

HOSTILE SHORES: RACIAL EXCLUSION LAWS AND THE WEST COAST

By Brendan Williams[†]

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Today the West Coast is reliably in the Democratic Party’s column.¹ It was a focal point of attacks from President Trump leading up to his 2020 re-election campaign defeat.²

Trump falsely accused California of sending mail-in ballots to undocumented immigrants for the 2020 election.³ He held a “California Sanctuary State Roundtable” in which, among other things, he referred to immigrants as “animals.”⁴ He attacked the state of Washington and city of

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¹ See John Bowden, *Biden sweeps Trump in West Coast states*, THE HILL (Nov. 3, 2020, 11:33 PM), <https://thehill.com/homenews/campaign/524380-biden-sweeps-trump-in-west-coast-states> (“California, by far the largest haul of Biden’s western sweep, last voted for a Republican presidential nominee in 1988, when former President George H.W. Bush narrowly edged Democratic nominee Michael Dukakis in the state.”).

² See David Siders & Christopher Cadelago, *West Coast emerges as 2020 campaign’s ‘ideological battleground’*, POLITICO (Sept. 15, 2020, 8 AM), <https://www.politico.com/news/2020/09/15/west-coast-battleground-trump-biden-california-414647> (“West Coast Democrats delivered some of Trump’s worst defeats in 2016. The president won less than 40 percent of the vote in California, Oregon and Washington state. And they have feuded ever since, litigating over climate change, immigration and other issues.”).

³ See Holmes Lybrand & Daniel Dale, *Fact check: Trump falsely claims California is sending mail-in ballots to undocumented immigrants*, CNN (May 28, 2020, 6:16 PM), <https://www.cnn.com/2020/05/26/politics/fact-check-trump-vote-by-mail-fraud-gavin-newsom-california/index.html>.

⁴ Jill Colvin, *In speech slamming California’s immigration policies, Trump calls some unauthorized border-crossers ‘animals’*, PBS NEWS HOUR (May 17, 2018, 8:56 AM), <https://www.pbs.org/newshour/politics/in-speech-slamming-californias-immigration-policies-trump-calls-some-unauthorized-border-crossers-animals>.

Seattle over racial injustice protests, suggesting he would federalize the response.⁵ After the shooting in Portland, Oregon of a right-wing supporter in 2020, amidst ongoing racial injustice protests, Trump called the city's mayor a "fool" and reportedly was "encouraging his supporters to move into Portland in the wake of the shooting. After the shooting, the president shared a video of his supporters driving into Portland and called those in Saturday's caravan 'GREAT PATRIOTS!'"⁶

Trump's antipathy toward immigrants was relentless, beginning with his launching his 2016 campaign by calling Mexican immigrants "rapists."⁷ He ran what CNN described as "the most racially charged national political ad in 30 years" before the 2018 midterm election – accusing Democrats "of plotting to help people they depict as Central American invaders overrun the nation with cop killers."⁸ He was reported asking in a White House meeting, "Why are we having all these people from shithole countries come here?"⁹

Yet it was not so long ago in history that sentiments like Trump's would have been popular on the West Coast. Indeed, in *The Atlantic*, Ben Zimmer traced Trump's racist language about an immigrant invasion to rhetoric on the West Coast in the 1800s:

"THE CHINESE INVASION! They Are Coming, 900,000 Strong." On August 27, 1873, readers of the *San Francisco Chronicle* were greeted

⁵ Veronica Stracqualursi, *Seattle mayor tells Trump to 'go back to your bunker' after he criticizes her handling of protests*, CNN (June 11, 2020, 2:23 PM), <https://www.cnn.com/2020/06/11/politics/seattle-mayor-trump-protests/index.html>.

⁶ Gillian Flaccus, *Trump, Portland mayor blame each other after deadly shooting*, ASSOCIATED PRESS (Aug. 20, 2020), <https://apnews.com/article/6706c916dc6a156b9847baca437a91de>. As another report noted:

President Donald Trump on Sunday praised a pro-Trump caravan of activists whose presence appeared to contribute to violent clashes Saturday in Portland, Oregon. The day after a man was shot and killed in confrontations between Black Lives Matter protesters and Trump supporters in Portland, he assailed only the anti-racism demonstrators.

Allan Smith, *Trump praises right-wing supporters, rails against protesters after unrest in Portland*, NBC NEWS (Aug. 31, 2020, 5:46 AM), <https://www.nbcnews.com/politics/donald-trump/trump-rails-against-protesters-following-unrest-portland-n1238808>.

⁷ Amber Phillips, *'They're rapists.' President Trump's campaign launch speech two years later, annotated*, WASH. POST (Jan. 16, 2017, 1:43 PM), <https://www.washingtonpost.com/news/the-fix/wp/2017/06/16/theyre-rapists-presidents-trump-campaign-launch-speech-two-years-later-annotated/>.

⁸ Stephen Collison, *Trump shocks with racist new ad days before midterms*, CNN (Nov. 1, 2018, 8:53 AM), <https://www.cnn.com/2018/10/31/politics/donald-trump-immigration-paul-ryan-midterms/index.html>.

⁹ Josh Dawsey, *Trump derides protections for immigrants from 'shithole' countries*, WASH. POST (Jan. 2, 2018, 7:52 AM), https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html.

with these words, in a notice that demanded, “What are you going to do about it? Nations of the earth take warning.”¹⁰

The West Coast, dating to its growing white population in the mid-1800s, and up to modern times, was a very racist region of our country, and that racism was embodied in laws and even state constitutions. That history, and how it resonates to the present day, is worth examining as we come to terms with the racial inequities that have long defined our society.¹¹

The focus here is not on the monstrous mistreatment of indigenous Native Americans.¹² The state of Washington, for example, was until modern times long-represented by a Republican senator, Slade Gorton, known in “Indian Country” as the “Custer of the Senate” who made a career “bashing Indians as relentlessly and ruthlessly as Strom Thurmond and Jesse Helms have race-baited blacks.”¹³ Its Democratic governor was labeled a “snake” by tribal leaders in 2021 when he vetoed language in an environmental projects bill “requiring tribal consultation for those projects and tribal consent for any projects that would harm tribes’ cultural, archeological or sacred sites.”¹⁴

¹⁰ Ben Zimmer, *Where Does Trump’s ‘Invasion’ Rhetoric Come From?*, THE ATLANTIC (Aug. 6, 2019), <https://www.theatlantic.com/entertainment/archive/2019/08/trump-immigrant-invasion-language-origins/595579/>.

¹¹ The police killing of a Black man, George Floyd, in Minnesota sparked nationwide protests over racial injustice. See Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (Mar. 28, 2021), <https://www.nytimes.com/article/george-floyd-protests-timeline.html>. Floyd’s death elevated racial injustice as a public concern. See Lydia Saad, *Racial Justice Concerns Persist Months After Floyd’s Death*, GALLUP (Feb. 19, 2021), <https://news.gallup.com/poll/329711/racial-justice-concerns-persist-months-floyd-death.aspx> (“George Floyd’s death and the nationwide protests that followed led to a relatively large percentage of Americans naming race-related issues as the top problem facing the country last year, even as the pandemic competed for public attention.”).

¹² For example, in the state of Washington, despite the treaty rights accorded to Native Americans to fish, “Washington steadily implemented policies via legislation, ballot initiatives, and court decisions making it increasingly difficult for Indians to fish at all, much less using traditional methods at their usual and accustomed places.” Ryan Hickey, *Highway Culverts, Salmon Runs, and the Stevens Treaties: A Century of Litigating Pacific Northwest Tribal Fishing Rights*, 39 PUB. LAND & RES. L. REV. 252 (Oct. 2018).

¹³ Jeffrey St. Clair, *The Last Indian Fighter*, IN THESE TIMES (Oct. 2, 2000), <https://inthesetimes.com/issue/24/22/stclair2422.html>. Gorton was defeated in 2000. See Helen Dewar, *Cantwell Senate Victory Over Gorton Upheld*, WASH. POST (Dec. 2, 2000), <https://www.washingtonpost.com/archive/politics/2000/12/02/cantwell-senate-victory-over-gorton-upheld/7016aa09-fb82-4c87-aa32-b6334fcddd4a/>.

¹⁴ John Ryan, *Tribal leaders call Inslee ‘a snake’ after he vetoes climate law’s tribal consent measure*, KUOW (May 21, 2021, 7:01 PM), <https://www.kuow.org/stories/tribal-leaders-call-inslee-a-snake-after-he-vetoes-tribal-consent-measure>; Lynda V. Mapes, *Washington tribal leaders, legislators slam Inslee over vetoes in climate bills*, SEATTLE TIMES (May 24, 2021, 4:16 PM), <https://www.seattletimes.com/seattle-news/environment/tribal-leaders-legislators-slam-inslee-over-vetoes-in-climate-bills/>. One commentator called it “yet another egregious example of how even the most progressive officials, when pressed to relinquish a modicum of their government’s power in the name of righting institutionalized wrongs of colonialism, continue choosing power over Indigenous rights.” Nick

Nor does this article address the historic mistreatment of Latinx people. One writer, Marie Arana, describes the land gains following the war between Mexico and the United States as coming with “hostages: the Mexican American people.”¹⁵ As she wrote:

That grudging population was not easy to exterminate; not by war, nor by verdict. There were too many to be herded down trails of tears or consigned to faraway exile, and they were useful, if vexatious. They knew the land, worked the land and could be put to work for white overlords.¹⁶

They, too, suffered atrocities on the West Coast until modern times, such as the so-called 1943 “Zoot Suit Riots” in Los Angeles when military servicemembers, urged on by a racist press, attacked Latinx people in public without consequence.¹⁷

These are important stories in our history, better told elsewhere.

Instead, this article focuses on Asian and Black people emigrating, or immigrating, to the West Coast states, and subject to their racist excesses, beginning with anti-Chinese sentiment in California, continuing to anti-Black exclusion in Oregon, and moving on to anti-Japanese laws in Washington. It examines how the West Coast drove one of the great American tragedies of the past century – Japanese internment during World War II. It concludes by focusing on racial equity on the West Coast today.

I. CALIFORNIA AND CHINESE EXCLUSION

California had a long history of hostility toward the Chinese. According to one account, “In 1869, the first daily newspaper in Los Angeles began to publish a series of editorials bitterly complaining about the effect of low-wage Chinese workers upon the incomes of whites.”¹⁸ This extended to even consideration of the 15th Amendment:

In 1870, when the California Legislature was debating the 15th Amendment to the U.S. Constitution, which protected citizens from denial of their right to vote based upon race, color or “previous condition of servitude” (slavery), the Los Angeles News railed against the “horde of idolatrous barbarians”

Martin, *Jay Inslee and the American Desire to Put Tribes in Their Place*, NEW REPUBLIC (May 7, 2021), <https://newrepublic.com/article/162524/jay-inslee-american-desire-put-tribes-place>.

¹⁵ Marie Arana, *A history of anti-Hispanic bigotry in the United States*, WASH. POST (Aug. 9, 2019, 12:34 PM), https://www.washingtonpost.com/outlook/a-history-of-anti-hispanic-bigotry-in-the-united-states/2019/08/09/5ceaacba-b9f2-11e9-b3b4-2bb69e8c4e39_story.html.

¹⁶ *Id.*

¹⁷ Marisa Gerber, *Zoot Suit Riots: After 75 years, L.A. looks back on a violent summer*, L.A. TIMES (June 4, 2018, 5 AM), <https://www.latimes.com/local/lanow/la-me-ln-zoot-suit-riots-anniversary-20180604-story.html>.

¹⁸ Michael Woo, *Review: A powerful look at ‘The Chinatown War’*, L.A. TIMES (Sept. 2, 2012), <https://www.latimes.com/entertainment/la-ca-scott-zesch-20120902-story.html>.

coming from China. The paper suggested that “we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls.” (The California Legislature failed to ratify the 15th Amendment until 1962).¹⁹

In Los Angeles on October 24, 1871, “[i]nflamed by racial hate and whiskey, an angry mob of 500 Angelenos—some of whom were led by City Councilman George E. Fall—surrounded Chinatown.”²⁰ Nineteen members of the Chinese community were hung or shot, including its only doctor who was hung – accounting for 10% of the Chinese community overall – and “[a]n estimated \$40,000 in cash, gold and jewels was stolen.” The “local newspapers called the riot a ‘victory of the patriots over the heathens’” and the manslaughter convictions of eight involved were overturned on a pretext.²¹

Truckee, California had – by 1870 – become a town where over a quarter of the residents were Chinese, many of whom had played a key role in building the Central Pacific Railroad.²² Yet, after a fire destroyed the original “Chinatown” in 1875, it was reported that “[i]n 1878, the Chinatown caught fire three times and it was projected to be by the work of anti-Chinese vigilantes, known as the ‘Caucasian League.’”²³ As the town experienced economic decline, anti-Chinese sentiment intensified:

On Nov. 25, 1882, the Truckee Republican printed “The Cue Klux Klan:”
 “To the people of California, and especially to anti-Chinese leagues, we suggest the bloodless remedy of cue (sic) cutting as an escape from serious complications, and a sure cure for the Chinese pestilence ...”²⁴

All Chinese residents were driven out of the town by 1886.²⁵

¹⁹ *Id.*

²⁰ Cecilia Rasmussen, *A Forgotten Hero From a Night of Disgrace*, L.A. TIMES (May 16, 1999), <https://www.latimes.com/archives/la-xpm-1999-may-16-me-37851-story.html>.

²¹ *Id.* Even as long ago as 1894, a historian described the massacre as “one of the most bloody and barbarous tragedies in the annals of this state.” C.P. Dorland, *Chinese Massacre at Los Angeles in 1871*, 3 ANN. PUBLICATION HIST. SOC’Y SO. CALIF. 22 (1894), https://www.jstor.org/stable/41167579?seq=1#metadata_info_tab_contents. He recounted that [o]ne of the victims was a Chinese doctor, an inoffensive man, respected by all the white people who knew him. He pleaded in English and in Spanish, for his life, offering his captors all his wealth, some \$2000 or \$3000, but in spite of his entreaties he was hanged; then his money was stolen, and one of his fingers cut off, to obtain the rings he wore. The doctor’s name was Gene Tung.

Id. at 23. However, in an early exercise in revisionism, the historian concluded: “I have not found one voice raised in defense or in palliation of the terrible crimes of that night; but the unanimous voice of officials, writers, newspaper men, coroners and grand jury, as well as the voice of common humanity, has been that of unqualified condemnation.” *Id.* at 26. If only that were true.

²² See Corrie Jimenez, *A city within a city: Truckee’s Chinatown*, SIERRA SUN (June 21, 2019), <https://www.sierrasun.com/news/a-city-within-a-city-truckees-chinatown/>.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

California members of Congress were instrumental in enacting federal legislation hostile to Chinese immigration. The immigration of women from “China, Japan, or any Oriental country” was restricted by the Page Act of 1875, which presumed that they were being brought to the United States for “for lewd and immoral purposes” – with “the consul-general or consul of the United States residing at the port” of entry charged with the duty of determining whether that was the case.²⁶

As one scholar, Kerry Adams, noted, “The Page Law itself is surprisingly understudied. Legal scholars and historians interested in immigration often ignore the Page Law altogether.”²⁷ The law’s author was a California U.S. House member, Horace F. Page.²⁸ Adams states that “[i]n advocating exclusion, Page emphasized the helplessness of his state, California, not only against the perceived servility of the Chinese but also against the tide of immorality and disease believed to accompany Chinese women.”²⁹

Following passage of the Page Act, anti-Chinese foment continued among the California congressional delegation. As one law review article recounts:

A new treaty with China in 1880 no longer permitted free and open immigration; instead, it said “reasonable” restrictions could be made by Congress. Immediately, in response, the California delegation to Congress proposed a twenty-year exclusion of all Chinese laborers. After its quick passage, however, President Arthur vetoed the Act, calling twenty years too lengthy a time period.³⁰

After that veto “the California delegation” came up with a new proposal,³¹ resulting in the Chinese Exclusion Act of 1882,³² which provided that “no State court or court of the United States shall admit Chinese to citizenship[.]”³³

As one account noted:

[T]he Act further crystallized distinctions between citizens and aliens, stoking existing racism, economic anxiety, and xenophobia. Local officials faced the impossible task of regulating the San Francisco harbor and the

²⁶ Pub. L. No. 43–141.

²⁷ Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 645 (2005).

²⁸ *Id.* at 690.

²⁹ *Id.* at 693.

³⁰ Henry S. Cohn & Harvey Gee, “No, No, No, No!”: *Three Sons of Connecticut Who Opposed the Chinese Exclusion Acts*, 3 CONN. PUB. INT. L. J. 1, 49 (2003).

³¹ *Id.*

³² Pub. L. No. 47-126.

³³ *Id.* at §12.

extensive border between U.S. territories and Canada. Consequently, they turned to white townspeople in San Francisco and the Washington Territory to report on their neighbors and co-workers.³⁴

This inspired white vigilantism:

During the Rock Springs Massacre of 1885 in the Washington Territory, white miners killed 28 Chinese workers, wounded 15, and forced out hundreds before they set Chinese living quarters on fire. Emboldened by news reports of the incident, white vigilantes in Tacoma banded together with city officials to announce the “peaceful” and “business-like” removal of Chinese residents.³⁵

In 1888 the act was augmented, making it “it shall be unlawful for any chinese [sic] laborer who shall at any time heretofore have been, or who may now or here-after be, a resident within the United States, and who shall have de-parted, or shall depart, therefrom, and shall not have returned before the passage of this act, to return to, or remain in, the United States.”³⁶

The U.S. Supreme Court upheld these laws, and the principle of Chinese exclusion,³⁷ in an 1889 decision involving a Chinese citizen who resided for 12 years in San Francisco before traveling back to China, in June 1887, for sixteen months – only to return and find he was now forbidden from coming ashore.³⁸ In an epically-long sentence, the Court approvingly noted the California history that drove these laws:

In December, 1878, the convention which framed the present Constitution of California, being in session, took this subject up and memorialized Congress upon it, setting forth in substance that the presence of Chinese laborers had a baneful effect upon the material interests of the state, and upon public morals; that their immigration was in numbers approaching the character of an Oriental invasion, and was a menace to our civilization; that the discontent from this cause was not confined to any political party, or to any class or nationality, but was well nigh universal; that they retained the habits and customs of their own country, and in fact constituted a Chinese settlement within the state, without any interest in our country or its institutions, and praying Congress to take measures to prevent their further immigration.³⁹

The Court found that the “power of exclusion of foreigners” was “part of those sovereign powers delegated by the constitution” and that “[w]hatever

³⁴ Irene Hsu, *The Echoes of Chinese Exclusion*, NEW REPUBLIC (June 28, 2018), <https://newrepublic.com/article/149437/echoes-chinese-exclusion>.

³⁵ *Id.*

³⁶ Pub. L. No. 50-1064.

³⁷ *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).

³⁸ *See id.* at 582.

³⁹ *Id.* at 595-96.

license, therefore, Chinese laborers may have obtained, previous to the act of October 1, 1888, to return to the United States after their departure, is held at the will of the government, revocable at any time, at its pleasure.”⁴⁰

1892 brought the most draconian form of anti-Chinese discrimination in the “Geary Act,”⁴¹ whose sponsor was a California U.S. House member, Thomas Geary,⁴² making it “the duty of all Chinese laborers within the limits of the United States, at the time of the passage of this act, and who are entitled to remain in the United States, to apply to the collector of internal revenue of their respective districts, within one year after the passage of this act, for a certificate of residence” or be subject to deportation unless proving that due to some “unavoidable cause, he has been unable to procure his certificate, and to the satisfaction of the court, and by at least one credible white witness, that he was a resident of the United States at the time of the passage of this act[.]”⁴³

The U.S. Supreme Court upheld this law, with Justice Horace Gray writing that:

[T]he government of the United States was brought to the opinion that the presence within our territory of large numbers of Chinese laborers, of 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[.]”⁴⁴

In dissent, Justice David Brewer found a material difference between exclusion and banishment:

I deny that there is any arbitrary and unrestrained power to banish residents, even resident aliens. What, it may be asked, is the reason for any difference? The answer is obvious. The Constitution has no extraterritorial effect, and those who have not come lawfully within our territory cannot claim any protection from its provisions; and it may be that the National Government, having full control of all matters relating to other nations, has the power to build, as it were, a Chinese wall around our borders, and absolutely forbid aliens to enter.⁴⁵

Justice Stephen Field, who had authored the Court’s 1889 decision validating Chinese exclusion,⁴⁶ also dissented:

⁴⁰ *Id.* at 609.

⁴¹ Pub. L. No. 52-60.

⁴² *See* Cohn & Gee, *supra* note 30, at 76.

⁴³ Pub. L. No. 52-60 §6.

⁴⁴ *Fong Yue Ting v. U.S.*, 149 U.S. 698, 717 (1893).

⁴⁵ *Id.* at 738 (Brewer, J. dissenting).

⁴⁶ *See Chae Chan Ping*, 130 U.S. at 581.

The punishment is beyond all reason in its severity. It is out of all proportion to the alleged offense. It is cruel and unusual. As to its cruelty, nothing can exceed a forcible deportation from a country of one's residence, and the breaking up of all the relations of friendship, family, and business there contracted. The laborer may be seized at a distance from his home, his family, and his business, and taken before the judge for his condemnation, without permission to visit his home, see his family, or complete any unfinished business.⁴⁷

Justice Field went on to ask of Congress, "How far will its legislation go? The unnaturalized resident feels it today, but if Congress can disregard the guaranties with respect to any one domiciled in the country with its consent, it may disregard the guaranties with respect to naturalized citizens."⁴⁸

Even in his famous dissent in *Plessy vs. Ferguson*, declaring that "[i]f a white man and a black man choose to occupy the same public conveyance on a public highway, it is their right to do so, and no government, proceeding alone on grounds of race, can prevent it without infringing the personal liberty of each,"⁴⁹ Justice John Harlan wrote: "There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race."⁵⁰

It would not be until 1943 that the Chinese exclusion laws were repealed by Congress.⁵¹ As one retrospective news account noted, "[t]he repeal was named for Warren G. Magnuson, a member of Congress from Washington state, where some of the strongest anti-Chinese sentiment was heard. The repeal, however, was still restrictive, opening up Chinese immigration to just 105 visas."⁵² Given that the Chinese were our allies during World War II, and more than 20,000 Chinese Americans fought in that war on behalf of our nation (roughly 40% of whom could not be U.S. citizens due to the exclusion laws), that concession seems absurdly minimal.⁵³

⁴⁷ *Id.* at 759 (Field, J., dissenting).

⁴⁸ *Id.* at 761 (Field, J., dissenting).

⁴⁹ *Plessy v. Ferguson*, 163 U.S. 537, 557 (1896) (Harlan, J., dissenting).

⁵⁰ *Id.* at 561 (he went on to note that "by the statute in question, a Chinaman can ride in the same passenger coach with white citizens of the United States, while citizens of the black race in Louisiana . . . are yet declared to be criminals, liable to imprisonment, if they ride in a public coach occupied by citizens of the white race."). *Id.*

⁵¹ See Pub. L. No. 78-19.

⁵² *The Chinese Exclusion Act Ended Seventy-One Years Ago, Today*, NBC NEWS (Dec. 17, 2014, 3:21 PM) <https://www.nbcnews.com/news/asian-america/chinese-exclusion-act-ended-seventy-one-years-ago-today-n270276>.

⁵³ See Matthew Daly, *Chinese Americans who served in WWII honored by Congress*, MIL. TIMES (Dec. 9, 2020), <https://www.militarytimes.com/military-honor/salute-veterans/2020/12/09/chinese-americans-who-served-in-wwii-honored-by-congress/> ("Among those honored posthumously . . . were former U.S.

II. OREGON AND BLACK EXCLUSIONARY LAWS

From its earliest days as a territory, Oregon was defined by its racism toward Blacks – a 1844 territorial law “provided that a free black who refused to leave would be subject to as many as thirty-nine lashes.”⁵⁴ As a *National Geographic* article recounts, “Before Oregon became a state, it fashioned itself as a whites-only utopia.”⁵⁵ The architect of Oregon’s “lash law,” Peter Burnett, was the a leader in Oregon Territory, and later California’s first governor – where he also tried to ban Blacks.⁵⁶

Oregon had ratified the 14th Amendment in 1866, but attempted to rescind that ratification in 1868, only to finally ratify it in 1973 – one law review article noted that “[w]hile Oregon’s attempted rescission of the Fourteenth Amendment in 1868 received widespread coverage, its re-ratification of the amendment in 1973 was a nonevent.”⁵⁷ Yet it was symbolic. As the author noted of the 1857 adoption of Oregon’s constitution:

The constitutional convention in Salem approved articles restricting blacks from military service and from voting. Another provision granted property rights equal to those of U.S. citizens only to white resident foreigners. In addition, Chinese people who arrived in Oregon after 1857 were to be prevented from owning real estate or holding or working a mining claim.⁵⁸

In ratifying their constitution, Oregonians “excluded free blacks and ‘mulattoes’ (by a vote of 8640 to 1081)” and “Oregon joined the union, in 1859, as the only state ever admitted with a black exclusion clause in its constitution.”⁵⁹ Blacks were not allowed to move into Oregon until 1926.⁶⁰

Sens. Hiram Fong and Daniel Akaka, both of Hawaii. Fong, a Republican, served in the Army Air Force, while Akaka, a Democrat, was in the Army Corps of Engineers, stationed in the Northern Mariana Islands”).

⁵⁴ R. Gregory Nokes, *Black History Month: Oregon’s exclusion laws aimed to prevent blacks from settling here*, OREGONIAN (updated from Feb. 9, 2014), https://www.oregonlive.com/hillsboro/2014/02/black_history_month_oregons_ex.html.

⁵⁵ Nina Stochlic, *Oregon once legally banned Black people. Has the state reconciled its racist past?*, NAT’L GEOGRAPHIC (Mar. 8, 2021), <https://www.nationalgeographic.com/history/article/oregon-once-legally-barred-black-people-has-the-state-reconciled-its-racist-past/>.

⁵⁶ See Jake Sheridan, *Citing racist past, Hawthorne elementary school drops Peter Burnett name*, L.A. TIMES (July 22, 2020, 12:42 PM), <https://www.latimes.com/california/story/2020-07-22/citing-racist-past-hawthorne-elementary-school-drops-peter-burnett-name>; DeNeen L. Brown, *When Portland banned blacks: Oregon’s shameful history as an ‘all-white’ state*, WASH. POST (Jan. 7, 2017), <https://www.washingtonpost.com/news/retropolis/wp/2017/06/07/when-portland-banned-blacks-oregons-shameful-history-as-an-all-white-state/>.

⁵⁷ Cheryl A. Brooks, *Comment, Race, Politics, and Denial: Why Oregon Forgot to Ratify the Fourteenth Amendment*, 83 OR. L. REV. 731, 732 (2004).

⁵⁸ *Id.* at 737.

⁵⁹ *Id.* at 738.

⁶⁰ The exclusion “law remained until voters removed it in 1926, while the original racist language stayed on the books until 2002.” Kami Horton, *Oregon’s Black Pioneers*, OR. PUB. BROADCASTING (Jan.

As another account notes, “Oregon was one of just six states that refused to ratify the 15th Amendment, which gave black men the right to vote.”⁶¹

Oregon in the 1920 had the highest proportion of “card-carrying” Klan members of any state west of the Mississippi, one in 20 residents,⁶² and “democrat Walter M. Pierce was elected to the governorship of the state in 1922 with the vocal support of the Klan, and photos in the local paper show the Portland chief of police, sheriff, district attorney, U.S. attorney, and mayor posing with Klansmen, accompanied by an article saying the men were taking advice from the Klan.”⁶³

There is also the tragic history of Vanport: “Built in 110 days in 1942, Vanport was always meant to be a temporary housing project, a superficial solution to Portland’s wartime housing shortage. At its height, Vanport housed 40,000 residents, making it the second largest city in Oregon, a home to the workers in Portland’s shipyards and their families.”⁶⁴ In part this was due to Portland’s discriminatory housing policies, and the shipyards needed workers regardless of color.⁶⁵ Yet Vanport outlasted the end of World War II, becoming a marshland slum of “slipshod houses and apartments” with a large Black population.⁶⁶ In 1948 a flood deluged Vanport, and, “[i]n less than a day, the nation’s largest housing project—and Oregon’s second largest city—was destroyed. 18,500 residents were displaced, and roughly 6,300 were black.”⁶⁷

To this day, according to a 2016 article, “Portland is the whitest big city in America, with a population that is 72.2 percent white and only 6.3 percent African American.”⁶⁸

31, 2019), <https://www.opb.org/television/programs/oregonexperience/article/oregon-black-pioneers-documentary/>.

⁶¹ Brown, *supra* note 56.

⁶² Strohlic, *supra* note 55.

⁶³ Alana Semuels, *The Racist History of Portland, the Whitest City in America*, THE ATLANTIC (July 22, 2016), <https://www.theatlantic.com/business/archive/2016/07/racist-history-portland/492035/>. See Brown, *supra* note 61.

⁶⁴ Natasha Geiling, *How Oregon’s Second Largest City Vanished in a Day*, SMITHSONIAN MAGAZINE (Feb. 18, 2015), <https://www.smithsonianmag.com/history/vanport-oregon-how-countrys-largest-housing-project-vanished-day-180954040/>.

⁶⁵ *See id.*

⁶⁶ *See id.*

⁶⁷ *Id.* As a child in the 1970s the author, then a Portland resident, had a friend who lived with an aunt who, due to oxygen deprivation, lost her ability to speak in the Vanport flood.

⁶⁸ Semuels, *supra* note 63.

III. WASHINGTON AND ANTI-JAPANESE LAWS

Like California, Washington was rife with anti-Chinese sentiment and violent acts,⁶⁹ but its laws took specific aim at Japanese immigrants.

As adopted in 1889, Article 2, Section 33 of the Washington Constitution read as follows:

The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly or in trust for such alien shall be void: Provided, That the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire-clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered on alien for the purposes of this prohibition.⁷⁰

In 1921, the Washington Legislature passed a law further restricting immigrant ownership of land:

An alien shall not own land or take or hold title thereto; No person shall take or hold land or title to land for an alien. Land now held by or for aliens in violation of the constitution of the state is forfeited to and declared to be the property of the state. Land hereafter conveyed to or for the use of aliens in violation of the constitution or of this act shall thereby be forfeited to and become the property of the state.⁷¹

The legislative history of this enactment made it clear it was aimed at Japanese immigrants.⁷² Consider remarks from one state senator reported in the *Seattle Times*:

I have waited two years for this day in court... No district of the state is so affected by the presence of Japanese as mine, comprising the great White River Valley and the whole southern end of King County. They are in

⁶⁹ See, e.g., Daniel Wu, *How Tacoma's small Chinese community reckoned with the city's anti-Chinese history*, SEATTLE TIMES (Mar. 2, 2022, 12:37 PM), <https://www.seattletimes.com/seattle-news/how-tacomas-small-chinese-community-reckoned-with-the-citys-anti-chinese-history/>.

⁷⁰ WASH. CONST. Art. I, §33 (repealed by Amend. 42), https://leg.wa.gov/CodeReviser/Pages/WACConstitution.aspx#ARTICLE_II.

⁷¹ 1921 Wash. Sess. Laws ch. 50 §2. Eugenic beliefs were not confined to immigrants. That same year a law was passed encouraging sterilization of "all feeble minded, insane, epileptic, habitual criminals, moral degenerates and sexual perverts, who are persons potential to producing offspring who, because of inheritance of inferior or anti-social traits, would probably become a social menace or wards of the State." 1921 Wash. Sess. Law ch. 53.

⁷² John Caldbick, *Washington Governor Louis Hart signs stringent Alien Land Bill on March 8, 1921*, HISTORYLINK.ORG (Feb. 9, 2018).

possession of the farm land and have their schools where they teach antagonism to the United States. They are taking the country from us.⁷³

Another proponent, Miller Freeman, known as the “father of modern Bellevue,” Washington, issued a triumphal statement to the Japanese community:

The people of this country never invited you here. You came into this country of your own responsibility, large numbers after our citizens supposed that Japanese immigration had been suppressed. You came notwithstanding you knew you were not welcome. You have created an abnormal situation in our midst for which you are to blame.⁷⁴

Given such measures, it is not surprising how supportive key Washingtonians were of Japanese internment during World War II: “Seattle Mayor Earl Millikin declared that a handful of traitors would likely ‘burn this town down and let the Japanese planes come in and bring on something that would dwarf Pearl Harbor.’”⁷⁵

The state constitutional language restricting “alien” ownership was not repealed until 1966 by voters.⁷⁶ Arguments for repeal in the voter’s pamphlet included:

1. People from other nations who come to the State of Washington to work at important jobs in our thriving economy, at the invitation of Washington companies, are restricted by a 77-year-old law from owning their own homes and other property.
2. Washington, as one of the key states of the great “Pacific Rim” trading area, must suffer the embarrassment of explaining why it maintains an obsolete and unfair law restricting property ownership.⁷⁷

In the argument against repeal, a state senator, Charles McMillan, asserted: “To remove a constitutional bar on land ownership by aliens tells the world that we, as citizens, have no special rights. The patriot fights for

⁷³ William H. Curry, *Alien Bill Up to Governor*, SEATTLE TIMES (Mar. 3, 2021).

⁷⁴ David Neiwart, *Bellevue College faces furor over attempt to whitewash a city father’s white supremacist legacy*, DAILY KOS (Feb. 29, 2020) (this truth was evidently so disturbing that a Bellevue Community College official sought to erase a description of it from a campus art installation in 2020), <https://www.dailykos.com/stories/2020/2/29/1922855/-Bellevue-College-faces-furor-over-attempt-to-whitewash-a-city-father-s-white-supremacist-legacy>.

⁷⁵ Lisa Kinoshita, *Seattle Remembers the Japanese Internment*, SEATTLE MAG. (Feb. 2012), <https://seattlemag.com/article/seattle-remembers-japanese-internment>.

⁷⁶ See WASH. CONST. amend. 42.

⁷⁷ Official Voter’s Pamphlet, State of Washington, 18 (1966), https://www.sos.wa.gov/_assets/elections/voters'%20pamphlet%201966.pdf#page=18.

his home, his fireside and his land. Will the alien do likewise? The downfall of nations is preceded by the decline of patriotism.”⁷⁸

IV. THE WEST COAST ORIGINS OF JAPANESE INTERNMENT

On February 19, 1942, President Roosevelt signed Executive Order 9066, which did not mention Japanese-Americans, but authorized the military to identify “military areas” “from which any or all persons may be excluded” with the federal government to then provide for such persons with “the furnishing of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facilities, and services.”⁷⁹ The next month Congress passed a law giving effect to that order.⁸⁰ Lieutenant General J. L. De Witt issued a March 25 order designating military areas and requiring that “[a]ny Japanese, German or Italian alien, or any person of Japanese Ancestry now resident in Military Area No. 1 who changes his place of habitual residence is hereby required to obtain and execute a ‘Change of Residence Notice’ at any United States Post Office within the States of Washington, Oregon, California and Arizona.”⁸¹

The impetus for this was clear. According to Professor Jerry Kang, “West Coast politicians, such as Representative Leland Ford of California, urged mass internment of the Japanese” and “[s]eeing a convenient opportunity to eliminate competition, White-owned agricultural interests poured gasoline on the fire.”⁸² The idea of exclusion was reinforced by the fact that “[i]n late February, Congress also began to hold roving hearings, chaired by Representative John Tolan of California. Most witnesses at these ‘National Defense Migration’ hearings spoke ill of the Japanese; in sharp contrast, well-known witnesses expressed sympathy for those of German or Italian descent.”⁸³

By November 1942 over 100,000 Japanese, approximately 70% U.S. born and birthright citizens, were in internment camps.⁸⁴ In one account from the state of Washington, “[s]wept up in the relocation were hundreds of Bainbridge Island residents; they were given a mere six days to liquidate or secure arrangements for their homes, farms and businesses.”⁸⁵ Reportedly, “the only known newspaper to have decried the policy in the area, maybe

⁷⁸ *Id.* at 19.

⁷⁹ Exec. Order No. 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942).

⁸⁰ Pub. L. No. 77-503.

⁸¹ Public Proclamation No. 1, 7 Fed. Reg. 2320, 2321 (Mar. 26, 1942).

⁸² Jerry Kang, *Denying Prejudice: Internment, Redress, and Denial*, 51 UCLA L. Rev. 933, 937-38 (2004).

⁸³ *Id.* at 939.

⁸⁴ *Id.* at 940.

⁸⁵ Kinoshita, *supra* note 75.

even the West Coast, was *Bainbridge Island Review*.⁸⁶ In 1942, more representative was a *Seattle Times*' columnist who wrote: "Personally, I hate the Japanese. And that goes for all of them."⁸⁷

The exclusion order was upheld by the U.S. Supreme Court in *Korematsu vs. United States*.⁸⁸ Writing for the Court, Justice Hugo Black stated:

Our task would be simple, our duty clear, were this a case involving the imprisonment of a loyal citizen in a concentration camp because of racial prejudice. Regardless of the true nature of the assembly and relocation centers -- and we deem it unjustifiable to call them concentration camps, with all the ugly connotations that term implies -- we are dealing specifically with nothing but an exclusion order.⁸⁹

The Court would not second-guess the military on this question, stating "exclusion of those of Japanese origin was deemed necessary because of the presence of an unascertained number of disloyal members of the group, most of whom we have no doubt were loyal to this country."⁹⁰ It noted that

[c]ompulsory exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institutions. But when, under conditions of modern warfare, our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger.⁹¹

Dissenting, Justice Owen Roberts wrote, "The petitioner, a resident of San Leandro, Alameda County, California, is a native of the United States of Japanese ancestry who, according to the uncontradicted evidence, is a loyal citizen of the nation."⁹² He found exclusion of Japanese-Americans racially motivated, noting "it is the case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry, and solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States."⁹³

⁸⁶ Hayat Norimine, *75 Years Ago, Only One Paper Opposed Japanese American Internment Camps*, SEATTLEMET (Apr. 2, 2017).

⁸⁷ *Id.*

⁸⁸ *Korematsu v. U.S.*, 323 U.S. 214 (1944).

⁸⁹ *Id.* at 223.

⁹⁰ *Id.* at 218-19. A remarkable proposition to read: Because an "unascertained" – but minority – number in an ethnic group are disloyal to the United States, assuming even that fact to be true, *all* in that ethnic group must be deprived of their liberty.

⁹¹ *Id.* at 219-20.

⁹² *Id.* at 226 (Roberts, J., dissenting).

⁹³ *Id.* (Roberts, J., dissenting).

Also dissenting was Justice Frank Murphy, who wrote that “[t]his exclusion of ‘all persons of Japanese ancestry, both alien and non-alien,’ from the Pacific Coast area on a plea of military necessity in the absence of martial law ought not to be approved. Such exclusion goes over ‘the very brink of constitutional power,’ and falls into the ugly abyss of racism.”⁹⁴

In his dissent, Justice Robert Jackson looked to the future:

A military order, however unconstitutional, is not apt to last longer than the military emergency. Even during that period, a succeeding commander may revoke it all. But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, *the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need.*⁹⁵

Given this premonition, it is worth noting that *Korematsu* has never been overturned and, thus, remains good law,⁹⁶ though the Civil Liberties Act of 1988 gave each surviving internee financial compensation and acknowledged “fundamental violations of the basic civil liberties and constitutional rights” for which “the Congress apologizes on behalf of the Nation.”⁹⁷

V. RACE AND THE WEST COAST TODAY

Today, “Americans tend to think of the West Coast as a liberal fortress. But not so long ago, Washington, Oregon, and California supported Republicans.”⁹⁸ And progressive policies involving race can still flounder there.

⁹⁴ *Id.* at 233 (Murphy, J., dissenting).

⁹⁵ *Id.* at 246 (Jackson, J., dissenting) (emphasis added).

⁹⁶ Some might argue it was overruled in dicta in a 2018 case. “*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—has no place in law under the Constitution.” 323 U.S., at 248, 65 S.Ct. 193 (Jackson, J., dissenting).” *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018). Yet that passing reference, in dicta, does not speak to what was expressly wrong about the decision, and as one scholar notes:

The Court’s statement is grotesque because . . . it condemns racism with one hand but deploys tokenism with the other. The statement appears in a case in which the majority blessed transparent religious bigotry on the part of the sitting President while cloaking itself in righteous indignation over a seventy-four-year-old decision whose wrongness is a matter of incompletely theorized consensus.

Jamal Greene, *Is Korematsu Good Law?*, in 128 *KOREMATSU IN THE COURT OF HISTORY: SEVENTY-FIVE YEARS LATER* 629, 630 (Yale L. J. F. ed., 2019).

⁹⁷ See Civil Liberties Act of 1988, Pub. L. No. 100-383 § 2(a) (1988).

⁹⁸ David Sarasohn, *The Rise of West Coast Democrats*, *NEW REPUBLIC* (Sept. 26, 2018), <https://newrepublic.com/article/151146/rise-west-coast-democrats>.

In 1998, 58% of Washington voters approved an initiative banning governmental affirmative action, and, in 2019, Washington voters very narrowly struck down a legislative-enacted restoration of affirmative action.⁹⁹ There was some irony, as the opposition to the affirmative action legislation was spearheaded by “a group led by Chinese immigrants that opposes affirmative action and got Referendum 88 on the ballot — a move supported by Republicans.”¹⁰⁰

Seattle’s police department began operating under a federal consent decree in 2012 based upon allegations of racially biased policing,¹⁰¹ and yet its first Black police chief, Carmen Best, announced her resignation in 2020 after the Seattle City Council cut her salary by \$1,500 a month, and also reduced the police force in a way likely to cause a disproportionate number of “officers of color” to lose their jobs.¹⁰² It was reported that “the Rev. Harriett Walden, a longtime police-accountability advocate and Best supporter, noted the council began 2020 with no Black representative for the first time in more than 50 years. A Black council member likely would have stuck up for Best, Walden said.”¹⁰³

In Seattle many white students escape the public school system to attend private K-12 schools, giving Seattle the third-highest percentage of private school enrollment (nearly 22%) of any large U.S. city.¹⁰⁴ Today an author of a book on segregation says Seattle public schools are more segregated than they have been in over four decades.¹⁰⁵ The city itself is segregated, with its

⁹⁹ Joseph O’Sullivan, *With the Loss of Referendum 88, Affirmative-Action Advocates Wonder What’s Next. Insee Offers Some Answers*, SEATTLE TIMES (Dec. 29, 2019, 6 AM), <https://www.seattletimes.com/seattle-news/politics/with-the-loss-of-referendum-88-affirmative-action-advocates-wonder-whats-next/>.

¹⁰⁰ *Id.* Ironically, justifying her vote against 2021 legislation “[c]ondemning all forms of anti-Asian sentiment as related to COVID-19,” U.S. Rep. Cathy McMorris Rodgers (R., WA) asserted the anti-hate crime legislation “lets China off the hook for their early cover up [of] COVID-19. This legislation ignores the manipulation of the World Health Organization by the Chinese Communist Party[.]” *See My Votes – Week of September 14th*, OFF. OF U.S. REP. CATHY McMORRIS RODGERS, <https://mcmorris.house.gov/posts/my-votes-week-of-september-20th>.

¹⁰¹ *See* Tony Black, *What the federal consent decree means for Seattle Police Department*, KING5 (June 4, 2020, 9:29 PM), <https://www.king5.com/article/news/what-the-federal-consent-decree-means-for-seattle-police-department/281-1c410cb9-206c-4ff3-b6b9-e085ffb88648>.

¹⁰² Daniel Beekman, *Seattle Police Chief Carmen Best Says City Council’s Budget Cuts, Lack of Respect for SPD Drove Her Retirement Decision*, SEATTLE TIMES (Aug. 12, 2020, 4:47 PM), <https://www.seattletimes.com/seattle-news/politics/seattle-police-chief-carmen-best-says-city-council-drove-her-decision-to-abruptly-retire/>.

¹⁰³ *Id.* Polling showed the police chief was more popular than the City Council.

¹⁰⁴ Gene Balk, *More Than 1 in 5 Seattle Students are Enrolled in Private Schools, Among Highest in Nation*, SEATTLE TIMES (July 15, 2020, 10:33 AM), <https://mynorthwest.com/1344560/seattle-schools-more-segregated-2019/>.

¹⁰⁵ *Seattle Schools Are More Segregated Today Than in Decades*, MYNORTHWEST (Apr. 15, 2019, 3:34 PM), <https://mynorthwest.com/1344560/seattle-schools-more-segregated-2019/>.

northern part “69 percent white, according to Census data. South Seattle is just 28 percent white.”¹⁰⁶ This is, in part, a relic of past overt racism:

In 1960, Seattle was 92 percent white. More than 90 percent of Seattle’s black population was pushed into the Central District. In 1964, Seattle voters soundly defeated an ‘open housing’ ordinance that would have let anyone live anywhere. It lost by more than 2-to-1. The city was segregated, and a large majority wanted it that way.¹⁰⁷

In 2019 state Medicaid funding neglect forced the closure of a “nursing home opened in 1976 to serve aging issei, first-generation Japanese Americans, who faced exclusion and racism.”¹⁰⁸ This special nonprofit facility offered “[t]raditional Asian foods and dishes . . . at each meal. Asian artwork adorns the walls. There are Japanese singalongs and sushi making activities.”¹⁰⁹ State policymakers reacted with indifference to its closure.¹¹⁰

Racism may be more polite today, but as one Black woman wrote of her decision to leave Seattle, finding it not to be the “a beautiful, progressive, liberal utopian city” many think it is: “In Seattle, I was always acutely aware of my blackness. I felt like the small black font on an all-white page of the newspaper. No matter how many black typeface words filled the page, the background is all white. Always. White.”¹¹¹

In 1994, “voters in California passed Proposition 187. This initiative, called ‘Save Our State,’ denied public, social, educational and health services to undocumented immigrants in California.”¹¹² Never enforced, after being blocked judicially,¹¹³ it reportedly “led to the political awakening of Latinos

¹⁰⁶ Jamala Henderson, *Why is Seattle so racially segregated?*, KUOW (Sept. 20, 2016, 4:32 PM), <https://www.kuow.org/stories/why-seattle-so-racially-segregated>.

¹⁰⁷ Knute Berger, *Seattle’s Ugly Past: Segregation in Our Neighborhoods*, SEATTLE MAG. (Mar. 2013), <https://seattlemag.com/article/seattles-ugly-past-segregation-our-neighborhoods>.

¹⁰⁸ Austin Jenkins, *Families scramble, industry sounds alarm as nursing home closures climb in Washington*, KUOW (June 24, 2019), <http://archive.kuow.org/post/rash-nursing-home-closures-washington-sends-families-scrambling-industry-sounds-alarm>.

¹⁰⁹ *Id.*

¹¹⁰ *See id.*

¹¹¹ Sonya Green, *Seattle’s Inability to Address Its Whiteness Problem Made Me Say Goodbye for Good*, SOUTH SEATTLE EMERALD (May 24, 2018), <https://southseattleemerald.com/2018/05/24/seattles-inability-to-address-its-whiteness-problem-made-me-say-goodbye-for-good/>.

¹¹² Andrea Silva, *How California’s Prop. 187 is Still Shaping Immigration Policy — 25 Years After it Passed*, WASH. POST. (Nov 25, 2019, 6 AM), <https://www.washingtonpost.com/politics/2019/11/25/how-californias-prop-is-still-shaping-immigration-policy-years-after-it-passed/>.

¹¹³ *See* Todd S. Purdum, *Judge Nullifies Most of California Immigrant Law*, N.Y. TIMES (Mar. 19, 1998), <https://www.nytimes.com/1998/03/19/us/judge-nullifies-most-of-california-immigrant-law.html> (“A Federal judge has struck down virtually all remaining provisions of Proposition 187, driving one more nail into the coffin of the California ballot initiative, which was passed in 1994 to deny social services to illegal immigrants but has been blocked by court challenges ever since.”).

in the Golden State” and the downfall of Republicans in California thereafter.¹¹⁴

Still, in 2020, 56% of California voters rejected an effort to restore governmental affirmative action.¹¹⁵ If anything, California opposition to affirmative action had *grown* since “[t]he ban on affirmative action was first approved by 54% of registered Californians via Proposition 209 in 1996” – making California the first state to ban governmental affirmative action.¹¹⁶ And yet, reportedly, “California has a higher rate of inequality than Mexico.”¹¹⁷

With President Trump referring to COVID-19 as the “China virus,”¹¹⁸ California accounted for almost half of the nation’s reported hate crimes directed toward Asian-Americans from March 19, 2020 to February 28, 2021.¹¹⁹ The state has the second-highest proportion of Asian-American residents (roughly 16%) after Hawaii, and the “rise in anti-Asian violence and harassment” was a factor in Governor Gavin Newsom, a Democrat, filling California’s attorney general vacancy in March 2021 with a progressive, Rob Bonta, of Filipino ancestry.¹²⁰

Politically, even during the pandemic, it was not always clear that the interests of people of color were paramount to California politicians. Even amidst pandemic-caused economic hardship, measures in 2020 meant to assist renters in danger of losing their homes were watered down by a

¹¹⁴ Libby Denkmann, *California’s Prop 187 Vote Damaged GOP Relations With Immigrants*, NPR (Nov. 8, 2019, 5:02 AM), <https://www.npr.org/2019/11/08/777466912/californias-prop-187-vote-damaged-gop-relations-with-immigrants>.

¹¹⁵ See Elinnor Aspegren, *California voters failed to repeal ban on affirmative action. What signal does that send the rest of the nation?*, USA TODAY, <https://www.usatoday.com/story/news/education/2020/12/30/affirmative-action-prop-16-california-supreme-court/6473023002/> (last updated: Dec. 30, 2020, 6:41 AM).

¹¹⁶ *Id.*

¹¹⁷ Sarasohn, *supra* note 98.

¹¹⁸ Donald Moynihan & Gregory Porumbescu, *Trump’s ‘Chinese virus’ slur makes some people blame Chinese Americans. But others blame Trump*, WASH. POST (Sept. 16, 2020), <https://www.washingtonpost.com/politics/2020/09/16/trumps-chinese-virus-slur-makes-some-people-blame-chinese-americans-others-blame-trump/>.

¹¹⁹ See Ashley Wong, *More than 1,600 Asians reported hate-related incidents in California since last March*, SACRAMENTO BEE (Mar. 16, 2021, 8:46 PM) (“44.56% of those reports were from California.”) (hyperlink omitted); Vindu Goel & Jill Cowan, *Californians Fear More Anti-Asian Attacks After Georgia Killings*, N.Y. TIMES (Mar. 18, 2021) (“In California, much of the recent outpouring of pain has come after attacks on elders in Asian neighborhoods.”) (hyperlink omitted); Katie Shepherd, *‘Disgusting and horrific’ stabbing at San Francisco bus stop seriously injures two Asian women*, WASH. POST (May 5, 2021, 4:39 PM) <https://www.washingtonpost.com/nation/2021/05/05/san-francisco-asian-stabbing-arrest/> (“Two Asian women were standing at a bus stop in San Francisco’s Tenderloin District . . . when a man approached, stabbed them both and then calmly strolled away.”).

¹²⁰ Shawn Hubler, *Rob Bonta, an Asian-American Progressive, Is Named Attorney General in California*, N.Y. TIMES (Mar. 25, 2021, 12:40 PM) <https://www.nytimes.com/2021/03/24/us/rob-bonta-california-attorney-general.html>.

Democratic governor, and a legislature with a Democratic super-majority, and Black Lives Matter activists were disappointed that police oversight bills “perished without a vote.”¹²¹ However, Gov. Newsom did sign a law in 2020 “to establish a first-in-the-nation task force to study and make recommendations on reparations for slavery.”¹²²

The nation’s whitest big city – Portland, Oregon – became the unlikely epicenter of protests over racial inequity in 2020, and yet some Black activists were frustrated that largely peaceful Black Lives Matter protests were hijacked by disruptive white protesters.¹²³ The president of Portland’s branch of the NAACP wrote an op-ed stating that “white co-optation” was becoming a problem and that “spectacle” is now the best way to describe Portland’s protests. Vandalizing government buildings and hurling projectiles at law enforcement draw attention — but how do these actions stop police from killing black people?”¹²⁴ At one point, according to the *New York Times*:

During 56 straight nights of protests here, throngs of largely white protesters have raised their fists in the air and chanted, “This is not a riot, it’s a revolution.” They have thrown water bottles at the federal courthouse, tried to pry off the plywood that protects the entrance and engaged in running battles with police officers through clouds of tear gas. In recent nights, the number of protesters has swollen into the thousands.¹²⁵

¹²¹ Tyler Kingkade, Alicia Victoria Lozano & David Ingram, *California has a reputation for progressive politics. Don’t tell that to the state’s progressives.*, NBC NEWS (Oct. 13, 2020, 6 AM) <https://www.nbcnews.com/politics/2020-election/california-has-reputation-progressive-politics-don-t-tell-state-s-n1243023>.

¹²² Press Release, Off. of Calif. Gov. Gavin Newsom, Governor Newsom Signs Landmark Legislation to Advance Racial Justice and California’s Fight Against Systemic Racism & Bias in Our Legal System (Sept. 30, 2020), <https://www.gov.ca.gov/2020/09/30/governor-newsom-signs-landmark-legislation-to-advance-racial-justice-and-californias-fight-against-systemic-racism-bias-in-our-legal-system/>. By a 5-4 vote, the task force voted to support “compensation for African-American descendants of enslaved people and descendants of freed Black people living in the United States before the 19th century.” Soumya Karlamangla, *California Task Force Votes to Offer Reparations Only to Descendants of Enslaved People*, N.Y. TIMES (Mar. 30, 2022), <https://www.nytimes.com/2022/03/30/us/california-reparations.html>.

¹²³ See Deborah Bloom, *In Portland, some Black activists frustrated with white protesters*, REUTERS (July 31, 2020, 1:50 PM), <https://www.reuters.com/article/us-global-race-protests-portland-activis/in-portland-some-black-activists-frustrated-with-white-protesters-idUSKCN24W2QD> (“Black demonstrators initially welcomed the moms - and dads who came with leaf blowers to disperse the tear gas - but are now frustrated with the band of midnight provocateurs at the courthouse.”).

¹²⁴ E.D. Mondainé, *Portland’s protests were supposed to be about black lives. Now, they’re white spectacle.*, WASH. POST (June 30, 2020, 1:51 PM) (hyperlinks omitted).

¹²⁵ Thomas Fuller, *How One of America’s Whitest Cities Became the Center of B.L.M. Protests*, N.Y. TIMES (July 29, 2020), <https://www.nytimes.com/2020/07/24/us/portland-oregon-protests-white-race.html>.

Businesses indiscriminately targeted by vandalism included those that were Black-owned.¹²⁶ And the media focus on white protesters remained, as a July 2020 news story noted: “Images of the mostly white Wall of Moms, PDXDadPod and aggressive protesters have dominated much of the news coverage. Last week, a photo went viral showing a standoff between law enforcement and a naked white woman later dubbed ‘Naked Athena.’”¹²⁷

Had “spectacle” overtaken substance? One Black psychiatrist, Dr. Anita Randolph, thought so: “[O]nce the federal troops left—and with them the bulk of the protestors—Randolph, who led the team of volunteer medics, grew disillusioned. ‘People don’t know what they’re there for,’ she says. ‘You ask and get one million answers. You need an answer to the question: Why is it so bad in Portland? You need to know your history.’”¹²⁸ Tired of what she perceived as systemic racism she moved out of Portland: “‘In the South, people tell you they’re racist,’ she says. ‘In Portland, it’s so insidious. Do you prefer the liberal fox or the snarling wolf?’”¹²⁹

After a 2017 hate crime in Portland where “a white supremacist allegedly stabbed two men to death and severely wounded another who tried to intervene as he hurled racial slurs at a black woman and a Muslim woman,” Keegan Stephan wrote in a *Washington Post* column: “I went to high school outside Portland, and I encountered more overt white supremacy there than anywhere else. Progressive politics and discrimination are not mutually exclusive.”¹³⁰

“Gentrification” has become the polite term for the phenomena that has pushed Black families out of Portland neighborhoods that were traditionally Black – as the comedian and social commentator W. Kamau Bell wrote in 2018:

[W]hat racist legislation couldn’t accomplish, gentrification has stepped in to take care of the rest.

During my time in Portland, I talked to Ural Thomas, a local music legend and one of the last black homeowners living in one of Portland’s many rapidly changing parts of the city. He described how his neighborhood

¹²⁶ See Nigel Jaquiss, *Black Leaders Decry Vandalism, Fires Along Portland’s Martin Luther King Jr. Boulevard*, WILLAMETTE WEEK (June 26, 2020), <https://www.wweek.com/news/2020/06/26/black-leaders-decry-vandalism-around-portlands-martin-luther-king-jr-boulevard/>; Sarah Hurwitz, *African-American business owners hit with vandalism during protests, calling for end to violence*, KPTV.COM (June 1, 2020), https://www.kptv.com/news/african-american-business-owners-hit-with-vandalism-during-protests-calling-for-end-to-violence/article_b8c65f90-a473-11ea-97f1-4712d676b0f6.html.

¹²⁷ Alicia Victoria Lozano, *From Black lives to ‘white spectacle,’ Portland protests have lost focus, civil rights leaders say*, NBC NEWS (July 24, 2020, 6:08 PM) (hyperlink omitted).

¹²⁸ Strohlic, *supra* note 55.

¹²⁹ *Id.*

¹³⁰ Keegan Stephan, *Portland isn’t Portlandia. It’s a capital of white supremacy.*, WASH. POST (June 1, 2017) (hyperlink omitted).

shrunk from being two-thirds black-owned to now only four black homeowners. Four! Why? Redlining.

Redlining was a not-so-uncommon practice in which banks refused to extend mortgages and loans to black residents. It was outlawed by the Fair Housing Act in 1968, but can still be found in subtler forms, like realtors not showing houses in “white areas” to black people.¹³¹

Portland was satirized on television as “Portlandia” – a weird, hip city—and yet, as one *BBC* account notes: “For people of colour in Portland in particular, there was something egregious about the city's ‘Portlandia’ reputation. The show – and subsequent portrayals of the city in national media – seemed to whitewash life in what was already an extremely white city.”¹³²

In conclusion, that is perhaps the story of the West Coast today. Its veneer of progressivism, and admirable resistance of President Trump’s overtly racist agenda through such means as disobeying his executive order against providing sanctuary to undocumented immigrants,¹³³ or filing innumerable lawsuits,¹³⁴ hides continuing racial inequities. With the bogeyman of Trump out of office, perhaps it is time for introspection. For example, looking at California, why can a state that filed 122 lawsuits against the Trump Administration, not enact affirmative action? Why can cities like Portland and Seattle not address the de facto segregationist effects of gentrification on poor people of color?

¹³¹ W. Kamau Bell, *Gentrifying Portland: A tale of two cities*, CNN (May 21, 2018, 12:26 PM), <https://www.cnn.com/2016/05/27/opinions/w-kamau-bell-united-shades-portland/index.html>.

¹³² Ashitha Nagesh, *Portland protests: How a ‘hyper-liberal’ city’s racist past is resurfacing*, BBC NEWS (Sept. 3, 2020), <https://www.bbc.com/news/world-us-canada-53996159> (“Locals explicitly blamed the show for hastening unwanted development in the city. By the time the series ended in 2018, few Portlanders looked back fondly on its influence.”).

¹³³ See Exec. Order 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017) (“Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.”). Oregon, for example, has had an immigration sanctuary law since 1987, and voters in 2018 overwhelmingly approved keeping it. See Conrad Wilson, *Oregonians Vote To Keep State’s Sanctuary Law, Reject Measure 105*, OR. PUB. BROADCASTING (Nov. 6, 2018, 11 PM), <https://www.opb.org/news/article/oregon-measure-105-result-sanctuary-state/> (“The race garnered national attention, especially in the weeks that led up to Election Day, as President Donald Trump did all he could to make immigration — and a caravan of migrants slowly making their way toward the U.S. southern border — central to energizing his base.”).

¹³⁴ By August 2020, California alone had spent \$43 million suing the Trump Administration. See Andrew Sheeler & Kate Irby, *California has spent \$43 million suing the Trump administration. It’s paying off, officials say*, SACRAMENTO BEE (Aug. 10, 2020, 1:41 PM) (hyperlink omitted). Even on Trump’s last day in office California filed nine lawsuits against his administration, and had reportedly “taken the Trump administration to court 122 times in four years[.]” Adam Beam, *Nine lawsuits by California mark Trump’s final day in office*, ASSOCIATED PRESS (Jan. 19, 2021), <https://apnews.com/article/joe-biden-lawsuits-environment-oil-and-gas-industry-california-c992f44856519c084d5c206c84dfe308>.