Contagious Disease, Epidemics, National Security, and U.S. Immigration: Historical Policy Responses

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(Comments welcome!)

Abstract

What is the relationship between epidemics, national security, and U.S. immigration policy? This question is important because epidemics have posed perhaps the largest security threat to humankind through history, with several of them claiming lives at a faster pace than the even great wars of the twentieth century. Extant literature in the area correctly and importantly brings attention to the danger of leaders misusing epidemic risk to justify xenophobic migration policies, but a greater understanding of the relationship between epidemics, national security, and U.S. immigration policy is required to protect against catastrophic events and bring transparency to the area to hold officials accountable for responsible policy decisions. This working paper does this by reviewing epidemics in American and world history, using the International Relations (IR) and Security Studies literatures to specify the danger of epidemics for nation-states, and identifying and providing examples using primary source evidence of three broad immigration policy measures that American leaders have utilized from the colonial period to the present-day to protect against contagions. This study has implications for American Political Development, IR, and migration research and can assist contemporary analysts and officials with forming prudent migration policies that maximize human safety.

What is the relationship between epidemics, immigration, and U.S. national security? How have U.S. leaders historically attempted to design immigration policies to protect against dangerous contagious disease?

Epidemics have posed perhaps the largest security threat to humankind through history. Several of them have rapidly and indiscriminately claimed lives at a faster pace than even the great wars of the twentieth century.[1] Some infectious diseases are highly contagious so the movement of sick people across borders poses security risks to nation-states because of their affect on human health and their ability to disturb economic and military production as well as generate civil discord. States therefore have a strong incentive to design immigration policies to protect against contagions.

Advances in transportation over the past two centuries have perhaps compounded epidemic risk to states, especially in comparison to earlier times, and today a contagious disease originating in a distant place, even as far off as China or Russia can be carried by a foreigner to the U.S. in less than a day. A National Intelligence Estimate, for example, concludes that most infectious diseases "originate outside U.S. borders and are introduced by international travelers, immigrants, returning U.S. military personnel, or imported

[1] For example, tuberculosis, as just one example of a worldwide pandemic, ranked at the top with war as one of the largest killers of the nineteenth century, claiming the lives of as many as an estimated one half of a percent of the population in the western world. Michael C. Lemay, *Guarding the Gates: Immigration and National Security* (Westport, CT: Praeger Security International, 2006), 41. On epidemics in American history see *Ibid.*, esp. 21, 41, 71; June E. Osborn, ed., *History, Science, and Politics: Influenza in America, 1918-1976* (New York: Prodist, 1977); Charles E. Rosenberg, *The Cholera Years: The United States in 1832, 1849, and 1866* (Chicago, IL: The University of Chicago Press, 1962); and Terra Ziporyn, *Disease in the Popular Press: The Case of Diphtheria, Typhoid Fever, and Syphilis, 1870-1920* (New York: Greenwood Press, 1988). For accounts of epidemics through world history, including discussion on those in America, see John M. Barry, *The Great Influenza* (New York: Penguin Group, 2004); Alfred W. Crosby, Jr., *Epidemic and Peace, 1918* (Westport, Conn.: Greenwood Press, 1976); Jared Diamond, *Guns, Germs, and Steel: The Fates of Human Societies* (New York: W.W. Norton & Company, 1999); Geoffrey Marks and William K. Beatty, *Epidemics* (New York: Charles Scribners's Sons, 1976); and William H. McNeill, *Plagues and Peoples* (Garden City, NY: Anchor Press, 1976).

animals and foodstuff" and "pose a rising global threat and will complicate U.S. and global security over the next twenty years."[2]

The relationship between contagious disease, epidemics, migration, and U.S. immigration policy has been the subject of several impressive studies, but many of them focus largely on how American officials have sensationalized and misused contagion risk to justify restrictive or xenophobic measures.[3] These scholars have correctly and importantly brought attention to the very real danger of leaders misusing epidemic threat for ulterior and racist purposes, especially considering that very few immigrants pose any type of risk.

Nevertheless, a greater understanding of the relationship between epidemics and U.S. immigration policy is required to protect against catastrophic security events (e.g., the 1919 Spanish Flu killed an estimated 50-100 million people worldwide) as well as bring transparency to the area to hold officials accountable for responsible policy decisions. A closer look at the relationship between immigration and contagious disease as well as the ways that American leaders have historically attempted to protect against epidemic danger

[2] National Intelligence Council (NIC), "The Global Infectious Disease Threat and Its Implications for the United States," NIE 99-17D, January 2000, published in, *Enviornmental Change & Security Project Report* 6 (Summer 2000): 33-65, avialable at http://www.wilsoncenter.org/topics/pubs/Report6-3.pdf (accessed July 22, 2009), quotes at 34.

[3] For studies that discuss contagious disease and/or epidemics and U.S. immigration (and to varying degrees U.S. migration policy responses to contagion/disease risk) see, for example, Alan M. Kraut, *Silent Travelers: Germs, Genes, and the "Immigrant Menace"* (New York: Basic Books, 1994); Donna E. Manfredi and Judith M. Riccardi, "AIDS and United States Immigration Policy: Historical Stigmatization Continues With the Latest "Loathsome" Disease," *Journal of Civil Rights and Economic Development* 7 (Spring 1993): 707-736; Howard Markel, *Quarantine! East European Jewish Immigrants and the New York City Epidemics of 1882* (Baltimore, MD: Johns Hopkins University Press, 1997); Howard Markel and Alexandra Minna Stern, "The Foreignness of Germs: The Persistent Association of Immigrants and Disease in American Society," *Millbank Quarterly* 80 (December 2002): 757-788; Howard Markel and Alexandra Minna Stern, "Which Face? Whose Nation? Immigration, Public Health, and the Construction of Disease at America's Ports and Borders, 1891-1928," *American Behavioral Scientist* 42: 1313-30; David T. Graham and Nana Poku, "Population Movements, Health, and Security," in *Redefining Security: Population Movements and National Security*, eds., Poku and Graham (Westport, CT: Praeger, 1998), 203-234; Ruth Ellen Wasem, "Immigration Policies and Issues on Health-Related Grounds for Exclusion," CRS Report for Congress (Washington, DC: Congressional Research Service, 2011).

with immigration policy can lay groundwork to help us to identify pragmatic policy responses that maximize human safety as well be on guard for potential misuses of migration policy in regard to epidemic risk. The goal, of course, is to bring transparency and greater knowledge in the area to assist analysts and leaders with forming policy responses that optimize the safety and security of American citizens *and* immigrants from the devastating consequences of a deadly contagion.

A study of this sort will also contribute to the American Political Development (APD), International Relations (IR), and Migration literatures in several ways. In regard to immigration studies, it will specify relationships between a relatively little studied variable (contagious disease or epidemics) and immigration as well as identify ways in which it has affected the formation of U.S. immigration policy.[4] Moreover, since nation-states in the international system face similar systemic pressures, the logic presented in this type of study regarding contagious disease, epidemics, immigration, national security, and historical U.S. policy responses to contagion risk can likely be profitably applied to other countries in the international community. This type of study will also speak to a discussion regarding the "securitization" of migration, with some scholars pointing out that focusing on security and immigration can result in irresponsible and xenophobic policy choices and others maintaining that, "It is essential that [security] fears not be summarily dismissed as xenophobic, racist, paranoid....Fears often do have a basis in reality, and whether they do

[4] For discussion more generally on relationships between security areas and U.S. immigration policy, see Robbie J. Totten, "Security and U.S. Immigration Policy," University of California, Los Angeles, Doctoral Dissertation, 2012. For analysis of how security issues factored into American immigration policy during the colonial period and founding of the country, see Robbie Totten, "National Security and U.S. Immigration Policy, 1776-1790," *Journal of Interdisciplinary History* 39 (Summer 2008): 37-64. See also Robbie J. Totten, "Security, Two Diplomacies, and the Formation of the U.S. Constiution: Review, Interpretation, and New Directions for the Study of the Early American Period," *Diplomatic History* 36 (January 2012): 97, 104, 113-114.

or do not, fears shape the way peoples and their governments behave."[5] An examination of how and why leaders perceive a connection between epidemics, migration, and national security can help officials and scholars determine the danger and value of considering epidemic risks and national/human security when forming migration policy.[6]

In regard to the APD and IR literatures, this type of study identifies how a factor (epidemics) originating in the international system contributes to American domestic policies (in this case, immigration policy.) As Ira Katznelson and Martin Shefter have emphasized, factors stemming in the world community and system have received relatively little attention from scholars even though they likely play a large role in shaping U.S. domestic policies.[7] An examination of how contagious disease and epidemics originating outside American borders affects U.S. immigration policy can help determine the value of considering international variables in examining American political development as well as specify ways in which an external variable factors into domestic policies. In regard to the IR literature, this type of study also provides insight into what has been referred to as a "non-traditional security area," since both epidemics and immigration constitute potential

[5] Regarding public leaders sensationalizing security aspects area for ulterior motives, see, for example, Didier Bigo, "Security and Immigration: Toward a Critique of the Governmentality of Unease," *Alternatives* 27 (2002): 63-92; Ayse Ceyhan and Anastassia Tsoukala, "The Securitization of Migration in Western Societies: Ambivalent Discourses and Policies," *Alternatives* 27 (2002): 21-39. See also Myron Weiner "International Migration and Global Security," in *International Migration and Security*, ed., Myron Weiner (Boulder, CO: Westview Press, 1993), 24.

[6] This type of analysis can help analysts in determining the advantages and drawbacks of factoring security considerations into immigration policy.

[7] On the neglect of the role of the international system in American political development, Ira Katznelson and Martin Shefter, eds., *Shaped by War and Trade: International Influences on American Political Development* (Princeton, NJ, 2002). On how the international system affects U.S. domestic policy see, for example, Gabriel Almond, "Review Article: The International-National Connection," *British Journal of Political Science* 19 (1989): 237-59; and Peter Gourevitch, "The Second Image Reversed: The International Sources of Domestic Politics," *International Organization* 32 (Autumn 1978): 881-911.

non-military dangers to nation-states.[8] It will help determine if and to what extent a perceived unconventional security threat (contagious disease and immigration) in fact poses a danger to the U.S. as well as if American leaders have historically constituted it as a risk to national security.

This working paper will proceed as follows: It will discuss relationships between infectious disease, epidemics, and immigration as well as American policy responses to the perceived dangers of contagions by first reviewing several epidemics through world and American history to provide a sense of the threat that they pose to civilizations, societies, and nations. Second, it will draw from the IR and Security Studies literatures to detail the security risks posed by epidemics for nation-states. Third, it will identify and discuss (and provide examples of) three broad types of immigration policies that U.S. leaders have used from the colonial period to the present-day to protect against contagions, which are laws that condition or prevent the entrance of foreigners suspected of carrying specified contagions, the isolation or quarantining of arriving immigrants thought to host dangerous disease, and delegating the president with authority to stop all immigration in the event of an epidemic abroad. Primary source material such as government documents, legal statutes, and public and private correspondence as well as works by historians will be consulted to determine if leaders have constituted epidemics and immigration as a security

[8] More generally, this working paper touches on a post-Cold War debate within the IR discipline over the boundaries of the field, with some scholars arguing that the field should continue to focus primarily on threats posed by foreign states in the international community and the economic and military dimensions of security while other scholars have argued that the field should be broadened to include security areas such as crime, epidemics, global warming, immigration, and narcotics. See, for example, Michael E. Brown, Owen R. Coté Jr., Sean M. Lynn-Jones, and Steve E. Miller, eds., *New Global Dangers: Changing Dimensions of International Security* (Cambridge, MA: MIT Press, 2004); Barry Buzan, Ole Waever, and Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder, CO: Lynee Rienner Publishers, Inc., 1998); Keith Krause and Michael C. Williams, "Broadening the Agenda of Security Studies: Politics and Methods," *Mershon International Studies Review* 40 (1996): 229-254; and Stephen M. Walt, "The Renaissance of Security Studies," *International Studies Quarterly* 35 (1991): 211-239.

risk. And fourth, the working paper will conclude by summarizing its findings and pointing to areas of future research.

Part I: Epidemics and Security in Historical Perspective

Many examples exist through history of epidemics destroying civilizations and militaries and abruptly altering the fate of governments and societies. Thucydides recorded perhaps the first account of an infectious disease, detailing the horror following the "plague of Athens," which was brought to Greece by sailors from Northern Africa and reduced the Athenian population by over one-third, significantly weakening their army and contributing to their defeat in the Peloponnesian Wars.[9] The bubonic plague (the Black Death) arrived in Europe during the fourteenth century by traders from Central Asia along the Silk Road, reducing the population of the continent by an estimated thirty to forty-five percent and perhaps contributing to the collapse of the feudal system.[10] European explorers introduced diseases in the New World that between Columbus's arrival in 1492 and the start of the eighteenth century killed as many as ninety-five percent of the North

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[9] Regarding the plague, Thucydides wrote, "The bodies of the dying were heaped one on top of the other, and half-dead creatures could be seen staggering about in the streets or flocking around the fountains in their desire for water. For the catastrophe was so overwhelming that men, not knowing what would next happen to them, became indifferent to every rule of religion or law. Athens owed to the plague the beginnings of a state of unprecedented lawlessness. Seeing how quick and abrupt were the changes of fortune…people now began openly to venture on acts of self-indulgence which before then they used to keep in the dark. As for what is called honor, no one showed himself willing to abide by its laws, so doubtful was it whether one would survive to enjoy the name for it. No fear of god nor law of man had a restraining influence. As for the gods, it seemed to be the same thing whether one worshipped them or not, when one saw the good and the bad dying indiscriminately. As for offences against human law, no one expected to live long enough to be brought to trial and punished." Thucydides, *History of the Peloponnesian War* (Penguin, 1980), 155, cited in Andrew T. Price-Smith, *Contagion and Chaos: Disease, Ecology, and National Security in the Era of Globalization* (Cambridge, MA: The MIT Press, 2009), 37. See also the discussion in *Ibid*., 5, 36-38.

[10] *Ibid*., 5, 40-45.

American Indians, contributing to the relative ease with which their lands were taken by imperial powers.[11] More recently, the resolve of German soldiers was broken by the 1918 influenza outbreak during WWI, and as is the case in most wars, disease killed more soldiers during WWII than combat in many battle areas.[12]

In regard to the U.S., deadly outbreaks of the ague, bacillary dysentery, cholera, diphtheria, influenza, lobar pneumonia, malaria, tuberculosis, typhus, typhoid, scarlet fever, small pox, and yellow fever repeatedly broke out across the country from the seventieth through the early twentieth centuries.[13] To give just a few examples and statistics, Philadelphia lost as much as an eighth of its population in a two month span to yellow fever in 1793, New Orleans had a higher death than birth rate for most of the nineteenth century in large part due to cholera and yellow fever, and it is estimated that the 1832, 1849, and 1866 cholera outbreaks killed over 200,000 Americans.[14] Contagious disease continued to claim large numbers of American lives during the first half the twentieth century, exemplified by the fact that typhoid killed an estimated one million lives

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[11] Francisco Pizarro, for example, defeated an Incan army of 80,000 soldiers with only 168 Spaniard soldiers because a smallpox epidemic killed large numbers of the Native American population (including the emperor and his heir) and caused civil war. Susan Peterson, "Epidemic Disease and National Security," *Security Studies* 12 (Winter 2002/2003): 55, 76; and Price-Smith, *Contagion and Chaos*, 5, 47-48.

[12] Peterson, "Epideimc Disease and National Security," 76.

[13] *Ibid.*; and Lemay, *Guarding the Gates*.

[14] Wilson G. Smillie, "The Period of Great Epidemics in the United States (1800-1875)," in *The History of American Epidemiology*, ed. Franklin H. Top (St. Louis: The C.V. Mosby Company, 1952), 58-60; Jim Murphy, *An American Plague: The True and Terrifying Story of the Yellow Fever Epidemic of 1793 (New York: Clarion Books, 2003); and* Rosenberg, *Cholera Years.* Regarding the yellow fever epidemic of 1878, one scholar writes, "The pre-epidemic population of [Memphis, Tennessee] was about 50,000. Of these, about 30,000 fled. In a space of three months, 17,500 of the remainder were attacked and 5,150 died. Of a police force of 48 officers, 27 were attacked and 10 died. Of 39 members of the Howard Association who volunteered to stay and assist the sick, 32 were attacked and 12 died. Such was yellow fever when it struck a large and susceptible population." James A. Doull, "The Bacteriological Era (1876-1920), in *The History of American Epidemiology*, ed. Top, 84.

from 1880-1920, and that the Spanish Influenza, the deadliest disease in human history as measured by the absolute number of lives it claimed worldwide, struck soon after WWI to kill an estimated 500,000 Americans in a few short years.[15]

But by the mid-twentieth century, with the discovery of cures and vaccines for many infectious diseases and improvements in sanitation methods the death tolls from communicable diseases plummeted in the U.S. Nevertheless, approximately 170,000 Americans die each year from infectious diseases and epidemics remain a security threat for states today.[16] For example, a U.S. National Intelligence Estimate on infectious disease reports that since 1973 at least twenty known diseases such as cholera and tuberculosis have reappeared or spread to new locations around the globe and approximately thirty previously unknown diseases such as Ebola and hepatitis C have been discovered by scientists, many of which do not have available cures. The report also emphasizes the susceptibility of modern states to biological attacks by rogue groups and individuals, citing the 2001 mail-based anthrax attacks throughout the U.S. as a possible example of

[15] The Spanish Influenza is estimated to have killed fifty to one hundred million people throughout the world. Doull, "The Bacteriological Era," in *The History of American Epidemiology*, ed. Top, 86; Barry, *The Great Influenza*, 4. The symptoms of the virus were horrific, including profuse nose and ear bleeding, strange dermatological changes, including a deep blackening of the skin, agonizing muscular pain, headaches and delirium, vomiting, and coughing so intense "that autopsies would later show [that the diseased] had torn apart abdominal muscles and rib cartilage." Many Americans lived in daily fear of catching the disease, prompting San Franciscans to wear masks to protect themselves from the airborne virus. See discussion in Alfred W. Crosby, "The Pandemic of 1913," in Osborn, ed., *History, Science, and Politics*, 9-13.

[16] The World Health Organization (WHO) estimates that from 1945 through the turn of the century that just three infectious diseases—AIDS, tuberculosis, and malaria—have killed over 150 million people worldwide, which is considerably more than the twenty-three million deaths from wars during a comparable time period. In fact, according to a recent estimate, WHO reports that approximately twenty-five percent of all deaths throughout the globe each year are from infectious diseases. Peterson, "Epidemic Disease and National Security," 47-48, citing the World Health Organization, "Removing Obstacles to Healthy Development, Report on Infectious Diseases" (Geneva: WHO, 1999), available at www.who.int/infectious-disease-report/, accessed on July 21, 2009.

terrorism.[17] Thus, the existence of modern bioterrorism coupled with recent outbreaks in developed nations (e.g., the 2003 Severe Acute Respiratory Syndrome (SARS) virus and the 2009 Swine Flu) indicate that the U.S. remains vulnerable to epidemics.

Part II: Security Threat of Epidemics to the U.S.

As the previous examples illustrate, epidemics pose security threats to states in a number of ways, primarily through their negative affect on economic and military power, "domestic" or internal security, and foreign relations. This section draws from recent works in the IR and Security Studies fields to elucidate the security threat to states from epidemics to emphasize why American leaders have a strong incentive to devise migration policies to protect against contagious disease.[18]

Economic and Military Power: Epidemics can reduce the ability of a state to project economic and military power in the international system. Infectious disease does this primarily through its affect on human health and productivity, with possible results of an epidemic including a high mortality rate, sick citizens unable to return to work, and laborers performing suboptimal—all outcomes that can tax social and healthcare systems and stagnate the economic and military production of a state. Disease also has a psychological toll on citizens, creating anxiety and fear amongst members of a polity, which can curb social and technological innovation, disrupt trade, limit capital investment, and encourage firms and entrepreneurs to abandon long-term economic plans.[19]

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[17] National Intelligence Council, "Global Infectious Disease Threat," 34, 37.

[18] This section is based upon Peterson, "Epidemic Disease and National Security"; and Price-Smith, *Contagion and Disease*, which detail the connection between epidemics and the security of states.

[19] Price-Smith, *Contagion and Disease*, 20-21, 204-205.

Domestic or Internal Security: The psychological impact of disease on people within a society is frequently severe, with the uncertainty and devastation wrought by epidemics capable of prompting erratic and violent behavior amongst members of a polity. "Emotions and perceptual distortions" emerging as a result of a deadly disease outbreak, writes Andrew T. Price-Smith, "may…generate the construction of images of the "other," resulting in stigmatization, persecution of minorities, and even diffuse inter-ethnic or inter-class violence."[20] As they attempt to cope with the horrors of an epidemic, citizens may blame one another for the outbreak and violence may erupt. Disease can also limit the ability of a state to control its constituents, which can force it to impose strict measures on citizens; and disease may reduce the services a state can provide to its populace, which can limit its legitimacy. Citizens dissatisfied with the state may therefore protest, with possible outcomes including rioting, civil-police violence, and even civil war.[21]

Foreign Relations: Epidemics affect relations amongst states in a number of ways. The economic and social fallout from a contagious disease may affect trade and social interactions amongst states, perhaps limiting their ability to cooperate and find solutions to disagreements and collective action problems. States may similarly take punitive action against one another if they blame the outbreak of a disease on the ineptitude or irresponsibility of governments other than their own. Epidemics may also directly cause conflict amongst states if they are perceived as caused by a biological attack carried out by a state or a rogue group within a state; and epidemics may indirectly cause conflict amongst states by weakening the economies and militaries of some states more so than

[20] *Ibid.*, 20.

[21] *Ibid.*, 20-21, 204-205.

those of other states in the international system, which can alter the balance of power in the global community and may lead to war.[22]

U.S. leaders, as this section has detailed, thus have security incentives to create measures to protect American citizens from disease carried by immigrants.

Part III: Epidemics and U.S. Immigration Policies

American leaders through the country's history have devised at least three broad immigration policy measures to protect against disease, which are creating laws that condition or prevent the entrance of foreigners suspected of carrying specified contagions, the isolation or quarantining of arriving immigrants thought to host dangerous disease, and delegating the president with authority to stop all immigration in the event of an epidemic abroad. This section focuses disproportionally on the two former methods, since they have constituted the primary ways that leaders have sought to protect against contagious disease. Secondary works by historians as well as primary sources such as government documents, statutes, and public statements are also consulted to gauge if American officials have viewed epidemics and migration as a security matter when making policy decisions.

Conditioning/Restricting Entrance to Foreigners Carrying Disease

American officials from the colonial era through the present day have devised laws that condition or disallow foreigners carrying diseases perceived dangerous entrance to the country.

[22] Peterson, "Epidemic Disease and National Security," 55-64; and Price-Smith, *Contagion and Disease*, 21-22, 204-206.

Colonial Legislation: These types of laws were first enacted during the colonial period when ships often "arrived in port with half of their passengers sick," forcing cities such as Philadelphia to set up a "pest-house provided at public expense" to shield residents from infectious disease.[23] Colonial governments sought to protect against the infirm by passing laws that required the reporting of arriving immigrants and the screening of them for disease, that disallowed foreigners with diseases considered dangerous from entering their territory, that required boat masters or citizens to post bonds for the arriving sick to protect against public relief expenses, and that obligated ship captains to return sick passengers to their ports of departure.[24] The titles of several of these laws provide a sense of their purpose, with a 1756 Massachusetts colony act entitled, "An Act to Prevent Charges Arising by Sick, Lame or Otherwise Infirm Persons, not belonging to this Province, Being Landed and Left Within the Same," and a 1740 Delaware colony act entitled, "An Act Imposing a Duty on Persons Convicted of Heinous Crimes and to Prevent Poor and Impotent Persons being Imported."[25] As these titles suggest, the colonies enacted measures to protect citizens from disease, exemplified by a 1751 Massachusetts law in this area that was created because during travel immigrants "often contract mortal and

[23] Emberson Edward Proper, *Colonial Immigration Laws: A Study of the Regulation of Immigration by the English Colonies in America* (New York: Columbia University Press, 1900), 52.

[24] E.P. Hutchinson, *Legislative History of American Immigration Policy, 1798-1965* (Philadelphia, PA: University of Pennsylvania Press, 1981), 390-393; and Proper, *Colonial Immigration Laws*, 29-30.

[25] Quoted in Hutchinson, *Legislative History*, 390-392. The former act declared that "no master or commander of any ship or vessel whatsoever, coming into, abiding in or going forth of any port, harbour or place within this province, shall cause or suffer to be landed or put on shoar within the same, any sick or otherwise impotent and infirm person, not being an inhabitant of this province...unless the consent of the selectmen of the town where such sick or infirm person shall be landed be first had and obtained therefor, the same to be signified in writing, under their hands; nor unless security be first given, if demanded, to the satisfaction of such selectmen, for indemnifying and keeping such town free from any charge that may arise for the support or relief of the persons so landed." Quoted in *Ibid.*, 391.

contagious distempers, and thereby occasion not only the death of great numbers of them in their passage, but also by such means on their arrival in this province, those who may survive, may be so infected as to spread the contagion, and be the cause of the death of many others."[26]

Local and State Legislation: U.S. local and state legislatures throughout the late eighteenth and nineteenth centuries devised the same types of measures as the colonial governments to safeguard citizens from contagious disease.[27] For example, a Massachusetts law permitted officials to order anyone who arrived from a place infected with "small-pox or other malignant temper" to depart within two hours or "be removed"; a New York law allowed leaders to remove travelers suspected of carrying disease from the state; and Connecticut, Delaware, and Pennsylvania laws permitted leaders to disallow trade with those carrying disease.[28] Leaders passed these laws to secure the country and protect Americans, exemplified by an immigration commissioner in New York, the location that most foreigners arrived during this period, declaring that his state's measures allow for the "protection of the whole country from pestilential scourges" and defend "the

[26] "An Act to Regulate the Importation of Germans and Other Passengers Coming to Settle in This Province, February 6, 1751," in *Immigration: Select Documents and Case Records*, ed., Edith Abbott (Chicago, IL: The University of Chicago Press, 1924), 6.

[27] These laws similarly mandated the reporting and health inspection of immigrants upon entry, the exclusion of those with dangerous disease, and the posting of bonds or security of sick people likely to become a public charge. Hutchinson, *Legislative History*, 397.

[28] Gerald L. Neuman, "The Lost Century of American Immigration Law (1776-1875)," *Columbia Law Review* 93 (December 1993): 1861, 1861*n*. See also Hutchinson, *Legislative History*, 397-400.

interest of the whole Union, by efficiently...preventing the spread of the diseases imported by [immigrants] over the country at large."[29]

Federal Legislation: Issues involving disease and immigration were primarily the domains of local and state governments during the first hundred years of the country, but after a series of epidemics in the late nineteenth century the federal government began to increasingly institute measures in the area.

For example, federal leaders, after decades of jurisdictional debate with state officials over immigration regulation, included a stipulation in the Act of March 3, 1891 that for the first time disallowed entrance to foreigners "suffering from a loathsome or dangerous contagious disease."[30] Events preceding its creation indicate that it was devised to protect against the security risks of contagious disease, with, for example, several notable epidemics after the Civil War contributing to increased agitation for federal action in the area, such as the 1878 yellow fever outbreak which killed more than 5,000 people, disrupted commerce in the south, prompted armed men to stop passengers from getting off of trains to prevent disease transmission, and led to residents dying of exposure and starvation as they attempted to flee the contagion; and by the 1888 yellow fever epidemic which killed nearly 5,000 people, caused a half-million dollars of damage in just Jacksonville, Florida, forced officials to ration food and set up refugee camps, and halted commerce.[31]

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[29] Friedrich Kapp, *Immigration and the Commissioners of Emigration of the State of New York* (New York: The Nation Press, 1870), excerpted in *Immigration: Documents and Case Records*, ed., Abbott, 166-167.

[30] Immigration Act of March 3, 1891, 26 Stat. 1084, Section 2.

[31] On increasing pressure for Congress to regulate immigration to prevent disease spread during the 1880s see Hutchinson, *Legislative History*, 82-83. On the 1878 and 1888 yellow fever epidemics, Felice Batlan, "Law in the Time of Cholera: Disease, State Power, and Quarantines Past and Future," *Temple*

The political debate regarding epidemics and immigration during the era indicates that the 1891 act was designed to protect residents. Perhaps most notably, the Supreme Court asserted in an 1893 immigration court decision, *Nishimura Eiku v United States*, that the federal government possessed the right to turn away immigrants for national security. "It is an accepted maxim of international law," the majority statement read, "that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe."[32]

Leaders have subsequently factored similar provisions within nearly every major immigration law, including the Immigration Act of 1917, the Immigration and Nationality Act of 1952, the Immigration and Nationality Act of 1965, and the Immigration and Nationality Act of 1990.[33] Under provisions within contemporary law, most immigrants are inspected abroad and at port of entry and foreigners found with specified diseases such as smallpox and tuberculosis are not permitted entrance into the U.S.[34] It also prohibits the entrance of foreigners lacking vaccinations, such as those for diphtheria, hepatitis B, influenza type B, measles, the mumps, pertussis, polio, rubella, and tetenus.[35] Thus, the

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Law Review 80 (2007): 65; Margaret C. Fairlie, "The Yellow Fever Epidemic of 1888 in Jacksonville," *The Florida Historical Quarterly* 19 (October 1940): 95-108; and Margaret Humphreys, *Yellow Fever and the South* (New Brunswick, NJ: Rutgers University Press, 1992)

[32] *Nishimura Eiku v United States*, 142 U.S. 651 (1892).

[33] See Hutchinson, *Legislative History*, 417-419.

[34] Foreigners are not permitted entrance into the U.S. if they have the following diseases: chancroid, cholera, diphtheria, gonorrhea, granuloma inguinale, infectious leprosy, lymphogranuloma venereum, plague, smallpox, active and infectious tuberculosis, infectious syphillis, viral hemorrhagic fevers, yellow fever, and "[i]nfluenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause, a pandemic." Ruth Ellen Wasem, "Immigration Policies and Issues on Health-Related Grounds for Exclusion," 3-4.

[35] *Ibid.*, 2-3.

federal government, responding to the security risks of epidemics during the nineteenth century, have restricted entry ever since to those carrying contagious diseases in part for national "self-preservation" and security and to safeguard the public.

Isolation and Quarantine

Isolation and quarantine are methods that have been used by world leaders to protect against contagious disease since ancient times.[36] American officials frequently employed them during the seventeenth through early twentieth centuries, but they have not been used in the country on a large-scale in recent decades because modern medicine and sanitation methods have curbed the number of epidemics in developed countries, though their use has been increasingly reviewed in recent years with the rise of modern bioterrorism. Quarantine refers to the "compulsory physical separation, including restriction of movement, of populations or groups of healthy people who have been potentially exposed to a contagious disease, or to efforts to segregate these persons within specified geographic areas," whereas isolation signifies "the separation and confinement of individuals known or suspected (via signs, symptoms, or laboratory criteria) to be infected with contagious disease to prevent them from transmitting disease to others."[37]

Colonial Legislation: Isolation and quarantine were the primary methods used by colonial and later American local and state officials to protect against contagious disease

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[36] Batlan, "Life in the Time of Cholera," 62.

[37] Joseph Barbera, Anthony Macintyre, Larry Gostin, Tom Inglesby, Tara O'Toole, Craig DeAtley, Kevin Tonat, and Marci Layton, "Large-Scale Quarantine Following Biological Terrorism in the United States: Scientific Examination, Logistic and Legal Limits, and Possible Consequences," *JAMA* 286 (December 5, 2001): 2712.

carried by immigrants prior to the twentieth century.[38] The Massachusetts Bay Colony, for example, instituted a quarantine measure in 1647 to stop passengers arriving from Barbados from infecting its populace with the plague.[39] The purpose of measures such as these were to safeguard residents from disease, as exemplified by the Pennsylvania Assembly and Governor lamenting that his state's quarantine procedures were failing to "prevent the spreading of infectious Distempers among Us, the Effects of which the City of Philadelphia has lately felt, altho' we think a due Execution of Laws [the isolation of sick passengers] might in part have prevented them." They called for additional measures to assist with "Guarding against the Dangers" of sick immigrants and "to prevent the future importation of Diseases into this City, which has more than once felt the fatal Effects of them."[40]

Local and State Legislation: Similar to the colonial legislatures, local and state governments from the founding of the country through the early twentieth century also used isolation and quarantine to safeguard residents from contagions. For example, an 1808 Boston law called for vessels arriving from "tropical ports in the months of May through October (when threats of yellow fever were greatest) to be quarantined on arrival for three days or until twenty-five days had passed since departure." Similarly, a New York law gave the state's governor and New York City mayor the authority starting in 1784 to quarantine immigrants based upon port doctor reports; and many U.S. city and state laws

[38] Neuman, "Lost Century of American Immigration Law," 1860.

[39] Batlan, "Law in the Time of Cholera," 63; and Elizabeth C. Tandy, "Local Quarantine and Inoculation for Smallpox in the American Colonies (1620-1775)," *American Journal of Public Health* 13 (1923): 203.

[40] *Minutes of the Provincial Council of Pennsylvania*, January 5-8, 1741, in *Historical Aspects* of the *Immigration Problem: Select Documents*, ed. Edith Abbott (Chicago, IL: The University of Chicago Press, 1926), 550-551.

during the nineteenth century mandated the erection of quarantine centers and inspectors at ports.[41]

Leaders devised these measures to protect citizens and securitize the nation from the "invasion" of disease, evidenced by a Justice asserting in a Supreme Court case in 1886 that a state possessed the right to administer quarantines because, "For the period of nearly a century since the government was organized Congress has passed no quarantine law, nor any other law to protect the inhabitants of the United States against the invasion of contagious and infectious diseases from abroad; and yet during the early part of the present century, for many years the cities of the Atlantic Coast, from Boston and New York to Charleston, were devastated by the yellow fever." He explained, however, that throughout this period the states sought to safeguard Americans in this area, noting that "during all this time the Congress of the United States never attempted to exercise this or any other power to protect the people from the ravages of these dreadful diseases" because "no doubt they believed that the power to do this belonged to the States."[42]

Federal Measures: Local and state bodies primarily regulated isolation and quarantine measures for the first hundred years of the country, but after a series of devastating epidemics during the late nineteenth century the federal government began to pass laws that gave it a larger role in the area. A system of shared power amongst local,

[41] Batlan, "Law in the Time of Cholera," 64.

[42] He also noted that, "In later times the cholera has made similar invasions, and the yellow fever has been unchecked in its fearful course in the Southern Cities, New Orleans especially, for several generations. During all this time the Congress of the United States never attempted to excercise this or any other power to protect the people from the ravages of these dreadful diseases." Morgan's Steamship Co. v. Louisiana Bd. of Health, 118 U.S. 455, 466 (1886), quoted in Sidney Edelman, "International Travel and our National Quarantine System," *Temple Law Quarterly* (1963-1964): 32.

state, and federal bodies regarding isolation and quarantine oversight arose during this period that remains in place today, with federal officials primarily having jurisdiction over epidemics across state lines and local and state governments possessing authority over epidemics within state lines.

Comments by national leaders during the late nineteenth century indicate that the federal government assumed greater responsibility in this area for national security and to protect Americans. For example, President Benjamin Harrison, with a worldwide cholera pandemic threatening the U.S., signed an executive order in 1891 mandating a twenty-day quarantine over the New York port to protect against the disease because it posed a "direct menace to public health."[43] Similarly, Senator Charles Sumner, the influential Civil War and Reconstruction leader, called for more vigorous federal action against contagious disease "to secure the public health." He argued that Congress was not doing enough to protect Americans and referring to the cholera he asked his fellow Senators, "Can we confess that a great Government of the world must fold its arms and see a foreign enemy, for such it is, crossing the sea and invading our shores and we [are] unable to go forth to

[43] President Harrison's statement regarding the quarantine declared that, "It having been officially declared that cholera is prevailing in various portions of Russia, Germany, and France, and at certain ports in Great Britain, as well as in Asia, and it having been made to appear that immigrants in large numbers are coming into the United States from the infected districts aforesaid, and that they and their personal effects are liable to introduce cholera into the United States, and that vessels conveying them are thereby a direct menace to the public health, and it having been further shown that under the laws of the several States quarantine detentions may be imposed upon these vessels a sufficent length of time to insure against the introduction of contagious diseases, it is hereby 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 shall have undergone a quarantine detention of twenty days (unless such detention is forbidden by the laws of the State or the regulations made therunder) and of such greater number of days as may be fixed in each special case by the State authorities." Surgeon General Walter Wyman, approved by President Benjamin Harrison and Secretary of the Treasury Charles Foster, "Quarantine Restrictions upon immigration to aid in the prevention of the introduction of cholera into the United States," September 1, 1892, in *Annual Report of the Supervising Surgeon-General of the Marine-Hospital Service of the United States, 1892* (Washington: Government Printing Office, 1893), 46-47.

meet it? I do not believe that this transcendent Republic is thus imbecile."[44] Sumner, therefore, likened contagious disease to a "foreign enemy" and invasion that was threatening American soil that the federal government had to act to protect against.

The U.S. has not used isolation or quarantine on a large-scale for over eighty years, but government agencies have carefully reviewed their use since the 9/11 terrorist attacks, the 2001 anthrax-mailings, the 2003 bioterrorist subway attacks in Japan, and the recent occurrence of contagious diseases such as SARs in developed nations.[45] American leaders have done so because they fear the dangers posed by bioterrorism and epidemics, exemplified by a United States Commission on National Security warning that "attacks against American citizens on American soil, possibly causing heavy casualties, are likely over the next quarter century," cautioning that "we must plan ahead" for a "major attack involving contagious biological agents," and urging that steps need to be taken to protect the U.S. against bioterrorism and weapons of mass destruction.[46]

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[44] Senator Charles Sumner, May 11, 1866, 39th Congress, 1st Session, *Congressional Globe* (Washington, D.C.: Government Printing Office, 1866), 2549. See also Michael Les Benedict, "Contagion and the Constitution: Quarantine Agitation from 1859 to 1866," *Journal of the History of Medicine* 25 (April 1970): 192.

[45] See, for example, Mark A. Rothstein, M. Gabriela Alcalde, Nanette R. Elster, Mary Anderlik Majumder, Larry I. Palmer, T. Howard Stone, and Richard E. Hoffman, *Quarantine and Isolation: Lessons Learned from Sars: A Report to the Centers for Disease Control and Prevention* (Louisville, KT: Institute for Bioethics, Health Policy and Law, University of Louisville School of Medicine, 2003).

[46] United States Commission on National Security/21st Century, *Road Map for National Security: Imperative for Change: The Phase III Report of the United States Commission on National Security/21st Century* (Washington, DC: February 15, 2001), 10-11, available at, http://govinfo.library.unt.edu/nssg/PhaseIIIFR.pdf, accessed May 12, 2011.

Special Measures—Presidential Power to Stop Immigration to Protect Against a Contagion

The federal government passed a law in the late nineteenth century that remained on the books for nearly fifty years that gave the President the power to suspend immigration if an epidemic abroad threatened U.S. security.[47] It was created in response to the 1892 cholera pandemic, which devastated parts of Asia, Europe, Persia, and Russia, resulted in seven ships arriving in New York Harbor with passengers infected with cholera, and caused panic amongst Americans in port states.[48] Comments by leaders indicate that it was devised to protect citizen security. For example, Secretary of State John W. Foster declared that improved federal measures were needed to protect against contagious disease coming from abroad and "as a precautionary measure against the introduction of contagious disease which is epidemic, or threatening to become epidemic, in other parts of the world." He stated that federal regulation of immigration for this purpose constitutes "the exercise of the police power of the nation, or, as it is called by the publicists, the right of self-preservation...."[49]

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[47] Hutchinson, *Legislative History*, 417. Many leaders proposed a one-year suspension of all immigration, but Congress instead adopted the Act of February 15, 1893 (27 Stat. 449) that gave the President power to prohibit "the introduction of persons and property" if an epidemic abroad jeopardized the safety of Americans. The law was repealed in July, 1944. *Ibid.*, 417. The act read, "That whenever it shall be shown to the satisfaction of the President that by reason of the existence of cholera or other infectious or contagious diseases in a foreign country there is serious danger of the introduction of the same into the United States…the President shall have power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate and for such period of time as he may deem necessary." Quoted in Hutchinson, *Legislative History*, 107.

[48] On the cholera pandemic, Batlan, "Law in the Time of Cholera"; and Howard Markel, *Quarantine!*

[49] Foster also considered the consequences of federal action in this area on the country's foreign policy interests, noting that, "Other nations, however, could scarcely question its existence [federal measures regarding epidemics] in the imminent danger of the introduction of cholera into the United States with immigrants during the coming year." "I am in the opinion, therefore, that [legislation in this area] which this Government deems it wise to enact in a reasonable way for its own protection is not in conflict with any treaty stipulations into which the United States has entered."John W. Foster, Senate Executive Document No. 25, 52nd Congress, 2nd Session, in *The Executive Documents of the Senate of the United*

Although this measure was taken off the books without use, and it has not been in place for over fifty years, it has been mentioned here because it is plausible that it would be created again in the event of a dangerous worldwide epidemic.

Part IV: Summary and Conclusions

This working paper discussed relationships amongst contagious disease, epidemics, and U.S. immigration as well as historical policy responses by American leaders to the perceived dangers of contagions. After reviewing the devastation wrought by numerous epidemics in American and world history, it used works in the International Relations and Security Studies literatures to identify the dangers of epidemics for nation-states. It then outlined three broad policies designed by American leaders from the colonial period to the present-day to attempt to prevent immigrants from carrying deadly contagions into the country: (1.) laws that condition or prevent the entrance of foreigners suspected of carrying specified contagions, (2.) the isolation or quarantining of arriving immigrants thought to host dangerous disease, and (3.) delegating the president with authority to stop all immigration in the event of an epidemic abroad. Primary evidence—public statements, legislation, private correspondence and comments—was provided to show that these policies were designed in part to protect against the security dangers of epidemics.

This working paper sheds insight into several areas of scholarship and points to areas of future research. For one, it has shown that the security risk posed by contagious disease and epidemics has affected the content of American immigration policy since the colonial period, thus indicating that taking a closer look at this variable (as well as other

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States for the Second Session of the Fifty-Second Congress and the Special Session of the Senate Convened March 4, 1893, 9 vols. (Washington, DC: Government Printing Office, 1893), 2:1-11.

internal or "domestic" security factors such as crime and drug smuggling, espionage, ethnic violence, and terrorism) can shed valuable insight into a force(s) underlying the formation of the U.S. migration policies. Second, since contagion and epidemics have played a role in the creation of U.S. immigration policy, and nation-states in the international system face similar pressures, investigation into how contagious disease has affected the migration policies of other states is likely productive. Third, this working paper has shown how a factor originating (a contagion) in the international system has played a sizeable role in the content of U.S. *domestic* policy (immigration policy)—this analysis and finding emphasizes the important role of international pressures in American political development and indicates that taking a closer look at the influence of geopolitical and systemic factors in the formation of U.S. domestic policies is analytically productive. Fourth, this working paper has specified links between epidemics, immigration, and national security as well as preliminary evidence that American leaders have constituted contagious disease and migration as a security threat (and what is referenced as a nonconventional security threat in the IR literature)—the reader can then determine the value and dangers of "securitizing" these sorts of issues as well as the utility of including unconventional security threats within the IR discipline.[50]

This working paper has also provided analysts and policy makers with information to assist in the formation of measures to protect against contagions by detailing common policies that American leaders over the centuries have used to attempt to protect against them. As other scholars have indicated, it is important to emphasize that American

[50] An issue that I would like to explore in future iterations of this paper is if the comments by leaders regarding the legislation and policies presented in this working paper adhere more to (what has been labeled in the IR literature) a human security or national security model. The evidence provided herewithin is mixed, with some of it supporting a human security framework (at least in regard to the safety of American citizens) and other parts of it adhering to a national security model.

leaders in the past have at times overreacted and sensationalized the danger from contagions to form xenophobic policies. At the same time, it is also important to underscore that contagious disease and epidemics do pose a very real and potentially devastating danger that require migration policies that protect citizens and immigrants.[51] With these two points in mind, analysts and officials are challenged to form migration policies that protect humans from contagions, but at the same time consider the potential for the misuse of these measures. Although this working paper shed insight into epidemics and migration primarily through the lens of national security, it is important to emphasize in closing that the best policies are the ones that equitably provide optimal safety and security to citizens *and* immigrants.

[51] An interesting research question with policy implications regarding these sorts of issues is as follows: do leaders use contagions to justify xenophobic policies because they are inherently racist or because they are overreacting to a security danger and out of fear they are forming racist policies? While the outcome in each situation may be that leaders are behaving in a xenophobic fashion (and are therefore xenophobic), the policy prescription to prevent insensible descriminatory policies stemming from epidemic risk is perhaps different: if leaders are inherently racist, then we need policies that address this problem to protect immigrants, but if leaders are forming xenophobic policies out of (an exaggerated?) fear/terror of an epidemic then perhaps we need policies that act to mitigate this fear as well as their racism.

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