

# SURVEYING THE GOLDEN STATE (1850–2020):

## *Vagrancy, Racial Exclusion, Sit-Lie, and the Right to Exist in Public*

KAYLEY BERGER\*

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\* J.D./M.B.A. Candidate, Class of 2022, UC Irvine School of Law, Paul Merage School of Business.

## I. INTRODUCTION

In the modern era, it is all too easy to label California as a liberal state that works to protect social and ethnic minorities. Perhaps this is because California was effectively the first “sanctuary state.”<sup>1</sup> Or, maybe it is because California even offered \$500 in COVID-19 aid to undocumented immigrants when the U.S. Federal Government failed to offer them stimulus funds in the wake of the COVID-19 Pandemic.<sup>2</sup> However, at the same time, it is all too easy to forget that California politicians were the pushing force behind the Chinese Exclusion Act.<sup>3</sup> And that California cities have been quick to pass sit-lie ordinances despite California having the largest homeless population in the United States.<sup>4</sup> California is, like the rest of the nation, plagued by inequality.<sup>5</sup> “As of January 2020, California

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<sup>1</sup> Rose Cuison Villazor & Pratheepan Gulasekaram, *The New Sanctuary and Anti-Sanctuary Movements*, 52 UC DAVIS L. REV. 549, 556 (2018) (“California became the first ‘sanctuary state’ with the passage of SB 54, the California Values Act, which limits state and local law enforcement officers’ ability to communicate with federal immigration authorities about a person’s immigration status.”).

<sup>2</sup> Miriam Jordan, *California Offers \$500 in Covid-19 Aid to Undocumented Immigrants*, N.Y. TIMES (May 18, 2020), <https://www.nytimes.com/2020/05/18/us/coronavirus-undocumented-california.html>.

<sup>3</sup> Ryan Reft, *Before It Embraced Immigrants, California Championed the Chinese Exclusion Act of 1882*, KCET (Feb. 9, 2017), <https://www.kcet.org/shows/lost-la/before-it-embraced-immigrants-california-championed-the-chinese-exclusion-act-of-1882> (“By 1875, California’s Senators pressured Washington to pass the Page Act of 1875, which prohibited convicted felons, prostitutes, and Asian contract laborers from entering the U.S. The Page Act functioned as a precursor to the more sweeping Chinese Exclusion Act of 1992, which doubled down on these restrictions, banning all Chinese laborers.”).

<sup>4</sup> Farida Ali, *Limiting the Poor’s Right to Public Space: Criminalizing Homelessness in California*, 21 GEO. J. ON POVERTY L. & POL’Y 197, 198 (2014).

<sup>5</sup> Hannah Knowles, *Homelessness in the U.S. rose for a third year, driven by a surge in California*, HUD says, Wash. Post (Dec. 21, 2019), <https://www.washingtonpost.com/nation/2019/12/21/homelessness-us-rose-third-year-driven-by-surge-california-hud-says/>; Berkeley Law’s Policy Advocacy Clinic, *California’s New Vagrancy Laws*, 1 (June 2016), <https://www.law.berkeley.edu/wp-content/uploads/2015/12/Californias-New-Vagrancy-Laws.pdf> (“More than one in five people who are homeless in the United States live in California, and two-thirds of all people experiencing homelessness in California are unsheltered.”).

had an estimated 161,548 experiencing homelessness on any given day.”<sup>6</sup> And this number has been increasing annually.<sup>7</sup> It is only expected to get much worse over the next four years due to the economic impact of the COVID-19 Pandemic.<sup>8</sup> But this inequality is nothing new. The state has been criminalizing vagrancy since it became a national issue in the mid-1800s.<sup>9</sup>

Rather than focusing on the innovative progressive legislation that originated in California, this article seeks to draw attention to the ways the Golden State participated in or even innovated in discriminatory laws or policies.

This article will proceed in five parts. Section II provides an overview of nineteenth- and twentieth-century California vagrancy laws that discriminated against “Indians,” “Greasers,” and “Okies.” Section III discusses California history as it relates to racial exclusion. Specifically, it dives into California’s discrimination against Chinese and African Americans. Section IV discusses a number of California’s sit-lie ordinances. Section V questions the effects of civil unrest curfew laws by relating the Rodney King Riots to the recent George Floyd Protests. Finally, Section VI concludes.

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<sup>6</sup> *California Homelessness Statistics*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (Jan. 2020) <https://www.usich.gov/homelessness-statistics/ca>.

<sup>7</sup> *The 2020 Annual Homeless Assessment Report (AHAR) to Congress*, U.S. Dep’t Housing & Urban Dev. 11 (Jan. 2020), <https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf> (showing 6.8 percent increase in homelessness in California from 2019 to 2020 and an overall increase of 16.2 percent from 2007 to 2020); Katelyn Newman, *Homelessness Spike in California Causes National Rise*, U.S. News (Dec. 26, 2019), <https://www.usnews.com/news/best-states/articles/2019-12-26/homelessness-spike-in-california-causes-national-rise-for-third-year-in-a-row>.

<sup>8</sup> Daniel Flaming et al., *Locked out: Unemployment and Homelessness in the COVID Economy*, ECONOMIC ROUNDTABLE (Jan. 11, 2021), <https://economicrt.org/publication/locked-out/>; Rob Hayes, *‘Catastrophic:’ Chronic Homelessness in LA County expected to skyrocket by 86% in next 4 years*, ABC 7 (Jan. 12, 2021), <https://abc7.com/la-county-homelessness-socal-homeless-crisis-economic-roundtable-population/9601083>.

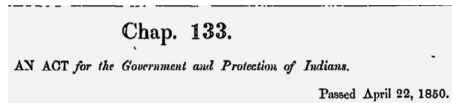
<sup>9</sup> Sara Bloomberg, *A Legacy of Criminalizing Transience and Homelessness*, SF PUBLIC PRESS (June 30, 2017), <https://www.sfpublicpress.org/a-legacy-of-criminalizing-transience-and-homelessness>.

## II EARLY VAGRANCY LAWS: “INDIANS,” “GREASERS,” & “OKIES”

“Despite much-touted myths of American upward and outward mobility, [vagrancy] laws proliferated along with English colonists on this side of the Atlantic too.”<sup>10</sup> Upward mobility was a pipe dream for those who found themselves labeled as Indians, Greasers, and Okies. To be called an Indian, Greaser, or Okie was akin to being called a vagrant because California ingrained into law the association between vagrancy and each of these labels.

### A. AN ACT FOR THE GOVERNMENT PROTECTION OF INDIANS — 1850

With the Compromise of 1850, California became the thirty-first U.S. state on September 9, 1850.<sup>11</sup>



However, California began criminalizing certain individuals’ right to exist in public months earlier when on April 22, 1850 the first session of the California State Legislature passed “The Act for the Government Protection of Indians” in Chapter 133.<sup>12</sup> Although the name of this act may lead one to think it advocates for the protection of Indians, the name is a misnomer. The act is more appropriately referred to as “The Indenture Act of 1850” because it functioned to enslave California Indians.<sup>13</sup> Specifically, Section 20 provided for public auctions whereby the indigent Indian would go to the highest bidder who would then use the Indian for labor.<sup>14</sup> Such a practice cannot be explained as anything but the state selling indigent Indians

<sup>10</sup> Risa Goluboff, *The Forgotten Law That Gave Police Nearly Unlimited Power*, TIME (Feb 1, 2016), <https://time.com/4199924/vagrancy-law-history>.

<sup>11</sup> Since California was admitted as a “free” state, the state lacked slave labor and so created these vagrancy statutes to meet their labor demands. *California becomes the 31st state in record time*, HISTORY.COM (Nov. 16, 2009), <https://www.history.com/this-day-in-history/california-becomes-the-31st-state-in-record-time>.

<sup>12</sup> Sections 3, 6, 14 and 20 are particularly demeaning. 1850 Cal. Stat. 408, Ch. 133, available at <https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1850/1850.pdf>.

<sup>13</sup> ROBERT F. HEIZER ET AL., *THE OTHER CALIFORNIANS: PREJUDICE AND DISCRIMINATION UNDER SPAIN, MEXICO, AND THE UNITED STATES TO 1920*, 46 (1977).

<sup>14</sup> 1850 Cal. Stat. 408, Ch. 133.

into slavery. In that same vein, Section 14 allowed a white person to post a bond for an Indian and “in such case the Indian shall be compelled to work for the person so bearing, until he has discharged or cancelled the fine assessed against him.”<sup>15</sup> Moreover, the act allowed whites to take ownership of Indian children via Section 3 which provided instructions for “[a]ny person obtaining a minor Indian . . . and wishing to keep it.”<sup>16</sup> The act also functioned to deny California Indians equal status under the law, as Section 6 provided that “in no case shall a white man be convicted of any offence upon the testimony of an Indian.”<sup>17</sup>

It took lawmakers a tremendous amount of time to repeal this act. After sixteen years in effect, Section 3 was repealed in 1863.<sup>18</sup> Then, it was not until the early 1870s that Section 20 was “indirectly, but effectively, repealed in the Penal Code of California in [S]ections 487 (1870) and 647 (1872), which exempt California Indians from the crime of vagrancy.”<sup>19</sup> And it was not until 1937 when the act (Chapter 133) was repealed in its entirety by the Fifty-Second Session of the California Assembly.<sup>20</sup>

CHAP. CCCCLXXV.—An Act for the repeal of Section Three of an Act for the Protection and Government of Indians, passed May twenty-second, one thousand eight hundred and fifty, and Section One of an Act amendatory thereof, passed April eighteenth, one thousand eight hundred and sixty.

[Approved April 27, 1863.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section three of an Act entitled an Act for the protection and government of Indians, passed May twenty-second, A. D. one thousand eight hundred and fifty, and section one of an Act amendatory thereof, passed April eighteenth, A. D. one thousand eight hundred and sixty, are hereby repealed.

SEC. 2. This Act shall be in force from and after its passage.

DIVISION XX. REPEALS.

20000. The following acts and sections, together with all amendments thereof and all acts supplementary thereto, are hereby repealed:

GENERAL LAWS.

Year	Ch.	Page	Year	Ch.	Page	Year	Ch.	Page
1850:	133:	408	1854:	2:	131	1855:	180:	238
1851:	27:	208			Special Law	1856:	44:	52
1851:	87:	384	1854:	7:	134	1860:	40:	60
1851:	130:	311			Special Law	1860:	60:	69
1853:	60:	33	1854:	60:	177	1860:	112:	134
1853:	149:	203			Special Law	1860:	142:	223
1853:	150:	203	1855:	23:	18	1857:	73:	72
1854:	2:	13	1855:	57:	67	1857:	104:	187
1854:	4:	13	1855:	90:	120	1857:	174:	188
1854:	62:	87	1855:	148:	188	1857:	211:	243

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Within the text is an image of the original. 1863 Cal. Stat. 743, ch. 475, § 1, available at <https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1863/1863.PDF#page=65>.

<sup>19</sup> HEIZER, *supra* note 12, at 48.

<sup>20</sup> 1937 Cal. Stat. 1180, ch. 369; CAL. WELF. AND INST. CODE §20,000, available at [https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1937/37vol1\\_Chapters.pdf#page=4](https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1937/37vol1_Chapters.pdf#page=4).

## CHAPTER CLXXV.

## AN ACT

*To punish Vagrants, Vagabonds, and Dangerous and Suspicious Persons.*

(Approved April 30, 1855.)

*The People of the State of California, represented in Senate and Assembly, do enact as follows :*

SECTION 1. All persons except Digger Indians, who have no visible means of living, who in ten days do not seek employment, nor labor when employment is offered to them, all healthy beggars, who travel with written statements of their misfortunes, all persons who roam about from place to place without any lawful business, all lewd and dissolute persons who live in and about houses of Ill-Fame ; all common prostitutes and common drunkards may be committed to jail and sentenced to hard labor for such time as the Court, before whom they are convicted shall think proper, not exceeding ninety days.

SEC. 2. All persons who are commonly known as "Greasers" or the issue of Spanish and Indian blood, who may come within the provisions of the first section of this Act, and who go armed and are not known to be peaceable and quiet persons, and who can give no good account of themselves, may be disarmed by any lawful officer, and punished otherwise as provided in the foregoing section.

SEC. 3. It shall be the duty of any Justice of the Peace, on knowledge or on written complaint from any creditable person of the State, to issue his warrant to apprehend such person or persons, and upon due conviction to send such person or persons to jail, as prescribed in section first of this Act ; and on a second conviction for the same offense any offenders may be sentenced to the County Jail for such additional time as the Court may deem proper, not exceeding one hundred and twenty days ; and in case of a conviction for either of the offenses aforesaid, an appeal may be taken to the Court of Sessions, in the same manner as provided for by law in criminal cases in this State.

SEC. 4. The keeper of the Jail or such other person, as the Sheriff of the county may appoint, shall be master or keeper of such prisoners after conviction and shall employ them at any kind of labor that the Board of Supervisors of the county may direct, and each and every person so convicted, shall be secured whilst employed outside of the County Jail, by ball and chain of sufficient weight and strength to prevent escape.

SEC. 5. When the Board of Supervisors of the county shall be of opinion that any person, who may have been committed under the provisions of this Act, has so conducted himself or herself, whilst so confined or employed, that he or she should be no longer held, said Board of Supervisors may discharge such person from confinement, upon his paying what may remain due of the costs of prosecution and commitment, including his support whilst so confined, or upon giving bond with two or more good and sufficient sureties in the sum of five hundred dollars for future good behavior ; provided, that the Board of Supervisors shall have power to discharge any person committed under the provisions of this Act without such conditions, when the health of said person is such as to require his or her discharge.

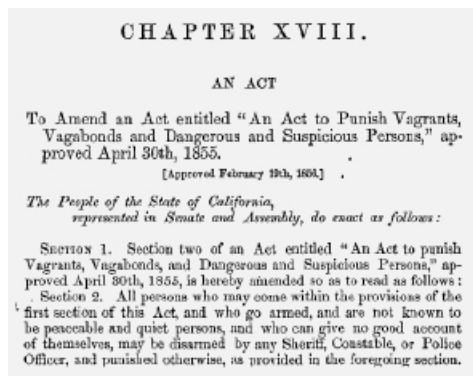
SEC. 6. This Act shall go into effect thirty days after its passage.

## B. THE GREASER ACT

Ready for a more general statute that allowed the state to force more vagrants into labor, and wanting to protect “honest people from the excesses of vagabonds,” on April 30, 1855 an act “To punish Vagrants, Vagabonds, and Dangerous and Suspicious Persons” was enacted in

California (an image of the original publication is pictured on the left).<sup>21</sup> Section 1 of the act provided for the jailing and sentencing to hard labor of all vagrants in the state except “Digger Indians.”<sup>22</sup> The vagrants, according to Section 2, were also to be secured “by ball and chain of sufficient weight and strength to prevent escape.”<sup>23</sup>

Colloquially this act became known as the “Greaser Act” because Section 2 of the act originally provided for the disarming of “[a]ll persons who are commonly known as ‘Greasers’ or the issue of Spanish and Indian blood.”<sup>24</sup> And as history has shown, the true goal of the act was to restrict the movement of Californians of Mexican descent.<sup>25</sup> However, a year later the act was amended eliminating “Greaser” from the text, in what many assume was an attempt to hide the racial exclusion intent behind the law, but by that time “Greaser” had already become a commonplace derogatory term for U.S. citizens of Mexican ancestry.<sup>26</sup>



<sup>21</sup> This act is referred to as the “Greaser Act.” 1855 Cal. Stat. 217, Ch. 175, *available at* <https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1855/1855.PDF>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> JOSE LUIS MORIN, *LATINOS AND CRIMINAL JUSTICE: AN ENCYCLOPEDIA*, 49 (Mar. 28, 2016) (“De jure discrimination and the racial profiling of Mexicans and Latinas/os had become the order of the day.”); *see* 1937 Cal. Stat. 1102, § 2615, *available at* [https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1937/37voll\\_Chapters.pdf#page=4](https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1937/37voll_Chapters.pdf#page=4).

<sup>26</sup> An image of the original publication is pictured above. 1856 Cal. Stat. 32, Ch. 18, *available at* <https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1856/1856.PDF#page=12>.



### C. THE ANTI-OKIE LAW — 1937

With the Great Depression and Dust Bowl came an Anti-Okie Law in California. “Okie” was a term used by Californians for “refugee farm families from Southern Plains who migrated to California in the 1930s to escape the ruin of the Great Depression and the Dust Bowl.”<sup>27</sup> They traveled from a broad range of places including Oklahoma, Texas, Arkansas, Missouri, Kansas, Colorado, and New Mexico.<sup>28</sup> California’s Anti-Okie Law was designed to target “people who migrated to California to escape the Dust Bowl. The California Anti-Okie law made

**Article 5. Bringing Indigent into the State.**

2615. Every person, firm, or corporation, or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor.

it a crime to bring anyone who was indigent into the state. By definition, those escaping the Dust Bowl at the height of the Great Depression were indigent.”<sup>29</sup> However, the law was short lived as the U.S. Supreme Court was “of the opinion that Section 2615 [was] not a valid exercise of the police power of California, that it impose[d] an unconstitutional burden upon interstate commerce, and that the conviction under it [could not] be sustained.”<sup>30</sup>

### III. CHINESE RACIAL EXCLUSION LAWS & SUNDOWN TOWNS

The battles throughout California’s history to exclude unwanted people from its communities often took a sharply racial character. Some efforts were overt, such as Article XIX of California’s 1879 Constitution.<sup>31</sup> Others, such as boycotts or neighborhood covenants, existed in the background. Many of these efforts occurred on a local level, relying on mob energy to effect a community-wide exclusion.

<sup>27</sup> David J. Wishart, ed., *Oakies*, ENCYCLOPEDIA OF THE GREAT PLAINS (last visited June 28, 2021), <http://plainshumanities.unl.edu/encyclopedia/doc/egp.ii.044.xml>.

<sup>28</sup> Wishart, *supra* note 26.

<sup>29</sup> *An Overview of California Vagrancy Laws*, ECOBEAR (last visited June 28, 2021), <https://ecobear.co/knowledge-center/california-vagrancy-laws>.

<sup>30</sup> *Edwards v. People of State of California*, 314 U.S. 160, 177 (1941).

<sup>31</sup> CAL. CONST. of 1879, ART. XIX, *available at* <https://www.cpp.edu/~jlkorey/cal-con1879.pdf>.



## A. ANTI-CHINESE RACIAL EXCLUSION

California's history of legal and quasi-legal race-based public exclusions dates back to early statehood. The most well-known examples, of course, are the publicly promoted federal statutes that primarily affected (and were promoted by) California constituents. Beginning with the Page Act of 1875, a series of federal bills was enacted to limit the population of Chinese laborers.<sup>32</sup> Article V of the Burlingame Treaty of 1868 established the right of mutual migration between the United States and China, while Article VI clarified that such migrants would "enjoy the same privileges, immunities and exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation."<sup>33</sup> Although the treaty made unilateral limitation of Chinese immigration by statute difficult, the Page Act attempted to do so by focusing on the business relationships involved in facilitating migration, making it a crime to assist or arrange for the importation of prostitutes or indentured laborers.<sup>34</sup> The Angell Treaty of 1880 revised the unlimited immigration provision of the Burlingame Treaty, granting the U.S. government sole discretion to limit or suspend Chinese immigration, provided the U.S. did not absolutely prohibit it.<sup>35</sup> Teachers, students, merchants, tourists, and the attendants thereof would not be subject to exclusions, nor would laborers already in the United States.<sup>36</sup> The Chinese Exclusion Act of 1882 went a step further, banning all Chinese laborers, allowing only non-laborers specifically identified by the Chinese government to enter, while providing a practical means for previously admitted laborers to obtain documentation to return, a right stipulated by the Angell Treaty.<sup>37</sup> In 1888, responding to a backlog of habeas cases for detained Chinese claiming returning status, the Scott Act

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<sup>32</sup> Reft, *supra* note 3.

<sup>33</sup> Burlingame Treaty, China-U.S., art. V & VI, July 28, 1868, 16 Stat. 739, available at <https://iowaculture.gov/history/education/educator-resources/primary-source-sets/immigration-regulation-response-and/burlingame-treaty>.

<sup>34</sup> Page Act, ch. 141, 18 Stat. 477, §§ 2–3 (1875) (repealed 1974), available at <https://loveman.sdsu.edu/docs/1875Immigration%20Act.pdf>.

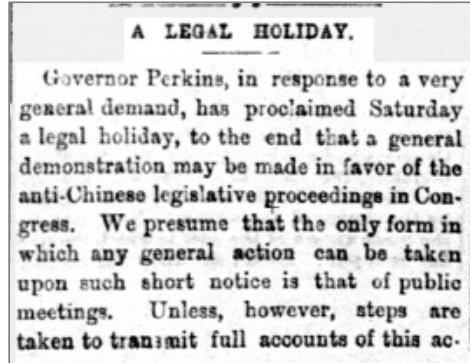
<sup>35</sup> Angell Treaty, U.S.-China, Nov. 17, 1880, 22 Stat. 826, 827, available at <https://www.loc.gov/law/help/us-treaties/bevans/b-cn-ust000006-0685.pdf>.

<sup>36</sup> *Id.*

<sup>37</sup> Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58.

removed the returning status exception altogether.<sup>38</sup> Then, the Geary Act of 1892 not only renewed the Chinese Exclusion Act, but established an enforcement mechanism, placing the onus on any legal Chinese resident to obtain documents of authorized residency from a Treasury office and subjecting him to arrest and a sentence of hard labor if found without said documents.<sup>39</sup>

It is clear that any provisions of national legislation or treaty regarding Chinese immigration were motivated by California interests. The 1870 Census records 49,277 Chinese in California, out of 63,199 in the United States and its territories.<sup>40</sup> This majority is even more substantial when territories, which had no legisla-



tive voice, are excluded: the total for all U.S. states is just 56,115.<sup>41</sup> California political figures from the lowly Denis Kearney, leader of the Workingmen's Movement, to Leland Stanford, governor, senator, and even an employer of Chinese labor, publicly agitated for excluding Chinese.<sup>42</sup> And so did John Franklin Swift, a California assemblyman and one of the three American delegates to sign the Angell treaty.<sup>43</sup> Also, when the Chinese Exclusion Act was being discussed in Congress, Governor George C. Perkins went so far

<sup>38</sup> Scott Act, ch. 1015, 25 Stat. 476 (1888) (repealed 1943).

<sup>39</sup> Geary Act, 27 Stat. 25 (1892).

<sup>40</sup> Calculated from page 8 and by subtracting Japanese counts in the footnotes. 1870 U.S. Census, available at <https://www2.census.gov/library/publications/decennial/1870/population/1870a-04.pdf#>.

<sup>41</sup> *Id.*

<sup>42</sup> Roger Olmsted, *The Chinese Must Go!*, CAL. HIST. Q. (1971), <https://online.ucpress.edu/ch/article-pdf/50/3/285/97466/25157337.pdf>.

<sup>43</sup> Journal of the Proceedings of the Assembly, Twentieth Session, 6 (1873-74), [https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/DailyJournal/1873/Volumes/1873\\_74\\_jnl.PDF](https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/DailyJournal/1873/Volumes/1873_74_jnl.PDF); Angell Treaty, U.S.-China, Nov. 17, 1880, 22 Stat. 826, 827, available at <https://www.loc.gov/law/help/us-treaties/bevans/b-cn-ust000006-0685.pdf>.

as to declare a holiday for the purpose of demonstrating in favor of the law.<sup>44</sup>

While the federal responses demonstrate the significance of the issue, they were not the only means attempted within California to exclude Chinese. California's 1879 Constitution was written with implicit and explicit attention to the issue of Chinese immigrants. Article I, declaring the rights of citizens and residents in California, clarifies in Section 17 that these rights extend to "[f]oreigners of the white race or of African descent . . . ,"<sup>45</sup> conspicuously omitting Asian foreigners. Article II Section 1 specifically precluded natives of China from voting.<sup>46</sup> Article XIX, concisely titled "Chinese," authorized or promised measures to discourage Asian immigration.<sup>47</sup> Section 1 rationalized the measures on the grounds that aliens "are or may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious disease. . . ." and promises to restrict aliens by imposing "conditions upon which persons may reside in the State . . . ."<sup>48</sup> Section 2 forbids corporations from employing Chinese and Section 3 forbids state, county, and municipal offices from employing Chinese.<sup>49</sup> Section 4 obligates the legislature to discourage immigration "by all the means within its power," and to delegate to cities and towns the power to relocate or remove Chinese residents.<sup>50</sup>

These provisions of the California Constitution clearly conflicted with the U.S. Constitution. *In re Tiburcio Parrott* asserted the primacy of the federal treaty-making power and found that the Burlingame Treaty granted China open immigration and most favored nation status.<sup>51</sup> It also ruled explicitly that Chinese or Mongolians in California are "persons" and therefore subject to due process by the Fourteenth Amendment of the U.S.

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<sup>44</sup> *A Legal Holiday*, SAC. DAILY UNION, Vol. 15, No. 9 (Mar. 3, 1882), available at <https://cdnc.ucr.edu/?a=d&d=SDU18820303.2.7&e=-----en--20--1--txt-txIN-----1>.

<sup>45</sup> CAL. CONST. of 1879, ART. I, § 17, available at <https://www.cpp.edu/~jlkorey/cal-con1879.pdf>.

<sup>46</sup> *Id.* at ART. II, § 1.

<sup>47</sup> *Id.* at ART. XIX.

<sup>48</sup> *Id.* at ART. XIX, § 1.

<sup>49</sup> *Id.* at ART. XIX, §§ 2–3.

<sup>50</sup> *Id.* at ART. XIX, § 4.

<sup>51</sup> 1 F. 481 (C.C.D. Cal. 1880).

Constitution, effectively nullifying the provisions of Article XIX.<sup>52</sup> Section 2 of Article XIX is particularly dealt with, finding that even though the formation of corporations is a reserved power, the arbitrary ability to dictate who may be employed by corporations is of such a sweeping nature that when it is used with discriminatory intent, it violates both the Burlingame Treaty and the Fourteenth Amendment. *In re Ah Chong* follows up by closing a loophole in which access to natural resources through state-issued licenses is claimed to be a reserved power that is not subject to federal oversight as a right of interstate citizenship.<sup>53</sup> The court ruled that since the Burlingame Treaty granted them most favored nation status, they could not be restricted from receiving fishing licenses.

For many California communities, town halls and ad hoc citizens' committees or town assemblies were the means by which Chinese were expelled. On Saturday, September 15, 1877, in Placer County, after a Chinese cook allegedly killed three residents of Rocklin, four of his associates were arrested and removed by a mob from a train.<sup>54</sup> On Monday morning, the citizens of Rocklin met and decided to notify all Chinese to vacate town by 6 p.m. that same evening, at which time, a posse razed all twenty-five dwellings in the Chinese neighborhood.<sup>55</sup> Two other towns in the area, Roseville and Penryn,

**THE ROCKLIN MURDERS.**  
 ———  
**TWO MEN AND A WOMAN  
 KILLED BY CHINAMEN.**  
 ———  
**Some of the Murderers in Custody—Great Excitement—Chinese Huddled out of the Neighborhood!**  
 ———

**The Last Local Horror.**  
 ———  
**COUNCILMAN KENDALL IN  
 HIS SHROUD.**  
 ———  
**The Plague-Spots Wiped Out.**  
 ———  
**CITIZENS IN COUNCIL.**  
 +  
**They Declare that the Chinamen  
 Must "Go."**  
 ———  
**AND THE CHINAMEN DO "GO."**  
 ———  
**Chinatown Deserted—Incidents of  
 the Brief Campaign.**  
 ———

<sup>52</sup> *Id.*; U.S. CONST. amend. XIV.

<sup>53</sup> 2 F. 733 (C.C.D. Cal. 1880); see also *McCready v. Virginia*, 94 U.S. 391 (1876) (explaining limitation on rights of interstate citizenship).

<sup>54</sup> *The Rocklin Murders*, PLACER HERALD, Vol. 26, No. 7 (Sept. 22, 1877), available at <https://cdnc.ucr.edu/?a=d&d=PH18770922&e=15-09-1876-30-09-1876--en--20--1--txt-txIN-placer-----1>.

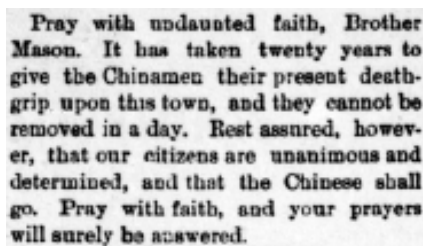
<sup>55</sup> *Rocklin Murders*, *supra* note 53.

formed committees the following day to notify Chinese to leave by the following day at noon.<sup>56</sup>

This tactic was followed by other communities. On February 6, 1885, Eureka City Councilman David Kendall was killed in the crossfire between two feuding Chinese.<sup>57</sup> A mob quickly gathered, and city officials quickly formed an ad hoc committee to arrange for the expulsion of Chinese.<sup>58</sup> The committee notified Chinese leaders that all Chinese had to leave by noon of the following day. Not only did all the Chinese leave, but on February 14 the committee reported to a town meeting, which adopted the following resolutions at the committee's recommendations:

- 1) That all Chinamen be expelled from the city and that none be allowed to return.
- 2) That a committee be appointed to act for one year, whose duty shall be to warn all Chinamen who may attempt to come to this place to live, and to use all reasonable means to prevent their remaining. If the warning is disregarded, to call mass meetings of citizens to whom the case will be referred for proper action.
- 3) That a notice be issued to all property owners through the daily papers, requesting them not to lease or rent property to Chinese.<sup>59</sup>

The following year, Eureka held an anniversary celebration of the expulsion of its Chinese, attended by a delegation from nearby Arcata. In March, they held a town meeting and resolved to remove all Chinese. Similar meetings were held in Ferndale and Crescent City, also in Humboldt County.<sup>60</sup> Subsequent attempts to reintroduce Chinese were answered by similar town meetings



Pray with undaunted faith, Brother Mason. It has taken twenty years to give the Chinamen their present death-grip upon this town, and they cannot be removed in a day. Rest assured, however, that our citizens are unanimous and determined, and that the Chinese shall go. Pray with faith, and your prayers will surely be answered.

<sup>56</sup> *Id.*

<sup>57</sup> Lynwood Carranco, *Chinese Expulsion from Humboldt County*, 30 PAC. HIST. REV. No. 4, 329, 329 (Nov. 1961), available at <https://www.jstor.org/stable/3636420>.

<sup>58</sup> Carranco, *supra* note 56.

<sup>59</sup> *The Last Local Horror*, HUMBOLDT TIMES, Vol. XXIII, No. 33, 8 (Feb. 8, 1885), available at <https://cdnc.ucr.edu/?a=d&d=HTS18850208.2.10&e=-----en--20--1--txt-txIN-----1>.

<sup>60</sup> Carranco, *supra* note 56, at 336.

and threats of expulsion, although exceptions were made.<sup>61</sup>

Meanwhile in Nevada County, a town meeting was held on November 28, 1885, where the following resolutions were adopted:

Resolved, That we, citizens of Truckee, in mass-meeting assembled, are determined that we will use every means in our power, lawfully, to drive them from our midst, and to assist the white laborers of California in forcing them back across the Pacific. Resolved, That the Chinese must go.<sup>62</sup>

This language falls short of calling for a forceful expulsion. Rather, a meeting the following weekend discussed available methods, and settled on a total economic boycott of Chinese labor, with plans to supplant Chinese businesses with white equivalents.<sup>63</sup>

Both the Humboldt County forcible expulsion and the Nevada County boycott were effective. Between the 1880 and 1890 censuses, the Chinese population in Humboldt County declined from 241 to 19, while the decline in Nevada county was from 3,003 to 1,053.<sup>64</sup>

On February 25, 1880, in San Francisco, the Board of Health convened a special meeting and appointed an ad hoc committee consisting of Mayor Isaac Kalloch, Dr. Henry S. Gibbons, Jr., and Health Officer J. L. Meares to perform an inspection of Chinatown and report back to the committee

**Anti-Chinese Movement at Truckee.**

A public meeting was held at Truckee on Saturday evening to consider the Mongolian question, and the tenor of all the speech-making was that "the Chinese must go!" The following preamble and resolutions were then adopted:

WHEREAS, We recognize the Chinese as an unmitigated curse to the Pacific Coast and as a direct menace to the bread and butter of the workingmen; therefore,

Resolved, That we, citizens of Truckee, in mass-meeting assembled, are determined that we will use every means in our power, lawfully, to drive them from our midst, and to assist the white laborers of California in forcing them back across the Pacific.

Resolved, That the Chinese must go.

Another meeting is called for next Saturday evening, when plans are expected to be adopted to carry out the intention of the resolutions. As these resolutions pledge the citizens to "lawful" measures in disposing of the Chinese it is to be hoped that they will abide by this determination. Truckee

<sup>61</sup> *Id.* at 337.

<sup>62</sup> *Anti-Chinese Movement at Truckee*, MORNING UNION, Vol. 36, No. 6650 (Dec. 2, 1885), available at <https://cdnc.ucr.edu/?a=d&d=MU18851202.2.10&srpos=8&e=-----188-en-20--1--txt-txIN-----1>.

<sup>63</sup> *An Appeal to Neighbors*, TRUCKEE REPUBLICAN, Vol. XIV, No. 101 (Dec. 9, 1885), available at <https://cdnc.ucr.edu/?a=d&d=SSTR18851209.2.12&srpos=1&e=06-12-1885-12-12-1885-188-en-20--1--txt-txIN-----1>.

<sup>64</sup> 1890 U.S. Census Tabulation Record, available at [https://www2.census.gov/prod2/decennial/documents/1890a\\_v1-13.pdf](https://www2.census.gov/prod2/decennial/documents/1890a_v1-13.pdf).



later that day.<sup>65</sup> The inspection, report, and resolution were clearly a pretext for excluding an undesired group from a desired public area, as

**THE BOARD OF HEALTH.**

**Resolutions of Condemnation Adopted.**

evidenced by the impromptu nature of the committee and the unveiled bigotry of the resolution, which expressed concern that Chinatown would “make San Francisco an Asiatic rather than American city.”<sup>66</sup> The resolution of the Board of Health was to completely condemn Chinatown, giving the residents thirty days to voluntarily leave or be forcibly driven out.<sup>67</sup> However, the Board of Health’s authority was mainly limited to fining the property owners, generally white men, and the National Guard was dispatched to the armories in case of any anti-Chinese mob uprising.<sup>68</sup>

San Jose convened a similar town meeting on March 8, 1887.<sup>69</sup> Expert reports condemning Chinatown were submitted by a health officer, a city engineer, the commissioner of streets, the chief of police, and the chief engineer.<sup>70</sup> The reports were part of an ongoing strategy by Mayor C. W. Breyfogle to find a pretext to remove Chinatown, an effort that included an attempt to solicit doctors to make a series of home wellness visits to Chinatown and report on unsanitary conditions.<sup>71</sup> This effort exemplifies the use

**The action of the Council in authorizing legal measures to declare Chinatown a nuisance and cause its demolition will be applauded by all right-minded people. Such a plague-spot should not be allowed to exist in this fair city. Its presence is an eye-sore and the sooner it is removed the better. Let the good work proceed.**

<sup>65</sup> *Chinatown Declared a Nuisance!*, WORKINGMEN’S COMMITTEE OF CALIF. (Mar. 1880), available at <http://www.sfmuseum.org/hist2/nuisance.html>.

<sup>66</sup> *Resolutions of Condemnation Adopted*, BD. OF HEALTH, available at <http://www.sfmuseum.org/hist2/wpc3.html>.

<sup>67</sup> *Chinatown Declared a Nuisance!*, *supra* note 64.

<sup>68</sup> *Pacific Coast News*, HUMBOLDT TIMES, Vol. XIII, No. 74 (Mar. 27, 1880), available at <https://cdnc.ucr.edu/?a=d&d=HTS18800327.2.6&srpos=8&e=10-03-1880-30-04-1880--en--20--1--txt-txIN-----1>.

<sup>69</sup> *Chinatown Condemned by the Council in Committee of the Whole*, SAN JOSE MERCURY NEWS, Vol. XXXI, No. 58 (Mar. 9, 1887), available at <https://cdnc.ucr.edu/?a=d&d=SJMN18870309.2.22&e=-----en--20--1--txt-txIN-----1>.

<sup>70</sup> *Chinatown Condemned by the Council in Committee of the Whole*, *supra* note 68.

<sup>71</sup> The mayor published the letter he circulated to physicians, complaining that one physician spoiled the attempt by warning the Chinese, who then



of prima facie neutral regulations for the purposes of targeted enforcement, for while Mayor Breyfogle makes reference to the leniency that Chinatown received with respect to existing regulations regarding fire safety, sanitation, and crime, he then goes on to propose that his abatement strategy is “that the Chinese be ordered to vacate the premises now occupied by them” and “that proceedings be instituted at the earliest possible moment for the condemnation of Chinatown and for its removal and disinfection.”<sup>72</sup> The proceedings mentioned took the form of a court case against the landlords, which alleges that the soil of Chinatown is so polluted that “no adequate means of exposing the soil and surface of said lands to the rays of the sun or healthful draughts of air, or of applying thereto other antiseptic or purifying remedies without the removal of said structures [exists]” and demands that “said structures and all others overshadowing and covering the filth and slime be required to be removed, and the foundations, floors and soil be disinfected and purified . . . .”<sup>73</sup> While health hazard may have been a real concern, the blanket claim made against all structures, the demand that they all be torn down, and the further demand “that defendants be restrained from maintaining said or any nuisance in or upon said lands,” all strongly indicate a targeted effort to dislocate the Chinese from Chinatown.<sup>74</sup> Rather than resolve the suit in court, San Jose’s Chinatown was entirely destroyed by a fire on May 4, 1887.<sup>75</sup> Some suspected




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reacted with suspicion. *A Cable Ordinance Reported to the Council*, SAN JOSE MERCURY NEWS, Vol. XXXI, No. 57 (Mar. 8, 1887), available at <https://cdnc.ucr.edu/?a=d&d=SJMN18870308.2.24&e=-----en--20--1--txt-txIN-----1>.

<sup>72</sup> *A Cable Ordinance Reported to the Council*, *supra* note 70.

<sup>73</sup> *Suits to Condemn Chinatown-Arrangements., Etc.*, SAN JOSE WEEKLY MERCURY, Vol. XXXV, No. 15 (Apr. 9, 1887), available at <https://cdnc.ucr.edu/?a=d&d=SJWM18870409.2.77&e=-----en--20--1--txt-txIN-----1>.

<sup>74</sup> *Suits to Condemn Chinatown-Arrangements*, *supra* note 72.

<sup>75</sup> *Laid in Ashes: Complete Destruction of Chinatown*, SAN JOSE WEEKLY MERCURY, vol. XXXV, no. 19 (May 7, 1887), available at <https://cdnc.ucr.edu/?a=d&d=SJWM18870507.2.2&e=-----en--20--1--txt-txIN-----1>.

arson, and one unidentified witness claimed to have seen the fire ignite in three separate places.<sup>76</sup>

These indirect attempts by San Francisco and San Jose to use targeted enforcement of nuisance ordinances seem to be an implicit recognition of the impossibility of attempting to accomplish the same result by a more direct means. Yet in 1890, San Francisco did attempt to empty Chinatown and confine the Chinese population to another neighborhood by Order 2190, better known as the Bingham Ordinance. The order simply made it “unlawful for any Chinese to locate, reside, or carry on business within the limits of the city and county of San Francisco, except in that district of said city and county hereinafter prescribed for their location.”<sup>77</sup> Judge J. Sawyer, writing the opinion for the test case, *In re Lee Sing*, cited the Fourteenth Amendment to the U.S. Constitution and Article 6 of the Burlingame Treaty (granting Chinese in the United States protections equal to those of visitors from the most favored nation) and succinctly stated that he was “unable to comprehend how this discrimination and inequality of operation, and the consequent violation of the express provisions of the constitution, treaties and statutes of the United States, can fail to be apparent to the mind of every intelligent person, be he lawyer or layman.”<sup>78</sup>

Over time, the sequence of federal legislation culminating in the Geary Act made Chinese migration to the United States more and more difficult. But interim attempts to regulate Chinese presence in various California communities were creative and sometimes effective. Broad-based support, frequently through town meetings, was key, but the flat failure of the Bingham Ordinance demonstrates the strategic importance of leveraging that support in ways that did not rely on courts. Smaller municipalities such as Rocklin, Eureka, and Truckee successfully expelled Chinese, and, in the latter two cases, limited their return. This restriction was accomplished through public resolutions that endured in local memory without leaving behind a numbered, written ordinance.

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<sup>76</sup> *Laid in Ashes*, *supra* note 74.

<sup>77</sup> *In re Lee Sing*, 43 F. 359, 359 (1890) (laying out text of Order No. 2190).

<sup>78</sup> *Id.* at 360.

## B. ANTI-BLACK RACIAL EXCLUSIONS: THE PHENOMENON OF SUNDOWN TOWNS

A direct successor to the late-nineteenth-century racial exclusion of Chinese is the twentieth-century phenomenon of sundown towns. There is ample evidence that in certain communities in California, Black people were not welcome in public after dark. There is also evidence that these prohibitions were not only organized, but had some form of official legitimacy, even if they largely circumvented court enforcement.

The ability to summarily exclude a race from a town by court-enforced statute would have been impossible. *In re Lee Sing* (discussed above) was sufficient precedent.<sup>79</sup> But since that decision was from 1890 and *Plessy v. Ferguson* was from 1896, some might have believed the door to local residential discrimination had been opened.<sup>80</sup> This was addressed when *Buchanan v. Warley* (1917) struck down a Louisville, Kentucky ordinance prohibiting Black people from occupying homes on predominantly white blocks.<sup>81</sup> Justice William Day, writing the unanimous opinion, explained that since the “interdiction is based wholly on color,”<sup>82</sup> it is a violation of the Fourteenth Amendment and not a valid application of police power.<sup>83</sup> The opinion resolved the potential conflict with *Plessy* by asserting that “in that case there was no attempt to deprive persons of color of transportation in the coaches of the public carrier, and the express requirements were for equal though separate accommodations for the white and colored races.”<sup>84</sup> The emphasis of *Buchanan* was on “the right of the individual to acquire, enjoy, and dispose of his property,”<sup>85</sup> which it held could not be abridged by local ordinance. Logically, if towns cannot legally bar Blacks from residing in a town, they cannot legally bar them from being in a town.

Glendale is an informative case study on the question of whether or not sundown ordinances existed. One local resident, Lois Johnson, recalls the 1940s when she would watch maids running to bus stops “so they would not

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<sup>79</sup> *Id.*

<sup>80</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896).

<sup>81</sup> *Buchanan v. Warley*, 245 U.S. 60 (1917).

<sup>82</sup> *Id.* at 73.

<sup>83</sup> *Id.* at 74.

<sup>84</sup> *Id.* at 79.

<sup>85</sup> *Id.* at 80.

be caught there after dark.”<sup>86</sup> Historian Clayton Cramer recalls neighbors telling him in the 1970s that Glendale had maintained a sundown ordinance until at least World War II.<sup>87</sup> Although this merely confirms that at least some locals believed such an ordinance existed, historian James Loewen argues two points about difficult-to-confirm local ordinances. First, local ordinances are first passed orally “by voice vote of the body passing them.”<sup>88</sup> They may or may not then be written down, depending on “several factors, including the level of record keeping in the town.”<sup>89</sup> Second, rumors might have the same effect as law on a local level, because most rules are transmitted informally from incumbents to newcomers, and especially because some rules can be effectively enforced by a sufficiently organized mob: “If whites have *not* had the power, legally, to keep African Americans out of town since 1917, so what?”<sup>90</sup> The rumor might be sufficiently potent.

Here, again, Glendale is informative. Glendale’s reputation as a sundown town was known to columnist Drew Pearson, who helped promote the national tour of the Freedom Train in 1947. The train carried original copies of patriotic documents, such as the Declaration of Independence. Pearson declared on a national radio broadcast that the train would not stop in Glendale because Negroes were not welcome there after dark.<sup>91</sup> Even more tellingly, the Civilian Conservation Corps, a federal agency, attempted to locate a camp for African-American workers in Griffith Park, which borders Burbank and Glendale. Park commissioners refused to allow it, on the grounds that both Burbank and Glendale had sundown ordinances.<sup>92</sup> If the ordinance were merely a rumor, it was a rumor for which the town sacrificed a temporary amenity rather than correct and also a rumor that had the force of restraining a federal agency.

In other towns, the existence of an ordinance can be confirmed by credible sources. Historian James Loewen quotes Vincent Jaster, former superintendent of schools in Brea:

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<sup>86</sup> JAMES W. LOEWEN, *SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM*, 283 (2005).

<sup>87</sup> *Id.* at 220.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> LOEWEN, *supra* note 85, at 219.

<sup>91</sup> *Id.* at 443.

<sup>92</sup> *Id.* at 240.

Brea used to have a law that no black person could live in town here after six o'clock. . . . But for years there were no black people in Brea at all. The shoeshine man was black, but he had to leave town by six o'clock. It was an illegal law, of course, if you'd gone to the Supreme Court.<sup>93</sup>

Racial exclusions also occurred at the neighborhood level, achieved through mutual covenants. In 1945, DeWitt Buckingham, a Black doctor, purchased a home in Berkeley's Claremont neighborhood, where all properties had a covenant prohibiting non-whites from occupying residences.<sup>94</sup> The neighborhood association filed suit, and Dr. Buckingham was ordered to leave.<sup>95</sup> Between 1937 and 1948, there were more than a hundred such suits in Los Angeles alone.<sup>96</sup> In Culver City in 1943, air raid wardens, tasked with the wartime responsibility of notifying residents what to do in case of a Japanese attack, were instructed by the city attorney to circulate restrictive covenants for white property owners to sign.<sup>97</sup> Covenants such as these were, of course, nationwide, strengthened by risk evaluation guidelines from the Federal Housing Association, which recommended deed restrictions that prohibited "the occupancy of properties except by the race for which they are intended."<sup>98</sup>

These covenants represented an efficient means of avoiding the type of enforcement made impossible by *Buchanan* — court enforcement of explicitly racial language in official local ordinances. By relocating the enforcement to a civil contract between neighbors, it avoided state action. This parallels the manner in which Truckee had effectively ejected the Chinese by making promises to one another to discharge their servants, not hire their labor, and replace their businesses. This means survived as an effective strategy until 1948, when the U.S. Supreme Court struck down

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<sup>93</sup> *Id.*

<sup>94</sup> RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA*, 80 (2017).

<sup>95</sup> Marisa Kendall, *For whites only: Shocking language found in property docs throughout Bay Area*, MERCURY NEWS (Feb. 26, 2019), <https://www.mercurynews.com/2019/02/26/for-whites-only-shocking-language-found-in-property-docs-throughout-bay-area>.

<sup>96</sup> ROTHSTEIN, *supra* note 92, at 80.

<sup>97</sup> *Id.* at 81.

<sup>98</sup> *Id.* at 82.

such covenants in *Shelley v. Kraemer*.<sup>99</sup> The crux of the opinion was that, by the local court’s interference in a mutually agreeable sale of property with a racial covenant attached, there was state action, in violation of the Fourteenth Amendment.<sup>100</sup>

One final method of enforcement further blurs the line between legal and extra-legal racial exclusion. In December 1945, O’Day Short moved to Fontana, where he was promptly threatened with violence by a “vigilante committee” and subsequently visited by two deputy sheriffs, Joe Glines and “Tex” Cornelison, who warned him that neighbors had been complaining about his presence.<sup>101</sup> Short reported these threats to his lawyer, the FBI, and the *Los Angeles Sentinel*.<sup>102</sup> On December 16, Short’s home caught fire, and his wife and two children died at the scene.<sup>103</sup> O’Day Short died weeks later of his injuries at a hospital.<sup>104</sup> Although an inquest was made by the coroner’s office in response to public pressure, no information regarding the vigilante committee or the deputy sheriffs’ visit was allowed to be presented, and the fire was deemed accidental.<sup>105</sup> This case illustrates the effectiveness of illegal exclusions when supported by the community and endorsed by law enforcement.

**Violence Threat Against Short Must Not Go Unchallenged**

**O. H. SHORT 4TH FONTANA VICTIM DIES**  
 Lacked Interest In Recovery

The ability to control who lives in a town enables the ability to completely control who has access to anything within the town. In 1960, Sunland resident Bob Johnson recalled of an incident in Glendale:

We took the kids to the Verdugo Plunge [swimming pool] in Glendale. There was a sign that said only for residents of Glendale. We are white and did not want to go back home, so we paid our money

<sup>99</sup> *Shelley v. Kraemer*, 334 U.S. 1 (1948).

<sup>100</sup> *Id.* at 19.

<sup>101</sup> *Violence Threat Against Short Must Not Go Unchallenged: An Editorial*, L.A. SENTINEL (Jan. 3, 1946).

<sup>102</sup> *O. H. Short 4th Fontana Victim Dies: Lacked Interest In Recovery*, L.A. SENTINEL (Jan. 24, 1946).

<sup>103</sup> *Violence Threat Against Short Must Not Go Unchallenged*, *supra* note 100.

<sup>104</sup> *O. H. Short 4th Fontana Victim Dies*, *supra* note 101.

<sup>105</sup> *Id.*

and they did not ask for our drivers license or identification. I was puzzled how they monitored whether or not I was from Glendale. Then I realized that was a way to keep blacks out since no blacks lived in Glendale.<sup>106</sup>

The practice of racialized traffic stops was enabled by racial exclusions. Lois Johnson, a Glendale resident, recalls a police officer explaining that they stopped any Black drivers after dark because they knew they did not live in town.<sup>107</sup>

It is difficult to know how many other towns in California practiced some form of racial exclusion. James Loewen, author of *Sundown Towns: Hidden in Plain Sight*, maintains an internet database to collect oral histories and other evidence that a town had used some means to exclude a racial category.<sup>108</sup> The extent or effectiveness of many attempted or successful exclusions may be lost to history.

#### IV. SIT-LIE ORDINANCES

Vagrancy laws that were as blatant as the Chinese Exclusion Act, Greaser Act and Anti-Okie Law are no longer accepted by the courts or society at large.<sup>109</sup> However, that does not mean California does not still have laws that target people because of their housing status or race. Today, vagrancy laws take the form of laws prohibiting: loitering, sleeping outside, sleeping in vehicles, food sharing, panhandling, fortune telling, gambling, prostitution, etc.<sup>110</sup> One of the most contested and popular at the same time in California are sit-lie ordinances; these are ordinances that ban sitting or

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<sup>106</sup> LOEWEN, *supra* note 85, at 255.

<sup>107</sup> *Id.* at 236.

<sup>108</sup> Matt Cheney et al., *Sundown Towns in the United States, Map (1997–2019)*, available at <https://sundown.tougaloo.edu/content.php?file=sundowntowns-whitemap.html>.

<sup>109</sup> For example, the U.S. Supreme Court found Cal. Penal. Code § 647(e) unconstitutional. *Kolender v. Lawson*, 461 U.S. 352, 361 (1983) (“We conclude § 647(e) is unconstitutionally vague on its face because it encourages arbitrary enforcement by failing to describe with sufficient particularity what a suspect must do in order to satisfy the statute.”).

<sup>110</sup> *An Overview of California Vagrancy Laws*, *supra* note 28.



lying down in public.<sup>111</sup> It is often claimed that the first sit-lie ordinance was established in Seattle, Washington in 1993, but the first sit-lie ordinance in history was established in San Francisco in 1968—a victory, if speed is the main measure, for the Golden State.<sup>112</sup>

The law made it a misdemeanor to willfully sit, lie or sleep in or upon any street, sidewalk or other public place in such a manner as to obstruct the free passage or use in the customary manner of such street, sidewalk, or public place. A violation could carry up to a \$500 fine and up to a six-month jail sentence. . . . Ultimately, the ACLU challenged the ordinance from a number of angles and the law was repealed by the Board of Supervisors in 1979.<sup>113</sup>

Then, in 2010 a new sit-lie ordinance was approved by San Francisco voters making “sitting or lying on public sidewalks in San Francisco between 7 a.m. and 11 p.m.” a crime.<sup>114</sup> Interestingly, the 2010 ordinance was first introduced by then–San Francisco Mayor, and now California Governor, Gavin Newsom.<sup>115</sup> The same politician who today is pushing hotels to house the homeless during the COVID-19 Pandemic is the politician who a decade ago proposed an ordinance that arguably targets the homeless.<sup>116</sup>

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<sup>111</sup> *No Safe Place: The Criminalization of Homelessness in U.S. Cities*, NLCHP.ORG 22, available at [https://nlchp.org/wp-content/uploads/2019/02/No\\_Safe\\_Place.pdf](https://nlchp.org/wp-content/uploads/2019/02/No_Safe_Place.pdf) (“Proponents of sit/lie laws argue that such laws are necessary to improve the economic activity in commercial districts where visibly homeless people are present. However, there is no empirical evidence of such an effect. To the contrary, these laws impose enforcement and other criminal justice costs on jurisdictions.”).

<sup>112</sup> Courtney Oxsen, *Embracing “Choice” and Abandoning the Ballot: Lessons from Berkeley’s Popular Defeat of Sit-Lie*, 25 HASTINGS WOMEN’S L.J. 135, 145 (2014), available at <https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1144&context=hwlj>.

<sup>113</sup> Oxsen, *supra* note 80.

<sup>114</sup> Jessica Cassella et al., *Implementation, Enforcement and Impact: San Francisco’s Sit/Lie Ordinance One Year Later*, CITY HALL FELLOWS (Mar. 2012), available at [https://sfbos.org/sites/default/files/FileCenter/Documents/42452CHF\\_SitLieReport\\_FINAL-wAppendices\\_7.2.12.pdf](https://sfbos.org/sites/default/files/FileCenter/Documents/42452CHF_SitLieReport_FINAL-wAppendices_7.2.12.pdf).

<sup>115</sup> Cassella, *supra* note 82.

<sup>116</sup> 82; Katy Murphy et al., *Is Hotel California a permanent answer to homelessness?*, POLITICO (June 3, 2020), <https://www.politico.com/states/california/story/2020/06/03/is-hotel-california-a-permanent-answer-to-homelessness-1288189> (“California Gov. Gavin Newsom is pushing to parlay short-term federal pandemic relief into a long-term

## V. EMERGENCY CURFEW ORDERS IN RESPONSE TO “CIVIL UNREST”

“NOT seldom has the curfew served as a tool of repression in history.”<sup>117</sup> Civil unrest curfews are another way to control who gets to exist in public, when, and for what purposes. They do this by empowering police to control who is outside during certain hours. Essentially, these curfews have become an excuse for police to use violence during certain hours against those they subjectively perceive to be a threat.<sup>118</sup> In effect, civil unrest curfew orders “put more police on the street and empower them to behave repressively in a[n] [already] tense situation.”<sup>119</sup> This has led to costly mass arrests of peaceful protestors, injuries caused by tear gas and rubber bullets, and even death.<sup>120</sup> In California, curfews are addressed by California Code § 8634 which provides that:

During a local emergency the governing body of a political subdivision, or officials designated thereby, may promulgate orders and regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety. Such orders and regulations and amendments and rescissions thereof shall be in writing and shall be given widespread publicity and notice. The authorization granted by this chapter to impose a curfew shall not be construed as restricting in

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remedy for the state’s homelessness crisis by buying vacant hotels and turning them into permanent housing.”).

<sup>117</sup> A G Noorani, *Curfew as Tool of Repression*, 19 *ECON. & POLITICAL WEEKLY* no. 34, 1463 (Aug. 25, 1984), available at <http://www.jstor.com/stable/41625636>.

<sup>118</sup> See Note, *Judicial Control of the Curfew*, 77 *YALE L.J.* 1560, 1561 (1968), available at <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5934&context=yj> (“Because of their simplicity, curfews can be used in a thoughtless manner at times when they can fulfill no valid governmental policy and can aggravate the very conditions which cause riots.”); see also Emily Elena Dugdale, *Everyone’s Imposing Curfews. But Do They Work?*, *LAIST* (June 2, 2020), [https://laist.com/2020/06/02/la\\_curfews\\_protests\\_do\\_they\\_work.php](https://laist.com/2020/06/02/la_curfews_protests_do_they_work.php).

<sup>119</sup> Zeeshan Aleem, *Dozens of cities across the country are imposing curfews. Do they work? Experts say curfews could backfire. Here’s why*, *Vox* (May 31, 2020), <https://www.vox.com/2020/5/31/21275996/curfew-george-floyd-protest-los-angeles>.

<sup>120</sup> *Id.*

any manner the existing authority of counties and cities and any city and county to impose pursuant to the police power a curfew for any other lawful purpose.<sup>121</sup>

In California history, one of the most notable curfew orders was issued in response to civil unrest following the April 1992 acquittals of the Los Angeles police officers who beat Rodney King.<sup>122</sup> These acquittals sparked civil unrest in Los Angeles because the beating that caused King to suffer a “fractured cheekbone, 11 broken bones at the base of his skull, and a broken leg” was videotaped by a bystander and aired on national television.<sup>123</sup> A devastating result of this curfew was death, as law enforcement used lethal force on occasion to enforce the curfews.<sup>124</sup> For instance, “two National Guard soldiers fired eight shots, fatally wounding a [20-year-old] Hispanic man driving a car who [allegedly] tried to run them down after curfew in south Los Angeles.”<sup>125</sup>

In the wake of the Rodney King riots, “[t]he Los Angeles Times reported that the arrests for curfew violations and other ‘civil disturbance’ offenses outnumbered those of looting, and that 51 percent of those arrested were Latino and 36 percent were Black.”<sup>126</sup> Despite attempts by those accused of violating the curfews to have the California courts rule that these

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<sup>121</sup> CAL. GOV'T CODE § 8634 (West); [§ 15] Violation of Curfew., 2 Witkin, Cal. Crim. Law 4th Crimes — Public § 15 (2020).

<sup>122</sup> Los Angeles Times Staff, *The L.A. Riots: 25 years later*, L.A. TIMES (Apr. 26, 2017), <https://timelines.latimes.com/los-angeles-riots>.

<sup>123</sup> *The Rodney King Affair*, L.A. TIMES (Mar. 24, 1991), <https://www.latimes.com/archives/la-xpm-1991-03-24-me-1422-story.html>.

<sup>124</sup> Anna Hopkins, *Justice unserved: 25 years after Rodney King riots that reduced Los Angeles to ashes and claimed dozens of lives, 23 homicides remain unsolved*, DAILY MAIL (May 2, 2017), <https://www.dailymail.co.uk/news/article-4467960/25-years-Rodney-King-riots-deaths-unsolved.html>.

<sup>125</sup> Paul Taylor & Lou Cannon, *Quiet Los Angeles Ends Curfew Today*, WASH. POST (May 4, 1992), <https://www.washingtonpost.com/archive/politics/1992/05/04/quiet-los-angeles-ends-curfew-today/aff13000-3425-4599-818e-749d2c80c793>.

<sup>126</sup> Fernanda Echavarrri, *Curfews “Definitely Work”—If We Define “Work” as Increasing the Possibilities for Police Violence*, MOTHER JONES (June 2, 2020), <https://www.motherjones.com/crime-justice/2020/06/do-curfews-work-confusion-los-angeles>; see Paul Lieberman, *51% of Riot Arrests Were Latino, Study Says: Unrest: RAND analysis of court cases find they were mostly young men. The figures are open to many interpretations, experts note*, L.A. TIMES (June 18, 1992), <https://www.latimes.com/archives/la-xpm-1992-06-18-me-734-story.html>.

curfew regulations were unconstitutional because they were overly broad and encouraged arbitrary enforcement, they were upheld.<sup>127</sup>

Recently, across the U.S., city-wide and county-wide curfews have been imposed in an attempt to halt public protests after George Floyd, a forty-six-year old father, was murdered by police officers in Minneapolis, Minnesota on May 25, 2020.<sup>128</sup> In California, on May 31, 2020 Los Angeles County's Board of Supervisors put in place an executive order "following proclamation of existence of a local emergency due to civil unrest."<sup>129</sup> The order placed Los Angeles County residents on notice that they should remain in their homes from 6 p.m. to 6 a.m.; instructed that they should only leave their homes if they need to seek medical care or work at an essential job. Violation of the executive order is a misdemeanor "punishable by a fine not to exceed \$1,000 or by imprisonment for a period not to exceed six months, or both."<sup>130</sup> Meanwhile, in San Francisco, Mayor London Breed established a similar curfew that lasted from 8 p.m. to 5 a.m. and said it would "be extended indefinitely."<sup>131</sup> Further, in San Jose, a curfew from 8:30 p.m. to 5:00 a.m. was imposed following the city's proclaiming "a local state of emergency within the City of San Jose resulting from the civil unrest following the death of George Floyd."<sup>132</sup>

<sup>127</sup> *In re Juan C.*, 28 Cal. App. 4th 1093, 33 Cal. Rptr. 2d 919 (1994).

<sup>128</sup> Amir Vera et al. *May 31 George Floyd Protest News*, CNN (June 5, 2020), [https://www.cnn.com/us/live-news/george-floyd-protests-05-31-20/h\\_faf6a71e06b13309403ff7cfbf1ded2d](https://www.cnn.com/us/live-news/george-floyd-protests-05-31-20/h_faf6a71e06b13309403ff7cfbf1ded2d); *George Floyd: What happened in the final moments of his life*, BBC NEWS (May 30, 2020), <https://www.bbc.com/news/world-us-canada-52861726>; Christina Palladino, *Who was George Floyd? Family, friends, coworkers remember 'loving spirit'*, FOX9 KMSP (May 27, 2020), <https://www.fox9.com/news/who-was-george-floyd-family-friends-coworkers-remember-loving-spirit>.

<sup>129</sup> L.A. County Curfew Order (May 30, 2020), available at <https://lacounty.gov/wp-content/uploads/Curfew-order.pdf>.

<sup>130</sup> *Id.*

<sup>131</sup> S.F. City Curfew Order (May 31, 2020), available at <https://sfmayor.org/sites/default/files/Order%20Setting%20Curfew%20During%20Local%20Emergency.pdf>; see also Amanda Bartlett, *SF officials choke up as they announce new curfew: 'We don't want to see it go up in flames'*, SFGATE (June 1, 2020), <https://www.sfgate.com/crime/article/City-officials-SF-curfew-George-Floyd-protests-15306879.php>; *Mayor London Breed and Public Safety Officials Announce Curfew in San Francisco to Begin Tonight at 8 PM*, SFMAYOR.ORG (May 31, 2020), <https://sfmayor.org/article/mayor-london-breed-and-public-safety-officials-announce-curfew-san-francisco-begin-tonight-8>.

<sup>132</sup> San Jose City Curfew Order (May 31, 2020), available at <https://www.sanjoseca.gov/home/showdocument?id=59288>.

These curfews have resulted in the arrest of thousands of peaceful protesters.<sup>133</sup> “Many of the arrests are made when police sweep a protest, lining up demonstrators against walls and tying their hands with zip ties.”<sup>134</sup> These massive sweeps have led police to need to create booking sites and field jails at places like UCLA’s stadium and utilize city buses to haul away arrested protesters.<sup>135</sup> Rather than curbing violence, the curfews increased police-instigated violence and increased the number of persons involved in the criminal justice system.<sup>136</sup> This begs the question: If civil unrest curfews are not *proven* to be effective at curbing violence and only arguably seem to result in blanket arrests, why have California courts not worked to amend or limit police power surrounding curfews? The financial and resource strain caused by civil unrest curfews alone should be enough to justify a closer look by California courts.

## VI. CONCLUSION

This article was written to highlight history that needs to be remembered and learned from because:

Progress, far from consisting in change, depends on retentiveness. When change is absolute there remains no being to improve and no direction is set for possible improvement: and when experience is not retained, as among savages, infancy is perpetual. Those who cannot remember the past are condemned to repeat it.<sup>137</sup>

What lesson does this article attempt to highlight? First, that the law can be used to target disadvantaged groups and exclude them from communities and public spaces. It stands to reason that guarantees of equal protection and due process would be unnecessary without the potential of

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<sup>133</sup> JoshCainetal., *LAPDprocesseshundredsofarrestedprotestersatUCLA’sJackieRobinsonStadium*, L.A. DAILY NEWS (June 3, 2020), <https://www.dailynews.com/2020/06/03/lapd-processes-hundreds-of-arrested-protesters-at-uclas-jackie-robinson-stadium>.

<sup>134</sup> Cain, *supra* note 101.

<sup>135</sup> Cain, *supra* note 101; Ryan Fonseca, *Why Are LA Metro Buses Taking People Arrested in Protests To Jail?*, LAist (June 3, 2020), [https://laist.com/2020/06/03/why\\_are\\_la\\_metro\\_buses\\_taking\\_people\\_arrested\\_in\\_protests\\_to\\_jail.php](https://laist.com/2020/06/03/why_are_la_metro_buses_taking_people_arrested_in_protests_to_jail.php).

<sup>136</sup> Echavarri, *supra* note 125.

<sup>137</sup> GEORGE SANTAYANA ET AL., *THE LIFE OF REASON OR THE PHASES OF HUMAN PROGRESS* (Published 1905–06), available at <https://muse.jhu.edu/chapter/682206/pdf>.

law to be used against certain groups. California is not exempt from this problem. Second, that the law can be creatively crafted to avoid the appearance of discrimination. Third, that as with the Page Act or Anti-Okie Law, laws may be written in language targeting those who would assist a targeted group, rather than the group itself. Fourth, laws need not be official to have an impact, as was the case with sundown towns. Fifth, when all else fails, private contracts can replace public ordinances.

Moving forward, California needs to consider potential similarities between contemporary laws, such as sit-lie ordinances and temporary curfew laws, and older laws that are now considered embarrassing. Are they aimed at removing a population that is broadly disliked? Are the legitimate concerns a pretext for a broader discrimination? Does the enforcement broadly infringe on recognized liberties? When the answer to any of these questions is yes, there is reason to believe that we will look back on the law with shame.

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