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## Racial Purges

Robert L. Tsai

*Temple University Beasley School of Law*

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# RACIAL PURGES

Robert L. Tsai\*

THE CHINESE MUST GO: VIOLENCE, EXCLUSION, AND THE MAKING OF THE ALIEN IN AMERICA. By *Beth Lew-Williams*. Cambridge and London: Harvard University Press. 2018. Pp. 244. \$24.95.

## INTRODUCTION

On the rainy morning of November 3, 1885, some 500 armed white men visited the home and business of every single Chinese person living in Tacoma, Washington. As the skies wept, the mob roused all 200 of them, including women, children, and the elderly, and marched them through the mud to the outskirts of town. Those who could afford a ticket were seen off on the next train. Those who could not make fare had to keep walking in the hope of seeking refuge in Portland, nearly 150 miles to the south. The next day, Chinese-owned businesses and homes were set on fire to ensure that the people driven out would not feel welcome to return.

In *The Chinese Must Go: Violence, Exclusion, and the Making of the Alien in America*, historian Beth Lew-Williams<sup>1</sup> recounts this horrific episode (pp. 96–102), along with several others, in clear prose and with impressive insight. She offers a “transcalar history”—a deep dive into the Chinese experience in America on multiple levels at once: local, national, and international (p. 10). Lured to the United States by the gold rush, most Chinese migrants quickly learned that their hope for instant wealth was little more than a fleeting dream (p. 23). Most wound up having to take low-paying jobs in agriculture, manufacturing, and the service industry (p. 35). This sudden, increased integration along economic and spatial dimensions turned out not to be what the Chinese migrants or many white Americans expected or wanted, and a volatile mix of racism, economic jealousy, and cultural difference caused enormous political upheaval (pp. 35–39). Waves of nativist politics and organized terror ensued as white Americans resisted national policies that favored free migration, enforced notions of white supremacy, and demanded that the federal government settle “the Chinese Question” (pp. 40–43). Until Congress solved the problem, white citizens would do the job by displacing Chinese migrants from communities where they were not

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\* Clifford Scott Green Visiting Professor of Constitutional Law, Temple University’s Beasley School of Law (Fall 2019); Professor of Law, American University, Washington College of Law. My thanks to Sara Douki, Hermine Duplany, Andrew Lanham, Sarah McDonald, Sophia Montgomery, and the staff of the *Michigan Law Review* for their fine editorial assistance.

1. Associate Professor of History, Princeton University.

wanted. As they did so, they justified their actions through the higher law tradition.<sup>2</sup>

What happened in Tacoma wasn't a spontaneous or isolated occurrence. To the contrary, it was part of a series of Chinese removals that were intentional and systematic, organized not just by vigilantes acting alone but also by leading figures within each community (p. 115). Local residents worked with others in a network of loosely affiliated but intensely motivated social groups that operated up and down the West Coast (p. 118). Before the group of men executed a plan of expulsion in Tacoma, there were mass meetings led by Mayor Jacob Weisbach to discuss what to do about the Chinese (p. 122), who wore strange garb, adhered to odd customs, and could live on very little.<sup>3</sup> Local newspapers like the *Tacoma Ledger* whipped citizens into a frenzy, warning of "this gigantic invasion of chinamen . . . captained by a few American mandarins."<sup>4</sup>

This method of social reordering through a brutal form of immigration localism<sup>5</sup> (today we would call it ethnic cleansing<sup>6</sup>) became portable, as one city after another emulated the strategy. Indeed, Tacoma's successful purge of its Chinese residents led others to dub it "the Tacoma method" and portray it as a "peaceful" solution (p. 124). Elsewhere, expulsions were preceded by beatings, shootings, murders, or lynchings. But whether lives were lost or not, social relationships were consistently disrupted, fear and anger were plentiful, and almost always Chinese property was dismantled, destroyed, or set ablaze as part of the ritual purification. Lew-Williams observes that from

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2. See, e.g., George Dudley Lawson, *The Tacoma Method*, 7 OVERLAND MONTHLY 234, 235 (1886) ("An appeal to the higher law of self-preservation was determined upon, and the Chinese were asked to 'go.'").

3. *Let Him Preach to Empty Benches*, DAILY LEDGER, Oct. 13, 1985, at 1. Not everyone supported the planned expulsion. One of the few who spoke out against rising anti-Chinese sentiment was Rev. W.D. McFarland, who found himself later denounced by the local newspaper as "a pro-Chinese fanatic of the most bigoted sort." *Id.*

4. Jules Alexander Karlin, *The Anti-Chinese Outbreak in Tacoma, 1885*, 23 PAC. HIST. REV. 271, 273 (1954).

5. More recent accounts of immigration localism have emphasized its progressive potential, but for every Sheriff Sally Hernandez there is a Sheriff Joe Arpaio. See, e.g., Pratheepan Gulasekaram et al., Essay, *Anti-Sanctuary and Immigration Localism*, 119 COLUM. L. REV. 837 (2019). Power, once recognized, can't be so easily cabined within formal, or even legal, limits.

6. Ethnic cleansing hasn't been formally recognized as an independent crime under international law but could be subsumed within "crimes against humanity." U.N. Secretary-General, Comm'n of Experts, *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, ¶¶ 72–74, U.N. Doc. S/1994/674 (May 27, 1994). The term emerged after the breakup of Yugoslavia in the 1990s and has been defined as "rendering an area ethnically homogenous by using force or intimidation to remove persons of given groups from the area" or "a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas." *Id.* ¶¶ 129–30 (quoting U.N. Secretary-General, Comm'n of Experts, *Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, ¶ 55, U.N. Doc. S/25274 (Feb. 10, 1993)).

1885–1886, 168 different communities in America expelled the Chinese (p. 1).

Lew-Williams's magisterial account of the injustices perpetrated against the Chinese is extremely generative on several fronts. The first is historical: she seeks to correct a national narrative that often leaves out the horrors instigated against the Chinese community while emphasizing emancipated slaves and native populations as the primary victims of racial violence (pp. 3–5). Her account of Chinese "resistance and flight in the face of white violence" successfully complicates that story (p. 95) and, along the way, deepens our understanding of American constitutional law's development. In Part I of this Review, I emphasize that anti-Chinese violence was extremely effective as a political tool. Perpetrators faced almost no legal repercussions, and unlike for freed persons, racial violence didn't lead to significant legislation that benefited the Chinese. Judicial rulings were mixed: the recognition of birthright citizenship was a high point, but rulings that endorsed exclusion as a national policy and recycled theories of cultural incompatibility proved damaging. Along a second trajectory, *The Chinese Must Go* raises troubling questions about America's tradition of popular sovereignty. In Part II, I assess this wave of anti-Chinese mobilization—from aggressive boycotts to lynchings to armed expulsions—which were justified by perpetrators and observers alike according to America's higher law tradition. Finally, in Part III, I use the local expulsions of Chinese migrants as a springboard to build a more complex portrait of inequality in America so that we might remedy it more effectively. I do so by sketching a typology of the different forms that inequality can take and explaining where racial purges fit among them. What we discover when we study inequality this way is how motivations, justifications, and consequences tend to cluster in new patterns.

All three lines of inquiry are worth pursuing if we wish to make progress on inequality today. We need to better understand our past, we need to figure out exactly how political and legal traditions have justified both cruelty and liberation, and we need to adjust our existing toolbox for attacking the various forms that inequality takes.

### I. CHINESE REMOVALS IN HISTORICAL TIME

Lew-Williams's remarkable work sheds light on how Americans reconsidered their fundamental values to justify mass expulsions. Those questions are back on the national stage, after voters catapulted Donald Trump to the Oval Office on the strength of rhetoric that demonized Hispanic migrants and plans to block Muslim travelers and refugees from coming to the United States.<sup>7</sup> Exclusion was the preferred patois of Trump and his most ardent supporters.

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7. See, e.g., John Fritze, *Trump Used Words Like 'Invasion' and 'Killer' to Discuss Immigrants at Rallies 500 Times: USA Today Analysis*, USA TODAY (Aug. 8, 2019, 4:46 PM), <https://www.usatoday.com/story/news/politics/elections/2019/08/08/trump-immigrants->

Of course, it's not just Trump who's engaged in this debate. Many Americans have good-faith questions about the right amount of immigration for American prosperity and security. Even so, roundups of undesirables, the separation of loved ones, and population purges again occupy a major part of this conversation. On such matters, the political and legal responses to the so-called Chinese question during the nineteenth century yielded plentiful material for both sides of today's immigration debate to work with. Those who favor unfettered migration and a cosmopolitan vision of community lament the Chinese Restriction and Exclusion Acts,<sup>8</sup> along with other techniques historically deployed to deter unwanted populations. By contrast, proponents of tough immigration restrictions and theories of cultural integrity find these older ideas, strategies, and laws worth dusting off—tidied up if possible—and reused.

More recently, in July 2019, University of Pennsylvania law professor Amy Wax generated headlines at a convention on conservative nationalism when she made the case for an immigration policy based on a theory of “cultural-distance nationalism.”<sup>9</sup> To Wax, who ridiculed the prevailing liberal-pluralist ideology that a person from anywhere can easily assimilate to American culture, it made perfect sense to limit migration from those countries whose traditions seem distant from those of the United States, even if it meant “in effect . . . taking the position that our country will be better off with more whites and fewer nonwhites.”<sup>10</sup> Elsewhere, she has written: “[W]e must ensure that bad habits from the Third World—lack of respect for law,

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rhetoric-criticized-el-paso-dayton-shootings/1936742001/ [https://perma.cc/RH4E-DXPH]; Jessica Taylor, *Trump Calls for 'Total and Complete Shutdown of Muslims Entering' U.S.*, NPR (Dec. 7, 2015, 5:49 PM), <https://www.npr.org/2015/12/07/458836388/trump-calls-for-total-and-complete-shutdown-of-muslims-entering-u-s> [https://perma.cc/HLG3-7J47] (reporting Trump's claim that Muslims have “great hatred” of America); Julia Carrie Wong, *Trump Referred to Immigrant 'Invasion' in 2,000 Facebook Ads, Analysis Reveals*, GUARDIAN (Aug. 5, 2019, 5:58 PM), <https://www.theguardian.com/us-news/2019/aug/05/trump-internet-facebook-ads-racism-immigrant-invasion> [https://perma.cc/K2E8-EQND].

8. This is sometimes popularly known as the “Chinese Exclusion Act,” but throughout this Review I'll go with the original name given to the law and reserve the 1888 law as the Chinese Exclusion Act, as Lew-Williams has done.

9. Zack Beauchamp, *Amy Wax, “National Conservatism,” and the Dark Dream of a Whiter America*, VOX (July 23, 2019, 8:30 AM), <https://www.vox.com/policy-and-politics/2019/7/23/20679172/amy-wax-white-national-conservatism-yoram-hazon-y-racism> [https://perma.cc/9CMM-VN3X]; Osita Nwanevu, *Conservative Nationalism Is Trumpism for Intellectuals*, NEW YORKER (July 21, 2019), <https://www.newyorker.com/news/news-desk/conservative-nationalism-is-trumpism-for-intellectuals> [https://perma.cc/JPW5-NCGP]. Wax's presentation was based on an earlier law review article. That essay is framed as one where she criticizes the language used to talk about immigration, but it's obvious that she is a proponent of cultural-distance nationalism. She criticizes “creedal nationalism” for ignoring differences in immigrants' ability to assimilate, defends cultural-distance nationalists for “wanting to limit the influx of non-Western peoples,” praises Steve Bannon's techniques for encouraging “self-deportation” for achieving this second vision in America, and ridicules equality and human rights as a progressive preoccupation with “niceness.” Amy L. Wax, *Debating Immigration Restriction: The Case for Low and Slow*, 16 GEO. J.L. & PUB. POL'Y 837, 851–62 (2018).

10. Beauchamp, *supra* note 9 (quoting Wax).

rampant corruption and kleptocracy, despotism, weak markets, insecure property rights, lassitude, lack of enterprise, tribalism, superstition, distrust, rampant violence, misogyny, and unreason—are not allowed to infect and undermine the First.”<sup>11</sup> To Wax’s detractors, this approach smacked of older, racist approaches to migrants and is at odds with the mid-1960s political settlement that emphasizes civil rights, along with immigration and naturalization policy that doesn’t presume cultural incompatibility between nonwhite migrants and America’s civic tradition.

While Lew-Williams is not the first to do so,<sup>12</sup> she powerfully illustrates that arguments that migrants pose a threat of moral contagion and political domination go way back. Specifically, she observes that “Chinese exclusion and the modern American alien emerge[d]” at the same time (p. 236). Seen in this light, Wax’s proposal to save America’s Western character through demographic controls that differentiate among countries of origin, Samuel Huntington’s vision of clashing civilizations,<sup>13</sup> and even the Trump-Miller-Bannon view of “American carnage” wrought by foreign powers<sup>14</sup> all can be traced to the ideological ferment of Chinese exclusion. That rhetoric has certainly been updated to incorporate Hispanic and Muslim migrants, but its basic structure has largely survived intact—and so have the associated policies.

The curious thing about the Chinese is that, unlike the four million slaves who suddenly gained citizenship rights after the Civil War and rose to political power in a number of communities, they didn’t pose any serious electoral threat before the repression began because they weren’t allowed to vote (p. 228). Chinese people were already barred by federal law from becoming naturalized citizens, and even at the high point of Chinese migration, they still composed a fraction of the population. Yet as Lew-Williams shows, their mere presence raised the specter of white citizens being conquered by outsiders (p. 6). The rhetoric of yellow domination mobilized white people to take preemptive action to arrest further assimilation (pp. 6–

11. Wax, *supra* note 9, at 860.

12. See, e.g., ANDREW GYORY, *CLOSING THE GATE: RACE, POLITICS, AND THE CHINESE EXCLUSION ACT* (1998); ERIKA LEE, *AT AMERICA’S GATES: CHINESE IMMIGRATION DURING THE EXCLUSION ERA, 1882–1943* (2003); JEAN PFAELZER, *DRIVEN OUT: THE FORGOTTEN WAR AGAINST CHINESE AMERICANS* (2007).

13. SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996). In crasser and more alarmist form, these ideas have appeared in the popular writings of conservative thinkers like Pat Buchanan and Ann Coulter. See, e.g., PATRICK J. BUCHANAN, *THE DEATH OF THE WEST: HOW DYING POPULATIONS AND IMMIGRANT INVASIONS IMPERIL OUR COUNTRY AND CIVILIZATION* (2002); ANN COULTER, *¡ADIOS, AMERICA!: THE LEFT’S PLAN TO TURN OUR COUNTRY INTO A THIRD WORLD HELLHOLE* (2015).

14. In President Trump’s First Inaugural Address, he recapitulated a number of ethnonationalist themes from his campaign: “We must protect our borders from the ravages of other countries making our products, stealing our companies, and destroying our jobs.” President Donald J. Trump, Inaugural Address (Jan. 20, 2017), <http://whitehouse.gov/briefings-statements/the-inaugural-address/> [<http://perma.cc/ZD98-45S3>].

9), reverse the social and economic integration that had taken place, and preempt the possibility of political equality—or foreign domination.<sup>15</sup>

In an early chapter, Lew-Williams analyzes a work of fiction titled *Last Days of the Republic*, published in 1880.<sup>16</sup> That book described the Chinese as not only culturally unassimilable but also as a barely hidden threat to American empire (p. 28). What begins as the description of the Chinese as a “race alien alike to every sentiment and association of American life” eventually gives way to “treachery.”<sup>17</sup> The mostly Chinese men who arrive on America’s shores actually constitute a secret army, and when they eventually gain citizenship followed by the right to vote, they quickly elect people of Chinese ancestry to key civic positions (p. 29). And when Chinese armies finally land in South Carolina, that merely signals the last days of the republic, for civilization had already crumbled from within.<sup>18</sup>

*Last Days of the Republic* wove together civic republicanism’s preoccupation with political decay, white nationalist sentiment, and an emerging obsession with demographic control. Its portrayal of immigration captured widely shared cultural stereotypes about Chinese people and conspiratorial fears of the “alien crown” (p. 29). Yet such views stood in sharp contrast from the perspective of American elites at the time. Those “cosmopolitan elites,” portrayed as rapacious businessmen and servile politicians by anti-Chinese forces, welcomed migration from China initially because they believed that a new source of foreign labor would actually lift up the status of white workers and facilitate rapid empire building.<sup>19</sup> This early national policy was reflected in treaties that protected the rights of the subjects of China while they sojourned in America (pp. 28, 271 n.36).

Almost immediately, populist movements arose to defend the rights of “white labor” against the “coolies” (or “semi-slaves”) and drive people of Chinese ancestry from America’s shores (pp. 31–36). If freed blacks and indigenous nations represented populations that could be assimilated as full citizens, the Chinese came to signify the perpetual noncitizen during this same period—what Lew-Williams calls “the quintessential alien in America.”<sup>20</sup> California, Oregon, and Washington Territory spearheaded laws that

15. For more on white fears of becoming a minority in America, see Robert L. Tsai, *Specter of a White Minority*, L.A. REV. BOOKS (Sept. 3, 2018), <https://lareviewofbooks.org/article/specter-of-a-white-minority/> [<https://perma.cc/5HMK-QCDC>].

16. P.W. DOONER, *LAST DAYS OF THE REPUBLIC* (1880).

17. Pp. 28–30 (quoting DOONER, *supra* note 16, at 27, 202).

18. P. 29. The use of fiction to disseminate notions of American community, including visions of white sovereignty, is nothing new. See ROBERT L. TSAI, *AMERICA’S FORGOTTEN CONSTITUTIONS* 236–37, 267–74 (2014).

19. Pp. 6, 11, 138–39. William Seward, Lincoln’s Secretary of State, exemplified this policy on free migration. Opening America to the Chinese, he thought, was necessary to prying open China to “white labor” and American goods. In turn, “cheap” Chinese labor would be helpful to development in Western states. Pp. 24–27.

20. P. 8; see also LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* (2006).

would “protect free White labor” and discourage Chinese migration (pp. 42–43).

Many of these laws resulted from the efforts of the Workingmen’s Party, which employed nationalistic, xenophobic, and racist rhetoric in its appeals to white citizens (pp. 40–43). Local and regional media also played a major role in casting people of Chinese ancestry as “invaders.” In a precursor to Kris Kobach’s efforts to make life in America so inhospitable for migrants that they leave voluntarily,<sup>21</sup> a number of jurisdictions enacted laws preventing the Chinese from owning property, imposed unfair and burdensome taxes, barred corporations from hiring people of Chinese ancestry, and refused licenses to fish or operate businesses (p. 43).

National political parties were forced to heed this desire for exclusion. Local expulsions and oppressive regulations eventually blossomed into a national policy of exclusion (pp. 43–45). This entire pattern of political action “accelerated Chinese segregation in the U.S.,” stimulated migration to the eastern parts of the country, and “hastened return migration to China,” Lew-Williams writes (p. 8). The groundswell of anti-Chinese sentiment led to the renegotiation of treaty obligations, which allowed the United States to regulate and even suspend Chinese migration (pp. 47–51), and eventually pushed President Chester Arthur to sign the Chinese Restriction Act, which suspended the entry of Chinese laborers for ten years—the first major national restriction of immigration.<sup>22</sup> Lew-Williams’s ability to tell a coherent narrative while showing how local actors on both sides of the Chinese question tried to navigate politics at all levels of government is a special achievement of the book.

In a lively section analyzing the enforcement of the federal restriction law in the Pacific Northwest, Lew-Williams recounts the adventures of a customs inspector named Arthur Blake who hunted for unauthorized Chinese

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21. Prominent anti-immigration activist and former Kansas Secretary of State Kobach has described a proposal of “attrition through enforcement.” Kris W. Kobach, *Attrition Through Enforcement: A Rational Approach to Illegal Immigration*, 15 TULSA J. COMP. & INT’L L. 155 (2008). “What if every illegal alien found it difficult to obtain employment in the United States and the risks of enforcement (including the possibility of detention during removal hearings) were to increase for all?” he asks. *Id.* at 157. To implement his vision, Kobach has helped states and local jurisdictions enact a raft of novel laws that criminalize many aspects of life for undocumented migrants. He has bragged that “[i]f we had a true nationwide policy of self-deportation, I believe we would see our illegal alien population cut in half at a minimum very quickly.” He says he doesn’t wish “to do it at gunpoint” but instead make it so they will “go home on their own volition, under their own will, pick their own day, get their things in order and leave. That’s a more humane way.” Jefferson Morley, *The Man Behind Romney’s “Self-Deportation” Plan*, SALON (Feb. 23, 2012, 3:44 AM), [https://www.salon.com/2012/02/22/the\\_man\\_behind\\_romneys\\_self\\_deportation\\_dreams/](https://www.salon.com/2012/02/22/the_man_behind_romneys_self_deportation_dreams/) [https://perma.cc/PL6N-AKGR].

22. Pp. 48–51. President Hayes had vetoed a harsher law that would have suspended Chinese migration broadly for twenty years and imposed passport and registration requirements on Chinese migrants. Pp. 46–48. What President Arthur later signed was a compromise. Pp. 49–51. This law would later be extended for another ten years before it expired, and then made permanent in 1902. PFAELZER, *supra* note 12, at 292, 335. The Chinese restriction laws were not repealed until 1943. *Id.* at 346.

migrants near Puget Sound (pp. 66–68). At that time, Port Townsend and Seattle were key ports of entry. Deputy Blake had trouble distinguishing between authorized and unauthorized migrants, so he tried to institute an ad hoc paperwork system that relied on the assistance of employers. He also cultivated a network of informants, deputized private parties to make arrests, and offered bounties (pp. 67–79). This vivid portrait of nascent bureaucracy-building through enforcement practices is a valuable contribution to the literature.

Paradoxically, Lew-Williams thinks that “[f]ederal officials had encouraged a form of vigilantism” by enlisting the help of private citizens to enforce the northern border (p. 88). She believes that the original strategy of Chinese restriction failed because it gave the impression that the federal government would do something to stem the flow of Chinese migrants but that the government never devoted sufficient resources to meet the challenge (pp. 87–88). This not only heightened expectations of closed borders beyond what was realistic, it also meant that when those expectations of demographic control were dashed by shifts in the federal government’s priorities, anti-immigration forces chomped at the bit to take the law into their own hands.

In fact, when thirty-seven Chinese workers showed up in Squak Valley on September 7, 1885, a group of white and Native American men attacked the camp, shooting into tents and leaving three dead and many others wounded (p. 82). Acts of open terror like this seemed to galvanize local communities who wished to settle the Chinese question definitively, but those who recoiled from blatant violence searched for answers that fell short of outright murder or beatings. Some anti-Chinese activists were content to engage in boycotts and send petitions to elected officials, while others settled upon a form of mobbing that involved some notice and restraint.<sup>23</sup>

According to Lew-Williams, white citizens toggled between open violence against migrants and more sophisticated strategies of expulsion in part because unrestrained tactics brought unwanted attention from state and federal authorities and sometimes divided the white community, especially along class lines (pp. 45–52). The Chinese occasionally fought back in the streets, but most of the time they sought the aid of the legal profession and well-placed businessmen (p. 94). In entreaties to politicians and diplomats, they invoked their legal status as subjects of China—“most favored nation”—to gain allies to fight back against white mobs, convince state or federal authorities to intervene, or demand reparations (p. 94).

In Tacoma, for example, the expulsion plan began with mass meetings as anti-Chinese forces tried to secure local support. Notices were subsequently posted throughout Chinatown demanding that the Chinese depart by November 1, 1885 (pp. 96–97). This convinced many transient laborers to

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23. Pp. 128–30. On “mobbing” as a feature of America’s constitutional tradition, see PAUL A. GILJE, *RIOTING IN AMERICA* (1996); LARRY D. KRAMER, *THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW* 27 (2004); and David Grimsted, *Rioting in Its Jacksonian Setting*, 77 *AM. HIST. REV.* 361 (1972).

flee, but as Lew-Williams points out, Chinese merchants had more financial investments to protect and believed that their greater social integration would allow them to survive racial tensions and insulate them from any reprisals (pp. 96–98). They miscalculated. Community leaders chose to rapidly escalate their efforts to uproot these more established members of society.

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Although her focus is not on the courts, Lew-Williams's book nevertheless enriches our appreciation of late nineteenth-century cases involving migrants. One such case is *Yick Wo v. Hopkins*,<sup>24</sup> in which the Supreme Court vindicated the constitutional rights of a Chinese laundry operator. After reading *The Chinese Must Go*, one has a better sense of the tumult faced by judges who had to manage not only the priorities of the federal government and the enduring interests of justice but also the realities of cultural discontent. There are some notable bright spots when judges vindicated the constitutional rights of migrants, but their willingness to endorse a vision of permanent foreignness remains a major blemish—one that has cast a long shadow over how American law treats nonwhite migrants.

What we know from the *Yick Wo* case itself is precious little: the city of San Francisco adopted an ordinance that required laundromat operators to obtain a permit if the building they would be operating from was not built of brick or stone.<sup>25</sup> While race neutral, the law had the effect of forcing every Chinese laundromat operator to apply for a license because they happened to work in wooden structures, and all of the Chinese applicants were summarily denied.<sup>26</sup> Meanwhile, operators of laundries in brick and stone buildings—who were mostly white—got a pass from the law and continued business as usual.

Lee Yick challenged the refusal of his permit on equality grounds and won. The ordinance was couched in terms of public health and cleverly did not mention the Chinese at all. In many other situations, judges have been confounded by such seemingly neutral laws. But in *Yick Wo*, the Supreme Court expressed skepticism about whether the ordinance actually served the needs of public order, implying that it might have been designed for nefarious purposes. Even more surprising, the justices took the extra step of finding that an unconstitutional motive—hostility to the person's race and national origin—infected local decisions in enforcing the law, and they inferred animus from the lopsided enforcement of the law.

On top of that, the Court held that the Fourteenth Amendment, originally formulated primarily with the plight of freed persons in mind, extends rights to foreign “persons” on American soil.<sup>27</sup> That meant that while Amer-

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24. 118 U.S. 356 (1886).

25. *Yick Wo*, 118 U.S. 356.

26. *Id.* at 359–60.

27. *Id.* at 369.

ican law might deny Chinese migrants certain kinds of rights like those closely associated with U.S. citizenship (federal law at that time limited naturalization to whites), they could still enjoy enforceable rights to life, liberty, and property as noncitizens. These were all crucial developments in constitutional law apart from recognizing that a treaty can create rights enforceable in federal court. But despite this ringing vindication of constitutional rights, the ruling left much discretion in the hands of state and local authorities, for there was no due process right to enforce, for instance, if state law didn't already recognize that someone had a property interest.

Lew-Williams mentions this case only in passing, but the widespread nature of anti-Chinese hostility she documents throughout *The Chinese Must Go* must have been such common knowledge that it influenced judges' thinking about the law. In fact, while there is almost no direct discussion of the xenophobic times in *Yick Wo* itself, the circuit judge who presided over the dispute below did perceive the permit regulation as a means of ingeniously effectuating the banishment of the Chinese from the area. Circuit Judge Sawyer wrote:

The effect of the execution of this ordinance in the manner indicated in the record would seem to be necessarily to close up the many Chinese laundries now existing, or compel their owners to pull down their present buildings and reconstruct of brick or stone; or to drive them outside the city and county of San Francisco, to the adjoining counties, beyond the convenient reach of customers,—either of which results would be little short of absolute confiscation of the large amount of property shown to be now, and to have been for a long time, invested in these occupations.<sup>28</sup>

In fact, Sawyer said that the goal of local leaders to effectively expel the Chinese by destroying their livelihood was well known.

That it does mean prohibition, as to the Chinese, it seems to us must be apparent to every citizen of San Francisco who has been here long enough to be familiar with the course of an active and aggressive branch of public opinion and of public notorious events. Can a court be blind to what must be necessarily known to every intelligent person in the state?<sup>29</sup>

He answered his own question by taking judicial notice of racial purges that were happening contemporaneously.

Still, why the discrepancy between the lower court's account, which is compatible with the richer history uncovered by Lew-Williams, and the more buttoned-down Supreme Court opinion? Perhaps the lower-key tone taken in the higher court's ruling was to avoid fanning the flames of anti-Chinese sentiment. If so, the decisionmaking processes on the high court somehow worked to understate the extent of racial violence, whereas the

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28. *In re Wo Lee*, 26 F. 471, 474 (C.C.D. Cal. 1886). On the widespread use of zoning laws to push Chinese restaurants out of business, see Gabriel J. Chin & John Ormonde, *The War Against Chinese Restaurants*, 67 DUKE L.J. 681 (2018).

29. *Wo Lee*, 26 F. at 475.

judges closer to the ground seemed more motivated to record those abuses. Whatever the case, given the sophisticated method of legal expulsion attempted there—not through vigilantism but through a process that's infinitely harder to detect because it relies on the discretion of local bureaucrats—this seems like a missed opportunity by the Supreme Court to fully document and brush back such forms of inequality.

There is another case that illustrates the effect of judges closer to the ground, who might have had first- or second-hand knowledge of anti-Chinese mobilization. Justice Stephen Field, who hailed from California, handled a challenge to a law aimed at the Chinese while riding circuit.<sup>30</sup> Ho Ah Kow wound up in jail because he violated a San Francisco ordinance that required at least 500 cubic feet of space for each person in a dwelling.<sup>31</sup> The migrants typically lived in close quarters to be able to save enough to send money back to loved ones in China.<sup>32</sup> The moment he was arrested, Ho Ah Kow faced the prospect of losing all his hair, which he wore in a traditional pigtail, because a separate law required the sheriff to shave the head of anyone he detained.<sup>33</sup>

In an amazing ruling, Justice Field found this policy to be a form of torture constituting “a cruel and unusual punishment” as well as a denial of equal protection of the laws.<sup>34</sup> He appeared to see the policy as part of a wider strategy of expelling the Chinese by humiliating them. “The ordinance was intended only for the Chinese in San Francisco,” Field wrote.<sup>35</sup> “This was avowed by the supervisors on its passage, and was so understood by everyone. The ordinance is known in the community as the ‘Queue Ordinance,’ being so designated from its purpose to reach the queues of the Chinese, and it is not enforced against any other persons.”<sup>36</sup>

Toward the end of his opinion, Field explicitly mentioned the popular tactic of racial purges. “We are aware of the general feeling—amounting to positive hostility—prevailing in California against the Chinese, which would prevent their further immigration hither, and expel from the state those already here,”<sup>37</sup> Field wrote. Unfortunately, he also accepted that the Chinese were unassimilable: “Their dissimilarity in physical characteristics, in language, manners and religion, would seem, from past experience, to prevent

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30. *Ho Ah Kow v. Nunan*, 20 Alb. L.J. 250 (C.C.D. Cal. 1879).

31. *Id.* at 250–51.

32. *See* pp. 21–24.

33. *Ho Ah Kow*, 20 Alb. L.J. at 251.

34. *Id.* at 252.

35. *Id.*

36. *Id.* Justice Field is even more explicit in a ruling three years later, saying that “there now exist, and have existed for years, with the residents of the city and county of San Francisco, and its citizens and tax-payers, great antipathy and hatred toward the people of his race.” *In re Quong Woo*, 13 F. 229, 230 (C.C.D. Cal. 1882) (striking down licensing scheme requiring applicant to secure recommendation of twelve tax-paying citizens from the block where a laundry was proposed).

37. *Ho Ah Kow*, 20 Alb. L.J. at 253.

the possibility of assimilation with our people.”<sup>38</sup> And he stated that restrictions on Chinese migration were probably justified: “thoughtful persons, looking at the millions which crowd the opposite shores of the Pacific, and the possibility at no distant day of their pouring over in vast hordes among us, giving rise to fierce antagonisms of race, hope that some way may be devised to prevent their further immigration.”<sup>39</sup>

Field then shifted gears by offering a strong nationalist vision that left no power over immigration to state and local officials:

We feel the force and importance of these considerations; but the remedy for the apprehended evil is to be sought from the general government, where, except in certain special cases, all power over the subject lies. To that government belong exclusively the treaty-making power, and the power to regulate commerce with foreign nations, which includes intercourse as well as traffic, and . . . the power to prescribe the conditions of immigration or importation of persons.<sup>40</sup>

Field thought that further outrages could be avoided by the federal government seizing total control of immigration enforcement. He continued:

The state in these particulars, with those exceptions, is powerless, and nothing is gained by the attempted assertion of a control which can never be admitted. . . . [N]othing can be accomplished in that direction by hostile and spiteful legislation on the part of the State, or of its municipal bodies, like the ordinance in question . . . .<sup>41</sup>

In this and other cases, federal judges sometimes interpreted federal law and the U.S. Constitution to defend commercial and diplomatic interests in Chinese migration (pp. 60–62).

Lew-Williams also does not spend much time analyzing the landmark case *Wong Kim Ark*,<sup>42</sup> beyond noting that the justices read the Fourteenth Amendment to confer citizenship upon the children of Chinese migrants born in the United States even though their parents were barred from naturalization (p. 228). But it bears explaining how the history and rhetoric of exclusion played a major role in that case. In deciding that the Fourteenth Amendment’s birthright citizenship language encompassed the Chinese, the Court cited two legislative discussions that referenced the children of Chinese migrants.<sup>43</sup> Both times, proponents of the Civil Rights Act of 1866, as well as the Fourteenth Amendment, which was modeled on that law,

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38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* This position would be crystalized as the “plenary power” doctrine, giving Congress power to regulate immigration to the exclusion of the states. See *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).

42. *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).

43. *Id.* at 697–98.

acknowledged that under the provision “the child of an Asiatic is just as much a citizen as the child of a European.”<sup>44</sup>

That Chinese migrants came up during these debates was crucial to convincing judges to resist a tendency that had emerged to limit the interpretation of the Reconstruction Amendments to freed persons despite the Amendments’ broad language. In other words, through a perverse stroke of luck, Chinese migration had become so controversial that this vulnerable population’s oppression percolated into constitutional debate. Drafters had a chance to exclude people of Chinese ancestry or migrants generally from the protection of the Fourteenth Amendment but chose not to do so.

Representative Cowan of Pennsylvania objected twice to the proposed language of birthright citizenship, the first time exclaiming, “The children of German parents are citizens; but Germans are not Chinese.”<sup>45</sup> He also alluded to negative sentiment on the West Coast in a failed bid to get the Chinese explicitly excluded from the language of the Fourteenth Amendment. Cowan said,

I do not know how my honorable friend from California looks upon Chinese, but I do know how some of his fellow-citizens regard them. I have no doubt that now they are useful, and I have no doubt that within proper restraints, allowing that State and the other Pacific States to manage them as they may see fit, they may be useful; but I would not tie their hands by the Constitution of the United States so as to prevent them hereafter from dealing with them as in their wisdom they see fit.<sup>46</sup>

Drawing on these exchanges, the justices explicitly subordinated laws restricting Chinese migration to the Fourteenth Amendment rather than allowing their racial views to shape judicial interpretation of the provision. The crucial effect was that birthright citizenship could not be altered by Congress.

For the dissenters, Justices Fuller and Harlan, laws meant to restrict Chinese migration merely recognized the inalterably foreign nature of Chinese people: even those born in America were nothing more than “aliens by descent, but born on our soil.”<sup>47</sup> In their view, “[t]he right of a nation to expel or deport foreigners who have not been naturalized or taken any steps toward becoming citizens of a country, is as absolute and unqualified as the

44. *Id.*

45. *Id.* at 697. It wasn’t lost on the Court that a reading of the Fourteenth Amendment that denied birthright citizenship to the Chinese would also harm the children of European migrants. “To hold that the Fourteenth Amendment of the Constitution excludes from citizenship the children, born in the United States, of citizens or subjects of other countries, would be to deny citizenship to thousands of persons of English, Scotch, Irish, German or other European parentage, who have always been considered and treated as citizens of the United States.” *Id.* at 694.

46. *Id.* at 698.

47. *Id.* at 706.

right to prohibit and prevent their entrance into the county.”<sup>48</sup> They then recycled earlier language that justified treating the children of Chinese noncitizens differently from other children on cultural grounds: they comprise “a distinct race and religion, remaining strangers in the land, residing apart by themselves, tenaciously adhering to the customs and usages of their own country, unfamiliar with our institutions, and apparently incapable of assimilating with our people, might endanger good order, and be injurious to the public interests.”<sup>49</sup> Proponents of cultural or racial nationalism had lost the debate on that day, but the battle was just beginning.

## II. EXPULSION AND POPULAR SOVEREIGNTY

What civic leaders did in cleansing Tacoma of the Chinese was praised by George Dudley Lawson in the *Overland Monthly* as “the Tacoma method.”<sup>50</sup> He described it as nothing more than the age-old practice of “expel[ling] intruders or exil[ing] obnoxious members” of society, a somewhat drastic move, but one that could be justified according to “the higher law of self-preservation.”<sup>51</sup> The power to remove undesirables was explicitly defended on grounds of popular sovereignty and mutual self-defense. Lawson wrote,

The Tacoma method is an application of the principle that all of the rights of the people cannot be conditioned or defined in the statute books . . . and that remedies and resorts must be left, in some degree, to be indicated by emergencies. Every government on the face of the earth recognizes this principle, and to all communities of the governed it is a vital one.<sup>52</sup>

Lawson’s statement was echoed throughout the American West, and this persistent appeal to popular sovereignty to rationalize these purges reveals an ugly strain in our political tradition—one that underscores just how malleable this rhetoric has always been as well as the remarkably broad range of ends that language can be used to promote. On these occasions, higher law discourse was used to defend everything from bloodless racial purges to injustices such as threats, racist boycotts, beatings, shootings, destruction of property, and murder.

For her part, Lew-Williams points out that the creative instigators of these local displacements later felt vindicated by legal decisions that affirmed the country’s power to completely exclude Chinese laborers, especially when

48. *Id.* at 726 (Fuller, J., dissenting).

49. *Id.* at 731.

50. Lawson, *supra* note 2, at 234.

51. *Id.* at 234–35. Similarly, the Tacoma News called the racial purge a “glorious victory” and legitimate exercise of the “‘indefeasible right’ of a community ‘to purge itself of obnoxious elements.’” Karlin, *supra* note 4, at 280.

52. Lawson, *supra* note 2, at 238. At another point, he called what the white residents of Tacoma did to the Chinese as “the local application of Abraham Lincoln’s principle of a government ‘of the people, by the people, and for the people.’” *Id.* at 239.

those decisions relied on rationales grounded in mutual self-defense and cultural incompatibility. Even though the Supreme Court ultimately denied them a formal role in immigration enforcement,<sup>53</sup> they believed that they had simply been doing at the grassroots level what the Court finally said was within the power of Congress to accomplish more comprehensively.

But the fact of the matter was that these citizens never felt the need to ask for permission before they acted. Their appeal to natural law was sometimes defended on a theory of political breakdown, or as a response to repeated grievances unheard, or as a kind of interstitial act neither authorized nor explicitly permitted by the law (Chapter Four). These purgers were not always consistent in their arguments, but they generally felt that the scale of the problem was enormous, that there were exigencies involved, and that when people assembled as they did, they were authorized to supersede any treaty or ordinary law that stood in the way. Mobilized thus, the community was then capable of carrying out harsh but necessary measures.

For many white residents, that extralegal form of self-help was explicitly linked to demographic control to preserve white supremacy. Tacoma's Chinese population had swelled to 800 or so,<sup>54</sup> and now its presence was perceived to be damaging cultural mores and discouraging economic investment in the city. So the people would do what state and national leaders refused to do—in that sense, this could be understood as an instance of exploiting federalism for the sake of preserving a racist vision of social order. “[T]he race is an undesirable element, and should not be allowed to obtain a foothold on our soil,” Lawson insisted, praising Oregon laws that barred Chinese people from owning property in the state and recognized the Chinese as “a transitory race.”<sup>55</sup> But Washington's territorial laws did not recognize this same difference in the races, and that gave rise to the need for self-help by whites. Lawson thought removal was justified because the Chinese had “formed a colony of leeches” and become “a menace to public health and safety.”<sup>56</sup> He claimed that once Tacoma became “one-tenth Chinese,” “conditions were becoming antagonistic to white occupation.”<sup>57</sup> Indeed, he insisted that “at least nine-tenths of the white residents sympathized entirely with the movement to make it a white man's town of peace and plenty.”<sup>58</sup>

Community leaders had help mobilizing anti-Chinese sentiment. Along these lines, Lew-Williams shows that the Knights of Labor played a significant role in the purges (pp. 118–19). Not all union figures were committed to driving the Chinese out of the country, but key leaders did see a benefit to organizing white workers around the issue (p. 118). Labor's influence ratcheted up the sense of economic competition and denied migrants sup-

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53. *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).

54. Lawson, *supra* note 2, at 234.

55. *Id.* at 238.

56. *Id.* at 235.

57. *Id.* at 234.

58. *Id.*

port from working-class white people. In fact, a number of law enforcement figures belonged to the union, and when it came time for the purge of Tacoma, they either actively participated in the removal or refused to come to the aid of the Chinese at their most desperate hour (pp. 121–23).

As Lew-Williams explains, those who carried out Chinese expulsions felt they were acting nonviolently (pp. 121–24), and this played a role in the popularity of the method. Lawson himself argued that “Tacoma is to be congratulated” because its residents had shown supreme restraint; their actions “escaped even the appearance of riot or violence.”<sup>59</sup> At least their efforts fell short of the talk of extermination that had started to permeate mass meetings, and they involved no lynchings or fire bombings.<sup>60</sup>

Leaders of the purge gave Tacoma’s Chinese residents advance notice, demanding that they go (pp. 96–97). Within two weeks of notices posted everywhere, Chinatown had emptied by half.<sup>61</sup> But that wasn’t good enough, according to the local paper. “If any are allowed to remain, others will come,” warned the *Tacoma Ledger*. Then the metaphor of ritual purification: “There must be a clean sweep and a thorough application of disinfectant after the sweeping is done” (p. 123).

That final removal of the remaining fifty to one hundred or so migrants, described as “intruders” and “[l]ingering Mongols” (p. 123), was effectuated in a manner Lawson defended as consistent with “the recognition and protection of all human rights that could . . . be demanded for any class of men, in its natural and necessary removal from a community where it had ceased to be useful and had become dangerous, or let us say, only inconvenient.”<sup>62</sup> He pointed to the fact that city and county “peace officers” were involved the entire time and that the migrants were told they had to leave but would not be hurt.<sup>63</sup> Indeed, as Lew-Williams points out, during the purge the mayor, who was supervising the events, turned and asked the sheriff whether the

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59. *Id.* at 238; see also 1 HERBERT HUNT, TACOMA: ITS HISTORY AND ITS BUILDERS 373 (1916) (“It was a mob, but an orderly mob as mobs go.”).

60. Jean Pfaelzer documents many of the attacks that occurred against the Chinese in California. White miners carried out “ruthless evictions” in places like El Dorado County, Placer County, and Shasta County. Throughout the spring and summer of 1852, white miners attacked the camps of Chinese miners, barred wagons containing their equipment from entering, and set fire to their tents and tools. PFAELZER, *supra* note 12, at 10–16. In 1858–1859, a race war began when 200 armed white men on horseback rode from camp to camp, ordering the Chinese to leave the area and give up any claims. A local sheriff tried to help the Chinese resist these racial purges by arresting vigilantes, but his men were outnumbered and he had to telegram for help from the governor: “An armed body of men, 300 strong and increasing, is organized for the purpose of driving the Mongolians out, in defiance of the law and its officers,” Shasta County Sheriff Clay Stockton wrote. *Id.* at 13–16. These same techniques were used against Latin Americans and Native Americans who also came to mine the land. *Id.* at 17–24. On the life of Chinese miners, see David V. DuFault, *The Chinese in the Mining Camps of California: 1848-1870*, 41 HIST. SOC’Y S. CAL. Q. 155 (1959).

61. Lawson, *supra* note 2, at 235.

62. *Id.*

63. *Id.* at 236.

armed white citizens were a “mob” (p. 123). The sheriff replied that the men carrying out the purge were acting within the law, since they were carrying out the racial purge in an orderly fashion: “Their men [are] orderly and [do] not demand any interference” (p. 123).

After “the final exodus” was accomplished, Lawson predicted that “the removal of the little yellow man, will go far to immortalize the pleasant city at the head of Puget Sound.”<sup>64</sup> As horrific as Lawson’s defense of a racial purge sounds now, it is apparent that his view was widely shared at the time. White people who carried out the mass removals of Chinese people believed that they were in the right and that they were behaving within the bounds of higher law—even when doing so conflicted with federal law or international obligations. They met publicly, deliberated openly, gave notice before applying force, sometimes offered provisions to those they were displacing, and refrained from what they felt to be unnecessary violence.

Those responsible for leading the Chinese purges also meant to send a message to business leaders, elected officials, and judges. Partway through her book, Lew-Williams clarifies that expulsion was distinctively political and communicative: those who carried out the practice believed they were “broadcast[ing]” demands for legal change (pp. 116, 133). Her definition of expulsion thus emphasizes its dialogic role as “a form of violent racial politics, that is, group violence intended to make a national political statement but meted out against a local racial minority” (p. 116).

And more than one community wanted to send a message. When the purges made their way to Seattle, federal troops had to be called out twice (pp. 106–07). Just before the first Seattle purge took place, anti-Chinese activists met with leading Chinese merchant-contractors to try to get them to remove themselves. Businessmen who employed Chinese laborers began to send them away (p. 105). But this concession was not enough to arrest the logic or momentum of expulsion.

Lew-Williams tells this terrifying chapter of our nation’s history with brutal honesty, from many perspectives at once, and she doesn’t give anyone a free pass. In an especially effective part of the book, she presents a first-hand account of the Chinese expulsions from the point of view of white citizens who were sympathetic to their suffering (Chapter Five). These figures included Washington Territorial Governor Watson C. Squire and his wife, Ida Squire, and Alexander Farquharson, owner of a barrel-manufacturing business, who stood his ground and stopped vigilantes from seizing his Chinese workers (pp. 139, 151–52). Each of these figures could have been stalwart allies, and some even came to the aid of migrants in need, but most emerged from these racial conflicts firmly convinced that only a drastic solution could restore domestic tranquility.

Governor Squire, a transplant from the Northeast, initially believed that people of Chinese ancestry faced a lot of prejudice (p. 139). But after living through the purges of Seattle, he came to accept “the intense feeling of an-

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64. *Id.* at 234.

tagonism that is seated in the breasts of the great body of our labouring people in reference to the Chinese” (p. 143). Barely a month after the events in Tacoma, Squire asked Washington’s Territorial Assembly to petition Congress to end all Chinese migration, saying that the continued presence of the Chinese spelled the end of “Christian civilization” (p. 165).

For her part, Ida Squire found the thought of hundreds of Chinese people “crowded on the wharf—trembling and crying” to be “cruel” (p. 146). Experiencing the purges, however, shook her to the core. Fear of the “roughs”—white vigilantes who would not stop at the color line, but would also attack white allies of the Chinese—led her to want the migrants gone even though they had made her life more comfortable (p. 147). This moved her toward tolerating voluntary repatriation, with the charity of white people willing to help fund the cost of travel to get Chinese people out of town (pp. 147–48).

Farquharson, who owned a plant in Puyallup, told his Chinese workers to arm themselves and even went face-to-face with vigilantes who threatened to burn his factory to the ground (pp. 148–52). His fellow citizens hanged him in effigy (p. 150). Farquharson never turned his Chinese employees over to the purge committees, but the threats and disruptions to his business eventually took a toll. He stopped hiring people of Chinese ancestry and told those on his payroll to move on. As Lew-Williams tells us, “over the winter of 1885–1886, Farquharson was among scores of employers who discharged thousands of Chinese workers from the mines, farms, factories, and railroads of the U.S. West” (p. 152).

Some white allies did come to the aid of Chinese migrants, but they faced social ostracism and violence for being “China lover[s]” and “white Chinamen.”<sup>65</sup> In the face of such repercussions for defending racial equality and opposing violence, many eventually succumbed to the logic of expulsion on a grander scale, as long as they were not the ones who had to carry it out.

Lew-Williams’s portrayal of these racial purges complicates our knowledge of the American political tradition. A great deal of constitutional law scholarship is narrowly (perhaps even selectively) focused on egalitarian episodes of popular lawmaking: the black civil rights movement, women’s suffrage, Occupy Wall Street, Black Lives Matter.<sup>66</sup> But once you digest the breadth of local Chinese removals and the rhetoric that surrounded them,

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65. In Whatcom County, Washington, white people who refused to participate in the purges were derided as “white Chinamen.” Kie Relyea, *Remembering Washington’s Chinese Expulsion 125 Years Later*, SEATTLE TIMES (Nov. 7, 2010, 9:46 AM), <https://www.seattletimes.com/seattle-news/remembering-washingtons-chinese-expulsion-125-years-later> [<https://perma.cc/QD9H-Q2DB>]; see also p. 151 (reporting that Farquharson was charged with being “a China lover”).

66. Mostly genial accounts of popular sovereignty in America include BRUCE ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* (1991), and KRAMER, *supra* note 23. But see MARY ZIEGLER, *AFTER ROE: THE LOST HISTORY OF THE ABORTION DEBATE* (2015); Linda Greenhouse & Reva B. Siegel, *Before (and After) Roe v. Wade: New Questions About Backlash*, 120 YALE L.J. 2028 (2011).

you cannot help but see our tradition more capaciously: popular sovereignty has also been used to license massive acts of inhumanity and inequality. It is a more accurate picture, even though it shines the light on some darker corners of popular constitutionalism.

First, the scenes of Chinese expulsions highlight once again the destabilizing nature of popular sovereignty. Not only is it indeterminate who can legitimately speak for the people, but it is also a deeply contested question when the people may speak. While the script for popular lawbreaking is always the same—significant unaddressed grievances justify extreme collective measures—the templates for direct action, which are composed of not just the basic script but also the different reasons and ends, can be very different. The more portable a particular template for popular action, the more easily anyone with a grievance can—by associating with like-minded individuals—claim the authority to act in the higher law tradition. The same formula that justified a revolutionary break from British rule can also be recycled, as it was here, on a more local level, for an even more discrete set of complaints.

Second, there is an intrinsic connection between delegitimizing ordinary law and generating a license for violence. The first is done to create space for the second. Relatedly, there is a temptation to overlook the violence if it is narrow in scope or not as bad as someone else's past violent act. These fine lines between episodes of violence are all drawn on the wrong side of the law. To be sure, not every act of lawbreaking is violent. Strikes, boycotts, and civil disobedience geared toward legal transformation all try to thread the needle. But the rhetoric of popular sovereignty, once engaged, tends to create ever-greater room for forceful action.

Not everyone is willing or able to hold the line. Abolitionist John Brown offers a cautionary tale. Brown started out cautiously, engaging in activities on behalf of the Underground Railroad, but once he began justifying acts of violence according to the higher law tradition, he found it harder and harder to draw lines that couldn't later be reset to accommodate more severe acts of force.<sup>67</sup> Fighting back against slave catchers based on a natural law theory of self-defense led to affirmative acts of slave stealing, whether the enslaved person was ready for liberation or not. Eventually, his attack on Harper's Ferry seemed as defensible as anything else he did before, since there were many individuals and institutions that played some role in the morally bankrupt practice of slavery. If slavery was really best understood as a "war of one portion of [the country's] citizens upon another," then self-defense could justify nearly anything.<sup>68</sup>

Third, popular sovereignty can sometimes be used not to create permanent institutions, as the framers of new constitutions do, but instead to justify ad hoc organizations—adjuncts to law enforcement, deliberative conventions as alternatives to city or county government—and then to imbue them with a gloss of legitimacy. These extralegal institutions may exist

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67. See Robert L. Tsai, *John Brown's Constitution*, 51 B.C. L. REV. 151, 176 (2010).

68. TSAI, *supra* note 18, at 92, 108–17.

only for a short time, justified by crisis-like language. Alternatively, they could ripen into other kinds of vigilante committees or roving militias, seize control of formal offices with the capacity to do great harm, and even splinter into more lasting forms of antiegalitarian activity.<sup>69</sup>

All three of these concerns are amply demonstrated by proponents of racial purges. In Tacoma, windows were shattered, doors were broken down, and Chinese residents who refused to comply were chased down and seized. Those who were displaced recall being prodded by clubs and poles and driven through the streets “like so many hogs” (p. 101). In Seattle, where racial purges spread next, the pregnant wife of a Chinese businessman was dragged down the stairs of her home and into the streets. She ended up losing her child due to the trauma (p. 107). And yet even when Chinese purges were more violent than what occurred in Tacoma, perpetrators still felt they were acting nonviolently, exemplifying civic virtue.<sup>70</sup>

Ad hoc gatherings of agitators seeking support for collective action against migrants tried to invoke the glorious tradition of the people meeting out of doors. They met in “conventions” and put together “committees” (pp. 121–23, 134–35). But it could be hard to tell the difference between virtuous civic gatherings and clandestine vigilante groups that could hardly be said to represent the broad judgment of an entire community. And many of the anti-Chinese boycotts involved threats to life and limb (p. 129).

Perhaps the most troubling thing about Lew-Williams’s account is that the Chinese purges largely worked. She observes that out-migration spiked, as the Chinese population in America dropped by 42,437 between 1882 and 1900 (p. 223). California alone experienced a net loss of 30,000 people of Chinese ancestry during the height of the anti-Chinese movement (p. 223). Worse, with a few exceptions, most perpetrators got away with it (pp. 132–33). This gave the popular defense of the method more credence than it deserved. Federal troops intervened in Seattle before a complete purge could be carried out, and there were a few cases where resistance by the Chinese momentarily repelled an attack (p. 106). Occasionally, Chinese people fought back against racist boycotts by arming themselves, engaging in strikes and work slowdowns, and refusing to patronize white businesses involved in such activity.<sup>71</sup>

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69. Along these lines, check out the so-called “Constitutional Sheriffs Movement,” which also draws on the tradition of popular sovereignty and insists that a county sheriff is the highest law enforcement officer in that jurisdiction—and has the power to resist state and federal officers. Two prominent members of this right-wing grassroots movement are Joe Arpaio and David A. Clarke, Jr. See Robert L. Tsai, *The Troubling Sheriffs’ Movement that Joe Arpaio Supports*, POLITICO (Sept. 1, 2017), <https://www.politico.com/magazine/story/2017/09/01/joe-arpaio-pardon-sheriffs-movement-215566> [<https://perma.cc/VL27-A3GH>]. During his tenure, Arpaio, an elected official, took it upon himself to begin enforcing federal immigration laws without permission. He was at war with the federal government, immigrants’ rights groups, and even his own county board of commissioners, which could not restrain him.

70. See pp. 124–25.

71. PFAELZER, *supra* note 12, at 39, 176, 183, 234, 260, 265, 267, 285.

But there was never much by way of legal accountability, beyond negotiated reparations for a handful of racial attacks. In the aftermath of Tacoma's expulsion, a U.S. attorney eventually indicted twenty-seven individuals for insurrection and conspiracy to deprive Chinese people of equal protection of the laws.<sup>72</sup> The defendants were those who played leadership roles, including the mayor, sheriff, and members of the chamber of commerce.<sup>73</sup> At trial, they defended themselves by arguing that the Fourteenth Amendment could not reach purely private action.<sup>74</sup> Somewhat shockingly, the defendants also relied on the *Dred Scott* decision to argue that some classes of human beings—in this case, the Chinese—should be deemed unprotected by the Constitution since they could not become citizens.<sup>75</sup> Ultimately, the charges were dismissed and the defendants returned home to a hero's welcome.<sup>76</sup> In Los Angeles, where seventeen Chinese people were brutally killed by a mob of 500 people, convictions were overturned and charges were never refiled.<sup>77</sup>

Unfortunately, there was no wave of political sympathy for Chinese migrants that translated into citizenship or enhanced civil rights for them. Here, a comparative approach could deepen the bite of Lew-Williams's point. Unlike racial violence against emancipated slaves, which led to the passage of the Reconstruction Amendments and the Ku Klux Klan Act of 1871,<sup>78</sup> anti-Chinese violence rallied elites to the side of white supremacy, while leaving Chinese people who remained in America in a state of legal purgatory—a problem for later generations to solve (Chapter Six).

Local agitators got what they wanted: expulsion on a grander scale. As Lew-Williams argues, while the wave of anti-Chinese violence was deplored by many, it had the intended effect of pushing national officials to side with their white constituents and close the door completely to Chinese migration (pp. 188–90). The logic was devastatingly simple: it was safer for everyone involved if they just got rid of them. “These little mobs rise, but they can not exterminate them, and we can not prevent it,” declared Democratic senator John Tyler Morgan of Alabama.<sup>79</sup> “All we can do is to keep them out of this country.”<sup>80</sup> When diplomatic efforts to renegotiate treaty terms with China failed, the United States moved unilaterally in 1888 to expand the terms of

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72. *Id.* at 223–24.

73. *Id.* at 224–25.

74. *Id.*

75. *Id.* at 226–27.

76. *Id.* at 228–29.

77. *Id.* at 47–53.

78. Harry A. Blackmun, *Section 1983 and Federal Protection of Individual Rights—Will the Statute Remain Alive or Fade Away?*, 60 N.Y.U. L. REV. 1, 5–6 (1985); Arturo Peña Miranda, “Where There Is a Right (Against Excessive Force), There Is Also a Remedy”: *Redress for Police Violence Under the Equal Protection Clause*, 65 UCLA L. REV. 1678, 1701–11 (2018); Marshall S. Shapo, *Constitutional Tort: Monroe v. Pape, and the Frontiers Beyond*, 60 NW. U. L. REV. 277, 279–80 (1965).

79. 19 CONG. REC. 8570 (1888) (statement of Sen. Morgan).

80. *Id.*

the 1882 Restriction Act, not only barring Chinese migrants, but also declaring void 30,000 return certificates issued to Chinese people who once lived in the United States but who had temporarily left the country (pp. 185–93). When the law went into effect, 600 Chinese travelers were left stranded on the high seas (p. 192).

In signing the Chinese Exclusion Act, President Cleveland parroted the rhetoric of anti-Chinese forces across the country, declaring “[t]he experiment of blending the social habits and mutual race idiosyncracies of the Chinese laboring classes with those of the great body of the people of the United States . . . to be in every sense unwise, impolitic, and injurious to both nations.”<sup>81</sup> The harsh logic of expulsion, rooted in assertions of cultural incompatibility and driven through a ferocious popular movement, had now truly gone national.

### III. TOWARD A TYPOLOGY OF INEQUALITY

At the start of her study, Lew-Williams tantalizingly suggests that our way of thinking about racial violence is stunted because we haven’t adequately grappled with Chinese removals (pp. 1–3). But how, exactly? And to what end, beyond understanding the past? Since it is not exactly fair to demand more from a historian, the rest of us must take the opportunity to wring additional political and legal significance from her careful work if we wish to capitalize upon this knowledge for the pursuit of justice. To do that, we shall have to put the anti-Chinese racial purges that occurred in the context of other forms of inequality. When we do so, we learn that different types of inequality create new arrangements or “clusters” of motivations, actions, and harms.

Much thinking about inequality in America is predicated upon assumptions of uniqueness, that each social group’s struggle has been special and must be respected.<sup>82</sup> The problem is that this isn’t accurate. The victims of injustice may be different, but the objectives of perpetrators, the nature of their collective actions, and the damage inflicted upon minority populations can be similar. Worse, the urge to preserve a distinctive memory can get in the way of obtaining justice. Even if we take white supremacy as a major feature of America’s story, the methods of maintaining racial dominance have crossed group lines. They have also morphed over time. As Lew-Williams notes, for instance, the politics of exclusion deployed against the Chinese was originally engaged against paupers and drunks, who were perceived to be mostly Irish (pp. 43, 49). And after the Civil War, communities that experienced an influx of freed persons—like Tulsa, Oklahoma, whose Greenwood

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81. 19 CONG. REC. 9052 (1888) (message from President Grover Cleveland); *see also* p. 188.

82. *See, e.g.*, JAMES BALDWIN, *THE FIRE NEXT TIME* (1963); RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS* (rev. ed. 1998); CORNEL WEST, *RACE MATTERS* (1993).

section was known as “Black Wall Street”<sup>83</sup>—also sometimes experienced racial purges. In the same vein, the strategy of imposing unequal taxes to scare away the Chinese was a technique also used to justify the deportation of Chileans and Mexicans.<sup>84</sup>

As I have argued elsewhere,<sup>85</sup> fear of comparing experiences can prevent us from dealing with the full extent of human suffering and inequality. But we have to do it the right way: not to determine some magical threshold below which suffering is simply not seen or remediable; but rather to see the full complexity of inequality in America. We can’t just pit one group against another. We must dare to identify commonalities among oppressive practices and the lasting interplay between social harms.

After all, it’s impossible to move forward unless we have a good sense of what went wrong. And to operationalize our sense of how we’ve gone wrong in the past, we’ll have to adjust our legal and historical understanding of inequality in America. In that light, *The Chinese Must Go* reveals that majoritarian processes and well-placed supporters repeatedly failed vulnerable immigrants, even those who were lawfully present and committed no crimes. And yet our constitutional doctrines are stunted by an obsession with individualized mistreatment rather than systematic injuries—even the dream of a post-racial society can blind us to the intergenerational effects of unequal policies.

Simplistic, cumbersome, or parsimonious notions of equality must be reconsidered or set aside. That’s because without a good feel for the subtleties of inequality, legal formulas are uncertain methods for facilitating remedies. In the absence of a richer vision of inequality, the best we could hope for is that decisionmakers go through the motions and occasionally hit upon an outcome that does some good. To render meaningful justice, we must find our way toward a more comprehensive catalogue of the forms of inequality, the harms associated with each historical variety, the reasons for doing something about them, and the remedies that might be appropriate.

In my view, it makes sense to treat expulsions as a separate form of inequality. This is a different approach to understanding inequality than that of many philosophers. For instance, T.M. Scanlon has offered six different reasons one might give for objecting to inequality.<sup>86</sup> He says, for example, that

83. “The Greenwood Massacre,” sometimes known as “the Tulsa Riot of 1921,” was sparked by a white teenage girl’s accusation that a black man had tried to sexually assault her in an elevator; the charge was later dropped. In the meantime, white mobs demanded that the accused, then under arrest, be delivered up for rough justice. White mobs rampaged through the black section of town, shooting and looting. It led to hundreds dead, the arrest of 6,000 black citizens, and thousands of homes and businesses burned to the ground. See ALFRED L. BROPHY, *RECONSTRUCTING THE DREAMLAND: THE TULSA RIOT OF 1921* (2002).

84. PFAELZER, *supra* note 12, at 31.

85. ROBERT L. TSAI, *PRACTICAL EQUALITY: FORGING JUSTICE IN A DIVIDED NATION* 101–05 (2019).

86. T.M. SCANLON, *WHY DOES INEQUALITY MATTER?* (2018). Scanlon says there are six kind of objections to inequality: (1) it creates a humiliating difference in status; (2) it gives the

providing public services differently to different people for no good reason would be a denial of equal concern and that this is a different sort of objection to inequality than a complaint that something fosters status inequality or denies procedural fairness.<sup>87</sup>

My concern here is not to supplant other ways of thinking about inequality but instead to supplement the most useful approaches by grounding them in historical complexity and improving our capacity to remedy a broader range of injustices. At the same time, we'll need to theorize across moments and experiences so we can recognize commonalities in terms of intentions, consequences, harms, and solutions.

We should start by building a typology of inequalities. Here's a sketch:

1. Slavery
2. Physical Violence (murder, assault, battery, rape)
3. Expulsion
4. Detention
5. Separation
6. Symbols of Hatred or Hierarchy
7. Denial of Civil Rights or Fundamental Rights (i.e., voting, speech, migration, etc.)
8. Differential Treatment as to Other Social Goods
9. Destruction of Property and Wealth Disparities
10. Impairment of Economic Opportunity

What do we learn when we treat inequality as a series of distinctive forms instead of merely reasons for concern? First, we start to see that the attributes of a particular form of inequality will share a family resemblance, even if they are applied to new groups and fresh circumstances. For instance, the stimulation of hierarchy and hatred, creation of a homogeneous community, social dislocation and geographic dispersal of undesirables, rise of a nomadic population, total shutdown of local economic opportunities to the expelled, and deterrence of future in-migration are all consequences shared by racial purges. Indeed, we can talk about designed rootlessness as a feature, since the idea was to keep Chinese migrants perpetually on the move in the hope they would eventually decide to wander back to their country of origin. In other words, local expulsion hopefully encouraged out-migration by re-

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rich unjustifiable power over those who are not wealthy; (3) it undermines equality of economic opportunity; (4) it undermines the fairness of political institutions; (5) it violates the notion of equal concern in distributing benefits; and (6) it arises from economic institutions that are themselves unfair. *Id.* at 8–9. Other philosophers emphasize a single principle of “basic equality,” along with some secondary concepts. See, e.g., JEREMY WALDRON, ONE ANOTHER’S EQUALS (2017).

87. SCANLON, *supra* note 86, at 5–7.

ducing economic opportunities and multiplying the kinds of social pain experienced by members of this group.

This set up a self-fulfilling prophesy: already described by anti-immigration forces as outsiders and risks of becoming public charges, Chinese people would then be forced to become just like vagrants, a despised category of people in America that traditionally enjoyed fewer rights than full citizens. After all, the original Articles of Confederation explicitly excluded “paupers, vagabonds, and fugitives” from the full privileges and immunities that “free citizens” enjoyed.<sup>88</sup> Widespread racial purges transformed a new set of migrants—the Chinese—into more historically familiar legal outcasts. And since these other groups did not enjoy the same rights to travel freely within the United States, constructing the Chinese in these terms made it easier to expose them to different and harsher treatment than other immigrants.

Similarly, this approach helps us to identify a set of related harms flowing from a particular form of inequality. Each time a racial purge was carried out, Chinese people experienced a similar set of injuries: a disruption in their social relationships, forced homelessness, psychological and perhaps physical injuries stemming from experiencing political terror, vulnerability to further downstream abuse, the loss of economic investments and future opportunities—just to name a few.

Second, reasons for objecting to a particular kind of inequality can cluster in particular, historically salient ways. We might object to racial expulsions for reasons we might not give for other forms of inequality. Using Scanlon’s terminology as a springboard, it is possible to say that the expulsion of Chinese migrants expressed animus because it fostered a humiliating difference in status compared with other immigrants; that the threat of racial purges and racist boycotts denied them equality of economic opportunities; that these displacements, when led by state actors like elected officials and law enforcement officers, corroded the fairness of political institutions meant to serve and protect everyone; and finally, that the state failed to treat the Chinese with equal concern because it failed to protect their rights to security and property guaranteed by relevant law.

Third, the approach confirms that racial violence is neither irrational nor unpredictable. Even when it’s believed to be solved, it can reoccur, and when it does, that violence follows certain repeatable forms. To talk of racial violence as if it were some kind of collective hysteria wrongly absolves subjects of agency and moral responsibility, and it underplays the crucial role that tradition and politics play in driving racial terror. In reality, perpetrators behave deliberately, recycling forms of inequality that served their ends in the past and adjusting strategies as necessary. In this respect, it isn’t just “the

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88. See ARTICLES OF CONFEDERATION of 1781, art. IV, para. 1. This exception was not carried over in the U.S. Constitution, and this fact was remarked upon by some—including John Bingham, principal drafter of the Fourteenth Amendment—as an indicator of a more expansive belief in equality for all. See CONG. GLOBE, 35th Cong., 2d Sess. 985 (1859).

Tacoma Method” that was portable—all forms of inequality provide templates for future action. This tells us something else: our reasons and strategies for opposing inequality will have to be just as adaptable.

We can now say a little more about purges as a strategy for fostering inequality. Expulsions have frequently been used to serve white supremacy, but they needn’t be tethered to such an objective. In the years before immigration policy became a national concern, New York and Massachusetts rounded up and deported foreign paupers.<sup>89</sup> Closer to our own time, many municipalities have used zoning laws to force people with intellectual disabilities to live outside of populated downtown areas, raising similar questions of group displacement.<sup>90</sup> Also, banishment was used to rid a community of interracial couples and drunks, while zoning techniques have been deployed to remove sex offenders and homeless people out of sight, out of mind.<sup>91</sup>

Expulsions can be extralegal measures, as they were in the case of the Chinese when they were deprived of civil rights guaranteed under treaties, federal law, and even state law. But expulsions can also be legally authorized, as they were once it became a national policy to keep out and hunt for unauthorized Chinese migrants, or when indigenous tribes were systematically deprived of sovereignty and their members forcibly relocated to reservations.<sup>92</sup> Legalized expulsions become almost something else entirely. Once codified and imbued with formal legitimacy, purges become more systematic and efficient. The logic of exclusion can become unassailable—as we all become accustomed to regular expulsions as a way of life. Its funding becomes more stable, bureaucracies are built to carry out the removals of the unwanted, an entire segment of society becomes economically and emotionally in-

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89. HIDEAKA HIROTA, *EXPPELLING THE POOR: ATLANTIC SEABOARD STATES AND THE NINETEENTH-CENTURY ORIGINS OF AMERICAN IMMIGRATION POLICY* 2–3 (2017). There was actually overlap in how these communities thought about the poor and people with disabilities, for state laws allowed officials to exclude not only aliens “likely to become a public charge,” but also “lunatics,” “idiots,” and “infirm” persons. *Id.* at 3.

90. See, e.g., Brief for Amici Curiae of Assoc. for Retarded Citizens et al. as Amici Curiae Supporting Respondents, *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432 (1985) (No. 84-468), 1985 WL 669791, at \*2 (“The states forthrightly and systematically sought to ‘purge society’ of their retarded citizens and by law declared them ‘unfit for citizenship.’ The Cleburne ordinance, modeled on a 1929 Dallas ordinance, has its origin in this period and—along with at least twelve similar ordinances in Texas alone—is rooted in the invidious discrimination of that time.”).

91. See, e.g., Peter D. Edgerton, *Banishment and the Right to Live Where You Want*, 74 U. CHI. L. REV. 1023 (2007). As just one example, Virginia’s antimiscegenation law was deployed to effectuate the banishment of the Lovings. They were sentenced to one year in jail, with their sentences suspended “on the condition that the Lovings leave the State and not return to Virginia together for 25 years.” *Loving v. Virginia*, 388 U.S. 1, 3 (1967).

92. See generally Lindsay Glauner, Comment, *The Need for Accountability and Reparation: 1830–1976: The United States Government’s Role in the Promotion, Implementation, and Execution of the Crime of Genocide Against Native Americans*, 51 DEPAUL L. REV. 911, 931 (2002).

vested in an expulsion industry, and the machinery of expulsion can then be turned against a variety of populations.

Racial expulsions of the sort conducted against the Chinese share some characteristics with lynchings: they were an extra-legal effort directed against a racial minority, and they were often conducted in a highly ritualized fashion.<sup>93</sup> Just as lynchings in some places became community-wide events, so, too, racial purges expressed a mixture of white affinity and patriotic sentiment. The people of Tacoma commemorated the Chinese purge by celebrating it as a holiday one year later, replete with “a parade and torch light procession.”<sup>94</sup> As the Chinese were being driven out, some citizens stopped and hunted for keepsakes. It was reported that “white women entered the Chinese shacks and procured souvenirs,”<sup>95</sup> already looking ahead to a time when they could safely, perhaps even wistfully, think back upon Chinese culture. In Los Angeles, seventeen Chinese men were lynched, their homes were looted and jewelry taken.<sup>96</sup> At times, perpetrators mutilated the bodies of Chinese victims. This happened in places like Los Angeles, Rock Springs, Snake River, and Hells Canyon.<sup>97</sup>

An alleged crime by nonwhites against whites could trigger a broader purge, and sometimes even a lynching, but was not a necessary component of a racial purge. Lynchings did play a role in the purges of Chinese residents in places like Denver, Eureka, and Los Angeles. On October 31, 1880, a drunken encounter between several white and Chinese residents in a Denver saloon spilled into the streets.<sup>98</sup> As the Chinese men tried to defend themselves, more white men joined the fracas.<sup>99</sup> By nightfall, thousands of angry whites had assembled and seized the opportunity to burn down every single Chinese laundry in the city.<sup>100</sup> A similar dynamic occurred in Pierce City, Missouri, after the 1901 lynching of two black men accused of crimes against white citizens, when a ringleader hollered, “Come on boys, you with guns—out to run the niggers out of town.”<sup>101</sup> Afterward, black people were warned that “negroes will not be permitted to live here in the future and that the few negroes not already expelled will be obliged to go.”<sup>102</sup> Likewise, the grisly scene of disfigured Chinese bodies lying in the streets of Los Angeles or the

93. W. FITZHUGH BRUNDAGE, *LYNCHING IN THE NEW SOUTH: GEORGIA AND VIRGINIA, 1880-1930* (1993).

94. HUNT, *supra* note 59, at 382.

95. *Id.* at 373.

96. PFAELZER, *supra* note 12, at 50, 123, 287 (describing how a Chinese doctor “had his garments ripped from off his person while hanging,” wares were stolen by white gangs, and a gang of white farmers and schoolboys “rob[bed] and murder[ed]” Chinese miners).

97. P. 169; PFAELZER, *supra* note 12, at 287.

98. Roy T. Wortman, *Denver’s Anti-Chinese Riot, 1880*, 42 *COLO. MAG.* 275, 280 (1965).

99. *Id.*

100. *See id.* at 286.

101. KIMBERLY HARPER, *WHITE MAN’S HEAVEN* 24–26 (2010).

102. *Pierce City Mob Drives Out Negroes*, *S.F. CALL*, Aug. 21, 1901, at 1.

swinging body of Hong Di, a convicted Chinese murderer lynched by a mob in Chico (p. 4), signifies the worthlessness of Chinese lives.

Whiteness is something that must be performed. After a purge was over, residents would frequently give public testimony as to how glad they were that Chinese people had been driven out. In Tacoma, one white woman thanked the men for driving “away the slaves that had taken the bread from the people’s mouths and from their children’s mouths.”<sup>103</sup> Racial homogeneity restored a perception of harmony, and that sense of purity had to be acknowledged. The same woman, like many others, was grateful that women’s “eyes no more meet the unclean Chinamen.”<sup>104</sup>

White residents of Whatcom County similarly celebrated their racial purge with a torchlight parade, songs, and fireworks.<sup>105</sup> “The Chinese are gone,” announced the local newspaper. “We rejoice.”<sup>106</sup> Fire typically played a major role in places like Tacoma, Truckee, San Jose, and Rock Springs—not merely in terrorizing the Chinese but also in purifying the community.<sup>107</sup> The absolute destruction of migrant encampments or the burning of Chinatown signaled a desire to blot out any positive impact the migrants had on the community, perhaps along with memories of the ruthless actions that had to be undertaken by white residents to erase the interlopers from history. Fire then became a symbolic feature of post-purge commemorations, as torch-lit processions offered a reenactment of the purification itself.

To the extent that a purge is memorialized or broadcast, it sends a message of hierarchy and intolerance. This kind of social injury is lasting to the extent others perceive a community is unwelcome to outsiders. And this characteristic renders a purge like other kinds of symbols, signage, or monuments intended to communicate that certain political minorities are inferior.<sup>108</sup> After the purge of Tacoma, some citizens were so brazen that they informed elected officials of exactly what they had done. On May 4, 1885, John Arthur wrote Governor Squire and crowed, “The Chinese are no more in Tacoma, and the trouble over them is virtually at an end.”<sup>109</sup> This was no temporary state of affairs, he insisted, but a permanent one: “Tacoma will be

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103. PFAELZER, *supra* note 12, at 225.

104. *Id.*

105. Relyea, *supra* note 65.

106. *Id.*

107. See, e.g., PFAELZER, *supra* note 12, at 170–77.

108. See SANFORD LEVINSON, WRITTEN IN STONE: PUBLIC MONUMENTS IN CHANGING SOCIETIES (2018); Micah Schwartzman & Nelson Tebbe, *Charlottesville’s Monuments Are Unconstitutional*, SLATE (Aug. 25, 2017, 9:07 AM), <https://slate.com/news-and-politics/2017/08/charlottesvilles-monuments-are-unconstitutional.html> [<https://perma.cc/D856-BNXD>].

109. PFAELZER, *supra* note 12, at 222. Arthur then urged the governor to endorse a petition to President Cleveland about “non-enforcement of the Chinese restriction act.” Letter from John Arthur to Watson Squire, Wash. Territorial Governor (Nov. 4, 1885), <https://www.washington.edu/uwired/outreach/cspn/Website/Classroom%20Materials/Curriculum%20Packets/Asian%20Americans/Documents/28.html> [<https://perma.cc/Q3ZV-U5W6>].

*sans* Chinese, *sans* pigtails, *sans* moon-eye, *sans* wash-house, *sans* joss-house, *sans* everything Mongolian.”<sup>110</sup>

It is important to note that expulsion is logically connected to detention, since expulsion requires either explicit or implicit use of force to gather and relocate human beings. Orders will have to be given and some people can be expected to resist. The wartime internment of Japanese Americans during the 1940s illustrates this relationship, despite the Supreme Court’s bizarre effort to deny that expulsion and detention were linked.<sup>111</sup>

Seizure is thus a necessary component of expulsion, but we can miss the connection because the detentions entailed in a purge are often temporary, requiring little architecture. In both Tacoma and Seattle, groups of Chinese were gathered near the wharf and then moved wholesale to ships or train stations or simply the city limits (p. 146). No trace of the detentions remained after the Chinese had been run out of town (p. 3). It’s only when other goals are paramount—a punitive objective, or perhaps the need to process the legal claims of detainees—that more infrastructure is needed. At that point, detention becomes more indefinite and visible.

The day may come when a type of expulsion is thought to be more humane than detention. Lew-Williams’s picture of early border enforcement in the North after the Chinese Restriction Act of 1882 highlights this tension. She tells us that the first known acts of indefinite immigrant detention occurred during this period, as unauthorized Chinese migrants were sent to the U.S. penitentiary on McNeil Island (p. 85). No law explicitly allowed for this course of action, since imprisonment was not authorized for violating the restriction law (p. 85). U.S. marshals simply began bringing captured migrants there, and those actions created a precedent that others found easiest to follow (p. 85). Once they started detaining more migrants, however, new problems cropped up. How long should they be detained? Who would decide? What if you wanted to deport someone but no nation would take the person?

Lew-Williams tells us that about 100 migrants were kept on McNeil Island. Some were tried by local judges, who gave them a variety of sentences upon conviction. Many migrants were given six-month sentences, but detainees were generally kept there awaiting trial, even after a sentence was finished, and those who didn’t get a trial were held until further instructions from the U.S. attorney general (pp. 84–86).

In a very real sense, America’s nineteenth-century lurch toward exclusion pushed us further down a path of complex detention. We are now grappling with the fact that detention crosses over with other forms of inequality.

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110. PFAELZER, *supra* note 12, at 222.

111. Justice Black’s decision in *Korematsu* insisted that the Court was considering only orders to leave designated military areas, while the dissenters argued that the exclusion orders were part of a broader program to drive people of Japanese ancestry to temporary relocation centers and then camps where they would be detained for a longer, but indefinite, period. *Korematsu v. United States*, 323 U.S. 214 (1944).

It involves, to some degree, separation from other human beings; it can expose people to greater risk of other deprivations and unequal treatment; and being detained for too long can lead to fairly predictable financial losses and psychological damage. Today, being branded an “illegal immigrant”—a term that didn’t exist before the age of exclusion<sup>112</sup>—can expose already vulnerable populations to further social pain and sharply limit one’s future rights and opportunities.

#### CONCLUSION

*The Chinese Must Go* recovers an intense period during the nineteenth century when mostly white communities throughout the American West expelled Chinese migrants. In doing so, the book adds to our existing understanding of racial and political violence in America. It also fleshes out the cultural and political undercurrents that led to changes in the country’s immigration laws and, in turn, spurred the development of constitutional law inside and outside the courts.

There is good news here as well as bad. On the one hand, the plight of the Chinese led to the clarification of birthright citizenship that brings formal legal security to the children of migrants and the assurance of some constitutional protections for noncitizens in America.<sup>113</sup> On the other hand, it also crystalized the idea of the border in the public imagination and initiated the apparatus of border control, spread a new rhetoric of “alien” noncitizens in our law and politics, and fostered problematic justifications for extralegal methods to deal with undesirables. Lew-Williams calls this “the scaffolding of modern American gatekeeping” (p. 240). The legacy of these racial purges haunts us still.

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112. John Hudson, *Looking for the First Use of the Term ‘Illegal Immigrant,’* ATLANTIC (Sept. 28, 2012), <https://www.theatlantic.com/national/archive/2012/09/looking-first-use-term-illegal-immigrant/323086/> [https://perma.cc/8AGQ-MMFE].

113. On birthright citizenship, see generally MARTHA S. JONES, *BIRTHRIGHT CITIZENS: A HISTORY OF RACE AND RIGHTS IN ANTEBELLUM AMERICA* (2018); AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY* (2009); Mae M. Ngai, *Birthright Citizenship and the Alien Citizen*, 75 *FORDHAM L. REV.* 2521 (2007); and Robert L. Tsai, *The Origins of Birthright Citizenship*, *BOS. REV.* (Nov. 9, 2018), <http://bostonreview.net/race/robert-l-tsai-origins-birthright-citizenship> [https://perma.cc/B6BE-QS22].