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## Speculative Immigration Policy

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# ARTICLES

## SPECULATIVE IMMIGRATION POLICY

MATTHEW BOAZ\*

### ABSTRACT

*This Article considers how speculative fiction was wielded by the Trump administration to implement destructive U.S. immigration policy. It analyzes the thematic elements from a particular apocalyptic novel, traces those themes through actual policy implemented by the president, and considers the harm effected by such policies. This Article proposes that the harmful outcomes are not due to the use of speculative fiction, but rather the failure to consider the speculative voices of those who have been historically marginalized within the United States. This Article argues that alternative speculative visions could serve as a platform for radical imagination about future U.S. immigration policies. In doing so, it offers a safe space for policymakers and others to consider ideas that might be far outside their normal political or social circles. For instance, speculative fiction creates an opportunity to engage with ideas that might otherwise be “third rails” such as the abolition of various policing forces, critiques of sovereignty, and open borders. Speculative fiction can, therefore, provide a secure realm within which one can be free to explore ideas that they might otherwise feel prohibited from considering. Here, this Article proposes that engaging with speculative fiction written by authors from marginalized backgrounds can help to shift both individual and institutional perceptions about what bold reconstructive policy changes might be possible.*

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*First, this Article analyzes the use of Jean Raspail's The Camp of the Saints by the Trump administration as an ideological foundation for its harmful immigration policies. This xenophobic, speculative fiction novel envisions the demise of Western civilization at the hands of mass migration. Second, this Article promotes the idea that speculative fiction can be useful and generative for imagining new immigration policies in the United States. Specifically, this Article claims that the experience of the COVID-19 pandemic created a nationwide (if not worldwide) sense of apocalypse. Such a collective experience provides an opportunity for universal reconsideration of historical policy norms, particularly those involving immigration. Finally, this Article notes that it is essential that these alternative visions be sourced from "oppositional storytellers," to use Richard Delgado's phrase. Examples abound: W.E.B. DuBois' The Comet and legal scholar Derrick Bell's The Space Traders. This Article offers additional visions: Waubgeshig Rice's Moon of the Crusted Snow, Omar El Akkad's American War, and Octavia Butler's Parable of the Sower as examples for reframing conceptions of 'apocalypse' from the viewpoint of the marginalized in Western culture. This Article concludes that, while notions of abolition and other taboo progressive policy proposals may seem apocalyptic to some, this apprehension is based in fear of the unknown. By crafting specific speculative visions, these authors, as well as others, can make clear that such radical imagination in crafting humane policies can produce a knowable future that is both manifest and necessary.*

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“Narrative fiction provides a controlled wilderness, an opportunity to be and to become the Other. The stranger. With sympathy, clarity, and the risk of self-examination.”—Toni Morrison<sup>1</sup>

#### INTRODUCTION

In a 2020 interview, David Horowitz, a conservative political operative, observed how President Obama had successfully wielded “hope” as a narrative

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1. TONI MORRISON, *THE ORIGIN OF OTHERS* 91 (2017).

device to achieve certain political goals.<sup>2</sup> But, Horowitz claimed, there was another, stronger weapon—fear.<sup>3</sup> This Article explains how fear was deployed by the Trump administration to capture the imagination of the public for political gain. Moreover, it demonstrates how several policy advisors embraced this strategy, notably Stephen Miller, who was the behind-the-scenes progenitor of a series of draconian shifts in immigration regulations and rules. An unlikely source undergirded this effort: *The Camp of the Saints*, a 1973 speculative fiction novel by French author Jean Raspail, lauded by Miller, Steve Bannon, and others in the far-right camp.<sup>4</sup> This apocalyptic book, which describes the demise of Western Civilization at the hands of immigrants from the global south, has received acclaim from extremist conservatives, as well as others, and has served as a touchstone for those professing the dangers of increased migration to the United States and elsewhere, since its publication. This Article identifies the notion of ‘apocalypse’ as a conceptual interpretation of fear that was used to bolster support for the Trump administration’s efforts to drive down immigration levels into the United States. This Article also argues that speculative fiction,<sup>5</sup> including narratives that are apocalyptic in nature, can be useful for conceiving future policy, despite the harmful interpretation in the instant example. Indeed, this specific narrative form is inextricably bound up with the law because policy-making and legal interpretation are inherently speculative.

Importantly, however, the source of these speculations must shift. Policy makers, advocates, and the public-at-large should be willing to look to speculative fiction authors from marginalized communities in crafting immigration policies that mitigate and reduce harm. In doing so, they will find key perspectives that demonstrate that apocalyptic outcomes have already been rendered for certain communities and that fear of apocalypse has driven policy decisions that are both incoherent and perpetuate harm. This argument is grounded in the lineage of the Law & Literature movement and Critical Race Theory (“CRT”), specifically the scholarship surrounding “oppositional storytelling,” first introduced by Richard Delgado. Law & Literature has identified the relevance of literature to law and the influence that it can have on rule makers and interpreters. CRT, in turn, emphasizes the importance of perspective and critiques the idea that law may be seen through a neutral lens.

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2. Jean Guerrero, *The Man Who Made Stephen Miller*, POLITICO (Aug. 1, 2020), <https://perma.cc/2XL8-DYT9>.

3. *Id.*

4. See Elian Peltier & Nicholas Kulish, *A Racist Book’s Malign and Lingering Influence*, N.Y. TIMES (Nov. 22, 2019), <https://perma.cc/9HWP-M9FQ>; see also Ed Kilgore, *Is the Right’s ‘Caravan’ Panic a Reenactment of Its Favorite Racist Novel?*, INTELLIGENCER (Oct. 22, 2018), <https://perma.cc/K9ET-8ECP>.

5. Speculative fiction, at its most basic definition, is highly imaginative literature, which includes small (or broad) differences between society at present and that of a world which conceives of how minute (or major) shifts might produce different outcomes. Speculative fiction typically serves as a mirror to the reader in critiquing or analyzing why certain aspects of a society (or law, culture, etc.) exist, and how the existence of that specific societal quirk currently affects people (or how it might affect people if it were to be changed). A more in-depth definition follows in Part I of this Article.

Importantly, oppositional storytelling synthesizes these ideas by demonstrating that the voice underneath the narrative can help to shift the reader's perspective, providing a new vantage point, and perhaps a shift in perception. Such shifts can create real, visceral change. This Article proposes that, by looking to alternative voices of speculative fiction, a key narrative will be uplifted—that the proposed abolition of current institutions and policies (such as immigration detention, exclusion, and enforcement) is not destructive, but rather generative. Importantly, engaging with speculative fiction as literature invites conversation and debate into policy areas that might otherwise be fraught or firmly grounded in political ideology. Speculative fiction provides a way out.

Part I of this Article provides a definition of speculative fiction, and a critical overview of the primary text referenced—*The Camp of the Saints*. Part II details how speculative fiction was used by political actors to gain support for extreme restrictionist immigration policies during the Trump administration. Part III briefly explores how, even apart from *The Camp of the Saints*, narrative and speculation are inevitably bound up in the development and administration of law, and specifically, immigration law. Part IV acknowledges that, if speculation is unavoidable, the voices that guide that speculation and narrative should belong to marginalized groups that have suffered the effects of colonialism, slavery, racism, and other normative and legal forms of oppression in the United States. Part V incorporates conversations about the historic use of legal fictions, particularly in immigration law, and identifies the ways in which narrative is used to make a complex concept like immigration more approachable.

In its conclusion, by looking to the “apocalyptic” and “post-apocalyptic” speculative visions of a number of writers from marginalized communities, this Article seeks to reframe conceptions of an apocalyptic world from the viewpoint of the vulnerable as opposed to the most privileged in Western culture. In doing so, this Article concludes by advocating that the present moment<sup>6</sup> offers a unique opportunity for considering an alternate future, rather than the return to “normal” as many have advocated for in the wake of COVID-19.<sup>7</sup> Such considerations are ripe for non-traditional or radically

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6. The present moment, for context, includes the following: where the United States is wrestling with a continually evolving pandemic, an uprising in response to police violence, and calls to abolish or reform many of its most seemingly permanent institutions. Other existential crises include large scale reconsiderations of gender identity and conformity, climate change, and global rises in populism have been met with equally virulent responses: the #MeToo movement, Black Lives Matter, and other intersectional coalitions. Though change is constant throughout U.S. history, this appears to be a moment of increased polarization, unrest, and dissatisfaction with current systems and structures.

7. See, e.g., John Glaspy, *Do We Really Want to Return to Normal?*, UCLA HEALTH (2021), <https://perma.cc/RVB8-XBDJ> (“I don’t want to return exactly to my life before COVID. Looking back to that time, I believe we may have fallen prey to runaway individualism and mean-spiritedness in our government and public lives and to excessive materialism, self-absorption and intoxication with the trivial in our private lives. There were things unnoticed that, had I seen better, would have added meaning to my life. Certainly, I want my grandchildren back in school, to have large dinner parties with friends, to go to bars and restaurants, to travel for pleasure and to not need to wear a mask. But I am intrigued by

imaginative solutions to such intransigent questions as whether and how to regulate immigration in the United States. Most importantly, they offer an opportunity for reconsidering the traditional notions of abolition as apocalyptic, looking beyond its inherent destructive nature to see it instead, most prominently, as a positive, generative opportunity.

## I. SPECULATIVE FICTION

### A. *Definition(s)*

In its original definition, speculative fiction was classified by Robert Heinlein as “narratives concerned not so much with science or technology as with human actions in response to a new situation created by science or technology, speculative fiction highlights a human rather than technological problem.”<sup>8</sup> The key point here being that speculative fiction concerns the actions of humans, or more broadly, humanity—i.e., how would society react if “x” happened or if “y” were different. A contemporary interpretation of this notion is expressed by N.K. Jemisin when she shares her thoughts about worldbuilding.<sup>9</sup> She says the key for speculative fiction is to imagine a world similar to our own, but with one or more key differences, which can be used to critique the particular ways in which our world or society operates.<sup>10</sup> For the purposes of this Article, the category of speculative fiction is quite broad, and refers to any piece of literature that imagines a world similar to our own, but with some key differences, and which uses those distinctions in order to help us analyze and confront some concern in our current world. They ask the question, “What if. . .?”.

According to notable science fiction author, Kim Stanley Robinson, the purpose of speculative fiction is twofold: (1) to imagine what might be possible (technologically, morally, or otherwise) and (2) to provide a metaphorical framework for analyzing current societal frameworks.<sup>11</sup> These frameworks map on neatly to the function of law and policy in a democratic society—an iterative effort to create laws, both predicting and creating the future, while

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how much deeper and satisfying life could be with a little more brotherhood and a little less elbow throwing, and how enriching it is to do some of the now-more-evident ‘unfinished work’ that was obscured by pre-COVID scheming, bickering and indolence.”).

8. Lyndsie Manusos, *What Is Speculative Fiction?*, BOOK RIOT (Jan. 24, 2020), <https://perma.cc/MF4H-5PB5> (quoting Robert Heinlein, *On the Writing of Speculative Fiction*, in *OF WORLDS BEYOND: THE SCIENCE OF SCIENCE FICTION WRITING* (Lloyd Arthur Eshbach ed., 1965)).

9. The Ezra Klein Show, *N.K. Jemisin’s Master Class in World Building*, YOUTUBE (Aug. 27, 2018), <https://perma.cc/3RQK-S8XE> (discussing the concept of creating a specific environment, or world, in which the characters in a specific work of fiction operate. These worlds may be ornate, or they may resemble the reader’s own experience, but they are rife with specific details about the ways in which governments, people, and even the laws of physics might operate in that “world.” Speculative fiction is notable for its ability to utilize distinctions present in the world of the author’s storytelling in order to present some observation about the reader’s own world).

10. *Id.* (discussing “Element X,” or the twist on current life that provides for an exploration of alternative societies, universes, and other places for ideological exploration).

11. Joshua Rothman, *Can Science Fiction Wake Us Up to Our Climate Reality?*, NEW YORKER (Jan. 24, 2022), <https://perma.cc/A9EF-KGJA>.

also taking care to evaluate and reinterpret those predictions as necessary. While such a viewpoint may appear naive or disconnected from the actual political process, this Article argues that engaging with speculative fiction is one way to re-engage with the process of implementing real-world political change. Other scholars have taken up the mantle previously with their scholarship,<sup>12</sup> or by participating in the narrative process of speculative fiction itself.<sup>13</sup> Indeed, one of the great tools of speculative fiction is that it allows for society to conceptualize what these futures may involve. These new conceptualizations may or may not build from tradition, but they do not rely on history as righteous or inherently just. They acknowledge the bounds and limitations of prior experiences, which need not limit our own conceptions of possibility. Indeed, the history of the United States is relatively brief and thematically repetitive. The characters may rotate, and the details may modify, but the ideas remain stubbornly intact.<sup>14</sup> Speculative fiction offers a way out, fighting against an inexorable march toward some perceived inevitable outcome, and resisting the notion that particular challenges may be too difficult to solve.

Speculative fiction is a broad umbrella term with sub-genres, including science fiction, utopian/dystopian fiction, and apocalyptic/post-apocalyptic fiction. Most of the works referenced in this Article fall within one of these three sub-genres.<sup>15</sup> The reason for using the broader, more generic term “speculative fiction” is partially to point out that policymaking and interpretation of the law already require a great deal of speculation. Importantly, this

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12. See, e.g., Bennett Capers, *Afrofuturism, Critical Race Theory, and Policy in the Year 2044*, 94 N. Y.U.L. REV. 101 (2019) (considering what a post-policing future might look like in a majority-minority United States, particularly when the Black perspective is prioritized).

13. See, e.g., DERRICK BELL, *The Space Traders*, in *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 158 (1992); see also W.E.B. DU BOIS, *The Comet*, in *DARKWATER: VOICES FROM WITHIN THE VEIL* 253 (1920).

14. Consider, for example, the “perpetual foreigner” stereotype, which is so deeply woven into the culture of the United States, that many may not realize the offense they cause by asking the question: “No, where are you really from?” See Que-Lam Huynh, Thierry Devos & Laura Smalarz, *Perpetual Foreigner in One’s Own Land: Potential Implications for Identity and Psychological Adjustment*, 30 J. SOC. CLINICAL PSYCH. 133–62 (2011). This question has real consequences in that it signifies the presumption of permissible presence for some and not others. Importantly, such questions obviate the historical presence of the groups most likely to be subject to these questions – those who are not considered racially white. These articulations of the perpetual foreigner, while considered normative, are crafted in fiction. They deny both the continued history of the presence of non-white people and the real, legal efforts to categorize and exclude individuals by nature of these categorizations. This Article will provide details about specific instances, but they include: (1) the wholesale exclusion of Chinese and then, more broadly, Asian immigrant from the US, nearly completely, until the mid-20 century, (2) the change in prioritization of identity from ethnicity (Irish, southern/eastern European, etc.) to that of race – white, and (3) the continued preference for those who share certain phenotypes over others, absent of historical guidance – see, e.g., the way in which Ukrainians fleeing war were treated vs. the ways in which Afghans fleeing the Taliban were treated.

15. As a side note, speculative fiction (and especially science fiction) has typically been believed to be the domain of white men. But there have been many speculative fiction writers dating back nearly a century and a half. Moreover, many progenitors of the early speculative fiction may have had their histories white-washed in some way. See, e.g., Lavie Tidhar, *Jews in Space: On the Unsung History of Jewish Writers and the Birth of Science Fiction*, LITERARY HUB (June 14, 2021), <https://perma.cc/3F2R-WZ3B> (exploring the important role of Jewish writers in early forms of science fiction).



prospective analysis is typically wrought with limited critique and limited meta-analysis. Moreover, it is most frequently wielded by the privileged few—namely lawmakers and judges. As with most “elite” professions in the United States, those most likely to hold these positions are “overwhelmingly white and male.”<sup>16</sup> While more than a few of these individuals in power may possess capacious imaginations, no doubt many are constrained by their lived experiences. This critique extends beyond the political allegiances of the lawmakers and judges, to an interrogation of the normative experiences that these decision makers share. By questioning the right of one group’s speculation to rule, this Article aims to present an alternative vision, which decenters such typical narratives and centers the voices of those who have historically been marginalized or harmed by U.S. law and policy. But first, this Article turns to the ways in which speculative fiction has already been utilized, by examining *The Camp of the Saints*, its themes, critical reception, and its link to the Trump administration’s maneuvers in shifting immigration policies.

### B. *The Camp of the Saints*

In 1971, the celebrated French author Jean Raspail,<sup>17</sup> sitting in a café on the French Riviera gazing out at the Mediterranean Sea, wondered, “What if they were to come? I did not know who ‘they’ were, but it seemed inevitable to me that the numberless disinherited people of the South would, like a tidal wave, set sail one day for this opulent shore, our fortunate country’s wide-gaping frontier.”<sup>18</sup> *The Camp of the Saints* is the 1973 speculative fiction novel that resulted from the question that Raspail asked himself two years earlier. Before providing details about the book, it is worth noting that some of the themes are overtly graphic, racist, xenophobic, and harmful. But that information serves an important purpose for this Article’s discussion.

After its publication, in explaining why he wrote the book, Raspail, who is white, said, “[T]he proliferation of other races dooms our race, my race, to extinction in the century to come, if we hold fast to our present moral principles.”<sup>19</sup> These principles are the same precepts that one of his characters in the book laments have been lost to the younger generations in France,

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16. See, e.g., *Diversity of the Federal Bench*, AM. CONST. SOC’Y, <https://perma.cc/K735-FFB2> (last visited July 25, 2022) (showing demographics of the federal bench based upon statistics archived from the Federal Judicial Center); Katherine Schaeffer, *The Changing Face of Congress in 7 Charts*, PEW RSCH. CTR. (Mar. 10, 2021), <https://perma.cc/6GG6-DLU8> (using available statistics to show that despite improvements that have led to the most diverse Congress in history, white and male members remain significantly overrepresented); Karl Evers-Hillstrom, *Majority of Lawmakers in 116th Congress are Millionaires*, OPEN SECRETS (Apr. 23, 2020), <https://perma.cc/5RGJ-F6TK> (explaining that the majority of members of Congress are millionaires).

17. Elian Peltier, *Jean Raspail, Whose Immigration Novel Drew the Far Right, Dies at 94*, N.Y. TIMES (June 22, 2020), <https://perma.cc/P3X5-Z4TW>.

18. Andrew Sullivan, *Democrats Can’t Keep Dodging Immigration as a Real Issue*, INTELLIGENCER (Oct. 26, 2018), <https://perma.cc/67YF-S5ZT>.

19. *Racist Book, Camp of the Saints, Gains in Popularity*, S. POVERTY L. CTR., INTEL. REP. (Mar. 21, 2001) <https://perma.cc/523T-N44D>.

“The old professor understood. That scorn of a people for other races, the knowledge that one’s own is best, the triumphant joy at feeling oneself to be part of humanity’s finest — none of that had ever filled these [white] youngsters’ brains, or at least so little that the monstrous cancer [of compassion for other races] implanted in the Western conscience had quashed it in no time at all.”<sup>20</sup>

Raspail’s concerns foreshadow the themes of his book—that the apocalypse is nigh, that it will be rendered according to racial categorization, and that it must be prevented at all costs, because white people and Western civilization are somehow superior to an unenumerated, but broad category of others.

### 1. *Plot Overview*

The plot, briefly summarized, is as follows: a large group of individuals from South Asia, variously described as “deformed, filthy, and brutish,” slowly make their way by boat around the southern coast of Africa and up to France, where they then invade, murder, pillage, and physically take over not only France, but all of Western Civilization, including the United States. The book theorizes the outnumbering of white people by immigrants, the slaughter of those who do not welcome immigrants, and the demise of European culture. It faults both government officials sympathetic to immigrants and media coverage that bolsters multiculturalism and fails to identify the supposed drawbacks of migration.

The book concludes with the depiction of the arrival of an “armada” to France, described as the following:

“[F]irst to land were the monsters, the grotesque little beggars from the streets of Calcutta. As they groveled through the wet sand like a pack of basset hounds, or a herd of clumsy seals exploring an unfamiliar shore, with their snorts and grunts of joy, they looked like an army of little green men from some remote planet. . . . Yes, the country [France] would suit them fine. No question.”<sup>21</sup>

The dehumanizing language of this premise is comparable to the Trump administration’s evocation of the United States as a precious place and the ability of some “others” to tarnish it simply by their presence.<sup>22</sup> Indeed, the

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20. *Id.* As a note, actual copies of *The Camp of the Saints* are a challenge to obtain because it is only available on the secondary market, at high prices. Therefore, many of the quotations in this Article come from secondary sources.

21. *Id.*

22. See generally Amber Phillips, *Here Are 12 Other Times Donald Trump Vilified Illegal Immigrants*, WASH. POST (July 1, 2015), <https://perma.cc/KHN9-2F79> (providing a list of insults directed at immigrants); Jasmine C. Lee & Kevin Quealy, *The 598 People, Places, and Things Donald Trump Has Insulted on Twitter: A Complete List*, N.Y. TIMES (May 24, 2019), <https://perma.cc/HK3T-7KVK>

book has resonated with a number of readers—politicians,<sup>23</sup> anti-immigrant advocates,<sup>24</sup> and even eugenicists.<sup>25</sup> One critic described the novel as “both prescient and appalling,” certainly “racist” but “written with tremendous verbal energy and passion,” stating that the book “gives bilious voice to an emotion whose expression is increasingly taboo in the West, but that can grow only more virulent when suppressed: the fierce resentment felt by majority populations when that status seems threatened.”<sup>26</sup>

Such observations are strange—they seem to indicate that this feeling is perhaps natural or innate in some way. Yet, claiming that the novel gives voice to the inner thoughts of most, or all, of any group of people presupposes too much. The racism in the novel is vile, and yet there is something captivating about it, apparently. In addition to the acclaim it has received from white supremacist groups and members of the Trump administration, many critics and scholars have spent decades analyzing and offering their own thoughts on the work.<sup>27</sup>

## 2. Critical Reception

Reviews of *The Camp of the Saints* range from laudatory to condemnatory, with various interpretations along the spectrum in between, spanning a notable length of time from its publication until present day. The beliefs of those

(providing a more extensive list of insults directed at policymakers and others, much of which are immigration-adjacent).

23. See, e.g., Peltier & Kulish, *supra* note 4 (referencing that Marine Le Pen, the leader of the arch-right conservative party in France, the French National Rally is a proponent of the novel and that Republican Congressman from Iowa Steve King stated that “the book’s story should be imprinted into everyone’s brain”); Trip Gabriel, *A Timeline of Steve King’s Racist Remarks and Divisive Actions*, N.Y. TIMES (Jan. 15, 2019), <https://perma.cc/SUJ4-G6AV> (referencing that Steve King was removed from his House committee assignments following an interview with the New York Times, in which he said, “[w]hite nationalist, white supremacist, Western civilization, - how did that language become offensive?”).

24. See Paul Blumenthal & JM Rieger, *This Stunningly Racist French Novel Is How Steve Bannon Explains the World*, HUFFPOST (Mar. 4, 2017), <https://perma.cc/PXS4-D2SJ> (explaining that Steve Bannon, one of President Trump’s key advisors during his campaign and early presidency, has referred to the book frequently and directly in describing various emergency migration patterns that were occurring in 2015-2016); Peltier & Kulish, *supra* note 4 (explaining that Stephen Miller, the Trump policy advisor also responsible for many of the efforts to limit migration into the U.S. is a fan of the novel).

25. John Tanton, the founder of FAIR (Federation for American Immigration Reform) and CIS (the Center for Immigration Studies), acquired the rights to the English-language translation of the novel and republished it in 1994, noting its effectiveness in conveying an anti-immigrant message, saying, “The storytellers can advance notions prohibited to others,” perhaps one of the few things that Mr. Tanton and I agree upon. Expanding upon his explanation of the novel’s utility, Tanton writes, “Raspail evokes different feelings and that may help to pave the way for policy changes.” This observation proved perhaps more prescient than even Tanton imagined. John Tanton, *The Camp of the Saints Revisited*, 5 SOC. CONT. J. 83 (Winter 1994-95) <https://perma.cc/2QAQ-3D3F>. See generally Jason DeParle, *The Anti-Immigration Crusader*, N.Y. TIMES (Apr. 17, 2011), <https://perma.cc/VZ65-LKSN> (providing a more in-depth exploration of Tanton).

26. Lionel Shriver, *Population Doomsday*, 15 NEW STATESMAN (June 10, 2002).

27. Prof. Chelsea Steiber teaches a course on the book at Catholic University of America and notes, “The key themes are actually white supremacy and the end of white civilization as the West knows it – infestation, invasion, hordes of nameless, faceless migrants who come to indeed invade the West and bring about its end.” Lulu Garcia-Navarro, *Stephen Miller and ‘The Camp of the Saints,’ a White Nationalist Reference*, NPR (Nov. 19, 2019), <https://perma.cc/A5MB-2A6D> (indicating that Steiber “became interested in the novel after she heard echoes of its rhetoric . . . in President Trump’s inaugural address”).

who align with each interpretation are not difficult to predict. Those who praise the book do so along calls to privilege Western civilization and limit migration, speaking in exasperated tones that condemn any call for responsibility to accrue to their respective nations. The more condemnatory responses are equally grounded in concerns for how the novel dehumanizes non-white people, ascribes violent characteristics to the “other,” and asserts that people fleeing their home countries are pitiable, but that the failure of those governments must be either genealogical or cultural and most certainly not because of colonialism.

For a work of speculative fiction, *The Camp of the Saints* has attracted interest in a cyclical, if not continuous, fashion. It received a smattering of initial reviews in 1975, following its English-language publication,<sup>28</sup> including a positive reception in *The National Review*.<sup>29</sup> It then gained renewed interest in France in the early 1980s, before allegedly being shared with President Reagan by a member of the French intelligence service during a White House visit.<sup>30</sup> A more academic review was published in *The Atlantic* by two respected historians, attempting to contextualize the novel’s success.<sup>31</sup> Reviews again abounded with new interpretations in the 2000s, particularly by several prominent conservative thinkers, including William F. Buckley,

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28. Time magazine published a cursory, dismissive review, finding that its purpose was to “exacerbate” racial enmity. Paul Gray, the author of the review, says that the novel “would not be worth a moment’s thought,” except that it arrived in the U.S. dripping with praise from France. Paul Gray, *Poor White Trash*, TIME (Aug. 4, 1975), <https://perma.cc/9647-U6SR>.

29. Jeffrey Hart, then a professor at Dartmouth and longtime writer for the National Review, is famed for penning the line, “[t]he liberal rote anathema on ‘racism’ is in effect a poisonous assault upon Western self-preference.” See Jeffrey Hart, *Raspail’s Superb Scandal*, NAT’L REV., Sept. 26, 1975, at 1062–63 (book review). Of note, Prof. Hart observes that, “[m]ost people, however, are able to perceive that the ‘other’ group looks rather different and lives rather differently from their own. Such ‘racist’ or ‘ethnocentric’ feelings are undoubtedly healthy and involve merely a preference for one’s own culture.” *Id.* This seems to indicate his own view of some homogenous or uniform society, though it is curious because he critiques Raspail for “accept[ing] as historical fact that Western civilization is largely white.” *Id.* He also lauds Raspail for not being a “prisoner of any biological assumptions,” due to his creation of a “very black Indian” character who lives in France and has “become completely assimilated by Western Civilization.” *Id.* This character states, “Being white isn’t really a question of color. It’s a whole mental outlook.” *Id.* Last, Hart again celebrates the countries that do stand by their exclusionary immigration laws, buttressed by weaponry, quoting the fictional president of Australia in the novel, “No, of course we won’t hesitate. We’ll shoot without giving it a second thought. In this high-minded racial war, all the rage these days, non-violence is the weapon of the masses. Violence is all the attacked minority has to fight back with. Yes, we’ll defend ourselves. And yes, we’ll use violence.” *Id.*

30. Jérôme Dupuis, *Le Camp des Saints, de Jean Raspail, un Succès de Librairie Raciste?*, L’EXPRESS (June 4, 2011), <https://perma.cc/T959-YTEB>.

31. The December 1994 cover story of *The Atlantic* explored the resurgent interest in *The Camp of the Saints*. Two prominent historians, Matthew Connelly and Paul Kennedy, explain that “many members of the more prosperous economies are beginning to agree with Raspail’s vision.” Matthew Connelly & Paul Kennedy, *Must It Be the Rest Against the West?*, ATL. MONTHLY (Dec. 1994), <https://perma.cc/2U3V-XNDJ>. It is difficult to read the concerns from nearly three decades previous without some sense of previous remove. There is incredulity expressed at the fact that seventy-two South Africans had crossed the Strait of Gibraltar to seek work in Europe: “Seventy-two from South Africa! Did they walk, hitchhike, or take buses across the entire continent?” *Id.* Quite simply, yes. Connelly and Kennedy ponder whether “this [is] simply a work of imagination or, as Raspail’s critics charge, a racist tract dressed up as fiction?” *Id.* But one wonders what the difference is, and whether the effect is the same regardless. Connelly and Kennedy acknowledge that Raspail clearly exhibits disdain for “the peoples of the Third World” but note that his disdain for “sympathizers . . . in the West” is “even more extreme.” *Id.*

Jr.<sup>32</sup> Its last iteration of prominence occurred in the 2010s, when it returned to the bestseller list in France and was espoused by various political advisors in the Trump administration.<sup>33</sup>

The reason for mentioning the fascination with this novel is to indicate its prominence in debates about migration. Raspail belongs to a lineage which presupposes specific racial categorizations, relies on invented attributes to place people within those categories, and then insistently adheres to a rigid hierarchy that values and rewards these fictional characteristics as an effort to create some form of tribal unity. This book is important because many have heeded its message and acted accordingly, to great effect, inflicting consistent harms upon those in the disfavored categories, which has been made all the worse for the lengthy period during which those damaging policies have been in place.

From its supporters, the insistent popularity of this novel is no doubt bound up in its provocative premise, incendiary language, and apocalyptic end.<sup>34</sup> In combination, these function to bolster the beliefs of those who already cling to these ideologies of race, caste, and inherent distinctions among humanity. It is this final concern of apocalypse – or the demise of Western civilization – which provides for a good transition point to briefly explore the thematic components of Raspail’s work.

### 3. Themes

*The Camp of the Saints* is notable, first, for its brazen apocryphal vision, and second, for the themes which contribute to that vision, of which three feature prominently: sovereignty and self-determinism, fear, and apocalypse. These themes have been embraced by a motley assortment of proponents: the Trump administration, far-right French parties (including Marine Le Pen, leader of the National Rally in France), and an increasing number of white nationalist groups in the United States. An exploration of each of these themes follows in more detail.

#### a. Sovereignty and Self-determinism

Sovereignty is an elusive concept, but best defined by the idea of self-determinism – that a collective group might have autonomy in its decision

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32. Buckley makes several odd rhetorical attempts to grapple with the (speculative) concern about “What to do?” when there are no longer sufficient numbers of airplanes to return individuals ineligible for migration to Europe to their home countries. His initial offerings, “Starve them? Shoot them?,” followed closely by “We don’t do that kind of thing . . .,” leads one to wonder, “[T]hen why pose those questions?” Regardless, he refers to *The Camp of the Saints* obliquely as “a great book,” in his assertion that “every Chinese would gratefully emigrate to the United States if given the opportunity.” William F. Buckley Jr., *No Irish Need Apply*, NAT’L REV. (July 23, 2004), <https://perma.cc/S37D-6AAF>.

33. See, e.g., Ben Mathis-Lilley, *Bannon, Adviser Behind Travel Ban, Is Fan of Novel About Feces-Eating, Dark-Skinned Immigrants Destroying White Society*, SLATE (Mar. 6, 2017), <https://perma.cc/R8GZ-GKPF>; Garcia-Navarro, *supra* note 27; Peltier & Kulish, *supra* note 4.

34. See generally Michael Edison Hayden, *Miller Pushed Racist ‘Camp of the Saints’ Beloved by Far Right*, S. POVERTY L. CTR., HATEWATCH (Nov. 12, 2019), <https://perma.cc/3TRG-MWSJ>.

and authority over its territory. Yet, the concept is a nuanced one, which has been kneaded, pulled, and contorted into a variety of shapes. Ilya Somin, among other scholars,<sup>35</sup> offers his own critiques about how sovereignty, or self-determinism, factors into the immigration debate.<sup>36</sup> Somin critiques the idea that there is some form of cogent cultural consensus about limiting the entrance of migrants into a particular country, and therefore notes that there is no cultural “community of character” to which to defer, as some restrictionists would demand.<sup>37</sup> Even in homogenous societies, he notes that generational divides frequently exist, and that such changes do not cause the demise of those interior national cultures.<sup>38</sup> Lastly, he argues that popular destination countries for migrants have limited solid ground to stand on because their nations were almost universally established through some “conquest and coercion,” and/or have only relatively recently coalesced around any form of national identity.<sup>39</sup>

Another criticism arises from the international law scholar, E. Tendayi Achiume, who questions whether “First World nation-states” have any right to “exclude Third World migrants, for reasons tied to the distributive and corrective justice implications of the legacies of colonialism.”<sup>40</sup> Indeed, the United States (and France, for that matter) seems to have imposed a set of time-linear restrictions on sovereignty claims, along with geographical borders that are more frequently invoked. Unspoken in *The Camp of the Saints* is that it comes a mere decade after Algeria’s independence from France, the process for which itself lasted nearly another decade and was preceded by over a century of colonial rule.<sup>41</sup> The French colonial empire extended

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35. One of these additional scholars is Peter Markowitz, who notes that much of the jurisprudence on this issue defers to prior decisions dating back to the 19 century, which he claims relied on faulty interpretations of international law, in addition to lacking any cross-scholarly agreement on the issue. While he makes the distinction between the ability to exclude vs. expel, he critiques the claim that these powers are somehow inherent, noting that “[t]he Court” (referring to the Supreme Court’s jurisprudence from the late 19 century on this issue) “overstated the positions of the leading international law commentators . . . and failed to appreciate the complexity of their positions individually and the diversity of their opinions collectively.” Peter L. Markowitz, *Straddling the Civil-Criminal Divide: A Bifurcated Approach to Understanding the Nature of Immigration Removal Proceedings*, 43 HARV. C.R.-C.L. L. REV. 289, 314 (2008).

36. Ilya Somin, *Migration and Self-Determination*, 18 GEO. J.L. & PUB. POL’Y 805 (2020).

37. *Id.* at 808.

38. *Id.* at 810.

39. *Id.* at 811.

40. E. Tendayi Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509, 1517 (2019); see also Angelica Chazaro, *The End of Deportation*, 68 UCLA L. REV. 1040, 1097–98 (2021) (critiquing the “arbitrary linkage of immigration with sovereignty” and calling for an inversion of the assumption of sovereignty as something inherent in a nation’s structure and conception of itself) (citing in n. 18 Linda Bosniak, *Citizenship Denationalized*, 7 IND. J. GLOB. LEGAL STUD. 447, 493 (2000) (“As someone sympathetic to the postnational project, however, I am inclined to turn the tables and ask instead whether national conceptions of citizenship deserve the presumptions of legitimacy and primacy that they are almost always afforded”).

41. The United States has exhibited similar behaviors in the western hemisphere under the Monroe Doctrine interventions, including in Guatemala, Cuba, Brazil, the Dominican Republic, Argentina, Chile, El Salvador, Grenada, Haiti, Venezuela, and Honduras. See *Before Venezuela, US Had Long Involvement in Latin America*, AP NEWS (Jan. 25, 2019), <https://perma.cc/BDF5-8AQ3>; see also ALAN MCPHERSON, *A SHORT HISTORY OF U.S. INTERVENTIONS IN LATIN AMERICA AND THE CARIBBEAN* (2016).

throughout the world, but no mention is made of the relevance to prior violations of sovereignty in the modern era, nor the importance that this history might have in relating to international politics of sovereignty.<sup>42</sup> Indeed, *The Camp of the Saints* appears ahistorical, or at least atemporal, in that respect – bound up not in the reality of history, but in the present moment of speculation. In this context, conversations about sovereignty gain legitimacy only when they are forward-looking. Past infringements of sovereignty are frequently ignored, while future speculative concerns about the erosion of sovereignty are treated with great import. This specific interpretation of sovereignty and self-determinism inheres and continually reifies both real and perceived power onto the countries who exercise it. Notably, both the United States and France utilize (and have done so with great frequency) this notion, with great effect. In doing so, they create a mold into which numerous countries and people are cast, unable to lay hold to these same types of sovereignty claims.<sup>43</sup>

In the United States there are calls to return to some idyllic past, though it is unclear to which era and place a return is being championed.<sup>44</sup> This theme is not an unfamiliar one in American society. The concern regarding superiority and inferiority, is threaded throughout American history, beginning first with slavery,<sup>45</sup> extending to the exclusion of the Chinese throughout the later nineteenth and early twentieth centuries,<sup>46</sup> and buoyed again in the twentieth century by support for eugenics.<sup>47</sup> During this time, the legal system, and specifically the Supreme Court, went out of its way to grapple with tricky

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42. But see Shikha Dalmia, *The Dystopian, Anti-Immigration Book The Camp of the Saints is Really Racist. So Why Are a Bunch of Smart Conservatives Praising It?*, WEEK (Mar. 18, 2016), <https://perma.cc/VV6J-LFWR> (indicating that Raspail explicitly chose Indians as the invading group because “using ‘nearby North Africans or Arabs’ would have meant getting involved in a ‘false debate about racism and anti-racism in French daily life’”).

43. See, e.g., Micah Zenko, *When the U.S. Doesn’t Respect Other Countries’ Sovereignty*, ATL. (May 31, 2012), <https://perma.cc/DV4G-397E> (cataloguing the use of drones by the U.S. in the Middle East).

44. Consider, for instance, the Trumpian slogan, “Make America Great Again.” Oddly enough, Octavia Butler, one of the authors discussed *infra* Part IV.B.3, presages the use of this slogan in her work *Parable of the Sower* to caution against such a political candidate. See Abby Aguirre, *Octavia Butler’s Prescient Vision of a Zealot Elected to “Make America Great Again,”* NEW YORKER (Jul. 26, 2017), <https://perma.cc/MSX8-EQD6>.

45. See CLINT SMITH, HOW THE WORD IS PASSED 22 (2021) (explaining that while some slaveholders, such as Thomas Jefferson, felt conflicted about the practice of slavery, the inferiority of Black people was never at question, as Smith quotes from Jefferson’s own 1821 autobiography, “The two races, equally free, cannot live in the same government. Nature, habit, opinion has drawn indelible lines of distinction between them.”). See generally NIKOLE HANNAH-JONES & N.Y. TIMES MAG., THE 1619 PROJECT: A NEW ORIGIN STORY (2021).

46. See, e.g., Natsu Taylor Saito, *The Enduring Effect of the Chinese Exclusion Cases: The “Plenary Power” Justification for On-Going Abuses of Human Rights*, 10 ASIAN AM. L.J. 13 (2003) (providing a history of the Chinese Exclusion Act and subsequent lawmaking and jurisprudence that worked to exclude a categorically broad group of people considered “Asian” from the United States for more than half a century).

47. See, e.g., Alessandra Suuberg, *Buck v. Bell, American Eugenics, and the Bad Man Test: Putting Limits on Newgenics in the 21st Century*, 38 MINN. J.L. & INEQ. 115 (2020); see also Edward J. Larson, *Putting Buck v. Bell in Scientific and Historical Context: A Response to Victoria Nourse*, 39 PEPP. L. REV. 119 (2011).

questions, such as “Who is white?”<sup>48</sup> and “No, really, who is white?”<sup>49</sup> It is clear that each of these efforts at categorization were an attempt to create some form of unity, a group to whom sovereignty might belong. The work of including and excluding is a fundamental exercise in power. The process itself, when repeated by policy makers and judges, strengthens that perception of the power to do so each time. Every effort to distinguish or to exclude results in a stronger firmament of sameness, a deeper perception of a sovereign whole, despite how quickly the façade crumbles when subjected to examination. The anxiety over sovereignty pervades both the public imagination and the legal sphere.<sup>50</sup> In moments of great tension, crisis, or rapid change, such anxiety yields quickly to fear.

### *b. Fear*

The key “what if” in *The Camp of the Saints* imagines an actual, coordinated invasion from the “Global South.”<sup>51</sup> In his collection of essays, *The Cruelty is the Point*, Adam Serwer describes the successful collaboration of former President Trump and Fox News in “finding new sources of rage and fear to sustain [their] audience’s perpetual sense of being under siege.”<sup>52</sup>

It is perhaps this subconscious panic that some of these “ghosts” of the Western international interference and/or colonialism may come back to haunt that is the origin for Raspail’s premise. The fear comes from concern that others might try to do what has been done to them.<sup>53</sup> To step briefly into

48. See *Ozawa v. United States*, 260 U.S. 178, 199 (1922) (concluding that the term “free white person” did not include people of Japanese descent within its construction because they were not part of the “Caucasian race”).

49. See *United States v. Bhagat Singh Thind*, 261 U.S. 204, 210, 215 (1923) (finding that an Indian Sikh man was also not “white,” despite providing evidence that he was part of the “Aryan race,” and that his ethnic group had originated in the Caucasus mountains, since he did not fit within the “common understanding of that term”); see also *S2 E 10: Citizen Thind (Seeing White, Part 10)*, SCENE ON RADIO (June 14, 2017), <https://perma.cc/6YDR-WVSP> (providing a fuller exploration of *Ozawa* and *Thind*).

50. See, e.g., Jill Family, *We Have Nothing to Fear but “Sovereignty Fear” Itself*, YALE J. ON REGUL. (2021) (explaining why the creation of an independent immigration court not under the control of the Attorney General would not result in the loss of law and order that proponents of the plenary power claim it would); see also Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 568 (1984) (noting that an emphasis on procedure can be seen as imperial and self-serving to those in power making the rules); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2421-22 n.36, (“In former times, powerful whites used *substantive* myths, stories about blacks’ purported actual inferiority, to justify oppression.”).

51. Note that this term, “Global South,” is contested because of the arbitrary delineations by which it is constructed and the negative perceptions that arise from various semantic associations. *But see*, Sinah Theres Kloß, *The Global South as Subversive Practice*, 11 GLOB. S. 1 (2017) (proposing that though the term “Global South” is imaginary, it might be utilized to unify and consolidate power among a number of marginalized social groups). A similar concept can be found in the development of the term “latino/latinx/latine” in the United States. The creation of this term was part of a deliberate campaign to unite immigrants from a variety of Spanish-speaking countries in order to gain political power. See, e.g., The Experiment, *Latinos Are a Huge, Diverse Group. Why Are They Lumped Together?*, ATL. (Mar. 11, 2021), <https://perma.cc/JL6R-YT87>.

52. ADAM SERWER, *THE CRUELTY IS THE POINT: THE PAST, PRESENT, AND FUTURE OF TRUMP’S AMERICA* xviii (2020).

53. See e.g. Samuel Clarke, *Les Camp des Saints: The Modern Alt-Right and the Fear of Reverse Colonisation*, CUB MAGAZINE (2019), <https://perma.cc/A6N3-YEMN>. Concerns about “reverse



the world of speculative fiction, one example of this specific kind of fear might be the concern that exists regarding artificial intelligence (“A.I.”), how it might at some future point gain autonomy, and that the next logical step would be for it to wreak great harm and violence upon human beings. In paraphrasing the ideas of Yuval Noah Harari, this situates our “fear of artificial intelligence as simply that A.I. will treat us the way we treat animals.”<sup>54</sup>

Interestingly, this trepidation has manifested in a very specific way with immigration. Among the alt-right, including many Trump policy advisors, is concern about “the Great Replacement,” an idea that originated with the French alt-right.<sup>55</sup> This apocalyptic notion envisions “the extinction of Western white populations by vast numbers of newer arrivals.”<sup>56</sup> This theme is resurgent both in the United States and France, but also elsewhere among certain right-wing populist movements.<sup>57</sup> The issue was taken up directly in the 2022 presidential elections in France, where Marine Le Pen was defeated, but with significant support from those who are swayed by the theory.<sup>58</sup> This concern over catastrophic change echoes the themes that are frequently explored in apocalyptic speculative fiction: the demise of a society or planet, enormous and incalculable loss, and an inability to return. This, in turn, leads into the final theme of *The Camp of the Saints*—apocalypse.

### c. Apocalypse

Apocalypse features prominently in *The Camp of the Saints*. In fact, its title is derived from the “biblical scene of the apocalypse, in which the Devil and his beast approach God’s beloved city, ‘the camp of the saints.’”<sup>59</sup> The apocalypse that is discussed in *The Camp of the Saints* and that is feared by

colonization” (one can’t help but note the similarities to concerns about “reverse racism” and the “Great Replacement”) are concepts that will be discussed more in-depth shortly.

54. The Ezra Klein Show, *Transcript: Ezra Klein Interviews Ted Chiang*, N.Y. TIMES (Mar. 30, 2021), <https://perma.cc/5Z6N-XQX4>.

55. Philip Bump, *Nearly Half of Republicans Agree with ‘Great Replacement Theory’*, WASH. POST (May 9, 2022), <https://perma.cc/Y92E-8MJC>.

56. See Peltier, *supra* note 17 (explaining that the term “le grand remplacement” in French was first used by Renaud Camus, another French author, and has gained in followers, including the perpetrators of two mass shootings: one in New Zealand and the other in El Paso, TX); see also Norimitsu Onishi, *The Man Behind a Toxic Slogan Promoting White Supremacy*, N.Y. TIMES (Sept. 20, 2019), <https://perma.cc/ZR5R-B67U> (backgrounding Camus in more detail). The same theory was relied upon by an even more recent mass shooting in Buffalo, N.Y. Dustin Jones, *What Is the ‘Great Replacement’ and How Is It Tied to the Buffalo Shooting Suspect?*, NPR (May 16, 2022), <https://perma.cc/FD45-EECT> (explaining how the “Great Replacement” theory motivated the shooting in Buffalo in 2022).

57. Lara Bullens, *How France’s ‘Great Replacement’ Theory Conquered the Global Far Right*, FR. 24 (Aug. 11, 2021), <https://perma.cc/QV2X-AGLJ>; see also Maani Truu, *Conspiracy Theory Linked to Christchurch Attack at Risk of Entering Mainstream: Report*, SBS NEWS (July 8, 2019), <https://perma.cc/4EXX-N9UY> (noting that the terminology “white genocide” is often used interchangeably to describe this theory).

58. Norimitsu Onishi, *In France, a Racist Conspiracy Theory Edges Into the Mainstream*, N.Y. TIMES (Feb. 15, 2022), <https://perma.cc/CY46-7CCJ>.

59. JEAN GUERRERO, HATEMONGER: STEPHEN MILLER, DONALD TRUMP, AND THE WHITE NATIONALIST AGENDA 127 (2020) (quoting Carly Goodman, *John Tanton Has Died. He Made America Less Open to Immigrants – and More Open to Trump*, WASH. POST (July 18, 2019), <https://perma.cc/DP43-PREW>).

proponents of the “Great Replacement” theory is grounded in fear of the unknown—the potential result of demographic changes imperiling one group’s ethnic, racial, religious, or cultural domination. These ideas are taken seriously by reviewers of the book, as well as others who advocate for numerical limitations on immigration, restrictions on types of immigrants, and how to ensure that incoming migrants “assimilate” into the dominant culture.<sup>60</sup> Each of these strategies is backed by assertions of unimaginable loss and harm that will occur if these drastic measures are not taken.<sup>61</sup>

But these speculative visions fail to consider, first, that this horizon of apocalypse has been impending for some time. These fears being roiled and pricked by politicians are not new, but rather trace back to the origins of U.S. immigration policy and judicial decisions.<sup>62</sup> Second, this focus on future speculative harm fails to consider that apocalypse has already occurred for many communities; they just happen to be those who have always been historically marginalized, extant to power, and in the minority.<sup>63</sup> Fear is strongest as an emotion when it is about the unknown<sup>64</sup> – meaning the type of loss and harm that has been effected on others is most terrifying to the dominant population, who can only imagine such a horrific outcome with incredulity.<sup>65</sup> Those who have experienced such harm have already seen the end of their way of life and must confront an even more crucial concern – what to do now?

As I will discuss in Part IV, we do not lack inventive ideas, clever interpretations, and unique takes on how to adapt, survive, and improve upon prior societal norms, arrangements, and expectations. Unlike Raspail’s cataclysmic

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60. Dalmia, *supra* note 42.

61. Indeed, this strategy has been successful, as many of these measures have been implemented regularly over time. For example, numerical limits have long been in place, initially restricting individuals according to a proportional share of those nationals already living in the U.S. under the Johnson Reed Act of 1924. In 1965, a more progressive approach, the Hart-Celler Act, evenly distributed visa availability. However, in doing so, it had the effect of limiting immigration from, for example, Mexico, where a circular migratory pattern became interrupted by these limitations. Subsequent Acts focused on how to punish violations of those who tried to circumvent these policies, rather than addressing the ways in which numerical restrictions where themselves creating harm – keeping families apart, etc.

62. See David C. Atkinson, *What History Can Tell Us about the Fallout from Restricting Immigration*, TIME (Feb. 3, 2017), <https://perma.cc/AP6G-54SF>.

63. “‘We’ve already survived an apocalypse,’ said Roanhorse, who is of Ohkay Owingeh Pueblo descent.” Alexandra Alter, *‘We’ve Already Survived an Apocalypse’: Indigenous Writers Are Changing Sci-Fi*, N.Y. TIMES (Aug. 14, 2020), <https://perma.cc/EFC6-FTJP>. Another Native author, Darcie Little Badger, who is a member of the Lipan Apache Tribe of Texas, said she wanted to write about young Indigenous characters in an alternative, magic-filled, contemporary America because so much fiction featuring Native characters is historical and feels outdated. *Id.* “A lot of times when there’s an Apache main character, it takes place in the 1800s,” she said. *Id.* “It almost feels like in fiction, people think we didn’t survive, but we did, and we’re still flourishing.” *Id.*

64. H.P. Lovecraft, *Weird Tales*, LAPHAM’S Q. (1927), <https://perma.cc/2XJ7-JD5A> (“The oldest and strongest emotion of mankind is fear, and the oldest and strongest kind of fear is fear of the unknown.”). Credit to Lulu Miller’s essay “The Eleventh Word” in the Paris Review for directing me to this quotation. Lulu Miller, *The Eleventh Word*, PARIS REV. (Oct. 5, 2020), <https://perma.cc/GT2Z-WRLW>.

65. Consider Stephen Miller’s efforts to gin up enthusiasm from supporters at a Trump campaign rally in San Diego on May 27, 2016: “Are you ready to secure that border? . . . Are you ready to stop Islamic terrorism? And are you ready to make sure that American children are given their birthright in their own country?” GUERRERO, *supra* note 59, at 1.

imagining of the end of civilization, most apocalyptic speculative fiction includes something important – an idea of what “after” might look like. An exploration of these alternative visions occurs later in this Article, but first, I turn to the connection between *The Camp of the Saints* and the Trump administration.

### C. *A Link from the Camp of the Saints to the Trump Administration*

The link from *The Camp of the Saints* to the Trump administration is strong. Several of President Trump’s policy advisors connected with the ideas presented in *The Camp of the Saints*.<sup>66</sup> These policy advisors relied upon these same themes of sovereignty/self-determinism, fear, and apocalypse to build support for the draconian shifts in immigration policy that they made, with great zeal, over the course of four years.

The architect of a large part of Trump’s immigration policy decisions was not the typical prominent leadership figure that you might expect, but rather a senior policy advisor named Stephen Miller. The journalist Jean Guerrero, in her book *Hatemonger*, details Miller’s rise to power in the Trump administration, and the influences that gave substance to his effective and wide-ranging policy proposals.<sup>67</sup> The first important influence was a mentor, David Horowitz, the president of a conservative think tank, who was mentioned in the introduction of this Article. Again, in noting how President Obama’s successful use of “hope” as a campaign messaging strategy, Horowitz argued that politicians should use fear in their messaging to voters, because “[it] is a much stronger and more compelling emotion.”<sup>68</sup> It is clear that Miller heeded that advice. Indeed, Horowitz would go on to help Miller get his first jobs in politics, with Michelle Bachmann, and eventually with then-Senator Jeff Sessions.<sup>69</sup> Miller remained in contact with Horowitz, seeking messaging strategies and receiving feedback on campaign speeches throughout 2016.<sup>70</sup>

The second, and related influence on Miller, was the speculative fiction novel *The Camp of the Saints*. According to a number of emails that were released to the Southern Poverty Law Center, while Miller was the communications director for then Senator Jeff Sessions, he would frequently pitch

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66. “Miller has been peddling a border crisis to whip up hysteria about white genocide, or the idea that brown people are coming to replace white people systematically,” Guerrero said. “But he says it camouflaged in the language of national security and the economy. Miller has been doing this for a very long time, and he knows how to manipulate the media’s desire for balance.” Marcela García, *Media are Falling Into Stephen Miller’s Trap*, BOS. GLOBE (Mar. 27, 2021), <https://perma.cc/M7JQ-2FMN>.

67. GUERRERO, *supra* note 59.

68. Jean Guerrero, *The Man Who Made Stephen Miller*, POLITICO (Aug. 1, 2020), <https://perma.cc/4MDS-RNPK>.

69. *Id.*

70. GUERRERO, *supra* note 59, at 161, 166. As a note, Horowitz also led retreats for several years attended by conservative lawmakers, including Jeff Sessions, in which he educated them about the “political utility of ‘hate.’” *Id.* at 131.

stories to Breitbart, the arch-right website.<sup>71</sup> In September of 2015, he sent an email to Kellie McHugh, an editor at Breitbart, and Julia Hahn, a columnist at Breitbart,<sup>72</sup> suggesting they focus their efforts on messaging around immigration.<sup>73</sup> Miller proposed in one email that Breitbart write a piece critiquing Pope Francis's recent statements in support of Western powers providing more support to refugees, saying, "Someone should point out the parallels to Camp of the Saints."<sup>74</sup>

Exactly one week later, Julia Hahn would go on to do just that, publishing a lengthy piece criticizing the Pope, the media, and Western leaders, including many conservatives, on being unwilling to prevent an "invasion" of refugees.<sup>75</sup> In her article, Hahn summarized Raspail's argument that the inability of the Western conscience to erect walls, to "put her foot down," to turn people away, will lead to the undoing of Western civilization itself.<sup>76</sup> She quotes Pat Buchanan, saying:

"Will the West endure, or disappear by the century's end as another lost civilization? Mass immigration, if it continues, will be more decisive in deciding the fate of the West than Islamist terrorism . . . Does Europe have the toughness to seal its borders and send back the intruders? Or is Europe so morally paralyzed it has become what Jean Raspail mocked in 'The Camp of the Saints'?"<sup>77</sup>

Katie McHugh, the editor included on those emails to Breitbart (and who later released them), said in an interview the following year, "What Stephen Miller sent to me in those emails has become policy at the Trump administration."<sup>78</sup> Indeed, less than six months later, Stephen Miller was on the payroll as a campaign advisor and speechwriter for Donald Trump.<sup>79</sup> He stayed on through all four years of the administration and was responsible for a number of immigration policy changes.<sup>80</sup> It should be noted that Miller, Julia Hahn, and Steve Bannon have all referenced the novel, its themes, and its relevance

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71. Michael Edison Hayden, *Stephen Miller's Affinity for White Nationalism Revealed in Leaked Emails*, S. POVERTY L. CTR., HATEWATCH (Nov. 12, 2019), <https://perma.cc/7UCM-VVGW>.

72. Hahn would later join Steve Bannon (founder of Breitbart) and Miller in the White House. See Ben Terris, *Who Is Julia Hahn? The Unlikely Rise of Steve Bannon's Right-Hand Woman*, WASH. POST (Mar. 29, 2017), <https://perma.cc/JDN9-F2XX>.

73. *Id.*

74. *Id.*

75. Julia Hahn, 'Camp of the Saints' Seen Mirrored in Pope's Message, BREITBART (Sept. 24, 2015), <https://perma.cc/D8ST-AVYA>.

76. *Id.*

77. *Id.*

78. See Hayden, *supra* note 71; see also Lulu Garcia-Navarro, *Former Breitbart Editor Katie McHugh on Stephen Miller and White Supremacy*, NPR (Dec. 15, 2019), <https://perma.cc/65A4-FPPX>.

79. Robert Costa, *Top Sessions Aide Joins Trump Campaign*, WASH. POST (Jan. 25, 2016), <https://perma.cc/R4BG-GRFW>.

80. See Matthew Nussbaum, *Trump Taps Campaign Aide Stephen Miller as Senior Adviser*, POLITICO (Dec. 13, 2016, 5:01 PM), <https://perma.cc/D8P9-A8VL>; see also Jonathan Blitzer, *How Stephen Miller Manipulates Donald Trump to Further His Immigration Obsession*, NEW YORKER (Mar. 2, 2020), <https://perma.cc/YE24-6G8R>.

to immigration policy in the United States,<sup>81</sup> and that all held positions as policy advisors for the Trump administration. An explanation of how they influenced immigration policy follows.

## II. SPECULATIVE FICTION AND THE TRUMP ADMINISTRATION

Over the course of four years, the Trump administration took 1,042 actions that shaped immigration policy.<sup>82</sup> The administration, through agency actors, was able to exhort enormous change to the operation of the immigration machine and its various mechanisms.

This Article will focus on three prominent policy actions taken by the Trump administration, largely at the direction of Stephen Miller, and how they relate back to the ideals espoused in *The Camp of the Saints* – (1) The Muslim Travel Ban, (2) the separation of parents from their children at the border, and (3) the precipitous drop in refugees admitted to the United States.<sup>83</sup> Each of these policies was undergirded by the same themes put forth in *The Camp of the Saints* about sovereignty, fear, and apocalypse. Miller's rhetoric on these three policy points carefully matched the emotional stasis threaded through the Camp of the Saints. Each is based heavily in speculation that draws on the thematic elements mentioned above. The policies are grounded in obfuscation about the type of people who are seeking entry into the United States and what is known about them. Importantly, these policies, grounded in speculation, caused real harm.

### A. *The Muslim Travel Ban* (Fear)

One week after taking office, former President Trump held true to his promise to exclude Muslim individuals from the United States.<sup>84</sup> The order was issued with little notice to important actors and resulted in hundreds of people who had previously been screened to enter the United States, suddenly becoming inadmissible midair.<sup>85</sup> The result was chaos at many international airports as recently arrived passengers tried to make sense of why their approved applications, months or even years in the making, were being summarily revoked.<sup>86</sup> Several lawsuits resulted, and the ban went through various versions before it was finally deemed constitutional by the Supreme Court in

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81. Glenn Thrush & Jennifer Steinhauer, *Stephen Miller Is a 'True Believer' Behind Core Trump Policies*, N.Y. TIMES (Feb. 11, 2017), <https://perma.cc/88VU-GPJ7>.

82. See *1,044 Trump-Era Immigration Policies (and their Current Status)*, IMMIGR. POL'Y TRACKING PROJECT, <https://perma.cc/6UTZ-M6BX> (last visited June 25, 2022).

83. See generally Jonathan Blitzer, *How Stephen Miller Single-Handedly Got the U.S. to Accept Fewer Refugees*, NEW YORKER (Oct. 13, 2017), <https://perma.cc/3FQC-SW2S>.

84. See Exec. Order No. 13679, 82 Fed. Reg. 8977 (Jan. 27, 2017).

85. See *Trump Executive Order: Refugees Detained at US Airports*, BBC (Jan. 29, 2017), <https://perma.cc/Z2Q3-5EEL>.

86. See Ron Nixon, *More People Were Affected by Travel Ban than Trump Initially Said*, N.Y. TIMES (Jan. 31, 2017), <https://perma.cc/97LA-K92R>.

a disputed decision.<sup>87</sup> A more detailed accounting of the process by which this executive order was implemented follows.

As early as December 2015, former President Trump stated his intentions to prevent Muslims from entering the United States.<sup>88</sup> Even earlier, he had expressed support for requiring all adherents to Islam in the United States to register in a national database.<sup>89</sup> But, it was Stephen Miller, the policy advisor hired in December 2016,<sup>90</sup> who took this idea and created the architecture for putting such a ban into place.<sup>91</sup> Focusing on the text of the executive orders, a narrative emerges: individuals from the banned countries are to be suspected of terrorism, are likely to disguise themselves as refugees fleeing war and civil strife, and likely value “violent ideologies over American law.”<sup>92</sup> Each of these assertions lacks a strong factual foundation, is fear-based, and is designed to evoke a sense of being under attack. This narrative approach supplants facts with fear and utilizes this fear for a political purpose.

In the text of the initial Executive Order issued on January 27, 2017, which Miller helped to author, the rationale for the ban first states that “[n]umerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program.”<sup>93</sup> This statement does not reference any specific report or

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87. See Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017). The litigation efforts against the order included *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), as well as cases in Maryland and Washington state; however, these cases were nullified by the Supreme Court’s decision in *Trump v. Hawaii*. Notably, in the midst of litigation, the Trump administration issued Presidential Proclamation 9645, extending the travel ban indefinitely, and perhaps also as an effort to stifle the various litigation efforts against the travel ban. Proclamation No. 9645, 82 Fed. Reg. 45161 (Sept. 24, 2017).

88. Jenna Johnson, *Trump Calls for ‘Total and Complete Shutdown of Muslims Entering the United States’*, WASH. POST (Dec. 7, 2015, 8:12 PM), <https://perma.cc/38F7-C86Z>.

89. Jenna Johnson & Abigail Hauslohner, *‘I Think Islam Hates Us’: A Timeline of Trump’s Comments about Islam and Muslims*, WASH. POST (May 20, 2017, 3:16 PM), <https://perma.cc/2Z5Y-YMEY>.

90. Miller was originally hired as part of the Trump campaign team in January 2016. Costa, *supra* note 79. However, he joined the administration as the national policy director in November 2016, before becoming a senior policy advisor in December 2016. *Id.*; Robert Costa, Philip Rucker & Elise Vieback, *Pence Replaces Christie as Leader of Trump Transition Effort*, WASH. POST (Nov. 11, 2016), <https://perma.cc/9FBY-7HC8>; Nussbaum, *supra* note 80.

91. Brian Bennett, *Travel Ban Is the Clearest Sign Yet of Trump Advisors’ Intent to Reshape the Country*, L.A. TIMES (Jan. 29, 2017), <https://perma.cc/7DEZ-4GY5>; Rebecca Savransky, *Scarborough Singles Out Trump Aide Stephen Miller for ‘Power Trip’*, HILL (Jan. 30, 2017), <https://perma.cc/Z6F8-G5EL>; Evan Perez, Pamela Brown & Kevin Liptak, *Inside the Confusion of the Trump Executive Order and Travel Ban*, CNN (Jan. 30, 2017), <https://perma.cc/P4NK-TFXT>.

92. Exec. Order No. 13769, Protecting the Nation from Foreign Terrorist Entry into the United States, 82 Fed. Reg. 8977 (Jan. 27, 2017); *see also*, Zainab Ramahi, *The Muslim Ban Cases: A Lost Opportunity for the Court and a Lesson for the Future*, 108 CALIF. L. REV. 557 (2020) (delving deeply into the language of the Executive Orders and missed opportunities by the federal courts to correct fundamental misassumptions about immigration, race, and religion)

93. *Donald Trump’s Executive Order on Immigration – The Full Text*, GUARDIAN (Jan. 27, 2017), <https://perma.cc/4WQC-3BRD>.

Congressional finding, nor does it allude to any data to support this finding.<sup>94</sup> What it does do is hearken back to a horrific moment in the history of the United States and allege, at least subliminally, that this sort of thing is likely to happen again if a change is not made.

While the ban went through several iterations, added other countries, and was eventually found constitutional for national security purposes, its effect had real harm.<sup>95</sup> Initially slated to be a pause on travel for six months, the ban extended throughout the Trump administration's time in power. It was only rescinded following Biden's election.<sup>96</sup> During the time in which the travel ban was in effect, "[o]verall, at least 42,650 people — including students, parents, siblings, children, and businesspeople — [were] barred from the United States because of their country of origin, rather than any warning signs in their files."<sup>97</sup> During this time, spouses were separated, children were unable to reunite with their parents, and families suffered immensely.<sup>98</sup>

The thematic basis for this ban was fear of the unknown. The idea was that there was insufficient knowledge about the individuals entering the U.S., and that this lack of information should strike fear in the hearts of U.S. residents. During his campaign, Trump said that he was calling for such a ban, "until our country's representatives can figure out what is going on,"<sup>99</sup> intimating that, in fact, it did not know what was going on.<sup>100</sup> He continues, ". . . [I]t is obvious to anybody the hatred is beyond comprehension" and "[w]here 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. . . ." <sup>101</sup>

While later rhetoric equivocated about the religious element, the fear component was regularly highlighted. Stephen Miller took up the vanguard of the dog whistle, saying, "To be clear, this is not a Muslim ban. . . . This is not about religion — this is about terror and keeping our country safe," in a Fox

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94. In fact, several federal courts pointed out that "not a single terrorist attack in the United States has involved a visa-holder from any of the six Muslim countries named in the ban (Iran, Libya, Somalia, Sudan, Syria, and Yemen, with Iraq now removed from the preceding executive order)." See Jeffrey D. Sachs, *The Muslim Ban and American History*, BOS. GLOBE (Mar. 19, 2017), <https://perma.cc/4J2C-3N23>.

95. See Stef W. Kight, *The Evolution of Trump's Muslim Ban*, AXIOS (Feb. 10, 2020), <https://perma.cc/2XZY-MJSJ>; see also Adam Liptak and Michael D. Shear, *Trump's Travel Ban is Upheld by Supreme Court*, N.Y. TIMES (Jun. 26, 2018), <https://perma.cc/SZ23-LJYF>.

96. *Biden Has Overturned Trump's 'Muslim Travel Ban.' Activists Say That's Not Enough*, NPR (Mar. 6, 2021), <https://perma.cc/TA76-7L94>.

97. Harsha Panduranga, *The Muslim Ban: A Family Separation Policy*, BRENNAN CTR. FOR JUST. (June 26, 2019), <https://perma.cc/ZHN8-ASGQ>.

98. See Isa Gutierrez, *'Psychological Trauma and Stress': The Lasting Impact of the 'Muslim Ban'*, NBC NEWS (Jan. 20, 2021), <https://perma.cc/YS9T-ZDJ3>; see also William Roberts, *Muslim Americans Testify on Effects of Trump's Travel Ban*, AL JAZEERA (Sept. 24, 2019), <https://perma.cc/M2WY-T2VA>.

99. Johnson, *supra* note 88.

100. In fact, the Department of State and Department of Homeland Security did very much know what was going on and had procedures in place to ensure that they continued to "know what was going on." See, e.g., Marty Lederman, *Contrary to Popular Belief, the Court Did Not Hold that the Travel Ban is Lawful—Anything But*, JUST SEC. (July 2, 2018), <https://perma.cc/ZR6X-A23V>.

101. Johnson, *supra* note 88.

News interview on January 30, 2017.<sup>102</sup> In that same interview, Miller alludes to the fact that the American people do not want to have “what happened in Nice, France, when a truck mowed over innocent men, women and children, or what happened in Paris, where gunmen slaughtered people, innocent. . . . or what happened all over the world, Islamic terrorism.” To drive the point home, he says, “You have to be prepared for the threat that hasn’t happened yet.”<sup>103</sup>

The theme of fear is present here in the same way that it was in *The Camp of the Saints*. It is based in speculation about what might happen. Importantly, it is a speculation of ignorance – one which does not attempt to conceptualize or imagine a future society which addresses the reality of migration. It provides no affirmative vision of a safe global society. Instead, its premise is that only an insular society can be safe, and that those who are not within the whole are to be feared. Such otherization is nearly clinical in its exactitude. But this is not the only Trump-era immigration policy that caused great harm.

#### B. *Child Separation at the Border* (Sovereignty/Self-determinism)

Miller is also widely known to be the mastermind behind the scheme to separate parents from their children at the border in order to deter them from coming to the United States.<sup>104</sup> As Miller is quoted in saying in a memo to Customs and Border Patrol, “My mantra has persistently been presenting aliens with multiple unsolvable dilemmas to impact their calculus for choosing to make the arduous journey to begin with.”<sup>105</sup> This statement echoes the theme of sovereignty and self-determinism from *The Camp of the Saints* – the idea that a country can construct its own borders, laws, and implementations – and that the administration in power has a mandate to implement its vision, regardless of internal or external critique.<sup>106</sup>

In 2017, the Trump administration instituted a policy whereby all adults crossing the border were criminally prosecuted for illegal entry and illegal reentry.<sup>107</sup> Although most immigration violations are handled through civil procedures, there are still a significant number of individuals who are

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102. Stephen Miller Defends President Trump’s Travel Ban, FOX NEWS (Feb. 4, 2017), <https://perma.cc/HML8-MSPC>.

103. *Id.*

104. McKay Coppins, *The Outrage Over Family Separation Is Exactly What Stephen Miller Wants*, ATL. (June 19, 2018), <https://perma.cc/UN6F-BDWA>.

105. Julia Ainsley, *Stephen Miller Wants Border Patrol, Not Asylum Officers, to Determine Migrant Asylum Claims*, NBC NEWS (July 29, 2019, 7:31 PM), <https://perma.cc/3SYM-ASSL>.

106. Some of these critiques might include the fact that the president, and by consequence its administration, was elected with fewer than 50% of the voting population’s consent. Another critique would be that even if a majority did consent, such policies are not representative of the polity as a whole, and their implementation by the Executive does not lend them the necessary moralistic (and, some would say, legal) underpinnings necessary to act in good faith. Additional critiques would note that deterrence is ineffective, expensive, cruel – and, to be frank, unpopular.

107. Julie Hirschfeld Davis & Michael D. Shear, *How Trump Came to Enforce a Practice of Separating Migrant Families*, N.Y. TIMES (June 16, 2018), <https://perma.cc/C2NX-W3CR>.



prosecuted criminally each year.<sup>108</sup> Typically, these prosecutions are reserved for drug traffickers, those accused of chronic reentry, or others that the U.S. government chooses to prioritize.<sup>109</sup>

The Trump administration, at the direction of Stephen Miller and Jeff Sessions, embraced a strategy to prosecute as close to 100% of individuals as possible, in a model of deterrence.<sup>110</sup> But simply prosecuting someone criminally, they reasoned, was not a sufficient deterrent, given that the average person convicted for criminal entry serves little time in jail.<sup>111</sup> In order to sufficiently raise the stakes, Sessions and Miller determined that parents who entered with their children would also be prosecuted.<sup>112</sup> By doing so, and placing those individuals in criminal custody (even if only for a few days), parents would be required to be separated from their children.<sup>113</sup>

The act of separating children from their parents is not unknown in U.S. history.<sup>114</sup> It brings to mind a modern version of the family separation imposed by slaveholders, described by one scholar as “a slow death.”<sup>115</sup> It also reckons to the practice of separating Native children from their families, and bringing them to “Indian Residential Schools,” as they were platonically called.<sup>116</sup> This practice of separation has held several previous rationales:

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108. *Major Swings in Immigration Criminal Prosecutions During Trump Administration*, TRAC IMMIGR. (Dec. 18, 2020), <https://perma.cc/2DYN-AM4N>.

109. See Eleanor Acer, *Criminal Prosecutions and Illegal Entry: A Deeper Dive*, JUST SEC. (July 18, 2019), <https://perma.cc/HTS3-85L4> (showing a history of how these criminalization laws became implemented); see also Nate Mackay, *Federal Judge Says Deportation Rule is Unconstitutional and Discriminatory*, COURTHOUSE NEWS SERV. (Aug. 18, 2021), <https://perma.cc/SCS4-HNG5> (reporting that a federal judge in Nevada recently found that charging a felony for illegal reentry was unconstitutional because of the discriminatory origins of the law).

110. See generally Davis & Shear, *supra* note 107 (mentioning the origins of the family separation policy).

111. See generally *Prosecuting People for Coming to the United States*, AM. IMMIGR. COUNCIL (Aug. 23, 2021), <https://perma.cc/XQT3-WV44> (providing a more comprehensive explainer of how these laws function).

112. In defense of his decision, after receiving criticism from evangelical groups, Sessions quoted the Bible (and apparently claimed divine support for the government), saying, “Persons who violate the law of our nation are subject to prosecution . . . I would cite you to the Apostle Paul and his clear and wise command in Romans 13 to obey the laws of the government because God has ordained the government for his purposes.” Adam Edelman, *Sessions Cites Bible in Defense of Breaking Up Families, Blames Migrant Parents*, NBC NEWS (June 14, 2018, 3:54 PM), <https://perma.cc/N8PC-3Z7L>.

113. See Michael D. Shear, Katie Benner & Michael S. Schmidt, “We Need to Take Away Children,” *No Matter How Young, Justice Dept. Officials Said*, N.Y. TIMES (Oct. 6, 2020), <https://perma.cc/3FRT-TVKH>.

114. See Anita Sinha, *A Lineage of Family Separation*, 87 BROOK. L. REV. 445, 446 (2022) (acknowledging the long history of family separation in the United States, noting the “justification narratives” that cemented the practice and articulating the need for sharing such narrative histories in the interest of “advanc[ing] the pursuit of justice”); see also Harmeet Kaur, *Actually, the US Has a Long History of Separating Families*, CNN (June 24, 2018, 9:06 PM), <https://perma.cc/3USA-DJN6>; EQUAL JUST. INITIATIVE, *SLAVERY IN AMERICA: THE MONTGOMERY SLAVE TRADE* (2018), <https://perma.cc/VH4V-6C9K>; *Family Separation Among Slaves in America Was Shockingly Prevalent*, ECONOMIST (June 18, 2022), <https://perma.cc/YG37-2QZV> (documenting the practice of family separation among enslaved families).

115. See Stephen Lee, *Family Separation as Slow Death*, 119 COLUM. L. REV. 2319 (2019).

116. Mary Annette Pember, *Death by Civilization*, ATL. (Mar. 8, 2019), <https://perma.cc/B6BB-AN4Q>; see also Andrea Smith, *Soul Wound: The Legacy of Native American Schools*, AMNESTY INT’L (Mar. 26, 2007), <https://perma.cc/LUC5-ZFNK>.

wealth production, paternalism and “civilization,” and now, adherence to and upholding “the law.” Importantly, this modern call for adhering to the “rule of law” and imposing punishment accordingly assumes that there is some value to imposing the criminal legal apparatus as a defining component of U.S. culture despite internal dynamics that have shifted away from such predilections.<sup>117</sup> The same critiques mentioned above in the thematic analysis of *The Camp of the Saints* apply here.

Regardless, Stephen Miller plodded along, expressing no misgivings about the families who were being separated, saying, “No nation can have the policy that whole classes of people are immune from immigration law or enforcement. . . . It was a simple decision by the administration to have a zero-tolerance policy for illegal entry, period. The message is that no one is exempt from immigration law.”<sup>118</sup> While this harm was a tipping point for many Trump supporters, and the President eventually revoked the policy, the damage was extreme.<sup>119</sup> Over the course of several months, more than 2,500 children were separated from their parents.<sup>120</sup> As of October 2021, there were still 445 children who had not been reunited with their parents.<sup>121</sup> Many have been separated for years, because the Trump administration failed to keep accurate records about what happened to the parents after the separations.<sup>122</sup> While the administration attempted to exercise sovereignty arguments in support of this policy, they were ultimately unsuccessful, and resulted in significant harm. The theme of sovereignty permitting unfettered power is clearly present in this policy, as well as the next.

### C. *The Precipitous Decline in Refugee Admissions* (Apocalypse)

The final policy linked to the thematic elements and rhetoric of *The Camp of the Saints* is the drastic drop in refugee admissions into the United States.<sup>123</sup> In 2017, President Obama set the refugee cap at 110,000 people, raising it from the average of 67,000 during his term, to accommodate those fleeing the Syrian civil war. When Trump was elected, he “paused” the refugee admission process and set the following year’s cap at 45,000.<sup>124</sup> This

117. See Weihua Li, David Eads & Jamiles Lartey, *There Are Fewer People Behind Bars Now than 10 Years Ago. Will it Last?*, MARSHALL PROJECT (Sept. 27, 2021, 1:00 PM), <https://perma.cc/7A5S-QQ4T>.

118. Davis & Shear, *supra* note 107.

119. See Stephanie Garcia, *Lingering Trauma: Families Separated at Border Suffer Long-Term Mental Health Challenges*, USA TODAY (Jan. 28, 2021, 6:00 AM), <https://perma.cc/WD8G-T2EZ>.

120. *Family Separation: By the Numbers*, ACLU (Oct. 2, 2018), <https://perma.cc/DYB7-Y4Z8>.

121. Aishvarya Kavi, *A Court Filing Says Parents of 445 Separated Migrant Children Still Have Not Been Found*, N.Y. TIMES (Oct. 28, 2021), <https://perma.cc/D382-WYVK>.

122. Caitlin Dickerson, *Parents of 545 Children Separated at the Border Cannot Be Found*, N.Y. TIMES (Mar. 15, 2021), <https://perma.cc/PU95-CQE2>.

123. Again, Miller was the progenitor of this idea, spearheading its implementation and urging lower and lower numbers each year. One former aide alleges that Miller once said, “I would be happy if not a single refugee foot ever again touched American soil.” Alexandra Hutzler, *Stephen Miller Said He’d Be ‘Happy if Not a Single Refugee Foot Ever Again Touched American Soil,’ Ex-Trump Aide Claims*, NEWSWEEK (Jan. 28, 2019, 4:19 PM), <https://perma.cc/MM4V-ZKJS>.

124. Blitzer, *supra* note 83.

number continued to drop until it reached a cap of 15,000 in Trump's last year. But the administration failed to meet even those modest goals. For example, of the 4,000 openings in 2019 for Iraqis who helped the military, only 123 were welcomed to the United States.<sup>125</sup>

Trump's policy advisor Miller had long been an advocate for reducing the overall immigrant population, stating in a 2015 email that Immigration Heritage Month "would seem a good opportunity to remind people about the heritage established by Calvin Coolidge, which covers four decades of the 20th century,"<sup>126</sup> referring to the 1924 Hart-Celler Act signed by President Coolidge. This piece of legislation severely restricted immigration, resulting in an 80% drop of overall immigrants, and completely barring immigrants from Asia.<sup>127</sup> It is widely known that this law was grounded in eugenics and that the purpose of the law was to maintain the homogeneity of the United States.<sup>128</sup> As Coolidge said in 1921, prior to the passage of the law, "There are racial considerations too grave to be brushed aside for any sentimental reasons," and that "[b]iological laws tell us that certain divergent people will not mix or blend. . . . Quality of mind and body suggests that observance of ethnic law is as great a necessity to a nation as immigration law."<sup>129</sup> The law persisted nearly unchanged, as Miller mentioned, for the next forty years.<sup>130</sup> This is the heritage that he thought worthy of acknowledgement.

Here, the reduction in refugees links back to the earlier discussion on the "Great Replacement" theory, an apocalyptic notion that considers the demise of "our way of life."<sup>131</sup> This concern for apocalypse is meant to stoke the fears of the dominant/majority population, feeding into preferences for homogeneity. But the strongest attribute of apocalyptic narrative is that it is seen as "the end." There is no imagination beyond, and rendered most strongly are visions of death, destruction, and a fatalistic outcome. Such fears are strengthened by apocalyptic imagery in religious texts—a link which is clearly made in *The Camp of the Saints*. Because it is seen as "the end," the

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125. Zolan Kanno-Youngs & Michael D. Shear, *Trump Virtually Cuts Off Refugees as He Unleashes a Tirade on Immigrants*, N.Y. TIMES (Oct. 1, 2020), <https://perma.cc/Y78W-FXRZ>.

126. Katie Rogers & Jason DeParle, *The White Nationalist Websites Cited by Stephen Miller*, N.Y. TIMES (Nov. 18, 2019), <https://perma.cc/SFM5-PK7B>.

127. Anna Diamond, *The 1924 Law That Slammed the Door on Immigrants and the Politicians Who Pushed it Back Open*, SMITHSONIAN MAG. (May 19, 2020), <https://perma.cc/CVC9-MYX4>.

128. *The Immigration Act of 1924 (The Johnson-Reed Act)*, OFF. OF THE HISTORIAN, U.S. DEP'T OF STATE, <https://perma.cc/6FWL-PPNV> (last visited July 25, 2022); see also Kevin Yuill, "America must remain American": The Liberal Contribution to Race Restrictions in the 1924 Immigration Act, 13 FED. HIST. 58, 59–84 (2021).

129. Adam Serwer, *White Nationalism's Deep American Roots*, ATL. (Apr. 2019), <https://perma.cc/G7BC-EFDJ>.

130. Miller's efforts to effectively end most forms of immigration, or "put a pause" on it, as he referred to Coolidge's policies bring to mind the science fiction parable *The Space Traders* by Derrick Bell, in which the United States is proffered a trade in which all Black people would be removed from the country in exchange for wealth, safe renewable energy, and other major technological advances. BELL, *supra* note 13. Such a vision was explored in a symposium on Bell's follow up piece "After We're Gone." See generally Derrick Bell, *After We're Gone: Prudent Speculations on America in a Post-Racial Epoch*, 34 ST. LOUIS U. L. J. 393 (1990).

131. See *supra* Section I.B.3.b.

stakes are incredibly high—normal guidelines are cast off in favor of whatever might be necessary for protection. This theme of apocalypse has been reified over and over in the immigration context – the extension of the plenary power, the narrowing of any constitutional protections in the immigration context (with an even narrower categorization of to whom these protections might apply), and binding each of these judicial interpretations together is the singular concern about national security.

In *Trump v. Hawaii*, the Supreme Court disregarded statements made by the president about why he was “pausing” migration from Muslim-majority nations, because a legal team later articulated there could be unknown national security concerns. This fear of the unknown, and the notion that it might somehow end civilization, provided support for policy decisions by the Trump administration, and permitted the judiciary’s generous interpretations of those decisions.

These three examples – the Muslim travel ban, the separation of families at the border, and the precipitous drop in refugee admissions – demonstrate the real harm that speculation can engender. But there is no doubt that speculation will continue. Therefore, instead of advocating for the excision of speculation from the legal system, this Article argues first that speculation should be acknowledged (see Part III, *infra*), and second, that a broader range of speculation should be admitted into the realm of political possibility (see Part IV, *infra*). Specifically, this Article concludes that speculative fiction from a more diverse array of authors could allow for the acknowledgement of faulty systems, the introduction of creative solutions, and the distance to engage in conversations about hyper-partisan policy issues, including immigration.

### III. NARRATIVE, SPECULATION, AND THE LAW

Narrative is, of course, compelling. This is evident from the success the Trump administration had in garnering vocal, if not majoritarian, support for its many cruel immigration policies – family separation, reducing refugee numbers to nearly zero, a complete prohibition on entry for most of its last year in power, etc. It is also clear that narrative can be powerful based on the seminal case of Trump’s presidency—*Trump v. Hawaii*—reaffirming the president’s power to essentially do whatever he or she wills re: immigration policy, particularly when that policy is couched in terms of national security.<sup>132</sup> This decision, despite Trump regularly calling for a “Muslim ban,”

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132. In *Trump v. Hawaii*, for example, Chief Justice Roberts, writing for the Supreme Court, noted that judges “cannot substitute [their] own assessment for the Executive’s predictive judgments” on matters of foreign affairs, which are “delicate, complex, and involve large elements of prophecy.” *Trump v. Hawaii*, 138 S. Ct. 2392, 2421 (2018). Prof. Marty Lederman provides his own interpretation: “The decision to be so deferential to the President was based upon a combination of two things: (i) that the Proclamation ‘merely’ has a disparate impact on Muslims, but does not facially single them out (thereby distinguishing it from the invalid order in *Korematsu*, which, according to Roberts, was ‘objectively’ unlawful); and (ii) that the Proclamation involves questions of entry into the United States and is ostensibly concerned with national security threats.” Lederman, *supra* note 100.

manages to avoid the narrative spell, but in doing so, gives it staying power. The administration was able to effectively withhold entry to thousands of people because they were born in Muslim-majority countries. It did so by explicitly stating its purpose to its constituents and then claiming another purpose to the Supreme Court, which quickly turned a blind eye to the public statements.

This public-facing narrative relies on falsehoods about immigrants as a group—that they are more prone to violence and criminal activity, that they have a negative effect on the economy, or that they say the “magic words”<sup>133</sup> in order to claim asylum and then disappear into the interior of the country. Each of these claims has repeatedly been proven false,<sup>134</sup> and yet the narrative remains strong. No doubt, this author had concerns about even repeating these narratives for fear of perpetuating them but felt it necessary to address them head on with contradicting evidence. Regardless, contradictory evidence and factual counters to bold narratives are not always sufficient. Sometimes narrative is most effective at connecting with the broader public in conveying important points about prospective policy decisions.

Many scholars have laid foundational groundwork in this field, including Richard Delgado, Jean Stefancic, Derrick Bell, and other Critical Legal Theorists. These scholars invoke narrative to illustrate how policy changes might affect specific individuals. Such narratives give insight into the daily lives of people who share different backgrounds, beliefs, values, and political leanings than the reader. Such a form is especially relevant for political discourse in the United States, when polarization increases not only the gap between these firmly held beliefs, but also the intensity with which they are held, and even the willingness (or unwillingness) for disparate parties to speak and interact with each other. These narratives may in fact be one of the rare moments in which members of conservative and liberal factions can engage with each other. Fiction offers a promising opportunity for such engagement. An entire legal scholarship movement—law and literature—was crafted around this idea.<sup>135</sup>

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133. See Attorney General Jeff Sessions Deliver Remarks to the Executive Office for Immigration Review, U.S. DEP'T OF JUST. (Oct. 12, 2017), <https://perma.cc/Y3KA-FG9M>.

134. See, e.g., BEN POWELL, WRETCHED REFUSE? THE POLITICAL ECONOMY OF IMMIGRATION AND INSTITUTIONS (2020) (offering a conservative/libertarian investigation into “whether immigration decreases economic freedom or increases corruption and terrorism,” based on a case study of Jordan, Israel, and the United States); see also *Understanding the Economics of Immigration*, CHARLES KOCH FOUND. (Aug. 4, 2021), <https://perma.cc/6BZR-FAKH> (finding that “mass immigration significantly enhanced institutions of economic freedom” and that no evidence exists that “immigration degrades institutions or increases violence”). This study contains Ben Powell’s assertion that “[Y]ou will not find any self-respecting social scientist who says that immigrants take jobs, on net, from native-born citizens . . . [despite this being] a widely held belief among the public.” *Id.* He concludes by saying that the same misconception applies to decreases in wages – there is simply no evidence to indicate ongoing, comprehensive wage reductions among native-born workers from immigration. *Id.* (Note: This example was specifically cited for its conservative/libertarian perspective.)

135. See, e.g., William Domnarski, *Law and Literature*, 27 LEGAL STUD. F. 109, 109 (2003) (providing a modern overview of the field with competing interpretations of what exactly “law and literature” means in contemporary legal academic thought); see also Jame Boyd White, LEGAL HERACLES’ BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW (1985) and James Boyd White, THE LEGAL

This Article argues that such narrative analysis can extend to incorporate speculative fiction that drastically reimagines societal structures. While doing so may seem abstract, a quick review of the development of law, its self-referential nature, and the compelling speculative fiction narratives that have arisen from historically marginalized populations should affirm the value of considering these ideas. As previously mentioned, speculative fiction is already part of the canon of the legal system<sup>136</sup> and its ideas pervade populist agendas, while also receiving due analysis from scholars.<sup>137</sup> The Supreme Court has referenced George Orwell's *1984* on multiple occasions, acknowledging the import of this specific piece of literature.<sup>138</sup> Finally, as already mentioned, several high-level policy advisors in the Trump Administration were influenced by *The Camp of the Saints*.

Speculative fiction has also been used in earnest by a small, insightful contingent of legal scholars in various ways. W.E.B. DuBois and Derrick Bell have both authored their own speculative fiction to convey important points about the treatment of Black people in the United States.<sup>139</sup> Indeed, a whole genre of literature, known as Afrofuturism, has sprung up in the past decades to make similar points.<sup>140</sup> Other legal scholars have engaged with speculative fiction in a number of ways, ranging from questions of policing,<sup>141</sup> the future of sex regulation,<sup>142</sup> and other areas. Indeed, questions of technology and the law are highly speculative,<sup>143</sup> and yet important. For example, critiques about predictive algorithms and the way in which liberty rights might be infringed upon by the implementation of these tools.<sup>144</sup>

IMAGINATION (1973), both of which are foundational texts in the movement. A collection of essays contemporaneous with the pinnacle of the Law & Literature scholarly movement can be found in *LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW* (Peter Brooks and Paul Gewirtz eds., 1996).

136. Mitchell Travis, *Making Space: Law and Science*, 23 L. & LITERATURE 241, 241 (2011). Some science fiction has already, to some extent, permeated the judiciary - referenced in a variety of cases. *Id.* at 247. As a result, Travis argues that science fiction and law have a reciprocal relationship and that legal language is in some areas also a language of science fiction. *Id.*

137. Rachael N. Pine, *Speculation and Reality: The Role of Facts in Judicial Protection of Fundamental Rights*, 136 U. PA. L. REV. 655, 659-60 (1988).

138. Nina Totenberg, All Things Considered, *Justices Invoke '1984' During GPS Case Arguments*, NPR (Nov. 8, 2011), <https://perma.cc/AJ8K-SFY4>; see also Margaret Hu, *Orwell's 1984 and a Fourth Amendment Cybersurveillance Nonintrusion Test*, 92 WASH. L. REV. 1819, 1819 (2017).

139. See, e.g., BELL, *supra* note 13, at 160. Consider also the writing of James Baldwin and the way in which it brought "Black life and Black interiority into being" for readers or, specifically, white readers. *James Baldwin & Darnell Moore, Bughouse Square with Eve Ewing* (2019) (downloaded using Apple Podcasts).

140. See, e.g., Delan Bruce, *Afrofuturism: From the Past to the Living Present*, UCLA MAG. (Sept. 3, 2020), <https://perma.cc/FB57-NAXS> (defining Afrofuturism as "a wide-ranging social, political and artistic movement that dares to imagine a world where African-descended peoples and their cultures play a central role in the creation of that world.").

141. See, e.g., Capers, *supra* note 12.

142. See, e.g., I. India Thusi, *Reality Porn*, 96 N.Y.U. L. REV. 738 (2021); see also Bennett Capers, *Future Sex*, 76 N.Y.U. ANN. SURV. AM. L. 293 (2021).

143. See, e.g., JOSHUA FAIRFIELD, *RUNAWAY TECHNOLOGY* (2021) (grappling with the issue of how to construct an administrative or legal apparatus to address the ever more rapidly changing field of technological and digital regulation).

144. See, e.g., Sean Hill, *Bail Reform and the (False) Racial Promise of Algorithmic Risk Assessment*, 68 UCLA L. REV. 910 (2021).

In addition to these explicit conversations about speculation, courts often independently engage in speculation, without addressing it as so. Judges frequently set bonds for individuals based on their best guesses about how likely an individual will attend future hearings or cause harm to others in the interim period. The same is true for parole boards, which are predictive in nature—relying on evidence, certainly, but ultimately speculating about how likely a person is to return as a recidivist. Immigration judges do the same—making similar determinations in bond proceedings about whether someone is likely to suffer harm if they are returned to their home country.<sup>145</sup> The Supreme Court also engages in speculation—indeed, former Justice Stephen Breyer is widely known for his curious hypotheticals<sup>146</sup>—but with the answers to these speculative questions having very real consequences.

In considering how fiction and speculation are already tightly knit into the fabric of the legal system, this Article argues that engaging with speculative fiction is a logical next step that could have real, positive implications in the way that immigration policies are crafted and administered.

#### A. *Speculation and the Exertion of Power*

Because speculation is built into the law, those with positions of authority exert power, in part, based on their own speculations about what is or is not possible.<sup>147</sup> In so doing, political and non-political actors create and interpret policy based on their own past experiences, and frequently, based on their own imaginations about what is possible. Again, this Article’s critique is one that acknowledges that speculation is inextricable from the law. Therefore, this section analyzes how that speculation is exerted as power, particularly within the context of immigration policy in the United States. This section first considers the ways in which power is exerted in the immigration context and otherwise, then weighs the implications of these legal decisions, and finally, critiques the fact that legal interpretation is constrained by the similarity among the decision-makers.

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145. It should be noted that speculation is not permitted to be advanced as a legal theory in immigration proceedings. *See, e.g.*, *Matter of V-X-*, 26 I. & N. Dec. 147, 154 (B.I.A. 2013). And yet, judges engage in it frequently – saying whether someone will likely be harmed or not, often basing their decisions on their own assumptions about what a specific country is like, or how someone might be treated there.

146. *See* Steven Trader, *An Ode To The ‘Breyer Hypothetical,’* LAW360 (Jan. 28, 2022), <https://perma.cc/2HWA-HCRM>. But Breyer is not alone – consider the hypotheticals posed by Justice Alito in recent oral arguments before the Court evaluating whether a website designer should be permitted to decline creating wedding websites for LGBTQ+ individuals, in which he pondered whether “a Black Santa” would be required to have his picture taken with “a child who’s dressed up in a Ku Klux Klan outfit.” Robert Barnes, *The Supreme Court thrives on hypotheticals. Alito’s latest sparked a backlash,* WASH. POST (Dec. 6, 2022), <https://perma.cc/SG65-7GHG>.

147. Many of the current Supreme Court justices share the same rarified air. *See*, Larry Abramason, *The Harvard-Yalification of the Supreme Court*, NPR (May 16, 2010) <https://perma.cc/6GY9-S6EZ> (discussing the East Coast and Ivy-league correlation with those appointed to the Supreme Court). But even those who serve as clerks to Supreme Court justices tend to follow a singular track. *See*, Adam Liptak, *The Road to a Supreme Court Clerkship Starts at Three Ivy League Colleges*, N.Y. TIMES (Feb. 6, 2023), <https://perma.cc/3AM4-Q83X>.

As renowned legal scholar Robert Cover wrote:

“Legal interpretation takes place in a field of pain and death. This is true in several senses. Legal interpretive acts signal and occasion the imposition of violence upon others: A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life.”<sup>148</sup>

Rarely is this truer than in the case of immigration proceedings, where an immigration judge conducts proceedings that frequently lack the time and diligence they should be afforded. A common metaphor is that they are “death penalty cases in the setting of traffic court.”<sup>149</sup> Due to the high stakes of these decisions, the immigration judge wields great power. Despite these high stakes, little predictability is afforded to those seeking relief to remain in the United States before an immigration judge. The likelihood of success depends less on the merits of the claim than on the judge that a person is assigned, the location of their court,<sup>150</sup> and whether they have an attorney.<sup>151</sup>

Literature offers something that lawyers often seek—a narrative. Here, works of speculative fiction, particularly those focused on apocalypse and regeneration after apocalypse, do the work of imagining how a specific society, or humanity at large, might carry on. To do so, authors employ language or create new terms to explain the workings of their characters and the narrative. Language creates a world, and world-building is the fundamental work of speculative fiction. Immigration policy is no different. As discussed above, notions of inherent sovereignty, collective identity, and nationalistic exclusion are recent and still malleable. The narrative, in legal terms, has remained quite consistent over the past century—Congressional actors and the president have nearly unfettered power to determine who may enter or remain in the United States.<sup>152</sup>

Congress is supposedly imbued with the will of the people and alleges to speak on behalf of the collective identity of Americans. Yet, the ability to elect congressional representatives has long been reserved to a select portion

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148. Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986); see also Martha Minow, *Interpreting Rights: An Essay for Robert Cover*, 96 YALE L.J. 1860, 1893–94 (1987) (discussing her reliance on Cover’s work as “exemplary of the ways people elaborate normative commitments through interpretive activities.” Taken more plainly, Minow heeds the concern of Cover that interpretation of the law has real life-and-death consequences and that “[o]fficial power effectuates itself in physical force, threatened or carried out”).

149. Hon. Mark A. Drummond, “Death Penalty Cases in a Traffic Court Setting”: *Lessons from the Front Lines of Today’s Immigration Courts*, AM. BAR ASS’N (Jan. 15, 2019), <https://perma.cc/JKG2-GYC8>.

150. Andrew I. Schoenholtz, Jaya Ramji-Nogales & Philip G. Shrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295 (2007-2008); see also *Asylum Decisions Vary Widely Across Judges and Courts – Latest Results*, TRAC IMMIGR. (Jan. 13, 2020), <https://perma.cc/H2AM-AE9C>.

151. Jennifer Stave, Peter Markowitz, Karen Berberich, Tammy Cho, Danny Dubbaneh, Laura Simich, Nina Siulc & Noelle Smart, *Evaluation of the New York Immigrant Family Unity Project*, VERA (Nov. 2017), <https://perma.cc/T5F7-48NG>.

152. See generally Gabriel J. Chin, *Chae Chan Ping and Fong Yue Ting: The Origins of Plenary Power*, IMMIGR. L. STORIES (David Martin & Peter Schuck eds., Foundation Press 2005).



of the population.<sup>153</sup> Feuds remain ongoing not just about who shall be permitted to vote,<sup>154</sup> but how,<sup>155</sup> and with which collective identity.<sup>156</sup> Moreover, the apportionment of Senate seats, based on the arbitrary division of state lines, allocates inverse amounts of power to less populated states.<sup>157</sup> Furthermore, the president continues to be elected via an archaic system created to appease political representatives who refused to yield on the issues of slavery.<sup>158</sup> Such a system means that a minority of the U.S. population has elected the world's most powerful actor in two of the last six elections.<sup>159</sup> This hardly presents a united front.

Yet, the narrative remains that there is somehow a clear voice on the issue of immigration. This Article seeks to push back on that notion by introducing other coherent voices that point out the incongruous, harmful, and frequently arbitrary way in which immigration policy is wielded. Scholars have bemoaned that the facts simply do not bear out the harm that immigration policy allegedly protects against. But the facts, apparently, are insufficient at times. Researchers have found that, “conceptions of policy problems [particularly regarding immigration] do not simply flow from the objective ‘facts’ of the situation, nor can policy preferences simply be inferred from objective, rational interests.”<sup>160</sup> This must come as some shock to those who believe the U.S. system of law is perfectly rational or objective. Instead, researchers have found, “both problems and preferred solutions are constructed by different actors (politicians, media, academics), drawing on available ideational

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153. This is demonstrated in the effort to prevent women's suffrage, as well as the long campaign to exclude Black people from voting, first by law, then by poll taxes, later with various other encumbrances. See, e.g. Carla Laroche, *Black Women & Voter Suppression*, B.U. L. REV. (forthcoming 2022) (tracing the history of exclusion (especially of black women) from the ballot box).

154. In 2020, approximately “5.2 million Americans were prohibited from voting due to laws that disenfranchise citizens convicted of felony offenses.” See Jean Chung, *Voting Rights in the Era of Mass Incarceration: A Primer*, SENT'G PROJECT 1 (July 28, 2021), <https://perma.cc/4DRC-7JSN>.

155. See efforts to limit early voting, mail-in ballots, etc. See generally Jane C. Timm, *19 States Enacted Voting Restrictions in 2021. What's Next?*, NBC NEWS (Dec. 21, 2021), <https://perma.cc/ZU3G-2NVW>.

156. There are ongoing efforts to shape congressional boundaries so that one group may benefit over another – the most recent of which are race and political party. Such gerrymandering is rampant and, federal courts have found, such decisions are not always subject to judicial review. See Brennan Center for Justice, *Assessing the Redistricting Cycle* (series), <https://perma.cc/M8HU-5YXA>. A substantial amount of recent legal scholarship has been devoted to countering the Supreme Court's efforts to not involve itself in these fundamental questions of democracy. See, e.g., Jessica Bulman-Pozen & Miriam Seifter, *Countering the New Election Subversion: The Democracy Principle and the Role of State Courts*, 2022 WIS. L. REV. 1337 (2022); see also, Vince Mancini, *The Court's Gerrymandering Conundrum: How Hyper-Partisanship in Politics Alters the Rucho Decision*, 2022 UTAH L. REV. 1135 (2022).

157. While this composition was created to prevent the tyranny of the majority, it comes into stark relief when viewed in the historical context of the Great Migration, wherein Black people were treated so badly in rural southern states that they fled to denser urban areas. Such demographic shifts continue to benefit one political party over the other.

158. See, e.g., Wilfred Codrington III, *The Electoral College's Racist Origins*, ATL. (Nov. 17, 2019), <https://perma.cc/7YWT-5CKC>.

159. See *Election and Voting Information*, FED. ELECTION COMM'N, <https://perma.cc/SU87-5DS4> (last visited July 25, 2022) (providing data on the 2000 and 2016 elections).

160. Christina Boswell, Andrew Geddes & Peter Scholten, *The Role of Narratives in Migration Policy-Making: A Research Framework*, BRIT. J. POL. & INT'L REL. 1 (Jan. 6, 2011), <https://perma.cc/P698-UW2H>.

resources or patterns or thought.”<sup>161</sup> Regardless, the key point is simple, that “narratives [can] provide a coherent and compelling account of complex phenomena, in a way that can engender support and motivate action.”<sup>162</sup>

To that end, words matter. Consider, for example, the way in which the terms “expat” and “refugee” conjure up specific expectations for a member of each category possessing specific identity characteristics: skin color, national origin, language, religion perhaps.<sup>163</sup> These categorizations no doubt arise from accrued perceptions and likely coincide with one’s own life experiences, societal position, country of origin, etc. What is important, though, is that, yes, “[k]nowledge and beliefs clearly shape perceptions of interests; but these interests in turn influence how knowledge is produced and deployed.”<sup>164</sup> This mutual constitution means that narrative can play a key role in redirecting such perceptions, based on one’s interest. Here, literature plays an important role.

Martha Nussbaum notes the role of “fancy,” an equivalent to what I, and other scholars, have termed “radical imagination.”<sup>165</sup> In adhering to this Article’s same central thesis, she proposes that the remedy for real-world harms is not “the repudiation of fancy, but it’s more consistent and humane cultivation.”<sup>166</sup> The problem is not speculation itself, but whose speculation is observed and acted upon. She argues that the solution is “the construction of institutions, and institutional actors, who more perfectly embody, and by institutional firmness protect, the insights of the compassionate imagination.”<sup>167</sup> Indeed, it is not enough for individuals to put forth their own ideas of radical imagination. There is a need for engagement with these ideas by institutions. Such contemplation by policymakers, or within the cabinet of the current administration would not be unthinkable.<sup>168</sup> Indeed, “[i]nstitutions

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161. *Id.* at 1–2.

162. *Id.* at 4.

163. One of the above authors, Omar El Akkad, puts a finer point on this, in discussing what he views as a spectrum of migratory status flowing from “expat” on the most privileged side and “illegal” on the least, “expats were White Westerners . . . [while] the migrant is probably someone who is doing . . . a lot more labour-intensive work, but doesn’t have the privilege of being called an expat. And then you work your way all across ‘refugee’ until you get to ‘illegal. That’s the other end of the spectrum.” Y-Dang Troeung & Phaniel Antwi, “*In this very uncertain space*”: A Conversation with Omar El Akkad, 240 CAN. LITERATURE 42, 44 (2020).

164. Boswell, Geddes & Scholten, *supra* note 160, at 5.

165. Nussbaum’s idea of “fancy” is derived from Charles Dickens’ observation that “we should come upon ‘Reason,’ by which he meant formal scientific reasoning, ‘through the tender light of Fancy.’” MARTHA NUSSBAUM, POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE 11 (1995). Nussbaum highlight the importance of “fancy” or the “literary imagination”, the humane cultivation of which she believes can “contend against the deep prejudices of many beings and institutions.” *See also id.* at xvii. Amna Akbar points to the idea of radical imagination in the policy proposals of the Movement for Black Lives as being potentially transformative at an institutional level. *See* Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 NYU. L. REV. 405, 405 (2018). While Nussbaum focuses on the literary imagination, Akbar identifies the need for radical and abolitionist ideas to serve as the root for imagining a decarceral future and serving as the foundation for real structural change.

166. NUSSBAUM, *supra* note 165, at xviii.

167. *Id.*

168. For example, the Department of Defense frequently engages in “war games,” or speculative strategic exercises in which it considers how possible future scenarios might be dealt with successfully.

themselves should also be informed by “fancy’s” insight.”<sup>169</sup> For government officials or elected representatives to take up this mantel might require something out of the norm. Yet, the United States is in the middle of just such a seismic shift about the conceptions of what is and is not possible.

Speculation is already being used and it causes real harm when wielded based on biases or preconceptions that may be influenced by the dominant narratives about speculation—namely, that it does not exist, or that it countenances all relevant variables, actors, and outcomes. If the implementation of law is already inextricably bound up with speculation, it would be helpful to be genuine and forthright about it. In doing so, scholars, lawmakers, advocates, and the population at large could clearly identify from where those speculative constructions derived.<sup>170</sup> But, instead of focusing on the fear of the unknown, speculative fiction offers an interesting opportunity—to consider how these narratives might offer future visions that are coherent, insightful, or expansive in their possibility.<sup>171</sup>

### B. *An Innate Narrative*

What occurred during the Trump administration was not merely a ratcheting up of restrictive immigration policies, but a radical reimagining of what it was possible for the executive to do with regard to immigration. I argue that speculative fiction played a key role in this process by providing a fictional account of “what could happen,” and invoking the emotion of fear as a result.<sup>172</sup> While “hope” could prove to be an effective counterpart, if fear is

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See, e.g., Kyle Mizokami, *The U.S. Military ‘Failed Miserably’ in a Fake Battle Over Taiwan*, POPULAR MECHS. (Aug. 2, 2021), <https://perma.cc/8Q8V-HMPX>.

169. NUSSBAUM, *supra* note 165, at xviii.

170. For example, Andrew Anglin, the editor of *The Daily Stormer*, a white supremacist website, advocated for using the word “caravan” to describe an annual protest march of Central Americans. He encouraged his followers to promote this verbiage because of its connection to *The Camp of the Saints*. When Mike Pence and President Trump did eventually use that language, Anglin and his followers claimed victory, saying “the media was not talking about this, only the alt-right was, and Trump is posting about it—so he does hear us.” Ian Allen, *Inside the World of Racist Science Fiction*, N.Y. TIMES (July 30, 2018), <https://perma.cc/4RG4-7A6B>.

171. One example of this type of speculative fiction is Kim Stanley Robinson’s *The Ministry for the Future*, which imagines a not-too-distant future in which lethal heatwaves result in massive numbers of fatalities in the Indian sub-continent. The result is that the UN creates a new office, charged with implementing resolutions that could prevent the repetition of such catastrophic casualties. The novel engages with the current real-world architecture, but also imagines fantastical (but not impossible) solutions—a cryptocurrency that rewards responsible environmental stewardship and flying dirigibles that supplant plane travel and functionally eliminate emissions. Though the trips are much lengthier, the creations and expansion of “wildlife corridors,” and a geoengineering project in Antarctica that slows the melt of glaciers. Of course, perhaps the most far-fetched idea is that such a ministry could be created. And yet, a speculative fiction novel may be the only place where such ideas can be considered seriously, in concert with each other, and presented to the public as a possible future outcome. KIM STANLEY ROBINSON, *THE MINISTRY FOR THE FUTURE* (2020).

172. Professor Chelsea Steiber, a scholar of far-right French nationalism and French literature explains that “the book itself is . . . from the pedagogic point of view, very effective because it performs the effect of infestation with its language and with its figures of style, repetition, metaphor,” she says. “And so students feel quite invaded by the language — and it is an emotional and visceral reaction . . . to study it, it is so important to understand how it could quite literally infest a mind, a person to believe things.” Garcia-Navarro, *supra* note 27.

strong (or even stronger), we must reckon with it. Therefore, this Article proposes extending radical imagination in the other direction. In this way, speculative fiction could be used to shift our perspective, away from the white, dominant gaze and into the viewpoint of those who have been harmed by the policies of the United States.<sup>173</sup> I propose that the result would be a demonstration of resilience and hope for the future.

Importantly, many scholars and scientists have discovered an innate urge in humans to grasp specific narratives. Such stories are compelling guides for decision-making.<sup>174</sup> In fact, narrative can create empathy and change minds.<sup>175</sup> However, it can also be used to create hysteria and monger fear and hate.<sup>176</sup>

Speculation and narrative are not inherently problematic; rather, the voices that guide the most prominent narratives and speculation have suffered from a lack of imagination due to constraints of similarity. If speculation continues to play such a prominent role in policy making, then the realm of voices should be extended to include those who have been marginalized by past

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173. “Some authors say that sci-fi and fantasy settings allow them to reimagine the Native experience in ways that wouldn’t be possible in realistic fiction. Writing futuristic narratives and building fantasy worlds provide a measure of freedom to tell stories that feel experimental and innovative and aren’t weighted down by the legacies of genocide and colonialism.” Alter, *supra* note 63.

174. As Nikole Hannah-Jones puts it, “[N]arrative changes policy.” Code Switch, *Nikole Hannah-Jones on the Power of Collective Memory*, NPR (Jan. 5, 2022), <https://perma.cc/J8ES-MJZM>.

175. For example, the primary purpose for sharing his own story is that he hopes to precipitate a deluge of similar stories among similarly excluded voices so that collectively they might “flood the market with [their] stories.” WAJAHAT ALI, GO BACK TO WHERE YOU CAME FROM AND OTHER HELPFUL SUGGESTIONS 74–75 (2022); *see also*, UNHCR’s efforts to shift the narrative on the plight of refugees. Lauren Parater, *7 Videos Guaranteed to Change the Way You See Refugees*, THE UN REFUGEE AGENCY: INNOVATION SERV. (June 26, 2015), <https://perma.cc/6FZR-WUWN>.

176. On Jan. 6, 2021, a significant number of individuals descended upon the capitol building, ostensibly to protest the results of the 2020 presidential election. While debate rages on about whether the former president encouraged or incited this riot/insurgency/sedition, some things are not up for debate. For example, on the front lawn of the Capitol grounds, a group of people constructed a set of gallows, and chanted “hang Mike Pence.” Cameron Peters, *Report: Capitol Police Knew Congress Might be Targeted Days Before Attack*, VOX (Jan. 16, 2021), <https://perma.cc/Q3SZ-TPQZ>. This actual event really happened, but perhaps most interestingly, it was a recreation of a fictionalized scene from *The Turner Diaries*, a speculative fiction novel about a race war that erupts following a revolutionary uprising by white supremacists in which all non-white people are killed. Aja Romano, *How a Dystopian Neo-Nazi Novel Helped Fuel Decades of White Supremacist Terrorism*, VOX (Jan. 28, 2021), <https://perma.cc/N397-ELHC>. So incendiary are the themes in this book, that the next day, its sale was removed for sale from Amazon. Alexandra Alter, *How “The Turner Diaries” Incites White Supremacists*, N.Y. TIMES (Jan. 15, 2021), <https://perma.cc/2W5B-RJKA>. Importantly, this is not the first time that *The Turner Diaries* has been relied upon. Notably, Timothy McVeigh, the perpetrator of the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City. McVeigh mimicked a bombing described in the book, including the time of day and the types of explosive materials used, in hopes of initiating a race war. “Excerpts from the novel were found in [his] getaway car.” Jo Thomas, *Behind a Book That Inspired McVeigh*, N.Y. TIMES (June 9, 2001), <https://perma.cc/F2A8-VCB7>. In a cruel twist of irony, this bombing effectively led to the passage of the Antiterrorism and Effective Death Penalty Act (AEDPA), which resulted in punitive policy directed at immigrants, based on early reports that the bombing had been committed by a group of international terrorists. *See* ALINA DAS, NO JUSTICE IN THE SHADOWS 74–75 (2020), *see also* Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Law and the Limited Scope of Proposed Reforms*, 113 HARV. L. REV. 1936 (2000). Finally, this is not the last time that *The Turner Diaries* has driven someone to action – *see e.g.* Alan Feuer, *Man Arrested Over Threat to Schumer and Vow to “Blow Up” F.B.I.*, N.Y. TIMES (Nov. 10, 2020).

U.S. policy—indigenous people,<sup>177</sup> migrants, Black people, people of color, women, and the LGBTQ+ community.<sup>178</sup> While important work is being done on the ground by organizations in support of these populations, this Article argues for the extension of thought beyond legal scholars, policy makers, and community advocates. Because the Trump administration relied on speculative fiction in driving its immigration narrative and made policy decisions based on that narrative,<sup>179</sup> an important voice for immigration policy are the authors from the aforementioned groups who write in speculative fiction.

### C. *An Example of Narrative Vision - The Left Hand of Darkness*

To illustrate this point, I theorize about an example of how speculative fiction could influence legal strategy and outcome. In 1975, Ruth Bader Ginsburg, then an attorney for the ACLU, brought a case to the Supreme Court on behalf of Stephen Wiesenfeld.<sup>180</sup> Mr. Wiesenfeld's wife had died, and he was unable to access the Social Security survivor benefits that she had accrued during her time as the principal wage earner in the family. Whereas, if the reverse had been true, and Mr. Wiesenfeld's wife had been the one widowed, she would have had full access to his benefits. This was one case in a series of efforts for gender equality and women's rights that defined Ginsburg's time at the ACLU.

Ginsburg's strategic decision to highlight a case in which a man was injured by gender discrimination was key. In this case, the court ruled unanimously for Mr. Wiesenfeld, granting him access to Social Security benefits. In bringing the case on behalf of a man, Ginsburg pinpointed the idea that the Social Security provision had discriminated against men acting as caregivers, and women serving as breadwinners. Brennan noted "such a gender-based generalization cannot suffice to justify the denigration. . . . of women who do work and whose earnings contribute significantly to their families'

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177. Indigenous and native people in the US have also suffered forced migrations, displacements, and harm due to the threads of colonialism and racism that support harmful ongoing narratives about belonging, property, identity, etc. Namely, the US would not exist without the unlawful appropriation of Native land. Moreover, the US historically reneged on its agreements with indigenous people, which it continues to treat in a quasi-foreign way. I am particularly indebted to this harm since I was born and raised in Oklahoma, the boundaries of which were explicitly defined as "Indian Territory" until the early 20th century, when suddenly, they were not. Note that Justice Gorsuch has pushed back on this in his recent decision about whether the Eastern half of Oklahoma was in fact under the jurisdiction of the Native people there. In finding that it was, Gorsuch pushed against the limits of what others thought to be possible. *See* *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2482 (2020). Note, also, however, that the current Supreme Court recently counteracted parts of that decision in *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2504 (2022).

178. For more information on how women, members of the LGBTQ+ community and others have been regulated via border control, see generally EITHNE LUIBHÉID, *ENTRY DENIED: CONTROLLING SEXUALITY AT THE BORDER* (Univ. Minn. Press 2002).

179. As Stephen Miller has said, "it doesn't matter what the truth is, but how it makes people feel." Guerrero, *supra* note 65, at 67.

180. *Weinberger v. Wiesenfeld*, 420 U.S. 636, 637 (1975).

support.”<sup>181</sup> The decision aimed to establish that it is just as important for male parents to take care of children, because men encounter the same parenting difficulties as women. The ruling challenged the traditional male breadwinner/female homemaker model in terms of allocating government benefits.

Six years earlier, in 1969, a novel titled, *The Left Hand of Darkness* was written and published by Ursula K. Le Guin.<sup>182</sup> In this novel, the author describes a world where gender does not exist in a binary way ascribed by sex characteristics. Instead, each character is ambisexual—meaning that they have no fixed sex.<sup>183</sup> As a result, in any partnership or sexual relationship, either partner could bear the responsibility of pregnancy and childbirth. This book reveals a possible vision of what a culture could look like when not driven by biological limitations, or rather, what policies could look like if they did not ascribe certain limitations based on this singular characteristic.<sup>184</sup> The lessons from this book can articulate the underlying rationale for establishing universal childcare, equity in pay, and family-supportive leave policies.<sup>185</sup>

Now, it is unknown whether Justice Ginsburg ever read this book. However, it did receive high critical praise—winning both the Nebula Award and the Hugo Award, the highest honors in science fiction writing.<sup>186</sup> Importantly, the themes in the book were engaged with and discussed by feminist thinkers at the time, namely Joanna Russ, who wrote a 1974 essay criticizing the book, claiming that the perspective remained a male one despite the created non-binary world.<sup>187</sup> She noted that traditional female roles were excluded from description or demeaned and that no primary characters had feminine characteristics. The very next year, Ginsburg would go on to use a male-centric strategy in her years-long effort to reduce gender disparities in the law.<sup>188</sup>

This story is important, first, because it interrogates the female/male dichotomy. Second, in doing so, it opens another avenue for consideration, one

181. *Id.* at 645.

182. URSULA K. LE GUIN, *THE LEFT HAND OF DARKNESS* (1969).

183. DONNA WHITE, *DANCING WITH THE DRAGONS: URSULA K. LE GUIN AND THE CRITICS* (1999).

184. *See* URSULA K. LE GUIN, *IS GENDER NECESSARY?* 172 (1988), <https://perma.cc/D7SY-JZGA> (“If we were socially ambisexual, if men and women were completely and genuinely equal in their social roles, equal legally and economically, equal in freedom, in responsibility, and in self-esteem, then society would be a very different thing.”).

185. *See, e.g.,* Jon Michaud, *A Safe Trip into Androgyny*, *NEW YORKER* (July 21, 2009), <https://perma.cc/PZJ8-TT7N>. Le Guin herself comments that she could have pushed even further into the realm of possibility, finding that, “men have tended to be more satisfied with the book, for allowing them ‘a safe trip into androgyny and back,’ while her female readers have wanted it to go further and do more.”).

186. SUZANNE ELIZABETH REID, *PRESENTING URSULA LE GUIN* (1997).

187. JOANNA RUSS, *The Image of Women in Science Fiction*, *IMAGES OF WOMEN IN FICTION: FEMINIST PERSPECTIVES* 79–94 (Susan Koppelman Cornillon ed., rev. ed., Bowling Green Univ. Popular Press, 1973).

188. Note that this was overall a time of intense change and other political developments were occurring around that same time. For example, Title IX was signed into law in 1972, preventing discrimination in academic activities based on sex, and *Roe v. Wade* was signed into law the following year, in 1973.

which proved to be helpful for Stephen Wiesenfeld, the plaintiff in the case *Weisenberger v. Wiesenfeld*.<sup>189</sup> It inverted the distinction of gender and shifted the perspective to one with which the eight male justices who heard the case could more easily identify.

On the fiftieth anniversary of the publication of *The Left Hand of Darkness*, author Charlie Jane Anders wrote in *The Paris Review*,

“A huge part of the value of a science-fiction story like *The Left Hand of Darkness* is that it allows you to imagine that things could be very different. And then, when you come back to the real world, you bring with you the sense that we can choose our own reality, and the world is ours to reshape. [The] vastly different gender landscape feels real enough that it casts a reflection on all the fixed ideas in our own world. Maybe our rigid gender binary is just as made up as their neutral gender is. Maybe our government-issued pronouns and official stereotypes don’t have to define us always. Especially for my fellow trans and non-binary people, a story that undermines the assumptions behind coercive labels feels magical.”<sup>190</sup>

Though outside the context of immigration, this story demonstrates how ideas presented in speculative fiction could help to enliven or expand one’s imagination for what is possible. This possibility of inspiration or influence is exactly the point—to look outside of the law.

#### IV. THE VISION – RADICAL IMAGINATION EXTENDED

In Amna Akbar’s article, “Toward a Radical Imagination of Law,” she invites readers to consider the useful work of social movements, though such advocacy is often held outside of the consideration of legal scholarship. She highlights, for example, the interdisciplinary framework of the Movement for Black Lives, in considering a vision for the abolition of prisons and immigration enforcement, saying:

“The visions of such radical social movements offer an alternative epistemology for understanding and addressing structural inequality. These visions should push legal scholars toward a broader frame for understanding how law, the market, and the state co-produce intersectional structural inequality, and toward agendas that focus. . . . on building the power of marginalized communities and transforming the state.”<sup>191</sup>

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189. *Weisenberger v. Wiesenfeld*, 420 U.S. 636, 645 (1975).

190. Charlie Jane Anders, *The Left Hand of Darkness at Fifty*, *PARIS REV.* (Mar. 12, 2019), <https://perma.cc/5VFZ-G3LR>.

191. Akbar, *supra* note 165, at 405 (2018).

As Patrisse Cullors advises, “Experiment: nothing is fixed,” and “[S]ay yes to [your] imagination.”<sup>192</sup> I hope to continue in that lineage by inviting scholars, policymakers, and others who hold power in their speculation, that they should consider the perspectives of those who are offering speculative views (and thus, potential policy proposals) through their writing in literature.

The incorporation of storytelling and narrative into legal reasoning and theory has a deep tradition, dating back to early CRT scholars,<sup>193</sup> among others. Indeed, this call for storytelling by “outgroups” has a lineage of nearly three decades.<sup>194</sup> Richard Delgado’s article on this issue maps out the way in which dominant groups create their own stories to remind themselves of their relationships to outgroups and “[to] provide [themselves] with a form of shared reality in which [their] own superior position is seen as natural.”<sup>195</sup> Accordingly, CRT scholars might argue that questions of inadequate enforcement and rule compliance are beside the point. “Rather, it is the prevailing mindset by means of which members of the dominant group justify the world as it is, that is, with whites on top and browns and blacks at the bottom.”<sup>196</sup> But, importantly, there is a remedy. As Delgado explains, “Stories, parables, chronicles, and narratives are powerful means for destroying mindset – the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse take place.”<sup>197</sup> Therefore, he offers up the solution, a “cure,” that he defines as “counter-storytelling” – stories which challenge perceived wisdom and “open new windows into reality, showing us that there are possibilities for life other than the ones we live.”<sup>198</sup> The work of these stories, as many authors have noted,<sup>199</sup> is two-fold: (1) to identify the cruelty, ridiculousness, and harm perpetuated by current hierarchies or systems, and (2) to “imaginatively promot[e] alternative accounts of how humans might live.”<sup>200</sup> In this way, storytelling mirrors the work of abolition – both seeking to tear down one unjust system and, at the same time, to build up something supportive and compassionate in its place.<sup>201</sup>

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192. Patrisse Cullors, *Abolition and Reparations: Histories of Resistance, Transformative Justice, And Accountability*, 132 HARV. L. REV. 1684 (2019).

193. See Delgado, *supra* note 50, at 2412.

194. *Id.* at 2413 (contending that storytelling by outgroups, those that are not white and male (the dominant “in group” at law schools) can provide valuable perspective).

195. *Id.* at 2412 (referring to several scholarly works including T. PETERSON, HAM & JAPETH: THE MYTHIC WORLD OF WHITES IN THE ANTEBELLUM SOUTH 5 (1978), and Lévi-Strauss, *The Structural Study of Myth*, 66 J. AM. FOLKLORE 428 (1955)).

196. *Id.*

197. *Id.*

198. *Id.* at 2414; see also Rothman, *supra* note 11.

199. Delgado, *supra* note 50, at 2415.

200. *Id.* at n.20 (quoting David O. Friedrichs, *Narrative Jurisprudence and Other Heresies: Legal Education at the Margin* (Mar. 1988) (unpublished manuscript on file with author) “[Stories] challenge taken-for-granted hierarchies both by exposing . . . the cruel consequences of such hierarchies, and by imaginatively promoting alternative accounts of how humans might live. . .”).

201. See Rachel Kushner, *Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind*, N.Y. TIMES (Apr. 17, 2019), <https://perma.cc/Q88F-JU4A> (quoting the legal scholar James Forman Jr.,



Interestingly, this same mode of thinking fits squarely within the design of speculative fiction and addresses head on the fears raised in apocalyptic renderings of the future, such as *The Camp of the Saints*. Such literature considers the demise of a prior form of society and envisions how society might reconstruct itself after the fall. Such lessons are apt for the present time as we experience massive change, social unrest, and shifts in political favor.

#### A. *New Ways for an Intractable Issue*

Some scholars have advocated for the incorporation of non-traditional works, traditionally outside the realm of scholarship, into the field of legal analysis. Indeed, the Law and Literature movement successfully propagated the notion that literature had something important to offer to the field of legal studies.<sup>202</sup> CRT scholars spent decades pushing back against established norms of legal scholarship to expose the necessity of alternative perspectives.<sup>203</sup> Recent scholars have noted the importance of looking to political movements and engaging with grassroots policy proposals that present coherent paths forward toward building a more just legal system. Most recently, researchers and scholars have identified that immigration policy questions under debate are particularly intractable, but not for pure stubbornness. Rather, values concerning migration have become deeply entrenched and politicized.<sup>204</sup> One study found that values regarding immigration have become sacralized, and therefore have literally relocated from one part of the brain to another.<sup>205</sup> This relocation, in Alison Peck's viewpoint, means that

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"What I love about abolition," . . . "and now use in my own thinking — and when I identify myself as an abolitionist, this is what I have in mind — is the idea that you imagine a world without prisons, and then you work to try to build that world."). Such thinking is imaginative at its core and generative in its mission — trying to make reality conform to creative ideation.

202. See, e.g., Amnon Reichman, *Law, Literature, and Empathy: Between Withholding and Reserving Judgment*, 56 J. LEGAL EDUC. 296, 296 (2006) (discussing the work of Martha Nussbaum and James Boyd White as "pioneering" and inspirational in their explanations that literature tells us something "about 'the law'").

203. Others within CRT have also advocated for a similar approach—using narrative, and in particular, a form of narrative known as "oppositional storytelling." Turning to speculative fiction in this case could be considered an extension of the "oppositional narratives" promoted by Richard Delgado. See generally Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking back to Move Forward*, 43 CONN. L. REV. 1253 (2011) (providing an overview of the origins of CRT and the developing discourse around it over its first two decades).

204. See JONATHAN HAIDT, *THE RIGHTEOUS MIND* (2012) (arguing that fundamental differences in ideology may hinge on certain unchangeable predispositions — including genetics, life experiences, and the way in which those experiences have been crafted into a narrative). As Haidt says, "the human mind is a story processor, not a logic processor . . . everyone loves a good story; every culture bathes its children in stories." *Id.* at 281. Haidt goes on to explain that partisanship may be governed by moral matrices, and that the reason for such intractability in politics is that these moral matrices are not subject to rational argumentation but are constrained by something deeper and more unchangeable, something sacred. *Id.* He cites heavily to Christian Smith's book, *MORAL, BELIEVING ANIMALS* in explaining how narratives fit within and support alignment with these various moral matrices. *Id.*

205. For an extensive report conducted by two psychologists about social cohesion and political polarization, and diving deeply into how Americans think about immigration, see Nichole Argo & Kate Jassin, *What Immigration Issues Do Americans Hold Sacred?*, AM. IMMIGR. COUNCIL (Feb. 18, 2021), <https://perma.cc/JA49-WPGK> (finding that "our policy stances can become sacralized, transforming into absolutist, moralized, non-negotiable values").

policy questions on migration cannot successfully be addressed with rational argumentation. She proposes an alternative methodology that is frequently used to reach agreements on particularly thorny issues in international arbitration.<sup>206</sup> Each of these approaches identifies the paucity of effect that traditional legal scholarship has in moving the needle in one direction or another on the spectrum of support for a particular policy.

Engaging with speculative fiction can provide a new approach when considering the intractable topic of large-scale immigration policy changes. It might be most effective when considering radical ideas, such as “abolition,” a term that has become increasingly partisan over the past several years. Effective oppositionist stories both challenge the reader (especially those who may benefit from the current societal structure) and invite open-mindedness by providing a plausible counterview.<sup>207</sup> The use of speculative fiction as an “oppositionist narrative” can expand such possibilities even further, particularly when the authors of stories offer a countervailing view. As activist Mariame Kaba notes, “The work of abolition insists that we foreground the people who are behind the walls—that we listen to them, that we take their ideas seriously.”<sup>208</sup> Such successful narratives create questions for the reader, such as “Can my world still stand? What parts of it remain valid? What parts of the story seem true? How can I reconcile the two worlds, and will the resulting world be a better one than the one with which I began?”<sup>209</sup> The purpose of these stories, to various marginalized groups, is two-fold: “psychic self-preservation” and a “means of lessening their own subordination.”<sup>210</sup> These narratives, though, typically come from real, lived experiences, or are based on them in some way. This Article extends the narrative

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206. This methodology, known as ARIA, and created by Jay Rothman, begins negotiations/conversations by encouraging antagonism, (A) – airing grievances. Once these are exhausted, he proposes a resonance phase (R), encouraging each party to focus on their common needs/shared motivations, while reflecting objectively on their own needs and fears, “mov[ing] away from an “*Us versus Them*” attitude toward a “*We*” attitude.” He then proposes an invention (I) phase built upon these cooperative, mutually beneficial solutions, before deciding on an action (A). Peck proposes the application of this strategy to immigration policy making, given its intractability. Alison Peck, *Immigration and Identity-Based Conflict*, 138 *ENG. HIST. REV.* (forthcoming 2023) (on file with author) (reviewing ELLIOT YOUNG, *FOREVER PRISONERS: HOW THE UNITED STATES MADE THE WORLD’S LARGEST IMMIGRANT DETENTION SYSTEM* 280 (Oxford Univ. Press, 2021); MAE NGAI, *THE CHINESE QUESTION: THE GOLD RUSHES AND GLOBAL POLITICS* 464 (W.W. Norton & Co. 2021); AVIVA CHOMSKY, *CENTRAL AMERICA’S FORGOTTEN HISTORY: REVOLUTION, VIOLENCE, AND THE ROOTS OF MIGRATION* 304 (Beacon Press 2021); ZACHARY M. SCHRAG, *THE FIRES OF PHILADELPHIA: CITIZEN-SOLDIERS, NATIVISTS, AND THE 1844 RIOTS OVER THE SOUL OF A NATION* 416 (Pegasus Books 2021).

207. Delgado, *supra* note 50, at 2435 (explaining that, an effective counter-story causes the reader to “move back and forth between two worlds, the storyteller’s, which the reader occupies vicariously to the extent the story is well-told and rings true, and his or her own, which he or she returns to and reevaluates in light of the story’s message.”).

208. Mariame Kaba & John Duda, *Towards the Horizon of Abolition: A Conversation with Mariame Kaba*, NEXT SYS. PROJECT (Nov. 9, 2017), <https://perma.cc/H5RZ-DNQ4>.

209. Delgado, *supra* note 50, at 2435.

210. *Id.* (noting that counter-narratives are helpful in subverting in-group narratives, for example, the “innocence-giving myths” that construct a favorable reality for White people in the United States in regard to race relations).

discourse, typically based on interpretations of history, to one which considers more broadly the future.

Richard Delgado describes in *Storytelling for Oppositionists* that counter-narratives are necessary in the law. Building upon the ideas of scholars from the law and literature movement, Delgado references Robert Cover's theory of *nomos* or "a normative universe . . . from which we are not easily dislodged."<sup>211</sup> In his scholarship, Delgado both creates a space for and offers his own narratives, many of which seek to provide alternative perspectives on what had at the time been seen as objective law and policy decisions.<sup>212</sup> This Article seeks to wrestle with those issues—speculation about what has been, but most importantly, speculation about what still is to come.

### B. *Speculative Visions*

Here, the necessity for opposition storytelling is clear. From the perspective of the narrator of *The Camp of the Saints*, the absence of immigration limitations and enforcement will inevitably lead to the destruction of (Western) civilization.<sup>213</sup> But this claim promotes a fundamental misunderstanding about what drastic changes to immigration enforcement, such as abolition, propose.<sup>214</sup> Indeed, as Ruth Wilson Gilmore says, "[A]bolition is

211. RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 41 (1st ed. 2001).

212. See, e.g., Richard Delgado, *On Telling Stories in School: A Reply to Farber and Sherry*, 46 VAND. L. REV. 665, 673-76 (1993) ("If racism is deeply imbedded in the very paradigm we rely on to describe and order our world, any story that challenges that paradigm too frontally will strike the reader as incoherent. . . . [t]ruth is largely socially constructed. . . . [o]utsider narratives . . . put our very ordering principles . . . in question.").

213. It should be noted that the role of apocalyptic fiction (and apocalyptic narratives in general) is prominent among certain white supremacist and anti-government groups within the US. See, e.g., Ian Allen, *Inside the World of Racist Science Fiction*, N.Y. TIMES (July 30, 2018), <https://perma.cc/FT77-7M5V>. Allen discusses how there is a canon of white supremacist literature and that, the "books act as a kind of binding agent, a Bible-like codification of basic principles that underpin the various denominations." *Id.* And yet, for understandable reasons, they remain largely unknown. Journalists are inclined to avoid name-checking the books publicly, for fear of inadvertently promoting them. *Id.* This is no longer a winning strategy. Heidi Beirich, who tracks far-right hate groups for the Southern Poverty Law Center, agrees. "We needed to have been talking about these books for decades," she asserts. "They're very influential, they're reaching the highest levels of power, they're having an impact on terrorism, on policy, and so on. Not talking about them is just wrong." *Id.* Other pieces of fiction with similar effect include *The Turner Diaries*, a 1978 novel that envisions a race war and calls upon white nationalists to act. It has inspired "dozens of acts of violence, and has been held as a blueprint for how to enact a violent insurrection." Alter, *supra* note 176. References to the book were made during the Jan. 6<sup>th</sup> riot at the capitol, during which a gallows was erected to chants of "hang Mike Pence." See *id.* As mentioned previously, it also served as inspiration for Timothy McVeigh, who bombed the Alfred P. Murrah federal building in Oklahoma City in 1995. See *id.* One researcher notes that the use of this fiction by white nationalists parallels some of the same amplifying tactics used by the Islamic State. See Max Fisher, *White Terrorism Shows 'Stunning' Parallels to Islamic State's Rise*, N.Y. TIMES (Aug. 5, 2019), <https://perma.cc/UR6H-LXWG>.

214. See, e.g., Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613 (2019) (identifying abolitionist justice as starkly at odds with the current individualized and punitive conceptions of justice, primarily rendered by a judge or jury in an adversarial court setting and noting that abolitionist justice wholly conceptualizes something different – a structural shift toward accountability and repair, and seeing efforts to reduce poverty, inequality, and violence as integral to the work of abolition justice).

about presence, not absence. It's about building life-affirming institutions."<sup>215</sup> If that is the case, then the argument here is not just about whether to ignore or denounce the narrative put forth by Miller and *The Camp of the Saints*, but also about what to put in its place.

In that vein, one way to counter the narratives of fear put forth in *The Camp of the Saints* by members of the Trump administration is to provide alternative narratives that refuse to engage with and reify the proposed ideas and instead promote other avenues of possibility. To do so, I will rely on the texts of three separate authors—Waubgeshig Rice, Omar El Akkad, and Octavia Butler.<sup>216</sup> Each offers a different modality of thinking, but within the same framework of speculative fiction. The narratives offered in these texts are the following: (1) Apocalypse is frequent and most often visited upon the historically marginalized, (2) Nativism is a pyramid scheme, and (3) Cataclysm invites radical imagination and an iterative process of engagement, reflection, and change. Engaging with this literature allows for an opportunity to engage with these themes and stories, while removing from the specifics that tend to make agreements about how to proceed with immigration policy such a troublesome process.

### 1. *Waubgeshig Rice - Moon of the Crusted Snow*

In *Moon of the Crusted Snow*, Waubgeshig Rice instructs readers that the apocalypse is not only impending—it has already occurred. The reference here is to a specific indigenous population within Canada, but most certainly applies to the Native American population broadly, as well as to those who suffered from the effectuation of the slave trade and colonialization. In each of these instances, the worldview under which a particular group of people was operating was shattered messily and another was quickly and violently erected in its place.<sup>217</sup>

215. Karis Clark, *Abolition is*, MICH. DAILY (Apr. 19, 2021), <https://perma.cc/3M9W-V8BE>.

216. This grouping is in no way an expansive or exclusive list, but rather an opening suggestion in this conversation that considers three authors who have offered meaningful insight through their works of speculative fiction. These suggestions are also made because the works imagine future realities that could actually arise in the future, while other works may veer into the genres of fantasy or magical realism. A more expansive list might include, for example, Mohsin Hamid's *Exit West*, which explores ideas of refugees fleeing to the West via actual doorways and portals that appear and disappear sporadically. Such a conceptualization serves as a useful critique to the current US system, where those seeking asylum are not permitted to do so until they are physically present within the United States. This work envisions a world where the sovereignty of the Western world is suddenly permeable, confronting the fear of invasion that was so aptly described in *The Camp of the Saints*. By providing an alternative narrative of what this might look like, Hamid explores the true desires and concerns that might drive individuals to leave their homeland to live in an unknown place. It also highlights the arbitrary ways in which asylum "law" and its requirements shift from one administration to another, and the ways in which asylum requirements are frequently considered too narrow, outdated, and insufficient for a world in which approximately 32.5 million people are considered refugees, and 103 million have been forcibly displaced from their homes. *Refugee Data Finder*, UNHCR (Oct. 27, 2022), <https://perma.cc/J96R-4HYQ>.

217. Consider, for example, Charles Yu's analysis of the precarity of life on earth and his critique that much of society subscribes to a belief that the natural and societal mechanisms that enable a comfortable 21 century experience are anything but precarious. Charles Yu, *The Pre-pandemic Universe Was the Fiction*, ATLANTIC (Apr. 15, 2020), <https://perma.cc/Y7XH-64CZ>.

In his novel, Rice describes how the Anishinaabe people, Indigenous members of the Ojibwe tribe in Canada, view an apocalyptic collapse of society as a commonplace occurrence in their tribe's history. According to a tribe elder:

“The world isn't ending. . . . Our world isn't ending. It already ended. It ended when the Zhaagnaash [English people] came into our original home down south on that bay and took it from us. That was our world. When the Zhaagnaash cut down all the trees and fished all the fish and forced us out of there, that's when our world ended. They made us come all the way up here. This is not our homeland! But we had to adapt and luckily we already knew how to hunt and live on the land. We learned to live here. But then they followed us up here and started taking our children away from us! That was when our world ended again. And that wasn't the last time. . . . Apocalypse. . . . We've had that over and over. But we always survived. We're still here. And we'll still be here, even if the power and the radios don't come back on and we never see any white people ever again.”<sup>218</sup>

Rice's work serves as a platform to flip the idea of “invasion” on its head. Specifically, it explores the idea that the greatest fear of American nativists is that others will gain the power to do what their country has done in the name of freedom. Indeed, a number of indigenous writers seek to address the enormity of the harm that has been perpetuated against them, while also finding strength in the persistence of language, customs, and identity.<sup>219</sup> One author describes Native Americans collectively as “a postapocalyptic people,” and opines that, “[I]n a society built atop our graves, survival has become an act of resistance.”<sup>220</sup>

The U.S. and Western fear of apocalypse is based on speculative and imagined harms that might be visited upon their own people. But relying on this speculation ignores the fact that apocalypse has already been wrought upon many people in this country. The history of slavery as an institution was bound up in the founding documents. Scores of indigenous people were killed, removed from their land, or disassociated from their families. Those worlds were actually ended and those lives irrevocably changed. It is perhaps fear of suffering the same that heightens the anxieties of writers such as Jean Raspail.

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218. WAUBGESHIG RICE, *MOON OF THE CRUSTED SNOW* 149 (2018).

219. See Alter, *supra* note 63 (“One of her aims in writing post-apocalyptic narratives, [Rebecca] Roanhorse said, is to depict a world where Native culture, language and people have endured, in spite of efforts over the centuries to wipe them out.”).

220. Sam Ramos, *Indigenous Apocalypse and Transgenerational Trauma*, 22 *AMA J. ETHICS* 898, 899 (2020) (quoting Julian Brave NoiseCat).

## 2. *Omar El Akkad - American War*

Second, we can look to *American War* by Omar El-Akkad for a straightforward vision about identity in the United States, by envisioning what a second civil war in the United States might resemble. A prescient (though hopefully inexact) examination of the lingering regional dynamics, injury, and resentment that can lead to large-scale conflict, El Akkad's novel probes the depths of identity and affiliation. He considers the idea of refugee camps near the southern U.S. border, housing those displaced by cataclysmic disasters: the erosion of coastal areas due to climate change and ongoing threats of a highly contagious and deadly virus. He also envisions the randomized destruction of the landscape by unmanned, well-armed drones that have become detached from a government server that was destroyed in the wartime violence and thus rendered uncontrollable.

The disintegration here comes not from external pressure, but internal disparity, revulsion, and polarization. Violence is ongoing, and frequently escalated, and the only recompense is to injure those who have wrought harm. The book also considers the role for the United States internationally by inverting its power structure, relative to the rest of the world. Notably, the "Middle East" has banded together into a singular United State – the Bouazizi empire – and serves as a place of refuge for those seeking to escape the war in the United States. But, importantly, the Bouazizi empire also acknowledges its interest in keeping the United States embroiled in internal strife so that it may benefit by its relative peace and wealth. To do so, it pursues many strategies, including supplying weapons to both sides and promoting narratives that lead to continued conflict. One feels as if a mirror is being held up to oneself.

The novel delves into refugee identity, particularly from an imagined American perspective, and charts the various ways in which allegiances may shift. It acknowledges that all members of a society are in some ways forced into roles of resistance or support ("if you're not for us, you're against us"), despite the varying levels of enthusiasm. Perhaps the most telling line in the book comes from the narrator, who, having been shuttled safely from the crumbling and insecure South to "New Alaska," is relatively safe from the ongoing violence and pandemic of the sub-continental United States. He shares his own reaction to those who arrive to the safety of New Alaska after him. He explains,

"Nativism being a pyramid scheme, I found myself contemptuous of the refugees' presence in a city already overburdened. At the foot of the docks, we yelled at them to go home, even though we knew home to be a pestilence field. We carried signs calling them terrorists and criminals and we vandalized the homes that would take them in. It

made me feel good to do it, it made me feel rooted; their unbelonging was proof of my belonging.”<sup>221</sup>

Adam Serwer comments on this notion in his collection of essays *The Cruelty is the Point* – “It is not just that the perpetrators of this cruelty enjoy it; it is that they enjoy it with one another. Their shared laughter at the suffering of others is an adhesive that binds them to one another. . . .”<sup>222</sup> This idea of nativism as a pyramid scheme is the most illustrative example of U.S. identity that I have come across. There are numerous political cartoons throughout history in which one ethnic or national group scales the proverbial walls of the United States border, gaining entry despite supposed cultural differences, only to throw down the ladder and deny entry to those behind them.<sup>223</sup> This concept helps to confront the thematic notion of sovereignty and self-determinism that was critiqued in *The Camp of the Saints*—taking issues with the idea of some collective core and disputing the idea of homogeneity among that group. El Akkad’s work inverts many ideas that we may have about ourselves, but it does not offer a vision beyond. This is where the work of Octavia Butler is of special utility.

### 3. *Octavia Butler - Parable of the Sower*

The third and final example is Octavia Butler’s *Parable of the Sower*. This novel offers a way forward. Of the three works discussed in this Article, it is the most “post-apocalyptic,” meaning that society has already broken down and is now in the process of being reconstructed. Butler is not a stranger to this genre. Her body of work collectively interrogates whether race, class, and religion are useful markers for how communities might be built and support each other in the face of apocalypse.

Butler’s work serves as a critique of the artificiality by which divisions of any kind are constructed. In doing so, she demonstrates how the formation of in-groups is both plausible and likely, but that the definitional terms of those in-groups are in no way terminal. Definitional questions about citizenship, for example, are still at dispute.<sup>224</sup> This critique extends to questions of where sovereignty inheres, who controls the permissible rules of entry and residence within these boundaries (as well as the rights afforded to those person), and who is granted the power to make those decisions. Even now, there is debate at the Supreme Court over the validity of the Insular Cases, and whether such

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221. OMAR EL AKKAD, *AMERICAN WAR* 327 (2017).

222. SERWER, *supra* note 52, at 103, (stating that group participating in this cruelty has bound the supporters of Trump to him).

223. See Michele Walfred, “*Throwing Down the Ladder by Which They Rose*” 1870, (Jan. 6, 2015), <https://perma.cc/X2G4-PU6G>.

224. Jacob Knutson, *Federal Court Rules Birthright Citizenship Does Not Apply to American Samoa*, AXIOS (June 16, 2021), <https://perma.cc/4DWJ-BEJB>.

distinctions are now permissible.<sup>225</sup> The law seeks organization and categorization, and then works hard to ensure that people, events, and interactions fit squarely within those groupings. But, in doing so, identities are frequently artificially composed and then shoehorned into irregular categories.<sup>226</sup>

Butler's novel *The Parable of the Sower* is especially apt at providing a vision beyond these narrow categorizations, asking that we concede that paradigms inevitably shift, and acknowledge that our descriptions are always temporally limited. She asks that we interrogate the walls we draw around ourselves, the traits that society values, and the possible future that awaits without such interrogation. Her main thesis is that change is not only inexorable, but necessary. As one scholar explains, categorizing dystopia as science fiction fails to engage with the "historic subjugation of Black and Indigenous people as the dystopic foundation for white settler utopias in the Americas and Caribbean."<sup>227</sup> Butler is identified as providing, in her novels, a consideration for how "Black women [can] disrupt the reality of dystopian societies and offer radical possibilities for a decolonized future."<sup>228</sup>

In the midst of an apocalyptic landscape, the main character in *The Parable of the Sower*, is "radical, prophetic, and life-giving."<sup>229</sup> The writings of the main character, "give 'name to the nameless so it can be thought.'"<sup>230</sup> These writings, codified as verses, say, "All that you touch/You Change./All that you Change/Changes you. The only lasting truth is Change."<sup>231</sup> This stands in stark contrast to those who are "waiting for the old days to come back."<sup>232</sup>

One journalist found that "Butler took a cyclical view of history," viewing social progress as reversible, and fearful that, "as the public sphere became hollowed out, a fear of change would create an opening for retrograde politics."<sup>233</sup> She worried that, "with collapse, racism would become more

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225. Adam Liptak, *Gorsuch Calls for Overruling "Shameful" Cases on U.S. Territories*, N.Y. TIMES (May 2, 2022), <https://perma.cc/LH9H-KA7K>.

226. See, e.g., LULU MILLER, *WHY FISH DON'T EXIST* (2020) (critiquing Stanford biologist and first chancellor, David Starr Jordan, whose precocity and curiosity about the natural world led him to become one of the most prolific cataloguers of various animal species). Jordan's zeal for categorization also extended to analyses of the distinctions among human beings, and eventually, his fervent support for the eugenics movement. Miller uses the analogy of the categorization of "fish" and how such a category is, in fact, not scientifically sustainable – i.e., that salmon have much more in common with humans than, for example, trout. But she notes that the category of "fish" is so universally recognized that it is incredibly challenging to push back against those defined boundaries. This analogy, she says, demonstrates the danger of seeking to categorize without careful reflection upon the way in which those categories are defined. *Id.* at 167–82.

227. Fiona-Elle Maurissette, *Narrating the (Im)Possible: Dystopian Literature and the Promise of a Liberated Future 1* (May 2018) (Ph.D. dissertation, Tufts University) (on file with the Tuft's Digital Library, Tufts University), <https://perma.cc/JE3X-LUMZ>.

228. *Id.* at 3.

229. *Id.* at 43.

230. *Id.* at 61 (quoting AUDRE LORDE, *POETRY IS NOT A LUXURY* (1977)).

231. OCTAVIA BUTLER, *PARABLE OF THE SOWER 3* (1993).

232. *Id.* at 5.

233. Abby Aguirre, *Octavia Butler's Prescient Vision of a Zealot Elected to Make America Great Again*, NEW YORKER (Jul. 26, 2017), <https://perma.cc/NS4E-8TL2>.



overt.<sup>234</sup> But, Butler presents her “readers with adapting beings. . . . who must change in order to survive.”<sup>235</sup> Thus, she provides readers a “radical alterity,” positing changes that are far from incremental and beyond the Overton window of possibility.<sup>236</sup> Butler posits a world of reciprocity, multicultural unity, and communitarianism, challenging the current system of “dualistic thought and hierarchal relations.”<sup>237</sup> In doing so, she acknowledges a need for ongoing and “continual adaptation to the world around us.”<sup>238</sup> As one scholar observes, this radicalism is “rooted in the desire to create a future society for future Black people, and other marginalized groups, who were never meant to have a future.”<sup>239</sup>

Butler does this in the same way that other speculative fiction authors operate, “[b]y exploring ‘possible worlds,’ [and/or] intuitions of the future that critique the present as we know it,” and in doing so, she “recovers purposive human time, the sense that history is not something that simply happens to us, irrespective of our will and desires, but is, indeed, ours to make.”<sup>240</sup> Many have observed the similarities between *Parable of the Sower* and the present era, such that it produces a “shock of familiarity.”<sup>241</sup> Importantly, *Parable of the Sower* offers a way out—“the future is not yet with us and might still be avoided if we take the requisite actions.”<sup>242</sup> This narrative device is compelling, and, in fact, resembles the same structure of *The Camp of the Saints*—a cautionary tale about what might happen if changes are not made. The latter was so compelling that it led to specific policy efforts by the Trump administration to try to eliminate nearly all immigration into the United States, particularly from the global south. Another work of speculative fiction, frequently referenced by white nationalist groups, *The Turner Diaries*, employs a similar narrative, by framing hope “in the triumphalist terms of a ruthless race war,”<sup>243</sup> while *Parable of the Sower* takes this same “apocalyptic imagining

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234. *Id.*

235. Maurissette, *supra* note 227, at 66.

236. The Trump administration did well to move quickly through the phases of the Overton Window, acting radically and shifting the perceptions of possibility, though often in harmful ways. See Derek Robertson, *How an Obscure Conservative Theory Became the Trump Era's Go-to Nerd Phrase*, POLITICO (Feb. 25, 2018), <https://perma.cc/J2Y5-86KF>. The idea is also in use among those who consider themselves part of the radical left. See Maggi Astor, *How the Politically Unthinkable Can Become Mainstream*, N.Y. TIMES (Feb. 26, 2019), <https://perma.cc/6WU5-XXGP>.

237. Maurissette, *supra* note 227, at 69 (quoting Sargisson 4); see also *id.* at 70 n.61 (quoting OCTAVIA BUTLER, *PARABLE OF THE SOWER* 83 (1993) “One of [*Parable of the Sower's*] verses perfectly captures the root cause of society’s ills as power struggles: “All struggles/Are essentially/power struggles./Who will rule./Who will lead./Who will define./refine./confine./design./Who will dominate. /All struggles /Are essentially /power struggles./ And most /are no more intellectual /than two rams /knocking their heads together.”).

238. *Id.* at 69.

239. *Id.* at 70.

240. Jerry Phillips, *The Intuition of the Future: Utopia and Catastrophe in Octavia Butler's Parable of the Sower*, 35 NOVEL 299, 299 (Nov. 2002).

241. *Id.* at 300 (quoting Madhu Dubey, *Folk and Urban Communities in African-American Women's Fiction: Octavia Butler's Parable of the Sower*, 27 STUD. AM. FICTION 103, 106 (1999)).

242. *Id.* at 300.

243. *Id.* at 307.

of the American future,”<sup>244</sup> and “employs a race-transcendent communalist ethic[] to frame a sense of hope.”<sup>245</sup> Such a vision does not come without some logical violence. Indeed, the “tendency of modernity [is] its existential undoing”<sup>246</sup> of prior solidified viewpoints, and it “obliges the subject to come to terms with ever-widening possibilities of human identity.”<sup>247</sup>

In sum, *Parable of the Sower* provides an opportunity to interrogate and engage with these ideas in a speculative way, considering them in their fictional form, without necessarily committing to that ethic in one daily life. But it is this metaphysical dipping of the toe that can cause real action, particularly when the narrative is coherent, revelatory, and humane. This Article now turns to the incorporation of speculative fiction into immigration policy and how it might prove to offer insight.

## V. LEGAL FICTIONS AND SPECULATIVE NARRATIVE

### A. *Legal Fictions in Immigration*

Legal fictions abound in the jurisprudence of the United States.<sup>248</sup> But, they are “more pervasive, insidious and entrenched in immigration law than in other legal areas.”<sup>249</sup> Certainly, legal fictions are not all necessarily harmful, and many claim their necessity for a coherent implementation of the law. But they do strike at the heart of an institution which believes itself to be neutral and rational. Indeed, while legal fictions have existed for much of the United States’ legal system’s history, most interpretations are modified with time, or reinterpreted through the lens of the modern era. This, too, can prove troublesome, when new legal fictions abound and provide further support to a legal system that might otherwise collapse from the removal of one or too intricate pieces of an unsteady, jury-rigged creation.<sup>250</sup> Indeed, the modern usage of legal fictions may play an especially important, and concerning role—that of avoiding the de-legitimation of the legal system.<sup>251</sup> But, even worse, “where other fictions shift and reform to accommodate changing views, century old fictions still rule immigration law.”<sup>252</sup>

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244. *Id.* at 308.

245. *Id.* at 307.

246. *Id.* at 309.

247. *Id.*

248. *See, e.g.*, *Citizens United v. FEC*, 558 U.S. 310 (2010) (finding that corporations “are people”).

249. Ibrahim J. Wani, *Truth, Strangers, and Fiction: The Illegitimate Uses of Legal Fiction in Immigration Law*, 11 *CARDOZO L. REV.* 51, 53 (1989–90).

250. *See* Peter J. Smith, *New Legal Fictions*, 95 *GEO. L. J.* 1435 (2007) (exploring the conception of new legal fictions which exist not to “temper the disruptive effect of changes in legal doctrine,” as Lon Fuller had claimed of the ancient variety, but rather to “[1] mask the fact that they are making a normative choice . . . [2] operationalize legal theories that are not easily put into practice . . . [3] serve functional goals and promote administrability in adjudication” and, perhaps most troubling, . . . [4] serve as a legitimating function, relied upon by judges, “even in the face of evidence that they are false – to avoid what they perceive as delegitimizing consequences.”).

251. *See id.* at 1478.

252. *See* Wani, *supra* note 249, at 53.

Indeed, these fictions, mostly created out of whole cloth, have retained their identities, casting long-held assertions about migration continually into the past; tradition has turned myth into policy and, ultimately, jurisprudence. For example, the Supreme Court refuses to let go of the belief that immigration detention and deportation are not punishments, relying heavily upon precedent and refusing to reinterpret old notions, despite willingness to do so in other arenas of the law.<sup>253</sup>

One might consider the similar ways in which the fiction of race was created in order to consolidate power, retain dominance, and assert control.<sup>254</sup> In the context of immigration law, many fictions have long held true—sovereignty and the concept of a national community, the demarcation of “entry” into the United States as a determination point for when constitutional rights may or may not attach, and last, the idea that deportation and immigration detention are not punishments.<sup>255</sup> Many scholars have indicated their concern that legal fictions are “often resorted to for dubious purposes that might not be equally well accomplished in candid dialogue.”<sup>256</sup> Legal fictions in immigration law are of a special breed. As Ibrahim Wani posits, “[T]hese fictions are favored in immigration law primarily because of their expediency in allowing immigration law to achieve purposes that would otherwise be constitutional and morally impermissible or at least suspect.”<sup>257</sup> The Supreme Court, on several occasions, has verified this notion—that, “[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.”<sup>258</sup> If such fictions permit this treatment, then new narratives are needed.

Some scholars have claimed that “[f]iction in literature is . . . generally harmless, while in law, where fiction has concrete practical consequences, that is not necessarily the case.”<sup>259</sup> This Article notes that the distinction no longer holds, given the incorporation of actual fiction into the policy

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253. Consider how the Court exhibited few qualms about its decision in *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022) despite the outcome’s upending of 50 years of jurisprudence. Whereas, the Court has been unwilling, for nearly a century, to revisit questions of punishment in immigration law. See César Cuauhtémoc García Hernández, *Immigration Detention as Punishment*, 61 UCLA L. REV. 1346 (2014); see also Peter L. Markowitz, *Deportation is Different*, 13 U. PA. J. CONST. L. 1299 (2011).

254. For an interesting review of how Black authors have engaged with the fiction of race in their own literature, see KARLA FC HOLLOWAY, *LEGAL FICTIONS: CONSTITUTING RACE, COMPOSING LITERATURE* (Duke Univ. Press 2014).

255. Wani, *supra* note 249, at 54. As a note, this last fiction—that neither immigration detention nor deportation are punishments – remains consistently upheld by the Supreme Court. See, e.g., Markowitz, *supra* note 253, at 1305 n.28 (discussing at length the massive amount of scholarship decrying this fiction).

256. Wani, *supra* note 249, at 54.

257. *Id.*

258. *Demore v. Kim*, 538 U.S. 510, 521 (2003) (quoting *Mathew v. Diaz*, 426 U.S. 67, 79-80 (1976)). For a more thorough analysis of how this legal fiction dates back to its analysis in the late 19 century, see Chin, *supra* note 152, at 28 n.118.

259. Wani, *supra* note 249, at 57 n.27. Though it should be noted that Professor Wani acknowledges several instances where fiction has proved to incite drastic responses in society – particularly where religious elements are concerned.

decisions of the Trump administration. But perhaps therein lies the significance of such an action. By directly referencing *The Camp of the Saints*, members of the Trump administration tore down the invisible curtain that had served as a safe harbor for legal fictions in immigration law. Whereas prior jurisprudence is merely poorly informed, or harbors prejudice, this is perhaps the first time that policymakers have so openly referred to a fictional account as justification for their decisions.<sup>260</sup> In doing so, they have shed light on the harm that such fictions can do.

El Akkad, the author of *American War*, describes his frustrations with the ways in which certain fictions are afforded more weight. He interrogates the notion of the sanctity of the “nation-state as an entity,” and the way in which it requires that mass migration be viewed as a crisis or a siege against a constant, unified protectorate. Particularly, he speaks to the harm that this perspective causes, stating:

“[W]e’re making the lives of many people a living hell so that we can save the presumed sanctity of a contrived thing . . . [but] I refuse to accept the ruin of so many people’s lives to save this entity that I don’t think is really under that much stress. I’m not of the opinion that it’s a crisis, and if it is a crisis, then it’s a crisis that can be solved by means other than destroying the lives of human beings.”<sup>261</sup>

This, perhaps, provides an opening salvo—the reconsideration of legal fictions based on new narratives, with new fictions and new contributions to imagine what might be possible in constructing a new framework for addressing such intractable issues as immigration policy.

### B. *Beyond Apocalypse - Abolition as (re)Constructive*

On March 13, 2020, life was permanently transformed in the United States.<sup>262</sup> Few foresaw this specific event and even fewer predicted the catastrophic shifts in daily life that occurred as a result of national efforts to limit and prevent the spread of COVID-19. Indeed, the United States continues to reckon with the consequences of initial inaction, later delayed reaction, and finally the imposition of strict restrictions in nearly every community across the nation. Certainly, enormous harm afflicted individuals, their families, and their loved ones. Even worse, disparities in these harms fell along lines of race and socioeconomic privilege that have long accounted for differences in health outcomes among various populations. However, this event was

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260. See, e.g., Mathis-Lilley, *supra* note 33 (discussing Steve Bannon’s declaration that various migration patterns in Europe and elsewhere in 2015 and 2016 were like “a global Camp of the Saints.”).

261. Troeung & Antwi, *supra* note 163.

262. AJMC Staff, *A Timeline of Covid 19 developments in 2020*, AJMC (Jan. 1, 2021), <https://perma.cc/ATL3-YPMZ>.

indiscriminate in that it consumed national policymaking for nearly two years, and that it largely spared no one in its reach.

In the wake of this apocalyptic experience, many have urged a return to “normal.” This Article seeks to resist that notion and to instead advocate for the use of this massive, near-universal disruption as an opportunity to imagine an alternative future. While “normal” may have felt tenable to some, it was already apocalyptic to others. The tectonic rearrangements of this past year demonstrate that: (1) We can become accustomed to massive change, and (2) Many things we believed to be innately fixed or required for society to function are, in fact, not. Indeed, the changes and adaptations that were made over the past year demonstrate an astounding resilience.

Now is the perfect time to consider broad changes to policies that have previously been considered intractable. For example, I recommend that we<sup>263</sup> seek insight from marginalized communities who have dealt with cataclysms on a more frequent scale.<sup>264</sup> One example of such broadscale change could be abolition of immigration detention, deportation, and/or other harmful policies. Concerns about radical ideas, such as abolition, are frequently grounded in fear, but here, the hope is to provide a vision beyond any speculated collapse. I advocate that legal scholars should source these visions from marginalized communities<sup>265</sup> when imagining alternatives to current immigration policy, specifically by looking to the speculative fiction that has been produced by these groups.

While the phrase “apocalypse” may conjure visions of chaos, anarchy, and the devolution of law, this Article posits that it is nevertheless the ideal framework through which to view future possibilities. Some say that law is eternal and others claim that is a fragile thing in need of safeguard, but most often, law is what we make of it.<sup>266</sup> By “we,” I mean to refer to the theorizing and positing of lawmakers (and, at least allegedly, their constituencies), the implementations of various directors of government agencies, and the

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263. “We” in this case includes policymakers, activists, lawyers, advocates, and society at large.

264. Alter, *supra* note 63.

265. See, e.g., Kyle P. Whyte’s assertion about “how some Indigenous perspectives on climate change can situate the present time as already dystopian. Instead of dread of an impending crisis, Indigenous approaches to climate change are motivated through dialogic narratives with descendants and ancestors. In some cases, these narratives are like science fiction in which Indigenous peoples work to empower their own protagonists to address contemporary challenges. Yet within literature on climate change and the Anthropocene, Indigenous peoples often get placed in historical categories designed by non-Indigenous persons, such as the Holocene. In some cases, these categories serve as the backdrop for allies’ narratives that privilege themselves as the protagonists who will save Indigenous peoples from colonial violence and the climate crisis.” Kyle P. Whyte, *Indigenous science (fiction) for the Anthropocene: Ancestral dystopias and fantasies of climate change crises*, 1 ENV’T & PLAN. E: NATURE & SPACE 224, 224 (2018).

266. One critique is that “[t]raditional legal writing purports to be neutral and dispassionately analytical, but too often it is not. In part, this is so because legal writers rarely focus on their own mindsets, the received wisdoms that serve as their starting points, themselves no more than stories, that lie behind their quasi-scientific string of deductions.” The author continues, “[t]he supposedly objective point of view often mischaracterizes, minimizes, dismisses, or derides without fully understanding opposing viewpoints. Implying that objective, correct answers can be given to legal questions also obscures the moral and political value judgments that lie at the heart of any legal inquiry.” Delgado, *supra* note 50, at 2440–41.

interpretation of judges.<sup>267</sup> This “we” is, historically, a small group of bedfellows. By expanding the “we” to include those who have survived apocalypse (particularly those who have endured at the hands of the historically more constricted group of “we”) and by paying attention to their stories, it is very possible that we all will benefit.<sup>268</sup>

## VI. CONCLUSION

In conclusion, this Article argues that speculative fiction was present in many of the policy decisions made by the Trump administration. These decisions created real harm, based in an ideology of fear. This Article interrogates those fears and examines how speculative fiction might, in fact, serve a beneficial purpose in the creation of future policy. In so advocating, this Article relies on two areas of scholarship: Law & Literature and CRT. Specifically, this Article builds upon Richard Delgado’s theory of “oppositional storytelling,” to offer alternative perceptions about what might be possible to building immigration policy, among other areas. This Article affirms that speculative fiction writers from marginalized communities have much to say about fears of the apocalypse—namely that many of them have already experienced and survived cataclysmic events. Such survival is itself referred to as the first step in crafting a resistance movement. Moreover, many of these writers offer both warnings and ideas for how to build policies (immigration and otherwise) that rely on the radical imagination of the historically marginalized as opposed to those who have historically wielded power. Last, this Article asserts that, in the vein of scholars, such as Amna Akbar, who recommend the incorporation of non-legal writing from grassroots advocates into policy formation, so should the speculative works of Black, indigenous, LGBTQ+, and migrant communities be incorporated into future conceptions of how the law might be written and interpreted. These voices should be brought to the forefront of immigration discussions, and fortunately, for us, there is no shortage of these visions.

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267. Richard Delgado describes these mindsets and narratives as “eyeglasses we have worn a long time. They are nearly invisible; we use them to scan and interpret the world and only rarely examine them for themselves.” *Id.* at 2413; *see also* Gary Peller, *The Metaphysics of American Law*, 73 CALIF. L. REV. 1151 (1985).

268. Indeed, legal storytelling is a way of “hurl[ing] rocks over walls of social complacency that obscure the view out from the citadel. But the rocks all have messages tied to them that the defenders cannot help but read. The messages say, let us knock down the walls, and use the blocks to pave a road we can all walk together.” Delgado, *supra* note 50, at 2441.