

# TRUMP AND CHINESE EXCLUSION: CONTEMPORARY PARALLELS WITH LEGISLATIVE DEBATES OVER THE CHINESE EXCLUSION ACT OF 1882

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## **Abstract**

*Donald Trump's presidential victory in November has prompted much public commentary about American political dynamics and about the future of American democracy. Given these inquiries, this paper is timely in aiming to reexamine, through a comparative-historical lens, one of the most prominent parts of Trump's campaign and one of the biggest points of concern among his critics: Trump's campaign rhetoric on immigration. Trump's own flirtation with racist themes is easy to identify in some of his most notable campaign comments regarding Mexican immigrants and Muslim immigrants. And given that these comments were also directed at immigrant constituencies, equally clear is Trump's flirtation with particularly nativistic forms of racial exclusion.*

*My aspiration in this paper is to shed some light on the Trump presidential victory and contemporary politics by examining these recent events in light of another significant moment in American immigration history: the passage of the Chinese Exclusion Act of 1882. By interrogating this crucial episode of nativist-influenced exclusion in the nineteenth century, I hope to illuminate certain dynamics that continue to resonate in and influence present-day politics.*

*In Part II, I offer some preliminary comments on the significance of the legislative debates over Chinese exclusion in the late nineteenth century and set forth the two primary claims of this paper. First, a crucial component of American political community has historically resided within cultural bonds. Second, precisely because cultural bonds have been so significant in defining American political community, they have helped give rise to the presence of statuses in our polity marked by relative inclusion and exclusion. Stated otherwise, we commonly find within historical debates and contemporary debates a conceptualization of minority groups, by*

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*political actors, where exclusionary and inclusionary themes are inescapable intertwined. In Part III, I will demonstrate the validity of these two claims in the context of the legislative debates over Chinese exclusion. Finally, in Part IV, I return to the contemporary context and demonstrate the relevance of my claims within Trump's campaign rhetoric prior to the 2016 election. Within his rhetoric, we see both a reliance upon culture in constituting American political community and the articulation of statuses that are characterized by the relative inclusion and relative exclusion of certain minority groups.*

*I will conclude with some discussion on how we might evaluate cultural claims and claims about relative inclusion/exclusion. It is undoubtedly tempting to view both types of argument, especially when paired with exclusionary political goals, as a mere smokescreen for racism. While I think there may indeed be a strong overlap between cultural claims, relative inclusion/exclusion claims, and racist themes, I maintain that the first two are conceptually distinct from the third. Furthermore, for those inclined toward more inclusionary political goals, the first two types of argument should be viewed as attractive tools that can provide intriguing opportunities for co-option by proponents of more inclusionary views—options that are simply not available with respect to more categorically racist forms of argument.*

#### TABLE OF CONTENTS

I. INTRODUCTION .....	682
II. CULTURE AND CHINESE EXCLUSION .....	687
III. ARGUMENTS FROM THE LEGISLATIVE DEBATES OVER THE CHINESE EXCLUSION ACT OF 1882 .....	695
A. <i>Assimilation Arguments</i> .....	695
B. <i>Comparative Arguments</i> .....	701
C. <i>Racist Arguments</i> .....	708
D. <i>Universal Arguments</i> .....	713
IV. RECURRENT THEMES IN THE RHETORIC OF DONALD TRUMP .....	719
IV. CONCLUSION.....	729

#### I. INTRODUCTION

Donald Trump's presidential victory in November has prompted much public commentary about American political dynamics and

about the future of American democracy.<sup>1</sup> Given these inquiries, this paper is timely in aiming to reexamine, through a comparative-historical lens, one of the most prominent parts of Trump's campaign and one of the biggest points of concern among his critics: Trump's campaign rhetoric on immigration.

In announcing his bid for the Republican presidential nomination in June 2015, Trump made the following comment:

When Mexico sends its people, they're not sending their best. They're not sending you. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people.

But I speak to border guards and they tell us what we're getting. And it only makes common sense. It only makes common sense. They're sending us not the right people.<sup>2</sup>

A few months later, Trump released a statement "calling for a total and complete shutdown of Muslims entering the United States."<sup>3</sup> He stated the following in that press release,

Without looking at the various polling data, it is obvious to anybody the hatred is beyond comprehension. Where this hatred comes from and why we will have to determine. Until we are able to determine and understand this problem and the dangerous threat it poses, our country cannot be the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life.

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1. See, e.g., John Cassidy, *Trump's Challenge to American Democracy*, THE NEW YORKER (Nov. 29, 2016), <http://www.newyorker.com/news/john-cassidy/trumps-challenge-to-american-democracy>; Steven Levitsky and Daniel Ziblatt, *Is Donald Trump a Threat to Democracy?*, N.Y. TIMES (Dec. 12, 2016), <http://www.nytimes.com/2016/12/16/opinion/sunday/is-donald-trump-a-threat-to-democracy.html>; George Packer, *A Democratic Opposition*, THE NEW YORKER (Nov. 21, 2016), at 48. See generally Stuart Chinn, *Threats to Democratic Stability: Comparing the Elections of 2016 and 1860*, MD L. REV. (forthcoming).

2. *Donald Trump Announces a Presidential Bid*, WASHINGTON POST (June 16, 2015) (remarks as delivered), <https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/>.

3. Donald J. Trump Statement on Preventing Muslim Immigration (Dec. 7, 2015), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration>.

If I win the election for President, we are going to Make America Great Again.<sup>4</sup>

This comment, among many others,<sup>5</sup> energized portions of the electorate both within the Republican Party and at the fringe of mainstream politics during the campaign.<sup>6</sup> It also clearly captured the attention of Republican voters at the conclusion of this campaign. Exit polling revealed that among those voters who believed that immigration was the most important issue, 64% were Republicans. When asked “what should happen to most illegal immigrants working in the U.S.,” among those who responded with “deportation,” 84% were Republican.<sup>7</sup> Of those who favored building a wall along the entire U.S. border with Mexico, 86% were Republican.<sup>8</sup>

Trump’s supporters on immigration cannot be categorically labelled as nativist or racist in any fair way.<sup>9</sup> Yet, Trump’s own flirtation with racist themes is easy to see in these prominent campaign quotes. Given that these comments were also directed at immigrant constituencies, equally clear is Trump’s flirtation with particularly *nativistic* forms of racial exclusion.

4. *Id.*; see also Russell Berman, *Donald Trump’s Call to Ban Muslim Immigrants*, THE ATLANTIC (Dec. 7, 2016), <http://www.theatlantic.com/politics/archive/2015/12/donald-trumps-call-to-ban-muslim-immigrants/419298/>; Jonathan Martin & Alexander Burns, *Blaming Muslims After Attack, Donald Trump Tosses Pluralism Aside*, N.Y. TIMES (June 13, 2016), [http://www.nytimes.com/2016/06/14/us/politics/donald-trump-hillary-clinton-speeches.html?\\_r=0](http://www.nytimes.com/2016/06/14/us/politics/donald-trump-hillary-clinton-speeches.html?_r=0); Dominic Tierney, *Trump’s Unspeakable Strategy to Erase His Past*, THE ATLANTIC (Feb. 10, 2016), <http://www.theatlantic.com/politics/archive/2016/02/trumps-unspeakable-strategy-to-erase-his-past/458748/>.

5. See *infra* Part IV.

6. Mark Leibovich, *Donald Trump is Not Going Anywhere*, N.Y. TIMES MAG. (Sep. 29, 2015), <http://www.nytimes.com/2015/10/04/magazine/donald-trump-is-not-going-anywhere.html> (“Trump’s war on political correctness is especially pleasing to many of the white voters of the G.O.P. who feel usurped by newcomers and silenced by the progressive gains that women, Hispanics and gays have enjoyed.”); Evan Osnos, *The Fearful and the Frustrated*, THE NEW YORKER (Aug. 31, 2015), at 59; Robert L. Tsai, *What Aryans See in Donald Trump*, SLATE (May 26, 2016), [http://www.slate.com/articles/news\\_and\\_politics/politics/2016/05/what\\_aryans\\_see\\_in\\_donald\\_trump.html](http://www.slate.com/articles/news_and_politics/politics/2016/05/what_aryans_see_in_donald_trump.html).

7. *Election 2016, Exit Polls*, N.Y. TIMES, [http://www.nytimes.com/interactive/2016/11/08/us/politics/election-exit-polls.html?\\_r=0](http://www.nytimes.com/interactive/2016/11/08/us/politics/election-exit-polls.html?_r=0).

8. *Id.*

9. See Larissa MacFarquhar, *Trumptown*, THE NEW YORKER (Oct. 10, 2016), at 65.

In John Higham's classic study of American nativism, he defined it as follows:

Whether the nativist was a workingman or a Protestant evangelist, a southern conservative or a northern reformer, he stood for a certain kind of nationalism. He believed—whether he was trembling at a Catholic menace to American liberty, fearing an invasion of pauper labor, or simply rioting against the great English actor William Macready—that some influence originating abroad threatened the very life of the nation from within. Nativism, therefore, should be defined as intense opposition to an internal minority on the ground of its foreign (i.e., “Un-American”) connections. . . . While drawing on much broader cultural antipathies and ethnocentric judgments, nativism translates them into a zeal to destroy the enemies of a distinctively American way of life.<sup>10</sup>

Thus, nativism is a particular form of exclusion from a political community, premised upon specific concerns regarding a minority group's suitability for, or embrace of, a dominant set of norms. That such concerns recently arose in the rhetoric of a major party presidential candidate suggests the timeliness of further inquiry into the substance of nativist exclusion and what such modes of argument may tell us about the American political community more generally.

In a broad sense, these are the goals of this paper. My aspiration, more specifically, is to interrogate one crucial episode of nativist-influenced exclusions in American history and to illuminate certain dynamics that continue to resonate in present-day politics. The historical episode that will be the focus of much of this article is the case of Chinese immigrants in the late nineteenth century and the passage of the Chinese Exclusion Act of 1882.<sup>11</sup>

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10. JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860–1925*, 4 (1955) (2008); *id.* at xi. Higham's study was largely focused on European immigrants during the late nineteenth and early twentieth centuries. However, Higham does say the following on the case of anti-Chinese prejudice: “No variety of anti-European sentiment has ever approached the violent extremes to which anti-Chinese agitation went in the 1870s and 1880s.” *Id.* at 25.

11. In referring to this legislation as the “Chinese Exclusion Act” and in referencing “Chinese exclusion” in relation to this legislation through the remainder of this paper, I am merely using the conventional terms. Beth Lew-Williams has argued that this period of Chinese immigration (1882–1888) was really more one of

The nativist elements within this episode are conspicuous and hard to miss. For example, in his opinion for the United States Supreme Court in *Fong Yu Ting v. United States*, Justice Gray referenced provisions of a treaty between the United States and China in 1868 dealing with the migration of individuals and made the following memorable comment:

After some years' experience under that treaty, the Government of the United States was brought to the opinion that the presence within our territory of large numbers of Chinese laborers, of a distinct race and religion, remaining strangers in the land, residing apart by themselves, tenaciously adhering to the customs and usages of their own country, unfamiliar with our institutions, and apparently incapable of assimilating with our people, might endanger good order, and be injurious to the public interests, and therefore requested and obtained from China a modification of the treaty.<sup>12</sup>

Furthermore, in the scholarly literature, many have written insightfully on the nativist dimensions of anti-Chinese or anti-Asian discrimination both historically and in more recent times.<sup>13</sup>

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“restriction” rather than “exclusion,” and she argues for referring to this Act as the “Chinese Restriction Act of 1882.” Beth Lew-Williams, *Before Restriction Became Exclusion: America’s Experiment in Diplomatic Immigration Control*, 83 PAC. HIST. REV. 24 (2014). In a similar vein, see ERIKA LEE, *AT AMERICA’S GATES: CHINESE IMMIGRATION DURING THE EXCLUSION ERA, 1882–1943*, 9 (2003). For works discussing the political and social dynamics behind Chinese exclusion, see generally MARY ROBERTS COOLIDGE, *CHINESE IMMIGRATION* (1909); ANDREW GYORY, *CLOSING THE GATE: RACE, POLITICS, AND THE CHINESE EXCLUSION ACT* (1998); STUART CREIGHTON MILLER, *THE UNWELCOME IMMIGRANT: THE AMERICAN IMAGE OF THE CHINESE, 1785–1882* (1969); ELMER CLARENCE SANDMEYER, *THE ANTI-CHINESE MOVEMENT IN CALIFORNIA* (1939) (1973); ALEXANDER SAXTON, *THE INDISPENSABLE ENEMY: LABOR AND THE ANTI-CHINESE MOVEMENT IN CALIFORNIA* (1971).

12. 149 U.S. 698, 717 (1893).

13. See, e.g., LEE, *supra* note 11, at 25–29 (2003); Robert S. Chang, *Toward an Asian-American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1255–58 (1993); Gabriel J. Chin, *Segregation’s Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 U.C.L.A. L. REV. 1, 28–38 (1998); Neil Gotanda, “Other Non-Whites” in *American Legal History: A Review of Justice at War*, 86 COLUM. L. REV. 1186, 1188–90 (1985); John Hayakawa Torok, *Reconstruction and Racial Nativism: Chinese Immigrants and the Debates on the Thirteenth, Fourteenth, and Fifteenth Amendments and Civil Rights Law*, 3 ASIAN L. J. 55, 56, 80–81, 100–01 (1996).

In Part II below, I offer some preliminary comments on the significance of the legislative debates over Chinese exclusion in the late nineteenth century and set forth the two primary claims of this paper. First, a crucial element of American political community has historically resided within cultural bonds. Second, precisely because cultural bonds have been so significant in defining American political community, they have helped to give rise to the historical and contemporary presence of statuses in our polity marked by *relative* inclusion and exclusion. Stated otherwise, we find within historical debates and contemporary debates a discussion of minorities where exclusionary and inclusionary themes are inescapably intertwined. Part III will aim to demonstrate the validity of these claims in the context of legislative debates over Chinese exclusion. Finally, in Part IV, I will return to the contemporary context and demonstrate the relevance of my claims for Trump's campaign rhetoric prior to the 2016 election.

## II. CULTURE AND CHINESE EXCLUSION

The Chinese Exclusion Act offers a valuable context for exploring the dimensions of nativist exclusions in America for at least two reasons. First, this piece of legislation was the initial part of what became a multi-decade process of relegating Chinese immigrants to a subordinate status relative to European immigrants.<sup>14</sup> Hence, one might expect within these legislative debates a particularly rich set of comments by members of Congress on then-prevailing notions of American political community. Second, the Chinese Exclusion Act was passed at the dawn of the Jim Crow era, as the nation was still grappling with the implications of formal civil and political equality for African Americans after Reconstruction. The precise contours of the standing of African Americans as members of the American political community was still unsettled at this time. Thus the temporal juxtaposition of major political debates over Chinese immigrants and over African American in the early 1880s provides a particularly fruitful historical context for exploring these themes.

In this paper, I ultimately make two claims grounded in these legislative debates, but that have general applicability beyond this case study, and that are relevant to contemporary politics. First, the legislative debates demonstrate that culture has long been understood as a basis of American political identity and an

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14. MARTIN B. GOLD, *FORBIDDEN CITIZENS: CHINESE EXCLUSION AND THE U.S. CONGRESS—A LEGISLATIVE HISTORY* (2012).

important ingredient in constituting the bonds of American political community.<sup>15</sup> By “culture” I specifically mean a set of common experiences, common cultural reference points, everyday norms, traditions, and spatial references (such as buildings, streets, landmarks) that two or more individuals may feel a connection to by virtue of having been—or imagining that they have been—in the same kinds of places at the same moments in time (or at the same stages in life). In short, these are markers of community and belongingness that are not the high-minded points of commonality that one necessarily invokes in speeches about America. Rather, these are the items that constitute everyday experiences that may largely exist in the background and that may only come into focus when individuals find themselves in a context where suddenly certain items are not taken for granted as common. I maintain that for these aspects of culture to serve as an adhesive structure across community, what is crucial is not whether such experiences actually are common to all members. Rather, the adhesive function of culture, as I define it, stems more from the plausible *perception* of commonality.<sup>16</sup> Thus, this notion of a cultural adhesive force that is rooted in perception builds upon Benedict Anderson’s famous description of national political communities as, in part, “imagined communities” of individuals who would never know or meet each other.<sup>17</sup>

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15. The discussion of “culture” in this paragraph is drawn from Stuart Chinn, *Finding Common Ground Across Race and Religion: Judicial Conceptions of Political Community in Public Schools*, UTAH L. REV. (forthcoming 2017).

16. Because I emphasize the role of the *perception* of cultural commonality as a source of American communal cohesion, this claim departs from other claims in the literature that discuss culture as a set of norms, beliefs, or language that are or should be made universal in American society. See SAMUEL HUNTINGTON, WHO ARE WE?: THE CHALLENGES TO AMERICA’S NATIONAL IDENTITY xv–xvi, 40–41, 59–80 (2004); MICHAEL LIND, THE NEXT AMERICAN NATION: THE NEW NATIONALISM AND THE FOURTH AMERICAN REVOLUTION 5–15 (1995).

17. BENEDICT ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM 6–7 (rev. ed. 1991); see also Philip Gleason, *American Identity and Americanization*, in HARVARD ENCYCLOPEDIA OF AMERICAN ETHNIC GROUPS 56–57 (Stephen Thernstrom, Ann Orlov, and Oscar Handlin eds., 1980) for discussion sympathetic, I believe, to my claims about culture here. Similarly, LAWRENCE H. FUCHS, THE AMERICAN KALEIDOSCOPE: RACE, ETHNICITY, AND THE CIVIC CULTURE 3–5 (1990) and Kenneth L. Karst, *Paths to Belonging: The Constitution and Cultural Identity*, 64 N.C. L. REV. 303, 361–76 (1986) both reference “civic culture” in ways that might align with my account as a crucial adhesive in American society. The content of this culture for both encompasses common ideals and political principles and the *practice* of those principles by Americans. Finally, though it is distinct from my use of the term and from my goals in this paper, the concept of “culture” has also been fleshed out by others in the context of examining

To be sure, the scholarly literature on this subject has correctly emphasized abstract ideals or “ideology”<sup>18</sup> and “political traditions”<sup>19</sup> as important sources of cohesion in constituting the American political community. Still, I maintain that among these three possibilities—culture, ideology, or political traditions—culture best speaks to the commonalities that Americans might share, or perceive they share, in terms of everyday life and experience. For this reason, it seems the most likely source for any instinctive sense of shared kinship Americans might feel, as opposed to the felt commonalities that might arise during moments of profound self-reflection or remembrance (during say, a Memorial Day speech), where ideology or political traditions may assume a larger role. Put more simply, if two Americans were to suddenly find themselves in the same place on the other side of the world and began talking, one suspects that any instinctive shared kinship would be based on the more mundane aspects of everyday American life—commonly-known movies, places, sports teams, or personalities—that might allow these two individuals to presume they had similar background experiences. That is, I suspect elements of culture would enter the conversation between these individuals before an invocation of Lincoln or Washington.

My second claim flows from the first. Once culture is rightly emphasized as an important basis of cohesion in the American political community, it implies a significant point about how matters

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constitutional interpretation and constitutional development. See, e.g., Robert C. Post, *Foreword: Fashioning the Legal Constitution: Culture, Courts, and Law*, 117 HARV. L. REV. 4, 8–11 (2003); Reva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the de facto ERA*, 94 CALIF. L. REV. 1323, 1325–32 (2006).

18. JOHN HIGHAM, HANGING TOGETHER: UNITY AND DIVERSITY IN AMERICAN CULTURE 7–14 (Carl J. Guarneri ed., 2001). See also GLEASON, *supra* note 16, at 31–34, 48, 51, 54, 56; HUNTINGTON, *supra* 14, at 41; HANS KOHN, AMERICAN NATIONALISM: AN INTERPRETATIVE ESSAY 8–10, 135 (1957); GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY, vol. 1 7–8, 25 (2002).

19. See, e.g., GARY GERSTLE, AMERICAN CRUCIBLE: RACE AND NATION IN THE TWENTIETH CENTURY (2003); LOUIS HARTZ, THE LIBERAL TRADITION IN AMERICA: AN INTERPRETATION OF AMERICAN POLITICAL THOUGHT SINCE THE REVOLUTION (1955); ROGERS M. SMITH, CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY (1997); GORDON S. WOOD, THE CREATION OF THE AMERICAN REPUBLIC 1776–1787 (1993); J David Greenstone, *Political Culture and American Political Development: Liberty, Union, and the Liberal Bipolarity*, 1 STUD. IN AM. POL. DEV. 1 (1986); Stephen Skowronek, *The Reassociation of Ideas and Purposes: Racism, Liberalism, and the American Political Tradition*, 100 AM. POL. SCI. REV. 385 (2006).

of inclusion and exclusion have been understood in American history. The legislative debates surrounding the Chinese Exclusion Act of 1882 suggest that questions of inclusion and exclusion in American history have often not tracked stark dichotomies of included/excluded or citizen/noncitizen. Rather, because the basis of political community has often been defined by culture, we see the existence of more varied types of cohesion—with distinct minority groups perceived by the majority as relatively more or less aligned with dominant norms and beliefs in relation to the majority and to each other. That is, present within American history are a variety of statuses of belonging characterized by graduated degrees of inclusion or exclusion.<sup>20</sup>

Hence in these legislative history debates, there is broad-ranging discussions of where, among other groups, Chinese immigrants, African-Americans, and ethnic whites are situated on a continuum by legislators from more to less “American.” These are comparative evaluations, and they underscore the comparative or relative nature of belongingness within certain notions of American political community. Furthermore, these arguments underscore the intertwinement of inclusionary and exclusionary themes in arguments about community membership. Any claim that Group A of individuals is “relatively more American” than another, also implies, by its very terms, that Group A is “relatively less American” than some other group. Relative inclusion implies a relative exclusion.<sup>21</sup> Furthermore, as I will discuss in Part III, such

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20. Relatedly, Kunal Parker has discussed the intertwinement of inclusionary bonds and exclusionary mechanisms in his discussion of how a status of “foreignness” has historically been attached not just to immigrants, but also various subordinated, *domestic* groups in American society. KUNAL M. PARKER, MAKING FOREIGNERS: IMMIGRATION AND CITIZENSHIP LAW IN AMERICA, 1600–2000, 4–5 (2015). Devon Carbado’s elaboration of “racial naturalization” underscores a similar theme about this intertwinement, where he both distinguishes between American identity and American citizenship and emphasizes how American identity may constitute “inclusionary forms of exclusion” for certain groups. Devon W. Carbado, *Racial Naturalization*, 57 AM. Q. 633, 637–39 (2005). Though his focus is on African-Americans and how they have been awkwardly situated across these two dimensions of exclusion/inclusion—and others, *id.* at 643–45, 653–53—he also discusses African-Americans in comparison to Asian-Americans, as I do as well in sections of this paper below. *Id.* at 648–49.

21. Focusing on doctrinal developments in citizenship law, Rogers Smith asserts that three major political traditions exist in America: a liberal tradition, a civic republican tradition, and a tradition of “ascriptive hierarchies” encompassing group-based exclusion and inequalities. As politicians cobble together various strands of thought from each of these traditions into coherent narratives of citizenship—in order to bring together majority voting coalitions—new combinations

arguments are quite alive and well in modern-day political arguments.

By way of briefly explicating these two claims as an initial matter, consider how they appear in Justice Harlan's famous dissent in *Plessy v. Ferguson*.<sup>22</sup> In dissenting from the Court's ruling upholding Louisiana's railroad seating segregation statute, Justice Harlan stated the following:

There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But by the statute in question, a Chinaman can ride in the same passenger coach with white citizens of the United States, while citizens of the black race in Louisiana, many of whom, perhaps, risked their lives for the preservation of the Union, who are entitled, by law, to participate in the political control of the State and nation, who are not excluded, by law or by reason of their race, from public stations of any kind, and who have all the legal rights that belong to white citizens, are yet declared to be criminals, liable to imprisonment, if they ride in a public coach occupied by citizens of the white race.<sup>23</sup>

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of ideals and commitments can be created that may defy easy categorization. See SMITH, *supra* note 18, at 6, 8–9, 30–39 (1997). Indeed, Smith tells us that “American citizenship laws should also be expected to display deep inconsistencies.” *Id.* at 35. In a similar vein, Stephen Skowronek goes one step beyond Smith to emphasize how liberal arguments can be so thoroughly repurposed for racist ends (and, likewise, racist arguments can be thoroughly repurposed for liberal ends) that liberalism and racism may ultimately synthesize into composite reflections of a singular “American” political tradition. Thus, Skowronek, in a sense, sees the possibility for incoherence and inconsistencies in political argument to be not just strategic, but genuine representations of the American political tradition itself. See Skowronek, *supra* note 18, at 385–88, 399–400 (2006). Finally, my claim aligns with Dan Tichenor's observation of Chinese immigration debates in the nineteenth century specifically. As he states: “[A] careful examination of the political discourse of this period suggests that rival ideological traditions were not clearly aligned on opposite sides of the Chinese exclusion question. . . . many of the combatants in this struggle pursued their policy goals with a disconcerting blend of liberal and illiberal aspirations.” DANIEL J. TICHENOR, *DIVIDING LINES: THE POLITICS OF IMMIGRATION CONTROL IN AMERICA* 111–12 (2002).

22. 163 U.S. 537 (1896).

23. *Id.* at 561 (1896) (Harlan, J., dissenting).

In highlighting this quotation, some have rightly emphasized the limits of Harlan's racial egalitarianism.<sup>24</sup> What I would emphasize for our purposes is a related but distinct point: that the comment reflects the presence of a comparative or relative exclusion in Harlan's opinion. It seems far too simplistic to dismiss Harlan as a simple racist for these comments about Chinese immigrants in light of statements he made elsewhere that are still invoked by defenders of racial egalitarianism in present times such as the claim that "[o]ur Constitution is color-blind, and neither knows nor tolerates classes among citizens."<sup>25</sup> Furthermore, his references to African American service in the Civil War seem to genuinely speak to a kind of cross-racial kinship born of common white and black sacrifice for the preservation of the larger American political community. That portion of Harlan's quote cannot easily be dismissed. And yet, we also clearly see the limits of those egalitarian tendencies in the above quotation.<sup>26</sup>

More precisely, I would assert that Harlan's comment reflects a sense of varying kinship between himself and these two racial minority groups. He articulates a sense of kinship with African Americans that, if not completely comparable to the bond he may feel with white Americans, is still substantive and of much greater strength than any sense of kinship he might feel with Chinese immigrants. From the standpoint of Chinese immigrants, Harlan's statement is a comparative exclusion. From the standpoint of his evaluation of African Americans, however, we might say that his opinion reflects a form of comparative inclusion or kinship.

In Part III, I will aim to support both my claim on the significance of culture, and my claim about comparative inclusion/exclusion, and their intertwinement, within the congressional debates on the Chinese Exclusion Act of 1882.<sup>27</sup> My

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24. Gabriel J. Chin, *The Plessy Myth: Justice Harlan and the Chinese Cases*, 82 IOWA L. REV. 151, 156–57 (1996). More generally, for a critical discussion of this language and Harlan's dissent in *Plessy*, see *id.*; Carbado, *supra* note 19, 647–48.

25. 163 U.S. at 559 (1896) (Harlan, J., dissenting).

26. The limits of Harlan's egalitarianism is also present in the paternalistic sympathy he has for African-Americans as well when he stated "The white race deems itself to be the dominant race in this country. And so it is in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty." *Id.*

27. To be precise, my examination of the congressional debates concerns two distinct bills that were being considered by Congress, in succession. To quote Gabriel Chin, who also examined this same set of materials: "The first [bill] was passed by

focus, appropriately, will be on arguments and statements that *explicitly* reference the racial dimension of this legislation. Thus, I will either bypass or only implicitly reference the many other issues implicated in this legislation including, most prominently, various issues surrounding foreign relations with China,<sup>28</sup> and issues related to labor that were discussed apart from racial considerations.<sup>29</sup> In examining these debates for commentary on the status of Chinese immigrants as potential members of the American political community, I have grouped the various arguments within these parameters into four broad categories: (1) Assimilation arguments, which were exclusionary arguments focused on the inability of Chinese immigrants to assimilate into the American polity; (2) Comparative arguments, which were exclusionary arguments against Chinese immigrants that underscored their relatively greater cultural incompatibility with white America relative to African Americans. These arguments emphasized that, in contrast to

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the House and Senate in March, but vetoed by President Chester A. Arthur on April 4, 1882. The second bill, introduced on April 6, 1882, was passed by the House and Senate in April and signed by the president on May 6, 1882. The major difference between the bills was the period of suspension of Chinese immigration—20 years under the vetoed bill, 10 under the bill that became law.” Gabriel J. Chin, *Segregation’s Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 U.C.L.A. LAW REV. 1, 29f.153 (1998). Chin’s survey of this legislative history in his article is valuable, and though my primary questions are distinct from his, this article builds off of some of his interpretations. *See id.* at 28–36.

28. *See, e.g.*, 13 CONG. REC. 1702 (1882) (statement of Sen. Platt).

Now, Mr. President, what is a treaty? It is a contract between nations. That is all. It occupies the same position between governments that an ordinary contract does between individuals. It is to be kept like every other contract, in the spirit in which it is made. We made this contract which we call a treaty with the Chinese Government, and we must keep it. We must keep it, or stand forever disgraced in the eyes of the world.

29. *See, e.g.*, 13 CONG. REC. 2030 (1882) (statement of Rep. Flower).

The cooly system is a system of slavery; Chinese labor is brought here by companies for a certain sum per capita. It comes to perform certain work, to secure certain pay, and finally to return home so much the richer. It comes in the interest of those who are obliged to employ labor. It comes to aid those who have mines to work, or railroads to build, or factories to be manned, or labor of any sort to be done. It is bought and brought by capital to increase the profits of capital; it is a wage-saving, labor-robbing, wage-reducing machine, bought and worked in the interest of capital.

For a useful reference for the legislative histories of the major statutes on Chinese exclusion, *see generally* GOLD, *supra* note 14.

Chinese immigrants, African Americans shared a much more meaningful and substantive bond with white Americans because of a shared history and shared experiences; (3) Racist arguments, which were exclusionary arguments based upon white supremacy. Racist arguments often referenced the greater value to the polity of white European immigrants relative to Chinese immigrants (and oftentimes the greater value of white European immigrants relative to African-Americans too); (4) Universal arguments, which were inclusionary arguments in defense of Chinese immigrants, based upon more universal ideals such as free labor and fundamental human rights.

Categorizing exercises of this sort often have a somewhat artificial flavor, since the preceding argument types often ran together, often within the same monologue by a given speaker—underscoring the fact, as emphasized by others,<sup>30</sup> that conflicting and opposing ideals are often fashioned into ideologically inconsistent arguments. Still, the exercise will hopefully illuminate certain core themes underlying these debates. By engaging in this exercise, the primary goal will be to show that by taking ideas or discrete arguments as our unit of analysis, broader themes may be more easily identified. In particular, one is better able to recognize the intertwinement of liberal and illiberal positions within a given argument. Within the exclusionary argument types, hints of liberal egalitarianism may be found, and within the more universal arguments, hints of illiberalism and racism can also be found—all in support of my second claim. Furthermore, in support of my first claim, the importance of culture as a perceived bond of social cohesion in the American polity will also be apparent.<sup>31</sup>

Finally, in Part IV, I will return to the present day and to the case of Donald Trump's campaign rhetoric to highlight the continuing relevance of these ideals for more contemporary notions of American political community. Within his rhetoric, we see both reliance upon culture in constituting American political community and the articulation of statuses that are characterized by the relative inclusion and relative exclusion of certain minority groups.

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30. See sources cited *supra* note 18.

31. I should mention a note on the scope of this paper: the choice to limit my examination to only the 1882 Act is somewhat artificial, since congressional debate on Chinese immigration had happened earlier, and key statutes on Chinese immigration were passed subsequent to 1882. One has to start somewhere, however, and since the 1882 Act was the initial major piece of legislation in this policy domain, it seems a useful and appropriate starting point for this inquiry.

As I will note in conclusion, one may ultimately find the cultural basis of political community to be either troubling, or to offer valuable openings for more inclusionary forms of political argument.

### III. ARGUMENTS FROM THE LEGISLATIVE DEBATES OVER THE CHINESE EXCLUSION ACT OF 1882

#### *A. Assimilation Arguments*

Among those legislators inclined to support Chinese exclusion, arguments on the inability and/or unwillingness of Chinese immigrants to fully assimilate into American life figured prominently in the congressional debates. These arguments underscored the nativistic elements of anti-Chinese discrimination. Fundamentally, they centered on the inescapable “foreignness” of these immigrants. Consider this comment by Senator John F. Miller (Republican, California), which appears within a long and notable speech early in the debates:

The two civilizations which have here met are of diverse elements and character, both the result of evolution under different conditions, radically antagonistic, and as impossible of amalgamation as are the two great races who have produced them. The attempt to merge them must result, as both reason and experience teaches, in the displacement of one or the other. Like the mixing of oil and water, neither will absorb the other. The Chinese have been established on the Pacific coast for more than a quarter of a century, and have displayed every phase and characteristic of their ancient civilization, all this time under the pressure of American laws and the example of American methods, brought into direct contact with western civilization and subjected to the powerful influence of modern thought and Christian teaching; and they have remained as fixed in their habits, methods, and modes of life as if they had all this time lived in the Mountains of the Moon. Not the slightest impression has been made upon them or the peculiar civilization which they brought with them. Their modes of life remain the same, which they and their ancestors have pursued for fifty centuries in their fierce struggle for existence. They have been unable or unwilling to change the habits and character which have been forced upon them and ground into them by necessity and a heredity as old as the

records of man. Nor does our experience with the Chinese differ in this respect from that of other nations who have admitted them.<sup>32</sup>

As to the particular elements that underlay the assimilation critique, there are hints in the preceding quotation by Senator Miller. Certainly, racist elements were implicated in arguments about assimilation. For example, as a counterpoint to the disjunction between Chinese immigrants and American society, legislators often invoked the example of white European immigrants who were viewed by many as having customs and habits much more aligned with those of white America. I will say more on racist arguments below, where often the racist elements were at the forefront and the assimilation arguments were a secondary concern.<sup>33</sup>

But, at least for those arguments where racist elements were more secondary to assimilation concerns, one common theme that emerged was persistent reference to Chinese immigrants as sub-human “invaders.” Images or metaphors invoked in discussing their unassimilability into American culture were often militaristic, referring to them as an invading or enemy force. Here is another comment from Senator Miller:

It is a fact of history that the Chinese have never abandoned any region wherein they have ever established themselves as they have on the Pacific coast. They have never more than temporarily quitted any soil upon which they have ever been planted. Regarded by superficial observers as the most inert and pusillanimous of all peoples, they are on the contrary the most successful conquerors the world has ever known, because they have held all they have ever conquered, and conquered every territory they have ever invaded. And not

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32. 13 CONG. REC. 1483 (1882) (statement of Sen. John F. Miller). This was a view that was echoed throughout the debates. *See, e.g.*, these two statements by Senator Eli M. Saulsbury (Democrat-Delaware): 13 CONG. REC. 1584 (1882) (statement of Sen. Saulsbury) (“In the first place, they [the Chinese] are a distinct and different people from those who now control this country....”); 13 CONG. REC. 2033 (1882) (statement of Rep. Saulsbury) (“The Chinaman brings with him a civilization, if such it can be called, antagonistic to ours....”).

As a general formatting note, when I quote additional, extended legislative statements in the footnotes below, I have provided, at a minimum, the citation and just the first several words of the quotation both to save space in this article and to provide some guidance for finding the quotation. For a handful of legislative statements of particular interest, I have quoted them in the footnotes in entirety.

33. See *infra* Section III.C.

only so; whenever China has been invaded, the invaders have been absorbed and finally conquered.

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As invaders the Chinese are the most persistent, subtle, and successful.<sup>34</sup>

Related arguments invoked images that were more pathogenic in nature, referring to Chinese immigrants as a “sickness” set upon the polity:

The greatest responsibility and the greatest duty of any dweller in these United States is his share in the Government and the legislation of this great country. Do the Chinese come here to share these responsibilities? They are parasites, like those insects which fasten themselves upon vegetables or upon animals and feed and feed until satiety causes them to release their hold. They come to this country not to partake in the responsibilities of citizenship; they come here with no love for our institutions; they do not hold intercourse with the people of the United States except for gain; they do not homologate in any degree with them. On the contrary, they are parasites when they come, parasites while they are here, and parasites when they go.<sup>35</sup>

If racism figured prominently in assimilation arguments by legislators, arguments about culture were at least as prominent. Thus also present within these arguments on the inability of Chinese immigrants to assimilate were the distinct concerns that they would never adopt dominant norms and patterns of behavior

34. 13 CONG. REC. 1483 (1882) (statement of Sen. John F. Miller). Consider these additional examples: 13 CONG. REC. 1584 (1882) (statement of Sen. Salisbury) (“Their proximity to the Pacific coast renders it very certain that if they are permitted to come to this country for purposes of gain. . . .”); 13 CONG. REC. 1589 (1882) (statement of Sen. Bayard) (“Their immense superiority in point of numbers we all admit. . . .”); 13 CONG. REC. 1636 (1882) (statement of Sen. Slater) (“These, sir, are the people for whom the honorable Senator [Senator Hoar] would open wide the door of admission. . . .”); 13 CONG. REC. 1745 (1882) (statement of Sen. Jones) (“Mr. President, when I rose to my feet, without having any prepared speech, I did not intend to say as much as I have said....”)

35. 13 CONG. REC. 3358 (1882) (statement of Rep. Willis). *See also* this additional statement by Representative Willis (D- Kentucky) at 13 CONG. REC. 1974 (1882) (statement of Rep. Willis) (“Such were the views, or “prejudices,” if you please, which I brought to the consideration of this question. . . .”).

that were perceived by legislators as characteristic of American society. For example, consider this comment by Representative Curtin (Democrat, Pennsylvania), which encompassed both a racist element and this cultural element:

We take the German, the English, the French, the Irish, the Scandinavian people from all nationalities of Western Europe. They or their children learn our language, accommodate themselves to our social organization, swear allegiance to our Government, become part of our people—our equals. . . . The Chinaman, in his instincts, in his birth and his feelings, remains a Chinaman after twenty-five years' residence upon the western slope. He is without the influence and happiness of home, wife, and children, and his rigid selfish nature is not chastened by the influences of social enjoyments. The Chinaman has not broken his allegiance to his native country.<sup>36</sup>

Assimilation arguments centered on culture could be linked to the belief of legislators that Chinese immigrants were unable to assimilate given the entrenchment of their own native culture and norms. Indeed, though the rhetoric centers on culture, one can certainly hear elements of biological or racial determinism in these arguments too:

Our civilization, which is the most potent in the world in blotting out race distinctions and amalgamating nationalities, is utterly powerless to efface in a single aspect the primeval national characteristics of the Chinaman. He is literally iron-clad to the genius of our institutions. He is the same unadulterated Mongolian on the banks of the Sacramento River as he is on the Hoang Ho. He is the same bigoted pagan, after twenty-five years' residence under the spires of San Francisco, as he is among the joss houses of

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36. 13 CONG. REC. 2220 (1882) (statement of Rep. Curtin). See also this comment by Rep. Berry of California: "We find that the Irishman, the Englishman, and the members of all the Caucasian races fast become Americans; they are absorbed into our population; but the Chinaman is unimpressible; he is a Chinaman forever." 13 CONG. REC. 2034 (1882) (statement of Rep. Berry). And once again, Senator Miller of California weighed in on this matter as well at 13 CONG. REC. 1483 (1882) (statement of Sen. John F. Miller) ("It is a fact of history that wherever the Chinese have gone they have always taken their habits, methods, and civilization with them...").

Canton. He is the same unbending Asiatic, whether toiling on the Union Pacific or under the shadow of the great wall of China. His national characteristics, his physical life, his very vices, enable him to underbid and drive out white labor by unequal and injurious competition.<sup>37</sup>

In addition, such arguments were often linked less to the inability, and more to the disinclination of Chinese immigrants to assimilate. The legislative debates have much discussion on a perceived Chinese disdain for American customs and their lacking any desire to assume an American identity. At moments, this disinclination was articulated by legislators as their belief that Chinese immigrants had an air of national or cultural superiority. At other moments, this

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37. 13 CONG. REC. 2126 (1882) (statement of Rep. McClure). *See also* 13 CONG. REC. 1741 (1882) (statement of Sen. Jones) (“The people in every country in Europe have struggled for liberty on every battle-field [sic] from Marston Moor to Magenta. . . .”); 13 CONG. REC. 2131 (1882) (statement of Rep. Butterworth) (“But the testimony in regard to the Chinese is that they do not assimilate with us because it is not in their nature.”); 13 CONG. REC. 1713 (1882) (statement of Sen. Teller) (“The education of four thousand years and more has made it impossible for a Chinaman to change.”).

The concern about the inability of Chinese immigrants to assimilate was sometimes paired with claims about the alleged sexual deviancy of Chinese immigrants:

Many of their [Chinese] conventional virtues are held by us to be vices; many things admirable in them, according to their code, are with us punishable by law. Their system of marriage, their systems of religion, the relations of the sexes, are wholly and utterly different from our own. . . . You know partly, not thoroughly and well, but you know well enough to judge, what the marital relation is in China; and how can any American speak of comparing that with the monogamy existing in this country, or the relations of the sexes under their different institutions of marriage? Who desires to see the American matron degraded to the position of the so-called Chinese wife?

13 CONG. REC. 1589 (1882) (statement of Sen. Bayard). *See also* 13 CONG. REC. 2214 (1882) (statement of Rep. Townshend) (“Their women are imported as slaves and are sold for immoral purposes, the transportation of virtuous women being prohibited in China. They often sell their female children to be reared in houses of infamy for vile purposes.”). Erika Lee states this: “The belief that most Chinese women in the United States were prostitutes had fueled much of the anti-Chinese sentiment in the 1870s and continued to have a detrimental effect on Chinese women’s admission cases during the exclusion era. Viewed as symbols of social decay, exploitation, and even slavery, Chinese prostitutes—and by extension all Chinese women—were considered to be one of the most dangerous threats of Chinese immigration.” ERIKA LEE, *AT AMERICA’S GATES: CHINESE IMMIGRATION DURING THE EXCLUSION ERA, 1882–1943*, 93 (2003).

disinclination stemmed from legislators' beliefs that the motive of Chinese immigrants to be in America was purely economic—with the latter having no thought of ever wanting to develop any kinship with other Americans or American society.

In the next place, Mr. Speaker, after having simply glanced at this question of Christianization, I come to examine another question, and this only casually, and that is the policy of the Government in admitting a class of people into our country who do not, and cannot, and will not, assimilate with its people; who come here for a special purpose only and who, when that purpose is accomplished, immediately return to and remain in their own country. When they land on our shores it is not for the purpose of becoming citizens, but for the purpose of amassing sufficient fortune to return to their own country, there to live and die in its enjoyment. I state it as a fact developed by this investigation, and I state it as a historical fact as well, that you cannot find within the territorial limits of this Republic any Chinese neighborhood (and I use the word neighborhood to describe a colony) who have any idea of becoming American citizens. You cannot find one who has ever given any thought or attention to our institutions or form of government.<sup>38</sup>

Indeed, much was made by various legislators in these debates on the strong desire of Chinese immigrants to have their remains buried in China—seemingly irrefutable evidence of the absence of American patriotism among this group.

The Chinaman has no children to take care of, no wife to clothe and support. He has none of the responsibilities of citizenship thrown upon him. He cares nothing for your institutions. He laughs at us when we talk about our great country. His desire is to go back to China from whence he came; and as a citizen of California I am always glad when he goes. It is provided in his contract that if he dies in this country one of the companies to which he is assigned shall send his bones back to China; and they are sent back in every instance.<sup>39</sup>

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38. 13 CONG. REC. 1902 (1882) (statement of Rep. Calkins).

39. 13 CONG. REC. 1936 (1882) (statement of Rep. Page). Other examples on this same point: 13 CONG. REC. 1644 (1882) (statement of Sen. Teller) ("Probably

*B. Comparative Arguments*

The legislative arguments on assimilation in the preceding section clearly demonstrate that a focus on culture—as a defining element of American political community and identity—might support exclusionary legislation. Yet, the legislative debates also illustrate how a focus on culture could lead to more inclusionary claims too. After all, as strong and entrenched as cultural ties may be, they are certainly more mutable than one’s physical characteristics. To the extent that legislative debate could be oriented toward certain behaviors and character traits, there was at least an opening to discuss countervailing evidence. Indeed, even among those legislators who supported Chinese exclusion, there was some recognition that Chinese immigrants possessed character traits quite at home in American society—even if these were still very clearly exclusionary points of view. Consider, for example, these comments by Senator Teller (Republican, Colorado):

[The Chinese civilization] is in numbers great; it is in patience and intelligence great; in ability to live under adverse circumstances it is great. It is the best illustration, as stated here the other day, of the doctrine of the survival of the fittest and of the adaptation of the human race to a certain condition of affairs. They can live upon a meager diet, because for generation after generation they have schooled themselves and educated their race to that method of living.<sup>40</sup>

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among all the races of the human family, with one exception, there is not a class of people who have such a contempt for any other civilization than their own. . . .”); 13 CONG. REC. 2030 (1882) (statement of Rep. Deuster) (“The Chinaman does not inquire into our liberal ideas as underlying the American system of government....”); 13 CONG. REC. 2032 (1882) (statement of Rep. Guenther) (“But, Mr. Speaker, the importation of Chinamen, as carried on for many years, is not immigration . . . .”); 13 CONG. REC. 2214 (1882) (statement of Rep. Townshend) (“Every thing [sic] they gain in this country is sent back to China....”); 13 CONG. REC. 2211 (1882) (statement of Rep. Pacheco) (“When the Chinese cooly comes to our shores he brings with him his religion, his laws, his manners and customs, his clothing, and in great part his food. He neither intends nor wishes to take root in our soil. He is among us but not of us.”).

40. 13 CONG. REC. 1645–46 (1882) (statement of Sen. Teller).

Representative Teller concludes with this question and response: "Do we want to try it? Not at all. We do not want it."<sup>41</sup> In other words, Chinese immigrants as a group had precisely some of the right characteristics to succeed in a capitalist society. The above critique was that they possessed these characteristics to an unseemly degree.

Of course, I should not overstate the point: one does not find arguments welcoming Chinese immigrants with open arms within these statements by legislative supporters of Chinese exclusion legislation. However, at the least, we see very minor hints of begrudging acknowledgment that Chinese immigrants possessed some cultural traits that were deemed admirable by these legislators.

More significantly, we also see that the reliance upon culture in these legislative arguments results in comparative arguments that emphasized the inassimilability of Chinese immigrants in comparison to African Americans. These comparative arguments point to how culture could be deployed to support both inclusionary and exclusionary views about different minority groups. When African Americans were raised in this subset of arguments, the concerns about unassimilable Chinese immigrants was pressed alongside the accompanying claim that by contrast, African Americans possessed relatively stronger cultural ties with white Americans. Thus we sometimes see within the appeal to culture in these debates an intertwining between inclusionary and exclusionary themes. For white Americans, culture was a basis for both excluding a foreign racial minority, and for including (at least partially) a more "familiar" racial minority in the American political community.

Consider then some assessments of Chinese immigrants in the legislative debates, in relation to African Americans as a point of comparison. One fascinating subset of these arguments were those

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41. *Id.* at 46 (statement of Sen. Teller). *See also* 13 CONG. REC. 1636 (1882) (statement of Sen. Slater) ("The Chinese as a people are doubtless shrewd, calculating, and far-seeing..."); 13 CONG. REC. 1585 (1882) (statement of Sen. Saulsbury) ("While they are industrious, while they may have contributed to the material prosperity of the State of California, I think we should not go further and permit any longer an immigration from China to this country. I shall vote, therefore, for the bill."); 13 CONG. REC. 1582 (1882) (statement of Sen. Farley) ("So far as I am concerned individually, as I said before, I have no doubt about the passage of this bill.").

by legislative supporters of Chinese exclusion who claimed that exclusion was beneficial to African Americans—an argument with obvious parallels to present-day political arguments. Specifically, one variant of this claim was that keeping Chinese immigrants out of the labor market and American society would be a benefit to African Americans as a means to avoid social friction and conflict:

It is my judgment and only my judgment—I do not give it as the judgment of anybody else—that the African people, from my knowledge of them, are a superior people to the Chinese in many respects; and I say if you take the Chinese to-day [sic] and mix them with the colored people of the South you will find there will be a conflict between those races that will result in riot and bloodshed, and the laws of the country will have to be invoked to protect the interests of one or both races.<sup>42</sup>

Another variant of this argument was about labor competition, a particularly prominent concern for legislators from the West Coast. Consider this comment from Representative Richardson, however, a Democrat from South Carolina who focused on the labor theme through this comparative lens:

Many of us on this floor represent more colored people than we do white people. For one, I represent not less than eighty thousand colored people. These with us in the South are our laborers—not exclusively or entirely, but they make up the great body of the laboring class of the South. While it would be a blow and a grievous injury to the laboring classes of the rest of this country to allow Chinese coolies unrestrained immigration to our country, to the colored people of the South it would be a disaster and almost utter ruin. The Chinese laborer or cooly, as a general thing, as we all know, comes here without any family to support, and nature has adapted him to live on very little; he would thrive on what the colored man would starve. He does and can afford to work for one-half the wages which the colored man must have in order to get along.

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42. 13 CONG. REC. 1582 (1882) (statement of Sen. Farley). *See also* 37 CONG. REC. 1584 (1882) (statement of Sen. Maxey) (“I do not pretend to be the special champion of the colored man. . .”).

As a friend, then, to the laboring classes all over our country, but especially as a friend to the colored man, and as in part his representative here, I can never consent to allow the Chinese cooly the right to enter the factories, the workshops, the farm and rice fields of the South to drive out our own people, white and colored, and supplant them as our laborers.<sup>43</sup>

Beyond these paternalistic arguments that were at least somewhat self-serving, exclusion-minded legislators gave voice to genuine-sounding points of commonality that they felt existed between white Americans and African Americans—but that did not exist between white Americans and Chinese immigrants. In the estimation of legislators, this bond—this shared sense of fate—was ultimately based in significant part on a shared culture encompassed by common norms, cultural reference points, and history. Culture was simultaneously invoked as a tool of inclusion and exclusion in these arguments. Consider this comment by Senator Slater (Democrat, Oregon):

[Let me] call attention to the utter want of any parallelism between the relations of the negro to the people of the United States and that of the Chinese, who desire to come among us as immigrants. The negro was native to the soil, born and bred within our jurisdiction, speaking our language, having, in a large degree, our civilization, and adhering to our religion. He was with us, if not of us; his ancestors were brought here against their will, and the generation with which we had to deal had no land, clime, or country to call their own except the land in which they were born, and no ties with any people or race except those with whom they had been reared. From necessity they were to remain with and of us; the only question, was what should be the relation.

The Chinese are aliens, born in a foreign land, speak a foreign tongue, owe allegiance to a foreign government, are idolaters in religion, have a different civilization from ours, do not and will not assimilate with our people, come only to get money, and return; and they are inimical to our laws, evade them whenever and wherever they can. . . . They bring

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43. 13 CONG. REC. 2177 (1882) (statement of Rep. Richardson).

their customs with them, and persistently adhere to and retain them.<sup>44</sup>

Along similar lines, Senator Jones (Republican, Nevada) stated this:

I have nothing but the very kindest feeling toward the negro which is intensified by the recollection of the oppression he has suffered at the hands of my own race, and never would I consciously do him an injustice. The negro possesses in a marked degree all the humane and affectionate sympathies. He easily becomes attached to those with whom he lives and is loyal to them. He adopts our customs and is proud to imitate them, instead of taking a pride, as the Chinaman does, in adhering to his own national habits. To the extent of his capacity for improvement he has a willingness and even ambition to improve himself, instead of shutting himself up as the Chinaman does, with an indomitable self-conceit within the limit of present attainments. The negroes now in this country were born in it; they speak our language; they have the same religion, and they recognize the same standard and code of morals. Considering how their race was brought here, and how admirably well they have borne themselves during and since their transition from servitude to freedom, we owe them not merely justice but kindness. My warmest sympathies have always been with them, and always will be. I was first, last, and all the time for their emancipation, and trust that I shall never fail to assist in securing for them all the rights and the highest advancement which are possible to them. I cannot but feel admiration for the acquirements which many of them have made under difficult and depressing circumstances, and I have no doubt that their race is capable under our leadership of attaining . . . much higher than their present development.<sup>45</sup>

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44. 13 CONG. REC. 1636 (1882) (statement of Sen. Slater).

45. 13 CONG. REC. 1744 (1882) (statement of Sen. Jones). Senators continued to invoke culture as a tool of inclusion and exclusion by stating:

And just here let it be stated that the rights of the colored people of this country are in no sense invaded or threatened by the terms of this bill or the spirit which it breathes. It is aimed at a non-voting, non-progressive, and non-assimilative people, who have no attachments for this country or its institutions save the sordid desire of bettering their condition in a

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pecuniary sense. No Chinaman ever came to this country because he hated oppression and loved liberty. He comes in every instance for the almighty dollar, and is incapable of an inspiration or aspiration beyond this. None of these things will lie against the citizen of African descent any more than against the man of Caucasian blood. Hence the colored man is in no way affected, and he need not be in any way disturbed. The discussion of races indeed had no proper place in this debate. It was dragged in by the sentimental gentlemen who preach equality in its broadest sense, but fail to practice it in its most restricted sense. We are not legislating against the Chinaman because his skin is yellow; we have no objection to that; but we are against him because of the civilization which he brings with him and which he refuses to abandon after years of residence among us. Colors have nothing whatever to do with this subject, and I should never have alluded to them but for the purpose of controverting some of the issues raised by our New England friends, both here and in the Senate. . . . They are a people without a religion, without a conscience, and without a God. There is no honesty among the men or virtue among the women. I mean to refer of course solely to the class which comes within the scope of this bill.

13 CONG. REC. 1979 (1882) (statement of Rep. Cassidy).

I do not know the Chinese; but I do know the colored people from my infancy. I come from a country where they have been known for more than a hundred years. A typical negro is infinitely superior to a typical Chinaman in all the characteristics of a kindly manhood, if the evidence of witnesses and the experience of travelers with regard to the latter be entitled to belief. The negro is deeply emotional; the Chinaman is as cold as one of his ugly stone idols. The negro is sympathetic and kind-hearted; the Chinaman callous and indifferent. The negro is susceptible to the kindly influences, to poetry and to eloquence; but the eloquence even of the distinguished gentleman from Ohio [Mr. Taylor] would have no influence on the phlegmatic Mongolian. The negro is intensely religious in his nature. Perhaps sometimes he backslides, as the best of us do; but he can be converted again. The Chinaman has no love of God whatever; his religion is the fear of the devil.

...

Sir, you will never see the spectacle of the entire South rising up against the negro as you see the entire West rising up against the Chinaman.

13 CONG. REC. 2029 (1882) (statement of Rep. Speer) (alteration in original).

Finally, note this comment comparing Chinese immigrants unfavorably to Native Americans, again from Representative Speer (Independent-Georgia):

We might as well disabuse our minds of the impression, if it exists, that we are dealing with an adversary like the noble red man or any other untutored savage or child of the forest. On the contrary, we are dealing with the representatives of an old and powerful civilization, of a renowned empire, which Gibbon tells us was the seat of the arts, of opulence, and of despotism when Europe was covered by the primeval forests and inhabited by savages clad in the skins of wild beasts.

To be sure, these statements asserting commonality with African Americans were, for most, only comparative or relative assessments judged in relation to Chinese immigrants. We do not hear endorsement of full egalitarianism between whites and African Americans in these comments either. Racist comments directed against African Americans were sometimes joined with inclusionary arguments in their favor by the same speaker in a single statement.<sup>46</sup>

Further, some comments also included references to how the shared fate between white Americans and African Americans owed much to the “circumstance” of slavery and the forced transport of the latter to the United States. For some, this sense of commonality was rooted in an unfortunate act from the past that created an obligation on the part of white Americans to be concerned for the welfare of this racial minority. The lesson from this history, of course, was that the same mistake of letting another racial minority take root in this country should not be repeated with Chinese immigration.<sup>47</sup>

Still, even if tinged with racism, paternalism, and some degree of self-servingness, the articulation of a shared sense of fate with African Americans by these legislators should not be reflexively dismissed as disingenuous either. I would assert that within these comparative arguments, we see even more clearly how exclusionary and inclusionary arguments are intertwined. The mechanism by which such arguments were joined was the focus on culture, and the degree to which African Americans and Chinese immigrants overlapped—to a greater extent with the former and to a lesser extent with the latter—with a set of norms, behavior, and a history predominant among white Americans.

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13 CONG. REC. 2027 (1882) (statement of Rep. Speer).

46. See, e.g., *supra* note 45 and accompanying text (statement of Sen. Jones).

47. *Id.* See, e.g., 13 CONG. REC. 1744 (1882) (statement of Sen. Jones) (“[c]onsidering how their race was brought here, and how admirably well they have borne themselves during and since their transition from servitude to freedom, we owe them not merely justice but kindness.”); 13 CONG. REC. 1645 (1882) (statement of Sen. Teller) (“Why, Mr. President, reference has been made to the negro in this country. There is no analogy.”); 13 CONG. REC. 1713 (1882) (statement of Sen. Teller) (“I understand that Mr. Lincoln never changed upon the question of the inferiority and superiority of the races. . .”).

*C. Racist Arguments*

The intertwining of inclusionary and exclusionary themes is most prominent in the comparative arguments noted in the previous section, but a similar dynamic is present in more categorically racist arguments as well. Those arguments that I label racist were characterized by a common belief in white supremacy and a general skepticism about the qualities and contributions of racial minority groups. Not surprisingly, such arguments were common in the congressional debates over the Chinese Exclusion Act, and they came in several easily recognizable groupings. The first grouping played directly into the white supremacy theme, with an emphasis on Anglo-Saxon supremacy, and with reference to notions of “white purity” or the desirability of keeping the polity in a “pure” condition. Note this statement by Senator Grover of (Democrat, Oregon):

America has truly been, as she was intended to be, the asylum of the oppressed of all European nations. While we accept and occupy this position as a sacred trust, the obligations of that trust devolve upon us duties deep and lasting. I construe that trust as meaning that we hold our inheritance sacred to our posterity, and of those who are of kin to our forefathers. While we are to treat the poor remnant of the Indian race among us and the African who was forcibly brought here with that justice and humanity becoming to a great people, it is of the gravest importance to the future peace and well-being of this country that we do not voluntarily create other relations with colored foreign peoples which will force upon us complications in our civil and political relations which, in my judgment, are certain to be troublesome to us and unfortunate to them.<sup>48</sup>

Putting the point even more emphatically, Senator Maxey (Democrat, Texas) stated:

What class of people came here at the time the Constitution was adopted and claimed citizenship in this country? The Caucasian race, and no others. Prior to the adoption of the Constitution there were settled in the colonies which became States and framed the Constitution, Caucasians and Caucasians only; white people and white people only. The

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48. 13 CONG. REC. 1546 (1882) (statement of Sen. Grover).

colored race were not citizens. They were not made citizens by the framers of the Constitution, and never became citizens until the adoption of the fourteenth amendment. When the Constitution was adopted there were no people of the Mongolian race coming to this country, and no one who framed the Constitution or voted for its adoption ever dreamed of incorporating people of the Mongolian race into our civilization.<sup>49</sup>

A second distinct but related theme was various arguments that emphasized the undesirability of Chinese immigrants—their traits, their orientation, their behaviors—with reference to similar concerns for other non-white peoples such as African Americans. Representative Deuster (Democrat, Wisconsin) made this point in characterizing Chinese immigration as the second coming of African American slavery. Given the costs to white America that stemmed from the latter, he warned of making the same mistake twice:

The advent of the Chinese to this country, in my opinion, partakes more of the character of a peaceful subversion, a possession of conquered territory by paid and hired armies of submissive laborers owing allegiance solely to a foreign power, and regardless of the future or prospects of the beautiful territory temporarily occupied by them. If it is not that, then perhaps it might better be styled simple slavery in another less revolting form. Negro slavery took precisely the same beginning. It was claimed that slavery was a divine institution—that the negro would do the labor no white man could endure. The blacks were at first brought only in small numbers. Twenty years ago there were three millions of enslaved human beings within the territory of the United States, and it cost thousands of millions of treasure and irreparable losses of valuable lives to make slavery a thing of the past. It proved the greatest curse that had ever blighted this fair land. Let us learn something from the history of the past. Every maimed soldier we meet, every widow who mourns her husband, every mother whose heart aches and

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49. 13 CONG. REC. 1583 (1882) (statement of Sen. Maxey). *See also* 13 CONG. REC. 1487 (1882) (statement of Sen. John F. Miller) (“Let us keep pure the blood which circulates through our political system. . . .”); 13 CONG. REC. 1645 (1882) (statement of Sen. Teller) (“The Caucasian race has a right, considering its superiority of intellectual force. . . .”).

whose eyes grow dim when she thinks of the dear child she has lost in that fearful struggle, repeats the sad lesson to us. Let us stamp this threatening danger out of existence before it can grow large enough to require more serious measures for its suppression.<sup>50</sup>

Distinct from the comparative arguments that emphasized a kinship between whites and African Americans (albeit grudgingly) relative to Chinese immigrants, this form of racist argument placed greater emphasis on the grudging aspect of this relationship. African Americans were again a significant point of reference, but here, they were a negative point of reference.<sup>51</sup>

Finally, a third set of racist arguments is noteworthy because, like the comparative arguments mentioned in the preceding section, these functioned in a similar manner. Alongside appeals to white supremacy and the defects/potential costs associated with allowing non-white individuals into the polity, legislators deployed a third type of racist argument that contrasted Chinese immigrants (and African Americans at times as well) with white immigrants from European nations. Within these arguments, the common theme was the ease of assimilation into American society these white immigrants had demonstrated because of an intrinsic cultural compatibility between Europe and white America. Prominent within these race-based exclusionary arguments was an appeal to cultural ties that excluded Chinese immigrants (and for legislators, excluded

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50. 13 CONG. REC. 2030 (1882) (statement of Rep. Deuster). *See also* 13 CONG. REC. 3267 (1882) (statement of Sen. Morgan) (“There we were, left in the midst of them [African-Americans] without the power to control them as they had been used to being controlled....”); 13 CONG. REC. 3358 (1882) (statement of Sen. Vest) (“As the Senator from Nevada [Mr. Jones] said, rising above party, your experiment in the Southern States of putting the negro above the white man is a miserable failure....”).

51. *See* 13 CONG. REC. 1744 (1882) (statement of Sen. Jones) (“Does anybody suppose for an instant that if the African were not in this country to-day we should be anxious to welcome him . . .?”); 13 CONG. REC. 1583 (1882) (statement of Sen. Maxey) (“We have had the colored race made citizens and voters.”); 13 CONG. REC. 1932 (1882) (statement of Rep. Page) (“I believe, Mr. Speaker, that there is not a member upon this floor, of either party, who believes that the coming of the African race to this country originally was a blessing to us or to the African himself. Their condition has long been a subject of careful and earnest consideration among thoughtful people.”); 13 CONG. REC. 2139 (1882) (statement of Rep. Buckner) (“Emancipation did not and cannot accomplish what the God of the universe did not ordain. It has not, and it never will, either by education or otherwise, make the African the equal of the white man. His presence as a freedman presents the same if not a greater obstacle to the progress and material development of the States which he inhabits as when he wore the shackles of slavery.”).

African Americans as well), but also, implied an inclusionary tie between white Americans and white European immigrants. This category of racist arguments was, in short, another type of comparative argument:

This Republic owes its marvelous growth, its wonderful development, its preeminence among the nations of our modern times largely to the influx of immigration from the Old World, an immigration totally different from that which found its way to the Pacific coast from Asia. The European immigrant, akin in race to the population of the American colonies which were originally settled by Europeans, became then, and still becomes, an indistinguishable part of our population. He adopts American customs, and, what is more, American ideas and love of personal liberty; he assimilates with and disappears entirely among the native-born, making all that is worth preserving of American life and thought the sacred heritage of his own children. The school-house, the workshop, the avenues of commerce become the scene of this peaceful transformation of kindred elements into a harmonious body that bids fair to establish in due time the most powerful, the most enlightened, the most progressive nation upon the face of the earth. But not so with the Chinese immigration, past, present, or future.<sup>52</sup>

Similarly, Representative Cannon (Republican, Illinois) stated:

All agree that the Chinese are unlike any other immigrants to this country. The Norwegians Swedes, Germans, Irish, English, and Scotch who find a home within our borders soon become, they and their descendants, in custom, language, and sympathy, part and parcel of the American people. They marry and are given in marriage. They help to support churches, schools, and in every way assist in working out advantageously their and our destiny; while the Chinese retain their language, manners, customs, allegiance to their emperor; they neither marry nor are given in marriage; they do not help to bear the burdens of state; they do not assist in the building of churches or school-houses; they are Chinese when they come, Chinese while they remain, and Chinese

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52. 13 CONG. REC. 2030 (1882) (statement of Rep. Deuster).

when they return.<sup>53</sup>

Such arguments were hardly inevitable or self-evident in the nineteenth century, of course. As others have shown, the boundaries

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53. 13 CONG. REC. 2223 (1882) (statement of Rep. Cannon). See also:

European immigrants are men of the like mental and physical characteristics of the American laborer. They are of the same or a kindred race, trained under a like civilization, with similar aspirations, hopes, and tendencies. Their wants and necessities are the same, and they conform their habits, methods, and manners to these of the people by whom they are surrounded. The requirements of their social condition expand with their improving fortunes. They assimilate with American society and become a part of the American people. The competition in the field of labor between such men and the American is a contest between equals. While the European immigrant augments production he becomes a liberal consumer. The Chinamen clothes himself in cheap imported fabrics, and his principal article of food is imported rice. The European immigrants build homes, rear families, and surround themselves with the luxuries and refinements of modern life. The Chinese take shelter in the hovel, or mass themselves in houses like swine in the sty, and send their wages to China. The accumulations of the European immigrants remain in the country and swell the aggregate wealth of the nation. Moreover, they are free, independent men, who control their own labor and their own destiny. They soon become the earnest defenders of free institutions and republican government. They unite their fortunes with ours, enjoy our prosperity, and brave our disasters. They stand shoulder to shoulder with us in battle for the defense of the Republic and the maintenance of the national honor.

13 CONG. REC. 1485–86 (1882) (statement of John F. Miller). Another example directly compared the Chinese to specific European immigrants, describing:

The German, the Irish the French, and other immigrants to our country have quickly and successfully adapted themselves to our institutions. Prompt to defend the honor and to promote the interests of their adopted land, yielding cheerful and ready obedience to its laws and customs, they have illustrated in their lives and vindicated by their conduct the wise policy of immigration. As kindred drops of water, they have mingled and been lost in the great stream of American life. The Chinese have no such intention or experience. They do not come to seek homes. They disdain to accept our institutions; they look with contempt upon our social customs; they defy the authority of our laws; they retain all the distinctive features and characteristics of their national life. Twenty-five years of residence and contact with our people have left them unchanged and unimproved in any important particular. The argument, then, based upon a comparison of this race with our Irish and German fellow-citizens is utterly without foundation.

13 CONG. REC. 1977 (1882) (statement of Rep. Willis).

of “whiteness” have long been contested in American history.<sup>54</sup> Additionally, Jacobson notes, the inclusion or exclusion of a particular European ethnic group within the category of “white” could be dependent upon the issue under consideration, the other racial or ethnic groups involved, or the location where debate was occurring.<sup>55</sup> This further underscores the prevalence of relative inclusionary and exclusionary statutes that could be applied not just to racial minorities, but to ethnic whites as well.

#### D. Universal Arguments

Finally, legislators also made arguments that I label “universal.” These were arguments by legislative opponents of the Chinese exclusion bill that emphasized more universal commitments embodied in the American polity that should extend to Chinese immigrants. Within these arguments, the emphasis on culture and the intertwinement of inclusionary and exclusionary themes—seen in the previous sections—also reappears.

The first subset of universal arguments worth noting are those that emphasized how the proposed legislation, and its targeting of Chinese immigrants, sat at odds with core Republican Party principles of free labor. As hinted at throughout many of the

54. See, e.g., MATTHEW FRYE JACOBSON, *WHITENESS OF A DIFFERENT COLOR: EUROPEAN IMMIGRANTS AND THE ALCHEMY OF RACE* 3–5 (1998).

55. Jacobson states this of the Irish, who regularly figured in racist arguments in the Chinese exclusion debates:

Conflicting or overlapping racial designations such as *white*, *Caucasian*, and *Celt* may operate in popular perception and discussion simultaneously, despite their contradictions—the Irish simians of the Thomas Nast cartoon, for example, were “white” according to naturalization law; they proclaimed themselves “Caucasians” in various political organizations using that term; and they were degraded “Celts” in the patrician lexicon of proud Anglo-Saxons. Indeed, this is the nature of the ideological contest. Some usages have had regional valences as well: it is one of the compelling circumstances of American cultural history that an Irish immigrant in 1877 could be a despised Celt in Boston—a threat to the republic—and yet a solid member of The Order of Caucasians for the Extermination of the Chinaman in San Francisco, gallantly defending U.S. shores from an invasion of “Mongolians.”

*Id.* at 5. See also *id.* at 75. The reinforcement of bonds of inclusion among European and European descended national and ethnic groups at the expense of “non-white” individuals is a dynamic that Jacobson also identifies in congressional debates over naturalization in 1870. *Id.* at 73–74.

preceding arguments, a common argument in support of the bill was that Chinese immigrants were undermining the economic welfare and social standing of white laborers. For example, immediately following the above-quoted statement by Representative Cannon, he continued with this comment:

“Our people cannot compete with them [Chinese immigrants] in labor where they are to be found in large numbers, for they are without the burdens of the family and do not bear the burdens of society, and will thrive upon wages where an American citizen who performs his duty and lives by the sweat of his face would starve at the same wages.”<sup>56</sup>

But opponents of the bill turned this critique on its head and emphasized how the bill was a perversion of free labor principles as applied on behalf of the Chinese immigrants:

I object to this bill in its present form, therefore, because it attacks the freedom of labor—the liberty to work. If you would elevate labor make it free. Servile service, such as slaves yield, is degrading, and such I would exclude from this country by making it free. But I insist that the right to work without trammel is a natural one, to be enjoyed alike by every race and color. In opposing the mean discrimination made in this bill against labor I am not speaking for the Chinese but for the dignity of labor, for freedom, for the right of man to live, his right to enjoy the air, the sunshine, the earth, and the fruits of his labor; for the toilers in the field, in the mines, and the workshop. I am for the largest possible liberty for every man and every people who engage in honest labor.<sup>57</sup>

Beyond the free labor idea, legislators spoke more generally to the tension between the proposed legislation and core ideals that, they believed, defined the American polity. Thus, we see invocations

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56. 13 CONG. REC. 2223 (1882) (statement of Rep. Cannon).

57. 13 CONG. REC. 2178 (1882) (statement of Rep. Browne). *See also* 13 CONG. REC. 1705 (1882) (statement of Sen. Platt) (“In the right to work honestly the Chinaman is your equal and my equal, and the equal of every living man. . . .”); 13 CONG. REC. 3265 (1882) (statement of Sen. Hoar) (“I will not deny to the Chinaman any more than I will to the negro or the Irishman or the Caucasian the right to bring his labor. . . .”).

of human rights and humanitarian notions being articulated by the bill's opponents too:

The establishment of such a precedent [of Chinese exclusion] by the United States, the recognized champion of human rights—the nation of all others in the world whose chief pride and glory it has been to truly boast of being known and recognized everywhere as the home of the free, the asylum for the oppressed, the land where all men, of all climes, all colors, all conditions, all nationalities, are welcome to come and go at will, controlled only by, and amenable only to, wise and beneficent laws, applying equally and alike to the people of every class—is one that does so much violence to my own sense of justice that I cannot, under any stress of evident passion, consent to aid in establishing it; and which, if established, I believe would be fraught only with mischief that would constantly return to torment us in the future.<sup>58</sup>

Similarly, Representative Williams (Republican, Wisconsin) invoked America's past in stating:

Yet this bill, in my judgment, does violate and defy the very fundamental idea out of which the American Republic sprang, and from which it draws its life and strength and hopes of perpetuity and domination in the world. What is it? It is this: that no obstacle to the free enjoyment of its blessings shall ever be interposed which the humblest of God's creatures by his own efforts may not overcome if he will.<sup>59</sup>

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58. 13 CONG. REC. 2035 (1882) (statement of Rep. Moore).

59. 13 CONG. REC. 2039 (1882) (statement of Rep. Williams). *See also* 13 CONG. REC. 2182 (1882) (statement of Rep. Browne) (“When we made the colored people free, when we elevated them to the high rank of American citizenship and gave them the ballot. . . .”); 13 CONG. REC. 1548 (1882) (statement of Sen. Hoar) (“I am in favor of admitting to the privileges of American citizenship, under proper limitations in case of foreigners who have been educated in attachment to other governments, every human being. . . .”); 13 CONG. REC. 2041 (1882) (statement of Rep. Skinner) (“The inalienable right of all men to life, liberty, and the pursuit of happiness is one of the fundamental ideas upon which our boasted enlightenment is built. . . .”); 13 CONG. REC. 2184 (1882) (statement of Rep. Joyce) (“To the other nations of the earth, not affected by this legislation, it must appear strange and unaccountable that a country inhabited by a people made up of immigrants from every race under Heaven should, at the very beginning of the second century of its existence, attempt to build around its territory a wall against foreigners. . . .”).

In the same vein as the ideologically-oriented arguments on free labor and human rights, opponents of the bill also invoked more historically-grounded inclusionary arguments as well. In this regard, many again referenced the case of African Americans and the recent Civil War. Yet unlike the comparative arguments deployed in a more exclusionary vein noted in preceding sections, these arguments emphasized African Americans as a historical analogue to support the proposition that Chinese immigrants could be assimilated into, and could enrich, American society too. This third type of universal argument proceeded from an inclusive—and ever-expanding—narrative of American history. African Americans were one stage of that narrative for some legislators. And they provided a compelling example of how bonds—particularly cultural bonds—may be created between white Americans and Chinese immigrants too.

Consider this particularly eloquent statement, again from Senator Hoar:

What argument can be urged against the Chinese which was not heard against the negro within living memory? The visionary of the East, as he was called, was taunted with meddling with social arrangements of which he had no experience, and standing at a distance to watch evils from which he was safe. The negroes were savages, heathens, wild beasts. The master and the owner could judge much better how to deal with them than these sickly philanthropists. I do not need to go to the holders of slaves for examples of this prejudice. The Attorney-General of Massachusetts, in Faneuil Hall, compared the negroes to caged wild beasts. . . . The great political parties vied with each other in pandering to this prejudice. How completely has the experience of a single generation vindicated the justice of the Creator and the truth of the immortal declaration. . . . Who now so bold as to deny to the colored race fitness for citizenship. Twenty years have not passed by since the children of the African savage were emancipated from slavery. In that brief space they have vindicated their title to the highest privileges and their fitness for the highest duties of citizenship.<sup>60</sup>

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60. 13 CONG. REC. 1518–19 (1882) (statement of Sen. Hoar).

Also worth emphasizing is that even within universal arguments, some elements of exclusionism and/or paternalism can be found. As was true with Justice Harlan's dissent in *Plessy*, a similar brand of racial prejudice intertwined with racial egalitarianism appears in the legislative debates:

It is true that the Chinaman has the misfortune to have a yellow skin and almond-shaped eyes. It was the misfortune of the colored man that he had a black skin. But even with that misfortune our civilization reached him, and he is now a full-fledged American citizen, with the ballot in his hand, and with all the powers, duties, and responsibilities of an intelligent American freeman. Now do you not think that if we could produce these results on the African we might try our influence on the Chinaman, particularly as they are a people always distinguished for their intelligence? This report is full of testimony to that effect.<sup>61</sup>

Even though the preceding sections do not encompass the full scope of the legislative debates over the Chinese Exclusion Act, these quotations and the larger themes they reflect constitute the most direct and explicit legislative statements on American political community in these debates. Within these statements, it is apparent that legislators conceptualized the bonds of American political community in several prominent ways. These included defining community in terms of race, ideology, value commitments, and—most notably for my argument—culture.

I maintained above that the appeal to culture by legislators is conceptually and substantially distinct from racist appeals, and this is most apparent within the comparative arguments noted above in Section III.B. In these arguments, we saw legislators articulating a sense of kinship—albeit only a qualified kinship—with African Americans, while simultaneously rejecting any such kinship with Chinese immigrants. Such arguments offer the most obvious support

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61. 13 CONG. REC. 2137 (1882) (statement of Rep. Hooker). Such prejudicial and/or paternalistic notions could also be joined to religious ideals. *See, e.g.*, 13 CONG. REC. 1523 (1882) (statement of Sen. Hoar) (“Humanity, capable of infinite depths of degradation, is capable also of infinite heights of excellence. The Chinese, like all other races, has given us its examples of both. To rescue humanity from this degradation is, we are taught to believe, the great object of God’s moral government on earth.”); 13 CONG. REC. 2174 (1882) (statement of Rep. Lord) (“Questions of this kind present themselves: while for forty years and more we have been sending missionaries to China. . .”).

for the cultural basis of communal bonds because the sense of kinship articulated by white legislators<sup>62</sup> toward African Americans necessarily had to reside within cultural commonalities and not race. Recognizing this does not minimize the fact that racial bonds remained a significant point of concern for legislators in the late nineteenth century, nor does it minimize the role of racism in Chinese exclusion. However, these arguments do give us reason to think that when we examine the comparative arguments, or even when we examine the more purely racist arguments put forth by legislators that unfavorably compared Chinese immigrants to white, European immigrants, the references to cultural anxieties about Chinese immigrants were at least partly genuine. That is, in some of these arguments, culture was an independent point of concern, distinct from race. Even if race mattered to legislators in thinking about Chinese exclusion, culture mattered too.

The preceding arguments also support my second general claim that inclusionary and exclusionary claims about community are often intertwined. Indeed, we see in the preceding sections how legislative appeals to cultural bonds joined more exclusionary arguments (against Chinese immigrants) with more inclusionary arguments (in favor of African Americans and white, European immigrants). Finally, we see hints of exclusionary rhetoric even in more universal arguments that aimed to be inclusionary toward Chinese immigrants.

More generally, this underscores the relative nature of kinship—where groups sit in varied relation to each other as having greater or lesser feelings of commonality. The reference point for the preceding Part has been the sense of relative kinship that an almost entirely white Congress felt toward various racial and/or immigrant social groups. My adoption of this perspective is unsurprising, of course, given that the perceptions and beliefs of these legislators ultimately enjoyed the force of law. But one might plausibly expect similar senses of qualified and varied kinship to exist among members of all types of groups with, for example, certain minority and/or immigrant groups perhaps feeling greater or lesser kinship with other minority,

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62. There were two African Americans in the House and none in the Senate at the time of these debates. See Black-American Representatives and Senators by Congress, 1870–present, UNITED STATES HOUSE OF REPRESENTATIVES, <http://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Data/Black-American-Representatives-and-Senators-by-Congress/> (last visited June 17, 2017). Neither of the two African American representatives figure prominently in my canvassing of these arguments-types.

non-minority, and/or immigrant groups based upon race, culture, national identity, religion, etc. As such, the sense of relative inclusion/exclusion apparent in these debates is significant because it is plausibly representative of how community may be perceived by other groups of Americans too.

#### IV. RECURRENT THEMES IN THE RHETORIC OF DONALD TRUMP

While Part II illuminated some aspects of the debate over Chinese exclusion at the end of the nineteenth century, the preceding discussion has relevance beyond that particular case. Indeed, the two key concepts I emphasized in the preceding Part—the centrality of culture and the intertwinement of inclusionary and exclusionary themes in arguments about political community—are, I believe, applicable across a range of contexts in American history. By way of beginning to demonstrate that point, let us fast forward to Donald Trump's campaign for president in the 2016 election. As with Chinese exclusion, we saw within Trump's 2016 campaign another conspicuous moment in our history where there was an emphasis on exclusionary themes in the context of immigration, backed by significant political support.

But beyond this obvious parallel, the case of Trump also illuminates the continued invocation of arguments that appeal to culture and that integrate inclusionary and exclusionary themes in the modern context. Below, after illustrating these modes of argument in the public statements of Trump, I will conclude with some discussion on how we might evaluate cultural and comparative claims about political community. It is undoubtedly tempting to view both types of argument, especially when paired with exclusionary political goals, as a mere smokescreen for racism. As I will discuss below, while I think there may indeed be a strong overlap between cultural claims, comparative claims, and racist themes, I maintain that they are conceptually distinct. Furthermore, for those inclined toward more inclusionary political goals, cultural claims and comparative claims should be viewed as attractive tools that can provide intriguing opportunities for co-option by proponents of more inclusionary views—options that are simply not available with respect to more categorically racist forms of argument.

Trump's campaign for the presidency was marked by a striking embrace of racially-charged rhetoric that has no ready analogue from a major party candidate in recent history. Of course Trump, for

the most part,<sup>63</sup> steered clear of classic racist statements. More common were claims of a threat of some kind by an “Other.”<sup>64</sup> And significantly, the “threat” and the definition of certain groups as an “Other” were driven in significant part by a claim of cultural incompatibility with American society. In a clear echo of the rhetoric surrounding Chinese immigrants in 1882, these other-groups had a set of values, and engaged in certain acts or behaviors, that made them alien to American society, according to Trump.

The earliest such statement along these lines was Trump’s comments on illegal immigrants from Mexico in announcing his candidacy for U.S. president, quoted in the Introduction.<sup>65</sup> A second

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63. See, e.g., Trump’s comments about Judge Gonzalo Curiel. Brent Kendall, *Trump Says Judge’s Mexican Heritage Presents ‘Absolute Conflict’*, WALL ST. J. (June 3, 2016, 10:03 AM), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

64. See this comment by George Saunders:

What unites these stories [of Trump supporters] is what I came to think of as usurpation anxiety syndrome—the feeling that one is, or is about to be, scooped, overrun, or taken advantage of by some Other with questionable intentions. In some cases, this has a racial basis, and usurpation anxiety grades into racial nostalgia, which can grade into outright racism, albeit cloaked in disclaimer.

In the broadest sense, the Trump supporter might be best understood as a guy who wakes up one day in a lively, crowded house full of people, from a dream in which he was the only one living there, and then mistakes the dream for the past: a better time, manageable and orderly, during which privilege and respect came to him naturally, and he had the whole place to himself.

George Saunders, *Trump Days*, THE NEW YORKER, July 11 & 18, 2016, at 57. See also Mark Danner’s similar comment:

The sense of threat from the Other—whether it be Mexican rapists swarming over the border or Muslim terrorists posing as refugees or “two young bullies cursing and threatening”; the sense of national decline that this signals (“We don’t win any more...”); the clear path to a restoration of greatness marked by simple, autocratic solutions (imposing tariffs, pulling out of NATO, bringing back torture, “bombing the shit” out of ISIS)—all of it springs from the populist toolbox, if not the fascist one, and the advertisements show that the roots of these positions and attitudes run very deep.

Mark Danner, *The Magic of Donald Trump*, N.Y. REV. OF BOOKS, May 26, 2016, <http://www.nybooks.com/articles/2016/05/26/the-magic-of-donald-trump/>.

65. See *Donald Trump Announces a Presidential Bid*, *supra* note 2. See also Peter Beinart, *The Republican Party’s White Strategy*, THE ATLANTIC (July/August

prominent example, also in the Introduction, was Trump's discussion of Muslim immigrants.<sup>66</sup> Finally, a third example of exclusionary rhetoric premised upon cultural incompatibility was Trump's rhetoric about domestic crime—heavily implied to be about racial minority groups in significant part—as a threat to law-and-order. He stated the following at the start of his acceptance speech at the Republican National Convention:

Together, we will lead our party back to the White House, and we will lead our country back to safety, prosperity, and peace. We will be a country of generosity and warmth. But we will also be a country of law and order. Our Convention occurs at a moment of crisis for our nation. The attacks on our police, and the terrorism in our cities, threaten our very way of life. Any politician who does not grasp this danger is not fit to lead our country. Americans watching this address tonight have seen the recent images of violence in our streets and the chaos in our communities. Many have witnessed this violence personally, some have even been its victims. I have a message for all of you: the crime and violence that today afflicts our nation will soon -- and I mean very soon -- come to an end. Beginning on January 20th, 2017, safety will be restored. . . . We cannot afford to be so politically correct anymore.<sup>67</sup>

In emphasizing the cultural elements of the preceding arguments, I am not dismissing the presence of racial prejudice present within them as well. Yet, I do think there are aspects of Trump's arguments that can be distinguished from racial prejudice and that can best be understood as cultural. The rhetoric in the preceding quotations suggests as much. Beyond that, consider that even with respect to Trump's most incendiary claims, he has consistently paired them with themes of inclusion for American racial minorities too. Indeed, Trump's public statements evidenced

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2016), <http://www.theatlantic.com/magazine/archive/2016/07/the-whitestrategy/485612/>.

66. See Donald J. Trump Statement on Preventing Muslim Immigration, *supra* note 3.

67. Philip Bump & Aaron Blake, *Donald Trump's Speech to the Republican National Convention, annotated*, WASH. POST (July 21, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2016/07/21/full-text-donald-trumps-prepared-remarks-accepting-the-republican-nomination/>.

ready use of comparative arguments. As such, his avoidance of more overt and categorical racist arguments in favor of comparative-exclusionary claims suggest the significance of cultural appeals in his rhetoric.

For example, Trump has been consistent in claiming—whether true or not—that the threat of illegal immigration is greatest for domestic racial minorities:

The biggest beneficiaries of allowing fewer foreign workers into our country would be minority workers, including all immigrants now living here, who are competing for jobs, benefits and community resources against record waves of foreign workers. Limiting job competition would reopen pathways to middle-class stability and shrink welfare rolls. In addition, it would relieve overcrowding in our schools and hospitals that afflict our poorest communities.<sup>68</sup>

Similarly, in his speech in Akron, Ohio, Trump stated the following in highlighting the costs of illegal immigration for African Americans and Hispanic-Americans:

Low-income workers are hurt the most by my opponent's policies. Poor Hispanic and African-American citizens are the first to lose a job, or see a pay cut, when we don't control our borders. According to Pew Research, immigration over the next fifty years will add another 100 million to our population. It will be much, much more than even that under Hillary Clinton's radical plans. That's unfair to the low-income workers—African-American, Latino, all Americans—living here today and trying to get ahead. . . . The Democratic Party has run nearly every inner city for half a century or more. They have produced only more poverty, failing schools, and broken homes. In the last eight years, the African-American labor force participation has declined another 3 percentage points—and it's dropped another 6 percent for teenagers. Nearly 4 in 10 African-American children live in poverty. African-American home ownership has declined nearly ten percentage points. Meanwhile, since 2009, another 2 million Latinos have fallen into poverty. Incomes for Latino

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68. Press Release, Donald J. Trump Statement on New Census Data Showing Record Immigration Growth (Mar. 7, 2016), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-immigration>.

workers fell by almost another \$1,000 dollars. Meanwhile, homicides are up nearly 50 percent in Washington D.C. and more than 60 percent in Baltimore. The level of crime in these cities is something no American should consider acceptable. Our government has failed these residents. For those hurting the most—who have been failed again and again by their politicians—I’ve asked in recent days, what do you have to lose by trying something new?<sup>69</sup>

In these statements, we see a close parallel to earlier claims that Chinese immigrants would pose a particularly significant threat to African Americans in the late-nineteenth century, and that Chinese immigration should be opposed by legislators on behalf of their fellow citizens.

Trump’s appeal to comparative arguments was likewise repeated in the context of Muslim immigrants. Following the mass shooting in Orlando, he frequently paired his claims about the threat of Islamic

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69. Brendan Morrow, *Full Transcript of Donald Trump, Speech in Akron, Ohio*, HEAVY (August 22, 2016), <http://heavy.com/news/2016/08/read-full-transcript-donald-trump-rally-speech-akron-ohio-text/>. Several additional examples also exist:

Decades of disastrous trade deals and immigration policies have destroyed our middle class. Today, nearly 40% of black teenagers are unemployed. Nearly 30% of Hispanic teenagers are unemployed. For black Americans without high school diplomas, the bottom has fallen out: more than 70% were employed in 1960, compared to less than 40% in 2000. The influx of foreign workers holds down salaries, keeps unemployment high, and makes it difficult for poor and working class Americans—including immigrants themselves and their children—to earn a middle class wage. Nearly half of all immigrants and their US-born children currently live in or near poverty, including more than 60 percent of Hispanic immigrants. Every year, we voluntarily admit another 2 million new immigrants, guest workers, refugees, and dependents, growing our existing all-time historic record population of 42 million immigrants. We need to control the admission of new low-earning workers in order to: help wages grow, get teenagers back to work, aid minorities’ rise into the middle class, help schools and communities falling behind, and to ensure our immigrant members of the national family become part of the American dream.

Donald J. Trump, *Immigration Reform That Will Make America Great Again*, <https://www.donaldjtrump.com/images/uploads/Immigration-Reform-Trump.pdf> (last visited Apr. 13, 2017).

“Decades of record immigration have produced lower wages and higher unemployment for our citizens, especially for African-American and Latino workers. We are going to have an immigration system that works, but one that works for the American people.” Bump & Blake, *supra* note 67.

terrorism with claims attesting to his support and sympathy for the LGBT community, claiming:

Our nation stands together in solidarity with the members of Orlando's LGBT Community. This is a very dark moment in America's history. A radical Islamic terrorist targeted the nightclub not only because he wanted to kill Americans, but in order to execute gay and lesbian citizens because of their sexual orientation. It is a strike at the heart and soul of who we are as a nation. . . . We cannot continue to allow thousands upon thousands of people to pour into our country, many of whom have the same thought process as this savage killer. Many of the principles of Radical Islam are incompatible with Western values and institutions. Radical Islam is anti-woman, anti-gay and anti-American. I refuse to allow America to become a place where gay people, Christian people, and Jewish people, are the targets of persecution and intimidation by Radical Islamic preachers of hate and violence. It's not just a national security issue. It is a quality of life issue. If we want to protect the quality of life for all Americans—women and children, gay and straight, Jews and Christians and all people—then we need to tell the truth about Radical Islam.<sup>70</sup>

Extrapolating a coherent vision of American political community from these comments is no easy task. Trump was hardly systematic in his policy diagnoses or prescriptions, and commentators noted the many contradictions across his various policy positions.<sup>71</sup> If his

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70. Press Release, Donald J. Trump Addresses Terrorism, Immigration, and National Security (June 13, 2016), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-addresses-terrorism-immigration-and-national-security>. See also *id.* ("Hillary Clinton can never claim to be a friend of the gay community as long as she continues to support immigration policies that bring Islamic extremists to our country who suppress women, gays and anyone who doesn't share their views."); *Donald Trump's Dark Speech to the Republican National Convention, Annotated*, THE WASHINGTON POST: THE FIX (July 21, 2016) (remarks as delivered), <https://www.washingtonpost.com/news/the-fix/wp/2016/07/21/full-text-donald-trumps-prepared-remarks-accepting-the-republican-nomination/> ("Only weeks ago, in Orlando, Florida, 49 wonderful Americans were savagely murdered by an Islamic terrorist. This time, the terrorist targeted our LGBTQ community. No good. And we're going to stop it. As your President, I will do everything in my power to protect our LGBTQ citizens from the violence and oppression of a hateful foreign ideology.").

71. See, e.g., Evan Osnos, *The Fearful and the Frustrated*, THE NEW YORKER, August 31, 2015, at 52–53.

general orientation may be boiled down to a couple of key characteristics, Trump has consistently emphasized a threat to America from an “Other,”<sup>72</sup> and his peculiar ability to protect the nation from that threat by virtue of his willingness to ignore niceties and do what needs to be done.<sup>73</sup> The parallels to Chinese exclusion are obvious here, as we see cultural and comparative claims deployed toward exclusionary goals. Indeed, perhaps not surprisingly, Trump has earned the enthusiasm of not just white Republican voters, but also elements of white nationalism that sit at the margins of mainstream politics—constituencies who feel various levels of threat by the growing numbers and increasing cultural influence of racial minority groups, in line with classic nativism themes.<sup>74</sup>

At the least, the comparison between the legislative debates over Chinese exclusion and the rhetoric of Trump illustrates the persistence of a rhetorical or conceptual toolkit for exclusionary arguments in the immigration context across American history. But, I believe the comparison suggests a more significant and recurrent

72. See Saunders and Danner, *supra* note 64.

73. See, e.g., Mark Leibovich, *Donald Trump is Not Going Anywhere*, N.Y. TIMES MAG. (Sept. 29, 2015), <http://www.nytimes.com/2015/10/04/magazine/donald-trump-is-not-going-anywhere.html> (“This was a common sentiment among Trump supporters I met, a group that felt worn down from being bullied. Implicit in the campaign’s “Make America Great Again” rallying cry is a yearning for a leader to restore a lost swagger — a return to a less complex, less politically correct and more secure nation.”).

74. See, e.g., *id.* (“Trump’s war on political correctness is especially pleasing to many of the white voters of the G.O.P. who feel usurped by newcomers and silenced by the progressive gains that women, Hispanics and gays have enjoyed.”). Evan Osnos, *The Fearful and the Frustrated*, THE NEW YORKER, Aug. 31, 2015, at 59; Tsai, *supra* note 6. [http://www.slate.com/articles/news\\_and\\_politics/politics/2016/05/what\\_aryans\\_see\\_in\\_donald\\_trump.html](http://www.slate.com/articles/news_and_politics/politics/2016/05/what_aryans_see_in_donald_trump.html). In fairness, Trump has made appeals to an inclusive form of populism too:

I am fighting—all of us across the country are fighting—for peaceful regime change in our own country. The media-donor-political complex that’s bled this country dry has to be replaced with a new government of, by and for the people.

I will fight to ensure that every American is treated equally, protected equally, and honored equally. We will reject bigotry and hatred and oppression in all of its forms, and seek a new future of security, prosperity and opportunity—a future built on our common culture and values as one American people.

See Morrow, *supra* note 69.

dynamic in American political thought: first, these cases help illuminate the central role of culture in constituting American political community and identity. Second, and further, because culture is so significant in these respects, these cases also illustrate the more graduated and nuanced ways that Americans have viewed and continued to view communal membership. As a matter of legal status, we do think in terms of distinct categories like “citizen” and “non-citizen.” But when Americans think and debate about matters of communal membership in a broader political sense, it is clear that many have long thought about such questions in more graduated or comparative or relative terms. It has been a common feature of American political thought to think and talk about groups within this country as “more in” and “more out” relative to other groups.

We have seen how cultural and comparative claims have been deployed in more exclusionary ways in both the past and present. Let me conclude this paper on a more optimistic note. As noted above, I would assert that Trump’s reliance on cultural claims leaves a valuable opening for proponents of inclusion to respond and co-opt them. If nothing else, claims about a group’s supposed inability to assimilate or conform to basic norms are seemingly claims dependent upon fact and observation—and thus are, in theory, susceptible to responses invoking countervailing evidence and countervailing experiences. Hence, for example, claims about the supposed unsuitability of Chinese immigrants for American society based upon behavior were at least open to rebuttal<sup>75</sup> in ways that exclusionary claims based upon race are not. Indeed, no matter how much claims about culture may track claims about race, the former remain arguments premised upon human behavior—and behavior, at least as a relative matter, is certainly more mutable and flexible than the “immutable” physical characteristics that have usually defined race in the American context.

A similar comment may be made about comparative claims too. Certainly, such arguments may often times amount to nothing more than slightly more polite forms of racist argument. Yet at the same time, such arguments may constitute genuine statements of outreach from insiders to quasi-outsiders, indicating a shared bond that is, for better or worse, sharpened in relation to a group even more “alien” to the insider or the quasi-outsider. In this vein, recall Harlan’s *Plessy* dissent, where he unfavorably contrasted Chinese immigrants with “citizens of the black race in Louisiana, many of whom, perhaps, risked their lives for the preservation of the

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75. See *supra* Part II.

Union.”<sup>76</sup> It is worth recognizing within this comment not just the explicit element of racial prejudice, but also, an element of racial inclusiveness that—because it is premised upon culture and shared experience—provides an opening for the inclusion of future racial minorities that might serve in the military, or may otherwise have their or their descendants’ experiences otherwise intertwined with the larger fabric of American life.

In George Saunders’ article on Trump supporters, he recounted the experience of chatting with them, and putting human faces to the problems of undocumented immigrants that would be exacerbated by a Trump immigration policy. While discussing conditions facing more ‘sympathetic’ undocumented immigrants with Trump supporters, he observed:

In the face of specificity, my interviewees began trying, really trying, to think of what would be fairest and most humane for this real person we had imaginatively conjured up. It wasn’t that we suddenly agreed, but the tone changed. We popped briefly out of zinger mode and began to have some faith in one another, a shared confidence that if we talked long enough, respectfully enough, a solution could be found that might satisfy our respective best notions of who we were. Well, let’s not get too dreamy about it. We’d stay in that mode for a minute or two, then be off again to some new topic, rewrapped in our respective Left and Right national flags.<sup>77</sup>

Saunders’s qualification appropriately alerts us to the fact that an appeal to culture and perceived commonality is unlikely to be a cure-all for the sharp lines of division that will always exist in a diverse society. Still, his experience underscores the power of appealing to shared experiences, and of forcing individuals otherwise inclined to be more exclusionary to rethink their conclusions when confronted by individuals who—despite their undocumented status—are living lives that look “American.” Taken together, the treatment of African Americans in comparative arguments from the 1882 debates, along with Saunders’ anecdote indicates that while cultural claims may be a tool for exclusion, they may also be wielded as a powerful tool for inclusion.

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76. *Plessy v. Ferguson*, 163 U.S. 537 (1896) (Harlan, J., dissenting).

77. Saunders, *supra* note 64, at 57.

To be sure, one may offer at least two counter-arguments to these claims. One might maintain that even if appeals to racism and culture are conceptually distinct, the fact that they have been so prominently joined in history—and indeed this has been true with respect to the two case-studies discussed here—may lead one to question just how much potential exists for cultural claims to be deployed in more inclusionary ways. These reservations aside, however, we do have some historical evidence of the potential for inclusionary political claims to be advanced on the basis of culture in these case studies. Whether one is ultimately inclined to believe the appeals to kinship with African Americans stated by white legislators in the late nineteenth century or not, such claims were presumably made precisely because they were viewed as potentially compelling for at least some members of the intended audience. Furthermore, to repeat a point mentioned above, even if the potential for inclusionary political goals may inevitably be constrained by culture-based claims about community, whatever potential exists will always be greater than that present in racist-based claims.

A second critique may be raised with respect to culture in relation to its implications for relative inclusion/exclusion. If culture-based claims about community inevitably point toward only relative inclusions and exclusions, this may imply that cultural claims will always be exclusionary, in some degree, toward some group of individuals. For any group to enjoy a more inclusionary status, some other group has to be lower on the pecking order. As such, this is perhaps another way of stating the concern that culture-based claims about community will be inherently exclusionary.

Perhaps this is true, though I would caution specificity and care in how we think of “exclusion” when discussed in this more expansive sense. We may rightfully be troubled when exclusionary conceptions of political community lead to categorical deprivations of important rights and/or benefits for certain classes of individuals without sufficient justification. But if the above-stated critique is merely that cultural claims will inevitably lead groups to be relatively more sympathetic to some groups than others, one can imagine situations in which this may be less normatively troubling, or at least more normatively contestable. For example, in her article on Trump supporters in a West Virginia County, Larissa MacFarquhar articulated how this sense of relative inclusion/exclusion intersected with the 2016 election. This was her extended comment on the topic, in relation to the contrasting styles of Barack Obama and Hillary Clinton:

Obama, with his complicated background, doesn't take roots for granted. In his first book, he describes learning that his father had ruined his life in part because he dismissed the ties of family and tribe as unimportant. What Obama's father never understood, Obama's aunt told him, was that "if everyone is family, no one is family." Perhaps this is why Obama makes a point of saying that he understands that the desire for borders is not always, or only, racism but also a desire to belong to a group of people that is smaller and less cosmic than all mankind: in other words, to have a home. Clinton's America, the nation that welcomes everyone from everywhere, can sound abstract: more of a political idea or a moral position than a physical place—bloodless, in ways both good and bad. And, if there seems to be no middle ground between an America-first xenophobia and a universalist abstraction, people for whom citizenship feels thicker than an idea—and there are many of them—may find the America-first xenophobia more familiar, and more attractive.<sup>78</sup>

Whether accurate or not, whether defensible or not, these sentiments speak to the views of some that a scarce resource—jobs and income—should be prioritized in favor of U.S. citizens and against non-U.S. citizens. One may hear appeals to pure racism in these comments, but more likely, these sentiments are also appealing to communal bonds based upon culture and more general legal principles. Even if one is disinclined to find this a satisfactory basis for conceptualizing the American political community or not, this is, I suspect, a mode of thinking that will demand engagement, if not some degree of acceptance, if only because it is unlikely to disappear from American politics anytime soon.

#### IV. CONCLUSION

In this paper, I have interrogated the legislative debates on Chinese exclusion in 1882 and identified four categories of argument that recur in the context of legislative discussions on American political community. These categories—assimilation arguments, comparative arguments, racist arguments, and universal arguments—collectively demonstrate two larger themes: the centrality of culture and the intertwinement of inclusionary and

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78. Larissa MacFarquhar, *Trumptown*, THE NEW YORKER, Oct. 10, 2016, at 65.

exclusionary themes in legislative discussions about communal membership. The reappearance of these themes in the modern-day rhetoric of Trump underscores their persistence in American political history. Even though my focus has been on the use of culture-based arguments for exclusionary political ends, this should not overshadow the potential for culture-based arguments to be deployed toward more inclusionary political goals as well.