

2 The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History

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THE FUNNY thing about stories is that everyone has one. My grandfather had them, with plenty to spare. When I was very young, he would regale me with stories, usually about politics, baseball, and honor. These were his themes, the subject matter he carved out for himself and his grandchildren. As the oldest grandson and his first godchild, I held a special place of responsibility and affection. In Mexican families, this patrimony handed to young boys is one remnant of older times that is fading, like the use of Spanish in the home, posadas at Christmas, or the deference accorded all elders.

In Sabino Olivas' world, there were three verities, ones that he adhered to his entire life: political and personal loyalties are paramount; children should work hard and respect their elders; and people should conduct their lives with honor. Of course, each of these themes had a canon of stories designed, like parables, to illustrate the larger theme, and, like the Bible, to be interlocking, cross referenced, and synoptic. That is, they could be embellished in the retelling, but they had to conform to the general themes of loyalty, hard work, and honor.

Several examples will illustrate the overarching theoretical construction of my grandfather's worldview and show how, for him, everything was connected, and profound. Like other folklorists and storytellers, he employed mythic heroes or imbued people he knew with heroic dimensions. This is an important part of capturing the imagination of young children, for the mythopoeic technique overemphasizes characteristics and allows listeners to fill in the gaps by actively inviting them to rewrite the story and remember it in their own terms. As a result, as my family grew (I am the oldest of ten), I would hear these taproot stories retold both by my grandfather to the other kids and by my brothers and sisters to others. The core of the story would be intact, transformed by the teller's accumulated sense of the story line and its application.

One of the earliest stories was about New Mexico's United States Senator Bronson Cutting, and how he had died in a plane crash after attempting to help Northern New Mexico Hispanics regain land snatched from them by greedy developers. Growing up near Tierra Amarilla, New Mexico, as he did, my grandfather was heir to a longstanding oral tradition of defining one's status by land ownership. To this day, land ownership in Northern New Mexico is a tangle of aboriginal Indian rights, Spanish land grants, Anglo and Mexican greed, treaties, and developer domination. Most outsiders (that is, anyone south of Santa Fe) know this issue only by having seen *The Milagro Beanfield War*, the Robert Redford movie based on John Nichols' book. But my grandfather's story was that sinister forces had somehow tampered with Senator Cutting's plane because he was a man of the people, aligned against wealthy interests. Senator Cutting, I was led to believe as I anchored the story with my own points of reference, was more like Jimmy Stewart in *Mr. Smith Goes to Washington* than like the Claude Rains character, who would lie to get his own greedy way.

Of course, as I grew older, I learned that the true story was not exactly as my grandfather had told it. Land ownership in New Mexico is complicated; the Senator had his faults; and my grandfather ran afoul of Cutting's political enemy, Senator Dennis Chavez. But the story still held its sway over me.

His other favorite story, which included a strong admonition to me, was about how he and other Hispanics had been treated in Texas on their way to World War I. A trainload of soldiers from Arizona and Northern New Mexico, predominantly of Mexican origin (both New Mexico and Arizona had only recently become states), were going to training camp in Ft. Hays, Kansas. Their train stopped in a town near Amarillo, Texas, and all the men poured out to eat at a restaurant, one that catered to train travelers. But only to some. A sign prominently proclaimed, "No coloreds or Mexicans allowed," and word spread among them that this admissions policy was taken seriously.

My grandfather, who until this time had never been outside the Territory or the State of New Mexico (after 1912), was not used to this kind of indignity. After all, he was from a state where Hispanics and Indians constituted a majority of the population, especially in the North, and it was his first face-to-face encounter with racism, Texas style. Shamefacedly, the New Mexicans ate the food that Anglo soldiers bought and brought to the train, but he never forgot the humiliation and anger he felt that day. Sixty-five years later, when he told me this story, he remembered clearly how most of the men died in France or elsewhere in Europe, defending a country that never fully accorded them their rights.

The longer, fuller version, replete with wonderful details of how at training camp they had ridden sawhorses with saddles, always ended with the anthem, "Ten cuidado con los Tejanos, porque son todos desgraciados y no tienen verguenza" (Be careful with Texans because they are all sons-of-bitches and have no shame). To be a *sin verguenza*—shameless, or without honor—was my grandfather's cruelest condemnation, reserved for faithless husbands, reprobates, lying grandchildren, and Anglo Texans.

These stories, which always had admonitions about honorable behavior, always had a moral to them, with implications for grandchildren. Thus, I was admonished to vote Democrat (because of FDR and the Catholic JFK), to support the National League (because the Brooklyn Dodgers had first hired Black players and because the relocated Los Angeles Dodgers had a farm team in Albuquerque), and to honor my elders (for example, by using the more formal *usted* instead of the informal *tu*).

People react to Derrick Bell and his storytelling in predictably diverse ways. People of color, particularly progressive minority scholars, have been drawn to his work. The old guard has been predictably scornful, as in Lino Graglia's dyspeptic assessment: "There can be no sin for which reading Professor Derrick Bell is not, for me, adequate punishment. . . . [The Chronicles are] wails of embittered, hate-filled self-pity. . . ."1

My objection, if that is the proper word, to the *Chronicle of the Space Traders* is not that it is too fantastic or unlikely to occur, but rather the opposite: This scenario has occurred, and more than once in our nation's history. Not only have Blacks been enslaved, as the *Chronicle* sorrowfully notes, but other racial groups have been conquered and removed, imported for their labor and not allowed to participate in the society they built, or expelled when their labor was no longer considered necessary.

Consider the immigration history and political economy of three groups whose United States history predates the prophecy for the year 2000: Cherokee removal and the Trail of Tears; Chinese laborers and the Chinese Exclusion Laws; and Mexicans in the Bracero Program and Operation Wetback. These three racial groups share different histories of conquest, exploitation, and legal disadvantage; but even a brief summary of their treatment in United States law shows commonalities of racial animus, legal infirmity, and majority domination of legal institutions guised as "political questions."² I could have also chosen the national origins or labor histories of other Indian tribes, the Filipinos, the Native Hawaiians, the Japanese, the Guamese, the Puerto Ricans, or the Vietnamese, in other words, the distinct racial groups whose conquest, colonization, enslavement, or immigration histories mark them as candidates for the Space Traders' evil exchange.

Cherokee Removal and the Trail of Tears

Although the Cherokees were, in the early 1800s, the largest tribe in what was the Southeastern United States, genocidal wars, abrogated treaties, and Anglo land settlement practices had reduced them to 15,000 by 1838, predominantly in Georgia, Tennessee, North Carolina, and Alabama.³ During the 1838–1839 forced march to the "Indian Territory" of what is now Oklahoma, a quarter of the Cherokees died on the "Trail of Tears," the long march of the Cherokees, Seminoles, Creeks, Choctaws, and Chickasaw. Gold had been discovered on Indian land in Georgia. The newly confederated states of the United

States did not want sovereign Indian nations coexisting in their jurisdiction; and President Andrew Jackson, engaged in a bitter struggle with Chief Justice John Marshall, saw the removal of the Indians as a means to his own political ends.

Not only were the tribes removed from their ancestral homelands, guaranteed to them by treaties, at forced gunpoint, but there were other elements that foreshadowed Bell's *Chronicles*. The Cherokees had sought to integrate themselves into their conquerors' social and legal systems; they engaged as sovereigns to negotiate formally and lawfully their place in the United States polity; and they litigated their grievances in Federal courts to no avail. Like the fictional Blacks in the *Chronicles*, they too appealed to the kindness of strangers. One authoritative account of this shameful occasion noted:

[M]any Cherokees continued to hold to their hope even while soldiers drove them from their homes into the stockades and on to the Trail of Tears. Some refused to believe that the American people would allow this to happen. Until the very end, the Cherokees spoke out supporting their rights to resist removal and to continue to live in the ancestral homelands.⁴

In order to coexist with their conquerors, the Cherokees had adopted Anglo ways, developing their own alphabet, bilingual (English-Cherokee) newspapers, a court system, and a written constitution.⁵ They entered into a series of treaties that ceded dominion to the United States, but that preserved a substantial measure of self determination and autonomy.⁶ Beginning in 1802 with the Georgia Compact, however, white landowners and officials variously entered into and repudiated treaties and other agreements with Indian tribes.⁷ By 1830, the Indian Removal Act had been passed by Congress,⁸ and the stage was set for *Cherokee Nation v. Georgia*⁹ and *Worcester v. Georgia*.¹⁰ In *Cherokee Nation*, Justice Marshall held that the Cherokee were a "domestic dependent nation[.]" and thus the Supreme Court did not have original jurisdiction; he invited another "proper case with proper parties" to determine the "mere question of right [*sic*]."¹¹

The "proper party" presented itself the following year, in *Worcester v. Georgia*, and Chief Justice Marshall held for the Cherokees. Marshall found that each Indian tribe was

a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of a state can have no force, and which the citizens of [a state] have no right to enter, but with the assent of the [Indians] themselves, or in conformity with treaties, and with the acts of Congress.¹²

Despite this first clarification of Indian sovereignty and the early example of preemption, the state of Georgia refused to obey the Court's order, and President Jackson refused to enforce the Cherokees' victory. Georgia, contemptuous of the Court's authority, in what it contended was its own affairs, did not even argue its side before the Court.

The Cherokees' victory was Pyrrhic, for even their supporters, such as Daniel Webster, turned their attention away from enforcement of *Worcester* to the Nul-

lification Crisis, which threatened the very existence of the Union.¹³ The case of *Worcester* was resolved by a pardon, technically mooting the Cherokees' victory.¹⁴ The "greater good" of the Union thus sacrificed Cherokee rights at the altar of political expediency, foreshadowing Blacks' sacrifice during the Civil War, Japanese rights sacrificed during World War II, Mexicans' rights sacrificed during Operation Wetback, and Black rights extinguished in the year 2000 for the Space Traders.

Chinese Exclusion

No racial group has been singled out for separate, racist treatment in United States immigration law more than have the Chinese. A full political analysis of immigration treaties, statutes, cases, and practices reveals an unapologetic, variegated racial character that today distinctly disadvantages Latin Americans. But peculiar racial antipathy has been specifically reserved for Asians, particularly the Chinese. While Chinese laborers were not enslaved in exactly the same fashion that Blacks had been, they were imported under a series of formal and informal labor contracting devices. These were designed to provide cheap, exploitable raw labor for the United States railroad industry, a labor force that would have few legal or social rights. Immigration law developments in the 1800s, particularly the last third of the century, were dominated by racial devices employed to control the Chinese laborers and deny them formal rights. These formal legal devices included treaties, statutes, and cases.

Anti-Chinese animus was particularly virulent in California, where a series of substantive and petty nuisance state ordinances were aimed at the Chinese. These ordinances provided for arbitrary inspections of Chinese laundries,¹⁵ special tax levies,¹⁶ inspections and admission regulations for aliens entering California ports,¹⁷ mandated grooming standards for prisoners that prohibited pig-tails,¹⁸ and a variety of other regulations designed to harass and discriminate against the laborers.¹⁹ Many of these statutes were enacted in defiance of the preemptive role of the federal government in immigration policymaking, and would not have survived the United States–China Burlingame Treaty, adopted in 1868.

Although many of these statutes were struck down and Reconstruction legislation was worded to specify certain protections to immigrants, by 1880 the Burlingame Treaty had been amended to restrict the immigration of Chinese laborers. 20 Congress enacted the Chinese Exclusion Act in 1882,²¹ and even harsher legislation in 1884.²² By 1888, Congress reached the point of no return. Another, harsher act was passed which virtually prohibited Chinese from entering or re-entering the United States,²³ while the Burlingame Treaty was altered again, ratcheting even further the mechanisms aimed at the Chinese.

In a series of important cases, the United States Supreme Court refused to strike down these federal laws and treaties, on political question grounds. In one of these cases, the Court stated:

The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States, as a part of those sovereign powers delegated by the Constitution, the right to its exercise at any time when, in the judgment of the government, the interests of the country require it, cannot be granted away or restrained on behalf of any one. . . . If there be any just ground of complaint on the part of China [or the Chinese immigrants], it must be made to the political department of our government, which is alone competent to act upon the subject.²⁴

Although the aliens, like the Cherokees before them, prevailed in some of the most egregious instances, the racist tide had undeniably turned. In 1892, Congress extended the amended Burlingame Treaty for an additional ten years, and added a provision for removing, through deportation, those Chinese who had managed to dodge the earlier bullets.²⁵ An extraordinary provision suspended deportation for those Chinese laborers who could qualify (through a special hardship exemption) and could furnish "one credible white witness" on their behalf.²⁶

In 1893, this proviso was tested by the luckless Fong Yue Ting, who foolishly produced only another Chinese witness to stay his own deportation. The United States Supreme Court upheld his expulsion, on political question grounds.²⁷ The majority opinion speculated that the Chinese would not be truthful, noting that Chinese testimony in similar situations "was attended with great embarrassment, from the suspicious nature, in many instances, of the testimony offered to establish the residence of the parties, arising from the loose notions entertained by the witness of the obligations of an oath."²⁸ As my grandfather would have said, they obviously had no shame and were probably *sin verguenzas*.

Congress enacted additional extensions of the Chinese exclusion statutes and treaties until 1943. When the immigration laws began to become more codified, each iteration formally included specific reference to the dreaded and unpopular Chinese. Thus, the Immigration Acts of 1917, 1921, and 1924 all contain references that single out this group. If the Space Traders had landed in the late 1800s or early 1900s and demanded the Chinese in exchange for gold, antitoxins, and other considerations, there is little doubt but that the States, Congress, and the United States Supreme Court would have acquiesced.

Mexicans, the Bracero Program, and Operation Wetback

Nineteenth-century Chinese labor history in the United States is one of building railroads; that of Mexicans and Mexican Americans is agricultural labor, picking perishable crops. In the Southwestern and Western United States, Mexicans picked half of the cotton and nearly 75 percent of the fruits and vegetables by the 1920s. By 1930, half of the sugar beet workers were Mexican, and 80 percent of the farmhands in Southern California were Mexican. As fields be-

came increasingly mechanized, it was Anglo workers who rode the machines, consigning Mexicans to stoop-labor and hand cultivation. One observer noted: "The consensus of opinion of ranchers large and small . . . is that only the small minority of Mexicans are fitted for these types of labor [i.e., mechanized agricultural jobs] at the present time."²⁹

Most crucial to the agricultural growers was the need for a reserve labor pool of workers who could be imported for their work, displaced when not needed, and kept in subordinate status so they could not afford to organize collectively or protest their conditions. Mexicans filled this bill perfectly, especially in the early twentieth century Southwest, where Mexican poverty and the Revolution forced rural Mexicans to come to the United States for work. This migration was facilitated by United States growers' agents, who recruited widely in Mexican villages, by the building of railroads (by Mexicans, not Chinese) from the interior of Mexico to El Paso, and by labor shortages in the United States during World War I.

Another means of controlling the spigot of Mexican farm workers was the use of immigration laws. Early labor restrictions through federal immigration law (and state law, as in California) had been aimed at Chinese workers, as outlined in the previous section. When agricultural interests pressured Congress to allow Mexican temporary workers during 1917-1921, the head tax (then set at \$8.00), literacy requirements, public charge provisions, and Alien Contract Labor Law provisions were waived. By 1929, with a surplus of "native" United States workers facing the Depression, the supply of Mexicans was turned off by reimposing the immigration requirements.

While United States nativists were pointing to the evils and inferiority of Southern European immigrants, Mexicans were characterized as a docile, exploitable, deportable labor force. As one commentator noted:

Mexican laborers, by accepting these undesirable tasks, enabled [Southwestern] agriculture and industry to flourish, thereby creating effective opportunities for [white] American workers in the higher job levels. . . . The representatives of [United States] economic interests showed the basic reason for their support of Mexican immigration[;] employers of the Southwest favored unlimited Mexican immigration because it provided them with a source of cheap labor which would be exploited to the fullest possible extent.³⁰

To effectuate control over the Southern border, the Border Patrol was created in 1924, while the Department of Labor and the Immigration Bureau began a procedure in 1925 to regulate Mexican immigration by restricting the flow to workers already employed or promised positions.

During the Depression, two means were used to control Mexican workers: mass deportations and repatriations. Los Angeles was targeted for massive deportations for persons with Spanish-sounding names or Mexican features who could not produce formal papers, and over 80,000 Mexicans were deported from 1929-1935.³¹ Many of these persons had the legal right to be in the country, or

had been born citizens but simply could not prove their status; of course, many of these workers had been eagerly sought for perishable crops. In addition, over one-half million Mexicans were also "voluntarily" repatriated by choosing to go to Mexico rather than remain in the United States, possibly subject to formal deportation.

By 1940, the cycle had turned: labor shortages and World War II had created the need for more agricultural workers, and growers convinced the United States government to enter into a large-scale contract-labor scheme, the Bracero Program. Originally begun in 1942 under an Executive Order, the program brokered laborers under contracts between the United States and Mexico.³² Between 1942 and 1951, over one-half million "braceros" were hired under the program. Public funds were used to seek and register workers in Mexico who, after their labor had been performed, were returned to Mexico until the crops were ready to be picked again. This program was cynically employed to create a reserve pool of temporary laborers who had few rights and no vesting of equities.

By 1946, the circulation of bracero labor, both in its certification and its deportation mechanism, had become hopelessly confused. It became impossible to separate Mexican Americans from deportable Mexicans. Many United States citizens were mistakenly "repatriated" to Mexico, including men with Mexican features who had never been to Mexico.³³ Thus, a system of "drying out wetbacks" was instituted. This modest legalization process gave some Mexican braceros an opportunity to regularize their immigration status and remain in the United States while they worked as braceros.

In 1950, under these various mechanisms, 20,000 new braceros were certified, 97,000 agricultural workers were dehydrated, and 480,000 old braceros were deported back to Mexico. In 1954, over one million braceros were deported under the terms of "Operation Wetback," a "Special Mobile Force" of the Border Patrol. The program included massive roundups and deportations, factory and field raids, a relentless media campaign designed to characterize the mop-up operation as a national security necessity, and a tightening up of the border to deter undocumented immigration.

Conclusion and My Grandfather's Memories

In two of his books based on folktales from Tierra Amarilla, New Mexico, the writer Sabine Ulibarri has re-created the Hispano-Indian world of rural, northern New Mexico. In *Cuentos de Tierra Amarilla* (Tales from Tierra Amarilla),³⁴ he collects a variety of wonderful tales, rooted in this isolated town that time has not changed, even today. My grandfather enjoyed this book, which I read to him in his final years, 1981 and 1982. But his favorite (and mine) was Ulibarri's masterwork, *Mi Abuela Fumaba Puros* (*My Grandmother Smoked Puros* [Cigars]),³⁵ in which an old woman lights cigars in her house to remind her of her dead husband.

My grandfather loved this story, not only because it was by his more famous *tocayo*, but because it was at once outlandish (“*mujeres en Nuevo Mexico no fumaban puros*”—that is, women in New Mexico did not smoke cigars) and yet very real. Smells were very real to him, evocative of earlier events and cuentos, the way that tea and madeleines unlocked Proust’s prodigious memory.³⁶ Biscochitos evoked holidays, and empanadas Christmas. Had he outlived my grandmother, he would have had mementos in the house, perhaps prune pies or apricot jam.

My grandfather’s world, with the exception of his World War I sortie in Texas and abroad, was small but not narrow. He lived by a code of behavior, one he passed to his more fortunate children (only one of whom still lives in New Mexico—my father) and grandchildren (most of whom no longer live in New Mexico). But for me, no longer in New Mexico, reading Derrick Bell’s *Chronicles* is like talking to my grandfather or reading Sabine Ulibarri; the stories are at once outlandish, yet very real.

Folklore and corridos [ballads] have always held a powerful place in Mexican society. Fiction has always held a powerful place in the human experience, and the *Chronicles* will inform racial jurisprudence and civil rights scholarship in the United States in ways not yet evident. Critical minority renderings of United States racial history, immigration practices, and labor economy can have equally compelling results, however, recounting what actually happened in all the sordid details. If Derrick Bell’s work forces us to engage these unsavory practices, he will have performed an even greater service than that already attributed to him in this forum and elsewhere. He will have caused us to examine our grandfathers’ stories and lives.

It is 1990. As a deterrent to Central American refugees and as “bait” to attract their families already in the United States, the INS began in the 1980s to incarcerate undocumented adults and unaccompanied minors in border camps.³⁷ One, near Brownsville, Texas, was once used as a United States Department of Agriculture pesticide storage facility.³⁸ The INS has defied court orders to improve conditions in the camps,³⁹ and by 1990 hundreds of alien children were being held without health, educational, or legal services.⁴⁰ Haitian boat persons were being interdicted at sea, given “hearings” on the boats, and repatriated to Haiti; by 1990, only six of 20,000 interdicted Haitians had been granted asylum.⁴¹ The INS had begun a media campaign to justify its extraordinary practices on land and on sea. The cycle of United States immigration history continued, and all was ready for the Space Traders.

NOTES

1. L. Graglia, Book Review, 5 CONST. COMM. 436, 437 (1988) (reviewing D. BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987)).

2. See, e.g., Derrick Bell, *After We’re Gone: Prudent Speculations on America in a Post-Racial Epoch*, chapter 1, this volume (“Blacks and their white

supporters challenged these procedures in the courts, but their suits were dismissed as 'political questions' that must be determined by co-equal branches of government").

3. See Rennard J. Strickland & William M. Strickland, *The Court and the Trail of Tears*, SUP. CT. HIST. SOC'Y 1979 Y.B. 20 (1978).

My grandfather had many stories about Indians, mostly about how they had been bilked out of their land and tricked by Anglos. His familiarity with Native Americans was with the various Pueblo peoples, whose lands are predominantly in Northern New Mexico, as well as Navajos and Apaches (Mescalero and Jicarilla). I clearly remember him taking me and my brothers to the Santa Fe Plaza (the "end of the Santa Fe trail") and showing us a plaque in the Plaza commemorating the commercial triumphs over the "savage" Indians.[sic] Years later, someone scratched out the offensive adjective and the State felt compelled to erect another, smaller sign next to the plaque, explaining that the choice of words was a sign of earlier, less-sophisticated times, and that no insult was really intended.

My grandfather, for one, never intended insult, and would have approved of the scratching. He taught us that Indians were good people, excellent artists (he would point to the Indian women selling their jewelry on the sidewalks in front of the Palace of the Governors), and generally preyed upon by the world-at-large. Interestingly, he held a very strong devotion both to Mary, La Senora de Guadalupe, the Mexican-Indian veneration, and to Mary, La Conquistadora, the New Mexican-Spanish veneration representing the Conquest over the Indians. My grandparents' house had vigil lights, pictures, and figurines in both Hispanic traditions, and the incongruity never occurred to me then. In addition to the Plaza walks, he would take us as he tended the gravesite of his daughter who had died as a baby. The cemetery plot was a couple of hundred yards from an Indian school and church (St. Catherine's), where he would often choose to pray for his daughter. In any event, my grandfather was, for his day, generous toward and supportive of Indians.

4. William F. Swindler, *Politics as Law: The Cherokee Cases*, 3 AM. INDIAN L. REV. 7 (1975); see also Strickland & Strickland, *supra* note 3, at 22 (recounting history of bitter disagreements over role of Supreme Court).

5. See Strickland & Strickland, *supra* note 3, at 22; see also M. WARDELL, *A POLITICAL HISTORY OF THE CHEROKEE NATION* (1938, reprinted in 1977).

6. See, e.g., Strickland & Strickland, *supra* note 3, at 21; R. Strickland, *From Clan to Court: Development of Cherokee Law*, 31 TENN. HIST. Q. 316 (1972).

7. See generally WARDELL, *supra* note 5; Strickland & Strickland, *supra* note 3, at 20-22.

8. Indian Removal Act, 4 Stat. 411 (1830).

9. 30 U.S. (5 Pet.) 178 (1831). Richard Peters, the official Supreme Court reporter at that time, gathered all the arguments, briefs, and opinions into a single volume, *THE CASE OF THE CHEROKEE NATION AGAINST THE STATE OF GEORGIA* (1831) (cited in Strickland & Strickland, *supra* note 3, at n.19).

10. 31 U.S. (6 Pet.) 515 (1832).

11. 30 U.S. (5 Pet.) 181 (1831).

12. 31 U.S. (6 Pet.) 515, 560 (1832).

13. In November, 1832, South Carolina attempted to secede and “nullify” its membership in the Union. President Jackson issued his Nullification Proclamation, insisting that states could not secede. Faced with this crisis, even staunch Indian supporters rushed to Jackson’s side in favor of the Union. *See, e.g.,* Joseph C. Burke, *The Cherokee Cases: A Study in Law, Politics, and Morality*, 21 STAN. L. REV. 500 (1969); Strickland & Strickland, *supra* note 3, at 28–29.

14. *See* G. JAHODA, *THE TRAIL OF TEARS, 1813–1855* (1975) (Georgia officials anticipated Jackson’s nonenforcement); *see also* Strickland, *supra* note 6, at 326.

15. *See* *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (invalidating city health ordinance applied only to Chinese).

16. *See* *Ling Sing v. Washburn*, 20 Cal. 534 (1862) (striking down “capitation” tax on Chinese). *See generally* RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE* (1988) (discussing immigration and labor history of Asians).

17. *See* *Chy Lung v. Freeman*, 92 U.S. 175 (1875) (striking down California Commissioner of Immigration’s authority to admit aliens); *People v. Downer*, 7 Cal. 170 (1857) (striking down state tax on Chinese arrivals).

18. *See* *Ho Ah Kow v. Nunan*, 5 Sawyer 552 (C.D. Cal. 1879).

19. Charles L. McClain, Jr., *The Chinese Struggle for Civil Rights in Nineteenth-Century America: The First Phase, 1850–1870*, 72 CALIF. L. REV. 529 (1984). For a review of recent evidence that Asians remain discriminated against, despite high statistical achievement, *see Asian and Pacific Americans: Behind the Myths*, CHANGE, Nov.–Dec. 1989 (special issue).

20. *See* 22 Stat. 826 (1880) (revising 1868 treaty to suspend Chinese immigration).

21. 22 Stat. 58 (1882) (suspending Chinese immigration for ten years and establishing Chinese certificate requirement).

22. *See* 23 Stat. 115 (1884) (making certificate mandatory for Chinese entry into U.S.).

23. *See* 25 Stat. 476 (1884) (rescinding right of Chinese to re-enter U.S., even if they had entry certificates; stipulating “punishment to master of vessel unlawfully bringing Chinamen [sic]”).

24. *Chae Chan Ping v. United States*, 130 U.S. 581, 609 (1889) (“The Chinese Exclusion Case”).

25. *See* 27 Stat. 25 (1892).

26. *See* *Fong Yuc Ting v. United States*, 149 U.S. 698 (1893).

27. *See id.* at 731.

28. *Id.* at 730 (citing *Chae Chan Ping v. United States*, 130 U.S. 581, 598 (1889)).

29. P. TAYLOR, *MEXICAN LABOR IN THE UNITED STATES IMPERIAL VALLEY* 42 (1928).

30. *See, e.g.,* R. DIVINE, *AMERICAN IMMIGRATION POLICY, 1924–1952*, at 58, 59 (1957).

31. *See* A. HOFEMAN, *UNWANTED MEXICAN AMERICANS IN THE GREAT DEPRESSION: REPATRIATION PRESSURES, 1929–1939*, at 126 (1974); A. Hoffman, *Mexican Repatriation Statistics: Some Suggested Alternatives to Carey McWilliams*, 1972 W. HIST. Q. 391.

32. See, e.g., J. R. GARCIA, OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954, at 18–69 (1980).

33. See MARIO BARRERA, RACE AND CLASS IN THE SOUTHWEST: A THEORY OF RACIAL INEQUALITY 104–07 (1979).

34. S. ULIBARRI, CUENTOS DE TIERRA AMARILLA (1971). Sabine Ulibarri, also a native of Tierra Amarilla, told me he had known of my grandfather because the town was small and because their names were so similar. My grandfather, who never met Ulibarri (who was 20 years younger), called him his *tocayo* (namesake).

35. S. ULIBARRI, MI ABUELA FUMABA PUROS (1977).

36. See M. PROUST, REMEMBRANCE OF THINGS PAST (rev. ed. 1981).

37. See, e.g., U.S. COMMITTEE FOR REFUGEES, REFUGEES AT OUR BORDERS: THE U.S. RESPONSE TO ASYLUM SEEKERS (1989) (critical report on detention policies in South Texas); ABA COORDINATING COMMITTEE ON IMMIGRATION LAW, LIVES ON THE LINE: SEEKING ASYLUM IN SOUTH TEXAS (1989) (critical report on legal services available to detainees in South Texas).

38. Author's observation during a personal visit to South Texas in the summer of 1989; also based on discussions with El Proyecto Libertad attorney (private immigration legal assistance program), Madison, Wisconsin, October, 1989.

39. See *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488 (D. Cal. 1988) (INS officials must not only refrain from placing obstacles in way of communication between detainees and their attorneys, but are obligated to affirmatively provide detainees with legal assistance); *Orantes-Hernandez v. Thornburgh*, No. 82-1107 (D. Cal. 1989) (INS not in compliance with earlier court order). See also *Ramos v. Thornburgh*, No. TY89-42-CA (E.D. Tex. 1989) (requiring INS to treat Salvadoran asylum claims as "having established a substantial likelihood of success on the merits," when INS had characterized claims as "frivolous").

40. See, e.g., U.S. COMMITTEE FOR REFUGEES, *supra* note 37; ABA COORDINATING COMMITTEE, *supra* note 37.

41. See U.S. COMMITTEE FOR REFUGEES, *supra* note 37, at 12–13.