Thereafter, she made no more attempts to escape. Admittedly, it was less than ideal, from the Department’s perspective, to expend the time and resources keeping Mallon detained for decades, but in the end, Soper claimed that the Department had done NYC and Mallon a service.<sup>205</sup> To Soper, Mallon’s five years of freedom were a double-edged sword. In Soper’s analysis, “although she had been free, there had been times when she had found it hard to fight her battles unaided,” for Mallon had no family, no home, and “little money.”<sup>206</sup> He believed that it was easier for Mallon to sacrifice her freedom to come and go as she pleased in exchange for a stable place to sleep and eat. To Soper, Mallon “became a privileged guest of the City,” and the city accorded her “a place where she could cook and sleep and read to her heart's content.”<sup>207</sup>

Mallon’s change in behaviour during her second quarantine meant that Soper’s earlier assumption that Mallon would never amend her defiant behaviour was wrong. But it was too late. By 1915, Mallon had exhausted whatever sympathy had previously resided within the ranks of the

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<sup>202</sup> Soper, “The Work,” 2022. Since Soper nor any other Department of Health investigator were able to fully trace her whereabouts between 1910 and 1915, and thus could not provide an estimate of how many cases she might have produced during that five-year period, this figure is likely an undercount. See Soper, “The Curious Career,” 710.

<sup>203</sup> Soper, “The Work,” 2022.

<sup>204</sup> Soper, “The Curious Career,” 712.

<sup>205</sup> Soper, “The Curious Career,” 710.

<sup>206</sup> Soper, “The Curious Career,” 711, 709.

<sup>207</sup> Soper, “The Curious Career,” 711.

Department; moreover, she had already tried her hand at the legal route and lost. Her refusal to abide by the Department's health guidelines provided onlookers with a concrete justification for why the Department and other public health agencies needed to have the broad ability to force even recalcitrant individuals to abide by their interventions, for the greater good of public health.<sup>208</sup> With *Jacobson v. Massachusetts* becoming even more entrenched legally by 1915 than it was in 1909 when Mallon petitioned for her release, the avenues previously available to her had receded even further.<sup>209</sup> The Department had effectively reasserted its authority over her.

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<sup>208</sup> For an example of contemporary commentators who made this argument, see "Typhoid Fever," editorial, *Scientific American* 112, no. 19 (8 May 1915): 428.

<sup>209</sup> Wendy K. Mariner, George J. Annas, and Leonard H. Glantz, "Jacobson v Massachusetts: It's Not Your Great-Grandfather's Public Health Law," *American Journal of Public Health* 95, no. 4 (2005): 583–584; Witt, 59–61.

## CHAPTER THREE — AFTERMATH

Each epidemic that this thesis describes left a mark upon the practice of public health, exposing the shifting relationships between public health officials and the populations they managed in the wake of these three epidemics. Public health officials, hoping to avoid repeating the embarrassments they had suffered, sought to improve their ability to compel Americans to abide by their anti-epidemic interventions in future epidemics. Through these responses, in the long-term, the American state expanded its authority over the regulation of public health. The central state became the foremost authority over certain aspects of quarantine policy and immigration policy, as policymakers increasingly came to view the central state as the best method of protecting Americans from threats that they believed were national and possibly existential dangers. This dynamic drove the aftermath of each epidemic, as public health officials searched for ways to expand their ability to exert regulatory control over groups they perceived as vulnerable or as second-class citizens, while ensuring that Americans in the racial and ethnic majority would not have the freedom to do as they wished curtailed.

### 3. I. AFTERMATH: CHOLERA

*Washington, D.C., November 1892 to February 1893*

After the *Normannia* debacle in September of 1892, Congress was broadly in agreement that something must be done to avert future embarrassments. Some kind of legislative cure was clearly necessary to immunize the nation against cholera and other scourges. What they could not agree on was what that cure would be. Eventually, Congress decided on a legislative fix: making the federal government the ultimate arbiter of quarantine policy, and subjecting state and local

health agencies to the authority of the federal government, since quarantine policy had heretofore been left in the hands of state and local Boards of Health.

The legislative debate began in earnest almost as soon as the *Normannia*'s cabin passengers had returned home, and quickly devolved into quarreling. The squabbling centered on an issue that had become ever more controversial in the preceding years: immigration.<sup>210</sup> Proponents of immigration restrictions, sensing an opportunity, insisted that the cholera had been brought to American shores in the teeming holds of steerage ships carrying immigrants, thus proving that America could only be safe from disease if immigration was cut off or at the very least, greatly reduced. Senator William Chandler, Republican of New Hampshire, the chair of the recently formed Senate Committee on Immigration and a fervent anti-immigration hardliner, led the camp clamouring for restrictions. A few weeks after the cholera epidemic had died down, Chandler began pressing for Congress to give the federal government the jurisdiction to implement nationwide quarantines and to enact a one-year ban on all immigrants, to be followed by permanent restrictions limiting the number of immigrants allowed to enter the nation each year.<sup>211</sup> He argued these measures were necessary as America was still in grave danger of contracting cholera from the pandemic still raging in Europe.<sup>212</sup> This would have represented a massive legislative escalation, since up to this point, Congress had only enacted restrictions on specific classes of migrants such as Chinese migrants, not migrants as a whole.<sup>213</sup>

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<sup>210</sup> The Supreme Court had first explicitly upheld the federal government's authority to regulate immigration in 1889 with *Chae Chan Ping v. United States*, and immediately afterwards, the federal government rapidly expanded its regulatory mechanisms via the creation of the Bureau of Immigration in 1891 and the opening of the Ellis Island Immigration Station in 1892. These were immediately controversial, both among nativists who wanted the federal government to implement and enforce further restrictions, and among opponents of immigration controls. See Katherine Benton-Cohen, *Inventing the Immigration Problem: The Dillingham Commission and Its Legacy* (Cambridge: Harvard University Press, 2018), 16–17.

<sup>211</sup> "Total Restriction Talk," *New York Times*, 1 December 1892.

<sup>212</sup> Markel, *Quarantine!* 166, 176.

<sup>213</sup> Benton-Cohen, 17; Brian Gratton, "Race or Politics? Henry Cabot Lodge and the Origins of the Immigration Restriction Movement in the United States," *Journal of Policy History* 30, no. 1 (2018): 148.

Throughout the fall and winter of 1892–1893, to promote his position, Chandler held a series of congressional hearings in which he paraded a series of physicians who testified that Chandler’s proposal was the best way to keep cholera from reaching American shores.<sup>214</sup> Just as Chandler hoped, the press eagerly reported on the hearings.<sup>215</sup> Meanwhile, key figures involved with the *Normannia* incident and NYC’s quarantine policy squarely laid the blame for the epidemic at the feet of immigrants, pressing for Congress to give the federal government more authority to articulate quarantine policy and migration restrictions to protect the nation from epidemics. In an article published a few months after the outbreak, Jenkins claimed that whenever cholera appeared in Europe, America would almost certainly contract it too as they “would have cases of it [cholera] appear among the immigrants;” while Surgeon General Wyman argued that the epidemic demonstrated that the federal government needed to be given the tools to enact nationwide quarantines and suspend immigration during pandemics to safeguard the nation.<sup>216</sup> Though they did not publicly endorse Chandler’s proposal, their arguments gave Chandler additional fuel for his anti-immigrant agenda and his legislative proposal.

But Chandler soon learned that not all publicity was good publicity. His public push allowed Chandler’s opponents to mobilize before Congress formally reconvened for the legislative debate. The steamship lines came out forcefully against Chandler, complaining that his immigration suspension would sink their business for good since they made most of their profits off immigrant traffic, while Chandler’s opponents in the Senate started drawing up a counterproposal.<sup>217</sup>

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<sup>214</sup> “Doctors and the Cholera,” *New York Times*, 2 December 1892; William E. Chandler, “Shall Immigration Be Suspended?” *North American Review* 156, no. 434 (January 1893): 2–5.

<sup>215</sup> “Total Restriction Talk,” *New York Times*, 1 December 1892.

<sup>216</sup> Jenkins, “Quarantine at New York,” 585; Wyman, “Safeguards Against the Cholera,” 490.

<sup>217</sup> “What Steamship Men Say,” *New York Times*, 1 December 1892; “Prohibition of Immigration,” *New York Times*, 12 December 1892.

By the time Chandler formally introduced his proposal in Congress, the steamship lines had helped to ensure that the tide of Congressional opinion was turning against Chandler.<sup>218</sup>

Chandler's fellow senators were unamused by Chandler's attempt to worm his anti-immigration agenda into the quarantine debate. Democratic Senator Isham Harris argued, "this question of immigration is a tremendous one, and the question of sanitation is only one of a thousand considerations affecting it," and sponsored a competing bill that would expand executive quarantine powers without addressing immigration.<sup>219</sup> Senator John McPherson, still incensed by, as he put it, "the view I had of the whole surroundings there, taken from the deck of a quarantined steamship [the *Normannia*]," pushed for the federal government to take the reins over quarantine policy so as to avoid the "inefficient" quarantine he and the other *Normannia* cabin passengers had been subjected to.<sup>220</sup> In his eyes, he and his fellow cabin passengers had never represented a health threat and had been improperly subjected to an overly long quarantine that should have focused on the real danger: immigrants.<sup>221</sup> But despite his experiences, he was put off by what he saw as Chandler's grandstanding over immigration, claiming that Chandler was diverting attention from the flaws the *Normannia* episode had exposed in the current system of quarantine management. McPherson, like many other senators, argued that "there should be some regulation with respect to the character of people we should admit" but thought Chandler's one-year ban was too extreme and would decimate the many industries economically reliant on immigrant labour, insisting that

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<sup>218</sup> Steamship agents made a concerted effort to lobby senators in both private meetings and promoted their position throughout the press and periodicals. See, for example, Gustav H. Schwab, "A Practical Remedy for the Evils of Immigration," *Forum* 14, no. 6 (1893): 805; Erastus Wiman, "What Cholera Costs Commerce," *North American Review* 155, no. 432 (November 1892): 545–550. The persuasiveness of this lobbying campaign upon the lawmakers debating the quarantine bill can be seen in part in Senator Henry C. Hansbrough, "Why Immigration Should Not Be Suspended," *North American Review* 156, no. 435 (February 1893): 221–222, where the senator makes the potential economic impact upon shipping lines a cornerstone of his argument against Chandler's proposal.

<sup>219</sup> Quoted in "Guards Against the Cholera," *New York Times*, 1 January 1893.

<sup>220</sup> 24 Cong. Rec. 369 (1893) (statement of Sen. McPherson).

<sup>221</sup> 24 Cong. Rec. 369 (1893) (statement of Sen. McPherson).

“suspending for a single year all immigration” would “keep out thousands and tens of thousands of worthy and desirable immigrants.”<sup>222</sup>

Instead of moderating his rhetoric and proposal, however, Chandler accused his fellow senators of being in the pockets of the shipping industry.<sup>223</sup> Fed up with Chandler’s antics, Chandler’s fellow Republican senators started referring to Chandler as the “infection of the Senate.”<sup>224</sup> By early January 1893, it was evident that Chandler’s bill did not have enough support to pass the Senate.

Congress’s attention then turned to Harris’s quarantine bill. The final version of Harris’s bill named the federal government the ultimate authority when it came to imposing quarantines.<sup>225</sup> Aware that the bill needed at least some votes from immigration restrictionists to pass, Harris included a provision—Section 7—that allowed the President to enact a wholesale suspension of immigration if there was “serious danger of the introduction” of “cholera or other infectious or contagious diseases.”<sup>226</sup> The haphazard compromise worked. Congress passed Harris’s bill with the begrudging votes of Chandler and other nativist senators, and Harrison formally signed the bill into law in February 1893.<sup>227</sup>

Containing both Section 7 and the federalization of quarantine, the bill thus marked one of the largest steps the federal government took towards becoming the primary arbiter of public health and immigration policy. Historians have tended to see the 1893 Quarantine Act as “a vital brick

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<sup>222</sup> 24 Cong. Rec. 370 (1893) (statement of Sen. McPherson). The American economy entered 1893 on already shaky ground, and shortly after President Grover Cleveland signed the Quarantine Act into law, the country entered a full-scale economic depression with the Panic of 1893, which lasted until 1897. See, for example, Douglas Steeples and David O. Whitten, *Democracy in Desperation: The Depression of 1893* (London: Greenwood Press, 1998).

<sup>223</sup> 24 Cong. Rec. 366–368 (1893) (statements of Sen. Chandler).

<sup>224</sup> 24 Cong. Rec. 365 (1893) (statement of Sen. Frye).

<sup>225</sup> An Act Granting Additional Quarantine Powers and Imposing Additional Duties Upon the Marine-Hospital Service, Pub. L. No. 52–114, 27 Stat. 452 (1893).

<sup>226</sup> An Act Granting Additional Quarantine Powers, 27 Stat. 452 (1893).

<sup>227</sup> 24 Cong. Rec. 1717 (1893) (message from Pres. Harrison, H.R. 9759).

among many along the road the federal government continued to build during the twentieth century in its assumption of public health responsibilities,” as Howard Markel described it in his 1997 study.<sup>228</sup> Though tarnished by the insertion of Section 7, the Act resulted in little more than “a vociferous but short-lived nativist response” that went nowhere.<sup>229</sup> After all, to this date, no president has ever invoked Section 7. From a legal perspective, Section 7 is nothing more than a curious footnote best left to the dustbin of history, an arcane appendage to the real significance of the 1893 Act, which was its role in federalizing quarantine.

The 1893 Quarantine Act gave the federal government more power to articulate quarantine policy and immigration policy via the inclusion of Section 7, under the logic that a federalized, centralized state mechanism was the best method for rapidly enacting the large-scale policies necessary to protect the nation from large scale health threats. Of course, we now know that immigration bans are ineffective at preventing disease transmission both in the Progressive Era and in our time; discriminatory policies that stop immigrants while allowing citizens free travel still allows diseases avenues of entry.<sup>230</sup> Even in the 1890s, some physicians and policymakers understood this, and argued accordingly.<sup>231</sup> But it was in vain. Ultimately, Section 7 heralded the change to come. Though Section 7 marked a temporary defeat for Chandler and the other immigration hardliners, in the coming years, it was their camp that would set the emerging status quo on immigration, as Congress passed ever more restrictions. Their camp would prevail with the 1924 Johnson-

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<sup>228</sup> Markel, *Quarantine!* 180.

<sup>229</sup> Markel, *Quarantine!* 181.

<sup>230</sup> See, for example, Nicole A. Errett, Lauren M. Sauer, and Lainie Rutkow. “An Integrative Review of the Limited Evidence on International Travel Bans as an Emerging Infectious Disease Disaster Control Measure,” *Journal of Emergency Management* 18, no. 1 (2020): 7–14.

<sup>231</sup> See, for example, Samuel W. Abbott, “Safeguards Against the Cholera,” 497.

Reed Act, which barred Asian immigrants and greatly reduced the numbers of European immigrants coming each year.<sup>232</sup>

### **3. II. AFTERMATH: PLAGUE**

#### *San Francisco, 1901 to 1910*

A similar dynamic would haunt the aftermath of the 1900 plague epidemic. Though San Francisco's public health officials' racially discriminatory measures had been struck down by the courts, instead of moderating their rhetoric, the officials doubled down on blaming the plague's spread on the Chinese. The most significant and long-lasting development for the exercise of public health and immigration regulation in San Francisco would be the new immigration station constructed by the Bureau of Immigration on Angel Island. The plague epidemic backgrounded the construction of the new station, which began in 1905 and was completed in 1910, as it provided federal immigration and public health officials with additional justification for shoring up the institutional structures that enforced Chinese Exclusion. The station further exemplified the direction in which both the regulatory regimes that underlaid public health and immigration were moving, as both regimes became increasingly centralized under the federal government.

To the public health officials tasked with fixing California's public health institutions to avoid future calamities like the response to the 1900 epidemic, the pre-eminent problem threatening San Francisco's health was the Chinese. To Kinyoun and the Board, regardless of what Gage, the papers, or the Chinese themselves might claim, the epidemic had proved once and for all how dangerous the Chinese were. In a letter written a few months after McKinley had shut down his

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<sup>232</sup> The 1924 Act greatly limited the numbers of European immigrants by established quotas for immigrants based on national origin. See Mae M. Ngai, "The Architecture of Race in American Immigration Law," *Journal of American History* 86, no. 1 (1999): 72–75.

racially targeted measures, Kinyoun claimed, “these Chinese are of the lowest dregs of the coolie class. They are all found living under sanitary conditions which would put an American hog to shame.”<sup>233</sup> To the city’s public health corps, the allegedly unreformable sanitary habits of the Chinese meant that they needed to undertake drastic action to push the Chinese out of the city, and protect the city from any further Chinese migrants. Reflecting on the epidemic, the president of the city Board of Health, John Williamson, vehemently argued that

...while the Chinese are permitted to inhabit their present quarters, and while every attempt to safeguard the City from the danger of their proximity meets with ridicule in the press, indifference on the part of the public, or is blockaded by injunction, San Francisco harbors a constant peril. Chinatown as it is at present cannot be rendered sanitary except by total obliteration... In this way and no other will there be safety from the invasion and propagation of Oriental diseases. The day has passed when a progressive city like San Francisco should feel compelled to tolerate in its midst a foreign community, perpetuated in filth...<sup>234</sup>

Despite the fiery rhetoric, as Williamson himself could have surmised, it was unlikely that Judge Morrow and the Ninth Circuit would have allowed such a clear example of racial discrimination, after repeatedly striking similarly racially targeted policies during the epidemic. San Francisco public health corps’ official reports and private correspondence reflected their perception that Asians were racially inferior, rather than a real gulf of difference between the sanitary habits and conditions of Chinese San Franciscans versus white San Franciscans.<sup>235</sup>

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<sup>233</sup> Letter from Joseph J. Kinyoun to Preston Bailhache, 52.

<sup>234</sup> John M. Williamson, “Report of the President,” in *Annual Report of the Department of Public Health of San Francisco, 1901*, 18; see also, California State Board of Health, *Biennial Report of the State Board of Health of California, 1902–1904* (Sacramento: W. W. Shannon, Superintendent State Printing, 1904), 11.

<sup>235</sup> Nayan Shah argued in his study that much of health officials’ perceptions of Chinatown as uniquely filthy was based more upon preconceived notions of white supremacy and Chinese inferiority: “Although the surveillance and investigation of Chinatown were extraordinary, the violations were quite ordinary. A five-page catalogue of the most egregious, most frequent infractions merely cited inadequate plumbing and drainage, including clogged water closets, urinals, and sinks; stagnant cesspools; and the lack of plumbing connections to street sewers. As a catalogue, however, these violations were no longer individual or singular anomalies but were interpreted as a collective manifestation—evidence of collective behavior.” Shah points out that these infractions were not limited to San Francisco’s Chinatown, as growing urban environments beyond Chinatowns frequently struggled with maintaining the necessary plumbing and sanitary infrastructure; but in majority white neighbourhoods, public health officials did not interpret these violations as evidence of racial inferiority. See Shah, 38–44.

These personal prejudices drove their thinking throughout the post-epidemic fallout, particularly regarding the quarantine station at Angel Island, the outpost of the MHS where Kinyoun had been stationed.<sup>236</sup> Angel Island sits in the northern end of San Francisco's harbour, overshadowing Alcatraz Island. Looming out of the harbour mists, all incoming ships must pass by it to enter the Bay, and as such, the city's bureaucrats saw it as a natural place for fortifying the city. Public health officials had first enlisted it in their fight against disease in 1891, when the MHS opened a quarantine station on the northern side of the island to inspect incoming ships, manage quarantines, and enforce public health regulations.<sup>237</sup> By 1900, it formed the bulwark of the MHS's western defenses against disease, intended to guard the nation against the spectre of contagion from across the Pacific. As the State Board of Health described it in 1904, "[t]he quarantine station on Angel Island... is a source of protection to the State. No freight or passengers are allowed to pass in until [the quarantine officer] is satisfied that they are not in any way affected with disease."<sup>238</sup>

But after the plague epidemic, federal immigration and public health officials turned their glances towards the quarantine station with a new suspicion, viewing it as insufficient for enforcing either immigration or public health.<sup>239</sup> In 1904, the quarantine station's chief officer complained that immigration officials had no proper place to conduct their medical inspections of incoming migrants, as required under the provision of the 1891 Immigration Act barring immigrants with a "loathsome or dangerous contagious disease," and had to instead use the quarantine station's

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<sup>236</sup> On how public health officials' anti-Asian and Sinophobic prejudices seeped into their policy actions, see, for example, McClain, 507; Risse, 181–191; Markel, *When Germs Travel*, 61–62.

<sup>237</sup> Luigi F. Lucaccini, "The Public Health Service on Angel Island," *Public Health Reports* 111, no. 1 (1996): 92–94.

<sup>238</sup> California State Board of Health, *Biennial Report, 1902–1904*, 13.

<sup>239</sup> LeMay, 85.

insufficient facilities.<sup>240</sup> In 1904, another assistant surgeon at the quarantine station further noted that the lack of sufficient facilities meant that immigration inspectors had to hastily conduct their examinations “in conjunction” with quarantine officers, which hindered the work of immigration and quarantine officials alike, and increased the risk to the city “so far as dangerous contagious diseases are concerned.”<sup>241</sup>

To federal officials, Angel Island needed an immigration station to extend the work of the quarantine station and bolster immigration enforcement.<sup>242</sup> In 1905, at the behest of both the immigration officials and public health officials working out of the Angel Island Quarantine Station, Congress allocated \$100,000 to the newly created Bureau of Immigration and Naturalization to build a new immigration station on Angel Island in San Francisco.<sup>243</sup> Through the new immigration station, federal and state public health officials along with the agents within the new Bureau of Immigration and Naturalization saw themselves as using a different kind of tool to protect the state from the unclean menace of Asian immigrants.<sup>244</sup> For example, in 1906, the Commissioner-General of Immigration, Frank P. Sargent, praised the work of “the individual employees of the Immigration Service and of the Public Health and Marine-Hospital surgeons who assist them in

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<sup>240</sup> H. S. Cumming, “Report of the Medical Inspection of Alien Immigrants at San Francisco, Cal.,” in *Annual Report of the Surgeon-General of the Public Health and Marine-Hospital Service of the United States for the Fiscal Year 1903* (Washington: Government Printing Office, 1904), 207.

<sup>241</sup> C. E. D. Lord, “Report of the Medical Inspection of Immigrants,” in *Annual Report of the Surgeon-General of the Public Health and Marine-Hospital Service of the United States for the Fiscal Year 1904*, (Washington: Government Printing Office, 1904), 210.

<sup>242</sup> See LeMay, 107–111, for a summary of how federal officials like Wyman’s successor, Rupert Blue, pushed for and supported the opening of the Immigration Station, viewing it as another tool available to them to protect the nation’s health, and how public health officials operated out of the immigration station in post-1910 epidemics as they waged their war on epidemic disease.

<sup>243</sup> Treasury Appropriation, Pub. L. No. 59–3914, 34 *Stat.* 710 (30 June 1906). See Erika Lee, and Judy Yung, *Angel Island: Immigrant Gateway to America* (New York: Oxford University Press, 2010), 10–11, for additional context on how federal immigration officials in San Francisco urged their superiors to build them a space in which to conduct thorough inspections and house detained migrants under Chinese Exclusion and the loathsome and contagious disease provision. Prior to 1910, the city had few places in which to place detained migrants.

<sup>244</sup> Lee and Yung, 38–39.

the work of guarding our gates against the entry of the vicious and diseased.”<sup>245</sup> To these bureaucrats, the agencies regulating immigration needed their own space to sufficiently work alongside federal and state public health agencies to protect America from the threat posed by migrants.

It was not just bureaucrats who perceived the construction of the new immigration station in this manner. In 1907, the *San Francisco Chronicle* wrote approvingly that once opened, the immigration station would safeguard San Francisco from the “consistent menace from Oriental plagues and diseases.”<sup>246</sup> To Californians, the new station was a beacon signalling that the island’s expanded infrastructure for immigration enforcement would specifically protect the nation more broadly from the health threat posed by disease-producing Asian migrants. Indeed, the immigration officials who worked out of the new immigration station viewed their responsibilities along similar lines. In his comprehensive study, Nayan Shah has argued that in the years after the plague epidemic, “health became a crucial gauge in the management of national borders,” as expressed through immigration enforcement institutions like Angel Island, as immigration officials employed health examinations in the service of immigration enforcement.<sup>247</sup>

The Angel Island Immigration Station opened its doors in 1910.<sup>248</sup> Once opened, it significantly expanded the enforcement of both Chinese Exclusion and the “loathsome and dangerous contagious disease” provision of America’s federal immigration law, which barred immigrants suffering from a “loathsome or dangerous contagious disease” from entry. Under this provision, the Angel Island Immigration Station helped spur a rise in the numbers of immigrants rejected

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<sup>245</sup> Frank P. Sargent, “Conclusion,” in *Annual Report of the Commissioner-General of Immigration to the Secretary of Commerce and Labor for the Fiscal Year Ended June 30, 1906* (Washington: Government Printing Office, 1906), 107.

<sup>246</sup> “Angel Island,” *San Francisco Chronicle*, 18 August 1907.

<sup>247</sup> Shah, 180. See Shah, 179–203 for a comprehensive explanation of how this process played out at the Angel Island Immigration Station.

<sup>248</sup> “Chinese Exclusion,” in *Annual Report of the Commissioner-General of Immigration to the Secretary of Commerce and Labor for the Fiscal Year Ended June 30, 1910* (Washington: Government Printing Office, 1910), 132.

from America's ports in the following years.<sup>249</sup> Immigration historians writing in the twentieth century traditionally saw the Angel Island Immigration Station as a smaller, less significant Western counterpart to the well-known immigration station on Ellis Island, but recent scholarship has made it clear that Angel Island was a different, harsher realm.<sup>250</sup> The customs officers required the predominantly Asian immigrants passing through Angel Island to submit to more invasive medical inspections, and kept them detained for longer on average than officials detained migrants passing through Ellis Island, who were almost wholly of European descent. As the historian Erika Lee put it, "Ellis Island was a processing station of entry, but Angel Island's purpose was to keep immigrants out."<sup>251</sup>

### 3. III. AFTERMATH: TYPHOID FEVER

*New York City, 1915 and onwards*

In the end, who was Mary Mallon?

Was she Typhoid Mary, a dangerous woman, who refused to take even the smallest measures to protect others from the germs ever-present within her, caring nothing for the health the souls unfortunate enough to cross her path? Or was she Mary Mallon, victimized by prejudiced public health officials keen to find a scapegoat to pin the blame on? Is she yet another one of history's unfairly maligned women, targeted by a society that had not yet learned to tolerate Irish immigrants and working women? Both Mallon's contemporaries as well as contemporary scholars have projected each of these images upon her. Mary Mallon and the question of how to evaluate

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<sup>249</sup> In the years following the opening of the Angel Island Immigration Station, immigrants rejected on these grounds became one of the largest classes of immigrants excluded. See Lee and Yung, 78; Shah, 186.

<sup>250</sup> See Roger Daniels, "No Lamps Were Lit for Them: Angel Island and the Historiography of Asian American Immigration," *Journal of American Ethnic History* 17, no. 1 (1997): 3–18, which is a printed version of Daniels' presidential address to the Immigration History Society; his address helped to generate scholarly interest in the Angel Island Immigration Station as a central player in the history of Asian American immigration.

<sup>251</sup> Lee, *At America's Gates*, 75.

both her behaviour and the Department's treatment of her have plagued me throughout the last two years, as I have been writing and researching this thesis. But both depictions of Mallon, as either victim or villain, have merit. Examining each side of her reveals the shifting relationship between Americans and public health, as Americans began to expect that all branches of public health adopt a greater role in protecting the health of the community from individual behaviours that threatened those around them with disease transmission throughout the Progressive Era.

The tension between these two portrayals—Typhoid Mary, the pestilence-spreading villain, and Mary Mallon, the vulnerable, mistreated victim—dogged portrayals of Mallon from the very beginning, even before Mallon transformed into the cultural symbol that she is today. Mallon's real name was publicized for the first time in the same article that also marked the genesis of the nickname "Typhoid Mary." Though the press first began covering Mallon's case when the Department first quarantined her in 1907, her identity remained hidden until newspaper magnate William Randolph Hearst's sensational *New York American* first revealed her full name in a 20 June 1909 article, at the same time as it nicknamed her "Typhoid Mary."<sup>252</sup> The original story was generally sympathetic, and frowned upon her indefinite quarantine, describing her as a "prisoner for life" who had "committed no crime" and had "never been accused of an immoral or wicked act."<sup>253</sup> However, the article's sympathy was undercut by the accompanying cartoon overshadowing the article, which depicted Mallon as a suspiciously buxom cook malevolently cracking human skulls into a saucepan as one would crack eggs for breakfast.<sup>254</sup> These two portrayals went hand-in-hand in the article.

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<sup>252</sup> "'Typhoid Mary': The Extraordinary Predicament of Mary Mallon, a Prisoner on New York's Quarantine Hospital," *New York American*, 20 June 1909.

<sup>253</sup> "'Typhoid Mary,'" *New York American*, 20 June 1909.

<sup>254</sup> "'Typhoid Mary,'" *New York American*, 20 June 1909.

Thereafter, Mary Mallon, the person, became the villain, Typhoid Mary. Typhoid Mary was the moniker that lived on long after the name Mary Mallon faded from the headlines of NYC's papers. Even papers less sensational than the *American* began to primarily refer to her as Typhoid Mary.<sup>255</sup> Soper and the NYC Department of Health began referring to her as Typhoid Mary in their official reports from this period.<sup>256</sup> In these years, the phrase "Typhoid Mary" started to become synonymous to the American public with an individual disease carrier who threatened all those around her with the spectre of contagion.

After Mallon's reappearance and second quarantine in 1915, press coverage of Mallon turned decidedly negative, as the papers and magazines came to widely agree that Mallon needed to be locked away for good. The sensationalist tabloids, like Joseph Pulitzer's *New York World* and Hearst's *American* exaggerated the details of Mallon's case to cast her in a harsher light, with the *World* claiming that Mallon had started an epidemic at the Sloane Hospital in which "no one was spared" (as NYC's health investigators admitted, the outbreak constituted 25 cases among a staff of 281).<sup>257</sup> Even beyond the tabloids, any glimmers of sympathy that could once be gleaned in previous coverage had been thoroughly snuffed out, once the papers had come to see Mallon as a deliberate spreader rather than a victim of unfortunate circumstance. The Republican Party's press organ, the *New York Tribune*, called Mallon "a constant menace to all about her," editorializing that Mallon's choice to violate her parole conditions meant that "the sympathy which would naturally be granted to Mary Mallon is largely modified... The chance was given to her five years

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<sup>255</sup> See, for example, "'Typhoid Mary' Must Stay: Court Rejects Her Plea to Quit Riverside Hospital," *New York Times*, 17 July 1909; "'Typhoid Mary' Freed: Lederle Thinks She's Learned to Keep Her Germs to Herself," *New York Times*, 21 February 1910.

<sup>256</sup> Cf. Soper's first published report on Mallon, titled "The Work of a Chronic Typhoid Germ Distributor," published in 1907, with his 1919 report in the *Journal of the Association of Military Surgeons of the United States*, which was entitled "Typhoid Mary," and used that moniker throughout.

<sup>257</sup> "Hospital's Germs Now Traced Back to 'Typhoid Mary,'" *New York Evening World*, 27 March 1915; Soper, "Typhoid Mary," 11.

ago to live in freedom, and... she deliberately elected to throw it away.”<sup>258</sup> Even the more level-headed *New York Times* opined that the “human culture tube” had “returned to justify her reputation” and her reimprisonment, and the staid *Scientific American* denounced her “perversity.”<sup>259</sup> With Mallon’s second imprisonment, the figure of Typhoid Mary came to evoke a willing and deliberate spreader of disease who deserved to be locked away and deprived of her liberties for life. She thus evolved into the caricature of Typhoid Mary, who continued to live on long after Mary Mallon herself was cold in her pauper’s grave.<sup>260</sup>

Mallon has fared better in historians’ evaluations, who frequently undertake a more sympathetic reading of her case to recover the reputation of the woman behind the sinister caricature of Typhoid Mary from the dustbin of history. Scholars writing in the 1990s and early 2000s, like Judith Walzer Leavitt and Alan Kraut, have drawn more sympathetic portraits of Mallon, spotlighting the systemic disadvantages she faced as an Irish immigrant woman, living in a society that was moving towards implementing restrictions on Irish migration and that had little tolerance for working women. Leavitt argued that although “Mallon was not isolated for life because she was a Catholic, Irish-born, single, working woman;” however, “for the middle-class professionals with whom she came in contact these social identifiers created a set of social expectations and evoked certain prejudices, which together helped lead to their perception of her as deviant and expendable.”<sup>261</sup> Alan Kraut made a similar argument, explaining that “from a conventional, stereotypical, early-twentieth-century masculine perspective, the classically domestic image of a nurturing woman making food for others to eat was violently defiled by Mallon’s behaviour,” which

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<sup>258</sup> “‘Typhoid Mary’ Reappears,” *New York Tribune*, editorial, 29 March 1915.

<sup>259</sup> “‘Typhoid Mary’ Has Reappeared,” *New York Times*, 4 April 1915; “Typhoid Fever,” editorial, *Scientific American* 112, no. 19 (8 May 1915): 428.

<sup>260</sup> For a summary of some of the cultural footprint of “Typhoid Mary,” see Marouf A. Hasian, “Power, Medical Knowledge, and the Rhetorical Invention of “Typhoid Mary,” *Journal of Medical Humanities* 21, (2000): 123–139.

<sup>261</sup> Leavitt, *Typhoid Mary*, 100.

explained why Soper and other Department officials found Mallon's behaviour so much more troubling than that of other male asymptomatic carriers they discovered shortly after her.<sup>262</sup> The legal scholar John Fabian Witt saw Mallon's treatment as an example of "discriminatory state power."<sup>263</sup> To these scholars, Mallon was unfairly punished, since, as Leavitt argued, "there were other ways to keep Mary Mallon from transmitting typhoid fever short of leaving her on an island for twenty-six years."<sup>264</sup>

This more sympathetic reading of Mallon's behaviour can be evidenced by the fact that Mallon's indefinite quarantine was an anomaly. In her study of Mallon, Leavitt demonstrated that NYC's Department of Health did not resort to similar measures with other asymptomatic carriers of typhoid discovered shortly after Mallon. The Department's primary strategy of requiring asymptomatic carriers to improve their sanitary habits, and occasionally forbidding them from working in certain occupations like food service was successful with carriers other than Mallon. In 1919, the Department wrote in its *Annual Report* that among the asymptomatic carriers tracked by the department, in 94% of the cases, "the home conditions and the personal habits in all cases were excellent. They had been carefully instructed how to protect others, and they carefully observe these instructions."<sup>265</sup> Leavitt interpreted this pattern as indicating that misogyny and anti-Irish nativism on the part of Soper and other Department officials fundamentally shaped their decision

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<sup>262</sup> Kraut, 103.

<sup>263</sup> Witt, 40.

<sup>264</sup> Leavitt, *Typhoid Mary*, 244.

<sup>265</sup> New York City Board of Health, *Annual Report of the Department of Health of the City of New York for the Calendar Year 1921* (New York City: Stillman Appellate Printing Co., 1922), 81.

to treat Mallon far more harshly than other asymptomatic carriers.<sup>266</sup> Leavitt and J. Andrew Mendelsohn have shown that the Department's typhoid mitigation efforts with other asymptomatic carriers were somewhat more "humane," in Mendelsohn's words, and somewhat more "socially sensitive," as Walzer Leavitt characterized it, further indicating that Mallon's treatment was in no small part influenced by public health officials' personal prejudices.<sup>267</sup>

Leavitt, Kraut, and other historians are far more attuned to concerns of race, class, and gender, along with the ways that these identities mediate individuals' experiences with public health agencies that are more eager to impinge upon individual liberties of the marginalized, than commentators in Mallon's era were. As Leavitt put it, "what is most jarring... [about] Mary Mallon's experience is that individual liberty seems to be irrevocably and maybe too quickly overridden by the perceived larger good of protecting the public's health."<sup>268</sup>

These are indeed troubling issues. But the willingness of the press and the public health officials who dealt with Mallon to villainize her, especially after her recapture, indicates how deeply Progressive Era Americans feared disease; infectious disease was the leading cause of death for Americans in 1910.<sup>269</sup> The Department did try methods short of indefinite quarantine to induce Mallon to amend her behaviour, per the parole agreement they released her under in 1910, and she undeniably spread typhoid through her refusal to adhere to the rigorous sanitary protocols the

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<sup>266</sup> Leavitt raised the cases of Alphonse Cotils, a Belgian immigrant, and Tony Labella, a native-born American, two male asymptomatic carriers who, similarly to Mallon, refused to cooperate with the Health Department, but were not scrutinized as heavily as Mallon. Both Cotils and Labella were detained by the department for a short period of time before being released. For example, Labella was detained for two weeks, before being paroled; like Mallon, he repeatedly violated the terms of his parole but unlike Mallon, the Department added him to a list of known asymptomatic carriers and took no further action. Leavitt argued that the difference between their treatment and Mallon's indicated that Mallon's gender, lack of femininity, and ethnicity influenced NYC's health officials' choice to confine her indefinitely. See Leavitt, *Typhoid Mary*, 118–125.

<sup>267</sup> J. Andrew Mendelsohn, "'Typhoid Mary' Strikes Again: The Social and the Scientific in the Making of Modern Public Health," *Isis* 86, no. 2 (1995): 272; Leavitt, "'Typhoid Mary' Strikes Back," 629.

<sup>268</sup> Leavitt, *Typhoid Mary*, 243.

<sup>269</sup> See U.S. Department of Commerce and Labor, Bureau of the Census, *Mortality Statistics: 1910* (Washington: Government Printing Office, 1912), 27.

Department required her to abide by. Mallon's right to exercise her individual liberty was not absolute, especially where it infringed upon the rights of others to remain free of disease.<sup>270</sup> The Department could have tried further methods, like providing her with an alternate form of livelihood so she would not have felt as though she needed to return to cooking to earn her keep, thereby exposing the food she cooked to the germs within her body. Whatever the counterfactual, it remains that they had to try something to keep the broader community safe.

I argue not for a reading of Mallon that casts her as a villain, as the Department and the press did in her time, or for a sympathetic reading of Mallon, as other historians have done, but for an empathetic one. With such a reading, the ways in which Americans' expectations of public health have shifted across the century become sharper. In the Progressive Era, both *Jacobson v. Massachusetts* and Mallon's treatment are indicative of how Americans were increasingly coming to believe that public health institutions at various levels of governance should play a central role in both guarding the community's health, and prioritize the health of the community over individuals' absolute liberties. Americans living in the late twentieth and early twenty-first centuries still expect this of their public health institutions, but now expect that their public health measures respect their individual rights and avoid the kinds of naked discrimination that featured in nineteenth and early twentieth century health policy. This is in part due to the proliferation of episodes like the 1900 San Francisco plague epidemic in which officials used public health mechanisms to stigmatize and target vulnerable minorities at the expense of effective anti-epidemic measures. Mallon's story, and our views of her, remain telling, even after more than a full century after the Department quarantined her for the last time.

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<sup>270</sup> As established in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

## EPILOGUE

From the vantage point of 2022, after living through two years and counting of Covid-19, both competing portraits of Mallon become even more complicated. Is Mallon the twentieth century equivalent of a twenty-first century anti-vaxxer and anti-masker, standing proud in her defiance of measures requiring her to make small personal sacrifices for the greater good, as some commentators from the Covid era have suggested?



**FIGURE 1** — “Typhoid Marty” Political Cartoon from *The Week*. Mike Luckovich, *The Week*, 18 April 2021, <https://theweek.com/cartoons/977797/editorial-cartoon-covid-anti-vaxxers-masks-typhoid-marty>.

Many commentators in the Covid era have said yes, drawing a line from Mallon’s refusals to abide by the Department’s health measures to the refusals of anti-vaxxers, anti-maskers, and anti-

lockdown Americans in the 2020s.<sup>271</sup> Others, especially those writing in the early days of the pandemic when Covid was still a novel virus, invoked Mallon's name as a cautionary warning to emphasize the seriousness of the threat that asymptomatic carriers and "super-spreaders" could pose to those around them.<sup>272</sup> Still others have written more sympathetic portrayals of Mallon, in keeping with scholars' more sensitive interpretations of her.<sup>273</sup>

Mallon is not the only resister in this thesis who has resurfaced in contemporary commentary during the Covid-19 pandemic. Commentators have drawn parallels between San Francisco public health officials' discrimination via public health ordinance towards the Chinese throughout the 1900 plague epidemic, and the intensification of anti-Asian racism that swept through pandemic-era America.<sup>274</sup> These parallels have arisen as the hot button issue of migration, along with the charge that Asian immigrants represent a health threat, resurfaced in the first few months of the pandemic particularly through the rhetoric of powerful figures like then-President Donald Trump, who notoriously termed Covid the "Kung Flu."<sup>275</sup> Meanwhile, still others have raised *Jacobson v. Massachusetts* to highlight or argue against the legal precedents backing the

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<sup>271</sup> See, for example, Nina Storchlic, "Typhoid Mary's Tragic Tale Exposed the Health Impacts of 'Super-spreaders,'" *National Geographic*, 17 March 2020, <https://www.nationalgeographic.com/history/article/typhoid-mary-tragic-tale-exposed-health-impacts-super-spreaders>; Jade Bremner, "'Typhoid Mary Having Linguini': Jimmy Kimmel Mocks Sarah Palin for Dining in NYC After Positive Covid Test," *Yahoo!* 28 January 2022, <https://ca.sports.yahoo.com/news/typhoid-mary-having-linguini-jimmy-191711815.html>; Rund Abdelfatah and Ramtin Arablouei, "What Typhoid Mary's Story Tells Us About COVID-19 Tensions," *NPR Throughline*, podcast audio, <https://www.npr.org/2020/07/02/886487212/what-typhoid-marys-story-tells-us-about-covid-19-tensions>.

<sup>272</sup> See, for example, Gillian Brockell, "Yes, There Really Was a 'Typhoid Mary,' an Asymptomatic Carrier Who Infected Her Patrons," *Washington Post*, 17 March 2020, <https://www.washingtonpost.com/history/2020/03/17/typhoid-mary-st-patricks-day-coronavirus/>; Mount Carmel, "Superspreaders: How Quickly COVID-19 Can Spread," Mount Carmel Blog, 17 August 2020, accessed 2 December 2022, <https://www.mountcarmelhealth.com/blog/superspreaders>.

<sup>273</sup> Alan Burdick, "The Pandemic and the Limits of Science," *New York Times*, 16 March 2021, <https://www.nytimes.com/2021/03/16/health/coronavirus-pandemic-lessons.html>.

<sup>274</sup> Olivia B. Waxman, "San Francisco's Response to Bubonic Plague in 1900 Shows the Dark Roots of Anti-Asian Hate," *TIME*, 24 May 2022, <https://time.com/6180443/bubonic-plague-anti-asian-hate-covid-19/>; Joanne Lu, "Why Pandemics Give Birth To Hate: From Bubonic Plague To COVID-19," *NPR*, 26 March 2021, <https://www.npr.org/sections/goatsandsoda/2021/03/26/980480882/why-pandemics-give-birth-to-hate-from-black-death-to-covid-19>.

<sup>275</sup> "Donald Trump Calls Covid-19 'Kung Flu' at Tulsa Rally," *Guardian*, 21 June 2020, <https://www.theguardian.com/us-news/2020/jun/20/trump-covid-19-kung-flu-racist-language>.

constitutionality of vaccine mandates, as America’s anti-vaccination movement gained in numbers and strength throughout the pandemic.<sup>276</sup> These commentaries are underlaid with the same explicit or implicit, conscious or unconscious point: that the dynamics that drove the pandemic-era contestations of public health that played out between America’s public health institutions and the populations they are tasked with protecting, did not spring from nowhere. These themes—of power, resistance, and control—that I identify as being crucial drivers in the exercise of public health have their own history. Looking backwards in time to understand them is but one method Americans have turned to as a way of grappling with the aftershocks of the pandemic.

The Covid-19 pandemic has made Americans rethink the role public health plays in their lives; this ongoing debate has played out across the nation, from social media to the halls of power in Washington, D.C. As I write this in December 2022, the US has recorded nearly 100 million documented cases of Covid-19 and over 1 million documented deaths, both measures undercounts, especially now that the country has widely given up on testing and contact tracing.<sup>277</sup> Measures like mask mandates are largely a relic of the past; partisan divisions, already deep even before the pandemic, have been exacerbated via the pandemic as commentators bemoan what they see as the increasing fracturing of the country.<sup>278</sup> Americans of all ideological stripes are exhausted,

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<sup>276</sup> Peter S. Canellos and Joel Lau, The Surprisingly Strong Supreme Court Precedent Supporting Vaccine Mandates,” *Politico Magazine*, 8 September 2021, <https://www.politico.com/news/magazine/2021/09/08/vaccine-mandate-strong-supreme-court-precedent-510280>. For example, the Federalist Society, the central conservative promoting right-wing judicial causes such as the June 2022 overturn of *Roe v. Wade* and which opposed anti-Covid measures like vaccination mandates, took aim at *Jacobson* and its backing for vaccination mandates. See Peter M. Thomson, “*Jacobson v. Massachusetts* Lends Questionable Support to Covid-19 Executive Orders Imposing Criminal Penalties for Non-Compliance,” FedSoc Blog, Federalist Society, 21 December 2021, accessed 2 December 2022, <https://fedsoc.org/commentary/fedsoc-blog/jacobson-v-massachusetts-lends-questionable-support-to-covid-19-executive-orders-imposing-criminal-penalties-for-non-compliance>.

<sup>277</sup> “COVID-19 United States Cases by County,” JHU Coronavirus Resource Center, John Hopkins University, accessed 2 December 2022, <https://coronavirus.jhu.edu/us-map>.

<sup>278</sup> See, for example, David Leonhardt, “Covid’s Partisan Errors,” *New York Times*, 18 March 2021, <https://www.nytimes.com/2021/03/18/briefing/atlanta-shootings-kamala-harris-tax-deadline-2021.html>.

increasingly uncharitable towards each other, inured to the spectacle of mass death that became a daily occurrence throughout the pandemic.<sup>279</sup>

In many respects, it is this hardening of perspectives that I have written this thesis to gently dispute. The underlying goal of this thesis has been to rethink the various factions that contested public health in both the present pandemic and the Progressive Era through the lens of empathy. *Empathy*, as in to occupy the perspective of another until their motivations, desires, and choices no longer seem foreign and unreasonable, whether we agree or disagree with them. In doing so, the complicated building of the foundations of public health in the late nineteenth and early twentieth centuries becomes more legible. To inhabit the perspectives of the resisters who challenged them allows us to see the defining roles they played in shaping the development of public health institutions and practices. Meanwhile, to inhabit the perspectives of the public health officials, frustrated at multiple opportunities by resisters they did not believe capable of such fierce protest allows us to see in sharper relief the limits of their power.

This thesis also suggests a new way to look at the state of public health in America, not as built atop a road of steady, uninterrupted *progress* but as sitting atop institutional foundations that were never particularly sturdy even at the time they were built. The development of public health has not been linear. The foundations reverberate into the present. As any student of history knows, we live in a world built by the past. Past not as prologue or analogue, but as the *sine qua non* to the present, without which the present cannot be understood.

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<sup>279</sup> Hannah Devlin, “Covid Might Have Changed People’s Personalities, Study Suggests,” *Guardian*, 28 September 2022, <https://www.theguardian.com/world/2022/sep/28/covid-might-have-changed-peoples-personalities-study-suggests>; Angelina R. Sutin et al., “Differential Personality Change Earlier and Later in the Coronavirus Pandemic in a Longitudinal Sample of Adults in the United States.” *PLOS One* 17, no. 9 (September 2022): e0274542.

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