A Constellation of Foundings: *Chae Chan Ping*, Chinese Exclusion, and the Making of *America*

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ABSTRACT

This article engages in a genealogy of national founding to pluralize and interrogate the founding moments of the United States. In the article, I examine the case of *Chae Chan Ping v. United States*, in which the Supreme Court established the sovereign power to exclude non-citizens, as a founding moment that constructs the nation-state as a confluence of people and territory. Placing *Chae Chan Ping* in its context of the late-nineteenth century, the end of Reconstruction, and the triumph of manifest destiny reveals how this founding is religiously and racially inflected. *Chae Chan Ping*—not solely but significantly—constructs a white Christian nation through the sovereign power of exclusion, a power that remains central to the exercise of immigration law today. The genealogical interrogation reveals, however, the contingency of this founding moment and the possibility of its otherwise.

On July 4, 2026, the United States marked the semiquincentennial of the Declaration of Independence, commemorating two hundred and fifty years since that document put into motion the events that would lead to the Revolutionary War between the

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colonists and Great Britain. While it predates the U.S. Constitution by over a decade, the Declaration of Independence is considered a central founding text for a central founding moment of the *American* republic.[1] The semiquincentennial is an opportunity to revisit and retell the history of the nation anchored to the singular moment of revolution.

In the prelude to and amidst the festivities of the semiquincentennial, the Trump Administration has engaged in a campaign of mass deportation.[2] Although mass deportations were not among the officially planned festivities commemorating the Declaration of Independence, this policy also serves to re-member the nation by drawing on a particular imaginary of *American* belonging to consolidate national identity through exclusion and expulsion.[3] In this way, the campaign of mass deportation joins a long history of establishing the body politic by what Kunal Parker describes as "nam[ing] and treat[ing] as foreigners not only those from outside the country's borders, but also those in their very midst," or, in

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[1] I use "*America*" and "*American*" to describe the United States of America advisedly, aware that the hemispheric egomania of such a claim is rejected by our neighbors throughout the Americas. I do so because, as the Monroe Doctrine made clear early in the history of the United States, the egomania is part and parcel of the imaginary. I place these terms in italics as a typographical reminder that neither is a given or natural category, consistent with my goal of troubling the idea of *America* in this article. On the deeply entwined history of the Americas, see Greg Grandin, *America, América: A New History of the New World* (New York: Penguin Group, 2025).

[2] See The White House, "Protecting the American People Against Invasion," The White House, January 21, 2025, https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/; Muzaffar Chishti et al., "Unleashing Power in New Ways: Immigration in the First Year of Trump 2.0," *Migration Information Source*, January 13, 2026, https://www.migrationpolicy.org/article/trump-2-immigration-1st-year.

[3] On "rememoration" and the national imagination, see Gayatri Chakravorty Spivak, "Nationalism and the Imagination," in *An Aesthetic Education in the Era of Globalization* (Cambridge, MA: Harvard University Press, 2013), 281.

short, "making foreigners."[4] As Parker's historical work reveals, the making of the *American* nation is not a singular occurrence but a continual negotiation over the very concept of the foreigner. In light of this history, we might ask: What if the campaign of mass deportation reveals as much about the founding of *America* as the celebration of the semiquincentennial?

To draw out the possibility of this contemporary juxtaposition, I also turn to history. In this article, I read the 1889 Supreme Court decision *Chae Chan Ping v. United States* as a founding event.[5] By fracturing the uniquely singular event of the founding, I make space for a genealogy of foundings that, to quote Michel Foucault, "opposes itself to the search for 'origins.'"[6] "What is found at the historical beginning of things," Foucault writes, "is not the inviolable identity of their origin; it is the dissension of other things. It is disparity."[7] A genealogy of foundings, then, would not ask *when* the nation was founded, as though a flag could be planted in the sands of history. Rather, a genealogy of foundings would ask *how* the nation is founded; *where* (in time, space, and culture) do we find the techniques and technologies of founding; and, ultimately, *what* is founded under the banner of

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[4] See generally Kunal M. Parker, *Making Foreigners: Immigration and Citizenship Law in America, 1600–2000* (Cambridge: Cambridge University Press, 2015) (quote at 4). The question of how foreigners become migrants and how migrants become foreigners occasions potentially rich engagement with the literature in postmigration, particularly as a conceptual bridge between the context of the United States (and settler colonial societies more generally) and that of Europe. Unfortunately, I must leave that potential for another day. On postmigration, see, for example, Hans Christian Post et al., eds., *Postmigration: Arts, Culture, and Politics in Contemporary Europe* (Bielefeld: transcript Verlag, 2021).

[5] Chae Chan Ping v. United States, 130 U.S. 581 (1889).

[6] Michel Foucault, "Nietzsche, Genealogy, History," in *The Essential Foucault: Selections from the Essential Works of Foucault 1954–1984*, ed. Paul Rabinow and Nikolas Rose (New York: New Press, 2003), 352.

[7] Foucault, "Nietzsche, Genealogy, History," 353.

America?[8] A genealogy of foundings would map a constellation of those foundings that goes by the name of *America*.[9] To map such a constellation is to reveal the diagram of power that draws the boundaries of the nation and to bring into perception not only the possibility of other maps but the insufficiency and instability of the boundaries as they are presently marked.[10]

To attend to the constellation of *American* foundings is to attend closely to questions of race and religion. The founding exclusions of *American* political identity have often been drawn along lines of race and religion.[11] But these founding exclusions also operate through racial and religious logics. It is not simply that race and religion designate lines of difference; rather race as a technology of politics is deployed to produce ontologies of political distinction, and religion in the form of a political theology is deployed to produce an

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[8] It is not my intention to single out the United States as uniquely marked by a genealogy of foundings. As Partha Chatterjee has argued, the consolidation and reconsolidation of the nation-state is integral to that political modality. Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton, NJ: Princeton University Press, 1994); see also Partha Chatterjee, *The Politics of the Governed: Reflections on Popular Politics in Most of the World* (New York: Columbia University Press, 2004). But every genealogy of foundings would be distinct, and here my concern is with the *American* genealogy.

[9] On constellation as method, see Walter Benjamin, "Epistemo-Critical Prologue," in *The Origin of German Tragic Drama*, eBook, trans. John Osborne (London: Verso, 2009), 35–36; Rocío Zambrana, "Dialectics as Resistance: Hegel, Benjamin, Adorno," in *Hegel and Resistance: History, Politics and Dialectics*, eds. Bart Zantvoort and Rebecca Comay (London: Bloomsbury Academic, 2018), 66; Andrea Krauß, "Constellations: A Brief Introduction," trans. James McFarland, *MLN* 126, no. 3 (2011): 439–45.

[10] While I do not draw on their work directly in this article, I am influenced throughout by Gloria Anzaldúa's work on the borderlands and Étienne Balibar's work on the antinomies of citizenship. See Gloria Anzaldúa, *Borderlands / La Frontera: The New Mestiza*, 4th ed. (San Franciso: Aunt Lute Books, 2012); Étienne Balibar, *Citizenship*, trans. Thomas Scott-Railton (Cambridge: Polity Press, 2015); Étienne Balibar, *Citizen Subject: Foundations for Philosophical Anthropology*, trans. Steven Miller (New York: Fordham University Press, 2016).

[11] See Kathryn Gin Lum, *Heathen: Religion and Race in American History* (Cambridge, MA: Harvard University Press, 2022).

ahistorical myth of national belonging. Each of these logics warrants a brief additional excursus.

The politics of exclusion is a politics that deploys what scholars such as Denise Ferreira De Silva and Falguni Sheth describe as the technology of race. For De Silva, the category of race "fuses particular bodily traits, social configurations, and global regions, in which human difference is reproduced as irreducible and unsublatable."[12] Race for De Silva naturalizes difference by marking politically productive ontological distinctions of otherness or foreignness, thereby producing a politics premised on ontological coherences defined as naturally unequal racial cohorts. But as Sheth argues, the technology of race also produces a politics of management in which the racialized subject is designated "unruly" or "threatening to the political order of a collectively disciplined society."[13] The racialized subject, Sheth argues, is conceived as disorder and danger embodied, thus such a person is not the vaunted autonomous agent of liberal politics but a threat to be contained, controlled, or eradicated.[14] Race, in other words, is not merely a designation of difference but a political technology that makes difference possible and manageable under the sign of naturalized distinctions. The national-foreigner distinction is made to appear given through its racial production.

Likewise, while religion has been an important marker of foreignness, that mark of foreignness is not simply identitarian but political-theological. *America* is a theological project, and the practices of exclusion that found that project trace not only a certain Protestant Christian heritage but a providential designation. If race is the technology by which the lines of political exclusion are rendered ontological and, thereby, naturalized in the process of their production, the political theology of providence effaces

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[12] Denise Ferreira Da Silva, *Toward a Global Idea of Race* (Minneapolis: University of Minnesota Press, 2007), xix.

[13] Falguni A. Sheth, *Toward a Political Philosophy of Race* (Albany: SUNY Press, 2009), 26.

[14] See generally Sheth, *Toward a Political Philosophy of Race*; see also Falguni A. Sheth, *Unruly Women: Race, Neocolonialism, and the Hijab* (Oxford: Oxford University Press, 2022).

the reproduction of *America* through exclusionary re-foundings by sublimating history to teleology. The historical formations of the nation through contests over belonging are effaced in the myth of *America*'s providential design and destiny. Historical materialism and its contingencies are replaced by a mythos in which the revolution already contains an eschatological end, what Thomas Jefferson called the "empire for liberty."[15]

I am not the first to suggest that *American* history should be read as a series of re-foundings rather than as a linear continuity. Among others, Ned Blackhawk's retelling of *American* history through the encounter with Native communities, Eric Foner's work on Reconstruction, and *The 1619 Project*'s effort to reveal, as Nicole Hannah-Jones writes, that "the year 1619 is as important to the American story as 1776," all propose analogous genealogical endeavors.[16] Nor is my attention to the era of Chinese exclusion the only historical period that would illuminate such a genealogy. A genealogy of the foundings of *America* might locate its inquiry at the many confluences of how and where that populate the constellation *America*, including, the removal of Native nations in the 1830s; the *Dred Scott* decision of 1857; or the repatriation of

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[15] Thomas Jefferson to James Madison, April 27, 1809, Manuscript Division, 149, p. 2, Library of Congress, https://www.loc.gov/exhibits/jefferson/jeffwest.html#149.

[16] See Ned Blackhawk, *The Rediscovery of America: Native Peoples and the Unmaking of U.S. History* (New Haven: Yale University Press, 2023); Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: W. W. Norton & Company, 2019); Nikole Hannah-Jones, "Our Democracy's Founding Ideals Were False When They Were Written: Black Americans Have Fought to Make Them True," *New York Times Magazine*, August 14, 2019, https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html.

Mexican Americans in the early twentieth century, to name but a few of many examples.[17]

Consistent with the theme of this special issue, I want to place a particular emphasis on the role of migration in a genealogy of foundings, and to this end I ground my analysis in the moment and mechanisms of Chinese exclusion. For a nation-state like the United States, founded through settler colonialism, migration and founding are inextricably linked. The white, European men who signed the Declaration of Independence were engaged in an epistemological turn: from settler to native; from European to *American*. It was not sufficient, however, to assert belonging and a new identity. To become native meant eliminating the Indigenous peoples (a process that took many forms, including mass programs of forced migration) and sustaining a system of racial subjugation that denied national belonging to those forcibly migrated from Africa and their descendants.[18] But to create the *American* nation—not the Euro-*American* or Anglo-*American* nation, terms still rarely used in the United States—also meant policing the national borders against other migrants. This policing of immigration through federal law began with the

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[17] See, for example, Claudio Saunt, *Unworthy Republic: The Dispossession of Native Americans and the Road to Indian Territory* (New York: W. W. Norton & Company, 2020); Martha S. Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* (Cambridge: Cambridge University Press, 2018); Kevin R. Johnson, "The Forgotten 'Repatriation' of Persons of Mexican Ancestry and Lessons for the 'War on Terror,'" *Pace Law Review* 26, no. 1 (2005): 1–26, https://doi.org/10.58948/2331-3528.1147.

[18] On settler practices of "self-indigenizing," see Roxanne Dunbar-Ortiz, *Not "A Nation of Immigrants": Settler Colonialism, White Supremacy, and a History of Erasure and Exclusion* (Boston: Beacon Press, 2021); Jean M. O'Brien, *Firsting and Lasting: Writing Indians Out of Existence in New England* (Minneapolis: University of Minnesota Press, 2010). On subject-making through the system of racial subjugation that included but also extended beyond chattel slavery, see Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America*, rev. ed. (New York: W. W. Norton & Company, 2022).

exclusion of the Chinese in the late-nineteenth century.[19]

In what follows, I focus on the practice of exclusion. This is not the only dimension of immigration history in the United States. As Parker observes, U.S. history "testifies to the United States' unquestionably impressive record of receiving and absorbing immigrants[,]" even as "[it] has never welcomed all possible immigrants."[20] And one need not engage in historical apologetics or revisionism to tell a story of foundings through the history of selective inclusion.[21] I choose to focus here on the practice of exclusion because practices of inclusion still tend to work from an exclusionary logic that assumes the foreigner is knowable as foreigner and, thus, excludable—just not excluded in the instance of inclusion. On this logic, inclusion is an exception to the rule of excludability. I'm not convinced those assumptions hold, or they are at least troubled by the incompleteness of the historical exclusion, by the trace that remains of the excluded life.

To explore how migration functions as a central concept in the recurring founding of the United States, this article begins with one such trace in an attempt, as Walter Benjamin writes, to catch a "memory as it flashes up in a moment of danger": San Francisco, 1888, the collector of customs has denied entry to a Chinese laborer named Chae Chan Ping.[22]

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[19] The first federal immigration law was the Page Act of 1875, which played on stereotypical fears around immigration from Asia to prohibit indentured laborers and sex workers. The second federal immigration law was the Chinese Exclusion Act of 1882. Page Act, ch. 141, 18 Stat. 477 (1875); Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882).

[20] Parker, *Making Foreigners*, 2–3.

[21] See, for example, Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge, MA: Harvard University Press, 2009).

[22] Walter Benjamin, "On the Concept of History," in *Walter Benjamin: Selected Writings*, vol. 4, 1938–1940, ed. Howard Eiland and Michael W. Jennings, trans. Harry Zohn (Cambridge, MA: The Belknap Press of Harvard University Press, 2006), thesis VI, at 391.

I. GLIMPSE OF A MIGRANT LIFE

What we know of Chae Chan Ping's story begins a year prior. On June 2, 1887, Chae Chan Ping set sail from San Francisco aboard the steamship Gaelic bound for Hong Kong.[23] When he boarded the Gaelic, Chae Chan Ping had been living in the United States since at least 1875.[24] He was a laborer, but we do not know the particulars of his labor. We do know that Chinese labor was essential to preparing the western United States for white settlement, or as Paul Kramer writes, "You needed the Chinese ... if you wanted California to be white."[25] According to Erika Lee, Chinese laborers were "indispensable in the mines, factories, and fields of the West. ... They were hired again and again for jobs that were believed to be too dirty, dangerous, or degrading for white men and were paid on a separate

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[23] The details that follow are drawn principally from the Supreme Court opinion, *Chae Chan Ping*, 130 U.S. at 582–83. Supplementary details are drawn from, "Chae Chan Ping," *San Francisco Bulletin*, February 15, 1889, Daily Evening Bulletin Edition, 1; "Chan Ping Leaves US: He Refuses to Pay His Fare and the Company Takes Him as a Guest," *New York Times*, September 2, 1889, reprinted from the *San Francisco Call*; Gabriel Jackson Chin, "Chae Chan Ping and Fong Yue Ting: The Origins of the Plenary Power," in *Immigration Stories*, ed. David A. Martin and Peter H. Schuck (New York: Foundation Press, 2005); Garrett Epps, "The Ghost of Chae Chan Ping," *The Atlantic*, January 20, 2018, https://www.theatlantic.com/politics/archive/2018/01/ghost-haunting-immigration/551015/.

[24] We know that Chae Chan Ping resided in the United States for at least twelve years, perhaps more. Because he appears in the archive almost exclusively through his encounter with the U.S. legal apparatus, much of his story remains a mystery. It is illustrative, as the Library of Congress notes, that "[n]o first-person memoirs of the Chinese experience in nineteenth-century California are known to survive." "California as I Saw It: First-Person Narratives of California's Early Years, 1849–1900," Digital Collection, Library of Congress, accessed April 8, 2022, https://www.loc.gov/collections/california-first-person-narratives/about-this-collection/.

[25] Paul A. Kramer, "Imperial Openings: Civilization, Exemption, and the Geopolitics of Mobility in the History of Chinese Exclusion, 1868–1910," *Journal of the Gilded Age and Progressive Era* 14, no. 3 (2015): 317–47, https://doi.org/10.1017/s1537781415000067.

and lower wage scale from whites."[26] In performing these jobs, Chinese laborers were caught between the violent antipathy of white laborers, who viewed them as an existential threat to the white working class, and the instrumental exploitation of white elites, who viewed them as necessary to the economic development of the West.[27] Yet, Chinese laborers—along with smaller numbers of merchants, intellectuals, artists, and families—also built communities and social institutions in the United States, including newspapers, cultural centers, schools, and religious institutions, and they formed social and economic connections beyond the Chinese community.[28] To be, like Chae Chan Ping, a Chinese laborer in the United States in the late-nineteenth century was likely an experience of precarity and exploitation, but also an experience of community and belonging.

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[26] Erika Lee, *America for Americans: A History of Xenophobia in the United States* (New York: Basic Books, 2019), 80; see also Beth Lew-Williams, *The Chinese Must Go: Violence, Exclusion, and the Making of the Alien in America* (Cambridge, MA: Harvard University Press, 2018), 26.

[27] See generally *Report of the Joint Special Committee to Investigate Chinese Immigration* (Washington, DC: Government Printing Office, 1877); see also Lew-Williams, *The Chinese Must Go*, chap. 1. Lew-Williams notes that white elites understood the menial labor of Chinese immigrants as a path to racial uplift for both white elites and white laborers. "As traders and capitalists, they saw an abundant need for unskilled labor to extract natural resources and serve the leading households of the U.S. West. They assumed that the white working classes, as well as their own elite ranks, would benefit from this rapid development." Lew-Williams, *The Chinese Must Go*, 26. But elites also used Chinese labor to maintain class hierarchy, as when the Central Pacific Railroad employed its first, large cohort of Chinese laborers to bust a strike by white workers. Scott Alan Carson, "Chinese Sojourn Labor and the American Transcontinental Railroad," *Journal of Institutional and Theoretical Economics (JITE)/Zeitschrift Für Die Gesamte Staatswissenschaft* 161, no. 1 (2005): 83–84, https://www.jstor.org/stable/40752497.

[28] J. Ryan Kennedy and Chelsea Rose, "Charting a New Course for Chinese Diaspora Archaeology in North America," in *Chinese Diaspora Archaeology in North America*, ed. J. Ryan Kennedy and Chelsea Rose (Gainesville, FL: University Press of Florida, 2020); Lucy E. Salyer, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill, NC: University of North Carolina Press, 1995), 40–42; Lew-Williams, *The Chinese Must Go*, 36–39.

When he boarded the Gaelic bound for China in 1887, Chae Chan Ping made sure that he had with him a certificate, issued by the collector of customs for the port of San Francisco, establishing his prior residence in the United States. This certificate was essential. In 1882, the United States Congress passed the Chinese Exclusion Act, limiting Chinese immigration for laborers such as Chae Chan Ping but permitting the departure and return of those already resident when the law was passed, so long as they carried the proper documentation.[29]

Chae Chan Ping spent a little over a year in China. He set sail again for San Francisco aboard the steamship Belgic on September 7, 1888. It was a month-long journey, and the Belgic docked in San Francisco on October 8, 1888. Chae Chan Ping presented his certificate of prior residence to the collector of customs, but he was denied entry. Seven days before he landed—three quarters of his journey across the Pacific from China—President Grover Cleveland had signed the Scott Act into law.[30] The Scott Act supplemented the 1882 Exclusion Act by prohibiting nearly all Chinese immigration to the United States and canceling the validity of any certificates of residency issued prior to the law's enactment. Thus, seven days journey from the coast of California, Chae Chan Ping's right and ability to return were nullified. The U.S. government had engaged in what Vazira Fazila-Yaccobali Zamindar calls "the bureaucratic violence of drawing political boundaries and nationalizing identities."[31] This bureaucratic violence seeks to clarify the phenomenal ambiguity of political belonging in a context like nineteenth-century California by overwriting social bonds with legal classifications, and in doing so, the

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[29] Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882). Gabriel Jackson Chin points out that what the statute meant by "Chinese" was ambiguous. It could be read as either a nationality or a racial designation. Subsequent legislation and litigation, however, would make clear that the term was applied as a racial category. Chin, "Chae Chan Ping and Fong Yue Ting," 10.

[30] Scott Act, ch. 1015, 25 Stat. 476 (1888).

[31] Vazira Fazila-Yaccobali Zamindar, *The Long Partition and the Making of Modern South Asia: Refugees, Boundaries, Histories* (New York: Columbia University Press, 2010), 2.

violence of the attempted resolution renders some lives "interminable."[32] Chae Chan Ping, in the evocative words of Zamindar, "invokes all the aporias of belonging in a cartography of nation-states," as he stands before the juridical power of the customs house holding his suddenly meaningless claim to residency.[33]

Denied entry into the United States, Chae Chan Ping was detained aboard the ship by the Belgic's captain. But the Chinese community in San Francisco had a well-established system of mutual aid, and Chae Chan Ping's denial of entry and detention were quickly known among his fellows. Thomas Riordan, counsel to the Chinese Six Companies, filed a *habeas corpus* petition with the Circuit Court for the Northern District of California.[34] The court issued a writ of *habeas corpus*, and Chae Chan Ping appeared before the court to determine whether he was improperly denied entry into the United States and, therefore, unlawfully detained aboard the Belgic. The Circuit Court ruled against him, and he appealed his case to the Supreme Court of the United States. The Supreme Court delivered its ruling on May 13, 1889, and, in one of the founding judgments of U.S. immigration law, the Court held that the inherent sovereign power of the U.S. Congress included the ability to nullify Chae Chan Ping's previously granted right to return.

At some point between the denial of his *habeas* petition and the Supreme Court decision, Chae Chan Ping was released from detention, perhaps when the Belgic was next scheduled to sail and needed to cease being a prison and become a ship again. The *San Francisco Call* reported that Chae Chan Ping continued to live in San Francisco's Chinatown until September of 1889, at which time he was forcibly

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[32] Zamindar, *The Long Partition*, 2. Anzaldúa makes a similar point when she argues that "[a] border is a dividing line, a narrow strip along a steep edge. A borderland is a vague and undetermined place created by the emotional residue of an unnatural boundary." Anzaldúa, *Borderlands / La Frontera*, 25.

[33] Zamindar, *The Long Partition*, 2.

[34] Chin, "Chae Chan Ping and Fong Yue Ting," 10. Lucy Salyer describes the Chinese Six Companies as "the advocate for the Chinese community in the white world." Riordan was the Companies' "attorney on retainer to contest anti-Chinese legislation and practices." Salyer, *Laws Harsh as Tigers*, 40.

deported to China aboard the steamship Arabic. The paper relates these final, and only extant, words from Chae Chan Ping as the ship's captain attempted to collect the fare for voyage: "I don't want to go back to China; I want to stop in California. If they want make me go back they must pay passage. I don't care. I won't pay."[35] This, Chae Chan Ping's final claim to belonging and its denial, still echo from San Francisco harbor, as the order announcing his exclusion still echoes from the halls of the Supreme Court.

II. *CHAE CHAN PING* AND THE AFTERLIFE OF CHAE CHAN PING

While all but the barest details of Chae Chan Ping's life are lost to history, his name is (in)famous. As Rose Cuison Villazor writes, "There is arguably no other case that is more familiar to immigration legal scholars than *Chae Chan Ping v. United States*."[36] In the case that bears this name—which, in the conventions of U.S. legal citation, becomes the principal signifier for the doctrines established in the case—the Supreme Court took the opportunity to establish the bedrock principle of U.S. immigration law.[37] To quote the Supreme Court:

> The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States, as a part of those sovereign powers delegated by the Constitution, the right to its exercise at any time when, in the judgement of the government, the interests of the country require it, cannot

[35] "Chan Ping Leaves US," *New York Times*, September 2, 1889, 3.
[36] Rose Cuison Villazor, "*Chae Chan Ping v. United States*: Immigration as Property," *Oklahoma Law Review* 68, no. 1 (2015): 137.
[37] The case is also known as *The Chinese Exclusion Case*, and the title page of the official opinion bears both names. As discussed below, the alternative title reinforces that the name Chae Chan Ping signifies exclusion: *Chae Chan Ping* and *The Chinese Exclusion Case* are one and the same.

> be granted away or restrained on behalf of any one.[38]

Known as the plenary power doctrine, this sovereign power of exclusion has resurfaced repeatedly throughout the history of U.S. immigration law to support largely unfettered power over immigration by the legislature and executive.[39] The Supreme Court's first invocation of *Chae Chan Ping* occurred within three years, when the Court called upon the case to exclude a Japanese woman who had arrived in San Francisco on May 7, 1891, aboard the Belgic, the same steamship that had carried Chae Chan Ping. Nishimura Ekiu was twenty-five years old, in possession of twenty-two dollars, and claimed to be traveling to join her husband of two years. She was judged a fraud and excluded as a likely public charge.[40] As a woman, Nishimura Ekiu could not enter the

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[38] *Chae Chan Ping*, 130 U.S. at 609. Epps points out that the Court's articulation of the government's sweeping power over immigration was "much broader than needed to resolve the certificate dispute." Epps, "The Ghost of Chae Chan Ping." It is clear from reporting at the time, however, that Chae Chan Ping's case was cast in the public imagination in these foundational terms. "[T]here has been so much evasion of the letter and spirit of the Chinese Restriction act," argued the *Los Angeles Daily Herald*, "that the ultimate rights of a nation have been properly imported into this question, and the United States has availed itself of its supreme power as a nation to exclude Ping." "Chae Chan Ping," *Los Angeles Daily Herald*, April 5, 1889.

[39] See generally, Hiroshi Motomura, "Immigration Law after a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation," *Yale Law Journal* 100, no. 3 (1990): 545–614. Adam Cox has recently argued against identifying *Chae Chan Ping* as a legally exceptional moment, contending instead that the case was decided through well-established doctrines of public law at the time. According to Cox, Chae Chan Ping's ability to return was understood as a mere privilege and not a vested right, which Congress could revoke without due process as it could any other privilege. Adam B. Cox, "The Invention of Immigration Exceptionalism," *Yale Law Journal* 134, no. 2 (2024): 357–65. I don't disagree with Cox's analysis, but I do think it matters both that the Court classified this claim as mere privilege and that it did so through a racialized discourse of sovereign power. In other words, I contend that this moment could be both legally mundane and foundationally meaningful. I hold on to the language of plenary power to capture that latter dimension.

[40] Nishimura Ekiu v. United States, 142 U.S. 651, 651–56 (1892).

United States without someone—some *man*—to support her. At a minimum she was seen as an impossible economic subject; more likely, she was understood to be and disqualified as a sex worker.[41] In the exclusion of Nishimura Ekiu, the Court drew on *Chae Chan Ping* to insulate not only the power to exclude but the procedural decisions of immigration officials from judicial review; with Nishimura Ekiu's exclusion, *Chae Chan Ping* began its afterlife.[42]

The year following *Nishimura Ekiu*, the Court would invoke *Chae Chan Ping* again in the case of *Fong Yue Ting* to deport three Chinese men who had failed to secure residency documents under the requirements of the Geary Act, which renewed the 1882 Chinese Exclusion Act in 1892, including one whose application failed for lack of a white witness to attest to his residency.[43] "The right of a nation to expel or deport foreigners who have not been naturalized, or taken any steps towards becoming citizens of the country," wrote the Court "rests upon the same grounds, and is as absolute and unqualified, as the right to prohibit and prevent their entrance into the country."[44] *Fong Yue Ting* again drew upon and expanded *Chae Chan Ping*'s exclusionary power, applying it not only to exclude persons at the border but to deport persons already residing within the country.[45]

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[41] I borrow the concept of the impossible subject from Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton, NJ: Princeton University Press, 2014). On the sexual stereotyping of Asian women as a valence of exclusion, see Kerry Abrams, "Polygamy, Prostitution, and the Federalization of Immigration Law," *Columbia Law Review* 105, no. 3 (2005): 641–716, https://www.jstor.org/stable/4099477.

[42] *Nishimura Ekiu*, 142 U.S. at 659–60. On the expansion of plenary power in *Nishimura Ekiu*, see Motomura, "Immigration Law after a Century of Plenary Power," 552.

[43] Fong Yue Ting v. United States, 149 U.S. 698 (1893). For the renewal and residency requirements, see Geary Act, ch. 60, 27 Stat. 25, 25 (1892).

[44] *Fong Yue Ting*, 149 U.S. at 707 (1893). The Court would, subsequently, grant limited due process rights to immigrants in deportation cases. See Yamataya v. Fisher, 189 U.S. 86, 100 (1903).

[45] Motomura, "Immigration Law after a Century of Plenary Power," 552.

Chae Chan Ping continues to reverberate in the Supreme Court's jurisprudence to this day. As recently as 2018, the Supreme Court invoked *Chae Chan Ping*, through the mechanism of precedent, to uphold the first Trump Administration's Muslim ban, writing: "For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a 'fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.'"[46] Furthermore, *Chae Chan Ping* resurfaces not only in the extraordinary moments of Supreme Court jurisprudence but in the hundreds of deportations and denied admissions effectuated by immigration court judges and enforcement agents every day.[47] Each removal is an exercise of that "power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States."[48] The principle established under the name *Chae Chan Ping* continues, 130 years later, to found and effect new forms of exclusion.[49]

Chae Chan Ping, "emerges only when [he] is needed in the space of imperial production," to borrow an evocative phrase from Gayatri Spivak.[50] His name, disassociated from his person, is invoked to

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[46] Trump v. Hawaii, 585 U.S. 667, 670 (2018) (quoting Fiallo v. Bell, 430 U.S. 787, 792 (1977), quoting Shaughnessy v. Mezei, 345 U.S. 206, 210 (1953), citing *Chae Chan Ping*, 130 U.S. 581 (1889)). For an even more recent case reiterating the plenary power doctrine, see *Department of State v. Muñoz*, 601 U.S. 889 (2024).

[47] According to TRAC Immigration at Syracuse University, Immigration and Customs Enforcement averaged 248,987 removals per year from 2003 to 2024, or approximately 682 removals per day. "Latest Data: Immigration and Customs Enforcement Removals," *TRAC Immigration*, https://tracreports.org/phptools/immigration/remove/ (accessed March 28, 2026; numbers may change as data is updated). This data predates the mass deportation campaign of the second Trump administration.

[48] *Chae Chan Ping*, 130 U.S. at 609.

[49] For further interrogation of the legacy of *Chae Chan Ping* and *Fong Yue Ting* and a critique of the continued reliance on decisions invoking racist logics, see Ahilan T. Arulanantham, "Reversing Racist Precedent," *Georgetown Law Journal* 112, no. 3 (2024): 439–508.

[50] Gayatri Chakravorty Spivak, *A Critique of Postcolonial Reason: Toward a History of the Vanishing Present* (Cambridge, MA: Harvard University Press, 1999), 238.

substantiate the government's largely unfettered power over immigration; the government may exert power over immigrants in ways that would, in the words of *Demore v. Kim* echoing *Chae Chan Ping*, "be unacceptable if applied to citizens" because that power was applied to the person of Chae Chan Ping and rendered lawful in the opinion that bears his name.[51] *Chae Chan Ping* enters history as the bedrock case establishing the principle of plenary sovereign power in immigration just as Chae Chan Ping, the subject that becomes the body-object of that power, exits history. The decision titled *Chae Chan Ping* no longer signifies the person Chae Chan Ping but, instead, his exclusion. In signifying his exclusion as an embodied person, his disembodied name justifies and legitimates the exclusion of others.

There is no recovering Chae Chan Ping as a historical subject, but to catch him "in *vain*, in history" is to mark the disjuncture in *Chae Chan Ping*'s publicity and Chae Chan Ping's erasure.[52] Such grasping in vain is to articulate the conditions that make possible, simultaneously, this publicity and erasure.[53] Chae Chan Ping, the person, exits history on an order of exclusion that requires only the barest facts of a life. He is the paradigmatic foreigner—object of the sovereign power of the state.[54] The state knows itself through his exclusion. As the Supreme Court wrote in *Chae Chan Ping*, "The United States in their relation to foreign countries and their subjects are one nation, invested with powers which belong to independent nations, the exercise of which can be invoked for the maintenance of its absolute independence and security throughout its entire territory."[55] In a single sentence the Court goes from talking about the "plural" United

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[51] *Demore v. Kim*, 538 U.S. 510, 521 (2003) (quoting *Mathews v. Diaz*, 426 U.S. 67, 79–80 (1976), citing *Kleindienst v. Mandel*, 408 U.S. 753, 765–70 (1972), citing *Chae Chan Ping*, 581 U.S. at 609).

[52] Spivak, *A Critique of Postcolonial Reason*, 242.

[53] See Joan W. Scott, "The Evidence of Experience," *Critical Inquiry* 17, no. 4 (1991): 792, https://doi.org/10.1086/448612.

[54] Cf. Hannah Arendt, "The Decline of the Nation-State and the End of the Rights of Man," in *Imperialism: Part Two of The Origins of Totalitarianism* (San Diego: Harcourt Brace Jovanovich, 1968).

[55] *Chae Chan Ping*, 130 U.S. at 604.

States ("their relation to foreign countries") to the singular "its absolute independence and security throughout its territory". What solidifies the nation-state is the boundary that defines its limit, and that boundary—which carries the name *Chae Chan Ping*—is drawn with the body of Chae Chan Ping.

Chae Chan Ping, the case, also goes by another name, *The Chinese Exclusion Case*. Under the sign of this alternate name, *Chae Chan Ping* signifies not only the sovereign power of exclusion but the contours of citizenship. Chae Chan Ping is excluded because he is Chinese. Because he is Chinese, he is not only legally but morally incapable of citizenship or belonging. As the Special Committee to Investigate Chinese Immigration reported to Congress in the preparations for the Chinese Exclusion Act: "To any one reading the testimony which we lay before the two houses it will become painfully evident that the Pacific coast must in time become either American or Mongolian. ... These two forces, Mongolian and American are already in active opposition. They do not amalgamate, and all conditions are opposed to any assimilation."[56] The Chinese, according to the Committee, are "[a]n indigestible mass in the community, distinct in language, pagan in religion, inferior in mental and moral qualities, and all peculiarities," and, thus, "an undesirable element in a republic, but becomes especially so if political power is placed in its hands."[57] By endorsing the underlying statutory scheme of Chinese exclusion, *The Chinese Exclusion Case* answers what New York congressman and exclusion proponent Edwin Meade, called "the Chinese *Question*," with the conclusion that the Chinese would be forever alien, incapable of the conditions of citizenship.[58]

That conclusion did not entirely hold under law in the years to come, and the slippage is instructive. In 1898 the Supreme Court would decide *United States v. Wong Kim Ark* and hold that the Fourteenth

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[56] *Report of the Joint Special Committee to Investigate Chinese Immigration*, v.

[57] *Id.*

[58] Edwin R. Meade, *The Chinese Question* (New York: Arthur & Bonnell, 1877); see also Lew-Williams, *The Chinese Must Go*, 20.

Amendment's birthright citizenship provision included the children of Chinese immigrants born within the territory of the United States.[59] But, as African Americans had come to know all too well by 1898, formal citizenship under the Fourteenth Amendment was not yet a guarantee of rights, safety, or belonging in practice. Furthermore, as Aristide Zolberg observes, "Although the Court … upheld the jus soli tradition, the draconian measures directed at excluding Chinese women and the effective segregation of the resident Chinese male population insured that very few would in fact be in a position to benefit from the ruling."[60] And while the ruling did introduce an, albeit limited, incongruence into the project of exclusion, it also forwarded a racial logic when the Court observed that to rule against Wong Kim Ark "would be to deny citizenship to thousands of persons of English, Scotch, Irish, German, or other European parentage who have always been considered and treated as citizens of the United States."[61] Citizenship for the children of Chinese parents residing in the United States could be incidental to preserving the citizenship of white immigrants.

As *Wong Kim Ark* reflects, the Chinese question did not arise in a vacuum; it was one facet of the consolidation of territory and racial hierarchy in the United States in the late-nineteenth century. "Native American wars, struggles over African slavery, and the conquest of the West were tied to race-based ideas of who belonged in the United States and where they fit in the country's racial hierarchy."[62] Chinese exclusion, with its twinned facets of defining the foreigner and excluding the foreigner, was one racialized technology of founding developed and deployed in this period of consolidation. But that process of consolidation, with its attendant fragments and fractures, was also

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[59] United States v. Wong Kim Ark, 169 U.S. 649 (1898). The Supreme Court recently upheld *Wong Kim Ark*'s expansive understanding of birthright citizenship in *Trump v. Barbara*, 146 S. Ct. 2438 (2026).

[60] Zolberg, *A Nation by Design*, 192; see also Parker, *Making Foreigners*, 125–30.

[61] *Wong Kim Ark,* 169 U.S. at 694.

[62] Lee, *America for Americans*, 81.

sublimated under a providential theology of national becoming in the form of manifest destiny.

III. FOUNDING THE UNITED STATES—AGAIN—IN THE LATE-NINETEENTH CENTURY

If Chae Chan Ping had made his initial journey to San Francisco thirty years earlier, he would have disembarked in Mexico, not the United States.[63] The territory that would become the State of California in 1850 had been annexed by conquest from Mexico through the Treaty of Guadalupe-Hidalgo in 1848 following what, in the United States, is commonly referred to as the Mexican-American War and, in Mexico, the *Intervención estadounidense en México* [the U.S. intervention into Mexico] or the *Invasión estadounidense* [the U.S. invasion].[64] The forced annexation of territory ranging from Texas to California, along with the purchase of the Oregon Territory from Great Britain in 1846, fulfilled what its greatest proponent, John O'Sullivan, described as "our manifest destiny to overspread and to possess the whole of the continent which Providence has given us

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[63] Although he would likely have fared no better in Mexico, or elsewhere in the Western Hemisphere. As Lee notes, "In Mexico, where Chinese immigration was described in catastrophic terms as *peste amarilla* and *invasión mongólica* ('yellow plague' and 'Mongol invasion'), local harassment and racial violence were the most common responses to Chinese immigration." Lee, *America for Americans*, 95; see also Jason Oliver Chang, *Chino: Anti-Chinese Racism in Mexico, 1880–1940* (Urbana, IL: University of Illinois Press, 2017). By the 1930s, Canada and most Latin American countries had, following the lead of the United States, put Chinese exclusion laws in place. Lee, *America for Americans*, 95–96.

[64] On the role of manifest destiny in the war between the United States and Mexico, see generally the special issue of the *Journal of Public Culture* 35, no. 2 (2001): 1–169; see especially María del Rosario Rodríguez Díaz, "Mexico's Vision of Manifest Destiny during the 1847 War," *Journal of Popular Culture* 35, no. 2 (2001): 41–50, https://doi.org/10.1111/j.0022-3840.2001.00041.x.

for the development of the great experiment of liberty and federative self-government entrusted to us."[65]

So great was the influence of manifest destiny ideology, that even the opponents of Chinese exclusion framed their opposition in its terms. As B.S. Brooks testified before the Committee to Investigate Chinese Immigration: "The Almighty has blessed us beyond all other people. He has placed in our hands the means of prosperity and happiness greater than any other people ever had. I feel as if we were throwing away this great prosperity, as if we were casting back in the face of the Almighty the gifts which he presented us; that we are throwing back upon him his bounty with scorn and seeking to destroy the foundations of the prosperity of our State and its great and glorious future."[66] And as the Joint Report of the Special Committee noted, those who opposed exclusion were generally either the capitalists, who benefited from Chinese labor, or the missionaries, who thought Christian assimilation of the Chinese was possible and, therefore, a Christian duty.[67]

As an ideology, manifest destiny wove together theologically informed colonial convictions, including the doctrine of discovery, the priority of cultivation, the white man's burden, and a providential political

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[65] John L. O'Sullivan, "The True Title," *New York Morning News*, December 27, 1845, quoted in Frederick Merk and Lois Bannister Merk, *Manifest Destiny and Mission in American History: A Reinterpretation* (Cambridge, MA: Harvard University Press, 1995), 31–32.

[66] "Opening Statement of B.S. Brooks before the Joint Committee of the Two Houses of Congress on Chinese Immigration," San Francisco, CA, October 21, 1876, 4.

[67] *Report of the Joint Special Committee to Investigate Chinese Immigration*, iv.

eschatology.[68] The "West" was a wilderness to be discovered, tamed, cultivated, and, finally, civilized. Thus, Frederick Johnson Turner could write in his 1893 essay, "The Significance of the Frontier in American History," that "[u]p to our own day American history has been in a large degree the history of the colonization of the Great West. The existence of an area of free land, its continuous recession, and the advance of American settlement westward, explain American development."[69] This was to be an empire, a uniquely *American* empire, that would be the eschatological apotheosis of human civilization. And the idea was not new to the late-nineteenth century. As Thomas Jefferson wrote to James Madison in 1809, instructing Madison on continuing the expansion of U.S. territory, "we should have such an empire for liberty as she has never surveyed since the creation: & I am persuaded no constitution was ever before so well

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[68] In naming the theological dimensions of manifest destiny, I draw on Willie James Jennings description of Christianity's "supersessionist sensibility," which begins with a supersessionist claim over the Jewish tradition and develops a broader supersessionist racial logic through the colonial encounter. See Willie James Jennings, *The Christian Imagination: Theology and the Origins of Race* (New Haven: Yale University Press, 2011), 291–93.

While one might be tempted to identify the providential political eschatology with a Puritan understanding of the New Jerusalem, I think the theological works here in a less specific and more hegemonic register. As Daniel Rodgers has noted, the claim to be a "city on a hill" is widespread in nationalist discourse beyond the Puritans and even beyond the United States. Daniel T. Rodgers, "Mobile Metaphors of Nationalism," in *As a City on a Hill: The Story of America's Most Famous Lay Sermon* (Princeton, NJ: Princeton University Press, 2018), https://doi.org/10.2307/j.ctvc778b0.13.

[69] Frederick Jackson Turner, "The Significance of the Frontier in American History," in *The Frontier in American History* (New York: Henry Holt and Company, 1921), 1, https://www.gutenberg.org/files/22994/22994-h/22994-h.htm.

Later historians have challenged Turner's claims about the frontier as the shaping force of *American* identity, but his essay remains a valuable source for understanding the views of the West circulating in broader society in the nineteenth century. Nathalie Massip, "The Role of the West in the Construction of American Identity: From Frontier to Crossroads," *Anglophonia/Caliban: French Journal of English Studies* 31 (2012): 239–48, https://doi.org/10.4000/caliban.486.

calculated as ours for extensive empire & self government."[70] Colonization and development of the continental land mass was the providential end of history; the ordained establishment of as good a democratic empire as the world could know.

Its claim to the territory stretching from the Atlantic to the Pacific now secure, the United States could claim its eschatological place as the culmination of history.[71] It was not opportunity, duty, or obligation that compelled the United States to create an empire for liberty; rather, it was destiny made manifest—a providential design written upon the landscape—and the culmination of the new Jerusalem. As O'Sullivan wrote in 1839:

> [W]e have, in reality, but little connection with the past history of any [other nation], and still less with all antiquity, its glories or its crimes. On the contrary, our national birth was the beginning of a new history, the formation and progress of an untried political system, which separates us from the past and connects us with the future only; and so far as regards the entire development of the natural rights of man, in moral, political, and national life, we may confidently

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[70] "Thomas Jefferson to James Madison."

[71] Although the continental landmass "from sea to shining sea" was central to the ideology of manifest destiny, it was not the end of the territorial ambitions of the United States, as the peoples of Hawaii, Alaska, Puerto Rico, Guam, Samoa, the Marianas Islands, the Virgin Islands, Cuba, and the Philippines would come to learn. See Daniel Immerwahr, *How to Hide an Empire: A History of the Greater United States* (New York: Farrar, Straus and Giroux, 2019). Indeed, even in the newspaper report of Chae Chan Ping's departure, there is a suggestion of further expansion into Mexico. Imagining Chae Chan Ping's attempt to return to the United States, the paper wrote: "On his return he will be en route to Guaymas, where he will settle, and when the annexation of that interesting country takes place, *as take place it must*, Ping will come in as one of the inhabitants, and as this Government cannot expatriate its own citizens Ping will stay." "Chan Ping Leaves US," *New York Times*, September 2, 1889, 3 (emphasis added).

> assume that our country is destined to be *the great nation* of futurity.[72]

By the late-nineteenth century, however, the "great nation of futurity" was experiencing profound rupture alongside consolidation following the acquisitions that completed the territorial facet of manifest destiny. Territorial expansion drove the long simmering tension over slavery to a boiling point, and the Civil War temporarily divided the continent-wide territory that the United States had claimed as its providential right. In the aftermath of the Civil War, there existed a brief period when it seemed possible that the rigid racial hierarchies that defined the social and political life of the United States might be dismantled. Reconstruction, however, ended shortly after it began, and the late-nineteenth century was, instead, a period of religio-racial consolidation of the *American* national identity at the intersection of whiteness and Christianity.[73]

Its territory consolidated, in the aftermath of the Civil War, the great nation of futurity was also re-consolidating its identity. As Joshua Paddison has argued, "Reconstruction was a multiracial and multiregional process of national reimagining. It ended not with the removal of federal troops from the South

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[72] John L. O'Sullivan, "The Great Nation of Futurity," *The United States Democratic Review* 6, no. 23 (1839): 426.

[73] Judith Weisenfeld uses the term religio-racial to "capture the commitment … to understanding individual and collective identity as constituted in the conjunction of religion and race … ." Judith Weisenfeld, *New World A-Coming: Black Religion and Racial Identity during the Great Migration* (New York: NYU Press, 2017), 5. Weisenfeld coined the term to describe Black religio-racial movements that emerge in the context of the Great Migration. I use it here to describe the religio-racial commitment to a simultaneously racial and theological project of nation-making. For historical narratives of the religio-racial consolidation of *American* national identity in the second half of the nineteenth century, see Joshua Paddison, *American Heathens: Religion, Race, and Reconstruction in California* (Berkeley: University of California Press, 2012); Edlie L. Wong, *Racial Reconstruction: Black Inclusion, Chinese Exclusion, and the Fictions of Citizenship* (New York: NYU Press, 2015); Najia Aarim-Heriot, *Chinese Immigrants, African Americans, and Racial Anxiety in the United States, 1848–82* (Urbana: University of Illinois Press, 2003).

in 1877 but in a knitting together of North, South, and West around a newly robust white Christian identity during the course of the following decade."[74] By the time of Reconstruction, various European immigrant communities that had been excluded from the Protestant, Northern European vision of *American* identity prior to the Civil War were beginning to be integrated into this vision of a white Christian *America*.[75] There remained, however, three unsettled religio-racial issues, which Lew-Williams, following the nomenclature of the period, identifies as the "Negro problem," the "Indian problem," and the "the Chinese question."[76] Each community represented a similar and a distinct challenge to the consolidation of the white Christian project of *America*. The challenges were similar insofar as each community necessitated a solution to its place within the religio-racial hierarchy of the nation. They were also different, however, because each community represented a different kind of otherness: the Black citizen, the Native nation-within-the-nation, and the Chinese foreigner. Black citizenship, while a formal reality following the Reconstruction amendments, was emptied of its substantive meaning through the constraints of segregation and the precarity generated by legal and extra-legal campaigns of terror.[77] Native nations were first contained through war, then fragmented and

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[74] Paddison, *American Heathens*, 5.

[75] Lee, *America for Americans*, 72–73. It bears acknowledging that anti-Catholic prejudice lasted well into the twentieth century, and the process by which previously racialized European immigrants became white was by no means immediate or uncomplicated. Nonetheless, by the latter part of the nineteenth century, Irish Americans could use their newfound political power to become leaders in the Chinese exclusion movement. See, for example, Paddison, *American Heathens*, chap. 4.

[76] Lew-Williams, *The Chinese Must Go*, 20.

[77] Saidiya Hartman describes this as the "nonevent of emancipation." Hartman, *Scenes of Subjection*, 203.

dispersed through allotment.[78] The Chinese foreigner was excluded and expelled.[79]

When the Supreme Court announced the sovereign power of exclusion in *Chae Chan Ping*, it did so in ahistorical terms: "That the government of the United States, through the action of the legislative department, can exclude aliens from its territory is a proposition which *we do not think open to controversy*. Jurisdiction over its own territory to that extent is an incident of every independent nation."[80] According to the Court, having a nation-state means having the power to exclude persons from the territory of the nation-state; the latter is the natural consequence of the former. Curtis Bradley calls this the "presumption of sovereign authority," and argues that the history of U.S. constitutional law reveals a presumption that the federal government gained certain powers pre-constitutionally because they are the powers that all sovereign nations would be expected to exercise under the law of nations, including the power to manage foreign affairs, acquire new territory, and exclude the foreigner.[81]

While Bradley's theory of the sovereign powers presumption is generally persuasive as a descriptive matter, my argument here is that the power to exclude as a sovereign power is bedeviled by an incoherence, and that incoherence can be identified by the founding character of the power to exclude.[82] The nation-state does not emerge bearing the power to exclude; the

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[78] See generally Jennifer Graber, *The Gods of Indian Country: Religion and the Struggle for the American West* (Oxford: Oxford University Press, 2018).

[79] "The principal method of anti-Chinese violence became expulsion. Since their arrival in the 1850s Chinese migrants had been popular targets for harassment and assault, but systematic expulsion became the method of choice by the 1880s." Lew-Williams, *The Chinese Must Go*, 6.

[80] *Chae Chan Ping*, 130 U.S. at 604 (emphasis added).

[81] Curtis Bradley, "Sovereign Power Constitutionalism," *University of Chicago Law Review* 92, no. 7 (2025): 1813, 1830–55. Bradley also distinguishes between sovereign power and plenary power, arguing that the existence of a sovereign power does not remove it from constitutional scrutiny. Bradley, "Sovereign Power Constitutionalism," 1863–64.

[82] To what extent similar incoherences might bedevil other sovereign powers is a question I must leave to the side for now.

power to exclude and the nation-state are mutually constitutive. It was through the making of the Chinese as foreigners and the practice of excluding them as foreigners that the United States consolidated both its territory and its national identity. "[I]t would seem," the Special Committee to Investigate Chinese Immigration wrote, "that an unlimited influx of Chinese might be a great future evil; that the population of the Pacific coast by a people of cognate language, religion, habits, and traditions would be better than its population by Asiatics; that its people should be like those of Iowa or Illinois rather than like those of Peking or Canton."[83] "It matters not," the Supreme Court agreed, "in what form [foreign] aggression and encroachment come, whether from the foreign nation acting in its national character or from vast hordes of its people crowding in upon us. ... If, therefore, the government of the United States ... considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subjects."[84] Along with the subjugation of Black and Native communities, the exclusion of the Chinese is a facet of the fulfillment of manifest destiny: the heathen Chinese are excluded from the nation. The exclusion is territorial and ontological, but the two aspects cannot be disassociated; together, they make the nation-state as place and people bound by an innate belonging organized through the technology of race and the theology of providence.

To name *Chae Chan Ping* a founding among foundings is to place it in a constellation of foundings and to recognize that constellation as the nation-state we call the United States of America. Such a claim

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[83] *Report of the Joint Special Committee to Investigate Chinese Immigration*, vi. Zamindar makes a similar point with regard to the practices of refugee inclusion and exclusion in post-Partition India and Pakistan: "It was through the making of refugees as a governmental category, through refugee rehabilitation as a tool of planning, that *new nations and the border between them were made*, and people, including families, were divided." Zamindar, *The Long Partition*, 3 (emphasis added).

[84] *Chae Chan Ping*, 130 U.S. at 606.

displaces the centrality of independence or constitutional ratification as *the* founding moment and highlights the role of Chinese exclusion as an integral moment in the making of *America*. The nation-state is not founded; it is constructed from many singularities we can productively call a recurrence of foundings.[85]

To name *Chae Chan Ping* as a founding among foundings also denaturalizes and historicizes the sovereign power of exclusion. The sovereign power of exclusion was not a natural or inevitable consequence of the thing-in-the-world that is the United States, or, to put it in the terms of the Court, the sovereign power of exclusion was not an incident of independence—that one true founding. The sovereign power of exclusion was deployed as a technology to realize the twinned ideological dimensions of manifest destiny: a continent spanning nation-state for white Christian *Americans*. Management of migration through exclusion is a technique for maintaining the epistemological positionality of nativity which has no—I would argue cannot have—an ontological ground: the belief that we belong because others do not.

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[85] I do not intend to give inadvertent support to the originalist opponents of birthright citizenship who argue that the Fourteenth Amendment does not apply to the children of undocumented immigrants because at the time the Amendment was ratified there were no formal restrictions on immigration. See, for example, *Birthright Citizenship: Is It the Right Policy for America? Hearing before the Subcommittee on Immigration and Border Security of the House Committee on the Judiciary*, 114th Congress First Session (2015) (testimony of Lino Graglia, A.W. Walker Centennial Chair in Law, University of Texas School of Law, testifying in his personal capacity). First, I find the historical characterization oversimplified and inaccurate; forms of excludable alienage status certainly existed in the antebellum period. See Parker, *Making Foreigners*, chap. 4. Second, my argument is that *Chae Chan Ping* when read as a founding moment complicates the entwinement of the power to exclude and national identity, such that the foreignness undergirding our notion of undocumented immigrants would need to be reconsidered altogether. My thanks to one of the anonymous reviewers for raising this concern.

IV. BEYOND THE SINGULAR FOUNDING: FRACTURES, TRACES, AND POSSIBILITIES

If the exclusion of Chae Chan Ping and the creation of the plenary power to exclude are counted among the foundings of *America*, new light is thrown upon the confluence of the semiquincentennial and the campaign of mass deportation. While the campaign of mass deportation is not imagined as part of a re-founding, it is legitimized by the appeal to an ontological imaginary of *America* constructed through racial and religious logics along racial and religious lines that seeks to bring its imaginary into being. Thus, even as the Trump administration celebrates the single *American* story that begins with revolution, it is attempting a re-founding, a recapitulation of a white Christian nation constituted through exclusion.

To fracture the uniquely singular event of the founding into a constellation of foundings is to fracture the stable ontology of *America*; to ask with Zamindar whether "history bear[s] the task of putting the very process of making modern nation-states to trial and scrutiny?"[86] The making of the nation-state is not contained in the "'moment of arrival' as nationalism achieves its celebrated goal of statehood," it is constellated through its foundings.[87] Thus, *America* becomes a shifting object of perception, as different foundings are articulated within the constellation, and a deferred object, always incomplete because open to the possibility of new foundings.[88]

If the constellation of *America* is shifting and incomplete, the foundings leave their own fragments, traces of what cannot be fully resolved into (or fully excluded from) the constellation of the nation-state.[89] Every invocation of the sovereign power to exclude bears the trace of Chae Chan Ping—whose labor built the West; who left his community in San Francisco bearing the promise of a right to return; who was detained aboard the Belgic; who was denied the fruits

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[86] Zamindar, *The Long Partition*, 13; see also Chatterjee, *The Nation and Its Fragments*.
[87] Zamindar, *The Long Partition*, 4.
[88] Krauß, "Constellations," 1–2.
[89] See Chatterjee, *The Nation and Its Fragments*.

of his labor and severed from his community by deportation. Chae Chan Ping cries out silently to be acknowledged as the subject of loss—which is to say, a subject with belonging to lose—even as what Ranajit Guha calls the "pall of abstract legalism" continually remakes him the object for the occasion of sovereign power to know itself through exclusion.[90] Chae Chan Ping's silence is made all the more resounding by the memorialization of his final and only recorded words: "I don't want to go … I won't pay."[91] While Spivak teaches us that Chae Chan Ping is ultimately ungraspable and silent, his disruptive present-absence marks the necessary indeterminacy of the sovereign power of exclusion.[92]

We know Chae Chan Ping's name because he had a claim against his exclusion and erasure, a claim to reside, to presence, to belonging. His name is invoked through the case that bears his presence and his absence to reestablish the power of exclusion, to reify the power "which can be invoked for the maintenance of [the nation-state's] absolute independence and security throughout its entire territory."[93] In each invocation, however, there is also the ghost of Chae Chan Ping's claim denied, and his relationships with and in the United States sundered; the subject excluded but present in the form of his absence.[94]

Chae Chan Ping is invoked every day in the deportation and exclusion of other immigrants. This invocation is its own kind of everyday founding in repetition of that prior exclusion. The ghost of Chae Chan Ping draws our attention to the way in which each invocation of *Chae Chan Ping* is a re-creation of the nation-state with borders drawn by new bodies. But the ghost of Chae Chan Ping also silently invites each repetition of *Chae Chan Ping* to become a site of

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[90] Ranajit Guha, "Chandra's Death," in *A Subaltern Studies Reader: 1986–1995*, ed. Ranajit Guha (Minneapolis: University of Minnesota Press, 1997), 55.

[91] "Chan Ping Leaves US," *New York Times*, September 2, 1889.

[92] Spivak, *A Critique of Postcolonial Reason*, 244.

[93] *Chae Chan Ping*, 130 U.S. at 604.

[94] Cf. Ruby Lal, *Coming of Age in Nineteenth-Century India: The Girl-Child and the Art of Playfulness* (Cambridge: Cambridge University Press, 2013), 43.

recognition rather than exclusion. The United States does not precede the asylum seeker turned away from the border or the immigrant deported, as though it were a coherence. The power of exclusion produces coherence through the logics of race and religion. The nation-state is founded again on these acts of exclusion, through these excluded bodies and these excluded identities. It could be founded otherwise.