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Immigration, Imperialism, and the Legacies of Indian Exclusion

Sherally Munshi*

In April of 1914, a few hundred men and women in Calcutta boarded a ship bound for Vancouver, though British Canada had recently enacted a law that would prevent the ship's passengers from landing.¹ As the ship, the *Komagata Maru*, steamed its way across the Pacific, officials in Vancouver braced themselves for its arrival. For Canadian officials, this would be the first refusal of its kind. When the *Komagata Maru* finally reached the harbor, on May 3, immigration officers refused to allow the ship to dock.² Vancouver police patrolled the waters and the shores to ensure that no Indian passengers left the ship. After two months of political brokering among officials throughout the British Empire, exhaustive legal challenges, and an attempt to forcibly remove the ship and its passengers—an attempt which the passengers resisted by hurling bricks—all but a few of the ship's passengers, never having set foot on Canadian ground, were forced to return to India. On their return journey, the passengers, now convinced that Indians would never enjoy the same rights as other subjects within the British Empire, vowed to put an end to British imperialism and to establish a free and independent India.³

Lala Lajpat Rai, an early leader of the movement for Indian independence, living in exile in the United States, wrote upon the conclusion of the *Komagata Maru* affair:

A shipload of Indians is not, superficially, a matter of much importance, and yet it is not impossible that if we could see the

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1. See JOAN JENSEN, *PASSAGE FROM INDIA* 130-138 (1988); MAIA RAMNATH, *HAI TO UTOPIA: HOW THE GHADAR MOVEMENT CHARTED GLOBAL RADICALISM AND ATTEMPTED TO OVERTHROW THE BRITISH EMPIRE* 3-4, 4-49 (2011); SEEMA SOHI, *ECHOES OF MUTINY: RACE, SURVEILLANCE & INDIAN ANTICOLONIALISM IN NORTH AMERICA* 134-151 (2014).

2. See RAMNATH, *supra* note 1, at 48.

3. See *id.*

events of our time through the eyes of the historian of 2014, we should find that quite the most significant thing to be seen in the world today is the *Komagata Maru*, with its [376] Hindus aboard, that lies at Victoria, British Columbia. It is a challenge thrown down, not only to the British Empire, but to the claim of the white man to possess the earth.⁴

Notwithstanding Rai's prediction, after the hundredth anniversary of its journey, the *Komagata Maru* has all but disappeared from political memory and legal consciousness in the United States.⁵ If we are to look back, however, we would discover, as Rai anticipated, that the journey undertaken by the passengers aboard the *Komagata Maru* played a significant but under-appreciated role in the two world-defining events of the twentieth century—the dissolution of empires and the proliferation of nation-state borders.

Historians have recognized that the *Komagata Maru* affair played a critical role in galvanizing the transnational movement to end British imperialism in India. But what is perhaps less appreciated is the exemplary role that the *Komagata Maru* affair played in closing borders to exclude Indian immigrants—not just from Canada, but the United States and from white-settler territories across the globe. For Rai, the passengers aboard the *Komagata Maru*, in waging their challenge to Canadian immigration law, exposed a line of continuity between forms of imperial expansion, which dominated in the nineteenth century, and the practice of immigrant exclusion, emerging at the beginning of the twentieth.

Writing at the eve of the European world war, as decolonization movements in Asia and Africa gained in momentum, and as the New World nations began closing their borders, Rai observed that while the world was changing, one thing remained constant: “the claim of the white man to possess the earth.”⁶ In the same essay, Rai wrote that “the dread of the Asiatic is the dominant fact in the world today, and it will largely govern the politics of the twentieth century.”⁷ In his pronouncement, we hear the distinct echoes of W.E.B. Du Bois's more famous prophesy, one that should sound familiar to most students of American history: “the problem of the twentieth century is the problem of the color line.”⁸

4. LALA LAJPAT RAI, *Indians and Canada*, in *THE STORY OF MY LIFE* 40, 40–41 (1978) (internal citations omitted).

5. While the *Komagata Maru* affair, among other campaigns against “Hindus” across the Pacific Northwest, largely receded from public memory in the United States, Canadian Sikhs have long demanded a formal apology from the Canadian government. In April of 2016, Prime Minister Justin Trudeau announced that he would make a formal apology in the House of Commons. See Adrijia Roychowdhury, *Simply Put: In Canada's Justin Trudeau apology for Komagata Maru, an attempt to heal a century-old scar*, *THE INDIAN EXPRESS* (April 14, 2016), available at <http://indianexpress.com/article/explained/justin-trudeau-komagata-maru-in-the-apology-for-komagata-maru-an-attempt-to-heal-a-century-old-scar/>.

6. *Id.*

7. *Id.*

8. W.E.B. DU BOIS, *The Forethought: The Souls of Black Folk*, in *W.E.B. DU BOIS: WRITINGS*

Though the formulation appears most famously in his autobiographical masterwork, *The Souls of Black Folk*, Du Bois spoke of the problem of color line well before its publication, before the convening of the first Pan-African Congress in London in 1900.⁹ The Congress was a convening of primarily artists and intellectuals of the African diaspora, but there was at least one representative of the decolonization movement in India. Lajpat Rai was not among those in attendance at the London conference, but he and Du Bois would later develop a friendship and sustain a long and productive exchange.¹⁰

Du Bois's formulation of the color line is often thought to have defined the racial justice movement that culminated in the civil rights reforms of the 1960s. Those reforms, however, did not exhaust Du Bois's expansive vision of social justice, nor did they fully embrace the global scope of Du Bois's vision. Du Bois, like many of his contemporaries, saw that the problems faced by African Americans in the United States were connected to those faced by "the darker races" in other parts of the world through histories of European imperialism—through histories of enslavement and colonization, forced migration and exploitation. So did he recognize that the world war had its origins in the long history of European exploitation of African peoples and lands?¹¹ Throughout his life, as he devoted himself to championing his vision of postcolonial internationalism, Du Bois maintained that the race problems of the United States were but "a local phase of the world problem": "The color line belts the world."¹²

Rai's anticipation that the "dread of the Asiatic" would define the twentieth century, of course, plays upon Du Bois's theme of the color line, but it brings into focus a particular twentieth-century development:

359 (1986).

9. The speech Du Bois delivered to the Congress, entitled "To the Nations of the World," began with these words: "In the metropolis of the modern world, in this closing year of the nineteenth century there has been assembled a congress of men and women of African blood, to deliberate solemnly upon the present situation and outlook of the darker races of mankind. The problem of the twentieth century is the problem of the colour line, the question as to how far differences . . . are going to be made, hereafter, the basis of denying to over half the world the right of sharing to their utmost ability the opportunities and privileges of modern civilization." W.E.B. Du Bois, *To the Nations of the World*, in W.E.B. DU BOIS: A READER 639 (David Levering Lewis ed., 1995) (1900). See BRENT HAYES EDWARDS, *THE PRACTICE OF DIASPORA: LITERATURE, TRANSLATION, AND THE RISE OF BLACK INTERNATIONALISM* (2003); DORA AHMAD, *LANDSCAPES OF HOPE: ANTI-COLONIAL UTOPIANISM IN AMERICA* (2009).

10. Rai's *The United States of America: A Hindu's Impressions* (1916) is informed by long discussions with Du Bois. Similarly, Du Bois's understanding of the anticolonial movement in India, which he often reviewed in the pages of his *The Crisis*, was informed by his correspondence with Rai. Du Bois showed Rai drafts of his 1928 novella, *The Dark Princess*, imagining the romantic and revolutionary union of a black radical and Indian internationalist, who took the time to read it while leading a boycott against British rule in India. See AHMAD, *supra* note 9, at 12-14; 169-175; Homi Bhabha, *The Black Savant and the Dark Princess*, 50 *ESQ: A JOURNAL OF THE AMERICAN RENAISSANCE* 173 (2004).

11. See W.E.B. Du Bois, "The African Roots of War," *THE ATLANTIC MONTHLY* (1915), available at <http://www.theatlantic.com/magazine/archive/2014/08/the-african-roots-of-war/373403/>.

12. See W.E.B. Du Bois, *The Color Line Belts the World*, in W.E.B. DU BOIS: A READER 42 (David Levering Lewis ed., 1995) (1906).

immigrant exclusion. Rai observed that, for centuries, the European settler had travelled “far and wide [raising] his flag, usually the British flag, all over the great waste places of the globe, brushing little people aside”—“there was no question of asking leave of the natives.”¹³ For centuries, European powers had overseen and profited from the forced migration of enslaved Africans and Asian coolie laborers, but as soon as “the coloured man” began following white settlers to the New World, the new immigrants were shut out by borders. As Rai observed, “Wherever we look around the Pacific and the Indian ocean—New Zealand, Australia, California, Canada, South Africa—we see the English-speaking faces filled with disquiet raising their defensive walls higher and higher.”¹⁴ For Rai, Asian exclusion from the white-settler world was not merely an expression of racial instinct, but part of a common strategy for maintaining white supremacy in the aftermath of empire.

* * *

This Article explores the relationship between imperial formations and immigration controls by focusing on the exclusion of Indian immigrants from the white-settler world in the early twentieth century.¹⁵ Legal scholars in the United States have devoted considerable attention to histories of Chinese and Japanese exclusion but have largely overlooked the significant role that Indian immigration would play in transforming immigration law.¹⁶ Insofar as the existing scholarship on Indian immigration during this period has primarily focused on questions of racial categorization, the remarkably transnational character of Indian

13. RAI, *supra* note 4, at 42.

14. *Id.*

15. A note on terminology. Throughout this Article, I use the terms “India” and “Indian” to refer to individuals from the subcontinent for two reasons: first, because they were subjects of what was at the time British India, and second, to invoke the idea and imminence of a free and independent India—an India that Rai and his contemporaries helped to bring into being. U.S. officials tended to refer to people from India as “Hindoos,” invoking a civilizational discourse of difference. I have chosen not to use that term, among other reasons, because many Indian immigrants in the United States then as now did not identify as religious Hindus but as Sikhs. And while, today, “South Asia” or “South Asian” may be the preferred term to refer to the many nations and nationalities represented on the subcontinent, it is a relatively recent construction that conjures divisions that had not been drawn in the early twentieth century.

16. While the experience of Indian immigration to North America in the early twentieth century has been largely overlooked by legal scholars in the United States, it has been gaining the attention of scholars and writers working in a range of disciplines and media. *See, e.g.*, RAMNATH, *supra* note 1; SOHI, *supra* note 1; VIVEK BALD, *BENGALI HARLEM AND THE LOST HISTORIES OF SOUTH ASIAN AMERICA* (2013); HUGH J. M. JOHNSON, *THE VOYAGE OF THE KOMAGATA MARU: THE SIKH CHALLENGE TO CANADA’S COLOUR BAR* (2014); ALI KAZIMI, *UNDESIRABLES: WHITE CANADA AND THE KOMAGATA MARU* (2011); VIJAY PRASHAD, *THE KARMA OF BROWN FOLK* (2001); JASBIR PUAR, *TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES* (2007); and NAYAN SHAH, *STRANGER INTIMACY: CONTESTING RACE, SEXUALITY, AND THE LAW IN THE NORTH AMERICAN WEST* (2012). Others have begun to illuminate the remarkable experience of the first generation of Indian immigrants in the United States by collecting and digitizing archival materials. *See, e.g.*, SOUTH ASIAN AMERICAN DIGITAL ARCHIVE, <http://www.saadigitalarchive.org>; “Echoes of Freedom: South Asian Pioneers in California, 1899-1965, Library of the University of California at Berkeley”; DR. BHAGAT SINGH THIND, <http://www.bhagatsinghthind.com/index02.html> (a website devoted to the history of Bhagat Singh Thind); *BENGALI HARLEM*, <http://bengaliharlem.com> (Vivek Bald’s website associated with his book).

exclusion has largely escaped critical attention.¹⁷ As the United States closed its borders to Indian immigrants, it did so in concert and collaboration with other white-settler nations around the globe, including Canada, Australia, and South Africa. Thus, by situating the history of Indian exclusion from the United States against the backdrop of settler colonialism and decolonization, this Article seeks to widen the nationalist framework of American exceptionalism through which questions about immigration law and policy are often presented.

Until the turn of the twentieth century, there were relatively few restrictions on international migration. Through the late nineteenth century, European imperialism and white-settler colonialism were sustained by mass migration—both the voluntary migration of European settlers and the involuntary migration of enslaved and indentured laborers. After the abolition of slavery in the British Empire, more than three million Indians were transferred to European colonies across the globe—as indentured laborers. But it was the *voluntary*—rather than involuntary—migration of a few thousand Indians to the white-settler dominions of South Africa, Australia, and Canada that hastened the development of modern immigration controls, transforming what had long been recognized as a natural right to free movement into a “problem” that emerging nation-states would regulate with exclusive authority.¹⁸

Within the British Empire, Indian migration to the white-settler dominions posed a very specific problem. Since the mid-nineteenth century, the British government had promised its white-settler dominions greater rights to self-rule. The British government, denying Indians the same rights to self-rule, guaranteed that Indians would enjoy “equal protection” within the Empire.¹⁹ In the second half of the nineteenth century, as greater numbers of Indians began immigrating to South Africa, Australia, and Canada, those countries began to argue that their rights to self-determination were threatened by the free migration of Indian subjects. They argued that national sovereignty was meaningless if it did not include the right exclude unwelcome immigrants. As one Canadian

17. In his foundational scholarship, Ian Haney Lopez has explored the important role that immigration and citizenship laws have played in constructing racial identity in the United States, focusing in particular on the co-construction of Asiatic and white. See IAN HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996); Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. REV. 405, 405–483 (2005). Scholars in other disciplines have begun to trace the colonial dimensions of Asian Exclusion. See, e.g., EIICHIRO AZUMA, *BETWEEN TWO EMPIRES: RACE, HISTORY, AND TRANSNATIONALISM IN JAPANESE AMERICA* (2005); MARILYN LAKE & HENRY REYNOLDS, *DRAWING THE GLOBAL COLOUR LINE: WHITE MEN'S COUNTRIES AND THE INTERNATIONAL CHALLENGE OF RACIAL EQUALITY* (2008); ADAM MCKEOWN, *MELANCHOLY ORDER: ASIAN MIGRATION AND THE GLOBALIZATION OF BORDERS* (2008); Erika Lee, *The “Yellow Peril” and Asian Exclusion in the Americas*, 76 PAC. HIST. REV. 537 (2007); Seema Sohi, *Race, Surveillance, and Indian Anticolonialism in the Transnational Western US–Canadian Borderlands*, 98 J. OF AM. HIS. 420 (2011).

18. See Radhika Viyas Mongia, *Race, Nationality, Mobility: A History of the Passport*, 11 PUBLIC CULTURE 527 (2005).

19. See Government of India Act, 1858, 21 & 22 Vict. c. 106.

official insisted, Indian exclusion was not a “racial question” but a question of “national existence.”²⁰

Similarly, Asian migration to the United States in the late nineteenth century led to a vast expansion of federal immigration controls.²¹ Until then, the United States imposed few federal restrictions on the immigration of free people and generally honored “the inherent and inalienable rights of man to change his home and allegiance.”²² But with the arrival of substantial numbers of Chinese and Japanese laborers, those earlier commitments to “the rights of man” were gradually supplanted with an emerging discourse of the rights of the nation to defend its people and territory against the “encroachment” of others. That discourse would become enshrined in the *Chinese Exclusion Cases* where the Supreme Court recognized, for the first time, that the right to exclude new immigrants was itself constitutive of territorial sovereignty and national independence.²³

In the United States as among the British dominions, the legislative exclusion of Indian immigrants was articulated not in terms of racial supremacy but by national sovereignty. Almost as soon as Indian immigrants began settling in the United States, exclusionists sought to pass a “Hindu” exclusion bill modeled after the earlier Chinese Exclusion Acts. But, as in the British imperial context, the efforts of exclusionists were constrained by international concerns. The fact that Indians traveled

20. See Mongia, *supra* note 18, at 550 (citing Frank Oliver, Canada Minister of Interior, “Official Report of a Debate in the Canadian House of Commons on Asiatic Immigration,” *Proceedings A*, October 1914).

21. While my emphasis throughout this article is on the changes to immigration law precipitated by the arrival of Asian immigrants to the United States and other white-settler countries, it is worth noting that, since the founding of the United States, the federal government and individuals asserted control over the movement of various peoples. Aristide Zolberg has put it especially starkly: “Long before what is conventionally regarded as the beginning of national immigration policy, the Americans undertook to violently eliminate most of the original dwellers, imported a mass of African workers whom they excluded from the nation altogether, actively recruited Europeans they considered suitable for settlement, intervened in the international arena to secure freedom of exit on their behalf, elaborated devices to deter those judged undesirable, and eventually attempted to engineer the self-removal of liberated slaves, deemed inherently unqualified for citizenship.” ARISTIDE ZOLBERG, *A NATION BY DESIGN: IMMIGRATION POLICY IN THE FASHIONING OF AMERICA* 1-2 (2006). Gerald Neuman has also offered a very powerful corrective to the myth that national borders were open until the late nineteenth century, recovering the “lost century” of state restrictions on the movement of immigrants. See GERALD L. NEUMAN, *STRANGERS TO THE CONSTITUTION: IMMIGRANTS, BORDERS, AND FUNDAMENTAL LAW* (1996). While I do not want to overstate the claim that national borders were entirely open until the arrival of Asian immigrants, my assertion in this article is that Asian migration to the United States played a substantial role in the closing of the national border and reshaping conceptions of the nation-state, national identity, and territorial belonging—of which the federalization of immigration law is itself a part.

22. See *Chae Chan Ping v. United States*, 130 U.S. 581, 592 (1889) (citing the Burlingame Treaty of 1866 allowing for the migration of Chinese immigrants to the United States and recognizing the mutual benefit of immigration to both countries).

23. See *Fong Yue Ting v. United States*, 149 U.S. 698, 706 (1898); see also PETER H. SCHUCK, *CITIZENS, STRANGERS, AND IN-BETWEENS: ESSAYS ON IMMIGRATION AND CITIZENSHIP* 23 (1998) (observing that Chinese Exclusion transformed conceptions of both national identity and territorial sovereignty, in that “control over which strangers might enter was viewed as a powerful expression of the nation’s identity and autonomy—in a word, of its sovereignty”).

as British subjects as well as the rise of anti-colonial movements across the British Empire forced exclusionists in the United States to recast racial restrictions in other, less “offensive” terms. Eventually Congress passed a law barring immigration from an invented “Asiatic Barred Zone.”²⁴

The history of Indian exclusion from the white-settler world thus challenges settled wisdom about the diffusion of the contemporary nation-state form. Benedict Anderson has popularized the notion that the nation-state form evolved in Western Europe in the eighteenth and nineteenth centuries and was later adopted in the Americas, Asia, and Africa.²⁵ The account offered here unfurls a very different map, one that decenters Europe and foregrounds the closing of New World frontiers, while tracing the emergence of immigration controls to the collapse of empire-states. Through the common project of excluding Asian immigrants from their territories, the white-settler world began to redefine their political communities in terms of demographic identity and territorial sovereignty. Though legal scholarship on immigration often takes for granted the relative stability and conceptual priority of the nation-state, the nation-state is itself a relatively recent formation, one that took shape against the backdrop of world war and decolonization.

Parts I and II of this Article explore the history of Indian exclusion from the white-settler world, focusing on exclusion from Canada, in 1914, and from the United States, in 1917, respectively. Part III then turns from the legislative history of exclusion to the writing of Indians in the United States in the early twentieth century. These individuals suffered varieties of humiliation in the United States—ranging from racial insult, to government surveillance, to exclusion at the border—but their writing was not primarily concerned with memorializing those experiences. These writers compel our attention because, like Rai, they were critical observers and creative thinkers who sought to engage American audiences in their project of imagining a common post-imperial future. Many of the first Indian immigrants to come to the United States came as students eager to learn from America’s example. They compared their own campaign for national independence with the American Revolution and identified the United States as a model postcolony—an example for the rest of the decolonizing world to emulate. This initial identification gradually gave way to disillusionment, but it also gave way to alternative visions of freedom in a post-imperial future.

Rai imagined that a historian today would recognize the *Komagata Maru* to have been a pivotal event in world history, “a challenge thrown

24. See Immigration Act, H.R. 10384; Pub.L. 301; 39 Stat. 874. (Feb. 3, 1917); see also Sherrally Munshi, *Race, Geography, and Mobility*, 30 GEO. IMM. L.J. 245 (2016).

25. See BENEDICT ANDERSON, *IMAGINED COMMUNITIES* (1983). Postcolonial critics have convincingly argued that the nation-state form was adopted in the former colonies but “with a difference.” See, e.g., PARTHA CHATTERJEE, *THE NATION AND ITS FRAGMENTS: COLONIAL AND POSTCOLONIAL HISTORIES* (1993).

down, not only to the British Empire, but to the claim of the white man to possess the earth.” Part IV concludes by reversing the gaze. If Rai could witness the events of our time—characterized by the intensification of old nativisms, unprecedented inequality, refugee crises, and the proliferation of border walls—would he find the world to be so changed?

PART I.

EXCLUSION AND EMPIRE

When a few thousand Indian laborers arrived in Vancouver, in 1906, there was no clear precedent for excluding them.²⁶ Relevant immigration regulations were intended to promote the settlement of British colonies. In 1803, the British government enacted legislation to protect the safety of millions of British passengers travelling to the colonies.²⁷ When Canada became a self-governing dominion in 1867, it developed its own immigration policies, but these too were generally open-border policies oriented towards encouraging population growth, economic expansion, and interior settlement.²⁸ But the arrival of Indian laborers prompted officials in Canada to seek greater control over immigration. Constrained by guarantees of equal protection to Indian subjects of the British Empire, as well as a traditional respect for freedom of movement within the Empire, Canadian officials were forced to reformulate a policy of racial exclusion in apparently nondiscriminatory terms. After rehearsing arguments about lack of labor demand and humanitarian concern for Indian’s lack of climactic compatibility, Canadian officials eventually arrived at a clever geographic solution. But perhaps more importantly, the disavowal of an explicitly racial rhetoric was accompanied by the emergence of a territorial nationalism. Indian exclusion, Canadian officials insisted, was not a matter of racial preference or priority but increasingly a matter of national sovereignty.

A. An Imperial Quandary

Indian immigration to Canada exposed a tear at the seams of British imperial government. It exposed the untenable distinction between the white-settler dominions—Canada, Australia, South Africa and New Zealand—and the imperial colonies of Africa and Asia. Over the course of

26. See Mongia, *supra* note 18, at 531.

27. See Passenger Vessels Act, 53 Geo. 3 c. 56 (Eng.). As late as 1889, Prince Edward, the future King of England, spoke encouragingly of British emigration to the colonies, suggesting that “the Colonies offer happy and prosperous homes to thousands who are unable to gain a livelihood within the narrow limits of these islands, owing to the pressure of over-population and consequent over-competition. In transplanting them to our own Colonies instead of to foreign lands, they retain their privileges as citizens of this great Empire, and live under the same flag and the same sovereign.” And in the century leading up to the world war, more than 22 million men and women had left Britain for its colonies. See DANIEL GORMAN, *IMPERIAL CITIZENSHIP: EMPIRE AND THE QUESTION OF BELONGING* 178, 180 (2006) (citing a speech delivered to the Royal Colonial Institute).

28. See *id.*

the second half of the nineteenth century, the white-settler dominions had been extended greater rights to self-government. But India, recently transferred from company to crown rule in 1858, after the violent suppression of the first clamoring for independence, had not been extended the same privilege. Instead, in a proclamation issued that year, Queen Victoria promised that Indians, because they were not yet entitled to self-government, were especially entitled to “equal and impartial protection” from the British government.²⁹ According to the proclamation, Indians were citizens of the British Empire, and, as such, guaranteed the same rights as other citizens, including the right to travel and to resettle within any of the British territories. Thus the conflict: Canada may have wanted to exercise its right to self-government by excluding Indian immigrants, but it could not have done so without offending the Queen’s promise to her Indian subjects.³⁰ As one observer wrote, Indian immigration to Canada presented the Empire with a test: “There will either be one standard, or two, within the Empire of British subjects, interests and privileges. If the latter, then it must be based on race privileges or race superiority. Hence India is looking to Canada most anxiously as to her own present and future status.”³¹

The exclusion of Indians from Canada and other self-governing dominions presented another problem: while the imperial government regulated the migration of indentured laborers from India to the colonies, there was little precedent for regulating the migration of “free” people.³² The gradual abolition of slavery from the British Empire in the 1830s created a demand for labor in the colonies. Private companies were soon formed to meet that demand by facilitating the mass transfer of contract laborers from India to plantation colonies in the Americas and islands across the Indian Ocean.³³ The practice immediately drew criticism from antislavery activists who, pointing to widespread kidnapping, deception, and deadly work and travel conditions, argued that the practice violated principles of freedom and standards of decency.³⁴ Carefully navigating the tension between imperatives of free trade and free labor, on the one hand, and humanitarian concern for its colonial subjects, on the other, British officials gradually introduced mechanisms for monitoring the mass movement of Indian laborers throughout the Empire.³⁵

One of the first acts of law regulating immigration in the British Empire, the Indian Emigration Act XXI, was passed in 1838 to regulate the

29. Government of India Act 1858, *supra* note 19.

30. See Mongia, *supra* note 18, at 531.

31. See JENSEN, *supra* note 1, at 128 (quoting Nand Singh Sihra, “Indians in Canada,” in VANCOUVER WORLD 144-146 (Dec. 11, 1908)).

32. See Mongia, *supra* note 18, at 529, 533.

33. See MCKEOWN, *supra* note 17, at 66-73.

34. See *id.*

35. See *id.*

conditions under which Indian migrants could *emigrate* “to labour for hire in some country beyond the limits of India.”³⁶ Though the regulation of “free” subjects—distinguished from enslaved subjects—was generally recognized to have “no foundation in existing law,” the break from established legal precedent was understood to be a “humanitarian” necessity for the protection of Indian subjects.³⁷ The Indian Emigration Act did nothing, however, to interfere with the scattered and less frequent travel of Indians who moved through the British Empire outside and independent of the state-monitored system of indentured migration. Nor did it establish any right to restrict the *immigration* of Indian subjects within the British Empire.

Attempts to introduce laws restricting Indian immigration in Canada were further complicated by previous efforts made in South Africa and Australia.³⁸ South Africa was unique among the white-settler dominions in that its Indian population consisted of both indentured and “free” migrants.³⁹ Indian nationalists were generally opposed to the system of indentured labor migration controlled by the British government, but the first attempts to restrict the “free” migration of Indian subjects to South Africa in 1895 enraged leaders of the nascent independence movement, including Mohandas Gandhi.⁴⁰ Given the reaction to discriminatory restrictions on migration to South Africa, officials in England encouraged colonial administrators there and elsewhere to exercise caution in designing their immigration policies and to avoid further inflaming anti-imperial sentiment.⁴¹

In 1896, Harry Escombe, Prime Minister of the Colony of Natal (contemporary South Africa), devised an artful mechanism for excluding undesirable immigrants, one that he had discovered in his study of the United States’s dealing with its race problems in the South and immigrant problems in the North—the literacy test.⁴² Prime Minister Escombe had modeled his proposed immigration reform on the United States’s Immigration Restriction Act, passed the same year with the support of

36. Indian Emigration Act XXI, No. 21 of 1883, PEN. CODE (India).

37. See Mongia, *supra* note 18, at 532.

38. See generally ROBERT A. HUTTENBACK, *RACISM & EMPIRE: WHITE SETTLERS AND COLORED IMMIGRANTS IN THE BRITISH SELF-GOVERNING COLONIES, 1830-1910* (1976); AUDIE KLOTZ, *MIGRATION AND NATIONAL IDENTITY IN SOUTH AFRICA, 1860-2010* (2013); ANDREW MARKUS, *FEAR AND HATRED: PURIFYING AUSTRALIA AND CALIFORNIA, 1850-1901* (1979).

39. See *id.* at 537.

40. See Indian Immigration Amendment Act 17 of 1895 (Natal) (S. Afr.); MOHANDAS KARAMCHAND GANDHI, *THE STORY OF MY EXPERIMENTS WITH TRUTH* 195 (Trans. Mahadev Desai, 1993).

41. See Mongia, *supra* note 18, at 537; LAKE & REYNOLDS, *supra* note 17, at 66.

42. Immigration Restriction Act 1 of 1897 (Natal) (S. Afr.). See also LAKE & REYNOLDS, *supra* note 17, at 131. The authors observe that Australian statesmen made careful study of the “Negro question” in the United States and warned that, unless Australia restricted migration, it too would be troubled by the “problem” confronting the United States—the problem of “two races so differently advanced” living in close proximity. *Id.* at 66 (citing James Bryce’s vast writing on *The American Commonwealth*).

anti-immigrant groups who resisted recent arrivals from Southern and Eastern Europe.⁴³ Introducing his proposed reform, the South African Prime Minister explained that “the great Republic of America has found it necessary to have recourse to that restriction, and I may say generally that the Bill that I now have the honor to submit to this Assembly is founded on the American Act. But it goes further.”⁴⁴ The American law required that new arrivals be able to read or write in their own language, but the Natal legislation, “to meet the requirements of Natal in connection with India,” prescribed that applicants must be able to read or write in a *European* language.⁴⁵

In the United States, the proposed literacy test was vetoed by President Grover Cleveland, who believed the law to be elitist and out of step with American tradition, but the “Natal compromise” was nonetheless held up for emulation by the British imperial government.⁴⁶ Before a number of colonial leaders gathered to honor Queen Victoria’s Diamond Jubilee, Prime Minister Neville Chamberlain encouraged exclusionists in Australia and Canada to model their own exclusionist policies after South Africa’s.⁴⁷ As he explained, the Natal formula would allow white-settler colonies to prevent an influx of “aliens” without offending “the traditions of the Empire, which make no distinction in favor of, or against, race or color.”⁴⁸ He continued:

It is not because a man is of a different color from ourselves that he is necessarily an undesirable immigrant, but it is because he is dirty, or he is immoral, or he is a pauper or he has some other objection which can be defined in an Act of Parliament, and by which exclusion can be managed with regard to all those whom you really desire to exclude . . . I hope therefore [that] it may be possible for us to arrange a form of words which will avoid hurting the feelings of Her Majesty’s subjects.⁴⁹

43. *See id.*

44. Marilyn Lake, *From Mississippi to Melbourne via Natal: the Invention of the Literacy Test as a Technology for Racial Exclusion*, in *CONNECTED WORLDS: HISTORY IN TRANSNATIONAL PERSPECTIVE* (Ann Curthoys & Marilyn Lake eds., 2006).

45. *Id.*

46. In 1896, Congress passed an immigration law requiring that anyone seeking entry to the United States be able to demonstrate literacy by reading 40 words in any language. The law, designed to restrict immigration from southern and eastern Europe, as well as Asia, had the broad support of legislators from the northeast as well as the west coast. But in 1897, the law was vetoed by President Grover Cleveland, who described the literacy test as “a radical departure from our national policy relating to immigration,” which, in his view, “welcomed all who came to us from other lands, except for those whose moral and physical condition or history threatened danger to our national welfare or safety.” *See President Grover Cleveland’s Veto Message of the Immigrant Literacy Test Bill* (March 2, 1897) in *US IMMIGRATION AND NATURALIZATION LAWS AND ISSUES: A DOCUMENTARY HISTORY* 81-83 (Michael C. Lemay & Elliott Robert Barkan eds., 1999).

47. *See* KLOTZ, *supra* note 38, at 72-97.

48. LAKE & REYNOLDS, *supra* note 17, at 132.

49. *Id.*

Soon after, in 1901, Australia adopted a literacy test modeled after the Natal formula.⁵⁰ The law, designed to exclude Asian immigrants, was one of the first laws passed by the newly formed commonwealth.⁵¹

Mohandas Gandhi, even after a decade of conflict with white settlers of South Africa, had maintained his faith in the imperial promise of equal protection for Indian subjects. But he did not fail to recognize or to point out to Prime Minister Chamberlain that “the Natal Act was passed with the deliberate intention of applying it almost exclusively to the Indians.”⁵² Gandhi and others saw through these thinly-veiled strategies of racial exclusion and had become impatient with the rhetoric of universalism and inclusion that obfuscated practices of differentiation and discrimination. Gandhi expressed his frustration with the government’s dissembling: “We do not know where we are or what we are to do.”⁵³

B. Experiments in Exclusion

As officials in England approached the “problem” of Indian immigration with diplomatic caution, nativists in the United States and Canada responded with more palpable anxiety. Almost as soon as Indian laborers began migrating to the Pacific Northwest, they were met with violence. In one of the most publicized incidents, in Bellingham, Washington, in 1907, a mob of five hundred men broke into lumber mills, pulled Indians from their work, robbed them of their possessions, and set fire to their bunk houses.⁵⁴ Indians were forced to the city jail, where police held them ostensibly for their own protection; others were driven to the city limits or marched onto trains headed for Canada.⁵⁵ Within ten days, a local newspaper reported, the community of a few hundred Indians had been successfully purged, “wiped off the map.”⁵⁶ A few weeks later, a crowd of over ten thousand in Vancouver protested the arrival of the *Monteagle*, a ship carrying 914 Indians on board, declaring Canada to be for Canadians.⁵⁷ When the ship arrived a week later, a still-angry mob filled the waterfront to block its landing. Through the days of rioting in Bellingham and Vancouver, newspapers in the United States and Canada emphasized the close relationship between white laborers in both countries. An editorial argued that, “in spite of political boundaries,” the shared threat posed by the migration of Indian laborers made the residents

50. Immigration Restriction Bill 1901 (Cth) (Austl.); MARKUS, *supra* note 38, at 228-233.

51. See MARKUS, *supra* note 38, at xi.

52. LAKE & REYNOLDS, *supra* note 17, at 132.

53. See *id.*; see also KLOTZ, *supra* note 38, at 92-96.

54. For a collection of newspaper clippings covering the Bellingham riots of 1907, see Seattle Civil Rights and Labor History Project, available at http://depts.washington.edu/civilr/bham_intro.htm.

55. See *Bellingham Sees the Last of the Hindus: Entire Colony is Wiped Off City Map, Last Leaving on this Morning's Owl Train*, THE REVEILLE 1 (Sept. 7, 1907), available at <http://www.wce.wvu.edu/resources/AACR/documents/bellingham/main/9.htm>.

56. See *id.*

57. See Sohi, *Race, Surveillance, and Indian Anticolonialism*, *supra* note 17, at 426.

of Canada and the Pacific Coast states “practically one people.”⁵⁸

The riots in Bellingham, Washington had caused 400 Indians to flee across the border to Canada “seeking the protection of the British Crown.”⁵⁹ Canadians then found themselves in the confounding position of having to extend asylum to fellow citizens of the empire, on the one hand, while devising a new racially restrictive immigration policy, on the other.⁶⁰ British officials conveyed that they would tolerate a carefully disguised mechanism of exclusion, but a literacy test like the one adopted in Natal would no longer be tolerated, given the way it had enraged Indian nationalists in South Africa and elsewhere.⁶¹ Canadian officials then began scrambling to find a legal solution—one that would effectively exclude Indians from Canadian territory, but, again, without appearing to run afoul of Britain’s promise of equal protection for its Indian subjects. They experimented with a series of rationales—reciting humanitarian concerns, physical unfitness, liability to become a public charge—before gradually evolving a workable method of exclusion.

Canadian officials tried to exclude Indians by exploiting the available “humanitarian” framework for regulating labor migration.⁶² In 1906, the Governor General of Canada sent a memorandum to the Secretary of State for the Colonies in London suggesting that the recent arrivals from India must have “doubtless come under misrepresentation as they are not suited to the climate, and there is not sufficient field for their employment. Many [are] in danger of becoming public charges and thus subject to deportation under law of Canada.”⁶³ The Governor General continued, “transfer of any people from a tropical climate to a northern one . . . must of necessity result in much physical suffering and danger to health.”⁶⁴

The Governor General’s concern for Indians’ climatic discomfort is striking for a number of reasons, but two are especially worth highlighting. First, though he does not make explicit reference to racial difference as the reason for excluding Indians, he plainly invokes the notion, popularized by race scientists, that “racial temperament” is determined by environment and that certain peoples belong in certain places and not elsewhere. Second, the climatic reasoning advanced by the Canadian official is curiously, though not coincidentally, resonant with

58. *Id.* at 425.

59. See Mongia, *supra* note 18, at 538 (citing Lord Grey, Governor General to Canada to Secretary of State for India (Sept. 24, 1907)).

60. More confounding still, anti-Asian organizations on either side of the U.S.-Canadian border openly demanded that their governments restrict immigration from Asia. See MCKEOWN, *supra* note 17, at 202; SOHI, ECHOES OF MUTINY, *supra* note 1, at 31-33.

61. See Ramnath, *supra* note 1, at 47; SOHI, ECHOES OF MUTINY, *supra* note 1, at 27; Mongia, *supra* note 18, at 537.

62. See Emigration Act XXI of 1883, *supra* note 36.

63. Mongia, *supra* note 18, at 534 (citing telegram forwarded from Secretary of State, London, to Viceroy of India (Nov. 19, 1906)).

64. *Id.*

arguments advanced by exclusionists in California a few years later. In 1910, a Representative from California sent a letter to the Commissioner General of Immigration, Daniel Keefe, explaining of Indians: "It must be remembered . . . that they come from a tropical country and from what I hear they cannot stand the rigors of a northern climate and on that account are bound to become burdens upon the communities to which they go."⁶⁵ What the congressman heard about Indians, he seemed to have heard from exclusionists in Canada, who made the same mistake in describing the immigrants' native region of northern Punjab as "tropical." Moreover, whatever the climatological rigors the Indians encountered in California, "northern climate" does not quite describe the Imperial Valley, in which most Punjabi workers settled. The wholesale repetition of the climatological reasoning that both Canadian and American exclusionists advanced to exclude Indians was not an accident but likely evidence of correspondence and cooperation between exclusionists on both sides of the U.S.-Canadian border.⁶⁶

After the London office rejected the climatological reasoning offered to justify Indian exclusion, in 1907 the Government of Canada recommended the implementation of a passport regime, one that would require Indians leaving India to obtain passports, which in turn would be required for entry in Canada.⁶⁷ This proposed passport regime resembled the arrangement established by the "Gentleman's Agreement" of the same year, through which Japanese and American officials would restrict the emigration of Japanese laborers through the issuance of passports. The Viceroy of India rejected the passport regime, acknowledging the "conciliatory attitude" with which Canadian officials "approached this difficult question," but maintaining that any restriction on emigration from India was both "opposed to our accepted policy" and likely to inflame "public feeling in India."⁶⁸

Finally, in 1908, Canadian officials landed upon a winning strategy: they would enact a law limiting travel to those who "come from [their] country of birth or citizenship by continuous journey."⁶⁹ The "continuous journey" provision, as it came to be known, was not discriminatory on its face, but in practice prevented everyone travelling from India from entering the country. At the time, there was no direct transit from India to Canada—the only routes offered by shipping companies included stops in

65. See Karl Douglas Hoover, *The Hindu-German Conspiracy in California in 1913-1918* 34 (1990) (unpublished Ph.D. dissertation, University of California at Berkeley) (on file with author) (citing California Representative Julius Kahn, himself an immigrant from what would become Germany).

66. See also JENSEN, *supra* note 1, at 163-193 (in exchange for information about Indian student activists in the United States, obtained through surveillance, British and Canadian officials assisted exclusionists in the United States in their effort to restrict immigration from India).

67. See Mongia, *supra* note 18, at 536.

68. Mongia, *supra* note 18, at 536-7.

69. See Act to Amend the Immigration Act, S.C. 1908, c33 (Can.).

Asia. As such, it was literally impossible for anyone in India to satisfy the “continuous journey” provision. The special brilliance of the law was not only that it effectively excluded Indians without naming them, but that it also blocked the small but especially despised minority of “re-immigrants,” laborers who had completed their terms of indenture in other parts of the Empire, from entering Canada. The “continuous journey” provision, together with a law requiring that Indians arrive with at least \$200 (to ensure that they would not later become public charges) effectively put an end to Indian immigration to Canada. In 1907 and 1908, a few thousand Indian immigrants entered the country; between 1909 and 1913, only 27 Indian immigrants entered the country—all of these, as returning residents.⁷⁰

C. Challenging Exclusion

Indians in other parts of the world protested the Canadian law and demanded its repeal. But these protesters were met with condescension, disregard, or were referred back to the language of the law, which had so ingeniously disguised its own purpose and effects. But in April of 1914, a few hundred men and women in Calcutta boarded a ship bound for Vancouver with the express purpose of challenging Canada’s new immigration restriction. The ship, the *Komagata Maru*, had been chartered by Gurdit Singh, a wealthy labor contractor in Singapore, who had already challenged laws in other parts of the Empire.⁷¹ Singh’s interest in challenging Canada’s immigration policy was political as well as commercial: Singh and his supporters dared Canadian officials to enforce what everyone recognized to be a discriminatory policy; at the same time, as shipping companies abandoned their routes from India to North America, Singh was also testing the opportunity to expand his own shipping business. The *Komagata Maru* made the usual stops in Asia—in Shanghai, Kobe, and Yokohama—picking up several other Indians and distributing protest literature along the way. When the ship finally reached Vancouver in May, Canadian officials hoped to find a reason to turn it away *without* invoking the continuous journey rule, but the ship’s papers were in order, everyone on board had been vaccinated and paid their tax. At the quarantine station, Gurdit Singh made his case to reporters: “We are British citizens and we have a right to visit any part of the Empire. We are determined to make this a test case and if we are refused entry into your country, the matter will not end there.”⁷² Notwithstanding the threat of further protest, immigration officials would not allow the ship to dock or its passengers to disembark.

70. See generally RAMNATH, *supra* note 1; Nand Singh Sihra, *Komagata Maru, Continuing the Journey*, <http://komagatamarujourney.ca/node/4453>.

71. See RAMNATH, *supra* note 1, at 47–48.

72. JENSEN, *supra* note 1, at 132 (citing MONTREAL STAR of May 23, 1914).

For three months, the *Komagata Maru* remained anchored in the harbor while Gurdit Singh and others negotiated with Canadian officials and exhausted all legal appeals. Singh had wanted the passengers to apply for a writ of habeas corpus rather than appear before the Immigration Board of Inquiry. His application for writ of habeas corpus was eventually brought before a carefully selected judge, sympathetic to exclusionists, who, predictably, refused the application. The case proceeded to a court of appeals. In a unanimous vote, the court of appeals, deferring to immigration authorities, decided that it had no jurisdiction to intervene. Canadian officials could proceed with legal deportation.⁷³ Officials ordered the ship captain to leave the harbor, but the passengers mutinied, throwing bricks and coal at police and militia as they attempted to climb aboard. A standoff continued for three days, before a navy ship was called in to escort the *Komagata Maru* out to sea. Thousands of Canadians crowded the shore and stood on rooftops to watch.⁷⁴

William Hopkinson, an officer of the Calcutta Police Department, an agent of the emerging British surveillance network dispatched to monitor the activities of Indian students living abroad, warned British authorities on three continents that the *Komagata Maru* affair was part of a larger “conspiracy headed by educated Indians living in the United States.”⁷⁵ One historian suggests that while Hopkinson may have exaggerated the role of Indians living in the United States, members of the energized Ghadar Party did not miss the opportunity to approach the passengers while docked in Vancouver.⁷⁶ As the *Komagata Maru* made its journey back to India, it spread the message of Ghadar—literally, mutiny—to Indians dispersed throughout the British Empire.⁷⁷

In India, the returning passengers were immediately apprehended by police, under the authority of the newly enacted Ingress of India Ordinance, a wartime emergency power that allowed for the entering subversives (radicalized returnees) to be arrested and detained without trial.⁷⁸ Several passengers resisted, eighteen were shot, twenty-eight fled, and most of the others were arrested. As news of the *Komagata Maru* affair reached the American west coast—and with Britain having declared war against Germany—leaders of the Ghadar movement amplified their calls for immediate and armed rebellion.

73. *Id.*

74. See JENSEN, *supra* note 1, at 135; see also KOMAGATA MARU: CONTINUING THE JOURNEY, <http://komagatamarujourney.ca/node/10812> (reproducing newspaper accounts of the *Komagata Maru*'s reception in Vancouver).

75. See RAMNATH, *supra* note 1, at 48.

76. *See id.*

77. *See id.* at 47-60.

78. Governor-General of India, A Collection of the Ordinances made by the Governor General of India from the Year 1865 to 1930, Ingress into India Ordinance, Ordinance No. V, 1914, Gazette of India (Sept. 5, 1914).

D. National Enclosure in the New World

The clumsy, indirect, and even shamefaced manner through which Canadian officials eventually succeeded in excluding Indian immigrants, illustrates just how unprecedented the practice of restricting “free” or voluntary migration seemed to imperial actors at the turn of the century. The restriction of voluntary migration, or the migration of free peoples, was almost entirely without precedent. Mass migration—of white-settlers as well as non-white migrants, both indentured and free—was a regular feature of the British empire-state through the nineteenth century. At the same time, the concept of borders posed no serious obstacle to the imperatives of colonial expansion or settlement. Du Bois put it ironically: “Europe has done more to break down national barriers than any preceding culture.”⁷⁹

It was the arrival of the Indians aboard the *Komagata Maru*—demanding their equal right to movement and entry—that led officials in Canada to assert that national independence required control over borders and the entry of new immigrants. Frank Oliver, Minister of the Interior, very clearly reframed the policy of Hindu exclusion more boldly as an assertion of national sovereignty:

The immigration law as it stands is a declaration on the part of this country that Canada is a mistress of her own house and takes the authority and responsibility of deciding who shall be admitted to citizenship and the privileges and rights of citizenship within her borders. . . . This is not a labor question; it is not a racial question; it is a question of *national dominance* and *national existence*. . . . [The *Komagata Maru* incident] is an organized movement for the purpose of establishing as a principle the right that the people of India, and not the people of Canada, shall have the say as to who may be accepted as citizens of Canada.⁸⁰

The outbreak of world war and the acceleration of decolonization movements perhaps lent credibility to the idea that the presence of these immigrants seriously threatened “national existence.” To be sure, the war supplied exclusionists with the rhetoric and reason of “national security,” which, as many contemporary critics observe, remains a powerful justification for immigration regulation, border control, and racial surveillance.⁸¹

The Indians aboard the *Komagata Maru* did not come as enemies, but as

79. See W.E.B. DU BOIS, *The Souls of White Folk*, in *DARKWATER: VOICES FROM WITHIN THE VEIL* 20 (1997).

80. See Mongia, *supra* note 18, at 550.

81. See generally SOHI, *ECHOES OF MUTINY*, *supra* note 1 (arguing that the surveillance and suppression of radical Indian movements at the turn of the century gave rise to not only policies of immigrant exclusion but a new trans-imperial discourse of national security); Jennifer M. Chacón, *Unsecured Borders: Immigration Restrictions, Crime Control, and National Security*, 39 CONN. L. REV. 1827 (2007).

British subjects claiming equality. As Lala Lajpat Rai observed, the journey made by those Indians challenged the authority of imperial rulers to determine who belonged where: “Everywhere [the white man] proceeded upon the assumption that [he] was born to possess the earth and that the coloured man was born to be his hewer of wood and drawer of water, used if he needed him and thrown aside if he did not.”⁸² Moreover, he recognized that British control over the movement of its colonial subjects was entirely consistent with the broader organization of the imperial economy, organized to enrich the metropolitan center at the expense of colonial peripheries:

[The Hindus] knock at the gate of Canada and ask for admission as a right of the British citizen to access any part of the British Empire. And British Canada has shut the gate in their face and declared that the British Empire will not allow the colored man to make his home within its borders. It does this on the most frankly *material* ground.⁸³

Rai’s criticism of Canada’s exclusion of Indian immigrants was framed by the now peculiar-sounding idiom of imperial citizenship, but he was prescient in recognizing that the challenge issued by the passengers aboard the *Komagata Maru* was a challenge “not only to the British Empire, but to the claim of the white man to possess the earth”—through the closing of national borders.⁸⁴

Around the same time, W.E.B. Du Bois took note of a new race-consciousness sweeping the globe. As he wrote, “the world in a sudden, emotional conversion had discovered that it is white and by that token, wonderful!”⁸⁵ Du Bois observed that this “discovery of personal whiteness” was, in part a response to what one Harvard eugenicist famously referred to as the “rising tide of color”—both the rising up of colonized peoples around the world, as well as the arrival of darker peoples to the shores of white nations.⁸⁶ “Wave on wave,” Du Bois wrote, “with increasing virulence, is dashing this new religion of whiteness on the shores of our time.” Redeploying the imagery often associated with Asian immigration—waves and tides, fear of invasion and inundation—Du Bois recognized that acceleration of decolonizing movements and the advent of Asian migration gave rise to shoring up of both white national identity and the boundaries of the nation-state. “But what on earth is

82. RAI, *supra* note 4, at 42–3.

83. *Id.*

84. RAI, *supra* note 4, at 42.

85. See DU BOIS, *supra* note 79, at 31.

86. In his essay, “*Souls of White Folk*,” Du Bois wrote, “[d]o we sense somnolent writhings in black Africa, or angry groans in India, or triumphant ‘Banzais’ in Japan? ‘To your tents, O Israel!’ These nations are not white.” See DU BOIS, *supra* note 79, at 31. Lothrop Stoddard wrote approvingly of “the instinctive and instantaneous solidarity which binds together Australians and Afrikaners, California and Canadians, into a sacred Union at the mere whisper of Asiatic immigration” and advocated immigration restrictions as a form of racial segregation on an international scale. See LOTHROP STODDARD, *THE RISING TIDE OF COLOR AGAINST WHITE WORLD SUPREMACY* 281 (1923).

whiteness that one should so desire it?" Du Bois asked. "[W]hiteness is the ownership of the earth forever and ever, Amen!"

Thus, both Rai and Du Bois anticipated that national boundaries and immigration restrictions would preserve the racial economy of imperialism *after* the dissolution of empire. National boundaries would provide a spatial solution to the problem that decolonization might have unleashed upon the new world order—the free movement of peoples from the colonial peripheries to the metropolitan centers. That is, as empires began to crumble into nation-states, as imperial hierarchies began to dissolve into the supposed equality among independent nation-states, the emerging international system of nation-states would play a critical role in preserving the distributional legacies of European imperialism. As Rai and other witnesses to the events of their time observed, national independence—defined as the right to self-rule in one's territory—was hardly compensation for the *material* crimes of imperialism—generally the transfer of wealth from the colonies to Europe. Insofar as the abstract equality among sovereign nations consisted in the mutual rights of territorial exclusion, the emerging international system of nation-states would continue to preserve the inequalities of the imperial era.

PART II.

EXCLUSION FROM THE UNITED STATES

As within the British context, exclusionists in the United States were constrained by diplomatic pressures to avoid giving "offense" to the governments of excluded peoples.⁸⁷ Americans were constrained not by the same promise of equal protection to imperial subjects but by concerns that expressly discriminatory legislation would worsen already fraught relations with China and Japan. Americans were also reluctant to trouble their Anglo-imperial allies by further inflaming the anti-imperial excitement spreading through the colonized world. The exclusion of Indian immigrants was further confounded by the apparently racial and legal status of Indian immigrants. Race scientists suggested that Indians belonged to the same racial family as European Americans, which gave pause to at least some lawmakers. The status of Indians was further confused by the fact that they traveled with the same rights as other British subjects. As in Canada, exclusionists succeeded in excluding Indian immigrants by replacing an offense rhetoric of racial restriction with a more elegant design of geographic segregation.

In many ways, Indian immigration to the United States had also confronted Americans with their ambivalence towards Anglo imperialism. Many of the first Indians to immigrate to the United States during this

87. This Part draws upon research and analysis presented in a companion article situating the history of Indian exclusion within a longer history of Asian Exclusion from the United States. See Munshi, *supra* note 24.

period identified with the American experience of declaring independence from England; and many Americans, in turn, identified with the movement for Indian independence. Still others worried that the free movement of racialized others was a danger to the “civilized nations.” New patterns of Indian immigration—through the American Philippines—also presented Americans with their own version of an imperial quandary. Would the inhabitants of the newly acquired territories—colonial possessions—enjoy the same rights as other Americans? Or would the growing American empire, like the British Empire, draw distinctions between its diverse territories and subjects?

A. The “Hindu Question”

As Indians began immigrating to the United States in larger numbers, congressmen from the western states were determined to pass a Hindu Exclusion bill, loosely modeled after the Chinese Exclusion Act of 1882.⁸⁸ In 1907, Congress established a special commission to investigate the patterns and effects of “new immigration” to the United States.⁸⁹ In 1910, the Commission published an exhaustive report, finding, among other things, that Hindus were “universally regarded as the least desirable race of immigrants thus far admitted to the United States.”⁹⁰ The Commission recommended that Congress pass a literacy test to exclude the least desirable among the new immigrants.

While a literacy test had been adopted to bar Asian immigrants from Australia and South Africa, the proposal remained controversial in the United States. In 1896, Congress had passed a bill requiring new immigrants to demonstrate literacy in their own language, but the bill was vetoed by President Cleveland. Charles Nagel, then Secretary of Commerce and Labor and an opponent of Indian immigration, criticized the proposed literacy test because, as he wrote, the real objection to Indians was not their illiteracy—as many Indian immigrants *were* literate—but their “character and physical condition.”⁹¹ John Raker, a newly elected Representative from California, railed at the Commission for recommending a literacy test, arguing that “[t]he real object and intent and promise was that there should be real exclusion of Asiatic laborers. This bill is not within the terms of that promise.”⁹² Moreover, he argued,

88. See JENSEN, *supra* note 1, at 139-143.

89. See *Restriction of Immigration of Hindu Laborers: Hearing Before the H. Comm. On Immigration and Naturalization*, 63d Cong. 37-64 (1914), <http://www.saadigitalarchive.org/item/20120113-581> [hereinafter 1914 Hindu Immigration Hearing].

90. IMMIGRATION COMMISSION, U.S. SENATE, REPORTS OF THE IMMIGRATION COMMISSION 349 (1911).

91. Arthur W. Helwig, *The Immigration Act of 1917: The Asian Exclusion Act*, in *ASIAN AMERICANS AND CONGRESS: A DOCUMENTARY HISTORY* (Hyung-Chan Kim ed., 1996), 152-184, 157 (citing letter from Nagel to President Howard Taft, November 8, 1910, *Taft Papers, Presidential Series 2*, file 77).

92. 49 CONG. REC. H2292 (daily ed. Jan. 30, 1913).

if the Committee had been serious about excluding Indian immigrants, it could have adopted a more exacting test, one that excluded “those who are unable to read in any *European* language,” adding, “the same as is the law now in Cape Colony and Australia.”⁹³

While the proposed literacy test floundered in Congress, congressmen from California introduced a series of measures aimed at restricting immigration from India. Representative Raker took up the cause of Hindu exclusion more aggressively by introducing two bills modeled after the Chinese Exclusion Acts—one simply excluding all Asians, another requiring the registration, thumb printing, and photographing of all Asian laborers, and deportation of any found without documentation.⁹⁴ But for a variety of reasons, these proposals failed to gain traction in Congress.

The exclusion of Indian immigrants was confounded, in part, by the indeterminate racial and legal status of Indians. While most lawmakers believed that Chinese and Japanese immigrants belonged to “a race so different from our own,” leading race scientists at the time insisted that Indians were descended from the same “Aryan stock” as European Americans.⁹⁵ As such, as Herman Scheffauer wrote in 1910, the coming “tide of turbans” raised a “new and anxious question”: if not on grounds of racial difference, how would Americans exclude “our brothers of the East?”⁹⁶ Moreover, Indians traveled as British subjects. As such, even the ardent exclusionists had to acknowledge that, “no legal bar under the present treaty can be set up against the coming of the Hindoos . . . they possess an undisputed right of entry to the United States.”⁹⁷ Insofar as the British government was less than entirely protective of its Indian subjects, either at home or abroad, many Americans were sympathetic to Indian immigrants, whom they embraced as political exiles.⁹⁸

Exclusion was further complicated by international developments, namely the rise of Japan as a military-industrial power in the Pacific and the intensification of decolonization movements in India and elsewhere. With its spectacular victory over Russia in the war of 1905, Japan had proven itself to be a serious rival to western powers in the Pacific, on the one hand, and a source of excitement to peoples throughout the colonized

93. *Id.*

94. The second of these bills would have amounted to extending the Geary Act of 1892—which required the registration and issuance of documentation to Chinese immigrants—to cover Japanese and Indian immigrants.

95. See *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting); *United States v. Bhagat Singh Thind*, 261 U.S. 204, 215 (1923) (acknowledging that European Americans and Indian immigrants may be descended from a “common ancestor,” while holding that Indian immigrants were ineligible for citizenship because they were not “white”).

96. Herman Scheffauer, *The Tide of Turbans*, *THE FORUM*, June 1910, at 616-618.

97. See *id.*

98. See JENSEN, *supra* note 1, at 159 (noting that President Woodrow Wilson, who wanted the United States to remain a place of political asylum, was deeply at odds with exclusionists in Congress and his own administration).

world.⁹⁹ With its growing stature, the Japanese government began to demand equal treatment for its nationals in the United States. The introduction of discriminatory legislation in California—including a measure that would have required Japanese children to attend segregated schools in San Francisco—had led the United States into tense conflict with Japan. Crisis was only averted by entering into the Gentleman's Agreement of 1907: President Theodore Roosevelt asked California to withhold from enacting anti-Japanese legislation; in turn, the United States and Japan agreed upon a passport regime through which Japan would limit Japanese emigration.

Exclusionists in the United States hoped that the British government might be willing to enter into a similar arrangement to restrict Indian emigration.¹⁰⁰ Under the terms of this informal gentleman's agreement, the British government would pass a law requiring Indians to carry passports; the United States, in turn, would refuse to admit any Indian traveling without a passport. Both the Immigration Bureau and the Labor Department favored the idea.¹⁰¹ Because South Africa and Australia had already enacted measures to exclude Indians, exclusionists in the United States believed that the British government would support such an arrangement.¹⁰² In fact, precisely because immigration restrictions in South Africa, Australia, and Canada had so outraged Indians on four continents, galvanizing the movement for national independence, the British government was reluctant to further implicate itself in policies discriminating against its Indian subjects. As within the British imperial system, exclusionists were constrained to formulate legislation that did not invoke racial hierarchy, "give offense," or otherwise invite international controversy.

B. Imperial Expansion and Immigrant Exclusion

While Congress declined to pass a Hindu Exclusion bill, the Bureau of Immigration adopted an informal policy of restricting the entry of Indian immigrants. In the words of one official, as early as 1910, the Bureau of Immigration had adopted a practice of especially "drastic application" of existing laws to exclude nearly half of all Indians seeking to enter the

99. See LAKE & REYNOLDS, *supra* note 17, at 168 (noting that even pacifist Gandhi was thrilled by the victory, writing that "the people of the East will never, never again submit to insult from the insolent whites").

100. See JENSEN, *supra* note 1, at 146.

101. See 1914 Hindu Immigration Hearing, *supra* note 89, at 49–50; Helwig, *supra* note 91, at 161.

102. See IMMIGRATION COMMISSION, *supra* note 90, at 44. Caminetti reported on the various methods that South Africa, New Zealand, Australia and Canada had adopted "to practically exclude Hindu immigration, of the laboring class, of course." Caminetti noted that the British government avoided giving the appearance of discriminating against its Indian subjects, but allowed its colonies to exclude Indians.

United States.¹⁰³ Immigration inspectors in Seattle began excluding all Muslims from entry on grounds that they were suspected polygamists.¹⁰⁴ Exclusionists were particularly delighted by the discovery that several Indian men inspected at Angel Island were found to be carrying hookworm, and, as such, might be excluded on grounds of public health.¹⁰⁵ Hookworm, newspapers reported, was more effective than Congress at stemming the tide of Indian immigration.¹⁰⁶ In a sinister echo of Du Bois's references to the global color line, Immigration Commissioner Anthony Caminetti explained to Congress that "hookworm practically belts the globe,"—echoing Du Bois's observation that the "color line belts the world."¹⁰⁷

Almost as soon as immigration authorities in San Francisco and Seattle adopted more aggressive screening practices, Indian immigrants sought to circumvent them by entering the United States through its newly acquired territories in Hawaii and the Philippines. Indian immigrants entered Hawaii and the Philippines without much scrutiny.¹⁰⁸ Plantation owners welcomed their labor, and Indian immigrants were able to establish U.S. residency within a few months.¹⁰⁹ In September of 1910, immigration officials in San Francisco were forced to admit twenty-five Hindus from Honolulu.¹¹⁰ Federal officials quickly responded by requiring immigrants in Hawaii to undergo a second examination before leaving Hawaii for the mainland. Immigration officials in Hawaii then began to deny Indian immigrants certificates to travel to the mainland.

A few months later, immigration officials in Seattle detained nineteen Indians who had travelled from the Philippines aboard the *SS Minnesota*.¹¹¹ An immigration inspector refused their entry, on grounds that the men were likely to become public charges. With the assistance of an attorney, the detained immigrants disputed the inspector's claim, calling upon the network of Indians living in the United States and Canada both to guarantee the new arrivals and to demonstrate that the new

103. See NAYAN SHAH, *CONTAGIOUS DIVIDES: EPIDEMICS AND RACE IN SAN FRANCISCO'S CHINATOWN 190-2* (2001).

104. *Id.*

105. See *id.* at 190.

106. See *id.* at 312 n. 44; 1914 Hindu Immigration Hearing, *supra* note 89, at 48-49.

107. In November of 1913, Immigration Commissioner Anthony Caminetti circulated to immigration inspectors a report showing that hookworm afflicts peoples living in countries lying in the southern part of the globe, including India, southern China, the Philippines, Egypt, Samoa, Mexico, Central America, the West Indies, and Puerto Rico. In South Africa and the southern United States, the presence of the disease is attributed to the importation of Africans during the slave trade. See 1914 Hindu Immigration Hearing, *supra* note 89, at 64.

108. See SOHI, *ECHOES OF MUTINY*, *supra* note 1, at 118; Sharmadip Bisu, *The Case of Twenty-Two Hindus* (June 16, 2014), SOUTH ASIAN AMERICAN DIGITAL ARCHIVE, available at <http://www.saadigitalarchive.org/tides/article/20140616-3592>.

109. See 1914 Hindu Immigration Hearing, *supra* note 89, at 42.

110. See SOHI, *ECHOES OF MUTINY*, *supra* note 1, at 118.

111. See *id.* at 108.

immigrants could easily obtain employment.¹¹² But more importantly, the men argued, the issue was not one of refusing entry but deportation: under existing immigration law, because the men had gained lawful entry in the Philippines, they had already been admitted to the United States. To travel from the Philippines to the mainland, they argued, was no different from traveling “from one section of our country to another.”¹¹³ Secretary Nagel, reviewing the case, reluctantly agreed, eventually admitting the detained immigrants into Seattle.

But the men aboard the *SS Minnesota* confronted Americans with their ambivalence towards imperial expansion, their own version of the imperial quandary that troubled British imperialism: would residents of the insular possessions enjoy the same rights to travel within the United States as other Americans residing on the mainland?¹¹⁴ Or would the growing American empire, like the British Empire, draw distinctions among its diverse territories and its subjects?¹¹⁵

Over the next few years, as Indian immigrants continued to seek entry in the western states by entering the United States through its colonial backdoor, immigration officials persisted in refusing them, or, as with the passengers aboard the *SS Minnesota*, on grounds that Indian immigrants were likely to become a public charge.¹¹⁶ Officials in the Bureau of Immigration and Labor Department appealed to shipping companies,

112. See *id.* at 118.

113. *Id.*

114. This is a version of the “insular question.” In a series of cases decided in 1901, generally referred to as the Insular Cases, the United States Supreme Court addressed versions of the question, “does the Constitution follow the flag?” Until the conclusion of the Spanish American War in 1898, when the United States acquired new overseas territories, the United States had generally followed the practice of admitting new territories as states of the Union. But the newly acquired territories of Puerto Rico, the Philippines, and Guam seemed “different.” As Efrén Rivera Ramos has written, “They were far away geographically, not contiguous to the continent, densely populated, unamenable to colonization on the part of Anglo-Americans and, above all, inhabited by alien peoples untrained in the arts of representative government.” EFRÉN RIVERA RAMOS, *THE LEGAL CONSTRUCTION OF IDENTITY: THE JUDICIAL AND SOCIAL LEGACY OF AMERICAN COLONIALISM IN PUERTO RICO* 75 (2001); see also *RECONSIDERING THE INSULAR CASES: THE PAST AND FUTURE OF THE AMERICAN EMPIRE* (Gerald L. Neuman & Tomiko Brown-Nagin eds., 2015) (exploring the legacies of the Insular Cases as well as their fundamental inconsistencies with constitutional and international legal principles).

115. At the conclusion of the Spanish American War, the inhabitants of acquired territories in Puerto Rico, the Philippines and Guam had not been granted citizenship, but were considered “American nationals,” which allowed them entry to the United States. In one of the Insular Cases, the solicitor general of the United States, referring to the effect of the Treaty of Paris on the Philippines, argued, “certainly the treaty never intended to make these tropical islands, with their savage and half-civilized people, a part of the United States in the constitutional sense, and just as certainly did make them a part of the United States in the international sense.” *De Lima v. Bidwell*, 182 U.S. 1, 138 (1901). As such, the relation between the Philippines and the U.S. mainland might be described as one of a differentiated form of territorial membership, further complicated, as in the case of Indian immigrants or lawful residents, by the movement of those with a differentiated claim to civic membership. See ROGERS M. SMITH, “THE INSULAR CASES, DIFFERENTIATED CITIZENSHIP, AND TERRITORIAL STATUSES IN THE TWENTY-FIRST CENTURY,” in NEUMAN & BROWN-NAGIN, *supra* note 114, at 104-109 (exploring the proliferation of differentiated forms of civic membership and territorial status in the present).

116. See, e.g., *In Re Rhagat Singh*, 906 Fed. 700, 702 (N.D. Cal. 1913).

asking them to voluntarily refuse to carry Indian laborers as passengers.¹¹⁷ They urged United States officials in the Philippines to inspect immigrants with the same rigor as did officials in the mainland.¹¹⁸ In 1913, officials in President Woodrow Wilson's administration succeeded in amending regulations to allow immigration officers at mainland ports to reject "aliens coming from insular possessions" who were likely to become a public charge.¹¹⁹ Almost as soon as they did, they learned that a number of Indians had reached Cuba and Panama with plans to enter the United States from its southern ports.¹²⁰ At a congressional hearing in February of 1914, Immigration Commissioner Anthony Caminetti explained that his office was doing everything within its power to exclude Indian immigrants. "Now the question is up to Congress . . . to pass a bill of some kind to reach this question, and then it will be settled once and for all. But the condition is urgent."¹²¹

C. Another Ground

In 1914, an American official, casting his gaze at Canada and other British dominions, all of which had begun to close their borders to Indian immigrants, asked, "[C]an we who are not connected by government ties or obligations with the Hindus, afford to do less for our people and country than those who are bound by a common citizenship under the Imperial Government?"¹²² He and others in the executive branches had grown weary of maintaining an implicit policy of Indian exclusion without clear legal authority. They wanted definitive legislative exclusion.

In the spring of that year, the House of Representatives convened a commission to revive proposals to exclude Indians. Immigration Commissioner Anthony Caminetti provided a report on Canada's continuous journey provision, assuring members of its success both at excluding Indian immigrants and avoiding giving offense.¹²³ Moreover, he warned, as Canada adopted measures to restrict immigration from India, the United States might soon have to address another stream of Indian immigrants, this time, entering the United States by crossing its northern border.¹²⁴

Among those who testified before the committee were two members of the Indian community in the United States: a businessman, Tishi Bhutia Kyawh Hla', and a professor of Indian civilization, Suhindra Bose. Both patiently addressed questions about the worthiness of Indian immigrants,

117. See 1914 Hindu Immigration Hearing, *supra* note 89, at 29; JENSEN, *supra* note 1, at 147.

118. See SOHI, ECHOES OF MUTINY, *supra* note 1, at 121.

119. See *id.* at 124.

120. 1914 Hindu Immigration Hearing, *supra* note 89, at 97.

121. *Id.*

122. JENSEN, *supra* note 1, at 154.

123. 1914 Hindu Immigration Hearing, *supra* note 89, at 38-39, 44.

124. *Id.* at 47-48.

disputing claims of racial inferiority, clannishness, and liability to become public charges. Both men were made to acknowledge that Indians had become the target of immigration restrictions within the British imperial system, but maintained that the restrictions adopted in South Africa, Australia, and Canada were unjust. When asked to explain the effect of Australia's literacy test, Bhutia explained, "the moral effect is that it ceases to be law."¹²⁵

Though Indians in the United States appealed to British officials for help, they received none. Instead of extending support to its subjects, the British extended unofficial support to exclusionists. In 1914, Caminetti corresponded with a British intelligence agent, William Hopkinson, charged with monitoring the activities of Indian nationalists in Canada. Hopkinson provided Caminetti with information about immigration enforcement and naturalization proceedings in Canada, to assist Caminetti in devising an exclusion policy in the United States. Caminetti, in turn, agreed to provide Hopkinson with information on the activities of Indian nationalists in California, to assist Canadian and British officials in their efforts to quash the growing movement for Indian independence.¹²⁶

Though the Commission generated no new legislation, the start of the world war in June of 1914 both hardened feelings towards immigration and gave new urgency to anticolonial radicals in the United States. In the years leading up to the start of the world war, exclusionists were spread across the United States but formed no political bloc. That began to change with the start of the war. At the same time, Indians in the United States and Canada, increasingly frustrated by their humiliating treatment, began to organize a movement to end British imperial rule in India. Just before the start of the world war, an unlikely coalition of student-exiles and laborers in California founded the Ghadar Party with the explicit goal of returning home to stage a rebellion. As leaders of the party suggested, the European war provided an opportune moment to challenge an overstretched imperial government. Within a few years, answering the call of the Ghadar Party, hundreds of Indians in the United States and Canada made the reverse journey to India. The circulation of radicalized Indians and their revolutionary ideals, in turn, provided pretext for both the United States and the British imperial government to restrict the mobility of Indians.¹²⁷

In 1916, Representative Raker reintroduced a version of the Hindu Exclusion bill, but in the end, it was another bill, introduced by another representative from California, Denver Church, that eventually passed into law in 1917.¹²⁸ The Church bill restricted Indian immigration not on the

125. *Id.* at 154.

126. See SOHI, *ECHOES OF MUTINY*, *supra* note 1, at 41, 90-91.

127. See Sohi, *Race, Surveillance, and Indian Anticolonialism*, *supra* note 17, at 12.

128. Immigration Act of 1917, Pub. L. No. 301, 39 Stat. 874 (Feb. 5 1917).

basis of identity—defined either in terms of race or nationality—but on the basis of geographic origin. As proponents of the Church bill explained, its main achievement over earlier bills was that it avoided making explicit reference to Hindus. One congressman explained that the State Department objected to that “form of words,” that it would be “extremely offensive to Japan,” and that “[t]herefore, instead of describing the excluded persons as ‘Hindus,’ the committee took the same people within geographic lines and excluded them.”¹²⁹ Though the word “Hindu” had disappeared from the text of the legislation, one congressman assured his colleagues, “the great body of the population [affected by the bill] is coming [from] British India.”¹³⁰

The Church bill would exclude anyone born within a geographically designated “Asiatic Barred Zone.”¹³¹ The perimeters of the barred zone were carefully drawn to avoid Japan—both to avoid antagonizing Japan and because immigration from Japan was already restricted by the Gentleman’s Agreement. More awkwardly, large parts of China were left out of the barred zone, but exclusion of anyone coming from China had already been established through the Chinese Exclusion Acts of the 1880s. Guam and the American Philippines, because they were “owned by the United States,” fell outside of the barred zone, but the 1917 Act also prohibited natives of the barred zone from entering the United States through its territories.¹³² Since immigration from much of Asia was already restricted by legislation or treaty, the only stream of immigration affected by the new law was from India—as Representative Church himself had certainly anticipated.¹³³

Before the bill was passed into law, a number of congressmen expressed their bewilderment at the veiled character of the proposed geographic exclusion. A representative from Wyoming complained that the proposed law “is not at all to the point because it would exclude men geographically

129. 54 CONG. REC. S221 (daily ed. Dec. 12, 1916) (comments of Sen. Lodge).

130. *Id.*

131. The barred zone covered the inhabitants of the swath of land stretching from Arabia and Afghanistan, across China, British India, French Indo-China, to the Central Asian portions of the Russian empire in the north, and the Polynesian Islands, most of them claimed as European colonies. See Immigration Act, Pub. L. No. 301, 39 Stat. 874 (1919).

132. Immigration Act, Pub. L. No. 301, 39 Stat. 874 (1919).

133. Though Representative Church devised a remarkably discrete form of racial exclusion, masked by lines and meridians, his own disgust towards Indian immigrants was expressed with tremendous volubility at an earlier hearing on the question of Indian immigration. He found Indians dirty; “they smell, and sometimes a person can hardly stand it”; their women “dressed like men”; they are “an eyesore to every man who has high ideals . . . [t]hey have no earthly excuse in dressing as they do other than to show they are Hindu[.] . . .” He blamed them for their own exclusion from public accommodations: “They . . . will not assimilate with other people . . . I never saw one go to a restaurant to eat. I do not think they do. . . . They do not go to lodging houses or to hotels. . . . If they would just adopt our style of clothing they would not be subjected to that exclusion. . . . They have no homes at all. When they live in a ranch, they occupy a bunkhouse.” He thought them ungovernable, prone to “disturbing the peace,” “drunkenness,” “sodomy”; they are “bound down by a strange religion”; “they cannot read in our language any more than a horse”; and the “oath means nothing to them.” 1914 Hindu Immigration Hearing, *supra* note 89, at 75-82.

and not racially.”¹³⁴ He added: “What we desire is not to exclude men by reason of their geographic location but to exclude certain races. . . . If we declare in plain language our purpose and intent [n]o one can be offended.”¹³⁵

Representative Raker, the force behind Hindu exclusion, sought to placate his fellow congressmen by convincing them of the relative advantage of the Asiatic Barred Zone provision. While it was always his purpose to exclude “Hindus . . . by name,” he found that, given international circumstances, by recasting exclusion in geographic terms, by “glossing it over, making it smooth so that it may be swallowed without naming anyone,” Congress had taken “another ground that will make it stronger . . . and we ought to make our laws sufficiently strong so as to prohibit and exclude all Asiatic laborers now so that there will be no question in the future.”¹³⁶ It is the Congressman’s confidence—that there would be no question in the future—that should goad us in the present.

PART III.

FUTURES PAST: IMAGINING OTHER WORLDS

Exclusion tends to dominate legal and historical narratives about Asian immigration to the United States in the early twentieth century. One problem with the exclusion narrative is that a few acts of Congress come to overshadow the myriad actions, expressions, and aspirations of the thousands who came to the United States—many of them with more expansive notions of freedom and democracy, America’s past and future, than many congressmen themselves could imagine. Exclusion narratives focus too narrowly on the actions of government, tending to reify the apparent givenness of the nation-state in its current configuration, effacing the contingencies that gave rise to its creation. In turn, they often render the nation-state a relative constant through history, permanent and immovable, resistant to the creative actions and political agency of individuals and collectivities.

Here, I seek to complicate prevailing narratives of Asian exclusion by turning our attention towards the aspirations of a set of Indian immigrants who lived and wrote in the United States in the early twentieth century. We might begin by recognizing that migration itself is always a political act, an act of self-determination, and an expression of individual freedom. Lisa Lowe uses the phrase “immigrant acts” to designate not only the actions of legislators but also the political challenge posed to state

134. See 54 CONG. REC. H160 (daily ed. Feb. 3, 1914).

135. *Id.*

136. 54 CONG. REC. H1492–93 (Jan. 16, 1917) (statement of Rep. John Raker).

imperatives by the actions of Asian immigrants.¹³⁷ Moreover, indifference towards the experience, the aspirations, and expression of individual immigrants tends to reinforce the assumption that *inclusion* is the natural or desired conclusion of every story of migration, that every immigrant comes to the United States already dreaming the American dream. But the journeys made by the first waves of Indian immigrants to the United States belie this assumption about immigrants' desires. By the time Congress passed the Immigration Act of 1917, barring further immigration from Asia, many Indians in the United States had already given up on making their home in the United States. Among the 20,000 who entered the United States, several thousand left with the start of the world war, anxious for the opportunity to return to a free and independent India, where they hoped to participate in the realization of an alternative dream.¹³⁸

A. The "Glorious Example" of the United States

Many of the first Indian immigrants to come to the United States, around 1910, came as students and political exiles, already active in the movement to end British imperialism. Writing for periodicals like the *Modern Review*, published in Calcutta and circulated to Indians across the empire, these students eagerly reported their observations about American ideas and institutions, encouraging their comrades at home to imagine a free and independent India modeled after the United States.¹³⁹

A later generation of immigrants wrote as much for American audiences as they did for co-nationalists. For instance, in his memoir, *My India, My America*, published in New York in 1941, Krishnalal Shridharani strained to synthesize and to reconcile the differences between his native and adoptive homes—as the title of his work conveys. Writing after the end of the First World War, the closing of national borders, the exodus of radicalized Ghadarites, Shridharani's purpose was to rehabilitate the image of India in the minds of Americans and to project a solidarity between the two nations.¹⁴⁰ Comparing the Indian nationalist movement to

137. In her seminal work, *Immigrant Acts: On Asian American Cultural Politics*, Lowe writes, "by insisting on 'immigrant acts' as contradictions and therefore as dialectical and critical, I also mean to emphasize that while immigration has been the *locus* of legal and political restrictions of Asians as the 'other' in America, immigration has simultaneously been the site of the emergence of critical negations of the nation-state for which those legislations are the expression. If the law is the apparatus that binds and seals the universality of the political body of the nation, then the 'immigrant' produced by the law as margin and threat to that symbolic whole, is precisely the generative site for the critique of that universality." See LISA LOWE, *IMMIGRANT ACTS: ON ASIAN AMERICAN CULTURAL POLITICS* 8 (1996).

138. See SHRIDHARANI, *MY INDIA, MY AMERICA* 501 (1941).

139. Even Lala Lajpat Rai, a ferocious critic of Canada and white-settler colonialism, admired elements of the American project—public education, most of all—which he recommended to his co-nationalists in India. In his Preface to *The United States of America*, a survey of American history and political institutions, published in Calcutta in 1916, Rai suggested that "the problems India faces are those that the United States has faced; India can learn from American experience." See LAJPAT RAI, *UNITED STATES OF AMERICA: A HINDU'S IMPRESSIONS AND A STUDY* iii (1916).

140. By the time of his writing, the Indian nationalist movement had evolved. It was no longer a

the American Revolution, Shridharani assured American readers, “we are doing nothing mischievous. We have the glorious example of the United States.”¹⁴¹

Shridharani asserted that the “bonds between America and India are more numerous than most Americans realize.”¹⁴² But the difficulty of naming and narrating those “bonds” is particularly striking. Shridharani traced these bonds to the American Revolutionary War: after fighting American revolutionaries in 1777, the British General, Charles Cornwallis, was dispatched to India, “to try his hand at other rebels”; and the “British Tea” that Bostonians boycotted was actually produced in India, “under a system that demanded not only Indian sweat but Indian blood.”¹⁴³ He explained that the contemporary Indian boycott of British-imported cotton and salt were themselves “based on the American doctrine of ‘no taxation without representation.’”¹⁴⁴ Then he went on to suggest that the “golden chain of coincidence with which history has linked the two great nations” can be traced all the way back to America’s “discovery.” As he wrote:

We Hindus take a pardonable pride in the fact that had it not been for us ‘undiscovered’ Indians, America would not have been the same America from 1492 on. It was Columbus’ eagerness to find out what we were doing and how much money we were making that gave him the idea of sailing the seas in the first place. He came and went in the New World, thinking all the time that he was looking at India ‘beyond the Ganges.’¹⁴⁵

What is startling about the “pardonable pride” that Shridharani describes—the supposed pride that Indians take in inciting the journey that led Columbus to “discover” the United States—is the total elision of that *other* “Indian,” the indigenous American.¹⁴⁶ Though Indians were not subject to the same genocidal violence as indigenous Americans, they had much more in common with indigenous Americans than the descendants of European colonizers, with whom Shridharani more readily identified.

fringe movement of stateless radicals dispersed across continents. Now under the charismatic leadership of Mohandas Gandhi, with his emphasis on non-violence and self-discipline, and Jawaharlal Nehru, with his secular liberal orientation, the movement for national independence in India had gained in both popular momentum and international prestige.

141. SHRIDHARANI, *supra* note 138, at 501.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* at 499.

146. In the past few years, scholars working across fields of indigenous studies, ethnic studies, and immigration law have begun to interrogate the relationship between the demand for inclusion issued by racialized immigrants, on the one hand, and the ongoing and unredressed violence of settler colonialism, on the other. “See generally, JODI A. BYRD, *THE TRANSIT OF EMPIRE: INDIGENOUS CRITIQUES OF COLONIALISM* (2011); CANDICE FUJIKANE & JONATHAN Y. OKAMURA, *ASIAN SETTLER COLONIALISM: FROM LOCAL GOVERNANCE TO THE HABITS OF EVERYDAY LIFE IN HAWAII* (2008); Leti Volpp, *The Indigenous as Alien*, 5 U.C. IRVINE L. REV. 289 (2015).

What Shridharani described as a “chain of coincidence” was not so much a “coincidence” as a mapping error—one that did not slow the course of imperial conquest, but widened its sphere. India and the United States were brought into relation hundreds of years earlier by the expansion of European imperialism—what Rai described as the movement to claim possession of the earth.

In other words, it is a badly misshapen analogy that identifies the American Revolution with the campaign for Indian independence. To identify the American Revolution as a model or a precursor to the national independence campaigns of the twentieth century is to confuse the experience of settler colonists in the New World with that of colonized subjects in Asia and Africa.¹⁴⁷ Moreover, it is to mistake “settler liberty” for postcolonial emancipation. As Aziz Rana has argued, in contemporary discourse, the abstract principles we tend to associate with the American Revolution and the Declaration of Independence have come to eclipse our understanding of the particular historical conditions that gave rise to them.¹⁴⁸

Returning to Shridharani, then, the idea of the United States held up for emulation is an incomplete and abstract idea, one that effaces the United States’s colonial past and present. To date the founding of the United States at the American Revolution is to disavow the histories of native dispossession, African enslavement, and colonial expansion across the continent and overseas that propelled the United States—with greater force than sheer pronouncement—to its position as leader of the free world by the early twentieth century. Shridharani’s identification of the United States as a model postcolony is thus striking for the ways in which it participates in and extends the fallacies of American exceptionalism—particularly the mistaken notion that, in claiming its independence from Britain, the United States made a radical and permanent break not only with a European past, but an *imperial* past.

Shridharani was not the only writer to participate in the myth of American exceptionalism. In his memoir, *Fifteen Years in America* (1920), Sudhindra Bose opens his study of American institutions by suggesting that the United States will lead the decolonizing world into “a

147. Settler colonialism, as Patrick Wolfe has suggested, has been defined by the elimination of indigenous populations. Colonialism in Asia and Africa, however destructive, cannot be described as genocidal in the same way as settler colonialism in the United States. Within the settler colonial experience, assertions of national independence were made against the governing metropolitan authority. These assertions were often made *after* settler communities were no longer dependent upon the metropolitan authority for military assistance in defending themselves against and eliminating native populations. In Asia and Africa, by contrast, assertions of national independence were the culmination of decolonization campaigns led by native populations demanding a withdrawal of colonial power from their territories. See Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. OF GENOCIDE RES. 387, 388 (2006); AZIZ RANA, THE TWO FACES OF AMERICAN FREEDOM 9 (2009).

148. See RANA, *supra* note 147, at 9.

new epoch.”¹⁴⁹ As he wrote, “In this historic epoch, the rising of India, as indeed the rest of the world, must turn to the United States for support and inspiration. Hindustan should know and study America—the people, the government, the scientific progress, the educational development, the gospel of energism of the New World.”¹⁵⁰ The post-imperial “world unity” projected here is only the proliferation of new nation-states, modeled after the example of the United States.¹⁵¹

W.E.B. Du Bois offered a striking counterpoint to this vision. Writing around the same time, Du Bois regarded the ascendance of the United States to the position of world leader not with admiration but with incredulity and outrage. Resisting the notion that the United States should become the leader of the free world, he wrote:

No nation is less fitted for this role. For more than two centuries, America has marched proudly in the van of human hatred—making bonfires of human flesh and laughing at them hideously, and making the insulting of millions more than a matter of dislike—rather a great religion, a world-cry. . . . Instead of standing as a great example as the success of democracy and the possibility of human brotherhood, America has taken her place as an awful example of the pitfalls and failures, so far as black and brown and yellow peoples are concerned.¹⁵²

Du Bois’s repudiation of the American example was informed by his more critical understanding of the American past and present. His repudiation of the American example also freed him to more fully embrace the instability of the present and the possibility of forging an alternative future. For instance, in his essay, “*The Souls of White Folk*,” addressed to the “Darker People of the World,” Du Bois observes that “in the awful cataclysms of World War, where from beating, slandering, and murdering us, the white world turned temporarily aside to kill each other.”¹⁵³ He added, “we of the Darker People looked on in mild amaze.”¹⁵⁴ Here, Du Bois shifts our focus from Europe to its colonial peripheries, conjuring into being a new political configuration, “we of the Darker People,” identified not only through the shared experience of past suffering, but in the present and simultaneous affirmation of possibility, in

149. SUHENDRA BOSE, *FIFTEEN YEARS IN AMERICA* iii (1920).

150. *Id.*

151. This is the modular nationalism of Benedict Anderson, through which the nation-state is originated in Europe and the United States and later adopted by the former colonies through study, repetition, and reproduction. See BENEDICT ANDERSON, *IMAGINED COMMUNITIES* (1983). Scholars of colonial and post-colonial history have been critical of Anderson’s assertion that the post-colonial world simply reproduced European-American forms. See PARTHA CHATTERJEE, *THE NATION AND ITS FRAGMENTS: COLONIAL AND POSTCOLONIAL HISTORIES* (1993). My observations here tilt the map somewhat to assert that the white-settler nations gave rise to a particular form of modern nation-statehood that would become a source of reference for the decolonizing world.

152. DU BOIS, *supra* note 79, at 50.

153. *Id.*

154. *Id.* at 60.

their collective longing for a new freedom and equality.

Scholars have written of a productive third world solidarity, of the kind anticipated by Du Bois, in the period after Indian independence and before the passage of civil rights legislation in the United States.¹⁵⁵ These scholars write, for instance, of the friendship between Paul Robeson and Jawaharlal Nehru and of Bayard Rustin's transformative visit to Gandhi's ashram. Shridharani himself is recognized to have played a significant role in the development of the civil rights movement in the United States in the late 1940s. While black radicals and pacifists had already taken notice of Gandhian practices of nonviolent resistance, Shridharani's *War Without Violence* would become standard reading for members of the pioneering civil rights organization, the Fellowship for Reconciliation.¹⁵⁶ Though Shridharani himself would become linked with an extraordinary group of activists who themselves connected the decolonization movements in Asia and Africa with the campaign for racial equality in the United States, these were not the "bonds" Shridharani attempted to delineate in his *My India, My America*. By identifying his cause not with that of the nation's minorities, but with the American Revolution, Shridharani and others seemed to forgo the visionary internationalism championed by Du Bois to embrace as their ideal independence in the form of nation-statehood modeled by the United States.

B. Inequality after Independence

Sudhindra Bose opened his first book on American life by announcing that he had "an unmeasured faith in the rich potentialities of American democracy."¹⁵⁷ Fifteen years later, when he published his second book, *Mother America*, Bose was far less admiring of American democracy.¹⁵⁸ For Bose, initial identification with the United States had been strained by a few intervening developments: the United States's expansion of imperial rule in the newly acquired territories; its entry into the world war as ally to imperial Britain; and the unmistakable resemblance between immigrant exclusion policies adopted in the United States and the white-settler dominions of the British Empire.

His book was itself framed as a response to another development: the

155. See, e.g., MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2011); NIKHIL PAL SINGH, *BLACK IS A COUNTRY: RACE AND THE UNFINISHED STRUGGLE FOR DEMOCRACY* (2005); PENNY VON ESCHEN, *RACE AGAINST EMPIRE: BLACK AMERICANS AND ANTI-COLONIALISM, 1937-1957* (1997).

156. See GERALD HORNE, *THE END OF EMPIRES: AFRICAN AMERICANS AND INDIANS* 138-140 (2008). Bayard Rustin was among those introduced to Shridharani's *War Without Violence*, published in the United States in 1939, and is often credited with introducing Martin Luther King, Jr. to the ideas and practices of Gandhian resistance. In 1948, soon after organizing one of the first Freedom Rides, Rustin traveled to India to visit Gandhi's ashram. Rustin and Martin Luther King, Jr. later founded the Southern Christian Leadership Conference, which was itself committed to non-violent resistance.

157. BOSE, *supra* note 149, at iv.

158. SUDHINDRA BOSE, *MOTHER AMERICA: REALITIES OF AMERICAN LIFE AS SEEN BY AN INDIAN* (1934).

popularization of the grotesquely unflattering image of Indian social life depicted in Katherine Mayo's book, *Mother India*.¹⁵⁹ Mayo's book offered readers a lurid view of the sexual customs and social habits of Indians which, as she argued, disqualified them from self-rule. As the book gained in popularity among American and British readers, it became a unifying cause among Indian nationalists across three continents.¹⁶⁰

Mayo was an American writer who, before publishing *Mother India*, had written a book defending American rule in the Philippines.¹⁶¹ Though historians have since concluded that Mayo collaborated heavily with British pro-imperial propagandists, Mayo herself insisted that her purpose was domestic.¹⁶² She described herself as "an ordinary American seeking to test facts to lay before [her] own people."¹⁶³ In *Mother India*, she claimed to reveal "the truth about the sex life, child marriages, hygiene, cruelty, religious customs of one-sixth of the world's populations."¹⁶⁴ Most Americans had little interest in or vague sympathy for decolonization movement in India, but Mayo wanted her readers to understand that not only were Indians unfit for freedom, their freedom posed a direct threat to American civilization. Conflating the "imperial question" with domestic anxieties about immigration, Mayo warned that the unrestricted circulation of Indian bodies around the world posed a global health risk: "whenever India's real public health risk becomes known . . . all the civilized countries of the world will turn to the League of Nations and demand protection against her."¹⁶⁵ To protect themselves, Mayo recommended that the civilized countries adopt a twinned policy of immigrant exclusion, on the one hand, and imperial containment on the

159. KATHERINE MAYO, *MOTHER INDIA* (1927). One critic has suggested that "no single book about India written for adult Americans has had more influence." See Asha Nadkarni, 'World Menace': *National Reproduction and Public Health in Katherine Mayo's Mother India*, 60 *AMERICAN QUARTERLY* 805 (2008).

160. See Mrinalini Sinha, *Introduction*, *SELECTIONS FROM MOTHER INDIA* (1998). Gandhi published a response from India, famously dismissing the book as a "drain inspector's report." Sarojini Naidu, feminist, nationalist, poet, and at the time President of the Indian Nationalist Congress, toured the United States to restore the image of the nationalist movement in India. Rabindranath Tagore received a celebrity's welcome in 1917, when he delivered chastising speeches on American nationalism before massive crowds in twenty-five cities, but on his second visit, in 1929, after being harassed by American officials at the Canadian border, Tagore blamed his humiliation on Mayo's influence. He said in an interview, "I suppose you realize that the publication of this book has done more in poisoning our mutual relationship than anything in recent happenings. It has the same effect as your immigration regulations in creating a barrier." See KRISHNA DUTTA & ANDREW ROBINSON, *RABINDRANATH TAGORE: THE MYRIAD-MINDED MAN* 284 (1998).

161. In her book, *The Isles of Fear: The Truth about the Philippines*, Mayo focused her attack on the supposed incapacity of Filipinos to govern themselves after the passage of the Jones Act of 1916, a first towards self-rule in the American colony. See generally KATHERINE MAYO, *THE ISLES OF FEAR: THE TRUTH ABOUT THE PHILIPPINES* (1925).

162. See MRINALINI SINHA, *SPECTERS OF MOTHER INDIA: THE GLOBAL RESTRUCTURING OF AN EMPIRE* 86-94 (2006) (demonstrating that Mayo relied heavily on access and information supplied by British imperial propagandists).

163. MAYO, *MOTHER INDIA*, *supra* note 159, at 13.

164. See Nadkarni, *supra* note 159, at 60 "'(referencing the quote appearing on the book jacket of the 1943 edition of Mayo's *Mother India*).

165. *Id.*

other.¹⁶⁶

Framed loosely as a rejoinder to Mayo's rude portrayal of Indian culture, Bose devoted considerable attention to criticizing what he called America's "self-righteous air."¹⁶⁷ As he wrote, "the material success of America, remarkable as it is, cannot be everything. Moreover, it is being overshadowed by moral and spiritual bankruptcy. Internal disorders, racial differences, and religious hatreds are on the increase. Tolerance, the truest mark of democracy and of civilization, is almost lost sight of."¹⁶⁸ Citing the "horrors of lynching" and the hypocrisy with which "a nation of foreigners" now detests its newest foreigners, Bose asserted that there was "something wrong in the character of the American" and called for moral reflection and renewal.¹⁶⁹

While his earlier study of American life consisted of flattering images of rural post offices and public school classrooms, *Mother America* turned readers' attention to darker scenes of American rule in its newly acquired territories, Puerto Rico and the Philippines. Bose acknowledged that Puerto Ricans exercised "a larger degree of self-government" under American rule than they had under Spanish rule, but reserved sympathy for the Puerto Rican nationalists who told him, "We have gained nothing with American citizenship. We continue to be an exploited colony, a sugar factory of American bankers."¹⁷⁰

Though political leaders in the United States characterized American rule in the Philippines as one of benign tutelage, preparing a colonized people for democracy, Bose saw it as another stage in the progress of empire. The United States had turned the Philippines into a rubber plantation so that American companies would free themselves from their dependence on the rubber produced in English and Dutch colonies—in Congo, most brutally.¹⁷¹ And while the United States and European powers were rivals for commercial supremacy, they also formed alliances to preserve white supremacy in Asia. As Bose observed, both the United States and the British Empire had an interest in maintaining a naval presence in the Pacific—to rival that of Japan.¹⁷²

Bose also recognized that the convergence of immigration policies among white-settler nations was part of a broader trans-imperial project of maintaining white supremacy. Though he did not explicitly criticize the United States's immigration policies in his *Mother America*, his critique of Australia's policy would have surely invited comparison.¹⁷³ He recounted

166. *Id.* at 807.

167. BOSE, *supra* note 158, at 69.

168. *Id.*

169. *Id.*

170. *Id.* at 230.

171. *Id.* at 240.

172. *Id.* at 235-36.

173. Bose did not directly reference the United States immigration policies, but he was among the

his meeting with the Prime Minister of Australia, William M. Hughes, on his tour of the United States. In his conversation with Bose, Hughes defended his country's notorious literacy test, boasting that the law "scrupulously avoids giving offense to the national pride of other nations. It is not directed against any particular group or country."¹⁷⁴ Bose described the law as a farce and deception: "While the law does not specifically mention any race, color, or country, it excludes all but whites."¹⁷⁵

Prime Minister Hughes suggested to Bose that, since India was "an integral part of the empire," it had "in theory, the same right to exclude Australians as Australians had to exclude Indians. The right to exclude is unchallengeable."¹⁷⁶ In language that had begun to echo across the white-settler world, Hughes went on to assert:

No right is more clearly inherent in a free nation than to determine who shall come into their own country. To deny the right would leave nothing of liberty but the shriveled husk. It is the right of every free man to say who shall come into his home, what is inherent in the free man must belong to the nation.¹⁷⁷

Bose asked wryly, "will not a mutually exclusive policy knock the bottom out of the empire?" Australia itself was the unwelcome "intrusion of European civilization into Asia."¹⁷⁸ Bose's rejoinder challenged the notion that the right to exclude others was an "inherent right"—colonized peoples did not enjoy such a right. But it went further to show that claims of mutual exclusion, in the imperial context as well as the emerging global order, gave the appearance of formal equivalence while preserving a policy of unequal treatment.

For Bose, it was precisely this sort of dissembling—the simultaneous assurance of formal equality, mutuality, and reciprocity, on the one hand, and refusal to acknowledge unequal treatment, on the other—that had become the focus of his criticism. His frustrations with the dissimulations of Anglo-American liberalism are captured by the rhetorical inversions that appear throughout his text: "White man's burden is an illusion, the brown man's, it is a reality. Yellow peril? It does not exist! The White peril? It is a reality!"¹⁷⁹ His criticism was not limited to the British dominions. In his earlier writing, Bose expressed his great admiration for

few Indian immigrants who testified before Congress in 1914, to oppose 'Hindu' exclusion. And throughout his career, he campaigned for the removal of restrictions against Indian immigration and naturalization. See 1914 Hindu Immigration Hearings, *supra* note 89, 4-12; See HAROLD A. GOULD, SIKHS, SWAMIS, STUDENTS, AND SPIES: THE INDIA LOBBY IN THE UNITED STATES, 1900-1946 (2006), 344.

174. BOSE, *supra* note 158, at 278.

175. *Id.*

176. *Id.* at 281.

177. *Id.*

178. *Id.* at 282.

179. *Id.* at 233.

democracy, reciting the words of the Declaration of Independence; by 1935, he complained that America was “only a democracy on paper, a shadow.”¹⁸⁰ His earlier faith that the world would give rise to a new “world unity” gave way to a similar pessimism. The League of Nations, he said, was nothing more than a “holding company” for old empire states. Moreover, he asserted that there would be no meaningful sovereignty, independence, or equality for peoples in the colonized world without a thorough dismantling of existing forms of imperial rule:

The international justice, at least in respect to the Orient, is as yet a catchword of the old game of European diplomacy. . . . So long as the modern conception of the state is tacitly based on the principle of war, is it not a ghastly futility to assume that maudlin sentimentality, that a few flabby, pious, poetic, pacifist phrases will right wrongs and save mankind?¹⁸¹

Bose anticipated that, without demilitarization or material redistribution, the emerging international system of nation-states was only a superficial reconfiguration of the existing imperial order.

C. A World of “No Nations”

For many Indians, the experience of exclusion and discrimination in the New World rendered ever more urgent the demand for national independence. But in a series of international lectures, Rabindranath Tagore advanced the view that national independence was not the solution to the world problem of imperialism. Imperialism would end, he argued, not with a proliferation of independent nation-states, but with ethical revolution in which the colonized peoples of the world would play a leading role.

Only a few months before the United States entered the world war, Tagore embarked on an extended tour of India, Japan, and the United States, delivering lectures on nationalism.¹⁸² After winning the Nobel Prize in Literature in 1913, the first non-European to receive the honor, Tagore had become an overnight celebrity in the United States, speaking on spiritualism before massive audiences. But in 1917, alarmed by the nationalist fervor then spreading through India, horrified by the example of militarized industrial nationalism set by Japan, and having sharpened his criticism of the imposition of European and American political forms on the rest of the world, Tagore began speaking very directly about contemporary world events.

In his view, the modern nation-state was a disastrous form of human

180. *Id.* at 4.

181. *Id.* at 344-345.

182. Tagore himself never lived in the United States, but he visited on a few occasions, while his son attended the University of Illinois, beginning in 1912. See Amardeep Singh, *Tagore in America*, SEPIA MUTINY, available at: http://sepiamutiny.com/blog/2005/07/22/tagore_in_ameri/.

organization, one that Europe evolved largely through the experience of colonial expansion, and one that the colonized people of the world—"we of no nations"—should reject. Rather than emulate western forms, Tagore encouraged his Indian audiences to fashion a postcolonial future out of the materials of its own past. Rather than consign itself to repeating European history, Tagore suggested, India might draw upon its own history of accommodating human diversity to lead the world in realizing a more genuinely post-imperial coexistence.¹⁸³

In a chastising but nonetheless popular lecture, delivered before American audiences, Tagore contrasted "Nationalism of the West" with what he called "Society."¹⁸⁴ In its modern form, the nation was not an organic community, bound by common language or experience, but a cold abstraction, invented to promote the narrowing of common interest to political aggrandizement and economic efficiency.¹⁸⁵ Society, by contrast, "has no ulterior purpose. It is an end to itself. It is a spontaneous expression of man as a social being."¹⁸⁶ Society is the culmination of a natural capacity for cooperation that is itself stimulated by difference and diversity.¹⁸⁷ Society proliferates forms of belonging that are not reducible to nationalism.

What was alarming about nationalism, in Tagore's analysis, was that it tended to destroy the "living bonds of society" and replace them with an attachment to an abstraction, one that would supply both the premise and alibi for the vicious treatment of others. "When we are fully human," he wrote:

we cannot fly at one another's throats; our instincts of social life, our traditions or moral ideals stand in the way. If you want me to take to butchering human beings, you must break up that wholeness of my humanity through some discipline which makes my will dead, my thoughts numb, my movements automatic, and then from the dissolution of the complex personal man will come out that abstraction, that destructive force, which has no relation to human truth, and therefore can easily be brutal or mechanical.¹⁸⁸

Nationalism tended to dehumanize foreigners as well as nationals, though in different ways. In pursuing power and efficiency, Tagore argued, the nation-state turned its own subjects into machines and

183. *Id.* at 15.

184. *See id.* (noting that Tagore spoke before large audiences and for a considerable fee in more than twenty cities across the United States during his 1916 tour).

185. Tagore described the nation as a soulless organization, only the "political and economic union of a people . . . that aspect a whole population assumes when organized for a mechanical purpose." *Id.*

186. *Id.*

187. *See also* MARTHA NUSSBAUM, POLITICAL EMOTIONS: WHY LOVE MATTERS FOR JUSTICE 82-109 (2015) (engaging Tagore's ideas about human personality, creativity, and freedom).

188. *Id.*

automatons; it turned life itself into an “applied science.”¹⁸⁹ Writing a few decades later, reflecting on the aftermath of world war, Hannah Arendt also worried about the many ways in which nationalism undermined social spontaneity and political capacity.¹⁹⁰ While Tagore worried that nationalism deadened moral instincts and human creativity, Arendt worried that nationalism ground down the differences between individuals by demanding a high degree of social and cultural conformity.

Both Tagore and Arendt observed that, while nationalism disciplined those within its borders, it often bred more pernicious disdain for others beyond its borders. Arendt recognized that the emerging system of nation-states gave rise to an entirely new form of social abandonment in the condition of statelessness.¹⁹¹ “What is unprecedented,” she wrote, “is not the loss of a home but the impossibility of finding a new one. Suddenly, there was no place on earth where migrants could go without the severest restrictions, no country where they would be assimilated, no territory where they could found a new community of their own.”¹⁹² The emerging international legal order, defined by territorial sovereignty, rights of mutual exclusion, and the loss of a traditional concern for minorities and others, Arendt anticipated, would continuously generate the very crises of displacement and collective abandonment that define our present.

While Arendt’s critique of nationalism focused on the problem of political abandonment, Tagore’s focused on the problem of economic exploitation. Just as Arendt argued that the emerging system of nation-states was no solution to the minority question troubling Europe at the time, Tagore argued that national independence would hardly put a stop to the kinds of economic exploitation unleashed by imperialism. On the contrary, “the spirit of conflict and conquest is at the origin and center of Western nationalism,” and the emerging system of nation-states was designed to promote economic competition above and beyond political cooperation.¹⁹³ A world organized around competition, he warned, was bound to perpetuate misery: “interminable economic war is waged . . . for greed of wealth and power can never have a limit. . . . They go on breeding jealousy and suspicion to the end—an end which comes through sudden catastrophic or spiritual rebirth.”¹⁹⁴ Thus, Tagore’s critique of the modern nation-state focused on the role that national boundaries have played in circumscribing political and ethical obligation. British colonialism had long been defined by a logic of secured democracy at

189. *Id.* at 8.

190. See HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 267-304 (Harcourt et al. ed., 1973) (1951).

191. *Id.* at 293.

192. *Id.* at 277.

193. Tagore compared the nation-state to a “pack of predatory creatures that must have its victims,” turning the rest of the world into its “hunting ground.” Singh, *supra* note 182, at 21.

194. *Id.* at 11-12.

home while pursuing tyranny abroad; as Tagore observed, the modern nation-state form did little to reimagine the relation between home and the world.

Tagore advised his audiences that neither “the self-idolatry of national worship” nor the “colorless vagueness of cosmopolitanism” is the goal of human history.¹⁹⁵ Rather, it was the realization of the essential unity of mankind. The nation-state form and the nation-state system impeded the realization of an immanent universality, among other reasons, because they promoted geographic segregation. Tagore noted that “during the evolution of the nation [in Europe], the moral culture of brotherhood was limited by geographic boundaries, because those boundaries were true.”¹⁹⁶ But new forms of travel and communication had created opportunities to overcome those boundaries and to close the distances that separated peoples. Tagore was generally distrustful of modernity, but observed the irony and anachronism of geographic boundaries: geographic boundaries were resurrected at precisely the moment that technology promised to liberate us from them.

For Tagore, India had an important role to play in advancing world history towards the goal of spiritual unity. He argued that what the world was becoming, in terms of its diversity, India had already been. From the beginning of its history, India’s “problem” has been the “race problem”: very different peoples, with different religions and customs, had invaded India or sought refuge there. Tagore compared India to a “hostess” who strives to accommodate her varied guests, different peoples who have come as conquerors or refugees, speaking different languages, observing different religions, practicing different customs. “[India’s] mission [is] to face it and prove our humanity in dealing with it in the fullest truth.”¹⁹⁷

While he celebrated India’s tradition of social accommodation, Tagore also acknowledged the failings of the caste system. With the caste system, India accommodated social difference only by “setting up the boundary walls too rigidly among races.”¹⁹⁸ But rather than abandon the experiment of hosting plurality, India should strive to improve it. And he thought India’s imperfect tolerance of difference far preferable to the paranoid intolerance of modern nationalism. Tagore contrasted India’s pluralism with the monism of European nations and Japan. And he had harsher words for white-settler nations: “In America and Australia, Europe has simplified her problem by almost exterminating the original population. Even in the present age, this spirit of extermination is making itself manifest, in the inhospitable shutting out of aliens, by those who were

195. *Id.* at 5.

196. *Id.* at 101.

197. *Id.* at 4.

198. *Id.* at 5.

themselves aliens in the land they now occupy.”¹⁹⁹

Universal accommodation meant making room even for British colonists. Tagore told his Indian audiences, “now at last has come the turn of the English to become true to this history and bring [their] tribute . . . and we have neither the right nor the power to exclude this people from the building of the destiny of India.”²⁰⁰ It was a mistake to think of national identity either in terms of demographic integrity or geographic claim. Instead, he insisted that the “idea” of India does not belong to any one people; it is a process of creation. India would advance its historic “mission” if it found a way to accommodate rather than expel even its European colonizers. Thus Tagore maintained, “I am not for thrusting off Western civilization and becoming segregated in our independence. Let us have deep association.”²⁰¹ Postcolonial emancipation, in his view, was not simply independence, or freedom from interference, but the realization of a radical interdependence, both in terms of historical entanglement and potential for cooperation.

Tagore invited his American audiences to participate in imagining a non-national post-imperial future. Like other writers introduced in this section, he recognized a deep affinity between India and the United States. As he wrote, “a parallelism exists between India and the United States—the parallelism of welding together into one body various races.”²⁰² But in making the comparison, Tagore refused the nativist projection of the United States as a monolithic people, racially and culturally homogeneous. Instead, he recognized the United States to be, like India, a vast experiment in human integration. If its record of imperialism had disqualified Europe from meaningfully participating in the unfolding of his universal vision, Tagore reserved optimism for the United States. “If it is given at all to the West to struggle out of these tangles of the lower slopes to the spiritual summit of humanity, then I cannot but think that it is the special mission of America to fulfill this hope of God and man. You are the country of *expectation*, desiring of something else than what is.”²⁰³ The America he held up as exemplary was an America yet to come.

D. Homelessness and Hospitality

Finally, Dhan Gopal Mukerji’s *Caste and Outcaste*, published in 1923, presents a counterpoint to the writing of his contemporaries in the United States and introduces an altered framework for thinking about the nation and migration.²⁰⁴ Unlike the writings of others discussed here, Mukerji’s

199. *Id.* at 115.

200. *Id.* at 7.

201. *Id.* at 109.

202. *Id.* at 127.

203. *Id.* at 123.

204. DHAN GOPAL MUKERJI, *CASTE AND OUTCASTE* (Gordon H. Chang, Purnima Mankekar & Akhil Gupta eds., Stanford Univ. Press 2002) (1923).

memoir was far less concerned with reflecting on world events, though he travelled a similar path to many of his contemporaries. After the Partition of Bengal, like other educated young men, he travelled to Japan and Germany before ending up in Berkeley. But Mukerji did not conceive of his journey as a quest for a new homeland—either real or conceptual. Instead, he came to think of his journey as a spiritual quest, undertaken in the tradition of Hindu ascetics who leave home and gradually relinquish material attachments in their pursuit of personal purification and enlightenment.²⁰⁵ Mukerji's narrative, recalling his childhood in India, is filled with his encounters with the wandering holy men who would come to his parents' home, begging for alms.²⁰⁶ At the age of fourteen, he left home to join one of them for a period of two years, traveling constantly and depending on the charity of others. He was especially moved by the words of one ascetic who described life as a condition of "vagrancy," homelessness.²⁰⁷

Mukerji must have been well aware that the idea that homelessness was a desirable material and spiritual condition would have been completely foreign to his American readers, for whom homelessness was probably understood to be, in every sense, a failure.²⁰⁸ And yet, this disorienting regard for homelessness would have challenged his readers—as it should challenge us—to examine the assumptions that underlie our contemporary thinking about both the nation and migration. Mukerji himself was repelled by the nationalism of the Indian students he encountered on the west coast—his biographers place him at the University of California at Berkeley at the same time as Har Dayal and Taraknath Das, eventual leaders of the *Ghadar* movement.²⁰⁹ Just as the idea of homelessness, in Mukerji's narrative, reads as a repudiation of the militant nationalism seizing some of his Indian contemporaries, it also reads as an implicit challenge to the nativism taking hold in the United States at the time—a particularly jealous form of territorial attachment.

For Mukerji, the condition of homelessness is also the occasion for hospitality. His journey, like the journeys of so many travelers, is punctuated by encounters with strangers who can choose to either exploit his vulnerability or extend their generosity. Mukerji tells a story of how he became an indebted laborer while traveling by ship from Japan to the west coast of the United States. Hungry and penniless, he saw crewmembers distributing what appeared to be free food. Only after helping himself and thanking the crew, Mukerji learned that he had incurred a debt. Unable to

205. See Purnima Mankekar & Ahkil Gupta, *Afterword* to DHAN GOPAL MUKERJI, *CASTE AND OUTCASTE* 237 (2002).

206. See MUKERJI, *supra* note 204, at 80-85.

207. *Id.* at 82.

208. See Mankekar & Gupta, *supra* note 205, at 238.

209. *Id.*

pay the debt, he had to sign on for the voyage as a contract laborer.²¹⁰ Throughout his account, this sort of experience is repeated over and over: occasions for generosity are turned into opportunities for exploitation.

But Mukerji's narrative also records a tradition of American hospitality. He writes, for instance, of a black woman with whom he worked in a university kitchen. When she noticed the holes in his shoes, she insisted that he borrow money. "She gave me five dollars on the spot and . . . drove me out with the warning that unless I came back with a new pair of shoes, I would not work in her kitchen. . . . Later on when I had the money to pay back, [she] would not take it."²¹¹ The scene recalls an earlier scene from Mukerji's childhood, when he saw his parents extending the same care to the strangers who arrived at their door.²¹² In the resonance between these scenes of hospitality, then and now, here and there, emerges an alternative norm of reciprocity. Rather than the reciprocity of mutual exclusion, which has come to define national sovereignty and to limit each nation's obligations towards the stranger, Mukerji's narrative recalls an alternative tradition of reciprocity in the ethic of hospitality.

Struggling to support himself and impatient with book learning, Mukerji for a while dropped out of school altogether to live among vagabonds and anarchists in Berkeley. Extending his experiments in homelessness, Mukerji drifted towards the margins of society in search of genuine hospitality, surrendering himself entirely to the generosity of strangers—which he occasionally found. From his vagabond days, he recounted a conversation with a "famous" anarchist who summed up the difference between Mukerji's home and adoptive countries in terms of their different treatment of homelessness: "In your country you have exalted beggary by making it a religious affair, but in our country we have reduced beggary to such a crime that even thieves think they are disgraced if they beg."²¹³ In other words, rather than receive those in need as an incitement to duty, as an occasion to practice our capacity for kindness, we turn need into a crime.

PART IV.

PASTS PRESENT: LEGACIES OF EXCLUSION

As Rai and his contemporaries anticipated more than a century ago, the globalization of national borders and immigration controls would play a role in preserving the racial asymmetries of imperialism long after the

210. See Gordon H. Chang, "Introduction to" DHAN GOPAL MUKERJI, *CASTE AND OUTCASTE* 1-5 (2002) (recounting a story that Mukerji told his family).

211. *Id.* at 152.

212. For instance, he writes of being surprised to learn that "employers could be immoral," and of a cook who seemed to help Mukerji learn to become a better servant, only to learn that the cook himself had been taking advantage of Mukerji's trust, having Mukerji do more than his own share of work. *Id.* at 145.

213. See MUKERJI, *supra* note 204.

formal dissolution of empires. By the late twentieth century, when peoples of the colonized world finally gained their independence in the limited form of territorial sovereignty, they had already lost the freedom of movement—that fundamental “right of man” long enjoyed by Europeans and their descendants in the white-settler New World. Notwithstanding the contemporary dread of mass migration, only a tiny fraction of the human population lives outside of the country of its birth—three percent—while global wealth and income remains concentrated in a few places—mainly Europe and its former New World colonies.²¹⁴ Though the end of empire promised to establish a new equality among the world’s people, the overwhelming majority of the world’s least fortunate remain confined to their circumstances, in no small part, because national borders keep peoples in place.

This Part begins with a brief account of some of the ways in which immigration laws in the United States, Canada, and Australia have changed over the past century. Then, turning from the United States to the broader global context, I identify some of the novel techniques that white-settler nations have developed to resist refugees and asylum seekers. Just as in the last century, egalitarian commitments and diplomatic pressures forced restrictionists in white-settler nations to cast policies of racial exclusion in other, nondiscriminatory terms, while in our own time, countries in the global core have begun to experiment with forms of territorial “excision” and border externalization to avoid triggering humanitarian obligations. Finally, I conclude by gesturing towards some of the ways in which the imperial pasts continue to haunt immigration law and policy in our present.

A. New World Borders

The upheavals of world war, the decline of empires, and the closing of New World frontiers brought an end to a period of unprecedented migration. The United States, soon after it closed its borders to Asia, began closing its borders to the rest of the world. In 1921, with the passage of the Emergency Quota Act, Congress established the first numerical limit on new immigration, marking an end to a period of relatively unrestricted migration from Europe.²¹⁵

A few years later, with the comprehensive Johnson-Reed Act of 1924, Congress extended its practice of global zoning by dividing the world into three parts, each governed by different restrictive regime.²¹⁶ Immigration from within the western hemisphere remained relatively open;

214. See HARM DE BLIJ, *THE POWER OF PLACE: GEOGRAPHY, DESTINY, AND GLOBALIZATION'S ROUGH LANDSCAPE* 13 (2009).

215. See Immigration Act, Pub. L. 67-5, 42 Stat. 5 (May 21, 1921).

216. See Immigration Act, Pub. L. 68-139; 43 Stat. 153. See also MAE NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* (2004), at 21-55.

immigration from Europe was governed by a restrictive “national origins formula”; and immigration from Asia was barred. After 1924, immigration from Asia was restricted not only by the Asiatic Barred Zone provisions, but by the introduction of new racially restrictive provisions barring entry of “aliens ineligible to citizenship,” a designation reserved for peoples of Asian descent. Exclusionists in Congress had proposed to block Indian immigration by establishing a “citizenship test,” which would restrict immigration to only those who were racially eligible for naturalization.²¹⁷ But it was not until 1923 that the Supreme Court decided that peoples from India were racially ineligible for citizenship.²¹⁸ Thus, with the Johnson-Reed Act of 1924, exclusionists finally succeeded in establishing a racial bar to immigration from India.

The framework for immigration restriction set forth in the Johnson-Reed Act would largely remain in place until the 1950s. But the intervening years brought an incremental dismantling of Asian exclusion.²¹⁹ For decades, Indians living in the United States campaigned to reverse policies restricting Indian immigration and naturalization.²²⁰ But only in 1946, after American Allied soldiers in British India were met with angry protests did Congress begin to loosen restrictions. On the eve of their gaining independence, India and the Philippines were each allowed to send a quota of 100 immigrants each year.²²¹ A few years later, in 1952, Congress abolished the racial bar against “aliens ineligible to citizenship,” but retained a nominal quota for immigrants from a designated “Asia Pacific Triangle.”²²²

In 1965, at the height of the civil rights movement in the United States and the decolonization movements elsewhere, the United States finally abolished its discriminatory national origins formula. The Immigration and Nationality Act of 1965 replaced the national origins formula with a uniform “per-country” limit, marking a general shift towards an immigration policy based on the principle of formal equality among

217. The Naturalization Act of 1790 restricted citizenship to “free white” people. Naturalization Act of 1790, ch. 3, 1 Stat. 103. The law was amended by the Naturalization Act of 1870, ch. 254, 16 Stat. 254, 256, after the passage of the Fourteenth Amendment, to extend citizenship to persons of “African nativity and . . . descent”. Rather than simply strike the words “free white persons,” Congress added the words “African nativity and . . . descent” to prevent Asian Americans from naturalizing. See *In re Ah Yup*, 1 Fed.Cas. 223, 224 (D. Cal. 1878).

218. See *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923) (holding that immigrants from India were not “white persons” within the meaning of the Naturalization Act and were thus racially ineligible for citizenship).

219. See, e.g., Magnuson Act (Chinese Exclusion Repeal Act), Pub. L. 94-265, 57 Stat. 600 (Dec. 17 1943); The Chinese War Brides Act, Pub. L. 82-414, 60 Stat. 945 (June 27, 1946).

220. See HAROLD A. GOULD, SIKHS, STUDENTS, SWAMIS, AND SPIES: THE INDIA LOBBY IN THE UNITED STATES, 1900-1942 (2006).

221. See Luce-Cellar Act, 60 Stat. 416 (1946).

222. See Immigration and Naturalization Act (McCarran Walter Act), Pub. L. 82-414, 66 Stat. 163 (1952). The law also established a ceiling of 2,000 immigrants on the Asia-Pacific Triangle as a whole, not including a Chinese quota of 105 and a Japanese quota of 185. See NGAI, *supra* note 216, at 238.

nation-states.²²³ But the new policy did not quite reflect the new unity and equality that Bose and others had hoped for. On the contrary, the change reflected a reconfiguration of racial inequality. Within the emerging system of nation-states, distinctions among peoples would be preserved not through vertical hierarchies but through the enforcement of horizontal distance, as an earlier rhetoric of racial priority gave way to a new order of naturalized boundaries.

The universal disavowal of earlier expressions of racism, reflective of the imperial era, brought a loosening of immigration restrictions throughout the white-settler New World. Around the same time as the United States, Canada began to dismantle its racially restrictive immigration policies. But in both countries, loosening of immigration restrictions was tethered to the economic advancement of the nation; greater racial and ethnic inclusivity was also accompanied by heightened selectivity. In the United States, though the 1965 Act opened the door to immigrants from every nation, the potential stream of immigration from each sending nation was substantially narrowed with the establishment of a system of “preference” categories, which favored individuals with family ties and certain occupational training.²²⁴ In the 1960s, Canada adopted an intricate point system to select skilled and assailable workers.²²⁵

Australia maintained its “White Australia” policies long after the experience of the world wars convinced many of the need to expand the country’s population, both to support economic growth and safeguard national sovereignty.²²⁶ Through the 1950s, Australia’s immigration policies favored British immigrants, but as labor demand outpaced British immigration, the government recruited displaced refugees and southern European immigrants.²²⁷ The Migration Act of 1958 eventually lifted the notorious dictation test, opening the door to migration beyond Europe. In the 1970s, Australia finally abandoned the last of its racially restrictive immigration policies and introduced a selective point system modeled after Canada’s. In all three settings, the introduction of preference categories and point criteria was significant in that, as one observer put it,

223. See Immigration and Nationality Act (Hart-Cellar Act), Pub. L. 89-236, 79 Stat. 911 (Oct. 3, 1965).

224. Many historians believe that those who drafted the Immigration and Nationality Act of 1965 expected the preference for immigrants with established family ties in the United States would benefit European immigrants. See, e.g., Gabriel J. Chin, *Were the Immigration and Nationality Act Amendments of 1965 Antiracist?* in *THE IMMIGRATION AND NATIONALITY ACT OF 1965: LEGISLATING A NEW AMERICA* 11 (Gabriel Chin & Roze Cuison Villazor eds., 2015).

225. See Jeffery G. Reitz, “Canada: New Initiatives and Approaches to Immigration and Nation Building,” in *CONTROLLING IMMIGRATION: A GLOBAL PERSPECTIVE* 89 (James F. Hollifield, Philip L. Martin, & Pia M. Orrenius eds., 2014).

226. See Stephen Castles, Ellie Vasta & Derya Ozkul, “Australia: A Classical Immigration Country in Transition” in *CONTROLLING IMMIGRATION: A GLOBAL PERSPECTIVE* 130 (James F. Hollifield, Philip L. Martin & Pia M. Orrenius eds., 2014).

227. *Id.*

“the country could select the alien instead of the alien selecting the country.”²²⁸

In the past fifty years, immigration reform has allowed a greater number of immigrants from Asia to migrate to the United States, Canada, and Australia. Immigrants from India rank among the primary beneficiaries of immigration policies that favor a class of high-skilled professionals.²²⁹ Ironically, perhaps, the mobility of affluent Indians has been facilitated by the accident of acquired English proficiency, which is rewarded in the point systems of white-settler nations.²³⁰ As Srinivas Aravamudan observes, “that the world has moved from the dominance of the British Empire in the late nineteenth century to the United States as unilateralist hyperpower by the twenty-first century without having to change the language of imperial dominance [is a fortunate] or unfortunate turn of events for the new rulers as well as the ruled.”²³¹ But the success and visibility of Indian immigrants in the United States and elsewhere should not be mistaken for egalitarianism or meritocracy; instead it is a reflection of careful selection, a reconfigured racism that has been usefully described as neoliberal multiculturalism.²³² Nor should the relative success of Asian immigrants in the United States be used to obscure the disastrous effects that immigration reform has had on immigration from Central America, or to draw unfair comparisons and to discipline other racialized minorities.²³³ And the question posed by indigenous activists and scholars remains to be answered: are the demands for expanding immigration in the United States and elsewhere a demand for the end of imperialism or inclusion within it?

B. New Experiments in Exclusion

As peoples fleeing violence and poverty make their way to North America, Australia, and the European Union, governments in those places continue to redefine territorial sovereignty and local geography to prevent migrants, many of them refugees, from reaching sovereign territory and

228. NGAI, *supra* note 216, at 238.

229. See *Rise of Asian Americans*, PEW RESEARCH CENTER (June 19, 2012) (observing that Asians are the “fastest-growing racial group in the United States,” having overtaken people of “Hispanic origin” in recent years), available at <http://www.pewsocialtrends.org/2012/06/19/the-rise-of-asian-americans/>.

230. The recent but failed bipartisan comprehensive immigration reform bill would have introduced to the United States a point system modeled after Canada’s. This point system would have favored immigrants who had attained some fluency in English. See AMERICAN IMMIGRATION COUNCIL, A GUIDE TO S.744: UNDERSTANDING THE 2013 SENATE IMMIGRATION BILL (2013).

231. SRINIVAS ARAVAMUDAN, GURU ENGLISH: SOUTH ASIAN RELIGION IN A COSMOPOLITAN ENGLISH 2 (2005).

232. Cf. Will Kymlicka, “Neoliberal Multiculturalism” in SOCIAL RESILIENCE IN THE NEOLIBERAL ERA 99-125 (Peter A. Hall & Michèle Lamont eds., 2013).

233. The Immigration Act of 1965 replaced the national origins formula with a new per-country limit, applied uniformly across the globe. While this change expanded opportunities for migration from Asia, it introduced, for the first time, a limit on migration from within the Western Hemisphere. Almost overnight, long-established patterns of migration from Mexico were rendered illegal. See NGAI, *supra* note 216, at 263-270.

otherwise claiming their human right to asylum.²³⁴ The countries that most creatively resisted new migrants in the previous century are the same countries that have been most aggressive in developing strategies to resist refugees and asylum seekers.

Perhaps the most notorious strategy to have been developed in recent years is Australia's "excision" of its island territories and northern coastline.²³⁵ In the 1990s, as a growing number of asylum seekers reached the northern coast of Australia, the government adopted more aggressive practices of interdicting boats at sea. In 2001, after refusing entry to 433 migrants rescued from a sinking ship, the *Tampa*, the Australian government retroactively changed the status of its island territories to prevent migrants who land by boat from pursuing their asylum claims. The migrants were detained on the island nation of Nauru and on Manus, an island of Papua New Guinea, where Australia continues to outsource detention and processing of asylum seekers.²³⁶

Long before Australia, the United States had detained refugees on offshore islands. In the 1980s, the United States adopted a policy of interdicting Haitian refugees and detaining them at the Guantanamo Bay Naval Base.²³⁷ After a political coup, sponsored by the United States, sent tens of Haitians fleeing, the United States expanded its program to include detention and further processing at Guantanamo Bay, where refugees remained behind barbed wire, for months, without adequate medical care or access to lawyers.²³⁸ The United States has also exploited the differentiated status of its overseas possessions in the Pacific to prevent migrants from pursuing asylum claims.²³⁹

234. The UN Convention Relating to the Status of Refugees, to which most western nations are signatories, imposes on signatory states certain obligations with respect to refugees and asylum seekers. Specifically, a state must not *refoule*, or return, a person who has a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group, or political opinion. The Refugee Convention grants migrants who flee persecution a particular status and set of rights with respect to the receiving nation. Refugees and asylum seekers are thus contrasted with other migrants who, for instance, may be fleeing poverty rather than persecution. See Convention Relating to the Status of Refugees, 19 U.S.T. 6259, 189 U.N.T.S. 137 (April 22, 1954).

235. See ALISON MOUNTZ, *SEEKING ASYLUM: HUMAN SMUGGLING AND BUREAUCRACY AT THE BORDER* 134-5 (2010).

236. See *id.*

237. Those who were found to have a credible fear of political persecution at home were brought to the United States, where they could pursue their asylum claims; those who were not were sent back to Haiti. The policy of interdiction and offshore processing was implemented in concert with an in-country program based at the U.S. Embassy in Port-au-Prince. Very few of those who applied in Haiti succeeded in gaining entry to the United States, despite high levels of violence and persecution. See Harold Hongju Koh, *The Human Face of the Haitian Interdiction Program*, VA. J. INT'L J. 482 (1993); Harold Hongju Koh, *America's Offshore Refugee Camps*, 29 U. RICH. L. REV. 139 (1994).

238. See Koh, *The Human Face*, *supra* note 237, at 484; see also *Sale v. Haitian Centers Council*, 509 U.S. 155 (1993) (holding that the U.S. policy of intercepting and forcibly repatriating Haitian refugees on the high seas violated neither domestic immigration law nor international refugee law).

239. More specifically, the United States exploits the differentiated status of its two unincorporated territories, Guam and the Mariana Islands. Migrants who reach Guam are eligible for asylum under U.S. law, but the same immigration laws do not apply in the Commonwealth of Northern Mariana Islands (CNMI). In 1993, the Coast Guard maintained a policy of sending interdicted migrants to the nearest US ports, where they were detained while their asylum applications

Pulling the edges of sovereign territory inward is one strategy for avoiding humanitarian obligations; pushing the enforcement of borders outward is another. In the past decade, the European Union and the United States have made effective use of a set of practices often described as border externalization.²⁴⁰ While member states of the European Union struggle to harmonize their response to a growing refugee crisis, they have been more unified in maintaining a border agency, Frontex, to police the perimeters of “Fortress Europe.”²⁴¹ Similarly, in response to its own refugee crises, the United States has not only intensified policing of its southern border; it has urged Mexico to strengthen *its* southern border.²⁴² At the United States’s behest, the Mexican government has detained and deported a number of women and children, many of them refugees who never learn of their rights to asylum.²⁴³ To limit its obligations towards asylum seekers entering from its northern border, in 2002, the United States entered into a “burden sharing” agreement with Canada that would require refugees to apply for asylum in whichever country they reached first.²⁴⁴ The Safe Third Country Agreement, as it is called, was modeled after a similar agreement among European Union member states.²⁴⁵

C. Colonial Pasts, Present Crises

The summer of 2015 brought to Europe hundreds of thousands of refugees, many of them fleeing violence and poverty from Eastern Europe, the Arabian Peninsula, parts of Asia and Africa. The response among Europeans was varied. Germany and Austria agreed to relax their usual processing to welcome refugees, particularly from Syria, where more than

were processed. But in 1999, when boats carrying hundreds of Chinese migrants were intercepted in the Pacific, the United States changed its policy. As detention centers in Guam filled beyond capacity, authorities set up makeshift tent cities to house asylum applicants. The United States then began diverting migrant boats headed for Guam to the nearby island of Tinian, of the CNMI. There, as in Guantanamo Bay, detained migrants were subject to asylum pre-screening procedures. Those who were “screened out”—the majority of new migrants—were not permitted to apply for asylum and were returned to the places from which they had fled. See David North, *Immigration Policy at the Edges: International Migration to and Through the U.S. Island Territories*, Center for Immigration Studies, available at <http://cis.org/USIslandTerritories-InternationalMigration>; MOUNTZ, *supra* note 235, at 133.

240. See Lori A. Nessel, *Externalized Borders and the Invisible Refugee*, 40 COL. H. RTS. L. REV. 625 (2009).

241. For a description of current initiatives aimed at deterring migration to the European Union, see the official Frontex website, <http://www.frontex.europa.eu/>. See also MOUNTZ, *supra* note 235, at 125.

242. See GEORGETOWN LAW HUMAN RIGHTS INITIATIVE, THE COST OF STEMMING THE TIDE: HOW IMMIGRATION ENFORCEMENT PRACTICES IN SOUTHERN MEXICO LIMIT MIGRANT CHILDREN’S ACCESS TO INTERNATIONAL PROTECTION 21 (April 13, 2015).

243. See CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW, US BORDER EXTERNALIZATION CREATES HUMAN RIGHTS CRISIS IN MEXICO, available at http://www.centerforhumanrights.org/Border_Externalization.html.

244. See Audrey Macklin, *Disappearing Refugees: Reflections on the Canada-US Safe Third Country Agreement*, 36 COL. HUM. RTS. L. REV. 366. Macklin observes that the “Safe Third Country” Agreement was introduced as a national security measure in the wake of 9/11—an example of an emergency measure that has since become the new norm.

245. See *id.*; see also Commission Regulation 343/2003 (L 50) 1.

11 million have been displaced in the past four years.²⁴⁶ At the same time, other countries began erecting fences along their national borders.²⁴⁷ In Hungary, police officers rounded up migrants and tricked them into boarding trains bound for Austria, only to be delivered to a refugee “reception” camp.²⁴⁸ In the Czech Republic, police officers were photographed scrawling identifying numbers across the forearms of detained migrants. For many in Europe, the scenes of crowded trains and babies passed over barbed wire conjured memories of what one reporter referred to as “Europe’s darkest hours,” when Jewish families were rounded up and forced from their home countries, often to death camps.²⁴⁹

The images marked a turning point in the still unfolding refugee crisis. As observers have been very careful to acknowledge, the current refugee crisis is no genocide.²⁵⁰ But, as the chief rabbi of Hungary suggested, “there are echoes.”²⁵¹ It was not only the visual resonance that was so haunting but others’ blindness to it. How quickly many Europeans seemed to forget their own history.²⁵² As Hungary hardened its stance against arriving refugees, others pointed out the irony, recalling that almost sixty years earlier, some 200,000 Hungarian refugees were granted asylum in neighboring countries.²⁵³

The images struck a particular chord in Germany, which has purposefully cultivated a national culture of remembrance and rectification. At least initially, German Chancellor Angela Merkel was celebrated for assuming a position of moral leadership by welcoming refugees and representing “Europe’s conscience.”²⁵⁴ Hundreds of Germans donated food and water; some opened their homes to refugees on what has been described as “refugee Airbnb.”²⁵⁵ The country’s largess has been

246. Mathew Holehouse, *Germany Drops EU Rules to Allow in Syrian Refugees*, THE TELEGRAPH, Aug. 24, 2015, available at <http://www.telegraph.co.uk/news/worldnews/europe/germany/11821822/Germany-drops-EU-rules-to-allow-in-Syrian-refugees.html>.

247. Patrick Boehler & Sergio Peçanha, *The Global Refugee Crisis, Region By Region*, N.Y. TIMES, Aug. 26, 2015.

248. See e.g., Rick Lyman, *Treatment of Migrants Evokes Memories of Europe’s Darkest Hour*, N.Y. TIMES, Sept. 4, 2015; Henry Chu, *Europe’s Refugee Crisis is Darkened by the Shadows of WWII*, L.A. TIMES, Sept. 5, 2015.

249. *Id.*

250. *Id.*

251. *Id.* (quoting Robert Frolich).

252. *Id.* Expressing horror at the conduct of police officers in Hungary, Kenneth Roth, executive director of Human Rights Watch, reflected, “they must be oblivious because who would do that if they had any historical memory whatsoever.”

253. See, e.g., Tim Lister, *Today’s refugees follow path of Hungarians who fled Soviets in 1956*, CNN (Sept. 7, 2015); Nick Thorpe, *Migrant Crisis: Hungary crossings echo 1989 and 1956*, BBC (Sept. 5, 2015), <http://www.bbc.com/news/world-europe-34168084>.

254. Jena McGregor, *On Refugee Crisis, Germany’s Angela Merkel Has Found a Bold Voice*, THE WASH. POST, Sept. 11, 2015.

255. David Sim, *Germans Welcome Migrants and Refugees with Donations of Food, Clothing and Toys*, INTL. BUS. TIMES, Sept. 1, 2015, available at <http://www.ibtimes.co.uk/germans-welcome-migrants-refugees-donations-food-clothing-toys-photos-1518028>; Jessica Elgot, *‘Airbnb for Refugees’ Group Overwhelmed by Offers of Help*, THE GUARDIAN, Sept. 1, 2015, available at

attributed, at least in part, to historical memory: as one scholar explained, most Germans understand that the refugee conventions were adopted as a response to the crimes committed by their country and “are very eager to make clear that they are not that country anymore.”²⁵⁶

Not surprisingly, the same images have prompted far less self-reflection on the part of Americans. Americans do not share the same memory of violence and displacement, but the United States shares in the guilt of turning away Jewish refugees during the Second World War.²⁵⁷ While the German government has opened its doors to 500,000 refugees from Syria, the United States, a country with four times the German population, has committed to receiving only 10,000.²⁵⁸ But even this modest commitment has met with widespread resistance, as evidenced by the actions of local governors, who have threatened to block refugees from entering their states, and the rhetoric of presidential candidates who vow to build border walls and establish a religious test for refugees.²⁵⁹ And while the detention of refugees scandalized at least some Europeans, Americans have to confront their own treatment of refugees. In 2013, when an estimated 50,000 refugees, most of them women and children fleeing extreme violence in Central America—violence in which the United States bears a responsibility seldom acknowledged—arrived at the southern border, the United States did not give them a warm welcome.²⁶⁰ Instead, they were

<http://www.theguardian.com/world/2015/sep/01/berlin-group-behind-airbnb-for-refugees-overwhelmed-by-offers-of-help>.

256. Heather Horn, *The Staggering Scale of Germany's Refugee Project*, THE ATLANTIC, Sept. 12, 2015 (quoting Kathleen Newland of the Migration Policy Institute and German political scientist, Petra Bendel); Anthony Faiola, *The Refugee Crisis Could Actually be a Boon for Germany*, THE WASH. POST, Sept. 9, 2015 (reporting that while Germany has been less successful than its European counterparts at recruiting new immigration, many understand that the refugee crisis presents an “opportunity” for the country to correct its impending demographic crisis).

257. While the photographs and the broader refugee crisis have prompted nothing like the response in Europe, of course, many in the United States did draw comparisons between the current crisis and refugee crises caused by the second world war. See, e.g., Daniel A. Gross, *The U.S. Government Turned Away Thousands of Jewish Refugees, Fearing that they Were Nazi Spies*, SMITHSONIAN MAGAZINE, Nov. 18, 2015 (recalling the particularly notorious turning away of the SS *St. Louis* in 1939; at least a quarter of the 937 passengers aboard are known to have been killed after returning to Europe).

258. Gardiner Harris, David E. Sanger & David M. Herszenhorn, *Obama Increases Number of Syrian Refugees for U.S. Resettlement to 10,000*, THE N.Y. TIMES, Sept. 10, 2015, http://www.nytimes.com/2015/09/11/world/middleeast/obama-directs-administration-to-accept-10000-syrian-refugees.html?_r=0.

259. See Ashley Frantz & Ben Brumfield, *More than half the nation's governors say Syrian refugees not welcome*, CNN (Nov. 19, 2015), <http://www.cnn.com/2015/11/16/world/paris-attacks-syrian-refugees-backlash/>; Amy Davidson, *Ted Cruz's Religious Test for Syrian Refugees*, THE NEW YORKER, Nov. 16, 2015 (noting that presidential candidates, Ted Cruz, Jeb Bush, and Ben Carson all suggested that the United States should admit Christian but not Muslim refugees; Donald Trump said he would bar all Muslim immigrants).

260. See Alexander Main, *The Central American Refugee Crisis*, DISSENT, July 30, 2014 (reviewing the long history of U.S. intervention in Central America, including the overthrowing of democratically-elected governments and arming of death squads—which forced thousands to flee their homes and seek refuge in the United States; the deportation of thousands of refugees who, while in the U.S., had become gang members and now, upon their deportation to their countries of birth, have brought those associations and practices with them, thus fueling an exploding gang problem; the simultaneous promotion of free trade agreements that have displaced subsistence farmers from their

placed in detention settings so tortuously cold, many detainees referred to them as the “ice-box.”²⁶¹

The arrival of Syrian refugees in Europe revived memories of an earlier refugee crisis, but it has not revived memories of Europe’s historic relationship to the Arabian Peninsula—at least not in the same way. After the defeat of the Ottoman Empire in 1916, the British and French empires, with Russia’s assent, entered into a secret agreement, the Sykes-Picot Agreement, to divide the Arab provinces into British and French zones of influence.²⁶² The arbitrary borders dividing the British and French territories would become the now contentious borders between Iraq, Syria, and Jordan. Though the recent exodus had prompted relatively little introspection on the part of peoples in Britain and France—and the United States, which has also had a catastrophic influence in the area—the history of European colonialism continues to haunt many people living in the Arab world.²⁶³ In 2014, when ISIS soldiers sent bulldozers crashing through the dirt barrier that divides Syria and Iraq, they claimed they were destroying the border created by Sykes-Picot.

Images of crowded trains seemed to touch the conscience of Europeans in a way that the many hundreds of images of sinking ships, circulating in the months and years before, did not. In the past few years, thousands of migrants have drowned in the Mediterranean Sea.²⁶⁴ Those same images recall the desperate flight of earlier “boat people” fleeing Vietnam and Haiti, again after disastrous European and American interventions. What accounts for the differing response? Why does one image arouse a sense of human obligation, and why does the other fail to? One unavoidable difference between the two scenes is the demographic composition of each migrant flow. Those who reached the borders of Hungary had traveled primarily from the Arabian Peninsula and Eastern Europe.²⁶⁵ As some

work and land; and the continuation of a violent war on drugs that has been largely waged beyond the United States’s borders).

261. *Florez v. Johnson*, CV 85-4544 DMG, CV-90 (D.C. Cir. 2015) (ordering the federal government to release the majority of women and children in family detention, finding that cells were overcrowded, unsanitary, freezing and ultimately harmful).

262. Malise Ruthven, *The Map Isis Hates*, NYR DAILY, June 25, 2014, <http://www.nybooks.com/daily/2014/06/25/map-isis-hates/>.

263. See Laya Hess-Skinner, *The Shadow of Sykes-Picot and the Rise of ISIS*, MUFTA, July 2, 2014, <http://muftah.org/shadow-sykes-picot-rise-isis/#.VvloS2PZpCI> (recalling that the Sykes-Picot agreement has been the focus of challenge among pan-Arabists for decades); see also *Sykes-Picot and the Arab World: How has the Sykes-Picot Agreement Impacted Arab People?*, AL JAZEERA, available at <http://www.aljazeera.com/focus/arabunity/2008/02/2008525173710454223.html> (collecting the reflections of Arabs from various countries who share the view that the “carve up of the region by the imperial powers was a successful policy of divide and rule and it has managed to divide Arabs rather than unify them”); see ZAID AL-ALI, *THE STRUGGLE FOR IRAQ’S FUTURE: HOW CORRUPTION, INCOMPETENCE AND SECTARIANISM HAVE UNDERMINED DEMOCRACY* (2014) (exploring the destructive consequences of the United States’s ill-planned interventions in Iraq).

264. *Mediterranean Update—Migrant Deaths Rise to 3,329 in 2015*, INTERNATIONAL ORGANIZATION FOR MIGRATION, Oct. 30, 2015 (noting that 3,329 migrants had drowned in the Mediterranean in 2014; another 3,329 had died in the first ten months of 2015); available at <https://www.iom.int/news/mediterranean-update-migrant-deaths-rise-3329-2015>.

265. Boehler & Pecanha, *supra* note 247.

have observed, the most recent waves of refugees leaving Syria and Iraq are relatively well off, better educated, often able to make their appeals to the media in English.²⁶⁶ Those who have attempted the more dangerous journey by sea include a greater diversity of migrants, many of them from Asia and Africa, many of them desperately poor.²⁶⁷

Another difference is the legal distinction drawn between political refugees and economic migrants which, since the end of the Second World War, has triggered a different set of obligations on the part of nations, but also defined and delimited our humanitarian sympathies towards the uninvited.²⁶⁸ Political refugees are those who flee certain forms of political persecution; migrants include anyone else and generally those who move to escape poverty or to improve the quality of their lives. Under existing international law, countries are obliged to extend basic protections to refugees; a refugee cannot be returned to the country from which he or she has fled. By contrast, countries owe nothing to economic migrants; migrants who arrive without permission may be deported. The arrival of “mixed flows” of refugees and migrants has provided justification for subjecting all newcomers to detention and processing.²⁶⁹ But the problem with the distinction goes further. It reflects a commitment to correct certain wrongs but not others—a promise never to repeat the crime of abandoning persecuted minorities, but far less commitment to redressing the kinds of inequalities that are the continuing legacy of imperialism.

In other words, there are lessons we have yet to learn from the history of imperialism. As Rai and his contemporaries anticipated more than a century ago, the proliferation of sovereign states was not a solution to the problem of empire. The globalization of national borders would preserve, even intensify the asymmetries wrought during the imperial era. Those asymmetries, in turn, have made the pressure to move across national borders greater than any other time in human history. Rather than consign ourselves to the nationalism that continues to govern our immigration policies, we might embrace an alternative vision, one that acknowledges histories of entanglement, that the earth is a shared inheritance. We might abandon the notion that our obligations are circumscribed by territorial boundaries and instead embrace a wider ethic of reciprocity and hospitality. As one contemporary writer puts it:

266. Jess McHugh, *Europe Refugee Crisis Facts: Wealthy, Educated Syrians Risking Lives to Leave War*, INTL. BUS. TIMES, Sept. 9, 2015, available at <http://www.ibtimes.com/europe-refugee-crisis-facts-wealthy-educated-syrians-risking-lives-leave-war-2089018>.

267. Until relatively recently, most of those traveling the route from north Africa to Italy were from Somalia and Eritrea.

268. Boehler & Pecanha, *supra* note 247.

269. For instance, mixed flows of political refugees and economic migrants have been detained in Guantanamo Bay and the United States's Pacific territories for initial asylum “screenings.” See Koh, *The Human Face*, *supra* note 237; Koh, *America's Offshore*, *supra* note 237; David North, *Immigration Policy at the Edges: International Migration to and Through the U.S. Island Territories*, CENTER FOR IMMIGRATION STUDIES (Feb. 2003), <http://cis.org/USIslandTerritories-InternationalMigration>.

[T]he immigrant is not someone who turns up out of the blue, but . . . someone set by History on the path that leads to my house (my country), to a place where he will be received as a guest. He's not an adventurer, a vagabond, or a potential usurper. The whole significance of immigration lies in the fact that the immigrant is expected. The Other is on his way.²⁷⁰

CONCLUSION

I have argued in this Article that the exclusion of Indian immigrants from the white-settler world at the turn of the twentieth century played a significant role in shaping modern conceptions of territorial sovereignty, national identity, and the right to exclude others. Focusing on the experience of Indian migration and exclusion, this Article has sought to shore up the continuity between forms of imperial expansion and colonial settlement in the past and immigrant exclusion in the present. By situating the history of Indian exclusion from the United States within a broader history of excluding Indians from the white-settler world, this Article has also sought to emphasize the transnational dimension of immigrant exclusion. By expanding our framework of analysis beyond the convention of national borders, we begin to more fully appreciate the international circumstances that gave rise to those same borders, namely the European world war and decolonization movements of Asia and Africa. Finally, I have offered the reflections of an earlier generation of Indian immigrants in the United States to remind ourselves both of the histories that have given rise to our present and to project an alternative vision of coexistence and cooperation in a post-imperial world.

270. TAHAR BEN JALLOUN, *FRENCH HOSPITALITY: RACISM AND NORTH AFRICAN IMMIGRANTS* 6 (Barbara Bray trans., 1999).