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Recommended Citation

Jean Stefancic, *Terrace v. Thompson and the Legacy of Manifest Destiny Symposium: The Worst Supreme Court Case Ever*, 12 Nev. L.J. 532 (2011).

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TERRACE V. THOMPSON AND THE LEGACY OF MANIFEST DESTINY

Jean Stefancic*

The first of a number of state anti-alien land law cases to reach the U.S. Supreme Court,¹ *Terrace v. Thompson*² affirmed that Japanese farmers in the state of Washington could not own agricultural land because they could not “in good faith” declare “their intention to become citizens of the United States.”³

On a first reading, the *Terrace* case does not seem like one of manifest destiny.⁴ Yet, earlier in Washington’s history, a dispute had occurred over property rights of the indigenous people in the Washington Territory, which foreshadowed later antagonistic relations between white settlers and Japanese immigrants, which eventually led to *Terrace*.

I argue that both events illustrate the interplay of manifest destiny—the notion that newly discovered land belonged in the hands of white settlers—and its close cousin, nativism,⁵ which still plays a role in current discriminatory treatment of undocumented aliens. Part I examines the early development and role of manifest destiny in U.S. history. Part II describes the dispute over the Medicine Creek treaty between the Nisqually tribe and Washington territorial governor Isaac A. Stevens regarding land ownership. Part III reviews the background and facts of *Terrace*. Part IV addresses the current treatment of undocumented immigrant workers in Washington state today in light of its past

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¹ See Keith Aoki, *No Right to Own?: The Early Twentieth-Century “Alien Land Laws” as a Prelude to Internment*, 40 B.C. L. REV. 37, 60 n.61; 19 B.C. THIRD WORLD L.J. 37, 60 n.61 (1998) (discussing role of alien land laws in paving the way for internment of Japanese Americans during World War II).

² *Terrace v. Thompson*, 263 U.S. 197 (1923).

³ *Id.* at 212 n.1. These phrases applied to those who could not attain citizenship by naturalization because they were not “free white persons.” *Id.* at 220. See *infra* note 90 and accompanying text. For the various iterations of this law in the state of Washington, see WASH. CONST., art. II, § 33 (repealed 1966); Act of Mar. 8, 1921, ch. 50, §§ 1–10, 1921 Wash. Laws 156 (repealed 1967); Act of Mar. 10, 1923, ch. 70, §§ 1–2, 1923 Wash. Laws 220 (repealed 1967); Act of Mar. 19, 1937, ch. 220, § 1, 1937 Wash. Laws 1092 (repealed 1967).

⁴ On the role of manifest destiny in the development of the American West, see generally REGINALD HORSMAN, *RACE AND MANIFEST DESTINY: THE ORIGINS OF AMERICAN ANGLO-SAXONISM* (1981).

⁵ Nativism means “intense opposition to an internal minority on the grounds of its foreign (i.e. ‘un-American’) connections.” JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860–1925*, at 4 (2d ed. 1988); see also *IMMIGRANTS OUT!: THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 1* (Juan F. Perea ed., 1997) (observing that “[d]uring nativist times in the United States, democratic processes are turned against internal minorities . . . resulting in discriminatory legislation and immigration restrictions.”).

relations with subordinated groups.⁶ As the reader will see, a recurrent sense of entitlement, fear, and resentment is the force that links society's mistreatment of Native people, the Japanese, and the undocumented.

I. MANIFEST DESTINY

The concept of manifest destiny seeped into the American consciousness during the early settlement of the United States. Even before British Captain James Cook explored the northwest coast of North America by sea in 1778, explorers had hoped to find a passage to the Pacific through the waterways of the American continent. If found, this would save them months of dangerous sailing around the southern tip of South America in order to reach the fabled markets of the Far East.⁷ Acting on a mandate from President Thomas Jefferson to find a "direct & practicable water communication across this continent, for the purposes of commerce"⁸ with Asia, Meriwether Lewis and William Clark in 1805 reached the Pacific Ocean at the mouth of the Columbia River in Oregon at a fort later named Astoria.⁹

During the debates over the Oregon Territory and the war with Mexico in the 1840s, America's destiny became even clearer to policy and opinion makers. The phrase, manifest destiny, first given voice in 1845,¹⁰ embraced achieving a new U.S. western boundary—the Pacific Ocean—and developing the land in between.¹¹ Advocating a treaty with England to cede the Oregon Territory to the United States, newspaper editor John L. O'Sullivan wrote that America's claim to the land was "by the right of our manifest destiny to overspread and to possess the whole of the continent which Providence has given us for the development of the great experiment of liberty and federated self gov-

⁶ For earlier examples of this type of local or state-based coverage, see Richard Delgado & Jean Stefancic, *Home-Grown Racism: Colorado's Historic Embrace—and Denial—of Equal Opportunity in Higher Education*, 70 U. COLO. L. REV. 703 (1999) (describing treatment of minority groups in Colorado) [hereinafter Delgado & Stefancic, *Home-Grown Racism*]; Richard Delgado & Jean Stefancic, *California's Racial History and Constitutional Rationales for Race-Conscious Decision Making in Higher Education*, 47 UCLA L. REV. 1521 (2000) (describing the same, in California) [hereinafter Delgado & Stefancic, *Racial History*].

⁷ RICHARD KLUGER, *THE BITTER WATERS OF MEDICINE CREEK: A TRAGIC CLASH BETWEEN WHITE AND NATIVE AMERICA* 19–20 (2011); HORSMAN, *supra* note 4, at 286–89 (describing how commerce would also bring the blessings of Western civilization and Christianity to the Far East).

⁸ President Thomas Jefferson's Instructions to Captain Meriwether Lewis (June 20, 1803), <http://www.library.csi.cuny.edu/dept/history/lavender/jefflet.html>.

⁹ *Lewis and Clark: The Journey Ends*, SMITHSONIAN MAG., Dec. 2005, at 32, *available at* http://www.smithsonianmag.com/history-archaeology/Lewis_and_Clark_The_Journey_Ends.html.

¹⁰ For a graph showing a progression of how the phrase "manifest destiny" has occurred in English-language books between 1800 and 2000, refer to Google Books Ngram Viewer, http://books.google.com/ngrams/graph?content=manifest+destiny&year_start=1800&year_end=2000&corpus=0&smoothing=3 http://books.google.com/ngrams/graph?content=manifest+destiny&year_start=1800&year_end=2000&corpus=0&smoothing=3 (last visited Mar. 23, 2012).

¹¹ See HORSMAN, *supra* note 4, at 86–87.

ernment entrusted to us.”¹² The slogan caught on during the Mexican War and became the subject of debate in newspapers and political venues for years afterward.¹³

Manifest destiny incorporated two interrelated components: the expansionist mission to settle the land to the Pacific shore, eventually establishing commerce with Asia, and the belief in Anglo-Saxon racial superiority.

1. *Westward Expansion and Trade with Asia*

The opening of the North American continent by Lewis and Clark inspired writers and politicians, such as Senator Thomas Hart Benton, to champion the imposition of Western civilization on other nations. The belief in the superiority of European civilization and the mandate that it be carried westward around the globe had deep roots. German philologists theorized that their language derived from a gifted civilization (later named Aryan) in the Indus River valley of northern India.¹⁴ From there civilization had traveled westward through Central Asia, across the Caucasus Mountains to central Europe where it found full flower in the German Romantic movement in the eighteenth century.¹⁵ From Germany, this higher culture spread, according to the thinking of the time, to England, and from there to the shores of America.¹⁶

Thus, in 1818, Benton was emboldened to write:

In a few years the Rocky Mountains will be passed, and ‘the children of Adam’ will have completed the circumambulation of the globe, by marching to the west until they arrive at the Pacific ocean, in sight of the eastern shore of that Asia in which their first parents were originally planted.¹⁷

As for what would happen when the settlers arrived, he wrote: “The valley of the Columbia might become the granary of China and Japan, and an outlet to their imprisoned and exuberant population. The inhabitants of the oldest and the newest, the most despotic and the freest Governments, would become the neighbors, and . . . friends of each other.”¹⁸

Benton’s remarks might have seemed prophetic, even inspiring. Yet, in the following two decades much was to happen that would incorporate a new element into the concept of destiny and change the way America’s leading thinkers conceived of westward development.¹⁹ Yet to come were Indian removal,²⁰

¹² *Id.* at 220. O’Sullivan published the article in his newspaper, *The New York Morning News*, December 27, 1845. *Id.* He had first used the phrase the previous summer in writing about the annexation of Texas as editor of the *Democratic Review* in the July-Aug issue. *Id.* at 219–20.

¹³ *See id.* at 219–28.

¹⁴ *Id.* at 32–36.

¹⁵ *Id.* at 25–27, 37.

¹⁶ *Id.* at 94–96, 227 (quoting speech of Daniel Webster, promoting the belief).

¹⁷ *Id.* at 90 (internal quotation marks omitted).

¹⁸ *Id.* at 91, 252 (arguing that the stilled civilization of the “Mongolian race” placed it far below the superior white race).

¹⁹ *See* HIGHAM, *supra* note 5, at 9–11 (explaining that though early Anglo-Saxonism defined American nationalism positively, it provided a channel for the racial nativism that was to follow).

²⁰ Indian Removal Act of 1830, ch. 548, 4 Stat. 411–12.

the Cherokee cases,²¹ the pioneers' westward migration,²² the annexation of Texas,²³ and the lust for Mexico's land.²⁴ With these events manifest destiny became entangled with the more sinister notion of racial superiority.

2. *Anglo-Saxonism and Racial Superiority*

Sixteenth century exploration brought Europeans face to face with people quite unlike themselves. Enlightenment philosophers and scientists, such as Linnaeus²⁵ and Blumenbach,²⁶ devised classification schemes to distinguish species and groups by their differences. By the nineteenth century, European and English scientists were busy measuring various parts of the human anatomy, hoping to establish a justification for their new racial-scientific theories about the origin and hierarchy of races.²⁷

In another kind of exploration, the English Reformation generated an enthusiastic interest in the country's Anglo-Saxon racial origins in early Teutonic tribes of Germany.²⁸ The English admired the Teutons for their political institutions such as tribal councils and trial by jury,²⁹ as well for their love of freedom, ferocity in battle, and racial purity.³⁰ That Anglo Saxons were a superior race gained a foothold in English political philosophy, particularly in the different factions of the Whig party, and became a strand in the political philosophy of early American colonists, most notably Thomas Jefferson.³¹

²¹ *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832) (considering various forms of federal intervention into Indian affairs).

²² See generally JOHN D. UNRUH, JR., *THE PLAINS ACROSS: THE OVERLAND EMIGRANTS AND THE TRANS-MISSISSIPPI WEST, 1840-60* (unab. ed. 1993) (describing, among other things, how government negotiations and treaty making made relations between emigrants and Indians more difficult).

²³ See generally HORSMAN, *supra* note 4, at 216-19; RODOLFO ACUÑA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS 6-12* (3d ed., 1988).

²⁴ See generally HOWARD ZINN, *A PEOPLE'S HISTORY OF THE UNITED STATES 147-51* (2d ed., 1995); ACUÑA, *supra* note 23, at 13.

²⁵ HORSMAN, *supra* note 4, at 46-47. Swedish botanist Carolus Linnaeus categorized humankind by color into four unchangeable groups: European (albus), American (rubescus), Asiatic (fuscus), African (niger) in his *SYSTEMA NATURAE* (1735). *Id.*

²⁶ *Id.* at 47. Johann Blumenbach divided the human species into five groups, which he named Caucasian, Mongolian, American, Ethiopian, and Malay. *Id.* Blumenbach's classification scheme justified a California court in denying naturalization to a Chinese man, reasoning that the citizenship requirement of being a "white person" would exclude a person of the "Mongolian race." *In re Ah Yup*, 1 Fed. Cas. 223 (C.C.D. Cal. 1878) (No. 104).

²⁷ HORSMAN, *supra* note 4, at 52-61.

²⁸ *Id.* at 10-11; see also PETER HUNTER BLAIR, *AN INTRODUCTION TO ANGLO-SAXON ENGLAND 6-9* (1956) (describing how Germanic tribes of Angles and Saxons had invaded and settled pre-Norman Britain).

²⁹ HORSMAN, *supra* note 4, at 14.

³⁰ *Id.* at 12; see also Cullen Murphy, *Birth of a Nation*, N.Y. TIMES, June 12, 2011, at B.R. 10 (reviewing CHRISTOPHER B. KREBS, *A MOST DANGEROUS BOOK: TACITUS'S "GERMANIA": FROM THE ROMAN EMPIRE TO THE THIRD REICH* (2011)). Tacitus, historian-anthropologist of the early Teutons who had defeated the Romans in A.D. 19, described their military prowess and upright, incorruptible behavior, observing that they were "not tainted by intermarriage with any other nations" but rather were a "distinct unadulterated people that resembles only itself." *Id.*

³¹ HORSMAN, *supra* note 4, at 15-24.

During the first half of the nineteenth century, the intellectual community in the United States was intrigued with the same racial theories that had taken hold in Western Europe.³² To Southern slave owners, American expansionist-minded politicians, and journalists who strove to inflame public opinion, those theories provided the evidence needed to justify the enslavement of blacks,³³ the extinction of Indians,³⁴ and the degradation of Mexicans.³⁵

Senator John C. Calhoun, speaking to Congress on the eve of the war with Mexico, expressed the feelings of many of his countrymen:

We have conquered many of the . . . tribes of Indians, but we never thought of . . . incorporating them into our Union. They have either been left as an independent people amongst us, or been driven into the forests. . . . [W]e have never dreamt of incorporating into our Union any but the Caucasian race—the free white race. To incorporate Mexico, would be . . . incorporating an Indian race; for more than half of the Mexicans are Indians, and the other is composed chiefly of mixed tribes. I protest against such a union as that! Ours . . . is the Government of a white race. The greatest misfortunes of Spanish America are to be traced to the fatal error of placing these colored races on an equality with the white race. That error destroyed the social arrangement which formed the basis of society.³⁶

The nation's leaders heeded Calhoun's sentiment. After crushing the outmanned Mexican army and dictating peace terms, the United States took only the upper, thinly populated half of Mexico, which included the land which is now California, Nevada, Arizona, New Mexico, and parts of Utah and Colo-

³² *Id.* at 3; see also HIGHAM, *supra* note 5, at 136–49, 165–75 (discussing the continuing influence of Anglo-Saxonism into the twentieth century regarding the racial composition of the nation).

³³ HORSMAN, *supra* note 4, at 209 (quoting Sen. Benjamin Leigh's address to Congress: "It is peculiar to the character of this Anglo-Saxon race of men to which we belong, that it has never been contented to live in the same country with any other distinct race, upon terms of equality; it has, invariably, when placed in that situation, proceeded to exterminate or enslave the other race in some form or other." (24 REG. DEB. 201 (1836))); see also HORSMAN, *supra* note 4, at 273–76.

³⁴ *Id.* at 197–98 (quoting President John Quincy Adams' recollection of a cabinet meeting in 1825 at which Secretary of State Henry Clay addressed Secretary of War James Barbour. Adams recounted what Clay had said to Barbour: "It was impossible to civilize Indians; that there never was a full-blooded Indian who took to civilization. It was not in their nature. He believed they were destined to extinction, and, although he would never use or countenance inhumanity towards them, he did not think them, as a race, worth preserving. He considered them as essentially inferior to the Anglo-Saxon race, which were now taking their place on this continent. They were not an improvable breed, and their disappearance from the human family will be no great loss to the world. In point of fact they were rapidly disappearing, and he did not believe that in fifty years from this time there would be any of them left."); see also *id.* at 278–79 (describing California's brutal policy to exterminate the Indians).

³⁵ See, e.g., Juan F. Perea, *A Brief History of Race and the U.S.-Mexican Border: Tracing the Trajectories of Conquest*, 51 UCLA L. REV. 283, 292 (2003) ("There are no people on the continent of America, whether civilized or uncivilized . . . more miserable in condition or despicable in morals than the mongrel race inhabiting New Mexico. . . . To manage them successfully, they must needs be held in continual restraint, and kept in their place by force. As servants they are excellent, when properly trained, but are worse than useless if left to themselves." (quoting 2. RUFUS B. SAGE: HIS LETTERS AND PAPERS, 1836–1847, at 82–87 (LeRoy R. Hafen & Ann W. Haven eds., 1956))).

³⁶ CONG. GLOBE, 30th Cong., 1st Sess. 96–98 (1848).

rado. It acquired, in short, much prized real estate without having to absorb too many dark-skinned mestizos.³⁷

By the end of the century the frontier had closed.³⁸ The United States had prevailed in the Spanish-American war, taking the Philippines, Guam, and Puerto Rico and establishing the U.S. as a world military and colonial power.³⁹ Ironically, large-scale world migration, this time from China and Japan, reversed direction as Asians sought refuge from war, economic depression, and Western colonialism. The Chinese came east to the United States, and the Japanese soon followed.⁴⁰

II. GOVERNOR ISAAC STEVENS, THE NISQUALLY PEOPLE, AND THE MEDICINE CREEK TREATY

*This land is your land, this land is my land
This land was made for you and me.*⁴¹

Washington Territory, formerly governed by the British as part of the Oregon Country, split off from the Oregon Territory in 1853 with the new governorship awarded to Isaac A. Stevens.

A West Point man,⁴² Stevens had fought in the war with Mexico (1846–48) as field commander of the Corps of Engineers where his duties included mapping the way through jungles and mountains from Veracruz to Mexico City for the advancing American army.⁴³ Victory in that war had expanded the United States westward from the Rocky Mountains to the Pacific coastline and northward from the Rio Grande to the 49th parallel.⁴⁴ After the war Stevens's taste for battle remained even as he reentered civilian life and became assistant director of the U.S. Coastal Survey.⁴⁵ Eventually his success at mapping the Pacific coastline, his political maneuvering, and his ambition led to his appointment as Governor of Washington Territory.⁴⁶ Stevens advocated for a stronger standing army that would support the westward migration

³⁷ JUAN PEREA ET AL., *RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA* 296 (2d ed. 2007) (describing the territories annexed through the Treaty of Guadalupe Hidalgo).

³⁸ See FREDERICK JACKSON TURNER, *THE FRONTIER IN AMERICAN HISTORY* 22–26 (1920) (paper delivered to the American Historical Association in 1893) (describing how settlement of “free land” in the West redefined American democracy). *But see generally* PATRICIA NELSON LIMERICK, *THE LEGACY OF CONQUEST: THE UNBROKEN PAST OF THE AMERICAN WEST* (1987) (discussing banishment, conquest, and subordination of nonwhite groups in the West and noting that westward expansion was far from an unmixed blessing).

³⁹ NATSU TAYLOR SAITO, *MEETING THE ENEMY: AMERICAN EXCEPTIONALISM AND INTERNATIONAL LAW* 146–60 (2010).

⁴⁰ See JAMES C. THOMPSON, JR. ET AL., *SENTIMENTAL IMPERIALISTS: THE AMERICAN EXPERIENCE IN EAST ASIA* 143 (1981) (discussing Japanese belief that civilization was destined to proceed both westward and eastward).

⁴¹ WOODY GUTHRIE, *THIS LAND IS YOUR LAND* (ca. 1936), available at http://www.woodyguthrie.org/Lyrics/This_Land.htm http://www.woodyguthrie.org/Lyrics/This_Land.htm (emphasis added).

⁴² KLUGER, *supra* note 7, at 7.

⁴³ *Id.* at 10–11.

⁴⁴ *Id.* at 12.

⁴⁵ *Id.*

⁴⁶ *Id.* at 13–16.

of white settlers into the newly acquired land where they would encounter “murderous Indian tribes.”⁴⁷

Racial rhetoric during the war with Mexico undoubtedly affected Isaac Stevens as well as other army men who later participated in the settlement of the West. Addressing his constituents upon his arrival to the territory in November 1853, Stevens proclaimed his vision of manifest destiny: “From your hands an imperial domain will descend to your children . . . in the cause of humanity and freedom.”⁴⁸ With backing from Congressional Democrats, Stevens and a surveying party had trekked overland from St. Paul, Minnesota, surveying a northern route through the mountains for a transcontinental railroad that would, in time, bring settlers and commerce to the Northwest.⁴⁹ By wagon trains, white settlers had been migrating to Oregon;⁵⁰ the railroad would bring them to Washington Territory. Along the way passing through Indian country, Stevens had encountered many Indian tribes in his capacity as newly-appointed superintendent of relations with the natives.⁵¹

In his new post, Stevens found a small band of hardy settlers clustered in the fertile territory west of the Cascade Mountains and south of Puget Sound. Some were engaged in logging, but most were homesteaders drawn by the lure of free land.⁵² One of Stevens’s first tasks was to deal with the indigenous tribes on whose homeland the settlers were making their farms.⁵³ The Nisqually, the largest tribe, were fishers and hunters and lived along the lower and upper reaches of the river that came to bear their name.⁵⁴

In a February 1854 address, Stevens assured the new territorial legislature that the verdant countryside would become “the highway of the trade of nations.”⁵⁵ In order for this to happen, Indian title to the land had to be expunged so that the settlers’ Donation Act claims could be certified.⁵⁶ Stevens asked his legislature to petition Congress to authorize land surveys and treaty negotiations.⁵⁷ The Nisqually were to be subject to the first treaty.⁵⁸ But, of course, they held no land title⁵⁹ and knew nothing of surveys.⁶⁰

⁴⁷ *Id.* at 13.

⁴⁸ *Id.* at 46.

⁴⁹ *Id.* at 38–39, 45. The Northern Pacific Railroad between St. Paul, Minnesota and Tacoma, Washington was finally completed in 1883. See Mark L. Lazarus III, *An Historical Analysis of Alien Land Law: Washington Territory and State 1853-1889*, 12 U. PUGET SOUND L. REV. 197, 211 (1989).

⁵⁰ To encourage settlement, Congress passed the Oregon Donation Land Act (1850) which granted to white men who would farm a claim for four years, 320 additional free acres of land; 640 if he had a wife. KLUGER, *supra* note 7, at 31.

⁵¹ *Id.* at 39–42, 47.

⁵² See *id.* at 46.

⁵³ *Id.* at 31, 35, 46, 47–48, 70–71. James W. Wiley, publisher of the Olympia newspaper *Pioneer and Democrat*, helped shape public opinion in the area by his loyal support of Stevens’s anti-Indian policies. See *id.* at 47.

⁵⁴ *Id.* at 57–61, 76.

⁵⁵ *Id.* at 67.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 58.

⁵⁹ See *id.* at 60.

⁶⁰ See *id.* at 82, 84 (explaining that tribal chiefs were asked to draw maps of their homelands but Leschi, sensing deception, refused to finish his). During this same period, as a

Before the year ended, Stevens had his treaty with the Nisqually and two other smaller tribes.⁶¹ It was never clear whether the Nisqually leader, Leschi, understood the import of what took place,⁶² much less the nuances of the treaty language translated from English into Chinook Jargon.⁶³ Nevertheless, he was said to have made his mark with a cross,⁶⁴ signing away rights to 4,000 square miles of ancestral land in exchange for three reservations of two square miles each.⁶⁵ The Nisqually were to be ushered out of the fertile river valleys, which provided them with abundant fish and game, to live on a thickly forested, stony bluff high above the Puget Sound.⁶⁶ Stevens was highly gratified with this result; the Nisqually were not.⁶⁷ Stevens's loyal enforcer, Frank Shaw, also the treaty team's interpreter, had no sympathy for the Indians.⁶⁸ In later years, he said:

[T]here was a great deal of humbug about making any treaties with the Indians. . . . The question was, shall a great country with many resources be turned over to a few Indians to roam over . . . making no use of the soil for timber or other resources, or should it be turned over to the civilized man who could develop it . . . and make it the abiding place of millions of white people.⁶⁹

result of the Treaty of Guadalupe Hidalgo that ended the war with Mexico, land grant adjudication was taking place in the Southwest. *See* PEREA ET AL., *supra* note 37, at 297. Article 10 of the treaty, as drafted, would have validated land grants recognized by the Mexican government before the war. *Id.* However, the Senate deferred to President James K. Polk and struck that provision from the treaty. *Id.* Consequently, the legitimacy of those grants came into question; ownership was to be governed by U.S. law and practice rather than Mexican title and custom. *Id.* See, e.g., the California Land Claims Commission, which

placed the burden on the land grant owner to file a claim with the land board by 1853 or have his or her property declared public domain of the United States. This burden of initiating and proving a claim required the claimant to hire an attorney and to gather all the documents and testimony needed to support that claim.

MALCOLM EBRIGHT, *LAND GRANTS AND LAWSUITS IN NORTHERN NEW MEXICO* 34 (1994); *see also* PEREA ET AL., *supra* note 37, at 305. Regarding the Surveyor General of New Mexico:

[For] Hispanos, possession was indeed nine-tenths of the law. Their use of the land was more important in establishing their ownership than were any documents. . . . Most Hispanos never conceived of the possibility that the common lands of their community grants were in jeopardy because under their laws and customs, the common lands could never be sold.

EBRIGHT, *supra* at 38–39; *see also* PEREA ET AL., *supra* note 37, at 305–06.

⁶¹ Treaty with Nisquallys, Dec. 26, 1854, 10 Stat. 1132; *see also* KLUGER, *supra* note 7, at 74–106 (Chapter 5: Christmas at Medicine Creek for a full discussion on the making of the treaty).

⁶² KLUGER, *supra* note 7, at 90–91.

⁶³ *Id.* at 78–79, 82–84 (Chinook Jargon, a language of about 300 to 500 words, made of English, French, and “fractured native tongues,” was used for trading in the Northwest Territory. Leschi spoke a Salish dialect).

⁶⁴ *Id.* at 90. But accounts vary; some say Leschi did not sign the treaty. *See id.* at 91–99.

⁶⁵ *Id.* at 84.

⁶⁶ *Id.* at 84, 94.

⁶⁷ *Id.* at 105–06 (explaining how a successful treaty would enhance Stevens's political ambitions); *id.* at 84–85, 87–88 (describing conditions of the treaty for the Indians).

⁶⁸ *Id.* at 70 (reporting that “Frank Shaw, then twenty five [was] well acquainted with—though not overly fond of—Indians.”); *id.* at 83 (reminiscing about the demise of the Indians).

⁶⁹ *Id.* at 74–75, 309 (quoting from a speech that Shaw delivered to the Oregon Historical Society on Oct. 20, 1903, and published in its Proceedings 1906, appendix C, at 24–32).

I further confess that I was one of the men who believed in allowing the Anglo-Saxon race to take up the burdens that the Indians were incapable of carrying . . . [W]e who have been in this country from the first inception of the new order of things . . . pray that this American civilization may not stop until it penetrates every nook and corner of this continent.⁷⁰

Wars ensued.⁷¹ To the territorial legislature Stevens vowed that “the war shall be prosecuted until the last hostile Indian is exterminated.”⁷² Leschi was eventually captured, tried for murder, and hanged.⁷³

Unlike the British, who had come to the northern sector of the Oregon Territory mainly to trade with the Indians,⁷⁴ the Americans had come to settle the land and develop its resources. Assimilation of the native northwest tribes was unthinkable. Extermination or settlement on reservations was to be the final solution.⁷⁵ Not until Congress unilaterally imposed it in 1924, were Indians offered citizenship.⁷⁶

III. *TERRACE v. THOMPSON*

*From sea to shining sea.*⁷⁷

In 1853, the same year that Governor Stevens arrived in Washington Territory determined to rid it of the native population, Commander Matthew Perry, fulfilling the ultimate goal of manifest destiny, landed in Japan seeking to open up trade and establish markets for American goods.⁷⁸ Here we may see how the doctrine overreached, producing an unintended effect on the west coast of the United States.⁷⁹

While still a territory, Washington had passed an alien land law to encourage development by white settlers and investment by foreign corpora-

⁷⁰ *Id.* at 105, 309 (continuing to quote from the Oregon Historical Society’s proceedings).

⁷¹ *See, e.g., id.* at 120–21 (describing Leschi’s realization that additional talking would go nowhere and that armed resistance might be necessary); *id.* at 134–36 (describing hostilities in the White River Valley).

⁷² *Id.* at 150. In 1858, as a member of the U.S. Congress, Stevens addressed the body, defending his Indian policies in Washington Territory saying he was protecting the settlers who were carrying with them the “laws and institutions of their country [where] they planted empire and civilization.” *See id.* at 243–44.

⁷³ *Id.* at 199–243.

⁷⁴ *Id.* at 23.

⁷⁵ *Id.* at 150, 310 (bibliographic notes to chapter 8). The *Pioneer and Democrat* reported that Stevens declaimed, in his address to the territorial legislature on Jan. 25, 1856, that “the war shall be prosecuted until the last hostile Indian is exterminated. . . . [N]othing but death is a mete punishment for their perfidy The guilty ones shall suffer, and the remainder placed on reservations under the eye of the military.” *Arrival of Gov. Stevens*, PIONEER & DEMOCRAT, Jan. 25, 1856. The newspaper was firmly, by then, in Stevens’s corner. *See supra* note 53.

⁷⁶ Indian Citizenship Act of 1924, ch. 233, § 1, 43 Stat. 253 (June 2, 1924). In 1884 a petition for citizenship by John Elk, born on a reservation, had been denied on the grounds that he belonged to an “alien nation.” *See Elk v. Wilkins*, 112 U.S. 94 (1884).

⁷⁷ Katharine Lee Bates, *America the Beautiful* (1895), in *RENDEZVOUS WITH DEATH: AMERICAN POEMS OF THE GREAT WAR* 41, 41 (Mark W. Van Wienen ed., 2002) (emphasis added).

⁷⁸ Aoki, *supra* note 1, at 44.

⁷⁹ *Id.* at 44 n.25 (noting that Japan imported goods; that its citizens were under-industrialized, overtaxed, and could not compete; and that its trade deficit drove prices up and forced farmers to look for more income in other countries).

tions.⁸⁰ Fishing, mining, and logging industries needed brute strength and capital to realize their potential. Fertile land awaited plowing and tilling, and harvesting of crops.⁸¹ But the Territory was remote, difficult to get to, and even then suffered a bad reputation for its inclement weather.⁸²

Meanwhile Chinese laborers, having learned of these opportunities in the new land, had immigrated to the west coast of the United States. Many came to the Washington Territory, first to mine gold, and later to build the Northern Pacific transcontinental railroad.⁸³ Known for their willingness to work long hours for low pay, they soon earned the hostility of white settlers.⁸⁴ They were a “yellow peril,” treacherous and subversive, traits that Washingtonians would soon transfer to the Japanese.⁸⁵ Even Supreme Court Justice Stephen Field, who was to write the opinion that prevented Chinese who had left the U.S. to visit their families in China from reentering,⁸⁶ weighed in disparagingly in a letter to a confidant.⁸⁷ Eventually labor competition,⁸⁸ as well as longstanding prejudice, resulted in a congressional act in 1882, lasting until 1943, which barred Chinese immigration to the United States.⁸⁹

On achieving statehood, Washington incorporated an alien land law⁹⁰ into its 1889 constitution that barred those aliens who could not, “in good faith,”

⁸⁰ Act of Jan. 27, 1864, § 1, 1864 Wash. Laws 12, *amended by* Act of Jan. 29, 1886, § 1, 1885–86 Wash. Laws 102, and *repealed by* Act of Feb. 3, 1927, ch. 56, § 1, 1927 Wash. Laws 45; *see* Lazarus, *supra* note 49, at 203–06 (discussing the statute and the state’s motivation in enacting it).

⁸¹ Lazarus, *supra* note 49, at 206–08.

⁸² *Id.* at 208 n.54.

⁸³ *Id.* at 208–09 (noting that Governor Richard D. Gholson proposed building railroads with the aid of “myriads of the sallow, but patient and sturdy John Chinamen along with others of his caste” and predicting that they would be easy to lure to Washington because of the offer of “profitable employment.” (quoting *Messages of the Governors of the Territory of Washington to the Legislative Assembly, 1854–1889*, 12 U. WASH. PUBL. SOC. SCI. 1, 72 (1940) (report of Gov. Elisha P. Ferry to the legislature on Oct. 9, 1873))).

⁸⁴ *Id.* at 214. This hostility repeats itself today in current attitudes toward Latinos. *See, e.g.*, Rodolfo Acuña, *Priorities: There is a Difference between One and Ten*, CALULAC.ORG BLOG (Apr. 15, 2011, 1:31 AM), <http://calulac.org/blog/2011/04/15/rudy-acuna-on-political-priorities/>; <http://calulac.org/blog/tag/rodolfo-f-acuna/>.

⁸⁵ *See* JACOBUS TENBROEK ET AL., *PREJUDICE, WAR AND THE CONSTITUTION* 19–32 (1954) (describing the “yellow peril” stereotype and how whites transferred it to the Japanese after Chinese exclusion).

⁸⁶ *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).

⁸⁷ *See* ERIK K. YAMAMOTO ET AL., *RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT* 55 (2001)

The manners, habits, mode of living, and everything connected with the Chinese prevent the possibility of their ever assimilating with our people. They are a different race, and, even if they could assimilate, assimilation would not be desirable. If they are permitted to come here, there will be at all times conflicts arising out of the antagonism of the races which would only tend to disturb public order and mar the progress of the country. . . . I belong to the class, who repudiate the doctrine that this country was made for the people of all races. On the contrary, I think it is for our race—the Caucasian race.

Id. (quoting letter from Stephen Field to John Norton Pomeroy, Apr. 14, 1882).

⁸⁸ Aoki, *supra* note 1, at 42–43.

⁸⁹ Chinese Exclusion Act of 1882, ch. 126, § 14, 22 Stat. 58–59. For a history of this period, *see* ERICA LEE, *AT AMERICA’S GATES: CHINESE IMMIGRATION DURING THE EXCLUSION ERA, 1882–1943* (2003).

⁹⁰ Wash. Const. art. II, § 33 (1889) (amended 1950 & 1954, repealed 1966).

declare their intentions of becoming citizens of the United States, from land ownership.⁹¹

The Chinese had been excluded, but Japanese immigration eastward soon began to increase. Recession in Japan had driven many of its agricultural workers to Hawaii. Upon hearing of opportunities in California, Oregon, and Washington, they began to immigrate to the mainland.⁹² All went well for a while. But by 1905 Japan had become a force to be reckoned with, especially when, to the astonishment of onlookers, it defeated Russia, a world power, in the Russo-Japanese war. Military batteries and gun emplacements sprang up along the west coast.⁹³ Newspapers inflamed public opinion.⁹⁴

In order to smooth relations with Japan, the United States began to put agreements and treaties into place. To regulate immigration, the Gentlemen's Agreement agreed to screen out laborers, but allowed wives of "settled agriculturalists" to join their husbands, a provision that inadvertently enhanced the possibility for the creation and establishment of families.⁹⁵ In 1911 a trade

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 aliens directly, or in trust for such alien, shall be void

Id. (emphasis omitted).

⁹¹ Until 1952, United States citizenship was governed by the 1790 Naturalization Act, ch. 3, § 2169, 1 Stat. 103-04 (March 26, 1790), Revised Statutes Title XXX (U.S. Comp. Stat. §4358); U.S. CONST. amend. XIV; and the Civil Rights Act of 1870, ch. 254, § 7, 16 Stat. 254-56 (July 14, 1870). Congress retained plenary power to confer citizenship, U.S. CONST. art. I, § 8. It did so, first to "free white persons" and, after the Civil War, to "aliens of African nativity and to persons of African descent." (July 14, 1870). Federal citizenship had been offered to Mexicans living in territories ceded to the U.S. in Articles VIII and IX of the Treaty of Guadalupe Hidalgo in 1848 after the war with Mexico. See PEREA ET AL., *supra* note 37, at 298-99. Consequently Mexicans could be classified as white, though they were, for the most part, not treated as such at the local level. Indians were ineligible for citizenship. Therefore, Asians not being white, black, or Mexican fell into the category of aliens ineligible for citizenship.

⁹² See Aoki, *supra* note 1, at 44-45.

⁹³ See *Puget Sound Coastal Military Museum at Fort Worden State Park, Port Townsend, Washington*, <http://www.parks.wa.gov/fortworden/interpretive.aspx>, (dedicated to preservation and interpretation of coast artillery history, with special emphasis on harbor defenses of Puget Sound). Among other things, a signboard explains how three forts located a few miles apart trained giant cannons on a narrow stretch of water—named the "triangle of death"—in the Strait of Juan de Fuca that leads from the Pacific Ocean to the Puget Sound and port of Seattle.

⁹⁴ See Aoki, *supra* note 1, at 47 n.33 (citing ROGER DANIELS, *THE POLITICS OF PREJUDICE: THE ANTI-JAPANESE MOVEMENT IN CALIFORNIA AND THE STRUGGLE FOR JAPANESE EXCLUSION* 25 (2d ed. 1977) (quoting from *The Japanese Invasion, the Problem of the Hour*, S.F. CHRON., Feb. 23, 1905, at 1, ("at least 100,000 of the 'little brown men' were here already, that they were 'no more assimilable than the Chinese,' and that they undercut white labor . . . [warning that] 'once the war with Russia is over, the brown stream of Japanese immigration' will become a 'raging torrent.'")); see also HIGHAM, *supra* note 5, at 172-73 (describing roles of military adventurer Homer Lea and reporter-novelist Jack London in promoting anti-Japanese racial nativism).

⁹⁵ SIDNEY L. GULICK, *SHOULD CONGRESS ENACT SPECIAL LAWS AFFECTING JAPANESE?: A CRITICAL EXAMINATION OF THE "HEARINGS BEFORE THE COMMITTEE ON IMMIGRATION AND NATURALIZATION" HELD IN CALIFORNIA, JULY 1920*, at 7 (1922); see PEREA ET AL., *supra*

agreement between Japan and the U.S. allowed citizens of both nations to enter, reside, and travel in each other's countries to carry on commerce and own real property, but it made no mention of the right to own agricultural land.⁹⁶

California, where nativism ran high, seized on the opportunity to pass an alien land law in 1913 prohibiting certain individuals and corporations from purchasing agricultural land and restricting the leasing of it to three years. The law avoided referring to the Japanese by name but instead used the euphemism "aliens ineligible to citizenship."⁹⁷ It proved so ineffective at curtailing Japanese farming,⁹⁸ however, that by 1920 an initiative amendment passed, strengthening the 1913 law.⁹⁹ As well as banning purchasing or leasing, it also prohibited aliens from serving as guardians to minors who had an interest in agricultural land,¹⁰⁰ which prevented immigrant Japanese from buying farms in the names of their citizen children.

In western Washington the Japanese settled first in the southern area of Puget Sound, then gradually spread into the White River Valley, the same area that had seen hostilities between white settlers and the Nisqually tribe over a half century before.¹⁰¹ World War I brought the need for more agricultural workers. The Chinese population had, by then, dwindled as a result of the Chinese Exclusion Act. As well, most immigrants from India, Southeast Asia, and the islands of the Pacific were excluded with the creation of the Asiatic Barred Zone in the Immigration Act of 1917.¹⁰² The Japanese, however, who were not subject to that exclusion, had proven able farmers and prospered.¹⁰³ Many envious white farmers saw the Japanese as a threat. But others admired them for their hard working ways and efficiency. One such person was Frank Terrace who, along with his wife Elizabeth, desired to lease part of their land to N. Nakatsuka.¹⁰⁴

In 1921, Washington toughened its alien land law to include leasing as well as procedural mechanisms that closed loopholes, and to enact harsh penal-

note 37, at 398, 428. The children of first-generation Japanese automatically became citizens and consequently could own land, but the parents, being noncitizens, could not. *United States v. Wong Kim Ark*, 169 U.S. 649, 732 (1898). For this unintended consequence, see ROGER DANIELS, *GUARDING THE GOLDEN DOOR: AMERICAN IMMIGRATION POLICY AND IMMIGRANTS SINCE 1882*, at 44–45 (2004).

⁹⁶ Treaty of Commerce and Navigation, U.S.-Japan, art. I, Feb. 21, 1911, 37 Stat. 1504.

⁹⁷ 1913 Cal. Stat. 206. Although race was not mentioned in the law, California attorney-general and co-drafter of the law Ulysses S. Webb later addressed the Commonwealth Club in San Francisco admitting that "[t]he fundamental basis of all legislation upon this subject . . . has been, and is, race undesirability. It is unimportant and foreign to the question under discussion whether a particular race is inferior. The simple and single question is, is the race desirable." YAMATO ICHIHASHI, *JAPANESE IN THE UNITED STATES* 275 (1962).

⁹⁸ Yuji Ichioka, *Japanese Immigrant Response to the 1920 California Alien Land Law*, 58 *AGRIC. HIST.* 157, 161–62 (1984).

⁹⁹ *Id.* at 163; see Alien Land Law Act, §§ 1–14, 1921 Cal. Stat. lxxxiii.

¹⁰⁰ Ichioka, *supra* note 97, at 163.

¹⁰¹ Stan Flewelling, *Issei in the White River Valley*, WHITE RIVER J. (Apr. 1997), http://www.wrvmuseum.org/journal/journal_0497.htmhttp://www.wrvmuseum.org/journal/journal_0497.htm; see *supra* note 71.

¹⁰² Immigration Act of 1917, Pub. L. No. 64-301, 39 Stat. 874 (1917).

¹⁰³ See, e.g., Ichioka, *supra* note 97, at 162 (table showing Japanese agricultural landholdings in California for the years 1914, 1918, and 1920).

¹⁰⁴ See Terrace v. Thompson, 263 U.S. 197, 211 (1923).

ties for circumventing the Constitution, making it clear that Washington really meant it.¹⁰⁵ The Japanese, as nonwhites, could not “in good faith” declare their intention to become citizens. By combining eligibility for citizenship with the intent to actually pursue it, the state effectively prevented the Japanese from participating in farming in any meaningful way. Indeed, it successfully removed that means of livelihood for many of them.

Washington’s motivation in passing and amending the law was not a secret—to eliminate competition between Japanese and white farmers. Indeed, one of its citizens, Albert Johnson, was soon to play a leading role in the major reform of U.S. immigration laws. Johnson, a native of the logging town of Gray’s Harbor and elected to Congress in 1912, was also a newspaper editor of the same ilk as Hearst and McClatchy¹⁰⁶ in California. His vehement campaign against the labor movement and his antipathy toward foreigners, Japanese in particular, propelled him into the heart of national immigration debates.¹⁰⁷ By 1919 he had become chair of the House Committee on Immigration, in which capacity he was successful in bringing the hearings to address the “Japanese problem” to Seattle where the members met in the courtroom of Judge Edward Everett Cushman,¹⁰⁸ who was later to write the district court opinion in *Terrace*.

The Northwest American Japanese Association had challenged the ban on Terrace leasing part of his land to Nakatsuka.¹⁰⁹ They lost.¹¹⁰ After negating protection by the 1911 commerce treaty, federal district court Judge Cushman, perhaps recalling conversations with Albert Johnson, tackled the eligibility question:

It is obvious that the objection on the part of Congress is not due to color, as color, but only to color as an evidence of a type of civilization which it characterizes. The yellow or brown racial color is the hallmark of Oriental despotisms, or was at the time the original naturalization law was enacted. It was deemed that the subjects of these despotisms, with their fixed and ingrained pride in the type of their civilization, which works for its welfare by subordinating the individual to the personal authority of the sovereign, as the embodiment of the state, were not fitted and suited to make for the success of a republican form of Government. Hence they were denied citizenship. It is this disqualification put upon them by the federal government to which the

¹⁰⁵ Act of Mar. 8, 1921, ch. 50, §§ 1–10, 1921 Wash. Laws 156 (repealed 1967); see Lazarus, *supra* note 49, at 235 (discussing these mechanisms).

¹⁰⁶ See DANIELS, *supra* note 94, at 45, 75–76 (on William Randolph Hearst); *id.* at 91, 95–99 (on V.S. McClatchy); see also MAE M. NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA 47 (2004) (discussing role of McClatchy, co-owner of the Sacramento Bee, in anti-immigration debates).

¹⁰⁷ HIGHAM, *supra* note 5, at 177–78, 309–10, 319.

¹⁰⁸ See Doug Blair, *The 1920 Anti-Japanese Crusade and Congressional Hearings*, SEATTLE CIV. RTS. & LAB. HIST. PROJECT nn.1–2 (2006), http://depts.washington.edu/civilr/Japanese_restriction.htm (describing the meeting). For the full text of the hearing held in Seattle from July 26–29, 1920, see *Full Text of “Hearings Before the Committee on Immigration and Naturalization: H. of R., 66th Congress”*, INTERNET ARCHIVE, http://www.archive.org/stream/cu31924051624843/cu31924051624843_djvu.txt.

¹⁰⁹ Ichioka, *supra* note 97, at 167.

¹¹⁰ *Terrace v. Thompson*, 274 F. 841, 841 (W.D. Wash. 1921).

state objects, and not their color, although the federal government may have made their race color the irrefutable evidence of disqualification for citizenship.¹¹¹

Declaring that it was the duty of Congress “to preserve, in its purity, our own type of civilization,” he went on to say: “The more homogeneous its parts, the more perfect the union . . . [T]here is no law or treaty that yet has said . . . if citizenship be accorded these Orientals, the danger is past of our becoming a ‘mechanical medley of race fragments.’”¹¹²

Shortly afterward, the U.S. Supreme Court in the *Ozawa* case (1922)¹¹³ handed down a decision crushing any hope for Japanese to transcend the barrier of the whiteness requirement for citizenship. Takao Ozawa had petitioned the Court for naturalization showing, in short, that he was an educated, assimilated American.¹¹⁴ Despite all, his request was denied and Japanese were barred from naturalized citizenship until the immigration reform McCarran-Walter Act of 1952.¹¹⁵

When the *Terrace* case reached the U.S. Supreme Court the following year, the Court needed only to use race-neutral language to affirm the lower court opinion. Terrace and Nakatsuka challenged the law on two grounds: first, that it conflicted with the due process and equal protection clauses of the 14th Amendment, and second, that it contravened the 1911 commerce treaty between U.S. and Japan. The Court decided it did not. With impeccable formalistic logic, the Court created a two-by-two matrix placing in the same category those ineligible for citizenship with those who were eligible for citizenship yet refused to elect it, preventing both groups from the ability to purchase, lease, or contract agricultural land.¹¹⁶

The effect of the decision on the Japanese population was devastating.¹¹⁷ One other California alien land law case was decided on the same day as *Terrace*;¹¹⁸ two more followed a week later.¹¹⁹ Between 1920 and 1930, the Japa-

¹¹¹ *Id.* at 849 (citation omitted).

¹¹² *Id.* at 849, 850 (addressing the issue of citizenship, he added: “Tribal laws of the progenitors of the Anglo-Saxons, while still upon the continent, made an estate in lands, similar to a freehold, a prerequisite to a voice in the tribal government.”).

¹¹³ Takao Ozawa v. United States, 260 U.S. 178 (1922).

¹¹⁴ *Id.* at 189 (he had lived in the United States for twenty years, attended high school and college in Berkeley, California, attended American churches, and spoke English with his children who had been educated in American schools); see J. Allen Douglas, *The “Priceless Possession” of Citizenship: Race, Nation and Naturalization in American Law, 1880–1930*, 43 DUQ. L. REV. 369, 386–87 n.38 (2005) (showing how “common understanding” of race, color, and possession of white identity came to be the basis for decisions about naturalization).

¹¹⁵ Act of June 27, 1952, ch. 2, § 311, 66 Stat. 239. The act lifted the ban imposed on Japanese immigration in 1924. It retained a quota system, however, which, for Japanese, was set at 185 annually. See YAMAMOTO ET AL., *supra* note 87, at 262.

¹¹⁶ Terrace, 263 U.S. 197, 219–20 (1923) (those in the other category—who could buy, lease, and contract land—were citizens and immigrants eligible for citizenship who elected to pursue it (called “good faith declarants”). Regarding the eligible and noneligible classes and categories and the criteria by which they were defined, see Dudley O. McGovney, *The Anti-Japanese Land Law of California and Ten Other States*, 35 CALIF. L. REV. 7, 43–46 (1947).

¹¹⁷ Ichioka, *supra* note 97, at 168–78.

¹¹⁸ Porterfield v. Webb, 263 U.S. 225 (1923) (upholding the 1920 California Alien Land Law’s ban on leasing).

nese population in Washington state increased by a mere 450 persons.¹²⁰ Washington's alien land law remained on the books until repealed in 1966, after two attempts had failed to remove it.¹²¹

Terrace was not the only blow. The Immigration and Naturalization Act¹²² ended Japanese immigration in 1924, ironically the very same year that Indians received citizenship.¹²³

IV. MANIFEST DESTINY AND ECHOES OF *TERRACE* TODAY

Though the slogan of manifest destiny seldom finds its way into contemporary discourse, the sentiment it evokes is very much alive.¹²⁴ Few Washingtonians may have heard of *Terrace v. Thompson*, yet its legacy is quite intact. By examining a state's racial history, one can see recurrent patterns that, somewhat like DNA, predictably replicate behavior.¹²⁵ Washington, late to enter the Union, was considered by some to be the last bastion of untarnished land. Inhabited by peaceful Indians, untainted by slavery, not a place of seething multiracialism and immigration, it remained for decades an overwhelmingly white state. If you were white, you would likely be surrounded by people like yourself; if not, you might find yourself leading a lonely existence with chilly relations with your neighbors.¹²⁶ If you were unlucky, you might

¹¹⁹ *Frick v. Webb*, 263 U.S. 326 (1923) (upholding California's ban on investments in agricultural land by corporations in which the majority of investors were ineligible aliens); *Webb v. O'Brien*, 263 U.S. 313 (1923) (upholding the Alien Land Law's ban on sharecropping). For a contemporaneous article questioning the reasoning in *Terrace v. Thompson*, *Porterfield v. Webb*, *Frick v. Webb*, and *Webb v. O'Brien*, see generally Thomas Reed Powell, *Alien Land Cases in the United States Supreme Court*, 12 CALIF. L. REV. 259 (1924).

¹²⁰ Lazarus, *supra* note 49, at 236. The increase, from 17,387 to 17,837, was probably due to the birth of the second generation Nisei who were citizens by birthright.

¹²¹ See Nicole Grant, *White Supremacy and the Alien Land Laws of Washington State*, SEATTLE CIV. RTS. & LAB. HIST. PROJECT, http://depts.washington.edu/civrl/alien_land_laws.htm http://depts.washington.edu/civrl/alien_land_laws.htm ("The Washington Movement to Repeal the Alien Land Law": describing efforts to repeal the law in 1960, 1962, and 1966).

¹²² Immigration (Johnson-Reed) Act of 1924, Pub. L. No. 68-139, 43 Stat. 153 (commonly known as the National Origins Act). Though the Act contained no reference to the Japanese, it made clear that aliens ineligible for citizenship were forbidden to immigrate to the United States. Albert Johnson was instrumental in its passage.

¹²³ Indian Citizenship Act of 1924, Pub. L. No. 68-175, 43 Stat. 253 (codified as amended at 8 U.S.C. § 1401(b) (2006)). For additional commentary on this and other ironies, see generally Joseph William Singer, *Comment: The Stranger Who Resides with You: Ironies of Asian-American and American Indian Legal History*, 40 B.C. L. REV. 171 (1998).

¹²⁴ See, e.g., Andrew Garber, *New Poll Looks at Tea Party Views Toward Minorities*, SEATTLE TIMES (June 1, 2010, 11:43 AM), http://seattletimes.nwsourc.com/html/politicsnorthwest/2012005031_new_poll_looks_at_tea_party_vi.html http://seattletimes.nwsourc.com/html/politicsnorthwest/2012005031_new_poll_looks_at_tea_party_vi.html.

¹²⁵ See Delgado & Stefancic, *Home-Grown Racism*, *supra* note 6, at 773 (discussing these patterns); Delgado & Stefancic, *Racial History*, *supra* note 6, at 1558, (also discussing these patterns).

¹²⁶ The "Seattle chill" is a frequently remarked phenomenon among students and faculty of color at the school where I teach. It refers to a somewhat distant, if friendly, manner that Anglos affect in interactions with their neighbors or colleagues of color.

encounter one of the region's Aryan supremacist groups that would make your life miserable.¹²⁷

If you were historically minded, you might suspect that the region's history had something to do with it. The reader will recall how Washington, while a territory, dispatched its Indians to miniscule, forlorn reservations.¹²⁸ Chinese were excluded from immigration by federal law until 1943; local attitudes kept them on edge both before and after that.¹²⁹ Japanese were cut off from agricultural livelihood and, not long after, interned.¹³⁰ Black migration from the South was tolerated, but not encouraged.¹³¹ Mexican workers have lived, in large part, under the radar.

Immigration of undocumented workers, much of it Latino, has increased as global migration changed direction in the last few decades. Formerly from west to east, or in some cases east to west, migration now proceeds from south to north. The manifest-destiny agenda of multinational corporations has delivered free trade to Latin America via NAFTA, bringing profits to U.S.-based companies and poverty to countries south of our border. Mexican farmers cannot compete with U.S.-subsidized corn, a staple of the Mexican diet.¹³² These little-regarded consequences have resulted in a migration of millions of Latin American farm workers to the U.S. looking for ways to make a living wage, much as did Japanese agricultural workers in the early twentieth century.

Latino workers have been essential to agriculture in Washington for many years. As with other racial groups, sometimes they have been treated well or ignored. Recently, however, the nation's tangled immigration laws have subjected them to workplace raids,¹³³ deportation,¹³⁴ loss of benefits,¹³⁵ and

¹²⁷ See, e.g., Mike Carter et al., *Spokane Bomb Suspect Tied to Neo-Nazi Group*, SEATTLE TIMES, Mar. 10, 2011, at A1.

¹²⁸ See, e.g., *supra* Part I text and accompanying notes 7–40.

¹²⁹ See *supra* notes 82–88 and accompanying text.

¹³⁰ See *supra* notes 104–20 and accompanying text.

¹³¹ See generally JOAN SINGLER ET AL., SEATTLE IN BLACK AND WHITE: THE CONGRESS OF RACIAL EQUALITY AND THE FIGHT FOR EQUAL OPPORTUNITY (2011).

¹³² See BILL ONG HING, ETHICAL BORDERS: NAFTA, GLOBALIZATION, AND MEXICAN MIGRATION 13 (2010); see also DAVID BACON, ILLEGAL PEOPLE: HOW GLOBALIZATION CREATES MIGRATION AND CRIMINALIZES IMMIGRANTS 51–81 (2008) (discussing displacement and migration); JOSÉ LUIS MORÍN, LATINO/A RIGHTS AND JUSTICE IN THE UNITED STATES 44 (2d ed. 2009) (pointing out that Nobel laureate economist Joseph Stiglitz attributes U.S. colonial mentality, in part, to legacy of Manifest Destiny).

¹³³ Manuel Valdes, *Napolitano Orders Review of Bellingham Immigration Raid*, SEATTLE TIMES, Feb. 25, 2009, http://seattletimes.nwsourc.com/html/localnews/2008785918_web_raid25m (describing workplace raid in Bellingham, Wash.). Bellingham had been the site of a riot against South Asians in 1907. See NGAI, *supra* note 106, at 41; see also Shannon Dininny, *Ellensburg Residents Respond to Immigration Raids*, SEATTLE TIMES (Jan. 21, 2011 8:45PM), http://seattletimes.nwsourc.com/html/localnews/2014001995_apwaimmigration_raid5thldwritethru.html (describing reaction to U.S. Immigration and Customs Enforcement (ICE) trailer park raid and arrests of undocumented workers in Ellensburg, Wash.).

¹³⁴ Lornet Turnbull & Roberto Daza, *Climate of Fear Grips Forks Illegal Immigrants*, SEATTLE TIMES (June 27, 2011 12:07PM), http://seattletimes.nwsourc.com/html/localnews/2015435439_forks27m.htmlhttp://seattletimes.nwsourc.com/html/localnews/2015435439_forks27m.html (describing pursuit that ended in death by U.S. Immigration and Customs Enforcement agents of undocumented worker who feared deportation); Amy Harris, *13 Counties to Join Crackdown on Illegal Immigrants Accused of Crimes*, SEATTLE TIMES (July 3, 2011 4:43PM), http://seattletimes.nwsourc.com/html/localnews/2015502785_securecom-

charges of unassimilability.¹³⁶ Naturalization is but a dream for the undocumented, and the repeal of birthright citizenship a threat for their children who were born here.¹³⁷ At the local level, states and municipalities seem to apply the same template of suspicion, nativism, and xenophobia to virtually all new groups, particularly if they look different than the majority population.¹³⁸ Latinos' misfortunes in Washington and other states now echo those of indigenous people, the Japanese, and the Chinese before them.¹³⁹ *Terrace v. Thompson* paved the way for Japanese internment during World War II. Will we be seeing more cases like it soon?¹⁴⁰

munities04m.html (describing the U.S. Immigration and Customs Enforcement Secure Communities program that can result in deportation).

¹³⁵ Andrew Garber, *State Budget Cuts to be Felt by Illegal Immigrants*, SEATTLE TIMES (Apr. 3, 2011 10:00PM), http://seattletimes.nwsources.com/html/localnews/201467745_immigrants04m.html.

¹³⁶ See SAMUEL P. HUNTINGTON, WHO ARE WE?: THE CHALLENGES TO AMERICA'S IDENTITY 316 (2004); PETER BRIMELOW, ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER 273 (1995).

¹³⁷ See Marc Lacey, *Birthright Citizenship Looms as Next Immigration Battle*, N.Y. TIMES, Jan. 4, 2011, <http://www.nytimes.com/2011/01/05/us/politics/05babies>. For the Congressional effort to provide a path to citizenship for undocumented immigrant students brought to the U.S. when they were young, see *Dream Act: Summary*, NAT'L IMMIGR. L. CTR. (May 2011), <http://nilc.org/dreamsummary.html> (click on pdf file link).

¹³⁸ For a comparison of nineteenth century laws against Chinese and current ones against undocumented Mexicans, see Mary D. Fan, *Post-Racial Proxies: Resurgent State and Local Anti-"Alien" Laws and Unity-Rebuilding Frames for Antidiscrimination Values*, 32 CARDOZO L. REV. 905 (2011).

¹³⁹ See Tim Johnson, *Latino Nation*, CASCADIA WKLY., May 18, 2011, at 8, 12 (reviewing treatment of undocumented Latinos in counties north of Seattle), available at <http://www.cascadiaweekly.com/pdfs/issues/201120.pdf>.

¹⁴⁰ See Editorial, *It Gets Even Worse: New Anti-Immigrant Laws Are Cruel, Racist and Counterproductive*, N.Y. TIMES, July 4, 2011, at A18 (urging Obama administration to bring suit against new state laws in Georgia, Alabama, and South Carolina targeting the undocumented). Cases challenging birthright citizenship for children of undocumented aliens may also be likely to reach the Supreme Court. See Lacey, *supra* note 137. On challenges to Latino land ownership, see *Lobato v. Taylor*, 71 P.3d 938, 955, 956 (Colo. 2002) (affirming traditional rights of holders of a Mexican land grant in Colorado to the use of lands formerly held in common). On voting rights and redistricting, see *MALDEF Lawyer Says Latinos Left No Better Off than 20 Years Ago Under Redrawn Congressional Districts*, AUSTIN-AM. STATESMAN POLITIFACT TEX. (June 22, 2011, 6:00 AM), <http://www.politifact.com/texas/statements/2011/jun/22/nina-perales/maldef-lawyer-says-may-remap-texas-congressional-d/>.