Owners and Others: Proper Citizens and Migrants without Properties

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Abstract

Property rights are central to the concept of citizenship in the liberal state, but in relation to the obvious reality of unequal distribution of resources and material injustice, they also present its most central contradiction. Property rights, as guaranteed by the liberal state, always entail both a right to exclude and to control (the right of dominion), which makes the individual the “sovereign,” and a right to alienate, transfer, and contract property (including certain rights connected to possession, distribution, and further contracts). Of course, these latter social or communal aspects (or potentials) of property rights are dependent on the prior right of dominion, without which full control of the communal dimension of property would be impossible. Yet without the social—contractual—dimension, the right to property would be quite useless in a capitalist system of production, and it is in this regard that property as a legal institution, and not just as a right, attains a crucial status for the critical understanding of the relation between the legal and the cultural formation of the figure of the migrant and the figure of the citizen.

The focus of this article is on the ambiguous nexus—both the inevitable conflict and the inexorable convergence—between central notions of property and citizenship in the United States, on the one hand, and the concept of the migrant, on the other hand. It argues that one of the most essential properties of the migrant in U.S. cultural and legal imagination has been (and still is) the migrant’s defining lack of “properties”; that is, the migrant is defined by being essentially dispossessed and therefore in need of the “property” of others. That makes the migrant a precarious but also threatening dialectical presence vis-à-vis the citizen in the cultural and legal imaginary of the United States. This article will discuss this dialectic in reference to the history of Asian American immigration and citizenship and, more particularly, in relation to the function of literature in the ongoing negotiation of the properties of the migrant.

Keywords: migration United States; immigration United States; property; naturalization; migration law; literary fiction.
If the distinction between citizens and aliens erodes, and the boundary defining the national community consequently is blurred, the civil connection between state and society becomes frayed. The state abdicates its role as the political organization of the community because there is less of a community to represent. (Jacobson 8)

1 Introduction: Forgetting History, Regulating Migration

Over the past four decades, increasing global refugee and mass migration surges have been viewed as the most imminent challenge to the modern nation state. In 2003, the International Organization of Migration (IOM) had already characterized this development as an ongoing “migration governability crisis” (qtd. in McKeown 363)—a crisis that has been and continues to be represented and announced as the destruction of national culture(s) (Vertovec 242).

More recently, the national and nativist sense of anxiety and impending threat related to the (enforced) mobility of large groups of people in the context of the so-called refugee crisis has fueled anti-migration sentiments in many western polities, supporting the rise and success of populist movements, parties, and ideologues—such as Nigel Farage in Britain, Victor Orban in Hungary, and, perhaps most spectacularly, Donald Trump in the United States. In the wake of the current pandemic crisis connected to the global spread of the SARS-CoV-2 virus, the general notion that unprecedented and uncontrolled forms of mobility and migration will also introduce unprecedented dangers to the body politic and, quite literally, the bodily health of all citizens will no doubt further strengthen the desire to isolate, or more precisely, inoculate, the nation state ever more effectively from any form of undesirable migration.

Yet, as Adam McKeown has convincingly argued, the desire for an effective international regime of migration regulation is not simply a contemporary response to recent developments and a new, unprecedented excess of migration “waves.” In fact, this regime had already been in the making, intellectually, legally, and culturally, during the late nineteenth century, slowly turning into a political reality from the beginning of the twentieth century onwards. Thus, what we today have come to accept as the most effective form of regulation and control of the so-called crisis of migration and forced mobility—for example, the policing of borders—is the result, as McKeown observes, of forgetting the past history of migration and its regulation in the face of the alleged newness of migration mobility: the sudden appearance of new forms of mass migration as a threat to the nation state and the subsequent introduction of new but necessary and adapted forms of safeguarding regulations. Moreover, as McKeown explains, the continuous “refinement of regulatory techniques” realized in the course of the nineteenth century through an expanding “machinery of identification and border
control” (351) also entails, almost by necessity, a rhetorical or narrative “technique” of migration regulation:

One of the most important of those techniques is the insistence on newness itself. Indeed, a call for more order will always flourish best when constructed as a response to new challenges and threats. For nearly two centuries, forgetting the past has been fundamental to the naturalization of border control. This forgetting can react to the mechanisms of regulation (and deregulation) as progressive solutions to our problems, rather than the same old techniques that have already created the problems we want to solve. Forgetting also obscures the effects of human regulation in creating the many aspects of social organization that we now accept unquestionably as the basic order of things, transforming a world historically created by human institutions into a universal principle. (351)

But forgetting the past in this way does in no way result in freeing society from the historical legacies of these techniques of regulation and naturalization. On the contrary, as Natalia Molina has argued, especially in regard to the interdependence of regulation, naturalization, and racialization which underlies the differential tension between the citizen and the migrant as imagined and projected figures, the past is never past, only different. Referring to George Lipsitz’s observation about the “long fetch of history,” Molina emphasized the enduring force of “racial scripts” for the continuance of dehumanizing cultural practices of othering and legal concepts of alienage in migration history and politics:

[T]he connections between the scripts in the arc of history demonstrate that no matter how discredited racial scripts become in any era, they are always available for use in new rounds of dehumanization and demonization in the next generation or even the next debate. […] each time a racial script is invoked, it has a hidden power because, whether consciously or not, we tend to appreciate the force of past arguments. (7)

The specific interplay of racial scripts, immigration patterns, and naturalization laws, on the one hand, and the distribution of resources and property, on the other hand, that Molina points out in her historical study had been observed and analyzed earlier from the perspective of Asian American Cultural and Literary Studies in Lisa Lowe’s Immigrant Acts, her seminal investigation of Asian American cultural politics from 1999. Although Lowe is less interested than Molina in the transmission of racial scripts from one group to another over time, she likewise insists that legal institutions are central to the reproduction of racialized relations which may be transferred from one group to another:

Racism is not a fixed structure; society’s notions about race are not static and immutable, nor has the state been built on an unchanging exclusion of all racialized peoples. Rather, legal institutions function as flexible apparatuses of racialization and gendering in response to the material conditions of different historical moments. […] legal institutions reproduce the capitalist relations of production as racialized gendered relations and are therefore symptomatic and determining of the relations of production themselves. (22; emphasis in original)

1 Thus, Molina traces the “historical arc” of “racial scripts” between 1924 and the 1960s by looking at the important role of legal decisions from the 1920s in the context of Japanese and Asian Indian migration, especially two Supreme Court decisions, Ozawa v. United States (1922) and United States v. Bhagat Singh Thind (1923), and their impact on the racialization of Mexicans and Mexican Americans. From this perspective, she argues that “the racial construction of one group affects others, sometimes simultaneously and sometimes at a much later date […] Racialized groups are linked across time and space: once attitudes, practices, customs, policies and laws are directed at one group, they are more readily available and hence easily applied to other groups” (5, emphasis in original). In contrast to Molina—but also as a complementary critique—Lowe (who also discusses both cases) focuses on the particular racialization of Asian Americans in connection to labor and capitalism and argues for another form of connection between racialized groups: “Asian American culture is the site of ‘remembering’ in which the recognition of Asian immigrant history in the present predicament of Mexican and Latino immigrants is possible” (21). The reference to the cultural and critical work of “remembering” is essential here.
The legal “institution” which Lowe looks at most critically is immigration law in general and in particular citizenship as the central concept (and ideal) of legal enfranchisement within the context of the liberal state. In fact, as Lowe convincingly argues, Asian American identity as a racialized, culturally disenfranchised ‘alien’ figure has been crucially defined and determined by the history of migration and the struggle for, and denial of, citizenship: “Asian Americans, with the history of being constituted as ‘aliens,’ have the collective memory to be critical of the notion of citizenship and the liberal democracy it upholds” (21).

Yet there is another legal institution that is central for Lowe’s perspective on the law’s reproduction of racialized relations, which she does not discuss as such: property. Following Marx, Lowe reads property both as a central concept of liberal rights and as a matter of the (just or unjust) distribution of material resources. Property rights are central to the concept of citizenship in the liberal state, but in relation to the obvious reality of unequal distribution of resources and material injustice they also present its most central contradiction, as Lowe argues: “The most powerful contradiction of liberal democracy arises from the condition that each individual man’s right to property violates the rights of others” (24-25). The problem with this reduction of the legal (and cultural) institution of property to a question of rights is that in Lowe’s perspective property only appears as a means of individual empowerment or disempowerment vis-à-vis the state. Property in this view is the way in which individuals partake in or are excluded from universal sovereignty—as in the formulation from Marx quoted by Lowe: “man is the imaginary member of an imaginary sovereignty […] infused with unreal universality” (25).

What this perspective obscures are the social or communal aspects of property rights vested in the rights to alienation. Property rights, as guaranteed by the liberal state, always entail both a right to exclude and to control (the right of dominion), which makes the individual the sovereign, and also a right to alienate, transfer, and contract property (including certain rights that may be connected to possession, distributed use or further contracts). Of course, these latter social or communal aspects (or potentials) of property rights are dependent on the prior right of dominion, without which full control of the communal dimension of property would be impossible. Yet without the social—contractual—dimension, the right to property would be quite useless in a capitalist system of production, and it is in this regard that property as a legal institution, and not just as a right, attains a crucial status for the critical understanding of the relation between the legal and the cultural formation of the figure of the migrant and the figure of the citizen.

Which is to say that Lowe’s critical perspective on property, property rights, and their central role in law and culture may not be radical enough to analyze and understand the formation and interplay of migrant and citizen as figures in the legal and cultural imagination.
Within the context of the liberal nation state one could argue that property rights crucially define and determine individual identity and enfranchisement in the legal, political, and cultural sphere—but they also define and determine collective identity and forms of entitlement, internally and also in relation to other groups. Moreover, the state’s guarantees of individual property rights say nothing about how these rights have to be or indeed are realized on the level of social and communal interaction. While property rights may determine the legal dimension of citizenship, they do not define the cultural potential of property and its social—intersubjective and collective—dimensions. This is the other gap: between the law’s flexible instrumentalization in the interest of state power and capitalism, on the one hand, and the pragmatism of the concrete historical and cultural situation, on the other. Given that it is the latter that must be the exclusive realm of historical fiction and its interest in individual agency and intersubjective relations, the role of property and property relations have to be reconsidered precisely in relation to the cultural formation of the figure of the migrant and the figure of the citizen.

The following discussion therefore is an attempt at a retrospective reading, focusing strategically on a hugely popular and successful, yet also critically irritating, piece of historical fiction from the mid-1990s, David Guterson’s bestseller *Snow Falling on Cedars.* The reading is meant to be retrospective in the sense that it will trace back the historical and cultural situation the novel purports to portray, to the even further removed past of Japanese American migration and struggle for citizenship between the 1920s and 1940s that the novel’s various characters seem to remember but also continue to reconstruct and revise. The discussion of these contexts and historical subtexts specifically asks about the inherent dialectics of the figures of the “migrant” versus the “citizen” as it plays out particularly in relation to disputes of illegitimate property claims and rightful ownership. While the figure of the migrant and of the citizen may be regarded above all as different imaginary formations, as they are projected individually and collectively within the context of larger, likewise historically specific, social and cultural imaginaries, their particular relation (i.e., their dialectic constellation) more often than not becomes realized—indeed naturalized—in the network of laws which concern migration, citizenship, and property. Literature, while often read simply as a means of influencing the imaginary formation of the figures of the migrant and the citizen, must also be looked at as a form of historical knowledge—or, better, as a form of knowledge about the history of the migrant, especially in regard to the connection between migration, property, and race.

In Guterson’s novel, this function of literature is emphasized by a peculiar narrative structure of retrospective reasoning and legitimation and by the particular oscillating emplotment of past events and actions in the present. Obviously, as a literary creation, *Snow Falling on Cedars*
rather explicitly wants to be read as a *historical* novel in that it presents itself as being about the effects of history and memory in the past; this reading, however, may be carried out in more than one sense, resulting in a form of aesthetic ambivalence that is due as much to the remembering as it is to the forgetting of the particular historical period after World War II which the novel allegedly revisits and represents. In consequence, as will become clear in my conclusion, the novel’s own stance vis-à-vis the kind of historical fiction it tries to establish itself as also turns out to be highly ambivalent and, eventually, self-abdicating.

2 The ‘Improper’ Figure of the Migrant

The following considerations are somewhat speculative and admittedly experimental in character since they are the result of work in progress. That work is driven by the attempt to think through a particular constellation or matrix which informs both our explicit and implicit understandings of citizenship as a mode of owning or a form of ownership. Citizenship, in its common implicit, but also in most of its more explicit legal, formal, and administrative meanings, is seen as a privilege (or a bundle of privileges)—a “birthright entitlement,” as Ayalet Shachar has described it, which shares some “striking conceptual and legal similarities” with property, especially *inherited* property:

[B]irthright entitlements still dominate both our imagination and our laws in the allotment of political membership to a given state. In fact, material wealth and political membership (which are for many the two most important distributable goods) are the only meaningful resources whose intergenerational transfer is still largely governed by principles of heredity. (Shachar and Hirschl 254)

For Shachar, in its distributary logic, citizenship, that is political membership whether granted on the basis of “parentage (*jus sanguinis*)” or “territoriality (*jus soli*),” is a kind of lottery—a “birthright lottery,” to be precise—because

birthright citizenship largely shapes the allocation of membership entitlement itself (“*demos*-demarcation”). But it does more than that: it also distributes opportunity on a global scale. In a world where membership in different political communities translates into very different starting points in life, upholding the legal connection between birth and political membership clearly benefits the interests of some (heirs of membership titles in well-off polities), while providing little hope for others (those who do not share a similar “birthright”). (254-55; see also Shachar)

The particular perspective on citizenship as (inheritance) property that Shachar and a number of other contemporary critical scholars of global migration suggest (or even demand) is meant to both reveal and counteract central deeply entrenched, legal, political, and cultural conceptions of the property-citizenship-migration matrix—which constitutes, in fact, the historical foundation of a way of thinking (or rather, concep-
tualizing and legitimizing) citizenship through property. In this historical and dominantly western formation of the conceptual matrix between property and political membership, citizenship is seen as a form of property because it is, in the final analysis, based on property (rights). In other words, Shachar’s argument may be read as an intervention into existing discourses, conceptualizations, and narratives in regard to citizenship and migration from the perception of property concepts and proprietary relations. This particular perspective also allows her to shift the focus away from the legal and political debate to the “identity-bonding” dimensions of citizenship, a debate largely concerned with “the claims of minority groups, the narratives of collective-identity formation, and the ethics of political boundaries” (254), to the distributatory injustice inscribed into the global production of migration regimes.

Moving from the legal and political debate about citizenship to the field of literature and cultural critique, Shachar and Hirschcl’s suggestion that citizenship should be considered as a form of inherited property and privilege may also encourage us to reconsider a number of critically entrenched arguments about citizenship and migration based on essential concepts such as identity, culture, or belonging, which still dominate discussions in American Cultural Studies and especially the discussion of literary texts about migration, i.e., literary fictions written by migrants but also literary fictions about migrants. I want to follow some of Shachar’s basic assumptions and arguments about citizenship as a form of property, but in doing so also pursue a somewhat more historically specific perspective concerned with the struggles for property and citizenship of a particular group in the U.S.-American context—Japanese Americans. Moreover, the kind of property that will be of central concern for my discussion will be land. Apart from lending a rather welcome material basis to my discussion of “fictions” of ownership and belonging (both in law and in literature), I choose to focus on land as property because of the tremendous significance that the ownership of land—as well as the acquisition of land as property—has for both our legal and cultural notions of citizenship as rightful or legitimate belonging (to the land or territory, precisely). Before any notion of citizenship as belonging can be connected to (affixed to or associated with) a particular form of identity—cultural, ethnic, collective, or individual—the political and legal semantics of the concept as we have come to understand it are both territorial and indeed terrestrial. In other words, citizenship is essentially land-bound, both in its abstract conceptualization and in its physical realization.

Thus, in the most general and widely acknowledged sense, being a citizen means to be connected to a physical entity—a concrete location or place—where certain rights can be claimed, are bound to certain responsibilities, and are acknowledged on the basis of being a regular inhabitant in situ—in other words, a space ordered and defined by abstract rules and regulations (a normative space), invisible, yet formative, both in constraining and empowering ways. From this perspective, citizen-
ship as belonging acquires an ambivalent yet also critical edge because it forces us to look at the citizen from a Foucauldian perspective as a member of a population (rather than a citizenry) and thus as the subject of principles and practices of “govermentality.”

This is by no means an accident, since our specific notions of land as property and the forms of ownership (or, better, the practices of owning) associated with this notion developed during early modern times in Europe and are thus intimately and causally connected to an emerging political economy of land use geared towards ever increasing productivity and tied to a system of administrative standardization and statistical observation and assessment (see Weaver and, more recently, Bandhar). In other words, our still prevalent notion of citizenship as belonging (to a population, to a place / space) basically grew out of early modern economic considerations and concerns regarding the productivity of land use—agrarian production—in relation to the stable reproduction of a territorial population—the people who legitimately used and/or owned the land. This is why “economic” or “productive” plottings always played and still play such an important and disturbing, even destructive, role in narratives about migration. At the most basic and essential level, the migrant must present the most irritating and, at the same time, the most important instance of human existence and agency within the matrix of land, ownership, and productivity.

In this vein, early modern models of economic governementality also form the basis for various politics of labor migration—a form of biopolitics that connects labor migration, forced migration, refugees, and settler colonialism to the point where the migrant becomes the signature subject of our modern legalities, both as a constitutive force and a figure to be disavowed, as social philosopher Thomas Nail has argued in the context of his The Figure of the Migrant (2015):

What at first appears only to be a political lack or absence—the migrant—turns out to be the constitutive element of political life. Just as in the past, so in the present, the disavowal of the migrant is the condition under which societies have rendered a definitively mobile social body subordinate, secondary, or invisible. To speak briefly, Locke, Rousseau, and Hegel are great examples of political thinkers who do precisely this. Locke requires the expulsion of the migrant (as non-landed worker) in the form of a special wage relation, where someone can work without gaining property as a result. Rousseau requires the introduction of the migrant (as alien-lawgiver) to found the good laws and then be expelled afterward. In the Philosophy of Right, the stateless migrant is the one person in Hegel’s whole system who is both socially constitutive but, as stateless, has absolutely no place in universal politics. The systematic marginalization of the migrant in political history continues today when people accuse migrants of depleting social services, in other words, of not contributing and stealing from the real producers of wealth. (“Roundtable” 142-43)

The passage bears quoting at length because it outlines a symptomatic and defining feature of narratives (and fictions) of migration, entitle-
ment, and property. Property rights and property relations loom large in early modern discussions of rights, political legitimacy, and relationships between collectives (the state, but also municipalities and regional authorities) and the individual members of those collectives. As Nail insists, this narrative of the migrant who depletes social services and steals from real producers of wealth is a carefully groomed fiction: “This is not only empirically false, but the opposite is true. Americans steal from and disavow migrants. Migrants pay taxes, migrants grow food, build houses, clean dishes, and all for sub-average wages and no tax returns and racism. We desperately need to invert this paradigm and see migration as socially constitutive and primary” (143).

The fiction of the migrant as a thief is only one symptomatic expression of a powerful political and cultural imaginary which reproduces the figure of the migrant as an un-propertied, that is, improper person. In fact, not a person at all but a floating subject, a drifter or vagrant not anchored to real property. The migrant therefore exists in a space without a place—a space, indeed, in need of a place. In consequence, narratives about migration always appear to be about territoriality, and the more concretely these territorialities can be defined as specific regions or local places, the more effective the production of the migrant as depleting and stealing can become.

It may sound cynical, but, for instance, the visible concentration of migrants, refugees, and asylum seekers in specifically designed and described localities allows for exactly those kinds of criminality to become representative of the migrant population as a whole that affirm, in the most obvious way, the common fiction about the migrant as criminal—despite a vast amount of statistical evidence to the contrary. The deviant status of the migrant as an improper person without a place has been described by Liisa Malkki as the “pathologization of uprootedness” (32). According to Malkki, this pathologization is due to the “peculiar sedentarism” which has come to inform our thinking and social practices in regard to people’s “proper” relation to places, especially their places of origin, or places claimed as original property based on historical and genealogical evidence in regard to continuous habitation, cultivation, and development:

This sedentarism is not inert. It actively territorializes our identities, whether cultural or national. […] it also directly enables a vision of territorial displacement as pathological. […] it is in confronting displacement that the sedentarist metaphysic embedded in the national order of things is at its most visible. (31)

For the purpose of my argument, Malkki’s observations are especially significant, because they indicate the fact that the basic fiction of the deviant migrant can be translated into different discourses and narrative forms. As she states, “[t]he pathologization of uprootedness in the national order of things can take several different (but often conflated) forms, among them political, medical, and moral” (32). This not only
explains why there is a sometimes unsettling complicity between moral arguments in favor of more flexible migration laws centering on the duty to help people “who have lost everything” and political counter arguments about the necessity of limiting and controlling the investment of one’s own resources in this moral duty; it also suggests that the conflation of forms has a strong affirmative resonance, a resonance that also ensures the endurance of ‘deep fictions’ about migrants across time and even cultures.

In the specific case I am interested in, the historical and cultural resonance traces current forms of the pathologization of the migrant—particularly noticeable in the campaign (and presidential) rhetoric of Donald Trump—back to cultural discourses and legal practices in the context of Alien Land Laws in the United States, especially in the western states and with a focus on Washington state and California. Because I am concerned with the relation between the cultural fictions and the legal reality of the property-migration matrix, the following is an attempt to bring together legal history and literary criticism, as they converge on the questions of belonging, ownership, and identity.

The question I attempt to follow in particular is how contemporary literature negotiates and revises but also reaffirms and therefore projects (into the future) a particular historical knowledge about the relation between migration, citizenship, and property. By historical knowledge I mean not simply a bundle of facts or a body of documents, but rather a combination of known or remembered aspects and events that form, at any given moment, the notion of an ongoing history of migration in which individuals and communities partake, that affects them, and that connects current perspectives on migration and citizenship with a very specific past, a past which produces our contemporary situation, both in its pragmatic reality and in its normative valence and salience. Instead of knowledge, then, one could probably use a term infused with more gravity, but also complexity and even ambivalence: what I am after is the *historische Erfahrung*, meaning both the experience of history (as an event structure) and the mode of experience that is characterized by an idea of history (as a quasi-teleological structure). The difference between the two modes, but also their dialectic complicity, may be exemplified by comparing John F. Kennedy’s use of the notion of the United States as a nation of immigrants and Donald J. Trump’s campaign chant “build the wall.” Both are ideological constructions or proto-narratives that use a particular experiential situation, i.e., the visibility of (and knowledge about) migrants, aliens, or racialized people, in order to “produce” a specific reaction, either complete acceptance or complete rejection.

From this perspective such ideological constructions come to stand in for a collective interpretation of the history of migration—in this case as a positive asset and form of empowerment (Kennedy) or as a form of cultural and social invasion and loss of identity (Trump). While they appear to be mutually exclusive opposites (which they obviously are, politi-
cally), the two constructions rely on a similar set of implicit assumptions about the migration-property-citizenship constellation. In this perspective, they should be seen not as absolute opposites but rather as merely different in degree.

3 Identity and the Property Paradigm

Shachar’s major hypothesis about the property character of citizenship may be more directly grasped by looking more closely at the relation between citizenship as a form of political identity and property as a legal form that is meant to define the contours of the rights and responsibilities that come with this political identity. In this perspective, citizenship and property are mutually empowering (and also controlling) categories of identity formation—a formation which is essentially based on recognition, as Christian Lund has argued:

Property and citizenship are intimately related in their constitution. The core element of both is recognition. The processes of recognition of political identity as belonging and of claims to land and other resources as property simultaneously work to imbue the institution that provides such recognition with the legitimation and recognition of its authority to do so. (71-72)

While the term citizenship may imply the state, Lund insists that it should actually be understood to signify a relationship between “individuals and an institution of public authority” (73)—which would include institutions on the regional and local level of community organization and also institutions that do not in any way belong to the state apparatus but have (some) public authority, like voluntary associations, neighborhood associations, etc.

Citizenship is generally—though not always—organized as a relationship between individuals and an institution of public authority, but it does not exclusively refer to national citizenship—this is just one of several configurations. It is basically shorthand for people’s political subjectivity and agency, meaning that citizenship denotes through which political institution a person derives rights of membership to that community. (73)

This observation is important, for several reasons. It allows us to pay attention to the complicated, and sometimes contradictory, coexistence of institutions that not only define or influence the particular state of belonging granted to migrants, or even aliens. All these institutions also realize in their own way different conceptualizations of citizenship as a relation between citizens, and this relational dimension is in turn realized in a form of membership. The various definitions of, or conditions for, membership may be mutually reinforcing, and thus reaffirming, or they may be in competition or even in conflict. An obvious example is the conflict between—and also the mutual affirmation of—migration policies and legislation in the United States in the relation between the federal government and the individual states. California and Texas
have very different policies (and legislation) affecting migrants, and in this they may be or may not be in line with the policies favored by the central government in Washington (depending on the president). The particular history of migration (and the production of different, competing migrant regimes) in the United States therefore is to no small degree the result of an ongoing struggle between the individual states and the central government, which reaches back to the original constitutional debates about naturalization and citizenship, but also, and more importantly, to the conflicting assessment of economic priorities in terms of labor, productivity, and property relations between the states and the federal government. In other words, not only did the cultural implementation of a particular ‘figuration’ of the migrant or alien play out rather differently in different regions and localities across the United States, but, more significantly, the ideological similarities and resonances between these figurations cannot (and need not) be explained in reference to an overarching ‘national’ program or dogma.

Although such a general, overarching dogmatic migration policy and ideological agenda might indeed exist, and might indeed be identified and described in reference to historical and existing legislation, it still remains difficult to detect and describe such a programmatic and ideological conformity over time (and at the same time) on all the levels of state, regional, and local policies. For instance, it seems more than obvious that the history of legislative measures, individual judgments, and statutes concerning migrants as aliens since at least the second half of the nineteenth century followed a racist trajectory, meaning that the converging legal definitions of eligibility (in terms of naturalization, citizenship, and property) clearly display an increasing racial bias. And yet, tracing that history would necessarily proceed by selecting particular cases and acts whose specific significance and resonance has to be demonstrated in regard to the larger sentiments and policies—while downplaying the history of dispute, struggle, and resistance that can (or rather should) also be seen as a central characteristic of the legal and cultural negotiation of citizenship, migration, and property in the United States.

The case is thus certainly complicated because there are so many interests involved—economic, legal, political, and cultural—that do not always cohere and align neatly, especially so if they are meant (or even forced) to play out on different levels between the local, regional, state, and the national levels. Especially in regard to the question of the strategic connection between citizenship, migrant aliens, and property, it is difficult to see an overarching pattern that could be traced back to a common cause or motivation. Indeed, what can be found is that, as one legal scholar has already concluded exasperatedly as far back as 1947, the “eligibility of aliens to possess […] particular rights follows a very queer pattern, or rather, is patternless, like a crazy quilt” (McGovney 10).

What is or was the reason for this “crazy quilt”? Unfortunately, there is no adequate space to answer this question in the scope of this article,
but for the discussion of my particular literary example, it might be reasonable and even necessary to sketch out a few basic historical aspects and facts in terms of the legal and political contexts, especially in regard to Japanese American citizenship and alienness during the time of the novel’s action, but also in the 1990s, the time of its publication. However, instead of isolating these contexts from the discussion of the novel itself and presenting the historical facts before the fiction, as it were, I bring the two perspectives into closer contact—which, after all, is also a major strategy of the narrative, as it is interspersed with information about and even quotations from some of the major legal documents and the historical events to which they are connected. What follows in the second part of my discussion is a reading of the novel in light of the historical and legal contexts it refers to, especially in regard to the conexus between migration, property, and citizenship. The contexts are not simply meant to shed the light of fact on the narrative fiction; rather, I will try to use some of the novel’s strategies of emplotment and spatialization to carve out some of the central ambiguities of the crazy quilting of the law (and of politics) that characterizes the production of migrants, aliens, and citizens with the help of property regulations.

4 Others and Owners:
Alien Fictions and Joint Conspiracies

It might be all too obvious to state that David Guterson’s 1994 novel *Snow Falling on Cedars* has received a mixed reception (both critical and popular) exactly for the peculiar way in which it connects and negotiates the cultural, political, economic, and social aspects of Japanese American identity in a specific historical setting and situation—more precisely, the coastal area of Washington state shortly after World War II and the end of Japanese American detention—a situation whose depiction, despite its depth of historical detail in relation to this specific locale and region, has been understood as exemplary for the Japanese American experience in general. Interestingly, yet probably also symptomatically, this assessment underlies both highly critical and highly approving readings of the novel, and to a certain degree must therefore be accounted for as a major effect of the novel’s own (self-)positioning as a general statement about the connection between historical racist resentments and practices of discrimination against Japanese Americans, the memory of World War II (Pearl Harbor), and the enforced confinement of Japanese American citizens between 1942 and 1946. Yet such an exemplary reading, as I will argue in the following, has some severe downsides, not least because it undercuts the acute, albeit probably unconscious, sensibility for the role and impact of specific property relations for the particular identity politics at play in the novel, but also in relation to its various readerly contexts (that is, the critical versus the popular reception).
Guterson’s novel has been read mostly along two major trajectories: a murder trial and a story of unrequited love—the connection between the two story lines also establishes a peculiar constellation between the major figures and is, as we will see, an important structural device. In the trial, the Japanese American Kabuo Miyamoto is accused of killing Carl Heine, Jr., a local fisherman who had also recently bought back a large patch of strawberry farm land, formerly owned by his father but sold by his mother during the war. The local population of the small island is predominantly made out of either fishermen or strawberry farmers, and sometimes, as in the victim’s case, they are both. This is also true of Kabuo, however, as he had begun to work as a fisherman only after his return from the war in Europe, where he served in the U.S. army fighting against the Germans. Before the war, Kabuo worked together with his father and the rest of the family on Carl Heine’s father’s strawberry farm.

The elder Miyamoto was one of Heine Sr.’s most respected laborers, which is why the latter at one point sold Kabuo’s father a small patch of land to use as his own property. The sale, however, would have been illegal according to the Alien Land Law of the state of Washington, which stated that resident aliens, such as Kabuo’s father, were not allowed to acquire land or hold land as property. Thus, Heine, Sr., the seller, and the accused’s father, the buyer, treated the sale as a long-time lease, for yearly rent payments that were actually meant as installments for the purchase of the patch of land.

In the trial, this particular provision (and the practice of leasing as selling) is explained by the judge to the jury “in order to explain a point of law” that he thinks is necessary:

He put down his glass and began again: ‘The witness makes reference to a currently defunct statute of the State of Washington which made it illegal at the time of which [the witness] speaks for an alien, a noncitizen, to hold title to real estate.

This same statute furthermore stipulated that no person shall hold title for an alien—a noncitizen—in any way, shape or form. Furthermore, in 1906, I believe it was, the U.S. attorney general ordered all federal courts to deny naturalized citizenship to Japanese aliens.’

Thus it was impossible, in the strict legal sense, for Japanese immigrants to own land in Washington state. Mrs. Heine has told us that her deceased husband, in joint conspiracy with the defendant’s deceased father, entered into an agreement which, shall we say, was predicated, on a rather liberal, albeit mutually satisfying, interpretation of these laws. They simply made their way around them. (Cedars 106-07)

This passage does considerable complex yet also ambivalent work in translating and remembering the legal and political past. On first sight, this is done merely for the purpose of making a point about the law, as the judge concludes his comments: “let it be known that this court is not concerned with any perpetuators of violations against our state’s now—blessedly so—defunct Alien Land Law” (Cedars 107).
However, from the perspective of a more genre-conscious approach that asks about the appropriation of authority by the use of specific forms (of writing or speaking), it becomes obvious that the literary text assumes the authority of the law through this peculiar intervention, by elaborating on legal history and the scope of statutes and regulations, as well as stating (and thereby deciding) matters of jurisdiction. This intervention and the appropriation of authority by the fictional tribunal is not without risks, however, because here the novel rests its credibility and plausibility as a historical fiction on statements about historical facts. So what are those facts?

Indeed, the State of Washington initially had one of the most liberal land laws in the United States in that it guaranteed in 1864 “That any alien may acquire and hold lands or any right thereto or interest therein by purchase, devise, or descent [...] as if such alien were a native citizen of this Territory of the United States” (Act of Jan. 27, 1864 Wash. Laws 12, qtd. in Lazarus 203fn32). In the wake of anti-Chinese resentments and riots during the late nineteenth century, however, the racialized logic of the original U.S. naturalization statutes was also used to weaponize the Alien Land Laws in Washington state. As in many other states, the acquisition of real property was linked to eligibility in regard to citizenship—like all other Asian non-citizens, the Japanese were ineligible aliens because they were neither “free white persons”—nor of “African nativity” or “of African descent” (qtd. in Douglas 370; emphasis added), as the 1870 amendment of the original 1790 naturalization act specifies. Because the elder Miyamoto was not born in the United States, but had migrated from Japan, he fell under the ineligible alien definition of the naturalization statutes and thus the Alien Land Laws. His son, however, who was born in the United States, had obtained citizenship by birth—birthright citizenship had been enshrined in the Fourteenth Amendment in 1866, and upheld in the famous 1898 Supreme Court decision United States v. Wong Kim Ark, for all persons born in the United States, regardless of race.

However, the judge’s historical reminder includes another complexity in regard to the further development of the state’s law from the 1920s to the 1940s—and, in particular, in regard to the practices employed by Japanese workers and their employers to obtain and save their land rights. While full ownership or full title to land was impossible for Japanese non-citizens after 1886 because of their status as ineligible aliens, they could still obtain leases to land and hence work their own fields. This changed during the extremely hostile and racist campaigns of the 1920s to introduce even more restrictive land laws all over the western states—which, in the case of Washington state, resulted in a new law passed in 1921 which aimed to take away the right to lease and rent land. This is the “now defunct law” that the judge is referring to.

The reaction among Japanese farmers was varied; either they entered into contract farming (without property rights) or they tried to extend
existing lease periods for a maximum amount of time before the law took effect. As labor historian Nicole Grant described the situation:

The most popular tactic, for those who could afford it, was to take the land they had been farming under lease and buy it in their American born (Nisei) children’s names. These methods worked for a time but […] in 1923 the state legislature added another law that […] made it so that land put in the name of a child would be considered to be held in trust for the “alien.” (n. pag.)

The judge’s comment in Guterson’s novel thus encapsulates in a condensed but also “liberally interpreted” way the history of a struggle and forms of resistance that in the case of landownership for Japanese farmers and their American-born children actually increased their successful efforts to obtain full ownership of land. As Grant concludes:

[T]he overall number of Japanese farms plummeted from 699 in 1920 to less than 250 in 1925. In the long run, however, these laws were not able to permanently remove the farmers. By 1930 the number of Japanese farms was back up to 523 and five times as many were actually owned by Japanese Americans now because so many leasees were forced into buying land for their children. (n. pag.)

While the major historical references in this passage from fictional trial are to a specific development in the 1920s and 1930s, the spirit of critique which is made obvious by the judge’s remark about the “now—blessedly so—defunct Alien Land Law” is decidedly younger and can be read as a veiled reference to another period, namely the 1960s, that saw successful activism against the old, and still existing, Washington State Alien Land Laws.

The attempt to repeal the Alien Land Laws was part of a larger movement to “remove racist statutes from state laws” (Grant n. pag.)— in regard to the Washington State Alien Land Laws, one of the most active supporters was Washington Senator Warren G. Magnuson, who expressed the significant relation between the restrictive and racist land laws and the internment of Japanese American citizens and non-citizens between 1942 and 1946 in a speech to Congress in 1960:

“these antialien land laws helped substantially to create the prejudices which were fanned by hysteria in 1942 into and [sic!] incident that has been described as ‘our worst wartime mistake.’ I have referenced to [sic] the mass military evacuation of 110,000 persons of Japanese ancestry, regardless of citizenship, age, or sex from their homes into interior interment camps.” (qtd. in Grant n. pag.)

Significantly, this specific link between the Alien Land Laws and Japanese American internment is obscured or even rejected by the judge in Guterson’s narrative, who instead insists that the trial is not about property disputes at all, as this would be an issue for a civil court but not for a criminal trial. What looks like a minor feature of Guterson’s realism, which embraces legalistic detail and argument to a convincing degree, must be understood as a structural device that determines not just the
question of legal but most of all of literary jurisdiction. The novel, like the judge, appears to insist that while property disputes might be important, they have to be decided in a different court, under different jurisdiction and with the help of different laws. It is no surprise, then, that the novel does not present a solution to the Japanese American property claim, nor does it at the end even touch on the still persistently open question about rightful ownership that the case depended so heavily upon. As will become obvious in the course of my reading, this oversight is no accident of style but the result of a bargain between historical accuracy and critical self-positioning.

Despite the judge’s refusal to legally acknowledge the property dispute at the heart of the murder trial, by way of its particular emplotment, the novel obviously insists that there is a deeper connection between the transfer of ownership (or the denial of such transfer) and acknowledgment of Japanese Americans as citizens (vis-à-vis their denial of civil rights). It only appears that the novel wants to keep the negotiation of disputes over these transfers out of the official legal proceedings and protocols, while instead subjecting it to a “more liberal, and mutually satisfying” interpretation of the “laws” of collective membership, defined not by the state but by the “people.”

The practices of resistance and “joint conspiracies” against the official legal racism of the Alien Land Laws—the hidden leases, the arrangements between the contracting parties—are meant to work around the law. As the novel makes clear, these arrangements are outside of the proper legal form and hence void, and yet at the same time they are highly formalized and mutually binding for those who enact them. The sale and purchase of the patch of land represents the most individualized level of mutual acknowledgment and consent, a relation based on a shared understanding of the situation and the mutual interests involved. This ideal notion of contractual equality pervades the entire narrative, to the point when, in the central moment of narrative dénouement, it is positively affirmed as the universally shared common basis both of property relations and civility (as the core of citizenship) in general. Another important aspect is that this ideal mutuality is based on a shared knowledge and an understanding of the particular legal construction of citizens, migrants, and ineligible aliens. It is not only the knowledge as such that was shared between the victim’s father and the father of the accused, as they made their way around the law. They also shared an interpretation of the Alien Land Laws as an obstacle blocking the realization and acknowledgment of the most deeply shared interests between citizens and aliens: ownership of land as a way of securing the survival and continuation of family structures.

It is, however, not the law which is presented as the major enemy in the novel—in fact, all representative agents of the law are shown as being almost excessively liberal to the point of becoming slightly nauseating in their overall well-meaning manner: no racist slurs, no man-handling, no
fabrication of incriminating evidence against the accused—again this obsession with due process appears to be the result of a slightly anachronistic ‘civil rights movement’ attitude that feels to be out of place and time (but of course might be seen as catering to the novel’s contemporary audiences). Yet against the backdrop of such common ‘amity’ (Amity Bay incidentally being the place where the court room is situated, while the jurors in turn are hosted in the Amity Hotel), the individualized hostility of the small set of characters who present the prejudiced, anti-alien, and racist ‘minority’ of San Piedro Island is thrown into high relief. The effect is rather remarkable, because it represents most of the characters as almost completely unaffected by and, in fact, resistant to the racism, prejudice, and stereotypes inscribed into and affirmed by the legal and political culture of their time.

The argument seems to be that the closer and more immediate the lived relation between citizens and non-citizen others is, the less likely they will become either racist perpetrators or victims: shared experience thus appears to be the basis of shared resistant knowledge and shared interpretations of official laws and politics. While there is ample evidence for a reading of the novel’s naive optimistic sentiments about racism as a purely extrinsic form of motivational orientation that is as easily rejected cognitively as it is negotiated emotionally, the major point seems to lie elsewhere. When racism as a form of denial (of property rights and civil rights) comes into play, it is rather depicted as the result of a misguided, or, more precisely, an inherently negative, assessment of what I have termed contractual mutuality.

As we have seen, the central problem of the narrative is a dispute about unresolved property claims, which the court refuses to discuss, but which are nevertheless presented to the reader (and the audience of “citizens” in the court room—as they are invariably called) as the key obstacle to the solution of the main conflict and the negotiation of the conflicting interests involved. This becomes clear when the murder trial appears to reveal the hidden motive of the accused son of the buyer for killing the son of the seller, thus turning the civil contract into a criminal action, transforming the civil proceeding of the mutually agreed transfer of property into an act of violent appropriation or dispossession. This, however, is only possible because literary storytelling is able to use the plotting structures and logics of legal property conveyance as narrative constraints. More precisely, the conflict between the sons of the buyer and the seller of the original property is not based on the premise that one is the owner and the other is the buyer—in this case the conflict would be about value and appropriate investment.

After the order for removal has taken effect, the older Heine tries to amend the situation by making the conditions more flexible:

‘We’ll just play this by ear a little bit, far as I’m concerned. One way or another you get your payments finished, […] everything comes out like it should in the long run. Everything comes out satisfactory.’ (Cedars 115)
Heine’s wife, Etta, however, sees the negotiation as an attempt to shrewdly take advantage of her husband’s disposition for fairness and empathy: “Pretty shrewd, for openers, she thought. Offer the berries, they’re worth nothing to him now. Real clever. Then talk about payments. […] but it didn’t matter very much—she wanted Carl to know what was up, how he was being duped” (Cedars 111, 115; emphasis in original). The difference between Etta’s perspective on contractual relations between citizens and the one shared by her husband and the Japanese non-citizen is crucial. From Etta’s point of view, contracts are aimed at individual profits; they are competitive and guided by hidden motives. From the point of view of her husband, in contrast, contracts are about stabilizing the status quo; they are relational and essentially a means to assure collective survival. It is, however, Etta’s image of the cunning, deceitful alien which survives the war: Her selling of the property—after the Miyamotos could not meet the last yearly payment because the entire family had been deported—eventually affords the hidden motive that is needed for putting the son on trial for the father. In other words, the trial is the space for the affirmative performance of the racist imagery of the migrant as ineligible alien who can only obtain the resource for citizenship—in this case land—by illegal means and violence. Obviously, the performance is made even more convincing during the trial because it can refer back to the memory of the war, especially the attack on Pearl Harbor. Thus, one of the central misperceptions that is activated throughout the investigation and the trial is the image of the cold-blooded Japanese soldier and attacker, by highlighting Kabuo’s well-known competence in the art of kendo—thus turning the U.S. army veteran who fought against facism in Europe into an enemy-alien, accused of killing an American soldier at sea.

This fateful ‘translation’ of the Japanese American citizen and veteran into its very opposite, the ‘enemy alien,’ is another reference to the twisted logic of the language of detention and deportation, which Natsu Taylor Saito has described:

The notion that Asians could never be real Americans came to a head in the internment of Japanese Americans during World War II, an action rationalized in part by the fact that first generation Japanese Americans, being ineligible to citizenship, were now enemy aliens. As a legal construct, being an alien simply means not being a U.S. citizen, a seemingly well-defined political construct. However, the term ‘alien’ often connotes foreignness in ways that go beyond citizenship. Thus, the West Coast evacuation orders applied to ‘all persons of Japanese ancestry, both alien and non-alien.’ When a citizen is no longer identified as a citizen, but as a ‘non-alien,’ the presumption of foreignness has supplanted nationality. (275)

This logic of translation as inversion also informs the central strategy of the prosecution in the trial. After the defense claims that Carl Heine’s death must have been an accident and that the accused actually boarded the victim’s ship only to help Heine Jr. in an emergency by replacing his
drained battery with one of Kabuo’s spares, the prosecutor translates and ‘inverts’ this hypothetical narrative while cross-examining the central witness:

‘And so Mr. Miyamoto at last makes his move. He hauls in his net, cuts his motor, makes sure his trusty fishing gaff is handy, and drifts down current toward Carl Heine, perhaps even blowing his foghorn. He drifts nearly right into Carl, it seems and lies to him, says his engine is dead. Now you tell me—you told us earlier—wouldn’t Carl Heine feel bound to help him?’

‘Sea yarn,’ Josiah Gillanders spat. ‘But a ripping good one. Go ahead.’

‘Wouldn’t the two men have tied their boats together? Wouldn’t you have the mutual consent necessary—an emergency situation, even if feigned—for a successful tie-up at sea? Wouldn’t you, Mr. Gillanders?’

Josiah nodded. ‘You would,’ he answered. ‘Yes.’

‘And at this point, sir, in the scenario, could the defendant not—a trained kendo master, remember, a man proficient at killing with a stick, lethal and experienced at stick fighting—could the defendant not have leapt aboard and killed Carl Heine with a hard blow to the skull, hard enough to crack it open? […] Am I, sir, still plausible? Does my scenario sound plausible to a man of your expertise? Is all of that, sir, plausible?’

‘It could have happened,’ said Josiah Gillanders. (Cedars 338-39)

At this point, the jury and the readers alike have to ask themselves which of the “scenarios” is the more plausible one, because the defendant himself has steadfastly refused to tell his attorney the truth about his encounter with Carl Heine at sea on the night the latter was killed. It is significant that this crucial encounter happens not on land but on sea, because the sea is a space governed by “laws” that fundamentally acknowledge individual independence and equality and, at the same, demand mutual support in cases of emergency. As the expert witness tells the jury:

‘We fish alone but we work together. There’s times at sea when we need each other, see? Any man worth his salt out there is going to come to the aid of his neighbor. It’s the law of the sea—you bet it is—to put away whatever you’re doin’ and answer any distress call. […] It’s a law, see—not written anywhere exactly, but just as good as something written.’ (Cedars 336)

The sea is thus a space that allows for, or even demands, the fiction of a deterritorialized civil identity: at sea all persons are displaced and mobile, and any form of attachment—of ‘mooring’—is made possible only by the “law” of the sea, the law of “mutual consent.” Equality in these surroundings is not a matter of civil rights or contract relations, but is a basic condition of human existence and mutual dependence (and responsibility) in cases of emergency:

Kabuo backed into neutral and drifted […]. The other man was too near […] out there in the fog, his motor cut. Kabuo laid on his horn again. In the silence that followed came a reply to port—this time a man's voice, calm and factual, a voice he recognized. ‘I'm over here,’ it called across the water. ‘I'm dead in the water, drifting.’
And this was how he had found Carl Heine, his batteries dead, adrift at midnight, in need of another man’s assistance. […] ‘I’m dead in the water,’ he’d said again […]. My batteries are drawed down. Both of them.’

‘All right,’ said Kabuo. ‘Let’s tie up. I’ve got plenty of juice.’ (Cedars 351)

It is in this space of existential equality that the novel stages the most important legal transaction, which also acknowledges equality between the American citizen and the Japanese American ‘non-alien’ citizen, a moment of transactional acknowledgment, however, that as it turns out will be impossible for the law to approve or protect. When the two “neighbors” of the sea finally shake hands like their fathers once did, their equal status of mutuality is made obvious by the negotiation of the details of purchase and payment:

Carl Heine spat into the water one more time, then turned and put out his hand. Kabuo put the gaff down and took it. They did not shake so much as grip like fishermen who know that they can go no further with words and must communicate in another fashion. […] They moved away from this more quickly than they desired but before embarrassment overtook them. ‘A thousand down,’ said Carl Heine. ‘We can sign papers tomorrow.’ ‘Eight hundred,’ said Kabuo, ‘and it’s a deal.’ (Cedars 356)

It is significant that the last word that closes the deal is also the last word on the matter that keeps the deal open without any closure—without any witnesses, the deal and its conditions will not be legally valid, and can never be acknowledged, not even in the court of fiction, because after this central moment of mutual acknowledgment and acceptance, even the novel remains silent about Japanese American property claims until the end.

Thus, the fiction of mutual consent and equality, which made the transfer of property and thus the acknowledgement of membership possible, turns out to be a dead man’s fiction. Once Kabuo’s “truth” is drawn into the space of the law, it is again inverted and turned against him. During his cross-examination, the prosecutor successfully establishes the image of the lying ‘alien’ who is still the ‘inscrutable’ enemy in disguise:

‘Mr. Miyamoto,’ he began. ‘For the life of me I can’t understand why you didn’t tell this story from the start. After all, don’t you think it might have been your citizenly duty to come forward with all of this information […] why didn’t you tell us this earlier? Why do you change your battery story every time a new question is raised? […] You’re a hard man to trust, Mr. Miyamoto […]’ (Cedars 357, 361-62)

The image projected is so powerful that when Kabuo finally leaves the witness stand, the citizens have made up their minds—even before the jury’s deliberation about the verdict—about Kabuo Miyamoto:

The citizens in the gallery were reminded of the photographs they had seen of Japanese soldiers. The man before them was noble in appearance […] his aspect connoted dignity. […] He was, they decided, not like them at all, and
the detached and aloof manner with which he watched the snowfall made 
this palpable and self-evident. (Cedars 362)

On the level of focalization, the image clearly responds to the racist insinuations of the prosecutor—who is strongly reprimanded by the judge for this strategy: “Shame on you” (Cedars 362)—which only further prepares the effect of the passage on the level of reading. It appears all too obvious that we as the audience beyond the court room are asked to reject the racist reading of the “appearance” of the “man” and rather see the dignity and nobility of the person as evident features of his humanity—a humanity which in the judgment of the alleged “citizens” ultimately turns into a denial of their own humanity—and of the natural rights that, in the U.S.-American context at least, are so “self-evidently” connected to it: life, liberty, and the pursuit of happiness.

The problematic ambivalence of the passage—and indeed of the whole novel—is not that is has to activate so many stereotypes in order to unveil the racist attitudes of an earlier period, a form of historical racism that readers are asked to recognize and acknowledge and at the same time feel their—“blessed”—distance from. Just like the land laws that indeed are now defunct (but that were still largely in place at the time of the fictive trial), this kind of fateful prejudice, as the novel phrases it, is a thing very much of the past, or so the reader is asked to believe (and feel). However, the implied solution to the problematic convergence of migration, property, and citizenship may be more troubling today than those aspects that were already addressed and criticized at the time of the novel’s original publication. Even as the murder trial is finally solved and the accused is “set free,” he still is a man without his property, still very much an “other,” not an owner, still an alien citizen whose stories about a dead man’s promise to restore his lost property are merely a “sea yarn”—“ripping good,” certainly, but not in any way useful as a claim in a court of law.

5 Conclusion: Remembering (Legal) History

My short reading of a popular bestseller from the mid-1990s in reference to an earlier historical context of race, migration, and property law in the United States was not simply meant as yet another look at Gutzon’s novel in terms of its accurate or inaccurate representation of migration history, migrant identity, or even its representation of Japanese American detention during World War II. The genre perspective that informed the preceding reading was not migration (or neo-migration) literature, however convincing such a perspective might be, but, rather, historical literature about property, race, and the law. Obviously, the novel wants to be read as historical fiction, but in what way it could or even should be read as historical fiction is not at all self-evident.

To put it differently, if the novel is meant to retrieve and to remember the role of the Alien Land Laws in the West Coast states and their

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4 See Paul’s convincing reading of the novel as neo-migration fiction.
inherent racism against Japanese immigrants and Japanese Americans of the Nisei generation as a “prelude to internment” (Aoki 37), this effort in remembering recontextualizes the historical struggles of the Japanese and of Japanese Americans between the 1920s to the 1950s from the perspective of the Civil Rights Movement of the 1960s. Some of the exchanges in the court and especially the newspaper columns which Arthur Chambers, the father of the protagonist, Ishmael Chambers, writes to criticize internment and the racist reactions of his compatriots are clearly indebted to the pathos of common humanity and equality that characterized much of the rhetoric of the Civil Rights Movement. What is more, these columns and the legacy of his father’s reputation among the Japanese American community as a relentless critic of anti-Japanese racism are what finally moves Ishmael to share his knowledge about crucial evidence with the judge to exonerate the defendant and end the trial with an acquittal.5

The retrospective focus on the injustice of internment and the racist stereotypes connected to war time politics and culture determine the ways in which the novel is read and, consequently, its effects as historical fiction in ambivalent ways. Especially in regard to the significant role of property laws, but also of property culture, in shaping the legal imaginaries of the 1920-1940s and their influence on war-time internment and its cultural resonance and historical negotiation, the novel fails to register and acknowledge the particular ways in which disputes about property claims had been negotiated in the legal history of the same period. It thus misses the crucial dimension of legal actions taken by Japanese Americans in regard to the violation of their property rights in the wake of war-time politics and especially in the context of internment, which in many cases resulted in escheat actions by the state.

Without any mention of these escheat cases, in which the state would confiscate property that had been transferred in ways that (allegedly) bypassed the Alien Land Laws (as, for instance, in transactions like the one described in the novel between the elder Heine and the elder Miyamoto), the dispute over property claims and rights is characterized merely as a dispute between private parties. Moreover, the judge’s address to the jury (and the citizens in the court room) clearly states that these kinds of transactions, while they might have been illegal under the now-defunct Alien Land Laws, have to be tried in a civil court; as a suit between two ‘civil’ parties, they must not be considered part of the deliberations in the criminal trial of Kabuo Miyamoto. In this way, the novel assigns the legal dispute about property to another jurisdiction that is beyond the scope of the particular justice that the narration attempts to administer. Consequently, by presenting the property dispute as clearly caused by the racist sentiments of the original owner’s wife, who does not honor the promise made by her husband to their Japanese neighbor, it also characterizes the racism inscribed into the Alien Land Laws as a matter of private sentiments and disputes, but not (or no lon-

5 While the fictitious columns written by Ishmael’s father are based on real editorials by Walt Woodward in the Bainbridge Review from the 1940s (Bainbridge being the island where Guterson grew up), the novel’s author has also repeatedly referred to the tremendous influence which Harper Lee’s To Kill a Mockingbird had on his writing and especially on the specific way in which history is integrated into the plot by various strategies of remembering and forgetting. Like Lee’s, Guterson’s alliance to the politics of the Civil Rights Movement remains difficult to ascertain. In fact, it appears that in his own estimation Snow Falling on Cedars is even less political than Lee’s novel: “If a Southern novel like Harper Lee’s To Kill a Mockingbird is shaped by history, by slavery and generations of segregation, Mr. Guterson believes that Northwest novels are shaped by the landscape. ‘The cycle of decay is so overwhelmingly present here,’ Mr. Guterson says. ‘Everything human disappears in this landscape’” (Mathews C1).
Although escheat actions by the state had occurred since the installation of the Californian Alien Land Laws, these actions had been relatively rare before World War II. As Villazor observed: “In fact, between 1913 and 1942, the state undertook only fourteen escheat actions, illuminating that both private and public actors openly ignored the law” (995; emphasis added). However, the involvement of the state changed considerably after the attack on Pearl Harbor and the internment of Japanese residents and Japanese American citizens: “As a result of legislative initiative to fund escheat suits, the Attorney General filed more escheat actions than before 1942. Specifically, five years after 1942, it undertook fifty-nine escheat actions. Importantly, all these actions […] involved land owned by Japanese. Many of these escheat actions were filed at the behest of white farmers who argued for more vigorous enforcement of the law. This is a crucial point, because it demonstrates a methodical public and private approach to rid the state of Japanese that the internment ultimately failed to do” (995; emphasis added).

What is truly surprising, however, given the specific historical setting of the trial (the early 1950s), is the novel’s silence about the most consequential legal decision in the context of citizenship and property rights, the 1948 Supreme Court decision *Oyama v. California*, which resulted from the claims of detained Japanese American property holders after the war. This important “landmark case in the history of civil rights” appears to be completely unknown to the representatives of the law in the novel—even though *Oyama* “created a paradigm shift in the treatment of property rights of Japanese Americans” (Villazor 979). This is especially significant since the particular case ignored also had an impact on legal jurisdictions beyond California, but most certainly in states that had similar provisions about escheating the property of “alien citizens” to the state if their titles had been secured in violation of the Alien Land Laws before the war. It also had a major impact on subsequent Supreme Court decisions, e.g., *Shelley v. Kraemer* (1948), which decided that “the denial of equal enjoyment of property rights by a state on the basis of a person’s race and ancestry constituted an equal protection violation” (Villazor 986).

The historical narrative that the novel wants to present and to preserve is an unofficial and private case of overcoming prejudice and resentment as an individualized example of a learning process, which eventually results in the restoration of truth and the acknowledgement of a ‘common humanity’ shared with a former enemy figure. For such an exemplary reading, there is no need for any detailed factual accuracy in legal history, and certainly neither the novel’s general success nor its lasting reception patterns were or are dependent on the awareness of and knowledge about the central role the Alien Land Laws played in legally entrenching racism in the property regime of the states. In fact, one could argue that the inconspicuous remark about the “blessedly defunct” Alien Land Laws in the novel merely adds some sort of ‘historical reality effect,’ because it sounds just like the sort of juridical technicality one would expect from the genre.

Yet a closer look at the selective process of remembering and forgetting that the remark exemplifies helps us to evoke and read the *Oyama* case as a cultural subtext for the specific historical knowledge the novel wants to preserve. It also may help to reveal and, finally, to negotiate the specific ambivalence inscribed into the fictitious legal history that *Snow Falling on Cedars* is referring to—and what that means for the imaginary figures of the migrant and the citizen. For it is not only that there is a remarkable similarity between the constellation that ‘produces’ the conflicts about property, citizenship, and equal rights in the novel and in the
Oyama case; there is also one peculiar aspect of the “landmark case” that resonates with the novel’s conclusion, which presumably restores Kabuo Miyamoto’s identity as a citizen but does not restore his property title.

Oyama v. California actually combined two complaints about equal protection under the law: both the rights of first-generation Japanese resident aliens and those of the second generation of Japanese American citizens. During the 1930s, Kajiro Oyama, a Japanese immigrant, had made several purchases of land in the name of his son, Fred, who was still a minor. By pursuing legal guardianship over his son (which he could acquire without being a citizen), the elder Oyama effectively became the owner of the purchased property. All of this happened with public announcement and documentation and all land transactions were approved by the courts: “Thus, despite the apparent violations of the Alien Land Law, local government officials were not only aware, but condoned, the private transactions” (Villazor 996; emphasis added). In 1944, the state tried to acquire Oyama’s properties with an escheat action, arguing that they had been purchased in violation of the Alien Land Law. Both Kajiro and Fred Oyama were evacuated to Utah during the time, but after the war ended, they sued and the case went through the California Superior and Supreme Courts, which both upheld the action of the state, and, finally, to the Supreme Court. While the Supreme Court in the past had ruled that state Alien Land Laws were constitutional, it had at the time also developed a more restricted view on “classifications […] based on race” in other cases. Thus, as Villazor observed in her thorough and detailed discussion of the case, it was precisely “[b]ecause of the correlation between ancestry and property restrictions” (998) that the Oyama case would turn into a Supreme Court case about the constitutionality of the Alien Land Laws.

While the court acknowledged that the state law had violated the rights of the citizen, Fred Oyama, to enjoy his legal claims to property, it did not rule on the violation of the rights of the migrant Kajiro Oyama, who had purchased the property for his son but was actually by law incapable of legally obtaining property. More specifically, the court failed to look at the discrimination of the father from the same perspective as that of the son: While it denounced the Alien Land Laws as discriminatory solely on the basis of race in reference to a citizen, Fred Oyama, it did not assess how racial discrimination also worked through the restriction on the purchase of property in the first place. As Villazor remarks:

Critically, [the court] missed the opportunity to address two overlapping issues of that time: why citizenship should be a basis in the first instance in acquiring a property right and when a state limitation on a noncitizen’s property rights has gone beyond the permissible boundaries of state police powers and shifted towards a form of unauthorized regulation of immigration law. (988)

The crucial failure in the Oyama decision, then, which has repercussions to this day, is that it “left untouched the power of states to regulate non-
citizens’ property rights” (988). As Villazor deftly concludes, when one looks at the current “claims of local governments” that restricting the property rights of noncitizens is necessary in order to restrict ‘undesirable’ migration, the transfer of “racial scripts” becomes obvious:

When these laws are viewed through the lens of Oyama, the case reveals how these contemporary uses of local property laws—targeted mainly against Latina/o immigrants—may be understood to be the alien land laws of our time. Oyama forces a re-examination of the intersections of immigration, citizenship law, race, and property law evident in these local housing ordinances and offers normative and prescriptive responses to them. (988-89; emphasis added)

Re-reading Snow Falling on Cedars from the perspective of this major case and these arguments about property rights, citizens, and aliens reveals an ambivalent stance, both in law and literature, towards the figures of the citizen and the migrant and their mutual dependence. The struggle for equal civil rights in law and in literature is very much a matter of the circumstances of local memory and history. Yet in the context of U.S. legal history, the case in the novel presents a legal “genre” that was exemplary for a systemic structure of land and property laws whose “cumulative effect,” as the Supreme Court decided in Oyama, “was clearly to discriminate” against “undesirable” groups, i.e., Japanese American citizens like Fred Oyama (qtd. in Villazor 1000). This form of racist discrimination is also addressed in the novel, as it motivates the prejudices of the “citizens” in the murder case against Kabuo Miyamoto. The novel’s ending, however, in ambivalent ways inverts the reasoning of the court about discrimination by denying Japanese Americans’ rights to property: While Kabuo’s life and liberty are restored when the accusations are dismissed, he still remains a citizen without properties.

Works Cited


7 As the Attorney General of California commented on the 1913 Alien Land Laws: “It is unimportant and foreign to the question, whether a particular race is inferior. The simple and single question is, is the race desirable” (Chuman qtd. in Villazor 992).


