M E M O R AN D U M

November 30, 2018

To: UC Berkeley Building Name Review Committee

From: Dean Erwin Chemerinsky

RE: Proposed De-naming of Boalt Hall

In accordance with the protocol of the Building Name Review Committee, please accept this memorandum (and the accompanying document) as a formal proposal to de-name that portion of the law building complex known as Boalt Hall.

After a process that lasted over a year and that received thousands of comments from our alumni, I have decided to request that we stop using the Boalt name. For a century, the law school has been unofficially referred to as "Boalt" and its alumni often affectionately refer to themselves as "Boalties." But in May 2017, it came to light that John Boalt said vile, racist things.

Boalt wrote a racist essay to support the Chinese Exclusion Act of 1882, which banned immigration of Chinese laborers to the U.S. for more than 60 years. In "The Chinese Question," Boalt said that the Chinese might be smarter than some native tribes and preferable to the "African Negro," but "the Chinaman has brought to us and planted within our border all the vicious practices and evil tendencies of his home … ." He wrote that the "Caucasian and Mongolian" races were "separated by a remarkable divergence in intellectual character and disposition." In Boalt's view, the Chinese could not assimilate and the races should not associate with one another.

I decided that I wanted to have an open and thorough process for considering how to proceed. Soon after becoming dean in fall 2017, I appointed a five person committee – comprised of a faculty member, a senior administrator, a staff member, an alumna, and a student – to carefully study the issue and make recommendations. It solicited comments and received over 2,000 responses, did extensive research, and held a public hearing. After receiving the committee's report, I circulated it to the community and asked for comments.

On September 10, 2018 I shared with the entire Law School community the report of the internal Committee on the Use of the Boalt Name, appended to this memorandum. I am grateful for the large number of responses I received from our students, alumni, faculty, and staff. Although this is a hard question with strong opinions on all sides, I am so proud of the way our community has approached it, with careful consideration and reasoned, civil discourse.

I very much appreciate those who have shared their views with me on the use of the Boalt name and their reactions to the Committee's report. I received over 600 messages since I circulated the report on September 10. The responses were fairly evenly divided, with about 60% favoring seeking to eliminate our use of the Boalt name on our building and in our activities, and about 40% wanting to keep it.

I received passionate, persuasive messages on both sides of the issue. There was some correlation to when the writer graduated, but less than I expected. There were many who graduated in the 1950s, 1960s, and 1970s who favored changing the name, and many who graduated recently or are currently attending the law school who wanted to keep the name. Those who self-identified as individuals of color overwhelmingly, but not unanimously, favored changing the name. I was surprised that there was more of a political reaction to this than I expected: those who indicated that they were politically conservative overwhelmingly favored keeping the name.

I confess that I have changed my mind several times over the course of this process. I find this a very difficult question. I am reassured, though, that ultimately this is about a symbol, not the substance of the law school. Berkeley Law is a terrific, very special place whether we officially use the name Boalt or not.

As I struggled with this issue, I began with the following premises:

1. The law school *never* has been officially named anything other than University of California, Berkeley School of Law/School of Jurisprudence (before 1950). It never was officially named "Boalt." Dean Chris Edley did not change the name of the law school a decade ago. He decided that it should be referred to as "Berkeley Law." He made this choice because "Berkeley" has great recognition and esteem around the country and the world; "Boalt" is not nearly as widely known. I think this is especially true internationally.

2. No gift had terms requiring that the 1951 wing of the current law building complex be named "Boalt Hall" nor that any organizations or activities in the law school be named Boalt. The terms of Elizabeth Josselyn Boalt's will specified that two professorships would be named for John and Elizabeth Boalt. Any change in these would require a request to the Attorney General of California to go to court. The Committee made no recommendation for doing this.

3. John Boalt said racist things, especially about those of Chinese ancestry, and also about African-Americans and Native Americans. We must remember the racism he expressed as it is part of the history of our country and region and was said by someone whose name we have been associated with for a century.

4. Elizabeth Josselyn Boalt was very generous to the university in providing financial support. No matter what we do, we must continue to honor and remember her generosity. A large portrait of her hangs in the corridor with the largest classrooms. That must remain and we should look for other ways to remember her contributions to the law school.

5. This is solely about the official use of the Boalt name for part of our building and for our organizations and activities. Our alumni, of course, can continue to refer to the law school as Boalt, or however they wish. Also, it does not change the "branding" of the law school in the larger legal and public community. As it has been for the past decade, we will continue to refer to ourselves as Berkeley Law.

Thus, we see the use of the Boalt name as entirely "honorific." The gifts made by Elizabeth Boalt were specifically to honor her husband John. The question is whether we should continue to honor John Boalt by the use of his name on a wing of our building and in our organizations and activities. I was moved by the many who wrote me expressing their discomfort with honoring someone who expressed vile racism, especially without anything to point to that would justify honoring him as an individual.

Many who wrote me opposing the name change observed that many other notable individuals – George Washington, Thomas Jefferson, James Madison, Albert Einstein, Earl Warren – owned slaves or said racist things or supported racist policies. But I think in those instances there are good reasons to honor these individuals notwithstanding their racist statements and actions. I cannot think of a comparable reason why we should continue to honor John Boalt.

It cannot be that a naming in honor of a person never should be changed (we all can imagine namings in honor of a person that we would want changed) and it cannot be that namings are easily changed. Ultimately, the question is whether, based on all we know of a person, we should continue to honor the person by using his or her name. I was especially moved by the views of many of our students and alumni of color who expressed discomfort in being part of a school where important aspects of its operation and location are named for someone who actively promoted such racism.

Many wrote to me to argue for an opposite conclusion. Some said that we should name everything for Elizabeth Josselyn Boalt. After all, she never expressed racism and she was the one who gave the money. I was tempted to recommend this solution. But the reality is that doing so would change nothing about the use of the Boalt name and besides, she gave the money expressly to honor John Boalt.

Some said that the Boalt name is a valuable brand and we will hurt the law school by changing the name. But the only things under consideration are the name of the wing of the building called "Boalt Hall" and our organizations and student activities. I do not think that changing these will affect perception of the law school in the profession or more generally. These namings are entirely internal.

Thus, I accept the recommendations of the Committee and come to the following conclusions:

1. We recommend to the campus Building Name Review Committee that it *de*-name the wing of the building known as "Boalt Hall." This memo and the accompanying report, constitutes this request. I recognize, of course, that removing the name of a building is ultimately a decision by the Chancellor and not one the law school can make on its own.

2. There are many things within the law school that use the name Boalt. We will cease using the Boalt name for these. We encourage organizations within the law school to discontinue the use of the name "Boalt" in their organization names and activities. Many already have done this. For example, lecturer positions (as distinct from the professorships mentioned above) named for the Boalts will be renamed in honor of our recent deans: Jesse Choper, Herma Hill Kay, and Christopher Edley.

3. We will take additional steps to ensure that Elizabeth Josselyn Boalt and her generosity continue to be recognized. We also will take steps to ensure that the racism underlying the Chinese Exclusion Act be remembered. Details about this historical recognition will be developed in the months ahead.

I appreciate the Building Name Review Committee considering this request. It is the result of over a year's worth of research, discussion, and deliberation in the law school.

REPORT OF THE COMMITTEE ON THE USE OF THE BOALT NAME

To: Dean Erwin Chemerinsky

From: Committee on the Use of the Boalt Name
Charles Cannon (chair)
Cheyenne Overall (student member)
gar Russell (staff member)
Quyen Ta (alumni member)
Leti Volpp (faculty member)

Re: Recommendations on Future Use of the Boalt Name

Date: June 25, 2018, revised October 10, 2018

Introduction

On September 14, 2017, you announced the appointment of our committee to develop a response to the issue of the name "Boalt" in relation to our law school. As you wrote in the email announcement:

> I have learned that John Boalt made deeply offensive and racist statements and played an important role in the despicable Chinese exclusion policy. Those views are obviously abhorrent and antithetical to who we are as a law school. This raises serious questions of whether we should continue to use the name Boalt in any way in connection with Berkeley Law.

You tasked our committee with considering the following questions: "How is the name Boalt now used at Berkeley Law? Are these uses in honor of John (as opposed to Elizabeth) Boalt? Should the name Boalt be removed from its current uses? If so, which can the Law School do on its own and which require campus approval?"

We were aware that this question was of deep importance to members of the law school community, and we were keenly interested in hearing those views. The committee solicited responses from all alumni, current students, staff, and faculty via an electronic survey. Over 2,000 members of the law school community responded either via this survey or via individual email messages and phone calls. The committee subsequently held a Town Hall on February 1, 2018 at which alumni and student volunteers advocated for the positions raised most consistently in the survey, followed by extensive community comments. Committee members also reached out to their respective constituencies to seek input through in-person meetings, listening sessions and through electronic communication.

In coming up with our recommendations, the committee adhered to two sets of principles. The first set of principles is that articulated in the 2016 Yale University Report of the Committee to Establish Principles on Renaming. The second set of principles is that laid out in the recently published UC Berkeley Building Name Review Proposal.

Applying these principles to the case of the name Boalt yields our recommendation, as discussed further below.

I. History

The name Boalt has been associated with the law school at the University of California at Berkeley since 1906, when Elizabeth Josselyn Boalt donated a parcel of land in San Francisco, valued at $100,000 prior to the subsequent 1906 earthquake, in memory of her husband, John Henry Boalt. The deed of trust stated:

> That whereas John H. Boalt, deceased, was a member of the Bar of the State of California, and achieved success in the practice of his profession in the said State…and whereas the party of the first part is the widow of the said deceased and wishes to erect a fitting memorial to the said deceased…the said building will be known as the "Boalt Law Building."

The Department of Jurisprudence opened for classes in January 1911, and occupied what was then called Boalt (Memorial) Hall of Law, or Boalt Hall.

In 1950, a new L-shaped building was constructed to relieve overcrowding in the old Boalt Hall of Law and the law school moved to the south-east corner of campus. Minutes from the meeting of November 18, 1949 (143) of the UC Regents approved the names for "various sections" of the new Jurisprudence Building, including "…that portion of the building used for instruction [shall] be known as the "Boalt Hall of Law." On August 24, 1950 (177), the Regents further decided to rename (old) Boalt Hall of Law "Durant Hall", and the School of Jurisprudence "School of Law." The Regents specifically refer to the "…new building for the School of Law, of which "Boalt Hall of Law" is a part…"

The very next motion approved architectural inscriptions for the new building, including "to place the lettering 'Boalt School of Law' a little north of the entrance of the main concourse." This is likely the point at which confusion began over the name of the School of Law as an entity, in contrast to the building housing it (or to the instructional section of that building). After relocation to the new building, the law school continued to be colloquially known as "Boalt Hall," and the name "Boalt School of Law" began to be used officially by the university to refer to the School of Law, and to the building housing it (as well as to the instructional section of that building).

In 1906 Elizabeth Boalt had also created a trust whereby, subject to a life estate and certain powers of revocation, she transferred substantially her remaining estate "to establish and endow a professorship in the Department of Jurisprudence in the University of California, to be known as the "John H. Boalt Professor of Jurisprudence." In 1912, she modified this

proviso by "permitting a latitude as to the precise chair or professorship to be established and endowed with the trust fund." The fund is to remain as a permanent endowment "for such chair or chairs as my said trustees, or their successors, may designate and determine, or, in lieu of such designation, as the said Board of Regents shall determine." This endowment approximated two hundred thousand dollars. Charles S. Wheeler, Elizabeth Josselyn Boalt: An Appreciation, 5 California Law Review (1917) 241 - 44.

The last holder of the John H. Boalt Chair was Professor Justin Sweet (emeritus). The current holder of the Elizabeth J. Boalt Chair is Professor Christopher Tomlins.

There are lecturers on the faculty with the designation "John and Elizabeth Boalt Lecturer," but this title is not the product of any gift, but is rather a law school honorific instituted by the dean a decade ago. There are also dozens of uses of the name "Boalt" throughout the law school including the Boalt Hall Alumni Association, Boalt Hall Fund, Boalt Hall Student Association, Boalt Environmental Law Society, Boalt Hall Committee on Human Rights, and so on.

In 2008 then-Dean Christopher Edley announced that "a positioning exercise" with an objective of simplifying the use of "our multiple names" had been conducted. The name question, he stated, was "especially difficult" to resolve "because we have two primary names, both of which carry tremendous prestige." The announcement concluded:

> Our official name has been—and will continue to be—the University of California, Berkeley, School of Law. We will use this name and especially its short form, Berkeley Law, in most communication with external audiences. The name Berkeley is known worldwide as the gold standard in higher education. And Berkeley Law mirrors the names of our peer schools, all of which exploit the equity in their university names: Harvard Law, Stanford Law, Michigan Law, etc.
>
> We will continue to use the name Boalt Hall, primarily in communications with alumni and internally for the campus community. The Boalt name is enormously meaningful to countless people who've been associated with the school over the years, including newcomers like me. And we want to reinforce those sentiments of pride and connectedness across generations.

On May 18, 2017, Berkeley Law lecturer Charles Reichmann published an op-ed in the San Francisco Chronicle titled "The Case for Renaming Boalt Hall," which focused attention on John Boalt's historical activities.[1] Boalt, who had begun his career in Nevada as a mining lawyer, had, after spending one year there as a judge, moved to the Bay Area.

[1] The Committee also notes the publication of Charles Reichmann's, "Anti-Chinese Racism at Berkeley: The Case for Renaming Boalt Hall," 25 Asian American Law Journal 5 (2018). We found the historical research conducted by Reichmann very helpful to our inquiry. In particular, we appreciate the article pointing us to Oscar T. Shuck's History of the Bench and Bar in California (1901) for its entry on John Boalt, and Elmer Sandmeyer, The Anti-Chinese Movement in California (1991) for its discussion of the 1879 vote on excluding Chinese immigrants from California.

He became a prominent member of San Francisco society, serving as President of the Bohemian Club. In August, 1877 he delivered a paper, titled "The Chinese Question," at the Berkeley Club. The paper was published as a stand-alone pamphlet, lauded in the San Francisco Chronicle, and reprinted as an appendix in the 1878 California Senate Special Committee Report on Chinese Immigration.

"The Chinese Question" is a text which seeks to persuade the reader of the need to prevent Chinese immigration. Noting that there "are many among ourselves who are still in favor of Chinese immigration," (262) and that some believe that opposition is limited to "a few demagogues and discontented communists," (id) the paper recommends that the California state legislature poll the people of the state on the question of Chinese immigration, suggesting the vote would be ten to one opposed to Chinese immigration (id). In seeking to persuade the reader of this position, "The Chinese Question" posits that the "Caucasian and Mongolian races are non-assimilating races." For one, contact with the "Chinaman" "excites in us, or at least in most of us, an unconquerable repulsion…" (257). For another, the "two races are also separated by a remarkable divergence in intellectual character and disposition" (id). "[T]he Chinaman has brought to us and planted within our border all the vicious practices and evil tendencies of his home…" (259).

One passage, which bears quoting at length, asserts that the "Chinese are in their way a civilized and not a barbarous race" (259). While some readers may assume that this passage suggests that John Boalt's view of Chinese people was not unequivocally negative, two observations may be made here. One is that a vision of racial difference that ultimately connotes racial inferiority can still contain within it character traits that are praised. The other is that the portrayal of Chinese people as civilized is accomplished through racially triangulating the Chinese as advanced in comparison to Native Americans, who are portrayed as barbaric:

> Several years ago, when the great eclipse of the sun occurred, which you all remember, I was living at Austin, in the State of Nevada. I had just come out of my house with a piece of smoked glass in my hand, when I noticed a Shoshone Indian intently looking up into the sky. The day had been very bright. Suddenly an invisible veil seemed to cover the sun, a luminous pall fell upon the mountains and valleys, softening the rugged outlines of the one and dimming the long distances of the other. Great vague shadows seemed to have dropped down into the cañons and gulches around us, where it had been dazzlingly bright but a moment before. Conscious of some great mystery, but utterly ignorant of its nature, the Indian stood with his eyes searching the cloudless sky. I handed him my bit of smoked glass and motioned him to look at the sun. He did so, and when I asked him what he thought of it, he heaved a deep sigh and said, "Whitee man heap sabee." Continuing down the street with my bit of smoked glass still in my hand, I happened on a Chinese laundryman. I offered him my smoked glass and advised him to look at the sun. But John only grinned complacently, and said "Up my house got heap big tub water, you see 'em 'clip' heap better." I went home and got out my own tub of water and found that John was quite right. I could see the "clip" a

> heap better. I have always felt that I ought to have passed to John the laurels I had just undeservedly received, and said "Chinaman heap sabee." (259-260).

Boalt, in addition, attempts to warn the reader about Chinese immigration by analogizing the threat they pose to that of black Americans:

> It did so happen that until the Chinese invasion, the class of immigrants who came to our shores were, with one exception, welcome visitors….there was one exception. That exception was the African Negro. His coming was bitterly regretted by every one of our early statesmen who ever spoke of it. If you doubt this, examine the list of members of the African Colonization Society. The pages shine with eminent names. But the negro did come, and we just barely survived his coming. Is it worth while to repeat the mistake? (260).

We thus think it important to note that John Boalt's text "The Chinese Question" should be understood to evince negative views about blacks and Native Americans, in addition to Chinese.

While it is difficult to discern Elizabeth Boalt's position on her husband's text from historical documents, we do have the following statement in Charles S. Wheeler, Elizabeth Josselyn Boalt, An Appreciation, 5 California Law Review (1917) 241-44:

> She felt that through the medium of the work which would be accomplished for State and Nation within the walls of the Boalt Memorial Hall of Law the ideals of her distinguished husband would live on and on.

II. Feedback

In the feedback received from community members, three primary positions were articulated: strike any reference to the name Boalt; keep the name of John Boalt; change any reference to Boalt to explicitly refer to Elizabeth, and not John Boalt. Approximately 47%, 33%, and 11% of the over 2,000 communications received by the committee correlated with these three positions.

Those who advocated striking any reference to the name Boalt asserted that the school rebranding in 2008 had in effect already accomplished any renaming of the law school as an entity, that many people were unfamiliar with what "Boalt" as opposed to "Berkeley" connotes, that it was repugnant to associate their school with racist speech, and that the name Boalt was offensive to current and prospective students, faculty, staff, and more recent graduates.

Those who wanted no change saw the charge of this committee as a waste of resources, as stirring things up in the name of "political correctness," as an ahistorical judgment of the

past, as divesting alumni of a meaningful connection to the school, and as a breach of a promise by the University to name the law school building in memory of John Boalt.

Those who advocated for changing any reference to explicitly refer to Elizabeth Boalt saw this as a "middle path" which would enable the Boalt name to live on without direct negative associations, while honoring a woman who had played a significant financial role in supporting the school.

Regardless of viewpoint expressed, many respondents expressed concerns about erasing history and emphasized the importance of memorializing the past.

III. Principles

In discerning principles to follow the Committee found two documents particularly helpful.

A. Yale Principles

The first is the lengthy memo written by a committee at Yale University which was tasked by the Yale University President to articulate principles to guide the University in deciding whether to remove "a historical name from a building or other prominent structure or space on campus." (We underline here that the name "Boalt" currently attaches only to the wing of one of the law school buildings and not to the school or any building as a whole).

The Yale principles begin with the presumption that "renaming on account of values should be an exceptional event." This is because continuity in names at a university has value: it allows for symbols through which students and alumni can develop lifelong connections and bonds. A presumption against renaming avoids the risk of undue debate over names, and recognizes that people are morally complex and that no generation "stands alone at the end of history with perfect moral hindsight." This presumption against renaming is at its height when buildings are named for people who have made major contributions to the life and mission of the university.

If we begin from a general presumption against renaming, we need to consider whether John Boalt made a major contribution to the life and mission of the university. Arguably, his widow did in his name, in the form of financial resources to help the university pursue its mission, but he did not.

The Yale principles continue by stating that sometimes renaming on the basis of values is warranted. In discussing what principles should apply, the document distinguishes three distinct time frames: the present, the era of a namesake's life and work, and the time of a naming decision.

The first question is whether "a principal legacy of the namesake" is "fundamentally at odds with the mission of the University." A legacy is a "long-lasting effect"; determining the principal legacies of a namesake obliges us to study and make a scholarly judgment on

how the namesake's legacies should be understood. The Yale principles state: "A principal legacy would be fundamentally at odds with the mission of the University if, for example, it contradicted the University's avowed goal of making the world a better place through, among other things, he education of future leaders in an 'ethical, interdependent, and diverse community.' A principal legacy of racism and bigotry would contradict this goal."

What is John Boalt's principal legacy? While he served as a judge for a year and had a successful legal practice, those activities do not appear to have had an enduring historical legacy. Indeed, to the contrary, "The Chinese Question" appears to be his most salient bequest to our time. Its effects redounded beyond those who heard him deliver the paper at the Berkeley Club or who read about it in the San Francisco Chronicle. In Oscar T. Shuck, History of the Bench and Bar of California (1901), John Boalt is described thus:

> To him is largely due the agitation of the question of Chinese immigration in the California legislature of 1877-78, which culminated in the passage of an act calling for a popular vote to test the views of the people of the State of California on the Chinese question. Hon. Creed Haymond, then in the State Senate, proposed the act and referred to this paper of Judge Boalt's as its source (786).

In Elmer Sandmeyer, The Anti-Chinese Movement in California (1991) it states that this election took place in September, 1879, and appeared in the form of "Against Chinese Immigration" on the ballot; those who sought to vote in favor of Chinese immigration had to erase the word "Against" and print the word "For." The result was 150,000 votes against, and fewer than 900 votes for; then Governor Irwin of California stated that this should be taken as a true expression of California's sentiments, in an attempt to press for national action to limit immigration from China (62-63).

Thus, on the historical record, we have little choice not to understand "The Chinese Question" as Boalt's principal legacy and, as such, is a principal legacy of racism and bigotry.

Second, the Yale principles ask whether the relevant principal legacy was significantly contested in the time and place in which the namesake lived. Here we are to distinguish whether John Boalt actively promoted a morally odious practice, or whether he bore an unexceptional relationship to such a practice. In other words, was John Boalt, as embedded in his particular time and place, someone whose relevant legacy was subject to insistent and searching critiques? "The Chinese Question" itself suggests that at the time of its writing views on Chinese exclusion were not universal ("many among ourselves…are still in favor of Chinese immigration"…..some believe that "opposition is limited to a few demagogues and discontented communists.") Thus, John Boalt appears to have been actively promoting Chinese exclusion in a context where opinion was not completely formed.

We could also look to the Congressional debate in 1879, the same year that the vote John Boalt advocated for actually did take place in California, in order to help us discern whether his views were unexceptional at that time. In 1879 the Fifteen Passenger Bill

was passed by the Senate (39 in favor, 27 against, 9 absent) and the House (155 in favor, 72 against, 61 absent) but was then vetoed as violating a treaty obligation by President Rutherford B. Hayes. We draw the discussion of the Congressional debate from Martin B. Gold, Forbidden Citizens: Chinese Exclusion and the U.S. Congress: A Legislative History (2012). The bill had sought to limit the number of Chinese passengers on board any ship landing in a U.S. port to fifteen persons. Two members of Congress who spoke against the bill were Senator Blanche Bruce, and Hannibal Hamlin. Senator Bruce, an African American Republican from Mississippi was born into slavery (his father was his mother's slave master). He was elected under Reconstruction until he was replaced by a former Confederate colonel in the 1880 election as white Southern Democrats seized back control from Reconstruction era Republicans. He testified as follows:

> Mr. President, I desire to submit a single remark. Representing as I do a people who but a few years ago were considered essentially disqualified from enjoying the privileges and immunities of American citizenship, and who have since been so successfully introduced into the body-politic, and having large confidence in the assimilative power of our institutions, I shall vote against the pending bill." 8 Cong. Rec. 1314 (1879).

Another opponent of the bill was Hannibal Hamlin, a Republican of Maine, who Abraham Lincoln had chosen to serve as Vice President during Lincoln's first term. Hamlin had originally gone into the Senate as a Democrat before the Civil War but split with the party in 1856 over their support for slavery and became a Republican. Hamlin pointed out that Congress was about to break a solemn treaty obligation, unilaterally, and with no good reason besides racial prejudice. He also revisited the subject of naturalization of the Chinese which had been rejected in 1870 and drew a direct connection with the new discriminatory legislation. Senator Hamlin stated:

> I am a little inclined to think that if all the Chinamen in our land had the ballot in their hands today, we should not have heard a word of this Chinese question here….I am willing to admit them to naturalization. I think all persons who come here to make their permanent home ought to participate in our Government, ought to be citizens, and ought to have the right of franchise conferred upon them. I voted for it once; I will vote for it again; and I believe, Mr. President, that if you will treat these people upon the Pacific slope with common humanity, they will assimilate, not, perhaps, as readily as other nationalities, to our institutions, but within a reasonable time." 8 Cong. Rec. 1386 (1879).

Senator Hamlin ended his speech saying, "I shall vote against this measure, and I leave that vote the last legacy to my children, that they may esteem it the brightest act of my life." 8 Cong. Rec. 1387 (1879).

Thus, examining John Boalt's views even within the context of his own era suggests that insistent and searching critique of his relevant legacy was available.

Third, the Yale principles ask whether the University, at the time of naming, honored a namesake for reasons that are fundamentally at odds with the mission of the University. This principle points in favor of renaming when the naming decision rested on reasons that either contradicted the mission it professed at the time of the naming itself, or that contract the mission the University professes today. An example of this would be the changing the name of a building at UNC by university trustees in order to honor someone they believed to be a leader of the Ku Klux Klan.

The stated reasons on the deed of trust describe John Boalt merely as a lawyer in the state of California who achieved success in the practice of his profession, and whose widow sought to make a memorial to him. We today have no information indicating whether the then-Department of Jurisprudence sought to name the building for reasons that were then or now fundamentally at odds with the mission of the University. We simply do not know whether or how John Boalt's activities in encouraging anti-Chinese sentiment were understood by the university in agreeing to accept this gift.

Fourth, the Yale principles ask whether a building whose namesake has a principal legacy fundamentally at odds with the University's mission, or which was named for reasons fundamentally at odds with the University's mission, play a substantial role in forming community at the University. Here we find the community-forming character of a building name as both arguing against renaming a building, if to do so helps form bonds and connections across generations of community members, but we also find it to push in the opposite direction, as it is very difficult to form a community around a namesake whose principal legacy is fundamentally at odds with the mission of the University as the world's pre-eminent public research institution and of that university's leading public law school.

It is clear from the responses that we have received from members of the community that, for many alumni, the name Boalt plays a significant role in forming community at the law school. What is less clear is whether the name Boalt can continue to do so, given the awareness that alumni and current and future students have today that the historical person John Boalt was the author of "The Chinese Question." During the Town Hall, the audience viewed a video created by current members of the Asian Pacific American Law Students Association reading from "The Chinese Question" and making precisely the point that it is difficult to study at an institution and feel part of its community when it carries the name of a person who argued that they should not be a member of the institution.

Finally, the Yale principles make clear that decisions to either retain a name or rename come with obligations of nonerasure, contextualization, and process. If the name Boalt is in fact removed from the west classroom wing of the law school building as well as from other law school contexts, it will be necessary to take affirmative steps to avoid an erasure or a similar forgetting of history, by providing a visible exhibit, installation, plaque, sign, public art, or similar such expression of our shared history.

B. UC Berkeley Principles

The Building Name Review Committee has recently articulated a process for determining whether the name of an existing University of California Berkeley building should be removed, which may be found here: https://chancellor.berkeley.edu/building-name-review-committee/principles.

The Berkeley process articulates separate paths depending upon whether a building name is honorific (named to honor someone without a philanthropic gift attached) or philanthropic (named in acknowledgment of a donation). In the case of the latter, the Building Name Review Committee will make a recommendation to the Chancellor who is then to submit the request to the UC president, who will then decide whether to forward it to the California Attorney General for a final decision. (The process of denaming an honorific building name does not receive this final step). Given the historical survey of the law school and building names in section I above, the committee submits that the Boalt naming became honorific when in 1950 it was applied to "that portion [of the building] used for instruction."

The Berkeley process mandates that the legacy of a building's namesake be in alignment with the values and mission of the university, as expressed in the Principles of Community. The Principles of Community are as follows:

- We place honesty and integrity in our teaching, learning, research and administration at the highest level.
- We recognize the intrinsic relationship between diversity and excellence in all our endeavors.
- We affirm the dignity of all individuals and strive to uphold a just community in which discrimination and hate are not tolerated.
- We are committed to ensuring freedom of expression and dialogue that elicits the full spectrum of views held by our varied communities.
- We respect the differences as well as the commonalities that bring us together and call for civility and respect in our personal interactions.
- We believe that active participation and leadership in addressing the most pressing issues facing our local and global communities are central to our educational mission.
- We embrace open and equitable access to opportunities for learning and development as our obligation and goal.

The Berkeley process also states that denaming will be guided by two principles. The first is the Regents of the University of California Policy 4400: University of California Diversity Statement:

> [T]he University of California renews its commitment to the full realization of its historic promise to recognize and nurture merit, talent, and achievement by supporting diversity and equal opportunity in its education, services, and administration, as well as research and creative activity. The University particularly acknowledges the acute need to remove barriers to the recruitment, retention, and

> advancement of talented students, faculty, and staff from historically excluded populations who are currently underrepresented.

The Berkeley process goes on to state:

> We view it [as] our intellectual and ethical responsibility to promote an inclusive, global perspective of the peoples and cultures of the world, particularly in view of past and current scholarship in the United States that may omit, ignore, or silence the perspectives of many groups, such as ethnic minorities, people from non-European nations, women, lesbian, gay and transgender, and disabled people among others.

The second principle of the Berkeley process is that it is "historically and socially valuable to retain a public record, perhaps in the form of a plaque in the building that notes the building's history of naming and the reasons for removing the name."

Lastly, the Berkeley process, in describing the process for submitting a proposal, notes that if:

> an individual's life is consistent with some of these principles and inconsistent with others, the proposal must make a case for why some principles outweigh others. For example, the named individual may have provided extensive service to the University, conducted important research, or made other contributions. However, the same individual may have acted to harm members of various groups. The proposal should explain why pernicious effects outweigh the contributions."

Applying the Berkeley principles to this case, it would appear that the legacy of John Boalt is not in alignment with the values and mission of the University. "The Chinese Question" and the ideas therein espoused do not recognize the intrinsic relationship between diversity and excellence, nor do they affirm the dignity of all individuals in a just community in which discrimination and hate are not tolerated. The legacy of John Boalt does not promote an inclusive, global perspective of the peoples and cultures of the world; to the contrary, "The Chinese Question" silences and disparages the perspectives of ethnic minorities and people from non-European nations. Moreover, John Boalt's positive contributions to the university do not appear to outweigh this legacy of harm. His widow did make a positive contribution in the form of these financial endowments in his memory, contributions that assisted the law school as well as the entire University of California to move forward at that time. But we have seen no evidence at all that John Boalt himself, as lawyer, or as a California opinion-maker of his time, would remotely have supported the diverse law school and UC Berkeley campus that we are so proud of today. We are now aware of this history and we acknowledge this history. Thus, it is for this simple reason that we cannot endorse having University of California's flagship law school tagged so unthinkingly, as it has been for more than a century, by John Boalt's name.

IV. Conclusion

The name "Boalt" has been associated with the law school of the University of California at Berkeley for many years. In considering what to recommend about the usage of this name, we have investigated history and elicited and carefully considered feedback from all members of our law school community. Our ultimate recommendation has been guided by the application of principles that have been developed by leading U.S. universities tackling this difficult question.

In untangling the history of Elizabeth Josselyn Boalt's gifts and subsequent university action, we have learned that the name "Boalt," though used in both official and colloquial correspondence to refer to both the School of Law and to its entire physical structure, in fact stopped serving as the actual name of the school almost seventy years ago. To briefly summarize findings of fact: Elizabeth Boalt's donation of a parcel of land in 1906 led to the opening of the prior Department of Jurisprudence as the "Boalt (Memorial) Hall of Law" in 1911. After WWII, the growth of both the university and its law school led the university to move the law school to its present location in 1950, at which point the Regents renamed the old Boalt Hall of Law "Durant Hall," and named the School of Jurisprudence in its present location "School of Law." The Regents also specified that the western section of the building designated for instruction was to be known as the "Boalt Hall of Law." As explained in more detail above, we conclude that since 1950 this naming of that classroom wing has been honorific, rather than philanthropic. The name "Boalt" also remains attached to two chairs endowed by Elizabeth Boalt, the John H. Boalt Chair and the Elizabeth J. Boalt Chair. The name "Boalt" appears, in addition, in many other contexts throughout the law school that did not originate from any gift by Elizabeth Boalt.

In considering what to recommend about the future use of the name "Boalt," applied to the west classroom wing, to the endowed chair names, and to the many additional uses, we have applied two sets of principles. The first set was developed in the 2016 Yale University Report of the Committee to Establish Principles on Renaming, and the second set is laid out in the UC Berkeley Building Name Review Committee Principles (2018).

The Yale Principles, designed to guide the University in deciding whether to remove "a historical name from a building or other prominent structure or space on campus," ask a series of questions. (We remind the reader here that the name "Boalt" currently attaches only to the western wing of one of the law school buildings and not to the school nor to any building as a whole). The questions, and our findings, are as follows:

i) Did John Boalt make a major contribution to the life and mission of the university?

We believe that Elizabeth Boalt may have done so in her husband's name, but that John Boalt did not.

ii) Is a principal legacy of John Boalt fundamentally at odds with the mission of the University?

Examining the historical record, we find "The Chinese Question" to constitute John Boalt's principal legacy, and as a legacy of racism and bigotry, is at odds with the mission of the University.

iii) Was this principal legacy significantly contested at the time and place in which John Boalt lived?

We find evidence in the historical record that there was insistent and searching critique of his relevant legacy.

iv) Did the University name the building for reasons that were then or are now fundamentally at odds with the mission of the University?

We do not know whether or how John Boalt's activities in encouraging anti-Chinese sentiment were understood by the university in agreeing to accept the gift.

v) Does the name Boalt play a significant role in forming community at the law school?

It is apparent from the responses we received that for many alumni, it does. What is not clear is whether the name can continue to do so, given the awareness that alumni and current and future students have today that the historical person John Boalt was the author of "The Chinese Question."

The UC Berkeley Principles, developed to articulate a process for determining whether the name of an existing UC Berkeley building should be removed, mandates that the legacy of a building's namesake be in alignment with the values and mission of the university, as expressed in the Principles of Community. Applying these, it would appear that the legacy of John Boalt is at odds with the Principles of Community. We find that Boalt's "The Chinese Question" and his ideas therein espoused do not further the intrinsic relationship between diversity and excellence, do not affirm the dignity of all individuals in a just community in which discrimination and hate are not tolerated, do not promote an inclusive, global perspective of all the peoples and cultures of the world, and rather do silence and denigrate the perspectives of ethnic minorities and people from non-European nations. John Boalt's positive contributions to the university do not appear to outweigh this legacy of harm.

Weighing the evidence, the Yale Principles would counsel us to remove the name "Boalt" from most of its current usages. The Berkeley Principles counsel us similarly. We would recommend that the honorific naming of the west classroom wing cease. The endowed chairs in the names of John Boalt and Elizabeth J. Boalt present a more complicated case in terms of testator intent, and we do *not* make a recommendation about those named chairs here. We recommend phasing out the use of the name "Boalt" in the dozens of other law school contexts where it appears by tradition.

As we make this recommendation we emphasize the need to retain a visible public record of this history. While the name "Boalt" would cease to designate the west classroom wing or its dozens of traditional law school uses, its role in the history of the law school would not be erased. It is imperative that the law school provides a visible exhibit, installation, plaque, sign, or public art form that will enable viewers to acknowledge this history; the law school might also consider a periodic public event that would provide such an opportunity in a different form.

In addition, we recommend that the law school continue to provide opportunities for the law school community to provide its collective input about this recommendation. Community feedback has formed an essential component of our committee deliberation and this consultative opportunity must continue now that we have put forward this recommendation. These two interwoven goals of retaining a visible public record of history and providing the opportunity for community comment are set out in the Berkeley Principles as important components of this process.

As we state above, Elizabeth Boalt did make contributions in John Boalt's memory that assisted the law school as well as the entire University of California to move forward in its early years. There is, however, no evidence that John Boalt himself, either as lawyer or as a California opinion-maker of his time, would remotely have supported the inclusive law school and the UC Berkeley campus that we are so proud of today. His principal public legacy is, rather, one of racism and bigotry. We are now aware of this history and we acknowledge this history. It is for this simple reason that we cannot endorse having University of California's flagship law school tagged so unthinkingly, as it has been for more than a century, with John Boalt's name.